

NEOPROBE CORP
Form DEFM14A
July 14, 2011

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant x
Filed by a Party other than the Registrant o
Check the appropriate box:

o Preliminary Proxy Statement
 o **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
 x Definitive Proxy Statement
 o Definitive Additional Materials
 o Soliciting Material under §240.14a-12

NEOPROBE CORPORATION

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

o No fee required.
 o Fee computed on table below per Exchange Act Rules 14a-6(i)(1) 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):

The purchase price payable under the Asset Purchase Agreement consists of \$30,000,000, subject to a possible adjustment as set forth in the Asset Purchase Agreement, plus royalty payments up to a maximum of \$20,000,000 over the course of six fiscal years. Solely for purposes of calculating the filing fee, the registrant estimates a purchase price of \$50,000,000.

(4) Proposed maximum aggregate value of transaction: \$50,000,000

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(5)

Total fee paid: \$5,805

Fee paid previously with preliminary materials.

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:

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2011 ANNUAL MEETING OF STOCKHOLDERS

July 13, 2011

Dear Stockholder:

You are cordially invited to attend the 2011 Annual Meeting of Stockholders of Neoprobe Corporation, which will be held at 9:00 a.m., Eastern Daylight Time, on August 15, 2011, at the Embassy Suites Hotel, 5100 Upper Metro Place, Dublin, Ohio 43017 (phone: 614-790-9000). The matters on the meeting agenda are described in the Notice of 2011 Annual Meeting of Stockholders and proxy statement which accompany this letter.

We hope you will be able to attend the meeting, but regardless of your plans, we ask that you please complete, execute, and date the enclosed proxy card and return it in the envelope provided so that your shares will be represented at the meeting.

Very truly yours,

Dr. Mark J. Pykett
President and Chief Executive Officer

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NEOPROBE CORPORATION
425 Metro Place North, Suite 300
Dublin, Ohio 43017

**NOTICE OF 2011 ANNUAL MEETING OF
STOCKHOLDERS**

**To the Stockholders of
NEOPROBE CORPORATION:**

The Annual Meeting of the Stockholders of Neoprobe Corporation, a Delaware corporation (the Company), will be held at the Embassy Suites Hotel, 5100 Upper Metro Place, Dublin, Ohio 43017 (phone: 614-790-9000), on August 15, 2011, at 9:00 a.m., Eastern Daylight Time, for the following purposes:

1. To approve the sale (the Asset Sale) of our GDS line of gamma detection device systems (the GDS Business) to Devicor Medical Products, Inc. (Devicor or the Buyer) pursuant to the terms and conditions of an asset purchase agreement dated as of May 24, 2011, by and between the Company and Devicor (the Asset Purchase Agreement). The Asset Purchase Agreement is attached as Appendix A to this proxy statement;
2. To elect three directors, to serve for a term of three years and until their successors are duly elected and qualified;
3. To approve and amend the Company's Amended and Restated 2002 Stock Incentive Plan (the 2002 Plan) to increase the maximum number of shares of Common Stock issuable under the 2002 Plan to 10,000,000 shares and to extend the term of the 2002 Plan to March 7, 2015;
4. To hold an advisory vote on the frequency of voting on the compensation of our named executive officers;
5. To hold an advisory vote relating to the compensation of our named executive officers;
6. To ratify the appointment of BDO USA, LLP as the Company's independent registered public accounting firm for 2011;
7. To adjourn the Annual Meeting to a later date, if necessary or appropriate, to allow for the solicitation of additional proxies in favor of the proposal to approve the Asset Sale if there are insufficient votes to approve the Asset Sale; and
8. To transact such other business as may properly come before the meeting or any adjournment thereof.

The Board of Directors has fixed the close of business on July 5, 2011, as the record date for the determination of stockholders entitled to notice of and to vote at the Annual Meeting and any adjournment thereof. A list of stockholders will be available for examination by any stockholder at the Annual Meeting and for a period of 10 days before the Annual Meeting at the executive offices of the Company.

Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting to be Held on August 15, 2011: The proxy statement and annual report to security holders is available at <http://neoprobe2011.investorroom.com>.

Whether or not you plan to attend the Annual Meeting, please sign, date, and return the enclosed proxy card in the envelope provided or take advantage of the opportunity to vote your proxy online. If you have any questions or need assistance voting your shares of our Common Stock, please contact Morrow & Co., LLC, 470 West Ave, Stamford, CT 06902, our proxy solicitor, by calling toll-free at (888) 813-7566 or by e-mailing neoprobe.info@morrowco.com.

By Order of the Board of Directors

Dr. Mark J. Pykett
President and Chief Executive Officer

Dublin, Ohio

July 13, 2011

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PROXY STATEMENT FOR
2011 ANNUAL MEETING OF STOCKHOLDERS

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CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING INFORMATION

This proxy statement, and the documents to which we refer you to in this proxy statement, contain forward-looking statements, as that term is defined in the Private Securities Litigation Reform Act of 1995, including, among others, under the headings Summary, Questions and Answers About the Asset Sale, Asset Sale, The Asset Purchase Agreement, Proposal No 1 The Asset Sale and the Asset Purchase Agreement, and in statements containing the words anticipates, believes, could, estimates, expects, intends, may, should, plans, targets and/or similar expressions. Forward-looking statements also include the following: (1) statements containing projections of revenues, operating expenses, income (or loss), earnings (or loss) per share, capital expenditures, dividends, capital structure, and other financial items; (2) statements concerning the plans and objectives of Neoprobe management for future operations, including plans or objectives relating to its products or services; (3) statements of future economic performance; (4) statements of the assumptions underlying or relating to any statement described in (1), (2), or (3); and (5) statements regarding the timing or completion of the Asset Sale. Actual results could differ materially from those predicted by these forward-looking statements.

You should be aware that forward-looking statements involve known and unknown risks and uncertainties as well as assumptions, among other things, about us and regulatory, clinical, economic and market factors, among others.

Although we believe that the expectations reflected in these forward-looking statements are reasonable, we cannot assure you that the actual results or developments we anticipate will be realized, or even if realized, that they will have the expected effects on the business or operations of Neoprobe. These forward-looking statements speak only as of the date on which the statements were made and we undertake no obligation to publicly update or revise any forward-looking statements made in this proxy statement or elsewhere as a result of new information, future developments or otherwise.

Forward-looking statements are not guarantees of future performance, and actual results may differ materially from those contemplated by forward-looking statements. You should not place undue reliance on any forward-looking statements contained herein, which speak only as of the date of this proxy statement, or, in the case of documents referred to in this proxy statement, as of the respective dates of such documents. These and other factors are discussed in our current filings with the SEC, including our Annual Report on Form 10-K for the fiscal year ended December 31, 2010, and our subsequent SEC filings. In addition to other factors and matters contained in this document, we believe the following factors could cause actual results to differ materially from those discussed in the forward-looking statements:

- the failure to satisfy any of the conditions to complete the Asset Sale, including the receipt of the required stockholder approval;
- the occurrence of any event, change or other circumstances that could give rise to the termination of the Asset Purchase Agreement;
- the outcome of any legal proceedings instituted against us and others in connection with the proposed Asset Sale;
 - the failure of the Asset Sale to close for any other reason;
 - the amount of the costs, fees, expenses and charges relating to the Asset Sale;
 - business uncertainty and contractual restrictions prior to the Asset Sale close;
- delays in the timing of the acceptance and/or approval of our New Drug Application (NDA) for Lymphotoseek®;
- delays in advancing our RIGScan™ technology toward re-initiation of clinical development;
- competition generally and the increasingly competitive nature of our industry;
- stock price and interest rate volatility; and

failure to operate our business successfully.

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The foregoing list and the risks reflected in this proxy statement should not be construed to be exhaustive. Actual results or matters related to the Asset Sale could differ materially from the forward-looking statements contained in this proxy statement as a result of the timing of the completion of the Asset Sale or the impact of the Asset Sale on our results of operations, financial condition, cash flows, capital resources, profitability, cash requirements, management resources and liquidity. In view of these uncertainties, you should not place undue reliance on any forward-looking statements, which are based on our current expectations.

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SUMMARY

This summary highlights selected information contained in this proxy statement and does not contain all of the information that may be important to you. We urge you to read carefully this proxy statement in its entirety, as well as the appendices. Additional, important information is also contained in the documents incorporated by reference into this proxy statement; see the section entitled Where You Can Find More Information; Incorporation by Reference.

The Annual Meeting (page 11)

The 2011 Annual Meeting of Stockholders of Neoprobe Corporation will be held at 9:00 a.m., Eastern Daylight Time, on August 15, 2011, at the Embassy Suites Hotel, 5100 Upper Metro Place, Dublin, Ohio 43017 (phone: 614-790-9000).

The Asset Sale (page 13)

On May 23, 2011, the members of our Board of Directors present at a meeting duly called and held (one member of our Board of Directors, Dr. Jess Emery Jones, was not present at the meeting), unanimously adopted and approved the Asset Sale pursuant to the Asset Purchase Agreement, a copy of which is included as Appendix A to this proxy statement (portions of which have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment). Please read it carefully. Pursuant to the terms of the Asset Purchase Agreement:

we agreed to sell the assets and assign certain liabilities, in each case, that are primarily related to the GDS Business (i.e., assets and liabilities that relate principally to the GDS Business, consisting primarily of intellectual property associated with our GDS products, supply and manufacturing agreements for these products, tooling and dies, testing equipment, inventory, trademarks (including the Neoprobe name), and associated contractual rights and obligations); and

in exchange for the assets of the GDS Business, Devicor agreed to: (i) make a cash payment to us of \$30,000,000; (ii) assume certain liabilities of the Company associated with the GDS Business as specified in the Asset Purchase Agreement; and (iii) make royalty payments to us of up to an aggregate maximum amount of \$20,000,000 based on the net revenue attributable to the GDS Business over the course of the six fiscal years ended December 31, 2012, 2013, 2014, 2015, 2016 and 2017 (collectively, the Aggregate Consideration) which Aggregate Consideration is subject to a possible adjustment as set forth in the Asset Purchase Agreement and more fully described below under Asset Purchase Agreement General beginning on page 29.

If all necessary approvals have been obtained or waived, including stockholder approval and any third party consents, we expect to complete the Asset Sale shortly after this Annual Meeting scheduled for August 15, 2011.

Parties to the Asset Sale (page 13)

Neoprobe Corporation

Neoprobe is a biomedical company focused on enhancing oncology patient care and improving patient benefit through radiopharmaceutical product development. Neoprobe is actively developing two radiopharmaceutical agent platforms Lymphoseek and RIGScan to help physicians better identify and treat certain types of cancer. Neoprobe's subsidiary, Cira Biosciences, Inc., is also advancing a patient-specific cellular therapy technology platform called ACT. Neoprobe's strategy is to deliver superior growth and shareholder return by bringing to market novel

radiopharmaceutical agents and advancing the Company's pipeline program through continued investment and selective licenses or acquisitions. We have agreed to sell our GDS Business pursuant to the Asset Purchase Agreement. For more information please visit our website at www.neoprobe.com. Our common stock is listed on the NYSE Amex stock exchange under the symbol NEOP. Neoprobe is a Delaware corporation. Our principal executive office is located at 425 Metro Place North, Suite 300, Dublin, Ohio 43017. The telephone number there is (614) 793-7500.

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Devicor Medical Products, Inc.

Devicor is a company dedicated to acquiring and growing medical device companies. With an initial focus on the breast cancer market, the company is focused on building a global business through the investment in, and development of, tools and technologies that facilitate minimally invasive medical procedures. For more information, please visit www.devicormedical.com. Devicor is a Delaware corporation. Its principal executive office is located at Summit Woods Corporate Center II, 5th Floor, 300 E-Business Way, Cincinnati, Ohio 45241. The telephone number there is (513) 864-9000.

Reasons for the Asset Sale (page 15)

In evaluating the Asset Sale, our Board of Directors considered various factors. For the material factors considered by our Board of Directors in reaching its decision to adopt and approve the Asset Sale and the Asset Purchase Agreement, see *The Asset Sale – Reasons for the Asset Sale*, beginning on page 15.

Post-Closing Business and Proceeds from the Asset Sale (page 18)

If the Asset Sale is approved by our stockholders and the other conditions to the closing of the Asset Sale are satisfied or waived, Devicor will acquire the GDS Business. We expect to focus on our remaining businesses following the closing of the Asset Sale, including: (i) developing, commercializing, marketing, selling and distributing biologics or pharmaceuticals, (ii) developing and commercializing personalized cell processing technology and cellular therapeutics; and (iii) advancing our technology for the detection of fluorescence labeled compounds and antibodies (hereinafter referred to collectively as the *Remaining Businesses*). If the Asset Sale is consummated, our lead radiopharmaceutical pipeline products and drug development portfolio will be our only operating businesses and, accordingly, our profitability will be entirely dependent upon those lines of business. If the Asset Sale is not approved by the holders of a majority of our outstanding shares of Common Stock, then Devicor may terminate the Asset Purchase Agreement and our Board of Directors, along with our management, will reassess our options in light of our long-term strategic goals. We currently anticipate that we will retain all of the net cash proceeds from the Asset Sale for working capital and general corporate purposes. We may use a portion of the net cash proceeds for future acquisitions complementary to the Remaining Businesses. However, at this time, no specific acquisition targets have been identified. If we have adequate working capital and establish adequate cash reserves without using all of our cash, and if we are unable to identify suitable acquisition targets that are appropriately valued, we will consider alternate uses of any excess cash in order to enhance stockholder value.

Recommendation of Our Board of Directors (page 19)

After careful consideration our Board of Directors:

adopted and approved the Asset Purchase Agreement; and determined the Asset Sale to be in the best interests of Neoprobe and our stockholders, and recommended to our stockholders that the Asset Purchase Agreement and the transactions contemplated thereby, including the Asset Sale, be adopted and approved by our stockholders.

Opinion of Our Financial Advisor (page 19 and Appendix B)

In connection with the Asset Sale, our Board of Directors received a written opinion, dated May 23, 2011, from our financial advisor, UBS Securities LLC, referred to as UBS, as to the fairness, from a financial point of view and as of the date of such opinion, to Neoprobe of the consideration to be received by Neoprobe in the Asset Sale. The full text of UBS written opinion, dated May 23, 2011, is attached to this proxy statement as Appendix B. Holders of our

Common Stock are encouraged to read UBS' opinion carefully in its entirety for a description of the assumptions made, procedures followed, matters considered and limitations on the review undertaken by UBS. **UBS' opinion was provided for the benefit of our Board of Directors (in its capacity as such) in connection with, and for the purpose of, its evaluation of the consideration from a financial point of view and did not address any other aspect of the Asset Sale. The opinion did not address the relative merits of the Asset Sale as compared to other business strategies or transactions that might be available with respect to the GDS Business or Neoprobe's underlying business decision to effect the Asset Sale. The opinion does not constitute a recommendation to any stockholder as to how to vote or act with respect to the Asset Sale.**