

COMPLETE GENOMICS INC
Form SC TO-T/A
October 02, 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. 2)

COMPLETE GENOMICS, INC.

(Name of Subject Company (Issuer))

BETA ACQUISITION CORPORATION

(Offeror)

A Wholly-Owned Subsidiary of

BGI-SHENZHEN

(Offeror)

(Names of Filing Persons (identifying status as offeror, issuer or other person))

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

20454K 10 4
(CUSIP Number of Class of Securities)

Wang Jun

Chief Executive Officer

BGI-SHENZHEN

11F-3, Main Building, Bei Shan Industrial Zone,

Yantian District, Shenzhen, China 518083

011-86-755-2527-3620

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

Copies to:

Paul Scrivano, Esq.

O Melveny & Myers LLP

Two Embarcadero Center, 28th Floor

San Francisco, CA 94111

(415) 984-8701

Wendy Pan, Esq.

O Melveny & Myers LLP

Plaza 66, Tower 1, 37th Floor

1266 Nanjing Road West

Shanghai 200040

86-21-2307-7300

CALCULATION OF FILING FEE

Transaction Valuation(1)
\$130,200,342

Amount Of Filing Fee(2)
\$14,920.96

Edgar Filing: COMPLETE GENOMICS INC - Form SC TO-T/A

- (1) Estimated for purposes of calculating the amount of the filing fee only. This calculation assumes the purchase of 41,333,442 shares of common stock, \$0.001 par value per share (the Shares), of Complete Genomics, Inc. (the Company), at a purchase price of \$3.15 per Share, net to the tendering stockholders in cash, without interest and subject to any required withholding of taxes. As of September 12, 2012, such Shares consisted of (i) 34,385,800 shares of common stock of the Company that were issued and outstanding; (ii) 2,901,176 shares of common stock of the Company issuable upon exercise of outstanding in-the-money stock options; (iii) 1,112,335 shares of common stock subject to outstanding restricted stock units; (iv) 1,533,823 shares of common stock issuable upon exercise of outstanding warrants; and (v) 1,400,308 shares of common stock issuable pursuant to the Company's employee stock purchase plan.
- (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: \$14,920.96

Filing Party: BGI-Shenzhen and Beta Acquisition Corporation

Form or Registration No.: Schedule TO

Date Filed: September 25, 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. 2 to the Tender Offer Statement on Schedule TO (as may be amended from time to time, the Schedule TO) amends and supplements the Schedule TO filed by (i) Beta Acquisition Corporation, a Delaware corporation (the Purchaser) and a wholly-owned subsidiary of BGI-Shenzhen, a company organized under the laws of the People s Republic of China (Parent), and (ii) Parent. This Schedule TO relates to the offer (the Offer) by the Purchaser to purchase all of the outstanding shares of common stock, par value \$0.001 per share (the Shares), of Complete Genomics, Inc., a Delaware corporation (the Company), at a purchase price of \$3.15 per Share, net to the seller in cash, without interest thereon, less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated September 25, 2012 (together with any amendments and supplements thereto, the Offer to Purchase) and in the related Letter of Transmittal, copies of which are attached hereto as Exhibits (a)(1)(A) and (a)(1)(B), respectively.

Item 11. Additional Information.

Item 11(a) of the Schedule TO is hereby amended and supplemented by adding the following paragraphs immediately after the last paragraph of the sub-section captioned Legal Proceedings .

Chad Gerber v. Clifford A. Reid, et. al.

On September 28, 2012, a purported stockholder of the Company filed an alleged class action lawsuit in the Court of Chancery of the State of Delaware, captioned Chad Gerber v. Clifford A. Reid, et al. In addition to the Company, the suit names the Purchaser and the individual directors of the Company as defendants. The action is pending and defendants have 30 days from the service of the summons to file a responsive pleading with the Court. The Gerber action purports to be brought individually and on behalf of the public stockholders of the Company and alleges claims for breaches of fiduciary duties of care and disclosure against the Company s board of directors in connection with the proposed transaction and that the Company and the Purchaser aided and abetted the purported breaches of fiduciary duties. The Gerber action seeks, among other things, preliminary and permanent injunctive relief prohibiting consummation of the proposed acquisition, rescission of the proposed acquisition, damages and attorneys fees and costs. The foregoing description is qualified in its entirety by reference to such Exhibit (a)(5)(I) to the Schedule TO, which is incorporated herein by reference.

Saba Saleemi v. Complete Genomics, Inc., et. al.

On October 1, 2012, a purported stockholder of the Company filed an alleged class action lawsuit in the Court of Chancery of the State of Delaware, captioned Saba Saleemi v. Complete Genomics, Inc., et al. In addition to the Company, the suit names Parent, the Purchaser and the individual directors of the Company as defendants. The action is pending and defendants have 30 days from the service of the summons to file a responsive pleading with the Court. The Saleemi action purports to be brought individually and on behalf of the public stockholders of the Company and alleges claims for breaches of fiduciary duties of care and disclosure against the Company s board of directors in connection with the proposed transaction and that the Company and the Purchaser aided and abetted the purported breaches of fiduciary duties. The Saleemi action seeks, among other things, permanent injunctive relief prohibiting consummation of the proposed transaction, rescission of the proposed transaction and attorneys fees and costs. The foregoing description is qualified in its entirety by reference to such Exhibit (a)(5)(J) to the Schedule TO, which is incorporated herein by reference.

Item 12. Exhibits

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

| Exhibit | Exhibit Name |
|----------------|--|
| (a)(5)(I) | Complaint filed by Chad Gerber, on behalf of himself and all other similarly situated, on September 28, 2012, in the Court of Chancery of the State of Delaware. |
| (a)(5)(J) | Complaint filed by Saba Saleemi, on behalf of himself and all other similarly situated, on October 1, 2012, in the Court of Chancery of the State of Delaware. |

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.

BETA ACQUISITION CORPORATION

By: /s/ YIN YE

Name: Yin Ye

Title: President and Secretary

Date: October 2, 2012

BGI-SHENZHEN

By: /s/ WANG JUN

Name: Wang Jun

Title: Chief Executive Officer

Date: October 2, 2012

Exhibit Index

| Exhibit | Exhibit Name |
|----------------|--|
| (a)(1)(A) | Offer to Purchase, dated September 25, 2012.* |
| (a)(1)(B) | Letter of Transmittal (including 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 Complete Genomics, Inc. and BGI-Shenzhen on September 17, 2012 (incorporated by reference to Exhibit 99.1 to BGI-Shenzhen's Tender Offer Statement on Schedule TO filed with the Securities and Exchange Commission on September 17, 2012).* |
| (a)(5)(B) | Summary Newspaper Advertisement as published in The New York Times on September 25, 2012.* |
| (a)(5)(C) | Press Release issued by BGI-Shenzhen on September 25, 2012.* |
| (a)(5)(D) | Complaint filed by Glenn Dietel, on behalf of himself and all other similarly situated, on September 20, 2012, in the Superior Court of the State of California, County of Santa Clara.* |
| (a)(5)(E) | Complaint filed by Walter David McNeal, on behalf of himself and all other similarly situated, on September 21, 2012, in the Court of Chancery of the State of Delaware.* |
| (a)(5)(F) | Complaint filed by Christopher Walsh, on behalf of himself and all other similarly situated, on September 24, 2012, in the Superior Court of the State of California, County of Santa Clara.* |
| (a)(5)(G) | Complaint filed by Budy Liauw, on behalf of himself and all other similarly situated, on September 25, 2012, in the Superior Court of the State of California, County of Santa Clara.* |
| (a)(5)(H) | Complaint filed by Irwin Hyman, on behalf of himself and all other similarly situated, on September 26, 2012, in the Court of Chancery of the State of Delaware.* |
| (a)(5)(I) | Complaint filed by Chad Gerber, on behalf of himself and all other similarly situated, on September 28, 2012, in the Court of Chancery of the State of Delaware. |
| (a)(5)(J) | Complaint filed by Saba Saleemi, on behalf of himself and all other similarly situated, on October 1, 2012, in the Court of Chancery of the State of Delaware. |
| (b)(1) | Commitment Letter, dated as of September 4, 2012, by and between the Agricultural Bank of China and BGI-Shenzhen (executed copy is in Chinese; English translation is attached).* |
| (b)(2) | Commitment Letter, dated as of September 4, 2012, by and between China Construction Bank Corporation and BGI-Shenzhen (executed copy is in Chinese; English translation is attached).* |
| (b)(3) | Commitment Letter, dated as of August 31, 2012, by and between the Export-Import Bank of China and BGI-Shenzhen (executed copy is in Chinese; English translation is attached).* |

- (d)(A) Agreement and Plan of Merger, dated as of September 15, 2012, by and among Complete Genomics, Inc., Beta Acquisition Corporation and BGI-Shenzhen (incorporated by reference to Exhibit 2.1 to Complete Genomic, Inc. s Current Report on Form 8-K filed with the Securities and Exchange Commission on September 17, 2012).
- (d)(B) Tender and Support Agreement, dated as of September 15, 2012, by and among Complete Genomics, Inc., Beta Acquisition Corporation and certain stockholders of Complete Genomics, Inc. (incorporated by reference to Exhibit 10.1 to Complete Genomics, Inc. s Current Report on Form 8-K filed with the Securities and Exchange Commission on September 17, 2012).
- (d)(C) Convertible Subordinated Promissory Note, dated as of September 15, 2012, by and among BGI-Shenzhen, BGI-HONGKONG Co., Limited and Complete Genomics, Inc. (incorporated by reference to Exhibit 10.2 to Complete Genomics, Inc. s Current Report on Form 8-K filed with the Securities and Exchange Commission on September 17, 2012).
- (g) Not applicable.
- (h) Not applicable.

* Previously filed.