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Bristol-Myers Wins Investor Support For $74B Celgene Buy

By **Chelsea Naso**

Law360 (April 12, 2019, 3:23 PM EDT) -- Bristol-Myers Squibb shareholders on Friday voted in favor of the pharmaceutical company's planned $74 billion acquisition of Celgene, overcoming pushback on the deal from an activist hedge fund and an institutional investor.

An early tally of shareholder votes shows that 75 percent of the Bristol-Myers Squibb Co. shares voted at the Friday special meeting were cast in favor of acquiring Celgene Corp. About 24 percent of votes were cast against the deal, and roughly 1 percent of votes cast were abstentions.

A handful of Bristol-Myers shareholders spoke during the meeting, which was webcast, with one longtime investor cautioning Bristol-Myers Chairman and CEO Giovani Caforio that while she hoped the deal would be successful, management would be held accountable either way.

"We will hold you to what you said today," the shareholder said.

In a statement issued after the meeting, Caforio said the pharmaceutical company is "pleased with the outcome of the vote."

"Together with Celgene, we will create a premier innovative biopharma company with leading scientific capabilities that is well positioned to address the needs of patients through high-value innovative medicines. We look forward to bringing the companies together, which we believe will deliver significant shareholder value," Caforio added.

Celgene's shareholders also voted in favor of the deal during a separate shareholder meeting Friday, the New Jersey-based company said in a statement. About 70 percent of Celgene's outstanding shares were voted in the company's special meeting, and 98 percent of those votes were cast in favor of the sale to Bristol-Myers.

The tie-up — which Bristol-Myers said is still on track to close during the third quarter — had drawn the ire of activist investor Starboard Value LP and traditionally passive institutional investor Wellington Management Co. LLP.

Starboard had argued that Bristol-Myers' acquisition of Celgene did not make sense at any price point, contending the combination will create a steep patent cliff. The activist hedge fund urged Bristol-Myers to abandon the transaction and instead look at selling itself or divesting assets.

The activist investor, however, abandoned its efforts to solicit votes against the transaction on March 29, hours after proxy advisory firms Institutional Shareholder Services and Glass Lewis & Co. LLC issued opinions in favor of the transaction.

Starboard at the time said it was "extremely disappointed" and acknowledged that overcoming that conclusion would be "extremely difficult."

Massachusetts-based Wellington Management Co. LLP had in February issued its own statement against the planned deal, saying that the deal requires Bristol-Myers Squibb shareholders "to accept too much risk." The institutional investor also contended that the terms would give Celgene investors Bristol-Myers Squibb stock "at a price well below implied asset value" and added that it has concerns that executing the deal successfully "could be more difficult to achieve" than management has said.

Bristol-Myers Squibb unveiled its cash-and-stock deal for New Jersey-based Celgene on Jan. 3. The deal's terms call for each Celgene share to be swapped for one Bristol-Myers Squibb share, $50 in cash and one tradable contingent value right tied to future regulatory milestones. Celgene investors are expected to hold about 31 percent of the combined company.

Bristol-Myers Squibb plans to finance the deal with a combination of cash on hand and debt financing, the pharmaceutical company said at the time.

The Bristol-Myers-Celgene transaction is the second megadeal to secure shareholder approval this week in spite of discontent expressed publicly by some of the acquirer's investors.

Colorado's Newmont Mining Corp. on Thursday secured approval from its stockholders to move forward with its anticipated $10 billion all-stock takeover of Goldcorp. Inc.

The vote came after Canada's Barrick Gold Corp. in March abandoned an $18 billion hostile pursuit of Newmont that would have derailed Newmont's Goldcorp takeover in favor of a joint venture agreement involving their overlapping Nevada assets.

It also followed outcry from Newmont investor Paulson & Co., who had contended that the deal's current terms are "dilutive to Newmont shareholders."

Paulson & Co., which owns 14.2 million Newmont shares, said in a letter to Goldberg that while it has faith in the company's ability to derive value from the Goldcorp acquisition, it believes the deal premium is too high given Goldcorp's performance and terms will give Goldcorp shareholders too much of the anticipated value from the Nevada joint venture.

Goldcorp's shareholders approved the deal on April 4.

Bristol-Myers Squibb is represented on the transaction by Kirkland & Ellis LLP and its in-house legal team. Mayer Brown LLP is also advising on intellectual property matters.

Celgene is represented on the transaction by Wachtell Lipton Rosen & Katz. Jones Day is also advising on intellectual property matters.

Counsel information for Starboard and Wellington Management was not immediately available.

Newmont Mining is represented by Wachtell Lipton Rosen & Katz, Goodmans LLP and White & Case LLP. BMO Capital Markets, Citigroup Inc. and Goldman Sachs Group Inc. are acting as financial advisers.

Goldcorp is represented by Cassels Brock & Blackwell LLP and Neal Gerber & Eisenberg LLP. TD Securities and Bank of America Merrill Lynch are acting as financial advisers.

Barrick is represented by Cravath Swaine & Moore LLP and Davies Ward Phillips & Vineberg LLP. CIBC Capital Markets and M. Klein and Co. Inc. are acting as financial advisers.

--Editing by John Campbell.