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Amsterdam, 11 March 2016

Vereniging VEB NCVB
for attention: P.M. Koster and Q.L.C.M. Bongaerts
Amaliastraat 7
2514 JC The Hague, the Netherlands

Leo Groothuis

European Investors' Association IVZW
for attention: P.W.J. Coenen
Rue du Sceptre 63a
1050 Brussels, Belgium

Paul Olden

via email:

Fons Leijten

Dear Sirs,

Re: 5010.2532 | Mylan N.V. - response to letter VEB and European Investors

We act as Dutch counsel to Mylan N.V. ("**Mylan**"). We refer to the letter that you have sent to the executive chairman of Mylan, Robert J. Coury, on 10 March 2016 on behalf of the Vereniging VEB NCVB ("**VEB**") and the European Investors' Association IVZW ("**European Investors**"). In response to your letter, please be informed as follows.

Continued refusal to disclose the identity and Mylan shareholdings of the parties you represent

We have repeatedly asked you to inform us about your organizations' shareholdings in the capital of Mylan, the identity of other parties on whose behalf you have approached Mylan and the respective shareholdings of those other parties. Mylan has also requested this information from you, most recently through the letter that you received from Mylan on 29 February 2016. Your continued disregard for these requests is unacceptable. You have made a deliberate choice to

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wage a public campaign against Mylan. Waging a public campaign entails certain responsibilities with respect to your own conduct. Consequently, Mylan as well as the marketplace are entitled to know just who they are dealing with.

Your continued refusal to inform Mylan and the marketplace about the rank and file of the parties you represent is particularly troubling in view of the demands you have made on Mylan. Your organizations hold themselves out to be public interest groups, but you simultaneously purport to have standing to exercise certain statutory shareholder rights. As you know, these statutory rights are only available to Mylan shareholders who meet the statutory standing requirements, including certain minimum share ownership thresholds. Generating the impression in public communications that your organizations can take certain legal actions against Mylan without a proper basis in fact or law creates serious concerns from a market abuse perspective and in our view exposes your organizations and other parties involved to substantial risks for actions under section 5:58 subsection 1(d) of the Dutch Financial Supervision Act. Once again, waging a public campaign entails certain responsibilities.

Only during a call around 12:00 hours today CET, your mr. Q.L.C.M. Bongaerts admitted that VEB, alone or with others, had no standing for any of the statutory authorities that you invoked in your letter.

Just as Mylan and the marketplace have a legitimate interest in knowing who and how many Mylan shares you represent, they also have an interest in knowing the true motives of your campaign.¹ In this respect, your conduct surrounding the public correspondence thus far is hardly reassuring. In your letter of Friday 26 February 2016, which we received via email of 16:38 CET, you demanded that Mylan respond to certain questions by no later than Monday 29 February 2016. In the same letter, you also wrote: *"As is customary, we will be publishing your response on our website, together with this letter."* Even though the deadline you imposed on Mylan for its response to your letter was unreasonably short, Mylan nonetheless provided you with the requested answers to your questions within the deadline that you had set. Mylan engaged in this correspondence in a spirit of constructive dialogue. The response that you have received to your questions from Mylan was detailed and informative. As such, the letter addressed any and all concerns that you and your organizations could possibly have with respect to the issues raised in your letter. However, you have deliberately attempted to derail Mylan's attempt at engaging in a constructive dialogue with you by publishing your letter on the VEB's website on Monday, 29 February around 6pm CET,

¹ See Amsterdam Court of Appeals 3 March 1999, *JOR* 1999/87 (*Gucci*), at section 3.3 and Amsterdam Court of Appeals (Enterprise Court) 11 March 1999, *JOR* 199/89 (*Breevast*) at section 4.16

and you subsequently held off publishing Mylan's response letter on your website for almost a full day after you had received it. Through this blatant disregard of the rules of the game that you yourself had imposed, you generated the false impression that Mylan had failed to respond in time to your letter and you subsequently held out for an entire trading day (CET) before correcting this.

You have applied the same tactics with respect to your letter of 10 March. In spite of yet again assuring Mylan that Mylan's response would be published together with your letter, you have again jumped the gun by publishing your own letter on the VEB's website on 11 March around 11am CET together with an inflammatory press release. This pattern of reckless behavior seriously undercuts your organizations' credibility as public interest groups and entails serious risks from a market abuse perspective.

Based on this conduct, it would seem that your public campaign, despite lofty words about matters of principle, mostly serves sophisticated asset managers who can take advantage of arbitrage opportunities in their trading at the expense of Mylan shareholders and shareholders in Meda Aktiebolag (publ.) ("**Meda**"). We know you and your organizations to be better than this, but it is up to you to demonstrate to us and to the marketplace that this is indeed the case.

Mylan's recommended public offer for Meda is a great opportunity for shareholders

In Mr. Coury's letter of 29 February, Mylan encouraged you to consider the merits of Mylan's recommended public offer to the Meda shareholders to tender all their shares in Meda to Mylan (the "**Offer**"). As Mylan stated in this letter, the transaction will significantly strengthen and diversify Mylan's global commercial presence and it will enhance Mylan's critical mass in key therapeutic areas. Mylan's shareholders will benefit from the strengthening of Mylan's position as a diversified global pharmaceutical leader as a result of the transaction. Moreover, the transaction is also compelling for Mylan's shareholders and other stakeholders from a financial point of view. As set out in the offer announcement of 10 February 2016, the transaction is expected to be immediately accretive to Mylan's earnings. Also, the transaction has been structured in such a way that optimizes Mylan's balance sheet and still leaves Mylan ample financial flexibility to continue to complement its business with additional attractive opportunities which is consistent with Mylan's mission and long-standing strategy of pursuing growth through organic and inorganic opportunities. For these reasons, this accretive transaction represents an exciting opportunity for Mylan's shareholders. Mylan has heard from a significant number of Mylan shareholders that they share this view.

Your letter conspicuously fails to address any of these merits of the transaction to Mylan, its business and its stakeholders (including Mylan's shareholders). The only substantive observation regarding the transaction itself is on p. 2 where you argue that the transaction will lead to a 50% increase of Mylan's debt and that as a consequence Mylan's cash position would be adversely affected. This view is wrong. As a matter of fact, the transaction would allow Mylan to substantially increase its cash flow, while current investment grade is maintained. In our opinion, advancing views that lack a proper basis in fact such as your statement regarding the impact of the transaction on Mylan's financial position is irresponsible. We once again encourage you to review the merits of the transaction.

Mylan's approach is in line with Dutch law, both in spirit as in substance

Your letter constitutes a further attempt to challenge Mylan's approach to the application of section 2:107a of the Dutch Civil Code ("DCC"). Mylan has concluded that there is no basis in law that would require Mylan to put the Offer to a vote of its shareholders. As explained in Mylan's letter to you of 29 February, Mylan's approach to section 2:107a DCC is correct as a matter of Dutch law, is in line with the spirit of the law, has been consistently applied in past and present practice, has been disclosed to shareholders and other market participants, is compelling on the merits and leads to a more reasonable outcome than the alternative approach that you seem to advocate.

The arguments in your present letter are based on piecemeal snippets from parliamentary history and case law without putting these snippets in their proper context and without regard for legal authorities which directly contravene the views you are advocating. In doing so, you are misrepresenting matters of Dutch law as they currently stand. We want to set the record straight on a number of legal matters:

- 1 There is no basis in law for your position that a company's financial position is a relevant factor, let alone a decisive factor, in determining whether or not a transaction will lead to a significant change in the identity or character of a company and its business within the meaning of the qualitative standard under section 2:107a subsection 1 DCC. Pursuant to the Dutch Supreme Court's 2007 judgment in re *ABN AMRO*, such a significant change can only be deemed to occur in cases where the contemplated transaction is so fundamental that it would as it were result in a change in the nature of the share ownership in the sense that shareholders would

be providing capital to a fundamentally different business.² This is not the case for Mylan's envisaged acquisition of Meda. Both are global pharmaceutical companies and shareholders of Mylan will consequently remain a shareholder in a global pharmaceutical company after completion of the acquisition of Meda. The takeover of Meda will not lead to a change in Mylan's identity, let alone a significant change.

- 2 Your statement that the explanatory notes to the balance sheet in the annual accounts of a Dutch company such as Mylan have no independent meaning within the context of section 2:107a subsection 1(c) DCC is incorrect as a matter of law. In drafting section 2:107a DCC, the legislator explicitly referred to the existing statutory provisions of sections 2:396/397 DCC as the basis for referring to both the balance sheet as well as to the explanatory notes in the language of section 2:107a subsection 1(c) DCC.³ As such, the language referring to both the balance sheet and the explanatory notes in section 2:107a DCC was based on a deliberate consideration to align this language with existing statutory provisions. There is also established precedent in Dutch case law for Mylan's position that the explanatory notes have an independent meaning for purposes of calculating threshold amounts under statutory provisions of Book 2 of the DCC such as section 2:107a DCC. In the 1990 *Uniwest* case, the Dutch Supreme Court held that the amount of a company's assets as apparent from the explanatory notes was decisive in calculating the threshold amount under section 2:263 subsection 2 DCC rather than the amount reflected in the balance sheet.⁴ Since the relevant language of section 2:107a subsection 1(c) DCC is identical to the relevant language in section 2:263 subsection 2 DCC and since it was clearly the legislator's intention that the standard of using both the balance sheet as well as the explanatory notes in the context of section 2:107a subsection 1(c) DCC should be aligned with existing statutory standards, the precedent of *Uniwest* also applies to section 2:107a subsection 1(c) DCC.
- 3 Your suggestion that attributing significance to the explanatory notes to annual accounts would undermine the principles set out by the legislator in the context of section 2:107a DCC is incorrect. Pursuant to section 2:362 DCC, the annual accounts, the balance sheet and the explanatory notes are subject to strict statutory requirements. As such, statements made in the explanatory notes or referred to therein require a sound basis

² Dutch Supreme Court 13 July 2007, *NJ* 2007, 434 (*ABN AMRO*), section 4.7.

³ Notes of the Dutch Government to the Bill introducing a proposal for, *inter alia*, section 2:107a DCC to the lower house of Dutch Parliament of 10 January 2002, *Parliamentary Papers II*, 2001/02, 28 179, no. 3, p. 19.

⁴ Dutch Supreme Court 17 January 1990, *NJ* 1990, 827 (*Uniwest*).

in fact and law. This was clearly the case for the explanation of the transactions (i) pursuant to which Mylan acquired the non-U.S. developed markets specialty and branded generics business of Abbott Laboratories, and (ii) the reverse triangular merger with Mylan Inc. (the "**Transactions**") and the references to the Registration Statement on Form S-4 filed with the SEC in connection with the Transactions include unaudited pro forma balance sheet information (compiled and prepared in accordance with U.S. GAAP) as of 30 September 2014 which reflects the Transactions as if they had already occurred on that date, showing a total (pro forma) asset value of approximately USD 22.8 billion in Mylan's 2014 accounts. On a side note, your assertion that Mylan should not have included the condensed combined balance of the businesses acquired from Abbott in the 2014 pro forma accounts because it had not yet obtained regulatory clearance for the Transactions is false. Mylan's 2014 annual accounts were adopted on 9 February 2015, e.g. after the required regulatory clearances had been obtained.

- 4 Your final point that section 2:107a DCC centers around the impact of a given transaction on the company's investment policy has no basis in law. The Dutch Supreme Court precedent in re *ABN AMRO* that you invoke elsewhere in your letter clearly requires a strict interpretation of section 2:107a subsection 1 DCC, both for the quantitative criteria under a-c as well as for the general qualitative standard. The transaction value mentioned in section 2:107a subsection 1 under c DCC does refer only to the aggregate consideration to be paid by Mylan in its bid to acquire the Meda shares. In case of a listed company such as Meda, the share price reflects the overall debt situation.

Conclusion

Mylan values its relationships with its shareholders. Even so, a constructive dialogue is only possible if the value of the relationship is reciprocated. In the case of the VEB and European Investors, your conduct has given rise to serious concerns about your organizations' motives and interests. We would hope that the VEB and European Investors as not-for-profit public interest groups, would genuinely take the interests of all shareholders to heart, including the interests of shareholders in Mylan and Meda who are adversely affected in their trading decisions as a consequence of your public campaign as well as their longer term interests in enjoying the great benefits that the combination of Mylan and Meda will bring about. Regardless, Mylan will continue to work pursue this exciting opportunity for shareholders and other stakeholders.

