



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PS Fund 1, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	C.A. No. _____
Allergan, Inc.,)	
)	
Defendant.)	
)	

VERIFIED COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF

Plaintiff PS Fund 1, LLC (“PS Fund 1”), by and through its undersigned counsel, alleges the following for its Verified Complaint against Defendant Allergan, Inc. (“Allergan” or “Company”):

Nature of the Action

1. This is an action to protect the shareholder franchise. Allergan’s Certificate of Incorporation (“Charter”) explicitly grants Allergan shareholders the right to call a special meeting, and Allergan’s Amended and Restated Bylaws (“Bylaws”) set out the complex and burdensome procedures for exercising that right. But Allergan’s Board of Directors (“Board”) has imperiled that right through its application of a “poison pill,” enacted without shareholder approval, to defend against a merger proposal

from Valeant Pharmaceuticals, Inc. (“Valeant”). PS Fund 1 seeks to do only what the Charter expressly permits: call a special meeting to solicit shareholder views of Valeant’s proposal by voting on the removal of directors hostile to that proposal. Allergan, however, has refused to confirm that the conduct necessary to call a special meeting under the Charter and Bylaws will not trigger the poison pill and thus massively dilute the stakes in Allergan held by PS Fund 1 and other shareholders who give proxies in response to PS Fund 1’s proxy solicitation. The uncertainty created by Allergan has the effect of disenfranchising Allergan shareholders and stifling stockholder dissent—if PS Fund 1 proceeds with its effort to collect the necessary shareholder support for a special meeting, it must do so at the risk (to PS Fund 1 and other shareholders) that Allergan will later claim that this very same conduct has triggered the pill and diluted its stockholdings. PS Fund 1 therefore seeks a declaratory judgment regarding the application of the pill to the anticipated efforts to request a special meeting under the Charter and Bylaws.

2. Plaintiff PS Fund 1 is the largest stockholder of Allergan, owning an aggregate of 28,878,538 shares of common stock (approximately 9.7% of the outstanding shares). On June 2, 2014, Pershing Square Capital Management, L.P. (“Pershing Square”), the investment manager of PS Fund

1, commenced an effort to call a special meeting of Allergan shareholders by filing a preliminary proxy statement on Schedule 14A with the U.S. Securities and Exchange Commission (“SEC”). The fundamental purpose of that meeting is to allow shareholders to vote on the removal of a majority of the Board, which has refused to engage in merger discussions with Valeant, even though Valeant has offered to acquire Allergan for a combination of cash and stock that reflects a 55% premium to Allergan’s unaffected stock price.

3. The Board has resisted giving serious consideration to a merger offer that many shareholders view favorably. Publicly, it has attacked Valeant and raised materially inaccurate and unsubstantiated criticism of Valeant’s business model, its business practices, and its senior management. Behind the scenes, it has lobbied investors and other interested parties to disregard Valeant’s offer.

4. Most recently, the Board has taken steps to prevent shareholders from expressing their views on the transaction. After enacting a “poison pill” in response to Valeant’s offer—which effectively blocks Valeant from consummating a transaction without the Board’s approval—the Board is now using the pill to silence shareholder dissent and prevent

shareholders from exercising their right to call a special meeting to vote on whether they agree with the Board's position.

5. Under Article 10 of the Charter, shareholders have the right to call a special meeting upon the written request of record holders of twenty-five percent (25%) of the outstanding shares. The Bylaws set forth numerous requirements that must be satisfied by shareholders to exercise that right. In order to establish the requisite 25% ownership threshold, the Bylaws require that shareholders collectively owning 25% of the shares become direct record owners of the shares and submit written requests to the Company that identify the *same* underlying purpose for the special meeting, reflect the *same* matters to be acted upon at the meeting, and certify that the shareholder possesses an intent to hold its shares through the date of the special meeting. By their plain terms, these provisions of the Charter and Bylaws necessitate some measure of coordination amongst shareholders to call a special meeting. In addition, the Bylaws require each shareholder requesting a special meeting to make significant detailed disclosures about certain "interests" (of itself and of various entities that have specified relationships with the stockholder) such as any contracts or agreements with principal competitors of the Company. Finally, the Bylaws include various rules pertaining to the timing of special meeting requests: (a) special meeting

requests received 90 days prior to the first anniversary of the preceding annual meeting are “ineffective”; and (b) the Board has the ability to delay a special meeting that is properly called by 120 days. The net effect of these timing rules is that shareholders have a limited window between annual meetings within which to exercise their Charter right to call a special meeting.

6. Under the terms of the “Rights Plan,” enacted by the Board in response to Valeant’s offer, the so-called “poison pill” is triggered if any shareholder becomes the “Beneficial Owner” of ten percent (10%) or more of outstanding Company shares. The term “Beneficial Owner” states that a shareholder is deemed to beneficially own:

any securities ... which are Beneficially Owned ... by any other Person ... with whom such Person ... has an agreement, arrangement, or understanding to act together for the purpose of acquiring, holding, voting, or disposing of any securities of the Company (except that a Person shall not be deemed the Beneficial Owner of any security under this Section 1.3.3 if such voting power arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, Section 14(a) ... by means of a solicitation statement filed on Schedule 14A)[.]

7. After reports surfaced that the pill could be used to restrict talks between investors, PS Fund 1 requested Allergan’s position on whether PS

Fund 1's solicitation and receipt of revocable proxies in connection with the special meeting request would trigger the pill. Seeking to capitalize on the uncertainty it created, Allergan failed to provide the answers necessary for shareholders to pursue a request for a special meeting. Allergan indicated that PS Fund 1's solicitation and receipt of one or more revocable proxies from other Allergan stockholders for the purpose of requesting a special meeting would not in and of itself trigger the pill. But it evaded responding to PS Fund 1's other questions, including whether discussions about the Bylaw requirement that a requesting stockholder express an intent to hold the shares through the meeting date, or the provision of assistance to fellow shareholders to complete, execute, date, and deliver the Special Meeting Request forms and revocable proxies and consents, would trigger the Rights Plan. Because the Bylaws contain numerous and complex requirements for completing the Special Meeting Request forms, PS Fund 1 anticipates the need to communicate with and provide assistance to shareholders in understanding and completing valid special meeting requests. Thus, without the ability to assist shareholders in properly completing the necessary forms (by, for example, gathering information from shareholders, meeting with shareholders to explain the process of calling a special meeting and interpreting the Bylaw requirements for doing so, and helping shareholders

fill out the necessary forms) *free of the risk of triggering the poison pill*, PS Fund 1's ability to call a special meeting will be materially frustrated and otherwise impaired.

8. Accordingly, PS Fund 1 seeks a declaration that actions taken by it and other Allergan stockholders solely for the purpose of exercising its right to call a special meeting in compliance with the Bylaws' requirements will not trigger the poison pill.

9. Alternatively, if the court determines that Allergan's poison pill would in fact be triggered by those actions, PS Fund 1 seeks a declaration that the relevant provisions of the poison pill are invalid as a matter of law because they are inconsistent with the contractual right (enshrined in the Charter) of stockholders to call a special meeting.

Parties

10. At all times relevant to this action, Plaintiff PS Fund 1, a Delaware limited liability company, has been a stockholder of Allergan.

11. Defendant Allergan is a Delaware Corporation with its principal place of business at 2525 Dupont Drive, Irvine, California 92612. Allergan can be served through its registered agent, The Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

Background Facts

A. Initial Merger Proposal

12. On April 21, 2014, Pershing Square and Valeant announced that they had formed a joint entity, PS Fund 1, to acquire ownership of Allergan stock and that PS Fund 1 had acquired beneficial ownership of approximately 9.7% of the outstanding shares of Allergan common stock.

13. The next day, on April 22, 2014, Valeant made a public offer (the “Initial Merger Proposal”) to Allergan’s Board, to acquire Allergan for a price comprised of \$48.30 in cash and 0.83 shares of Valeant for each Allergan share based on the fully diluted number of Allergan shares outstanding. Pursuant to the terms of the offer, Allergan shareholders would receive a substantial premium over Allergan’s unaffected stock price of \$116.63 on April 10, 2014 and would own approximately 43% of the combined company after the consummation of the proposed merger.

B. Adoption of Poison Pill and Rejection of Initial Merger Proposal

14. Immediately upon receipt of Valeant’s offer, on April 22, 2014, the Board adopted a Rights Plan, commonly known as a poison pill, as a defensive measure against Valeant’s proposal. Under the Rights Plan, should any shareholder become the Beneficial Owner of ten percent (10%) of outstanding Company shares, the poison pill is triggered, enabling all remaining shareholders of record (as of May 8, 2014), to exercise their

Rights (as defined therein) to purchase additional Allergan stock. The Rights Plan, therefore, effectively dilutes the percentage of shares owned by the shareholders that trigger the pill. The Rights expire on April 22, 2015, unless previously redeemed or exchanged by the Board. The Board also has broad authority to amend the Rights Plan to exempt premium offers, such as Valeant's offer. A true and correct copy of the Rights Plan is attached to this complaint as Exhibit A.

15. After declining Pershing Square's overtures to meet in person to discuss Valeant's proposal, Allergan officially rejected the Merger Proposal on May 12, 2014.

C. Valeant Raises Its Offer

16. On May 28, 2014, Valeant publicly announced an improved proposal and expressed its willingness to engage in meaningful discussions with the Board. Valeant's improved offer increased the cash component of the consideration by \$10.00 per share to \$58.30 and included a contingent value right (the "CVR") tied to sales of DARPin®, one of Allergan's products, representing up to an additional \$25.00 of value per share. In addition, Valeant committed to invest up to \$400 million to develop DARPin® and pay to Allergan shareholders 40% of the net sales of

DARPin® after recovery of Valeant shareholders' investment in DARPin® development expenses.

17. On May 29, 2014, at the Sanford C. Bernstein Strategic Decisions Conference in New York City, many of Allergan's largest shareholders expressed their support of a merger between Allergan and Valeant. These investors suggested that if Valeant raised its offer to \$180 in value per share of Allergan stock based on Valeant's current trading price they would support a transaction.

18. Subsequently, on May 30, 2014, Valeant announced that it was making a revised proposal for Allergan under which each Allergan share would be exchanged for \$72.00 in cash and 0.83 shares of Valeant common stock, based on the fully diluted number of Allergan shares outstanding, reflecting a value of \$180.90 per Allergan share based on May 30 closing prices. The revised proposal also referenced Valeant's continued willingness to include the CVR if Allergan were to engage in negotiations with Valeant to work out the exact terms. Under the revised proposal, Allergan stockholders would continue to be able to elect cash and/or Valeant stock, subject to proration. Pershing Square also separately agreed to receive \$20.75 per share less than other stockholders and to exchange its Allergan shares for Valeant shares at a 1.22659 exchange ratio, based on

closing stock prices of Allergan and Valeant on May 29, 2014. In doing so, Pershing Square gave up \$600 million of value to the other Allergan shareholders, and agreed to take all of its consideration in stock, making a strong statement about its belief in the long term value of a Valeant-Allergan combination. Nonetheless, Allergan, again without meeting with Valeant to address any concerns that it may have or to perform any due diligence, rejected Valeant's revised offer on June 10, 2014.

D. Pershing Square Initiates Process to Request a Special Meeting

19. On June 2, 2014, Pershing Square filed a preliminary proxy statement with the SEC on Schedule 14A to solicit revocable proxies from the Company's shareholders to call a special meeting pursuant to Article 10 of the Charter and Article II, Section 3 of the Bylaws. The special meeting would be called for several purposes, including: (1) to remove from office, without cause, a majority of the Board; (2) to request that the Board elect or appoint a slate of individuals proposed by the shareholders as new directors on the Board; (3) to amend the Bylaws to remove certain onerous special meeting provisions; and (4) to request that the Board promptly engage in good faith discussions with Valeant regarding Valeant's offer to merge with the Company. A true and correct copy of the preliminary proxy statement is attached to this complaint as Exhibit B.

20. After filing the preliminary proxy statement on June 2, 2014, concerns surfaced that Allergan might characterize efforts to obtain the required 25% shareholder threshold for calling a special meeting as triggering the 10% Beneficial Owner threshold in the Rights Plan.

21. On June 6, 2014, Pershing Square sent a letter to Allergan asking for confirmation that Allergan would not take the position that PS Fund 1's solicitation and receipt of revocable proxies in connection with the Special Meeting Request forms trigger Allergan's Rights Plan. The letter presented four specific questions:

- (A) Does Allergan agree that Pershing Square's discussion about and receipt of Special Meeting Request forms (including the representations therein) and a revocable proxy in connection therewith as proposed in Pershing Square's June 2, 2014 preliminary proxy materials will not render Pershing Square a "Beneficial Owner," as defined in Section 1.3 of Allergan's Rights Plan, of any security held by another Beneficial Owner from which it receives such Special Meeting Request forms and proxy?
- (B) Does Allergan agree that if Pershing Square takes steps attendant to complying with the bylaws to request a Special Meeting that such conduct will not trigger the Rights Plan, including, without limitation, solicitation and receipt of Special Meeting Request forms and revocable proxies or written consents, steps related to requesting a Special Meeting, and the provision of assistance to Pershing Square's fellow shareholders to complete, execute, date, and deliver the attendant documents?
- (C) Does Allergan agree that for any potential Proposing Person who is not already a record holder, the possible purchase and/or

transfer from street name of a *de minimis* number of shares to comply with the bylaw requirement that Proposing Persons be record holders (and discussions related thereto), will not trigger the Rights Plan?

- (D) Does Allergan agree that if shareholders (a) remove a majority of Allergan's directors at a special meeting; and (b) thereafter apply to the Chancery Court under Section 223(c) of the DGCL to order an election of board replacements (as your lawyers have acknowledged shareholders have the right to do), the actions of those shareholders in working together to apply to the court will not trigger the Rights Plan?

A true and correct copy of Pershing Square's June 6, 2014 letter is attached to this complaint as Exhibit C.

22. Allergan responded in a letter dated June 11, 2014, a true and correct copy of which is attached to this complaint as Exhibit D. In that letter, Allergan observed that PS Fund 1's solicitation and receipt of one or more revocable proxies from other Allergan stockholders for the purpose of requesting a special meeting would not in and of itself trigger the pill. Allergan, however, refused to answer any of PS Fund 1's specific questions. In particular, Allergan did not address (a) whether the provision of assistance to shareholders to complete, execute, date, and deliver the Special Meeting Request forms and revocable proxies and consents would trigger the Rights Plan; (b) whether assisting in, or communicating with shareholders about, registering a *de minimis* amount of their stock for the purpose of meeting the Bylaws' requirement that the proposing person be a

record holder would trigger the Rights Plan; (c) whether soliciting stockholders to submit forms that include a representation that the holder intends to hold the shares through the date of the meeting would trigger the Rights Plan; and (d) whether Allergan would contend that coordination among shareholders to petition the court under Section 223(c) of the DGCL to order an election in the event a majority of the board were removed would trigger the Rights Plan.

E. The Governing Corporate Provision

23. The Charter empowers stockholders to call a special meeting to remove directors. Article 10 of the Charter establishes the stockholders' right to call a special meeting and the basic requirements for doing so:

Special meetings of the Corporation ... (ii) shall be called by the Secretary upon the written request of the holders of record of at least twenty-five percent (25%) of the outstanding shares of common stock of the Corporation at the time such request is validly submitted by the holders of such requisite percentage of such outstanding shares, subject to and in compliance with this Article 10 and the bylaws of the Corporation.

A true and correct copy of the Charter is attached to this complaint as Exhibit E.

24. Article 7 of the Charter establishes that directors may be removed at a special meeting:

[A]ny or all of the directors of the Corporation may be removed from office by the stockholders at any annual or special meeting of stockholders ..., with or without cause, by the affirmative vote of at least a majority of the outstanding shares.

(Ex. E.)

25. Under Article II, Section 3 of the Bylaws:

In order for a special meeting to be called upon stockholder request (“Stockholder Requested Special Meeting”), one or more requests for a special meeting (each, a “Special Meeting Request” and, collectively, the “Special Meeting Requests”) ... must be signed by Proposing Persons (as defined below) that have a combined Net Long Beneficial Ownership (as defined below) of at least the Requisite Percentage. Only Proposing Persons who are stockholders of record at the time the Special Meeting Requests representing the Requisite Percentage are validly delivered pursuant to this Section 3 shall be entitled to sign a Special Meeting Request. In determining whether a Stockholder Requested Special Meeting has been properly requested by Proposing Persons that have a combined Net Long Beneficial Ownership of at least the Requisite Percentage, multiple Special Meeting Requests delivered to the Secretary will be considered together only if (i) each Special Meeting Request identifies the same purpose or purposes of the Stockholder Requested Special Meeting and the same matters proposed to be acted on at such meeting (in each case as determined in good faith by the Board) ...

A true and correct copy of the Bylaws is attached to this complaint as Exhibit F.

26. Article II, Section 3 of the Bylaws requires that the Special Meeting requests be in the “proper form.” (*Id.*) To be in proper form, among other things, the requests must include for each Proposing Person: (1) the person’s name and address; (2) the class and number of shares of the Company beneficially owned by that person (with evidence of such ownership attached); (3) a representation by that person that he/she intends to hold the shares described as beneficially owned through the date of the requested special meeting; and (4) acknowledgement that the person’s special meeting request will be proportionally revoked to the extent of any reduction in that person’s beneficial ownership. A Special Meeting Request form must also set forth the Proposing Person’s Disclosable Interests, if any. To determine whether one has a Disclosable Interest, the Proposing Person must consult a 596-word and 37-line definition of Disclosable Interests in the Bylaws, which defines “Disclosable Interest” to include, among other things, information about the Proposing Person’s material relationships with the Company and its affiliates, as well as such relationships with “any principal competitor of the Company.” In addition, a Special Meeting Request must include a statement of the purpose(s) for the special meeting. The Bylaw requirements for properly requesting a special meeting conclude with the catch-all that the form must set forth:

Such other information and representations as would be required by Article 12 of the Restated Certificate of Incorporation and Section 9 of Article II of these Bylaws if incorporated in this Section 3, including, *without limitation*, all such information regarding any material interest of the Proposing Person in the matter(s) proposed to be acted on at the Stockholder Requested Special Meeting, all agreements, arrangements, or understandings between or among any Proposing Person and any other record holder or beneficial owner of shares of any class or series of capital stock of the Corporation in connection with the Special Meeting Record Date Request, the Special Meeting Request, or the matter(s) proposed to be brought before the Stockholder Requested Special Meeting.

(*Id.* (emphasis added).) In light of these complicated, ill-defined, and burdensome requirements, PS Fund 1 anticipates the need to provide assistance to shareholders in understanding and completing valid special meeting requests.

27. Under the Rights Plan, the poison pill is triggered if any shareholder becomes the “Beneficial Owner” of ten percent (10%) or more of outstanding shares.

28. A “Beneficial Owner” under the Rights Plan is one or a group of shareholders who have:

an agreement, arrangement or understanding to act together for the purpose of acquiring, holding, voting or disposing of any securities of the Company (except that a Person shall not be

deemed to be the Beneficial Owner of any security under this Section 1.3.3 if such voting power arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by means of a solicitation statement filed on Schedule 14A).

(Ex. A at § 1.3.)

29. Any interaction between Pershing Square and other shareholders to call a special meeting should not render Pershing Square a “Beneficial Owner” of those shareholders’ securities. By taking steps attendant to calling a special meeting, as necessitated by the Charter and Bylaws, Pershing Square and the other stockholders who request a special meeting do not form the type of group that should be able to trigger a rights plan. There is no agreement, arrangement, or understanding between Pershing Square and the other stockholders other than the coordination required by Allergan in its Bylaws in order to request a special meeting. The stockholders would only be acting together for the purpose of requesting a special meeting and exercising a contractual right conferred upon the stockholders by the Charter. Pershing Square gains no voting power or control over the disposition of other Beneficial Owners’ shares.

30. Further, Pershing Square’s Solicitation Statement filed on Schedule 14A falls squarely within the Section 14 exclusion to the definition

of “Beneficial Ownership” under the Rights Plan. The Rights Plan includes an explicit exception from the 10% Ownership trigger if an agreement, arrangement, or understanding with respect to voting such stock arises from receipt of revocable proxies or consents given in response to a public solicitation statement. As a consequence, Pershing Square’s discussion with other stockholders about, and receipt of, Special Meeting Request forms (including the representations therein) and a revocable proxy in connection therewith, fall within the Section 14 exclusion. Discussions with other stockholders to satisfy the complex Bylaw requirements for calling a special meeting fall within the Section 14 exclusion as well. Furthermore, such discussions do not trigger any disclosure obligations under Section 13D of the Exchange Act.

31. The Charter grants shareholders a right to express their views by way of a special meeting. Allergan has effectively stripped shareholders of that right by declining to confirm that it will not claim that taking steps to call a special meeting triggers the poison pill and dilutes the existing shares of each and every stockholder who requests such a meeting. If shareholders must comply with the Bylaws to call a special meeting, but any attempt to comply with those Bylaws’ requirements would trigger the poison pill, Allergan—by adopting, enforcing, and refusing to clarify or amend the

poison pill—has foreclosed shareholders from exercising the contractual rights conferred upon them by the Charter. If that interpretation is accepted, the pertinent provisions of the Rights Plan are in plain conflict with the Charter and therefore invalid.

F. The Board’s Position Also Infringes Stockholders Rights Under 8 Del. C. § 223(c).

32. Section 223(c) of the General Corporation Law dictates the rights of stockholders in the event that a majority of directors are removed by the stockholders:

If, at the time of filling any vacancy or any newly created directorship, the directors then in office *shall constitute less than a majority of the whole board* (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10 percent of the voting stock at the time outstanding having the right to vote for such directors, *summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office* as aforesaid, which election shall be governed by § 211 or § 215 of this title as far as applicable.

See 8 Del. C. § 223(c) (emphases added).

33. The Board’s broad interpretation of “Beneficial Ownership” creates a situation where stockholders might conclude that any agreement, arrangement, or understanding between stockholders to petition the Court

pursuant to Section 223(c), and thus satisfy the 10% requirement, triggers the Rights Plan. To address this potential concern, Pershing Square asked Allergan to confirm that coordination among stockholders to achieve the 10% required to petition the Court pursuant to Section 223(c) would not trigger the Rights Plan. Allergan has not.

34. The uncertainty created by Allergan similarly deters stockholders from exercising their rights under Delaware law by leaving a lingering concern that the draconian effects of the Rights Plan could apply. Heightening that concern is the fact that it is also unclear whether the Section 14 exclusion in the definition of “Beneficial Ownership” would apply to any public solicitation to agree to petition the Court pursuant to Section 223(c). Section 14(a) of the Exchange Act and Schedule 14A generally apply to solicitations for acts required to be taken at a meeting of stockholders.

35. Because no stockholder held greater than 10% of Allergan’s shares at the time the Rights Plan was adopted—PS Fund 1 was and is Allergan’s largest stockholder at 9.7%—no single stockholder holds the necessary 10% to petition this Court under Section 223(c). If a solicitation to achieve the necessary 10% to petition this Court pursuant to Section 223(c) either (1) does not trigger the Rights Plan or (2) is exempt under the

Section 14 exclusion, PS Fund 1 will have no difficulty finding the additional .3% necessary to get to 10%.

G. Irreparable Harm

36. Without a declaratory judgment that the relevant provisions of the Rights Plan are invalid for violating the rights granted to stockholders under the Charter, PS Fund 1's ability to achieve the necessary 25% required for stockholders to exercise their right under the Charter to call a special meeting is materially frustrated and impaired. Similarly, without a declaratory judgment that the relevant provisions of the Rights Plan are invalid for violating the rights granted to stockholders under Section 223, it becomes impossible for shareholders to exercise their statutory right to petition the court for relief in the event that a majority of directors are removed at the special meeting.

37. The Rights Plan thus irreparably harms all Allergan shareholders by effectively stripping them of rights expressly granted in the Charter and by statute at a crucial time where a potentially lucrative and advantageous merger is at stake.

38. This dispute carries the risk of specific, irreparable harm for Allergan shareholders. Despite Allergan's attempts to attract another third-party acquirer, Valeant has made the only premium offer for Allergan's

stock. As with any nonbinding premium offer, undue delay creates risk that the transaction will not be consummated. *See, e.g., QVC Network, Inc. v. Paramount Commc'ns*, 635 A.2d 1245, 1273 n.50 (Del. Ch. 1993) (“Since the opportunity for shareholders to receive a superior control premium would be irrevocably lost if injunctive relief were not granted, that alone would be sufficient to constitute irreparable harm.”).

39. Shareholders cannot be adequately compensated by monetary damages for the value and lost opportunity cost of the potential merger.

Claims For Relief

Count I: Declaratory Judgment

40. Plaintiff repeats the allegations of paragraphs 1 through 39 as if fully set forth herein.

41. Pursuant to Chapter 65 of Title 10 of the Delaware Code, Court of Chancery Rule 57, and 8 Del. C. §111(a)(2), this Court has the power to declare the rights, status or other legal relations of the parties before it. More specifically, Section 6502 of Title 10 permits any person interested under a written contract to obtain a declaration of that person’s rights, status, or other legal relations thereunder, and Section 111 of Title 8 grants subject matter jurisdiction to this Court to “interpret, apply, enforce or determine the

validity of... (2) Any instrument, document or agreement by which a corporation creates...any rights...respecting its stock.”

42. There is an actual, narrow, ripe and purely legal controversy regarding the applicability of the Rights Plan to shareholders’ right to call a special meeting under the Charter and Bylaws.

43. Plaintiff requests that this Court declare that:

- (A) the provision of assistance by PS Fund 1 or Pershing Square to shareholders to complete, execute, date, and deliver the Special Meeting Request forms and revocable proxies and consents, does not trigger the Rights Plan;
- (B) PS Fund 1 or Pershing Square’s communications with fellow shareholders concerning the Bylaws’ requirement that special meeting request forms include a representation that the holder intends to hold the shares through the date of the meeting, does not trigger the Rights Plan; and
- (C) PS Fund 1 or Pershing Square’s communications with fellow shareholders regarding the possible purchase and/or transfer from street name of a *de minimis* number of shares to comply with the bylaw requirement that Proposing Persons be record holders, does not trigger the Rights Plan.

44. Plaintiff has no adequate remedy at law.

Count II: Declaratory Relief

45. Plaintiff repeats the allegations of paragraphs 1 through 44 as if fully set forth herein.

46. Pursuant to Chapter 65 of Title 10 of the Delaware Code, Court of Chancery Rule 57, and 8 Del. C. §111(a)(2), this Court has the power to

declare the rights, status or other legal relations of the parties before it. More specifically, Section 6502 of Title 10 permits any person interested under a written contract to obtain a declaration of that person's rights, status, or other legal relations thereunder, and Section 111 of Title 8 grants subject matter jurisdiction to this Court to "interpret, apply, enforce or determine the validity of... (2) Any instrument, document or agreement by which a corporation creates...any rights...respecting its stock."

47. There is an actual, narrow, ripe and purely legal controversy regarding the applicability of the Rights Plan to shareholders' right to call a special meeting under the Charter and Bylaws.

48. Plaintiff requests that this Court declare, in the alternative, that the relevant provisions of the Rights Plan are invalid and inconsistent with the right (enshrined in the Charter) of stockholders holding 25% of the outstanding shares to call a special meeting.

49. Plaintiff has no adequate remedy at law.

COUNT III: Declaratory Relief

50. Plaintiff repeats the allegations of paragraphs 1 through 49 as if fully set forth herein.

51. Pursuant to Chapter 65 of Title 10 of the Delaware Code, Court of Chancery Rule 57, and 8 Del. C. §111(a)(2), this Court has the power to

declare the rights, status or other legal relations of the parties before it. More specifically, Section 6502 of Title 10 permits any person interested under a written contract to obtain a declaration of that person's rights, status, or other legal relations thereunder, and Section 111 of Title 8 grants subject matter jurisdiction to this Court to "interpret, apply, enforce or determine the validity of... (2) Any instrument, document or agreement by which a corporation creates...any rights...respecting its stock."

52. There is an actual, narrow, ripe, and purely legal controversy regarding the applicability of the Rights Plan to shareholders' right to petition the Court pursuant to Section 223(c).

53. PS Fund 1 is entitled to a declaratory judgment that stockholders working together to satisfy the 10% ownership threshold necessary to petition the Court of Chancery to call a special meeting of stockholders under 8 *Del. C.* § 223(c) does not violate the Rights Plan.

54. Plaintiff has no adequate remedy at law.

Count IV: Declaratory Relief

55. Plaintiff repeats the allegations of paragraphs 1 through 54 as if fully set forth herein.

56. Pursuant to Chapter 65 of Title 10 of the Delaware Code, Court of Chancery Rule 57, and 8 *Del. C.* §111(a)(2), this Court has the power to

declare the rights, status or other legal relations of the parties before it. More specifically, Section 6502 of Title 10 permits any person interested under a written contract to obtain a declaration of that person's rights, status, or other legal relations thereunder, and Section 111 of Title 8 grants subject matter jurisdiction to this Court to "interpret, apply, enforce or determine the validity of... (2) Any instrument, document or agreement by which a corporation creates...any rights...respecting its stock."

57. There is an actual, narrow, ripe, and purely legal controversy regarding the applicability of the Rights Plan to shareholders' right to petition the Court pursuant to Section 223(c).

58. Plaintiff requests that this Court declare, in the alternative, that the relevant provisions of the Rights Plan are invalid and inconsistent with the right of stockholders under 8 *Del. C.* § 223(c).

Count V: Injunctive Relief

59. Plaintiff repeats the allegations of paragraphs 1 through 58 as if fully set forth herein.

60. Plaintiff, as a shareholder of the Company, has protectable rights under the terms of the Charter.

61. Should the Board, prior to this Court's ruling, declare that PS Fund 1's efforts to comply with the Bylaws to request a special meeting or

to exercise its right under 8 *Del. C.* § 223(c) qualifies to trigger the poison pill and allow shareholders to purchase additional shares, PS Fund 1, as well as other shareholders, will be irreparably harmed.

62. Plaintiff requests that this Court enjoin the effectuation of the offending provisions of the poison pill identified by Plaintiff.

63. Plaintiff has no adequate remedy at law.

Prayer For Relief

WHEREFORE, Plaintiff PS Fund 1, LLC, prays this Court enter an Order:

A. Declaring that PS Fund 1 or Pershing Square's provision of assistance to fellow shareholders to complete, execute, date, and deliver the Special Meeting Request forms in connection with a special meeting request under the Company's Charter and Bylaws, does not trigger the Rights Plan.

B. Declaring that PS Fund 1 or Pershing Square's communications with fellow shareholders concerning the Bylaws' requirement that special meeting request forms include a representation that the holder intends to hold the shares through the date of the meeting, does not trigger the Rights Plan.

C. Declaring that PS Fund 1 or Pershing Square's communications with fellow shareholders regarding the possible purchase and/or transfer from street name of a *de minimis* number of shares to comply with the bylaw requirement that Proposing Persons be record holders, does not trigger the Rights Plan.

D. Declaring that coordination among stockholders to satisfy the 10% ownership threshold necessary to petition the Court of Chancery to

order a special meeting of stockholders under 8 *Del. C.* § 223(c), does not trigger the Rights Plan.

E. Enjoining the Company from taking any steps to enforce the relevant provisions of the Rights Plan until it has ruled on relief requested herein.

F. That the Court grant Plaintiff such other and further relief as this Court deems just and appropriate.

YOUNG CONAWAY STARGATT
& TAYLOR, LLP

/s/ Martin S. Lessner

OF COUNSEL:

Jay P. Lefkowitz
John P. Del Monaco
Danielle R. Sassoon
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
(212) 446-4800

David C. McBride (#408)
Martin S. Lessner (#3109)
Christian Douglas Wright (#3554)
Tammy L. Mercer (#4957)
Benjamin Z. Grossberg (#5615)
1000 North King Street
Rodney Square
Wilmington, Delaware 19801
Telephone: (302) 571-6600

Attorneys for Plaintiff PS Fund 1, LLC

Dated: June 12, 2014