

AveXis, Inc.
Form SC TO-T/A
May 15, 2018

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)

AVEXIS, INC.

(Name of Subject Company (Issuer))

NOVARTIS AM MERGER CORPORATION

an indirect wholly-owned subsidiary of

NOVARTIS AG

(Name of Filing Persons (Offerors))

Common Stock, \$0.0001 Par Value

(Title of Class of Securities)

05366U100

(CUSIP Number of Class of Securities)

**Felix R. Ehrat
Group General Counsel
Novartis AG
Lichstrasse 35**

**CH-4056 Basel
Switzerland
Telephone: +41-61-324-1111**

(Name, Address, and Telephone Numbers of Person Authorized to Receive Notices and Communications on Behalf of Filing Persons)

Copies to:

**Joseph E. Gilligan
Joseph G. Connolly, Jr.
Hogan Lovells US LLP
555 13th Street, NW
Washington, DC 20002
Telephone: +1 (202) 637-5600**

CALCULATION OF FILING FEE

Transaction Valuation(1)
\$8,687,565,742.00

Amount of Filing Fee(2)
\$1,081,601.93

(1) Estimated for purposes of calculating the filing fee only. Calculated by adding (a) 36,816,253 shares of AveXis, Inc. (AveXis) common stock (Shares) multiplied by \$218.00, the offer price per Share, plus (b) 3,034,966 Shares potentially issuable upon exercise or vesting of equity compensation options, warrants, and similar securities, multiplied by \$218.00, the offer price per Share. The calculation of the filing fee is based on information provided by AveXis as of April 5, 2018.

(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 #1 for fiscal year 2018, issued August 24, 2017, by multiplying the transaction value by 0.0001245.

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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: \$1,081,601.93

Filing Party: Novartis AG and Novartis AM Merger Corporation

Form of Registration No.: Schedule TO

Date Filed: April 17, 2018

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)
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This Amendment No. 2 (this *Amendment*) amends and supplements the Tender Offer Statement on Schedule TO (together with any amendments and supplements thereto, the *Schedule TO*), filed with the Securities and Exchange Commission on April 17, 2018 by (i) Novartis AM Merger Corporation, a Delaware corporation (*Purchaser*) and an indirect wholly-owned subsidiary of Novartis AG, a company organized under the laws of Switzerland (*Parent*), and (ii) Parent. The *Schedule TO* relates to the offer by *Purchaser* to purchase all of the outstanding shares of common stock, par value \$0.0001 per share (the *Shares*), of AveXis, Inc., a Delaware corporation (*AveXis*), at a purchase price of \$218.00 per Share, net to the seller in cash, without interest and subject to any tax withholding, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated April 17, 2018 (the *Offer to Purchase*), and in the related Letter of Transmittal (which, together with the Offer to Purchase, as they may be amended or supplemented from time to time, collectively constitute the *Offer*), copies of which are attached to the *Schedule TO* as Exhibits (a)(1)(A) and (a)(1)(B), respectively.

Except as otherwise set forth in this Amendment, the information set forth in the *Schedule TO* remains unchanged and is incorporated herein by reference to the extent relevant to the items in this Amendment. Capitalized terms used but not defined herein have the meanings assigned to such terms in the Offer to Purchase.

Schedule TO.

The *Schedule TO* is hereby amended as follows:

Items 1 through 9 and Item 11.

The information set forth in the Offer to Purchase and Items 1 through 9 and Item 11 of the *Schedule TO*, to the extent such Items incorporate by reference the information contained in the Offer to Purchase, is hereby amended and supplemented to include the following:

The Offer and withdrawal rights expired as scheduled at 12:00 Midnight, New York City time, at the end of the day of Monday, May 14, 2018 (such date and time, the *Expiration Time*). The Depositary has advised *Purchaser* that, as of the *Expiration Time*, a total of 30,368,057 Shares (excluding Shares with respect to which Notices of Guaranteed Delivery were delivered) were validly tendered and not properly withdrawn pursuant to the Offer, representing approximately 82.48% of the Shares outstanding as of the *Expiration Time*. In addition, the Depositary has advised *Purchaser* that, as of the *Expiration Time*, Notices of Guaranteed Delivery had been delivered with respect to 1,058,258 additional Shares, representing approximately 2.87% of the outstanding Shares as of the *Expiration Time*.

As of the *Expiration Time*, the number of Shares validly tendered and not properly withdrawn pursuant to the Offer satisfied the Minimum Tender Condition, and all other conditions to the Offer were satisfied or waived. Immediately after the *Expiration Time*, *Purchaser* irrevocably accepted for payment all Shares tendered and not properly withdrawn pursuant to the Offer.

As a result of its acceptance for payment of the Shares tendered pursuant to the Offer and in accordance with Section 251(h) of the DGCL, *Purchaser* owns at least the percentage of Shares that would be required to adopt the Merger Agreement by a vote of the stockholders of AveXis. Parent and *Purchaser* expect to complete the acquisition of AveXis on May 15, 2018 by consummating the Merger pursuant to the Merger Agreement without a vote of the AveXis stockholders in accordance with Section 251(h) of the DGCL. At the Effective Time, each Share then outstanding (other than Shares owned by Parent, *Purchaser*, AveXis or any subsidiary of Parent or AveXis or by any AveXis stockholders who

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properly demanded and perfected their appraisal rights under the DGCL) will be converted into the right to receive \$218.00 in cash, without interest and subject to any tax withholding.

Following consummation of the Merger, the Shares will be delisted and will cease to trade on the NASDAQ Global Select Market. Parent and Purchaser intend to take steps to cause the termination of the registration of the Shares under the Exchange Act and the suspension of all of AveXis' reporting obligations under the Exchange Act as promptly as practicable.

On May 15, 2018, Parent issued a press release announcing the expiration and results of the Offer. The full text of the press release is attached as Exhibit (a)(5)(G) hereto, and is incorporated herein by reference.

Item 12.

Item 12 is hereby amended and supplemented by adding the following exhibit:

| Exhibit No. | Description |
|--------------------|--|
| (a)(5)(G) | Press Release issued by Novartis AG on May 15, 2018, announcing the expiration and results of the Offer. |

SIGNATURES

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.

Date: May 15, 2018

NOVARTIS AG

By /s/ AUGUSTO LIMA
Name: Augusto Lima
Title: As Attorney

By /s/ NIGEL SHEAIL
Name: Nigel Sheail
Title: As Attorney

NOVARTIS AM MERGER CORPORATION

By /s/ KEREN HARUVI
Name: Keren Haruvi
Title: Authorized Signatory

By /s/ JONATHAN EMERY
Name: Jonathan Emery
Title: Authorized Signatory

EXHIBIT INDEX

| Exhibit | Exhibit Name |
|----------------|---|
| (a)(1)(A) | Offer to Purchase dated April 17, 2018.* |
| (a)(1)(B) | Form of Letter of Transmittal (including Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9).* |
| (a)(1)(C) | Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.* |
| (a)(1)(D) | Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.* |
| (a)(1)(E) | Form of Notice of Guaranteed Delivery.* |
| (a)(1)(F) | Summary Newspaper Advertisement as published in the New York Times on April 17, 2018.* |
| (a)(1)(G) | Power of Attorney for Novartis AG.* |
| (a)(1)(H) | Signing Authorization for Novartis AM Merger Corporation.* |
| (a)(5)(A) | Press Release issued by Novartis International AG on April 9, 2018, attached as Exhibit (a)(5)(A) to the Schedule TO-C filed by Novartis AG with the Securities and Exchange Commission on April 9, 2018 (incorporated herein by reference).* |
| (a)(5)(B) | Novartis AG Investor Presentation on April 9, 2018, attached as Exhibit (a)(5)(B) to the Schedule TO-C filed by Novartis AG with the Securities and Exchange Commission on April 9, 2018 (incorporated herein by reference).* |
| (a)(5)(C) | Email message dated April 9, 2018 from Dr. Vas Narasimhan, Chief Executive Officer of Novartis AG, to the AveXis Employees, attached as Exhibit (a)(5)(C) to the Schedule TO-C filed by Novartis AG with the Securities and Exchange Commission on April 10, 2018 (incorporated herein by reference).* |
| (a)(5)(D) | Transcript of Novartis AG analyst conference call on April 9, 2018, attached as Exhibit (a)(5)(D) to the Schedule TO-C filed by Novartis AG with the Securities and Exchange Commission on April 10, 2018 (incorporated herein by reference).* |
| (a)(5)(E) | Transcript of Novartis AG conference call on April 9, 2018, attached as Exhibit (a)(5)(E) to the Schedule TO-C filed by Novartis AG with the Securities and Exchange Commission on April 10, 2018 (incorporated herein by reference).* |
| (a)(5)(F) | Press Release issued by Novartis AG on May 1, 2018, announcing expiration of the waiting period under the HSR Act.* |
| (a)(5)(G) | Press Release issued by Novartis AG on May 15, 2018, announcing the expiration and results of the Offer. |
| (b) | <i>Not applicable.</i> |
| (d)(1) | Agreement and Plan of Merger dated as of April 6, 2018, among Novartis AG, Novartis AM Merger Corporation and AveXis, Inc., attached as Exhibit 2.1 to the Current Report on Form 8-K filed by AveXis, Inc. with the Securities and Exchange Commission on April 9, 2018 (incorporated herein by reference).* |
| (d)(2) | Confidentiality Agreement, dated as of March 5, 2018, between AveXis, Inc. and Novartis International AG.* |
| (g) | <i>Not applicable.</i> |
| (h) | <i>Not applicable.</i> |

* Previously filed.