



PERSHING SQUARE CAPITAL MANAGEMENT, L.P.

888 SEVENTH AVENUE, 42ND FLOOR
NEW YORK, NY 10019
P: 212-813-3700 F: 212-286-1133

October 24, 2013

The Board of Directors
Herbalife Ltd.
P.O. Box 309GT
Ugland House, South Church Street
Grand Cayman, Cayman Islands

To the Board of Directors of Herbalife Ltd.:

I am sure you are aware that Pershing Square Capital Management, L.P., on behalf of the funds for which it is the investment advisor (collectively, "Pershing Square"), has publicly stated that Herbalife Ltd. ("Herbalife" or the "Company") is an illegal pyramid scheme. We have further maintained that this scheme is focused on defrauding disadvantaged people in both the U.S. and abroad under the guise of "business opportunities" that are, in fact, spurious and hopeless. You, as the board of directors of Herbalife (the "Board"), should know that Pershing Square has brought these issues to the attention of appropriate authorities. We are confident that the authorities will act in the public interest and will take the requisite action to eliminate this scheme.

As directors of a fraudulent public company, you will be held liable, at a minimum, for monetary damages, unless you have met the high standards that apply to a director's performance. You may believe that the likelihood of facing monetary liability if Herbalife were declared an illegal pyramid scheme is slight in light of the D&O coverage that Herbalife has undertaken for your benefit, exculpation clauses in the Company's organizational documents that purport to exculpate you from liability, and indemnification agreements between you and the Company.

If, however, Herbalife were declared an illegal pyramid scheme – and we believe it should and will be – your insurance, exculpation and indemnification protections will be worthless, as will Herbalife. Your D&O coverage will likely be of no value if the Board knowingly allows fraudulent activity to continue. In this case, the Board will not be entitled to insurance coverage and the exculpatory provisions of the Company's organizational documents will not be available for violations of the duty of good faith or the duty of loyalty. Herbalife's indemnification obligations will be obligations of an insolvent company – a risk exacerbated by the Company's ongoing share repurchase program and possible upcoming leveraged

recapitalization, which will diminish assets available not only to protect victims of the Company's misconduct, but also to provide indemnification protection to the Board.

Unlike virtually all reputable U.S. public companies, which are incorporated in Delaware or other domestic jurisdictions, Herbalife is organized as an offshore, Cayman Islands company. Nevertheless, it is likely that the Cayman Islands courts will look to Delaware law, as it is the most highly developed body of corporate law. It is well settled under Delaware law that a board of directors is grossly negligent if it does not establish and monitor the company's information and reporting systems to assure that the business is being conducted properly and legally. For example, in the *Caremark* case, the court stated "a director's obligation includes a duty to attempt in good faith to assure that a corporate information and reporting system, which the board concludes is adequate, exists, and that failure to do so under some circumstances may, in theory at least, render a director liable for losses caused by non-compliance with applicable legal standards." *In re Caremark Int'l, Inc. Derivative Litig.*, 698 A.2d 959 (Del. Ch. 1996); *see also Stone ex rel. AmSouth Bancorp v. Ritter*, 911 A.2d 362 (Del. 2006).

The problems of Herbalife are not hidden or secret nor are they complicated or difficult to discern. Pershing Square has brought these issues to the attention of the public, the regulators, the Company's accountants and this Board. As a result, your continuing failure to explore these issues is likely to be met with an appropriate level of skepticism by a court and a jury. You should therefore not feel comfortable relying on the views of advisors hand-picked by management and retained for the purpose of ensuring management's entrenchment.

In addition to fiduciary duty issues, directors of Herbalife have responsibilities under the U.S. federal and state securities laws, even though the Company is an offshore, Cayman Islands vehicle. For example, under Section 11 of the Securities Act of 1933, 15 U.S.C. § 77k, directors may be liable if an effective registration statement contains an untrue statement of material fact or omits a material fact required to make the statements therein not misleading. Under Sections 10(b) and 18(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b), 78r, directors may be liable for fraudulent acts or untrue statements of material fact in connection with a purchase or sale of securities or false or misleading statements in reports required to be filed with the Securities and Exchange Commission. The standards for proving a director violated securities laws are often less burdensome, and the law offers fewer protections than required to show a breach of fiduciary duty. Securities filings must be entirely complete and accurate. We believe, however, that Herbalife's securities filing have been and continue to be materially false and misleading.

Herbalife directors may also incur liability under certain federal and state fraud and consumer protection statutes, including under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (prohibiting unfair or deceptive acts or practices in commerce) and the New York Martin Act, N.Y. GEN. BUS. LAW § 352 *et seq.* (preventing the use of fraud, deception or concealment to promote the sale of securities and also specifically targeting chain distributor schemes).

In most cases in which independent directors are found personally liable, directors have been found to have failed to properly oversee and monitor the misconduct of management, and

liability can be found for both a breach of fiduciary duty and a violation of securities laws. Below I have provided a few examples of situations in which directors were found personally liable and were required to pay out-of-pocket fines and expenses:

Van Gorkom - The directors accepted a high-premium offer to the company, without informing themselves of the inherent value of the company, thereby violating their fiduciary duties. The directors were found personally liable and were required to pay claims.

WorldCom - The company collapsed because of accounting improprieties and lack of oversight by the board, despite having certified financial statements. In the settlement, directors were required to pay an amount greater than 20% of their net worth.

Enron - Similar to *WorldCom*, the company failed amidst a public scandal as a result of falsified and misleading financial statements, in part due to a lack of board oversight. In the settlement, directors were required to pay millions of dollars in settlement.

Herbalife's business depends upon, among other things, the constant recruitment of large numbers of new distributors into a futile business opportunity, often through lead-generation and other methods. Herbalife itself has warned that lead-generation can entail "misrepresentations" and other "abuses." Recruits cannot be enticed into a business in which most will fail, except through material misrepresentations and deceptions. Herbalife has constructed a compensation system that incentivizes recruitment, and it receives most of its income through such recruitment. Where a multi-level marketing scheme ("MLM") causes and encourages recruitment and reaps the fruits of its own and others' acts, the courts have held the MLM and its directors liable for one another's conduct. *See FTC v. Five-Star Auto Club, Inc.*, 97 F.Supp.2d 502 (S.D.N.Y. 2000); *FTC v. Equinox Int'l, Corp.*, 1999 WL 1425373 (D. Nev. Sept. 14, 1999). In the case of Herbalife, we estimate the damages caused to consumers total many billions of dollars.

In addition to the misconduct by Herbalife and its principals, including its senior-most distributors (Founder's Circle, Chairman's Club and President's Team), as previously described in Pershing Square's December 20, 2012 presentation and subsequent public statements, including correspondence sent to PricewaterhouseCoopers, we urge you to examine closely the following specific issues:

1. The maintenance and development of recruiting tools at the corporate level aimed specifically at undocumented immigrants as distributors. (Related to this, you might conduct a search through corporate records, emails and documents for the phrase "afraid to fly.");
2. The production and distribution of potentially adulterated products, not only in connection with metal filings and black mold in its Lake Forest facilities, but also the distribution of expired, mislabeled, adulterated and otherwise non-compliant product throughout Europe and South Africa;
3. The on-going cover-up of irregularities at the Lake Forest facility;