

TOBIRA THERAPEUTICS, INC.

FORM SC 14D9/A

(Amended Statement of Ownership: Solicitation)

Filed 10/19/16

Address	701 GATEWAY BLVD SUITE 300 SOUTH SAN FRANCISCO, CA 94080
Telephone	650-741-6625
CIK	0001311596
Symbol	TBRA
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Medical Research
Sector	Healthcare
Fiscal Year	12/31

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

(Rule 14d-101)

**Solicitation/Recommendation Statement
Under Section 14(d)(4) of the Securities Exchange Act of 1934
(Amendment No. 3)**

Tobira Therapeutics, Inc.

(Name of Subject Company)

Tobira Therapeutics, Inc.

(Name of Persons Filing Statement)

Common Stock, par value \$0.001 per share
(Title of Class of Securities)

88883P 10 1

(CUSIP Number of Class of Securities)

Laurent Fischer, M.D.
President and Chief Executive Officer
701 Gateway Boulevard, Suite 300
South San Francisco, CA 94080
(650) 741-6625

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

Copies to:

Jay K. Hachigian
Bennett L. Yee
Andrew Y. Luh
Heidi E. Mayon
Gunderson Dettmer Stough
Villeneuve Franklin & Hachigian, LLP
1200 Seaport Boulevard
Redwood City, California, 94063
(650) 321-2400

Graham Robinson
Laura Knoll
Skadden, Arps, Slate, Meagher & Flom LLP
500 Boylston Street, 23rd Floor
Boston, Massachusetts, 02116
(617) 573-4800

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

This Amendment No. 3 (this “ *Amendment No. 3* ”) amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 filed by Tobira Therapeutics, Inc., a Delaware corporation (“ *Tobira* ” or the “ *Company* ”), with the Securities and Exchange Commission (the “ *SEC* ”) on October 3, 2016 (together with any subsequent amendments and supplements thereto, including this Amendment No. 3, the “ *Schedule 14D-9* ”). The Schedule 14D-9 relates to the tender offer by Sapphire Acquisition Corp., a Delaware corporation (“ *Purchaser* ”), a wholly owned subsidiary of Allergan Holdco US, Inc., a Delaware corporation (“ *Parent* ”), and an indirect wholly owned subsidiary of Allergan plc, an Irish public limited company (“ *Allergan* ”), for all of the outstanding shares of common stock, par value \$0.001 per share (“ *Shares* ”), of Tobira at a price of (x) \$28.35 per Share, net to the seller in cash, without interest and less any applicable withholding taxes, plus (y) one contractual contingent value right per Share, which represents the right to receive contingent payments of up to \$49.84 in cash in the aggregate, if any, if certain specified milestones are achieved, upon the terms and subject to the conditions set forth in the offer to purchase dated October 3, 2016 (the “ *Offer to Purchase* ”) and in the related letter of transmittal (the “ *Letter of Transmittal* ”), which, as each may be amended or supplemented from time to time, collectively constitute the “ *Offer* .” The Offer is described in a Tender Offer Statement on Schedule TO filed by Purchaser, Parent and Allergan with the SEC on October 3, 2016. Copies of the Offer to Purchase and form of Letter of Transmittal are filed as Exhibit (a)(1)(A) and (a)(1)(B) to the Schedule 14D-9, respectively, and are incorporated herein by reference.

Except to the extent specifically provided in this Amendment No. 3, the information set forth in the Schedule 14D-9 remains unchanged and is incorporated herein by reference as relevant to the items in this Amendment No. 3. Capitalized terms used but not defined herein have the meanings ascribed to them in the Schedule 14D-9.

ITEM 8. ADDITIONAL INFORMATION

Item 8 of the Schedule 14D-9 is hereby amended and supplemented as follows:

The fourth sentence in the first paragraph of “ *Item 8. Additional Information—Regulatory Approvals* ” on page 57 of the Schedule 14D-9, as such sentence was amended and restated by Amendment No. 1 to the Schedule 14D-9 filed with the SEC on October 4, 2016, is deleted and replaced with the following sentences:

“On October 18, 2016, the FTC granted early termination of the waiting period applicable to the Offer under the HSR Act. Accordingly, the condition of the Offer relating to the expiration or termination of the waiting period under the HSR Act has been satisfied. On October 19, 2016, Allergan and Tobira issued a joint press release announcing the early termination of the waiting period under the HSR Act. A copy of the joint press release is filed as Exhibit (a)(1)(J) hereto and is incorporated herein by reference.”

ITEM 9. EXHIBITS

Item 9 of the Schedule 14D-9 is hereby amended and supplemented by adding the following exhibit:

<u>Exhibit No.</u>	<u>Description</u>
(a)(1)(J)	Joint Press Release issued by Tobira Therapeutics, Inc. and Allergan plc, dated October 19, 2016.

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.

Date: October 19, 2016

Tobira Therapeutics, Inc.

By: /s/ Laurent Fischer, M.D.

Name: Laurent Fischer, M.D.

Title: Chief Executive Officer

**NEWS RELEASE****CONTACTS:****ALLERGAN:****Investors:**

Lisa DeFrancesco
(862) 261-7152

Media:

Mark Marmur
(862) 261-7558

TOBIRA:**Investors:**

Ian Clements, Ph.D.
(650) 351-5013

Media:**Brewlife**

Kelly Boothe, Ph.D.
(415) 946-1076

**Allergan and Tobira Therapeutics Announce Early Termination of
Hart-Scott-Rodino Waiting Period for Allergan's Proposed
Acquisition of Tobira**

DUBLIN, and SOUTH SAN FRANCISCO, Calif. – Oct. 19, 2016 /PRNewswire/ – Allergan plc (NYSE: AGN), a leading global pharmaceutical company, and Tobira Therapeutics, Inc. (NASDAQ:TBRA), a clinical-stage biopharmaceutical company focused on developing and commercializing therapies for non-alcoholic steatohepatitis (NASH) and other liver diseases, today announced that the U.S. Federal Trade Commission (“FTC”) has granted early termination of the waiting period under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended (“HSR”), with respect to Allergan’s pending acquisition of Tobira.

The early termination of the HSR waiting period satisfies one of the conditions to the closing of the pending acquisition, which remains subject to other customary closing conditions. Both companies expect the transaction to be completed by the end of 2016.

About Allergan plc

Allergan plc (NYSE: AGN), headquartered in Dublin, Ireland, is a bold, global pharmaceutical company and a leader in a new industry model – Growth Pharma. Allergan is focused on developing, manufacturing and commercializing branded pharmaceuticals, devices and biologic products for patients around the world.

Allergan markets a portfolio of leading brands and best-in-class products for the central nervous system, eye care, medical aesthetics and dermatology, gastroenterology, women's health, urology and anti-infective therapeutic categories.

Allergan is an industry leader in Open Science, the Company's R&D model, which defines our approach to identifying and developing game-changing ideas and innovation for better patient care. This approach has led to Allergan building one of the broadest development pipelines in the pharmaceutical industry with 70+ mid-to-late stage pipeline programs in development.

Our Company's success is powered by our more than 15,000 global colleagues' commitment to being Bold for Life. Together, we build bridges, power ideas, act fast and drive results for our customers and patients around the world by always doing what it is right.

With commercial operations in approximately 100 countries, Allergan is committed to working with physicians, healthcare providers and patients to deliver innovative and meaningful treatments that help people around the world live healthier lives every day.

For more information, visit Allergan's website at www.Allergan.com.

About Tobira Therapeutics

Tobira is a clinical-stage biopharmaceutical company focused on the development and commercialization of therapies for non-alcoholic steatohepatitis (NASH) and other liver diseases. The company's lead product candidate, cenicriviroc (CVC), is a first-in-class immunomodulator and dual inhibitor of CCR2 and CCR5 in late-stage development for the treatment of NASH, a serious liver disease that can progress to cirrhosis, liver cancer and liver failure. CVC is also being investigated to address primary sclerosing cholangitis (PSC), a disease which causes inflammation and scarring of the bile ducts, eventually leading to serious liver damage. Tobira's pipeline also includes evogliptin, a selective DPP-4 inhibitor, which it plans to develop for NASH in combination with CVC. Learn more about Tobira at www.tobiratx.com.

Tobira® is a registered trademark owned by Tobira Therapeutics, Inc.

Allergan Cautionary Statement Regarding Forward-Looking Statements

Statements contained in this press release that refer to future events or other non-historical facts are forward-looking statements that reflect Allergan's current perspective of existing trends and information as of the date of this release. Except as expressly required by law, Allergan disclaims any intent or obligation to update these forward-looking statements. Actual results may differ materially from Allergan's current expectations depending upon a number of factors affecting Allergan's business. These factors include, among others, the difficulty of predicting the timing or outcome of FDA approvals or actions, if any; the impact of competitive products and pricing; market acceptance of and continued demand for Allergan's products; difficulties or delays in manufacturing; the ability of Allergan to complete the acquisition of Tobira; and other risks and uncertainties detailed in Allergan's periodic public filings with the Securities and Exchange Commission, including but not limited to Allergan's Annual Report on Form 10-K for the year ended December 31, 2015 and Quarterly Report on Form 10-Q for the quarter ended June 30, 2016 (such periodic public filings having been filed under the "Actavis plc" name). Except as expressly required by law, Allergan disclaims any intent or obligation to update these forward-looking statements.

Tobira Cautionary Statement Regarding Forward-Looking Statements

All of the statements in this press release, other than historical facts, are forward-looking statements, including, without limitation, the statements made concerning Allergan's pending acquisition of Tobira. As a general matter, forward-looking statements are those focused upon anticipated events or trends, expectations, and beliefs relating to matters that are not historical in nature. Such forward-looking statements are subject to uncertainties and factors relating to Tobira's operations and business environment, all of which are difficult to predict and many of which are beyond the control of Tobira. Among others, the following factors could cause actual results to differ materially from those set forth in the forward-looking statements: (i) uncertainties as to how many Tobira stockholders will tender their shares of Tobira common stock in the tender offer; (ii) the possibility that competing offers will be made; (iii) the possibility that various closing conditions for the transaction may not be satisfied or waived; (iv) the risk that the merger agreement with Allergan may be terminated in circumstances requiring Tobira to pay Allergan a termination fee; (v) risks related to obtaining the requisite consents to the transaction, including, without limitation, the timing (including possible delays) and receipt of regulatory approvals from various governmental entities (including any conditions, limitations or restrictions placed on these approvals and the risk that one or more governmental entities may deny approval); (vi) the possibility that the transaction may not be timely completed, if at all; and (vii) that, prior to the completion of the transaction, if at all, Tobira's business may experience significant disruptions due to transaction-related uncertainty. Other factors that could cause actual results to differ materially include those set forth in Tobira's SEC reports, including, without limitation, the risks described in Tobira's Annual Report on Form 10-K for its fiscal year ended December 31, 2015 and Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2016. Tobira assumes no obligation and does not intend to update these forward-looking statements, except as expressly required by law.

Notice to Investors

The description contained in this press release is neither an offer to purchase nor a solicitation of an offer to sell any securities. The solicitation and the offer to buy shares of Tobira common stock are only being made pursuant to an offer to purchase and related materials that Allergan first filed with the Securities and Exchange Commission on October 3, 2016. Tobira has also filed a solicitation/ recommendation statement on Schedule 14D-9 with respect to the offer. The tender offer statement (including an offer to purchase, a related letter of transmittal and other offer documents) and the solicitation/recommendation statement contain important information that should be read carefully and considered before any decision is made with respect to the tender offer. Additionally, Tobira and Allergan have filed and may in the future file other relevant materials in connection with the proposed acquisition of Tobira by Allergan pursuant to the terms of the merger agreement. All of these materials (and all other materials filed by Tobira with the Securities and Exchange Commission) are available at no charge from the Securities and Exchange Commission through its website at www.sec.gov. Free copies of the offer to purchase, the related letter of transmittal and certain other offering documents may be obtained by directing a request to Allergan's Investor Relations Department at (862) 261-7488. Investors and security holders may also obtain free copies of the documents filed with the Securities and Exchange Commission by Tobira by contacting Tobira Investor Relations at (650) 351-5013.

INVESTORS AND STOCKHOLDERS OF TOBIRA ARE ADVISED TO READ THE SCHEDULE TO AND THE SCHEDULE 14D-9, AS EACH HAS BEEN AND MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME, AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION WHEN THEY BECOME AVAILABLE BEFORE THEY MAKE ANY DECISION WITH RESPECT TO THE TENDER OFFER OR MERGER, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND THE PARTIES THERETO.