

KOSAN BIOSCIENCES INC  
Form SC TO-T/A  
June 26, 2008

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**SCHEDULE TO**

AMENDMENT NO. 2

TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)  
OF THE SECURITIES EXCHANGE ACT OF 1934

**KOSAN BIOSCIENCES INCORPORATED**

(Name of Subject Company (Issuer))

**KB ACQUISITION CORP.**

(Offeror)

A Wholly-Owned Subsidiary of

**BRISTOL-MYERS SQUIBB COMPANY**

(Parent of Offeror)

(Names of Filing Persons (identifying status as offeror, issuer or other person))

**COMMON STOCK, \$0.001 PAR VALUE**

(Title of Class of Securities)

**50064W107**

(CUSIP Number of Class of Securities)

**Sandra Leung  
Senior Vice President, General  
Counsel & Corporate Secretary  
Bristol-Myers Squibb Company  
345 Park Avenue  
New York, New York 10154  
(212) 546-4000**

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

*Copies to:*

**Susan Webster  
Ronald Cami  
Cravath, Swaine & Moore LLP**

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Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019-7475  
(212) 474-1000

CALCULATION OF FILING FEE

Transaction Valuation(1)	Amount of Filing Fee(2)
\$246,148,958	\$9,673.65

(1) Estimated for purposes of calculating the filing fee only. This amount is determined by multiplying 44,754,356 shares of Kosan Biosciences Incorporated common stock (which represents the number of shares, including outstanding, in-the-money options, warrants and restricted stock units, outstanding as of May 27, 2008) by \$5.50 per share, which is the offer price.

(2) The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934 and Fee Rate Advisory #6 for fiscal year 2008, issued December 27, 2007, by multiplying the transaction value by .0000393.

☐ Check the 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: \$9,673.65

Filing Party: KB Acquisition Corp. and  
Bristol-Myers Squibb Company

Form of Registration No.: Schedule TO

Date Filed: May 29, 2008

☐ 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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This Amendment No. 2 to the Tender Offer Statement on Schedule TO (this "Amendment") is filed by (i) KB Acquisition Corp., a Delaware corporation (the "Purchaser"), and a wholly-owned subsidiary of Bristol-Myers Squibb Company, a Delaware corporation ("Parent"), and (ii) Parent. This Amendment amends and supplements the Tender Offer Statement on Schedule TO filed with the Securities and Exchange Commission on May 29, 2008, as amended (the "Schedule TO"), and relates to the offer (the "Offer") by the Purchaser to purchase all of the outstanding shares of common stock, par value \$0.001 per share (the "Shares"), of Kosan Biosciences Incorporated, a Delaware corporation (the "Company"), at a purchase price of \$5.50 per Share, net to the seller in cash, without interest thereon, less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated May 29, 2008 (together with any amendments and supplements thereto, the "Offer to Purchase") and in the related Letter of Transmittal.

Capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Offer to Purchase.

### **Items 1 through 9 and 11**

Items 1 through 9 and 11 of the Schedule TO are hereby amended and supplemented to include the following:

"At 12:00 midnight, New York City time, on Wednesday, June 25, 2008, the Offer expired as scheduled. The Offer was not extended. Based on the information provided by the Depository to Parent, as of June 25, 2008, approximately 41,449,606 Shares were tendered and not withdrawn prior to the expiration of the Offer, including 1,682,151 Shares subject to guaranteed delivery procedures. The Purchaser has accepted all validly tendered and not withdrawn Shares for payment. The Shares tendered and not withdrawn represent approximately 97.1% of the Company's Shares.

Pursuant to the terms of the Merger Agreement, Parent intends to cause the merger of the Purchaser with and into the Company (the "Merger") following the expiration of the Offer. The Merger Agreement provides, among other things, that subject to certain conditions, the Purchaser will be merged with and into the Company with the Company continuing as the Surviving Corporation, wholly owned by Parent. Pursuant to the Merger Agreement, at the Effective Time of the Merger (the "Effective Time"), each Share outstanding immediately prior to the Effective Time (other than (i) Shares owned by the Company, Parent or the Purchaser, which will be canceled and retired and shall cease to exist, and (ii) Shares owned by the Company's stockholders who perfect their appraisal rights under the Delaware General Corporation Law) will be converted into the right to receive \$5.50, net to the seller in cash, without interest thereon, less any required withholding taxes."

The press release issued by Parent announcing the completion of the tender offer is attached hereto as Exhibit (a)(5)(E).

### **Item 12. Exhibits.**

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

"(a)(5)(E) Press Release issued by Bristol-Myers Squibb Company on June 26, 2008."

**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.

KB ACQUISITION CORP.

By /s/ Jeremy Levin

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Name: Jeremy Levin  
Title: President

Date: June 26, 2008

BRISTOL-MYERS SQUIBB COMPANY

By /s/ Sandra Leung

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Name: Sandra Leung  
Title: Senior Vice President, General Counsel and Secretary

Date: June 26, 2008

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**Exhibit**

**Exhibit Name**

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(a)(5)(E)

Press Release issued by Bristol-Myers Squibb Company on June 26, 2008.

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Item 12. Exhibits.

SIGNATURE