

FOREST LABORATORIES INC
Form DFAN14A
August 10, 2011

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a)

of the Securities Exchange Act of 1934

(Amendment No.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only** (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to § 240.14a-12

Forest Laboratories, Inc.

(Name of Registrant as Specified In Its Charter)

Carl C. Icahn

Dr. Alexander J. Denner

Dr. Richard Mulligan

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Icahn Partners Master Fund LP

Icahn Partners Master Fund II L.P.

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ON JULY 19, 2011, THE PARTICIPANTS (AS DEFINED BELOW) FILED A DEFINITIVE PROXY STATEMENT WITH THE SECURITIES AND EXCHANGE COMMISSION. SECURITY HOLDERS ARE ADVISED TO READ THE DEFINITIVE PROXY STATEMENT AND OTHER DOCUMENTS RELATED TO THE SOLICITATION OF PROXIES BY CARL C. ICAHN, DR. ALEXANDER J. DENNER, DR. RICHARD MULLIGAN, PROFESSOR LUCIAN A. BEBCHUK, DR. ERIC J. ENDE, MAYU SRIS, ICAHN PARTNERS LP, ICAHN PARTNERS MASTER FUND LP, ICAHN PARTNERS MASTER FUND II L.P., ICAHN PARTNERS MASTER FUND III L.P., HIGH RIVER LIMITED PARTNERHIP, HOPPER INVESTMENTS LLC, BARBERRY CORP., ICAHN ENTERPRISES G.P. INC., ICAHN ENTERPRISES HOLDINGS L.P., IPH GP LLC, ICAHN CAPITAL L.P., ICAHN ONSHORE LP, ICAHN OFFSHORE LP, AND BECKTON CORP. (COLLECTIVELY, THE PARTICIPANTS) FROM THE STOCKHOLDERS OF FOREST LABORATORIES, INC. FOR USE AT ITS 2011 ANNUAL MEETING OF STOCKHOLDERS, BECAUSE THEY CONTAIN IMPORTANT INFORMATION, INCLUDING INFORMATION RELATING TO THE PARTICIPANTS. THE DEFINITIVE PROXY STATEMENT AND A FORM OF PROXY IS AVAILABLE TO STOCKHOLDERS OF FOREST LABORATORIES, INC. FROM THE PARTICIPANTS AT NO CHARGE AND IS ALSO AVAILABLE AT NO CHARGE AT THE SECURITIES AND EXCHANGE COMMISSION S WEBSITE AT [HTTP://WWW.SEC.GOV](http://www.sec.gov) OR BY CONTACTING D.F. KING & CO., INC. BY TELEPHONE AT THE FOLLOWING NUMBERS: STOCKHOLDERS CALL TOLL FREE: (800) 697 6975 AND BANKS AND BROKERAGE FIRMS CALL: (212) 269 5550.

Consent of the author and publication has not been obtained to use the material filed herewith as proxy soliciting material.

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Forest Labs board needs change

Two independent proxy advisory firms issued analyses criticizing Forest Labs on several dimensions

Presiding independent director Goodman oversaw operations and made decisions leading to civil and criminal violations, also lacks independence

Compensation not tied to share performance
Icahn Nominees will help drive necessary change,
vote the GOLD card!

2

ISS and Glass Lewis both criticized Forest Labs for deeply flawed corporate governance

The image of the CEO sitting in on the ostensibly independent directors as they discuss whether or not to support him is uncomfortably close to that of a show trial: a **theatrical demonstration of power**, with a pre-determined outcome, in which those with ostensible authority must first and foremost demonstrate their zealous personal loyalty to **the one who holds real**

.
All the subsequent protestations about personal integrity and independence **ring a little hollow**, when the right course of action

calling an executive session to let the unaffiliated outside directors debate the issues in private, without any undue influence from insiders was both an **obvious and easy choice**. That the meeting appears to have been **orchestrated from the C-suite**

the General Counsel, rather than the board's own outside advisors, apparently prepared and presented the materials which shaped the discussion does not help matters.

If there was ever a moment for the independent directors to take matters into their own hands, this was it. That they failed to do

so

and
perhaps
even
failed
to
recognize
their
own
responsibility
to
do
so

is

We believe that there are various aspects of the Company's corporate governance that could suggest that the

. . .we believe that Mr. Solomon and other Company insiders **should have recused** themselves from the board deliberations and actual voting on the matter.

. . .we note that the board's primary committees (audit, compensation, and nominating and governance) have historically been comprised of the board's longest tenured directors, which we believe **may blunt the**

impact
that
can
be
made
by
the
recently-appointed
directors.

. . .the appointment of Mr. Goodman as presiding director leaves us feeling **highly dubious** of the board's ability to enact truly positive corporate governance reforms and only serves to drive home the Icahn Group's argument that the Company's board is **filled with**

.
ISS
Glass Lewis
Source: ISS, Glass Lewis
power
deeply worrisome
board
has
become

entrenched
entrenched directors

.

3

ISS criticizes appearance of nepotism, in addition to highlighting corp. gov. concerns

However, the fact that the succession plan involves having a senior executive

presumably

a

candidate

for

the

top

job

report
to his own father
who presumably has some influence in the
matter
is **another bad omen**. SVP Solomon may in fact be the
best candidate for the job, internally or externally: it is hard
to
know, if **all his senior level executive experience came at the**
firm
his
father
has
been
running
for
four
decades.

At
a
publicly-held company, succession planning should never be
confused, visually or procedurally, with **establishing a dynasty**.
Unaffiliated shareholders **should be concerned** about the degree
to which the independent directors are truly independent of the
long-serving Chairman and CEO. Among the **red flags** are these
directors
apparent **unwillingness to exclude the CEO** from
high-stakes discussions
such as the company's response to
threatened
regulatory
action
against
him
individually

in
which
he
is **clearly conflicted**, and their apparently easy acceptance of the
fundamental
conflict
involved
in
making
the
CEO's
own
son
one
of his direct reports.

ISS Proxy Advisory Services, August 2011

4
ISS and Glass Lewis also criticized Forest
Labs on other dimensions
Stock price and
operating
performance
. . .it is still clear that the company's
meager
returns
to
shareholders
over
the half decade leading up to the
announcement of this proxy contest have
been
substantially
outpaced
not
just
by the specialty pharma peers, but even
by a blended group of big and specialty
pharma peers.

We find that the Company's stock price performance was better than that of the Peer Group over the recent one-year period but has been worse than the Peer Group over the

. . . we note that the Company's compounded annual growth rates for revenue and operating income over the three- and five-year periods ended December 31, 2010 were all below the range of growth rates observed in the Peer Group. This raises some concerns that the board and management may not have been proactive enough in facilitating greater growth for the Company and its shareholders in recent years. Compensation practices Rated High Concern Received D

grade

Overall,

the

Company

paid

more

than

its

peers,

but

performed

moderately

worse

than its peers.

ISS

Glass Lewis

Source: ISS, Glass Lewis

longer term

5

Goodman's poor business judgment and lack of independence qualify him for removal

Current presiding independent director Goodman was President and COO, responsible for decisions leading to civil and criminal pleadings, payment of ~\$300M in fines, and higher costs and administrative burdens from implementation of corporate integrity agreement

Glass Lewis states:

- Moreover, we note that the board has neither appointed an independent chairman nor an independent presiding director

.
.
.we
do
not
consider
him
[Goodman]
to
be
independent
from
the

Company's management given that he was employed as an executive by the Company within the past five years, served as a Company executive for more than 25 years, and received approximately \$198,000 in retirement benefits from the Company during fiscal year 2011.

Goodman poor choice for board,
vote the GOLD card!

Source: Submission Behalf of Howard Solomon to the HHS-OIG from Davis Polk & Wardwell; Glass Lewis

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Chairman and CEO Solomon compensation
not tied to share performance

Note: Fiscal year ends March 31

Source: Public documents

While Forest Labs equity value declined by
~65%, Solomon paid ~\$60M

0

2

4

6

8

\$10M

Chairman & CEO Solomon compensation (\$M)

FY

2004FY

\$9.0M

2005FY

\$7.0M

2006FY

\$6.7M

2007FY

\$5.4M

2008FY

\$6.5M
2009FY
\$6.6M
2010FY
\$8.3M
2011
Bonus
Salary
Stock
Other
Options
\$8.9M

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Special note regarding this presentation

This presentation includes information based on data found in filings with the SEC, independent industry publications

and other sources.

Although

we believe that

the data

is reliable,

we do

not guarantee

the accuracy

or completeness

of this information

and have

not independently

verified any

such information.

We have not sought, nor have we received, permission from any third-party to include their information in this presentation.

Many of the statements in this presentation reflect our subjective belief. Although we have reviewed and analyzed the information that has informed our opinions, we do not guarantee the accuracy of any such beliefs.

Sections of this presentation refer to the experience of our nominees for director at Forest Laboratories

during their

tenure as

directors of

Biogen

Idec,

ImClone
Systems
Inc.,
Genzyme
Corporation,
Amylin
Pharmaceuticals,
and
Enzon
Pharmaceuticals.

We
believe
their
experience
at
these
companies

was
a
success and resulted in an increase in shareholder value that benefited all shareholders. However, their
success at these companies is not necessarily indicative of future results at Forest Laboratories if our
nominees

were
to
be
elected

to
the
Forest
Laboratories
Board
of
Directors.

In
addition,
we
acknowledge

that if elected, our nominees will be a minority of the directors and will not alone be able to adopt
resolutions.

All stockholders of Forest Laboratories are advised to read the definitive proxy statement, the gold proxy
card and other documents related to the solicitation of proxies by the Participants from the stockholders of
Forest Laboratories for use at the 2011 annual meeting of stockholders of Forest Laboratories because they
contain important information. The definitive proxy statement and form of proxy along with other relevant
documents are available at no charge on the SEC's website at <http://www.sec.gov> or by contacting D.F.
King & Co., Inc. by telephone at the following numbers: Stockholders call toll-free: (800) 697-6975 and
Banks and Brokerage Firms call: (212) 269-5550. In addition, the Participants will provide copies of the
definitive proxy statement without charge upon request. Information relating to the Participants is
contained in the definitive Schedule 14A filed by the Participants with the SEC on July 19, 2011.