

Forum Report: Neu Industries / Mercy

Defining Issues for Voting Decisions at Special Meeting

Asked to define issues that may be relevant to voting decisions about the proposals presented in a November 19, 2012 Proxy Statement for a December 5, 2012 special meeting of Neu Industries, Inc., the Shareholder Forum has found that the only issue we are able to address at this time is management's failure to provide information prior to the meeting.

The company's chief executive officer was presented on November 30, 2012 with a request for additional information, in a formal demand as well as in invitations of informal communication. In the absence of any response, the chairman of the company's board of directors was sent a letter at 8:43amEST this morning recommending consideration of a postponement or adjournment of the meeting, since the company's failure to provide relevant information would raise questions about the validity of any action taken.* (See the attached December 3, 2012 letter to Richard A. Kimball, Jr., which includes copies of the November 30, 2012 letter and emails to the company's president.) As of 6:00pmEST today, there has been no response from the chairman, the president or any other representative of the company.

* These were the reasons for recommending that the meeting be postponed or adjourned, as presented to the chairman of the company's board:

- **Provision of relevant information** – The Proxy Statement does not include information that is essential to understanding the proposed changes in the company, and in the rights of its shareholders. Not only does the Proxy Statement lack the usual comparisons of existing and proposed provisions to help investors easily identify what will be changed, but it does not even include the reference information that would allow a professional adviser to analyze what will change. For example, it is not possible to determine how the reincorporation would change the rights of either common or preferred shareholders since you provide copies of only the proposed new certificate of incorporation and bylaws without the existing ones – or even summaries of their provisions – for comparison.
- **Required responses to information requests** – Having determined that the Proxy Statement did not provide the information needed to reasonably consider the proposals, I presented an initial request of additional information to Mr. Tomasino on November 30, sending the attached emails at 11:31am and 3:53pm with both the formal request and invitations of informal discussion. There has been no response of any kind to these communications or to the referenced telephone messages, either from Mr. Tomasino or from anyone else representing the company. I should note that some shareholders have also reported frustrations in their own efforts to obtain information the company is obligated to provide.
- **Explanation of diminished rights** – The Proxy Statement failed to reasonably present changes that most shareholders would consider important. A troubling example is a provision discovered in a careful reading of Exhibit B (“Form of Bylaws of Mercy Nutraeuticals”) that would deprive shareholders of their right to call special meetings. It should be noted that this important shareholder right is clearly supported by the Delaware General Corporation Law that you have praised as the main reason for reincorporation, and is broadly considered a “best practice” by corporate governance experts. Eliminating this widely recognized benefit of the Delaware law requires a deliberate modification of conventional bylaws, and is clearly the intent of this statement found in your proposed new bylaws:

[Article I, paragraph 2.] **Special Meetings**. Special meetings of stockholders may be called by the Chief Executive Officer, if one is elected, or, if there is no Chief Executive Officer, a President, or by the Board, but such special meetings may not be called by any other person or persons....

- **Reasons for urgency** – The rushed presentation and scheduling suggests that there may be some reason why the proposed reincorporation must be completed immediately. If so, you should certainly explain the reasons so that the company's shareholders can weigh the benefits of a quick decision against the benefits of a fully informed decision.

Under these circumstances, shareholders may wish to consider either withholding votes or abstaining for any or all of these reasons:

1. The information provided in the Proxy Statement is not sufficient to determine whether a shareholder will benefit from the proposals, and no information has been provided that suggests a shareholder benefit from urgent rather than deliberate action.
2. You have the right to demand information relevant to your voting decisions, and should insist upon management's respecting that right.
3. Voting to approve the proposed reincorporation now, in the context of management's willful failure to provide information relevant to shareholder decisions, would create potentially crippling confusion about corporate authority relating not only to your own investment interests but to any kind of company agreement.

Your questions and comments will be welcomed. The Forum will of course be continuing its efforts to define the substantive issues relating to shareholder decisions about management's proposed corporate restructuring, and will be posting reports on the private website established for Neu Industries shareholders: www.shareholderforum.com/mercy.

GL – December 3, 2012

Gary Lutin
Chairman, The Shareholder Forum
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THE SHAREHOLDER FORUM, INC.

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December 3, 2012

By email and postal service

Mr. Richard A. Kimball, Jr.
Chairman, Board of Directors
Neu Industries, Inc.
197 Grand Street, 6W
New York, New York 10013

Email: richard.kimball999@gmail.com

Dear Mr. Kimball:

The Shareholder Forum was asked on November 29, 2012 to define issues relevant to the voting decisions you are asking shareholders of Neu Industries to make in the November 19, 2012 Proxy Statement for a meeting that is currently scheduled for this Wednesday, December 5.

For the following reasons, I encourage the company's board of directors to consider postponing or adjourning the meeting:

- **Provision of relevant information** – The Proxy Statement does not include information that is essential to understanding the proposed changes in the company, and in the rights of its shareholders. Not only does the Proxy Statement lack the usual comparisons of existing and proposed provisions to help investors easily identify what will be changed, but it does not even include the reference information that would allow a professional adviser to analyze what will change. For example, it is not possible to determine how the reincorporation would change the rights of either common or preferred shareholders since you provide copies of only the proposed new certificate of incorporation and bylaws without the existing ones – or even summaries of their provisions – for comparison.
- **Required responses to information requests** – Having determined that the Proxy Statement did not provide the information needed to reasonably consider the proposals, I presented an initial request of additional information to Mr. Tomasino on November 30, sending the attached emails at 11:31am and 3:53pm with both the formal request and invitations of informal discussion. There has been no response of any kind to these communications or to the referenced telephone messages, either from Mr. Tomasino or from anyone else representing the company. I should note that some shareholders have also reported frustrations in their own efforts to obtain information the company is obligated to provide.

- **Explanation of diminished rights** – The Proxy Statement failed to reasonably present changes that most shareholders would consider important. A troubling example is a provision discovered in a careful reading of Exhibit B (“Form of Bylaws of Mercy Nutraeuticals”) that would deprive shareholders of their right to call special meetings. It should be noted that this important shareholder right is clearly supported by the Delaware General Corporation Law that you have praised as the main reason for reincorporation, and is broadly considered a “best practice” by corporate governance experts. Eliminating this widely recognized benefit of the Delaware law requires a deliberate modification of conventional bylaws, and is clearly the intent of this statement found in your proposed new bylaws:

[Article I, paragraph 2.] Special Meetings. Special meetings of stockholders may be called by the Chief Executive Officer, if one is elected, or, if there is no Chief Executive Officer, a President, or by the Board, but such special meetings may not be called by any other person or persons....

- **Reasons for urgency** – The rushed presentation and scheduling suggests that there may be some reason why the proposed reincorporation must be completed immediately. If so, you should certainly explain the reasons so that the company’s shareholders can weigh the benefits of a quick decision against the benefits of a fully informed decision.

As someone with your professional background must know, proceeding with the scheduled December 5 meeting under these circumstances would raise questions about the validity of any action taken, making it impossible for anyone – including particularly existing and prospective investors – to rely upon corporate authority without judicial review.

Please let me know by 2:00pm today if you want me to include any response in my report to the company’s shareholders. I will of course also welcome informal discussion of anything the Forum can do to help you serve Neu Industries.

Sincerely yours,



Gary Lutin

Attachments

cc: Mr. Luc Tomasino

From: Gary Lutin [<mailto:gl@shareholderforum.com>]
Sent: Friday, November 30, 2012 3:53 PM
To: Luc Tomasino (luc.tomasino@drinkmercy.com)
Subject: Requesting information for week-end review
Importance: High

Mr. Tomasino –

As indicated in the new telephone message I just left for you, I'll appreciate an opportunity to talk with you this afternoon about the information request. If you're unable to talk in the next hour or so, please suggest someone else who can provide the information.

It will be very helpful to have whatever material you can provide in time for me to review over the week-end. I'm willing to make every effort to satisfy the information needs of your shareholders before your scheduled Wednesday meeting, but will need your cooperation to achieve this presumed common objective.

- GL

Gary Lutin
Chairman, The Shareholder Forum
c/o Lutin & Company, 575 Madison Avenue, New York NY 10022
212-605-0335
gl@shareholderforum.com

From: Gary Lutin [<mailto:gl@shareholderforum.com>]
Sent: Friday, November 30, 2012 11:31 AM
To: Luc Tomasino (luc.tomasino@drinkmercy.com)
Subject: Information needed for shareholder voting decisions

Mr. Tomasino –

As indicated in my telephone message, I'll welcome an informal discussion of the issues the Shareholder Forum has been asked to address.

Considering the time constraints, I've prepared the attached letter to satisfy whatever requirements you may have to provide me with some basic information I'll need to get started. We should of course determine how it will be most convenient for you to provide the information.

Most importantly, I will want to get your thoughts on what needs to be addressed to give your shareholders the information they need for their decisions. If you suggest some times for a call, I'll try to plan accordingly.

- GL

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November 30, 2012

By email and postal service

Mr. Luc Tomasino
Neu Industries, Inc.
197 Grand Street, 6W
New York, New York 10013

Email: luc.tomasino@drinkmercy.com

Re: Demand for records

Dear Mr. Tomasino:

Acting as a shareholder Delegate according to the accompanying powers of attorney granted by Andrea Spirov as a record holder of your company's common stock, having no notice or knowledge that those powers have been revoked, I demand that you produce the following records of Neu Industries, Inc. (the "Company") either by delivery to me or for inspection and copying pursuant to Section 624 of the New York State Business Corporation Law:

1. Copies of the Certificate of Incorporation of Mercy (NY) filed in New York, as amended to date (the "New York Certificate"), and the Bylaws of Mercy (NY), as amended to date (the "New York Bylaws").
2. Audited financial reports as available for the past three years, or in the absence of audited reports annual balance sheets and profit and loss statements.
3. Any interim balance sheets or profit and loss statements that have been distributed to shareholders during 2012.
4. Any annual or interim financial statements, projections, forecasts or other reports that have been provided to shareholders or prospective investors during 2012.
5. The names and addresses all shareholders, noteholders or others with rights to vote on the matters presented in the Company's November 19, 2012 Proxy Statement.

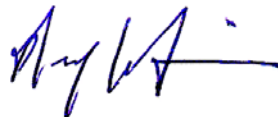
The purposes of this demand are (a) to obtain information relevant to shareholder decisions about the proposals presented in the Company's Proxy Statement and (b) to enable exchanges of information and views among those responsible for voting on the proposals presented in the Proxy Statement.

Regarding any records that include what you consider to be trade secrets or other information that should be treated as confidential, you will of course be expected to so identify the particular material. If appropriate, I will agree to your engagement of an independent attorney or other agent to review such confidential material as a foundation for the agent's preparation of reports that provide the substantive information needed for voting decisions in a form suitable for distribution to your shareholders, without confidential details. It should be understood that the information which is ultimately provided to me should not be subject to any confidentiality agreements or other duties that might restrict its distribution to and use by your shareholders, since the very purpose of seeking the information is to make it available for their use in voting or other investment decisions.

It should also be understood that neither your communications with me nor any of my communications with others will relieve the Company's management of its responsibility for providing information to investors.

Please let me know as soon as possible what arrangements you propose for producing the demanded records so that relevant information can be considered by shareholders in time for their voting decisions.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Gary Lutin', with a horizontal line extending to the right.

Gary Lutin,
as Delegate

Attachment

A “Durable Power of Attorney for Shareholder Delegate” accompanied the letter delivered to the chairman of the company’s board of directors. Requests for a copy of the document may be addressed to mercy@shareholderforum.com.