

NOVARTIS AG  
Form SC TO-T/A  
February 07, 2011

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**SCHEDULE TO**

**Amendment No. 1**

**Tender Offer Statement under Section 14(d)(1) or 13(e)(1)**  
**of the Securities Exchange Act of 1934**

**GENOPTIX, INC.**

(Name of Subject Company (Issuer))

**GO MERGER SUB, INC.**

(Offeror)

A Direct Wholly-Owned Subsidiary of

**NOVARTIS FINANCE CORPORATION**

(Offeror)

An Indirect Wholly-Owned Subsidiary of

# NOVARTIS AG

(Offeror)

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

## COMMON STOCK, \$0.001 PAR VALUE

(Title of Class of Securities)

**37243V100**

(CUSIP Number of Class of Securities)

**Thomas Werlen**

**Novartis AG**

**Lichtstrasse 35**

**4056 Basel**

**Switzerland**

**Tel: +41-61-324-1111**

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

Copies to:

**Mark I. Greene, Esq.**

**Thomas E. Dunn, Esq.**

**Cravath, Swaine & Moore LLP**

**Worldwide Plaza**

**825 Eighth Avenue**

**New York, NY 10019-7475**

**(212) 474-1000**

Edgar Filing: NOVARTIS AG - Form SC TO-T/A

CALCULATION OF FILING FEE

Transaction Valuation(1)	Amount of Filing Fee(2)
\$469,943,500	\$54,560.44

- 
- (1) Estimated for purposes of calculating the filing fee only. This amount is determined by multiplying 18,797,740 shares of Genoptix, Inc. common stock (representing the shares of common stock outstanding, in the-money options and shares of common stock subject to restricted stock units, in each case as of January 24, 2011) by \$25.00 per share, which is the offer price.
- (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 2011, issued December 22, 2010, by multiplying the transaction value by 0.0001161.

☒ 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: \$54,560.44  
Form of Registration No.: Schedule TO

Filing Party: Novartis AG, Novartis Finance Corporation and GO Merger Sub, Inc.  
Date Filed: January 28, 2011

☐ 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. ☐

## Edgar Filing: NOVARTIS AG - Form SC TO-T/A

This Amendment No. 1 to the Tender Offer Statement on Schedule TO (this Amendment) is filed by (i) GO Merger Sub, Inc., a Delaware corporation (Purchaser) and a direct wholly-owned subsidiary of Novartis Finance Corporation, a New York corporation (Parent) and an indirect wholly-owned subsidiary of Novartis AG, a stock corporation organized under the laws of Switzerland, (ii) Parent and (iii) Novartis AG. This Amendment amends and supplements the Tender Offer Statement on Schedule TO filed with the Securities and Exchange Commission on January 28, 2011, (together with any amendments and supplements thereto, the Schedule TO), and relates to the offer (the Offer) by Purchaser to purchase all of the outstanding shares of common stock, par value \$0.001 per share (the Shares), of Genoptix, Inc., a Delaware corporation, at a purchase price of \$25.00 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 January 28, 2011 (together with any amendments and supplements thereto, the Offer to Purchase), and in the related Letter of Transmittal.

Capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Offer to Purchase.

### **Item 11. Additional Information.**

Item 11 of the Schedule TO is hereby amended and supplemented by adding the following text thereto:

On February 4, 2011, the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the HSR Act) applicable to the Offer was terminated. Accordingly, the condition to the Offer relating to the expiration or termination of the HSR Act waiting period has been satisfied.

Item 11 of the Schedule TO is hereby further amended and supplemented by adding the following text thereto:

On January 31, 2011, an additional putative class-action lawsuit (*The George Leon Family Trust v. Genoptix, Inc. et al.*, Case No. 37-2011-00050935-CU-BT-NC (the GLFT Complaint)) was filed in the Superior Court of the State of California, San Diego County, against the Company, each member of the Company's board of directors (including its president and chief executive officer), Novartis AG and Purchaser. The GLFT Complaint alleges that the Company's directors breached their fiduciary duties in connection with the proposed sale of the Company to Novartis, and that the other defendants aided and abetted these alleged breaches of fiduciary duty. Specifically, the GLFT Complaint asserts that the Company's directors breached their fiduciary duties to the Company's public stockholders by, among other things, (i) agreeing to sell the Company to Novartis at an unfair price and via an unfair process; (ii) failing to disclose all material information about the proposed sale of the Company to Novartis; and (iii) agreeing to certain provisions of the merger agreement that are alleged to favor Novartis and deter alternative bids. The GLFT Complaint seeks injunctive relief and curative disclosures, among other remedies, and an award of costs, including a reasonable allowance for attorneys' and experts' fees. The Company intends to vigorously defend against these claims.

---

**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.

**NOVARTIS AG**

By /s/ Jonathan Symonds  
Name: Jonathan Symonds  
Title: Chief Financial Officer, Novartis Group

By /s/ Thomas Werlen  
Name: Thomas Werlen  
Title: General Counsel, Novartis Group

**NOVARTIS FINANCE CORPORATION**

By /s/ Wayne Merkelson  
Name: Wayne Merkelson  
Title: Vice President and General Counsel

**GO MERGER SUB, INC.**

By /s/ Wayne Merkelson  
Name: Wayne Merkelson  
Title: Vice President and Secretary

**Signature Page to Amendment No. 1 to Schedule TO**