

CombiMatrix Corp
Form SC TO-T/A
November 15, 2017

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

Amendment No. 4

to

SCHEDULE TO

(Rule 14d-100)

Tender Offer Statement under Section 14(d)(1) or 13(e)(1)

of the Securities Exchange Act of 1934

CombiMatrix Corporation

(Name of Subject Company (Issuer))

Invitae Corporation

(Name of Filing Person (Offeror))

Series F Warrants to Purchase Common Stock, Par Value \$0.001 Per Share

(Title of Class of Securities)

20009T147

(CUSIP Number of Class of Securities)

Sean E. George, Ph.D.

President and Chief Executive Officer

Invitae Corporation

1400 16th Street

San Francisco, CA 94103

(415) 374-7782

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

Copies to:

| | | | |
|--------------------------------|--|--|--|
| Thomas Brida | Mike Hird | Mark McDonough | Parker A. Schweich |
| General Counsel | Patty M. DeGaetano | President and Chief Executive Officer | Stradling Yocca Carlson & Rauth, P.C. |
| Invitae Corporation | Pillsbury Winthrop Shaw Pittman LLP | CombiMatrix Corporation | 660 Newport Center Drive, Suite 1600 |
| 1400 16th Street | 12255 El Camino Real, Suite 300 | 300 Goddard, Suite 100 | Newport Beach, CA 92660 |
| San Francisco, CA 94103 | San Diego, CA 92130 | Irvine, CA 92618 | (949) 725-4000 |
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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 following 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 final Amendment No. 4 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO (as amended, the Schedule TO) originally filed by Invitae Corporation, a Delaware corporation (Invitae), on September 13, 2017, as subsequently amended by Amendment No. 1 to the Schedule TO filed with the Securities and Exchange Commission (the SEC) on September 28, 2017, Amendment No. 2 to the Schedule TO filed with the SEC on October 23, 2017 and Amendment No. 3 to the Schedule TO filed with the SEC on November 8, 2017. This Schedule TO relates to the offer by Invitae to exchange (the Exchange Offer) each outstanding Series F warrant (the CombiMatrix Series F Warrants) to acquire shares of common stock of CombiMatrix Corporation (CombiMatrix) for shares of common stock, par value \$0.0001 per share, of Invitae (the Invitae Common Stock). The terms and conditions of the Exchange Offer and procedures for tendering the CombiMatrix Series F Warrants are set forth in the prospectus/offer to exchange, dated October 6, 2017 (the Prospectus/Offer to Exchange), as supplemented by Prospectus Supplement No. 1, dated October 23, 2017, filed as Exhibit (a)(4)(B) hereto (the Prospectus Supplement), and in the related letter of transmittal (the Letter of Transmittal).

On October 5, 2017, the SEC declared effective Invitae's registration statement on Form S-4 (No. 333-220448) (as amended, the Registration Statement), relating to the Exchange Offer. The terms and conditions of the Exchange Offer, as well as a description of Invitae and other information required by Schedule TO, are set forth in the Prospectus/Offer to Exchange and the Letter of Transmittal, which is filed as Exhibit 99.1 to the Registration Statement, as supplemented by the Prospectus Supplement.

The Exchange Offer expired at 12:00 midnight (one minute after 11:59 p.m.), New York City time, on November 13, 2017 (the Expiration Date). Because the minimum tender condition requiring 90% of the CombiMatrix Series F Warrants outstanding immediately prior to the date of the Merger Agreement to have been validly tendered and not withdrawn prior to the Expiration Date (toward which Invitae counted any CombiMatrix Series F Warrants exercised prior to the Expiration Date (including, for this purpose, exercises made conditional solely upon closing of the Merger)) was not achieved in the Exchange Offer, Invitae did not accept any of the CombiMatrix Series F warrants that were tendered prior to the Expiration Date. Accordingly, any CombiMatrix Series F warrants that were tendered will be promptly returned to the holder by the exchange agent.

On November 15, 2017, Invitae issued a press release, filed as Exhibit (a)(1)(G) hereto, announcing the results of the Exchange Offer and the closing of the Merger.

Items 1 through 9, and Item 11.

All of the information in the Prospectus/Offer to Exchange and the Prospectus Supplement, is hereby incorporated by reference into Items 1 through 9 and 11 of this Schedule TO. This Amendment should be read together with the Schedule TO.

Item 10. Financial Statements.

The information set forth in the Prospectus/Offer to Exchange under the sections entitled *Selected Historical Financial Data of Invitae*, *Selected Historical Financial Data of CombiMatrix*, *Unaudited Pro Forma Condensed Combined Financial Information* and *Where You Can Find More Information* is incorporated herein by reference.

Item 12. Exhibits.

| Exhibit No. | Description |
|--------------------|---|
| (a)(1)(A)* | Form of Letter of Transmittal. |
| (a)(1)(B)* | Internal Revenue Service Form W-9 (included in Exhibit (a)(1)(A)). |
| (a)(1)(C)* | Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees. |
| (a)(1)(D)* | Form of Letter to Clients. |
| (a)(1)(E)* | Form of Notice of Guaranteed Delivery. |
| (a)(1)(F) | Press release issued by Invitae Corporation on November 8, 2017 (incorporated by reference to the Form 425 filed by Invitae Corporation with the SEC on November 8, 2017). |
| (a)(1)(G) | Press release issued by Invitae Corporation on November 15, 2017 (incorporated by reference to Exhibit 99.1 to Invitae's Current Report on Form 8-K filed on November 15, 2017). |
| (a)(2) | Not applicable. |
| (a)(3) | Not applicable. |
| (a)(4)(A) | Prospectus/Offer to Exchange relating to shares of common stock of Invitae Corporation to be issued in the Exchange Offer (incorporated by reference to the Prospectus/Offer to Exchange filed by Invitae Corporation with the SEC on October 6, 2017). |
| (a)(4)(B) | Prospectus Supplement No. 1 to the Prospectus/Offer to Exchange relating to shares of common stock of Invitae Corporation to be issued in the Exchange Offer (incorporated by reference to Prospectus Supplement No. 1 filed by Invitae Corporation with the SEC on October 23, 2017). |
| (a)(5) | Not applicable. |
| (b) | Not applicable. |
| (d)(1)* | Agreement and Plan of Merger and Reorganization, dated as of July 31, 2017, by and among Invitae Corporation, Coronado Merger Sub, Inc. and CombiMatrix Corporation (incorporated by reference to Exhibit 2.1 to Invitae's Current Report on Form 8-K filed on August 1, 2017, and included as Annex A to Exhibit (a)(4)(A)). |
| (d)(2)* | Form of Transaction Bonus Payout Agreement, dated as of July 31, 2017, entered into by and among CombiMatrix Corporation, Invitae Corporation and each of the outside directors of CombiMatrix. |
| (d)(3)* | Transaction Bonus Payout Agreement, dated as of July 31, 2017, by and among Invitae Corporation, CombiMatrix Corporation and Mark McDonough. |
| (d)(4)* | Transaction Bonus Payout Agreement, dated as of July 31, 2017, by and among Invitae Corporation, CombiMatrix Corporation and Scott R. Burell. |
| (d)(5)* | Independent Contractor Agreement, effective as of the closing of the Merger, by and between Invitae Corporation and Mark McDonough. |
| (d)(6)* | Independent Contractor Agreement, effective as of the closing of the Merger, by and between Invitae Corporation and Scott R. Burell. |
| (d)(7) | |

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Marketing and Laboratory Services Agreement, dated as of September 25, 2017, by and among Invitae Corporation, Good Start Genetics, Inc. and CombiMatrix Molecular Diagnostics, Inc. (incorporated by reference to Exhibit 10.1 to Invitae's Current Report on Form 8-K filed on September 27, 2017).

- (g) Not applicable.
- (h)(i)* Legal Opinion of Pillsbury Winthrop Shaw Pittman LLP regarding tax matters.
- (h)(ii)* Legal Opinion of Stradling Yocca Carlson & Rauth, P.C. regarding tax matters.

* Incorporated by reference to the Registration Statement.

Item 13. Information Required By Schedule 13E-3.

Not applicable.

SIGNATURES

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.

INVITAE CORPORATION

Dated: November 15, 2017

By: /s/ Shelly D. Guyer
Name: Shelly D. Guyer
Title: Chief Financial Officer