RNS Number : 6829I
OptiBiotix Health PLC
18 October 2024

OptiBiotix Health plc

("OptiBiotix" or the "Company" or "the Group")

Response to Publication of Circular by ProBiotix Health plc

OptiBiotix Health plc (AIM: OPTI) ("OptiBiotix") the life sciences business developing compounds to tackle obesity, high cholesterol, diabetes and skincare, notes that ProBiotix Health plc ("PBX") has announced that it has published a circular to shareholders (the "Circular") containing details of a requisitioned general meeting of PBX (the "Requisitioned General Meeting"). The Requisitioned General Meeting will be held at 10:00 a.m. on 1 November 2024 at the offices of BPE Solicitors LLP, St James House, St James Square, Cheltenham, GL50 3PR.

The provisions of the Companies Act 2006 restrict the requisitioner of the meeting to including a statement of 1,000 words with the requisition notice. Despite specifically referring to the Seneca statement in the PBX RNS as an appendix, the Seneca supporting statement was not included in the RNS. We recommend that all shareholders in PBX read the Seneca statement carefully (which is included in the appendix to this announcement). Seneca is an institutional shareholder committed to creating long term value for its own investors with a highly experienced investment committee; Seneca behaves in a very objective manner and would not be taking this action absent compelling and urgent measures being needed to be taken to avoid detriment to shareholders. The statement from Seneca Partners is included in the Circular but given the length of the rebuttal produced by PBX we are publishing our own reasons for supporting the action taken by Seneca Partners.

For all the reasons given below we urge shareholders in PBX to support the resolution and to vote in favour of the resolutions, which we intend to do in respect of our holding of 53,533,333 ordinary shares in the capital of PBX representing 33.85% of the voting rights of PBX. In addition, Stephen O'Hara, Neil Davidson and Sean Christie intend to vote in favour of the resolutions in respect of their aggregate holding of 6,479,783 ordinary shares in the capital of PBX representing 4.10% of the voting rights of PBX. We also note that Mr Anderson does not hold any shares or options in PBX which we believe does not align his interest with the interests of PBX shareholders.

The real agenda at PBX

On 7 May 2024, a virtual meeting took place between Mr Reynolds, Mr Anderson and the OptBiotix Board at the request of PBX. Mr Reynolds set out that because of a lack of liquidity in the AQSE market a recent PBX fundraise had failed. During the call OptiBiotix was informed that there was a Danish investor keen to make a substantial investment in the PBX business and was willing to be a long-term supporter. However, the investor (who we conclude to be Mr Bruhn-Petersen or his family office) did not want to invest into a business that was traded on AQSE. Mr Andersen and Mr Reynolds went on to propose this as justification for delisting and sought OptiBiotix's support for this course of action. Delisting would, of course, require a vote of the shareholders of PBX and given the interest of OptiBiotix at that time (and before the recent dilutive share issue) could only proceed if OptiBiotix was in agreement.

This suggested course of action prompted an outright refusal from OptiBiotix. OptiBiotix advised of its recent successful fundraise of £1.35m by the Company and identified lack of market communication by Mr Andersen as the main reason for the failed PBX fundraise. OptiBiotix requested that PBX increase its news flow to potentially support the share price and build positive investor sentiment or at least to allow the market to track developments in the PBX business. We firmly believe that Mr Andersen was pursuing a strategy to suppress the share price to justify his preferred strategy of taking the company private. In 2023 PBX published just 2 business update releases in the whole year. In 2024, there were only 2 business related announcements prior to the

announcement of the subscription with Mr Bruhn-Petersen and only one prior to OptiBiotix challenging the board of PBX to be more transparent with the market; by contrast the last 3 months have seen 3 positive news-flow announcements.

PBX have stated that they started discussions with Mr Bruhn-Petersen in April 2024 (we believe that it was earlier than this). The discussions with Mr Bruhn-Petersen were not disclosed to the full board of PBX, with Mr O'Hara only being informed of the investment on the evening prior to its announcement. It is against this backdrop that Seneca are taking action that we support. It is the most appalling example of corporate governance to effectively conduct negotiations to bring in a new major shareholder in secret and to only inform all board members hours before announcing it. Shareholders in PBX are being asked to believe that Mr Bruhn rapidly made his investment decision less than a month following the PBX AGM in August 2024.' We do not believe this to be true. It is market practice for any Company seeking to disapply pre-emptive rights at its AGM to state if they have any current intention to use that authority. PBX remained entirely silent as to its intent when seeking the authority from shareholders and accordingly obtained the authority without proper disclosure; had shareholders been aware of the immediate intention to use the authority to conduct a highly dilutive subscription it would never have been approved.

Trading Performance at PBX

PBX are suddenly at great pains to talk up trading performance and particularly the role of Mr Andersen. The truth about the source of PBX sales is somewhat different from that claimed by PBX.

PBX had plenty of opportunity to announce positive news before closing the subscription, including the "over 10 deals" to which they refer in their Circular, as the majority of these happened prior to the announcement of the subscription (we believe the prevailing share price might have been different had that information been in the public domain) but clearly at that time were considered unworthy of mention by the board of PBX or, in our view, may have hindered the proposed dilutive subscription and we believe that the previously failed fundraise would have been successful if these developments had been disclosed to the market, as demonstrated by the recent share price uplifts in PBX.

There is also continuous misrepresentation by PBX on the source of sales growth. The board of PBX would have shareholders believe that this is driven by the performance and stewardship of Mr Andersen, however the reality is that vast majority of the sales growth is directly attributable to the legacy customers that Mr O'Hara (the founder of PBX) brought to PBX, including Alfasigma, HLH and Seed Health.

In the Q3 2024 trading update Mr Andersen made the following statement:

"Two leading US supplement brands have successfully developed line extension products based on LPLDL®. Both companies are looking at 2025 product launches in physical stores as well as online".

This information was known before 4 September 2024, yet this was not disclosed to investors until the trading update. It might be inferred that product launches were events in which Mr Andersen was instrumental but this is not true.

The Relationship Agreement

The Board of PBX seek to make much of certain provisions of the relationship agreement that was put in place on the separation of PBX from OptiBiotix.

The relationship agreement is very specific about the restrictions that apply to interference with the Board of PBX. The relationship agreement provides OptiBiotix and Mr O'Hara shall exercise voting power and voting rights to ensure that:

3.1.1 each [PBX entity] is capable at all times of carrying on its business independently of [OptiBiotix] and any member of the [OptiBiotix Group];

3.1.2 [PBX] has, at all times, at least one Independent Director;

3.1.3 [PBX]'s remuneration, audit and insider committees comprise at least the same number of Independent Directors as other directors;

3.1.4 [PBX] is managed by the Directors for the benefit of all members as a whole;

3.1.5 [PBX] has adopted and complies in all material respects with the QCA Corporate Governance Code for Small and Mid-Size Quoted Companies 2013;

We are not seeking to take action in contravention of these key principles; our action is to ensure that PBX is not managed in a way that is contrary to the benefit of members as a whole. We consider that the subscription with Mr Bruhn-Petersen, and the manner in which this was conducted, to be at complete odds with the basic principle that PBX be managed for the benefit of members as a whole.

PBX suggests that the Company could not function as an independent company absent the presence of Mr Andersen; this is clearly a preposterous claim and would suggest that a public company is entirely dependent on a single individual for its independent operation. If PBX claim this to be the case then the Board must surely immediately consider how the Company were to function if Mr Andersen were incapacitated or voluntarily left his employment. Indeed, PBX functioned as a successful public company prior to Mr Andersen's appointment.

PBX suggest that OptiBiotix's proposed action to remove Mr Andersen is "interference in operational matters". We support Seneca's proposals which are not proposing any other changes to management which might impact operational matters; if operational matters cannot survive the loss of Mr Andersen then we question PBX's eligibility as a quoted company. In any case Mr Andersen's removal as a director does not automatically result in the termination of his employment unless he elects to treat it as constructive dismissal.

PBX assert that our support of Seneca's requisition is a breach of clause 3.3 of the relationship agreement. The clause is there to constrain ourselves from unilaterally seeking board controlling action or the removal of independent directors or in circumstances where actions might prejudice continued eligibility for trading - nothing prevents us from supporting the actions of an independent institutional shareholder who happens to share our views on this matter (whether we subsequently exercise our voting rights or not). We have every confidence that minority shareholders will support the requisition to remove Mr Andersen.

PBX have threatened to seek injunctive relief to constrain OptiBiotix and Mr O'Hara from exercising their voting rights at the Requisitioned General Meeting, should PBX pursue this course of action OptiBiotix intends to oppose it vigorously for the reasons given above.

PBX has been built on the entrepreneurship of Mr O'Hara and the capital invested by shareholders predating the recent highly dilutive subscription. We accordingly urge all PBX shareholders to vote in favour of the resolutions to prevent further erosion of shareholder value.

Included below in the Appendix is the statement from Seneca Partners included in the PBX circular.

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About OptiBiotix - www.optibiotix.com

OptiBiotix Health plc (AIM: OPTI), which was formed in March 2012, brings science to the development of compounds which modify the human microbiome - the collective genome of the microbes in the body - in order to prevent and manage human disease and promote wellness.

OptiBiotix has an extensive R&D programme working with leading academics in the development of microbial strains, compounds, and formulations which are used as active ingredients and supplements. More than twenty international food and healthcare supplement companies have signed agreements with OptiBiotix to incorporate their human microbiome modulators into a wide range of food products and drinks.

OptiBiotix is also developing its own range of consumer supplements and health products. The Company's current areas of focus include obesity, cardiovascular health, and diabetes.

Appendix

Statement from Seneca

The Company is required to circulate the Statement in accordance with section 314 of the Act. The Company has not taken steps to verify the accuracy of the Statement and does not in any way support the statements contained in the Statement. The full text of the Statement is set out below.

"To the shareholders of ProBiotix Health plc

Dear Shareholders,

We are writing to you today on behalf of our investors, who combine as the largest institutional shareholders in ProBiotix Health plc ("PBX"), representing a holding in excess of 5 per cent. (recently diluted from 7.1 per cent.), in order to highlight to you our concerns about the Company and to set out a possible way forward.

We are concerned that the directors of PBX chose to announce the recent subscription at a price of

3.36 pence without any prior consultation with ourselves or the other significant shareholders. The price of 3.36 pence appears to have been offered to investors who are well known to members of the Board, causing in our view excessive dilution to existing shareholders.

The discount to the share price at the close of business the prior trading day was an alarming 36 per cent. and the discount to the average closing price over the prior 14 days was 16 per cent. - we consider this to be of particular note when reviewed alongside commentary included within its interim results announcement on 30 August, which stated:

"The performance of the first six months of the years and the increasing market opportunity allows the Board to remain confident and filled with enthusiasm when it comes to the short as well as the long-term potential for creating value and return for the Company and its investors."

It is our view that this subscription was clearly not in keeping with creating value for investors and has left us questioning the motivation and rationale for this share issue. The discount appears excessive and the level of funds raised appears in our view to be driven by the preferred investment size of the investor, as well as the pre-authorised limit, rather than the actual cash requirements of the business.

We are also concerned that PBX's Aquis adviser did not require, or at least strongly recommend to the Board, that they consult with the significant shareholders formally, or at least informally, before proceeding with the subscription. All of this comes despite Seneca having open dialogue with the Board within the last month, where the cash position was described as being "ahead of plan" and noting that commercial developments were progressing well.

The interims also gave no indication of a potential fundraise nor did the notice of annual general meeting at which the authority was sought - the annual general meeting was held on 8 August 2024 and this highly dilutive fundraise has come less than a month later. We therefore have to assume that in all likelihood members of the board knew about and/or had planned this subscription at the time interim results were released and the notice of annual general meeting despatched, but chose to give no warning to shareholders of the planned dilutive issue. We believe that this was disingenuous if not misleading and we (and other major shareholders) would not have voted in favour of the authority to allot shares on a non-pre-emptive basis if we had known or had cause to suspect how the authority would be used.

Our concern here is that the share issue has resulted in an erosion of trust and undermines all the principles of good investor relations. The lack of a retail offer alongside this fundraise, something which is actively encouraged by advisers and regulators as good practise, was of particular note.

As a responsible institutional shareholder, we feel obliged to step in and are not prepared to accept conduct of this nature. We share the concerns of many other shareholders, some of whom have voiced these views in public and on bulletin boards. We have an overriding concern that this is the first step in a very unwelcome strategy which has been formulated by Mr Andersen. We are also not prepared to see a person who is clearly well known to Mr Andersen join the Board in such circumstances. As such, we are taking this action to allow all shareholders to express their views as to the actions of Mr Andersen.

We are also concerned that PBX appears to be taking steps to gradually migrate its main business and operations to Denmark, and this pattern of behaviour, lack of communication with shareholders generally and lack of transparency, has now gone too far in our opinion. This is the reason for our initiating this action before any more actions are taken that could further impact shareholder value. We are seeking to give all shareholders the right to vote in accordance with their views and without having to wait until the next annual general meeting.

We have spoken with the other significant shareholders prior to taking this action and whilst they are unable to sign the document initiating this requisition themselves, they have told us they intend to vote with us in favour of the resolutions that we have required to be sent out to you. Nevertheless, due to the heavy dilution that we have all suffered, due to the actions of the Board, we will need your support to ensure that the resolutions are passed.

We are confident that PBX has the potential to succeed and continue to capitalise on increasing momentum in its core markets, however, we believe that there is an urgent need to remove certain members of the board to protect shareholders' investment.

In summary, we therefore strongly urge shareholders to vote in favour of the resolutions that will be proposed at the forthcoming general meeting of the Company as we believe that this is the only way that shareholders can be assured that the value of their investment will not be further eroded and/or diluted. Yours sincerely,

Matt Currie
Seneca Partners Limited

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