

IDENIX PHARMACEUTICALS INC
Form SC TO-T
June 20, 2014

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE TO
(RULE 14D-100)
Tender Offer Statement Pursuant to Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934

IDENIX PHARMACEUTICALS, INC.

(Name of Subject Company)

IMPERIAL BLUE CORPORATION

(Offeror)

MERCK & CO., INC.

(Parent of Offeror)

(Names of Filing Persons)

COMMON STOCK, \$0.001 PAR VALUE

(Title of Class of Securities)

45166R204

(CUSIP Number of Class of Securities)

Geralyn S. Ritter

Senior Vice President, Global Public Policy and Corporate Responsibility,

Secretary and Assistant General Counsel

Merck & Co., Inc.

P.O. Box 100

Whitehouse Station, NJ 08889-0100

(908) 423-1000

(Name, address and telephone number of person authorized to receive notices and communications on behalf of filing persons)

with copies to:

James Modlin

David Schwartz

Hughes Hubbard & Reed LLP

One Battery Park Plaza

New York, NY 10004

(212) 837-6000

CALCULATION OF FILING FEE

Transaction Valuation*

\$3,852,404,200

Amount of Filing Fee**

\$496,189.66

* Calculated solely for purposes of determining the filing fee. The calculation of the transaction value is determined by adding the sum of (i) 150,856,104 shares of common stock, par value \$0.001 per share, of Idenix Pharmaceuticals, Inc. (Idenix) multiplied by the offer price of \$24.50 per share and (ii) the net offer price for 8,794,634 shares issuable pursuant to outstanding options with an exercise price less than \$24.50 per share (which is calculated by multiplying the number of shares underlying such outstanding options by an amount equal to \$24.50 minus such applicable exercise price). The calculation of the filing fee is based on information provided by Idenix as of June 8, 2014.

** The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 1 for Fiscal Year 2014, issued August 30, 2013, by multiplying the

transaction valuation by 0.00012880.

- .. Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: N/A
Form or Registration No.: N/A

Filing Party: N/A
Date Filed: N/A

- .. Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- ☒ third-party tender offer subject to Rule 14d-1.
- ☐ issuer tender offer subject to Rule 13e-4.
- ☐ going-private transaction subject to Rule 13e-3.
- ☐ amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: ..

This Tender Offer Statement on Schedule TO (this Schedule TO) relates to the tender offer by Imperial Blue Corporation, a Delaware corporation (Purchaser) and a wholly-owned subsidiary of Merck & Co., Inc., a New Jersey corporation (Parent), for all of the outstanding shares of common stock, par value \$0.001 per share (Shares), of Idenix Pharmaceuticals, Inc., a Delaware corporation (Idenix), at a price of \$24.50 per share, net to the seller in cash, without interest, but subject to any required withholding of taxes, upon the terms and conditions set forth in the offer to purchase dated June 20, 2014 (the Offer to Purchase), a copy of which is attached as Exhibit (a)(1)(A), and in the related letter of transmittal (the Letter of Transmittal), a copy of which is attached as Exhibit (a)(1)(B), which, as each may be amended or supplemented from time to time, collectively constitute the Offer.

All the information set forth in the Offer to Purchase, including Schedule I thereto, is incorporated by reference herein in response to Items 1 through 9 and Item 11 of this Schedule TO, and is supplemented by the information specifically provided in this Schedule TO.

Item 1. Summary Term Sheet.
Regulation M-A Item 1001

The information set forth in the Offer to Purchase under the caption SUMMARY TERM SHEET is incorporated herein by reference.

Item 2. Subject Company Information.
Regulation M-A Item 1002

(a) *Name and Address.* The name, address, and telephone number of the subject company's principal executive offices are as follows:

Idenix Pharmaceuticals, Inc.

320 Bent Street

Cambridge, Massachusetts 02141

(617) 995-9800

(b)-(c) *Securities; Trading Market and Price.* The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

INTRODUCTION

THE TENDER OFFER Section 6 (Price Range of Shares; Dividends)

Item 3. Identity and Background of Filing Person.
Regulation M-A Item 1003

(a)-(c) *Name and Address; Business and Background of Entities; and Business and Background of Natural Persons.*
The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 8 (Certain Information Concerning Parent and Purchaser)

SCHEDULE I Information Relating to Parent and Purchaser

Item 4. *Terms of the Transaction.*

Regulation M-A Item 1004

(a) *Material Terms.* The information set forth in the Offer to Purchase is incorporated herein by reference.

Item 5. *Past Contacts, Transactions, Negotiations and Agreements.*
Regulation M-A Item 1005

(a) *Transactions.* The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 10 (Background of the Offer; Past Contacts or Negotiations with Idenix)

(b) *Significant Corporate Events.* The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 10 (Background of the Offer; Past Contacts or Negotiations with Idenix)

THE TENDER OFFER Section 11 (The Merger Agreement; Other Agreements)

THE TENDER OFFER Section 12 (Purpose of the Offer; Plans for Idenix)

Item 6. *Purposes of the Transaction and Plans or Proposals.*
Regulation M-A Item 1006

(a) *Purposes.* The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

THE TENDER OFFER Section 12 (Purpose of the Offer; Plans for Idenix)

(c) (1)-(7) *Plans.* The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 9 (Source and Amount of Funds)

THE TENDER OFFER Section 10 (Background of the Offer; Past Contacts or Negotiations with Idenix)

THE TENDER OFFER Section 11 (The Merger Agreement; Other Agreements)

THE TENDER OFFER Section 12 (Purpose of the Offer; Plans for Idenix)

THE TENDER OFFER Section 13 (Certain Effects of the Offer)

THE TENDER OFFER Section 14 (Dividends and Distributions)

Item 7. *Source and Amount of Funds or Other Consideration.*
Regulation M-A Item 1007

(a) *Source of Funds.* The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 9 (*Source and Amount of Funds*)

THE TENDER OFFER Section 10 (*Background of the Offer; Past Contacts or Negotiations with Idenix*)

- 3 -

(b) *Conditions*. The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 9 (Source and Amount of Funds)

THE TENDER OFFER Section 10 (Background of the Offer; Past Contacts or Negotiations with Idenix)

THE TENDER OFFER Section 11 (The Merger Agreement; Other Agreements)

THE TENDER OFFER Section 12 (Purpose of the Offer; Plans for Idenix)

THE TENDER OFFER Section 15 (Conditions of the Offer)

(d) *Borrowed Funds*. The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 9 (Source and Amount of Funds)

THE TENDER OFFER Section 10 (Background of the Offer; Past Contacts or Negotiations with Idenix)

THE TENDER OFFER Section 11 (The Merger Agreement; Other Agreements)

THE TENDER OFFER Section 15 (Conditions of the Offer)

Item 8. *Interest in Securities of the Subject Company.*

Regulation M-A Item 1008

(a) *Securities Ownership*. The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

THE TENDER OFFER Section 8 (Certain Information Concerning Parent and Purchaser)

THE TENDER OFFER Section 12 (Purpose of the Offer; Plans for Idenix)

SCHEDULE I Information Relating to Parent and Purchaser

(b) *Securities Transactions*. None.

Item 9. *Persons/Assets Retained, Employed, Compensated or Used.*

Regulation M-A Item 1009

(a) *Solicitations or Recommendations*. The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 3 (Procedures for Accepting the Offer and Tendering Shares)

THE TENDER OFFER Section 10 (Background of the Offer; Past Contacts or Negotiations with Idenix)

THE TENDER OFFER Section 18 (Fees and Expenses)

- 4 -

Item 10. *Financial Statements.*

Regulation M-A Item 1010

(a) *Financial Information.* Not Applicable.

(b) *Pro Forma Information.* Not Applicable.

Item 11. *Additional Information.*

Regulation M-A Item 1011

(a) *Agreements, Regulatory Requirements and Legal Proceedings.* The information set forth in the Offer to Purchase under the following captions is incorporated herein by reference:

SUMMARY TERM SHEET

THE TENDER OFFER Section 10 (Background of the Offer; Past Contacts or Negotiations with Idenix)

THE TENDER OFFER Section 11 (The Merger Agreement; Other Agreements)

THE TENDER OFFER Section 12 (Purpose of the Offer; Plans for Idenix)

THE TENDER OFFER Section 13 (Certain Effects of the Offer)

THE TENDER OFFER Section 16 (Certain Legal Matters; Regulatory Approvals)

(c) *Other Material Information.* The information set forth in the Offer to Purchase and the Letter of Transmittal is incorporated herein by reference.

Item 12. Exhibits.

Regulation M-A Item 1016

Exhibit No.	Description
(a)(1)(A)	Offer to Purchase, dated June 20, 2014.
(a)(1)(B)	Letter of Transmittal.
(a)(1)(C)	Notice of Guaranteed Delivery.
(a)(1)(D)	Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
(a)(1)(E)	Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
(a)(1)(F)	Summary Advertisement as published in <i>The New York Times</i> on June 20, 2014.
(a)(1)(G)	Press Release dated June 9, 2014 (incorporated by reference to Exhibit (a)(1) to the Schedule TO-C filed by Merck & Co., Inc. with the Securities and Exchange Commission on June 9, 2014).
(a)(1)(H)	Presentation of Merck & Co., Inc. (incorporated by reference to Exhibit (a)(2) to the Schedule TO-C filed by Merck & Co., Inc. with the Securities and Exchange Commission on June 9, 2014).
(a)(1)(I)	Press Release dated June 20, 2014.
(b)	None.
(d)(1)	Agreement and Plan of Merger, dated as of June 8, 2014, by and among Merck & Co., Inc., Imperial Blue Corporation and Idenix Pharmaceuticals, Inc. (incorporated by reference to Exhibit 2.1 to the Form 8-K filed by Idenix Pharmaceuticals, Inc. with the Securities and Exchange Commission on June 9, 2014).
(d)(2)	Support Agreement, dated as of June 8, 2014, by and among Merck & Co., Inc., Imperial Blue Corporation and The Baupost Group, L.L.C. (incorporated by reference to Exhibit 99.1 to the Form 8-K filed by Idenix Pharmaceuticals, Inc. with the Securities and Exchange Commission on June 9, 2014).
(g)	None.
(h)	None.

Item 13. Information Required by Schedule 13E-3.

Not applicable.

SIGNATURES

After due inquiry and to the best of their knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: June 20, 2014

IMPERIAL BLUE CORPORATION

By: /s/ Sunil A. Patel

Name: Sunil A. Patel

Title: Vice President

MERCK & CO., INC.

By: /s/ Katie Fedosz

Name: Katie Fedosz

Title: Senior Assistant Secretary

- 7 -

EXHIBIT INDEX

Exhibit No.	Description
(a)(1)(A)	Offer to Purchase, dated June 20, 2014.
(a)(1)(B)	Letter of Transmittal.
(a)(1)(C)	Notice of Guaranteed Delivery.
(a)(1)(D)	Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
(a)(1)(E)	Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
(a)(1)(F)	Summary Advertisement as published in <i>The New York Times</i> on June 20, 2014.
(a)(1)(G)	Press Release dated June 9, 2014 (incorporated by reference to Exhibit (a)(1) to the Schedule TO-C filed by Merck & Co., Inc. with the Securities and Exchange Commission on June 9, 2014).
(a)(1)(H)	Presentation of Merck & Co., Inc. (incorporated by reference to Exhibit (a)(2) to the Schedule TO-C filed by Merck & Co., Inc. with the Securities and Exchange Commission on June 9, 2014).
(a)(1)(I)	Press Release dated June 20, 2014.
(b)	None.
(d)(1)	Agreement and Plan of Merger, dated as of June 8, 2014, by and among Merck & Co., Inc., Imperial Blue Corporation and Idenix Pharmaceuticals, Inc. (incorporated by reference to Exhibit 2.1 to the Form 8-K filed by Idenix Pharmaceuticals, Inc. with the Securities and Exchange Commission on June 9, 2014).
(d)(2)	Support Agreement, dated as of June 8, 2014, by and among Merck & Co., Inc., Imperial Blue Corporation and The Baupost Group, L.L.C. (incorporated by reference to Exhibit 99.1 to the Form 8-K filed by Idenix Pharmaceuticals, Inc. with the Securities and Exchange Commission on June 9, 2014).
(g)	None.
(h)	None.