

Kite Pharma, Inc.
Form SC TO-T
September 05, 2017

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**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

KITE PHARMA, INC.

(Name of Subject Company (Issuer))

DODGERS MERGER SUB, INC.

a wholly-owned subsidiary of

GILEAD SCIENCES, INC.

(Names of Filing Persons (Offeror))

Common Stock, Par Value \$0.001 Per Share

(Title of Class of Securities)

49803L109

(Cusip Number of Class of Securities)

Brett A. Pletcher, Esq.
Executive Vice President, General Counsel and Chief Compliance Officer
Gilead Sciences, Inc.
333 Lakeside Drive
Foster City, California 94404
650-574-3000

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

Copies to:

Stephen F. Arcano
Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, NY 10036
(212) 735-3542

Graham Robinson
Skadden, Arps, Slate, Meagher & Flom LLP
500 Boylston Street
Boston, MA 02116
(617) 573-4850

CALCULATION OF FILING FEE

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Transaction Valuation*	Amount of Filing Fee**
\$11,225,580,130.26	\$1,301,044.74

*

Estimated for purposes of calculating the filing fee only. The transaction valuation was calculated as the sum of (i) 57,410,242 outstanding shares of common stock, par value \$0.001 per share (the "Shares"), of Kite Pharma, Inc. ("Kite") multiplied by \$180.00, (ii) 4,387,212 Shares issuable pursuant to outstanding stock options that have vested (or are anticipated to vest prior to the completion of the transaction) multiplied by \$180.00, (iii) 86,850 Shares issuable pursuant to outstanding warrants multiplied by \$180.00, (iv) 181,811 Shares issuable pursuant to outstanding unvested stock options multiplied by \$105.66 (which is \$180.00 minus the weighted average exercise price for such options of \$74.34 per share) and (v) 373,307 Shares issuable pursuant to outstanding unvested restricted stock units that are anticipated to vest prior to the completion of the transaction multiplied by \$180.00. The calculation of the filing fee is based on information provided by Kite as of August 31, 2017.

**

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 2017, issued August 31, 2016, by multiplying the transaction value by 0.0001159.

o

Check 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:	None	Filing Party:	Not applicable
Form or Registration No.:	Not applicable	Date Filed:	Not applicable

o

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:

ý

third-party tender offer subject to Rule 14d-1.

o

issuer tender offer subject to Rule 13e-4.

o

going-private transaction subject to Rule 13e-3.

o

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. o

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This Tender Offer Statement on Schedule TO (this "Schedule TO") relates to the offer by Dodgers Merger Sub, Inc., a Delaware corporation ("Purchaser"), and Gilead Sciences, Inc., a Delaware corporation ("Parent"), to purchase all outstanding shares of common stock, \$0.001 par value per share ("Shares"), of Kite Pharma, Inc., a Delaware corporation ("Kite"), at a price of \$180.00 per Share, net to the holder in cash, without interest upon the terms and subject to the conditions described in the Offer to Purchase dated September 5, 2017 (together with any amendments or supplements thereto, the "Offer to Purchase") and in the accompanying Letter of Transmittal (together with any amendments or supplements thereto and with the Offer to Purchase, the "Offer"), which are annexed to and filed with this Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. Purchaser is a wholly-owned subsidiary of Parent. This Schedule TO is being filed on behalf of Parent and Purchaser. Unless otherwise indicated, references to sections in this Schedule TO are references to sections of the Offer to Purchase. A copy of the Agreement and Plan of Merger, dated as of August 27, 2017, among Kite, Parent and Purchaser is attached as Exhibit (d)(1) hereto and incorporated herein by reference with respect to Items 4 through 11 of this Schedule TO.

ITEM 1. SUMMARY TERM SHEET.

The information set forth in the section of the Offer to Purchase titled "Summary Term Sheet" is incorporated herein by reference.

ITEM 2. SUBJECT COMPANY INFORMATION.

(a) The subject company and the issuer of the securities subject to the Offer is Kite Pharma, Inc. Its principal executive office is located at 2225 Colorado Avenue, Santa Monica, California 90404, and its telephone number is (310) 824-9999.

(b) This Schedule TO relates to Shares. According to Kite, on August 31, 2017 there were approximately 57,410,242 Shares issued and outstanding.

(c) The information concerning the principal market, if any, in which the Shares are traded and certain high and low sales prices for the Shares in the principal market in which the Shares are traded set forth in Section 6 "Price Range of Shares; Dividends" of the Offer to Purchase is incorporated herein by reference.

ITEM 3. IDENTITY AND BACKGROUND OF FILING PERSON.

The filing companies of this Schedule TO are (i) Parent and (ii) Purchaser. Each of Purchaser's and Parent's principal executive office is located at c/o Gilead Sciences, Inc., 333 Lakeside Drive, Foster City, California 94404, and the telephone number of each is (650) 574-3000. The information regarding Purchaser and Parent set forth in Section 9 "Certain Information Concerning Parent and Purchaser" of the Offer to Purchase and Schedule A of the Offer to Purchase is incorporated herein by reference.

ITEM 4. TERMS OF THE TRANSACTION.

The information set forth in the Offer to Purchase is incorporated herein by reference.

ITEM 5. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS.

The information set forth in Section 8 "Certain Information Concerning Kite", Section 9 "Certain Information Concerning Parent and Purchaser", Section 10 "Background of the Offer; Contacts with Kite" and Section 11 "Purpose of the Offer and Plans for Kite; Summary of the Merger Agreement and Certain Other Agreements" of the Offer to Purchase is incorporated herein by reference.

ITEM 6. PURPOSES OF THE TRANSACTION AND PLANS OR PROPOSALS.

The information set forth in the sections of the Offer to Purchase titled "Summary Term Sheet" and "Introduction" and in Section 7 "Possible Effects of the Offer on the Market for the Shares; NASDAQ Listing; Exchange Act Registration and Margin Regulations" and Section 11 "Purpose of the Offer and Plans for Kite; Summary of the Merger Agreement and Certain Other Agreements" of the Offer to Purchase is incorporated herein by reference.

ITEM 7. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

The information set forth in the section of the Offer to Purchase titled "Summary Term Sheet" and in Section 12 "Source and Amount of Funds" of the Offer to Purchase is incorporated herein by reference.

The Offer is not subject to a financing condition.

ITEM 8. INTEREST IN SECURITIES OF THE SUBJECT COMPANY.

The information set forth in Section 9 "Certain Information Concerning Parent and Purchaser" and Section 11 "Purpose of the Offer and Plans for Kite; Summary of the Merger Agreement and Certain Other Agreements" of the Offer to Purchase is incorporated herein by reference.

ITEM 9. PERSONS/ASSETS RETAINED, EMPLOYED, COMPENSATED OR USED.

The information set forth in Section 3 "Procedures for Tendering Shares", Section 10 "Background of the Offer; Contacts with Kite" and Section 16 "Fees and Expenses" of the Offer to Purchase is incorporated herein by reference.

ITEM 10. FINANCIAL STATEMENTS.

Not Applicable. In accordance with the instructions to Item 10 of the Schedule TO, the financial statements are not considered material because:

- (a) the consideration offered consists solely of cash;
- (b) the Offer is not subject to any financing condition; and
- (c) the Offer is for all outstanding securities of the subject class.

ITEM 11. ADDITIONAL INFORMATION.

The information set forth in Section 10 "Background of the Offer; Contacts with Kite", Section 11 "Purpose of the Offer and Plans for Kite; Summary of the Merger Agreement and Certain Other Agreements" and Section 15 "Certain Legal Matters; Regulatory Approvals" of the Offer to Purchase is incorporated herein by reference.

ITEM 12. EXHIBITS.

Index No.

- (a)(1)(A) Offer to Purchase, dated September 5, 2017
- (a)(1)(B) Form of Letter of Transmittal
- (a)(1)(C) Form of Notice of Guaranteed Delivery
- (a)(1)(D) Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees

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- (a)(1)(E) Form of Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees
- (a)(1)(F) Form of Summary Advertisement, published September 5, 2017 in The Wall Street Journal
- (a)(5)(A) Joint Press Release of Parent and Kite, dated August 28, 2017 (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by Parent with the Securities and Exchange Commission on August 28, 2017)
- (a)(5)(B) Investor Presentation, dated August 28, 2017 (incorporated by reference to the Tender Offer Statement on Schedule TO-C of Parent filed with the Securities and Exchange Commission on August 28, 2017)
- (a)(5)(C) Infographic by Parent (incorporated by reference to the Tender Offer Statement on Schedule TO-C of Parent filed with the Securities and Exchange Commission on August 28, 2017)
- (a)(5)(D) Email sent to Parent Operations Department and Senior Management on August 28, 2017 (incorporated by reference to the Tender Offer Statement on Schedule TO-C of Parent filed with the Securities and Exchange Commission on August 28, 2017)
- (a)(5)(E) Email sent to employees of Kite, dated August 28, 2017 (incorporated by reference to the Tender Offer Statement on Schedule TO-C of Parent filed with the Securities and Exchange Commission on August 28, 2017)
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- (a)(5)(M) Q&A provided to Kite employees (incorporated by reference to the Tender Offer Statement on Schedule TO-C of Parent filed with the Securities and Exchange Commission on September 1, 2017)

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- (a)(5)(N) E-mail to Kite employees from Kite management (incorporated by reference to the Tender Offer Statement on Schedule TO-C of Parent filed with the Securities and Exchange Commission on September 1, 2017)

- (d)(1) Agreement and Plan of Merger, dated as of August 27, 2017, among Kite, Parent and Purchaser (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by Parent with the Securities and Exchange Commission on August 28, 2017)

- (d)(2) Mutual Confidentiality Agreement, dated as of February 10, 2017, by and between Kite and Parent (incorporated by reference to Exhibit (e)(2) to the Schedule 14D-9 filed by Kite with the Securities and Exchange Commission on September 5, 2017)

- (d)(3) Amendment No. 1 to Mutual Confidential Disclosure Agreement, dated as of August 20, 2017, by and between Parent and Kite (incorporated by reference to Exhibit (e)(3) to the Schedule 14D-9 filed by Kite with the Securities and Exchange Commission on September 5, 2017)

ITEM 13. INFORMATION REQUIRED BY SCHEDULE 13E-3.

Not applicable.

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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.

Dated: September 5, 2017

DODGERS MERGER SUB, INC.

By: /s/ ROBIN L. WASHINGTON

Name: Robin L. Washington
Title: *President and Treasurer*

GILEAD SCIENCES, INC.

By: /s/ JOHN F. MILLIGAN, PH.D.

Name: John F. Milligan, Ph.D.
Title: *President and Chief Executive Officer*

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