

**OPEN LETTER TO SHAREHOLDERS OF MERRIMACK PHARMACEUTICALS, INC.****Re: *Proposals 4 & 5 Contained in Definitive Proxy Statement for 2020 Annual Meeting***

Dear Fellow Shareholders:

As you may have noticed, our company, Merrimack Pharmaceuticals, Inc. (“MACK”), filed its definitive proxy statement for the 2020 annual meeting of shareholders on April 22<sup>nd</sup>, with the meeting currently scheduled for May 28<sup>th</sup>.<sup>1</sup> The undersigned, CIO of Seven Corners Capital Management, LLC, currently owns 30,000 shares of MACK stock, all of which were purchased using my own capital. The value of my MACK holdings represents a meaningful percentage of my personal net worth. Therefore, unlike the various investment funds (unfortunately, far too plentiful) whose MACK holdings represent a *de minimus* portion of their AUM, I am strongly incentivized to care deeply about whether shareholder value is being created by our board of directors for all MACK shareholders (not just those few select shareholders that happen also to be company insiders)—in other words, my interests are completely aligned with yours. I am writing to express my views on two of the proposals that are up for a vote at the upcoming annual meeting; namely, Proposal #4 (Approval of the Section 382 Plan) and Proposal #5 (Stockholder Proposal to Require an Independent Board Chair). **AS OF TODAY, I INTEND TO VOTE AGAINST PROPOSAL #4 AND FOR PROPOSAL #5 (I.E., IN EACH CASE *AGAINST* OUR BOARD’S RECOMMENDATIONS), AND URGE YOU TO DO THE SAME.** I discuss my voting rationale regarding each such proposal in further detail below.

**PROPOSAL 4 - Approval of the Section 382 Plan**

This proposal concerns the company’s so-called “Section 382 Rights Plan”, dated as of December 3, 2019 (also known as a “poison pill”), which limits the amount of additional MACK stock that 5% shareholders may acquire above and beyond their outstanding holdings as of such date, unless given prior permission to do so by the company’s board of directors. Proposal 4 requests that MACK’s shareholders approve the plan that was **unilaterally adopted** by the board and put in place **without shareholder consent** nearly 5 months ago. If shareholders vote against Proposal 4 at the annual meeting, the poison pill will immediately terminate and no longer have any force or effect.

In the proxy statement (page 26), MACK has provided the following rationale for imposing this restriction on the right of certain shareholders to acquire additional stock:

“Although we are unable to quantify an exact value for the benefits that [MACK’s] NOLs may ultimately provide to the Company, we believe that the NOLs are a potentially valuable asset and the board believes it is in the Company’s best interests to attempt to protect this asset by preventing the imposition of limitations on their use. The benefits of the NOLs would be reduced, and our use of the NOLs would be substantially delayed or potentially lost, if we experience an ‘ownership change,’ as determined under Section 382 of the Internal Revenue Code, as amended, and applicable Treasury Regulations.

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<sup>1</sup> <https://www.sec.gov/Archives/edgar/data/1274792/000119312520115075/d915878ddef14a.htm>



Shareholders considering this rationale should note that, in my opinion, it is overbroad and unjustified, and (unless management makes certain commitments regarding consideration of waivers, which I describe below) I urge you to vote **AGAINST** Proposal 4, for the following reasons:

1. *Failure to Explain the Pill's Rationale Fully or Consider Contrary Arguments:* MACK states in the proxy that “the Company’s accountants performed an analysis for the relevant period and did not identify any events that, either individually or cumulatively, would result in an ‘ownership change’ for such relevant period”. Considering this fact, MACK’s board’s failure to address whether less restrictive (and more shareholder friendly) alternatives might be available to protect the NOLs than a blanket poison pill is indeed puzzling. Nor has the board, in presenting the proposal, given shareholders any clue as to how much headroom is available under the Section 382 rules for the current 5% owners to acquire additional stock and not jeopardize MACK’s tax assets. Is this headroom substantial or minuscule? (MACK leaves its shareholders in the dark.) **And while MACK asserts that the pill advances shareholder interests, the board fails to mention a key countervailing consideration, namely that the pill could by its operation severely constrict the universe of MACK purchasers over the next two years.** Given the dynamics of supply and demand, existing shareholders should logically prefer more buyers, rather than fewer, of MACK equity, and should especially hope that those holders who have previously indicated a willingness to buy substantial amounts of MACK, i.e., >5% holders, not be restricted from acquiring more stock. **Shouldn’t the benefit of preserving our NOLs be weighed against the cost of drastically limiting large shareholders’ ability to purchase additional MACK stock until 2022 (if not later, assuming the pill is further extended)?** This category of holders includes activists willing to hold our board and management accountable for producing actual results. MACK admits in the proxy that “stockholder approval of the Rights Plan is not required by applicable law or by our Restated Certificate of Incorporation, as amended, Amended and Restated Bylaws or other governing document”, yet at the same time claims that it is requesting our approval of the pill “as a matter of good corporate governance”. However, in my view a board espousing good corporate governance would not request approval of a possibly overbroad remedy for a theoretical problem that might be addressed more narrowly, which remedy effectively entrenches incumbent directors and management, all the while using one-sided arguments to do so.

2. *MACK’s Board and Management Created the Problem They Claim to Fix:* MACK’s failure to successfully engage with potential buyers of the Ipsen contingent value rights, or CVRs<sup>2</sup>, on our balance sheet created the problem which is meant to be addressed by the poison pill in the first place. **In other words, if the board and management had shown a greater sense of urgency in marketing these CVR assets to potential third-party buyers over the past few years, the Ipsen CVRs might already have been monetized and our NOLs already substantially utilized (and there would be no need**

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<sup>2</sup> As a reminder, MACK is entitled to receive up to an aggregate of \$450 million in potential regulatory-based milestones from Ipsen S.A., as well as up to approximately \$54.5 million in potential milestone payments from Elevation Oncology, Inc. (formerly known as 14ner Oncology, Inc.)

to institute a pill). At our 2019 annual meeting, which I attended in person, MACK Board Chairman Gary Crocker stated that he is in regular communication with Ipsen, but that Ipsen has no desire to purchase the CVRs. Are we simply supposed to take his word for this? What if Ipsen changes its mind—is our board just going to sit around and wait for the phone to ring? Where is the sense of urgency? Perhaps a clue lies in who is making these decisions on our behalf. If anyone would be incentivized NOT to sell these CVRs (note that the failure to do so provides a convenient excuse never to liquidate MACK), it would be someone in Mr Crocker’s position. He would be likely to reap substantial benefits as our chief executive and board chairman, both reputational and monetary, if MACK survives indefinitely as a going concern, and especially so if he ultimately backtracks on prior promises to pay out all CVR proceeds to shareholders and instead uses such funds to resurrect MACK’s drug development program, with himself at the helm.

3. *MACK Has Not Enforced the Pill Against Insiders*: Last but certainly not least, MACK has apparently already provided waivers from the restrictions contained in the pill to both Western Standard and Newtyn Partners (both 5% holders and represented on our board of directors). We know this because both such entities have been making open market purchases of MACK stock in April 2020, as shown below<sup>3</sup>.

Transaction Date	Reporting Owner	Form	Transaction Type	Number of Securities Transacted
4/21/20	Levy Noah G.	<a href="#">4</a>	P-Purchase	591
4/21/20	Levy Noah G.	<a href="#">4</a>	P-Purchase	833
4/21/20	Andersen Eric	<a href="#">4</a>	P-Purchase	1,424
4/20/20	Levy Noah G.	<a href="#">4</a>	P-Purchase	965
4/20/20	Levy Noah G.	<a href="#">4</a>	P-Purchase	1,360
4/20/20	Andersen Eric	<a href="#">4</a>	P-Purchase	2,325
4/7/20	Andersen Eric	<a href="#">4</a>	P-Purchase	5,899
4/7/20	Levy Noah G.	<a href="#">4</a>	P-Purchase	2,448
4/7/20	Levy Noah G.	<a href="#">4</a>	P-Purchase	3,451
4/6/20	Levy Noah G.	<a href="#">4</a>	P-Purchase	2,507
4/6/20	Levy Noah G.	<a href="#">4</a>	P-Purchase	3,535
4/6/20	Andersen Eric	<a href="#">4</a>	P-Purchase	6,043
4/3/20	Levy Noah G.	<a href="#">4</a>	P-Purchase	4,461
4/3/20	Levy Noah G.	<a href="#">4</a>	P-Purchase	6,289
4/3/20	Andersen Eric	<a href="#">4</a>	P-Purchase	10,750

Why should select preferred insiders receive waivers while other 5% holders are out in the cold? Is it MACK’s intent to provide waivers only to shareholders who are sympathetic to Mr Crocker’s future plans and ambitions for MACK, while simultaneously tilting the annual meeting voting results in the board’s favor on Proposals 4 and 5? How does granting waivers to certain directors who have openly backed Mr Crocker and the status quo (as indicated by the fact that the board unanimously supports all of MACK’s proposals while unanimously opposing the sole shareholder proposal in the proxy), while apparently ignoring other 5% holders, jibe with our board’s fiduciary

<sup>3</sup> <https://www.sec.gov/cgi-bin/own-disp?action=getissuer&CIK=0001274792>



duties to all shareholders?

For the foregoing reasons, I believe that MACK shareholders should demand, before we sign off on approving the poison pill for another two years, that MACK's board publicly declare that it will engage in good faith and on an expeditious basis to permit all existing 5% shareholders who wish to purchase additional stock to receive waivers from the pill on an even playing field (i.e., pro rata based on their respective current holdings, to the extent waivers can be granted while still preserving the value of the NOLs). The object of a pill, properly constituted, should be to protect the value of the NOLs, not protect certain insiders from accountability at the expense of the rest of the company's owners. Once our "YES" votes are in and counted on Proposal 4, however, our leverage as shareholders will be gone on this issue for the foreseeable future. **PLEASE VOTE "AGAINST" PROPOSAL 4 UNLESS THE BOARD PUBLICLY COMMITS TO TREAT ALL >5% SHAREHOLDERS FAIRLY AND EQUALLY WITH RESPECT TO THE PILL.**

**PROPOSAL 5 – Stockholder Proposal to Require an Independent Board Chair**

Proposal 5 is a precatory shareholder proposal to amend our company charter and/or bylaws, as necessary, to require the Chair of our Board of Directors, whenever possible, to be a non-management, independent member of the Board. Despite MACK's board's unanimous recommendation against Proposal 5, I believe that a vote "**FOR**" this proposal is warranted for the following reasons:

1. Board Retains Flexibility: The proposal is an advisory-only, non-binding request by the shareholders to the MACK board. It does not require our board to take any specific action; instead, it is simply an expression of the will of the shareholders (assuming it is adopted at the annual meeting), to be implemented in whatever manner the board deems fit. In addition, Proposal 5 is by its language narrowly tailored to avoid illogical or draconian outcomes. The resolution states that separation of the board chair and CEO (or President, if applicable) roles may be "waived so long as no independent director is available and willing to serve as Chair". Importantly, any incumbent director who happens to be a member of management (such as Mr Crocker currently) could remain on the board, just not in the capacity as chairman. Thus, it would not result in any director arbitrarily being forced off of our board, nor would it result in any officer of our company being forced out of his or her respective executive position.

2. Separation of Roles Represents Optimal Corporate Governance: Corporate governance best practices stipulate that the positions of board chairman and principal executive officer almost always be separated. So long as Mr Crocker serves as MACK's board chairman as well as principal executive officer, as he's currently doing, he's effectively acting as his own boss, which is obviously not optimal from a governance perspective. Also, our company has previously defended this separation of roles. For example, Section B.5 of MACK's own corporate governance guidelines posted on its website state that these should be "separate offices", which I presume means held by different people.

Additionally, page 8 of the 2018 MACK proxy statement<sup>4</sup> states that “[o]ur board of directors decided to separate the roles of Chairman of the Board and Chief Executive Officer because it believes that a bifurcated leadership structure offers [numerous] benefits” (please see the shareholder supporting statement to Proposal 4 in the proxy statement regarding these benefits). Of course, this occurred during a time when Mr Crocker was not our CEO. Apparently, it suited Mr Crocker just fine in 2018 to mandate that the roles be separated (this separation increased his power, since he was then the board chairman), yet when it would (as now) reduce his authority he has reversed his position.

Speaking more philosophically, a board chairman is supposed to stand in the shoes of the shareholders and act as the guardian of shareholder interests. Not only should this person normally *not* be the CEO or principal executive officer, but ideally he or she should also be a major shareholder. I am not alone in the above views on separation of the CEO and chairman roles. Glass Lewis has the following to say on the issue, per page 6 from its “2020 PROXY PAPER GUIDELINES” (*emphasis added*)<sup>5</sup>:

Glass Lewis believes that separating the roles of CEO (or, more rarely, another executive position) and chair creates a better governance structure than a combined CEO/chair position. An executive manages the business according to a course the board charts. Executives should report to the board regarding their performance in achieving goals set by the board. **This is needlessly complicated when a CEO chairs the board, since a CEO/chair presumably will have a significant influence over the board.**

While many companies have an independent lead or presiding director who performs many of the same functions of an independent chair (e.g., setting the board meeting agenda), we do not believe this alternate form of independent board leadership provides as robust protection for shareholders as an independent chair.

**It can become difficult for a board to fulfill its role of overseer and policy setter when a CEO/chair controls the agenda and the boardroom discussion. Such control can allow a CEO to have an entrenched position, leading to longer-than-optimal terms, fewer checks on management, less scrutiny of the business operation, and limitations on independent, shareholder-focused goal-setting by the board.**

A CEO should set the strategic course for the company, with the board’s approval, and the board should enable the CEO to carry out the CEO’s vision for accomplishing the board’s objectives. Failure to achieve the board’s objectives should lead the board to replace that CEO with someone in whom the board has confidence.

Likewise, an independent chair can better oversee executives and set a pro-shareholder agenda without the management conflicts that a CEO and other executive insiders often face. Such oversight and concern for shareholders allows for a more proactive and elective board of directors that is better able to look out for the interests of shareholders. Further, it is the board’s responsibility to select a chief executive who can best serve a company and its shareholders and to replace this person when his or her duties have not been appropriately fulfilled. **Such a replacement becomes more difficult and happens less frequently when the chief executive is also in the position of overseeing the board.**

<sup>4</sup> [https://www.sec.gov/Archives/edgar/data/1274792/000156459018009499/mack-def14a\\_20180612.htm#HOW\\_OUR\\_BOARD\\_IS\\_ORGANIZED](https://www.sec.gov/Archives/edgar/data/1274792/000156459018009499/mack-def14a_20180612.htm#HOW_OUR_BOARD_IS_ORGANIZED)

<sup>5</sup> [https://www.glasslewis.com/wp-content/uploads/2016/11/Guidelines\\_US.pdf](https://www.glasslewis.com/wp-content/uploads/2016/11/Guidelines_US.pdf)





Glass Lewis believes that the installation of an independent chair is almost always a positive step from a corporate governance perspective and promotes the best interests of shareholders. Further, the presence of an independent chair fosters the creation of a thoughtful and dynamic board, not dominated by the views of senior management. Encouragingly, many companies appear to be moving in this direction—one study indicates that only 10 percent of incoming CEOs in 2014 were awarded the chair title, versus 48 percent in 2002. Another study finds that 50 percent of S&P 500 boards now separate the CEO and chair roles, up from 37 percent in 2009, although the same study found that only 30 percent of S&P 500 boards have truly independent chairs.

We do not recommend that shareholders vote against CEOs who chair the board. However, we typically recommend that our clients support separating the roles of chair and CEO whenever that question is posed in a proxy (typically in the form of a shareholder proposal), as we believe that it is in the long-term best interests of the company and its shareholders.

Apparently, MACK's directors do not agree with the above, since they have unanimously opposed Proposal 5. Perhaps none of the directors besides Mr Crocker want to take on the time commitment that the chairman role entails. However, while MACK remains in its current dormant state, MACK's board chair duties should be minimal. **And if there comes a time when substantive business issues need to be addressed (such as the monetization of the CVRs), that is *exactly* when we as shareholders would want an independent board chairman in charge.** This begs the following question: If MACK's incumbent directors (other than Mr Crocker) are unwilling to serve as board chairman, then why are they on the board? Are they simply there to rubber stamp Mr Crocker's decisions?

3. *Board Chair Should Be An Expert Capital Allocator*: A key role of any competent board chairman is to supervise and, where necessary, rein in the decisions of a company's senior management (which often tend towards value-destructive empire building). Thus, the chair should be somebody with demonstrated effective capital allocation skills. **How is a chairperson supposed to judge whether management is allocating shareholders' capital to its highest and best use, if he or she has no track record of doing so previously?** Consider Berkshire Hathaway. Under its pre-1965 regime, Berkshire floundered for years because it illogically reinvested all of its funds from operations in a declining industry (textiles). The company's board was headed by someone who, in the words of Warren Buffett's official biographer, "refused to give up his dream of reviving the [company's] mills" despite all contrary evidence<sup>6</sup>. However, after Buffett took over as board chairman in 1965, Berkshire channeled its available capital into high ROI opportunities, for example in the insurance sector with the acquisition of National Indemnity Company in 1967. The results are in—the latter approach is far better! But Berkshire's turnaround only occurred after a brilliant capital allocator took over as head of the company's board of directors. Failing this, the board would undoubtedly have continued mindlessly destroying its shareholders' wealth by doubling down on textiles, just as they had previously.

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<sup>6</sup> See Alice Schroeder, *The Snowball*, Chapter 27. <https://www.amazon.com/Snowball-Warren-Buffett-Business-Life/dp/0553384619>



Turning to our company, unfortunately Mr Crocker's long track record at MACK evidences an inability to allocate capital effectively. In the 15 years since Mr Crocker first became MACK's board chairman in 2005, the company has accumulated \$544 million in net losses, or about 97% of the entire net capital raised in the company's history. Even after adding back all dividends paid to shareholders to date, the stock at its recent \$3.58/share level (as of April 23<sup>rd</sup>) is down 78% from its 2012 IPO price<sup>7</sup>. In addition, since the beginning of 2014, MACK has, according to its public filings, spent approximately \$435MM in R&D on the following business initiatives collectively: MM-121, MM-141 (abandoned in September 2018), MM-310 (abandoned in April 2019), and other preclinical general research and discovery, with very little to show for these expenditures. The only apparent payoff to date from these investments has been (1) a \$3.5MM upfront cash payment, plus up to \$54.5MM in future CVR payments, from Elevation Oncology for MM-121 and MM-111, and (2) a \$2.25MM cash payment in March 2020 for certain nanoliposome assets.

It is quite possible that the value of MACK's equity is depressed<sup>8</sup> because the market recognizes that Mr Crocker retains effective control over the company by virtue of being both the principal executive officer and the board chairman. Given his poor historical track record of generating value for MACK shareholders, many investors have probably assigned MACK to the dreaded "dead money" category of stocks for the foreseeable future. Permanent separation of the board chair and principal executive officer roles should be a significant benefit to the company and would, I presume, lead to a substantial increase in the share price over time as investors gain confidence that MACK will institute those corporate governance best practices needed for proper oversight of management. Simply put, having a board chair skilled in capital allocation is essential to insure that MACK's remaining assets will be effectively monetized and all proceeds returned to shareholders in the most tax efficient manner possible. **THEREFORE, I URGE ALL MACK SHAREHOLDERS WHO CARE ABOUT INCREASING THE VALUE OF THEIR INVESTMENT IN OUR COMPANY TO VOTE "FOR" PROPOSAL 5 (INDEPENDENT BOARD CHAIRMAN).**

Sincerely,

Scott Klarquist  
Seven Corners Capital Management, LLC

**THIS IS NOT A SOLICITATION OF AUTHORITY TO VOTE YOUR PROXY. PLEASE DO NOT SEND ME YOUR PROXY CARD; I AM NOT ABLE TO VOTE YOUR PROXIES, NOR DOES THIS COMMUNICATION CONTEMPLATE SUCH AN EVENT.**

<sup>7</sup> Adjusted for a 1-for-10 reverse stock split in September 2017, MACK has paid out approximately \$12/share in dividends. The company IPO'd at a split-adjusted price of \$70/share. (Source: MACK SEC filings.)

<sup>8</sup> With an enterprise value of approximately \$32MM (\$48MM market capitalization at 4/23/20, less \$16MM net cash on the balance sheet as of 12/31/19), MACK is now being valued by the market at just 7% of the aggregate face value of the Ipsen CVRs.