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MYLAN LABORATORIES INC
Form DFAN14A
June 01, 2005

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 ss. 240.14a-12

Mylan Laboratories, Inc.

(Name of Registrant as Specified In Its Charter)

Carl C. Icahn,
Barberry Corp., Hopper Investments LLC and
High River Limited Partnership

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (check the appropriate box):

☒ No fee required.

☐ Fee computed on table below per Exchange Act Rule 14a-6(i)(4) and 0-11.

1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

☐ Fee paid previously with preliminary materials.

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[] Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

- 1) Amount Previously Paid:
- 2) Form, Schedule or Registration Statement No.:
- 3) Filing Party:
- 4) Date Filed:

On June 1, 2005, Carl Icahn issued a press releases attached hereto as Exhibit A.

SECURITY HOLDERS ARE ADVISED TO READ THE PROXY STATEMENT AND OTHER DOCUMENTS RELATED TO SOLICITATION OF PROXIES BY MR. ICAHN AND HIS AFFILIATES FROM THE STOCKHOLDERS OF MYLAN LABORATORIES INC. FOR USE AT ITS ANNUAL MEETING (A) WHEN AND IF THEY BECOME AVAILABLE, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION, INCLUDING INFORMATION RELATING TO THE PARTICIPANTS IN ANY SUCH PROXY SOLICITATION, AND (B) WHEN AND IF COMPLETED, A DEFINITIVE PROXY STATEMENT AND A FORM OF PROXY WHICH WILL BE MAILED TO STOCKHOLDERS OF MYLAN LABORATORIES INC. AND WILL BE AVAILABLE AT NO CHARGE AT THE SECURITIES AND EXCHANGE COMMISSION'S WEBSITE AT [HTTP://WWW.SEC.GOV](http://www.sec.gov). INFORMATION RELATING TO THE POTENTIAL PARTICIPANTS IN A POTENTIAL PROXY SOLICITATION IS CONTAINED IN THE SCHEDULE 13D FILED BY MR. ICAHN AND HIS AFFILIATES WITH THE SECURITIES AND EXCHANGE COMMISSION ON FEBRUARY 28, 2005 WITH RESPECT TO MYLAN LABORATORIES INC. THAT SCHEDULE 13D IS CURRENTLY AVAILABLE AT NO CHARGE ON THE SECURITIES AND EXCHANGE COMMISSION'S WEBSITE.

EXHIBIT A

FOR IMMEDIATE RELEASE

ICAHN CALLS ON MYLAN TO PURSUE HIS \$20 PER SHARE PROPOSAL FOR MYLAN

New York, New York, June 1, 2005
Contact: Susan Gordon (212) 702-4309

On June 1, 2005, High River Limited Partnership delivered the following letter to Mylan Laboratories, Inc.:

HIGH RIVER LIMITED PARTNERSHIP
767 FIFTH AVENUE - 47TH FLOOR
NEW YORK, NEW YORK 10153

June 1, 2005

VIA FAX DELIVERY

Milan Puskar
Chairman of the Board
Mylan Laboratories, Inc.
1500 Corporate Drive
Suite 400
Canonsburg, Pennsylvania 15317-8574

Dear Mr. Puskar:

We consider it to be very fortunate for Mylan shareholders that Mylan did not go forward with its proposed acquisition of King Pharmaceuticals, Inc., which we and other Mylan shareholders criticized from the start. Mylan was willing to pay \$16.66 per share of King stock.¹ Yesterday King stock closed at \$9.46. Frankly, it is hard for us to understand what could have lead the Mylan Board to pursue the proposed King transaction in the first place and we are further baffled by your failure to engage us in discussions regarding our proposal to acquire Mylan.

Six months ago we submitted a \$20 per share proposal to acquire Mylan with no "breakup fee." We have repeatedly indicated that we are available to discuss that proposal with you. Even though the performance of Mylan's generic segment continues to deteriorate (most recently earnings from operations declined 16% in the fourth quarter of fiscal year 2005 compared to the fourth quarter of fiscal year 2004), we continue to stand by our proposal. On Mylan's March 10, 2005 conference call with investors, in reply to a question posed regarding whether Mylan considered itself as an "acquirer" or an "acquiree" in the U.S. generic industry consolidation, Mr. Coury responded that he "would not rule out ... any opportunities." Shockingly, even after making such statement publicly, Mylan has failed to engage in any discussions with us regarding our proposal! As we advised the Board in our prior communications, we anticipate contributing, together with our affiliates, \$1.5 billion of the necessary equity and we believe that after completing the customary due diligence, we will be in position to obtain any additional financing for the acquisition. We are prepared to commence our diligence review immediately. We believe that Mylan's management should let the shareholders decide whether they desire to accept \$20 per share. It is incumbent on Mylan's Board to pursue our proposal and not continue to ignore an opportunity to provide shareholders with the benefits it would provide. We urge you to seize this opportunity for shareholders now, as we remain concerned that, under current management, Mylan will suffer additional deterioration in its business.

We are also concerned that rather than seeking an open sale process for Mylan, the Board may once again pursue an ill-advised transaction that may have a negative impact on Mylan's business and as a result make Mylan a less attractive acquisition candidate. Our sensitivity in this regard has been heightened by the statement made on February 24, 2005 by Mylan's legal counsel that "the reason for the [2005 annual shareholders] meeting being held in October was because of other events that the company anticipates being involved with in the summer" Given your near miss with the King proposal, we are concerned about what other egregious errors Mylan may be on the verge of making.

In that regard, we are also watching diligently to ensure management maximizes the benefits of nebivolol for Mylan shareholders in a timely fashion and does not mishandle this unique opportunity. To date, Mylan has only provided

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limited insight to investors regarding nebivolol. While we are excited for the potential of nebivolol in hypertension, the congestive heart failure market may offer the greatest opportunity to Mylan. We note that over the last twelve months ended March 31, 2005 the two leading brand name beta blockers with indications for congestive heart failure are Toprol-XL (\$1,033MM in U.S. sales) and Coreg (517MM GBP or \$946MM in North American sales at current exchange rates). In a press release dated August 30, 2004, Mylan CEO, Robert Coury, stated "we would like to extend our congratulations to Menarini for having completed a successful heart failure study with nebivolol. These preliminary results provide important additional data and further supports our excitement regarding the potential health benefits nebivolol may hold". However, Mylan has not disclosed whether it has conducted the necessary trials on nebivolol to obtain an FDA indication for congestive heart failure or to properly differentiate nebivolol for use in congestive heart failure from the other brand name beta-blockers. The lack of communication regarding a drug of this potential magnitude is, in our view, wrong and exacerbates our concerns regarding Mylan's plans for nebivolol. We expect that on June 14th, the date of the next investors' presentation scheduled by Mylan, Mylan will finally clarify to investors both its plan for marketing nebivolol and the progress (if any) made to date in attempting to obtain an indication from the FDA for congestive heart failure.

We remind you once again that Mylan's Board should be acting as fiduciaries for all Mylan shareholders. You should not doubt that we will hold Mylan Board members personally responsible and accountable for any failures to properly discharge their duties.

Very truly yours,

High River Limited Partnership

By: Hopper Investments LLC, its general partner

By: Barberry Corp., its sole member

By: /s/ Carl C. Icahn

Carl C. Icahn, Chairman

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1 Based on closing prices of King and Mylan stock on the day prior to your announcement of that transaction.

Nova's solution utilizes X-ray Photoelectron Spectroscopy (XPS) to simultaneously measure composition and thickness of complex film stacks through the fabrication process. The integration of these film stacks is significantly more complicated than previous nodes both in terms of the materials used and their multi-layer composition, requiring sophisticated process control to minimize device variation. The VeraFlex product portfolio provides the requisite sensitivity and precision needed for these challenging measurements.

As a result of this selection, Nova expects more than \$12 million in aggregate business from this customer across 2018 and 2019.

"We are excited about this selection which confirms the applicability of our technology for 5nm and emphasizes the growing need for advanced materials metrology solutions in advanced nodes," said Adrian Wilson, General Manager of Nova's Materials Metrology Division. "In order to achieve better performance in smaller devices, our Logic customers are required to modify their materials strategy beyond the traditional architectural changes. These innovative developments increase the need for Materials control and our available market accordingly. We look forward to additional orders as 5nm moves into volume production and further applications are qualified."

About Nova: Nova is a leading innovator and key provider of metrology solutions for advanced process control used in semiconductor manufacturing. Nova delivers continuous innovation by providing state-of-the-art high-performance metrology solutions for effective process control throughout the semiconductor fabrication lifecycle. Nova's product portfolio, which combines high-precision hardware and cutting-edge software, provides its customers with deep insight into the development and production of the most advanced semiconductor devices. Nova's unique capability to deliver innovative X-ray and Optical solutions enable its customers to improve performance, enhance product yields and accelerate time to market. Nova acts as a partner to semiconductor manufacturers from its offices around the world. Additional information may be found at www.novami.com.

Nova is traded on NASDAQ & TASE under the symbol NVMI.

This press release contains forward-looking statements within the meaning of safe harbor provisions of the Private Securities Litigation Reform Act of 1995 relating to future events or our future performance, such as statements regarding, but are not limited to, anticipated growth opportunities and projections about our business and its future revenues, expenses and profitability. Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied in those forward-looking statements. Factors that may affect our results, performance, circumstances or achievements include, but are not limited to, the following: our dependency on three product lines; our dependency on a small number of large customers and small number of suppliers; the highly cyclical and competitive nature of the markets we target and we operate in; our inability to reduce spending during a slowdown in the semiconductor industry; our ability to respond effectively on a timely basis to rapid technological changes; our dependency on PEMs; risks related to exclusivity obligations and non-limited liability that may be included in our commercial agreements and arrangements; our ability to retain our competitive position despite the ongoing consolidation in our industry; risks related to our dependence on our manufacturing facilities; risks related to changes in our order backlog; risks related to efforts to complete and integrate current and/or future acquisitions; risks related to the worldwide financial instabilities; risks related to our intellectual property; new product offerings from our competitors; unanticipated manufacturing or supply problems; risks related to government programs we participate in; risks related to taxation; changes in customer demand for our products; risks related to currency fluctuations; risks related to technology security threats and changes in privacy laws; risks related to acquisitions we may pursue and risks related to our operations in Israel. We cannot guarantee future results, levels of activity, performance or achievements. The matters discussed in this press release also involve risks and uncertainties summarized under the heading “Risk Factors” in Nova’s Annual Report on Form 20-F for the year ended December 31, 2017 filed with the Securities and Exchange Commission on February 28, 2018. These factors are updated from time to time through the filing of reports and registration statements with the Securities and Exchange Commission. Nova Measuring Instruments Ltd. does not assume any obligation to update the forward-looking information contained in this press release.