

MICROFLUIDICS INTERNATIONAL CORP

Form SC 14D9/A

February 08, 2011

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14D-9
SOLICITATION/RECOMMENDATION STATEMENT
UNDER SECTION 14(d)(4) OF THE
SECURITIES EXCHANGE ACT OF 1934
(AMENDMENT NO. 2)**

MICROFLUIDICS INTERNATIONAL CORPORATION
(Name of Subject Company)

MICROFLUIDICS INTERNATIONAL CORPORATION
(Name of Person Filing Statement)

Common Stock, par value \$0.01 per share
(Title of Class of Securities)

595074105
(CUSIP Number of Class of Securities)

Michael C. Ferrara
President and Chief Executive Officer

30 Ossipee Road
Newton, Massachusetts 02464
(617) 969-5452

*(Name, Address, and Telephone Number of Person Authorized to Receive
Notices and Communications on Behalf of the Person Filing Statement)*

With a copy to:

Jonathan L. Kravetz, Esq.

Megan N. Gates, Esq.

Daniel H. Follansbee, Esq.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

One Financial Center

Boston, MA 02111

(617) 542-6000

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

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Item 8. Additional Information.

Item 9. Exhibits.

SIGNATURE

INDEX TO EXHIBITS

Ex-(a)(1)(O)

Ex-(a)(5)(A)

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This Amendment No. 2 amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 initially filed with the Securities and Exchange Commission (the SEC) on January 25, 2011, as amended by Amendment No. 1 filed on January 31, 2011 (as previously filed with the SEC, and as the same may further be amended or supplemented from time to time, the Schedule 14D-9), by Microfluidics International Corporation, a Delaware corporation (Microfluidics or the Company), relating to the offer (the Offer) by Nano Merger Sub, Inc., a Delaware corporation (Purchaser) and a wholly owned subsidiary of IDEX Corporation, a Delaware corporation (IDEX), as set forth in a Tender Offer Statement filed by IDEX and Purchaser on Schedule TO, dated January 25, 2011, as amended by Amendment No. 1 filed on January 28, 2011 (as previously filed with the SEC, and as the same may further be amended or supplemented from time to time, the Schedule TO), to purchase all outstanding shares of common stock, par value \$0.01 per share (the Shares) of Microfluidics, at a purchase price of \$1.35 per Share, net to the selling stockholders in cash, without interest thereon and less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated January 25, 2011, and in the related Letter of Transmittal, copies of which are filed with the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. Any capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Schedule 14D-9.

Item 8. Additional Information.

Section (h) of Item 8 of the Schedule 14D-9 is hereby amended and restated in its entirety as set forth below:

(h) Legal Proceedings

On January 14, 2011, as amended on January 28, 2011, a putative shareholder class action lawsuit was filed by a single plaintiff, Joseph P. Daly, against the Company, members of the Company's Board of Directors, IDEX and Purchaser in the Court of Chancery of the State of Delaware. The action alleges, among other things, that the members of the Company's Board of Directors violated their fiduciary duties by failing to maximize shareholder value when negotiating and entering into the Merger Agreement and that the Schedule 14D-9 Solicitation/Recommendation Statement filed by the Company on January 25, 2011 contained inadequate disclosure in certain respects. The complaint alleges that IDEX and Purchaser aided and abetted those purported violations of fiduciary duties. The plaintiff seeks, among other things, to enjoin the acquisition of the Company by Purchaser and IDEX or, in the alternative, to rescind the acquisition should it occur before the lawsuit is resolved.

On January 20, 2011, as amended on February 1, 2011, a putative shareholder class action lawsuit was filed by a single plaintiff, Paul Shumsky, against the Company, members of the Company's Board of Directors, IDEX and Purchaser in the Massachusetts Superior Court (Middlesex County). The action alleges, among other things, that the members of the Company's Board of Directors violated their fiduciary duties by failing to maximize shareholder value when negotiating and entering into the Merger Agreement and that the Schedule 14D-9 Solicitation/Recommendation Statement filed by the Company on January 25, 2011 contained inadequate disclosure in certain respects. The complaint alleges that IDEX and Purchaser aided and abetted those purported violations of fiduciary duties. The plaintiff seeks, among other things, to enjoin the acquisition of the Company by Purchaser and IDEX. On February 3, 2011, the Massachusetts Superior Court (Middlesex County) granted the defendant's motion to stay the proceedings in this matter pending resolution of the Delaware litigation described above.

The Company believes that the allegations in the complaints are without merit and intends to vigorously defend these actions. The foregoing summary of the complaints does not purport to be complete and is qualified in its entirety by reference to the complaints, which have been filed with the SEC as exhibits to the Schedule 14D-9, and which are incorporated herein by reference.

Item 9. Exhibits.

Item 9 of the Schedule 14D-9 is hereby supplemented by adding the following exhibits:

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Exhibit No. Description

- (a)(1)(N) Amended Complaint filed in the Court of Chancery of the State of Delaware, captioned Joseph P. Daly v. Michael Ferrara, George Uveges, Leo Roy, Eric Walters, Henry Kay, Stephen Robinson, Microfluidics International Corporation, IDEX Corporation, and Nano Merger Sub, Inc., C.A. No. 6126-VCS, dated January 28, 2011 (incorporated herein by reference to Exhibit (a)(1)(J) to the Schedule TO of IDEX and Purchaser initially filed with the SEC on January 25, 2011, and amended on January 28, 2011).
- (a)(1)(O) Amended Complaint filed in the Massachusetts Superior Court for Middlesex County, captioned Paul Shumsky v. Microfluidics International Corporation; IDEX Corporation; Nano Merger Sub, Inc.; George Uveges; Eric G. Walters; Henry Kay; Leo Pierre Roy; Michael C. Ferrara; and Stephen J. Robinson, C.A. No. 11-0186, dated February 1, 2011 (filed herewith).
- (a)(5)(A) Notice to Microfluidics International Corporation's stock option holders, delivered by Microfluidics International Corporation on February 8, 2011 (filed herewith).
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SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: February 8, 2011

**MICROFLUIDICS INTERNATIONAL
CORPORATION**

By: /s/ Michael C. Ferrara
Michael C. Ferrara
President and Chief Executive Officer

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- (a)(1)(A)*+ Letter to Stockholders of the Company, dated January 25, 2011, from Michael C. Ferrara, President and Chief Executive Officer of the Company.
- (a)(1)(B)* Information Statement Pursuant to Section 14(f) of the Securities Exchange Act of 1934, as amended, and Rule 14f-1 thereunder (included as Annex I to the Schedule 14D-9 filed with the SEC on January 25, 2011).
- (a)(1)(C) Offer to Purchase, dated January 25, 2011 (incorporated herein by reference to Exhibit (a)(1)(A) to the Schedule TO of IDEX and Purchaser filed with the SEC on January 25, 2011).
- (a)(1)(D) Form of Letter of Transmittal (incorporated herein by reference to Exhibit (a)(1)(B) to the Schedule TO of IDEX and Purchaser filed with the SEC on January 25, 2011).
- (a)(1)(E) Form of Notice of Guaranteed Delivery (incorporated herein by reference to Exhibit (a)(1)(C) to the Schedule TO of IDEX and Purchaser filed with the SEC on January 25, 2011).
- (a)(1)(F) Form of Letter to Brokers, Dealers, Banks, Trust Companies and other Nominees (incorporated herein by reference to Exhibit (a)(1)(D) to the Schedule TO of IDEX and Purchaser filed with the SEC on January 25, 2011).
- (a)(1)(G) Form of Letter to Clients for use by Brokers, Dealers, Banks, Trust Companies and other Nominees (incorporated herein by reference to Exhibit (a)(1)(E) to the Schedule TO of IDEX and Purchaser filed with the SEC on January 25, 2011).
- (a)(1)(H)* Opinion of America's Growth Capital, LLC, to the Board of Directors of the Company dated January 10, 2011 (included as Annex II to the Schedule 14D-9 filed with the SEC on January 25, 2011).
- (a)(1)(I) Joint Press Release issued by the Company and IDEX, dated January 11, 2011 (incorporated herein by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K filed with the SEC on January 11, 2011).
- (a)(1)(J) Summary Advertisement as published on January 25, 2011 in Investor's Business Daily (incorporated herein by reference to Exhibit (a)(1)(G) to the Schedule TO of IDEX and Purchaser filed with the SEC on January 25, 2011).
- (a)(1)(K) Press Release issued by IDEX, dated January 25, 2011 (incorporated herein by reference to Exhibit (a)(1)(H) to the Schedule TO of IDEX and Purchaser filed with the SEC on January 25, 2011).
- (a)(1)(L) + Complaint filed in the Court of Chancery of the State of Delaware, captioned Joseph P. Daly v. Michael Ferrara, George Uveges, Leo Roy, Eric Walters, Henry Kay, Stephen Robinson, Microfluidics International Corporation, IDEX Corporation, and Nano Merger Sub, Inc., C.A. No. 6126, dated January 14, 2011.
- (a)(1)(M) + Complaint filed in the Massachusetts Superior Court for Middlesex County, captioned Paul Shumsky v. Microfluidics International Corporation; George Uveges; Eric G. Walters; Henry Kay; Leo Pierre Roy; Michael C. Ferrara, dated January 20, 2011.

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- (a)(1)(N) Amended Complaint filed in the Court of Chancery of the State of Delaware, captioned Joseph P. Daly v. Michael Ferrara, George Uveges, Leo Roy, Eric Walters, Henry Kay, Stephen Robinson, Microfluidics International Corporation, IDEX Corporation, and Nano Merger Sub, Inc., C.A. No. 6126-VCS, dated January 28, 2011 (incorporated herein by reference to Exhibit (a)(1)(J) to the Schedule TO of IDEX and Purchaser initially filed with the SEC on January 25, 2011, and amended on January 28, 2011).
 - (a)(1)(O) Amended Complaint filed in the Massachusetts Superior Court for Middlesex County, captioned Paul Shumsky v. Microfluidics International Corporation; IDEX Corporation; Nano Merger Sub, Inc.; George Uveges; Eric G. Walters; Henry Kay; Leo Pierre Roy; Michael C. Ferrara; and Stephen J. Robinson, C.A. No. 11-0186, dated February 1, 2011 (filed herewith).
 - (a)(5)(A) Notice to Microfluidics International Corporation's stock option holders, delivered by Microfluidics International Corporation on February 8, 2011 (filed herewith).
 - (a)(5)(B) Letter from Michael C. Ferrara, President and Chief Executive Officer of the Company, distributed on January 11, 2011 to the Company's stockholders regarding the proposed acquisition (incorporated herein by reference to the Schedule 14D-9C of the Company filed with the SEC on January 11, 2011).
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- (a)(5)(C) E-mail from Michael C. Ferrara, President and Chief Executive Officer of the Company, distributed on January 11, 2011 to the Company's employees regarding the proposed acquisition (incorporated herein by reference to the Schedule 14D-9C of the Company filed with the SEC on January 11, 2011).
- (a)(5)(D) Letter from Michael C. Ferrara, President and Chief Executive Officer of the Company, distributed on January 11, 2011 to the Company's customers regarding the proposed acquisition (incorporated herein by reference to the Schedule 14D-9C of the Company filed with the SEC on January 11, 2011).
- (a)(5)(E) Letter from Michael C. Ferrara, President and Chief Executive Officer of the Company, distributed on January 11, 2011 to the Company's sales representatives regarding the proposed acquisition (incorporated herein by reference to the Schedule 14D-9C of the Company filed with the SEC on January 11, 2011).
- (a)(5)(F) Transcript of the Company's conference call held on January 11, 2011 at 8:30 a.m. (Eastern time) regarding the proposed acquisition (incorporated herein by reference to the Schedule 14D-9C of the Company filed with the SEC on January 11, 2011).
- (e)(1) Agreement and Plan of Merger, dated January 10, 2011, by and among IDEX, Purchaser and the Company (incorporated herein by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the SEC on January 11, 2011).
- (e)(2) Amended and Restated Employment Agreement, dated as of December 4, 2009, by and between Michael C. Ferrara and the Company (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on December 8, 2009).
- (e)(3) Employee Agreement by and between the Company and Peter F. Byczko dated September 1, 2010 (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on September 8, 2010).
- (e)(4) Employee Agreement by and between the Company and William J. Conroy dated September 3, 2010 (incorporated herein by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the SEC on September 8, 2010).
- (e)(5) Summary of Compensation Arrangements including Discretionary Bonus Plan with the Company's named executive officers (incorporated herein by reference to Exhibit 10.109 to the Company's Annual Report on Form 10-K filed with the SEC on March 29, 2010).
- (e)(6) Convertible Debenture and Warrant Purchase Agreement between the Company and Global Strategic Partners, LLC, dated as of November 14, 2008 (incorporated herein by reference to Exhibit 10.1 to the Company's Amendment No. 1 to Form S-3 filed with the SEC on January 14, 2009).
- (e)(7) Amendment No. 1 to Convertible Debenture and Warrant Purchase Agreement and Amendment No. 1 to Convertible Debenture, between the Company and Global Strategic Partners, LLC, dated as of November 17, 2008 (incorporated herein by reference to Exhibit 10.2 to the Company's Amendment No. 1 to Form S-3 filed with the SEC on January 14, 2009).
- (e)(8) Registration Rights Agreement between the Company and Global Strategic Partners, LLC, dated as of November 14, 2008 and amended on December 3, 2008 (incorporated herein by reference to

Exhibit 10.3 to the Company's Amendment No. 1 to Form S-3 filed with the SEC on January 14, 2009).

- (e)(9) Security Agreement between the Company and Global Strategic Partners, LLC, dated as of November 14, 2008 (incorporated herein by reference to Exhibit 10.4 to the Company's Amendment No. 1 to Form S-3 filed with the SEC on January 14, 2009).
 - (e)(10) Convertible Debenture issued by the Company to Global Strategic Partners, LLC, dated as of November 14, 2008, as amended (incorporated herein by reference to Exhibit 10.5 to the Company's Amendment No. 1 to Form S-3 filed with the SEC on January 14, 2009).
 - (e)(11) Common Stock Purchase Warrant issued by the Company to Global Strategic Partners, LLC, dated as of November 14, 2008 (incorporated herein by reference to Exhibit 10.6 to the Company's Amendment No. 1 to Form S-3 filed with the SEC on January 14, 2009).
 - (e)(12) Amendment No. 2 to Registration Rights Agreement, Amendment No. 2 to Convertible
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Debenture and Warrant Purchase Agreement and Amendment to Security Agreement dated March 11, 2009 by and between the Company and Global Strategic Partners, LLC (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on 8-K filed with the SEC on March 17, 2009).

- (e)(13) Amendment to Transaction Documents dated October 23, 2009 by and between the Company and Global Strategic Partners, LLC (incorporated herein by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the SEC on October 26, 2009).
- (e)(14) Amendment No. 2 to that certain Debenture and Warrant Purchase Agreement dated as of November 14, 2008 (incorporated herein by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed with the SEC on August 14, 2009).
- (e)(15) + Confidentiality Agreement, dated November 4, 2010, by and between the Company, Celgene Corporation, Abraxis BioScience, Inc., and Global Strategic Partners, LLC.
- (e)(16) Confidentiality Agreement, effective November 24, 2009, by and between the Company and IDEX (incorporated herein by reference to Exhibit (d)(4) to the Schedule TO of IDEX and Purchaser filed with the SEC on January 25, 2011).
- (e)(17) Exclusivity Agreement, dated June 8, 2010, as amended on July 23, 2010, by and between the Company and IDEX (incorporated herein by reference to Exhibit (d)(5) to the Schedule TO of IDEX and Purchaser filed with the SEC on January 25, 2011).
- (e)(18) Form of Tender and Support Agreement entered into on January 10, 2011 by and among IDEX, Purchaser and each of Michael C. Ferrara, George Uveges, Henry Kay, Stephen J. Robinson, Leo Pierre Roy, Eric G. Walters, Peter F. Byczko, William J. Conroy, and Irwin J. Gruverman (incorporated herein by reference to Exhibit 2.2 to the Company's Current Report on Form 8-K filed with the SEC on January 11, 2011).
- (e)(19) + Tender and Support Agreement, dated as of January 12, 2011, by and among IDEX, Purchaser, and Marjorie Gruverman.
- (e)(20) Agreement Concerning Debenture, dated as of January 10, 2011, by and among IDEX, Purchaser, Global Strategic Partners, LLC, Abraxis BioScience, LLC and American Stock Transfer and Trust Company, LLC (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on January 11, 2011).
- (e)(21) 1986 Employee Stock Purchase Plan as amended (incorporated herein by reference to Exhibit 4 to the Company's Registration Statement on Form S-8 filed with the SEC on April 10, 2002).
- (e)(22) 1988 Stock Plan as amended (incorporated herein by reference to Exhibit 4 to the Company's Registration Statement on Form S-8 filed with the SEC on September 6, 2002).
- (e)(23) 1989 Non-Employee Directors Stock Option Plan (incorporated herein by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-8 filed with the SEC October 22, 1996).
- (e)(24)

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2006 Stock Plan (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on August 11, 2006).

- (e)(25) Form of Notice of Grant of Stock Option and Employee Stock Option Agreement for Microfluidics International Corporation 2006 Stock Plan (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on June 10, 2009).
 - (e)(26) Certificate of Incorporation for the Company, as amended (incorporated herein by reference to Exhibit 2A to the Company's Registration Statement on Form 8-A and Exhibit 3.1(a) to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 1999 filed with the SEC on November 15, 1999).
 - (e)(27) Certificate of Amendment to the Restated Certificate of Incorporation of the Company (incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on June 10, 2009).
 - (e)(28) Amended and Restated By-Laws for the Company (incorporated herein by reference to Exhibit 3(b) to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1996 filed with the SEC on March 31, 1997).
 - (g) Not applicable.
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- * Included in mailing to stockholders commenced as of January 25, 2011.
- + Previously filed as an exhibit to the Schedule 14D-9 on January 25, 2011.