

INHIBITEX, INC.
Form SC TO-T/A
February 13, 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. 5

INHIBITEX, INC.
(Name of Subject Company (Issuer))

INTA ACQUISITION CORPORATION
(Offeror)

A Wholly Owned Subsidiary of

BRISTOL-MYERS SQUIBB COMPANY
(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)

45719T103
(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:

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Daniel Wolf, Esq.

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601 Lexington Avenue

New York, NY 10022

(212) 446-4800

CALCULATION OF FILING FEE

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Transaction Valuation(1)
\$2,529,313,507.44

Amount of Filing Fee(2)
\$289,859.33

- (1) Calculated solely for purposes of determining the filing fee. The calculation assumes the purchase of 80,398,198 shares of voting common stock, par value \$0.001 per share. The transaction value also includes the aggregate offer price for 17,943,006 shares issuable pursuant to outstanding options and warrants with an exercise price less than \$26.00 per share, which is calculated by multiplying the number of shares underlying such outstanding options at each exercise price therefor by an amount equal to \$26.00 minus such exercise price.
- (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: \$289,859.33

Filing Party: Bristol-Myers Squibb Company and Inta Acquisition Corporation

Form of Registration No.: Schedule TO

Date Filed: January 13, 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.
x 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. 5 to the Tender Offer Statement on Schedule TO (the "Schedule TO") amends and supplements the Schedule TO relating to the tender offer by (i) Inta Acquisition Corporation, 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 Inhibitex, Inc., a Delaware corporation (the "Company"), at a price of \$26.00 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 January 13, 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 11 in the Schedule TO, and is supplemented by the information specifically provided in this Amendment No. 5.

This Amendment No. 5 is being filed to amend and supplement Items 1, 4, 8 and 11 as reflected below.

Items 1, 4, 8 and 11

Items 1, 4, 8 and 11 of the Schedule TO are hereby amended and supplemented by adding the following text thereto:

The Offer and withdrawal rights expired at midnight, New York City time, on February 10, 2012. The Depositary has advised us that 77,532,611 Shares were validly tendered and not properly withdrawn (not including 4,260,705 Shares tendered pursuant to notices of guaranteed delivery). All Shares that were validly tendered and not properly withdrawn have been accepted for payment in accordance with the terms of the Offer.

As a result of the purchase of Shares in the Offer, Purchaser and Parent will have sufficient voting power to approve the Merger without the affirmative vote of any other stockholder of the Company. Accordingly, Purchaser and Parent intend to effect a short form merger in which Purchaser is merged with and into the Company, with the Company surviving the Merger and continuing as a wholly-owned subsidiary of the Parent. In the Merger, each Share issued and outstanding immediately prior to the effective time of the Merger, other than Shares held by the Company in treasury, Parent or Purchaser immediately prior to the effective time of the Merger, or any stockholder of the Company who is entitled to and properly exercises appraisal rights under Delaware law, will automatically be converted into the right to receive the Offer Price in cash, without interest and less any applicable withholding taxes. All Shares converted into the right to receive the Offer Price shall be canceled and cease to exist. In addition, upon completion of the Merger, the common stock of the company will cease to be traded on Nasdaq.

On February 13, 2012, Parent issued a press release announcing the expiration and results of the Offer. The full text of the press release is attached hereto as Exhibit (a)(13) and is incorporated herein by reference.

Item 12

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

**Exhibit
No.**

(a)(13) Press Release issued by Bristol-Myers Squibb Company, dated February 13, 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.

INTA ACQUISITION CORPORATION

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

Date: February 13, 2012

BRISTOL-MYERS SQUIBB COMPANY

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

Date: February 13, 2012

EXHIBIT INDEX

Exhibit	
No.	
(a)(1)(A)	Offer to Purchase, dated January 13, 2012.*
(a)(1)(B)	Letter of Transmittal (including Internal Revenue Service 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)	Joint Press Release of Inhibitex, Inc. and Bristol-Myers Squibb Company, dated January 7, 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 dated January 9, 2012).*
(a)(1)(G)	Summary Advertisement as published in the Wall Street Journal on January 13, 2012.*
(a)(5)	Press Release issued by Bristol-Myers Squibb Company, dated January 13, 2012.*
(a)(6)	Class Action Complaint dated January 11, 2012 (Charles C. Osborne and Hortensia D. Osborne v. Inhibitex, Inc., et al.).*
(a)(7)	Class Action Complaint dated January 12, 2012 (Jeremy Alber v. Inhibitex, Inc. et al.) (incorporated by reference to Exhibit (e)(14) to the Schedule 14D-9 filed by Inhibitex, Inc. with the Securities and Exchange Commission on January 17, 2011).*
(a)(8)	Class Action Complaint dated January 13, 2012 (John P. Hegarty v. Inhibitex, Inc., et al.).*
(a)(9)	Amended Class Action Complaint dated January 19, 2012 (Jeremy Alber v. Inhibitex, Inc., et al.) (incorporated by reference to Exhibit (e)(16) to Amendment No. 2 to the Schedule 14D-9 filed by Inhibitex, Inc. with the Securities and Exchange Commission on January 26, 2011).*
(a)(10)	Amended Class Action Complaint dated January 20, 2012 (Charles C. Osborne, Jr. and Hortensia D. Osborne v. Inhibitex, Inc., et al.) (incorporated by reference to Exhibit (e)(17) to Amendment No. 2 to the Schedule 14D-9 filed by Inhibitex, Inc. with the Securities and Exchange Commission on January 26, 2011).*
(a)(11)	Class Action Complaint dated January 25, 2012 (Ferdinand Alvarez v. Inhibitex, Inc., et al.) (incorporated by reference to Exhibit (e)(18) to Amendment No. 2 to the Schedule 14D-9 filed by Inhibitex, Inc. with the Securities and Exchange Commission on January 26, 2011).*
(a)(12)	Press Release issued by Bristol-Myers Squibb Company, dated February 3, 2012.*
(a)(13)	Press Release issued by Bristol-Myers Squibb Company, dated February 13, 2012.
(d)(1)	Agreement and Plan of Merger, dated as of January 7, 2012, by and among Inhibitex, Inc., Bristol-Myers Squibb Company, and Inta Acquisition Corporation (incorporated by reference to Exhibit 2.1 to the Form 8-K filed by Inhibitex, Inc. with the Securities and Exchange Commission on January 10, 2012).*
(d)(2)	Tender and Support Agreement, by and among Inhibitex, Inc., Bristol-Myers Squibb Company, Inta Acquisition Corporation and certain stockholders, dated January 7, 2012 (incorporated by reference to Exhibit 10.1 to the Form 8-K filed by Inhibitex, Inc. with the Securities and Exchange Commission on January 10, 2012).*

* Previously filed.