AMYLIN PHARMACEUTICALS INC
Form SC TO-T/A
July 17, 2012

# UNITED STATES

# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

# SCHEDULE TO

**TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)**

**OF THE SECURITIES EXCHANGE ACT OF 1934**

**AMENDMENT NO. 1**

# AMYLIN PHARMACEUTICALS, INC.

**(Name of Subject Company (Issuer))**

# B&R ACQUISITION COMPANY

**(Offeror)**

# BRISTOL-MYERS SQUIBB COMPANY

**(Offeror)**

**COMMON STOCK, PAR VALUE $0.001 PER SHARE**
**(Title of Class of Securities)**

**032346108**
**(CUSIP Number of Class of Securities)**

**Sandra Leung, Esq.**

**General Counsel & Corporate Secretary**

**P. Joseph Campisi, Jr., Esq.**

**Vice President & Associate General Counsel**

**Bristol-Myers Squibb Company**

**345 Park Avenue**

**New York, New York 10154**

**(212) 546-4000**
**(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)**

***Copies to:***

**David Fox, Esq.**

**Daniel Wolf, Esq.**

**Kirkland & Ellis LLP**

**601 Lexington Avenue**

**New York, NY 10022**

**(212) 446-4800**

**CALCULATION OF FILING FEE**

| Transaction Valuation(1) | Amount of Filing Fee(2) |
|---|---|
| $5,309,403,868.82 | $608,457.68 |

(1) Calculated solely for purposes of determining the filing fee. The calculation assumes the purchase of 163,768,702 shares of voting common stock, par value $0.001 per share. The transaction value also includes the aggregate offer price for (i) 1,552,376 shares issuable pursuant to the vesting of restricted stock units and (ii) 5,950,014 shares issuable pursuant to outstanding options

with an exercise price less than $31.00 per share, which is calculated by (x) multiplying the number of shares underlying an outstanding option with an exercise price less than $31.00 by an amount equal to $31.00 minus the exercise price for such option and (y) dividing such product by $31.00.

(2) The amount of the filing fee was calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory #3 for fiscal year 2012, issued September 29, 2011, by multiplying the transaction value by 0.0001146.

x 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: $608,457.68 | Filing Party: Bristol-Myers Squibb Company and B&R Acquisition Co. |
| Form of Registration No.: Schedule TO | Date Filed: July 10, 2012 |

¨ 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:

x 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. ¨

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

¨ Rule 13e-4(i) (Cross-Border Issuer Tender Offer)
¨ Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

This Amendment No. 1 to the Tender Offer Statement on Schedule TO (the Schedule TO ) amends and supplements the Schedule TO relating to the tender offer by (i) B&R Acquisition Company, a Delaware corporation ( Purchaser ) and a wholly-owned subsidiary of Bristol-Myers Squibb Company, a Delaware corporation ( Parent ) and (ii) Parent, for all of the outstanding common stock, par value $0.001 per share (the Shares ), of Amylin Pharmaceuticals, Inc., a Delaware corporation (the Company ), at a price of $31.00 per share net to the seller in cash without interest and less applicable withholding taxes, if any, upon the terms and conditions set forth in the offer to purchase dated July 10, 2012 (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, together with any amendments or supplements, collectively constitute the Offer.

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

This Amendment No. 1 to the Schedule TO is being filed to amend and supplement Item 12 by attaching as Exhibits to the Schedule TO a transcript of an employee town hall meeting which was posted to the Company s intranet on July 17, 2012 and an Integration Frequently Asked Questions memorandum which was emailed to employees and posted to the Company s intranet website on July 17, 2012.

**Item 12**

Item 12 of the Schedule TO is amended and supplemented by adding the following exhibits:

| **Exhibit No.** | |
|---|---|
| (a)(5)(E) | Transcript of Town Hall Meeting with Bristol-Myers Squibb Company and Amylin Ohio LLC, dated July 12, 2012 and slide presentation used during the Town Hall Meeting (incorporated by reference to Exhibit (a)(5)(E) to Amendment No. 1 to the Schedule 14D-9 filed by Amylin Pharmaceuticals, Inc. with the Securities and Exchange Commission on July 17, 2012). |
| (a)(5)(F) | Amylin Integration Frequently Asked Questions memorandum distributed to Amylin employees on July 17, 2012 (incorporated by reference to Exhibit (a)(5)(F) to Amendment No. 1 to the Schedule 14D-9 filed by Amylin Pharmaceuticals, Inc. with the Securities and Exchange Commission on July 17, 2012). |

**SIGNATURE**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

B&R ACQUISITION COMPANY

By /s/ Demetrios Kydonieus
Name: Demetrios Kydonieus
Title: Vice President

Date: July 17, 2012

BRISTOL-MYERS SQUIBB COMPANY

By /s/ Demetrios Kydonieus
Name: Demetrios Kydonieus
Title: Vice President, Strategy, Alliances & Transactions

Date: July 17, 2012

**EXHIBIT INDEX**

| Exhibit No. | |
|---|---|
| (a)(1)(A) | Offer to Purchase, dated July 10, 2012.* |
| (a)(1)(B) | Letter of Transmittal (including Substitute Form W-9).* |
| (a)(1)(C) | Notice of Guaranteed Delivery.* |
| (a)(1)(D) | Letter from the Information Agent to Brokers, Dealers, Commercial Banks, Trust Companies and Nominees.* |
| (a)(1)(E) | Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Nominees.* |
| (a)(1)(F) | Instruction Form to be Used with the Letter of Transmittal.* |
| (a)(1)(G) | Summary Advertisement as published in the Wall Street Journal on July 10, 2012.* |
| (a)(5)(A) | Joint Press Release of Amylin Pharmaceuticals, Inc. and Bristol-Myers Squibb Company, dated June 29, 2012 (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by Bristol-Myers Squibb Company with the Securities and Exchange Commission on July 2, 2012).* |
| (a)(5)(B) | Press Release issued by Bristol-Myers Squibb Company, dated July 10, 2012.* |
| (a)(5)(C) | Class Action Complaint dated July 3, 2012 (Maxine Phillips v. Amylin Pharmaceuticals, Inc., et al.).* |
| (a)(5)(D) | Class Action Complaint dated July 3, 2012 (Douglas Peterson v. Amylin Pharmaceuticals, Inc., et al.).* |
| (a)(5)(E) | Transcript of Town Hall Meeting with Bristol-Myers Squibb Company and Amylin Ohio LLC, dated July 12, 2012 and slide presentation used during the Town Hall Meeting (incorporated by reference to Exhibit (a)(5)(F) to Amendment No. 1 to the Schedule 14D-9 filed by Amylin Pharmaceuticals, Inc. with the Securities and Exchange Commission on July 17, 2012). |
| (a)(5)(F) | Amylin Integration Frequently Asked Questions memorandum distributed to Amylin employees on July 17, 2012 (incorporated by reference to Exhibit (a)(5)(F) to Amendment No. 1 to the Schedule 14D-9 filed by Amylin Pharmaceuticals, Inc. with the Securities and Exchange Commission on July 17, 2012). |
| (b) | None. |
| (d)(1) | Agreement and Plan of Merger, dated June 29, 2012, by and among Amylin Pharmaceuticals, Inc., Bristol-Myers Squibb Company, and B&R Acquisition Company (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by Bristol-Myers Squibb Company with the Securities and Exchange Commission on July 3, 2012).* |
| (d)(2) | Tender and Support Agreement, by and among Amylin Pharmaceuticals, Inc., Bristol-Myers Squibb Company, B&R Acquisition Company and certain stockholders of Amylin Pharmaceuticals, Inc., dated June 29, 2012.* |
| (g) | None. |
| (h) | None. |

* Previously filed.