

NOVEN PHARMACEUTICALS INC

Form SC TO-T/A

July 30, 2009

Table of Contents

**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. 2)
NOVEN PHARMACEUTICALS, INC.
(Name of Subject Company (Issuer))
NORTHSTAR MERGER SUB, INC.
A Wholly-Owned Subsidiary of
HISAMITSU U.S., INC.
A Wholly-Owned Subsidiary of
HISAMITSU PHARMACEUTICAL CO., INC.
(Names of Filing Persons (Offerors))
COMMON STOCK, \$0.0001 PAR VALUE
*(Title of Class of Securities)***

670009109

(CUSIP Number of Class of Securities)

Mr. Nobuo Tsutsumi, Ph.D.

General Manager of Legal Department

Hisamitsu Pharmaceutical Co., Inc.

Marunouchi, Chiyoda-ku 1-11-1

Tokyo, 100-6221, Japan

81-3-5293-1700

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

Copy to:

Kevin A. Rinker, Esq.

Debevoise & Plimpton LLP

919 Third Avenue

New York, NY 10022

(212) 909-6000

CALCULATION OF FILING FEE

	Transaction Valuation⁽¹⁾	Amount of Filing Fee⁽²⁾
	\$407,383,098	\$22,732

(1) Estimated for purposes of calculating the filing fee only. This amount is the sum of (i)

23,535,967
shares of Noven
Pharmaceuticals,
Inc. common
stock (based on
25,028,987
outstanding as of
July 9, 2009, less
1,240,000 shares
owned by
Hisamitsu
Pharmaceutical
Co., Inc. and
253,020
outstanding
shares of
restricted stock)
by \$16.50 per
share, which is
the offer price,
plus (ii)
\$3,057,352
expected to be
paid in
connection with
the cancellation
of outstanding
options, (iii)
\$10,982,460 to
be paid in
connection with
the cancellation
of outstanding
stock
appreciation
rights, plus (iv)
\$825,000
expected to be
paid in
connection with
cancellation of
outstanding
restricted stock
units, and (v)
\$4,174,830
expected to be
paid in
connection with
cancellation of
shares of
restricted stock.

(2) The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory #5 for fiscal year 2009, issued March 11, 2009, by multiplying the transaction value by 0.0000558.

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: \$22,732
Form of Registration No.: SC-TO-T

Filing Party: Hisamitsu U.S., Inc.
Date Filed: July 23, 2009

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.

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)

TABLE OF CONTENTS

Item 7. Source and Amount of Funds

SIGNATURE

EXHIBIT INDEX

Table of Contents

This Amendment No. 2 (Amendment No. 2) amends and supplements the Tender Offer Statement on Schedule TO originally filed with the U.S. Securities and Exchange Commission on July 23, 2009, as amended by Amendment No. 1 filed on July 28, 2009 (as amended, the Schedule TO), by (i) Northstar Merger Sub, Inc., a Delaware corporation (the Purchaser) and wholly-owned subsidiary of Hisamitsu U.S., Inc., a Delaware corporation (Holdings) and wholly-owned subsidiary of Hisamitsu Pharmaceutical Co., Inc., a corporation organized under the laws of Japan (Parent), (ii) Holdings and (iii) Parent, relating to the offer by the Purchaser to purchase all of the outstanding shares of common stock, par value \$0.0001 per share, together with the associated Series A junior participating preferred stock purchase rights issued pursuant to the Rights Agreement, dated as of November 6, 2001, between the Company and American Stock Transfer & Trust, as amended (the Shares), of Noven Pharmaceuticals, Inc., a Delaware corporation (the Company), at a purchase price of \$16.50 per Share, net to the seller in cash, without interest and less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated July 23, 2009 (together with any amendments and supplements thereto, the Offer to Purchase) and in the related Letter of Transmittal.

Capitalized terms used in this Amendment No. 2 and not defined herein shall have the meanings assigned to such terms in the Offer to Purchase.

The information in the Offer to Purchase and the related Letter of Transmittal is incorporated in this Amendment No. 2 by reference to all of the applicable items in the Schedule TO, except that such information is amended and supplemented to the extent specifically provided in this Amendment No. 2.

Item 7. Source and Amount of Funds

The fourth and fifth paragraphs under the section of the Offer to Purchase entitled Summary Term Sheet are hereby amended and restated in their entirety as follows:

Do you have the financial resources to make payment?

Yes. Parent, our ultimate parent company, will provide us with sufficient funds to purchase all Shares validly tendered in the Offer and not validly withdrawn. Parent will also fund our Merger with the Company, which is expected to follow the successful completion of the Offer in accordance with the terms and conditions of the Merger Agreement. The Offer is not subject to a financing condition. Parent intends to provide us with the necessary funds from cash on hand and cash equivalents. See Section 9 Source and Amount of Funds.

Is your financial condition relevant to my decision to tender my Shares in the Offer?

No. We do not think our financial condition is relevant to your decision whether to tender Shares and accept the Offer because:

- the Offer is being made for all outstanding Shares solely for cash;
- in light of Parent's financial capacity in relation to the amount of consideration payable in the Offer, we, through Parent, will have sufficient cash on hand and cash equivalents to purchase all Shares validly tendered in the Offer and not validly withdrawn;
- the Offer is not subject to any financing condition; and
- if we consummate the Offer, we expect to acquire any remaining Shares not purchased in the Offer for the same cash price in the Merger.

See Section 9 Source and Amount of Funds.

The first and second paragraphs under Section 9 Source and Amount of Funds of the Offer to Purchase are hereby amended and restated in their entirety as follows:

The Offer is not conditioned upon Parent's, Holdings' or the Purchaser's ability to finance the purchase of Shares pursuant to the Offer. Parent, Holdings and the Purchaser estimate that the total amount of funds required to purchase all of the Shares pursuant to the Offer and consummate the Merger is approximately \$430,000,000, including related transaction fees and expenses. Parent will have sufficient funds to consummate the purchase of Shares in the Offer and the Merger and the other transactions described above, and will cause the Purchaser to have sufficient funds available to consummate such transactions. Parent intends to provide the necessary funds from cash on hand and cash equivalents.

The Purchaser does not think its financial condition is relevant to the decision of holders of Shares whether to tender Shares and accept the Offer because:

- the Offer is being made for all outstanding Shares solely for cash;
- in light of Parent's financial capacity in relation to the amount of consideration payable in the Offer, the Purchaser, through Parent, will have sufficient cash on hand and cash equivalents to purchase all Shares validly tendered in the Offer and not validly withdrawn;
- the Offer is not subject to any financing condition; and
- if the Purchaser consummates the Offer, it expects to acquire any remaining Shares not purchased in the Offer for the same cash price in the Merger.

Table of Contents

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.

HISAMITSU PHARMACEUTICAL CO., INC.

By: /s/ Hirotaka Nakatomi
Name: Hirotaka Nakatomi
Title: President & Chief Executive Officer

Date: July 30, 2009

HISAMITSU U.S., INC.

By: /s/ Nobuo Tsutsumi, Ph.D.
Name: Nobuo Tsutsumi, Ph.D.
Title: Secretary

Date: July 30, 2009

NORTHSTAR MERGER SUB, INC.

By: /s/ Nobuo Tsutsumi, Ph.D.
Name: Nobuo Tsutsumi, Ph.D.
Title: Secretary

Date: July 30, 2009

Table of Contents

EXHIBIT INDEX

Exhibit	Exhibit Name
(a)(1)(A)	Offer to Purchase dated July 23, 2009.*
(a)(1)(B)	Letter of Transmittal (including Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9).*
(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)(5)(A)	Joint Press Release issued by Hisamitsu Pharmaceutical Co., Inc., and Noven Pharmaceuticals, Inc. on July 14, 2009, incorporated herein by reference to the Schedule TO filed by Hisamitsu Pharmaceutical Co., Inc. on July 14, 2009.
(a)(5)(B)	Summary Newspaper Advertisement as published in The Wall Street Journal on July 23, 2009.*
(a)(5)(C)	Press Release issued by Hisamitsu Pharmaceutical Co., Inc. on July 23, 2009.*
(a)(5)(D)	Complaint of IBEW Local Union 98, filed in the Court of Chancery of the State of Delaware and dated July 15, 2009.*
(a)(5)(E)	Complaint of Arthur I. Murphy, Jr., filed in the Eleventh Judicial Circuit of Florida and dated July 15, 2009.*
(a)(5)(F)	Complaint of Louisiana Municipal Police Employees, filed in the Court of Chancery of the State of Delaware and dated July 16, 2009.*
(a)(5)(G)	Complaint of Arthur I. Murphy Jr., filed in the Court of Chancery of the State of Delaware and dated July 23, 2009.**
(a)(5)(H)	Complaint of Zucker, et al., filed in the Eleventh Judicial Circuit of Florida and dated July 24, 2009.**
(a)(5)(I)	Complaint of David Noven, filed in the Eleventh Judicial Circuit of Florida and dated July 24, 2009.**
(b)	<i>Not applicable.</i>
(d)(1)	Agreement and Plan of Merger dated as of July 14, 2009, by and among Hisamitsu Pharmaceutical Co., Inc., Hisamitsu U.S., Inc., Northstar Merger Sub, Inc. and Noven Pharmaceuticals, Inc.*
(d)(2)	Confidentiality Agreement, dated as of June 25, 2008, between Hisamitsu Pharmaceutical Co., Inc. and Noven Pharmaceuticals, Inc.*
(d)(3)	

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Exclusivity Agreement, dated as of June 4, 2009, between Hisamitsu Pharmaceutical Co., Inc. and Noven Pharmaceuticals, Inc.*

(d)(4) Amended and Restated Employment Agreement, dated July 14, 2009, between Noven Pharmaceuticals, Inc. and Jeffrey Eisenberg.*

(g) *Not applicable.*

(h) *Not applicable.*

* Previously filed
on the
Schedule TO,
dated July 23,
2009.

** Previously filed
on the
Amendment
No. 1 to the
Schedule TO,
dated July 28,
2009.