

ALLERGAN INC
Form DFAN14A
July 18, 2014

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

SCHEDULE 14A INFORMATION
Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934

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

Allergan, Inc.

(Name of Registrant as Specified In Its Charter)

Pershing Square Capital Management, L.P.

PS Management GP, LLC

William A. Ackman

(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.

(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:

(5) Total fee paid:

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:

PSCM

CALLING FOR A SPECIAL MEETING OF ALLERGAN SHAREHOLDERS

SPEAKERS: WILLIAM (BILL) ACKMAN, BILL DOYLE, ROY KATZOVICZ, JORDAN RUBIN

PRODUCER: JOE SUTTON

08:31:51:00

(OFF-MIC CONVERSATION)

WILLIAM ACKMAN:

08:31:52:00

Okay, welcome to our Calling for a Special Meeting for Allergan Shareholders. I am Bill Ackman, I'm with Bill Doyle, I'm with Jordan Rubin and Roy Katzovicz. But it's Bill, Bill, myself, and Jordan are part of the research team and Roy is leading the legal effort at Allergan.

08:32:14:00

We're going to cover a lot of material. There's a long disclaimer. I think it's the longest in the history of the firm. We're going to skip through that. But you'll be able to read that on the Web and we'll make these slides available for download or obviously we'll provide them and to the SEC.

08:32:29:00 So basically we are calling for a special meeting. We are doing this for two principal reasons. 1) To fix the special meeting provisions in Allergan's bylaws, which are extremely onerous. We think they are one of a kind and we think they are very dangerous because they'll likely proliferate if Allergan is successful in using them as a defensive measure. We'll go into quite a bit of detail there.

08:32:53:00 And number two, we would like to remove directors and propose new directors who have a more shareholder-friendly orientation. And encourage them to engage with Valeant and consider their proposed 50% premium transaction. So let's move forward. I'm going to skip through the outline and we're going to just dig in. Okay.

PG.2

08:33:16:00 So what drives us here is Allergan's governance track record. And in particular how they've responded to the Valeant transaction. So we respect the right of a board to adopt a negotiating strategy and in many cases it's appropriate not to respond to initial bid or to a revised bid. However, in this case we have not an all-cash transaction to acquire a company. We have a proposed merger between two similarly sized enterprises.

08:33:24:00 So we respect the right of a board to adopt a negotiating strategy and in many cases it's appropriate not to respond to an initial bid or to a revised bid. However, in this case we have not an all-cash transaction to acquire a company. We have a proposed merger between two similarly sized enterprises.

PG.3

08:33:46:00 Allergan shareholders will own 44% of the combined company. The combined company is estimated to have 2.7 billion of synergies by Valeant. The combined company will have a different strategy, business model, than Allergan. And there is complexity to Valeant's financial statements because of how the company has grown through acquisition over the years.

08:34:06:00 That, to understand the value of that transaction requires one to understand the value of Valeant. That requires engagement, questions, and Allergan's board has refused to engage to meet, to have its advisors approach Valeant's management team, their company, their advisors, their accountants. We've attempted to engage with Allergan and we've approached the lead director. And we were not permitted to have a executive session one on one with the lead director over the telephone or otherwise.

PG.4

08:34:40:00 David Pyott has been authorized as the only person allowed to engage with shareholders on behalf of the company. And we believe David Pyott, as chairman and CEO of the business, has a disabling conflict by virtue of the fact that he will lose his control over the business and his role as CEO of the company.

08:34:58:00 The third piece is we think the company has gone, as I say, beyond the pale in the way that they've attacked Valeant's business model and their management, their accounting in ways that are not supported by facts. And when Valeant has corrected the facts, Allergan has not even acknowledged or corrected their misstatements that they've made public. So what is the standard for a board of directors in a situation where there's a takeover bid? The standard is the board is required to inform themselves of all material information about transaction and they have to act with care in evaluating it.

PG.5

08:35:30:00 The board has not done that here. They have certainly not made any attempt to understand material facts that are critical to their analysis. And the best evidence to that is that they've made public statements that are materially false about Valeant's business.

08:35:45:00 And they have had access to whatever amount of material information they want because Valeant's had an open door with respect to meeting with the management, the board, their advisors to address any concerns they've had. As a result, the shareholders have not had an opportunity to consider this offer. That, of course, combined with the poison pill and these very onerous bylaws. And unfortunately this kind of behavior is consistent with the, you know, the company's past governance behavior. And I'm going to go into a fair amount of detail on that.

PG.6

08:36:46:00 And the company adopted one of the what we believe to be the most onerous special meeting provision of any public company in the United States. And so that we'll discuss in a fair amount of detail. We've proposed a special meeting which is a right that was granted by the company when they made changes to their charter and bylaws.

08:37:05:00 And the company's attempting to stop us from calling a special meeting for shareholders. Again, what's the purpose of the meeting? Purpose of the meeting is to give shareholders a chance to voice their point of view on the board, on the Valeant transaction, it's to give shareholders a voice.

PG.8

08:37:21:00 And what legitimate board would stop that kind of activity? Again, we can't engage the board won't speak to us. The lead director who's been, by the way, on the board for 16 years, on the comp committee for I believe sixteen, the same period, a close friend of David Pyott. Clearly, in my view, not an independent director in this transaction. And not even willing to speak with us without Mr. Pyott, you know, on the phone or at the meeting. So we look at ISS, what they say about special meetings.

08:37:54:00 ISS says, In terms of day to day governance shareholders may lose an important right, the ability to remove directors or initiate a shareholder resolution without having to wait for the next scheduled meeting if they are unable to call a timely special meeting. Shareholders could also be powerless to respond to a beneficial offer if a bidder cannot call a special meeting.

PG.9

08:38:09:00 Basically the poison pill has locked out the ability for a bidder to make an offer directly to shareholders. And the only protection, the balance against the poison pill is the ability for shareholders to go to the ballot box, replace the board and look at an offer. In light of the timing of this offer, the company would, the shareholders would have to wait a year to next year's annual meeting, which can be delayed by the company. Could be 15 months. And that's why the special meeting's important.

08:38:37:00 Again, ISS continues, Past few years companies have responded to shareholder resolutions, seeking the right to call special meetings by offering management proposals with stricter requirements. Such restrictions can be used as anti-takeover devices, impeding the removal of incumbent board members or delaying a takeover attempt to the company. And therefore run counter to the stated intention of allowing shareholders to call special meetings. And then written consent, same idea.

PG.10

08:39:01:00

ISS continues, But the value of shareholder meetings precisely provides a definitive, authentic and unassailable answer to the question of what shareholders want. Mr. Pyott has made public statements about what shareholders, he says, are telling him to do. We've heard not one shareholder make arguments in favor of some of the things Mr. Pyott has talked about, running out and doing an acquisition. So we'd rather people not take our word but let's hear the shareholders' word.

PG.11

08:39:21:00

To continue, Not every shareholder is in agreement on every issue to be sure. But shareholders in general, institutional shareholders in particular, accept that the shareholder vote is the premier mechanism for the owners of the company to settle significant questions about the company's future. Engagement can be a very effective mechanism for providing the board with insight, for settling complex questions about the company's future. However, it lacks the definitive authority of the shareholder vote itself. And we've been deprived of that by virtue of the special meeting provisions here.

08:39:50:00

Just looking at the way the company has responded to requests from shareholders. So 2012, shareholders have asked for a special meeting with a 10% threshold to call a meeting. Got 55.3% of the votes cast in favor, management recommended against. ISS and Glass Lewis both recommended for.

PG.12

08:40:08:00 The company was forced to put it on the ballot but put in substantial restrictions. Among them, a 25% vote versus a 10% vote. All kinds of timing restrictions we'll get into. A newly onerous disclosure requirements to make a request which we think are unique, restrictions on similar items which restricts your ability of what you can do at a special meeting. In particular, the company makes it difficult to you can fire a director but makes it difficult to hire a director.

08:40:32:00 And then they this new provision about, you know, if you sell a share of stock between now and the time you call the special meeting, that share doesn't count toward the vote. 2013 shareholders asked for the right to act by written consent. Management, again, recommended against, ISS, Glass Lewis for. 50 got a majority vote from shareholders.

PG.13

08:41:30:00

In the old days you'd actually get a stock certificate. It would have your name on it. That's what it means to be a record owner. It's a very old fashioned process. It's complicated. It takes, could take, a couple weeks for an institution to get their shares in record form.

08:41:44:00

And there's no legitimate business reason for the company to ask for this. By the way, other companies have special meeting provisions, you send out basically a proxy in the mail. You get 10% votes, you call a meeting. There's no obligation to put shares in record name.

PG.15

08:42:00:00 They have a provision that says special meetings may not consider similar items, the most significant similar item, you know, what's covered at a board meeting, annual meeting every year is the election of directors. So they're basically saying you can't elect new directors at a special meeting. They have incredibly onerous disclosure requirements that you have an ongoing duty to update. You have to give two-year trading data in Allergan. You have to talk about relationships with Allergan and their competitors among your employees.

08:42:26:00 Imagine an organization with 25,000 employees. Think about that kind of requirement. What we understand from our proxy solicitor is a highly unusual requirement for Cede & Co., the depository, to itself submit the individual signed meeting requests. You know, this is expensive and time-consuming resource. Takes a lot of resources.

PG.16

08:42:46:00 And then the board determines at its sole discretion whether the meeting requests are compliant. If they're not, they kick them out and magically you could fall below the threshold. 25% vote meeting request must be quote, unquote in proper form. Shareholders have to represent that they intend to hold their shares through the date of the special meeting. And, by the way, a lot of people have been confused by this.

08:43:06:00 A lot of the meetings we've had so far people say, Well, am I locked out from trading in order to vote in favor of this special meeting? The answer is shareholders are not locked out from trading. They do have to have an intent to hold the shares. Obviously intent can, you know, your actions can change. But if you do sell, those shares don't count.

PG.17

08:43:28:00

And then you have to acknowledge that a sale of their shares prior to the meeting day will constitute a reduction in the shares supporting the special meeting. And you got to update, you know, to the company at various points in time on the record date I think ten days before the meeting how many shares you still own or the company can cancel it at the very last minute.

WILLIAM ACKMAN:

08:43:49:00

They also have a very unusual provision that says, has a couple constraints on when a meeting can be held. And they say you can't have a meeting 90 days prior to the anniversary of the previous meeting. So if the meeting was May 7th, that means that, between February 7th and May 7th, you can't have a special meeting.

PG.18

08:44:06:00 Now the company has the ability to delay the request for 120 days. So that knocks out 210 days of the year in which you can hold a meeting. So if you decided the day after the annual meeting which, of course, you never would, to call a special meeting why would you want to call a special meeting the day after the annual meeting? But let's say you did. There's a very narrow window, between mid-October and early-February, in which you can actually call a meeting.

08:44:36:00 And if you get started a little bit late, you know, let's say that the bid from Valeant came in instead of in late April, but it came in in August or September, you're locked out. And so at best you can have one meeting. But you've got to get a lot of stuff done. And a lot of the procedural requirements, the requirement that you actually have you know, a lot of companies, by the way, you can call a special meeting with a 10% vote. That means a shareholder who owns 10% can call a meeting.

PG.19

- 08:45:02:00 In Allergan's case there's a pill so you can't own 10%. You're not allowed to talk to other shareholders by virtue of the pill other than by using the proxy solicitation process. And you've got to reach out to all of the shareholders to get the required 25% vote. And that process requires SEC clearance, proxy solicitation, printing, mailing. It's a very fairly extraordinary thing.
- 08:45:22:00 The bylaws, by the way, were not shown to the shareholders when they approved this special meeting. The shareholders asked for a 10% provision. The company came back and said, "Fine. We'll give you 25%." And I think shareholders, you know, 25% is better than nothing. And then the board put in place these onerous bylaws without showing them to shareholders.

PG.20

ROY KATZOVICZ:

08:45:42:00 So without a vote of the shareholders.

WILLIAM ACKMAN:

08:45:43:00 Without a vote of the shareholders. And, you know, people are stuck with bylaws that are until either the next annual meeting or special meeting for them to be fixed. Provisions, as I mentioned, is intent to hold shares sold get kicked out. You know, these are very unusual, we believe unique, provisions.

08:46:05:00 We've covered a lot of this. And why don't we keep moving? Okay. So next thing the board did is it designed a poison pill that was highly restrictive in terms of the ability of shareholders to speak to each other. And when you combine that with the incredibly onerous disclosure requirements and mechanics to call a special meeting, a lot of explanations are required; It became practically impossible for us to say to shareholders that they could participate in a solicitation without being in violation of the pill.

PG.21

08:46:38:00

We thought that would threaten conservative counsels of investors to not participate in the calling of the special meeting. So what we did was we went to Allergan and we said, Look, please clarify that the pill does not apply. And they wouldn't do so. So we had to go to court and we had to sue the company which, again, is a waste of time and resources.

PG.22

08:46:55:00 And hearing what the judge had to say at an expedited hearing the company capitulated. And the pill does not prohibit us from calling a meeting. But that cost us time. And that affects, again, that narrows the window, that delays the deal. So when you look at what's required to call a special meeting, there are actually four very extensive steps that will take weeks for the bigger institutions to comply with.

08:47:23:00 Now interestingly Allergan's done something I also haven't seen which is a revocation campaign. They're actually seeking to encourage shareholders not to call a special meeting. Now what does it require to not call a special meeting? Well, here they send you a proxy in the mail and you just say, Check a box you can do it on the internet, you can do it over the telephone, you can do it by mail. It's the easiest thing in the world. You check a box and you're no longer you've just revoked all that complicated stuff that took you several weeks to do.

PG.23

08:47:52:00

So it's unbelievably burdensome. It could take weeks. Very, very difficult for organizations. Although fortunately we'll get to that we're making good progress there. But the company makes it incredibly easy. You know, what if this was reversed? What if calling a special meeting was one step and you send someone something in the mail and they check a box, they do it on the internet and the phone. But in order to revoke the meeting you actually had to put shares in record form and you had to go through these logistics? I mean, think about that in terms of how fair this provision is designed. I think it is shocking.

PG.24

08:48:36:00 Now what is Allergan's response in their proxy solicitation to ask people not to call the meeting? And they give two reasons. I encourage you to read their whole document. But let me just tell you what the two reasons are. They talk about significant risks and costs associated with calling and holding a special meeting that shareholders need to be aware of. And here are those risks and costs.

08:48:57:00 Quote, "A special meeting, the related solicitation risks diverting significant time and resources when it is critical that Allergan's board and management be fully focused on operations and executing the company's strategies. Rather than hold a special meeting our board and management strongly believe the more prudent course of actions for Allergan to focus on extending its track record of substantial growth. The board and management are confident we will create significantly more value for stockholders than Pershing Square's and Valeant's proposal."

PG.25

08:49:23:00

So it's a distraction this special meeting and a lot of risk associated with it. It might company might veer off its growth path. Guess what I would say is the distraction here is called by Allergan. A very attractive proposal has been made to shareholders. If the board were to engage immediately, determine whether this offer is attractive, negotiate and Valeant has offered to negotiate the terms of this deal, you know, as an Allergan shareholder, shareholders would like to see what's in Valeant's pocket that would take a relatively short period of time. There would be very little distraction.

PG.26

08:49:57:00 What's distracting is that Allergan is dragging this out and, by the way, I would not want to be an Allergan employee right now with this going on. And I feel bad for the Allergan employees with all the uncertainty about the future of the company which is going to continue for as long as this gets delayed by Allergan. So I think this is actually quite false which is the distraction is not being caused by a special meeting that will take an hour to be held. The distraction's being caused by Allergan, by delaying the potential for the the board and the company to consider a transaction.

08:50:31:00 The second point they make I find also fascinating success of solicitations would also require Allergan to incur additional financial costs including with respect to internal allocations, third-party advisory fees, printing, mailing, solicitation expenses, other costs. Now Allergan, as everyone knows, is not a company known for being particularly disciplined about costs so I find it interesting that they are now focused on cost.

PG.27

08:50:50:00

But the mailing and the printing, they say successive solicitation. So it sounds like they're going to send future mailings to people encouraging them to withdraw their consents for the special meeting. And they're concerned about those incremental mailing costs. There's a transaction on the table with a 50% premium, you know in the you know, \$15 billion whatever the number is, you know multiple billions of dollars. And the company is now concerned about mailing costs. You know, I find this extraordinary.

PG.28

08:51:19:00 You look at the company's own corporate governance guidelines. And here I give a lot of credit to the proxy advisory firms who have pushed, I think in this case ISS, the description of the lead director's role was much more limited than the proxy advisory firms like to see. And the company revised supposedly Mr. Gallagher's purview as lead independent director.

08:51:43:00 And they put in language in the proxy this year that says he consults with the chairman of the board, other board members and corporate governance practices and policies and assuming the primary leadership role and addressing issues of this nature if under the circumstances it's inappropriate for the chairman of the board to assume such leadership. We have a transaction where Mr. Pyott has a direct conflict of interest.

PG.29

08:52:03:00 Mr. Gallagher is the appointed person under the company's proxy to meet with and speak to shareholders. We're the largest shareholder of Allergan. Mr. Gallagher would not we asked for a call with Mr. Gallagher, a meeting with Mr. Gallagher without Mr. Pyott present. He would not do so. He said and then our next opportunity to engage with the company with Mr. Pyott, he gave us 15 minutes and we asked him for the opportunity to address the full board and Mr. Pyott said that he is the only person authorized on behalf of the board to engage with shareholders. So, again, this is a major governance failure.

08:52:43:00 If you look at the board and I focus in particular on long-tenured directors. You look at Gallagher, Trevor Jones, Russell Ray, you know, these are substantial people. They are not meaningful shareholders in the company. And I don't think meaningful relative to their respective net-worths.

PG.30

08:53:05:00 And frankly, the director's fees here are quite large. Directors make \$300,000, \$400,000 a year to serve on this board. They've certainly not shown skin in the game. We have some, and particular I focus on Michael Gallagher, on the board 16 years with Mr. Pyott in the lead director seat.

08:53:26:00 You know, it's hard for in light of the personal relationships that develop over time of you know, he's on the compensation committee he's really not and he's not behaved like a independent lead director. Note that shareholders, 1/3, voted against him in the most recent annual meeting. And again, below the average 95% votes for Trevor Jones and Peter McDonald and these are two of them are members of the comp committee. And they've gotten lower than average support from shareholders I think is notable.

PG.31

08:54:01:00

And again, I'm not attacking the character of the people on the board. Let me be really clear. I think these are high-quality individuals. I think they've gotten too close to Mr. Pyott. And I think that has affected their judgment in this transaction. These are, for the most part, certainly the long-standing directors, these are long-standing friends of Mr. Pyott. And those kind of relationships unfortunately can affect a director's judgment.

PG.32

08:54:21:00 Let's look at our third parties' view of the board. So on board structure, ISS ranked Allergan they gave it the worst ranking which is a ten. And I'll suggest to ISS they change tens usually a good thing. But in this case ten is a bad thing. This is the worst ISS ranking. And in fact, ISS recommended against the reelection of Mr. Gallagher at the 2014 AGM for failing as corporate governance, compliance committee chair to implement the shareholder proposal that was proposed by written consent. And he received 1/3 withhold votes.

08:54:57:00 Eight of the nine directors received approval ratings below the average level. Three below 90%. And we've got some long-standing I don't really object to a few long-standing directors. But after ten years I think a director loses a bit of objectivity in his particular role and you have to really carefully analyze that director to decide whether he should stay.

PG.33

08:55:15:00 No separation of Chairman and CEO. You know, these are the principle factors that gave the company a ten out of ten. Ten being the worst ISS ranking. On shareholder rights the company has a nine out of ten. But my advice is that should be reassessed based on how the company has responded this year. And then you have the poison pill. Poison pills you know, restricting the ability of shareholders to communicate other than through the proxy process is a unnecessary restriction, in my opinion, without a business justification.

08:55:48:00 And so the only way we can speak to each other is to call a special meeting and we're given a very narrow window. By the way, the window they've chosen happens to be Thanksgiving and Christmas, if you note that. So just think about how difficult it is to call a meeting at this company.

PG.34

08:56:02:00

Company of course has the flexibility to delay the annual meeting. Companies typically can delay a meeting for several months past the meeting date. So even if, you know, just, again, another reason here. Think about a bidder who's made a bid at this period of time. If you had to wait until the last period of time when shareholders could communicate if there was no special meeting, a bidder would have to wait - let's say, you look at, in the case of Valeant the bid came in April 21st, you'd have to wait till September [of 2015] in order to have shareholders consider their transaction without a special meeting provision.

PG.35

08:56:32:00 I would say no bidder there'll be no hostile bids. There'll be no actually I'm going to change the term hostile bid. I call them happy bids. They're happy bids because everyone is happy except for the only that's hostile to is the management the senior management of the target company. And I think we there are a lot of happy Allergan shareholders versus the stock at \$116 a share a few months ago.

08:57:03:00 In the meantime, there's risk. You know, we're in a very bullish credit environment right now. As we've seen that can change effectively overnight. The financing, you know, Valeant has committed financing. But commitments don't last forever. Banks fail. Things happen. You know, we've been through a crisis recently. Markets change. Opportunities change.

PG.36

08:57:21:00 Valeant has a business to run. Now they're very committed to the transaction. They're going to see it through. It's important to them. They've said so publicly. But they're going to see it through in the context of a special meeting that we're going to hold at the end of the year.

08:57:33:00 I can't speak for Valeant if, you know, if we're if it's a year from now and they're still hanging around the hoop waiting to hear what shareholders have to say. In the meantime, there's a real risk that Allergan's board and management could take value destructive actions to thwart the offer. And among them and our fear here is not just a made up fear. Mr. Pyott has made very clear in recent speeches and statements that the company and he are considering doing a major acquisition which could be \$10 billion or more.

PG.37

08:58:00:00 Now notice the acquisition he's considering is one that does not require shareholder vote. It's one that would use debt resources and the company's cash flow. And the shareholders have no ability to vote on that transaction. And you've got a CEO quote, unquote defending the company who has zero track record on large transactions and a poor transaction [record] which we'll take you through on small transactions where every seller in the world knows you've got a desperate guy willing to buy.

08:58:22:00 And then we have a very, very heated market for pharma assets. That is not a market in which this company should be running out to do a major transaction. That could be enormously value destructive. And, by the way, if they finance it by issuing debt with various onerous prepayment provisions, I mean, today if you do you know, interest rates as low as they are and you've got yield maintenance prepayment, you know, you could put in enormous friction that could take away a lot of value from shareholders.

PG.38

08:58:52:00 And the company is also talking about a buyback. Now I find it remarkable. This is a company that for years shareholders have been saying, Please buy back stock. You've got a unlevered balance sheet. You generate a lot of free cash flow. The board has the company's basically bought back almost enough shares to cover the options they've granted to management and that's basically it.

08:59:15:00 Now they're thinking about doing a buyback. A year ago the stock was \$82. Today the stock's doubled. And they're e talking about a \$10 billion buyback. \$10 billion buyback would have to be done at a premium. This would not be

PG.39

this would be an incredibly damaging transaction for shareholders plus the restrictions associated with the debt. So what does the special meeting do? Gives us a path to completion for the offer and I would say very importantly it fixes Allergan's bylaws.

08:59:41:00

And more significantly it makes the threat of these kind of bylaws being spread to every other company in corporate America much lower. Path to the deal. Special meeting, we can remove Allergan directors. We can propose a number of directors which hopefully with seeing what the shareholders want, the existing board will appoint to the board. If they choose to just immediately reappoint the directors that we got rid of which they claim they have the ability to do we'll run into court under Delaware 223C and ask the court to put through shareholders interests.

PG.40

09:00:21:00 Now what do we think is a more sensible path? What do we think is a more likely path assuming the board comes to its senses? So we're taking the steps to get to the special meeting. It will be a significant event for this board when we get 25% support and I can't know for certainty that will happen.

09:00:44:00 But we think it's likely based on conversations so far. And I remind you that we have 9.7% already. So this is really not 25%, it's 15.3% of the 85% of the shares that are outstanding. To me another 15% now we're going to need a big cushion to the 15% because of the risk of Allergan kicking out some of the shares.

PG.41

09:01:11:00 So this is not really a 25% special meeting provision because of the way they've designed it. It's probably a 35% or 40% special meeting provision if you think about it. We want a big margin of safety. So this is, because your shares don't count if you sell, and we're not asking people to lock up their shares between now and the meeting we want a very big cushion for shareholders who may choose to sell during the period. Now good news here is we've named six terrific directors. I'll get to them.

09:01:41:00 We've identified six members of the board that we're going to replace. And that is a threat to those directors. These directors are at a stage in their career, for the most of them, where being on boards is what they want to spend the rest of their career doing. When we were putting together a slate for this meeting, you know, frankly we didn't want directors that have been thrown off by their shareholders.

PG.42

09:01:56:00 It becomes much more difficult to get on a board particularly a high-profile board if you've been thrown off the Allergan board. And I think that might cause a director to come to his senses and say, "Hey, maybe we should think about this." And so we think the company's negotiating leverage deteriorates the moment we can deliver consents for 25% of our special meeting. We expect that will be sometime hopefully in the middle of August. And the clock begins ticking at 120 days if the company wants to delay as much as possible.

09:02:24:00 And as that day approaches when this sword of Damocles is going to come down again, it tends to motivate directors to come to their senses. As a shareholder activist I can tell you most activist engagements settle before the board meeting. And a settlement here would be Allergan immediately engaging with Valeant. And when boards see the writing on the wall and when they see shareholders saying, "Guys, it's time" hopefully we can accelerate this process. And that's why this is important.

PG.43

09:02:52:00

Now why is near-term engagement important? Allergan will say, Hey, we got an annual meeting. It can wait. You know, they'll be interested. Don't worry. Well, a couple reasons, number one, part of the transaction consideration is cash. So getting that cash sooner is obviously a positive. You can reinvest it otherwise. Part of the transaction consideration is stock.

PG.44

- 09:03:11:00 But even here if the transaction happens sooner, the synergies are achieved sooner, the value is created sooner. The stock price of the combined company goes up sooner and that creates value for shareholders. So obviously there's a big positive to getting a transaction done sooner.
- 09:03:25:00 Number two, in the meantime we're exposed to what's going on at Allergan. If Allergan has big lawsuit comes in or makes progress on one of Allergan's key drugs, and we saw LATISSE recently have a loss in the courts that can have a very material impact on the value of Allergan. And that will have an impact on the price that Valeant is likely to be willing to pay for the company.

PG.45

09:03:52:00 And shareholders are exposed to those kinds of risks in the meantime. Or as I mentioned before if a company makes a done deal and destroys shareholder value. We were exposed to those kind of risks the more time that goes by. And then you have the risk of financing markets and equity markets, moving.

09:04:11:00 And you know, I would say the financing markets cannot get better than where they are. We re pretty close, you know, with junk, you know, so-called non-investment grade debt trading being newly issued in the fours. You can t ask for a better market than this. But that can change overnight.

09:04:31:00 The other thing I would mention here is the moment a merger agreement is signed that binds Valeant, and I would encourage the board to make it as incredibly tight as possible so that Valeant has few alternatives, and can t get out of the deal basically. We want an absolutely, you know, tight transaction here. Now what s

PG.46

typical in merger agreements however is you see that companies retain a fiduciary out which means that if, indeed, there is someone who can offer more value than Valeant, they're free to come in and typically in those kind of cases, you know, Valeant would get a meaningful breakup fee that was appropriate but within the Delaware kind of levels of appropriateness.

09:05:13:00

So shareholders are not locking out some other great alternative if it were to come along. So I just think the notion of negotiating a deal soon before the company loses its leverage you know, letting the directors on this board preserve their dignity by being the group that acts, behaves like fiduciaries on behalf of shareholders and negotiating again, and Valeant's offered to negotiate. And I would focus frankly on the terms of the merger agreement I think are critically important and I'd make them as tight as possible.

PG.47

09:05:39:00

All of that can be accomplished if that discussion starts now. If that discussion starts a couple of days before the, you know, when it's a certainty which way the vote is coming down and, you know, that information will be known as you start to approach and get pretty close to the special meeting vote the company will lose negotiating leverage and really it will be the new board that responsible for negotiating deal. And frankly, I have enormous confidence in these directors to negotiate a fabulous deal and we'll talk about that.

PG.48

09:06:17:00

Let's talk about them. So what were we looking for here? Now what's interesting about this situation is this is not your normal proxy contest where you're putting in directors who are going to govern a company going forward. You know, Canadian Pacific, we ran a proxy contest, we put on seven directors. And we were looking for people who wanted to be part of, you know, changing the leadership and the board of the company. But they knew stepping on they were stepping into a situation where they could be a director for four, five, six, eight years. And so it would be an interesting experience and rewarding for them.

09:06:48:00

What's interesting about this situation is the directors who have signed up understand that this may be a relatively short-term board assignment. If, in fact, they join this board and, in fact, the Valeant transaction or another transaction is the best transaction and the company is sold well, you know, one or two or some of these directors may end up on the combined company's board. There's certainly no assurance of that.

PG.49

09:07:04:00

So it may be a very short-term engagement. So there's not a lot of economics in terms of director's fees that one can glean or obtain from being a member this late. So but we wanted incredibly high-quality people with very high shareholder orientation track record. And we got that because there was nothing economic in this for these directors. But what they're interested in is continuing their reputation for being stellar representatives of shareholders on boards. And they studied the situation. They found it compelling. And they wanted to represent the interests of a \$50 billion company in deciding its future.

PG.50

09:07:38:00 Why don't I turn it over? I'll turn it over to Bill Doyle. I'll just mention Betsy who I spent a little more time with than Bill did. First of all, in terms of what we're looking for, we wanted directors who had no previous affiliation with Valeant or with Pershing Square.

09:07:53:00 Only one of these directors had I met before - John Zillmer. I flipped the page to John. John we considered as a potential director for Air Products when we were considering proxy contests about a year ago. We ended up not running a proxy contest there. As I mentioned, things tend to settle. In this case, we didn't go anywhere near a proxy contest. We found a board of directors that was very focused on what were the best interests of their shareholders.

PG.51

09:08:26:00 But we actually covered a few thousand dollars of John's travel expenses when he flew to meet us. But other than that no economic or other relationship and we did not have a relationship with John since that time. But let me go through the other candidates.

09:08:38:00 Betsy Atkins. Betsy is an entrepreneur. Helped build a company called Ascend Communications as a founder (up to I think \$5 billion revenue companies sold to Lucent) for \$24 billion. And she has built, founded, sold a number of companies over her career. In the venture capital space as we speak and a very, very experienced director. And based on my I've not met her yet I'm going to meet her soon, you know, a dynamo. And she sounds terrific. Cathie Black has tremendous board experience, you know, let's start with that and then we'll talk about her career experience on some of the most important boards in the country.

PG.52

09:09:16:00 On IBM for about 16 years, on Coca-Cola for almost 20. I would love to have been on a board with Warren Buffett during that period. And I'd love to learn more from Cathie about some of those experiences. You know, she's a media senior executive over the course of her career at Hearst. And she was president of *U.S.A. Today*, you know, building one of the most successful media publications in the country.

09:09:50:00 I guess she got a little bit of a notoriety when Bloomberg asked her to be kind of run New York City's education system. This was not her expertise. But when the mayor taps you on the shoulder and says, Cathie, I need you she gave it a shot. And, you know, this is quite a political and difficult job. And 96 days in she stepped aside. But what we love about Cathie from her reputation is she is among the most straight-talking, tough, but says what she thinks kind of people. And with that, let me turn it over to Bill on Fred Eshelman.

PG.53

BILL DOYLE:

09:10:18:00 Yeah, so in addition to selecting directors that were independent and experienced and focused on creating shareholder value there are also a couple of specific issues that this board is going to have to consider. And we wanted to be sure that the board was capable of forming an independent judgment.

09:10:34:00 One of them is R&D. There's quite a bit of discussion about R&D models, the validity of R&D models. R&D can be a black box to people who are not familiar. And Fred Eshelman is an expert in pharmaceutical R&D. A long time senior executive of Glaxo. Founded his own company, Furiex

PG.54

Pharmaceuticals which he sold successfully to Forest. And also was a founder of a CRO. And one of the important considerations here is the difference between a high-fix cost R&D structure and the ability to variabilize that cost. And Fred is an expert in considering those issues.

09:11:07:00

In addition, when we're looking out at the future value products, we have to consider not only the R&D and the pharmaceutical company side, but the payer side. What will people pay for these products? And this is a big issue that we'll get to in a minute with respect to Allergan's pipeline. But in crowded markets where there are generic entrants when you're projecting into the future you need to understand the payer perspective. And Steve Shulman is an expert in representing that perspective. Additionally, accounting has been thrown up as one of the

PG.55

WILLIAM ACKMAN:

09:11:45:00 Do you mind if I jump in on Steve?

BILL DOYLE:

09:11:48:00 sure.

WILLIAM ACKMAN:

09:11:49:00 Steve has also been stepped into situations not dissimilar to this one. He stepped in as chairman of Health Management Associates, relatively short-term role. There was a shareholder activist in that case. It was Larry Robbins. But he's got a lot of experience as a turnaround executive, as a restructuring executive. A guy who understands cost control and efficient operations of businesses.

BILL DOYLE:

09:12:13:00 Absolutely. And then the final issue that I'll mention is that Allergan has attacked Valeant's accounting. It is true that for acquisitive companies the accounting is complicated. And it's also true that acquisitive companies historically have misused accounting to their advantage. We've done significant due diligence

PG.56

WILLIAM ACKMAN:

09:12:33:00 I would say some acquisitive companies

BILL DOYLE:

09:12:35:00 some, some. Absolutely. And I was going to say that, we've done significant due diligence of Valeant. We don't believe that's the case. But we wanted an independent director on the board who was capable of making that assessment for the board. David Wilson's a Ph.D. accountant, long-time partner at Ernst and Young and is absolutely capable of digging through all the smoke screens around the accounting issues.

PG.57

WILLIAM ACKMAN:

09:13:05:00 And then John Zillmer who I mentioned before. John is a true operating executive. Spent a meaningful part of his career at Aramark. Stepped in as chairman/CEO of Allied Waste which was a turnaround KKR and Apollo were on the board as a public company, not a successful investment. And he made it one for them and for their shareholders ultimately selling the company, merging with Republic Services.

09:13:31:00 I think Republic, my recollection, was smaller than Allied Waste. But in order to get the deal done, you know, Republic wanted to run the CEO wanted to run the company, John stepped aside. And we respected his decision to step aside because that was the right thing to do for shareholders in that case.

PG.58

09:13:44:00

And then Univar, you know, most recently. And, you know, super-talented, operating executive. And a person of impeccable character. I encourage people to check on John Zillmer. He's probably not well-known in the pharma space. And again our goal here wasn't to put on a bunch of people from pharmaceuticals. You know, the issues here we wanted people with some domain expertise. But we wanted broad business expertise, relevant accounting expertise, people who are, the most important issue is character, independence and reputation for shareholder orientation.

09:14:14:00

So two things fix the special meeting provisions we're going to get accomplished at the special meeting. And I think most significantly if we don't, we're unsuccessful and Allergan's allowed to basically get away with this, the Wachtell Lipton Firm which is representing Allergan right now will be promoting these bylaws. I'm surprised they haven't started promoting them already. Maybe they're going to wait for the outcome of the special meeting.

PG.59

09:14:33:00 But every company in America will have bylaws like this for their special meeting if this is allowed to stand in this particular case. So if you want to support this special meeting you should contact Ed McCarthy or just call the D.F. King number. There's an 800 number for those focused on cost control in the proxy materials that we've sent you. And they can help you through the mechanics.

09:14:54:00 So let's get to the deal. We believe the deal now has reached a level where a board acting in the interest of their shareholders needs to engage. Valeant has materially increased its offer. Pershing Square has agreed to take materially less consideration than others to get to kind of a \$180 nominal number that was the number given to us by the biggest shareholders of the company as, you know, a today value of \$180. Obviously we think the future value if the transaction closes is materially larger.

PG.60

09:15:34:00 And of course as I mentioned before I'll get to this sorry, one second is that this is not a all-cash deal and it does require substantial due diligence on the part of Allergan to determine whether this is an attractive deal for shareholders.

09:15:43:00 So it's time to engage. And that's why one of the important reasons for the special meeting. We look at, we've done an analysis here that is done by many of the kind of the proxy advisory, a number of the proxy advisory firms on is this compelling transaction? Is it enough of a premium to consider?

PG.61