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Subject: Mylan / Meda – shareholder approval under Article 2:107(1) DCC

Dear Mr Coury,

On behalf of the Dutch Investors' Association (**VEB**) and the European Investors' Association IVZW (**European Investors**) we would like to thank you for your response to our letter of 26 February 2016. Although it sheds some light on the considerations underlying Mylan N.V.'s announcement that it will not be submitting the acquisition of Meda AB (**Meda**) to the shareholders for approval, it fails to obviate our concerns. It also gives rise to some further questions. This letter aims to obtain further clarity in regard of Mylan N.V.'s considerations for not submitting the contemplated acquisition of Meda for shareholder approval and expresses our view of the arguments put forward by Mylan N.V.

As you well understand, the key question remains whether Mylan N.V. needs to ask its shareholders for approval for the proposed transaction under Article 2:107(1) of the Dutch Civil Code (**DCC**). The law grants the general meeting the right of approval in the event of transactions which significantly change the identity or character of the company, which in any event will be the case if Mylan N.V. takes a participating interest in another company the value of which equals at least a third of its own total assets according to the consolidated balance sheet and accompanying notes as included in the most recently adopted annual report (**the one third threshold**).

Our letter covers three issues that will be dealt with as follows: (1) the impact of the acquisition of Meda on Mylan N.V.'s identity or character; (2) the calculation of the one third threshold under Article 2:107a(1)(c) of the Dutch Civil Code (**DCC**) and (3) the calculation by Mylan N.V. of the value of the Meda acquisition.

1. Change of identity

According to your letter, the contemplated transaction is based on a compelling strategic fit between Mylan N.V. and Meda. Although that may be a valid premise for this acquisition, such a transaction could still qualify as an important change in the identity or character of the company.

The identity or character of a company concerns more than the nature and scope of its business alone. Factors such as cash positions and loan to equity ratios also affect the position, activities and strategy of a company, and may accordingly affect its identity or character. For instance, a cash-poor company is more likely to fall behind with new investments, R&D, and dividend payments.

Moreover, this interpretation of "identity or character" fits at least two of the three examples given by the legislator in subsections a, b and c of Article 2:107a(1) DCC which in any event leads to a resolution requiring shareholder approval and also appears to be consistent with the parliamentary history of this article. Subsection b refers to long-term cooperation with another party having a far-reaching significance for the company, which can also be seen in terms of its financial exposure, while subsection c refers solely to the impact of a transaction on the company's financials without consideration of the impact of the transaction in question on the company's activities.

This view is further supported by the parliamentary history. The initial wording of Article 2:107a(1) DCC did not contain any language concerning an important change of identity or character. The three examples given under subsection 1(a), (b) and (c) only effectuated mandatory shareholder approval. The basis of article 2:107a(1) DCC consists of mandatory approval in the event of structural changes to the company and thus the shareholders' investment as well. The financial position of the company forms an essential element in such an investment.

Given that 80% of the purchase price (approximately USD 5.7 billion) will be paid in cash for Meda and that this amount will be drawn under a bridge credit facility, Mylan N.V.'s debt of USD 12.5 billion will be increased by almost 50%. This is clearly a substantial change in Mylan N.V.'s financial position. For this reason alone, the contemplated transaction could result in a change in Mylan N.V.'s identity or character.

Please explain whether these aspects were taken into account when determining whether the transaction would affect Mylan N.V.'s identity or character and, if so, what factors made Mylan N.V. decide that this transaction would not change the identity or character of the company?

2. The one third threshold of what?

With regard to determining the value of Mylan N.V.'s "assets", Mylan N.V. appears to agree on the principle of applying the annual accounts of New Moon B.V. (changed to Mylan N.V. on 27 February 2015). However, Mylan N.V. also attaches great value to the law's reference to "explanatory notes" which, as we understand it, would justify the inclusion of the figures for

Mylan Inc. and the business acquired from Abbott Laboratories (the **Abbott business**) by reference. In the explanatory notes to New Moon B.V.'s balance sheet, reference is made to the "The Registration Statement on Form S-4 (the "Registration Statement") filed by New Moon with the United States Securities and Exchange Commission in connection with the Transaction" (the **Registration Statement**). We will explain our misgivings in this respect in the paragraphs below.

First of all, "balance sheet and explanatory notes" (and "annual accounts and explanatory notes") constitute a standard phrase. Each time reference is made to "balance sheet" in Book 2 DCC, it is followed by "and explanatory notes". The explanatory notes serve to provide information on the method to be applied when compiling the balance or annual accounts and are considered to be part of the balance and annual accounts (*i.e.* financial statements).

> See the cases decided by the enterprise chamber of the Amsterdam court of appeal on 20 January 1977, NJ 1979, 373 (*Douwe Egberts BV*) and 16 March 1978 NJ 1979, 566 (*Koninklijke Scholten Honig*).

The explanatory notes solely provide an explanation of the information stated on the relevant balance sheet. They are not intended to provide additional financial data that can be added to the financials in the balance itself. That would detract from the relevance of the balance itself and undermine the legal safeguards concerning the preparation of annual accounts, as well as the auditing and adoption of this statement.

In view of these legal safeguards and the explicit reference to the last adopted annual accounts (as explained in the parliamentary history), we have serious doubts as to whether assets derived from non-adopted accounts concerning different legal entities can simply be taken into account when calculating the year end assets of Mylan N.V. (at that time known as New Moon B.V.).

Secondly, the notes do not contain the relevant amounts, which would have been the case if New Moon B.V. had intended to have these figures included in its 2014 balance sheet. It further appears that the figures set out in the Registration Statement only concern the situation as per 30 September 2014. As such they cannot be considered to be a source of the relevant asset values for 2014. Moreover, it appears that on the date that New Moon B.V.'s 2014 accounts were finalized, no accounts for Mylan Inc. and the Abbott business were ready: "New Moon is also preparing such unaudited pro forma balance sheet information as of 31 December 2014 that gives effect to the transaction as if it had occurred on 31 December 2014." We understand from your letter that Mylan N.V.'s 2014 balance should be understood as if amounts are to be taken into account that had not yet been accounted for, audited and adopted. Given our view on the legal safeguards concerning the preparation of annual accounts and the importance of these safeguards as recognised by the legislator in the parliamentary history of Article 2:107a DCC, we fail to see here an adequate substantiation of Mylan's arguments.

Thirdly, based on the parliamentary history of Article 2:107a(1)(c) DCC it does not follow that additional importance may be attached to the explanatory notes as such. On the contrary, the legislator emphasized the importance of using audited and adopted annual accounts as this is in the interests of shareholders, but made no reference whatsoever to the explanatory notes accompanying the company's balance sheet or any other comment at all that could reasonably be linked to the explanatory notes (see parliamentary paper (*Kamerstukken II*) 2001-2002, 28 179, 5 memorandum of reply (*Nota naar aanleiding van het Verslag*), p. 19).

Needless to say, attaching any meaning to a reference in the explanatory notes to the accounts in the manner advocated by Mylan N.V. would seriously undermine the principles set out by

the legislator in connection with the introduction of Article 2:107a DCC. Not least because the accounts referred to (*i.e.* the accounts of Mylan Inc. and the Abbott business) were based on different accounting methods, were unaudited and had not been adopted by the general meeting. Based on the regime of the law (*i.e.* the meaning and frequent use of "explanatory notes" and the legislator's intentions, the wide interpretation of "explanatory notes" in your letter seems to us a matter of 'wishful interpretation'.

In this respect, we also refer to par. 4.7 and 4.8 of the Dutch Supreme Court's decision of 13 July 2007 (*NJ* 2007/343 commented on by Maeijer) in which the Supreme Court considered that, despite the specific nature of ABN AMRO's balance sheet (*i.e.* bank balances tend to show a substantially larger asset value than ordinary companies) which effectively rendered Article 2:107a(1)(c) DCC impractical, it saw no reason to deviate from the wording of subsection c. The Supreme Court referred specifically to the legislator's intention to give a clear indication of situations in which shareholder approval is required in the interests of certainty. Essentially, the same principle could be applied to the situation here. The actual balance sheet, if subsection c is to be strictly adhered to, may result in a rather 'inconvenient' outcome (*i.e.* a relatively low threshold), this does justify the manufacture of a higher threshold by means of adding figures derived from other accounts (as advocated – albeit implicitly – by Mylan N.V.)

Assuming, nonetheless, that Mylan Inc.'s unaudited pro forma balance sheet, referred to in the 2014 New Moon B.V. accounts, are to be included, this does not necessarily justify including the condensed combined balance of the Abbott business. Even if a broader explanation of assets as contained in the last adopted annual accounts were to be accepted, only accounts concerning companies that formed part of the Mylan group in 2014 can be taken into account. Even though the agreement concerning the purchase of the Abbott business was concluded on 13 July 2014, and restated and amended on 14 November 2014, the relevant transaction was only completed on 27 February 2015. It seems very unlikely that Mylan Inc. or New Moon B.V. did, in fact, exercise control over the Abbott business at that time as it would only have received (conditional) merger clearance from the European Commission on 28 January 2015. For these reasons, Mylan N.V.'s decision to include the Abbott business accounts in the 2014 New Moon B.V. accounts when determining the one third threshold seems to us to be open to question.

With regard to your reference to the approval requested from shareholders for the Perrigo transaction, we would like to comment as follows. Given that approval was requested, there was no need for VEB and European Investors to act in that context. Companies may use all sorts of arguments when submitting important decisions for shareholder approval. If approval is requested, both parties see no reason for further action.

The aforementioned arguments raise the following question:

Please provide the sources (if at all available) supporting your interpretation of "explanatory notes" and explain your grounds for this interpretation?

3. The value of the participating interest

The total amount that Mylan N.V. wants to pay for the shares is SEK 60.3 billion/ USD 7.2 billion. The offer value, comprising the purchase price *and* Meda's net debt, comes to SEK 83.6 billion or USD 9.9 billion. Apparently, Mylan N.V. is sticking to the purchase price as its explanation for the value of the acquisition as referred to in article 2:107a(1)(c) DCC.

Regrettably, your letter contains no further arguments in support of Mylan N.V.'s previous statements (as expressed in our telephone calls) other than that the VEB's "view is wrong as a matter of law" according to opinions provided by NautaDutilh N.V. and Stibbe N.V. Mylan N.V.'s line of reasoning that the law's reference to "a participating interest" (*deelneming in het kapitaal van een vennootschap*) clearly refers to a purchase price, also seems hard to fathom.

As we explained before, the matter of mandatory shareholder approval centres around on the impact if a company's investment policy. When it comes to investments, as in this case, a company bases its decisions on the impact of the investment as a whole. The underlying, mostly internal, documentation contains numerous calculations and figures providing for all sorts of future scenarios. These documents generally take into account the purchase price paid, including the necessary financing arrangements, as well as the impact of the target company's loans (whether extended or renewed or not) on the business of the combination post-closing. The purchase price or equity value constitutes only part of the whole story.

This is clearly supported by the example in our previous letter: when a highly indebted company is acquired for EUR 1, the impact of the transaction is not limited to EUR 1 as the newly acquired burden of debt is far more material.

This view is also confirmed by the applicable accounting methods. Following completion, the newly acquired participation is valued for accounting purposes in accordance with IFRS 3. IFRS 3 establishes principles in relation to the recognition and measurement of items arising in a business combination (such as the contemplated takeover), and therefore gives a relevant perspective on the value of the target. IFRS 3.18 stipulates that all assets acquired and liabilities assumed in a business combination are measured at acquisition-date fair value. After doing so, the figures are included in the purchaser's accounts.

This is to be clearly distinguished from the change of identity or character as described above.

Can you please provide the opinions delivered by NautaDutilh N.V and Stibbe N.V.?

4. Conclusion

The relevance of this discussion and – in our view – Mylan N.V.'s insistence concerning the justification for its publicly announced statement, are illustrated by the following table which combines all possible outcomes:

	Mylan asset value (MAV)		Value of the participating interest (VPI)			VPI/MAV* 100%
Assets New Moon B.V. - year end 2014	USD	1,000,075,011	purchase price	USD	7,165,094,228	716%
	USD	1,000,075,011	offer price + Meda net debt (enterprise value):	USD	9,933,696,143	993%
Assets Mylan Inc. - year end 2014	USD	15,820,500,000	purchase price	USD	7,165,094,228	45%
	USD	15,820,500,000	offer price + Meda net debt (enterprise value):	USD	9,933,696,143	63%
Assets Mylan Inc. (incl. Abbott -business - year end 2014	USD	22,800,000,000	purchase price	USD	7,165,094,228	31%
	USD	22,800,000,000	offer price + Meda net debt (enterprise value):	USD	9,933,696,143	44%

We look forward to receiving your pertinent and detailed response to our comments and questions and kindly request that you provide these no later than Tuesday 15 March 2016 to ensure that sufficient time remains for further consultation. As is customary, we will be publishing this letter, as well as your response on www.veb.net ultimately by close of business

of the date following receipt. Naturally, Mylan N.V. is free to issue its own press releases in this respect.

VEB and European Investors retain all rights, including the right to initiate an inquiry procedure to obtain full disclosure of the events surrounding Mylan N.V. further to any future investigation. In this context this letter should (again) be deemed a letter of objection pursuant to Article 2:349(1) DCC, and a request to schedule a general meeting of shareholders pursuant to Article 2:110(1) DCC. As always, VEB and European Investors are available for discussion.

As we indicated before, should Mylan N.V. in the meantime decide to submit the transaction to the general meeting for approval – a step that both VEB and European Investors would very much welcome – then it will no longer be necessary to answer our questions. Should Mylan N.V., however, persist in not submitting the transaction for shareholder approval, we will consider appropriate legal action, given the importance of this matter, both to Mylan shareholders and as a matter of principle.

Yours sincerely,

Dutch Investors' Association (*VEB*)

European Investors' Association

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