

ALLERGAN INC
Form DFAN14A
July 23, 2014

SCHEDULE 14A INFORMATION

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

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

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- Preliminary Proxy Statement
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- Definitive Proxy Statement
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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)

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Pershing Square Capital Management, L.P.
Calling
for
a
Special
Meeting
of
Allergan
Shareholders

July 17, 2014

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This communication does not constitute an offer to buy or solicitation of an offer to sell any securities. This communication relates to a solicitation of written requests to call a special meeting of shareholders of Valeant Pharmaceuticals International, Inc. (Valeant) by Pershing Square Capital Management, L.P. (Pershing Square) in connection with the proposal which Valeant Pharmaceuticals International, Inc. (Valeant) has made for a business combination transaction with Allergan. In furtherance of this proposal and subject to future developments, Pershing Square has filed a definitive solicitation statement with the Securities and Exchange Commission (the SEC) on July 11, 2014 (the solicitation statement), Valeant has filed a registration statement on Form S-4 (the Form S-4) and a tender offer statement on Schedule TO (including the offer to exchange securities, proxy election and transmittal and other related offer materials) with the SEC on June 18, 2014 (together with the Form S-4, the Schedule TO, the preliminary proxy statement on June 24, 2014 with respect to a meeting of Valeant shareholders. Pershing Square and Valeant are currently negotiating a transaction (the proposed transaction) which, if agreed, Allergan) may file one or more solicitation statements, registration statements, proxy statements, exchange offer documents or other documents with the SEC. This communication is not a substitute for the solicitation statement, registration statement, proxy statement, prospectus, tender or exchange offer document, or any other solicitation statement, proxy statement, registration statement, prospectus, tender or exchange offer document filed with the SEC in connection with the proposed transaction. INVESTORS AND SHAREHOLDERS OF VALEANT AND ALLERGAN ARE URGED TO READ THE SOLICITATION STATEMENT, PROXY STATEMENT, REGISTRATION STATEMENT, PROSPECTUS, TENDER OR EXCHANGE OFFER DOCUMENTS AND OTHER DOCUMENTS FILED WITH THE SEC CAREFULLY IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE AS THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION. The solicitation statement is currently being mailed to stockholders of Valeant and a definitive solicitation statement or proxy statement(s) or definitive tender or exchange offer documents (if and when available) will be mailed to stockholders of Allergan and/or Valeant, as applicable. Investors and security holders will be able to obtain free copies of the solicitation statement and the Schedule TO and will be able to obtain free copies of these other documents filed with the SEC by Pershing Square and Valeant through the web site maintained by the SEC at <http://www.sec.gov>.

Information regarding the names and interests in Allergan and Valeant of Pershing Square and persons related to Pershing Square who are deemed participants in any solicitation of Allergan or Valeant shareholders in respect of a Valeant proposal for a business combination transaction with Allergan is available in the solicitation statement. The solicitation statement can be obtained free of charge from the sources in

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This presentation contains forward-looking statements. These forward-looking statements include, but are not limited to, statements regarding Valeant's financing of the proposed transaction, Valeant's or Allergan's expected future value and performance (including operations and financial guidance), and the combined company's future financial condition, operation results, strategy and plans. Forward-looking statements will be identified by the use of the words anticipates, expects, intends, plans, should, could, would, may, view, opportunity, tentative, positioning, designed, create, predict, project, seek, ongoing, upside, increase, and other similar expressions and include but are not limited to beliefs expressed regarding future performance. These statements are based upon the current beliefs of Pershing Square and are subject to numerous assumptions, risks and uncertainties that change over time and could cause actual results to differ materially from those described in the forward-looking statements. These assumptions, risks and uncertainties include, but are not limited to, the assumptions and uncertainties discussed in Valeant's and/or Allergan's most recent annual or quarterly reports filed with the SEC and the Exchange Act (the "CSA") and assumptions, risks and uncertainties relating to the proposed merger, as detailed from time to time in Valeant's and Allergan's public filings. Important factors that could cause actual results to differ materially from the forward-looking statements we make in this presentation include, but are not limited to: the ultimate outcome of any possible transaction between Valeant and Allergan, including the possibilities that Valeant will not complete a transaction with Allergan and that Allergan will reject a transaction with Valeant; if a transaction between Valeant and Allergan were to occur, the ultimate outcome and results of integrating the operations of Valeant and Allergan; the outcome of Valeant's pricing and operating strategy applied to Allergan and the ultimate ability to realize synergies; the effects of the business combination of Valeant and Allergan, including the combined company's future financial condition and performance; the effects of governmental regulation on Valeant's and Allergan's business or potential business combination transaction; the ability to obtain regulatory approvals and meet other closing conditions to the transaction, including all necessary stockholder approvals; Valeant's and Allergan's ability to sustain and grow revenues and cash flow from operations in their respective markets and to maintain their respective customer bases, the need for innovation and the related capital expenditures and the unpredictable economic conditions in the U.S. and globally; the impact of competition from other market participants; the development and commercialization of new products; the availability and access, in general, of funds to meet Valeant's and Allergan's debt obligations prior to or when they become due and necessary capital expenditures, either through (i) cash on hand, (ii) free cash flow, or (iii) access to the capital or credit markets; Valeant's and Allergan's ability to comply with all covenants in their respective indentures and credit facilities any violation of which could trigger a default of their respective other obligations under cross-default provisions; and the risks and uncertainties detailed by Valeant and Allergan with respect to their respective businesses as described in their respective public filings filed with the SEC.

All forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the above. We are cautioned not to place undue reliance on any of these forward-looking statements. These forward-looking statements speak only for Pershing Square or any of its affiliates or associates, or any of their respective directors, officers, employees, agents, shareholders or partners. We have no obligation to update any of these forward-looking statements to reflect events or circumstances after the date of this presentation.

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Executive Summary

There are two principal reasons we are calling for a special meeting

1)

To fix the special meeting provisions in Allergan's bylaws, which are unduly onerous and anti-shareholder

2)

To remove directors and propose the appointment of new directors who will engage with Valeant on its compelling and certain offer to acquire Allergan at a 50%+ premium to Allergan's unaffected share price

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A Special Meeting is Warranted Given Allergan's Record of Poor Corporate Governance

The Current Offer Justifies Board Engagement and Meets Investors' Asking Price

The Valeant Offer Satisfies the Prevailing M&A Proxy Fight Analytical Framework
Investors and Research Analysts Are Confident in Valeant's Operating Model and the Strategic Combination

Risks in Allergan's Business Model

Allergan's History of Poor Cost Management

Allergan's Poor Track Record of Allocating Capital

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Allergan's Record of Poor Corporate
Governance

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To date, Allergan's board has responded extremely poorly to Valeant's highly compelling and certain offer

Has refused to engage with Valeant

Has refused to meet with Pershing Square, Allergan's largest shareholder, without management present

Has attacked Valeant's business model and management with claims unsupported by factual evidence

A Special Meeting is Warranted Given Allergan's

Record of Poor Corporate Governance

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Members of the board of directors of a Delaware corporation faced with a takeover bid are required to inform themselves of all material information about a transaction and then act with care in evaluating it. By failing to authorize the board's advisors to meet with Valeant to address any of the board's stated concerns about Valeant, the board and its advisors have failed to do properly consider the Valeant transaction. A Special Meeting is Warranted Given Allergan's Record of Poor Corporate Governance (Cont.) The board's actions have deprived shareholders of the opportunity to consider this offer.

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This board's recent behavior is consistent with

Allergan's past poor corporate governance

Shareholders deserve the right to elect a board who will
protect their interests as owners of the company

Shareholders also deserve the right to call a special
meeting free of onerous provisions and impediments

We have proposed a special meeting, which Allergan has
sought to suppress, to enfranchise shareholders

A Special Meeting is Warranted Given Allergan's

Record of Poor Corporate Governance (Cont.)

ISS 2014 US Proxy Voting Guidelines:

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.

Over the 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 of the company and, therefore, run counter to the stated intention of allowing shareholders to call special meetings.

Limitations on written consent are clearly contrary to shareholder interests. Beneficial tender offers may also be precluded because of a bidder's inability to take action by written consent.

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ISS Supports Special Meeting and Written Consent Rights as

Important Tools for Empowering Shareholders to Respond to
Attractive Offers

But the value of a shareholder meeting is precisely that it provides a definitive, authentic, and unassailable answer to the question of what shareholders want. Not every shareholder is in agreement on every issue, to be sure – but shareholders in general, and 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.

ISS analysis on Darden Restaurants (April 24, 2014):

ISS recommendation: FOR the Consent to Request a Special Meeting

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ISS Supports Special Meeting and Written Consent Rights as Important Tools for Empowering Shareholders to Respond to Attractive Offers (Cont.)

25% of the vote required
Timing restrictions
Unduly onerous disclosure
requirements to make request
Restrictions on similar items
Restriction on stock sales by
shareholders requesting a
special meeting
13
2012
Shareholder
Proposal
(% of votes cast)
(1)
Call special meetings with
10% of the vote
(55.3%)

2013

2014

Mgmt Rec.

ISS Rec.

Right to act by
written consent

(50.2%)

Separation of
Chairman / CEO

(50.5%)

AGAINST

AGAINST

AGAINST

FOR

FOR

FOR

Placed on ballot a year later but
with substantial restrictions

Placed on ballot a year later but
with substantial restrictions

No action taken, to date

Mgmt

Response

25% of the vote required

Timing restrictions

Restrictions on similar
items

N/A

Restrictions

(1)

Votes FOR as % of votes [FOR + AGAINST]

GL Rec.

FOR

FOR

FOR

Allergan has Used Procedural Restrictions to
Neuter Mechanisms for Shareholder Action

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Allergan's Special Meeting Provision Provides a
Heavily Restricted Right
Requirement
for
shareholders
themselves
to
become
RECORD
OWNERS
Special
meetings
may
not
consider
any
Similar
Items
covered

at a
meeting in the previous year

By
which
the
Allergan
board
seeks
to
PROHIBIT
THE
ELECTION
OF
NEW
DIRECTORS

at
a
special
meeting,
even
if
current
Allergan
directors
are
removed

(1)
Unduly onerous disclosure requirements (with ongoing duty to update) for
requesting
shareholders

(e.g.,
2-year
trading
data,
relationships
with
AGN
employees
and
competitors)

Highly unusual requirement for Cede & Co. to itself submit individual
signed meeting requests (rather than granting the usual omnibus proxy)

The board determines, in sole discretion, whether meeting requests are
compliant

(1)
A
shareholder
derivative
lawsuit
is

pending
in
Delaware
challenging
the
Allergan
board s
attempted
application
of

Similar
Items

to
replacing
directors

(In

re

Allergan,

Inc. Stockholder Litigation).

To frustrate shareholder action, Allergan designed unnecessary
restrictions to calling a special meeting

25%
of the voting power of the company's common stock required to
request a special meeting
The
meeting
request
must
be
IN
PROPER
FORM ,
meaning
the
requesting shareholders must make certain concessions including:
Representations
that
they
INTEND

TO
HOLD
THEIR
SHARES

through
the
date

of the special meeting

Acknowledgements that a sale of their Allergan shares prior to the meeting date
will constitute a corresponding reduction of shares in support of the special
meeting request, even if shares are repurchased prior to the meeting

Shareholders requesting the special meeting must continue to hold at

least

of

the

company's

shares

until

the

special

meeting

date

or

the meeting may be cancelled

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Allergan's Special Meeting Provision Provides a
Heavily Restricted Right (Cont.)

To frustrate shareholder action, Allergan designed unnecessary
restrictions to calling a special meeting

25%

Allergan's Special Meeting Provision Provides a Heavily Restricted Right (Cont.)

Allergan's special meeting timing restrictions effectively limit the special meeting window to only one meeting per year within a narrow three and one half-month period

Allergan's board can delay a special meeting by up to **120** days from the date requested

No requests are allowed from **90** days prior to the anniversary of the previous AGM until the adjournment of the next AGM

Illustrative Timeline:

Oct
Aug
Sep

Jun

Jul

May 7:

Assumes request is
made the first day
after the AGM

Nov

Dec

Jan

Mar

Apr

May

Feb

Management can delay
up to 120 days

Special meeting
window

May 6:

Anniversary of
previous AGM
90-days prior to
anniversary of AGM

Solicitation period:

a. ~2 weeks for SEC
clearance

b.

~4 weeks for proxy
solicitation

~3.5 months