

Gentium S.p.A.  
Form SC TO-T/A  
January 24, 2014

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

**SCHEDULE TO**  
**Tender Offer Statement under Section 14(d)(1) or 13(e)(1)**  
**of the Securities Exchange Act of 1934**  
**(Amendment No. 9)**

**GENTIUM S.p.A.**  
**(Name of Subject Company (Issuer))**

**JAZZ PHARMACEUTICALS ITALY S.p.A.**  
**JAZZ PHARMACEUTICALS PUBLIC LIMITED COMPANY**  
**(Names of Filing Persons (Offerors))**

**Ordinary Shares, no par value per share**

**and**

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**American Depositary Shares, each representing one Ordinary Share**  
**(Title of Class of Securities)**

**The CUSIP number for the Ordinary Shares, which are not traded on U.S. markets, is 37250B922.**

**The CUSIP number for the related American Depositary Shares is 37250B104.**

**(CUSIP Number of Class of Securities)**

**Suzanne Sawochka Hooper, Esq.**  
**Executive Vice President and General Counsel**  
**Jazz Pharmaceuticals Public Limited Company**  
**c/o Jazz Pharmaceuticals, Inc.**

**3180 Porter Drive**

**Palo Alto, California 94304**

**Tel: (650) 496-3777**

*Copy to:*

**Keith A. Flaum, Esq.**

**Jane Ross, Esq.**

**James R. Griffin, Esq.**

**Weil, Gotshal & Manges LLP**

**201 Redwood Shores Parkway**

**Redwood Shores, CA 94065**

**(650) 802-3000**

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

**CALCULATION OF FILING FEE**

**Transaction Valuation\***

\$1,011,728,625.00

**Amount of Filing Fee\*\***

\$130,310.65

- \* For purposes of calculating the filing fee pursuant to Rule 0-11(d) only, the Transaction Valuation was calculated on the basis of (i) the aggregate of 17,749,625 Ordinary Shares, no par value per share, which includes (A) 10,984,130 Ordinary Shares represented by 10,984,130 American Depositary Shares outstanding, and (B) 2,194,494 Ordinary Shares not yet outstanding but underlying outstanding equity awards, in each case not owned by the Filing Persons, that may be purchased in the tender offer, and (ii) the tender offer price of \$57.00 per Ordinary Share and per American Depositary Share.
- \*\* The amount of the filing fee, calculated in accordance with Rule 0-11 of the Exchange Act, and Fee Rate Advisory #1 for fiscal year 2014, issued August 30, 2013, is \$128.80 per \$1 million (prorated for amounts less than \$1 million) of the aggregate Transaction Valuation. The filing fee is calculated by multiplying the transaction value by 0.0001288.
- x 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: \$130,310.65

Filing Party: Jazz Pharmaceuticals Italy S.p.A.

(formerly known as Jazz Pharmaceuticals Italy S.r.l.) and

Jazz Pharmaceuticals Public Limited Company

Form or Registration Number: Schedule TO

Date Filed: December 23, 2013

- .. 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:

- x 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 appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

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- .. Rule 13e-4(i) (Cross-Border Issuer Tender Offer)
- .. Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

## INTRODUCTORY STATEMENT

This Amendment No. 9 (this **Amendment** ) amends and supplements the Tender Offer Statement on Schedule TO (which, together with any amendments or supplements thereto, collectively constitute the **Schedule TO** ) relating to the offer by Jazz Pharmaceuticals Italy S.p.A., an Italian *società per azioni* (formerly known as Jazz Pharmaceuticals Italy S.r.l., an Italian *società a responsabilità limitata*) ( **Purchaser** ) and a wholly-owned subsidiary of Jazz Pharmaceuticals Public Limited Company, a public limited company formed under the laws of Ireland ( **Parent** or **Jazz Pharmaceuticals** ), to purchase all outstanding shares of ordinary stock, no par value per share (the **Ordinary Shares** ), and all outstanding American Depositary Shares, each representing one Ordinary Share and evidenced by an American Depositary Receipt ( **ADR** ) issued by The Bank of New York, as depositary (the **ADSs** ) of Gentium S.p.A., a *società per azioni* incorporated in Italy (the **Company** or **Gentium** ), at a purchase price of \$57.00 per Ordinary Share and per ADS (without duplication for Ordinary Shares underlying ADSs), net to the seller in cash, without interest thereon and less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated December 23, 2013 (which, together with any amendments or supplements thereto, collectively constitute the **Offer to Purchase** ) and in the related ADS Letter of Transmittal (the **ADS Letter of Transmittal** ) and Share Form of Acceptance (the **Share Form of Acceptance** and, together with the ADS Letter of Transmittal and Offer to Purchase, as amended or supplemented from time to time, the **Offer** ), which are annexed to and filed with the Schedule TO as Exhibits (a)(1)(A), (a)(1)(B) and (a)(1)(G), respectively. The information set forth in the Offer to Purchase and the related ADS Letter of Transmittal and Share Form of Acceptance are incorporated by reference herein.

Capitalized terms used but not defined in this Amendment shall have the meanings assigned to such terms in the Schedule TO.

**Items 1-11. Additional information.**

The Offer to Purchase and Items 1-11 of the Schedule TO, to the extent such items incorporate by reference the information contained in the Offer to Purchase, are amended and supplemented by amending and supplementing the information set forth in Section 10 (Source and Amount of Funds) of the Offer to Purchase to reflect the entering into of Amendment No. 2 to Parent's current credit facility by Parent, three wholly-owned subsidiaries of Parent, Barclays Bank PLC and the other lenders party thereto. Accordingly, such information is amended and supplemented as follows:

*The following paragraphs replace the final paragraph under the heading "Conditions Precedent to the Debt Financing" in its entirety:*

On January 23, 2014, Parent, as guarantor, and the Borrowers entered into Amendment No. 2 (the "Amendment") to the Credit Agreement (as amended by the Amendment, the "Amended Credit Agreement") with the lender parties thereto and Barclays, as administrative agent, collateral agent, letter of credit issuer and swing line lender.

The Amended Credit Agreement provides for (i) a tranche of incremental term loans made to the U.S. Borrower in the aggregate principal amount of \$350,000,000 ("Incremental Term Loans"), (ii) a tranche of term loans made to the U.S. Borrower (together with the Incremental Term Loans, the "New Term Loans") to refinance the \$554,401,563 aggregate principal amount of previously outstanding Tranche 1 Term Loans in their entirety and (iii) a revolving credit facility of \$425,000,000 (the "Revolving Credit Facility") that replaces the revolving credit facility of \$200,000,000 provided for under the Credit Agreement. The Revolving Credit Facility provides for revolving loans to be made to any of the Borrowers. Parent used the proceeds from the Incremental Term Loans and \$300,000,000 of loans under the Revolving Credit Facility to purchase the Ordinary Shares and ADSs properly tendered and accepted for payment at the expiration of the Offer as of January 22, 2014, and expects to use the proceeds from future loans under the Revolving Credit Facility, if any, for general corporate purposes, including corporate development activities. The New Term Loans have the same June 12, 2018 maturity date that was applicable to the Tranche 1 Term Loans. Loans under the Revolving Credit Facility will have the same June 12, 2017 maturity date that was applicable under the Credit Agreement. A copy of the Amendment has been filed as Exhibit (b)(3) to the Schedule TO. Reference is made to such exhibit for a more complete description of the terms and conditions of the Amendment, and such exhibit is incorporated herein by reference.

**Item 12. Exhibits.**

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

- (b)(3) Amendment No. 2, dated as of January 23, 2014, to the Credit Agreement, dated as of June 12, 2012, by and among Jazz Pharmaceuticals, Inc., Jazz Financing I Limited and Jazz Pharmaceuticals Ireland Limited, as borrowers, Jazz Pharmaceuticals Public Limited Company, as guarantor, the Lenders thereto and Barclays Bank PLC, as Administrative Agent, Collateral Agent, L/C Issuer and Swing Line Lender (incorporated by reference to Exhibit 10.1 from the Form 8-K filed by Jazz Pharmaceuticals with the Securities and Exchange Commission on January 24, 2014).

**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.

**JAZZ PHARMACEUTICALS PUBLIC  
LIMITED COMPANY**

By: /s/ Suzanne Sawochka Hooper

Name: Suzanne Sawochka Hooper

Title: Executive Vice President and  
General Counsel

**JAZZ PHARMACEUTICALS ITALY  
S.p.A.**

By: /s/ Fintan Keegan

Name: Fintan Keegan

Title: Director

Date: January 24, 2014

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**EXHIBIT LIST**

<b>Exhibit Number</b>	<b>Description</b>
(a)(1)(A)	Offer to Purchase, dated December 23, 2013.*
(a)(1)(B)	Form of ADS Letter of Transmittal.*
(a)(1)(C)	Form of Notice of Guaranteed Delivery.*
(a)(1)(D)	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(E)	Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(F)	Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.*
(a)(1)(G)	Form of Share Form of Acceptance.*
(a)(5)(A)	Summary Advertisement as published in The Wall Street Journal on December 23, 2013.*
(a)(5)(B)	Joint Press Release of Jazz Pharmaceuticals and Gentium issued on December 19, 2013 (incorporated by reference to Exhibit 99.1 from the Schedule TO-C filed by Jazz Pharmaceuticals with the Securities and Exchange Commission on December 19, 2013).
(a)(5)(C)	Jazz Pharmaceuticals investor presentation first made available on December 19, 2013 (incorporated by reference to Exhibit 99.2 from the Schedule TO-C filed by Jazz Pharmaceuticals with the Securities and Exchange Commission on December 19, 2013).
(a)(5)(D)	Transcript from investor/analyst conference call held on December 19, 2013 (incorporated by reference to Exhibit 99.1 from the Schedule TO-C filed by Jazz Pharmaceuticals with the Securities and Exchange Commission on December 20, 2013).
(a)(5)(E)	Email from Jazz Pharmaceuticals Chief Executive Officer to employees, sent on December 19, 2013 (incorporated by reference to Exhibit 99.2 from the Schedule TO-C filed by Jazz Pharmaceuticals with the Securities and Exchange Commission on December 20, 2013).
(a)(5)(F)	Letter from Jazz Pharmaceuticals Chief Executive Officer to Gentium employees, sent on December 19, 2013 (incorporated by reference to Exhibit 99.3 from the Schedule TO-C filed by Jazz Pharmaceuticals with the Securities and Exchange Commission on December 20, 2013).
(a)(5)(G)	Media Standby Statement, first used on December 19, 2013 (incorporated by reference to Exhibit 99.4 from the Schedule TO-C filed by Jazz Pharmaceuticals with the Securities and Exchange Commission on December 20, 2013).
(a)(5)(H)	Gentium Transaction Internal Communications Q&A, first used on December 19, 2013 (incorporated by reference to Exhibit 99.5 from the Schedule TO-C filed by Jazz Pharmaceuticals with the Securities and Exchange Commission on December 20, 2013).
(a)(5)(I)	Jazz Pharmaceuticals Overview Presentation, first used on December 20, 2013 (incorporated by reference to Exhibit 99.6 from the Schedule TO-C filed by Jazz Pharmaceuticals with the Securities and Exchange Commission on December 20, 2013).
(a)(5)(J)	Portion of transcript from Jazz Pharmaceuticals conference call to discuss acquisition of rights to ADX-N05 from Aerial BioPharma, LLC held on January 13, 2014.*



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- (a)(5)(K) Jazz Pharmaceuticals investor presentation, first used at the J.P. Morgan Healthcare Conference in San Francisco, California on January 13, 2014.\*
- (a)(5)(L) Portion of transcript of oral presentation by Jazz Pharmaceuticals at the J.P. Morgan Healthcare Conference in San Francisco, California on January 13, 2014.\*
- (a)(5)(M) Complaint captioned *Xavion Jyles, Individually and on Behalf of All Others Similarly Situated v. Gentium S.P.A. et al*, filed on or about January 15, 2014, in the United States District Court for the Southern District of New York.\*
- (a)(5)(N) Press Release of Jazz Pharmaceuticals issued on January 23, 2014.\*
- (a)(5)(O) Post-Closing Standby Statement for use by Jazz Pharmaceuticals.\*
- (b)(1) Amended and Restated Commitment Letter, dated as of January 6, 2014, by and between Jazz Pharmaceuticals plc, Barclays Bank PLC, J.P. Morgan Securities LLC, JPMorgan Chase Bank, N.A., Merrill Lynch Pierce, Fenner & Smith Incorporated, Bank of America, N.A., Citigroup Global Markets Inc., Morgan Stanley Senior Funding, Inc., Royal Bank of Canada, DNB Bank ASA and DNB Capital Markets, Inc.\*
- (b)(2) Amendment No. 1, dated as of June 13, 2013, to the Original Credit Agreement and related Guaranty, by and among Jazz Pharmaceuticals, Inc., Jazz Financing I Limited and Purchaser, as borrowers, Jazz Pharmaceuticals, as guarantor, the Lenders thereto and Barclays Bank PLC, as Administrative Agent, Collateral Agent, L/C Issuer and Swing Line Lender (incorporated by reference to Exhibit 10.1 from the Form 8-K filed by Jazz Pharmaceuticals with the Securities and Exchange Commission on June 13, 2013).
- (b)(3) Amendment No. 2, dated as of January 23, 2014, to the Credit Agreement, dated as of June 12, 2012, by and among Jazz Pharmaceuticals, Inc., Jazz Financing I Limited and Jazz Pharmaceuticals Ireland Limited, as borrowers, Jazz Pharmaceuticals Public Limited Company, as guarantor, the Lenders thereto and Barclays Bank PLC, as Administrative Agent, Collateral Agent, L/C Issuer and Swing Line Lender (incorporated by reference to Exhibit 10.1 from the Form 8-K filed by Jazz Pharmaceuticals with the Securities and Exchange Commission on January 24, 2014).
- (d)(1) Tender Offer Agreement, dated as of December 19, 2013, by and among Jazz Pharmaceuticals, Gentium and Purchaser (incorporated by reference to Exhibit 2.1 from the Form 8-K/A filed by Jazz Pharmaceuticals with the Securities and Exchange Commission on December 20, 2013).
- (d)(2) Form of Support Agreement (incorporated by reference to Exhibit 99.3 from the Form 8-K/A filed by Jazz Pharmaceuticals with the Securities and Exchange Commission on December 20, 2013).
- (d)(3) Form of Transition, Amendment and Release Agreement.\*
- (d)(4) Form of Consultancy Agreement.\*
- (d)(5) Form of Retention and Amendment Agreement.\*
- (d)(6) Confidentiality and Nondisclosure Agreement, entered into effective September 30, 2013, by and between Jazz Pharmaceuticals and Gentium.\*

\* Previously filed.