



**Memorandum**

**24 November 2015**

**FBC Represented Perrigo in its Rejection of Mylan’s Hostile Takeover Attempt**

FBC represented Perrigo Company plc ("Perrigo"), a Dublin-based over-the-counter drug manufacturer traded on the New York Stock Exchange and the Tel Aviv Stock Exchange ("TASE"), as part of a global representation throughout the US, Ireland, the Netherlands and Israel, in Perrigo's rejection of Mylan N.V.'s ("Mylan") hostile takeover attempt, which ended with over 60% of Perrigo's shareholders refusing to tender into what was the largest hostile offer in history to go to the very end.

Mylan first bid for Perrigo in April 2015, with an unsolicited \$29 billion offer (based on the value of Mylan stock at the time), which Perrigo's board rejected as undervaluing the company. The case took numerous turns over the following months, with Mylan raising its offer to \$32.7 billion (based on the value of Mylan stock at the time), and Teva Pharmaceuticals Industries Ltd. ("Teva") announcing its own bid for Mylan shortly thereafter. Teva later withdrew, in favor of an alternative acquisition, after facing fierce resistance from Mylan, including Mylan's implementation of a Dutch "Poison Pill" protective device known as the "Stichting Foundation", created by Mylan to thwart a hostile bid.

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In September 2015, Mylan officially launched its hostile tender offer for Perrigo's shares. The offer was open for 60 days, and in contrast to its earlier offers, which had set the approval threshold at 80% of Perrigo's shares (which would have allowed Mylan to “squeeze out” the remaining 20% and gain 100% ownership of Perrigo), required

approval of only 50% of Perrigo's shares; Mylan also threatened to delist Perrigo from trade if the bid prevailed and Mylan gained control.

Although more than 10% of Perrigo's shares were traded on the TASE, Mylan did not publish an Israeli Prospectus and an Offering Circular as required under the Israeli Securities Law-1968 ("Securities Law") in connection with its tender offer in Israel. FBC represented Perrigo in applying to the Israeli Securities Authority ("ISA") and later in filing a motion for an injunction from the Economic Division of the Tel Aviv District Court to require Mylan to cease all activities related to the offer, in view of Mylan's failures to comply with Israeli law. The court and the ISA accepted Perrigo's position that Mylan failed to publish a Prospectus and an Offering Circular; however, at its hearing on October 14<sup>th</sup> 2015, the court postponed its final decision on the matter by 14 days in order to allow Mylan an additional opportunity to complete a dual listing of its shares on the TASE and thereby enable the ISA to allow Mylan to use its S-4 Registration Statement to satisfy the Prospectus requirement.

While the ISA considered whether to allow Mylan to dual list on the TASE and thereby obtain relief from the Israeli Prospectus requirement, the issue was brought for discussion at the Finance Committee of the Israeli Parliament. The Finance Committee summoned the Chairman of the ISA for a hearing and urged the ISA to take into consideration the potential damage that the acquisition and delisting of Perrigo could cause to Perrigo's more than 1,000 Israeli employees and to the Israeli investing public. The Finance Committee noted its concern that Perrigo, a company that has established itself locally, would be acquired by Mylan, a company with no commitment or affinity to Israel and with a reputation for weak corporate governance, if the takeover were successful.

Following the ISA's decision to allow Mylan to dual list on the TASE and thereby afford it relief from the Israeli Prospectus requirement, the subsequent court hearing focused on whether Mylan properly could be listed for trading on TASE given its corporate governance, which

includes powerful anti-takeover mechanisms, such as a self-perpetuating board structure, an active Poison Pill protection mechanism (the Stichting Foundation) and share capital consisting of two types of shares, ordinary and preferred, all of which Perrigo claimed were in breach of Section 46B of the Securities Law. In its decision, the ISA diverged from its long-standing interpretation of Section 46B by permitting Mylan to list its shares while having strong anti-takeover mechanisms in place, albeit on the condition that the preferred shares held by the Dutch foundation would be cancelled as promptly as possible, and subject to Mylan's undertaking to delist if the Poison Pill were re-activated. This position substantially rolls back Section 46B, which establishes the one-share-one-vote requirement that Israel has imposed on TASE-listed companies for more than two decades.

The court accepted ISA's position, ruling that a *non-Israeli company* adopting typical anti-takeover mechanisms may be listed in Israel notwithstanding Section 46B, if the company obtains specific prior approval from the ISA. Accordingly, the court permitted Mylan to list on TASE. The court also stated in its decision that when deciding whether to tender, shareholders should consider the implications of Mylan's poor corporate governance and extraordinary anti-shareholder takeover defenses.

The court did not address whether Israeli companies (traded exclusively on the TASE or dually listed on an additional stock exchange) are permitted to have anti-takeover mechanisms, such as a poison pill or a self-perpetuating board of directors. We believe that the wording of Section 46B does not support different treatment of Israeli and non-Israeli companies in this regard, and the ISA's decision, which in effect permits companies to list on the TASE while having strong anti-takeover mechanisms, including active poison pills, should apply to Israeli companies as well.

Even after the court's decision, Perrigo continued to express confidence that its Israeli shareholders would reject the hostile

takeover bid, on the grounds that Mylan's offer substantially undervalued Perrigo and that the disclosure during the court hearing of significant shortcomings in Mylan's corporate governance demonstrated that Mylan does not necessarily act in the best interest of its shareholders. Perrigo reassured Israeli investors that they were better off with Perrigo as an independent company and pointed out to Mylan's multiple violations of Israeli law; we believe that these considerations played an important role in persuading an extremely high percentage of Israeli investors (non-official numbers suggest as high as 85%) to vote against Mylan's offer. Their votes proved to be critical in preventing Mylan's hostile bid from moving forward and in supporting Perrigo's management team.

Sincerely,

**Fischer Behar Chen Well Orion & Co.**

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