

NexCen Brands, Inc.  
Form PREM14A  
June 01, 2010

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of  
the Securities Exchange Act of 1934 (Rule 14a-101)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

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

**NEXCEN BRANDS, INC.**

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(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

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- (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):
- (4) Proposed maximum aggregate value of transaction:  
\$112,500,000
- (5) Total fee paid:  
\$8,022

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-1-1(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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**Preliminary Proxy Statement Subject to Completion, dated May 28, 2010**

Dear NexCen Stockholders:

You are cordially invited to attend a special meeting of the stockholders of NexCen Brands, Inc. to be held on \_\_\_\_\_, 2010 at \_\_\_\_\_, Eastern Time, at \_\_\_\_\_. At the special meeting, NexCen is seeking your approval of:

the sale of substantially all of the assets of NexCen Brands, Inc., to Global Franchise Group, LLC, an affiliate of Levine Leichtman Capital Partners IV, L.P., a fund managed by Levine Leichtman Capital Partners, Inc., pursuant to and on the terms set forth in the Acquisition Agreement, dated May 13, 2010, between NexCen and Global Franchise Group, LLC;

a plan of dissolution of NexCen, including the liquidation and dissolution of NexCen contemplated thereby, following the closing of the asset sale;

an amendment to NexCen's certificate of incorporation to reduce the number of authorized shares of capital stock from 1 billion shares of common stock and 1 million shares of preferred stock to 100 million shares of common stock and 1 million shares of preferred stock;

the authorization of the NexCen board of directors, in its discretion, to adjourn the special meeting if the voting power of holders of NexCen common stock represented and voting in favor of the asset sale proposal, the plan of dissolution proposal or the share reduction proposal is insufficient to approve any of such proposals under Delaware law; and

to consider and transact such other business as may properly come before the special meeting and any adjournments or postponements thereof by or in the discretion of the NexCen board of directors.

As discussed in more detail in the accompanying proxy statement, pursuant to the Acquisition Agreement, Global Franchise Group, LLC will acquire the subsidiaries of NexCen that hold our franchise business assets and also our franchise management operations, including our management operations in Norcross, Georgia, and our cookie and pretzel dough factory and research facility in Atlanta, Georgia. The purchase price is \$112.5 million subject to closing adjustments for cash, indebtedness (other than indebtedness under the credit facility of certain of our subsidiaries with BTMU Capital Corporation), working capital, deferred franchise revenue, and other specified items. If the asset sale proposal is approved and the asset sale is consummated, NexCen will transfer substantially all of its assets and specified liabilities to Global Franchise Group, LLC, and NexCen will continue to exist as a separate legal entity.

If the asset sale is not consummated, whether due to lack of stockholder approval or for other reasons, we believe that NexCen will have limited alternatives and that there is a substantial risk that stockholders will receive little or no value from any alternatives that might be pursued. As of the date of this proxy statement, NexCen is not aware of any viable alternatives that we expect would enable us to deliver similar or higher value to our stockholders (including value relating to the use of NexCen's accumulated tax loss carryforwards) or to continue in operation for an extended period of time. We believe that the terms of the asset sale and the accord and satisfaction agreement we have reached with BTMU Capital Corporation to forgive a sufficient amount of its debt such that we will retain a portion of the proceeds of the asset sale represent the best available outcome for stockholders under the circumstances, in light of the current value of our business, the significantly greater amount of debt owed to BTMU Capital Corporation by NexCen Holding Corporation and certain of its subsidiaries, and the operating and liquidity challenges we would face in the near term were we to attempt to continue to operate our business. We believe it would be extremely difficult to achieve an alternative

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that would be likely to provide similar potential value to stockholders or involve a low enough forgiveness of debt so as to gain the consent of BTMU Capital Corporation (which would be required). Absent a reasonable and attractive alternative that is agreeable to us and also to BTMU Capital Corporation, there is a substantial risk that our assets would be subject to foreclosure after a further default under the BTMUCC credit facility. If this were to happen, NexCen would lose control of all of its operating assets and cash flows and likely would have no choice but to file for bankruptcy protection. In such event, it is highly unlikely that there would be significant assets, if any, available for any distribution to NexCen's stockholders.

In connection with the negotiation of the asset sale, as discussed in the accompanying proxy statement, we also have entered into an accord and satisfaction agreement with BTMU Capital Corporation that will allow us to use a substantial portion of the proceeds from the asset sale to completely satisfy the obligations under the credit facility with BTMU Capital Corporation and leave us with approximately \$14 million to \$15 million of cash.

Following the closing of the asset sale and the satisfaction of the obligations to BTMU Capital Corporation, absent the emergence of a higher value alternative that the NexCen board of directors concludes it has a fiduciary duty to explore, NexCen shall use the remaining proceeds to pay, or make reasonable provision for, its outstanding, contingent and anticipated liabilities in accordance with existing agreements and contracts, its certificate of incorporation, Delaware law and the plan of dissolution. Any assets not used to satisfy outstanding, contingent and anticipated liabilities will be available for distribution to NexCen's stockholders pursuant to the plan of dissolution. NexCen currently estimates that, assuming that the asset sale is completed on its current terms, the assets ultimately available for distribution to the holders of NexCen common stock will be between \$0.12 and \$0.16 per share of common stock; however, NexCen is unable at this time to predict the exact amount, nature and timing of any distributions to its stockholders.

The NexCen board of directors has carefully reviewed and considered the terms and conditions of the asset sale proposal (including the terms and conditions of the Acquisition Agreement), the plan of dissolution and the amendment to NexCen's certificate of incorporation and has concluded that the asset sale and, absent the emergence of a higher value alternative that the NexCen board of directors concludes it has a fiduciary obligation to explore, the liquidation and dissolution of NexCen pursuant to the plan of dissolution and the amendment to NexCen's certificate of incorporation are all in the best interests of NexCen and its stockholders. The NexCen board of directors made its determination with respect to the proposals after consultation with its independent legal and financial advisors and consideration of various factors discussed in the accompanying proxy statement. **THE NEXCEN BOARD OF DIRECTORS THEREFORE HAS APPROVED THESE PROPOSALS AND UNANIMOUSLY RECOMMENDS THAT YOU VOTE "FOR" EACH OF THE PROPOSALS SET FORTH IN THE ATTACHED PROXY STATEMENT.**

Approval of each of the asset sale proposal, the plan of dissolution proposal and the amendment to NexCen's certificate of incorporation proposal requires the affirmative vote of the holders of a majority in voting power of the outstanding shares of NexCen common stock. Approval of the adjournment proposal requires the affirmative vote of the holders of a majority in voting power of the shares of NexCen common stock present, either in person or by proxy, and entitled to vote at the special meeting.

**Your vote is very important.** Whether or not you plan to attend the special meeting, please complete, sign, date and return the enclosed proxy card, or submit your proxy by telephone or the Internet, as soon as possible. If you hold your shares in "street name," you should instruct your broker how to vote in accordance with your voting instruction card.

If you do not either submit your proxy, instruct your broker how to vote your shares or vote in person at the special meeting, it will have the same effect as a vote against approval of the asset sale, the plan of dissolution and the amendment to NexCen's certificate of incorporation and will have no effect on the adjournment proposal.

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You are also encouraged to review carefully the enclosed proxy statement, as it explains the reasons for the proposals to be voted on at the special meeting and contains other important information, including copies of the Acquisition Agreement, the plan of dissolution and the amendment to NexCen's certificate of incorporation, which are attached as annexes.

Thank you for your cooperation and continued support.

Sincerely,

Kenneth J. Hall  
Chief Executive Officer

**Neither the Securities and Exchange Commission nor any state securities regulator has approved or disapproved the asset sale or plan of dissolution described in this proxy statement, passed upon the merits or fairness of the asset sale or plan of dissolution or passed upon the adequacy or accuracy of the disclosures in this document. Any representation to the contrary is a criminal offense.**

*This proxy statement is dated            and is first being mailed to NexCen stockholders on or about            , 2010.*

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**NexCen Brands, Inc.**  
**1330 Avenue of the Americas, 34th Floor**  
**New York, NY 10019**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**  
**TO BE HELD ON \_\_\_\_\_, 2010**

Dear NexCen Stockholder:

A special meeting of the stockholders of NexCen Brands, Inc., a Delaware corporation, will be held on \_\_\_\_\_ at \_\_\_\_\_, Eastern Time, at \_\_\_\_\_ for the following purposes:

1. To approve the sale of substantially all of the assets of NexCen Brands, Inc., to Global Franchise Group, LLC, an affiliate of Levine Leichtman Capital Partners IV, L.P., a fund managed by Levine Leichtman Capital Partners, Inc., pursuant to and on the terms set forth in the Acquisition Agreement, dated May 13, 2010, between NexCen and Global Franchise Group, LLC, which we refer to as the asset sale proposal.
2. To approve the plan of complete dissolution and liquidation of NexCen, including the liquidation and dissolution of NexCen contemplated thereby, following the closing of the asset sale, which we refer to as the plan of dissolution proposal.
3. To approve an amendment to our certificate of incorporation to reduce the number of authorized shares of capital stock from 1 billion shares of common stock and 1 million shares of preferred stock to 100 million shares of common stock and 1 million shares of preferred stock, which we refer to as the share reduction proposal.
4. To authorize the NexCen board of directors to adjourn the special meeting, in its discretion, if the voting power of holders of NexCen common stock represented and voting in favor of the asset sale proposal, the plan of dissolution proposal or the share reduction proposal is insufficient to approve any of such proposals under Delaware law, which we refer to as the adjournment proposal.
5. To consider and transact such other business as may properly come before the special meeting and any adjournments or postponements thereof by or in the discretion of the NexCen board of directors.

This proxy statement and the proxy card are being furnished to NexCen's stockholders in connection with the solicitation of proxies by the NexCen board of directors for use at the special meeting of stockholders.

**AFTER CONSULTATION WITH ITS INDEPENDENT LEGAL AND FINANCIAL ADVISORS AND CONSIDERATION OF VARIOUS FACTORS DISCUSSED IN THE ACCOMPANYING PROXY STATEMENT, THE NEXCEN BOARD OF DIRECTORS HAS APPROVED THE ACQUISITION AGREEMENT AND THE ASSET SALE, THE PLAN OF DISSOLUTION AND THE AMENDMENT TO NEXCEN'S CERTIFICATE OF INCORPORATION AND UNANIMOUSLY RECOMMENDS THAT YOU VOTE "FOR" THE ASSET SALE PROPOSAL, "FOR" THE PLAN OF DISSOLUTION PROPOSAL, "FOR" THE SHARE REDUCTION PROPOSAL AND "FOR" THE ADJOURNMENT PROPOSAL.** The proposals are described in more detail in the accompanying proxy statement, which you should read in its entirety before voting.

**Your vote is very important, regardless of the number of shares of NexCen common stock that you own.** Only holders of record of NexCen's capital stock at the close of business on \_\_\_\_\_, 2010 are entitled to notice of and to vote at the special meeting or any adjournment or postponement thereof. Approval of the asset sale proposal, the plan of dissolution proposal and the share reduction proposal each requires the affirmative vote of the holders of a majority in voting power of the outstanding shares of NexCen common stock. Approval of the adjournment proposal requires the affirmative vote of the holders of a majority in voting power of the shares of NexCen common stock present, either in

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person or by proxy, and entitled to vote at the special meeting. Your failure to vote your shares will have the same effect as voting against of the asset sale proposal, the plan of dissolution proposal and the share reduction proposal and will have no effect on the adjournment proposal.

Even if you plan to attend the special meeting in person, we request that you submit your proxy by telephone, over the Internet or by signing, dating and returning the enclosed proxy in the envelope provided prior to the special meeting and thus ensure that your shares will be represented at the special meeting if you are unable to attend. You may revoke your proxy at or at any time prior to the special meeting. If you are present at the special meeting or any adjournments or postponements of the special meeting, you may revoke your proxy and vote personally on the matters properly brought before the special meeting. Your shares will be voted at the special meeting in accordance with your proxy. If you sign, date and mail your proxy card without indicating how you wish to vote, your proxy will be counted as a vote in favor of the asset sale proposal, the plan of dissolution proposal, the share reduction proposal, and the adjournment proposal. If you hold your shares through a broker, bank or other nominee, please follow the instructions provided by your broker, bank or other nominee.

By Order of the Board of Directors

Sue J. Nam  
General Counsel, Secretary

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**QUESTIONS AND ANSWERS REGARDING THE SPECIAL MEETING**

The following are some questions that you, as a stockholder of NexCen, may have regarding the asset sale, the plan of dissolution, the amendment to our certificate of incorporation and the special meeting and brief answers to those questions. We urge you to read carefully the remainder of this proxy statement because the information in this section may not provide all the information that might be important to you with respect to the proposals being considered at the special meeting. Additional important information is also contained in the annexes to this proxy statement.

Except as otherwise specifically noted in this proxy statement, "NexCen," the "Company," "we," "our," "us" and similar words refer to NexCen Brands, Inc. and, where applicable, its subsidiaries.

**Q: Why am I receiving this proxy statement?**

A: NexCen is soliciting proxies for the special meeting of stockholders. You are receiving a proxy statement because you owned shares of NexCen common stock on \_\_\_\_\_, 2010, the record date, and that entitles you to vote at the special meeting. Each share of our common stock is entitled to one vote. By use of a proxy, you can vote whether or not you attend the special meeting. This proxy statement describes the matters on which we would like you to vote and provides information on those matters so that you can make an informed decision. This proxy statement is first being mailed to NexCen stockholders on or about \_\_\_\_\_, 2010.

**Q: What are the matters on which I am being asked to vote?**

A: At the special meeting, you will be asked to vote on four matters:

The sale of substantially all of our assets, which we refer to as the asset sale proposal, to Global Franchise Group, LLC, which we refer to as GFG, in accordance with the Acquisition Agreement, dated as of May 13, 2010, between NexCen and GFG, which we refer to as the Acquisition Agreement, that is described in this proxy statement and is attached as Annex A.

A plan of dissolution pursuant to which we would dissolve, wind down our business and, after addressing our outstanding, contingent and anticipated liabilities as required by Delaware law and as contemplated by the plan of dissolution, we would distribute remaining assets, if any, to our stockholders. We would not wind down our business and implement the plan of dissolution unless and until we complete the asset sale. The plan of dissolution is described in this proxy statement and is attached as Annex B.

An amendment to our certificate of incorporation to reduce the number of authorized shares of capital stock from 1 billion shares of common stock and 1 million shares of preferred stock to 100 million shares of common stock and 1 million shares of preferred stock. The proposed amendment to our certificate of incorporation is attached as Annex C.

Authorization of the NexCen board of directors, in its discretion, to adjourn the special meeting if the voting power of holders of NexCen common stock represented and voting in favor of the asset sale proposal, the plan of dissolution proposal or the share reduction proposal is insufficient to approve any of such proposals under Delaware law.

**Q: How does the board of directors recommend that I vote?**

A: **After careful consideration of a variety of factors described in this proxy statement, the NexCen board of directors has unanimously recommended a vote "FOR" each of the four matters described in this proxy statement. Your vote is very important. If you do not either submit your proxy or instruct your broker how to vote your shares or vote in person at the special meeting, it**



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**will have the effect as a vote against approval of the asset sale, plan of dissolution and share reduction proposals. We encourage you to vote as soon as possible.**

**Q.**

**Why did NexCen enter into the Acquisition Agreement?**

**A.**

After exploring and considering various alternatives during the past nine months to address our existing debt and capital structure, and after presenting certain of these alternatives with our senior secured lender, BTMU Capital Corporation, which we refer to as BTMUCC, the NexCen board of directors concluded that the asset sale and payment to NexCen of the purchase price is the only viable mechanism that we believe can reasonably be expected to provide equity value to our stockholders in the foreseeable future. This decision was based on the following four primary reasons:

As previously disclosed, our financial condition and liquidity raise substantial doubt about our ability to continue as a going concern. In particular, we currently do not expect that we will be able to make a principal payment on (or restructure) our outstanding debt due in July 2011 estimated at \$34.5 million. In addition, we currently anticipate that, absent further waivers and amendments from BTMUCC, we will breach certain financial and other restrictive covenants under the credit facility among NexCen Holding Corporation and certain of its subsidiaries, NexCen and BTMUCC, which we refer to as the BTMUCC credit facility, later in 2010. If we fail to meet debt service obligations, or otherwise breach the covenants of the BTMUCC credit facility, we would be in default under the BTMUCC credit facility. A default could trigger BTMUCC's right to accelerate all payment obligations, foreclose on virtually all of our assets and take control of all of our cash flow from operations. In such event, it is highly unlikely that there would be significant assets, if any, available for distribution to NexCen's stockholders or unsecured creditors.

BTMUCC is consenting to the asset sale, particularly in light of NexCen's current financial condition and the level of debt forgiveness the asset sale represents, and did not consent to other alternatives presented to it.

BTMUCC's agreement to forgive a portion of its debt, and thereby permit us to retain a portion of the sale proceeds and of our cash on hand made it reasonably likely that by completing the asset sale we would be able to deliver value to our stockholders and unsecured creditors.

As of the date of this proxy statement, NexCen is not aware of any viable alternatives that we expect would enable us to deliver similar or higher value to our stockholders (including value relating to the use of NexCen's accumulated tax loss carryforwards) or to continue in operation for an extended period of time.

**Q.**

**Who is the purchaser?**

**A.**

The purchaser is Global Franchise Group, LLC, or GFG, an affiliate of Levine Leichtman Capital Partners IV, L.P., or LLC IV. LLC IV is a fund that is managed by Levine Leichtman Capital Partners, Inc., or LLC, a Los Angeles, California-based investment firm. LLC currently manages approximately \$5.0 billion of institutional investment capital through private equity partnerships, distressed debt and leveraged loan funds. LLC has significant franchise management experience, including franchise investments in Quiznos, Wetzel's Pretzels, Beef 'O' Brady's and Cici's Pizza. GFG is a newly formed entity that has not engaged in any activity other than activities for the purpose of acquiring substantially all of NexCen's assets pursuant to the asset sale.

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**Q. What is the purchase price for NexCen's assets?**

A. The purchase price for NexCen's franchise business assets is \$112.5 million subject to closing adjustments for cash, indebtedness (other than indebtedness under the BTMUCC credit facility), working capital, deferred franchise revenue, and other specified items.

**Q. Did NexCen obtain a fairness opinion from its independent financial advisor?**

A. Yes. Rothschild Inc., or Rothschild, delivered its opinion to the NexCen board of directors that, as of May 12, 2010 and based upon and subject to the qualifications, limitations and assumptions set forth therein, the \$112.5 million purchase price to be paid to NexCen in cash for the assets and the assumption of certain liabilities by GFG pursuant to the Acquisition Agreement, was fair from a financial point of view to the Company.

**Q. What are the anticipated uses of the asset sale purchase price?**

A. Of the \$112.5 million purchase price, BTMUCC will receive in full satisfaction of the total amount of the debt outstanding under the BTMUCC credit facility (which, as of \_\_\_\_\_, 2010, was approximately \$ \_\_\_\_\_ million), the following amount:

\$98 million, plus

100% of the amount (if any) by which the aggregate consideration for the asset sale (after giving effect to various estimated adjustments at the closing of the asset sale) exceeds \$112.5 million, plus

the amount by which NexCen's cash on hand immediately prior to closing (after giving effect to various estimated adjustments) exceeds \$6 million, plus

payment of all outstanding third-party fees and expenses of BTMUCC, which are currently estimated to be approximately \$150,000.

We estimate that the total amount of these payments will be approximately \$ \_\_\_\_\_.

In addition, we will be required to pay our own transaction costs and fees, including fees of our professional advisors and investment bankers, retention payments to employees under the Acquisition Agreement, and the costs of the special meeting, the proxy statement, and the proxy solicitation process. We estimate that these costs and fees will total approximately \$4 million.

Based on our current estimates, after satisfying the obligations to BTMUCC under the BTMUCC credit facility remaining after giving effect to its forgiveness of debt, we believe that we will need approximately \$6 million to \$8 million to satisfy our remaining outstanding liabilities (including making reasonable provision for our contingent and anticipated liabilities) and that we will have approximately \$7 million to \$9 million of remaining assets available for distribution to the Company's stockholders, which would represent a distribution of between \$0.12 and \$0.16 per share. Many of the factors influencing the amount of cash distributed to stockholders as a liquidating distribution cannot be currently quantified with certainty and are subject to change. Accordingly, you will not know the exact amount of any liquidating distribution you may receive as a result of the plan of dissolution proposal when you vote on it. You may receive substantially more or less than the amount currently estimated. In addition, we are not able to predict with certainty the precise timing of any distribution. See "Proposal Two The Plan of Dissolution Proposal Estimated Liquidating Distributions" beginning on page 71 of this proxy statement for additional information.

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**Q. When will NexCen know what impact the adjustments will have on the purchase price?**

A: The Acquisition Agreement provides that the purchase price will be adjusted at the closing of the asset sale based on estimated calculations prepared by NexCen and reviewed by GFG. Within 60 days after the closing, GFG will prepare revised calculations of the adjustment items, based on actual financial information of the acquired business as of the closing. NexCen will then have 20 days to review GFG's calculations, and if we have no objections, payment is due within 10 business days of the date on which we inform GFG of this fact. If we dispute any of GFG's calculations, we will have 20 days to seek an agreement with GFG, and absent that, the disputed items will be submitted to an accounting firm for resolution within 30 days. Any payments owed are due within 10 business days of the date on which the disputes are resolved.

To support NexCen's potential obligations in connection with the post-closing purchase price adjustment, \$1 million of the sale consideration will be deposited into in an escrow account. These funds will be used to pay any amounts owing to GFG, or returned to NexCen, once the adjustments are resolved as discussed above.

**Q. What assets are being sold by NexCen?**

A. The Acquisition Agreement provides that:

NexCen will sell to GFG all of its equity interests in TAF Australia, LLC;

NexCen Holding Corporation will sell to GFG all of its equity interests in Athlete's Foot Brands, LLC, The Athlete's Foot Marketing Support Fund, LLC, GAC Franchise Brands, LLC, GAC Manufacturing, LLC, GAC Supply, LLC, MaggieMoo's Franchise Brands, LLC, Marble Slab Franchise Brands, LLC, PM Franchise Brands, LLC, PT Franchise Brands, LLC, and ShBx IP Holdings LLC. These companies, along with TAF Australia, LLC and their respective subsidiaries, are sometimes referred to as the Acquired Companies;

NB Supply Management Corporation, or NB Supply, will sell to GFG all of its assets, subject to certain specified exceptions, and assign to GFG certain specified liabilities; and

NexCen Franchise Management, Inc., or NF Management, will sell to GFG all of its assets, subject to certain specified exceptions, and assign to GFG certain specified liabilities.

The assets being sold by NF Management and NB Supply include a majority of their contracts, all accounts receivable related to NexCen's franchise business currently held by NF Management and NB Supply, all intellectual property rights and any restricted cash. The assets excluded from the asset sale are the tax refunds from the City of New York for the year 2006. GFG will acquire all of the assets of the Acquired Companies through the acquisition of all of the outstanding equity of the Acquired Companies, which assets include NexCen's franchised brands, franchise and area development agreements, vendor contracts, accounts receivable related to the franchising business, and the related marketing support funds.

**Q. What liabilities will be assumed by Global Franchise Group?**

A. In addition to the assumption of the liabilities of the Acquired Companies, GFG is only assuming the following liabilities of NB Supply and NF Management: all liabilities accruing after the closing under contracts included in the acquired assets, all liabilities under a finite list of employment agreements, and all current liabilities that are deferred revenue of the Acquired Companies or are included in the working capital adjustment or another adjustment to the purchase price. GFG is not assuming any other liabilities of NB Supply or NF Management.



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**Q. When does NexCen expect the asset sale to be completed?**

A. NexCen is working to complete the asset sale as soon as practicable and currently expects that the asset sale will be completed promptly following the receipt of stockholder approval of the asset sale proposal at the special meeting. However, NexCen cannot predict the exact timing of the completion of the asset sale because it is subject to other conditions to closing as set forth in the Acquisition Agreement.

**Q. What will happen if the asset sale is not approved?**

A. If the asset sale is not approved, absent a reasonable and attractive alternative that is agreeable to us and also to BTMUCC, there is a substantial risk that our assets would be subject to foreclosure after a further default under the BTMUCC credit facility. If this were to happen, NexCen would lose control of all of its operating assets and cash flows and likely would have no choice but to file for bankruptcy protection. In such event, it is highly unlikely that there would be significant assets, if any, available for any distribution to NexCen's stockholders.

If the asset sale is not approved, the NexCen board of directors will evaluate what alternatives, if any, are available to NexCen, including our ability to continue operations, the prospects for reaching a further agreement with BTMUCC and the prospects for obtaining substantial new financing or entering into another strategic transaction. As of the date of this proxy statement, NexCen is not aware of any viable alternatives that we expect would enable us to deliver similar or higher value to our stockholders (including value relating to the use of NexCen's accumulated tax loss carryforwards) or to continue in operation for an extended period of time. We believe that the terms of the asset sale and the agreement we have reached with BTMUCC to forgive a portion of its debt permitting us to retain a portion of the proceeds of the asset sale represent the best available outcome for stockholders under the circumstances, in light of the current value of our business, the significantly greater amount of debt owed to BTMUCC, the low likelihood of completing an acceptable refinancing of our debt and the operating and liquidity challenges we would face in the near term were we to attempt to continue to operate our business. We believe it would be extremely difficult to achieve an alternative that would be likely to provide similar potential value to stockholders or involve forgiveness of debt to an extent satisfactory to BTMUCC (whose consent of such forgiveness would be required).

**Q. What will happen under the plan of dissolution?**

A. Under the plan of dissolution, NexCen will file a certificate of dissolution with the Secretary of State of the State of Delaware, NexCen's jurisdiction of incorporation, to dissolve NexCen as a legal entity. NexCen expects it will satisfy its outstanding liabilities and distribute its remaining assets, if any, to NexCen stockholders. The NexCen board of directors, in its sole discretion, will determine the timing for this filing and any distribution to stockholders. The NexCen board of directors currently anticipates that the certificate of dissolution will be filed as soon as reasonably practicable after the closing of the asset sale.

**Q. If the asset sale and plan of dissolution proposals are approved and the asset sale is consummated on the terms contained in the Acquisition Agreement, what does NexCen estimate that the holders of NexCen common stock will receive?**

A: NexCen currently estimates that assets ultimately available for distribution to holders of NexCen common stock will be between \$0.12 and \$0.16 per share of common stock (assuming that the asset sale is consummated). However, the cash amount, if any, that may ultimately be distributed to the holders of NexCen common stock is not yet known given the uncertainty of the costs to resolve certain of NexCen's outstanding liabilities. If the asset sale is not approved, it is unlikely



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that any funds will be available for distribution to our stockholders, especially if there is a further default under the BTMUCC credit facility or we are unable to make the upcoming principal payment in July 2011.

Many of the factors influencing the amount of cash distributed to stockholders as a liquidating distribution cannot be currently quantified with certainty and are subject to change. Accordingly, you will not know the exact amount of any liquidating distribution you may receive as a result of the plan of dissolution proposal when you vote on it. You may receive substantially more or less than the amount currently estimated.

**Q. When and in what amounts will stockholders receive payment of any available liquidation proceeds?**

A: Although we are not able to predict with certainty the precise nature, amount or timing of any distributions, we expect to make an initial distribution as soon as reasonably practicable following the filing of the certificate of dissolution. We are not able to predict with certainty the precise nature, amount or timing of any distributions, primarily due to our inability to predict the amount of our remaining liabilities or the amount that we will expend during the course of the liquidation and the net value, if any, of our remaining non-cash assets, consisting of any office furniture, equipment, supplies and other miscellaneous assets. We do not expect that our non-cash assets will result in material, incremental value. If the amount of our liabilities and the amounts that are spent during the liquidation are greater, or the value of our non-cash assets is less than we anticipate, stockholders may receive substantially less than the amount estimated. The NexCen board of directors has not established a firm timetable for any final distributions to stockholders. Subject to contingencies inherent in winding up our business, the NexCen board of directors intends to authorize any distributions as promptly as reasonably practicable in our best interests and the best interests of stockholders. The NexCen board of directors, in its discretion, will determine the nature, amount and timing of all distributions. In any liquidation of NexCen, the claims of secured and unsecured creditors of NexCen take priority over the stockholders.

**Q. What vote of NexCen stockholders is required to approve the asset sale and the plan of dissolution proposals?**

A: Approval of the asset sale proposal and the plan of dissolution proposal each requires the affirmative vote of the holders of a majority in voting power of the outstanding shares of NexCen common stock.

**Q. Do NexCen's directors and officers have any interest in the asset sale and plan of dissolution?**

A: Yes. NexCen stockholders should be aware that some directors and executive officers of NexCen may have interests in the asset sale and the plan of dissolution that may be different from, or in addition to, the interests of NexCen stockholders. These interests include agreements that provide for severance payments following the termination of employment (which is currently anticipated to occur following the closing of the asset sale) of certain executive officers (but not any directors) of NexCen, and the right to continued customary indemnification and insurance coverage for a specified period following the asset sale and dissolution of the Company. The NexCen board of directors was aware of and considered these interests, among other matters, prior to negotiating and voting to approve the asset sale, voting to approve the plan of dissolution, and recommending the approval of the asset sale proposal and plan of dissolution proposal to NexCen's stockholders.

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**Q. Are there any risks related to the asset sale or the plan of dissolution?**

A. Yes. You should carefully review the section entitled "Factors to be Considered by Stockholders in Deciding whether to Approve the Proposals" beginning on page 19 of this proxy statement.

**Q. What are the United States federal income tax consequences of the asset sale?**

A: For United States federal income tax purposes, the asset sale will not be taxable directly to NexCen's stockholders. For United States federal income tax purposes, the sale of NexCen's assets pursuant to the Acquisition Agreement will be treated as a taxable asset sale, with NexCen as the seller and GFG as the purchaser. NexCen anticipates the asset sale will result in a loss for federal income tax purposes. In the event NexCen recognizes taxable gain as a result of the asset sale, although NexCen has tax loss carryforwards that could potentially offset a portion of such gain, such tax loss carryforwards could be unavailable, in whole or in part, due to potentially applicable limitations under the Internal Revenue Code.

**Q. What are the United States federal income tax consequences of the plan of dissolution?**

A: The NexCen board of directors has adopted a plan of dissolution, which, subject to the approval of NexCen's stockholders, provides for the complete liquidation and distribution of NexCen's assets to its stockholders. The dissolution of NexCen will be a taxable transaction for both NexCen and its stockholders. NexCen will recognize gain or loss equal to the difference, if any, between the fair market value and the adjusted basis of each asset sold or distributed in connection with its dissolution. Since NexCen will cease to exist, its unused tax loss carryforwards will be permanently lost. The NexCen stockholders generally will recognize gain or loss equal to the difference between the fair market value of their portions of the assets (determined net of liabilities to which such assets are subject) distributed to them and their adjusted bases in their NexCen stock. If the dissolution is not completed, NexCen and its stockholders, as applicable, may be exposed to greater (or lesser) tax liabilities with respect to any increases (or decreases) in the value of assets that are subsequently sold or distributed (whether or not in liquidation).

**Q. When will I be able to recognize a tax loss or a tax gain on the shares of NexCen common stock that I hold?**

A: You will not recognize any gain on liquidating distributions with respect to shares of NexCen common stock until you have recovered your adjusted tax basis for those shares. After you have recovered your adjusted tax basis, all liquidating distributions in excess of the amount of this recovered tax basis will be recognized by you as taxable gain. You will generally recognize any loss only when NexCen has made its final distribution, which may not be until 2013 or later. Even then, you will recognize a loss for tax purposes only if the aggregate value of all liquidating distributions with respect to your shares of NexCen common stock is less than your adjusted tax basis for those shares. In either case, this gain or loss will be long-term capital gain or loss if, as of the date of dissolution, you have held your shares of NexCen common stock for more than one year.

**Tax matters are complicated and the tax consequences to you of the transactions discussed in this proxy statement will depend on the facts of your own situation. You should consult with your own tax advisor to fully understand the tax consequences of the asset sale and dissolution of NexCen to you.**

**Q. Is the dissolution of NexCen, as contemplated in the plan of dissolution, conditional upon the completion of the asset sale?**

A: Yes. NexCen does not intend to dissolve unless it first sells substantially all of its assets in the asset sale.

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**Q. Is the asset sale conditioned on the plan of dissolution proposal being approved?**

A: No. The asset sale is not conditioned on the plan of dissolution proposal being approved.

**Q. What will happen if the asset sale proposal is approved and the plan of dissolution proposal is not approved?**

A: If NexCen stockholders approve the asset sale and do not approve the plan of dissolution, NexCen will still complete the asset sale to GFG, upon the satisfaction of the remaining closing conditions in the Acquisition Agreement. In that case, NexCen will have transferred substantially all of its operating assets to GFG and will not have any assets to support ongoing operations. We also will have paid most of the proceeds from the asset sale to BTMUCC, in the agreed amount as satisfaction of amounts owed under the BTMUCC credit facility. Thereafter, the NexCen board of directors will evaluate what alternatives, if any, are available to the Company. As of the date of this proxy statement, NexCen is not aware of any viable alternatives that we expect would enable us to deliver similar or higher value to our stockholders (including value relating to the use of NexCen's accumulated tax loss carryforwards) or to continue in operation for an extended period of time. Unless additional financing sources become available to us, we may be required to cease operating and possibly seek protection under applicable United States bankruptcy laws. NexCen does not intend to invest in or acquire another operating business following the closing of the asset sale.

**Q. Am I entitled to appraisal rights in connection with the asset sale or the plan of dissolution proposals?**

A: No. As a NexCen stockholder, you will not be eligible for appraisal rights in connection with the asset sale or plan of dissolution, even if you abstain from voting or vote against the asset sale or the plan of dissolution proposals.

**Q. Will I still be able to sell my shares of NexCen common stock following the closing of the asset sale?**

A: Yes, although it may only be for a limited period of time. Although no assurance can be given that there will be an active trading market for NexCen common stock, you will be able to sell your shares of NexCen common stock until NexCen files its certificate of dissolution. If the plan of dissolution proposal is approved by NexCen stockholders, the NexCen board of directors will then decide when to file the certificate of dissolution with the Secretary of State of the State of Delaware. From and after the end of trading on the date the certificate of dissolution becomes effective with the Secretary of State of the State of Delaware, NexCen will no longer permit transfers of its capital stock and will discontinue recording transfers of shares of NexCen common stock. Thereafter, certificates representing shares of NexCen common stock will not be assignable or transferable on NexCen's books. NexCen intends to make a public announcement of the anticipated filing date of the certificate of dissolution at least three business days in advance of the filing.

**Q. Why is NexCen seeking your vote on the share reduction proposal?**

A. NexCen currently has 1 billion shares of common stock and 1 million shares of preferred stock authorized for issuance under its certificate of incorporation. There are approximately            shares of NexCen common stock outstanding. Because NexCen will not need to issue many (or any) additional shares given its current plans, and because a reduction in the number of authorized shares will save approximately \$117,000 in annual Delaware franchise tax charges, NexCen is seeking your approval to amend our certificate of incorporation to reduce the total

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number of authorized shares to 100 million shares of common stock and retain the same number of authorized shares of preferred stock. The amendment will have no impact on your existing shares of NexCen common stock.

**Q. What vote of NexCen stockholders is required to approve the share reduction proposal?**

A: The share reduction proposal requires the affirmative vote of the holders of a majority in voting power of the outstanding shares of NexCen common stock.

**Q. Why is NexCen seeking your vote on the adjournment proposal?**

A. Adjourning the special meeting to a later date will give NexCen additional time to solicit proxies to vote in favor of approval of the asset sale, the plan of dissolution or the share reduction proposal. Consequently, NexCen is seeking your approval of the adjournment proposal to ensure that, if necessary, NexCen will have enough time to solicit the required votes for the asset sale, the plan of dissolution, and the share reduction proposals.

**Q. What vote of NexCen stockholders is required to approve the adjournment proposal?**

A: The adjournment proposal requires the affirmative vote of the holders of a majority in voting power of the outstanding shares of NexCen common stock present, either in person or by proxy, and entitled to vote at the special meeting.

**Q. When and where will the special meeting be held?**

A. The special meeting will be held on \_\_\_\_\_ at \_\_\_\_\_, Eastern Time, at \_\_\_\_\_.

**Q. Who is entitled to notice of and to vote at the special meeting?**