

MICROMET, INC.
Form SC TO-T/A
February 15, 2012

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO

(RULE 14d 100)

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

(Amendment No. 3)

MICROMET, INC.

(Name of Subject Company)

ARMSTRONG ACQUISITION CORP.

(Offeror)

AMGEN INC.

(Parent of Offeror)

(Names of Filing Persons)

COMMON STOCK, \$0.00004 PAR VALUE

(Title of Class of Securities)

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59509C105

(Cusip Number of Class of Securities)

David J. Scott, Esq.

Senior Vice President, General Counsel and Secretary

One Amgen Center Drive

Thousand Oaks, California 91320-1799

(805) 447-1000

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

With a copy to

Frank J. Aquila, Esq.

Eric M. Krautheimer, Esq.

Sullivan & Cromwell LLP

125 Broad Street

New York, NY 10004

(212) 558-4000

CALCULATION OF FILING FEE

Transaction Valuation*
\$1,255,747,416

Amount of Filing Fee**
\$143,908

* Estimated solely for purposes of calculating the filing fee. The transaction value was determined by multiplying (a) \$11.00, the tender offer price, by (b) the sum of (i) 92,375,454, the issued and outstanding shares of Micromet common stock, (ii) 14,017,356, the number of shares of Micromet common stock issuable by Micromet upon the exercise of outstanding stock options pursuant to Micromet's stock option plans and (iii) 7,766,046, the number of shares of Micromet common stock issuable by Micromet upon the exercise of outstanding warrants. The foregoing share figures have been provided by the issuer to the offerors and are as of January 25, 2012, the most recent practicable date.

** The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory #3 for fiscal year 2012, issued September 29, 2011, by multiplying the transaction value by .0001146.

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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: \$143,908

Filing Party: Armstrong Acquisition Corp.

Form or Registration No.: Schedule TO

and Amgen Inc.
Date Filed: February 2, 2012

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.

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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. 3 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO (together with any subsequent amendments and supplements thereto, the Schedule TO) filed by Amgen Inc., a Delaware corporation (Amgen), and Armstrong Acquisition Corp., a Delaware corporation (Purchaser) and a wholly-owned subsidiary of Amgen. The Schedule TO relates to the offer by the Purchaser to purchase all outstanding shares of common stock, par value \$0.00004 per share (together with the associated preferred stock purchase rights, the Shares), of Micromet, Inc., a Delaware corporation (Micromet), at \$11.00 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 February 2, 2012 (the Offer to Purchase), and in the related Letter of Transmittal, dated February 2, 2012, copies of which are attached as Exhibits (a)(1)(i) and (a)(1)(ii), respectively, to the Schedule TO (which, together with any amendments or supplements thereto, collectively constitute the Offer).

All information contained in the Offer to Purchase and the accompanying Letter of Transmittal, including all schedules thereto, is hereby incorporated herein by reference in response to Items 1 through 9 and Item 11 in the Schedule TO.

This Amendment No. 3 is being filed to amend and supplement Item 11 as reflected below.

Item 11. Additional Information.

Item 11 of the Schedule TO is hereby amended and supplemented as follows:

(a) The information set forth in Section 17 Certain Legal Matters; Regulatory Approvals Litigation of the Offer to Purchase is hereby amended and restated in its entirety to read as follows:

On January 27, 2012, a putative class action lawsuit challenging the Merger, captioned *Rush v. Micromet, Inc., et al.*, Case No. V358302, was filed in the Circuit Court for Montgomery County, Maryland (the Rush Case). On January 30, 2012, a putative class action lawsuit challenging the Merger, captioned *Passes v. Micromet, Inc., et al.*, Case No. 7198-VCP, was filed in the Court of Chancery for the State of Delaware (the Passes Case). On January 30, 2012, a putative class action lawsuit challenging the Merger, captioned *Bohaychuck v. David Hale, et al.*, Case No. 7197-VCP, was filed in the Court of Chancery for the State of Delaware (the Bohaychuck Case). On January 31, 2012, a putative class action lawsuit challenging the Merger, captioned *Volpe v. David Hale, et al.*, Case No. 7201-VCP, was filed in the Court of Chancery for the State of Delaware (the Volpe Case). On January 31, 2012, a putative class action lawsuit challenging the Merger, captioned *Osler v. Micromet, Inc., et al.*, Case No. V358457, was filed in the Circuit Court for Montgomery County, Maryland (the Osler Case). On January 31, 2012, a putative class action lawsuit challenging the Merger, captioned *Noskoviak v. Micromet, Inc., et al.*, Case No. V358455 was filed in the Circuit Court for Montgomery County, Maryland (the Noskoviak Case). On February 1, 2012, a putative class action lawsuit challenging the Merger, captioned *Draper-Donaldson v. Micromet Technologies, Inc., et al.*, Case No. 7208-VCP, was filed in the Court of Chancery for the State of Delaware (the Draper-Donaldson Case). On February 3, 2012, the Draper-Donaldson Case was voluntarily dismissed without prejudice by the plaintiff in that case. On February 1, 2012, a putative class action lawsuit challenging the Merger, captioned *Wolf v. David Hale, et al.*, Case No. 7205-VCP, was filed in the Court of Chancery for the State of Delaware (the Wolf Case). On February 2, 2012, a putative class action lawsuit challenging the Merger, captioned *Russell v. Micromet, Inc.*, Case No. 7210-VCP, was filed in the Court of Chancery for the State of Delaware (the Russell Case). On February 8, 2012, a putative class action lawsuit challenging the Merger, captioned *Raad v. Christian Itin, et al.*, Case No. 8:12-cv-00385-DKC, was filed in the United States District Court for the District of Maryland (the Raad Case). On February 9, 2012 a putative class action lawsuit challenging the Merger, captioned *Louisiana Municipal Police Employees Retirement System v. David F. Hale, et al.*, was filed in the Court of Chancery for the State of Delaware (the LMPERS Case) and collectively with the Rush Case, Passes Case, Bohaychuck Case, Volpe Case, Osler Case, Noskoviak Case, Wolf Case, Russell Case and Raad Case, the Stockholder Litigations). The Passes Case, Bohaychuck Case, Volpe Case, Wolf Case, Russell Case and LMPERS Case are collectively referred to as the Delaware Litigations and are being overseen by Vice Chancellor Parsons in the Court of Chancery for the State of Delaware.

The Stockholder Litigations and the Draper-Donaldson Case were each filed against us, Amgen, Micromet and the individual members of the Micromet Board. The Stockholder Litigations each generally allege and the Draper-Donaldson Case alleged, among other things, that the members of the Micromet Board breached their fiduciary duties owed to the Micromet stockholders by approving the proposed Merger for inadequate consideration, entering into the Merger Agreement containing preclusive deal protection devices and failing to take

steps to maximize the value to be paid to the Micromet stockholders. The Raad Case brings an additional claim against the members of the Micromet Board under Section 14(e) of the Securities Exchange Act of 1934 for making false and misleading statements in the Schedule 14D-9. On February 6, 2012 the Passes Case was amended to include a claim that the members of the Micromet Board breached their fiduciary duties by failing to make adequate disclosures to Micromet's stockholders with respect to the Merger. Each of the Stockholder Litigations also alleges and the Draper-Donaldson Case alleged claims for aiding and abetting such alleged breaches of fiduciary duties. The Bohaychuck Case alleges this claim against Micromet and Amgen, the Draper-Donaldson Case alleged and the Wolf Case and LMPERS Case allege this claim against Amgen and us, the Noskoviak Case, Russell Case, Osler Case and Raad Case allege this claim against Amgen only, and the Rush Case and Volpe Case allege this claim against us, Amgen and Micromet. The Passes Case originally alleged the aiding and abetting claim against Micromet only, but was amended on February 6, 2012 to include Amgen and us. The plaintiffs in each of the Stockholder Litigations generally seek, among other things, declaratory and injunctive relief concerning the alleged breaches of fiduciary duty, injunctive relief prohibiting consummation of the proposed Merger, damages and attorneys' fees and costs, and other forms of relief.

On February 13, 2012, the Delaware Chancery Court overseeing the Delaware Litigations held a telephonic hearing on a motion for expedited discovery filed by Plaintiff in the Passes Case. While indicating that it was not expressing a view on the merits of any of Plaintiff's claims, the Court granted the request and set a hearing on Plaintiff's request for preliminary injunctive relief for Monday, February 27, 2011 at 2 p.m.

(b) The last paragraph of Section 15 – Conditions to the Offer is hereby amended and supplemented by adding the following to the end of the paragraph:

The HSR Condition has been satisfied by the grant of early termination of the HSR waiting period by the Federal Trade Commission on February 14, 2012.

(c) The second paragraph of Section 17 – Certain Legal Matters; Regulatory Approvals – Antitrust Compliance – United States Antitrust Compliance of the Offer to Purchase is hereby amended and restated as follows:

On February 2, 2012, each of Micromet and Amgen filed a Premerger Notification and Report Form with the FTC and the Antitrust Division in connection with the Offer. The waiting period under the HSR Act, which was scheduled to expire on February 17, 2012, was terminated early on February 14, 2012.

(d) Section 17 – Certain Legal Matters; Regulatory Approvals – Antitrust Compliance – German Antitrust Compliance of the Offer to Purchase is hereby amended and restated as follows:

If required by law, the written approval by the German Federal Cartel Office or the expiration of any applicable waiting period would be a condition to our obligation to accept for payment and pay for the Shares tendered pursuant to the Offer. We do not believe that the Offer will require the approval by or a filing with the German Federal Cartel Office, and accordingly, will not be making any such filing, nor do we believe that the consummation of the Offer will meet the criteria for a prohibition under the German Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*). However, there can be no assurance that a challenge to the Offer on antitrust grounds will not be made, or if such a challenge is made, what the result would be.

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: February 14, 2012

AMGEN INC.

By: /s/ David J. Scott
Name: David J. Scot
Title: Senior Vice President,Senior Vice President,
ARMSTRONG ACQUISITION CORP.

By: /s/ David J. Scott
Name: David J. Scot
Title: Senior Vice President,Senior Vice President,