

**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. 4)**

FORTY SEVEN, INC.

(Name of Subject Company (Issuer))

TORO MERGER SUB, INC.

a wholly-owned subsidiary of

GILEAD SCIENCES, INC.

(Names of Filing Persons (Offeror))

Common Stock, Par Value \$0.0001 Per Share

(Title of Class of Securities)

34983P104

(Cusip Number of Class of Securities)

Brett A. Pletcher, Esq.

Executive Vice President, Corporate Affairs, General Counsel and Corporate Secretary

Gilead Sciences, Inc.

333 Lakeside Drive

Foster City, CA 94404

650-574-3000

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

Copies to:

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CALCULATION OF FILING FEE

Transaction Valuation*

\$ 4,949,381,117.36

Amount of Filing Fee**

\$ 642,429.67

* Estimated for purposes of calculating the filing fee only. The transaction valuation was calculated as the sum of (i) 48,151,481 outstanding shares of common stock, par value \$0.0001 per share (the "Shares"), of Forty Seven, Inc. ("Forty Seven") multiplied by \$95.50, (ii) 1,341,064 Shares issuable pursuant to outstanding stock options that have vested (or are anticipated to vest prior to the completion of the transaction) multiplied by \$95.50, and (iii) 2,924,066 Shares issuable pursuant to outstanding unvested stock options multiplied by \$76.21 (which is \$95.50 minus the weighted average exercise price for such options of \$19.29 per share). The calculation of the filing fee is based on information provided by Forty Seven as of February 29, 2020.

** 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 2020, issued August 23, 2019, by multiplying the transaction value by 0.0001298.

x 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: \$ 642,429.67

Filing Party: Toro Merger Sub, Inc. and Gilead Sciences, Inc.

Form or Registration No.: Schedule TO

Date Filed: March 10, 2020

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)



This Amendment No. 4 (this “Amendment”) amends and supplements the Tender Offer Statement on Schedule TO filed by Toro Merger Sub, Inc., a Delaware corporation (“Purchaser”), and Gilead Sciences, Inc., a Delaware corporation (“Parent”), with the U.S. Securities and Exchange Commission on March 10, 2020 (together with any subsequent amendments and supplements thereto, the “Schedule TO”). The Schedule TO relates to the offer by Purchaser to purchase all outstanding shares of common stock, \$0.0001 par value per share (the “Shares”), of Forty Seven, Inc., a Delaware corporation (“Forty Seven”), at a price of \$95.50 per Share, net to the holder in cash, without interest and subject to any withholding of taxes, upon the terms and subject to the conditions described in the Offer to Purchase dated March 10, 2020 (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 the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. Purchaser is a wholly owned subsidiary of Parent. This Amendment is being filed on behalf of Parent and Purchaser. Unless otherwise indicated, references to sections in the Schedule TO are references to sections of the Offer to Purchase.

Amendments to the Offer to Purchase:

Items 1 through 11.

The information set forth in the Offer to Purchase under “The Tender Offer—Section 15—Certain Legal Matters; Regulatory Approvals” and Items 1 through 11 of the Schedule TO, to the extent such Items incorporate by reference the information contained in the Offer to Purchase, are hereby amended and supplemented by replacing in its entirety the paragraph entitled “Legal Proceedings Related to the Tender Offer” on page 57 of the Offer to Purchase with the following:

“Legal Proceedings Related to the Tender Offer.

On March 16, 17, 20 and 26, 2020, complaints were filed in federal courts by purported stockholders of Forty Seven regarding the Merger. The first complaint, filed on an individual basis by the plaintiff, is captioned *Stephen Bushansky v. Forty Seven, Inc., et al.*, No. 3:20-cv-01853 (N.D. Cal. filed Mar. 16, 2020). The second complaint, filed as a putative class action, is captioned *Joseph Post v. Forty Seven, Inc., et al.*, No. 1:20-cv-00377 (D. Del. filed Mar. 17, 2020). The third complaint, filed on an individual basis by the plaintiff, is captioned *Jason Augustine v. Forty Seven, Inc., et al.*, No. 5:20-cv-01978 (N.D. Cal. filed Mar. 20, 2020). The fourth complaint, filed on an individual basis by the plaintiff, is captioned *Glenn Parr v. Forty Seven, Inc., et al.*, No. 3:20-cv-02104 (N.D. Cal. filed Mar. 26, 2020). The fifth complaint, filed on an individual basis by the plaintiff, is captioned *Cole Demyon v. Forty Seven, Inc., et al.*, No. 5:20-cv-02111 (N.D. Cal. filed Mar. 26, 2020) (collectively, the “Federal Complaints”). The Federal Complaints name as defendants Forty Seven and each member of the Forty Seven Board. The Post complaint additionally names as defendants Parent and Purchaser. The Federal Complaints allege violations of Section 14(e) of the Exchange Act against all defendants, and assert violations of Section 20(a) of the Exchange Act against the individual defendants. The Post complaint additionally alleges a violation of Section 14(d) of the Exchange Act against all defendants and a violation of Section 20(a) of the Exchange Act against Parent and Purchaser, and the Demyon complaint additionally alleges breach of the fiduciary duty of candor against the individual defendants. The plaintiffs contend that the Schedule 14D-9 omitted or misrepresented material information regarding the Merger. The Federal Complaints seek (i) injunctive relief preventing the consummation of the Transactions; (ii) rescissory damages or rescission in the event the Transactions are consummated; and (iii) an award of plaintiff’s expenses and attorneys’ fees. The Post and Parr complaints additionally seek dissemination of a recommendation statement that discloses certain information requested by that plaintiff, and the Augustine and Demyon complaints seek an accounting of purported damages. Parent and Purchaser believe the claims asserted in the Federal Complaints are without merit.

On March 20, 2020, a complaint was filed in state court by a purported stockholder of Forty Seven regarding the Merger. The complaint, filed as a putative class action, is captioned *Darryl Hawkins v. Forty Seven, Inc., et al.*, case number pending (Cal. Super. Ct., San Mateo, filed Mar. 20, 2020). The Hawkins complaint names as defendants Forty Seven and certain members of the Forty Seven Board. The Hawkins complaint alleges breach of fiduciary duty claims against the individual defendants and an aiding and abetting breach of fiduciary duty claim against Forty Seven. The plaintiff contends that the Transactions are unfair and undervalue Forty Seven, and that the Schedule 14D-9 omitted or misrepresented material information regarding the Merger. The Hawkins complaint seeks (i) injunctive relief preventing the consummation of the Transactions; (ii) rescissory damages or rescission in

the event the Transactions are consummated; (iii) injunctive relief directing the individual defendants to commence a sale process; (iv) an accounting of purported damages; and (v) an award of plaintiff's expenses and attorneys' fees. Parent and Purchaser believe the claims asserted in the Hawkins complaint are without merit.

Additional lawsuits may be filed against Forty Seven, the Forty Seven Board, Parent and/or Purchaser in connection with the Transactions, the Schedule TO and the Schedule 14D-9."

The information set forth in the Offer to Purchase under "The Tender Offer—Section 15—Certain Legal Matters; Regulatory Approvals" and Items 1 through 11 of the Schedule TO, to the extent such Items incorporate by reference the information contained in the Offer to Purchase, are hereby amended and supplemented by replacing the last paragraph of the subsection titled "Antitrust," as such paragraph was added by Amendment No. 1 to the Offer to Purchase filed with the SEC on March 12, 2020, with the following paragraph:

"On March 12, 2020, each of Parent and Forty Seven filed a Premerger Notification and Report Form with the FTC and the Antitrust Division in connection with the purchase of Shares in the Offer. The required waiting period under the HSR Act with respect to the Offer expired at 11:59 p.m., Eastern Time on March 27, 2020. Accordingly, the HSR Condition in Section 13—"Conditions of the Offer" has been satisfied."

Item 12.

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

(a)(5)(M) Press Release of Parent, dated March 30, 2020, announcing expiration of the waiting period under the HSR Act.

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: March 30, 2020

TORO MERGER SUB, INC.

By: /s/ BRETT A. PLETCHER

Name: Brett A. Pletcher

Title: *Secretary and Director*

GILEAD SCIENCES, INC.

By: /s/ BRETT A. PLETCHER

Name: Brett A. Pletcher

Title: *Executive Vice President, Corporate Affairs, General
Counsel and Corporate Secretary*



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For Immediate Release

**GILEAD ANNOUNCES EXPIRATION OF HART-SCOTT-RODINO WAITING PERIOD
FOR FORTY SEVEN TENDER OFFER**

Foster City, Calif. — March 30, 2020 — Gilead Sciences, Inc. (Nasdaq: GILD) today announced that the required waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act) with respect to Gilead's cash tender offer for Forty Seven, Inc. expired at 11:59 p.m. on March 27, 2020.

On March 12, 2020, Gilead and Forty Seven filed the Premerger Notification and Report Forms required under the HSR Act with the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice.

With the expiration of the waiting period, the tender offer is expected to close in the beginning of April 2020, subject to customary closing conditions. Unless the tender offer is extended, the offer and withdrawal rights will expire at 12:00 midnight, Eastern Time, on April 7, 2020 (one minute after 11:59 p.m., Eastern Time, on April 6, 2020).

About Gilead Sciences

Gilead Sciences, Inc. is a research-based biopharmaceutical company that discovers, develops and commercializes innovative medicines in areas of unmet medical need. The company strives to transform and simplify care for people with life-threatening illnesses around the world. Gilead has operations in more than 35 countries worldwide, with headquarters in Foster City, California. For more information on Gilead Sciences, please visit the company's website at www.gilead.com.

Forward-Looking Statements

This communication contains forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995, related to Gilead, Forty Seven and the acquisition of Forty Seven by Gilead that are subject to risks, uncertainties and other factors. All statements other than statements of historical fact are statements that could be deemed forward-looking statements, including all statements regarding the intent, belief or current expectation of the companies' and members of their senior management team. Forward-looking statements include, without limitation, statements regarding the business combination and related matters, prospective performance and opportunities, post-closing operations and the outlook for the companies' businesses, including, without limitation, the ability of Gilead to advance Forty Seven's product pipeline, including magrolimab, FSI-174 and FSI-189; regulatory approval of magrolimab, FSI-174 and FSI-189 on a timely basis; the anticipated timing of clinical data; the possibility of unfavorable results from clinical trials; filings and approvals relating to the transaction; the expected timing of the completion of the transaction; the ability to complete the transaction considering the various closing conditions; difficulties or unanticipated expenses in connection with integrating the companies; and any assumptions underlying any of the foregoing. Investors are cautioned that any such forward-looking statements are not guarantees of future performance and involve risks and uncertainties and are cautioned not to place undue reliance on these forward-looking statements. Actual results may differ materially from those currently anticipated due to a number of risks and uncertainties. Risks and uncertainties that could cause the actual results to differ from expectations contemplated by forward-looking statements include: uncertainties as to the timing of the tender

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offer and merger; uncertainties as to how many of Forty Seven's stockholders will tender their stock in the offer; the possibility that competing offers will be made; the possibility that various closing conditions for the transaction may not be satisfied or waived, including that a governmental entity may prohibit, delay or refuse to grant approval for the consummation of the transaction; the effects of the transaction on relationships with employees, other business partners or governmental entities; the difficulty of predicting the timing or outcome of FDA approvals or actions, if any; the impact of competitive products and pricing; other business effects, including the effects of industry, economic or political conditions outside of the companies' control; transaction costs; actual or contingent liabilities; adverse impact on business, operating results or financial condition in the future due to pandemic, epidemic or outbreak, such as COVID-19; and other risks and uncertainties detailed from time to time in the companies' periodic reports filed with the U.S. Securities and Exchange Commission (the "SEC"), including current reports on Form 8-K, quarterly reports on Form 10-Q and annual reports on Form 10-K, as well as the Schedule 14D-9 filed on March 10, 2020 by Forty Seven and the Schedule TO and related tender offer documents filed on March 10, 2020 by Gilead and Toro Merger Sub, Inc. ("Purchaser"), a wholly owned subsidiary of Gilead. All forward-looking statements are based on information currently available to Gilead and Forty Seven, and Gilead and Forty Seven assume no obligation and disclaim any intent to update any such forward-looking statements.

Additional Information and Where to Find It

This communication is for informational purposes only and is neither an offer to purchase nor a solicitation of an offer to sell shares of Forty Seven. Gilead and Purchaser have filed a Tender Offer Statement on Schedule TO with the SEC containing an offer to purchase all of the outstanding shares of common stock of Forty Seven for \$95.50 per share, and Forty Seven has filed a Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC with respect to the tender offer. The tender offer is being made solely by means of the Offer to Purchase, and the exhibits filed with respect thereto (including the Letter of Transmittal), which contain the full terms and conditions of the tender offer. FORTY SEVEN'S STOCKHOLDERS AND OTHER INVESTORS ARE URGED TO READ THE TENDER OFFER MATERIALS (INCLUDING THE OFFER TO PURCHASE, THE RELATED LETTER OF TRANSMITTAL AND CERTAIN OTHER TENDER OFFER DOCUMENTS) AND THE SOLICITATION/RECOMMENDATION STATEMENT BECAUSE THEY CONTAIN IMPORTANT INFORMATION WHICH SHOULD BE READ CAREFULLY BEFORE ANY DECISION IS MADE WITH RESPECT TO THE TENDER OFFER. The Offer to Purchase, the related Letter of Transmittal and certain other tender offer documents, as well as the Solicitation/Recommendation Statement, have been sent to all stockholders of Forty Seven at no expense to them. The Tender Offer Statement and the Solicitation/Recommendation Statement are available for free at the SEC's web site at www.sec.gov. Additional copies may be obtained for free by contacting Gilead or Forty Seven. Free copies of these materials and certain other offering documents are available for request by mail to Gilead Sciences, Inc., 333 Lakeside Drive, Foster City, CA 94404, attention: Investor Relations, by phone at 1-800-GILEAD-5 or 1-650-574-3000, or by directing requests for such materials to the information agent for the offer, Innisfree M&A Incorporated, 501 Madison Avenue, 20th Floor, New York, New York 10022. Stockholders may call toll free: (888) 750-5834; Banks and Brokers may call collect: (212) 750-5833; Email: info@innisfreema.com. Copies of the documents filed with the SEC by Forty Seven are available free of charge under the "Investors" section of Forty Seven's internet website at ir.fortyseveninc.com.

In addition to the Offer to Purchase, the related Letter of Transmittal and certain other tender offer documents, as well as the Solicitation/Recommendation Statement, Gilead and Forty Seven file annual, quarterly and current reports, proxy statements and other information with the SEC. Gilead's and Forty Seven's filings with the SEC are also available for free to the public from commercial document-retrieval services and at the website maintained by the SEC at www.sec.gov.

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For more information about Gilead, please visit the company's website at www.gilead.com, follow Gilead on Twitter (@Gilead Sciences) or call Gilead Public Affairs at 1-800-GILEAD-5 or 1-650-574-3000.
