

## Extraordinary General Meeting in Forward Pharma A/S

### **NOTICE TO CONVENE EXTRAORDINARY GENERAL MEETING WITH THE COMPLETE PROPOSALS**

An extraordinary general meeting in Forward Pharma A/S (the "**Company**") will be held on

1 February 2017 at 2:00 PM (CET)

at the Company's premises, Østergade 24A, 1st floor, 1100 Copenhagen K, Denmark.

### **AGENDA**

- 1) Proposal to approve (i) the Company's entry into a Settlement and License Agreement with Biogen Swiss Manufacturing GmbH, Biogen International Holding Ltd. and the other parties thereto (the "**License Agreement**") and the consummation of the transactions contemplated thereby, and (ii) the Company's entry into an addendum (the "**Addendum**") to the Patent Transfer Agreement, dated May, 4. 2010, between the Company and Aditech Pharma AG (the "**Patent Transfer Agreement**") and the consummation of the transactions contemplated thereby;
- 2) Proposal to authorize the non-disqualified members of the Board of Directors of the Company (the "**Board**") to negotiate and execute an indemnification agreement between the Company on the one hand and certain companies affiliated with Florian Schönharting that are party to the License Agreement and Florian Schönharting, in his individual capacity, on the other hand (the "**Indemnification Agreement**");
- 3) Proposal to authorize each of Karen Smith, Jan van de Winkel and Grant Lawrence to sign the License Agreement and the Addendum on behalf of the Company

## COMPLETE PROPOSALS OF THE ITEMS OF THE AGENDA

**Item (1): Proposal to approve the License Agreement and the transactions contemplated thereby and the Addendum and the transactions contemplated thereby.**

The Company has negotiated the License Agreement with Biogen Swiss Manufacturing GmbH and Biogen International Holding Ltd. (collectively "**Biogen**") and certain other parties thereto which, if approved by the extraordinary general meeting, will entitle the Company to receive (a) a lump payment in the amount of USD 1.25 billion (prior to taking into account taxes, duties and VAT, if any) regardless of the outcome of the ongoing patent disputes between the Company and affiliates of Biogen and (b) royalty payments from 1 January 2021 or 1 January 1 2023 between 0 and 20 per cent (the percentage depends on the outcome of the ongoing patent disputes between the Company and Biogen) of net sales of any Biogen product indicated for the treatment of multiple sclerosis that, but for the rights granted pursuant to the License Agreement, would infringe a licensed patent covering the treatment of a human for multiple sclerosis by orally administering a therapeutically effective amount of 480 mg per day of dimethyl fumarate, on a country-by-country basis. The timing and size of the royalty payments, if any, will also depend on whether the Company's licence to Biogen will be exclusive or co-exclusive. The assets that the Company will be licensing to Biogen include all intellectual property owned or controlled by the Company and its subsidiaries, including without limitation (a) all patents and patent applications and (b) the FP-187 product and any and all rights relating to regulatory clearance and exclusivity.

Following the execution of the License Agreement, certain covenants of the Company shall retroactively apply to the Company as of 17 January 2017. As a result, upon execution and delivery of the License Agreement, the Company may be liable for breaches of such covenants that occurred during the period between 17 January 2017 and the date on which the License Agreement is executed and delivered.

As part of the transactions contemplated by the License Agreement the Company shall use its commercially reasonable efforts to take the actions set forth in Appendix E to the License Agreement and consummate the transactions contemplated thereby, in a manner and subject to the conditions described in Appendix E:

- (i) a contribution of the Company's assets and liabilities to a new Danish company ("**New SubCo**"),
- (ii) a demerger of New SubCo into two new Danish Companies ("**SubCo 1**" and "**SubCo 2**") where SubCo 1 receives the ownership to New SubCo's IP rights/patents, including the obligation to protect and maintain the IP rights/patents, while SubCo 2 receives all other assets, including all payment

rights under the License Agreement, and all other liabilities, including the obligation to fund the protection/maintenance of the IP rights/patents,

- (iii) the establishment of a Danish commercial foundation, and
- (iv) the transfer of the shares in SubCo 1 to a Danish company owned by the commercial foundation.

In parallel with the negotiation of the License Agreement, the Company has negotiated the Addendum to the Patent Transfer Agreement with Aditech Pharma AG (“**Aditech**”). The purpose of the Addendum is to clarify certain ambiguities with respect to the construction of the Patent Transfer Agreement and for Aditech to waive certain rights under the Patent Transfer Agreement. If approved by the extraordinary general meeting, Aditech will be entitled to receive 2 per cent of the lump sum payment payable by Biogen to the Company (prior to taking into account taxes, duties and VAT, if any) as well as (a) if the license with Biogen is exclusive, a cash payment equal to 2 per cent of the same base amount with respect to which the Company’s royalty percentage is calculated, accruing from the same period of time as any royalty payment payable by Biogen to the Company (prior to taking into account taxes, duties and VAT, if any) and (b) if the license with Biogen is non-exclusive, a cash payment equal to 20 per cent of any royalty received by the Company from Biogen under the non-exclusive license (prior to taking into account taxes, duties and VAT, if any).

**The above summary of the License Agreement and the Addendum does not provide a full description of the terms of the License Agreement and the Addendum. The shareholders are strongly recommended and encouraged to carefully read the full text of the License Agreement and the Addendum. In case of any deviation between the above summary and the actual text of the License Agreement and/or Addendum, the actual text will prevail.**

A majority of the members of the Board, including the chairman, consider themselves disqualified from approving the License Agreement, the Addendum and the transactions contemplated by the License Agreement and Addendum, see section 131 of the Danish Companies Act, and, as a result, the non-disqualified members of the Board do not form a quorum under Article 10.5 of the Articles of Association and section 124 of the Danish Companies Act. Due to this lack of quorum, it is a requirement under Danish law that the License Agreement, the Addendum and the transactions contemplated by the License Agreement and the Addendum are approved by the extraordinary general meeting in order to become valid, binding and enforceable on the Company.

The Board represented by its non-disqualified members proposes that the extraordinary general meeting approves the Company’s entry into the License Agreement and the Addendum and the consummation of the transactions contemplated by the License Agreement and the Addendum. The proposal from the non-disqualified members of the Board to approve the

Company's entry into the License Agreement and the Addendum and the consummation of the transactions contemplated by the License Agreement and the Addendum is conditional upon shareholder approval of both agreements and the transactions contemplated thereby (i.e., the extraordinary general meeting cannot approve one but not both agreements). Further, the Board's proposal is conditional upon the affirmative vote of at least two-thirds of the votes cast as well as at least two-thirds of the share capital represented at the extraordinary general meeting in favor of approval of the Company's entry into the License Agreement and the Addendum and the consummation of the transactions contemplated by the License Agreement and the Addendum.

The draft License Agreement and the Addendum which are proposed for approval by the extraordinary general meeting are available from today's date and until the extraordinary general meeting on the Company's offices as well as on the Company's website ([www.forward-pharma.com](http://www.forward-pharma.com)) → "Investors") from where they may be downloaded.

The Board has been informed that shareholders of the Company holding in excess of 2/3 of the outstanding ordinary shares, on a fully diluted basis, of the Company (consisting of Nordic Biotech K/S and its affiliates, Rosetta Capital I, LP and BVF Forward Pharma L.P.) have irrevocably and unconditionally covenanted and committed to vote in favor of approving the Company's entry into the License Agreement and the Addendum and the consummation of the transactions contemplated by the License Agreement and the Addendum at the extraordinary general meeting.

**Item (2): Proposal to authorize the non-disqualified members of the Board to negotiate and execute an indemnification agreement between the Company on the one side and certain companies affiliated with Florian Schönharting that are party to the License Agreement and Florian Schönharting personally on the other side**

Subject to approval of Item (1), the Board represented by its non-disqualified members proposes to authorize the non-disqualified members of the Board to negotiate and execute an indemnification agreement between the Company on the one side and certain companies affiliated with Florian Schönharting and Florian Schönharting personally on the other side, which at the request of Biogen Swiss Manufacturing GmbH and Biogen International Holding Ltd. have agreed to provide certain releases and representations under the License Agreement (collectively "**Additional Parties**").

The Indemnification Agreement shall be limited to claims that both (i) concern the License Agreement and the Addendum and the transactions contemplated by the License Agreement and the Addendum and (ii) are brought against Additional Parties but ought to have been brought against the Company and which are not caused by any negligence, willful misconduct or fraud by any of the Additional Parties.

A majority of the members of the Board, including the chairman, consider themselves disqualified from resolving on the entry into of the Indemnification Agreement and, as a result, the non-disqualified members of the Board do not form a quorum under Article 10.5 of the Articles of Association and section 124 of the Danish Companies Act. Due to this lack of quorum, it is a requirement under Danish law that the proposal is approved by the extraordinary general meeting in order to become valid.

**Item (3): Proposal to authorize each of Karen Smith, Jan van de Winkel and Grant Lawrence to sign the License Agreement and the Addendum on behalf of the Company**

Subject to approval of Item (1), the Board represented by its non-disqualified members proposes that the extraordinary general meeting authorises each of Karen Smith, Jan van de Winkel and Grant Lawrence to sign the License Agreement and the Addendum on behalf of the Company.

**ADDITIONAL INFORMATION**

**Majority requirements**

The proposal under Items (1), (2) and (3) on the agenda must be adopted by at least two-thirds of the votes cast as well as at least two-thirds of the share capital represented at the extraordinary general meeting.

**Share capital**

The current share capital of the Company is DKK 4,714,388.90, divided into 47,143,889 shares of DKK 0.10 each. Each share of DKK 0.10 carries one vote.

**Record date**

The record date is 23:59 p.m. (CET) on 25 January 2017.

**Participation and voting rights**

The right of a shareholder to attend and vote at the extraordinary general meeting is determined by the shares held by the shareholder at the record date.

The number of shares held by each shareholder at the record date shall be calculated based on (i) the number of shares registered in the Company's register of shareholders and (ii) any notification of ownership received by the Company but not yet registered in the Company's register of shareholders.

Participation is conditional on the shareholder having obtained an admission card in due time.

#### **How to obtain an admission card**

Access to the extraordinary general meeting is conditional on the shareholder having requested an admission card by 23:59 p.m. (CET) on 27 January 2017.

Admission cards for the extraordinary general meeting may be obtained by:

- contacting Forward Pharma A/S by phone +45 33 44 42 42, or
- returning the attached request for admission card form, duly completed and signed, by email to fbh@mazanti.dk or by ordinary letter to Mazanti-Andersen Korsø Jensen LLP, Amaliegade 10,1256 Copenhagen K, Denmark, attn. Frederik B. Hasling.

#### **How to submit a proxy**

Proxies shall be submitted by 5:00 p.m. (CET) on 31 January 2017.

Voting instructions by proxy may be completed and submitted by:

- returning the attached proxy form, duly completed and signed, by email to fbh@mazanti.dk or by ordinary letter to Mazanti-Andersen Korsø Jensen LLP, Amaliegade 10,1256 Copenhagen K, Denmark, attn. Frederik B. Hasling.

From shareholders unable to attend the extraordinary general meeting, the Board would appreciate receiving a proxy to exercise the voting rights attached to the shares to know the shareholders' view on the Items on the agenda.

According to Danish law, a proxy issued to the Board for the extraordinary general meeting is only valid if it is in writing and dated.

#### **How to vote by correspondence**

Shareholders may vote by correspondence no later than 5:00 p.m. (CET) on 31 January 2017 by:

- returning the attached voting by correspondence form, duly completed and signed, by email to fbh@mazanti.dk or by ordinary letter to Mazanti-Andersen Korsø Jensen LLP, Amaliegade 10,1256 Copenhagen K, Denmark, attn. Frederik B. Hasling.

Votes by correspondence cannot be withdrawn.

### **Information on the website**

Further information on the extraordinary general meeting will be available on [www.forward-pharma.com](http://www.forward-pharma.com) → 'Investors' until and including the date of the extraordinary general meeting, including:

- The notice convening the extraordinary general meeting, including the agenda and the complete proposals;
- Information about the total number of shares and voting rights on the date of the notice;
- The documents to be presented at the extraordinary general meeting, including the License Agreement and the Addendum;
- The form to be used for request for admission card
- The forms to be used for voting by proxy or voting by correspondence.

17 January 2017

The Board of Forward Pharma A/S represented by its non-disqualified directors