

GENENTECH INC  
Form SC TO-T/A  
March 23, 2009

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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SCHEDULE TO  
(RULE 14d-100)  
Tender Offer Statement under Section 14(d)(1) or 13(e)(1) of  
the Securities Exchange Act of 1934

(Amendment No. 7)

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

ROCHE INVESTMENTS USA INC.  
(Offeror)  
an indirect wholly owned subsidiary of  
ROCHE HOLDING LTD  
(Parent of Offeror)  
GENENTECH, INC.  
(Issuer)

(Names of Filing Persons (identifying status as offeror, issuer and other person))  
Common Stock, Par Value \$0.02 Per Share  
(Title of Class of Securities)

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368710406  
(Cusip Number of Class of Securities)

Carol Fiederlein  
Roche Investments USA Inc.  
1220 N. Market Street, Suite #334  
Wilmington, DE 19801  
Telephone: (302) 425-0151

Sean A. Johnston  
Genentech, Inc.  
1 DNA Way  
South San Francisco, California 94080-4990  
Telephone: (650) 225-1000

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

Copies to:

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Christopher Mayer

Larry W. Sonsini

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Davis Polk & Wardwell  
450 Lexington Avenue  
New York, New York 10017  
Telephone: (212) 450-4000

Martin W. Korman  
Wilson Sonsini Goodrich & Rosati  
Professional Corporation  
650 Page Mill Road  
Palo Alto, California 94304  
Telephone: (650) 493-9300

CALCULATION OF FILING FEE

Transaction Valuation\*  
\$46,763,462,125.00

Amount of Filing Fee\*\*  
\$1,837,804.06

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\*Estimated for purposes of calculating the filing fee only. Calculated by adding (i) the product of (A) 466,224,275, which is the difference between 1,053,413,655, the number of shares ("Shares") of common stock of Genentech, Inc. outstanding as of February 6, 2009, and 587,189,380, the number of Shares beneficially owned by Roche Holding Ltd and (B) \$95.00, which is the per Share tender offer price, and (ii) the product of (A) 77,400,000, which is the number of Shares subject to options outstanding as of December 31, 2008, and (B) \$31.94, which is the difference between the \$95.00 per Share tender offer price and \$63.06, the average weighted exercise price of such options. The number of outstanding Shares, the number of Shares subject to options and the average weighted exercise price for such options is contained in Genentech's Quarterly Report on Form 10-K for the year ended December 31, 2008.

\*\*The amount of the filing fee is calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory # 2 for Fiscal Year 2009 issued by the Securities and Exchange Commission on September 29, 2008, by multiplying the transaction valuation by 0.0000393.

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: \$1,652,803.11

Filing Party: Roche Investments USA Inc./Roche Holding Ltd

Form or Registration Schedule TO-T  
No.:

Date Filed: February 9, 2009

Amount Previously Paid: \$142,272.08

Filing Party: Roche Investments USA Inc./Roche Holding Ltd

Form or Registration Schedule TO-T/A  
No.:

Date Filed: March 6, 2009

Amount Previously Paid: \$42,728.87

Filing Party: Roche Investments USA Inc./Roche Holding Ltd

Form or Registration Schedule TO-T/A  
No.:

Date Filed: March 12, 2009

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.



This Amendment No. 7 amends and supplements the Tender Offer Statement and Rule 13E-3 Transaction Statement originally filed under cover of Schedule TO on February 9, 2009 and as previously amended and supplemented (as amended and supplemented, the "Schedule TO") by Roche Holding Ltd, a joint stock company organized under the laws of Switzerland ("Parent"), Roche Investments USA Inc., a Delaware corporation and an indirect wholly owned subsidiary of Parent (the "Purchaser"), and Genentech, Inc., a Delaware corporation (the "Company"). The Schedule TO relates to the offer by the Purchaser to purchase all outstanding shares of common stock (the "Shares") of the Company not owned by Parent and its subsidiaries upon the terms and subject to the conditions set forth in the Offer to Purchase, dated February 9, 2009, as amended and supplemented (the "Offer to Purchase"), and in the related Letter of Transmittal (which, together with any amendments or supplements thereto, collectively constitute the "Offer").

All capitalized terms used in this Amendment No. 7 without definition have the meanings ascribed to them in the Schedule TO.

Item 11.

Item 11 of the Schedule TO is hereby amended and supplemented to add the following information:

On March 17 and 18, 2009, the plaintiffs in the three related actions pending in the United States District Court for the Northern District of California filed amended complaints adding the Purchaser as a named defendant, updating the factual allegations contained therein, and seeking, among other things, damages and declaratory and injunctive relief based on allegations that the Special Committee's decisions to enter into the Merger Agreement and recommend the Offer constituted breaches of its fiduciary duties, that Roche aided and abetted such breaches and that the Company's filings with the SEC included materially false, misleading or omissive disclosures under the U.S. federal securities laws.

On March 23, 2009, counsel to the parties to the consolidated action pending in the Court of Chancery of the State of Delaware (captioned *In re Genentech, Inc. Shareholders Litigation*), as well as counsel to the parties to the consolidated action pending in the Superior Court of the State of California, County of San Mateo, and the four actions pending in the United States District Court for the Northern District of California (collectively, the "California Actions"), entered into a Stipulation and Agreement of Compromise, Settlement, and Release (the "Settlement Stipulation") to resolve these actions. Pursuant to the Settlement Stipulation, the Delaware consolidated action will be dismissed with prejudice on the merits, the plaintiffs in the California Actions will voluntarily dismiss with prejudice the California Actions, and all defendants will be released from any claims relating to, among other things, the Offer, the Merger, the Merger Agreement and any disclosure made in connection therewith. The Settlement Stipulation is subject to customary conditions, including final approval by the Court of Chancery following notice to the Company's stockholders, completion of certain confirmatory discovery and consummation of the Merger. A hearing will be scheduled at which the Court of Chancery of the State of Delaware will consider the fairness, reasonableness and adequacy of the settlement.

The settlement will not affect the price per Share paid in the Offer or the consideration paid in the Merger.

The defendants, including Roche, have denied and continue to deny any wrongdoing or liability with respect to all claims, events and transactions complained of in the aforementioned litigations or that they engaged in any wrongdoing. Roche entered into the Settlement Stipulation to eliminate the uncertainty, burden, risk, expense and distraction of further litigation. The foregoing description of the Settlement Stipulation does not purport to be complete, and a copy of the Settlement Stipulation is attached hereto as Exhibit (a)(5)(Ixi) and is incorporated herein by reference.

Item 12.

Item 12 of the Schedule TO is hereby amended and supplemented with the following information:

Exhibit No.	Description
(a)(5)(Ixi)	Stipulation and Agreement of Compromise, Settlement, and Release, dated March 23, 2009.

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SIGNATURES

After due inquiry and to the best knowledge and belief of the undersigned, each of the undersigned certify that the information set forth in this statement is true, complete and correct.

Date: March 23, 2009

ROCHE INVESTMENTS USA INC.

By: /s/ Carol Fiederlein  
Name: Carol Fiederlein  
Title: Secretary

ROCHE HOLDING LTD

By: /s/ Steve Krognés  
Name: Steve Krognés  
Title: Authorized Signatory

By: /s/ Beat Kraehenmann  
Name: Dr. Beat Kraehenmann  
Title: Authorized Signatory

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SIGNATURES

After due inquiry and to the best knowledge and belief of the undersigned, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Date: March 23, 2009

GENENTECH, INC.

By:	/s/ Stephen Juelsgaard
Name:	Stephen Juelsgaard
Title:	Executive Vice President, Secretary and Chief Compliance Officer



EXHIBIT INDEX

Item 12. Exhibits.

Exhibit No.	Description
(a)(1)(i)	Offer to Purchase dated February 9, 2009.*
(a)(1)(ii)	Letter of Transmittal.*
(a)(1)(iii)	Notice of Guaranteed Delivery.*
(a)(1)(iv)	Letter to Brokers, Dealers, Commercial Banks, Trust Companies, Custodians, Holder of Employee Stock Purchase Plan Shares and Other Nominees.*
(a)(1)(v)	Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies, Custodians, Holder of Employee Stock Purchase Plan Shares and Other Nominees.*
(a)(1)(vi)	Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.*
(a)(1)(vii)	Summary Advertisement to be published in The Wall Street Journal.*
(a)(2)(i)	Solicitation/Recommendation Statement on Schedule 14D-9, dated February 23, 2009.*
(a)(2)(ii)	Solicitation/Recommendation Statement (Amendment No. 1) on Schedule 14D-9, dated February 24, 2009.*
(a)(2)(iii)	Solicitation/Recommendation Statement (Amendment No. 2) on Schedule 14D-9, dated March 2, 2009.*
(a)(2)(iv)	Solicitation/Recommendation Statement (Amendment No. 3) on Schedule 14D-9, dated March 3, 2009.*
(a)(2)(v)	Solicitation/Recommendation Statement (Amendment No. 4) on Schedule 14D-9, dated March 6, 2009.*
(a)(2)(vi)	Solicitation/Recommendation Statement (Amendment No. 5) on Schedule 14D-9, dated March 12, 2009.*
(a)(2)(vii)	Solicitation/Recommendation Statement (Amendment No. 6) on Schedule 14D-9, dated March 12, 2009.*
(a)(2)(viii)	Solicitation/Recommendation Statement (Amendment No. 7) on Schedule 14D-9, dated March 20, 2009.*
(a)(2)(ix)	Solicitation/Recommendation Statement (Amendment No. 8) on Schedule 14D-9, dated March 23, 2009.*
(a)(5)(i)	Roche Annual Report 2008 Finance Report, containing the consolidated financial statements for Roche Holding Ltd and its consolidated subsidiaries as of and for each of the years ended December 31 2008 and 2007.
(a)(5)(ii)	Verified consolidated class action complaint in the consolidated action captioned In re Genentech, Inc. Shareholders Litigation, filed in the Court of Chancery of the State of Delaware and dated August 18, 2008.*
(a)(5)(iii)	

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Complaint of Alameda County Employees' Retirement Association against Genentech, Inc., William M. Burns, Erich Hunziker, Jonathan K.C. Knowles, Roche Holdings, Inc., and Roche Holding, Ltd., filed in the Court of Chancery of the State of Delaware and dated July 29, 2008.\*

- (a)(5)(iv) Complaint of City of Dearborn Heights General Employees' Retirement System against Roche Holdings AG, Herbert Boyer, William Burns, Erich Hunziker, Jonathan Knowles, Arthur Levinson, Debra Reed, and Charles Sanders, filed in the Court of Chancery of the State of Delaware and dated July 25, 2008.\*
  - (a)(5)(v) Complaint of City of Edinburgh Council as Administering Authority of Lothian Pension Fund against Roche Holdings, Inc., Herbert Boyer, William Burns, Erich Hunziker, Jonathan Knowles, Arthur Levinson, Debra Reed, and Charles Sanders, filed in the Court of Chancery of the State of Delaware and dated July 29, 2008.\*
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- (a)(5)(vi) Complaint of Fulton County Employees' Retirement System against Herbert W. Boyer, William M. Burns, Erich Hunziker, Jonathan K.C. Knowles, Arthur D. Levinson, Debra L. Reed, Charles A. Sanders, Genentech, Inc., Roche Holdings, Inc., and Roche Holding Ltd, filed in the Court of Chancery of the State of Delaware and dated August 5, 2008.\*
- (a)(5)(vii) Complaint of Ira J. Gaines against Genentech, Inc., Roche Holding, Ltd., Roche Holdings, Inc., Arthur D. Levinson, Herbert W. Boyer, William Burns, Erich Hunziker, Jonathan Knowles, Debra Reed, and Charles Sanders, filed in the Court of Chancery of the State of Delaware and dated July 23, 2008.\*
- (a)(5)(viii) Complaint of The General Retirement Fund for the City of Detroit against Herbert W. Boyer, William M. Burns, Erich Hunziker, Jonathan K.C. Knowles, Arthur D. Levinson, Debra L. Reed, Charles A. Sanders, Genentech, Inc., Roche Holdings, Inc., and Roche Holding Ltd, filed in the Court of Chancery of the State of Delaware and dated August 7, 2008.\*
- (a)(5)(ix) Complaint of Montgomery County Employees' Retirement Fund against Herbert W. Boyer, William M. Burns, Erich Hunziker, Jonathan K.C. Knowles, Arthur D. Levinson, Debra L. Reed, Charles A. Sanders, Genentech, Inc., Roche Holdings, Inc., and Roche Holding Ltd, filed in the Court of Chancery of the State of Delaware and dated July 22, 2008.\*
- (a)(5)(x) Complaint of City of Tallahassee's Employees' Retirement System against Genentech Inc., Herbert W. Boyer, William M. Burns, Erich Hunziker, Jonathan K.C. Knowles, Arthur D. Levinson, Debra L. Reed, Charles A. Sanders, and Roche Holdings, Inc., and Roche Holding Ltd, filed in the Court of Chancery of the State of Delaware and dated July 28, 2008.\*
- (a)(5)(xi) Complaint of Peter Wrubel against Genentech, Inc., Roche Holding, Ltd., Roche Holdings, Inc., Arthur D. Levinson, Herbert W. Boyer, William Burns, Erich Hunziker, Jonathan Knowles, Debra Reed, and Charles Sanders, filed in the Court of Chancery of the State of Delaware and dated July 24, 2008.\*
- (a)(5)(xii) Complaint of Bader & Yakaitis PSP and Trust against Genentech, Inc., Arthur D. Levinson, Herbert W. Boyer, William M. Burns, Erich Hunziker, Jonathan K.C. Knowles, Debra L. Reed and Charles Sanders, filed in the Superior Court of the State of California, County of San Mateo and dated July 22, 2008.\*
- (a)(5)(xiii) Complaint of Misty L. Colwell against Genentech, Inc., Arthur D. Levinson, William M. Burns, Erich Hunziker, Jonathan K.C. Knowles, Herbert W. Boyer, Debra L. Reed, Charles A. Sanders, and Roche Holdings AG, filed in the Superior Court of the State of California, County of San Mateo and dated July 21, 2008.\*
- (a)(5)(xiv) Complaint of Robert Corwin against Herbert W. Boyer, William M. Burns, Erich Hunziker, Jonathan K.C. Knowles, Arthur D. Levinson, Debra L. Reed, Charles A. Sanders, Genentech, Inc., Roche Holdings, Inc. and Roche Holding Ltd, filed in the Superior Court of the State of California, County of San Mateo and dated July 29, 2008.\*
- (a)(5)(xv)

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Complaint of Robert L. Garber against Genentech, Inc., Arthur D. Levinson, Herbert W. Boyer, William M. Burns, Erich Hunziker, Jonathan K.C. Knowles, Debra L. Reed and Charles A. Sanders, filed in the Superior Court of the State of California, County of San Mateo and dated July 22, 2008.\*

(a)(5)(xvi) Complaint of Joel A. Gerber against Genentech, Inc., Arthur D. Levinson, Herbert W. Boyer, William M. Burns, Erich Hunziker, Jonathan K.C. Knowles, Debra L. Reed and Charles A. Sanders, filed in the Superior Court of the State of California, County of San Mateo and dated July 22, 2008.\*

(a)(5)(xvii) Complaint of Elizabeth Henderson against Herbert W. Boyer, William M. Burns, Erich Hunziker, Jonathan K.C. Knowles, Arthur D. Levinson, Debra L. Reed, Charles A. Sanders, Roche Holdings, Inc., and Roche Holding Ltd, filed in the Superior Court of the State of California, County of San Mateo and dated July 23, 2008.\*

(a)(5)(xviii)