

**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. 2)**

**CONSTELLATION PHARMACEUTICALS, INC.**

(Name of Subject Company (Issuer))

**MORPHOSYS DEVELOPMENT INC.**  
an indirect wholly owned subsidiary of

**MORPHOSYS AG**  
(Names of Filing Persons (Offeror))

**Common Stock, Par Value \$0.0001 Per Share**  
(Title of Class of Securities)

**210373106**  
(Cusip Number of Class of Securities)

**Charlotte Lohmann**  
**Member of the Executive Committee, Senior Vice President and General Counsel**  
**MorphoSys AG**  
**Semmelweisstraße 7**  
**Germany**  
**82152 Planegg**  
**+49 89-89927-0**

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

*Copies to:*

**Stephan Hutter**  
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**500 Boylston Street**  
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**CALCULATION OF FILING FEE**

Transaction Valuation*	Amount of Filing Fee**
\$1,740,231,876.40	\$189,859.30

\* Estimated for purposes of calculating the filing fee only. The transaction valuation was calculated as the sum of (i) 48,054,654 outstanding shares of common stock, par value \$0.0001 per share (the "Shares"), of Constellation Pharmaceuticals, Inc. (the "Company") multiplied by \$34.00, (ii) 2,209,683 Shares issuable pursuant to outstanding stock options that have vested (or are anticipated to vest prior to the completion of the transaction) multiplied by \$34.00, (iii) 22,708 warrants to purchase Shares multiplied by \$34.00, and (iv) 2,011,376 Shares issuable pursuant to outstanding unvested stock options multiplied by \$15.15 (which is \$34.00 minus the weighted average exercise price for such options of \$18.85 per share). The calculation of the filing fee is based on information provided by the Company as of June 15, 2021.

\*\* The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 1 for Fiscal Year 2021, issued August 26, 2020, by multiplying the transaction value by 0.0001091.

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: \$189,859.30      Filing Party: MorphoSys Development Inc. and MorphoSys AG  
Form or Registration No.: Schedule TO      Date Filed: June 16, 2021

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(s) relied upon:

- Rule 13e-4(i) (Cross-Border Issuer Tender Offer)
  - Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)
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This Amendment No. 2 (this “Amendment”) amends and supplements the Tender Offer Statement on Schedule TO filed by MorphoSys Development Inc., a Delaware corporation (“Purchaser”), and MorphoSys AG, a German stock corporation (*Aktiengesellschaft*) (“Parent”), with the U.S. Securities and Exchange Commission on June 16, 2021 (together with any subsequent amendments and supplements thereto, the “Schedule TO”). The Schedule TO relates to the offer by Purchaser to purchase all outstanding shares of common stock, \$0.0001 par value per share (the “Shares”), of Constellation Pharmaceuticals, Inc., a Delaware corporation (the “Company”), at a price of \$34.00 per Share, net to the holder in cash, without interest and subject to any withholding of taxes, upon the terms and subject to the conditions described in the Offer to Purchase dated June 16, 2021 (together with any amendments or supplements thereto, the “Offer to Purchase”) and in the accompanying Letter of Transmittal (together with any amendments or supplements thereto and with the Offer to Purchase, the “Offer”), which are annexed to and filed with the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. Purchaser is an indirect wholly owned subsidiary of Parent. This Amendment is being filed on behalf of Parent and Purchaser. Unless otherwise indicated, references to sections in the Schedule TO are references to sections of the Offer to Purchase.

Amendments to the Offer to Purchase:

**Items 1 through 11.**

The information set forth in the Offer to Purchase under Section 15—“Certain Legal Matters; Regulatory Approvals” and Items 1 through 11 of the Schedule TO, to the extent such Items incorporate by reference the information contained in the Offer to Purchase, are hereby amended and supplemented by replacing the paragraph entitled “Legal Proceedings Relating to the Tender Offer” on page 60 in its entirety with the following

“On June 29, 2021, a complaint was filed by a purported stockholder of the Company regarding the Transactions. The complaint, filed on an individual basis by the plaintiff, is captioned *Susan Finger v. Constellation Pharmaceuticals, Inc., et al.*, Case No. 1:21-cv-00946 (D. Del.) (the “Finger Complaint”). The Finger Complaint names as defendants the Company and each member of the Company Board. The Finger Complaint alleges violations of Sections 14(d) and 14(e) of the Exchange Act and Rule 14d-9 thereunder against all defendants and violations of Section 20(a) of the Exchange Act against the individual defendants. The plaintiff contends that the Schedule 14D-9 omitted and/or misrepresented material information regarding the Transactions. The Finger Complaint seeks: (i) injunctive relief preventing the consummation of the Transactions; (ii) rescissory damages or rescission in the event the Transactions are consummated; and (iii) an award of plaintiff’s expenses, including attorneys’ and experts’ fees.

On June 30, 2021, a complaint was filed by a purported stockholder of the Company regarding the Transactions. The complaint, filed on an individual basis by the plaintiff, is captioned *Michael Kent v. Constellation Pharmaceuticals, Inc., et al.*, Case No. 1:21-cv-00958 (D. Del.) (the “Kent Complaint”). The Kent Complaint names as defendants the Company and each member of the Company Board. The Kent Complaint alleges violations of Sections 14(d) and 14(e) of the Exchange Act and Rule 14d-9 thereunder against all defendants and violations of Section 20(a) of the Exchange Act against the individual defendants. The plaintiff contends that the Schedule 14D-9 omitted and/or misrepresented material information regarding the Transactions. The Kent Complaint seeks: (i) injunctive relief preventing the consummation of the Transactions; (ii) rescissory damages or rescission in the event the Transactions are consummated; and (iii) an award of plaintiff’s expenses, including attorneys’ and experts’ fees.

On June 30, 2021, a complaint was filed by a purported stockholder of the Company regarding the Transactions. The complaint, filed on an individual basis by the plaintiff, is captioned *Matthew Whitfield v. Constellation Pharmaceuticals, Inc., et al.*, Case No. 1:21-cv-00967 (D. Del.) (the “Whitfield Complaint”). The Whitfield Complaint names as defendants the Company, Parent, Purchaser, and each member of the Company Board. The Whitfield Complaint alleges violations of Sections 14(d) and 14(e) of the Exchange Act against all defendants and violations of Section 20(a) of the Exchange Act against the individual defendants, Parent, and Purchaser. The plaintiff contends that the Schedule 14D-9 omitted and/or misrepresented material information regarding the Transactions. The Whitfield Complaint seeks: (i) injunctive relief preventing the consummation of the Transactions; (ii) rescissory damages or rescission in the event the Transactions are consummated; (iii) the filing of a Solicitation/Recommendation Statement on Schedule 14D-9 that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading; (iv) declaration that defendants violated Sections 14(d), 14(e), and 20(a) of the Exchange Act and Rule 14a-9 thereunder; and (v) an award of plaintiff’s expenses, including attorneys’ and experts’ fees.

On June 30, 2021, a complaint was filed by a purported stockholder of the Company regarding the Transactions. The complaint, filed on an individual basis by the plaintiff, is captioned *Peter Lyle v. Constellation Pharmaceuticals, Inc., et al.*, Case No. 1:21-cv-05682 (S.D.N.Y.) (the “Lyle Complaint”). The Lyle Complaint names as defendants the Company and each member of the Company Board. The Lyle Complaint alleges violations of Sections 14(d)(4) and 14(e) of the Exchange Act and Rule 14d-9 thereunder against all defendants, violations of Section 20(a) of the Exchange Act against all defendants, and breach of fiduciary duty of candor and disclosure against the individual defendants. The plaintiff contends that the Schedule 14D-9 omitted and/or misrepresented material information regarding the Transactions. The Lyle Complaint seeks: (i) injunctive relief preventing the consummation of the Offer; (ii) accounting for damages; and (iii) an award of plaintiff’s expenses, including attorneys’ and experts’ fees.

On July 1, 2021, a complaint was filed by a purported stockholder of the Company regarding the Transactions. The complaint, filed on an individual basis by the plaintiff, is captioned *Hernan Prados v. Constellation Pharmaceuticals, Inc., et al.*, Case No. 1:21-cv-03715 (E.D.N.Y.) (the “Prados Complaint”). The Prados Complaint names as defendants the Company and each member of the Company Board. The Prados Complaint alleges violations of Sections 14(d)(4) and 14(e) of the Exchange Act and Rule 14d-9 thereunder against all defendants and violations of Section 20(a) of the Exchange Act against the individual defendants. The plaintiff contends that the Schedule 14D-9 omitted and/or misrepresented material information regarding the Transactions. The Prados Complaint seeks: (i) injunctive relief preventing the consummation of the Transactions; (ii) rescissory damages or rescission in the event the Transactions are consummated; (iii) declaration that defendants violated Sections 14(d)(4), 14(e), and 20(a) of the Exchange Act and Rule 14d-9 thereunder; and (iv) an award of plaintiff’s expenses, including attorneys’ and experts’ fees.

The Company, Parent and Purchaser believe the claims asserted in each of the complaints are without merit.

Additional lawsuits may be filed against the Company, the Company Board, Parent and/or Purchaser in connection with the Transactions, the Schedule TO and the Schedule 14D-9.”

## **Item 12**

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

(a)(5)(J) Press Release, dated July 1, 2021.

**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: July 1, 2021

**MORPHOSYS DEVELOPMENT INC.**

By: /s/ Lara Smith-Weber

Name: Lara Smith-Weber

Title: President, Secretary, Treasurer

**MORPHOSYS AG**

By: /s/ Jean-Paul Kress

Name: Jean-Paul Kress

Title: CEO, Member Management Board

By: /s/ Sung Lee

Name: Sung Lee

Title: CFO, Member Management Board

**Media Release**

Planegg/Munich, Germany, July 1, 2021

**MorphoSys Announces Expiration of the Hart-Scott-Rodino Waiting Period for Acquisition of Constellation Pharmaceuticals**

MorphoSys AG (FSE: MOR; NASDAQ: MOR) (“MorphoSys”) today announced the expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“HSR”), for its tender offer for Constellation Pharmaceuticals, Inc., (NASDAQ: CNST) (“Constellation”).

The expiration of the HSR waiting period satisfies one of the conditions to the tender offer, which is scheduled to expire at one minute past 11:59 p.m. New York Local Time, on July 14, 2021, unless extended in accordance with the terms of the merger agreement. The tender offer is subject to various other conditions including a minimum tender of at least a majority of outstanding Constellation shares and other customary conditions. The transaction is expected to close in the third quarter of 2021, as previously announced.

**Advisors**

Goldman Sachs Bank Europe SE acted as financial advisor to MorphoSys and Skadden, Arps, Slate, Meagher & Flom LLP as its legal advisor. Centerview Partners LLC acted as financial advisor to Constellation and Wachtell, Lipton, Rosen & Katz as its legal advisor.

**About MorphoSys**

MorphoSys (FSE & NASDAQ: MOR) is a commercial-stage biopharmaceutical company dedicated to the discovery, development and commercialization of innovative therapies for people living with cancer and autoimmune diseases. Based on its leading expertise in antibody and protein technologies, MorphoSys is advancing its own pipeline of new drug candidates and has created antibodies which are developed by partners in different areas of unmet medical need. In 2017, Tremfya® (guselkumab)—developed by Janssen Research & Development, LLC and marketed by Janssen Biotech, Inc., for the treatment of plaque psoriasis—became the first drug based on MorphoSys’ antibody technology to receive regulatory approval. In July 2020, the U.S. Food and Drug Administration (the “FDA”) granted accelerated approval of the company’s proprietary product Monjuvi(R) (tafasitamab-cxix) in combination with lenalidomide in patients with a certain type of lymphoma. Headquartered near Munich, Germany, the MorphoSys group, including the fully owned U.S. subsidiary MorphoSys US Inc., has more than 600 employees. More information at [www.morphosys.com](http://www.morphosys.com) or [www.morphosys-us.com](http://www.morphosys-us.com).

Monjuvi® is a registered trademark of MorphoSys AG.

Tremfya® is a registered trademark of Janssen Biotech, Inc.

**Additional Information and Where to Find it**

This communication is for informational purposes only and is neither an offer to purchase nor a solicitation of an offer to sell securities. MorphoSys Development Inc. (“Purchaser”) has filed a Tender Offer Statement on Schedule TO with the Commission containing an offer to purchase all of the outstanding shares of common stock of Constellation for \$34.00 per share, net to the seller in cash, without interest, and subject to any applicable withholding of taxes. The tender offer is being made solely by means of the Offer to Purchase, and the exhibits filed with respect thereto (including the Letter of Transmittal), which contain the full terms and conditions of the tender offer. INVESTORS AND

SECURITY HOLDERS OF THE CONSTELLATION ARE URGED TO READ THE TENDER OFFER STATEMENT (INCLUDING THE OFFER TO PURCHASE, THE RELATED LETTER OF TRANSMITTAL, AND OTHER OFFER DOCUMENTS) AND THE SOLICITATION/RECOMMENDATION STATEMENT ON SCHEDULE 14D-9 AND OTHER DOCUMENTS FILED WITH THE COMMISSION WHEN THEY BECOME AVAILABLE, AS WELL AS OTHER DOCUMENTS FILED WITH THE COMMISSION, BECAUSE THEY CONTAIN IMPORTANT INFORMATION. Investors and security holders will be able to obtain free copies of these documents (if and when available) and other documents filed with the Commission by Purchaser through the website maintained by the Commission at <http://www.sec.gov> or through or by directing requests for such materials to the information agent for the offer, Innisfree M&A Incorporated, Stockholders may call toll free: (888) 750-9498; Banks and Brokers may call collect: (212) 750-5833; Email: [info@innisfreema.com](mailto:info@innisfreema.com).

### **Forward Looking Statements**

This communication contains forward-looking statements related to MorphoSys, Constellation and the acquisition of Constellation by MorphoSys (the "Transaction") that are subject to risks, uncertainties and other factors. All statements other than statements of historical fact are statements that could be deemed forward-looking statements, including all statements regarding the intent, belief or current expectation of the companies' and members of their senior management team. Forward-looking statements include, without limitation, statements regarding the Transaction and related matters, prospective performance and opportunities, post-closing operations and the outlook for the companies' businesses, including, without limitation, the ability of MorphoSys to advance Constellation's product pipeline, including pelabresib (CPI-0610) and CPI-0209, FSI-174 and FSI-189; regulatory approval of pelabresib (CPI-0610) and CPI-0209 on a timely basis; the anticipated timing of clinical data; the possibility of unfavorable results from clinical trials; filings and approvals relating to the Transaction; the expected timing of the completion of the Transaction; the expected plans for financing the Transaction (including the strategic partnership and financing collaboration with Royalty Pharma); the ability to complete the Transaction considering the various closing conditions; difficulties or unanticipated expenses in connection with integrating the companies; and any assumptions underlying any of the foregoing. Investors are cautioned that any such forward-looking statements are not guarantees of future performance and involve risks and uncertainties and are cautioned not to place undue reliance on these forward-looking statements. Actual results may differ materially from those currently anticipated due to a number of risks and uncertainties. Risks and uncertainties that could cause the actual results to differ from expectations contemplated by forward-looking statements include: uncertainties as to the timing of the tender offer and merger; uncertainties as to how many of Constellation's stockholders will tender their stock in the offer; the possibility that competing offers will be made; the possibility that various closing conditions for the Transaction may not be satisfied or waived, including that a governmental entity may prohibit, delay or refuse to grant approval for the consummation of the Transaction; the effects of the Transaction on relationships with employees, other business partners or governmental entities; the difficulty of predicting the timing or outcome of FDA approvals or actions, if any; the impact of competitive products and pricing; other business effects, including the effects of industry, economic or political conditions outside of the companies' control; Transaction costs; actual or contingent liabilities; and other risks and uncertainties detailed from time to time in the parties' periodic reports filed with the Commission, including current reports on Form 8-K, quarterly reports on Form 10-Q, annual reports on Form 10-K, Form 20-F, and Form 6-K as well as the Schedule 14D-9 to be filed by Constellation and the Schedule TO and related tender offer documents to be filed by MorphoSys and MorphoSys Development Inc., an indirect wholly owned subsidiary of MorphoSys. All forward-looking statements are based on information currently available to MorphoSys and Constellation, and MorphoSys and Constellation assume no obligation and disclaim any intent to update any such forward-looking statements, except as required by law.

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