Corium International, Inc.
Form SC TO-T/A
November 13, 2018

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)

Corium International, Inc.

(Name of Subject Company (Issuer))

GURNET MERGER SUB, INC.

(Offeror)

A Wholly Owned Subsidiary of

GURNET HOLDING COMPANY

(Parent of Offeror)

GURNET POINT L.P.

(Other Person)

(Names of Filing Persons)

Common Stock, Par Value $0.001 Per Share

(Title of Class of Securities)

21887L107

(Cusip Number of Class of Securities)

James Singleton

Secretary

Gurnet Holding Company

c/o Waypoint International GP LLC

55 Cambridge Parkway, Suite 401

Cambridge, MA 02142

Telephone: (617) 588-4900

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

Copies to:

Michael J. Aiello, Esq.

Eoghan P. Keenan, Esq.

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, NY 10153

(212) 310-8000

CALCULATION OF FILING FEE

Transaction Valuation*	**Amount of Filing Fee****
$ 517,303,223.15	$ 62,697.15

*The transaction value was determined by adding (1) the product of (a) $13.00, which is the sum of (i) the closing cash payment of $12.50 per share and (ii) $0.50 per share, which is the maximum amount payable with respect to the contingent value right and (b) the sum of (x) 36,546,444 shares of common stock, par value $0.001 per share (**Shares**), of Corium International, Inc. (**Corium**) issued and outstanding as of the close of business on October 22, 2018, (y) restricted stock units with respect to an aggregate of 165,934 Shares and (z) an aggregate number of 919,325 Shares were reserved for issuance under Corium s 2014 Employee Stock Purchase Plan; (2) the product of (i) the difference between (x) $13.00 and (y) an exercise price of $9.26 for the outstanding Warrants to Purchase Stock, issued November 7, 2011, by Corium to Oxford Finance LLC (the **Oxford Warrants**) and (ii) 32,380 Shares issuable pursuant to the Oxford Warrants; and (3) the product of (a) the difference between (x) $13.00 and (y) an exercise price of $6.11 (the weighted-average exercise price of the outstanding options as of October 22, 2018) and (b) stock options representing the right to purchase an aggregate of 3,953,955 Shares.

** 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 2019, issued August 24, 2018, by multiplying the transaction value by 0.0001212.

x 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: $ 62,697.15	Filing Party: Gurnet Merger Sub, Inc.; Gurnet Holding Company
Form or Registration No.: Schedule TO-T	Date Filed: October 26, 2018

o 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.

o Issuer tender offer subject to Rule 13e-4.

o Going-private transaction subject to Rule 13e-3.

o 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: o

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

o Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

o Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

This Amendment No. 2 (this **Amendment**) amends and supplements the Tender Offer Statement on Schedule TO (together with any subsequent amendments and supplements thereto, including Amendment No. 1 dated November 5, 2018 and this Amendment, the **Schedule TO**) is filed by Gurnet Merger Sub, Inc., a Delaware corporation (**Purchaser**) and a wholly-owned subsidiary of Gurnet Holding Company, a Delaware corporation (**Parent**), which is a wholly-owned subsidiary of Gurnet Point L.P., a Delaware limited partnership (**Sponsor**). This Schedule TO relates to the offer by Purchaser to purchase all of the outstanding shares of common stock, par value, $0.001 per share (the **Shares**), of Corium International, Inc., a Delaware corporation (the **Company**), at a purchase price of $12.50 per Share in cash, net of applicable withholding taxes and without interest, plus one non-transferable contingent value right for each Share, which represents the contractual right to receive $0.50 per Share in cash, net of applicable withholding taxes and without interest, following approval by the FDA of the New Drug Application for Corplex Donepezil on or prior to March 31, 2020, as described in and under the conditions set forth in the CVR Agreement (as defined in the Offer to Purchase), upon the terms and subject to the conditions set forth in the Merger Agreement (as defined below), the Offer to Purchase, the related Letter of Transmittal, and the Notice of Guaranteed Delivery, copies of which are attached hereto as Exhibits (a)(1)(A), (a)(1)(B), and (a)(1)(C) respectively.

All information contained in the Offer to Purchase (including Schedule I to the Offer to Purchase) and the accompanying Letter of Transmittal is hereby expressly incorporated herein by reference in response to Items 1 through 9 and Item 11 of this Schedule TO, and is supplemented by the information specifically provided in this Amendment.

The Agreement and Plan of Merger, dated as of October 11, 2018 (as it may be amended from time to time, the **Merger Agreement**), by and among the Company, Parent and Purchaser, a copy of which is attached as Exhibit (d)(1) hereto, is incorporated herein by reference with respect to Items 4 and 11 of this Schedule TO.

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

This Amendment is being filed to amend and supplement the Offer to Purchase, Items 1 through 9 and Items 11 and 12 as reflected below.

Items 1 through 9 and Item 11.

The Offer to Purchase and Items 1 through 9 and Item 11 of the Schedule TO, to the extent each such Item incorporates by reference the information contained in the Offer to Purchase, is hereby amended and supplemented as set forth below:

(1) The information under the heading What are the most significant conditions to the Offer? of the Summary Term Sheet in the Offer to Purchase is amended and supplemented by adding the following new paragraph at the end of the section:

The Antitrust Condition has been satisfied by the expiration of the waiting period under the HSR Act with respect to the Offer effective November 9, 2018. The Offer continues to be subject to the remaining conditions set forth in this Offer to Purchase.

(2) The sixth paragraph of the Introduction of the Offer to Purchase is amended and supplemented by adding the following sentences at the end of such paragraph:

The Antitrust Condition has been satisfied by the expiration of the waiting period under the HSR Act with respect to the Offer effective November 9, 2018. The Offer continues to be subject to the remaining conditions set forth in this Offer to Purchase.

(3) Section 15 Conditions of the Offer of the Offer to Purchase is amended and supplemented by adding the following new paragraph after the last paragraph of Section 15:

The Antitrust Condition has been satisfied by the expiration of the waiting period under the HSR Act with respect to the Offer effective November 9, 2018. The Offer continues to be subject to the remaining conditions set forth in this Offer to Purchase.

(4) The second paragraph of the subsection titled U.S. Antitrust Compliance in Section 16 Certain Legal Matters; Regulatory Approvals Antitrust Compliance is amended and supplemented by adding the following sentences to the end of such paragraph:

On November 9, 2018, the waiting period under the HSR Act with respect to the Offer expired. Accordingly, the Antitrust Condition has been satisfied. The Offer continues to be subject to the remaining conditions set forth in this Offer to Purchase.

(5) The subsection entitled Legal Proceedings in Section 16 Certain Legal Matters; Regulatory Approvals of the Offer to Purchase is amended and supplemented by adding the following new paragraph after the last paragraph of that subsection:

On November 5, 2018, Michael Kent, a purported stockholder of the Company, filed a putative securities class action complaint in the United States District Court for the District of Delaware against the Company, the individual members of the Company Board, Parent and Purchaser, captioned Kent v. Corium International, Inc., et. al., Case No. 1:18-01744-CFC (the **Kent Complaint**). On November 6, 2018, Melvyn Klein, a purported stockholder of the Company, filed a putative securities class action complaint in the United States District Court for the Northern District of California against the Company and the individual members of the Company Board, captioned Klein v. Corium International, Inc., et al., Case No. 4:18-cv-06731-PJH (the **Klein Complaint** and together with the Kent Complaint, the **Complaints**). The Kent Complaint asserts that the Company and certain of its directors violated sections 14(e), 14(d), and 20(a) of the Exchange Act by making untrue statements of material fact and omitting certain material facts related to the transactions described in the Schedule 14D-9 filed by the Company on October 26, 2018 (the **Company 14D-9**). The Klein Complaint asserts that the Company, certain of its directors, Parent and Merger Sub violated sections 14(e) and 20(a) of the Exchange Act by making untrue statements of material fact and omitting certain material facts related to the transactions described in the Company 14D-9. The Complaints seek, among other things, an order enjoining defendants from consummating the transactions described in the Company 14D-9, money damages, and an award of attorneys and experts fees.

The foregoing description is qualified in its entirety by reference to the Kent Complaint and Klein Complaint, which are attached as Exhibit (a)(5)(C) and Exhibit (a)(5)(D) to this Schedule TO, respectively.

Item 12. Exhibits.

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

Exhibit No.	Description
(a)(5)(C)	Class Action Complaint as filed November 5, 2018 (*Kent v. Corium International, Inc., et. al.*, Case No. 1:18-cv-01744-CFC).*
(a)(5)(D)	Class Action Complaint as filed November 6, 2018 (*Klein v. Corium International, Inc., et. al.*, Case No. 4:18-cv-06731-PJH).*

* Filed herewith.

SIGNATURES

After due inquiry and to the best knowledge and belief of the undersigned, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Date: November 13, 2018

GURNET MERGER SUB, INC.

By: /s/ James Singleton
Name: James Singleton
Title: President

GURNET HOLDING COMPANY

By: /s/ James Singleton
Name: James Singleton
Title: Secretary

GURNET POINT L.P.

By: Waypoint International GP LLC, in its capacity as General Partner of Gurnet Point L.P.

By: /s/ James Singleton
Name: James Singleton
Title: Manager

EXHIBIT INDEX

Exhibit No.	Description
(a)(1)(A)	Offer to Purchase, dated October 26, 2018.*
(a)(1)(B)	Letter of Transmittal (including Guidelines for Certification of Taxpayer Identification Number on IRS Form W-9).*
(a)(1)(C)	Notice of Guaranteed Delivery.*
(a)(1)(D)	Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(E)	Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(F)	Summary Advertisement as published in the *New York Times*, dated October 26, 2018.*
(a)(5)(A)	Class Action Complaint as filed October 29, 2018 (Wang v. Corium International, Inc., et. al., Case No. 4:18-cv-06590-JSW).*
(a)(5)(B)	Class Action Complaint as filed November 2, 2018 (Schwartz v. Corium International, Inc., et. al., Case No. 3:18-cv-06670-LHK).*
(a)(5)(C)	Class Action Complaint as filed November 5, 2018 (*Kent v. Corium International, Inc., et. al.*, Case No. 1:18-cv-01744-CFC).**
(a)(5)(D)	Class Action Complaint as filed November 6, 2018 (*Klein v. Corium International, Inc., et. al.*, Case No. 4:18-cv-06731-PJH).**
(b)	Not applicable.
(d)(1)	Agreement and Plan of Merger, dated as of October 11, 2018, among Parent, Purchaser and the Company (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by the Company on October 11, 2018).*
(d)(2)	Commitment Letter between Parent and Gurnet Point, L.P. dated as of October 11, 2018.*
(d)(3)	Confidentiality Agreement between the Company and Gurnet Point Capital, LLC dated as of May 17, 2018.*
(d)(4)	Tender and Support Agreement among Parent, Purchaser and Essex Woodlands Health Ventures Fund VII, L.P dated as of October 11, 2018 (incorporated by reference to Exhibit 2.3 to the Current Report on Form 8-K filed by the Company on October 11, 2018). *
(d)(5)	Form of Contingent Value Rights Agreement between Parent and Continental Stock Transfer and Trust Company (incorporated by reference to Exhibit 2.2 to the Current Report on Form 8-K filed by the Company on October 11, 2018). *
(d)(6)	Transition Bonus Plan of the Company.*
(d)(7)	Press Release of Gurnet Point L.P., announcing the launch of the Offer, dated October 26, 2018. *
(g)	Not applicable.
(h)	Not applicable.

* Previously filed
** Filed herewith