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Submission Form Type	SC TO-T/A
Filer	Biosynex SA
CIK	0001964166
CCC	xxxxxxx
Filer Form Type	SC TO-T/A
Filer Form Type	
Exchanges	NASD
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Subject Company	CHEMBIO DIAGNOSTICS, INC.
CIK	0001092662
IRS Number	88-0425691
Group Names	
PROJECT MERCI MERGER SUB, INC.	
Submission Contact	Broadridge Financial Solutions
Contact Phone Number	877-432-3342
Total Documents	3 (2 documents, 1 images)

Fees	
Fee Offsets	
Fee and Offering Information	
Payor	
CIK	
CCC	xxxxxxx
Fee Amount	
Fee Basis	

Notification Emails	
Emails	catherine.mcnally@whitecase.com
	james.hu@whitecase.com
	melissa.curvino@whitecase.com
	cristen.callan@whitecase.com
	joseph.tawil@whitecase.com
	Julie.Rizzo@klgates.com
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Documents	
SC TO-T/A	brhc10049961_scto-ta.htm
Description	SC TO-T/A
EX-99.(a)(5)(d)	brhc10049961_ex99-a5d.htm
Description	Exhibit (a)(5)(d)
GRAPHIC	image00001.jpg

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. 3)

CHEMBIO DIAGNOSTICS, INC.
(Name of Subject Company (Issuer))

PROJECT MERCI MERGER SUB, INC.
(Name of Filing Persons (Offeror))
a wholly-owned indirect subsidiary of

BIOSYNEX SA
(Name of Filing Persons (Parent of Offeror))

Common Stock, Par Value \$0.01 Per Share
(Title of Class of Securities)

163572209
(Cusip Number of Class of Securities)

Alexis Steinmetz
c/o Biosynex SA
22 Boulevard Sébastien Brant
67400 Illkirch-Graffenstaden, France
+33 (0)6 70 86 00 15

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

Copy to:
James Hu
Marc Petitier
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020
(212) 819-8200

☐ 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 appropriate box(es) below to designate the appropriate rule provision

- ☐ 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 (as amended and together with any subsequent amendments and supplements hereto, the “Schedule TO”) filed by Biosynex SA, Inc., a French société anonyme (“Parent”), Biosynex U.S. Holdings, Inc., a Delaware corporation and a wholly-owned direct subsidiary of Parent (“Holdco”), and Project Merci Merger Sub, Inc., a Nevada corporation and a wholly-owned indirect subsidiary of Parent (“Purchaser”) with the Securities and Exchange Commission on February 14, 2023. The Schedule TO relates to the tender offer for all of the issued and outstanding shares of common stock, par value \$0.01 per share (the “Shares”), of Chembio Diagnostics, Inc. (“CEMI”), at a price of \$0.45 per Share, net to the seller in cash without interest and subject to any required withholding taxes (the “Offer Price”), upon the terms and conditions set forth in the offer to purchase, dated February 14, 2023 (together with any amendments or supplements thereto, the “Offer to Purchase”), a copy of which is attached to the Schedule TO as Exhibit (a)(1)(A), and in the related letter of transmittal (together with any amendments or supplements thereto, the “Letter of Transmittal” and, together with the Offer to Purchase, the “Offer”), a copy of which is attached to the Schedule TO as Exhibit (a)(1)(B).

Except as otherwise set forth in this Amendment, the information set forth in the Schedule TO remains unchanged. This Amendment is being filed to reflect certain updates as reflected below. Capitalized terms used but not defined herein have the meanings assigned to such terms in the Offer to Purchase or the Schedule TO. You should read this Amendment together with the Schedule TO and the Offer to Purchase.

Item 12. Exhibits

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

Index No.

(a)(5)(D)	Reminder to Chembio Diagnostics, Inc. Stockholders to Tender Shares dated March 21, 2023.
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Exhibit No.	Description
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(a)(1)(A)*	Offer to Purchase, dated February 14, 2023.
(a)(1)(B)*	Letter of Transmittal.
(a)(1)(C)*	Letter from the Information Agent to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
(a)(1)(D)*	Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
(a)(1)(E)*	Summary Advertisement, as published in the New York Times on February 14, 2023.
(a)(2)	Not applicable.
(a)(3)	Not applicable.
(a)(4)	Not applicable.
(a)(5)(A)*	Joint Press Release issued by Chembio Diagnostics, Inc. and Biosynex SA, dated January 31, 2023 (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed with the SEC by Chembio Diagnostics, Inc. on January 31, 2023).
(a)(5)(B)*	Press Release issued by Biosynex SA, dated March 15, 2023.
(a)(5)(C)*	Press Release and Letter to Stockholders issued by Chembio Diagnostics, Inc., dated March 15, 2023.
(a)(5)(D)**	Reminder to Chembio Diagnostics, Inc. Stockholders to Tender Shares dated March 21, 2023.
(b)	Not applicable.
(d)(1)	Agreement and Plan of Merger, dated January 31, 2023, by and among Biosynex SA, Project Merci Merger Sub, Inc. and Chembio Diagnostics, Inc. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed with the SEC by Chembio Diagnostics, Inc. on January 31, 2023).
(d)(2)*	Confidentiality Agreement, dated May 25, 2022, by and among Biosynex SA and Chembio Diagnostics, Inc.
(g)	None.
(h)	None.
107*	Filing Fee Table.

* Previously filed.

** Filed herewith.

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: March 21, 2023

PROJECT MERCI MERGER SUB, INC.

By /s/ Larry Abensur

Name: Larry Abensur

Title: President

BIOSYNEX U.S. HOLDINGS, INC.

By /s/ Larry Abensur

Name: Larry Abensur

Title: President

BIOSYNEX SA

By /s/ Larry Abensur

Name: Larry Abensur

Title: Chief Executive Officer

Exhibit (a)(5)(d)



Chembio Stockholders Reminded to Tender Shares Before 6:00 PM New York City Time, on March 28, 2023

Fellow Chembio Stockholders,

As previously disclosed, Chembio Diagnostics, Inc. ("Chembio" or the "Company") entered into an Agreement and Plan of Merger (the "Merger Agreement"), dated as of January 31, 2023, with Biosynex SA, a French société anonyme ("Biosynex"), and Project Merci Merger Sub, Inc., a Nevada corporation and wholly-owned indirect subsidiary of Biosynex (the "Purchaser"). Pursuant to the Merger Agreement, the Purchaser commenced a tender offer (the "Offer") to purchase all of the issued and outstanding shares of the Company's common stock, par value \$0.01 per share (the "Shares"), for a purchase price of \$0.45 per share, net to the seller in cash, without interest and subject to any required tax withholding. On March 15, 2023, Biosynex announced an extension of the Offer until **6:00 p.m., New York City time, on March 28, 2023.**

I am reaching out to remind you to tender your shares prior to the expiration of the Offer on March 28, 2023. If less than a majority of the outstanding shares of Chembio common stock are tendered, the Offer will not be completed and Chembio will not merge with Biosynex. [As of midnight, Time New York City time, on March 14, 2023, 12,664,710 shares representing approximately 34.5% of the outstanding shares of Chembio common stock had been validly tendered and not validly withdrawn, pursuant to the Offer.]¹ For the Offer to be completed, more than 50% of the outstanding Shares must be validly tendered.

What Happens If Stockholders Don't Tender Their Shares:

There are substantial risks to Chembio remaining an independent company if the Offer and merger between Biosynex and Chembio are not completed. As discussed in further detail in the Schedule 14D-9 and the Company's letter to stockholders dated March 15, 2023, the risks faced by the Company include:

- Breaching a financial covenant in its Credit Agreement that could force the Company to pursue a transaction or financing arrangement that is highly dilutive to existing stockholders or a bankruptcy or restructuring proceeding;
- Being delisted by Nasdaq as soon as April 2023; and
- The Company's ability to continue as a going concern due to its ongoing net losses from operations.

¹ NTD – Review in light of withdrawals/tendered shares at time letter is issued to ensure not misleading.



How to Tender Your Shares:

If you hold shares of Chembio common stock through a broker, dealer, commercial bank, trust company or other nominee, instruct such broker or other nominee to tender your shares. **Please do so promptly to allow sufficient time to meet any broker processing deadlines before the Offer expiration at 6:00 p.m. New York City time on March 28, 2023. Do not wait until the Offer expires to tender your shares.**

Contact Information for Commonly Used Brokers:

- Call TD Ameritrade at 888-723-8504, option 1
- Call Fidelity at 800-343-3548
- Call E-Trade at 1-800-387-2331
- Contact Robinhood at <https://robinhood.com/contact>
 - o To participate, please include the stock symbol for the offer (**CEMI**) and the number of shares you'd like to participate with.
- If your broker is not listed above, please contact your broker's customer service department and ask to speak with **Corporate Actions**. From here, you should be directed to someone who can help you.
- Chembio stockholders who hold shares directly or in registered name can follow the instructions in the materials mailed to you.
- Stockholders should contact the Information Agent, **Alliance Advisors** with any questions or to request documents and assistance at **866-620-7692** or email CEMI@allianceadvisors.com.

If you were unable to previously tender your shares due to processing deadlines from your broker, you may tender your shares during the extension period. Please act as soon as possible to ensure you can tender your shares on time. Chembio stockholders who have previously tendered their shares do not need to re-tender their shares or take any other action as a result of the extension of the Offer.

On behalf of our entire team and the Board of Directors, thank you for your continued support of Chembio.

Sincerely,

Richard L. Eberly
President and Chief Executive Officer



Additional Information and Where to Find It

This press release relates to a pending business combination between Biosynex and Chembio. This press release is for informational purposes only and does not constitute an offer to purchase or a solicitation of an offer to sell shares of Chembio, nor is it a substitute for any tender offer materials that the parties have filed or will file with the SEC in connection with the tender offer. CHEMBIO STOCKHOLDERS ARE URGED TO READ THE TENDER OFFER MATERIALS (INCLUDING AN OFFER TO PURCHASE, A RELATED LETTER OF TRANSMITTAL AND CERTAIN OTHER TENDER OFFER DOCUMENTS), THE SOLICITATION / RECOMMENDATION STATEMENT AND OTHER RELEVANT DOCUMENTS THAT HAVE BEEN AND MAY BE FILED WITH THE SEC, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO ANY OF THE FOREGOING DOCUMENTS CAREFULLY THAT ARE OR BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION THAT HOLDERS OF CHEMBIO SECURITIES SHOULD CONSIDER BEFORE MAKING ANY DECISION REGARDING TENDERING THEIR SECURITIES. The Solicitation/Recommendation Statement, the Offer to Purchase, the related Letter of Transmittal and certain other tender offer documents were sent to all of Chembio's stockholders at no expense to them. The tender offer materials and the Solicitation / Recommendation Statement are also available for free on the SEC's website at www.sec.gov or from the information agent named in the tender offer materials. Copies of the documents filed with the SEC by Chembio are available free of charge under the SEC filings heading of the Investors section of Chembio's website at <https://chembio.com/investors>.

Forward-Looking Statements

This press release contains forward-looking statements regarding the acquisition of Chembio Diagnostics, Inc. by Biosynex SA as well as the matters in the section captioned "What Happens If Stockholders Don't Tender Their Shares". Forward-looking statements involve inherent risks and uncertainties and you are cautioned that a number of important factors could cause actual results to differ materially from those contained in any such forward-looking statement. These statements can otherwise be identified by the use of words such as "anticipate," "believe," "could," "estimate," "expect," "feel," "forecast," "intend," "may," "plan," "potential," "predict," "project," "seek," "should," "would," "will," and similar expressions intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. The forward-looking statements contained in this press release include, but are not limited to, statements related to Biosynex's and Chembio's plans, objectives, expectations and intentions with respect to the proposed transaction and the combined company, the impacts on Chembio if the proposed transaction should not close, the anticipated timing of the proposed transaction, the conditions precedent to the closing of the proposed transaction, and the potential impact the transaction will have on Chembio or Biosynex and other matters related to either or both of them. The forward-looking statements are based on assumptions regarding current plans and estimates of management of Biosynex and Chembio. Such management believes these assumptions to be reasonable, but there is no assurance that they will prove to be accurate.



Factors that could cause actual results to differ materially from those described in this press release include, among others: changes in expectations as to the closing of the transaction including timing and changes in the method of financing the transaction; the satisfaction of the conditions precedent to the consummation of the proposed transaction (including a sufficient number of Chembio shares being validly tendered into the tender offer to meet the minimum condition); the risk of litigation and regulatory action related to the proposed transactions; expected synergies and cost savings are not achieved or achieved at a slower pace than expected; integration problems, delays or other related costs; retention of customers and suppliers; and unanticipated changes in laws, regulations, or other industry standards affecting the companies; and other risks and important factors contained and identified in Biosynex's and Chembio's filings with the SEC, including Chembio's Quarterly Reports on Form 10-Q and Annual Reports on Form 10-K.

The foregoing list of factors is not exhaustive. Readers are cautioned not to place undue reliance on any forward-looking statements, which speak only as of the date hereof. Readers are urged to carefully review and consider the various disclosures, including but not limited to risk factors contained in Chembio's Annual Reports on Form 10-K and its Quarterly Reports on Form 10-Q, as well as other filings it and Biosynex have filed with the SEC. Forward-looking statements reflect the analysis of management of Biosynex and Chembio as of the date of this press release. Neither Biosynex nor Chembio undertakes to update or revise any of these statements in light of new information or future events, except as expressly required by applicable law.

Contact:

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415-937-5406
investor@chembio.com