

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

VERIFICATION

I, William A. Ackman, am the Chief Executive Officer of Pershing Square Capital Management, L.P., a Delaware limited partnership (“PSCM”), and the managing member of PS Management GP, LLC. PSCM is the manager of PS Fund 1, LLC (“PS Fund 1”). I have read the foregoing Verified Complaint and affirm that the factual allegations contained therein are true and correct to the best of my knowledge, information and belief.



William A. Ackman

SWORN TO AND SUBSCRIBED
before me this 12th day of June, 2014.

Bernadette J. Jones
New York, NY



EXHIBIT A

EX-4.1 3 d714691dex41.htm EX-4.1

Exhibit 4.1

Allergan, Inc.

and

Wells Fargo Bank, N.A.

as Rights Agent

Rights Agreement

Dated as of April 22, 2014

RIGHTS AGREEMENT

Rights Agreement, dated as of April 22, 2014 (this “*Agreement*”), between Allergan, Inc., a Delaware corporation (the “*Company*”), and Wells Fargo Bank, N.A., as Rights Agent (the “*Rights Agent*”).

RECITALS

WHEREAS, on April 22, 2014, the Board of Directors (the “*Board*”) of the Company adopted this Agreement, and has authorized and declared a dividend of one preferred stock purchase right (a “*Right*”) for each share of Common Stock (as defined in Section 1.6) of the Company outstanding at the close of business on May 8, 2014 (the “*Record Date*”) and has authorized and directed the issuance of one Right (subject to adjustment as provided herein) with respect to each share of Common Stock that shall become outstanding between the Record Date and the earliest of the Distribution Date and the Expiration Date (as such terms are defined in Sections 3.1 and 7.1, respectively), each Right initially representing the right to purchase one one-thousandth (subject to adjustment) of a share of Series A Junior Participating Preferred Stock (the “*Preferred Stock*”) of the Company having the rights, powers and preferences set forth in the form of Certificate of Designations of Series A Junior Participating Preferred Stock, attached hereto as Exhibit A, to the Restated Certificate of Incorporation (as amended from time to time), upon the terms and subject to the conditions hereinafter set forth, *provided, however*, that Rights may be issued with respect to Common Stock that shall become outstanding after the Distribution Date and prior to the Expiration Date in accordance with Section 22.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

Section 1. Certain Definitions. For purposes of this Agreement, the following terms have the meanings indicated:

1.1. “*Acquiring Person*” shall mean any Person who or which, together with all Related Persons of such Person, shall be the Beneficial Owner of 10% or more of the Common Stock then outstanding, but shall not include (i) an Exempt Person or (ii) any Existing Holder, unless and until such time as such Existing Holder shall, after the first public announcement of this Agreement, become the Beneficial Owner of one or more additional shares of Common Stock (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Stock in Common Stock or pursuant to a split or subdivision of the outstanding Common Stock), unless upon acquiring such Beneficial Ownership, such Existing Holder does not Beneficially Own 10% or more of the Common Stock then outstanding. Notwithstanding the foregoing, no Person shall become an “*Acquiring Person*” as the result of an acquisition of Common Stock by the Company which, by reducing the number of shares outstanding, increases the proportionate number of shares Beneficially Owned by such Person to 10% or more of the Common Stock then outstanding; *provided, however*, that if a Person shall become the Beneficial Owner of 10% or more of the Common Stock then outstanding solely by reason of share purchases by the Company and shall, after such share purchases by the Company, become the Beneficial Owner of one or more additional shares of Common Stock

(other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Stock in Common Stock or pursuant to a split or subdivision of the outstanding Common Stock), then such Person shall be deemed to be an “Acquiring Person” unless, upon becoming the Beneficial Owner of such additional Common Stock, such Person does not Beneficially Own 10% or more of the Common Stock then outstanding. Notwithstanding the foregoing, if the Board determines in good faith that a Person who would otherwise be an “Acquiring Person,” as defined pursuant to the foregoing provisions of this Section 1.1, has become such inadvertently (including, without limitation, because (A) such Person was unaware that it Beneficially Owned a percentage of Common Stock that would otherwise cause such Person to be an “Acquiring Person” or (B) such Person was aware of the extent of its Beneficial Ownership of Common Stock but had no actual knowledge of the consequences of such Beneficial Ownership under this Agreement), and such Person divests as promptly as practicable (as determined, in good faith, by the Board) a sufficient number of shares of Common Stock so that such Person would no longer be an Acquiring Person, as defined pursuant to the foregoing provisions of this Section 1.1, then such Person shall not be deemed to be or have become an “Acquiring Person” at any time for any purposes of this Agreement. For all purposes of this Agreement, any calculation of the number of shares of Common Stock outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding Common Stock of which any Person is the Beneficial Owner, shall include the number of shares of Common Stock not outstanding at the time of such calculation that such Person is otherwise deemed to Beneficially Own for purposes of this Agreement. The number of shares of Common Stock not outstanding that such Person is otherwise deemed to Beneficially Own for purposes of this Agreement shall be deemed to be outstanding for the purpose of computing the percentage of the outstanding number of shares of Common Stock owned by such Person but shall not be deemed to be outstanding for the purpose of computing the percentage of outstanding Common Stock owned by any other Person. Notwithstanding the foregoing, if any Person satisfying the requirements of Rule 13d-1(b)(1) (other than a Person that so satisfies Rule 13d-1(b)(1) solely by reason of Rule 13d-1(b)(1)(ii)(E)) who would otherwise be an “Acquiring Person” has become so as a result of its actions in the ordinary course of such Person’s business as a derivatives dealer that the Board determines, in good faith, were taken without the intent or effect of evading or assisting any other Person to evade the purposes and intent of this Agreement, then, and unless and until the Board shall otherwise determine, such Person shall not be deemed to be an “Acquiring Person” for any purposes of this Agreement.

1.2. “*Affiliate*” and “*Associate*” shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), as in effect on the date of this Agreement.

1.3. A Person shall be deemed the “*Beneficial Owner*” of and shall be deemed to “*Beneficially Own*” or have “*Beneficial Ownership*” of any securities:

1.3.1. which such Person or any of such Person’s Related Persons, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (A) voting power, which includes the power to vote, or to direct the voting of, such security (except that a Person shall not be deemed to be the Beneficial Owner of any security under this clause (A) 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), and/or (B) investment power, which includes the power to dispose, or to direct the disposition of, such security;

1.3.2. which such Person or any of such Person's Related Persons, directly or indirectly, has the Right to Acquire; *provided, however*, that a Person shall not be deemed the Beneficial Owner of, or to Beneficially Own, (x) securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person's Related Persons, until such tendered securities are accepted for purchase or exchange, (y) securities which such Person or any of such Person's Related Persons, has a Right to Acquire upon the exercise of Rights at any time prior to the time that any Person becomes an Acquiring Person, or (z) securities issuable upon the exercise of Rights from and after the time that any Person becomes an Acquiring Person if such Rights were acquired by such Person or any of such Person's Related Persons prior to the Distribution Date or pursuant to Section 3.1 or Section 22 ("*Original Rights*") or pursuant to Section 11.9 or Section 11.15 with respect to an adjustment to Original Rights;

1.3.3. which are Beneficially Owned, directly or indirectly, by any other Person (or any Affiliate or Associate thereof) with whom such Person or any of such Person's Related Persons, 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 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);

1.3.4. which such Person would otherwise be deemed to be the beneficial owner pursuant to Rule 13d-3 under the Exchange Act; or

1.3.5. which are "Beneficially Owned" (within the meaning of Sections 1.3.1 through 1.3.4 hereof), directly or indirectly, by a Counterparty (as such term is defined in the immediately following paragraph) (or any of such Counterparty's Affiliates or Associates) that has any Synthetic Equity Position (as such term is defined in the immediately following paragraph) (without regard to any short or similar position under the same or any other Synthetic Equity Position) to which such Person or any of such Person's Affiliates or Associates is a Receiving Party (as such term is defined in the immediately following paragraph) and that is not otherwise included in the definition of Beneficial Ownership (within the meaning of Sections 1.3.1 through 1.3.4 hereof); *provided, however*, that the number of shares of Common Stock of the Company that a Person is deemed to "Beneficially Own" pursuant to this Section 1.3.5 in connection with a particular Synthetic Equity Position shall not exceed the number of Notional Common Shares (as such term is defined in the immediately following paragraph) with respect to such Synthetic Equity Position; *provided further*, that the number of securities Beneficially Owned by each Counterparty (including its Affiliates and Associates) under a Synthetic Equity Position shall for purposes of this Section 1.3.5 be deemed to include all securities that are Beneficially Owned, directly or indirectly, by any other Counterparty (or any of such other Counterparty's Affiliates or Associates) under any Synthetic Equity Position to which such first Counterparty (or any of such first Counterparty's Affiliates or Associates) is a Receiving Party, with this proviso being applied to successive Counterparties as appropriate.

A “*Synthetic Equity Position*” is a “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) between two parties (the “*Receiving Party*” and the “*Counterparty*”) that constitutes a “call equivalent position” (as such term is defined in Rule 16a-1(b) under the Exchange Act); *provided* that, for the purposes of the definition of “Synthetic Equity Position,” the term “derivative security” shall also include any security or instrument that would not otherwise constitute a “derivative security” as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument become determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination. The number of shares of Common Stock of the Company specified or referenced in such derivative security contract (as determined by the Board in good faith) is the number of “*Notional Common Shares*.” For the avoidance of doubt, interests in broad-based index options, broad-based index futures and broad-based publicly traded market baskets of stocks approved for trading by the appropriate federal governmental authority shall not be deemed to be Synthetic Equity Positions.

No Person shall be deemed to be the “Beneficial Owner” of, to have “Beneficial Ownership” of or to “Beneficially Own” any securities which such Person or any of such Person’s Related Persons would otherwise be deemed to “Beneficially Own” pursuant to this [Section 1.3](#) solely as a result of any merger or other acquisition agreement between the Company and such Person (or one or more of such Person’s Related Persons), or any tender, voting or support agreement entered into by such Person (or one or more of such Person’s Related Persons) in connection therewith, if, prior to such Person becoming an Acquiring Person, the Board has approved such merger or other acquisition agreement, or such tender, voting or support agreement.

No Person who is an officer, director or employee of an Exempt Person shall be deemed, solely by reason of such Person’s status or authority as such, to be the “Beneficial Owner” of, to have “Beneficial Ownership” of or to “Beneficially Own” any securities that are “Beneficially Owned” (as defined in this [Section 1.3](#)), including, without limitation, in a fiduciary capacity, by an Exempt Person or by any other such officer, director or employee of an Exempt Person.

1.4. “*Business Day*” shall mean any day other than a Saturday, Sunday, or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

1.5. “*close of business*” on any given date shall mean 5:00 p.m., New York time, on such date; *provided, however*, that if such date is not a Business Day it shall mean 5:00 p.m., New York time, on the next succeeding Business Day.

1.6. “*Common Stock*” when used with reference to the Company shall mean the shares of common stock, par value \$0.01 per share, of the Company. “Common Stock” when

used with reference to any Person other than the Company shall mean the capital stock with the greatest voting power, or the equity securities or other equity interest having power to control or direct the management, of such other Person or, if such Person is a Subsidiary of another Person, the Person or Persons which ultimately control such first-mentioned Person, and which has issued and outstanding such capital stock, equity securities or equity interest.

1.7. “*Exempt Person*” shall mean the Company, any Subsidiary of the Company, in each case including, without limitation, the officers and members of the board of directors thereof acting in their fiduciary capacities, or any employee benefit plan of the Company or of any Subsidiary of the Company or any entity or trustee holding (or acting in a fiduciary capacity in respect of) shares of capital stock of the Company for or pursuant to the terms of any such plan, or for the purpose of funding other employee benefits for employees of the Company or any Subsidiary of the Company.

1.8. “*Existing Holder*” shall mean any Person who, immediately prior to the first public announcement of the adoption of this Agreement, is the Beneficial Owner of 10% or more of the Common Stock then outstanding, together with any Affiliates and Associates of such Person.

1.9. “*Person*” shall mean any individual, partnership, joint venture, limited liability company, firm, corporation, unincorporated association or organization, trust or other entity, and shall include any successor (by merger or otherwise) of any such Person.

1.10. “*Related Person*” shall mean, as to any Person, any Affiliates or Associates of such Person.

1.11. “*Right to Acquire*” shall mean a legal, equitable or contractual right to acquire (whether directly or indirectly and whether exercisable immediately, or only after the passage of time, compliance with regulatory requirements, fulfillment of a condition or otherwise), pursuant to any agreement, arrangement or understanding, whether or not in writing (excluding customary agreements entered into in good faith with and between an underwriter and selling group members in connection with a firm commitment underwriting registered under the Securities Act of 1933, as amended (the “*Securities Act*”), or upon the exercise of any option, warrant or right, through conversion of a security, pursuant to the power to revoke a trust, discretionary account or similar arrangement, pursuant to the power to terminate a repurchase or similar so-called “stock borrowing” agreement or arrangement, or pursuant to the automatic termination of a trust, discretionary account or similar arrangement.

1.12. “*Stock Acquisition Date*” shall mean the first date of public announcement (which, for purposes of this definition, shall include, without limitation, the filing of a report pursuant to Section 13(d) of the Exchange Act or pursuant to a comparable successor statute) by the Company or an Acquiring Person that an Acquiring Person has become such or that discloses information which reveals the existence of an Acquiring Person or such earlier date as a majority of the Board shall become aware of the existence of an Acquiring Person.

1.13. “*Subsidiary*” of any Person shall mean any partnership, joint venture, limited liability company, firm, corporation, unincorporated association, trust or other entity of which a majority of the voting power of the voting equity securities or equity interests is owned, of record or beneficially, directly or indirectly, by such Person.

1.14. A “*Trigger Event*” shall be deemed to have occurred upon any Person becoming an Acquiring Person.

1.15. The following terms shall have the meanings defined for such terms in the Sections set forth below:

| <u>Term</u> | <u>Section</u> |
|--------------------------------|----------------|
| Adjustment Shares | 11.1.2 |
| Agreement | Preamble |
| Board | Recitals |
| Book Entry Shares | 3.1 |
| common stock equivalent | 11.1.3 |
| Company | Preamble |
| Counterparty | 1.3.5 |
| current per share market price | 11.4.1 |
| Current Value | 11.1.3 |
| derivative security | 1.3.5 |
| Distribution Date | 3.1 |
| equivalent preferred stock | 11.2 |
| Exchange Act | 1.2 |
| Exchange Consideration | 27.1 |
| Expiration Date | 7.1 |
| Final Expiration Date | 7.1 |
| Notional Common Shares | 1.3.5 |
| NYSE | 9 |
| Original Rights | 1.3.2 |
| Preferred Stock | Recitals |
| Principal Party | 13.2 |
| Purchase Price | 4 |
| Receiving Party | 1.3.5 |
| Record Date | Recitals |
| Redemption Date | 7.1 |
| Redemption Price | 23.1 |
| Right | Recitals |
| Right Certificate | 3.1 |
| Rights Agent | Preamble |
| Securities Act | 1.12 |
| Security | 11.4.1 |
| Spread | 11.1.3 |
| Substitution Period | 11.1.3 |
| Summary of Rights | 3.2 |
| Synthetic Equity Position | 1.3.5 |
| Trading Day | 11.4.1 |
| Trust | 27.1 |
| Trust Agreement | 27.1 |

Section 2. Appointment of Rights Agent. The Company hereby appoints the Rights Agent to act as rights agent for the Company and the holders of the Rights (who, in accordance with Section 3, shall prior to the Distribution Date also be the holders of the Common Stock) in accordance with the terms and conditions hereof, and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such co-Rights Agents as it may deem necessary or desirable. In the event the Company appoints one or more co-Rights Agents, the respective duties of the Rights Agent and any co-Rights Agent shall be as the Company shall determine. Contemporaneously with such appointment, if any, the Company shall notify the Rights Agent thereof.

Section 3. Issuance of Right Certificates.

3.1. Rights Evidenced by Stock Certificates. Until the earlier of (i) the close of business on the tenth (10th) Business Day after the Stock Acquisition Date or (ii) the close of business on the tenth (10th) Business Day after the date of the commencement of, or first public announcement of the intent of any Person (other than an Exempt Person) to commence, a tender or exchange offer the consummation of which would result in any Person becoming an Acquiring Person (the earlier of (i) and (ii) being herein referred to as the “*Distribution Date*”), (x) the Rights (unless earlier expired, redeemed or terminated) will be evidenced (subject to the provisions of Section 3.2) by the certificates representing the Common Stock registered in the names of the holders thereof or, in the case of uncertificated shares of Common Stock registered in book entry form (“*Book Entry Shares*”), by notation in book entry (which certificates for Common Stock and Book Entry Shares shall also be deemed to be Right Certificates) and not by separate certificates, and (y) the Rights (and the right to receive certificates therefor) will be transferable only in connection with the transfer of the underlying Common Stock. The preceding sentence notwithstanding, prior to the occurrence of a Distribution Date specified as a result of an event described in clause (ii) (or such later Distribution Date as the Board may select pursuant to this sentence), the Board may postpone, one or more times, the Distribution Date which would occur as a result of an event described in clause (ii) beyond the date set forth in such clause (ii). Nothing herein shall permit such a postponement of a Distribution Date after a Person becomes an Acquiring Person, except as a result of the operation of the third sentence of Section 1.1. As soon as practicable after the Distribution Date, the Company will prepare and execute, the Rights Agent will countersign and the Company (or, if requested, the Rights Agent) will send, by first-class, postage-prepaid mail, to each record holder of Common Stock as of the close of business on the Distribution Date (other than any Acquiring Person or any Related Person of an Acquiring Person), at the address of such holder shown on the records of the Company or the transfer agent or registrar for the Common Stock, one or more certificates for Rights, in substantially the form of Exhibit B hereto (a “*Right Certificate*”), evidencing one Right (subject to adjustment as provided herein) for each share of Common Stock so held. As of and after the Distribution Date, the Rights will be evidenced solely by such Right Certificates.

3.2. Summary of Rights. On the Record Date or as soon as practicable thereafter, the Company will send or cause to be sent a copy of a Summary of Rights to Purchase Preferred Shares, in substantially the form attached hereto as Exhibit C (the “*Summary of Rights*”), by first-class, postage-prepaid mail, to each record holder of Common Stock as of the close of business on the Record Date (other than any Acquiring Person or any Related Person of any Acquiring Person) at the address of such holder shown on the records of the Company or the transfer agent or registrar for the Common Stock. Any failure to send a copy of the Summary of Rights shall not invalidate the Rights or affect their transfer with the Common Stock. With respect to certificates representing Common Stock and Book Entry Shares outstanding as of the close of business on the Record Date, until the Distribution Date (or the earlier Expiration Date), the Rights will be evidenced by such certificates for Common Stock registered in the names of the holders thereof or Book Entry Shares, as applicable, together with a copy of the Summary of Rights and the registered holders of the Common Stock shall also be registered holders of the associated Rights. Until the Distribution Date (or the earlier Expiration Date), the surrender for transfer of any certificate for Common Stock or Book Entry Shares outstanding at the close of business on the Record Date, with or without a copy of the Summary of Rights, shall also constitute the transfer of the Rights associated with the Common Stock represented thereby and the Book Entry Shares, as applicable.

3.3. New Certificates and Uncertificated Shares After Record Date. Certificates for Common Stock which become outstanding (whether upon issuance out of authorized but unissued Common Stock, disposition out of treasury or transfer or exchange of outstanding Common Stock) after the Record Date but prior to the earliest of the Distribution Date or the Expiration Date, or in certain circumstances provided in Section 22 hereof, after the Distribution Date, shall have impressed, printed, stamped, written or otherwise affixed onto them a legend in substantially the following form:

This certificate also evidences and entitles the holder hereof to certain rights as set forth in a Rights Agreement between Allergan, Inc. (the “Company”) and Wells Fargo Bank, N.A., as Rights Agent, dated as of April 22, 2014, as the same may be amended from time to time (the “Agreement”), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of the Company. Under certain circumstances, as set forth in the Agreement, such Rights (as defined in the Agreement) will be evidenced by separate certificates and will no longer be evidenced by this certificate. The Company will mail to the holder of this certificate a copy of the Agreement without charge after receipt of a written request therefor. ***As described in the Agreement, Rights which are owned by, transferred to or have been owned by Acquiring Persons (as defined in the Agreement) or any Related Person (as defined in the Agreement) of any Acquiring Person shall become null and void and will no longer be transferable.***

With respect to any Book Entry Shares, such legend shall be included in a notice to the record holder of such shares in accordance with applicable law. Until the Distribution Date (or the earlier Expiration Date), the Rights associated with the Common Stock represented by such certificates and such Book Entry Shares shall be evidenced solely by such certificates or the Book Entry Shares alone, and the surrender for transfer of any such certificates or Book Entry

Shares, except as otherwise provided herein, shall also constitute the transfer of the Rights associated with the Common Stock represented thereby. In the event that the Company purchases or otherwise acquires any Common Stock after the Record Date but prior to the Distribution Date, any Rights associated with such Common Stock shall be deemed canceled and retired so that the Company shall not be entitled to exercise any Rights associated with the Common Stock that are no longer outstanding.

Notwithstanding this Section 3.3, neither the omission of the legend required hereby, nor the failure to provide the notice thereof, shall affect the enforceability of any part of this Agreement or the rights of any holder of the Rights.

Section 4. Form of Right Certificates. The Right Certificates (and the forms of election to purchase shares and assignment, including the certifications therein, to be printed on the reverse thereof) shall each be substantially in the form set forth in Exhibit B hereto and may have such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange or trading system on which the Rights may from time to time be listed or quoted, or to conform to usage. Subject to the terms and conditions hereof, the Right Certificates, whenever issued, shall be dated as of the Record Date, and shall show the date of countersignature by the Rights Agent, and on their face shall entitle the holders thereof to purchase such number of one one-thousandths of a share of Preferred Stock as shall be set forth therein at the price per one one-thousandth of a share of Preferred Stock set forth therein (the "*Purchase Price*"), but the number of such one one-thousandths of a share of Preferred Stock and the Purchase Price shall be subject to adjustment as provided herein.

Section 5. Countersignature and Registration. The Right Certificates shall be executed on behalf of the Company by its Chairman of the Board of Directors, the Chief Executive Officer, President or any Vice President, either manually or by facsimile signature, and shall have affixed thereto the Company's seal or a facsimile thereof which shall be attested by the Secretary or any Assistant Secretary of the Company or by such officers as the Board may designate, either manually or by facsimile signature. The Right Certificates shall be countersigned, either manually or by facsimile signature, by an authorized signatory of the Rights Agent, but it shall not be necessary for the same signatory to countersign all of the Right Certificates hereunder. No Right Certificate shall be valid for any purpose unless so countersigned. In case any officer of the Company who shall have signed any of the Right Certificates shall cease to be such officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Right Certificates, nevertheless, may be countersigned by the Rights Agent, and issued and delivered by the Company with the same force and effect as though the Person who signed such Right Certificates had not ceased to be such officer of the Company; and any Right Certificate may be signed on behalf of the Company by any Person who, at the actual date of the execution of such Right Certificate, shall be a proper officer of the Company to sign such Right Certificate, although at the date of the execution of this Agreement any such Person was not such an officer.

Following the Distribution Date, the Rights Agent will keep or cause to be kept, at its principal office, books for registration and transfer of the Right Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Right Certificates, the number of Rights evidenced on its face by each of the Right Certificates, the certificate number of each of the Right Certificates and the date of each of the Right Certificates.

Section 6. Transfer, Split Up, Combination and Exchange of Right Certificates; Mutilated, Destroyed, Lost or Stolen Right Certificates. Subject to the provisions of this Agreement, including but not limited to Section 11.1.2 and Section 14, at any time after the close of business on the Distribution Date, and at or prior to the close of business on the Expiration Date, any Right Certificate or Right Certificates (other than Right Certificates representing Rights that have become void pursuant to Section 11.1.2 or that have been exchanged pursuant to Section 27) may be transferred, split up, combined or exchanged for another Right Certificate or Right Certificates, entitling the registered holder to purchase a like number of one one-thousandths of a share of Preferred Stock as the Right Certificate or Right Certificates surrendered then entitled such holder to purchase. Any registered holder desiring to transfer, split up, combine or exchange any Right Certificate shall make such request in writing delivered to the Rights Agent, and shall surrender, together with any required form of assignment and certificate duly executed and properly completed, the Right Certificate or Right Certificates to be transferred, split up or combined or exchanged at the office of the Rights Agent designated for such purpose. Neither the Rights Agent nor the Company shall be obligated to take any action whatsoever with respect to the transfer of any such surrendered Right Certificate or Right Certificates until the registered holder shall have properly completed and duly executed the certificate contained in the form of assignment on the reverse side of such Right Certificate or Right Certificates and shall have provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) thereof or any Related Person of such registered holder or such Beneficial Owner (or such former Beneficial Owner), in each case, as the Company shall reasonably request. Thereupon, the Rights Agent shall countersign and deliver to the Person entitled thereto a Right Certificate or Right Certificates, as the case may be, as so requested. The Company may require payment from the holders of Right Certificates of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up or combination or exchange of such Right Certificates.

Subject to the provisions of Section 11.1.2, at any time after the Distribution Date and prior to the Expiration Date, upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Right Certificate, and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to them, and, at the Company's request, reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Right Certificate if mutilated, the Company will make and deliver a new Right Certificate of like tenor to the Rights Agent for countersignature and delivery to the registered owner in lieu of the Right Certificate so lost, stolen, destroyed or mutilated.

Section 7. Exercise of Rights; Purchase Price; Expiration Date of Rights.

7.1. Exercise of Rights. Subject to Section 11.1.2 and except as otherwise provided herein, the registered holder of any Right Certificate may exercise the Rights evidenced

thereby in whole or in part at any time after the Distribution Date upon surrender of the Right Certificate, with the form of election to purchase and certification on the reverse side thereof properly completed and duly executed, to the Rights Agent at the office of the Rights Agent designated for such purpose, together with payment of the aggregate Purchase Price for the total number of one one-thousandths of a share of Preferred Stock (or other securities, cash or other assets) as to which the Rights are exercised, at or prior to the time (the “*Expiration Date*”) that is the earliest of (i) 8:00 a.m. Eastern Time on April 22, 2015 (the “*Final Expiration Date*”), (ii) the time at which the Rights are redeemed as provided in [Section 23](#) (the “*Redemption Date*”), (iii) the closing of any merger or other acquisition transaction involving the Company pursuant to an agreement of the type described in [Section 13.3](#) at which time the Rights are deemed terminated, or (iv) the time at which the Rights are exchanged as provided in [Section 27](#).

7.2. Purchase. The Purchase Price for each one one-thousandth of a share of Preferred Stock pursuant to the exercise of a Right shall be initially \$500.00, shall be subject to adjustment from time to time as provided in [Sections 11, 13 and 26](#) and shall be payable in lawful money of the United States of America in accordance with [Section 7.3](#).

7.3. Payment Procedures. Except as otherwise provided herein, upon receipt of a Right Certificate representing exercisable Rights, with the form of election to purchase and certification properly completed and duly executed, accompanied by payment of the aggregate Purchase Price for the total number of one one-thousandths of a share of Preferred Stock to be purchased and an amount equal to any applicable tax or charge required to be paid by the holder of such Right Certificate in accordance with [Section 9](#), in cash or by certified or cashier’s check to the order of the Company, the Rights Agent shall thereupon promptly (i)(A) requisition from any transfer agent of the Preferred Stock (or make available, if the Rights Agent is the transfer agent) certificates for the number of shares of Preferred Stock to be purchased and the Company hereby irrevocably authorizes its transfer agent to comply with all such requests, or (B) if the Company shall have elected to deposit the total number of shares of Preferred Stock issuable upon exercise of the Rights hereunder with a depositary agent, requisition from such depositary agent depositary receipts representing interests in such number of one one-thousandths of a share of Preferred Stock as are to be purchased (in which case certificates for the Preferred Stock represented by such receipts shall be deposited by the transfer agent with the depositary agent) and the Company hereby directs such depositary agent to comply with all such requests; (ii) when appropriate, requisition from the Company the amount of cash to be paid in lieu of the issuance of fractional shares in accordance with [Section 14](#) or otherwise in accordance with [Section 11.1.3](#); (iii) promptly after receipt of such certificates or depositary receipts, cause the same to be delivered to the registered holder of such Right Certificate, or upon the order of the registered holder of such Right Certificate, registered in such name or names as may be designated by such holder and (iv) when appropriate, after receipt, promptly deliver such cash to the registered holder of such Certificate, or upon the order of the registered holder of such Right Certificate, to such other Person as designated by such holder. In the event that the Company is obligated to issue other securities of the Company, pay cash and/or distribute other property pursuant to [Section 11.1.3](#), the Company will make all arrangements necessary so that such other securities, cash and/or other property are available for distribution by the Rights Agent, if and when appropriate.

7.4. Partial Exercise. In case the registered holder of any Right Certificate shall exercise less than all the Rights evidenced thereby, a new Right Certificate evidencing Rights equivalent to the Rights remaining unexercised shall be issued by the Rights Agent and delivered to the registered holder of such Right Certificate or to his or her duly authorized assigns, subject to the provisions of Section 14.

7.5. Full Information Concerning Ownership. Notwithstanding anything in this Agreement to the contrary, neither the Rights Agent nor the Company shall be obligated to undertake any action with respect to a registered holder of Rights upon the occurrence of any purported transfer or exercise of Rights pursuant to Section 6 or as set forth in this Section 7 unless the certification contained in the form of election to purchase set forth on the reverse side of the Right Certificate surrendered for such exercise shall have been properly completed and duly executed by the registered holder thereof and the Company shall have been provided with such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) thereof or any Related Person of such registered holder or such Beneficial Owner (or such former Beneficial Owner), in each case, as the Company shall reasonably request.

Section 8. Cancellation and Destruction of Right Certificates. All Right Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or to any of its agents, be delivered to the Rights Agent for cancellation or in canceled form, or, if surrendered to the Rights Agent, shall be canceled by it, and no Right Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall so cancel and retire, any other Right Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. Subject to applicable law and regulation, the Rights Agent shall maintain in a retrievable database electronic records or physical records of all cancelled or destroyed Rights Certificates which have been cancelled or destroyed by the Rights Agent. The Rights Agent shall maintain such electronic records or physical records for the time period required by applicable law and regulation. Upon written request of the Company (and at the expense of the Company), the Rights Agent shall provide to the Company or its designee copies of such electronic records or physical records relating to Rights Certificates cancelled or destroyed by the Rights Agent.

Section 9. Reservation and Availability of Capital Stock. The Company covenants and agrees that, from and after the Distribution Date, it will cause to be reserved and kept available out of its authorized and unissued Preferred Stock (and, following the occurrence of a Trigger Event, out of its authorized and unissued Common Stock or other securities or out of its shares held in its treasury) the number of shares of Preferred Stock (and, following the occurrence of a Trigger Event, Common Stock and/or other securities) that will be sufficient to permit the exercise in full of all outstanding Rights.

So long as the Preferred Stock (and, following the occurrence of a Trigger Event, Common Stock and/or other securities) issuable upon the exercise of Rights may be listed on the New York Stock Exchange (“NYSE”) or any other national securities exchange or traded in the over-the-counter market, the Company shall use its best efforts to cause, from and after such time as the Rights become exercisable, all shares reserved for such issuance to be listed or admitted to trading on the NYSE or such other exchange or market upon official notice of issuance upon such exercise.

The Company covenants and agrees that it will take all such action as may be necessary to ensure that all Preferred Stock (and, following the occurrence of a Trigger Event, Common Stock and/or other securities) delivered upon exercise of Rights shall, at the time of delivery of the certificates for such shares (subject to payment of the Purchase Price), be duly and validly authorized and issued and fully paid and nonassessable shares.

From and after such time as the Rights become exercisable, the Company shall use its best efforts, if then necessary to permit the issuance of Preferred Stock upon the exercise of Rights, to register and qualify such Preferred Stock under the Securities Act and any applicable state securities or "Blue Sky" laws (to the extent exemptions therefrom are not available), cause such registration statement and qualifications to become effective as soon as possible after such filing and keep such registration and qualifications effective until the earlier of the date as of which the Rights are no longer exercisable for such securities and the Expiration Date. The Company may temporarily suspend, from time to time for a period of time not to exceed one hundred twenty (120) days in any particular instance, the exercisability of the Rights in order to prepare and file a registration statement under the Securities Act and permit it to become effective or in order to prepare and file any supplement or amendment to such registration statement that the Board determines to be necessary and appropriate under applicable law. Upon any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension is no longer in effect. Notwithstanding any provision of this Agreement to the contrary, the Rights shall not be exercisable in any jurisdiction unless the requisite qualification or exemption in such jurisdiction shall have been obtained and until a registration statement under the Securities Act (if required) shall have been declared effective.

The Company further covenants and agrees that it will pay when due and payable any and all taxes and charges which may be payable in respect of the issuance or delivery of the Right Certificates or of any Preferred Stock (or Common Stock and/or other securities, as the case may be) upon the exercise of Rights. The Company shall not, however, be required to pay any tax or charge which may be payable in respect of any transfer or delivery of Right Certificates to a Person other than, or the issuance or delivery of certificates for the Preferred Stock (or Common Stock and/or other securities, as the case may be) in a name other than that of, the registered holder of the Right Certificate evidencing Rights surrendered for exercise or to issue or deliver any certificates for Preferred Stock (or Common Stock and/or other securities, as the case may be) in a name other than that of the registered holder upon the exercise of any Rights until any such tax or charge shall have been paid (any such tax or charge being payable by the registered holder of such Right Certificate at the time of surrender) or until it has been established to the Company's satisfaction that no such tax or charge is due.

Section 10. Preferred Stock Record Date. Each Person in whose name any certificate for Preferred Stock (or Common Stock and/or other securities, as the case may be) is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of the Preferred Stock (or Common Stock and/or other securities, as the case may be) represented thereby on, and such certificate shall be dated, the date upon which the Right

Certificate evidencing such Rights was duly surrendered and payment of the Purchase Price (and any applicable taxes or charges) was made; *provided, however*, that if the date of such surrender and payment is a date upon which the Preferred Stock (or Common Stock and/or other securities, as the case may be) transfer books of the Company are closed, such Person shall be deemed to have become the record holder of such shares (fractional or otherwise) on, and such certificate shall be dated, the next succeeding Business Day on which the Preferred Stock (or Common Stock and/or other securities, as the case may be) transfer books of the Company are open. Prior to the exercise of the Rights evidenced thereby (or an exchange pursuant to Section 27), the holder of a Right Certificate shall not be entitled to any rights of a holder of Preferred Stock (or Common Stock or securities, as the case may be) for which the Rights shall be exercisable, including, without limitation, the right to vote or to receive dividends or other distributions, and shall not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

Section 11. Adjustment of Purchase Price, Number of Shares or Number of Rights. The Purchase Price, the number of shares of Preferred Stock or other securities or property purchasable upon exercise of each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.

11.1. Post-Execution Events.

11.1.1. Corporate Dividends, Reclassifications, Etc. In the event the Company shall, at any time after the date of this Agreement, (A) declare and pay a dividend on the Preferred Stock payable in Preferred Stock, (B) subdivide the outstanding Preferred Stock, (C) combine the outstanding Preferred Stock into a smaller number of shares of Preferred Stock or (D) issue any shares of its capital stock in a reclassification of the Preferred Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11.1.1, the Purchase Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification, and the number and kind of shares of capital stock issuable on such date, shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive the aggregate number and kind of shares of capital stock which, if such Right had been exercised immediately prior to such date and at a time when the Preferred Stock transfer books of the Company were open, such holder would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, combination or reclassification; *provided, however*, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right. If an event occurs which would require an adjustment under both Section 11.1.1 and Section 11.1.2, the adjustment provided for in this Section 11.1.1 shall be in addition to, and shall be made prior to, the adjustment required pursuant to, Section 11.1.2.

11.1.2. Acquiring Person Events; Triggering Events. Subject to Section 27, in the event that a Trigger Event occurs, then, from and after the first occurrence of such event, each holder of a Right, except as provided below, shall thereafter have a right to receive, upon exercise thereof at a price per Right equal to the then current Purchase Price multiplied by the number of one one-thousandths of a share of Preferred Stock for which a Right is then

exercisable (without giving effect to this [Section 11.1.2](#)), in accordance with the terms of this Agreement and in lieu of Preferred Stock, such number of shares of Common Stock as shall equal the result obtained by (x) multiplying the then current Purchase Price by the then number of one one-thousandths of a share of Preferred Stock for which a Right is then exercisable (without giving effect to this [Section 11.1.2](#)) and (y) dividing that product by 50% of the current per share market price of the Common Stock (determined pursuant to [Section 11.4](#)) on the first of the date of the occurrence of, or the date of the first public announcement of, a Trigger Event (the “*Adjustment Shares*”); *provided* that the Purchase Price and the number of Adjustment Shares shall thereafter be subject to further adjustment as appropriate in accordance with [Section 11.6](#). Notwithstanding the foregoing, upon and after the occurrence of a Trigger Event, any Rights that are or were acquired or Beneficially Owned by (1) any Acquiring Person or any Related Person of such Acquiring Person, (2) a transferee of any Acquiring Person (or of any Related Person of such Acquiring Person) who becomes a transferee after the Acquiring Person becomes such, or (3) a transferee of any Acquiring Person (or of any Related Person of such Acquiring Person) who becomes a transferee prior to or concurrently with the Acquiring Person becoming such and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from the Acquiring Person to holders of equity interests in such Acquiring Person or to any Person with whom the Acquiring Person has any continuing agreement, arrangement or understanding regarding the transferred Rights or (B) a transfer which the Board has determined is part of a plan, arrangement or understanding which has as a primary purpose or effect avoidance of this [Section 11.1.2](#), and subsequent transferees, shall become void without any further action, and any holder (whether or not such holder is an Acquiring Person or a Related Person of an Acquiring Person) of such Rights shall thereafter have no right to exercise such Rights under any provision of this Agreement or otherwise. From and after the Trigger Event, no Right Certificate shall be issued pursuant to [Section 3](#) or [Section 6](#) that represents Rights that are or have become void pursuant to the provisions of this paragraph, and any Right Certificate delivered to the Rights Agent that represents Rights that are or have become void pursuant to the provisions of this paragraph shall be canceled.

The Company shall use all reasonable efforts to ensure that the provisions of this [Section 11.1.2](#) are complied with, but shall have no liability to any holder of Right Certificates or any other Person as a result of its failure to make any determinations with respect to any Acquiring Person or its Related Persons or transferees hereunder.

From and after the occurrence of an event specified in [Section 13.1](#), any Rights that theretofore have not been exercised pursuant to this [Section 11.1.2](#) shall thereafter be exercisable only in accordance with [Section 13](#) and not pursuant to this [Section 11.1.2](#).

11.1.3. Insufficient Shares. The Company may at its option substitute for Common Stock issuable upon the exercise of Rights in accordance with the foregoing [Section 11.1.2](#) a number of shares of Preferred Stock or fraction thereof such that the then current per share market price of one share of Preferred Stock multiplied by such number or fraction is equal to the then current per share market price of one share of Common Stock. In the event that upon the occurrence of a Trigger Event there shall not be sufficient Common Stock authorized but unissued, or held by the Company as treasury shares, to permit the exercise in full of the Rights in accordance with the foregoing [Section 11.1.2](#), the Company shall take all such action as may be necessary to authorize additional Common Stock for issuance upon exercise of the Rights,

provided, however, that if the Company determines that it is unable to cause the authorization of a sufficient number of additional shares of Common Stock, then, in the event the Rights become exercisable, the Company, with respect to each Right and to the extent necessary and permitted by applicable law and any agreements or instruments in effect on the date hereof to which it is a party, shall: (A) determine the excess of (1) the value of the Adjustment Shares issuable upon the exercise of a Right (the “*Current Value*”), over (2) the Purchase Price (such excess, the “*Spread*”) and (B) with respect to each Right (other than Rights which have become void pursuant to Section 11.1.2), make adequate provision to substitute for the Adjustment Shares, upon payment of the applicable Purchase Price, (1) cash, (2) a reduction in the Purchase Price, (3) Preferred Stock, (4) other equity securities of the Company (including, without limitation, shares, or fractions of shares, of preferred stock which, by virtue of having dividend, voting and liquidation rights substantially comparable to those of the Common Stock, the Board has deemed in good faith to have substantially the same value as the Common Stock) (each such share of preferred stock or fractions of shares of preferred stock constituting a “*common stock equivalent*”), (5) debt securities of the Company, (6) other assets or (7) any combination of the foregoing having an aggregate value equal to the Current Value, where such aggregate value has been determined by the Board based upon the advice of a nationally recognized investment banking firm selected in good faith by the Board; *provided, however*, that if the Company shall not have made adequate provision to deliver value pursuant to clause (B) above within thirty (30) days following the occurrence of a Trigger Event, then the Company shall be obligated to deliver, to the extent necessary and permitted by applicable law and any agreements or instruments in effect on the date hereof to which it is a party, upon the surrender for exercise of a Right and without requiring payment of the Purchase Price, Common Stock (to the extent available) and then, if necessary, such number or fractions of Preferred Stock (to the extent available) and then, if necessary, cash, which shares and/or cash have an aggregate value equal to the Spread. If, upon the occurrence of a Trigger Event, the Board shall determine in good faith that it is unlikely that sufficient additional shares of Common Stock could be authorized for issuance upon exercise in full of the Rights, then, if the Board so elects, the thirty (30) day period set forth above may be extended to the extent necessary, but not more than one hundred twenty (120) days following the occurrence of a Trigger Event, in order that the Company may seek stockholder approval for the authorization of such additional shares (such thirty (30) day period, as it may be extended, is herein called the “*Substitution Period*”). To the extent that the Company determines that some actions need be taken pursuant to the second and/or third sentences of this Section 11.1.3, the Company (x) shall provide that such action shall apply uniformly to all outstanding Rights, and (y) may suspend the exercisability of the Rights until the expiration of the Substitution Period in order to seek any authorization of additional shares and/or to decide the appropriate form of distribution to be made pursuant to such first sentence and to determine the value thereof. In the event of any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended as well as a public announcement at such time as the suspension is no longer in effect. For purposes of this Section 11.1.3, the value of a share of Common Stock shall be the then current per share market price (as determined pursuant to Section 11.4) on the date of the occurrence of a Trigger Event and the value of any “*common stock equivalent*” shall be deemed to have the same value as the Common Stock on such date. The Board may, but shall not be required to, establish procedures to allocate the right to receive Common Stock upon the exercise of the Rights among holders of Rights pursuant to this Section 11.1.3.

11.2. Dilutive Rights Offering. In case the Company shall fix a record date for the issuance of rights, options or warrants to all holders of Preferred Stock entitling them (for a period expiring within forty-five (45) calendar days after such record date) to subscribe for or purchase Preferred Stock (or securities having the same rights, privileges and preferences as the Preferred Stock (“*equivalent preferred stock*”)) or securities convertible into Preferred Stock or equivalent preferred stock at a price per share of Preferred Stock or per share of equivalent preferred stock (or having a conversion or exercise price per share, if a security convertible into or exercisable for Preferred Stock or equivalent preferred stock) less than the then current per share market price of the Preferred Stock (as determined pursuant to Section 11.4) on such record date, the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of shares of Preferred Stock and shares of equivalent preferred stock outstanding on such record date plus the number of shares of Preferred Stock and shares of equivalent preferred stock which the aggregate offering price of the total number of shares of Preferred Stock and/or shares of equivalent preferred stock to be offered (and/or the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such current per share market price and the denominator of which shall be the number of shares of Preferred Stock and shares of equivalent preferred stock outstanding on such record date plus the number of additional Preferred Stock and/or shares of equivalent preferred stock to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible); *provided, however*, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right. In case such subscription price may be paid in a consideration part or all of which shall be in a form other than cash, the value of such consideration shall be as determined in good faith by the Board, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and the holders of the Rights. Preferred Stock and shares of equivalent preferred stock owned by or held for the account of the Company or any Subsidiary of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustments shall be made successively whenever such a record date is fixed; and in the event that such rights or warrants are not so issued, the Purchase Price shall be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

11.3. Distributions. In case the Company shall fix a record date for the making of a distribution to all holders of the Preferred Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing or surviving corporation) of evidences of indebtedness, cash, securities or assets (other than a regular periodic cash dividend at a rate not in excess of 125% of the rate of the last regular periodic cash dividend theretofore paid or, in case regular periodic cash dividends have not theretofore been paid, at a rate not in excess of 50% of the average net income per share of the Company for the four quarters ended immediately prior to the payment of such dividend, or a dividend payable in Preferred Stock (which dividend, for purposes of this Agreement, shall be subject to the provisions of Section 11.1.1(A))) or convertible securities, or subscription rights or warrants (excluding those referred to in Section 11.2), the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the then current per share market price of the Preferred Stock (as determined pursuant to Section 11.4) on such record date, less the fair

market value (as determined in good faith by the Board, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent) of the portion of the cash, assets, securities or evidences of indebtedness so to be distributed or of such subscription rights or warrants applicable to one share of Preferred Stock and the denominator of which shall be such current per share market price of the Preferred Stock (as determined pursuant to Section 11.4); *provided, however*, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company to be issued upon exercise of one Right. Such adjustments shall be made successively whenever such a record date is fixed; and in the event that such distribution is not so made, the Purchase Price shall again be adjusted to be the Purchase Price that would then be in effect if such record date had not been fixed.

11.4. Current Per Share Market Value.

11.4.1. General. For the purpose of any computation hereunder, the “*current per share market price*” of any security (a “*Security*” for the purpose of this Section 11.4.1) on any date shall be deemed to be the average of the daily closing prices per share of such Security for the thirty (30) consecutive Trading Days (as such term is hereinafter defined) immediately prior to, but not including, such date; *provided, however*, that in the event that the then current per share market price of the Security is determined during any period following the announcement by the issuer of such Security of (i) a dividend or distribution on such Security payable in shares of such Security or securities convertible into such shares or (ii) any subdivision, combination or reclassification of such Security, and prior to the expiration of thirty (30) Trading Days after the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification, then, and in each such case, the “*current per share market price*” shall be appropriately adjusted to reflect the then current market price per share equivalent of such Security. The closing price for each day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if the Security is not listed or admitted to trading on the NYSE, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Security is listed or admitted to trading or, if the Security is not listed or admitted to trading on any national securities exchange, the last quoted price or, if on such date the Security is not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported thereby or such other system then in use, or, if on any such date the Security is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Security selected by the Board. If on any such date no such market maker is making a market in the Security, the fair value of the Security on such date as determined in good faith by the Board shall be used. The term “*Trading Day*” shall mean a day on which the principal national securities exchange on which the Security is listed or admitted to trading is open for the transaction of business or, if the Security is not listed or admitted to trading on any national securities exchange, a Business Day. If the Security is not publicly held or not so listed or traded, or if on any such date the Security is not so quoted and no such market maker is making a market in the Security, “*current per share market price*” shall mean the fair value per share as determined in good faith by the Board or, if at the time of such determination there is an Acquiring Person, by a nationally recognized investment banking firm

selected by the Board, which shall have the duty to make such determination in a reasonable and objective manner, whose determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes.

11.4.2. Preferred Stock. Notwithstanding Section 11.4.1, for the purpose of any computation hereunder, the “current per share market price” of the Preferred Stock shall be determined in the same manner as set forth above in Section 11.4.1 (other than the last sentence thereof). If the current per share market price of the Preferred Stock cannot be determined in the manner described in Section 11.4.1, the “current per share market price” of the Preferred Stock shall be conclusively deemed to be an amount equal to 1,000 (as such number may be appropriately adjusted for such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock occurring after the date of this Agreement) multiplied by the current per share market price of the Common Stock (as determined pursuant to Section 11.4.1). If neither the Common Stock nor the Preferred Stock are publicly held or so listed or traded, or if on any such date neither the Common Stock nor the Preferred Stock are so quoted and no such market maker is making a market in either the Common Stock or the Preferred Stock, “current per share market price” of the Preferred Stock shall mean the fair value per share as determined in good faith by the Board, or, if at the time of such determination there is an Acquiring Person, by a nationally recognized investment banking firm selected by the Board, which shall have the duty to make such determination in a reasonable and objective manner, which determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes. For purposes of this Agreement, the “current per share market price” of one one-thousandth of a share of Preferred Stock shall be equal to the “current per share market price” of one share of Preferred Stock divided by 1,000.

11.5. Insignificant Changes. No adjustment in the Purchase Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Purchase Price. Any adjustments which by reason of this Section 11.5 are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 shall be made to the nearest cent or to the nearest one-hundred thousandth of a share of Preferred Stock or the nearest ten-thousandth of a share of Common Stock or other share or security, as the case may be.

11.6. Shares Other Than Preferred Stock. If as a result of an adjustment made pursuant to Section 11.1, the holder of any Right thereafter exercised shall become entitled to receive any shares of capital stock of the Company other than Preferred Stock, thereafter the number of such other shares so receivable upon exercise of any Right shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Preferred Stock contained in Sections 11.1, 11.2, 11.3, 11.5, 11.8, 11.9 and 11.13, and the provisions of Sections 7, 9, 10, 13 and 14 with respect to the Preferred Stock shall apply on like terms to any such other shares.

11.7. Rights Issued Subsequent to Adjustment. All Rights originally issued by the Company subsequent to any adjustment made to the Purchase Price hereunder shall evidence the right to purchase, at the adjusted Purchase Price, the number of one one-thousandths of a share of Preferred and shares of other capital stock or other securities, assets or cash of the Company, if any, purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

11.8. Effect of Adjustments on Existing Rights. Unless the Company shall have exercised its election as provided in Section 11.9, upon each adjustment of the Purchase Price as a result of the calculations made in Sections 11.2 and 11.3, each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to purchase, at the adjusted Purchase Price, that number of one one-thousandths of a share of Preferred Stock (calculated to the nearest one-hundred thousandth of a share of Preferred Stock) obtained by (i) multiplying (x) the number of one one-thousandths of a share of Preferred Stock covered by a Right immediately prior to this adjustment by (y) the Purchase Price in effect immediately prior to such adjustment of the Purchase Price and (ii) dividing the product so obtained by the Purchase Price in effect immediately after such adjustment of the Purchase Price.

11.9. Adjustment in Number of Rights. The Company may elect on or after the date of any adjustment of the Purchase Price to adjust the number of Rights, in substitution for any adjustment in the number of one one-thousandths of a share of Preferred Stock issuable upon the exercise of a Right. Each of the Rights outstanding after such adjustment of the number of Rights shall be exercisable for the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest ten-thousandth) obtained by dividing the Purchase Price in effect immediately prior to adjustment of the Purchase Price by the Purchase Price in effect immediately after adjustment of the Purchase Price. The Company shall make a public announcement of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Purchase Price is adjusted or any day thereafter, but, if the Right Certificates have been issued, shall be at least ten (10) days later than the date of the public announcement. If Right Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 11.9, the Company may, as promptly as practicable, cause to be distributed to holders of record of Right Certificates on such record date Right Certificates evidencing, subject to Section 14, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the Right Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Right Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Right Certificates so to be distributed shall be issued, executed and countersigned in the manner provided for herein (and may bear, at the option of the Company, the adjusted Purchase Price) and shall be registered in the names of the holders of record of Right Certificates on the record date specified in the public announcement.

11.10. Right Certificates Unchanged. Irrespective of any adjustment or change in the Purchase Price or the number of one one-thousandths of a share of Preferred Stock issuable upon the exercise of the Rights, the Right Certificates theretofore and thereafter issued may continue to express the Purchase Price per share and the number of one one-thousandths of a share of Preferred Stock which were expressed in the initial Right Certificates issued hereunder.

11.11. Par Value Limitations. Before taking any action that would cause an adjustment reducing the Purchase Price below one one-thousandth of the then par value, if any, of the Preferred Stock or other shares of capital stock issuable upon exercise of the Rights, the Company shall take any corporate action that may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable Preferred Stock or other such shares at such adjusted Purchase Price.

11.12. Deferred Issuance. In any case in which this Section 11 shall require that an adjustment in the Purchase Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such event the issuance to the holder of any Right exercised after such record date of that number of shares of Preferred Stock and shares of other capital stock or securities of the Company, if any, issuable upon such exercise over and above the Preferred Stock and shares of other capital stock or other securities, assets or cash of the Company, if any, issuable upon such exercise on the basis of the Purchase Price in effect prior to such adjustment; *provided, however*, that the Company shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares upon the occurrence of the event requiring such adjustment.

11.13. Reduction in Purchase Price. Anything in this Section 11 to the contrary notwithstanding, the Company shall be entitled to make such reductions in the Purchase Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that it in its sole discretion shall determine to be advisable in order that any consolidation or subdivision of the Preferred Stock, issuance wholly for cash of any of the Preferred Stock at less than the current market price, issuance wholly for cash of Preferred Stock or securities which by their terms are convertible into or exchangeable for Preferred Stock, dividends on Preferred Stock payable in Preferred Stock or issuance of rights, options or warrants referred to hereinabove in this Section 11, hereafter made by the Company to holders of its Preferred Stock shall not be taxable to such stockholders.

11.14. Company Not to Diminish Benefits of Rights. The Company covenants and agrees that after the earlier of the Stock Acquisition Date or Distribution Date it will not, except as permitted by Section 23, Section 26 or Section 27, take (or permit any Subsidiary to take) any action if at the time such action is taken it is reasonably foreseeable that such action will substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights.

11.15. Adjustment of Rights Associated with Common Stock. Notwithstanding anything contained in this Agreement to the contrary, in the event that the Company shall at any time after the date hereof and prior to the Distribution Date (i) declare or pay any dividend on the outstanding Common Stock payable in shares of Common Stock, (ii) effect a subdivision or consolidation of the outstanding Common Stock (by reclassification or otherwise than by the payment of dividends payable in shares of Common Stock), or (iii) combine the outstanding Common Stock into a greater or lesser number of shares of Common Stock, then in any such case, the number of Rights associated with each share of Common Stock then outstanding, or issued or delivered thereafter but prior to the Distribution Date or in accordance with Section 22 shall be proportionately adjusted so that the number of Rights thereafter associated with each share of Common Stock following any such event shall equal the result obtained by multiplying

the number of Rights associated with each share of Common Stock immediately prior to such event by a fraction, the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to the occurrence of the event and the denominator of which shall be the total number of shares of Common Stock outstanding immediately following the occurrence of such event. The adjustments provided for in this Section 11.15 shall be made successively whenever such a dividend is declared or paid or such a subdivision, combination or consolidation is effected.

Section 12. Certificate of Adjusted Purchase Price or Number of Shares. Whenever an adjustment is made as provided in Sections 11 or 13, the Company shall (a) promptly prepare a certificate setting forth such adjustment, and a brief statement of the facts accounting for such adjustment, (b) promptly file with the Rights Agent and with each transfer agent for the Common Stock or the Preferred Stock a copy of such certificate and (c) mail a brief summary thereof to each holder of a Right Certificate (or if before the Distribution Date, to each holder of a certificate representing shares of Common Stock or Book Entry Shares in respect thereof) in accordance with Section 25. The Rights Agent shall be fully protected in relying on any such certificate and on any adjustment or statement therein contained and shall not be deemed to have knowledge of any such adjustment unless and until it shall have received such certificate.

Section 13. Consolidation, Merger or Sale or Transfer of Assets or Earning Power.

13.1. Certain Transactions. In the event that, from and after the first occurrence of a Trigger Event, directly or indirectly, (A) the Company shall consolidate with, or merge with and into, any other Person and the Company shall not be the continuing or surviving corporation, (B) any Person shall consolidate with the Company, or merge with and into the Company and the Company shall be the continuing or surviving corporation of such merger and, in connection with such merger, all or part of the Common Stock shall be changed into or exchanged for stock or other securities of the Company or any other Person or cash or any other property, or (C) the Company shall sell, exchange, mortgage or otherwise transfer (or one or more of its Subsidiaries shall sell, exchange, mortgage or otherwise transfer), in one or more transactions, assets or earning power aggregating 50% or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person or Persons (other than the Company or one or more wholly-owned Subsidiaries of the Company in one or more transactions each of which complies with Section 11.14), then, and in each such case, proper provision shall be made so that (i) each holder of a Right (other than Rights which have become void pursuant to Section 11.1.2) shall thereafter have the right to receive, upon the exercise thereof at a price per Right equal to the then current Purchase Price multiplied by the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to the first occurrence of a Trigger Event (as subsequently adjusted pursuant to Sections 11.1.1, 11.2, 11.3, 11.8, 11.9 and 11.12), in accordance with the terms of this Agreement and in lieu of Preferred Stock or Common Stock, such number of validly authorized and issued, fully paid, non-assessable and freely tradable Common Stock of the Principal Party (as such term is hereinafter defined) not subject to any liens, encumbrances, rights of first refusal or other adverse claims, as shall be equal to the result obtained by (x) multiplying the then current Purchase Price by the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable

immediately prior to the first occurrence of a Trigger Event (as subsequently adjusted pursuant to Sections 11.1.1, 11.2, 11.3, 11.8, 11.9 and 11.12) and (y) dividing that product by 50% of the then current per share market price of the Common Stock of such Principal Party (determined pursuant to Section 11.4) on the date of consummation of such consolidation, merger, sale or transfer; *provided* that the price per Right so payable and the number of shares of Common Stock of such Principal Party so receivable upon exercise of a Right shall thereafter be subject to further adjustment as appropriate in accordance with Section 11.6 to reflect any events covered thereby occurring in respect of the Common Stock of such Principal Party after the occurrence of such consolidation, merger, sale or transfer; (ii) such Principal Party shall thereafter be liable for, and shall assume, by virtue of such consolidation, merger, sale or transfer, all of the obligations and duties of the Company pursuant to this Agreement; (iii) the term “Company” shall thereafter be deemed to refer to such Principal Party; and (iv) such Principal Party shall take such steps (including, but not limited to, the reservation of a sufficient number of shares of its Common Stock in accordance with Section 9) in connection with such consummation as may be necessary to assure that the provisions hereof shall thereafter be applicable, as nearly as reasonably may be, in relation to its Common Stock thereafter deliverable upon the exercise of the Rights; *provided* that, upon the subsequent occurrence of any consolidation, merger, sale or transfer of assets or other extraordinary transaction in respect of such Principal Party, each holder of a Right shall thereupon be entitled to receive, upon exercise of a Right and payment of the Purchase Price as provided in this Section 13.1, such cash, shares, rights, warrants and other property which such holder would have been entitled to receive had such holder, at the time of such transaction, owned the Common Stock of the Principal Party receivable upon the exercise of a Right pursuant to this Section 13.1, and such Principal Party shall take such steps (including, but not limited to, reservation of shares of stock) as may be necessary to permit the subsequent exercise of the Rights in accordance with the terms hereof for such cash, shares, rights, warrants and other property. The Company shall not consummate any such consolidation, merger, sale or transfer unless prior thereto the Company and such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement confirming that the requirements of this Section 13.1 and Section 13.2 shall promptly be performed in accordance with their terms and that such consolidation, merger, sale or transfer of assets shall not result in a default by the Principal Party under this Agreement as the same shall have been assumed by the Principal Party pursuant to this Section 13.1 and Section 13.2 and providing that, as soon as practicable after executing such agreement pursuant to this Section 13, the Principal Party, at its own expense, shall:

(1) prepare and file a registration statement under the Securities Act, if necessary, with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate form, use its best efforts to cause such registration statement to become effective as soon as practicable after such filing and use its best efforts to cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Securities Act) until the Expiration Date and similarly comply with applicable state securities laws;

(2) use its best efforts, if the Common Stock of the Principal Party shall be listed or admitted to trading on the NYSE or on another national securities exchange, to list or admit to trading (or continue the listing of) the Rights and the securities purchasable upon exercise of the Rights on the NYSE or such securities exchange;

(3) deliver to holders of the Rights historical financial statements for the Principal Party which comply in all respects with the requirements for registration on Form 10 (or any successor form) under the Exchange Act; and

(4) obtain waivers of any rights of first refusal or preemptive rights in respect of the Common Stock of the Principal Party subject to purchase upon exercise of outstanding Rights.

In case the Principal Party has a provision in any of its authorized securities or in its articles or certificate of incorporation or by-laws or other instrument governing its corporate affairs, which provision would have the effect of (i) causing such Principal Party to issue (other than to holders of Rights pursuant to this [Section 13](#)), in connection with, or as a consequence of, the consummation of a transaction referred to in this [Section 13](#), Common Stock or common stock equivalents of such Principal Party at less than the then current market price per share thereof (determined pursuant to [Section 11.4](#)) or securities exercisable for, or convertible into, Common Stock or common stock equivalents of such Principal Party at less than such then current market price (other than to holders of Rights pursuant to this [Section 13](#)), or (ii) providing for any special payment, taxes, charges or similar provision in connection with the issuance of the Common Stock of such Principal Party pursuant to the provision of [Section 13](#), then, in such event, the Company hereby agrees with each holder of Rights that it shall not consummate any such transaction unless prior thereto the Company and such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement providing that the provision in question of such Principal Party shall have been canceled, waived or amended, or that the authorized securities shall be redeemed, so that the applicable provision will have no effect in connection with, or as a consequence of, the consummation of the proposed transaction.

The Company covenants and agrees that it shall not, at any time after the Trigger Event, enter into any transaction of the type described in clauses (A) through (C) of this [Section 13.1](#) if (i) at the time of or immediately after such consolidation, merger, sale, transfer or other transaction there are any rights, warrants or other instruments or securities outstanding or agreements in effect which would substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights, (ii) prior to, simultaneously with or immediately after such consolidation, merger, sale, transfer or other transaction, the stockholders of the Person who constitutes, or would constitute, the Principal Party for purposes of [Section 13.2](#) shall have received a distribution of Rights previously owned by such Person or any of its Related Persons or (iii) the form or nature of organization of the Principal Party would preclude or limit the exercisability of the Rights. The provisions of this [Section 13](#) shall similarly apply to successive transactions of the type described in clauses (A) through (C) of this [Section 13.1](#).

13.2. Principal Party. “*Principal Party*” shall mean:

(i) in the case of any transaction described in clauses (A) or (B) of the first sentence of [Section 13.1](#): (i) the Person that is the issuer of the securities into which the Common Stock is converted in such merger or consolidation, or, if there is more than one such issuer, the issuer the Common Stock of which has the greatest aggregate market value of shares outstanding, or (ii) if no securities are so issued, (x) the Person that is the other party to the merger, if such Person survives said merger, or, if there is more than one such Person, the Person

the Common Stock of which has the greatest aggregate market value of shares outstanding or (y) if the Person that is the other party to the merger does not survive the merger, the Person that does survive the merger (including the Company if it survives) or (z) the Person resulting from the consolidation; and

(ii) in the case of any transaction described in clause (C) of the first sentence in Section 13.1, the Person that is the party receiving the greatest portion of the assets or earning power transferred pursuant to such transaction or transactions, or, if each Person that is a party to such transaction or transactions receives the same portion of the assets or earning power so transferred or if the Person receiving the greatest portion of the assets or earning power cannot be determined, whichever of such Persons is the issuer of Common Stock having the greatest aggregate market value of shares outstanding; *provided, however*, that in any such case described in the foregoing clause (i) or (ii) of this Section 13.2, if the shares of Common Stock of such Person are not at such time or have not been continuously over the preceding twelve (12) month period registered under Section 12 of the Exchange Act, then (1) if such Person is a direct or indirect Subsidiary of another Person the shares of Common Stock of which are and have been so registered, the term "Principal Party" shall refer to such other Person, or (2) if such Person is a Subsidiary, directly or indirectly, of more than one Person, the shares of Common Stock of all of which are and have been so registered, the term "Principal Party" shall refer to whichever of such Persons is the issuer of Common Stock having the greatest aggregate market value of shares outstanding, or (3) if such Person is owned, directly or indirectly, by a joint venture formed by two or more Persons that are not owned, directly or indirectly, by the same Person, the rules set forth in clauses (1) and (2) above shall apply to each of the owners having an interest in the venture as if the Person owned by the joint venture was a Subsidiary of both or all of such joint venturers, and the Principal Party in each such case shall bear the obligations set forth in this Section 13 in the same ratio as its interest in such Person bears to the total of such interests.

13.3. Approved Acquisitions. Notwithstanding anything contained herein to the contrary, upon the consummation of any merger or other acquisition transaction of the type described in clause (A), (B) or (C) of Section 13.1 involving the Company pursuant to a merger or other acquisition agreement between the Company and any Person (or one or more of such Person's Affiliates or Associates) which agreement has been approved by the Board prior to any Person becoming an Acquiring Person, this Agreement and the rights of holders of Rights hereunder shall be terminated in accordance with Section 7.1.

Section 14. Fractional Rights and Fractional Shares.

14.1. Cash in Lieu of Fractional Rights. The Company shall not be required to issue fractions of Rights or to distribute Right Certificates which evidence fractional Rights (except prior to the Distribution Date in accordance with Section 11.15). In lieu of such fractional Rights, there shall be paid to the registered holders of the Right Certificates with regard to which such fractional Rights would otherwise be issuable an amount in cash equal to the same fraction of the current market value of a whole Right. For the purposes of this Section 14.1, the current market value of a whole Right shall be the closing price of the Rights for the Trading Day immediately prior to the date on which such fractional Rights would have been otherwise issuable. The closing price for any day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices,

regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if the Rights are not listed or admitted to trading on the NYSE, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Rights are listed or admitted to trading or, if the Rights are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the NYSE or such other system then in use or, if on any such date the Rights are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Rights selected by the Board. If on any such date no such market maker is making a market in the Rights, the current market value of the Rights on such date shall be the fair value of the Rights as determined in good faith by the Board, or, if at the time of such determination there is an Acquiring Person, by a nationally recognized investment banking firm selected by the Board, which shall have the duty to make such determination in a reasonable and objective manner, which determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes.

14.2. Cash in Lieu of Fractional Shares of Preferred Stock. The Company shall not be required to issue fractions of shares of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock) upon exercise or exchange of the Rights or to distribute certificates which evidence fractional shares of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock). Interests in fractions of shares of Preferred Stock in integral multiples of one one-thousandth of a share of Preferred Stock may, at the election of the Company, be evidenced by depositary receipts, pursuant to an appropriate agreement between the Company and a depositary selected by it; *provided*, that such agreement shall provide that the holders of such depositary receipts shall have all the rights, privileges and preferences to which they are entitled as Beneficial Owners of the Preferred Stock represented by such depositary receipts. In lieu of fractional shares of Preferred Stock that are not integral multiples of one one-thousandth of a share of Preferred Stock, the Company shall pay to the registered holders of Right Certificates at the time such Rights are exercised or exchanged as herein provided an amount in cash equal to the same fraction of the current per share market price of one share of Preferred Stock (as determined in accordance with Section 14.1) for the Trading Day immediately prior to the date of such exercise or exchange.

14.3. Cash in Lieu of Fractional Shares of Common Stock. The Company shall not be required to issue fractions of shares of Common Stock or to distribute certificates which evidence fractional shares of Common Stock upon the exercise or exchange of Rights. In lieu of such fractional shares of Common Stock, the Company shall pay to the registered holders of the Right Certificates with regard to which such fractional shares of Common Stock would otherwise be issuable an amount in cash equal to the same fraction of the current market value of a whole share of Common Stock (as determined in accordance with Section 14.1) for the Trading Day immediately prior to the date of such exercise or exchange.

14.4. Waiver of Right to Receive Fractional Rights or Shares. The holder of a Right by the acceptance of the Rights expressly waives his right to receive any fractional Rights or any fractional shares upon exercise or exchange of a Right, except as permitted by this Section 14.

Section 15. Rights of Action. All rights of action in respect of this Agreement, except the rights of action given to the Rights Agent under Section 18, are vested in the respective registered holders of the Right Certificates (and, prior to the Distribution Date, the registered holders of the Common Stock); and any registered holder of any Right Certificate (or, prior to the Distribution Date, of the Common Stock), without the consent of the Rights Agent or of the holder of any other Right Certificate (or, prior to the Distribution Date, of the Common Stock), may, in his own behalf and for his own benefit, enforce this Agreement, and may institute and maintain any suit, action or proceeding against the Company to enforce this Agreement, or otherwise enforce or act in respect of his right to exercise the Rights evidenced by such Right Certificate (or, prior to the Distribution Date, such Common Stock) in the manner provided in such Right Certificate and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and shall be entitled to specific performance of the obligations under, and injunctive relief against actual or threatened violations of, the obligations of any Person (including, without limitation, the Company) subject to this Agreement.

Section 16. Agreement of Right Holders. Every holder of a Right by accepting the same consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, the Rights will not be evidenced by a Right Certificate and will be transferable only in connection with the transfer of the Common Stock;

(b) as of and after the Distribution Date, the Right Certificates are transferable only on the registry books of the Rights Agent if surrendered at the office of the Rights Agent designated for such purpose, duly endorsed or accompanied by a proper instrument of transfer with all required certifications completed; and

(c) the Company and the Rights Agent may deem and treat the Person in whose name the Right Certificate (or, prior to the Distribution Date, the associated Common Stock certificate or Book Entry Share) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Right Certificates or the associated Common Stock certificate or Book Entry Share made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent shall be affected by any notice to the contrary.

Section 17. Right Certificate Holder Not Deemed a Stockholder. No holder, as such, of any Right Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of the Preferred Stock or any other securities of the Company which may at any time be issuable on the exercise of the Rights represented thereby, nor shall anything contained herein or in any Right Certificate be construed to confer upon the holder of any Right

Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in Section 24), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by such Right Certificate shall have been exercised in accordance with the provisions hereof.

Section 18. Concerning the Rights Agent. The Company agrees to pay to the Rights Agent reasonable compensation for all services rendered by it hereunder in accordance with a fee schedule to be mutually agreed upon and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and other disbursements incurred in the administration and execution of this Agreement and the exercise and performance of its duties hereunder. The Company also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability, or expense, incurred without gross negligence or willful misconduct on the part of the Rights Agent, for anything done or omitted by the Rights Agent in connection with the acceptance and administration of this Agreement, including the costs and expenses of defending against any claim of liability arising therefrom, directly or indirectly.

The Rights Agent shall be protected and shall incur no liability for or in respect of any action taken, suffered or omitted by it in connection with its administration of this Agreement in reliance upon any Right Certificate or certificate for the Preferred Stock or the Common Stock or for other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, instruction, direction, consent, certificate, statement, or other paper or document believed by it to be genuine and to be signed, executed and, where necessary, verified or acknowledged, by the proper Person or Persons.

Section 19. Merger or Consolidation or Change of Name of Rights Agent. Any corporation or limited liability company or other entity into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any corporation or limited liability company or other entity resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any corporation or limited liability company succeeding to the corporate trust or stock transfer business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided* that such corporation or limited liability company or other entity would be eligible for appointment as a successor Rights Agent under the provisions of Section 21. In case at the time such successor Rights Agent shall succeed to the agency created by this Agreement, any of the Right Certificates shall have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of the predecessor Rights Agent and deliver such Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, any successor Rights Agent may countersign such Right Certificates either in the name of the predecessor Rights Agent or in the name of the successor Rights Agent; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

In case at any time the name of the Rights Agent shall be changed and at such time any of the Right Certificates shall have been countersigned but not delivered, the Rights

Agent may adopt the countersignature under its prior name and deliver Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, the Rights Agent may countersign such Right Certificates either in its prior name or in its changed name; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

Section 20. Duties of Rights Agent. The Rights Agent undertakes the duties and obligations imposed by this Agreement upon the following terms and conditions, by all of which the Company and the holders of Right Certificates, by their acceptance thereof, shall be bound:

20.1. Legal Counsel. The Rights Agent may consult with legal counsel selected by it (who may be legal counsel for the Company), and the opinion of such counsel shall be full and complete authorization and protection to the Rights Agent as to any action taken or omitted by it in good faith and in accordance with such opinion.

20.2. Certificates as to Facts or Matters. Whenever in the performance of its duties under this Agreement the Rights Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by any one of the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, the Secretary or any Assistant Treasurer or Assistant Secretary of the Company and delivered to the Rights Agent; and such certificate shall be full authorization to the Rights Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon such certificate.

20.3. Standard of Care. The Rights Agent shall be liable hereunder only for its own gross negligence or willful misconduct.

20.4. Reliance on Agreement and Right Certificates. The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Right Certificates (except as to its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

20.5. No Responsibility as to Certain Matters. The Rights Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Rights Agent) or in respect of the validity or execution of any Right Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Right Certificate; nor shall it be responsible for any change in the exercisability of the Rights (including the Rights becoming void pursuant to Section 11.1.2) or any adjustment required under the provisions of Sections 3, 11, 13, 23 or 27 or responsible for the manner, method or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment (except with respect to the exercise of Rights evidenced by Right Certificates after actual notice of any such change or adjustment); nor shall it

by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any Preferred Stock or other securities to be issued pursuant to this Agreement or any Right Certificate or as to whether any Preferred or other securities will, when so issued, be validly authorized and issued, fully paid and nonassessable.

20.6. Further Assurance by Company. The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

20.7. Authorized Company Officers. The Rights Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from any one of the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, the Secretary or any Assistant Treasurer or Assistant Secretary of the Company, and to apply to such officers for advice or instructions in connection with its duties under this Agreement, and it shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with instructions of any such officer or for any delay in acting while waiting for these instructions. Any application by the Rights Agent for written instructions from the Company may, at the option of the Rights Agent, set forth in writing any action proposed to be taken or omitted by the Rights Agent with respect to its duties or obligations under this Agreement and the date on and/or after which such action shall be taken or such omission shall be effective. The Rights Agent shall not be liable to the Company for any action taken by, or omission of, the Rights Agent in accordance with a proposal included in any such application on or after the date specified therein (which date shall not be less than three (3) Business Days after the date any such officer actually receives such application, unless any such officer shall have consented in writing to an earlier date) unless, prior to taking of any such action (or the effective date in the case of omission), the Rights Agent shall have received written instructions in response to such application specifying the action to be taken or omitted.

20.8. Freedom to Trade in Company Securities. The Rights Agent and any stockholder, director, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent from acting in any other capacity for the Company or for any other legal entity.

20.9. Reliance on Attorneys and Agents. The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents, and the Rights Agent shall not be answerable or accountable for any act, omission, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company resulting from any such act, omission, default, neglect or misconduct, *provided* that reasonable care was exercised in the selection and continued employment thereof.

20.10. Incomplete Certificate. If, with respect to any Right Certificate surrendered to the Rights Agent for exercise or transfer, the certificate contained in the form of assignment or the form of election to purchase set forth on the reverse thereof, as the case may be, has not been completed to certify the holder is not an Acquiring Person (or a Related Person of an Acquiring Person), the Rights Agent shall not take any further action with respect to such requested exercise or transfer without first consulting with the Company.

20.11. Rights Holders List. At any time and from time to time after the Distribution Date, upon the request of the Company, the Rights Agent shall promptly deliver to the Company a list, as of the most recent practicable date (or as of such earlier date as may be specified by the Company), of the holders of record of Rights.

Section 21. Change of Rights Agent. The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Agreement upon thirty (30) days' notice in writing mailed to the Company and to each transfer agent of the Common Stock and/or Preferred Stock, as applicable, by registered or certified mail. Following the Distribution Date, the Company shall promptly notify the holders of the Right Certificates by first-class mail of any such resignation. The Company may remove the Rights Agent or any successor Rights Agent upon thirty (30) days' notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of the Common Stock and/or Preferred Stock, as applicable, by registered or certified mail, and to the holders of the Right Certificates by first-class mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the resigning, removed, or incapacitated Rights Agent shall remit to the Company, or to any successor Rights Agent designated by the Company, all books, records, funds, certificates or other documents or instruments of any kind then in its possession which were acquired by such resigning, removed or incapacitated Rights Agent in connection with its services as Rights Agent hereunder, and shall thereafter be discharged from all duties and obligations hereunder. Following notice of such removal, resignation or incapacity, the Company shall appoint a successor to such Rights Agent. If the Company shall fail to make such appointment within a period of thirty (30) days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Right Certificate (who shall, with such notice, submit his Right Certificate for inspection by the Company), then the registered holder of any Right Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, shall be a corporation organized and doing business under the laws of the State of New York or the State of Delaware (or any other state of the United States so long as such corporation is authorized to do business as a banking institution in the State of New York or the State of Delaware) in good standing, having an office in the State of New York or the State of Delaware, which is authorized under such laws to exercise stock transfer or corporate trust powers and is subject to supervision or examination by Federal or state authority and which has at the time of its appointment as Rights Agent a combined capital and surplus of at least \$100 million. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment the

Company shall file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Common Stock and/or Preferred Stock, as applicable, and, following the Distribution Date, mail a notice thereof in writing to the registered holders of the Right Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

Section 22. Issuance of New Right Certificates. Notwithstanding any of the provisions of this Agreement or of the Rights to the contrary, the Company may, at its option, issue new Right Certificates evidencing Rights in such form as may be approved by its Board to reflect any adjustment or change in the Purchase Price and the number or kind or class of shares or other securities or property purchasable under the Right Certificates made in accordance with the provisions of this Agreement. In addition, in connection with the issuance or sale of Common Stock following the Distribution Date and prior to the Expiration Date, the Company shall, with respect to Common Stock so issued or sold pursuant to the exercise of stock options or under any employee plan or arrangement, granted or awarded, or upon exercise, conversion or exchange of securities heretofore or hereinafter issued by the Company, in each case existing prior to the Distribution Date, issue Right Certificates representing the appropriate number of Rights in connection with such issuance or sale; *provided, however*, that (i) no such Right Certificate shall be issued if, and to the extent that, the Company shall be advised by counsel that such issuance would create a significant risk of material adverse tax consequences to the Company or the Person to whom such Right Certificate would be issued and (ii) no such Right Certificate shall be issued if, and to the extent that, appropriate adjustment shall otherwise have been made in lieu of the issuance thereof.

Section 23. Redemption.

23.1. Right to Redeem. The Board may, at its option, at any time prior to a Trigger Event, redeem all but not less than all of the then outstanding Rights at a redemption price of \$0.01 per Right, appropriately adjusted to reflect any stock split, stock dividend, recapitalization or similar transaction occurring after the date hereof (such redemption price being hereinafter referred to as the “*Redemption Price*”), and the Company may, at its option, pay the Redemption Price in Common Stock (based on the “current per share market price,” determined pursuant to Section 11.4, of the Common Stock at the time of redemption), cash or any other form of consideration deemed appropriate by the Board. The redemption of the Rights by the Board may be made effective at such time, on such basis and subject to such conditions as the Board in its sole discretion may establish.

23.2. Redemption Procedures. Immediately upon the action of the Board ordering the redemption of the Rights (or at such later time as the Board may establish for the effectiveness of such redemption), and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price for each Right so held. The Company shall promptly give public notice of such redemption; *provided, however*, that the failure to give, or any defect in, any such notice shall not affect the validity of such redemption. The Company shall promptly give, or cause the Rights Agent to give, notice of such redemption to the holders of the then outstanding Rights by mailing such notice to all such holders at their last addresses as they

appear upon the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the transfer agent for the Common Stock. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption shall state the method by which the payment of the Redemption Price will be made. The failure to give notice required by this Section 23.2 or any defect therein shall not affect the validity of the action taken by the Company. Neither the Company nor any of its Affiliates or Associates may redeem, acquire or purchase for value any Rights at any time in any manner other than that specifically set forth in this Section 23 or in Section 27, and other than in connection with the purchase, acquisition or redemption of Common Stock prior to the Distribution Date.

Section 24. Notice of Certain Events. In case the Company shall propose at any time after the earlier of the Stock Acquisition Date and the Distribution Date (a) to pay any dividend payable in stock of any class to the holders of Preferred Stock or to make any other distribution to the holders of Preferred Stock (other than a regular periodic cash dividend at a rate not in excess of 125% of the rate of the last regular periodic cash dividend theretofore paid or, in case regular periodic cash dividends have not theretofore been paid, at a rate not in excess of 50% of the average net income per share of the Company for the four quarters ended immediately prior to the payment of such dividends, or a stock dividend on, or a subdivision, combination or reclassification of the Common Stock), or (b) to offer to the holders of Preferred Stock rights or warrants to subscribe for or to purchase any additional Preferred Stock or shares of stock of any class or any other securities, rights or options, or (c) to effect any reclassification of its Preferred Stock (other than a reclassification involving only the subdivision of outstanding Preferred Stock), or (d) to effect any consolidation or merger into or with, or to effect any sale or other transfer (or to permit one or more of its Subsidiaries to effect any sale or other transfer), in one or more transactions, of 50% or more of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to, any other Person (other than pursuant to a merger or other acquisition agreement of the type excluded from the definition of “*Beneficial Ownership*” in Section 1.3), or (e) to effect the liquidation, dissolution or winding up of the Company, or (f) to declare or pay any dividend on the Common Stock payable in Common Stock or to effect a subdivision, combination or consolidation of the Common Stock (by reclassification or otherwise than by payment of dividends in Common Stock), then, in each such case, the Company shall give to the Rights Agent and to each holder of a Right Certificate, in accordance with Section 25, a notice of such proposed action, which shall specify the record date for the purposes of such stock dividend, distribution of rights or warrants, or the date on which such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution, or winding up is to take place and the date of participation therein by the holders of the Preferred Stock and/or Common Stock, if any such date is to be fixed, and such notice shall be so given in the case of any action covered by clause (a) or (b) above at least ten (10) days prior to the record date for determining holders of the Preferred Stock for purposes of such action, and in the case of any such other action, at least ten (10) days prior to the date of the taking of such proposed action or the date of participation therein by the holders of the Preferred Stock and/or Common Stock, whichever shall be the earlier.

In case any event set forth in Section 11.1.2 or Section 13 shall occur, then, in any such case, (i) the Company shall as soon as practicable thereafter give to the Rights Agent and to each holder of a Right Certificate, in accordance with Section 25, a notice of the occurrence of

such event, which notice shall describe the event and the consequences of the event to holders of Rights under Section 11.1.2 and Section 13, and (ii) all references in this Section 24 to Preferred Stock shall be deemed thereafter to refer to Common Stock and/or, if appropriate, other securities.

Section 25. Notices. Notices or demands authorized by this Agreement to be given or made by the Rights Agent or by the holder of any Right Certificate to or on the Company shall be sufficiently given or made if sent by overnight delivery service or first-class mail, postage prepaid, addressed (until another address is filed in writing with the Rights Agent) as follows:

Allergan, Inc.
2525 Dupont Drive
Irvine, California 92612
Attention: Secretary

Subject to the provisions of Section 21 and Section 24, any notice or demand authorized by this Agreement to be given or made by the Company or by the holder of any Right Certificate to or on the Rights Agent shall be sufficiently given or made if sent by overnight delivery service or first-class mail, postage prepaid, addressed (until another address is filed in writing with the Company) as follows:

Wells Fargo Shareholder Services
1110 Centre Pointe Curve, Suite 101
Mendota Heights, MN 55120
Attention: Erik Amundson

Notices or demands authorized by this Agreement to be given or made by the Company or the Rights Agent to the holder of any Right Certificate (or, prior to the Distribution Date, to the holder of any certificate representing Common Stock or of any Book Entry Shares) shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Company or the transfer agent or registrar for the Common Stock; provided that prior to the Distribution Date a filing by the Company with the Securities and Exchange Commission shall constitute sufficient notice to the holders of securities of the Company, including the Rights, for purposes of this Agreement and no other notice need be given.

Section 26. Supplements and Amendments. For so long as the Rights are then redeemable, the Company may in its sole and absolute discretion, and the Rights Agent shall, if the Company so directs, supplement or amend any provision of this Agreement in any respect without the approval of any holders of Rights or Common Stock. From and after the time that the Rights are no longer redeemable, the Company may, and the Rights Agent shall, if the

Company so directs, from time to time supplement or amend this Agreement without the approval of any holders of Rights (i) to cure any ambiguity or to correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions herein or (ii) to make any other changes or provisions in regard to matters or questions arising hereunder which the Company may deem necessary or desirable, including but not limited to extending the Final Expiration Date; *provided, however*, that no such supplement or amendment shall adversely affect the interests of the holders of Rights as such (other than an Acquiring Person or a Related Person of an Acquiring Person), and no such supplement or amendment may cause the Rights again to become redeemable or cause this Agreement again to become amendable as to an Acquiring Person or a Related Person of an Acquiring Person other than in accordance with this sentence; *provided further*, that the right of the Board to extend the Distribution Date shall not require any amendment or supplement hereunder. Upon the delivery of a certificate from an appropriate officer of the Company which states that the proposed supplement or amendment is in compliance with the terms of this Section 26, the Rights Agent shall execute such supplement or amendment; *provided* that any supplement or amendment that does not amend Sections 18, 19, 20 or 21 hereof or this Section 26 or any other Section of this Agreement in a manner adverse to the Rights Agent shall become effective immediately upon execution by the Company, whether or not also executed by the Rights Agent. The Company shall promptly provide the Rights Agent with written notice of such supplement or amendment.

Section 27. Exchange.

27.1. Exchange of Common Stock for Rights. The Board may, at its option, at any time after the occurrence of a Trigger Event, exchange Common Stock for all or part of the then outstanding and exercisable Rights (which shall not include Rights that have become void pursuant to the provisions of Section 11.1.2) by exchanging at an exchange ratio of one share of Common Stock per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof (such amount per Right being hereinafter referred to as the “*Exchange Consideration*”). Notwithstanding the foregoing, the Board shall not be empowered to effect such exchange at any time after any Acquiring Person shall have become the Beneficial Owner of 50% or more of the Common Stock then outstanding. From and after the occurrence of an event specified in Section 13.1, any Rights that theretofore have not been exchanged pursuant to this Section 27.1 shall thereafter be exercisable only in accordance with Section 13 and may not be exchanged pursuant to this Section 27.1. The exchange of the Rights by the Board may be made effective at such time, on such basis and with such conditions as the Board in its sole discretion may establish. Without limiting the foregoing, prior to effecting an exchange pursuant to this Section 27, the Board may direct the Company to enter into a Trust Agreement in such form and with such terms as the Board shall then approve (the “*Trust Agreement*”). If the Board so directs, the Company shall enter into the Trust Agreement and shall issue to the trust created by such agreement (the “*Trust*”) all of the Common Stock issuable pursuant to the exchange (or any portion thereof that has not theretofore been issued in connection with the exchange). From and after the time at which such shares are issued to the Trust, all stockholders then entitled to receive shares pursuant to the exchange shall be entitled to receive such shares (and any dividends or distributions made thereon after the date on which such shares are deposited in the Trust) only from the Trust and solely upon compliance with the relevant terms and provisions of the Trust Agreement. Any Common Stock issued at the direction of the Board in connection herewith shall be validly issued, fully paid and

nonassessable Common Stock or Preferred Stock (as the case may be), and the Company shall be deemed to have received as consideration for such issuance a benefit having a value that is at least equal to the aggregate par value of the shares so issued.

27.2. Exchange Procedures. Immediately upon the effectiveness of the action of the Board ordering the exchange for any Rights pursuant to Section 27.1 and without any further action and without any notice, the right to exercise such Rights shall terminate and the only right thereafter of a holder of such Rights shall be to receive the Exchange Consideration. The Company shall promptly give public notice of any such exchange; *provided, however*, that the failure to give, or any defect in, such notice shall not affect the validity of such exchange. The Company promptly shall mail a notice of any such exchange to all of the holders of such Rights at their last addresses as they appear upon the registry books of the Rights Agent. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange shall state the method by which the exchange of the Common Stock for Rights will be effected and, in the event of any partial exchange, the number of Rights which will be exchanged. Any partial exchange shall be effected pro rata based on the number of Rights (other than the Rights that have become void pursuant to the provisions of Section 11.1.2) held by each holder of Rights.

27.3. Insufficient Shares. The Company may at its option substitute, for each share of Common Stock that would otherwise be issuable upon exchange of a Right, (i) a number of shares of Preferred Stock or fraction thereof (or equivalent preferred stock, as such term is defined in Section 11.2), (ii) cash, (iii) other equity securities of the Company or common stock equivalents, as such term is defined in Section 11.1.3), (iv) debt securities of the Company, (v) other assets or (vi) any combination of the foregoing, in each case having an aggregate value equal to the current per share market price of one share of Common Stock (determined pursuant to Section 11.4) as of the date of such exchange. In the event that there shall not be sufficient shares of Common Stock issued but not outstanding or authorized but unissued and otherwise available for issuance to permit an exchange of Rights for Common Stock as contemplated in accordance with this Section 27, the Company shall substitute to the extent of such insufficiency, for each share of Common Stock that would otherwise be issuable upon exchange of a Right, consideration of any type described in Section 11.1.3(B)(1)-(7), which consideration shall have an aggregate current per share market price (determined pursuant to Section 11.4 hereof) equal to the current per share market price of one share of Common Stock (determined pursuant to Section 11.4 hereof) as of the date of such exchange.

Section 28. Successors. All the covenants and provisions of this Agreement by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 29. Benefits of this Agreement. Nothing in this Agreement shall be construed to give to any Person or corporation other than the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Stock) any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Stock).

Section 30. Determination and Actions by the Board or Committee Thereof. The Board, or a duly authorized committee thereof, shall have the exclusive power and authority to administer this Agreement and to exercise the rights and powers specifically granted to the Board or to the Company, or as may be necessary or advisable in the administration of this Agreement, including, without limitation, the right and power to (i) interpret the provisions of this Agreement and (ii) make all determinations deemed necessary or advisable for the administration of this Agreement (including, without limitation, a determination to redeem or not redeem the Rights or amend this Agreement). In administering this Agreement and exercising the rights and powers specifically granted to the Board and to the Company hereunder, and in interpreting this Agreement and making any determination hereunder, the Board, or a duly authorized committee thereof may consider any and all facts, circumstances or information it deems to be necessary, useful or appropriate. All such actions, calculations, interpretations and determinations that are done or made by the Board, or a duly authorized committee thereof, in good faith shall be final, conclusive and binding on the Company, the Rights Agent, the holders of the Rights, as such, and all other parties to the fullest extent permitted by applicable law.

Section 31. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 32. Governing Law. This Agreement and each Right Certificate issued hereunder shall be deemed to be a contract made under the internal laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts to be made and performed entirely within such State.

Section 33. Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. A signature to this Agreement transmitted electronically shall have the same authority, effect and enforceability as an original signature.

Section 34. Descriptive Headings. Descriptive headings of the several Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, as of the day and year first above written.

ALLERGAN, INC.

By /s/ Matthew J. Maletta

Name: Matthew J. Maletta

Title: Vice President, Associate General
Counsel

and Secretary

WELLS FARGO BANK, N.A.

By /s/ Andrea Severson 4/22/14

Name: Andrea Severson

Title: AVP Client Services

EXHIBIT A

FORM OF
CERTIFICATE OF DESIGNATIONS
of
SERIES A JUNIOR PARTICIPATING PREFERRED STOCK
of
ALLERGAN, INC.

(Pursuant to Section 151 of the
Delaware General Corporation Law)

Allergan, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the “*Corporation*”), hereby certifies that the following resolution was adopted by the Board of Directors of the Corporation (hereinafter called the “*Board of Directors*” or the “*Board*”) as required by Section 151 of the General Corporation Law at a meeting duly called and held on April 22, 2014.

RESOLVED, that pursuant to the authority expressly granted to and vested in the Board in accordance with the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, the Board hereby creates a series of Preferred Stock, par value \$0.01 per share (the “*Preferred Stock*”), of the Corporation and hereby states the designation and number of shares, and fixes the relative rights, powers and preferences, and qualifications, limitations and restrictions thereof as follows:

Section 1. Designation and Amount. The shares of such series shall be designated as “Series A Junior Participating Preferred Stock” (the “*Series A Preferred Stock*”) and the number of shares constituting the Series A Preferred Stock shall be 400,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; **provided**, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series A Preferred Stock.

Section 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any class or series of stock of this Corporation ranking prior and superior to the Series A

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Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock, in preference to the holders of Common Stock, par value \$0.01 per share (the “*Common Stock*”), of the Corporation, and of any other stock ranking junior to the Series A Preferred Stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a “*Quarterly Dividend Payment Date*”), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) of this Section 2 immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series A Preferred Stock shall nevertheless be payable (with any such payment being within the discretion of the Board) on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly

Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than sixty (60) days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the shareholders of the Corporation. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of shareholders of the Corporation.

(C) Except as set forth herein, or as otherwise provided by law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

(D) If, at the time of any annual meeting of stockholders for the election of directors, the equivalent of six quarterly dividends (whether or not consecutive) payable on any share or shares of Series A Preferred Stock are in default, the number of directors constituting the Board of Directors of the Corporation shall be increased by two. In addition to voting together with the holders of Common Stock for the election of other directors of the Corporation, the holders of record of the Series A Preferred Stock, voting separately as a class to the exclusion of the holders of Common Stock, shall be entitled at such meeting of stockholders (and at each subsequent annual meeting of stockholders), unless all dividends in arrears on the Series A Preferred Stock have been paid or declared

and set apart for payment prior thereto, to vote for the election of two directors of the Corporation, the holders of any Series A Preferred Stock being entitled to cast a number of votes per share of Series A Preferred Stock as is specified in paragraph (A) of this Section 3. Each such additional director shall serve until the next annual meeting of stockholders for the election of directors, or until his successor shall be elected and shall qualify, or until his right to hold such office terminates pursuant to the provisions of this Section 3(D). Until the default in payments of all dividends which permitted the election of said directors shall cease to exist, any director who shall have been so elected pursuant to the provisions of this Section 3(D) may be removed at any time, without cause, only by the affirmative vote of the holders of the shares of Series A Preferred Stock at the time entitled to cast a majority of the votes entitled to be cast for the election of any such director at a special meeting of such holders called for that purpose, and any vacancy thereby created may be filled by the vote of such holders. If and when such default shall cease to exist, the holders of the Series A Preferred Stock shall be divested of the foregoing special voting rights, subject to reversion in the event of each and every subsequent like default in payments of dividends. Upon the termination of the foregoing special voting rights, the terms of office of all persons who may have been elected directors pursuant to said special voting rights shall forthwith terminate, and the number of directors constituting the Board of Directors shall be reduced by two. The voting rights granted by this Section 3(D) shall be in addition to any other voting rights granted to the holders of the Series A Preferred Stock in this Section 3.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (both as to dividends and upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Amended and Restated Certificate of Incorporation or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. Liquidation, Dissolution or Winding Up.

(A) Upon any liquidation, dissolution or winding up of the Corporation, voluntary or otherwise no distribution shall be made (i) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of Series A Preferred Stock shall have received an amount per share (the "Series A Liquidation Preference") equal to \$1,000 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, provided that the holders of shares of Series A Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of Common Stock, or (ii) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (i) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that are outstanding immediately prior to such event.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other classes and series of stock of the Corporation, if any, that rank on a parity with the Series A Preferred Stock in respect thereof, then the assets available for such distribution shall be distributed ratably to the holders of the Series A Preferred Stock and the holders of such parity shares in proportion to their respective liquidation preferences.

(C) Neither the merger or consolidation of the Corporation into or with another corporation nor the merger or consolidation of any other corporation into or with the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 6.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare

or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The Series A Preferred Stock shall not be redeemable by the Corporation.

Section 9. Rank. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up, junior to all series of any other class of the Corporation's Preferred Stock, except to the extent that any such other series specifically provides that it shall rank on a parity with or junior to the Series A Preferred Stock.

Section 10. Amendment. At any time any shares of Series A Preferred Stock are outstanding, the Amended and Restated Certificate of Incorporation of the Corporation shall not be further amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, voting separately as a single class.

Section 11. Fractional Shares. Series A Preferred Stock may be issued in fractions of a share that shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

* * *

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EXHIBIT B
Form of Right Certificate

Certificate No. W-

Rights

NOT EXERCISABLE AFTER 8:00 A.M. EASTERN TIME ON APRIL 22, 2015 OR EARLIER IF NOTICE OF REDEMPTION OR EXCHANGE IS GIVEN OR IF THE COMPANY IS MERGED OR ACQUIRED PURSUANT TO AN AGREEMENT OF THE TYPE DESCRIBED IN SECTION 13.3 OF THE AGREEMENT. THE RIGHTS ARE SUBJECT TO REDEMPTION AT \$0.01 PER RIGHT, AND TO EXCHANGE ON THE TERMS SET FORTH IN THE AGREEMENT. UNDER CERTAIN CIRCUMSTANCES (SPECIFIED IN SECTION 11.1.2 OF THE AGREEMENT), RIGHTS BENEFICIALLY OWNED BY OR TRANSFERRED TO AN ACQUIRING PERSON (AS DEFINED IN THE AGREEMENT), OR ANY SUBSEQUENT HOLDER OF SUCH RIGHTS, WILL BECOME NULL AND VOID AND WILL NO LONGER BE TRANSFERABLE.

Right Certificate

ALLERGAN, INC.

This certifies that _____, or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Rights Agreement, dated as of April 22, 2014, as the same may be amended from time to time (the "*Agreement*"), between Allergan, Inc., a Delaware corporation (the "*Company*"), and Wells Fargo Bank, N.A., as Rights Agent (the "*Rights Agent*"), to purchase from the Company at any time after the Distribution Date and prior to 8:00 a.m. Eastern Time on April 22, 2015, at the offices of the Rights Agent, or its successors as Rights Agent, designated for such purpose, one one-thousandth of a fully paid, nonassessable share of Series A Junior Participating Preferred Stock, par value \$0.01 per share (the "*Preferred Stock*"), of the Company, at a purchase price of \$500.00 per one one-thousandth of a share of Preferred Stock, subject to adjustment (the "*Purchase Price*"), upon presentation and surrender of this Right Certificate with the Form of Election to Purchase and certification duly executed. The number of Rights evidenced by this Right Certificate (and the number of one one-thousandths of a share of Preferred Stock which may be purchased upon exercise thereof) set forth above, and the Purchase Price set forth above, are the number and Purchase Price as of April 22, 2014 based on the Preferred Stock as constituted at such date. Capitalized terms used in this Right Certificate without definition shall have the meanings ascribed to them in the Agreement. As provided in the Agreement, the Purchase Price and the number of shares of Preferred Stock which may be purchased upon the exercise of the Rights evidenced by this Right Certificate are subject to modification and adjustment upon the happening of certain events.

This Right Certificate is subject to all of the terms, provisions and conditions of the Agreement, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Rights Agent, the Company and the holders of the Right Certificates. Copies of the Agreement are on file at the principal offices of the Company and the Rights Agent.

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This Right Certificate, with or without other Right Certificates, upon surrender at the offices of the Rights Agent designated for such purpose, may be exchanged for another Right Certificate or Right Certificates of like tenor and date evidencing Rights entitling the holder to purchase a like aggregate number of one one-thousandths of a share of Preferred Stock as the Rights evidenced by the Right Certificate or Right Certificates surrendered shall have entitled such holder to purchase. If this Right Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender hereof another Right Certificate or Right Certificates for the number of whole Rights not exercised.

Subject to the provisions of the Agreement, the Board may, at its option, (i) redeem the Rights evidenced by this Right Certificate at a redemption price of \$0.01 per Right or (ii) exchange Common Stock for the Rights evidenced by this Certificate, in whole or in part.

No fractional Preferred Stock will be issued upon the exercise of any Right or Rights evidenced hereby (other than fractions of Preferred Stock which are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depository receipts), but in lieu thereof a cash payment will be made, as provided in the Agreement.

No holder of this Right Certificate, as such, shall be entitled to vote or receive dividends or be deemed for any purpose the holder of the Preferred Stock or of any other securities of the Company which may at any time be issuable on the exercise hereof, nor shall anything contained in the Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in the Agreement), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Right Certificate shall have been exercised as provided in the Agreement.

If any term, provision, covenant or restriction of the Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

This Right Certificate shall not be valid or binding for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Company and its corporate seal.

Dated as of _____, 20[]].

Attest:

ALLERGAN, INC.

By _____
Title:

By _____
Title:

Countersigned:

WELLS FARGO BANK, N.A.,
as Rights Agent

By _____
Authorized Signature

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Form of Reverse Side of Right Certificate

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Right Certificate.)

FOR VALUE RECEIVED _____
hereby sells, assigns and transfers unto _____

(Please print name and address
of transferee)

Rights evidenced by this Right Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ Attorney, to transfer the within Right Certificate on the books of the within-named Company, with full power of substitution.

Dated: _____

Signature

Signature Medallion Guaranteed:

Signatures must be guaranteed by an "eligible guarantor institution" as defined in Rule 17Ad-15 promulgated under the Securities Exchange Act of 1934, as amended, which is a member of a recognized Medallion Signature Guarantee Program.

The undersigned hereby certifies that:

(1) the Rights evidenced by this Right Certificate are not Beneficially Owned by and are not being assigned to an Acquiring Person or a Related Person of an Acquiring Person; and

(2) after due inquiry and to the best knowledge of the undersigned, the undersigned did not acquire the Rights evidenced by this Right Certificate from any Person who is, was or subsequently became an Acquiring Person or a Related Person of an Acquiring Person.

Dated: _____

Signature

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FORM OF ELECTION TO PURCHASE

(To be executed if holder desires to
exercise the Right Certificate.)

To: Allergan, Inc.

The undersigned hereby irrevocably elects to exercise _____ Rights represented by this Right Certificate to purchase the Preferred Stock issuable upon the exercise of such Rights (or such other securities or property of the Company or of any other Person which may be issuable upon the exercise of the Rights) and requests that certificates for such stock (or such other securities or property of the Company or of any other Person which may be issuable upon the exercise of the Rights) be issued in the name of (or to, as the case may be):

(Please print name and address)

If such number of Rights shall not be all the Rights evidenced by this Right Certificate, a new Right Certificate for the balance remaining of such Rights shall be registered in the name of and delivered to:

Please insert social security
or other identifying number

(Please print name and address)

Dated: _____

Signature

Signature Medallion Guaranteed:

Signatures must be guaranteed by an "eligible guarantor institution" as defined in Rule 17Ad-15 promulgated under the Securities Exchange Act of 1934, as amended, which is a member of a recognized Medallion Signature Guarantee Program.

The undersigned hereby certifies that:

(1) the Rights evidenced by this Right Certificate are not Beneficially Owned by and are not being assigned to an Acquiring Person or a Related Person of an Acquiring Person; and

(2) after due inquiry and to the best knowledge of the undersigned, the undersigned did not acquire the Rights evidenced by this Right Certificate from any Person who is, was or subsequently became an Acquiring Person or a Related Person of an Acquiring Person.

Dated: _____

Signature

NOTICE

The signature in the foregoing Form of Assignment and Form of Election to Purchase must conform to the name as written upon the face of this Right Certificate in every particular, without alteration or enlargement or any change whatsoever.

In the event the certification set forth above in the Form of Assignment or Form of Election to Purchase is not completed, the Company will deem the Beneficial Owner of the Rights evidenced by this Right Certificate to be an Acquiring Person or a Related Person of an Acquiring Person and such Assignment or Election to Purchase will not be honored.

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EXHIBIT C

As described in the Rights Agreement, Rights which are held by or have been held by an Acquiring Person or any Related Persons of an Acquiring Person (as such terms are defined in the Rights Agreement) and certain transferees thereof shall become null and void and will no longer be transferable.

SUMMARY OF RIGHTS TO PURCHASE
PREFERRED SHARES

On April 22, 2014 the Board of Directors of Allergan, Inc. (the “*Company*”) declared a dividend of one preferred stock purchase right (a “*Right*”) for each share of common stock, par value \$0.01 (the “*Common Stock*”), of the Company outstanding at the close of business on May 8, 2014 (the “*Record Date*”). As long as the Rights are attached to the Common Stock, the Company will issue one Right (subject to adjustment) with each new share of Common Stock so that all such shares will have attached Rights. When exercisable, each Right will entitle the registered holder to purchase from the Company one one-thousandth of a share of Series A Junior Participating Preferred Stock (the “*Preferred Stock*”) at a price of \$500.00 per one one-thousandth of a share of Preferred Stock, subject to certain anti-dilution adjustments (the “*Purchase Price*”). The description and terms of the Rights are set forth in a Rights Agreement, dated as of April 22, 2014, as the same may be amended from time to time (the “*Agreement*”), between the Company and Wells Fargo Bank, N.A., as Rights Agent (the “*Rights Agent*”).

Until the earlier to occur of (i) the close of business on the tenth (10th) business day following a public announcement that a person or group of affiliated or associated persons has acquired, or obtained the right to acquire, beneficial ownership of 10% or more of the Common Stock (including certain synthetic equity positions created by derivative securities, which are treated as beneficial ownership of the number of shares of Common Stock equivalent to the economic exposure created by the synthetic equity position, to the extent actual shares of Common Stock are directly or indirectly beneficially owned by a counterparty to the synthetic equity position) (an “*Acquiring Person*”) or (ii) the close of business on the tenth (10th) business day (or such later date as may be determined by action of the Board of Directors prior to such time as any person or group of affiliated persons becomes an Acquiring Person) following the commencement or announcement of an intention to make a tender offer or exchange offer the consummation of which would result in the beneficial ownership by a person or group of 10% or more of the Common Stock (the earlier of (i) and (ii) being called the “*Distribution Date*”), the Rights will be evidenced, with respect to any of the Common Stock certificates outstanding as of the Record Date, by such Common Stock certificates or, with respect to any uncertificated Common Stock registered in book entry form, by notation in book entry, in either case together with a copy of this Summary of Rights. The Agreement provides that any person who beneficially owned 10% or more of the Common Stock immediately prior to the first public announcement of the adoption of the Agreement, together with any affiliates and associates of that person (each an “*Existing Holder*”), shall not be deemed to be an “*Acquiring Person*” for purposes of the Agreement unless the Existing Holder becomes the beneficial owner of one or more additional shares of Common Stock (other than pursuant to a dividend or distribution paid

or made by the Company on the outstanding Common Stock in Common Stock or pursuant to a split or subdivision of the outstanding Common Stock). However, if upon acquiring beneficial ownership of one or more additional shares of Common Stock, the Existing Holder does not beneficially own 10% or more of the Common Stock then outstanding, the Existing Holder shall not be deemed to be an “Acquiring Person” for purposes of the Agreement.

The Agreement provides that until the Distribution Date (or earlier redemption, exchange, termination or expiration of the Rights), the Rights will be transferred with and only with the Common Stock. Until the Distribution Date (or earlier redemption, exchange, termination or expiration of the Rights), new Common Stock certificates issued after the close of business on the Record Date upon transfer or new issuance of the Common Stock will contain a notation incorporating the Agreement by reference, and the Company will deliver a notice to that effect upon the transfer or new issuance of book entry shares. Until the Distribution Date (or earlier redemption, exchange, termination or expiration of the Rights), the surrender for transfer of any certificates for Common Stock or any book entry shares, with or without such notation, notice or a copy of this Summary of Rights, will also constitute the transfer of the Rights associated with the Common Stock represented by such certificate or book entry shares. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights (“*Right Certificates*”) will be mailed to holders of record of the Common Stock as of the close of business on the Distribution Date and such separate Right Certificates alone will evidence the Rights.

The Rights are not exercisable until the Distribution Date. The Rights will expire at 8:00 a.m. Eastern Time on April 22, 2015, subject to the Company’s right to extend such date (the “*Final Expiration Date*”), unless earlier redeemed or exchanged by the Company or terminated.

Each share of Preferred Stock purchasable upon exercise of the Rights will be entitled, when, as and if declared, to a minimum preferential quarterly dividend payment of \$1.00 per share or, if greater, an aggregate dividend of 1,000 times the dividend, if any, declared per share of Common Stock. In the event of liquidation, dissolution or winding up of the Company, the holders of the Preferred Stock will be entitled to a minimum preferential liquidation payment of \$1,000 per share (plus any accrued but unpaid dividends), provided that such holders of the Preferred Stock will be entitled to an aggregate payment of 1,000 times the payment made per share of Common Stock. Each share of Preferred Stock will have 1,000 votes and will vote together with the Common Stock. Finally, in the event of any merger, consolidation or other transaction in which Common Stock are exchanged, each share of Preferred Stock will be entitled to receive 1,000 times the amount received per share of Common Stock. Preferred Stock will not be redeemable. These rights are protected by customary antidilution provisions. Because of the nature of the Preferred Stock’s dividend, liquidation and voting rights, the value of one one-thousandth of a share of Preferred Stock purchasable upon exercise of each Right should approximate the value of one share of Common Stock.

The Purchase Price payable, and the number of shares of Preferred Stock or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of the Preferred Stock, (ii) upon the grant to holders of the Preferred Stock of certain rights or warrants to subscribe for or purchase Preferred Stock or convertible securities at

less than the current market price of the Preferred Stock or (iii) upon the distribution to holders of the Preferred Stock of evidences of indebtedness, cash, securities or assets (excluding regular periodic cash dividends at a rate not in excess of 125% of the rate of the last regular periodic cash dividend theretofore paid or, in case regular periodic cash dividends have not theretofore been paid, at a rate not in excess of 50% of the average net income per share of the Company for the four quarters ended immediately prior to the payment of such dividend, or dividends payable in Preferred Stock (which dividends will be subject to the adjustment described in clause (i) above)) or of subscription rights or warrants (other than those referred to above).

In the event that a Person becomes an Acquiring Person or if the Company were the surviving corporation in a merger with an Acquiring Person or any affiliate or associate of an Acquiring Person and shares of the Common Stock were not changed or exchanged, each holder of a Right, other than Rights that are or were acquired or beneficially owned by the Acquiring Person (which Rights will thereafter be void), will thereafter have the right to receive upon exercise that number of shares of Common Stock having a market value of two times the then current Purchase Price of the Right. In the event that, after a Person has become an Acquiring Person, the Company were acquired in a merger or other business combination transaction or more than 50% of its assets or earning power were sold, proper provision shall be made so that each holder of a Right shall thereafter have the right to receive, upon the exercise thereof at the then current Purchase Price of the Right, that number of shares of common stock of the acquiring company which at the time of such transaction would have a market value of two times the then current Purchase Price of the Right.

At any time after a Person becomes an Acquiring Person and prior to the earlier of one of the events described in the last sentence of the previous paragraph or the acquisition by such Acquiring Person of 50% or more of the then outstanding Common Stock, the Board of Directors may cause the Company to exchange the Rights (other than Rights owned by an Acquiring Person which will have become void), in whole or in part, for shares of Common Stock at an exchange rate of one share of Common Stock per Right (subject to adjustment).

No adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price. No fractional Preferred Stock or Common Stock will be issued (other than fractions of Preferred Stock which are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depository receipts), and in lieu thereof, a payment in cash will be made based on the market price of the Preferred Stock or Common Stock on the last trading date prior to the date of exercise.

The Rights may be redeemed in whole, but not in part, at a price of \$0.01 per Right (the "*Redemption Price*") by the Board of Directors at any time prior to the time that an Acquiring Person has become such. The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board of Directors in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder of the Company beyond those as an existing stockholder, including, without limitation, the right to vote or to receive dividends.

Any of the provisions of the Agreement may be amended by the Board of Directors, or a duly authorized committee thereof, for so long as the Rights are then redeemable, and after the Rights are no longer redeemable, the Company may amend or supplement the Agreement in any manner that does not adversely affect the interests of the holders of the Rights (other than an Acquiring Person or any affiliate or associate of an Acquiring Person).

A copy of the Agreement has been filed with the Securities and Exchange Commission as an Exhibit to a Current Report on Form 8-K. A copy of the Agreement is available free of charge from the Company. This summary description of the Rights does not purport to be complete and is qualified in its entirety by reference to the Agreement, which is incorporated herein by reference.

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EXHIBIT B

PREN14A 1 d737831dpren14a.htm PREN14A

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

SCHEDULE 14A

(Rule 14a-101)

INFORMATION REQUIRED IN

PROXY STATEMENT

SCHEDULE 14A INFORMATION

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

Check the appropriate box:

- Filed by the Registrant Filed by a Party other than the Registrant
- 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,
PS Fund 1, 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:

PRELIMINARY SOLICITATION STATEMENT – SUBJECT TO COMPLETION

**SOLICITATION OF WRITTEN REQUEST FOR SPECIAL MEETING IN
CONNECTION WITH THE
CALLING OF A SPECIAL MEETING OF SHAREHOLDERS
OF
ALLERGAN, INC.**

**SOLICITATION STATEMENT
OF
THE REQUESTING SHAREHOLDER**

To the Shareholders of Allergan, Inc.:

This Solicitation Statement (this “Solicitation Statement”), the enclosed form of Special Meeting Request attached as Exhibit A (the “Special Meeting Request Form”) and the accompanying WHITE Proxy Card attached as Exhibit B (the “WHITE Proxy Card”) are being furnished to you as a shareholder of Allergan, Inc., a Delaware corporation (the “Company” and/or “Allergan”) by and on behalf of PS Fund 1, LLC, a Delaware limited liability company (the “Requesting Shareholder,” “PS Fund 1,” “we,” “our” or “us”) for the purpose of soliciting revocable proxies from shareholders of the Company to empower us to deliver to the Company’s Secretary your Special Meeting Request Forms to call a special meeting of the Company’s shareholders for the purposes described below (the “Special Meeting”). Pursuant to the Company’s Amended and Restated Certificate of Incorporation, effective May 6, 2014 (the “Charter”) and the Company’s Amended and Restated Bylaws, effective May 6, 2014 (the “Bylaws”), the calling of the Special Meeting requires the written request of the holders of record of at least 25% of the outstanding shares of common stock of the Company, par value \$0.01 per share (“Company Common Stock”) at the time the request is validly submitted (the “Requisite Percentage”) subject to and in compliance with Article 10 of the Charter and Article II, Section 3 of the Bylaws. Pursuant to the Bylaws, one or more written requests must be signed by Proposing Persons (as defined in the Bylaws) that have a combined Net Long Beneficial Ownership (as defined in the Bylaws) of at least the Requisite Percentage (the “Requisite Holders”). The Special Meeting Request Forms and the WHITE Proxy Cards are being provided to you for the purpose of calling the Special Meeting.

The date of this Solicitation Statement is [●], 2014. This Solicitation Statement, the enclosed Special Meeting Request Form and the accompanying WHITE Proxy Card are first being sent or given to shareholders on or about [●], 2014. Copies of the Bylaws and Charter can be found at: http://www.allergan.com/investors/corporate_governance_and_certificates.htm.

The Requesting Shareholder seeks to request that the Company call a special meeting of the Company’s shareholders for the following purposes:

1. to remove from office, without cause, the following six members of the current Board of Directors of the Company (the “Board”), [●], [●], [●], [●], [●] and [●], as well as any person or persons elected or appointed to the Board without shareholder approval after the Company’s 2014 annual meeting and up to and including the date of the Special Meeting;
2. to request that the Board elect or appoint the following individuals to serve as directors on the Board, regardless of whether Proposal 1 is passed: [●], [●], [●], [●], and [●] (each, a “Group Nominee” and, collectively, the “Group Nominees”);
3. (i) to amend Article II, Section 3 and Article II, Section 9 of the Bylaws to remove certain onerous special meeting provisions, to provide mechanics for determining the place, date and hour of and record date for

any special meeting called at the request of Company's shareholders and to provide mechanics for calling a special meeting if no directors or less than a majority of directors are then in office, and (ii) to amend Article III, Section 2 of the Bylaws to establish the authorized number of directors of the Company at nine directors, in each case as set forth in greater detail on Exhibit C hereto;

4. to repeal any amendment changing the Bylaws in any way from the version that was publicly filed with the Securities and Exchange Commission (the "SEC") on March 26, 2014 and became effective as of May 6, 2014; and
5. to request that the Board promptly engage in good faith discussions with Valeant Pharmaceuticals International, Inc. ("Valeant") regarding Valeant's offer to merge with the Company, without in any way precluding discussions the Board may choose to engage in with other parties potentially offering higher value (Proposals 1 through 5, collectively, the "Proposals").

At this time, the Requesting Shareholder is soliciting your revocable proxy to empower us to deliver your Special Meeting Request Form to the Company's Secretary, and is not currently seeking your proxy, consent, authorization or agent designation for approval of the Proposals or any other actions. In the event the Special Meeting is called, the Requesting Shareholder will send you proxy materials relating to the Proposals.

On April 22, 2014, Valeant first made an offer to the Board proposing a business combination of Allergan and Valeant. On May 30, 2014, Valeant publicly announced a revised proposal to merge with Allergan pursuant to which each share of Company Common Stock would be exchanged for \$72.00 in cash and 0.83 shares of Valeant common stock (and has indicated it remains willing to add a contingent value right relating to sales of Allergan's DARPin® product if Allergan were to engage in negotiations with Valeant to work out the exact terms of the CVR). Please refer to the "Background and Past Contacts" section on page 4 for more detailed information.

From April 10, 2014 (the day before Pershing Square began its rapid accumulation program) to the date of this Solicitation Statement, the Company's stock price has increased by [●]%. We believe the market has spoken, and that shareholders see substantial value in Valeant's revised proposal. To date, the Board has refused to engage with Valeant in any way regarding a merger with Valeant.

Therefore, the Requesting Shareholder is asking the Company's shareholders to complete, sign, date and mail the enclosed Special Meeting Request Form and the accompanying WHITE Proxy Card and return them to D.F. King and Co., Inc. ("D.F. King"), which is assisting the Requesting Shareholder in this solicitation of requests to call the Special Meeting. The Special Meeting Request Form requests that the Special Meeting be held as soon as possible following the date on which Special Meeting Request Forms and Proxy Cards from the Requisite Holders are received and delivered to the Company's Secretary, and in any event no later than [●] days after the date on which the Requesting Shareholder delivers Special Meeting Request Forms and Proxy Cards from the Requisite Holders.

We ask that the executed Special Meeting Request Forms and the executed WHITE Proxy Cards be delivered as promptly as possible, by mail in the enclosed postage-paid envelope to D.F. King at the address below. Please note that, because Article II, Section 3(a) of the Bylaws provides that special meeting requests from multiple shareholders may be aggregated and considered together only if they identify the same purposes and the same matters proposed to be acted on at a special meeting, we request that you not change the purposes or Proposals stated in the Special Meeting Request Forms. Also, please note that, pursuant to Article II, Section 3(a) of the Bylaws, your delivery of the Special Meeting Request Forms to D.F. King must be made within 60 days from [●], 2014. Copies of the Bylaws and Charter can be found at: http://www.allergan.com/investors/corporate_governance_and_certificates.htm.

IF YOU HAVE ANY QUESTIONS ABOUT COMPLETING, EXECUTING, DATING AND DELIVERING YOUR SPECIAL MEETING REQUEST FORM AND WHITE PROXY CARD OR

REQUIRE ASSISTANCE, PLEASE CONTACT D.F. KING AT THE ADDRESS AND TELEPHONE NUMBERS BELOW. WE ENCOURAGE YOU TO SUBMIT YOUR SPECIAL MEETING REQUEST FORM AND WHITE PROXY CARD EVEN IF YOU CANNOT COMPLETE YOUR SPECIAL MEETING REQUEST FORM OR PROXY CARD IN FULL OR YOU BELIEVE YOUR SPECIAL MEETING REQUEST FORM OR PROXY CARD MAY BE DEFECTIVE; HOWEVER, WE RESERVE THE RIGHT NOT TO SUBMIT ANY SPECIAL MEETING REQUEST FORMS AND ANY PROXY CARDS IF WE BELIEVE THAT THEY DO NOT COMPLY WITH THE CHARTER AND BYLAWS. IF WE BELIEVE THAT YOUR SPECIAL MEETING REQUEST FORM AND/OR PROXY CARD DOES NOT SO COMPLY, AND WE DECIDE NOT TO SUBMIT THEM, WE EXPECT TO CONTACT YOU.

IMPORTANT

IF YOUR SHARES OF COMPANY COMMON STOCK ARE REGISTERED IN YOUR OWN NAME, PLEASE COMPLETE, SIGN, DATE AND MAIL THE ENCLOSED SPECIAL MEETING REQUEST FORM AND THE ACCOMPANYING WHITE PROXY CARD TO D.F. KING, WHICH IS ASSISTING US, IN THE POSTAGE-PAID ENVELOPE PROVIDED.

IF YOUR SHARES OF COMPANY COMMON STOCK ARE HELD IN THE NAME OF A BROKERAGE FIRM, BANK NOMINEE OR OTHER INSTITUTION, ONLY IT CAN SIGN THE SPECIAL MEETING REQUEST FORM AND WHITE PROXY CARD WITH RESPECT TO YOUR SHARES AND ONLY UPON RECEIPT OF SPECIFIC INSTRUCTIONS FROM YOU. ACCORDINGLY, YOU SHOULD CONTACT THE PERSON RESPONSIBLE FOR YOUR ACCOUNT AND GIVE INSTRUCTIONS FOR THE SPECIAL MEETING REQUEST FORM AND WHITE PROXY CARD TO BE SIGNED REPRESENTING YOUR SHARES OF COMPANY COMMON STOCK. WE URGE YOU TO CONFIRM IN WRITING YOUR INSTRUCTIONS TO THE PERSON RESPONSIBLE FOR YOUR ACCOUNT AND TO PROVIDE A COPY OF SUCH INSTRUCTIONS TO US IN CARE OF D.F. KING TO THE ADDRESS BELOW, SO THAT WE WILL BE AWARE OF ALL INSTRUCTIONS GIVEN AND CAN ATTEMPT TO ENSURE THAT SUCH INSTRUCTIONS ARE FOLLOWED. IN ADDITION, PLEASE INCLUDE THE NAME AND ADDRESS OF THE ACCOUNT HOLDER AS IT APPEARS ON THE COMPANY'S BOOKS AND ATTACH EVIDENCE OF BENEFICIAL OWNERSHIP TO THE SPECIAL MEETING REQUEST FORM.

PURSUANT TO THE BYLAWS, IF ANY PORTION OF YOUR SHARES OF COMPANY COMMON STOCK IS SOLD, OR THERE IS ANY OTHER REDUCTION IN YOUR NET LONG BENEFICIAL OWNERSHIP, PRIOR TO THE DATE OF THE SPECIAL MEETING, YOUR SPECIAL MEETING REQUEST FORM WILL BE DEEMED REVOKED PURSUANT TO THE BYLAWS TO THE EXTENT OF SUCH SALE OR REDUCTION. THEREFORE, WE REQUEST THAT YOU NOT SELL ANY PORTION OF YOUR SHARES, OR OTHERWISE REDUCE YOUR NET LONG BENEFICIAL OWNERSHIP, UNTIL AFTER THE DATE OF THE SPECIAL MEETING.

IF YOU HAVE ANY QUESTIONS ABOUT COMPLETING, EXECUTING, DATING AND DELIVERING YOUR SPECIAL MEETING REQUEST FORM AND WHITE PROXY CARD OR REQUIRE ASSISTANCE, PLEASE CONTACT:

**D.F. King & Co., Inc.
48 Wall Street
New York, NY 10005
Toll-free: (800) 859-8511
Banks and brokers: (212) 269-5550**

Please complete, sign, date and return the enclosed Special Meeting Request Form and the accompanying WHITE Proxy Card in the enclosed postage-paid envelope today.

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE SPECIAL MEETING. In addition to delivering printed versions of this Solicitation Statement, the Special Meeting Request Form and the WHITE Proxy Card to all shareholders by mail, this Solicitation Statement, the Special Meeting Request Form and the WHITE Proxy Card are also available on the Internet. You have the ability to access and print this Solicitation Statement, the Special Meeting Request Form and the WHITE Proxy Card, at [www.\[\]\].com](http://www.[]].com).

THIS SOLICITATION IS BEING MADE BY THE REQUESTING SHAREHOLDER, AND NOT ON BEHALF OF THE COMPANY OR THE BOARD. AT THIS TIME, WE ARE NOT CURRENTLY SEEKING YOUR PROXY, CONSENT, AUTHORIZATION OR AGENT DESIGNATION FOR APPROVAL OF THE PROPOSALS OR ANY OTHER ACTIONS. WE ARE ONLY SOLICITING YOUR REVOCABLE PROXY TO EMPOWER US TO DELIVER TO THE COMPANY'S SECRETARY YOUR SPECIAL MEETING REQUEST FORM TO CALL THE SPECIAL MEETING. AFTER THE SPECIAL MEETING HAS BEEN CALLED, WE WILL SEND YOU PROXY MATERIALS URGING YOU TO VOTE IN FAVOR OF THE PROPOSALS. YOUR SPECIAL MEETING REQUEST FORM AND YOUR WHITE PROXY CARD ARE IMPORTANT, NO MATTER HOW MANY OR HOW FEW SHARES YOU OWN. WE URGE YOU TO COMPLETE, SIGN, DATE AND RETURN THE ENCLOSED SPECIAL MEETING REQUEST FORM AND THE ACCOMPANYING WHITE PROXY CARD.

BACKGROUND AND PAST CONTACTS

On February 25, 2014, Pershing Square Capital Management, L.P. ("Pershing Square") and Valeant entered into an agreement (the "Letter Agreement") pursuant to which they agreed that a joint venture entity, PS Fund 1, would acquire shares of Company Common Stock and derivative instruments referencing Company Common Stock. Pursuant to the Letter Agreement, the parties thereto agreed, among other things, that:

- Valeant would not, while Valeant, Pershing Square and/or PS Fund 1 may be deemed a group, acquire beneficial ownership of Company Common Stock, except in a business combination transaction with Allergan or as a result of transactions by Pershing Square, PS Fund 1 or any of their respective affiliates;
- PS Fund 1 would dissolve following the earliest to occur of several events, including the consummation of a business combination transaction with Allergan or at such time that Valeant informs Pershing Square or Allergan that it is no longer interested in pursuing a business combination transaction with Allergan;
- Income, gain and loss on \$75.9 million in value of shares of Company Common Stock purchased by PS Fund 1 would be allocated to Valeant and the remaining net profit realized by PS Fund 1 would be allocated to funds advised by Pershing Square, except that Valeant would have a right to 15% of the net profits otherwise allocable to funds advised by Pershing Square if, before dissolution and at a time when a Valeant business combination proposal for Allergan was outstanding, a proposal for a third party business combination with Allergan is outstanding or made;
- Valeant would consult with Pershing Square before making any material decisions relating to a business combination with Allergan;
- Pershing Square would direct the management of PS Fund 1 (including the manner and timing of purchases and sales of Company Common Stock) and would generally decide how PS Fund 1 votes any securities it owns, except that until the Termination Time (as defined in the Letter Agreement) PS Fund 1 would vote all of its shares of Company Common Stock in favor of a proposal by Valeant to acquire Allergan and other proposals supported by Valeant and against proposals reasonably likely to impair the ability of Valeant to consummate a business combination with Allergan, and, subject to limited exceptions, would not sell or otherwise reduce its economic ownership Company Common Stock;

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- At the election of Valeant, immediately prior to consummation of a Valeant business combination with Allergan, Pershing Square would purchase, for \$400 million, shares of Valeant common stock at a per share price reflecting a 15% discount to the then current market price;
 - If Valeant and Allergan consummate a business combination transaction that permits shareholders of Allergan to elect to receive Valeant common stock, Pershing Square would cause PS Fund 1 to elect to receive Valeant common stock for all shares of Company Common Stock over which it controls that election; and
 - If Valeant and Allergan consummate a business combination transaction, Pershing Square would, on the date of consummation, hold Valeant common stock with a then current value of at least \$1.5 billion and, for a period of one year after that consummation, it will not sell shares of Valeant common stock unless after giving effect to the sale it continues to own at least \$1.5 billion in value of Valeant common stock (and during that one year period it would not hedge its investment in that minimum number of shares).

The amended and restated limited liability company agreement of PS Fund 1, entered into by and among Pershing Square, certain funds advised by Pershing Square and Valeant Pharmaceuticals International (“Valeant USA”), generally reflected the terms of the Letter Agreement described above.

Also on February 25, 2014, PS Fund 1 began acquiring securities of Allergan. Following the acquisition by PS Fund 1 of 597,431 shares of Company Common Stock, Valeant contributed \$75.9 million to PS Fund 1 in respect of such shares. Funds managed by Pershing Square contributed monies to PS Fund 1 to fund the acquisition of derivative instruments referencing Company Common Stock.

On April 11, 2014, PS Fund 1 crossed the 5% Schedule 13D ownership threshold and began a rapid accumulation program. By April 21, 2014, PS Fund 1 had acquired beneficial ownership of approximately 9.7% of the outstanding shares of Company Common Stock.

On April 21, 2014, Pershing Square and Valeant each filed a Schedule 13D disclosing their beneficial ownership of shares in Company Common Stock.

On April 22, 2014, Valeant made a public offer to David E.I. Pyott, the Chairman and Chief Executive Officer of Allergan, and the 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 (the day before Pershing Square began its rapid accumulation program) and would own approximately 43% of the combined company.

On April 22, 2014, Allergan issued a press release in which it confirmed receipt of the proposal from Valeant and stated that the Board, in consultation with its financial and legal advisors, would carefully review and consider the proposal and pursue the course of action that it believes is in the best interests of the Company’s shareholders. The Company also adopted a shareholder rights plan (commonly referred to as a “Poison Pill”), effective April 22, 2014.

On April 23, 2014, Mr. Ackman emailed Matthew Maletta, Allergan’s Associate General Counsel and Secretary, to request an opportunity to speak with Michael R. Gallagher, the lead independent director of the Board.

On April 24, 2014, Mr. Maletta arranged a telephone call between Mr. Ackman and Mr. Gallagher, but noted that Mr. Pyott and Jim Hindman, SVP of Investor Relations for Allergan, would be joining Mr. Gallagher on the call. While Mr. Ackman welcomed the opportunity to have a discussion with Mr. Pyott, Mr. Ackman’s purpose for the call was to speak with Mr. Gallagher, without management present, as the lead director who Mr. Ackman expected, based on the Allergan’s proxy disclosures, to be the Board’s independent representative for shareholders in considering the Valeant proposal.

During the April 24, 2014 call, Mr. Ackman requested the opportunity to speak with Mr. Gallagher in executive session which Mr. Gallagher rejected. Mr. Ackman then asked for Mr. Gallagher's contact information so Mr. Ackman could contact Mr. Gallagher directly in the future. Mr. Gallagher was unwilling to provide Mr. Ackman with his contact information because Mr. Gallagher explained that he did not believe it was appropriate to speak to Mr. Ackman alone. Mr. Ackman then offered to speak with Mr. Gallagher with the Board's counsel present on the call, and Mr. Gallagher also refused this request.

On May 1, 2014, early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, was granted with respect to the acquisition by PS Fund 1 of certain shares of Company Common Stock. Later that day, PS Fund 1 exercised its American-style call options to purchase Company Common Stock and also paid the applicable forward purchase price under the forward purchase contracts forward purchase contract to purchase Company Common Stock. As a result, PS Fund 1 became Allergan's largest shareholder. In total, Pershing Square contributed approximately \$3.624 billion to PS Fund 1 to fund the acquisition of Company Common Stock through the purchase and ultimate settlement of derivative instruments.

On May 5, 2014, in response to news reports stating that the Company had begun to approach alternative business combination partners, Mr. Ackman sent a letter to Mr. Gallagher, encouraging the Board to begin discussions with Valeant regarding its proposal. Among other things, Mr. Ackman's letter highlighted Pershing Square's belief that (i) the strength of Allergan's negotiating position with Valeant comes, in part, from the potential that Allergan may negotiate a more valuable transaction with a large global pharmaceutical company, (ii) the list of global pharmaceutical companies with the financial capacity to buy Allergan is limited, and even more limited when factors such as strategic fit and antitrust risk are considered, and (iii) unless Allergan were to identify and engage with a large global pharmaceutical company for a transaction in the very near future, the odds of a transaction with such a counterparty are likely to decrease over time, the market and Valeant will likely learn of the lack of interest from alternative companies, and Allergan's negotiating leverage with Valeant will decline. Indeed, in the days that followed such letter, news outlets reported that several global pharmaceutical companies, including Sanofi, Johnson & Johnson and Shire, had been contacted by Allergan and had declined to engage in a business combination transaction.

On May 12, 2014, Mr. Pyott sent a letter to J. Michael Pearson, the Chairman and Chief Executive Officer of Valeant, stating that the Board had rejected the Valeant proposal.

Later on May 12, 2014, Mr. Ackman sent a letter (the "220 Request") to Mr. Maletta, pursuant to Section 220 of the Delaware General Corporation Law (the "DGCL") requesting a complete record or list the holders of Company Common Stock.

On May 13, 2014, Pershing Square filed a preliminary proxy statement with the SEC announcing a meeting of Allergan stockholders in order to conduct a stockholder referendum in which stockholders would be given the opportunity to vote on a non-binding resolution with the same terms as Proposal 5 below to request that the Board promptly engage in good faith discussions with Valeant regarding Valeant's proposal.

Also on May 13, 2014, Mr. Ackman spoke briefly by telephone with Mr. Pyott. Mr. Pyott only afforded fifteen minutes for the call despite Mr. Ackman's understanding that Mr. Pyott had spent considerably more time with other Allergan shareholders and despite the fact that Pershing Square is Allergan's largest shareholder. During the call, Mr. Ackman asked several questions concerning Allergan's rejection of the Valeant proposal, and why the Board did not meet with Valeant before doing so. Mr. Pyott would not answer these questions, but simply told Mr. Ackman that the Valeant proposal substantially undervalued Allergan. At the end of the call, Mr. Ackman again requested the opportunity to meet with Allergan's independent directors. Mr. Pyott said that he was the only member of the Board that was authorized to speak with shareholders and rejected Mr. Ackman's request to meet with the full Board.

On May 19, 2014, Mr. Ackman sent a letter to Mr. Gallagher, the designated point of contact for corporate governance issues relating to Allergan. Mr. Ackman stated that, because Mr. Pyott stood to lose his leadership position if Valeant's proposal were consummated, Mr. Pyott would be unable to engage in unconflicted discussions with Valeant and Pershing Square regarding that proposal. Mr. Ackman also expressed his displeasure that Allergan had rejected Valeant's proposal without conducting any private due diligence.

Later on May 19, 2014, Mr. Gallagher sent a letter to Mr. Ackman in which he confirmed receipt of Mr. Ackman's previous letter and stated his disagreement with Mr. Ackman's assertion regarding Mr. Pyott's disabling conflict of interest in respect of Valeant's proposal.

Also on May 19, 2014, representatives of Latham & Watkins LLP ("Latham"), on behalf of Allergan, sent a letter to Stephen Fraidin, Partner at Kirkland & Ellis LLP ("Kirkland") and counsel to Pershing Square, in response to the 220 Request, in which Latham stated that Allergan would make available to Pershing Square and certain of its affiliates such information set forth in the 220 Request that was currently available to Allergan.

On May 21, 2014, Mr. Ackman sent a letter to Mr. Gallagher confirming receipt of Mr. Gallagher's May 19 letter and stating that Pershing Square was encouraged to hear that the Board had an "open mind" and would show a high degree of professionalism in its review of Valeant's proposal, but that no effort had been made by the Board to reach out to Pershing Square or sit down with Valeant to discuss its proposal. Furthermore, Mr. Ackman noted Allergan's negative characterization of Valeant's proposal despite the immediate and long-term value that Valeant's proposal represented for Allergan's shareholders.

Later on May 21, 2014, Mr. Gallagher sent a letter to Mr. Ackman confirming receipt of Mr. Ackman's prior letter and stating that the Board would carefully review any revised offer announced by Valeant.

On May 27, 2014, Allergan filed a presentation with the SEC in which it criticized Valeant's business model and management team despite the fact that Allergan had failed to conduct any private due diligence on Valeant.

Later on May 27, 2014, representatives of Kirkland sent a letter to representatives of Latham requesting that Latham produce those documents set forth in the 220 Request which were currently available to Allergan and to provide a list of those documents which Allergan would not be able to produce.

On May 28, 2014, executives of Valeant held an investor presentation in New York City during which Valeant publicly announced an improved proposal and Valeant's willingness to sit down with the Board and management to engage in meaningful discussions regarding that proposal. Also on May 28, 2014, Mr. Pearson sent a letter to Mr. Pyott outlining the improved proposal, which increased the cash component of Valeant's proposal by \$10.00 per share of Company Common Stock to \$58.30, and included a contingent value right (the "CVR") tied to sales of Allergan DARPin[®] representing an additional \$25.00 of value per share of Company Common Stock. 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.

On May 29, 2014, at the Sanford C. Bernstein Strategic Decisions Conference in New York City, many of Allergan's largest shareholders expressed to Mr. Ackman 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 Company Common Stock based on Valeant's current trading price, they would be supportive of a transaction.

On the morning of May 30, 2014, Mr. Ackman spoke by telephone with Mr. Pearson and conveyed to Mr. Pearson the substance of his conversations with other Allergan shareholders from the day before. Mr. Ackman indicated that if Valeant would raise its bid for Allergan so that its value (based on then current prices) approximated \$180 per share of Company Common Stock, Pershing Square would accept a fixed

exchange ratio of 1.22659 based on Allergan and Valeant closing prices on May 29, 2014. After considering Pershing Square's proposal, Mr. Pearson contacted Mr. Ackman and said that he would recommend to Valeant's board of directors that Valeant raise its offer for Allergan on the terms discussed with Mr. Ackman, which Valeant's board of directors approved shortly thereafter.

Later in the afternoon 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. 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 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, and receive no cash consideration.

As of the close of trading on May 30, 2014, Valeant's proposal represented \$180.90 in value for each share of Company Common Stock held by Allergan shareholders.

PLANS FOR THE SPECIAL MEETING

If we, the Requesting Shareholder, with the support of other shareholders are successful in obtaining sufficient shareholder support to request that a Special Meeting be called pursuant to the Bylaws and the Special Meeting is called, we expect to present the following matters for a shareholder vote at the Special Meeting:

- *Proposal 1:* "RESOLVED, that the following six members of the current Board, [•], [•], [•], [•], [•] and [•], be removed from office, without cause, immediately as well as any other person or persons elected or appointed to the Board without shareholder approval after the Company's 2014 annual meeting and up to and including the date of the Special Meeting."

Article 7 of the Charter, along with Section 141(k) of the DGCL provides that any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of the Company's directors.

- *Proposal 2:* "RESOLVED, that the shareholders of Allergan hereby request that the Board elect or appoint the following individuals to serve as directors on the Board, regardless of whether Proposal 1 is passed: [•], [•], [•], [•], [•] and [•]."

Pursuant to Article II, Section 6 of the Bylaws, such a proposal requesting that the Board elect or appoint such individuals as directors requires the vote of a majority in voting interest of the shareholders present in person or by proxy and entitled to vote at such Special Meeting on such matter, a quorum being present. Please note that the Board has no obligation to take any action with respect to the shareholders' request to appoint new directors (which action is necessary to effect such request). Each Group Nominee named in this Proposal 2 has consented to be named in a proxy statement and to serve as a director of the Company, if elected. Each Group Nominee's consent is attached to the Special Meeting Request Form in accordance with Article II, Section 9(A) of the Bylaws. If the Group Nominees are elected, they intend to discharge their duties as directors of the Company consistent with all applicable legal requirements, including the general fiduciary obligations imposed upon corporate directors. If elected, each Group Nominee named in this Proposal 2 would serve as a director until the Company's annual meeting in 2015.

- *Proposal 3:* "RESOLVED, that Article II, Section 3 and Article II, Section 9 of the Bylaws be amended to remove certain onerous special provisions, to provide mechanics for determining the place, date and hour of and record date for any special meeting called at the request of Company's shareholders and to provide mechanics for calling a special meeting if no directors or less than a majority of directors are

then in office, and that Article III, Section 2 of the Bylaws be amended to establish the authorized number of directors of the Company at nine directors, in each case as set forth in greater detail on the attached Exhibit C.”

Pursuant to Article II, Section 6 of the Bylaws, the amendment of the Bylaws requires the vote of a majority in voting interest of the shareholders present in person or by proxy and entitled to vote at the Special Meeting on such matter, a quorum (which is a majority in voting interest of the shares of the Company) being present.

- *Proposal 4*: “RESOLVED, that any amendment changing the Bylaws in any way from the version that was publicly filed with the SEC on March 26, 2014 and became effective as of May 6, 2014, be and hereby is repealed.”

Pursuant to Article VII, Section 3 of the Bylaws, the repeal of amendments to the Bylaws requires the vote of a majority in voting interest of the shareholders present in person or by proxy and entitled to vote at the Special Meeting on such matter, a quorum being present. This Proposal 4 is designed to prevent the Board from taking actions to amend the Bylaws to attempt to nullify or delay the actions taken by, or proposed to be taken by, the shareholders pursuant to the Proposals or to create new obstacles to the consummation of the transactions contemplated by Valeant’s proposal.

- *Proposal 5*: “RESOLVED, that the shareholders of Allergan hereby request that the Board promptly engage in good faith discussions with Valeant regarding Valeant’s offer to merge with the Company, without in any way precluding discussions the Board may choose to engage in with other parties potentially offering higher value.”

Pursuant to Article II, Section 6 of the Bylaws, such a proposal requesting that the Board promptly engage in good faith discussions with Valeant regarding Valeant’s proposal requires the vote of a majority in voting interest of the shareholders present in person or by proxy and entitled to vote at such Special Meeting on such matter, a quorum being present.

We will solicit votes in favor of the Proposals only by means of a proxy statement and proxy card once the record and meeting dates for the Special Meeting have been established. If the Requesting Shareholder is successful in requesting that the Special Meeting be called as a result of the Requisite Holders completing, executing, dating and returning the enclosed Special Meeting Request Forms and the accompanying WHITE Proxy Cards to D.F. King, then we will include in the Requesting Shareholder’s definitive proxy statement for such Special Meeting information regarding voting at such Special Meeting. The sole purpose of this solicitation, and the only effect of your return of the enclosed Special Meeting Request Form and the accompanying WHITE Proxy Card, is to request the calling of the Special Meeting and to empower us to deliver your Special Meeting Request Form to the Company’s Secretary.

Accordingly, we urge you to join with us to request the call of the Special Meeting for the purpose of submitting the Proposals to shareholders for a vote thereon. To help us call the Special Meeting, please follow the instructions for delivering your Special Meeting Request Form and WHITE Proxy Card described below.

WE URGE YOU TO COMPLETE, EXECUTE, DATE AND RETURN THE ENCLOSED SPECIAL MEETING REQUEST FORM AND THE ACCOMPANYING WHITE PROXY CARD TO D.F. KING.

THE SPECIAL MEETING

Special Meeting Request Form and the Proxy Card. The Requesting Shareholder is asking the shareholders to complete, execute, date and return the enclosed Special Meeting Request Forms and the accompanying WHITE Proxy Cards to D.F. King, which is assisting us with this solicitation and, pursuant to your executed Proxy Cards, will deliver the executed written requests from the Requisite Shareholders (once received) to the Company’s Secretary to obligate the Company to call the Special Meeting of

shareholders pursuant to the Bylaws. We are furnishing this Solicitation Statement, the Special Meeting Request Forms and the WHITE Proxy Cards to enable you and the Company's other shareholders to support us in requesting the Special Meeting be called and held.

For the Special Meeting to be properly requested in accordance with the Bylaws, the written request in favor of the call of the Special Meeting must be executed by the Requisite Holders. On the date of filing of this Solicitation Statement, PS Fund 1 is the record holder of 28,878,538 shares of Company Common Stock and the Requesting Shareholder is the beneficial owner of 28,878,638 shares of Company Common Stock. According to the Company's Quarterly Report on Form 10-Q, as filed with the SEC on May 7, 2014 (the "Company 10-Q"), there were 297,556,619 shares of Company Common Stock outstanding (exclusive of 10,035,814 shares of Company Common Stock held in treasury). Based on the number of shares outstanding, the written request by holders representing an aggregate of at least 74,389,155 shares of Company Common Stock, including the shares held by the Requesting Shareholder, will be required to request the call of the Special Meeting. There is no particular record date for the Special Meeting Requests; however, the Requesting Shareholder anticipates submitting all of the Special Meeting Request Forms on the first business day after the Requesting Shareholder discloses that it believes that it has obtained sufficient Special Meeting Request Forms to call a Special Meeting.

If we receive executed Special Meeting Request Forms and Proxy Cards from the Requisite Holders, we will request that the Secretary of the Company promptly call the Special Meeting as soon as possible following the date on which Special Meeting Request Forms and Proxy Cards from the Requisite Holders are received and delivered to the Company's Secretary, and in any event no later than [•] days after the date on which the Requesting Shareholder delivers Special Meeting Request Forms and Proxy Cards from the Requisite Holders. After the Special Meeting is called, we intend to solicit proxies from you in support of the Proposals by sending you a notice of the Special Meeting, a proxy statement and a proxy card for use therewith. At the Special Meeting, the shareholders will be asked to vote "For" the Proposals.

Record Date for Special Meeting. The record date for determining shareholders entitled to notice of, and to vote at, the Special Meeting shall be at the close of business on the day immediately preceding the day upon which notice of the Special Meeting is given to shareholders, unless the Board sets a different record date in accordance with Article VI, Section 5 of the Bylaws and Section 213 of the DGCL. In any event, such record date shall not be more than 60 nor less than 10 days before the date of the Special Meeting.

Time and Location of Special Meeting; Notice of Special Meeting. The Bylaws provide that all meetings of shareholders shall be held either at the principal office of the Company (which is 2525 Dupont Drive, Irvine, California, 92612) or at any other place that may be designated by the Board. Further, the Bylaws require the Company, in complying with a request to convene the Special Meeting, to provide shareholders written notice of the place, date and hour of the Special Meeting and shall also state the purpose for which the Special Meeting is called not less than 10 days nor more than 60 days before the date of the Special Meeting. If the Special Meeting is requested by the Requisite Shareholders, the Bylaws provide that the Board may (in lieu of calling the requested special meeting) present an identical or substantially similar item at another meeting of shareholders that is to be held 120 days from the date the Company's Secretary receives such Special Meeting request. We will strongly discourage the Board from taking such action, which will effectively delay addressing the Proposals in a timely manner, and recommend that you do the same.

We expect to request, in any future proxy solicitation relating to the Special Meeting, authority (i) to initiate and vote for Proposals, (ii) to recess or adjourn the Special Meeting for any reason and (iii) to oppose and vote against any proposal to recess or adjourn the Special Meeting. We do not currently anticipate additional proposals on any substantive matters. Nevertheless, we reserve the right to either modify the Proposals or cause additional proposals to be identified in the notice of, and in, the proxy materials for the Special Meeting. Should any other proposals be brought before the Special Meeting, we will vote the Company's proxies on such matters in the Company's discretion.

PROCEDURES FOR SUBMITTING SPECIAL MEETING REQUEST FORMS AND PROXY CARDS

Pursuant to this Solicitation Statement, the Requesting Shareholder is requesting that the holders of the outstanding shares of Company Common Stock complete, execute, date and deliver to D.F. King at the address set forth on the enclosed envelope, the Special Meeting Request Forms attached hereto as Exhibit A by which you will request that the Company's Secretary call the Special Meeting and hold such Special Meeting as soon as possible, and the accompanying WHITE Proxy Cards attached hereto as Exhibit B by which you will empower us to deliver your executed Special Meeting Request Forms to the Company's Secretary on your behalf. Please note that, because Article II, Section 3(a) of the Bylaws provides that special meeting requests from multiple shareholders may be aggregated and considered together only if they identify the same purposes and the same matters proposed to be acted on the meeting, we request that you not change the purposes or Proposals stated in the Special Meeting Request Forms.

Executed Special Meeting Request Forms and Proxy Cards should be delivered by mail using the enclosed postage-paid envelope. If we receive executed Special Meeting Request Forms and Proxy Cards from the Requisite Holders, we will request the Secretary of the Company to promptly call the Special Meeting at such time. Please note that you must date and deliver the executed Special Meeting Request Forms within 60 days from [●], 2014.

Sales of Your Common Stock. If any portion of your shares of Company Common Stock is sold, or there is any other reduction in your Net Long Beneficial Ownership, prior to the date of the Special Meeting, your written request to hold the Special Meeting will be deemed revoked to the extent of such sale or reduction. Therefore, we request that you not sell any portion of your shares, or otherwise reduce your Net Long Beneficial Ownership, until after the date of the Special Meeting.

Updates to Your Special Meeting Request Form. All information provided or required to be provided in the Special Meeting Request Form must be true and correct as of the record date for notice of the Special Meeting and as of the date that is 10 business days prior to the date for the Special Meeting or any adjournment or postponement thereof. In accordance with Article II, Section 3(c) of the Bylaws, if there is any update that needs to be made with respect to the information you provided in your Special Meeting Request Form after your submission, you must further update and supplement the information as necessary and send it to the Secretary of the Company at the principal executive office of the Company at the address below, to be received by (i) not later than five business days after the record date for notice of the Special Meeting (in the case of the update and supplement required to be made as of such record date), and (ii) not later than eight business days prior to the date for the Special Meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the Special Meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the date for the Special Meeting or any adjournment or postponement thereof):

Allergan, Inc.
2525 Dupont Drive
Irvine, California 92612
ATTN: Secretary

Please note that the delivery of the enclosed Special Meeting Request Form and the accompanying Proxy Card will not commit you to cast any vote in respect of any Proposal to be brought before the Special Meeting. To vote on the matters to be brought before the Special Meeting, you must vote by proxy or in person at the Special Meeting.

Revocation Procedure. Shareholders who have executed and delivered a Proxy Card may revoke it at any time before the proxy is exercised by delivering an instrument revoking the earlier Proxy Card, or a duly executed later dated Proxy Card for the same shares, to D.F. King, our proxy solicitor, at 48 Wall Street, New York, New York 10005.

You may revoke your Special Meeting Request Form at any time prior to the date of the Special Meeting by delivering a written revocation to the Company's Secretary at the address above. Such a revocation must clearly state that your Special Meeting Request Form is no longer effective. Although such revocation is effective if delivered to the Secretary of the Company or to such other recipient as the Company may designate as its agent, we request that either the original or photostatic copies of all revocations be mailed or faxed to the Requesting Shareholder, care of D.F. King, so that we will be aware of all revocations and can more accurately determine if and when enough Special Meeting Request Forms have been received from shareholders.

Delivery Procedures for Direct and Beneficial Owners. If your shares of Company Common Stock are registered in your own name, please sign, date and mail the enclosed Special Meeting Request Form and the accompanying Proxy Card to D.F. King in the postage-paid envelope provided.

If any of your shares of Company Common Stock are held in the name of a brokerage firm, bank nominee or other institution, only it can sign the Special Meeting Request Form and Proxy Card. Accordingly, please contact the person responsible for your account and give instructions for the WHITE Proxy Card to be signed representing your shares of Company Common Stock. In addition, please include the name and address of the account holder as it appears on the Company's books and attach evidence of beneficial ownership to the Special Meeting Request Form.

Your Special Meeting Request Form and Proxy Card are important, no matter how many or how few shares you own. Please complete, execute, date and return the enclosed Special Meeting Request Form and the accompanying WHITE Proxy Card to the address set forth on the enclosed envelope as promptly as possible. The failure to sign and return the Special Meeting Request Form and the accompanying WHITE Proxy Card will have the same effect as opposing the call of a Special Meeting.

If you have any questions about completing, executing, dating and delivering your Special Meeting Request Form and the accompanying Proxy Card or require assistance, please contact:

**D.F. King & Co., Inc.
48 Wall Street
New York, NY 10005
Toll-free: (800) 859-8511
Banks and brokers: (212) 269-5550**

By completing, executing, dating the enclosed Special Meeting Request Form and the accompanying Proxy Card and returning them to D.F. King, you are not committing to cast any vote in respect of, nor are you granting us any proxy to vote on, any Proposal to be brought before the Special Meeting.

SOLICITATION OF REQUESTS AND PROXIES; EXPENSES

The Requesting Shareholder will bear the entire expense of preparing and mailing this Solicitation Statement and any other soliciting material and the total expenditures relating to the solicitation of revocable proxies to empower us to deliver to the Company's Secretary Special Meeting Request Forms to call the Special Meeting, including, without limitation, costs, if any, related to advertising, printing, fees of attorneys, financial advisors, solicitors and accountants, public relations, transportation and litigation. We may solicit your proxy by telephone, email, facsimile, and personal solicitation, in addition to mail. We will reimburse the reasonable out-of-pocket expenses of banks, brokerage houses, and other custodians, nominees, and fiduciaries in connection with the forwarding of solicitation material to the beneficial owners of Company Common Stock that such institutions hold.

D.F. King, our proxy solicitation firm, has been retained to assist in this solicitation and will receive customary fees for its services, plus reimbursement of reasonable out-of-pocket expenses. D.F. King will be

indemnified against certain liabilities and expenses, including certain liabilities under the federal securities laws. The firm will utilize approximately 30 persons in its solicitation efforts.

We estimate that our total expenditures relating to this solicitation will be approximately [\$] (including, without limitation, costs, if any, related to advertising, printing, public relations, transportation, litigation, and fees of attorneys, financial advisors, solicitors and accountants). Our total expenditures to date relating to these solicitations have been approximately [\$].

CERTAIN INFORMATION REGARDING THE COMPANY

The Company is a Delaware corporation with its principal executive offices at 2525 Dupont Drive, Irvine, California.

The Company is subject to the informational filing requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith it files periodic reports, proxy statements and other information with the SEC. Reports, proxy statements and other information filed by the Company with the SEC can be inspected and copied at the public reference facilities maintained by the SEC at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Information regarding the public reference facilities may be obtained from the SEC by calling (202) 551-8090. The Company's filings with the SEC are also available to the public without charge on the SEC's website (<http://www.sec.gov>).

Except as otherwise noted herein, the information concerning the Company contained in this Solicitation Statement has been taken from or based upon publicly available documents and records on file with the SEC and other public sources. Although we do not have any knowledge that would indicate that any statement contained herein based upon such documents and records is untrue, we have not independently verified the accuracy or completeness of such information and do not take any responsibility for the accuracy or completeness of the information contained in such documents and records, or for any failure by the Company to disclose events that may affect the significance or accuracy of such information. For information regarding the security ownership of the directors and the management of the Company, please refer to Annex A attached to this Solicitation Statement.

INFORMATION REGARDING THE NOMINEES

In the event that the Special Meeting is called and held and the Company's shareholders approve the proposal to remove from office, without cause, the following six members of the current Board: [•], [•], [•], [•], [•] and [•], and any person or persons appointed by the Board without shareholder approval after the 2014 Annual Meeting and up to and including the date of the Special Meeting, Proposal 2 requests the appointment or election of the Group Nominees. Set forth below are the name, age, business address, present principal occupation, and employment and material occupations, positions, offices, or employments for the past five years of each of the proposed Group Nominees. We reserve the right to request the appointment or election of substitute persons for any of the Group Nominees named herein. This information has been furnished to the Requesting Shareholder by the Group Nominees.

Nominee

Age

Other Information

The Charter and the Bylaws currently permit the Company's shareholders to remove its directors with or without cause, but further provide that any vacancies on the Board will be filled solely by the affirmative vote of a majority of the remaining directors then in office, and do not permit the Company's shareholders to fill any vacancies on the Board. Therefore, the Board's action is necessary to effect the shareholders' request to appoint or elect the Group Nominees, but the Board has no obligation to take any action with respect to such request. However, in the event that, at the time of filling any board vacancy, the directors then in office constitute less than a majority of the whole board, Section 223(c) of the DGCL authorizes the Delaware Court of Chancery, upon the application of any shareholder or shareholders holding at least 10 percent of the voting stock at the time outstanding having the right to vote for such directors, to summarily order an election to be held to fill any such vacancies or to replace the directors chosen by the directors then in office. If the Board ignores the request to fill vacancies as contemplated in Proposal 2, Pershing Square reserves its right to petition the Delaware Court of Chancery under Section 223(c) of the DGCL to order a new election.

CERTAIN INFORMATION REGARDING THE PARTICIPANTS

The Requesting Shareholder and certain other persons listed below are participants in this solicitation.

The business address of the Pershing Square Participants (as defined below) is 888 Seventh Avenue, 42nd Floor, New York, NY 10019. The business address of Valeant is 2150 St. Elzéar Blvd. West Laval, Quebec, Canada, H7L 4A8, and the business address of Valeant USA is 400 Somerset Corporate Boulevard, Bridgewater, New Jersey 08807. The business address of the Valeant Officer Participants (as defined below) is 2150 St. Elzéar Blvd. West Laval, Quebec, Canada, H7L 4A8.

PS Fund 1 and Valeant have been shareholders of the Company since February 25, 2014 and May 7, 2014, respectively. As of [●], 2014, approximately 9.7% of the outstanding shares of Company Common Stock were held for the accounts of Pershing Square Participants and the Valeant Participants (as defined below) as follows:

| | Ownership of Company Common Stock | Percent of Class (1) |
|---|--|---------------------------------|
| Pershing Square Capital Management, L.P. | 28,878,638 (2) | 9.7% |
| PS Management GP, LLC | 28,878,638 (2) | 9.7% |
| PS Fund 1, LLC | 28,878,638 (2) | 9.7% |
| William A. Ackman | 28,878,638 (2) | 9.7% |
| William F. Doyle | 0 | 0 |
| Ben Hakim | 0 | 0 |
| Jordan H. Rubin | 0 | 0 |
| Roy J. Katzovicz | 0 | 0 |
| Valeant Pharmaceuticals International, Inc. | 28,878,638 (2) | 9.7% |
| Valeant Pharmaceuticals International | 28,878,638 (2) | 9.7% |
| J. Michael Pearson | 0 | 0 |
| Howard B. Schiller | 0 | 0 |
| Ari S. Kellen | 0 | 0 |
| Laurie W. Little | 0 | 0 |
| Total | 28,878,638 (2) | 9.7% |

- (1) Based on 297,556,619 shares of Company Common Stock outstanding as of May 1, 2014 (exclusive of 10,035,841 shares of Company Common Stock held in treasury) as reported in the Company 10-Q.
- (2) The total number of shares beneficially owned by the Pershing Square Participants and the Valeant Participants include 28,878,538 shares of Common Stock owned by PS Fund 1, LLC and 100 shares of Common Stock owned by Valeant USA.

Pershing Square Participants

Pershing Square serves as investment advisor to PS Fund 1 with respect to 28,878,538 shares of Company Common Stock held for the accounts of this fund and may be deemed to have beneficial ownership of such shares of Company Common Stock for purposes of Rule 13d-3 under the Exchange Act (“Rule 13d-3”).

Pershing Square is an investment adviser founded in 2003 and registered with the SEC. Pershing Square is a concentrated, research-intensive, fundamental value investor in the public markets.

PS Management GP, LLC (“PS Management”), a Delaware limited liability company, serves as the general partner of Pershing Square and may be deemed to be the beneficial owner of such shares of Company Common Stock owned by Pershing Square for purposes of Rule 13d-3. William A. Ackman is the Chief Executive Officer of Pershing Square and managing member of PS Management and may be deemed to be the beneficial owner of such shares of Company Common Stock owned by Pershing Square for purposes of Rule 13d-3.

PS Fund 1 is a Delaware limited liability company formed by Pershing Square to purchase certain securities of the Company. Valeant USA contributed \$75.9 million of its working capital to PS Fund 1 for such purpose and, together with the capital contribution from Pershing Square, PS Fund 1 acquired 28,878,538 shares of Company Common Stock.

In addition, William A. Ackman, William F. Doyle, Ben Hakim, Jordan H. Rubin and Roy J. Katzovicz (together with Pershing Square, PS Management, and PS Fund 1, the “Pershing Square Participants”), may be deemed “participants” under SEC rules in this solicitation.

Valeant Participants

Valeant is a corporation continued under the laws of British Columbia, Canada. Valeant USA is a Delaware corporation and a wholly owned subsidiary of Valeant. Valeant and Valeant USA are multinational, specialty pharmaceutical and medical device companies that develop, manufacture, and market a broad range of branded, generic and branded generic pharmaceuticals, over-the-counter products, and medical devices (contact lenses, intraocular lenses, ophthalmic surgical equipment, and aesthetics devices).

In addition, J. Michael Pearson, Chairman and Chief Executive Officer of Valeant, Howard B. Schiller, Director, Executive Vice President and Chief Financial Officer of Valeant, Ari S. Kellen, Executive Vice President and Company Group Chairman of Valeant, and Laurie W. Little, Senior Vice President, Investor Relations of Valeant (the “Valeant Officer Participants” and, together with Valeant and Valeant USA, the “Valeant Participants”), may be deemed “participants” under SEC rules in this solicitation.

Group Nominees

[•]

Section 13(d) Group

Each of Pershing Square, PS Management, PS Fund 1, William A. Ackman, Valeant and Valeant USA, as a member of a “group” for the purposes of Rule 13d-5(b)(1) under the Exchange Act, is deemed to be a beneficial owner of the 28,878,638 shares of Company Common Stock held by each of the members of the group combined, or 9.7% of the issued and outstanding Company Common Stock based on 297,556,619 shares of Company Common Stock outstanding as of May 1, 2014 (exclusive of 10,035,841 shares of Company Common Stock held in treasury) as reported in the Company 10-Q, and each entity or individual may be deemed to beneficially own the shares of each other entity or individual in the reporting group. Each member of the group disclaims beneficial ownership of such shares of Company Common Stock, except to the extent it exercises voting or dispositive power with respect to those shares. Such shares include 100 shares of Company Common Stock with respect to which Valeant exercises sole voting and dispositive power.

For information regarding purchases and sales of securities of the Company during the past two years by the Pershing Square Participants and the Valeant Participants, please refer to Annex B to this Solicitation Statement. Except as set forth on Annex B, there have been no purchases or sales in the securities of the Company in the past two years by such parties.

Except as set forth in this Solicitation Statement (including the annexes, exhibits and any other attachments hereto), (i) during the past 10 years, no participant in this solicitation has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors); (ii) no participant in this solicitation directly or indirectly beneficially owns any securities of the Company; (iii) no participant in this solicitation owns any securities of the Company which are owned of record but not beneficially; (iv) no participant in this solicitation has purchased or sold any securities of the Company during the past two years; (v) no part of the purchase price or market value of the securities of the Company owned by any participant in this solicitation is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities; (vi) no participant in this solicitation is, or within the past year was, a party to any contract, arrangements or understandings with any person with respect to any securities of the Company, including, but not limited to, joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit, division of losses or profits, or the giving or withholding of proxies; (vii) no associate of any participant in this solicitation owns beneficially, directly or indirectly, any securities of the Company; (viii) no participant in this solicitation owns beneficially, directly or indirectly, any securities of any parent or subsidiary of the Company; (ix) no participant in this solicitation or any of his, her or its associates was a party to, or had a direct or indirect material interest in, any transaction, or series of similar transactions, since the beginning of the Company's last fiscal year, or is a party to any currently proposed transaction, or series of similar transactions, to which the Company or any of its subsidiaries was or is to be a party, in which the amount involved exceeds \$120,000; (x) no participant in this solicitation or any of his, her or its associates has any arrangement or understanding with any person with respect to any future employment by the Company or its affiliates, or with respect to any future transactions to which the Company or any of its affiliates will or may be a party; (xi) no participant in this solicitation has a substantial interest, direct or indirect, by securities holdings or otherwise in any matter to be acted on at the Special Meeting; and (xii) no participant in this solicitation has a family relationship with any director, executive officer, or person nominated or chosen by the Company to become a director or executive officer.

For the purposes of the foregoing, the term "associates" shall have the meaning as that term is defined in Rule 14a-1 of Regulation 14A under the Exchange Act.

CERTAIN EFFECTS RELATED TO THIS SOLICITATION

According to the Company 10-Q, Allergan had approximately \$2.815 billion of cash and cash equivalents on its balance sheet for the fiscal period ended March 31, 2014 and long-term debt of approximately \$2.095 billion, for a net cash position of approximately \$72 million.

Based upon a review of the Company's public filings with the SEC, pursuant to the Company's Amended and Restated Credit Agreement, dated as of October 28, 2011 (the "Credit Agreement"), the Proposals could potentially result in an Event of Default (as defined in the Credit Agreement), which includes a change in the majority of the Board, unless approved by the original Board members in office on the effective date of the Credit Agreement and/or their successors. An Event of Default would permit Lenders (as defined in the Credit Agreement) holding more than 50% of the commitments under the Credit Agreement to terminate the commitments under the Credit Agreement and to declare the outstanding principal and accrued interest due and payable. The Company could also seek a waiver of such Event of Default which would require the approval of the Lenders. As reported in the Company 10-Q, the Company had no borrowings under the Credit Agreement.

Based upon a review of the Company's public filings with the SEC, the Proposals could potentially result in a Change in Control (as defined in the respective agreements) under a number of agreements with the Company's

named executive officers (“NEOs”) and other management level employees. Under the 2014 Management Bonus Plan and the Executive Bonus Plan (applicable only to David Pyott), upon a Change in Control, participants will be paid a bonus prorated to the effective date of such Change in Control, with the Company’s performance being deemed to be the greater of (i) 100% of the underlying target goals and (ii) the prorated actual year-to-date performance. The NEOs’ target bonus amounts are: for Mr. Pyott, 135% of his base salary (\$1,365,000); for Jeffrey Edwards, 75% of his base salary (\$645,000); for Scott Whitcup, 75% of his base salary (\$645,000); for Julian Gangolli, 60% of his base salary (\$556,000), and for Douglas Ingram, 77.5% of his base salary (\$700,000). We note, however, that the target bonus amount for Mr. Pyott and Mr. Ingram and each of the base salary amounts provided herein are based on information filed with the SEC with respect to the 2013 fiscal year.

With respect to awards granted in 2010 and thereafter under the 2008 Incentive Award Plan and with respect to unvested option, restricted stock unit (“RSU”), and restricted stock awards granted under the Company’s 2011 Incentive Award Plan, awards will be subject to “double trigger” change in control vesting in the event of a termination without cause or a resignation for good reason within two years after the Change in Control, provided, however, the Company may decide to cancel and cash-out the outstanding equity awards, in which case, such awards will “single-trigger” vest upon the Change in Control (with performance-based RSUs vesting to the extent that the Company achieves the underlying performance objectives on an abbreviated basis). Based on information filed with the SEC, the NEOs’ respective unvested holdings are: 477,000 options and 165,000 performance-based RSUs for Mr. Pyott; 99,000 options for Mr. Ingram; 106,750 options for Mr. Edwards; 133,500 options for Mr. Whitcup; and 97,000 options and 3,000 shares of restricted stock for Mr. Gangolli. More generally, as reported in the Company’s Annual Report on Form 10-K for the year ended December 31, 2013, as of December 31, 2013, there were 12,051,000 unvested options and 875,000 unvested “restricted share” awards (which amount includes restricted stock and RSUs).

The Company’s Change in Control Policy provides employees at the vice president level or above with certain severance entitlements in the event of a termination without cause or a resignation for good reason within two years after a Change in Control of the Company (a “Qualifying Termination”). Under the Change in Control Policy, upon such a Qualifying Termination, participants at the CEO, President and Executive Vice President level (including the NEOs) are eligible to receive (A) a lump sum cash payment equal to three times the sum of (i) the participant’s highest annual salary rate within the five-year period preceding the termination and (ii) the participant’s target annual bonus for the year in which the Qualifying Termination occurs (the “Cash Severance Payment”) and (B) continued participation (at no cost to the participant) in medical, dental and vision benefit programs for the three-year period following the termination and outplacement benefits of a type and duration generally provided to employees at the participant’s level (the “Continued Employee Benefits”). Based on information filed with the SEC, upon a Qualifying Termination as of December 31, 2013, each NEO would be entitled to receive a Cash Severance Payment under the Company’s Change in Control Policy in an amount as follows: \$9,623,250 for Mr. Pyott; \$3,624,000 for Mr. Ingram; \$3,386,250 for Mr. Edwards; \$3,386,250 for Mr. Whitcup; and \$2,668,800 for Mr. Gangolli and each NEO would be entitled to receive Continued Employee Benefits with a value as follows: \$80,389 for Mr. Pyott; \$80,410 for Mr. Ingram; \$76,049 for Mr. Edwards; \$36,487 for Mr. Whitcup; and \$77,002 for Mr. Gangolli.

In the event of a Change in Control, each participant in the Company’s Supplemental Executive Benefit Plan and the Supplemental Retirement Income Plan will be entitled to receive a lump sum payment in lieu of accrued benefits under each respective plan, with such lump sum payment calculated using a more favorable discount rate of 3.6%. Under the Company’s Executive Deferred Compensation Plan, in the event of a Change in Control, each participant will become vested in the unvested portion of his or her plan account. Based on the Company’s public filings, we understand that all five NEOs are participants in the Supplemental Executive Benefit Plan and that Messrs. Whitcup and Gangolli were the only NEOs who participated in the Executive Deferred Compensation Plan in 2013. We are unable to confirm from the Company’s public filings with the SEC to what extent any individuals are currently receiving benefits under these plans (though no NEOs are currently receiving any such benefits).

We have not independently verified if the copies of the agreements discussed above (collectively, the “Filed Agreements”) and publicly filed by the Company with the SEC are the same as the executed copies of the Filed Agreements, and the analyses above are based on our review of the Company’s public SEC filings. While we not aware of any, there may be other compensation or vesting provisions with other Company employees or directors may be triggered by a change in control. The discussion of the potential impact of the Proposals is based entirely upon our review of the Filed Agreements and the Company’s Annual Report on Form 10-K for the year ended December 31, 2013. If the Company’s shareholders approve the Proposals, prior to the acceleration of vesting of any Company equity awards (which will occur if the Company decides to cancel and cash-out the outstanding equity awards) or the payment of any compensation described above, we expect to review with counsel the original copies of all relevant agreements, award documentation and Company records associated with the creation of the potential obligations upon a change in control.

YOUR SUPPORT IS IMPORTANT

NO MATTER HOW MANY OR HOW FEW SHARES YOU OWN, WE ARE SEEKING YOUR SUPPORT. PLEASE COMPLETE, EXECUTE, DATE, AND MAIL IN THE ENCLOSED POSTAGE-PAID ENVELOPE (TO THE ADDRESS SET FORTH ON THE ENVELOPE, WHICH IS SAME AS THE ADDRESS AT THE BOTTOM OF THIS PAGE) THE ENCLOSED SPECIAL MEETING REQUEST FORM AND THE ACCOMPANYING WHITE PROXY CARD AS SOON AS POSSIBLE.

IF YOUR SHARES OF COMPANY COMMON STOCK ARE HELD IN THE NAME OF A BROKERAGE FIRM, BANK NOMINEE OR OTHER INSTITUTION, ONLY IT CAN SIGN THE SPECIAL MEETING REQUEST FORM AND PROXY CARD. ACCORDINGLY, PLEASE CONTACT THE PERSON RESPONSIBLE FOR YOUR ACCOUNT AND GIVE INSTRUCTIONS FOR THE PROXY CARD TO BE SIGNED REPRESENTING YOUR SHARES OF COMPANY COMMON STOCK. IN ADDITION, PLEASE INCLUDE THE NAME AND ADDRESS OF THE ACCOUNT HOLDER AS IT APPEARS ON THE COMPANY’S BOOKS AND ATTACH EVIDENCE OF BENEFICIAL OWNERSHIP TO THE SPECIAL MEETING REQUEST FORM.

WHOM YOU CAN CALL IF YOU HAVE QUESTIONS

If you have any questions or require any assistance, please contact D.F. King, proxy solicitors for the Requesting Shareholder, at the following address and toll free telephone number:

D.F. King & Co., Inc.
48 Wall Street
New York, NY 10005
Toll-free: (800) 859-8511
Banks and brokers: (212) 269-5550

IT IS IMPORTANT THAT YOU COMPLETE, EXECUTE DATE AND RETURN THE ENCLOSED SPECIAL MEETING REQUEST FORM AND THE ACCOMPANYING WHITE PROXY CARD PROMPTLY TO D.F. KING IN THE ENCLOSED ENVELOPE TO AVOID UNNECESSARY EXPENSE AND DELAY. NO POSTAGE IS NECESSARY.

THE REQUESTING SHAREHOLDER

[•], 2014

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ANNEX A

**SECURITY OWNERSHIP OF DIRECTORS AND MANAGEMENT OF THE COMPANY
AND PRINCIPAL SHAREHOLDERS**

Security Ownership of Directors and Executive Officers

The following information is based solely on the Company's Definitive Proxy Statement on Schedule 14A, as filed with the SEC on March 26, 2014 for its 2014 annual meeting (the "Company Proxy Statement") and the Company 10-Q, and the Requesting Shareholder makes no representation regarding its accuracy or completeness. The Company indicated in the Company Proxy Statement that, to the Company's knowledge, the following table summarizes information as of March 11, 2014 with respect to ownership of the outstanding shares of Company Common Stock by (i) each director, (ii) the Chief Executive Officer, Chief Financial Officer, and each of the Company's three other most highly compensated executive officers for the year ended December 31, 2013, and (iii) all directors and executive officers of the Company as a group. Unless otherwise indicated, each person in the table has sole voting and investment power of the shares listed as owned by such person. The percentages in the following table are based on 297,556,619 shares of Company Common Stock outstanding as of May 1, 2014 (exclusive of 10,035,841 shares of Company Common Stock held in treasury) as reported in the Company 10-Q.

| | Vested Shares of Company Common Stock Owned(1) | Rights to Acquire Shares of Company Common Stock(2) | Unvested Shares of Restricted Stock/Units | Total Shares of Company Common Stock Beneficially Owned | Percent of Class(3) |
|---|---|--|--|--|--------------------------------|
| Directors: | | | | | |
| Deborah Dunsire, M.D. | 29,111 | 65,123 | 0 | 94,234 | * |
| Michael R. Gallagher | 36,400 | 61,750 | 0 | 98,150 | * |
| Trevor M. Jones, Ph.D. | 200 | 54,476 | 0 | 54,676 | * |
| Louis J. Lavigne, Jr. | 14,421 | 3,102 | 0 | 17,523 | * |
| Peter J. McDonnell, M.D. | 0 | 3,102 | 0 | 3,102 | * |
| Timothy D. Proctor | 0 | 3,261 | 0 | 3,261 | * |
| David E.I. Pyott | 234,168 | 2,265,200 | 165,000 | 2,664,368 | * |
| Russell T. Ray | 22,810 | 57,702 | 0 | 80,512 | * |
| Henri A. Termeer(4) | 0 | 0 | 0 | 0 | * |
| Other Named Executive Officers: | | | | | |
| Douglas S. Ingram | 30,101 | 527,700 | 0 | 557,801 | * |
| Jeffrey L. Edwards | 20,259 | 207,850 | 0 | 228,109 | * |
| Scott M. Whitcup, M.D. | 20,849 | 556,200 | 0 | 577,049 | * |
| Julian S. Gangolli | 20,590 | 140,500 | 3,000 | 164,090 | * |
| All current directors and executive officers (as a group 17 persons, including those named above) | 454,077 | 4,348,166 | 178,700 | 4,980,943 | 1.674 |

* Beneficially owns less than 1% of the outstanding Company Common Stock.

- (1) In addition to shares held in the individual's sole name, this column includes: (1) shares held by the spouse of the named person and shares held in various trusts; and (2) for executive officers, shares held in trust for the benefit of the named employee in the Company's Savings and Investment Plan and Employee Stock Ownership Plan as of March 11, 2014.
- (2) This column also includes shares which the person or group has the right to acquire within 60 days of March 11, 2014 as follows: (1) for executive officers, these shares include shares that may be acquired upon the exercise of stock options and vesting of restricted stock units; and (2) for non-employee directors, these shares include shares that may be acquired upon the exercise of stock options and vesting of restricted stock

units, as well as shares accrued under the Company's Deferred Directors' Fee Program as of March 11, 2014. Under the Company's Deferred Directors' Fee Program, participants may elect to defer all or a portion of their retainer and meeting fees until termination of their status as a director. Deferred amounts are treated as having been invested in Company Common Stock such that on the date of deferral the director is credited with a number of phantom shares of Company Common Stock equal to the amount of fees deferred divided by the market price of a share of Company Common Stock as of the date of deferral. Upon termination of the director's service on the Board, the director will receive shares of Company Common Stock equal to the number of phantom shares of Company Common Stock credited to such director under the Deferred Directors' Fee Program.

- (3) Based on 297,556,619 shares of Company Common Stock outstanding as of May 1, 2014 (exclusive of 10,035,841 shares of Company Common Stock held in treasury), as reported in the Company 10-Q.
- (4) Mr. Termeer was appointed to the Board on January 24, 2014.

Security Ownership of Certain Principal Shareholders

Set forth below is the name and stock ownership of each person or group of persons known by the Company to beneficially own more than 5% of the outstanding shares of Company Common Stock, and is based on the Company Proxy Statement and information provided by the beneficial owner in subsequent public filings made with the SEC.

| <u>Name and Address of Beneficial Owners</u> | <u>Shares Beneficially Owned</u> | <u>Percent of Class(1)</u> |
|--|--|--------------------------------|
| Capital Research Global Investors 40 East 52 nd Street New York, NY 10022 | 17,472,533 ⁽²⁾ | 5.87% |
| BlackRock, Inc. 40 East 52 nd Street New York, NY 10022 | 17,416,972 ⁽³⁾ | 5.85% |
| Pershing Square Capital Management, L.P. 888 Seventh Avenue, 42 nd Floor New York, NY 10019 | 28,878,638 ⁽⁴⁾ | 9.71% |
| PS Management GP, LLC 888 Seventh Avenue, 42 nd Floor New York, NY 10019 | 28,878,638 ⁽⁴⁾ | 9.71% |
| William A. Ackman 888 Seventh Avenue, 42 nd Floor New York, NY 10019 | 28,878,638 ⁽⁴⁾ | 9.71% |
| Valeant Pharmaceuticals International, Inc. 2150 St. Elzéar Blvd. West Laval, Quebec, Canada, H7L 4A8 | 28,878,638 ⁽⁵⁾ | 9.71% |
| Valeant Pharmaceuticals International 400 Somerset Corporate Boulevard Bridgewater, New Jersey 08807 | 28,878,638 ⁽⁵⁾ | 9.71% |

- (1) Based on 297,556,619 shares outstanding as of May 1, 2014 (exclusive of 10,035,841 shares held in treasury), as reported in the Company 10-Q.
- (2) Based on information provided pursuant to a statement on a Schedule 13G filed with the SEC on February 10, 2014 by Capital Research Global Investors, a division of Capital Research and Management Company. Capital Research Global Investors reported that it has sole voting power with respect to 17,472,533 shares and sole dispositive power with respect to 17,472,533 shares.
- (3) Based on information provided pursuant to a statement on a Schedule 13G/A filed with the SEC on January 28, 2014 by BlackRock, Inc. BlackRock reported that it has sole voting power with respect to 14,470,789 shares and sole dispositive power with respect to 17,416,972 shares.

-
- (4) Based on information provided pursuant to a statement on a Schedule 13D/A filed with the SEC on May 12, 2014 by Pershing Square Capital Management, L.P., PS Management GP, LLC and William A. Ackman, pursuant to which the three parties reported that they have shared beneficial ownership with respect to 28,878,638 shares and shared voting power with respect to 28,878,538 shares.
 - (5) Based on information provided pursuant to a statement on a Schedule 13D/A filed with the SEC on May 5, 2014 by Valeant Pharmaceuticals International, Inc. and Valeant Pharmaceuticals International, pursuant to which the two parties reported that they have shared beneficial ownership with respect to 28,878,538 shares and shared voting power with respect to 28,878,538 shares, and on information provided pursuant to a statement on a Schedule 13D/A filed with the SEC on May 12, 2014 by Pershing Square Capital Management, L.P., PS Management GP, LLC and William A. Ackman, which reported that Valeant has sole voting power with respect to 100 shares.

ANNEX B**ADDITIONAL INFORMATION REGARDING PARTICIPANTS IN THE SOLICITATION:****PURCHASES AND SALES IN THE COMPANY COMMON STOCK DURING THE PAST TWO YEARS****Common Stock**

| <u>Name</u> | <u>Trade Date</u> | <u>Buy/ Sell</u> | <u>No. of Shares / Quantity</u> | <u>Price Per Share</u> | <u>Security</u> |
|----------------|-------------------|----------------------|-------------------------------------|----------------------------|-----------------|
| PS Fund 1, LLC | February 25, 2014 | Buy | 94,182 | \$125.21 | Common Stock |
| PS Fund 1, LLC | February 25, 2014 | Buy | 25,000 | \$125.01 | Common Stock |
| PS Fund 1, LLC | February 25, 2014 | Buy | 55,454 | \$125.16 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 5,000 | \$126.76 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 4,197 | \$127.31 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 540 | \$126.86 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 5,000 | \$126.92 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 5,000 | \$127.52 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 75,000 | \$127.49 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 5,000 | \$127.57 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 10,000 | \$127.51 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 100,000 | \$128.21 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 35,000 | \$127.88 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 21,634 | \$128.21 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 75,000 | \$127.99 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 25,000 | \$127.76 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 20,000 | \$127.65 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 13,629 | \$127.60 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 10,000 | \$127.53 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 10,000 | \$127.64 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 2,500 | \$127.61 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 250 | \$127.44 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 40 | \$127.43 | Common Stock |
| PS Fund 1, LLC | February 26, 2014 | Buy | 5 | \$127.33 | Common Stock |
| PS Fund 1, LLC | May 1, 2014 | Buy | 1,239,000 | \$127.89 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 863,000 | \$129.26 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 779,000 | \$128.76 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 1,416,000 | \$129.07 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 1,353,000 | \$131.58 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 2,130,000 | \$128.75 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 2,578,000 | \$123.72 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 1,733,000 | \$123.65 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 1,046,000 | \$125.65 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 1,191,107 | \$122.01 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 2,523,000 | \$120.73 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 2,184,000 | \$123.71 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 1,843,000 | \$126.08 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 2,233,000 | \$130.50 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 1,720,000 | \$134.06 | Common Stock* |
| PS Fund 1, LLC | May 1, 2014 | Buy | 3,450,000 | \$139.02 | Common Stock** |

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- * The Price Per Share column reflects the average consideration paid (net of premium, strike price and other transaction fees) on a per share basis pursuant to the exercise of the relevant (previously purchased) American-style call option transactions.
- ** The Price Per Share column reflects the average consideration paid (net of forward price and other transaction fees) on a per share basis pursuant to the early termination of the relevant (previously purchased) forward purchase contract.

| <u>Name</u> | <u>Trade Date</u> | <u>Buy/ Sell</u> | <u>No. of Shares / Quantity</u> | <u>Price Per Share</u> | <u>Security</u> |
|---|-------------------|----------------------|-------------------------------------|----------------------------|-----------------|
| Valeant Pharmaceuticals International, Inc. | May 7, 2014 | Buy | 100 | \$164.80 | Common Stock |

Options (all of which have been exercised as of the date hereof):

| <u>Name</u> | <u>Trade Date</u> | <u>Buy/ Sell</u> | <u>No. of Options</u> | <u>Premium Paid</u> | <u>Strike Price</u> | <u>Security</u> | <u>Expiration Date</u> |
|----------------|-----------------------|----------------------|---------------------------|-------------------------|-------------------------|-----------------|----------------------------|
| PS Fund 1, LLC | March 3, 2014 | Buy | 1,239,000 | \$127.68 | \$1.27 | OTC Call Option | March 4, 2015 |
| PS Fund 1, LLC | March 6, 2014 | Buy | 863,000 | \$129.06 | \$1.29 | OTC Call Option | March 9, 2015 |
| PS Fund 1, LLC | March 11, 2014 | Buy | 779,000 | \$128.58 | \$1.28 | OTC Call Option | March 12, 2015 |
| PS Fund 1, LLC | March 14, 2014 | Buy | 1,416,000 | \$128.90 | \$1.28 | OTC Call Option | March 16, 2015 |
| PS Fund 1, LLC | March 19, 2014 | Buy | 1,353,000 | \$131.42 | \$1.31 | OTC Call Option | March 20, 2015 |
| PS Fund 1, LLC | March 24, 2014 | Buy | 2,130,000 | \$128.61 | \$1.28 | OTC Call Option | March 25, 2015 |
| PS Fund 1, LLC | March 27, 2014 | Buy | 2,578,000 | \$123.60 | \$1.23 | OTC Call Option | March 30, 2015 |
| PS Fund 1, LLC | April 1, 2014 | Buy | 1,733,000 | \$123.55 | \$1.23 | OTC Call Option | April 2, 2015 |
| PS Fund 1, LLC | April 4, 2014 | Buy | 1,046,000 | \$125.56 | \$1.25 | OTC Call Option | April 6, 2015 |
| PS Fund 1, LLC | April 8, 2014 | Buy | 1,191,107 | \$121.94 | \$1.21 | OTC Call Option | April 9, 2015 |
| PS Fund 1, LLC | April 11, 2014 | Buy | 2,523,000 | \$120.66 | \$1.20 | OTC Call Option | April 13, 2015 |
| PS Fund 1, LLC | April 14, 2014 | Buy | 2,184,000 | \$123.65 | \$1.23 | OTC Call Option | April 15, 2015 |
| PS Fund 1, LLC | April 15, 2014 | Buy | 1,843,000 | \$126.02 | \$1.26 | OTC Call Option | April 16, 2015 |
| PS Fund 1, LLC | April 16, 2014 | Buy | 2,233,000 | \$130.45 | \$1.30 | OTC Call Option | April 17, 2015 |
| PS Fund 1, LLC | April 17, 2014 | Buy | 1,720,000 | \$134.01 | \$1.33 | OTC Call Option | April 20, 2015 |

Forward (which has been early terminated and physically settled as of the date hereof):

| <u>Name</u> | <u>Trade Date</u> | <u>Buy/ Sell</u> | <u>No. of Options</u> | <u>Unit Cost</u> | <u>Security</u> | <u>Expiration Date</u> |
|----------------|-----------------------|----------------------|---------------------------|----------------------|--------------------|----------------------------|
| PS Fund 1, LLC | April 21, 2014 | Buy | 3,450,000 | \$140.37 | OTC Equity Forward | April 22, 2015 |

EXHIBIT A

SPECIAL MEETING REQUEST FORM

[See Attached]

ALLERGAN, INC.
2525 Dupont Drive
Irvine, CA 92612
Attention: Matthew J. Maletta
Associate General Counsel and Secretary

Re: Request for Special Meeting of Shareholders of Allergan, Inc. (the “Company”)

Ladies and Gentlemen:

Pursuant to Article 10 of the Company’s Amended and Restated Certificate of Incorporation, effective May 6, 2014 (the “Charter”), and Article II, Section 3 of the Company’s Amended and Restated Bylaws, effective May 6, 2014 (the “Bylaws”), this letter constitutes the written request (a “Special Meeting Request”) of the undersigned (a “Proposing Person”) (as such term is defined in Article II, Section 3(A)(5)(a) of the Bylaws) and, collectively with all other persons who send such Special Meeting Requests, the “Proposing Persons”) for the Secretary of the Company to call a special meeting of the Company’s shareholders (the “Special Meeting”) for the purposes of considering and voting upon the following proposals, the adoption of which we believe will enhance shareholder value:

1. to remove from office, without cause, the following six members of the current Board of Directors of the Company (the “Board”), [•], [•], [•], [•], [•] and [•], as well as any person or persons elected or appointed to the Board without shareholder approval after the Company’s 2014 annual meeting and up to and including the date of the Special Meeting;
2. to request that the Board elect or appoint the following individuals to serve as directors on the Board, regardless of whether Proposal 1 is passed: [•], [•], [•], [•], [•] and [•] (each, a “Group Nominee” and, collectively, the “Group Nominees”);
3. (i) to amend Article II, Section 3 and Article II, Section 9 of the Bylaws to remove certain onerous special meeting provisions, to provide mechanics for determining the place, date and hour of and record date for any special meeting called at the request of Company’s shareholders and to provide mechanics for calling a special meeting if no directors or less than a majority of directors are then in office, and (ii) to amend Article III, Section 2 of the Bylaws to establish the authorized number of directors of the Company at nine directors, in each case as set forth in greater detail on Exhibit C hereto;
4. to repeal any amendment changing the Bylaws in any way from the version that was publicly filed with the Securities and Exchange Commission (“SEC”) on March 26, 2014 and became effective as of May 6, 2014; and
5. to request that the Board promptly engage in good faith discussions with Valeant Pharmaceuticals International, Inc. (“Valeant”) regarding Valeant’s offer to merge with the Company, without in any way precluding discussions the Board may choose to engage in with other parties potentially offering higher value (Proposals 1 through 5, collectively, the “Proposals”).

The undersigned is a record holder of the Company’s common stock, par value \$0.01 per share (the “Company Common Stock”), and has a Net Long Beneficial Ownership (as such term is defined in Article II, Section 3(A)(5)(c) of the Bylaws) of the shares of Company Common Stock set forth in Exhibit A. Assuming the Proposing Persons who deliver Special Meeting Requests to the Company have a combined Net Long Beneficial Ownership of at least the Requisite Percentage (as such term is defined in Article II, Section 3 of the Bylaws), pursuant to Article 10 of the Charter and Article II, Section 3 of the Bylaws, the Secretary of the Company shall call a Special Meeting.

The Proposing Person(s) are requesting the Special Meeting in order to allow the Company’s shareholders to consider and vote upon the Proposals. The full text of the Proposals and corresponding resolutions (as appearing in the Solicitation Statement filed on Schedule 14A with the SEC on [•], 2014 by (i) Pershing Square Capital Management, L.P., a Delaware limited partnership; (ii) PS Management GP, LLC, a Delaware limited

liability company; (iii) PS Fund 1, LLC, a Delaware limited liability company; and (iv) William A. Ackman, a citizen of the United States of America) are set forth below.

1. “RESOLVED, that the following six members of the current Board, [•], [•], [•], [•], [•] and [•], be removed from office, without cause, immediately as well as any other person or persons elected or appointed to the Board without shareholder approval after the Company’s 2014 annual meeting and up to and including the date of the Special Meeting.”
2. “RESOLVED, that the shareholders of Allergan hereby request that the Board elect or appoint the following individuals to serve as directors on the Board, regardless of whether Proposal 1 is passed: [•], [•], [•], [•], [•] and [•].”

Each Group Nominee named in this Proposal 2 has consented to be named in a proxy statement and to serve as a director of the Company, if elected. Consent is attached in accordance with Article II, Section 9(A) of the Bylaws. If the Group Nominees are elected, they intend to discharge their duties as directors of the Company consistent with all applicable legal requirements, including the general fiduciary obligations imposed upon corporate directors. If elected, each Group Nominee named in this Proposal 3 would serve as a director until the Company’s annual meeting in 2015.

3. “RESOLVED, that Article II, Section 3 and Article II, Section 9 of the Bylaws be amended to remove certain onerous special provisions, to provide mechanics for determining the place, date and hour of and record date for any special meeting called at the request of Company’s shareholders and to provide mechanics for calling a special meeting if no directors or less than a majority of directors are then in office, and that Article III, Section 2 of the Bylaws be amended to establish the authorized number of directors of the Company at nine directors, in each case as set forth in greater detail on the attached Exhibit C.”
4. “RESOLVED, that any amendment changing the Bylaws in any way from the version that was publicly filed with the SEC on March 26, 2014 and became effective as of May 6, 2014, be and hereby is repealed.”
5. “RESOLVED, that the shareholders of Allergan hereby request that the Board promptly engage in good faith discussions with Valeant regarding Valeant’s offer to merge with the Company, without in any way precluding discussions the Board may choose to engage in with other parties potentially offering higher value.”

Attached hereto as Exhibit A is the Form of Proposing Person questionnaire, which sets forth, for the Proposing Person (s), the information that is required to be furnished in connection with this Special Meeting Request pursuant to the Charter and Bylaws. Attached hereto as Exhibit B is information required to be provided for director nominations made by shareholders pursuant to the Charter and Rule 14a under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

Any claim that this Special Meeting Request is in any way defective or deficient, and all further correspondence on this matter, should be addressed to Edward McCarthy at D.F. King and Co., Inc., via mail at 48 Wall Street, New York, New York 10005, by telephone at (212) 269-5550, or by email to emccarthy@dfking.com, with copies to Roy J. Katzovicz, General Counsel, Pershing Square Capital Management, via mail at 888 Seventh Avenue, 42nd Floor New York, NY, 10019, by telephone at (212) 813-3700 or by email to rjk@persq.com and to Richard Brand at Kirkland & Ellis LLP, via mail at 601 Lexington Avenue, New York, NY 10022, via telephone at (212) 446-6454 or by email to richard.brand@kirkland.com, so that there is adequate opportunity to address any such claim in a timely fashion.

[Signature page follows]

Sincerely yours,

(Signature)

**(Print name exactly as it appears on the
Company's books)**

By: _____
Name: _____
Title: _____

[Signature Page to Special Meeting Request]

INSTRUCTION SHEET

Each shareholder should fill out Exhibit A (which directly follows this Instruction Sheet) by following the instructions set forth below. After completing Exhibit A and signing and dating the Special Meeting Request to which it is attached, each shareholder should then submit the following items: (i) a signed and dated Special Meeting Request letter, (ii) a completed Exhibit A, (iii) the document attached hereto as Exhibit B and (iv) the document attached hereto as Exhibit C, to D.F. King & Co., Inc., proxy solicitor for PS Fund I, LLC (the “Requesting Shareholder”), at 48 Wall Street, New York, NY 10005, Toll-free: (800) 859-8511. D.F. King & Co., Inc. will gather all such documents and coordinate the submission of such materials on behalf of the Proposing Persons to the Company.

Only Proposing Persons who are stockholders of record at the time Special Meeting Requests representing the Requisite Percentage are delivered are entitled to sign a Special Meeting Request. IF YOUR SHARES OF COMPANY COMMON STOCK ARE HELD IN THE NAME OF A BROKERAGE FIRM, BANK NOMINEE OR OTHER INSTITUTION, ONLY IT CAN SIGN THIS SPECIAL MEETING REQUEST WITH RESPECT TO YOUR SHARES AND ONLY UPON RECEIPT OF SPECIFIC INSTRUCTIONS FROM YOU. ACCORDINGLY, YOU SHOULD CONTACT THE PERSON RESPONSIBLE FOR YOUR ACCOUNT AND GIVE INSTRUCTIONS FOR THIS SPECIAL MEETING REQUEST TO BE SIGNED REPRESENTING YOUR SHARES OF COMPANY COMMON STOCK. WE URGE YOU TO CONFIRM IN WRITING YOUR INSTRUCTIONS TO THE PERSON RESPONSIBLE FOR YOUR ACCOUNT AND TO PROVIDE A COPY OF SUCH INSTRUCTIONS TO US IN CARE OF D.F. KING TO THE ADDRESS ABOVE, SO THAT WE WILL BE AWARE OF ALL INSTRUCTIONS GIVEN AND CAN ATTEMPT TO ENSURE THAT SUCH INSTRUCTIONS ARE FOLLOWED.

Instructions for Completing Exhibit A

Please provide the requested information in the space provided in Exhibit A. Attach additional sheets if necessary.

Item 1.

The Bylaws define a “Proposing Person” as (i) each stockholder of record that signs a Special Meeting Request, (ii) the beneficial owner or beneficial owners, if different, on whose behalf such Special Meeting Request is made, (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation or associate (within the meaning of Rule 12b-2 under the Exchange Act) of such stockholder or beneficial owner, and (iv) any other person with whom such stockholder or such beneficial owner (or any of their respective associates or other participants in such solicitation) is Acting in Concert (as defined in Article II, Section 5(b) of the Bylaws).

State the name and address of each Proposing Person, including the name and address of the stockholder of record exactly as they appear on the Company’s books, as well as the name and address of each beneficial owner, participant or relevant person.

Item 2.

The Bylaws define “Net Long Beneficial Ownership” as those shares of common stock of the Corporation as to which the Proposing Person possesses (i) the sole power to vote or direct the voting, (ii) the sole economic incidents of ownership (including the sole right to profits and the sole risk of loss), and (iii) the sole power to dispose of or direct the disposition; provided that the number of shares calculated in accordance with clauses (i), (ii) and (iii) does not include any Synthetic Equity Position. “Synthetic Equity Position” means the full notional amount of any securities that, directly or indirectly, underlie any “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a “call equivalent position” (as such term is defined in Rule 16a-1(b) under the Exchange Act).

Note that each Proposing Person will be deemed for such purpose to beneficially own any shares of any class or series of capital stock of the Company as to which such Proposing Person has the right to acquire (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both).

Each Proposing Person must also attach *evidence of both record and beneficial ownership* of Company Common Stock, such as a letter from your custodian bank(s) and/or broker(s) attesting to your status as a record and beneficial owner of Company Common Stock.

Item 3.

Divide the number of shares disclosed in Item 2 by 297,556,619 and state the fraction as a percentage, rounded to three decimal places.

Item 4.

The Bylaws define a “qualified representative” of a Proposing Person as follows: if such Proposing Person is (a) a general or limited partnership, any general partner or person who functions as a general partner of the general or limited partnership or who controls the general or limited partnership, (b) a corporation, a duly appointed officer of the corporation, (c) a limited liability company, any manager or officer (or person who functions as an officer) of the limited liability company or any officer, director, manager or person who functions as an officer, director or manager of any entity ultimately in control of the limited liability company or (d) a trust, any trustee of such trust.”

Item 5.

- (i) State the full notional amount of any securities that, directly or indirectly, underlie any “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a “call equivalent position” (as such term is defined in Rule 16a-1(b) under the Exchange Act) (“Synthetic Equity Position”) and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of shares of the Company.

Note that, for purposes of the definition of Synthetic Equity Position, the term “derivative security” also includes any security or instrument that would not otherwise constitute a “derivative security” as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable will be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination.

In addition, note that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) will not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person’s business as a derivatives dealer.

- (ii) State any rights to dividends on the shares of any class or series of capital stock of the Company owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Company.
- (iii) State any material pending or threatened action, suit or proceeding (whether civil, criminal, investigative, administrative or otherwise) in which such Proposing Person is, or is reasonably expected to be made, a party or material participant involving the Company or any of its officers, directors or employees, or any affiliate of the Company, or any officer, director or employee of such affiliate.

- (iv) State any other material relationship between such Proposing Person, on the one hand, and the Company, any affiliate of the Company, any officer, director or employee of the Company or any affiliate thereof, or any principal competitor of the Company, on the other hand.

Principal competitors of the Company would include: Akom, Inc., Alcon Laboratories, Inc./Novartis AG, Abbott Laboratories, Bausch & Lomb, Inc., Obagi Medical Products, Inc., Medicis Pharmaceutical Corporation and Medicis Aesthetics Canada, each divisions of Valeant Pharmaceuticals International, Inc., Genentech/Hoffman La Roche AG, Merck & Co., Pfizer Inc., Regeneron Pharmaceuticals, Inc., Santen Seiyaku, US WorldMeds, Ipsen Ltd., Galderma, a joint venture between Nestle and L'Oréal Group, Syntaxin, Merz, Q-Med, Anteis, Filorago, Teoxane, Stiefel Laboratories, Inc., a division of GlaxoSmithKline, Novartis AG, L'Oréal Group, Pfizer Inc., Actavis Inc., Warner Chilcott, Astellas Pharma US, Inc., Mentor, Sientra, Inc., Silimed, Eurosilicone, Nagor, Polytech and several Chinese breast implant manufacturers.

- (v) State any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Company, any affiliate of the Company or any principal competitor of the Company (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement).

See paragraph (iv) above for a listing of the principal competitors of the Company.

- (vi) State any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the Special Meeting.

The items required to be included by the SEC in a Proxy Statement on Schedule 14A can be found at <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=47b43cbb88844faad586861c05c81595&rgn=div5&view=text&node=17:3.0.1.1.1&idno=17>.

Note that Disclosable Interests do not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the shareholder directed to prepare and submit this Special Meeting Request on behalf of a beneficial owner.

Item 6.

Provide a description of any agreement, arrangement or understanding with any (i) shareholder providing the notice of business proposed to be brought before the Special Meeting, (ii) beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the Special Meeting is made, (iii) participant with such shareholder in such solicitation or associate of such shareholder or beneficial owner and (iv) other person with whom such shareholder or such beneficial owner (or any of their respective associates or other participants in such solicitation) is Acting in Concert.

Item 8.

Describe any agreements or arrangements, written or unwritten, between the Proposing Person(s) and any other shareholder(s) with respect to this Special Meeting Request or the Proposals (other than those that have already been disclosed in this Special Meeting Request or that will be disclosed in the Solicitation Statement).

*******PLEASE BE CERTAIN TO COMPLETE APPENDIX 2 — “TRANSACTIONS IN COMPANY COMMON STOCK BY THE PROPOSING PERSON” — ALONG WITH YOUR PROPOSING PERSON SPECIAL MEETING REQUEST FORM*******

EXHIBIT A
PROPOSING PERSON SUBMISSION

ALLERGAN, INC. PROPOSING PERSON QUESTIONNAIRE
TO BE DELIVERED IN CONNECTION WITH SPECIAL MEETING REQUEST

1. Name and address of Proposing Person(s): _____
2. Class and number of shares of Company Common Stock owned beneficially and of record (with evidence of such ownership attached) as of the date hereof: _____ shares of Company Common Stock owned beneficially, including _____ shares owned of record (the "Subject Shares").
3. Percentage of shares of Company Common Stock as of the date of the undersigned's execution hereof, based on 297,556,619 shares of Company Common Stock outstanding as of May 1, 2014 (exclusive of approximately 10,035,841 shares of Company Common Stock held in treasury by the Company), as reported in the Company's Quarterly Report on Form 10-Q, as filed with the SEC on May 7, 2014: _____%.
4. The undersigned Proposing Person(s) hereby represents and warrants to the Company, as of the date hereof, that: (a) the Proposing Person(s) submitting this Special Meeting Request is a holder of record of shares of the Company entitled to vote at the Special Meeting, (b) the Proposing Person(s) set forth in this Exhibit A intends to continuously hold the Subject Shares through the date of the Special Meeting and intends to appear in person or by a "qualified representative" at the Special Meeting to propose the Proposals, and (c) the Proposing Person(s) acknowledges that any reduction in such Proposing Person(s) Net Long Beneficial Ownership with respect to which this Special Meeting Request relates following the delivery of this Special Meeting Request to the Company's Secretary, will constitute a revocation of this Special Meeting Request to the extent of such reduction.
5. Disclosable Interests:
 - (i) _____
 - (ii) _____
 - (iii) _____
 - (iv) _____
 - (v) _____
 - (vi) _____
6. Description of any agreements, arrangements or understandings required to be disclosed pursuant to Article II, Section 9 (A) of the Bylaws:

7. The undersigned Proposing Person(s) hereby represents and warrants to the Company, as of the date hereof, that such Proposing Person(s) intends to deliver a proxy statement to holders of at least the percentage of the Company's outstanding capital stock required to approve or adopt the Proposals and/or otherwise solicit proxies from shareholders in support of the Proposals.
8. Description of any agreements, arrangements or understandings between or among the Proposing Person(s) and any other shareholders in connection with this Special Meeting Request or the Proposals (to the extent not disclosed elsewhere):

-
9. Additional information regarding transactions in securities of the Company effected during the past two years by the Proposing Person(s), is set forth on Appendix 2 to this Exhibit A.

Pursuant to Article II, Section 3(C) of the Bylaws, each Proposing Person agrees to update and supplement the information contained herein, if necessary, so that the information provided or required to be provided herein is true and correct as of the record date for notice of the Special Meeting and as of the date that is 10 Business Days prior to the Special Meeting or any adjournment or postponement thereof, and such update and supplement will be delivered to, or mailed and received by, the Secretary of the Company at the principal executive offices of the Company not later than five Business Days after the record date for notice of the Special Meeting (in the case of the update and supplement required to be made as of such record date) and not later than eight Business Days prior to the date for the Special Meeting, or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the Special Meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 Business Days prior to the Special Meeting or any adjournment or postponement thereof). As used herein, the term "Business Day" means any day that is not a Saturday or Sunday or a day on which banks in the city of the Company's principal place of business are required or permitted to close.

* * * * *

EXHIBIT B
CERTAIN INFORMATION ABOUT THE GROUP NOMINEES

1. Name: _____
(the “Nominee” and, together with all other nominees named herein, the “Group Nominees”)
2. Age: _____
3. Business address: _____
4. Residence address: _____
5. Principal occupation or employment: _____
6. Material occupations, positions, offices, or employments for the past five years: _____
7. Citizenship: _____
8. Class and number of shares of capital stock of the Company beneficially owned by the Nominee: _____
9. Disclosable Interests of Nominee: _____
10. Agreements, arrangements or understandings between the Nominee and the Proposing Person(s): _____

Additional information about the Nominees named herein:

Each Group Nominee named in this Special Meeting Request is independent under the Board’s independence guidelines, the applicable rules of the New York Stock Exchange (“NYSE”), and the independence standards applicable to the Company under paragraph (a)(1) of Item 407 of Regulation S-K under the Exchange Act. Furthermore, [•] of the six candidates — those other than [•] — are independent of and unaffiliated with the Requesting Shareholder and the other Proposing Person(s).

Each Group Nominee named in this Special Meeting Request has consented to be named in a proxy statement and to serve as a director of the Company, if elected. If these Group Nominees are elected, they intend to discharge their duties as directors of the Company consistent with all applicable legal requirements, including the general fiduciary obligations imposed upon corporate directors. If elected, each of these Group Nominees would serve as a director until the Company’s annual meeting in 2015 and until a successor has been duly elected.

The Requesting Shareholder does not intend to compensate the Group Nominees in connection with their nomination. If elected, the Group Nominees will be entitled to such compensation from the Company as may be determined by the Company for non-employee directors, and which is described in the Company’s Definitive Proxy Statement on Schedule 14A, as filed with the SEC on March 26, 2014 for its 2014 annual meeting.

Except as disclosed in this Special Meeting Request, (i) no Group Nominee or any associate of a Group Nominee is a party adverse to the Company or any of its subsidiaries or has a material interest adverse to the Company or any of its subsidiaries in any material proceeding and (ii) there is no event that occurred during the past 10 years with respect to any of the Group Nominees that is required to be described under Item 401(f) of Regulation S-K. The information in this Special Meeting Request regarding a particular Group Nominee has been furnished to the Requesting Shareholder by such Group Nominee.

Additional information regarding transactions in the securities of the Company effected during the past two years by Group Nominees, is set forth on Appendix 1 to this Exhibit B.

Unless otherwise indicated, percentages of the outstanding shares of Company Common Stock reported in this Special Meeting Request were computed based upon the 297,556,619 shares of Company Common Stock outstanding as of May 1, 2014 (exclusive of approximately 10,035,841 shares of Company Common Stock held in treasury by the Company), as reported in the Company's Quarterly Report on Form 10-Q, as filed with the SEC on May 7, 2014.

In connection with this Special Meeting Request, the Requesting Shareholder has entered into customary indemnification agreements with each Group Nominee with respect to the nomination of such individual as a director of the Company at the Special Meeting. The indemnification agreement provides, among other things, that:

- The Requesting Shareholder will reimburse each Group Nominee for reasonable out-of-pocket expenses arising from or in connection with such person's participation in the proxy solicitation described in this Special Meeting Request;
- The Requesting Shareholder will, subject to limited exceptions and to the extent permitted by applicable law, indemnify and hold each Group Nominee harmless from and against all losses, claims, damages, liabilities and expenses (including, without limitation, attorneys' fees) incurred by such Group Nominee and also advance expenses in the event he becomes a party to litigation arising out of or relating to this proxy solicitation (but not in such Group Nominee's capacity as a director of the Company if elected).

Other than as disclosed in this Special Meeting Request, there are no arrangements or understandings between the undersigned and any Group Nominee or any other person or persons with respect to the nomination of the Group Nominees.

Except as set forth in this Special Meeting Request (including the appendices hereto), (i) during the past 10 years, none of the Group Nominees has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors); (ii) none of the Group Nominees directly or indirectly beneficially owns any securities of the Company; (iii) none of the Group Nominees owns any securities of the Company which are owned of record but not beneficially; (iv) none of the Group Nominees has purchased or sold any securities of the Company during the past two years; (v) no part of the purchase price or market value of the securities of the Company owned by any Group Nominee is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities; (vi) none of the Group Nominees is, or within the past year was, a party to any contract, arrangements or understandings with any person with respect to any securities of the Company, including, but not limited to, joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit, division of losses or profits, or the giving or withholding of proxies; (vii) no associate of any of the Group Nominees owns beneficially, directly or indirectly, any securities of the Company; (viii) none of the Group Nominees owns beneficially, directly or indirectly, any securities of any parent or subsidiary of the Company; (ix) none of the Group Nominees or any of his or its associates was a party to, or had a direct or indirect material interest in, any transaction, or series of similar transactions, since the beginning of the Company's last fiscal year, or is a party to any currently proposed transaction, or series of similar transactions, to which the Company or any of its subsidiaries was or is to be a party, in which the amount involved exceeds

\$120,000; (x) none of the Group Nominees or any of his or its associates has any arrangement or understanding with any person with respect to any future employment by the Company or its affiliates, or with respect to any future transactions to which the Company or any of its affiliates will or may be a party; (xi) none of the Group Nominees has a substantial interest, direct or indirect, by securities holdings or otherwise in any matter to be acted on at the Special Meeting; and (xii) none of the Group Nominees has a family relationship with any director, executive officer, or person nominated or chosen by the Company to become a director or executive officer.

For the purposes of the foregoing, the term “associates” has the meaning as that term is defined in Rule 14a-1 of Regulation 14A under the Exchange Act.

APPENDIX 1
TRANSACTIONS IN COMPANY COMMON STOCK BY GROUP NOMINEES

The following is a summary of all transactions in Company Common Stock and Company options over the last two years by the Group Nominees.

Company Common Stock

| <u>Trading Entity Name</u> | <u>Buy/Sell</u> | <u>Security</u> | <u>Trade Date</u> | <u>Quantity</u> | <u>Trade Amount</u> | <u>Per Share Cost</u> |
|----------------------------|-----------------|-----------------|-------------------|-----------------|---------------------|-----------------------|
|----------------------------|-----------------|-----------------|-------------------|-----------------|---------------------|-----------------------|

Stock-Settled Options

| <u>Trading Entity Name</u> | <u>Buy/Sell</u> | <u>Security</u> | <u>Trade Date</u> | <u>Quantity</u> | <u>Trade Amount</u> | <u>Expiration Date</u> | <u>Strike Price</u> |
|----------------------------|-----------------|-----------------|-------------------|-----------------|---------------------|------------------------|---------------------|
|----------------------------|-----------------|-----------------|-------------------|-----------------|---------------------|------------------------|---------------------|

Cash-Settled Options

| <u>Trading Entity Name</u> | <u>Buy/Sell</u> | <u>Security</u> | <u>Trade Date</u> | <u>Quantity</u> | <u>Trade Amount</u> | <u>Expiration Date</u> | <u>Strike Price</u> |
|----------------------------|-----------------|-----------------|-------------------|-----------------|---------------------|------------------------|---------------------|
|----------------------------|-----------------|-----------------|-------------------|-----------------|---------------------|------------------------|---------------------|

APPENDIX 2
TRANSACTIONS IN COMPANY COMMON STOCK BY THE PROPOSING PERSON

The following is a summary of all transactions in Company Common Stock and Company options over the last two years by the Proposing Person.

Company Common Stock

| <u>Trading Entity Name</u> | <u>Buy/Sell</u> | <u>Security</u> | <u>Trade Date</u> | <u>Quantity</u> | <u>Trade Amount</u> | <u>Per Share Cost</u> |
|----------------------------|-----------------|-----------------|-------------------|-----------------|---------------------|-----------------------|
|----------------------------|-----------------|-----------------|-------------------|-----------------|---------------------|-----------------------|

Stock-Settled Options

| <u>Trading Entity Name</u> | <u>Buy/Sell</u> | <u>Security</u> | <u>Trade Date</u> | <u>Quantity</u> | <u>Trade Amount</u> | <u>Expiration Date</u> | <u>Strike Price</u> |
|----------------------------|-----------------|-----------------|-------------------|-----------------|---------------------|------------------------|---------------------|
|----------------------------|-----------------|-----------------|-------------------|-----------------|---------------------|------------------------|---------------------|

Cash-Settled Options

| <u>Trading Entity Name</u> | <u>Buy/Sell</u> | <u>Security</u> | <u>Trade Date</u> | <u>Quantity</u> | <u>Trade Amount</u> | <u>Expiration Date</u> | <u>Strike Price</u> |
|----------------------------|-----------------|-----------------|-------------------|-----------------|---------------------|------------------------|---------------------|
|----------------------------|-----------------|-----------------|-------------------|-----------------|---------------------|------------------------|---------------------|

NOMINEE CONSENT

I, _____, hereby consent to being named as a nominee for the Board of Directors of the Company in any proxy, consent or information statement issued relating to the election of directors of the Company at any Special Meeting of shareholders. Furthermore, I consent to serve as a Director of Allergan, Inc. if so elected.

Dated as of: _____, 2014

Name:

EXHIBIT C
AMENDED AND RESTATED BYLAWS

ALLERGAN, INC.
a Delaware Corporation

AMENDED AND RESTATED BYLAWS

(As Amended and Restated Effective _____, 2014)

ARTICLE I: Offices

SECTION 1. Registered Office. The registered office of Allergan, Inc. (the "Corporation") shall be at The Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, State of Delaware 19808, and the name of the registered agent in charge thereof shall be The Prentice-Hall Corporation System, Inc.

SECTION 2. Principal Office. The principal office for the transaction of the business of the Corporation shall be at such place as the Board of Directors of the Corporation (the "Board") may determine. The Board is hereby granted full power and authority to change said principal office from one location to another.

SECTION 3. Other Offices. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II: Meetings of Stockholders

SECTION 1. Place of Meetings. All annual meetings of stockholders and all other meetings of stockholders shall be held either at the principal office of the Corporation or at any other place within or without the State of Delaware that may be designated by the Board pursuant to authority hereinafter granted to the Board.

SECTION 2. Annual Meetings. Annual meetings of stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings may be held at such time and place and on such date as the Board shall determine by resolution.

SECTION 3. Special Meetings.

~~Section 3.~~ (A) Special meetings of the stockholders of the Corporation (i) may be called by the Chairman of the Board, the Chief Executive Officer or the Board, at any time and for any purpose or purposes, and (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 (the "Requisite Percentage"), subject to and in compliance with Article 10 of the Amended and Restated Certificate of Incorporation of the Corporation (as the same may be amended and/or restated from time to time, the "Restated Certificate of Incorporation"), or any successor provision thereto, and this Section 3. Any special meeting of stockholders of the Corporation shall be held at such place, date and hour and with such record date as may be fixed by the Board in compliance with applicable law; provided, however, that in the case of a meeting called pursuant to clause (ii) of the preceding sentence, the place, date, hour and record date shall be as specified in the written request described in that clause (and in accordance with applicable law) and the Secretary shall mail the notice of such meeting to stockholders (specifying such place, date, hour and record date) as provided in Section 4 of this Article II (and the date of such meeting shall be publicly announced) no later than five business days after the date of receipt of such written request.

~~(A) 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"), in the form required by this section (A) of this Section 3, 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), and (ii) such Special Meeting Requests have been dated and delivered to the Secretary within sixty (60) days of the earliest dated Special Meeting Request. To be in proper form, such Special Meeting Request(s) shall comply with, and shall include and set forth, the following:

(1) As to each Proposing Person, (a) the name and address of each Proposing Person (including, if applicable, the name and address as they appear on the Corporation's books), (b) the class and number of shares of the Corporation which are owned beneficially and of record by such Proposing Person (with evidence of such ownership attached), except that such Proposing Person shall be deemed for such purpose to beneficially own any shares of any class or series of capital stock of the Corporation as to which such Proposing Person has the right to acquire (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both), (c) a representation that such Proposing Person intends to hold the shares of the Corporation described in the immediately preceding clause (b) through the date of the Stockholder Requested Special Meeting and (d) an acknowledgement by the Proposing Person that any reduction in such Proposing Person's Net Long Beneficial Ownership with respect to which a Special Meeting Request relates following the delivery of such Special Meeting Request to the Secretary shall constitute a revocation of such Special Meeting Request to the extent of such reduction;

(2) As to each Proposing Person, any Disclosable Interests (as defined below) of such Proposing Person;

(3) As to the purpose or purposes of the Stockholder Requested Special Meeting, a reasonably brief statement of the specific purpose or purposes of the Stockholder Requested Special Meeting, the matter(s) proposed to be acted on at the Stockholder Requested Special Meeting and the reasons for conducting such business at the Stockholder Requested Special Meeting, and the text of any proposal or business to be considered at the Stockholder Requested Special Meeting (including the text of any resolutions proposed to be considered and, in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment); and

(4) 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;

(5) Definitions:

(a) "Proposing Person" shall mean (i) each stockholder of record that signs a Special Meeting Request pursuant section (A) of this Section 3, (ii) the beneficial owner or beneficial owners, if different, on whose behalf such Special Meeting Request is made, (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation or associate (within the meaning of Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") for purposes of these Bylaws) of such stockholder or beneficial owner, and (iv) any other person with whom such stockholder or such beneficial owner (or any of their respective associates or other participants in such solicitation) is Acting in Concert.

(b) A person shall be deemed to be "Acting in Concert" with another person for purposes of these Bylaws if such person knowingly acts (whether or not pursuant to an express agreement, arrangement or

understanding) in concert or in parallel with, or towards a common goal with such other person, relating to changing or influencing the control of the Corporation or in connection with or as a participant in any transaction having that purpose or effect, where (i) each person is conscious of the other person's conduct and this awareness is an element in their decision-making processes and (ii) at least one additional factor suggests that such persons intend to act in concert or in parallel, which such additional factors may include, without limitation, exchanging information (whether publicly or privately), attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel; provided, that a person shall not be deemed to be Acting in Concert with any other person solely as a result of the solicitation or receipt of (x) revocable proxies or consents from such other person in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a proxy or consent solicitation statement filed on Schedule 14A or (y) tenders of securities from such other person in a public tender or exchange offer made pursuant to, and in accordance with, Section 14(d) of the Exchange Act by means of a tender offer statement filed on Schedule TO. A person Acting in Concert with another person shall be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other person.

(c) "Net Long Beneficial Ownership" shall mean those shares of common stock of the Corporation as to which the stockholder or Proposing Person, as applicable, possesses (i) the sole power to vote or direct the voting, (ii) the sole economic incidents of ownership (including the sole right to profits and the sole risk of loss), and (iii) the sole power to dispose of or direct the disposition; provided that the number of shares calculated in accordance with clauses (i), (ii) and (iii) shall not include any Synthetic Equity Position.

(d) "Disclosable Interests" shall mean (i) the full notional amount of any securities that, directly or indirectly, underlie any "derivative security" (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a "call equivalent position" (as such term is defined in Rule 16a-1(b) under the Exchange Act) ("Synthetic Equity Position") and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of shares of the Corporation; provided that, for the purposes of the definition of "Synthetic Equity Position," the term "derivative security" shall also include any security or instrument that would not otherwise constitute a "derivative security" as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, provided, further, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person's business as a derivatives dealer, (ii) any rights to dividends on the shares of any class or series of capital stock of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (iii) any material pending or threatened action, suit or proceeding (whether civil, criminal, investigative, administrative or otherwise) in which such Proposing Person is, or is reasonably expected to be made, a party or material participant involving the Corporation or any of its officers, directors or employees, or any affiliate of the Corporation, or any officer, director or employee of such affiliate, (iv) any other material relationship between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation, any officer, director or employee of the Corporation or any affiliate thereof, or any principal competitor of the Corporation, on the other hand, (v) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement) and (vi) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting; provided, however, that Disclosable Interests shall not include any such disclosures with

respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the Special Meeting Record Date Request or Special Meeting Request required by Article 10 of the Restated Certificate of Incorporation or these Bylaws on behalf of a beneficial owner.

~~(B) Notwithstanding anything to the contrary in this Section 3:~~

~~(1) The Secretary shall not accept, and shall consider ineffective, a Special Meeting Request if (a) such Special Meeting Request does not comply with Article 10 of the Restated Certificate of Incorporation, these Bylaws, or relates to an item of business that is not a proper subject for stockholder action under applicable law, (b) the Special Meeting Request is received by the Corporation during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting of stockholders and ending on the date of the final adjournment of the next annual meeting of stockholders, (c) an identical or substantially similar item (a "Similar Item") to that included in the Special Meeting Request was presented at any meeting of stockholders held within one year prior to receipt by the Corporation of such Special Meeting Request, (d) the Board calls an annual or special meeting of stockholders (in lieu of calling the Stockholder Requested Special Meeting) in accordance with section (B)(3) of this Section 3, (e) a Similar Item is already included in the Corporation's notice as an item of business to be brought before a meeting of the stockholders that has been called but not yet held, or (f) such Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Exchange Act, or other applicable law.~~

~~(2) Business transacted at any Stockholder Requested Special Meeting shall be limited to the purpose stated in the valid Special Meeting Request; provided, however, that nothing herein shall prohibit the Board from submitting matters to the stockholders at any Stockholder Requested Special Meeting. If none of the Proposing Persons who submitted the Special Meeting Request appears at or sends a qualified representative to the Stockholder Requested Special Meeting to present the matters to be presented for consideration that were specified in the Stockholder Meeting Request, the Corporation need not present such matters for a vote at such meeting. A "qualified representative" of a Proposing Person shall be, if such Proposing Person is (a) a general or limited partnership, any general partner or person who functions as a general partner of the general or limited partnership or who controls the general or limited partnership, (b) a corporation, a duly appointed officer of the corporation, (c) a limited liability company, any manager or officer (or person who functions as an officer) of the limited liability company or any officer, director, manager or person who functions as an officer, director or manager of any entity ultimately in control of the limited liability company or (d) a trust, any trustee of such trust.~~

~~(3) If a Special Meeting Request is made that complies with this Section 3 and Article 10 of the Restated Certificate of Incorporation, the Board may (in lieu of calling the Stockholder Requested Special Meeting) present a Similar Item for stockholder approval at any other meeting of stockholders that is held within one hundred twenty (120) days after the Corporation receives such Special Meeting Request.~~

~~(4) Any Proposing Person may revoke a Special Meeting Request by written revocation delivered to, or mailed and received by, the Secretary at any time prior to the date of the Stockholder Requested Special Meeting. In the event any revocation(s) are received by the Secretary after the Secretary's receipt of a valid Special Meeting Request(s) from the holders of the Requisite Percentage of stockholders or any Special Meeting Request is deemed to be revoked as a result of section (A)(1)(d) of this Section 3, and as a result of such revocation(s), there no longer are valid unrevoked Special Meeting Request(s) from the Requisite Percentage of stockholders to call a special meeting, the Board shall have the discretion to determine whether or not to proceed with the Stockholder Requested Special Meeting.~~

~~(5) Notwithstanding anything in these Bylaws to the contrary, the Secretary shall not be required to call a special meeting except in accordance with Article 10 of the Restated Certificate of Incorporation and this Section 3. If the Board shall determine that any Special Meeting Request was not properly made in accordance with Article 10 of the Restated Certificate of Incorporation or these Bylaws, or shall determine that the stockholder or stockholders submitting such Special Meeting Request have not otherwise complied with Article 10 of the Restated Certificate of~~

Incorporation or these Bylaws, then the Board shall not be required to take any action in connection with the Stockholder Requested Special Meeting, and the Secretary shall not be required to call such meeting. In addition to the requirements of this Section 3, each Proposing Person shall comply with all requirements of applicable law, including all requirements of the Exchange Act, with respect to any request to fix a Special Meeting Request.

~~(C) In connection with a Stockholder Requested Special Meeting called in accordance with this Section 3, each Proposing Person that signed and delivered a Special Meeting Request shall further update and supplement the information previously provided to the Corporation in connection with such request, if necessary, so that the information provided or required to be provided in such request pursuant to this Section 3 shall be true and correct as of the record date for notice of the Stockholder Requested Special Meeting and as of the date that is ten (10) business days prior to the Stockholder Requested Special Meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for notice of the special meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the special meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the special meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the Stockholder Requested Special Meeting or any adjournment or postponement thereof). As used herein, the term "business day" shall mean any day that is not a Saturday or Sunday or a day on which banks in the city of the Corporation's principal place of business are required or permitted to close.~~

~~(D)(B) Any special meeting of stockholders, including any Stockholder Requested Special Meeting, shall be held at such date and time as may be fixed by the Board in accordance with these Bylaws and in compliance with applicable law. The Chief Executive Officer or Secretary shall, within five business days after the earlier of (i) the first date on which the Corporation shall have no directors in office and (ii) the date on which the Court of Chancery issues an order requiring the Corporation to hold an election pursuant to Section 223 of the General Corporation Law of the State of Delaware, call a special meeting of stockholders of the Corporation for the election of directors and mail notice of such meeting as provided in Section 4 of this Article II. Any special meeting of stockholders of the Corporation so called shall be held at the place, date and hour and with the record date specified in the notice of such meeting and in accordance with applicable law (or, in the case of an election ordered by the Court of Chancery, at such other place, date and hour and with such other record date, if any, as may be specified by the Court of Chancery).~~

SECTION 4. Notice of Meetings. Except as otherwise required by law, notice of each meeting of stockholders, whether annual or special, shall be given not less than ten (10) days nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to such stockholder personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to such stockholder at such stockholder's post office address furnished by such stockholder to the Secretary of the Corporation for such purpose, or, if such stockholder shall not have furnished an address to the Secretary for such purpose, then at such stockholder's post office address last known to the Secretary, or by transmitting a notice thereof to such stockholder at such address by electronic transmission in accordance with Section 232 of the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law"). Except as otherwise expressly required by law, no publication of any notice of a meeting of stockholders shall be required. Every notice of a meeting of stockholders shall state the place, date and hour of the meeting and, in the case of a special meeting, shall also state the purpose for which the meeting is called. Notice of any meeting of stockholders shall not be required to be given to any stockholder to whom notice may be omitted pursuant to applicable law or who shall have waived such notice, and such notice shall be deemed waived by any stockholder who shall attend such meeting in person or by proxy, except a stockholder who shall attend such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Except as otherwise expressly required by law, notice of any adjourned meeting of stockholders need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.

SECTION 5. Quorum. Except as otherwise required by law, the holders of record of a majority in voting interest of the shares of stock of the Corporation entitled to be voted thereat, present in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of stockholders of the Corporation or any adjournment thereof. Subject to the requirement of a larger percentage vote contained in the Restated Certificate of Incorporation, these Amended and Restated Bylaws (these "Bylaws") or by statute, the stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding any withdrawal of stockholders that may leave less than a quorum remaining, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence thereof of all the stockholders, any officer entitled to preside at, or to act as secretary of, such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally called.

SECTION 6. Voting.

Each stockholder shall, at each meeting of stockholders, be entitled to vote in person or by proxy each share of stock of the Corporation that has voting rights on the matter in question and that shall have been held by such stockholder and registered in such stockholder's name on the books of the Corporation:

(A) on the date fixed pursuant to Article VI, Section 5 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting; or

(B) if no such record date shall have been so fixed, then (i) at the close of business on the day immediately preceding the day upon which notice of the meeting shall be given or (ii) if notice of the meeting shall be waived, at the close of business on the day immediately preceding the day upon which the meeting shall be held. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation the pledgor shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or the pledgee's proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two (2) or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the Delaware General Corporation Law.

Any such voting rights may be exercised by the stockholder entitled thereto in person or by such stockholder's proxy appointed by an instrument in writing (or in such manner prescribed by the Delaware General Corporation Law) by such stockholder or by such stockholder's attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three (3) years from its date unless said proxy shall provide for a longer period. The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless such stockholder shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of stockholders, all matters, except as otherwise provided in the Restated Certificate of Incorporation, in these Bylaws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon, a quorum being present. The vote at any meeting of stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by such stockholder's proxy, if there be such proxy, and it shall state the number of shares voted.

SECTION 7. List of Stockholders. The Secretary of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting,

arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of such stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, in such manner as prescribed by the Delaware General Corporation Law. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

SECTION 8. Judges. If at any meeting of stockholders a vote by written ballot shall be taken on any question, the chairman of such meeting may appoint a judge or judges to act with respect to such vote. Each judge so appointed shall first subscribe an oath faithfully to execute the duties of a judge at such meeting with strict impartiality and according to the best of such judge's ability. Such judges shall decide upon the qualification of the voters and shall report the number of shares represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against the question. Reports of judges shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. The judges need not be stockholders of the Corporation, and any officer of the Corporation may be a judge on any question other than a vote for or against a proposal in which such officer shall have a material interest.

SECTION 9. Notice of Stockholder Business and Nominations. ~~In addition to the provisions governing a~~ A stockholder's notice of nominations of persons for election to the Board, or the proposal of other business to be considered by the stockholders ~~provided for in~~, at any annual meeting of stockholders must comply with the applicable procedures set forth in Articles 11 and 12 of the Restated Certificate of Incorporation.

~~(A) Such stockholder's notice shall also set forth: (i) as to each person whom the stockholder proposes to nominate for election as a director, (a) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected, (b) any Disclosable Interests of such person (except that the term "Proposing Person" where it appears in sections (A)(1) and (2) of Section 3 shall be deemed to refer to such nominee) and (c) a description of any agreement, arrangement or understanding with any Noticing Person (defined below); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any interest in such business of such stockholder or the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to all Noticing Persons giving the notice (a) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among the Noticing Persons, (b) a description of any Disclosable Interests of any such Noticing Person (except that the term "Proposing Person" where it appears in sections (A)(1) and (2) of Section 3 shall be deemed to refer to such Noticing Person); (c) a representation that the stockholder of record submitting the notice is a holder of record of stock of the Corporation entitled to vote at such meeting, intends to continuously hold such stock of the Corporation through such meeting and intends to appear in person or by a qualified representative at the meeting to propose such business or nomination, and (d) a representation as to whether the stockholder of record submitting the notice or any Noticing Person intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) otherwise to solicit proxies from stockholders in support of such proposal or nomination. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.~~

~~The term "Noticing Person" shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation or~~

associate (within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owner, and (iv) any other person with whom such stockholder or such beneficial owner (or any of their respective associates or other participants in such solicitation) is Acting in Concert.

(B) A Noticing Person shall update and supplement its notice to the Corporation of its intent to propose business or a nomination at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 9 shall be true and correct as of the record date for notice of the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for notice of the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(C) The foregoing notice requirements of this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(D) Only such persons who are nominated in accordance with the procedures set forth in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation shall be eligible to be elected at an annual meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation. The only matters that may be brought before a special meeting of stockholders are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant Section 3 of these Bylaws, and stockholders shall not otherwise be permitted to nominate directors or propose business to be brought before a special meeting of stockholders. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty:

(i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (A)(iii) (d) of this Section 9) and (ii) if any proposed nomination or business was not made or proposed in compliance with this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear in person at the annual meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 9, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

~~(E) Notwithstanding the foregoing provisions of this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation; provided, however, that any references in these Bylaws or in the Restated Certificate of Incorporation to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any business to be considered pursuant to this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation and compliance with this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in clause (C) of this Section 9, matters brought properly under and in compliance with Rule 14a-8 of the Exchange Act). Nothing in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (ii) of the holders of any series of preferred stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.~~

ARTICLE III: Board of Directors

SECTION 1. General Powers. Subject to any requirements in the Restated Certificate of Incorporation, these Bylaws, and of the Delaware General Corporation Law as to action which must be authorized or approved by the stockholders, any and all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be under the direction of, the Board to the fullest extent permitted by law. Without limiting the generality of the foregoing, it is hereby expressly declared that the Board shall have the following powers, to wit:

(A) to select and remove all of the officers, agents and employees of the Corporation, prescribe such powers and duties for them as may not be inconsistent with law, the Restated Certificate of Incorporation or these Bylaws, fix their compensation, and require from them security for faithful service;

(B) to conduct, manage and control the affairs and business of the Corporation, and to make such rules and regulations therefor not inconsistent with law, the Restated Certificate of Incorporation or these Bylaws, as it may deem best;

(C) to change the location of the registered office of the Corporation in Article I, Section 1 hereof; to change the principal office for the transaction of the business of the Corporation from one location to another as provided in Article I, Section 2 hereof; to fix and locate from time to time one or more subsidiary offices of the Corporation within or without the State of Delaware as provided in Article I, Section 3 hereof; to designate any place within or without the State of Delaware for the holding of any meeting or meetings of stockholders; and to adopt, make and use a corporate seal, and to prescribe the forms of certificates of stock, and to alter the form of such seal and of such certificates from time to time, and in its judgment as it may deem best, provided such seal and such certificate shall at all times comply with the provisions of law;

(D) to authorize the issuance of shares of stock of the Corporation from time to time, upon such terms and for such considerations as may be lawful;

(E) to borrow money and incur indebtedness for the purposes of the Corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust and securities therefor; and

(F) by resolution adopted by a majority of the authorized number of directors, to designate an executive and other committees, each consisting of one or more directors, to serve at the pleasure of the Board, and to prescribe the manner in which proceedings of such committee or committees shall be conducted.

SECTION 2. Number and Term of Office. The authorized number of directors of the Corporation shall be ~~not less than five (5) nor more than fifteen (15) until this Section 2 is amended by a resolution duly adopted by the Board or by the stockholders of the Corporation. The exact number of directors shall be fixed from time to time within the limits specified by resolution of the Board or the stockholders.~~nine (9). Directors need not be stockholders. Each of the directors of the Corporation shall hold office until such director's successor shall have been duly elected and shall qualify or until such director shall resign or shall have been removed in the manner provided for in the Restated Certificate of Incorporation. At all times a majority of the directors shall be Independent Directors (as defined below). If a director ceases to be an Independent Director, and such change causes the majority of directors not to be Independent Directors, the Board shall take such action as it deems prudent and necessary to cause the Board to consist of directors, a majority of whom are Independent Directors.

SECTION 3. Election of Directors. Each director to be elected by the stockholders of the Corporation shall be elected by the affirmative vote of a majority of the votes cast with respect to such director by the shares represented and entitled to vote therefor at a meeting of the stockholders for the election of directors at which a quorum is present (an "Election Meeting"); provided, however, that if the Board determines that the number of nominees exceeds the number of directors to be elected at such meeting (a "Contested Election"), and the Board has not rescinded such determination by the record date of the Election Meeting as initially announced, each of the directors to be elected at the Election Meeting shall be elected by the affirmative vote of a plurality of the votes cast by the shares represented and entitled to vote at such meeting with respect to the election of such director.

For purposes of this Section 3, a "majority of the votes cast" means that the number of votes cast "for" a candidate for director exceeds the number of votes cast "against" that director (with "abstentions" and "broker non-votes" not counted as votes cast as either "for" or "against" such director's election). In an election other than a Contested Election, stockholders will be given the choice to cast votes "for" or "against" the election of directors. In a Contested Election, stockholders will be given the choice to cast "for" or "withhold" votes for the election of directors and shall not have the ability to cast any other vote with respect to such election of directors. In the event an Election Meeting involves the election of directors by separate votes by class or classes or series, the determination as to whether an election constitutes a Contested Election shall be made on a class by class or series by series basis, as applicable.

SECTION 4. Resignations. Any director of the Corporation may resign at any time upon notice given in writing or by electronic transmission to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time be not specified, it shall take effect immediately upon receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 5. Vacancies. Except as otherwise provided in the Restated Certificate of Incorporation, and subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, newly created directorships resulting from any increase in the number of directors or any vacancy on the Board resulting from death, resignation, disqualification, removal or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until such director's successor shall have been elected and shall qualify or until such director shall resign or shall have been removed.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

SECTION 6. Place of Meeting. The Board or any committee thereof may hold any of its meetings at such place or places within or without the State of Delaware as the Board or such committee may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or a waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board or

any committee thereof by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board or such committee can hear each other, and such participation shall constitute presence in person at such meeting.

SECTION 7. First Meeting. The Board shall meet as soon as practicable after each annual election of directors, and notice of such first meeting shall not be required.

SECTION 8. Regular Meetings. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day that is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

SECTION 9. Special Meetings. Special meetings of the Board for any purpose or purposes shall be called at any time by the Chairman of the Board or, if the Chairman of the Board is absent or unable or refuses to act, by the Chief Executive Officer or the President. Except as otherwise provided by law or by these Bylaws, special meetings of the Board shall be held upon at least four (4) days written notice or two (2) hours notice given personally, by telephone or by electronic transmission. Any such notice shall be addressed or delivered to each director at such director's address as is shown upon the records of the Corporation or as may have been given to the Corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held. Notice by mail shall be deemed to have been given at the time such notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for delivery or transmission. Notice by electronic transmission shall be deemed to have been given at the time it is actually transmitted by the person giving the notice by electronic means to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or similar means of communication, to the recipient or to a person at the office of the recipient whom the person giving the notice has reason to believe will promptly communicate it to the recipient. Except where otherwise required by law or these Bylaws, notice of the purpose of a special meeting need not be given. Notice of any meeting of the Board shall not be required to be given to any director who is present at such meeting, except a director who shall attend such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 10. Quorum and Manner of Acting. Except as otherwise provided in these Bylaws, the Restated Certificate of Incorporation or by applicable law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative vote of a majority of the directors present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, provided any action taken is approved by at least a majority of the required quorum for such meeting. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

SECTION 11. Action by Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if consent in writing or by electronic transmission is given thereto by all members of the Board or of such committee, as the case may be, and such consent, electronic transmission or transmissions are filed with the minutes of proceedings of the Board or of such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

SECTION 12. Compensation. Directors who are not employees of the Corporation or any of its subsidiaries may receive an annual fee for their services as directors in an amount fixed by resolution of the Board, and, in

addition, a fixed fee, with or without expenses of attendance, may be allowed by resolution of the Board for attendance at each meeting, including each meeting of a committee of the Board. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefor.

SECTION 13. Committees. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Any such committee, to the extent provided in the resolution of the Board and subject to any restrictions or limitation on the delegation of power and authority imposed by applicable law, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Any such committee shall keep written minutes of its meetings and report the same to the Board at the next regular meeting of the Board. Unless the Board or these Bylaws shall otherwise prescribe the manner of proceedings of any such committee, meetings of such committee may be regularly scheduled in advance and may be called at any time by the chairman of the committee or by any two (2) members thereof; otherwise, the provisions of these Bylaws with respect to notice and conduct of meetings of the Board shall govern.

SECTION 14. Definition of Independent Director. For purposes of this Article III, the term “Independent Director” shall mean:

(A) for purposes of determining whether a director is qualified to serve as a member of the audit committee of the Board, a director who meets the qualification requirements for being an independent director under applicable securities laws, including the Securities Exchange Act of 1934, as amended, applicable rules and regulations of the U.S. Securities and Exchange Commission and applicable rules and regulations of any stock exchange or securities market applicable to the Corporation; and

(B) for all other purposes, a director who meets the qualification requirements for being an independent director under applicable rules and regulations of any stock exchange or securities market applicable to the Corporation.

SECTION 15. Interpretation and Application of this Article. The Board shall have the exclusive right and power to interpret and apply the provisions of this Article, including, without limitation, the adoption of written definitions of terms used in and guidelines for the application of this Article (any such definitions and guidelines shall be filed with the Secretary, and such definitions and guidelines as may prevail shall be made available to any stockholder upon written request). Any such definitions or guidelines and any other interpretation or application of the provisions of this Article made in good faith shall be binding and conclusive upon the stockholders, provided that, in the case of any interpretation or application of this Article by the Board to a specific person which results in such person being classified as an Independent Director, the Board shall have determined that such person is independent of management and free from any relationship that, in the opinion of the Board, would interfere with such person’s exercise of independent judgment as a Board member.

ARTICLE IV: Officers

SECTION 1. SECTION 1. Officers. The officers of the Corporation shall be a Chairman of the Board, a Chief Executive Officer, a President, one or more Vice Presidents (the number thereof and their respective titles to be determined by the Board), a Secretary, a Treasurer and such other officers as may be appointed at the discretion of the Board in accordance with the provisions of Section 3 of this Article IV. At the discretion of the Board, from time to time, the Chairman of the Board may be a director of the Corporation who is not an officer of the Corporation.

SECTION 2. Election. The officers of the Corporation, except such officers as may be appointed or elected in accordance with the provisions of Section 3 or Section 5 of this Article IV, shall be chosen annually by the

Board at the first meeting thereof, and each officer shall hold office until such officer shall resign or shall be removed or otherwise disqualified to serve, or until such officer's successor shall be elected and qualified.

SECTION 3. Other Officers. In addition to the officers chosen annually by the Board at its first meeting, the Board also may appoint or elect such other officers as the business of the Corporation may require, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board may from time to time specify, and shall hold office until such officer shall resign or shall be removed or otherwise disqualified to serve, or until such officer's successor shall be elected and qualified.

SECTION 4. Removal and Resignation. Any officer may be removed, either with or without cause, by resolution of the Board passed by a majority of the directors at the time in office, at any regular or special meeting of the Board, or except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

SECTION 5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointment to such office.

SECTION 6. Chairman of the Board. The Chairman of the Board shall preside at all meetings of stockholders and at all meetings of the Board. The Chairman of the Board shall be a member of such committees, if any, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

SECTION 7. Chief Executive Officer. The Chief Executive Officer shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation.

SECTION 8. President. The President shall have such powers and perform such duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned by the Chief Executive Officer or the Board, or as may be prescribed by these Bylaws.

SECTION 9. Vice President. Each Vice President shall have such powers and perform such duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to such Vice President by the Chief Executive Officer, the President or the Board, or as may be prescribed by these Bylaws.

SECTION 10. Secretary. The Secretary shall keep, or cause to be kept, at the principal office of the Corporation, or such other place as the Board may order, a book of minutes of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at meetings of directors, the number of shares present or represented at meetings of stockholders, and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the name and address of each stockholder, the number of shares of each class held by such stockholder, the number and date of certificates issued for certificated shares, the number and date of issuance of uncertificated shares, and the number and date of cancellation of certificated shares surrendered for cancellation or for uncertificated shares.

The Secretary shall give, or cause to be given, notice of all meetings of stockholders and of the Board required by these Bylaws or by law to be given, and shall keep the seal of the Corporation in safe custody and, if necessary or appropriate, shall affix and attest the seal to all documents to be executed on behalf of the Corporation under its seal, and shall have such other powers and perform such other duties as may be prescribed by these Bylaws or assigned by the Board, the Chairman of the Board or any officer of the Corporation to whom the Secretary may report. If for any reason the Secretary shall fail to give notice of any special meeting of the Board called by one or more of the persons identified in Article III, Section 9 hereof, then any such person or persons may give notice of any such special meeting.

SECTION 11. Treasurer. The Treasurer shall supervise, have custody of and be responsible for all funds and securities of the Corporation. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board or in accordance with authority delegated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered or authorized by the Board, shall render to the Board and the Chairman of the Board whenever they request it, an account of all of the Treasurer's transactions, and shall have such other powers and perform such other duties as may be prescribed by these Bylaws or assigned by the Board, the Chairman of the Board or any officer of the Corporation to whom the Treasurer may report.

ARTICLE V: Contracts, Checks, Drafts, Bank Accounts, Etc.

SECTION 1. Execution of Contracts. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

SECTION 2. Checks, Drafts, Etc. All checks, drafts, or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such officer, assistant, agent or attorney shall give such bond, if any, as the Board may require.

SECTION 3. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Treasurer or the Secretary (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall from time to time be determined by the Board) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

SECTION 4. General and Special Bank Accounts. The Board may from time to time authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by any officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI: Shares and Their Transfer

SECTION 1. Certificates for Stock. The shares of stock of the Corporation may be certificated or uncertificated, as provided under Delaware law. Every holder of stock represented by certificates shall be entitled to have a certificate or certificates, to be in such form as the Board shall prescribe, certifying the number and class of shares of the stock of the Corporation owned by such holder. The certificates representing certificated shares of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, the Chief Executive Officer, the President or any Vice President, and by the Secretary or the Treasurer. Any or all of the signatures on the certificates may be a facsimile. In case any officer, transfer agent or registrar who has signed, or whose facsimile signature has been placed upon, any such certificate, shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as

though the person who signed such certificate, or whose facsimile signature shall have been placed thereupon, were such officer, transfer agent or registrar at the date of issue. Every certificate surrendered to the Corporation for exchange or transfer shall be canceled, and no new certificate or certificates or uncertificated shares shall be issued in exchange for any existing certificate until such existing certificate shall have been so canceled, except in cases provided for in Section 4 of this Article VI.

SECTION 2. Transfers of Stock. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by such holder's attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 3 of this Article VI, and, if such shares are represented by a certificate, upon surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes with regard to the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be so expressed in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer or uncertificated shares are requested to be transferred, both the transferor and the transferee request the Corporation to do so.

SECTION 3. Regulations. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. It may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

SECTION 4. Lost, Stolen, Destroyed, and Mutilated Certificates. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another certificate or uncertificated shares may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sum as the Board may direct; provided, however, that a new certificate or uncertificated shares may be issued without requiring any bond when, in the judgment of the Board, it is proper so to do.

SECTION 5. Fixing Date for Determination of Stockholders of Record.

(A) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting. A determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of such meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(B) The record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be fixed in the manner provided for in the Restated Certificate of Incorporation.

(C) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted and which record date shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be the close of business on the day on which the Board adopts the resolution relating thereto.

ARTICLE VII: Miscellaneous

SECTION 1. Seal. The Board shall adopt a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words showing that the Corporation was incorporated in the State of Delaware.

SECTION 2. Waiver of Notices. Whenever notice is required to be given by these Bylaws or the Restated Certificate of Incorporation or by law, the person entitled to said notice may waive such notice in writing, either before or after the time stated therein, and such waiver shall be deemed equivalent to notice.

SECTION 3. Amendments. Except as otherwise provided herein or in the Restated Certificate of Incorporation, these Bylaws or any of them may be altered, amended, repealed or rescinded and new Bylaws may be adopted by the Board or by the stockholders at any annual or special meeting of stockholders, provided that notice of such proposed alteration, amendment, repeal, rescission or adoption is given in the notice of such meeting.

SECTION 4. Representation of Other Corporations. The Chairman of the Board, the Chief Executive Officer, the President, the Secretary or any Vice President of the Corporation is authorized to vote, represent and exercise on behalf of the Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the Corporation. The authority herein granted to said officers to vote or represent on behalf of the Corporation any and all shares held by the Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by such officers.

EXHIBIT B

PROXY CARD

PRELIMINARY PROXY STATEMENT – SUBJECT TO COMPLETION

THIS PROXY IS BEING SOLICITED BY THE REQUESTING SHAREHOLDER AND NOT BY ALLERGAN
OR THE BOARD OF DIRECTORS OF ALLERGAN

Please sign and date your white proxy card and return it in the postage-paid envelope provided or return it
to: D.F. King & Co., Inc., 48 Wall Street, New York, NY 10005.

EXHIBIT B

WHITE PROXY CARD

ALLERGAN, INC.

SPECIAL MEETING OF SHAREHOLDERS

THIS PROXY IS SOLICITED ON BEHALF OF PS FUND 1, LLC.

THE BOARD OF DIRECTORS OF ALLERGAN, INC. IS NOT SOLICITING THIS PROXY

PLEASE MARK AS IN THIS EXAMPLE.

The undersigned hereby appoints [•] and [•], or either of them, proxies or proxy, with full power of substitution, to submit the attached Special Meeting Request Form to the Company's Secretary on behalf of such Allergan, Inc. shareholder.

Signature

Signature if held jointly

Dated

Please sign exactly as name appears hereon. Joint owners should each sign. When signing as attorney, executor, administrator, trustee or guardian, please give full title as such. If a corporation, please sign in full corporate name by authorized officer, giving full title. If a partnership, please signing partnership name by authorized person, giving full title.

EXHIBIT C

PROPOSED REVISIONS TO BYLAWS

[See attached]

ALLERGAN, INC.
a Delaware Corporation

AMENDED AND RESTATED BYLAWS

(As Amended and Restated Effective _____, 2014)

ARTICLE I: Offices

SECTION 1. Registered Office. The registered office of Allergan, Inc. (the "Corporation") shall be at The Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, State of Delaware 19808, and the name of the registered agent in charge thereof shall be The Prentice-Hall Corporation System, Inc.

SECTION 2. Principal Office. The principal office for the transaction of the business of the Corporation shall be at such place as the Board of Directors of the Corporation (the "Board") may determine. The Board is hereby granted full power and authority to change said principal office from one location to another.

SECTION 3. Other Offices. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II: Meetings of Stockholders

SECTION 1. Place of Meetings. All annual meetings of stockholders and all other meetings of stockholders shall be held either at the principal office of the Corporation or at any other place within or without the State of Delaware that may be designated by the Board pursuant to authority hereinafter granted to the Board.

SECTION 2. Annual Meetings. Annual meetings of stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings may be held at such time and place and on such date as the Board shall determine by resolution.

SECTION 3. Special Meetings.

~~Section 3.~~ (A) Special meetings of the stockholders of the Corporation (i) may be called by the Chairman of the Board, the Chief Executive Officer or the Board, at any time and for any purpose or purposes, and (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 (the "Requisite Percentage"), subject to and in compliance with Article 10 of the Amended and Restated Certificate of Incorporation of the Corporation (as the same may be amended and/or restated from time to time, the "Restated Certificate of Incorporation"), or any successor provision thereto, and this Section 3. Any special meeting of stockholders of the Corporation shall be held at such place, date and hour and with such record date as may be fixed by the Board in compliance with applicable law; provided, however, that in the case of a meeting called pursuant to clause (ii) of the preceding sentence, the place, date, hour and record date shall be as specified in the written request described in that clause (and in accordance with applicable law) and the Secretary shall mail the notice of such meeting to stockholders (specifying such place, date, hour and record date) as provided in Section 4 of this Article II (and the date of such meeting shall be publicly announced) no later than five business days after the date of receipt of such written request.

~~(A) 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"), in the form required by this section (A) of this Section 3, 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), and (ii) such Special Meeting Requests have been dated and delivered to the Secretary within sixty (60) days of the earliest dated Special Meeting Request. To be in proper form, such Special Meeting Request(s) shall comply with, and shall include and set forth, the following:

(1) As to each Proposing Person, (a) the name and address of each Proposing Person (including, if applicable, the name and address as they appear on the Corporation's books), (b) the class and number of shares of the Corporation which are owned beneficially and of record by such Proposing Person (with evidence of such ownership attached), except that such Proposing Person shall be deemed for such purpose to beneficially own any shares of any class or series of capital stock of the Corporation as to which such Proposing Person has the right to acquire (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both), (c) a representation that such Proposing Person intends to hold the shares of the Corporation described in the immediately preceding clause (b) through the date of the Stockholder Requested Special Meeting and (d) an acknowledgement by the Proposing Person that any reduction in such Proposing Person's Net Long Beneficial Ownership with respect to which a Special Meeting Request relates following the delivery of such Special Meeting Request to the Secretary shall constitute a revocation of such Special Meeting Request to the extent of such reduction;

(2) As to each Proposing Person, any Disclosable Interests (as defined below) of such Proposing Person;

(3) As to the purpose or purposes of the Stockholder Requested Special Meeting, a reasonably brief statement of the specific purpose or purposes of the Stockholder Requested Special Meeting, the matter(s) proposed to be acted on at the Stockholder Requested Special Meeting and the reasons for conducting such business at the Stockholder Requested Special Meeting, and the text of any proposal or business to be considered at the Stockholder Requested Special Meeting (including the text of any resolutions proposed to be considered and, in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment); and

(4) 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;

(5) Definitions:

(a) "Proposing Person" shall mean (i) each stockholder of record that signs a Special Meeting Request pursuant section (A) of this Section 3, (ii) the beneficial owner or beneficial owners, if different, on whose behalf such Special Meeting Request is made, (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation or associate (within the meaning of Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") for purposes of these Bylaws) of such stockholder or beneficial owner, and (iv) any other person with whom such stockholder or such beneficial owner (or any of their respective associates or other participants in such solicitation) is Acting in Concert.

(b) A person shall be deemed to be "Acting in Concert" with another person for purposes of these Bylaws if such person knowingly acts (whether or not pursuant to an express agreement, arrangement or

understanding) in concert or in parallel with, or towards a common goal with such other person, relating to changing or influencing the control of the Corporation or in connection with or as a participant in any transaction having that purpose or effect, where (i) each person is conscious of the other person's conduct and this awareness is an element in their decision-making processes and (ii) at least one additional factor suggests that such persons intend to act in concert or in parallel, which such additional factors may include, without limitation, exchanging information (whether publicly or privately), attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel; provided, that a person shall not be deemed to be Acting in Concert with any other person solely as a result of the solicitation or receipt of (x) revocable proxies or consents from such other person in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a proxy or consent solicitation statement filed on Schedule 14A or (y) tenders of securities from such other person in a public tender or exchange offer made pursuant to, and in accordance with, Section 14(d) of the Exchange Act by means of a tender offer statement filed on Schedule TO. A person Acting in Concert with another person shall be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other person.

(c) "Net Long Beneficial Ownership" shall mean those shares of common stock of the Corporation as to which the stockholder or Proposing Person, as applicable, possesses (i) the sole power to vote or direct the voting, (ii) the sole economic incidents of ownership (including the sole right to profits and the sole risk of loss), and (iii) the sole power to dispose of or direct the disposition; provided that the number of shares calculated in accordance with clauses (i), (ii) and (iii) shall not include any Synthetic Equity Position.

(d) "Disclosable Interests" shall mean (i) the full notional amount of any securities that, directly or indirectly, underlie any "derivative security" (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a "call equivalent position" (as such term is defined in Rule 16a-1(b) under the Exchange Act) ("Synthetic Equity Position") and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of shares of the Corporation; provided that, for the purposes of the definition of "Synthetic Equity Position," the term "derivative security" shall also include any security or instrument that would not otherwise constitute a "derivative security" as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, provided, further, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person's business as a derivatives dealer, (ii) any rights to dividends on the shares of any class or series of capital stock of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (iii) any material pending or threatened action, suit or proceeding (whether civil, criminal, investigative, administrative or otherwise) in which such Proposing Person is, or is reasonably expected to be made, a party or material participant involving the Corporation or any of its officers, directors or employees, or any affiliate of the Corporation, or any officer, director or employee of such affiliate, (iv) any other material relationship between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation, any officer, director or employee of the Corporation or any affiliate thereof, or any principal competitor of the Corporation, on the other hand, (v) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement) and (vi) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting; provided, however, that Disclosable Interests shall not include any such disclosures with

respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the Special Meeting Record Date Request or Special Meeting Request required by Article 10 of the Restated Certificate of Incorporation or these Bylaws on behalf of a beneficial owner.

~~(B) Notwithstanding anything to the contrary in this Section 3:~~

~~(1) The Secretary shall not accept, and shall consider ineffective, a Special Meeting Request if (a) such Special Meeting Request does not comply with Article 10 of the Restated Certificate of Incorporation, these Bylaws, or relates to an item of business that is not a proper subject for stockholder action under applicable law, (b) the Special Meeting Request is received by the Corporation during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting of stockholders and ending on the date of the final adjournment of the next annual meeting of stockholders, (c) an identical or substantially similar item (a "Similar Item") to that included in the Special Meeting Request was presented at any meeting of stockholders held within one year prior to receipt by the Corporation of such Special Meeting Request, (d) the Board calls an annual or special meeting of stockholders (in lieu of calling the Stockholder Requested Special Meeting) in accordance with section (B)(3) of this Section 3, (e) a Similar Item is already included in the Corporation's notice as an item of business to be brought before a meeting of the stockholders that has been called but not yet held, or (f) such Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Exchange Act, or other applicable law.~~

~~(2) Business transacted at any Stockholder Requested Special Meeting shall be limited to the purpose stated in the valid Special Meeting Request; provided, however, that nothing herein shall prohibit the Board from submitting matters to the stockholders at any Stockholder Requested Special Meeting. If none of the Proposing Persons who submitted the Special Meeting Request appears at or sends a qualified representative to the Stockholder Requested Special Meeting to present the matters to be presented for consideration that were specified in the Stockholder Meeting Request, the Corporation need not present such matters for a vote at such meeting. A "qualified representative" of a Proposing Person shall be, if such Proposing Person is (a) a general or limited partnership, any general partner or person who functions as a general partner of the general or limited partnership or who controls the general or limited partnership, (b) a corporation, a duly appointed officer of the corporation, (c) a limited liability company, any manager or officer (or person who functions as an officer) of the limited liability company or any officer, director, manager or person who functions as an officer, director or manager of any entity ultimately in control of the limited liability company or (d) a trust, any trustee of such trust.~~

~~(3) If a Special Meeting Request is made that complies with this Section 3 and Article 10 of the Restated Certificate of Incorporation, the Board may (in lieu of calling the Stockholder Requested Special Meeting) present a Similar Item for stockholder approval at any other meeting of stockholders that is held within one hundred twenty (120) days after the Corporation receives such Special Meeting Request.~~

~~(4) Any Proposing Person may revoke a Special Meeting Request by written revocation delivered to, or mailed and received by, the Secretary at any time prior to the date of the Stockholder Requested Special Meeting. In the event any revocation(s) are received by the Secretary after the Secretary's receipt of a valid Special Meeting Request(s) from the holders of the Requisite Percentage of stockholders or any Special Meeting Request is deemed to be revoked as a result of section (A)(1)(d) of this Section 3, and as a result of such revocation(s), there no longer are valid unrevoked Special Meeting Request(s) from the Requisite Percentage of stockholders to call a special meeting, the Board shall have the discretion to determine whether or not to proceed with the Stockholder Requested Special Meeting.~~

~~(5) Notwithstanding anything in these Bylaws to the contrary, the Secretary shall not be required to call a special meeting except in accordance with Article 10 of the Restated Certificate of Incorporation and this Section 3. If the Board shall determine that any Special Meeting Request was not properly made in accordance with Article 10 of the Restated Certificate of Incorporation or these Bylaws, or shall determine that the stockholder or stockholders submitting such Special Meeting Request have not otherwise complied with Article 10 of the Restated Certificate of~~

Incorporation or these Bylaws, then the Board shall not be required to take any action in connection with the Stockholder Requested Special Meeting, and the Secretary shall not be required to call such meeting. In addition to the requirements of this Section 3, each Proposing Person shall comply with all requirements of applicable law, including all requirements of the Exchange Act, with respect to any request to fix a Special Meeting Request.

~~(C) In connection with a Stockholder Requested Special Meeting called in accordance with this Section 3, each Proposing Person that signed and delivered a Special Meeting Request shall further update and supplement the information previously provided to the Corporation in connection with such request, if necessary, so that the information provided or required to be provided in such request pursuant to this Section 3 shall be true and correct as of the record date for notice of the Stockholder Requested Special Meeting and as of the date that is ten (10) business days prior to the Stockholder Requested Special Meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for notice of the special meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the special meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the special meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the Stockholder Requested Special Meeting or any adjournment or postponement thereof). As used herein, the term "business day" shall mean any day that is not a Saturday or Sunday or a day on which banks in the city of the Corporation's principal place of business are required or permitted to close.~~

~~(D)(B) Any special meeting of stockholders, including any Stockholder Requested Special Meeting, shall be held at such date and time as may be fixed by the Board in accordance with these Bylaws and in compliance with applicable law. The Chief Executive Officer or Secretary shall, within five business days after the earlier of (i) the first date on which the Corporation shall have no directors in office and (ii) the date on which the Court of Chancery issues an order requiring the Corporation to hold an election pursuant to Section 223 of the General Corporation Law of the State of Delaware, call a special meeting of stockholders of the Corporation for the election of directors and mail notice of such meeting as provided in Section 4 of this Article II. Any special meeting of stockholders of the Corporation so called shall be held at the place, date and hour and with the record date specified in the notice of such meeting and in accordance with applicable law (or, in the case of an election ordered by the Court of Chancery, at such other place, date and hour and with such other record date, if any, as may be specified by the Court of Chancery).~~

SECTION 4. Notice of Meetings. Except as otherwise required by law, notice of each meeting of stockholders, whether annual or special, shall be given not less than ten (10) days nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to such stockholder personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to such stockholder at such stockholder's post office address furnished by such stockholder to the Secretary of the Corporation for such purpose, or, if such stockholder shall not have furnished an address to the Secretary for such purpose, then at such stockholder's post office address last known to the Secretary, or by transmitting a notice thereof to such stockholder at such address by electronic transmission in accordance with Section 232 of the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law"). Except as otherwise expressly required by law, no publication of any notice of a meeting of stockholders shall be required. Every notice of a meeting of stockholders shall state the place, date and hour of the meeting and, in the case of a special meeting, shall also state the purpose for which the meeting is called. Notice of any meeting of stockholders shall not be required to be given to any stockholder to whom notice may be omitted pursuant to applicable law or who shall have waived such notice, and such notice shall be deemed waived by any stockholder who shall attend such meeting in person or by proxy, except a stockholder who shall attend such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Except as otherwise expressly required by law, notice of any adjourned meeting of stockholders need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.

SECTION 5. Quorum. Except as otherwise required by law, the holders of record of a majority in voting interest of the shares of stock of the Corporation entitled to be voted thereat, present in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of stockholders of the Corporation or any adjournment thereof. Subject to the requirement of a larger percentage vote contained in the Restated Certificate of Incorporation, these Amended and Restated Bylaws (these "Bylaws") or by statute, the stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding any withdrawal of stockholders that may leave less than a quorum remaining, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence thereof of all the stockholders, any officer entitled to preside at, or to act as secretary of, such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally called.

SECTION 6. Voting.

Each stockholder shall, at each meeting of stockholders, be entitled to vote in person or by proxy each share of stock of the Corporation that has voting rights on the matter in question and that shall have been held by such stockholder and registered in such stockholder's name on the books of the Corporation:

(A) on the date fixed pursuant to Article VI, Section 5 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting; or

(B) if no such record date shall have been so fixed, then (i) at the close of business on the day immediately preceding the day upon which notice of the meeting shall be given or (ii) if notice of the meeting shall be waived, at the close of business on the day immediately preceding the day upon which the meeting shall be held. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation the pledgor shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or the pledgee's proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two (2) or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the Delaware General Corporation Law.

Any such voting rights may be exercised by the stockholder entitled thereto in person or by such stockholder's proxy appointed by an instrument in writing (or in such manner prescribed by the Delaware General Corporation Law) by such stockholder or by such stockholder's attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three (3) years from its date unless said proxy shall provide for a longer period. The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless such stockholder shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of stockholders, all matters, except as otherwise provided in the Restated Certificate of Incorporation, in these Bylaws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon, a quorum being present. The vote at any meeting of stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by such stockholder's proxy, if there be such proxy, and it shall state the number of shares voted.

SECTION 7. List of Stockholders. The Secretary of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting,

arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of such stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, in such manner as prescribed by the Delaware General Corporation Law. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

SECTION 8. Judges. If at any meeting of stockholders a vote by written ballot shall be taken on any question, the chairman of such meeting may appoint a judge or judges to act with respect to such vote. Each judge so appointed shall first subscribe an oath faithfully to execute the duties of a judge at such meeting with strict impartiality and according to the best of such judge's ability. Such judges shall decide upon the qualification of the voters and shall report the number of shares represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against the question. Reports of judges shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. The judges need not be stockholders of the Corporation, and any officer of the Corporation may be a judge on any question other than a vote for or against a proposal in which such officer shall have a material interest.

SECTION 9. Notice of Stockholder Business and Nominations. ~~In addition to the provisions governing a~~ A stockholder's notice of nominations of persons for election to the Board, or the proposal of other business to be considered by the stockholders ~~provided for in~~, at any annual meeting of stockholders must comply with the applicable procedures set forth in Articles 11 and 12 of the Restated Certificate of Incorporation.

~~(A) Such stockholder's notice shall also set forth: (i) as to each person whom the stockholder proposes to nominate for election as a director, (a) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected, (b) any Disclosable Interests of such person (except that the term "Proposing Person" where it appears in sections (A)(1) and (2) of Section 3 shall be deemed to refer to such nominee) and (c) a description of any agreement, arrangement or understanding with any Noticing Person (defined below); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any interest in such business of such stockholder or the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to all Noticing Persons giving the notice (a) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among the Noticing Persons, (b) a description of any Disclosable Interests of any such Noticing Person (except that the term "Proposing Person" where it appears in sections (A) (1) and (2) of Section 3 shall be deemed to refer to such Noticing Person); (c) a representation that the stockholder of record submitting the notice is a holder of record of stock of the Corporation entitled to vote at such meeting, intends to continuously hold such stock of the Corporation through such meeting and intends to appear in person or by a qualified representative at the meeting to propose such business or nomination, and (d) a representation as to whether the stockholder of record submitting the notice or any Noticing Person intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) otherwise to solicit proxies from stockholders in support of such proposal or nomination. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.~~

~~The term "Noticing Person" shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation or~~

associate (within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owner, and (iv) any other person with whom such stockholder or such beneficial owner (or any of their respective associates or other participants in such solicitation) is Acting in Concert.

(B) A Noticing Person shall update and supplement its notice to the Corporation of its intent to propose business or a nomination at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 9 shall be true and correct as of the record date for notice of the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for notice of the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(C) The foregoing notice requirements of this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(D) Only such persons who are nominated in accordance with the procedures set forth in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation shall be eligible to be elected at an annual meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation. The only matters that may be brought before a special meeting of stockholders are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant Section 3 of these Bylaws, and stockholders shall not otherwise be permitted to nominate directors or propose business to be brought before a special meeting of stockholders. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty:

(i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (A)(iii) (d) of this Section 9) and (ii) if any proposed nomination or business was not made or proposed in compliance with this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear in person at the annual meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 9, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

~~(E) Notwithstanding the foregoing provisions of this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation; provided, however, that any references in these Bylaws or in the Restated Certificate of Incorporation to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any business to be considered pursuant to this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation and compliance with this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in clause (C) of this Section 9, matters brought properly under and in compliance with Rule 14a-8 of the Exchange Act). Nothing in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (ii) of the holders of any series of preferred stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.~~

ARTICLE III: Board of Directors

SECTION 1. General Powers. Subject to any requirements in the Restated Certificate of Incorporation, these Bylaws, and of the Delaware General Corporation Law as to action which must be authorized or approved by the stockholders, any and all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be under the direction of, the Board to the fullest extent permitted by law. Without limiting the generality of the foregoing, it is hereby expressly declared that the Board shall have the following powers, to wit:

(A) to select and remove all of the officers, agents and employees of the Corporation, prescribe such powers and duties for them as may not be inconsistent with law, the Restated Certificate of Incorporation or these Bylaws, fix their compensation, and require from them security for faithful service;

(B) to conduct, manage and control the affairs and business of the Corporation, and to make such rules and regulations therefor not inconsistent with law, the Restated Certificate of Incorporation or these Bylaws, as it may deem best;

(C) to change the location of the registered office of the Corporation in Article I, Section 1 hereof; to change the principal office for the transaction of the business of the Corporation from one location to another as provided in Article I, Section 2 hereof; to fix and locate from time to time one or more subsidiary offices of the Corporation within or without the State of Delaware as provided in Article I, Section 3 hereof; to designate any place within or without the State of Delaware for the holding of any meeting or meetings of stockholders; and to adopt, make and use a corporate seal, and to prescribe the forms of certificates of stock, and to alter the form of such seal and of such certificates from time to time, and in its judgment as it may deem best, provided such seal and such certificate shall at all times comply with the provisions of law;

(D) to authorize the issuance of shares of stock of the Corporation from time to time, upon such terms and for such considerations as may be lawful;

(E) to borrow money and incur indebtedness for the purposes of the Corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust and securities therefor; and

(F) by resolution adopted by a majority of the authorized number of directors, to designate an executive and other committees, each consisting of one or more directors, to serve at the pleasure of the Board, and to prescribe the manner in which proceedings of such committee or committees shall be conducted.

SECTION 2. Number and Term of Office. The authorized number of directors of the Corporation shall be ~~not less than five (5) nor more than fifteen (15) until this Section 2 is amended by a resolution duly adopted by the Board or by the stockholders of the Corporation. The exact number of directors shall be fixed from time to time within the limits specified by resolution of the Board or the stockholders.~~ nine (9). Directors need not be stockholders. Each of the directors of the Corporation shall hold office until such director's successor shall have been duly elected and shall qualify or until such director shall resign or shall have been removed in the manner provided for in the Restated Certificate of Incorporation. At all times a majority of the directors shall be Independent Directors (as defined below). If a director ceases to be an Independent Director, and such change causes the majority of directors not to be Independent Directors, the Board shall take such action as it deems prudent and necessary to cause the Board to consist of directors, a majority of whom are Independent Directors.

SECTION 3. Election of Directors. Each director to be elected by the stockholders of the Corporation shall be elected by the affirmative vote of a majority of the votes cast with respect to such director by the shares represented and entitled to vote therefor at a meeting of the stockholders for the election of directors at which a quorum is present (an "Election Meeting"); provided, however, that if the Board determines that the number of nominees exceeds the number of directors to be elected at such meeting (a "Contested Election"), and the Board has not rescinded such determination by the record date of the Election Meeting as initially announced, each of the directors to be elected at the Election Meeting shall be elected by the affirmative vote of a plurality of the votes cast by the shares represented and entitled to vote at such meeting with respect to the election of such director.

For purposes of this Section 3, a "majority of the votes cast" means that the number of votes cast "for" a candidate for director exceeds the number of votes cast "against" that director (with "abstentions" and "broker non-votes" not counted as votes cast as either "for" or "against" such director's election). In an election other than a Contested Election, stockholders will be given the choice to cast votes "for" or "against" the election of directors. In a Contested Election, stockholders will be given the choice to cast "for" or "withhold" votes for the election of directors and shall not have the ability to cast any other vote with respect to such election of directors. In the event an Election Meeting involves the election of directors by separate votes by class or classes or series, the determination as to whether an election constitutes a Contested Election shall be made on a class by class or series by series basis, as applicable.

SECTION 4. Resignations. Any director of the Corporation may resign at any time upon notice given in writing or by electronic transmission to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time be not specified, it shall take effect immediately upon receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 5. Vacancies. Except as otherwise provided in the Restated Certificate of Incorporation, and subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, newly created directorships resulting from any increase in the number of directors or any vacancy on the Board resulting from death, resignation, disqualification, removal or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until such director's successor shall have been elected and shall qualify or until such director shall resign or shall have been removed.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

SECTION 6. Place of Meeting. The Board or any committee thereof may hold any of its meetings at such place or places within or without the State of Delaware as the Board or such committee may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or a waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board or

any committee thereof by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board or such committee can hear each other, and such participation shall constitute presence in person at such meeting.

SECTION 7. First Meeting. The Board shall meet as soon as practicable after each annual election of directors, and notice of such first meeting shall not be required.

SECTION 8. Regular Meetings. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day that is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

SECTION 9. Special Meetings. Special meetings of the Board for any purpose or purposes shall be called at any time by the Chairman of the Board or, if the Chairman of the Board is absent or unable or refuses to act, by the Chief Executive Officer or the President. Except as otherwise provided by law or by these Bylaws, special meetings of the Board shall be held upon at least four (4) days written notice or two (2) hours notice given personally, by telephone or by electronic transmission. Any such notice shall be addressed or delivered to each director at such director's address as is shown upon the records of the Corporation or as may have been given to the Corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held. Notice by mail shall be deemed to have been given at the time such notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for delivery or transmission. Notice by electronic transmission shall be deemed to have been given at the time it is actually transmitted by the person giving the notice by electronic means to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or similar means of communication, to the recipient or to a person at the office of the recipient whom the person giving the notice has reason to believe will promptly communicate it to the recipient. Except where otherwise required by law or these Bylaws, notice of the purpose of a special meeting need not be given. Notice of any meeting of the Board shall not be required to be given to any director who is present at such meeting, except a director who shall attend such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 10. Quorum and Manner of Acting. Except as otherwise provided in these Bylaws, the Restated Certificate of Incorporation or by applicable law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative vote of a majority of the directors present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, provided any action taken is approved by at least a majority of the required quorum for such meeting. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

SECTION 11. Action by Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if consent in writing or by electronic transmission is given thereto by all members of the Board or of such committee, as the case may be, and such consent, electronic transmission or transmissions are filed with the minutes of proceedings of the Board or of such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

SECTION 12. Compensation. Directors who are not employees of the Corporation or any of its subsidiaries may receive an annual fee for their services as directors in an amount fixed by resolution of the Board, and, in

addition, a fixed fee, with or without expenses of attendance, may be allowed by resolution of the Board for attendance at each meeting, including each meeting of a committee of the Board. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefor.

SECTION 13. Committees. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Any such committee, to the extent provided in the resolution of the Board and subject to any restrictions or limitation on the delegation of power and authority imposed by applicable law, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Any such committee shall keep written minutes of its meetings and report the same to the Board at the next regular meeting of the Board. Unless the Board or these Bylaws shall otherwise prescribe the manner of proceedings of any such committee, meetings of such committee may be regularly scheduled in advance and may be called at any time by the chairman of the committee or by any two (2) members thereof; otherwise, the provisions of these Bylaws with respect to notice and conduct of meetings of the Board shall govern.

SECTION 14. Definition of Independent Director. For purposes of this Article III, the term “Independent Director” shall mean:

(A) for purposes of determining whether a director is qualified to serve as a member of the audit committee of the Board, a director who meets the qualification requirements for being an independent director under applicable securities laws, including the Securities Exchange Act of 1934, as amended, applicable rules and regulations of the U.S. Securities and Exchange Commission and applicable rules and regulations of any stock exchange or securities market applicable to the Corporation; and

(B) for all other purposes, a director who meets the qualification requirements for being an independent director under applicable rules and regulations of any stock exchange or securities market applicable to the Corporation.

SECTION 15. Interpretation and Application of this Article. The Board shall have the exclusive right and power to interpret and apply the provisions of this Article, including, without limitation, the adoption of written definitions of terms used in and guidelines for the application of this Article (any such definitions and guidelines shall be filed with the Secretary, and such definitions and guidelines as may prevail shall be made available to any stockholder upon written request). Any such definitions or guidelines and any other interpretation or application of the provisions of this Article made in good faith shall be binding and conclusive upon the stockholders, provided that, in the case of any interpretation or application of this Article by the Board to a specific person which results in such person being classified as an Independent Director, the Board shall have determined that such person is independent of management and free from any relationship that, in the opinion of the Board, would interfere with such person’s exercise of independent judgment as a Board member.

ARTICLE IV: Officers

SECTION 1. SECTION 1. Officers. The officers of the Corporation shall be a Chairman of the Board, a Chief Executive Officer, a President, one or more Vice Presidents (the number thereof and their respective titles to be determined by the Board), a Secretary, a Treasurer and such other officers as may be appointed at the discretion of the Board in accordance with the provisions of Section 3 of this Article IV. At the discretion of the Board, from time to time, the Chairman of the Board may be a director of the Corporation who is not an officer of the Corporation.

SECTION 2. Election. The officers of the Corporation, except such officers as may be appointed or elected in accordance with the provisions of Section 3 or Section 5 of this Article IV, shall be chosen annually by the

Board at the first meeting thereof, and each officer shall hold office until such officer shall resign or shall be removed or otherwise disqualified to serve, or until such officer's successor shall be elected and qualified.

SECTION 3. Other Officers. In addition to the officers chosen annually by the Board at its first meeting, the Board also may appoint or elect such other officers as the business of the Corporation may require, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board may from time to time specify, and shall hold office until such officer shall resign or shall be removed or otherwise disqualified to serve, or until such officer's successor shall be elected and qualified.

SECTION 4. Removal and Resignation. Any officer may be removed, either with or without cause, by resolution of the Board passed by a majority of the directors at the time in office, at any regular or special meeting of the Board, or except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

SECTION 5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointment to such office.

SECTION 6. Chairman of the Board. The Chairman of the Board shall preside at all meetings of stockholders and at all meetings of the Board. The Chairman of the Board shall be a member of such committees, if any, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

SECTION 7. Chief Executive Officer. The Chief Executive Officer shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation.

SECTION 8. President. The President shall have such powers and perform such duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned by the Chief Executive Officer or the Board, or as may be prescribed by these Bylaws.

SECTION 9. Vice President. Each Vice President shall have such powers and perform such duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to such Vice President by the Chief Executive Officer, the President or the Board, or as may be prescribed by these Bylaws.

SECTION 10. Secretary. The Secretary shall keep, or cause to be kept, at the principal office of the Corporation, or such other place as the Board may order, a book of minutes of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at meetings of directors, the number of shares present or represented at meetings of stockholders, and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the name and address of each stockholder, the number of shares of each class held by such stockholder, the number and date of certificates issued for certificated shares, the number and date of issuance of uncertificated shares, and the number and date of cancellation of certificated shares surrendered for cancellation or for uncertificated shares.

The Secretary shall give, or cause to be given, notice of all meetings of stockholders and of the Board required by these Bylaws or by law to be given, and shall keep the seal of the Corporation in safe custody and, if necessary or appropriate, shall affix and attest the seal to all documents to be executed on behalf of the Corporation under its seal, and shall have such other powers and perform such other duties as may be prescribed by these Bylaws or assigned by the Board, the Chairman of the Board or any officer of the Corporation to whom the Secretary may report. If for any reason the Secretary shall fail to give notice of any special meeting of the Board called by one or more of the persons identified in Article III, Section 9 hereof, then any such person or persons may give notice of any such special meeting.

SECTION 11. Treasurer. The Treasurer shall supervise, have custody of and be responsible for all funds and securities of the Corporation. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board or in accordance with authority delegated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered or authorized by the Board, shall render to the Board and the Chairman of the Board whenever they request it, an account of all of the Treasurer's transactions, and shall have such other powers and perform such other duties as may be prescribed by these Bylaws or assigned by the Board, the Chairman of the Board or any officer of the Corporation to whom the Treasurer may report.

ARTICLE V: Contracts, Checks, Drafts, Bank Accounts, Etc.

SECTION 1. Execution of Contracts. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

SECTION 2. Checks, Drafts, Etc. All checks, drafts, or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such officer, assistant, agent or attorney shall give such bond, if any, as the Board may require.

SECTION 3. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Treasurer or the Secretary (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall from time to time be determined by the Board) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

SECTION 4. General and Special Bank Accounts. The Board may from time to time authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by any officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI: Shares and Their Transfer

SECTION 1. Certificates for Stock. The shares of stock of the Corporation may be certificated or uncertificated, as provided under Delaware law. Every holder of stock represented by certificates shall be entitled to have a certificate or certificates, to be in such form as the Board shall prescribe, certifying the number and class of shares of the stock of the Corporation owned by such holder. The certificates representing certificated shares of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, the Chief Executive Officer, the President or any Vice President, and by the Secretary or the Treasurer. Any or all of the signatures on the certificates may be a facsimile. In case any officer, transfer agent or registrar who has signed, or whose facsimile signature has been placed upon, any such certificate, shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as

though the person who signed such certificate, or whose facsimile signature shall have been placed thereupon, were such officer, transfer agent or registrar at the date of issue. Every certificate surrendered to the Corporation for exchange or transfer shall be canceled, and no new certificate or certificates or uncertificated shares shall be issued in exchange for any existing certificate until such existing certificate shall have been so canceled, except in cases provided for in Section 4 of this Article VI.

SECTION 2. Transfers of Stock. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by such holder's attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 3 of this Article VI, and, if such shares are represented by a certificate, upon surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes with regard to the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be so expressed in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer or uncertificated shares are requested to be transferred, both the transferor and the transferee request the Corporation to do so.

SECTION 3. Regulations. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. It may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

SECTION 4. Lost, Stolen, Destroyed, and Mutilated Certificates. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another certificate or uncertificated shares may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sum as the Board may direct; provided, however, that a new certificate or uncertificated shares may be issued without requiring any bond when, in the judgment of the Board, it is proper so to do.

SECTION 5. Fixing Date for Determination of Stockholders of Record.

(A) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting. A determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of such meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(B) The record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be fixed in the manner provided for in the Restated Certificate of Incorporation.

(C) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted and which record date shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be the close of business on the day on which the Board adopts the resolution relating thereto.

ARTICLE VII: Miscellaneous

SECTION 1. Seal. The Board shall adopt a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words showing that the Corporation was incorporated in the State of Delaware.

SECTION 2. Waiver of Notices. Whenever notice is required to be given by these Bylaws or the Restated Certificate of Incorporation or by law, the person entitled to said notice may waive such notice in writing, either before or after the time stated therein, and such waiver shall be deemed equivalent to notice.

SECTION 3. Amendments. Except as otherwise provided herein or in the Restated Certificate of Incorporation, these Bylaws or any of them may be altered, amended, repealed or rescinded and new Bylaws may be adopted by the Board or by the stockholders at any annual or special meeting of stockholders, provided that notice of such proposed alteration, amendment, repeal, rescission or adoption is given in the notice of such meeting.

SECTION 4. Representation of Other Corporations. The Chairman of the Board, the Chief Executive Officer, the President, the Secretary or any Vice President of the Corporation is authorized to vote, represent and exercise on behalf of the Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the Corporation. The authority herein granted to said officers to vote or represent on behalf of the Corporation any and all shares held by the Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by such officers.

EXHIBIT C



PERSHING SQUARE CAPITAL MANAGEMENT, L.P.

888 SEVENTH AVENUE, 42ND FLOOR
NEW YORK, NY 10019
P: 212-813-3700 F: 212-286-1133

June 6, 2014

By U.S. Mail and Email:

Mr. Arnold Pinkston
Executive Vice President, General Counsel
And Assistant Secretary
c/o Allergan, Inc.
2525 Dupont Drive
Irvine, CA 92612

Re: Allergan Poison Pill and the Shareholder Franchise

Dear Mr. Pinkston,

On June 2, 2014, Pershing Square Capital Management, L.P. (“Pershing Square”) filed a preliminary proxy statement on Schedule 14A with the U.S. Securities and Exchange Commission (“SEC”). Its purpose is to solicit revocable proxies from shareholders of Allergan, Inc. (“Allergan”) to empower PS Fund 1, LLC (“PS Fund 1”) to deliver the shareholders’ Special Meeting Request forms to Allergan’s Secretary in order to call a special meeting of Allergan’s shareholders (the “Special Meeting”). PS Fund 1 plans to request that Allergan call a Special Meeting in order to consider a number of proposals detailed in the preliminary proxy statement.

I am writing to seek confirmation that Allergan will 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 recently-adopted shareholder rights plan (the “Rights Plan”), effective April 22, 2014. While Pershing Square would strongly dispute any such interpretation, I nonetheless request clarification of Allergan’s position. Specifically, I request a response to the following questions by 8:00 p.m. Eastern Time on Monday, June 9, 2014:

1. 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?

Mr. Arnold Pinkston

June 6, 2014

Page 2 of 2

2. 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?
3. 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?
4. 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?

To the extent Allergan thinks there is any ambiguity regarding these issues, we request that it amend the Rights Plan to make clear that shareholders will not trigger the Rights Plan by taking steps under the bylaws to request a Special Meeting or take action by written consent. Such clarification will facilitate a transparent and meaningful assessment of the shareholders' views about Valeant Pharmaceuticals International Inc.'s offer to merge with Allergan.

We look forward to your prompt response.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy J. Katzovicz", with a stylized flourish at the end.

Roy J. Katzovicz
Chief Legal Officer
Pershing Square Capital Management, L.P.

cc: Matthew Maletta, Esq.

EXHIBIT D

June 11, 2014

By U.S. Mail and E-mail

Mr. Roy Katzovicz
Chief Legal Officer
Pershing Square Capital Management, L.P.
888 Seventh Avenue, 42nd Floor
New York, New York 10019

Re: Allergan, Inc. Stockholder Rights Plan

Dear Mr. Katzovicz,

As Delaware counsel to Allergan, Inc. (the “Company”), I am writing in response to your letter, dated June 6, 2014 to Arnold Pinkston, seeking, among other things, confirmation that the Company will not take the position that the solicitation and receipt of revocable proxies by PS 1 Fund, LLC (“PS Fund”) in connection with its request to cause the Company to call a special meeting of stockholders (the “Special Meeting Request”) pursuant to the Company’s Amended and Restated Bylaws (the “Bylaws”) will trigger the Rights under the Rights Agreement, dated April 22, 2014 (the “Rights Agreement”), between the Company and Wells Fargo Bank, N.A.¹

As you are aware, the Rights are not exercisable until the occurrence of a Distribution Date. One of the events giving rise to a Distribution Date is a Person’s becoming an Acquiring Person. Subject to specified exceptions, an Acquiring Person is any Person who or which, together with all Related Persons of such Person, becomes the Beneficial Owner of 10% or more of the Company’s Common Stock then outstanding. Under the Rights Agreement, a Person is deemed to be the Beneficial Owner of, and is deemed to Beneficially Own and have Beneficial Ownership of, among others, any security that: (x) such Person or any of such Person’s Related Persons, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares voting power, which includes the power to vote, or direct the voting of, such security; or (y) is Beneficially Owned, directly or indirectly, by any other Person (or any Affiliate or Associate thereof) with whom such Person or any of such Person’s Related Persons, has an agreement, arrangement or understanding to act together for the purpose of acquiring, holding, voting or disposing of any securities of the Company. As your letter connotes, the Rights Agreement contains an important exception to clauses (x) and (y) in the preceding

¹ Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Rights Agreement, a copy of which was filed as an Exhibit to the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission (the “Commission”) on April 23, 2014. Any description, summary or characterization of any provision of the Rights Agreement set forth in this letter is qualified in its entirety by the full text of the Rights Agreement.



Mr. Roy Katzovicz
June 11, 2014
Page 2

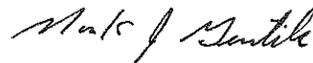
sentence: a Person shall not be deemed to be the Beneficial Owner of any such security if such voting power arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, Section 14 of the Exchange Act by means of a solicitation statement filed with the Commission on Schedule 14A.

As long as PS Fund (along with any of its Related Persons) does not otherwise engage in (or has not otherwise engaged in) conduct that would otherwise result in its becoming an Acquiring Person by becoming the Beneficial Owner of 10% or more of the shares of Common Stock then outstanding, PS Fund's solicitation and receipt of one or more revocable proxies from the Company's stockholders to be counted toward the number of shares of the outstanding Common Stock needed to cause a special meeting of stockholders to be called pursuant to and in accordance with the Bylaws, which proxies are given to PS Fund in response to a public solicitation of such proxies made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by means of a solicitation statement filed with the Commission on Schedule 14A, should not, of itself, cause PS Fund to become an Acquiring Person.

The Company takes its responsibilities to its stockholders under the Rights Agreement and its Bylaws seriously and wants to ensure that stockholders have a full understanding of each. It would nonetheless be all but impossible to provide full and complete responses to the remaining questions set forth in your letter given the important factual nuances, or to speculate as to the rights and remedies of any Person under the Rights Agreement in the absence of a fully developed factual record.

If you consequently have any specific interpretational questions about the Rights Agreement, please let me know and we can arrange for a conference call to discuss.

Very truly yours,



Mark J. Gentile

cc: Arnold Pinkston, Esq.
Paul Tosetti, Esq.
David Katz, Esq.

EXHIBIT E

Delaware

PAGE 1

The First State

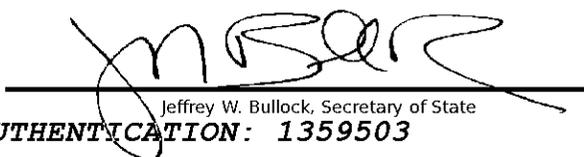
I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "ALLERGAN, INC.", FILED IN THIS OFFICE ON THE NINTH DAY OF MAY, A.D. 2014, AT 12:17 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

0837097 8100

140597334




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 1359503

DATE: 05-09-14

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
ALLERGAN, INC.**

ALLERGAN, INC. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

1. The Corporation was originally incorporated on April 14, 1977, under the name of ALLERGAN PHARMACEUTICALS, INC. Pursuant to a Certificate of Amendment filed with the Secretary of State of the State of Delaware on September 26, 1986, the name of the Corporation was changed to, and now is, ALLERGAN, INC.

2. This Amended and Restated Certificate of Incorporation (this "Certificate of Incorporation"), which amends and restates the Amended and Restated Certificate of Incorporation of the Corporation as filed with the Secretary of State of the State of Delaware on May 1, 2013, was duly adopted pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware.

3. The Amended and Restated Certificate of Incorporation of the Corporation as filed with the Secretary of State of the State of Delaware on May 1, 2013 is hereby amended and restated in its entirety to read as follows:

ARTICLE 1. Name

The name of the Corporation is Allergan, Inc.

ARTICLE 2. Registered Office

The address of the registered office of the Corporation in the State of Delaware is The Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at such address is The Prentice-Hall Corporation System, Inc.

ARTICLE 3. Purpose

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as may be amended from time to time. The Corporation shall have perpetual existence.

ARTICLE 4. Authorized Capital Stock

The aggregate number of shares which the Corporation shall have authority to issue is 505,000,000, to be divided into (a) 500,000,000 shares of Common Stock, par value \$.01 per share and (b) 5,000,000 shares of Preferred Stock, par value \$.01 per share.

The Board of Directors is hereby empowered to cause the Preferred Stock to be issued from time to time for such consideration as it may from time to time fix, and to cause such Preferred Stock to be issued in series with such voting powers and such designations, preferences and relative, participating, optional or other special rights as designated by the Board of Directors in the resolution providing for the issue of such series. Shares of Preferred Stock of any one series shall be identical in all respects.

ARTICLE 5. Bylaws

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind the bylaws of the Corporation.

ARTICLE 6. Election of Directors

The number of directors that shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the bylaws of the Corporation. At each annual meeting of stockholders of the Corporation all directors shall be elected for a term expiring at the next succeeding annual meeting of stockholders. Each director shall hold office until his or her successor is duly elected and qualified or until his or her prior death, resignation, retirement, disqualification or removal from office.

Notwithstanding the foregoing, whenever the holders of any one or more classes or series of Preferred Stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Certificate of Incorporation or the resolution or resolutions adopted by the Board of Directors pursuant to Article 4 hereof.

Elections of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

ARTICLE 7. Removal of Directors

Subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, any or all of the directors of the Corporation may be removed from office by the stockholders at any annual or special meeting of stockholders of the Corporation, the notice of which shall state that the removal of a director or directors is among the purposes of the meeting, with or without cause, by the affirmative vote of at least a majority of the outstanding shares of stock of the Corporation entitled to vote generally in the election of directors of the Corporation.

ARTICLE 8. Board of Directors Vacancies

Subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, newly created directorships resulting from any increase in the number of directors or any vacancy on the Board of Directors resulting from death, resignation, disqualification, removal or

other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum, or by a sole remaining director. The term of any director elected in accordance with the preceding sentence shall expire at the next annual meeting of the stockholders following such director's election. Each such director shall hold office until his or her successor is duly elected and qualified or until his or her prior death, resignation, retirement, disqualification or removal from office. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

ARTICLE 9. Stockholder Action by Written Consent

All actions required or permitted to be taken by stockholders at an annual or special meeting of stockholders of the Corporation may be effected by the written consent of the holders of capital stock of the Corporation entitled to vote; provided that no such action may be effected except in accordance with the provisions of this Article 9 and applicable law.

(a) **Request for Record Date.** The record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be as fixed by the Board of Directors or as otherwise established under this Article 9. Any stockholder seeking to have the stockholders authorize or take corporate action by written consent without a meeting shall, by written notice addressed to the Secretary of the Corporation and delivered to the Corporation at its principal executive office and signed by holders of record of at least twenty-five percent (25%) in voting power of the then outstanding shares of capital stock of the Corporation entitled to vote on the matter, request that a record date be fixed for such purpose. Such request must contain the information set forth in paragraph (b) of this Article 9. Following receipt of such request, the Board of Directors shall, by the later of (i) 20 days after the Corporation's receipt of such request and (ii) 5 days after delivery of any information requested by the Corporation to determine the validity of any such request or whether the action to which such request relates may be effected by written consent of stockholders in lieu of a meeting, determine the validity of such request and whether such request relates to an action that may be taken by written consent of stockholders in lieu of a meeting pursuant to this Article 9 and applicable law and, if appropriate, adopt a resolution fixing the record date for such purpose. The record date for such purpose shall be no more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors and shall not precede the date upon which such resolution is adopted. If (x) the request required by this paragraph (a) has been determined to be valid and to relate to an action that may be effected by written consent pursuant to this Article 9 and applicable law or (y) no such determination shall have been made by the date required by this paragraph (a), and in either event no record date has been fixed by the Board of Directors, the record date shall be the first date on which a signed written consent relating to the action taken or proposed to be taken by written consent is delivered to the Corporation in the manner described in paragraph (f) of this Article 9; provided that if prior action by the Board of Directors is required under the provisions of the Delaware General Corporation Law, the record date shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(b) Notice Requirements. The request required by paragraph (a) of this Article 9 must be delivered by holders of record of at least twenty five percent (25%) in voting power of the outstanding shares of capital stock of the Corporation entitled to vote on the matter as of the date of such delivery (with written evidence of such ownership included with the written notice making such request), must describe the action proposed to be taken by written consent of stockholders in lieu of a meeting and must contain such information and representations, to the extent applicable, required by Article 11 and Article 12 of the Certificate of Incorporation, as applicable, and Article II, Section 9 of the bylaws of the Corporation (or any successor provision(s) relating to advance notice of stockholder nominations or business proposals to be submitted at a meeting of stockholders) as though such stockholder or stockholders were intending to make a nomination or to bring a business proposal before a meeting of stockholders (other than a proposal permitted to be included in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), including, without limitation, all such information regarding the stockholder or stockholder(s) making the request required by paragraph (a) of this Article 9, the beneficial owner or beneficial owners, if any, on whose behalf the request is made, and the text of the proposal(s) (including the text of any resolutions to be adopted by written consent of stockholders and, in the event the resolution proposes to amend the bylaws of the Corporation, the language of any proposed amendment to the bylaws of the Corporation). The Corporation may require the stockholder(s) submitting such notice to furnish such other information as may be requested by the Corporation to determine the validity of the request required by paragraph (a) of this Article 9 and to determine whether such request relates to an action that may be effected by written consent of stockholders in lieu of a meeting under this Article 9 and applicable law. In connection with an action or actions proposed to be taken by written consent in accordance with this Article 9 and applicable law, the stockholder(s) seeking such action or actions shall further update and supplement the information previously provided to the Corporation in connection therewith, if necessary, in the same manner required by Article 11 and Article 12 of this Certificate of Incorporation, as applicable, and Article II, Section 9 of the bylaws of the Corporation (or any successor provision(s)).

(c) Actions Which May Be Taken by Written Consent. Stockholders are not entitled to act by written consent if (i) the request to act by written consent made pursuant to paragraph (a) of this Article 9 (x) does not comply with this Article 9, (y) was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law, or (z) relates to an item of business that is not a proper subject for stockholder action under applicable law, (ii) any such request is received by the Corporation during the period commencing 90 days prior to the first anniversary of the date of the immediately preceding annual meeting of stockholders, (iii) an identical or substantially similar item (a "Similar Item") to that included in any such request was presented at any meeting of stockholders held within one year prior to the Corporation's receipt of such request, (iv) a Similar Item is already included in the Corporation's notice as an item of business to be brought before a meeting of stockholders that has been called but not yet held, and the date of which is within 90 days of the Corporation's receipt of such request, or (v) the Board of Directors calls an *annual or special meeting of stockholders* for the purpose of presenting a Similar Item, or solicits action by written consent of stockholders for a Similar Item pursuant to paragraph (i) of this Article 9.

(d) Manner of Consent Solicitation. Stockholders may take action by written consent only if consents are solicited by the stockholder or stockholders seeking to take action by written consent of stockholders in accordance with this Article 9 and applicable law from all holders of capital stock of the Corporation entitled to vote on the matter.

(e) Date of Consent. Every written consent purporting to take or authorize the taking of corporate action (each such written consent is referred to in this paragraph and in paragraph (f) as a "Consent") must bear the date of signature of each stockholder who signs the Consent, and no Consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated Consent delivered in the manner required by paragraph (f) of this Article 9 and applicable law, Consents signed by a sufficient number of stockholders to take such action are so delivered to the Corporation.

(f) Delivery of Consents. No Consents may be dated or delivered to the Corporation or its registered office in the State of Delaware until 90 days after the delivery of the related request required by paragraph (a) of this Article 9. Consents must be delivered to the Corporation by delivery to its registered office in the State of Delaware or its principal place of business. Delivery must be made by hand or by certified or registered mail, return receipt requested. In the event of the delivery to the Corporation of Consents, the Secretary or such other officer of the Corporation as the Board of Directors may designate shall provide for the safe-keeping of such Consents and any related revocations and shall promptly conduct such ministerial review of the sufficiency of all Consents and any related revocations and of the validity of the action to be taken by written consent as the Secretary or such other officer, as the case may be, deems necessary or appropriate, including, without limitation, whether the stockholders of a number of shares having the requisite voting power to authorize or take the action specified in Consents have given consent; provided, however, that if the action to which the Consents relate is the removal of one or more members of the Board of Directors, the Secretary or such other officer of the Corporation as the Board of Directors may designate, as the case may be, shall promptly designate two persons, who shall not be members of the Board of Directors, to serve as inspectors ("Inspectors") with respect to such Consent and such Inspectors shall discharge the functions of the Secretary, or such other officer of the Corporation as the Board of Directors may designate, as the case may be, under this Article 9. If after such investigation the Secretary, such other officer of the Corporation as the Board of Directors may designate or the Inspectors, as the case may be, shall determine that the action purported to have been taken is duly authorized by the Consents, that fact shall be certified on the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders and the Consents shall be filed in such records. In conducting the investigation required by this paragraph (f), the Secretary, such other officer of the Corporation as the Board of Directors may designate or the Inspectors, as the case may be, may, at the expense of the Corporation, retain special legal counsel and any other necessary or appropriate professional advisors as such person or persons may deem necessary or appropriate and, to the fullest extent permitted by law, shall be fully protected in relying in good faith upon the opinion of such counsel or advisors.

(g) Effectiveness of Consent. Notwithstanding anything in this Certificate of Incorporation to the contrary, no action may be taken by the stockholders by written consent except in accordance with this Article 9 and applicable law. If the Board of Directors shall determine that any request to fix a record date or to take stockholder action by written consent

was not properly made in accordance with, or relates to an action that may not be effected by written consent pursuant to, this Article 9 or applicable law, or the stockholder or stockholders seeking to take such action do not otherwise comply with this Article 9 or applicable law, then the Board of Directors shall not be required to fix a record date in respect of such proposed action, and any such purported action by written consent shall be null and void. No action by written consent without a meeting shall be effective until such date as the Secretary, such other officer of the Corporation as the Board of Directors may designate or the Inspectors, as applicable, certify to the Corporation that the Consents delivered to the Corporation in accordance with paragraph (f) of this Article 9 represent at least the minimum number of votes that would be necessary to take the corporate action at a meeting at which all shares entitled to vote thereon were present and voted, in accordance with the Delaware General Corporation Law and this Certificate of Incorporation.

(h) Challenge to Validity of Consent. Nothing contained in this Article 9 shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any Consent or related revocations, whether before or after such certification by the Secretary, such other officer of the Corporation as the Board of Directors may designate or the Inspectors, as the case may be, or to take any other action (including, without limitation, the commencement, prosecution, or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(i) Board-Solicited Stockholder Action by Written Consent. Notwithstanding anything to the contrary set forth above, (x) none of the foregoing provisions of this Article 9 shall apply to any solicitation of stockholder action by written consent in lieu of a meeting by or at the direction of the Board of Directors and (y) the Board of Directors shall be entitled to solicit stockholder action by written consent in accordance with applicable law.

ARTICLE 10. Special Meetings of the Stockholders

Special meetings of the stockholders of the Corporation (i) may be called by the Chairman of the Board of Directors, the Chief Executive Officer, or the Board of Directors at any time and for any purpose or purposes as shall be stated in the notice of the meeting, and (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. Except in accordance with, and subject to, this Article 10 and the bylaws of the Corporation, stockholders shall not be permitted to propose business or nominations to be brought before a special meeting of the stockholders.

ARTICLE 11. Annual Meetings of Stockholders

At an annual meeting of stockholders, only such business shall be conducted, and only such proposals shall be acted upon, as shall have been brought before the annual meeting (a) by, or at the direction of, a majority of the directors, or (b) by any stockholder of the Corporation who complies with the notice procedures set forth in this Article 11. For a proposal to be properly brought before an annual meeting by a stockholder, the stockholder must have given

timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than 30 days nor more than 60 days prior to the scheduled annual meeting, regardless of any postponements, deferrals or adjournments of that meeting to a later date; provided, however, that if less than 40 days' notice or prior public disclosure of the date of the scheduled annual meeting is given or made, notice by the stockholder, to be timely, must be so delivered or received not later than the close of business on the tenth day following the earlier of the day on which such notice of the date of the scheduled annual meeting was mailed or the day on which such public disclosure was made. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (a) a brief description of the proposal desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (b) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business and any other stockholders known by such stockholder to be supporting such proposal, (c) the class and number of shares of the Corporation's stock which are beneficially owned by the stockholder on the date of such stockholder notice and by any other stockholders known by such stockholder to be supporting such proposal on the date of such stockholder notice, and (d) any financial interest of the stockholder in such proposal.

The presiding officer of the annual meeting shall determine and declare at the annual meeting whether the stockholder proposal was made in accordance with the terms of this Article 11. If the presiding officer determines that a stockholder proposal was not made in accordance with the terms of this Article 11, he shall so declare at the annual meeting and any such proposal shall not be acted upon at the annual meeting.

This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors and committees of the Board of Directors, but, in connection with such reports, no new business shall be acted upon at such annual meeting unless stated, filed and received as herein provided.

ARTICLE 12. Stockholder Nomination of Directors

Subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, only persons who are nominated in accordance with the following procedures shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors by any nominating committee or person appointed by the Board of Directors or by any stockholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Article 12. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than 30 days nor more than 60 days prior to the scheduled annual meeting, regardless of any postponements, deferrals or adjournments of that meeting to a later date; provided, however, that if less than 40 days' notice or prior public disclosure of the date of the scheduled annual meeting is given or made, notice by the stockholder, to be timely, must be so delivered or received not

later than the close of business on the tenth day following the earlier of the day on which such notice of the date of the scheduled annual meeting was mailed or the day on which such public disclosure was made. A stockholder's notice to the Secretary shall set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class and number of shares of capital stock of the Corporation which are beneficially owned by the person and (iv) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to Rule 14a under the Exchange Act; and (b) as to the stockholder giving the notice (i) the name and address, as they appear on the Corporation's books, of the stockholder and (ii) the class and number of shares of the Corporation's stock which are beneficially owned by the stockholder on the date of such stockholder notice. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as director of the Corporation.

The presiding officer of the annual meeting shall determine and declare at the annual meeting whether the nomination was made in accordance with the terms of this Article 12. If the presiding officer determines that a nomination was not made in accordance with the terms of this Article 12, he shall so declare at the annual meeting and any such defective nomination shall be disregarded.

ARTICLE 13. Limitation of Director Liability

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after the date hereof to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

ARTICLE 14. Indemnification

(a) Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the Delaware General Corporation

Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith. Such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in subparagraph (b) hereof, the Corporation shall indemnify any such indemnitee seeking indemnification in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Article 14 shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (an "expense advancement"); provided, however, that, if the Delaware General Corporation Law so requires, the payment of such expenses incurred by an indemnitee in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such indemnitee while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made upon delivery to the Corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified under this Article 14 or otherwise; and provided, further, that no expense advancement shall be paid by the Corporation if independent legal counsel shall advise the Board of Directors in a written opinion that, based upon the facts known to such counsel at the time, (a) the indemnitee acted in bad faith or deliberately breached his or her duty to the Corporation or its stockholders, and (b) as a result of such conduct by the indemnitee, it is more likely than not that it will ultimately be determined that such indemnitee has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the Corporation to indemnify such indemnitee. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

(b) If a claim under subparagraph (a) of this Article 14 is not paid in full by the Corporation within 30 days after a written claim has been received by the Corporation, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an expense advancement, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. It shall be a defense to any such action that the indemnitee has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the indemnitee is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the

Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the indemnitee has not met the applicable standard of conduct; provided, however, that a determination by the board of directors denying an expense advancement based upon the written opinion of independent legal counsel as provided for in subparagraph (a) above shall be a complete defense to any action seeking an expense advancement, but such determination shall not be a defense or create a presumption that the indemnitee is not entitled to be indemnified hereunder upon the final disposition of the proceeding.

(c) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article 14 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

(d) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

ARTICLE 15. Business Combinations

(a) For purposes of this Article 15, the following terms shall have the meanings indicated, and all capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Section 203(c) of the Delaware General Corporation Law, as in effect on the date of filing of this Certificate of Incorporation:

(i) "Business Combination" shall have the meaning ascribed to it in Section 203(c)(3) of the Delaware General Corporation Law; provided, however, that the term "interested stockholder," as used therein, shall have the meaning ascribed to it in subparagraph (a)(iv) below.

(ii) "Disinterested Shares" shall mean the shares of Voting Stock of the Corporation held by Persons other than an Interested Stockholder, and each reference herein to a percentage or portion of the Disinterested Shares shall refer to such percentage or portion of the votes entitled to be cast by the holders of such Disinterested Shares.

(iii) "Independent Directors" shall mean the members of the Board of Directors who were directors of the Corporation prior to any Person becoming an Interested Stockholder or were recommended for election or elected to succeed such directors by a majority of such directors.

(iv) "Interested Stockholder" shall mean any Person (other than the Corporation and any direct or indirect majority-owned subsidiary of the Corporation) that (1) is the owner of 5% or more of the outstanding Voting Stock or (2) is an Affiliate or Associate of the Corporation and

was the owner of 5% or more of the outstanding Voting Stock at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such Person is an Interested Stockholder; and the Affiliates and Associates of such Person. For the purpose of determining whether a Person is an Interested Stockholder, the Voting Stock deemed to be outstanding shall include stock deemed to be owned by the Person through application of Section 203(c)(8) of the Delaware General Corporation Law, but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(v) "Voting Stock" shall mean stock of the Corporation of any class or series entitled to vote generally in the election of directors of the Corporation, and each reference herein to a percentage or portion of shares of Voting Stock shall refer to such percentage or portion of the votes entitled to be cast by the holders of such shares.

(b) In addition to any affirmative vote required by applicable law or any other provision of this Certificate of Incorporation or specified in any agreement, and in addition to any voting rights granted to or held by the holders of any series of Preferred Stock, the approval or authorization of any Business Combination with an Interested Stockholder that has not been approved by a majority of the Independent Directors prior to the date that such stockholder became an Interested Stockholder, shall require the affirmative vote of the holders of not less than a majority of the Disinterested Shares then outstanding.

(c) A majority of the Independent Directors shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article 15, including without limitation, (i) whether a Person is an Interested Stockholder; (ii) the number of shares of Voting Stock Owned by any Person, (iii) whether a Person is an Affiliate or Associate of another Person, (iv) whether a proposed transaction is a Business Combination and (v) whether a Business Combination shall have been approved by a majority of the Independent Directors prior to the date that a stockholder became an Interested Stockholder; and any such determination made in good faith by a majority of the Independent Directors shall be conclusive and binding for all purposes of this Article 15.

ARTICLE 16. Board Considerations

The Board of Directors, each committee of the Board and each individual director, in discharging their respective duties under applicable law and this Certificate of Incorporation and in determining what they each believe to be in the best interests of the Corporation and its stockholders, may consider the effects, both short-term and long-term, of any action or proposed action taken or to be taken by the Corporation, the Board of Directors or any committee of the Board on the interests of (i) the employees, distributors, customers, suppliers and/or creditors of the Corporation and its subsidiaries and (ii) the communities in which the Corporation and its subsidiaries own or lease property or conduct business, all to the extent that the Board, any committee of the Board or any individual director deems pertinent under the circumstances; provided, however, that the provisions of this Article 16 shall not limit in any way the right of the Board to consider any other lawful factors in making its determinations, including, without limitation, the effects, both short-term and long-term, of any action or proposed action on the

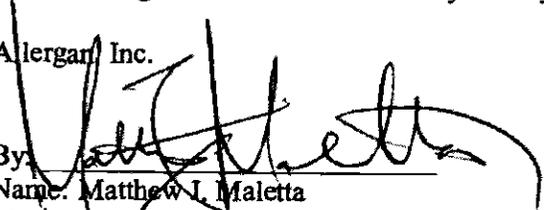
Corporation or its stockholders directly; and provided further that this Article 16 shall be deemed solely to grant discretionary authority to the Board, each committee of the Board and each individual director and shall not be deemed to provide to any specific constituency any right to be considered.

ARTICLE 17. Amendment of Certificate of Incorporation

The Corporation reserves this right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. In addition to any affirmative vote required by applicable law or any other provision of this Certificate of Incorporation, and in addition to any voting rights granted to or held by the holders of any series of Preferred Stock, the affirmative vote of the holders of not less than a majority of the outstanding shares of stock of the Corporation entitled to vote generally in the election of directors of the Corporation shall be required to amend or repeal, or adopt any provisions inconsistent with, the provisions of this Certificate of Incorporation.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed by the undersigned officer on this 9th day of May, 2014.

Allergan, Inc.

By: 

Name: Matthew J. Maletta

Title: ~~Vice President~~

Associate General Counsel and Secretary

EXHIBIT F

ALLERGAN, INC.
a Delaware Corporation

AMENDED AND RESTATED BYLAWS

(As Amended and Restated Effective May 9, 2014)

ARTICLE I: Offices

SECTION 1. Registered Office. The registered office of Allergan, Inc. (the “Corporation”) shall be at The Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, State of Delaware 19808, and the name of the registered agent in charge thereof shall be The Prentice-Hall Corporation System, Inc.

SECTION 2. Principal Office. The principal office for the transaction of the business of the Corporation shall be at such place as the Board of Directors of the Corporation (the “Board”) may determine. The Board is hereby granted full power and authority to change said principal office from one location to another.

SECTION 3. Other Offices. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

ARTICLE II: Meetings of Stockholders

SECTION 1. Place of Meetings. All annual meetings of stockholders and all other meetings of stockholders shall be held either at the principal office of the Corporation or at any other place within or without the State of Delaware that may be designated by the Board pursuant to authority hereinafter granted to the Board.

SECTION 2. Annual Meetings. Annual meetings of stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings may be held at such time and place and on such date as the Board shall determine by resolution.

SECTION 3. Special Meetings. Special meetings of the stockholders of the Corporation (i) may be called by the Chairman of the Board, the Chief Executive Officer or the Board, at any time and for any purpose or purposes, and (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 (the “Requisite Percentage”), subject to and in compliance with Article 10 of the Amended and Restated Certificate of Incorporation of the Corporation (as the same may be amended and/or restated from time to time, the “Restated Certificate of Incorporation”), or any successor provision thereto, and this Section 3.

(A) 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”), in the form required by this section (A) of this Section 3, 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), and (ii) such Special Meeting Requests have been dated and delivered to the Secretary within sixty (60) days of the earliest dated Special Meeting Request. To be in proper form, such Special Meeting Request(s) shall comply with, and shall include and set forth, the following:

(1) As to each Proposing Person, (a) the name and address of each Proposing Person (including, if applicable, the name and address as they appear on the Corporation’s books), (b) the class and number of shares of the Corporation which are owned beneficially and of record by such Proposing Person (with evidence of such ownership attached), except that such Proposing Person shall be deemed for such purpose to beneficially own any shares of any class or series of capital stock of the Corporation as to which such Proposing Person has the right to acquire (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both), (c) a representation that such Proposing Person intends to hold the shares of the Corporation described in the immediately preceding clause (b) through the date of the Stockholder Requested Special Meeting and (d) an acknowledgement by the Proposing Person that any reduction in such Proposing Person’s Net Long Beneficial Ownership with respect to which a Special Meeting Request relates following the delivery of such Special Meeting Request to the Secretary shall constitute a revocation of such Special Meeting Request to the extent of such reduction;

(2) As to each Proposing Person, any Disclosable Interests (as defined below) of such Proposing Person;

(3) As to the purpose or purposes of the Stockholder Requested Special Meeting, a reasonably brief statement of the specific purpose or purposes of the Stockholder Requested Special Meeting, the matter(s) proposed to be acted on at the Stockholder Requested Special Meeting and the reasons for conducting such business at the Stockholder Requested Special Meeting, and the text of any proposal or business to be considered at the Stockholder Requested Special Meeting (including the text of any resolutions proposed to be considered and, in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment); and

(4) 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.

(5) Definitions.

(a) “Proposing Person” shall mean (i) each stockholder of record that signs a Special Meeting Request pursuant section (A) of this Section 3, (ii) the beneficial owner or beneficial owners, if different, on whose behalf such Special Meeting Request is made, (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation or associate (within the meaning of Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) for purposes of these Bylaws) of such stockholder or beneficial owner, and (iv) any other person with whom such stockholder or such beneficial owner (or any of their respective associates or other participants in such solicitation) is Acting in Concert.

(b) A person shall be deemed to be “Acting in Concert” with another person for purposes of these Bylaws if such person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) in concert or in parallel with, or towards a common goal with such other person, relating to changing or influencing the control of the Corporation or in connection with or as a participant in any transaction having that purpose or effect, where (i) each person is conscious of the other person’s conduct and this awareness is an element in their decision-making processes and (ii) at least one additional factor suggests that such persons intend to act in concert or in parallel, which such additional factors may include, without limitation, exchanging information (whether publicly or privately), attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel; provided, that a person shall not be deemed to be Acting in Concert with any other person solely as a result of the solicitation or receipt of (x) revocable proxies or consents from such other person in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a proxy or consent solicitation statement filed on Schedule 14A or (y) tenders of securities from such other person in a public tender or exchange offer made pursuant to, and in accordance with, Section 14(d) of the Exchange Act by means of a tender offer statement filed on Schedule TO. A person Acting in Concert with another person shall be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other person.

(c) “Net Long Beneficial Ownership” shall mean those shares of common stock of the Corporation as to which the stockholder or Proposing Person, as applicable, possesses (i) the sole power to vote or direct the voting, (ii) the sole economic incidents of ownership (including the sole right to profits and the sole risk of loss), and (iii) the sole power to dispose of or direct the disposition; provided that the number of shares calculated in accordance with clauses (i), (ii) and (iii) shall not include any Synthetic Equity Position.

(d) “Disclosable Interests” shall mean (i) the full notional amount of any securities that, directly or indirectly, underlie any “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a “call equivalent position” (as such term is defined in Rule 16a-1(b) under the Exchange Act) (“Synthetic Equity Position”) and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of shares of the Corporation; provided that, for the purposes of the

definition of “Synthetic Equity Position,” the term “derivative security” shall also include any security or instrument that would not otherwise constitute a “derivative security” as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, provided, further, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person's business as a derivatives dealer, (ii) any rights to dividends on the shares of any class or series of capital stock of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (iii) any material pending or threatened action, suit or proceeding (whether civil, criminal, investigative, administrative or otherwise) in which such Proposing Person is, or is reasonably expected to be made, a party or material participant involving the Corporation or any of its officers, directors or employees, or any affiliate of the Corporation, or any officer, director or employee of such affiliate, (iv) any other material relationship between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation, any officer, director or employee of the Corporation or any affiliate thereof, or any principal competitor of the Corporation, on the other hand, (v) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement) and (vi) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting; provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the Special Meeting Record Date Request or Special Meeting Request required by Article 10 of the Restated Certificate of Incorporation or these Bylaws on behalf of a beneficial owner.

(B) Notwithstanding anything to the contrary in this Section 3:

(1) The Secretary shall not accept, and shall consider ineffective, a Special Meeting Request if (a) such Special Meeting Request does not comply with Article 10 of the Restated Certificate of Incorporation, these Bylaws, or relates to an item of business that is not a proper subject for stockholder action under applicable law, (b) the Special Meeting Request is received by the Corporation during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting of stockholders and ending on the date of the final adjournment of the next annual meeting of stockholders, (c) an identical or substantially similar item (a “Similar Item”) to that included in the Special Meeting Request was presented at any meeting of stockholders held within one year prior to receipt by the

Corporation of such Special Meeting Request, (d) the Board calls an annual or special meeting of stockholders (in lieu of calling the Stockholder Requested Special Meeting) in accordance with section (B)(3) of this Section 3, (e) a Similar Item is already included in the Corporation's notice as an item of business to be brought before a meeting of the stockholders that has been called but not yet held, or (f) such Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Exchange Act, or other applicable law.

(2) Business transacted at any Stockholder Requested Special Meeting shall be limited to the purpose stated in the valid Special Meeting Request; provided, however, that nothing herein shall prohibit the Board from submitting matters to the stockholders at any Stockholder Requested Special Meeting. If none of the Proposing Persons who submitted the Special Meeting Request appears at or sends a qualified representative to the Stockholder Requested Special Meeting to present the matters to be presented for consideration that were specified in the Stockholder Meeting Request, the Corporation need not present such matters for a vote at such meeting. A "qualified representative" of a Proposing Person shall be, if such Proposing Person is (a) a general or limited partnership, any general partner or person who functions as a general partner of the general or limited partnership or who controls the general or limited partnership, (b) a corporation, a duly appointed officer of the corporation, (c) a limited liability company, any manager or officer (or person who functions as an officer) of the limited liability company or any officer, director, manager or person who functions as an officer, director or manager of any entity ultimately in control of the limited liability company or (d) a trust, any trustee of such trust.

(3) If a Special Meeting Request is made that complies with this Section 3 and Article 10 of the Restated Certificate of Incorporation, the Board may (in lieu of calling the Stockholder Requested Special Meeting) present a Similar Item for stockholder approval at any other meeting of stockholders that is held within one hundred twenty (120) days after the Corporation receives such Special Meeting Request.

(4) Any Proposing Person may revoke a Special Meeting Request by written revocation delivered to, or mailed and received by, the Secretary at any time prior to the date of the Stockholder Requested Special Meeting. In the event any revocation(s) are received by the Secretary after the Secretary's receipt of a valid Special Meeting Request(s) from the holders of the Requisite Percentage of stockholders or any Special Meeting Request is deemed to be revoked as a result of section (A)(1)(d) of this Section 3, and as a result of such revocation(s), there no longer are valid unrevoked Special Meeting Request(s) from the Requisite Percentage of stockholders to call a special meeting, the Board shall have the discretion to determine whether or not to proceed with the Stockholder Requested Special Meeting.

(5) Notwithstanding anything in these Bylaws to the contrary, the Secretary shall not be required to call a special meeting except in accordance with Article 10 of the Restated Certificate of Incorporation and this Section 3. If the Board shall determine that any Special Meeting Request was not properly made in accordance with Article 10 of the Restated Certificate of Incorporation or these Bylaws, or shall determine that the stockholder or stockholders submitting such Special Meeting Request have not otherwise complied with Article 10 of the Restated Certificate of Incorporation or these Bylaws, then the Board shall not be required to take any action in connection with the Stockholder Requested Special Meeting, and the Secretary shall not be required to call such meeting. In addition to the requirements of this Section 3, each Proposing Person shall comply with all requirements of applicable law, including

all requirements of the Exchange Act, with respect to any request to fix a Special Meeting Request.

(C) In connection with a Stockholder Requested Special Meeting called in accordance with this Section 3, each Proposing Person that signed and delivered a Special Meeting Request shall further update and supplement the information previously provided to the Corporation in connection with such request, if necessary, so that the information provided or required to be provided in such request pursuant to this Section 3 shall be true and correct as of the record date for notice of the Stockholder Requested Special Meeting and as of the date that is ten (10) business days prior to the Stockholder Requested Special Meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for notice of the special meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the special meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the special meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the Stockholder Requested Special Meeting or any adjournment or postponement thereof). As used herein, the term “business day” shall mean any day that is not a Saturday or Sunday or a day on which banks in the city of the Corporation’s principal place of business are required or permitted to close.

(D) Any special meeting of stockholders, including any Stockholder Requested Special Meeting, shall be held at such date and time as may be fixed by the Board in accordance with these Bylaws and in compliance with applicable law.

SECTION 4. Notice of Meetings. Except as otherwise required by law, notice of each meeting of stockholders, whether annual or special, shall be given not less than ten (10) days nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to such stockholder personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to such stockholder at such stockholder’s post office address furnished by such stockholder to the Secretary of the Corporation for such purpose, or, if such stockholder shall not have furnished an address to the Secretary for such purpose, then at such stockholder’s post office address last known to the Secretary, or by transmitting a notice thereof to such stockholder at such address by electronic transmission in accordance with Section 232 of the General Corporation Law of the State of Delaware (the “Delaware General Corporation Law”). Except as otherwise expressly required by law, no publication of any notice of a meeting of stockholders shall be required. Every notice of a meeting of stockholders shall state the place, date and hour of the meeting and, in the case of a special meeting, shall also state the purpose for which the meeting is called. Notice of any meeting of stockholders shall not be required to be given to any stockholder to whom notice may be omitted pursuant to applicable law or who shall have waived such notice, and such notice shall be deemed waived by any stockholder who shall attend such meeting in person or by proxy, except a stockholder who shall attend such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Except as otherwise expressly required

by law, notice of any adjourned meeting of stockholders need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.

SECTION 5. Quorum. Except as otherwise required by law, the holders of record of a majority in voting interest of the shares of stock of the Corporation entitled to be voted thereat, present in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of stockholders of the Corporation or any adjournment thereof. Subject to the requirement of a larger percentage vote contained in the Restated Certificate of Incorporation, these Amended and Restated Bylaws (these "Bylaws") or by statute, the stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding any withdrawal of stockholders that may leave less than a quorum remaining, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence therefrom of all the stockholders, any officer entitled to preside at, or to act as secretary of, such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally called.

SECTION 6. Voting. Each stockholder shall, at each meeting of stockholders, be entitled to vote in person or by proxy each share of stock of the Corporation that has voting rights on the matter in question and that shall have been held by such stockholder and registered in such stockholder's name on the books of the Corporation:

(A) on the date fixed pursuant to Article VI, Section 5 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting; or

(B) if no such record date shall have been so fixed, then (i) at the close of business on the day immediately preceding the day upon which notice of the meeting shall be given or (ii) if notice of the meeting shall be waived, at the close of business on the day immediately preceding the day upon which the meeting shall be held.

Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation the pledgor shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or the pledgee's proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two (2) or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the Delaware General Corporation Law.

Any such voting rights may be exercised by the stockholder entitled thereto in person or by such stockholder's proxy appointed by an instrument in writing (or in such manner prescribed by the Delaware General Corporation Law) by such stockholder or by such stockholder's attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three (3) years from its date unless said proxy shall provide for a longer period. The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless such stockholder shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of stockholders, all matters, except as otherwise provided in the Restated Certificate of Incorporation, in these Bylaws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon, a quorum being present. The vote at any meeting of stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by such stockholder's proxy, if there be such proxy, and it shall state the number of shares voted.

SECTION 7. List of Stockholders. The Secretary of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of such stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, in such manner as prescribed by the Delaware General Corporation Law. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

SECTION 8. Judges. If at any meeting of stockholders a vote by written ballot shall be taken on any question, the chairman of such meeting may appoint a judge or judges to act with respect to such vote. Each judge so appointed shall first subscribe an oath faithfully to execute the duties of a judge at such meeting with strict impartiality and according to the best of such judge's ability. Such judges shall decide upon the qualification of the voters and shall report the number of shares represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against the question. Reports of judges shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. The judges need not be stockholders of the Corporation, and any officer of the Corporation may be a judge on any question other than a vote for or against a proposal in which such officer shall have a material interest.

SECTION 9. Notice of Stockholder Business and Nominations. In addition to the provisions governing a stockholder's notice of nominations of persons for election to the Board or the proposal of other business to be considered by the stockholders provided for in Articles 11 and 12 of the Restated Certificate of Incorporation:

(A) Such stockholder's notice shall also set forth: (i) as to each person whom the stockholder proposes to nominate for election as a director, (a) such person's written consent to

being named in the proxy statement as a nominee and to serving as a director if elected, (b) any Disclosable Interests of such person (except that the term “Proposing Person” where it appears in sections (A)(1) and (2) of Section 3 shall be deemed to refer to such nominee) and (c) a description of any agreement, arrangement or understanding with any Noticing Person (defined below); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any interest in such business of such stockholder or the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to all Noticing Persons giving the notice (a) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among the Noticing Persons, (b) a description of any Disclosable Interests of any such Noticing Person (except that the term “Proposing Person” where it appears in sections (A)(1) and (2) of Section 3 shall be deemed to refer to such Noticing Person), (c) a representation that the stockholder of record submitting the notice is a holder of record of stock of the Corporation entitled to vote at such meeting, intends to continuously hold such stock of the Corporation through such meeting and intends to appear in person or by a qualified representative at the meeting to propose such business or nomination, and (d) a representation as to whether the stockholder of record submitting the notice or any Noticing Person intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation’s outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) otherwise to solicit proxies from stockholders in support of such proposal or nomination. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

The term “Noticing Person” shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation or associate (within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owner, and (iv) any other person with whom such stockholder or such beneficial owner (or any of their respective associates or other participants in such solicitation) is Acting in Concert.

(B) A Noticing Person shall update and supplement its notice to the Corporation of its intent to propose business or a nomination at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 9 shall be true and correct as of the record date for notice of the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for notice of the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first

practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(C) The foregoing notice requirements of this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(D) Only such persons who are nominated in accordance with the procedures set forth in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation shall be eligible to be elected at an annual meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation. The only matters that may be brought before a special meeting of stockholders are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant Section 3 of these Bylaws, and stockholders shall not otherwise be permitted to nominate directors or propose business to be brought before a special meeting of stockholders. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty: (i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (A)(iii)(d) of this Section 9) and (ii) if any proposed nomination or business was not made or proposed in compliance with this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear in person at the annual meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 9, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(E) Notwithstanding the foregoing provisions of this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation, a stockholder shall also comply with all applicable

requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation; provided, however, that any references in these Bylaws or in the Restated Certificate of Incorporation to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any business to be considered pursuant to this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation and compliance with this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in clause (C) of this Section 9, matters brought properly under and in compliance with Rule 14a-8 of the Exchange Act). Nothing in this Section 9 and Articles 11 and 12 of the Restated Certificate of Incorporation shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (ii) of the holders of any series of preferred stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.

ARTICLE III: Board of Directors

SECTION 1. General Powers. Subject to any requirements in the Restated Certificate of Incorporation, these Bylaws, and of the Delaware General Corporation Law as to action which must be authorized or approved by the stockholders, any and all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be under the direction of, the Board to the fullest extent permitted by law. Without limiting the generality of the foregoing, it is hereby expressly declared that the Board shall have the following powers, to wit:

(A) to select and remove all of the officers, agents and employees of the Corporation, prescribe such powers and duties for them as may not be inconsistent with law, the Restated Certificate of Incorporation or these Bylaws, fix their compensation, and require from them security for faithful service;

(B) to conduct, manage and control the affairs and business of the Corporation, and to make such rules and regulations therefor not inconsistent with law, the Restated Certificate of Incorporation or these Bylaws, as it may deem best;

(C) to change the location of the registered office of the Corporation in Article I, Section 1 hereof; to change the principal office for the transaction of the business of the Corporation from one location to another as provided in Article I, Section 2 hereof; to fix and locate from time to time one or more subsidiary offices of the Corporation within or without the State of Delaware as provided in Article I, Section 3 hereof; to designate any place within or without the State of Delaware for the holding of any meeting or meetings of stockholders; and to adopt, make and use a corporate seal, and to prescribe the forms of certificates of stock, and to alter the form of such seal and of such certificates from time to time, and in its judgment as it may deem best, provided such seal and such certificate shall at all times comply with the provisions of law;

(D) to authorize the issuance of shares of stock of the Corporation from time to time, upon such terms and for such considerations as may be lawful;

(E) to borrow money and incur indebtedness for the purposes of the Corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust and securities therefor; and

(F) by resolution adopted by a majority of the authorized number of directors, to designate an executive and other committees, each consisting of one or more directors, to serve at the pleasure of the Board, and to prescribe the manner in which proceedings of such committee or committees shall be conducted.

SECTION 2. Number and Term of Office. The authorized number of directors of the Corporation shall be not less than five (5) nor more than fifteen (15) until this Section 2 is amended by a resolution duly adopted by the Board or by the stockholders of the Corporation. The exact number of directors shall be fixed from time to time within the limits specified by resolution of the Board or the stockholders. Directors need not be stockholders. Each of the directors of the Corporation shall hold office until such director's successor shall have been duly elected and shall qualify or until such director shall resign or shall have been removed in the manner provided for in the Restated Certificate of Incorporation. At all times a majority of the directors shall be Independent Directors (as defined below). If a director ceases to be an Independent Director, and such change causes the majority of directors not to be Independent Directors, the Board shall take such action as it deems prudent and necessary to cause the Board to consist of directors, a majority of whom are Independent Directors.

SECTION 3. Election of Directors. Each director to be elected by the stockholders of the Corporation shall be elected by the affirmative vote of a majority of the votes cast with respect to such director by the shares represented and entitled to vote therefor at a meeting of the stockholders for the election of directors at which a quorum is present (an "Election Meeting"); provided, however, that if the Board determines that the number of nominees exceeds the number of directors to be elected at such meeting (a "Contested Election"), and the Board has not rescinded such determination by the record date of the Election Meeting as initially announced, each of the directors to be elected at the Election Meeting shall be elected by the affirmative vote of a plurality of the votes cast by the shares represented and entitled to vote at such meeting with respect to the election of such director.

For purposes of this Section 3, a "majority of the votes cast" means that the number of votes cast "for" a candidate for director exceeds the number of votes cast "against" that director (with "abstentions" and "broker non-votes" not counted as votes cast as either "for" or "against" such director's election). In an election other than a Contested Election, stockholders will be given the choice to cast votes "for" or "against" the election of directors. In a Contested Election, stockholders will be given the choice to cast "for" or "withhold" votes for the election of directors and shall not have the ability to cast any other vote with respect to such election of directors. In the event an Election Meeting involves the election of directors by separate votes by class or classes or series, the determination as to whether an election constitutes a Contested Election shall be made on a class by class or series by series basis, as applicable.

SECTION 4. Resignations. Any director of the Corporation may resign at any time upon notice given in writing or by electronic transmission to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time be not specified, it shall take effect immediately upon receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 5. Vacancies. Except as otherwise provided in the Restated Certificate of Incorporation, and subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, newly created directorships resulting from any increase in the number of directors or any vacancy on the Board resulting from death, resignation, disqualification, removal or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum, or by a sole remaining director. Each director so chosen to fill a vacancy shall hold office until such director's successor shall have been elected and shall qualify or until such director shall resign or shall have been removed.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

SECTION 6. Place of Meeting. The Board or any committee thereof may hold any of its meetings at such place or places within or without the State of Delaware as the Board or such committee may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or a waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board or any committee thereof by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board or such committee can hear each other, and such participation shall constitute presence in person at such meeting.

SECTION 7. First Meeting. The Board shall meet as soon as practicable after each annual election of directors, and notice of such first meeting shall not be required.

SECTION 8. Regular Meetings. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day that is not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

SECTION 9. Special Meetings. Special meetings of the Board for any purpose or purposes shall be called at any time by the Chairman of the Board or, if the Chairman of the Board is absent or unable or refuses to act, by the Chief Executive Officer or the President. Except as otherwise provided by law or by these Bylaws, special meetings of the Board shall be held upon at least four (4) days written notice or two (2) hours notice given personally, by telephone or by electronic transmission. Any such notice shall be addressed or delivered to each director at such director's address as is shown upon the records of the Corporation or as may have been given to the Corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of

the directors are regularly held. Notice by mail shall be deemed to have been given at the time such notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for delivery or transmission. Notice by electronic transmission shall be deemed to have been given at the time it is actually transmitted by the person giving the notice by electronic means to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or similar means of communication, to the recipient or to a person at the office of the recipient whom the person giving the notice has reason to believe will promptly communicate it to the recipient. Except where otherwise required by law or these Bylaws, notice of the purpose of a special meeting need not be given. Notice of any meeting of the Board shall not be required to be given to any director who is present at such meeting, except a director who shall attend such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 10. Quorum and Manner of Acting. Except as otherwise provided in these Bylaws, the Restated Certificate of Incorporation or by applicable law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative vote of a majority of the directors present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, provided any action taken is approved by at least a majority of the required quorum for such meeting. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

SECTION 11. Action by Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if consent in writing or by electronic transmission is given thereto by all members of the Board or of such committee, as the case may be, and such consent, electronic transmission or transmissions are filed with the minutes of proceedings of the Board or of such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

SECTION 12. Compensation. Directors who are not employees of the Corporation or any of its subsidiaries may receive an annual fee for their services as directors in an amount fixed by resolution of the Board, and, in addition, a fixed fee, with or without expenses of attendance, may be allowed by resolution of the Board for attendance at each meeting, including each meeting of a committee of the Board. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefor.

SECTION 13. Committees. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Any such committee, to the extent provided in the resolution of the

Board and subject to any restrictions or limitation on the delegation of power and authority imposed by applicable law, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Any such committee shall keep written minutes of its meetings and report the same to the Board at the next regular meeting of the Board. Unless the Board or these Bylaws shall otherwise prescribe the manner of proceedings of any such committee, meetings of such committee may be regularly scheduled in advance and may be called at any time by the chairman of the committee or by any two (2) members thereof; otherwise, the provisions of these Bylaws with respect to notice and conduct of meetings of the Board shall govern.

SECTION 14. Definition of Independent Director. For purposes of this Article III, the term “Independent Director” shall mean:

(A) for purposes of determining whether a director is qualified to serve as a member of the audit committee of the Board, a director who meets the qualification requirements for being an independent director under applicable securities laws, including the Exchange Act, applicable rules and regulations of the U.S. Securities and Exchange Commission and applicable rules and regulations of any stock exchange or securities market applicable to the Corporation; and

(B) for all other purposes, a director who meets the qualification requirements for being an independent director under applicable rules and regulations of any stock exchange or securities market applicable to the Corporation.

SECTION 15. Interpretation and Application of this Article. The Board shall have the exclusive right and power to interpret and apply the provisions of this Article, including, without limitation, the adoption of written definitions of terms used in and guidelines for the application of this Article (any such definitions and guidelines shall be filed with the Secretary, and such definitions and guidelines as may prevail shall be made available to any stockholder upon written request). Any such definitions or guidelines and any other interpretation or application of the provisions of this Article made in good faith shall be binding and conclusive upon the stockholders, provided that, in the case of any interpretation or application of this Article by the Board to a specific person which results in such person being classified as an Independent Director, the Board shall have determined that such person is independent of management and free from any relationship that, in the opinion of the Board, would interfere with such person’s exercise of independent judgment as a Board member.

ARTICLE IV: Officers

SECTION 1. Officers. The officers of the Corporation shall be a Chairman of the Board, a Chief Executive Officer, a President, one or more Vice Presidents (the number thereof and their respective titles to be determined by the Board), a Secretary, a Treasurer and such other officers as may be appointed at the discretion of the Board in accordance with the provisions of Section 3 of this Article IV. At the discretion of the Board, from time to time, the Chairman of the Board may be a director of the Corporation who is not an officer of the Corporation.

SECTION 2. Election. The officers of the Corporation, except such officers as may be appointed or elected in accordance with the provisions of Section 3 or Section 5 of this Article IV, shall be chosen annually by the Board at the first meeting thereof, and each officer shall hold office until such officer shall resign or shall be removed or otherwise disqualified to serve, or until such officer's successor shall be elected and qualified.

SECTION 3. Other Officers. In addition to the officers chosen annually by the Board at its first meeting, the Board also may appoint or elect such other officers as the business of the Corporation may require, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board may from time to time specify, and shall hold office until such officer shall resign or shall be removed or otherwise disqualified to serve, or until such officer's successor shall be elected and qualified.

SECTION 4. Removal and Resignation. Any officer may be removed, either with or without cause, by resolution of the Board passed by a majority of the directors at the time in office, at any regular or special meeting of the Board, or except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

SECTION 5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointment to such office.

SECTION 6. Chairman of the Board. The Chairman of the Board shall preside at all meetings of stockholders and at all meetings of the Board. The Chairman of the Board shall be a member of such committees, if any, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

SECTION 7. Chief Executive Officer. The Chief Executive Officer shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of the Corporation.

SECTION 8. President. The President shall have such powers and perform such duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned by the Chief Executive Officer or the Board, or as may be prescribed by these Bylaws.

SECTION 9. Vice President. Each Vice President shall have such powers and perform such duties with respect to the administration of the business and affairs of the Corporation as may from time to time be assigned to such Vice President by the Chief Executive Officer, the President or the Board, or as may be prescribed by these Bylaws.

SECTION 10. Secretary. The Secretary shall keep, or cause to be kept, at the principal office of the Corporation, or such other place as the Board may order, a book of minutes of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at

meetings of directors, the number of shares present or represented at meetings of stockholders, and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the name and address of each stockholder, the number of shares of each class held by such stockholder, the number and date of certificates issued for certificated shares, the number and date of issuance of uncertificated shares, and the number and date of cancellation of certificated shares surrendered for cancellation or for uncertificated shares.

The Secretary shall give, or cause to be given, notice of all meetings of stockholders and of the Board required by these Bylaws or by law to be given, and shall keep the seal of the Corporation in safe custody and, if necessary or appropriate, shall affix and attest the seal to all documents to be executed on behalf of the Corporation under its seal, and shall have such other powers and perform such other duties as may be prescribed by these Bylaws or assigned by the Board, the Chairman of the Board or any officer of the Corporation to whom the Secretary may report. If for any reason the Secretary shall fail to give notice of any special meeting of the Board called by one or more of the persons identified in Article III, Section 9 hereof, then any such person or persons may give notice of any such special meeting.

SECTION 11. Treasurer. The Treasurer shall supervise, have custody of and be responsible for all funds and securities of the Corporation. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board or in accordance with authority delegated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered or authorized by the Board, shall render to the Board and the Chairman of the Board whenever they request it, an account of all of the Treasurer's transactions, and shall have such other powers and perform such other duties as may be prescribed by these Bylaws or assigned by the Board, the Chairman of the Board or any officer of the Corporation to whom the Treasurer may report.

ARTICLE V: Contracts, Checks, Drafts, Bank Accounts, Etc.

SECTION 1. Execution of Contracts. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

SECTION 2. Checks, Drafts, Etc. All checks, drafts, or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such officer, assistant, agent or attorney shall give such bond, if any, as the Board may require.

SECTION 3. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Treasurer or the Secretary (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall from time to time be determined by the Board) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

SECTION 4. General and Special Bank Accounts. The Board may from time to time authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by any officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

ARTICLE VI: Shares and Their Transfer

SECTION 1. Certificates for Stock. The shares of stock of the Corporation may be certificated or uncertificated, as provided under Delaware law. Every holder of stock represented by certificates shall be entitled to have a certificate or certificates, to be in such form as the Board shall prescribe, certifying the number and class of shares of the stock of the Corporation owned by such holder. The certificates representing certificated shares of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, the Chief Executive Officer, the President or any Vice President, and by the Secretary or the Treasurer. Any or all of the signatures on the certificates may be a facsimile. In case any officer, transfer agent or registrar who has signed, or whose facsimile signature has been placed upon, any such certificate, shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as though the person who signed such certificate, or whose facsimile signature shall have been placed thereupon, were such officer, transfer agent or registrar at the date of issue. Every certificate surrendered to the Corporation for exchange or transfer shall be canceled, and no new certificate or certificates or uncertificated shares shall be issued in exchange for any existing certificate until such existing certificate shall have been so canceled, except in cases provided for in Section 4 of this Article VI.

SECTION 2. Transfers of Stock. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by such holder's attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer clerk or a transfer agent appointed as provided in Section 3 of this Article VI, and, if such shares are represented by a certificate, upon surrender of the certificate or certificates for

such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes with regard to the Corporation. Whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact shall be so expressed in the entry of transfer if, when the certificate or certificates shall be presented to the Corporation for transfer or uncertificated shares are requested to be transferred, both the transferor and the transferee request the Corporation to do so.

SECTION 3. Regulations. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. It may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

SECTION 4. Lost, Stolen, Destroyed, and Mutilated Certificates. In any case of loss, theft, destruction, or mutilation of any certificate of stock, another certificate or uncertificated shares may be issued in its place upon proof of such loss, theft, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sum as the Board may direct; provided, however, that a new certificate or uncertificated shares may be issued without requiring any bond when, in the judgment of the Board, it is proper so to do.

SECTION 5. Fixing Date for Determination of Stockholders of Record.

(A) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting. A determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of such meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(B) The record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be fixed in the manner provided for in the Restated Certificate of Incorporation.

(C) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted and which record date shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be the close of business on the day on which the Board adopts the resolution relating thereto.

ARTICLE VII: Miscellaneous

SECTION 1. Seal. The Board shall adopt a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and words showing that the Corporation was incorporated in the State of Delaware.

SECTION 2. Waiver of Notices. Whenever notice is required to be given by these Bylaws or the Restated Certificate of Incorporation or by law, the person entitled to said notice may waive such notice in writing, either before or after the time stated therein, and such waiver shall be deemed equivalent to notice.

SECTION 3. Amendments. Except as otherwise provided herein or in the Restated Certificate of Incorporation, these Bylaws or any of them may be altered, amended, repealed or rescinded and new Bylaws may be adopted by the Board or by the stockholders at any annual or special meeting of stockholders, provided that notice of such proposed alteration, amendment, repeal, rescission or adoption is given in the notice of such meeting.

SECTION 4. Representation of Other Corporations. The Chairman of the Board, the Chief Executive Officer, the President, the Secretary or any Vice President of the Corporation is authorized to vote, represent and exercise on behalf of the Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the Corporation. The authority herein granted to said officers to vote or represent on behalf of the Corporation any and all shares held by the Corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by such officers.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

**BRIEF IN SUPPORT OF PLAINTIFF'S
MOTION FOR EXPEDITED PROCEEDINGS**

YOUNG CONAWAY STARGATT
& TAYLOR, LLP

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
Dated: June 12, 2014

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

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PRELIMINARY STATEMENT

Plaintiff PS Fund 1, LLC (“PS Fund 1”) respectfully submits this brief in support of its motion for expedited proceedings and truncation of the 20-day periods found in Court of Chancery Rules 12 and 56(a). As set forth below and in PS Fund 1’s complaint, the recent refusal by Allergan, Inc. (“Allergan” or the “Company”) to confirm its position on the scope of provisions in its Shareholder Rights Plan (or “Poison Pill”) has effectively nullified a variety of rights vested in the shareholders by Allergan’s Certificate of Incorporation and the Delaware General Corporation Law (“DGCL”), including the right to call a special meeting. Specifically, Allergan has refused to confirm to PS Fund 1 that actions required to be undertaken to call a special meeting of shareholders in conformance with the Charter and Bylaws, will not be deemed to trigger the Poison Pill, thus massively diluting PS Fund 1’s 9.7% stake in the Company, as well as the stakes of other stockholders who join PS Fund 1 in seeking such a meeting.

The Charter and Bylaws require holders of 25% of the Allergan shares to act in parallel to seek a special meeting, while the Poison Pill precludes any one beneficial owner from owning 10% or more of the equity. Necessarily, to fulfill the 25% requirement to call a special meeting, any one shareholder must cooperate with other shareholders. That cooperation among shareholders is mandated by the special meeting rules of the Charter and Bylaws.

Allergan refuses to confirm that the Poison Pill will not be triggered by shareholders acting together to fulfill the requirements for calling a special meeting. Allergan's conduct creates an *in terrorum* risk to shareholders: if they even attempt to fulfill the Charter and Bylaws' special meeting rules, the Board may declare the Pill to be triggered. That is a grave, unacceptable risk to shareholders, as Allergan knows. In practice, Allergan is using the Poison Pill to render unusable and nugatory the shareholders' right under the Charter and Bylaws to call a special meeting.

Allergan's strategic obfuscation regarding how it will interpret and apply the Poison Pill effectively disenfranchises shareholders and entrenches the Board, because shareholders cannot exercise their right to call a special meeting without risking that in doing so they will inadvertently trigger the Pill. This needless and unjustifiable impairment of the stockholder franchise is causing irreparable harm to PS Fund 1. For these reasons and as further explained below, these circumstances warrant expedited proceedings.

FACTUAL BACKGROUND

I. The Parties and the Initial Merger Proposal

Plaintiff PS Fund 1 is an entity formed by non-parties Pershing Square Capital Management, L.P. (“Pershing Square”) and Valeant Pharmaceuticals, Inc. (“Valeant”). (Compl. ¶ 12). Defendant Allergan is a publicly traded Delaware corporation. On April 21, 2014, Pershing Square and Valeant announced that (i) they had formed a joint entity PS Fund 1, to acquire ownership of Allergan stock, and (ii) PS Fund 1 had acquired beneficial ownership of approximately 9.7% of the outstanding shares of Allergan common stock. (*Id.* at ¶ 12).

The following day, on April 22, 2014, Valeant made a public offer (the “Initial Merger Proposal”) to Allergan’s Board, to acquire Allergan for a price comprising \$43.80 in cash and 0.83 shares of Valeant for each Allergan share based on the fully diluted number of Allergan shares outstanding. *Id.* at ¶ 13. The Initial Merger Proposal would have offered shareholders a substantial premium over Allergan’s unaffected stock price of \$116.63 as of April 10, 2014. *Id.*

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

Immediately upon receipt of Valeant’s offer, on April 22, 2014, Allergan’s Board adopted a Shareholder Rights Plan as a defensive measure against Valeant’s proposed bid. *Id.* at ¶ 14. Under the Rights Plan, should any shareholder become Beneficial Owner of ten percent of the outstanding Company shares, the Pill is triggered, enabling all other shareholders of record (as of May 8, 2014), to exercise

their Rights (as defined therein) to purchase Allergan stock, effectively diluting the holdings of the triggering shareholder(s). *Id.* at ¶ 14 & Ex. A. Meanwhile, the Board refused to negotiate. After declining Pershing Square’s overtures to meet in person to discuss Valeant’s proposal, Allergan officially rejected the Initial Merger Proposal on May 12, 2014.¹ *Id.* at ¶ 15.

III. PS Fund 1 Seeks to Exercise Shareholder Voting Rights as Granted by Allergan’s Certificate of Incorporation.

On June 2, 2014, Pershing Square, PS Fund 1, and certain affiliates filed a preliminary Schedule 14A with the SEC to solicit revocable proxies from the Company’s shareholders in order to call a special meeting pursuant to Article 10 of the Company’s Certificate of Incorporation and Article II, Section 2 of the Company’s Bylaws. *Id.* at ¶ 19. The preliminary solicitation statement indicated that the special meeting would be called for several purposes, including: (i) to remove from office, without cause, a majority of the Board; (ii) to request that the Board elect or appoint a slate of individuals proposed by the shareholders as new Directors on the Board; (iii) to amend the Bylaws to remove certain onerous special meeting provisions; and (iv) to request that the Board promptly engage in

¹ As set forth more fully in the complaint, after Valeant raised its bid (twice), Allergan—without meeting with Valeant to address concerns or performing any due diligence—rejected Valeant’s latest revised offer on June 10, 2014. (Compl. at ¶¶ 16-18).

good faith discussions with Valeant regarding Valeant's offer to merge with the Company. *Id.* at ¶ 19 & Ex. B.

After the preliminary proxy statement was filed 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. *Id.* at ¶ 20. 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 (and the tasks reasonably necessary to accomplish that goal) would trigger the Pill. *Id.* at ¶ 21 & Ex. C. The letter presented four specific questions:

1. 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?
2. 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?

3. 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?
4. 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?

Id.

Allergan responded by letter on June 11, 2014. *Id.* at ¶ 22 & Ex. D. In that letter, Allergan acknowledged 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. *Id.* Allergan, however, refused to answer any of PS Fund 1's specific questions. In particular, Allergan did not address (i) 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; (ii) whether assisting in, or communicating with shareholders about, registering a *de*

minimis amount of their stock for the purpose of meeting the Bylaw requirement that the proposing person be a record holder would trigger the Rights Plan; (iii) 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 (iv) whether Allergan would contend that coordination among shareholders to petition the Court under Section 223(c) of the DGCL to order an election would trigger the Rights Plan. *Id.*

Allergan's unresponsiveness is a strategic attempt to render it difficult if not impossible for PS Fund 1 to solicit revocable proxies to request a special meeting. Specifically, Allergan refused to confirm that the provision of assistance to Pershing Square's fellow shareholders to complete, execute, date, and deliver the Special Meeting Request forms and revocable proxies and consents would not 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 proactively assist shareholders in compiling, organizing, and presenting the abundant information required by Allergan's Bylaws (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 necessary forms) *free of the risk of triggering the poison pill*, PS Fund 1 is materially impaired in its efforts to pursue a special meeting request.

IV. The Relevant Corporate Provisions

Article 10 of Allergan's Certificate of Incorporation allows for shareholders to call for a special meeting:

Special meetings of the 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.

Id. at ¶ 23 & Ex. E, Art. 10.

Furthermore, the Certificate of Incorporation allows the shareholders to vote to remove Allergan's Directors at such 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.

Id. at ¶ 24 & Ex. E, Art. 7.

Allergan's Bylaws append a number of complex prerequisites to any exercise of the shareholders' right under the Certificate of Incorporation to call a special meeting. Specifically, Article II, Section 3 of the Bylaws states:

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)

Id. at ¶ 25 & Ex. F, Art. II, § 3.

Article II, Section 3 of the Bylaws requires that the Special Meeting requests be in the “proper form.” *Id.* at ¶ 26 & Ex. F, Art. II, § 3. 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. *Id.* A Special Meeting Request form must also set forth the Proposing Person's Disclosable Interests, if any. *Id.* To determine whether one has a Disclosable Interest, the Proposing Person must consult a 596-word, 37-line definition of Disclosable Interests in the Bylaws. *Id.*

In addition, a Special Meeting Request must include a statement of the purpose(s) for the special meeting. *Id.* As further set forth in the Complaint, the Bylaw requirements for properly requesting a special meeting conclude by incorporating various other Corporate provisions by reference, all of which require additional informational disclosure. *Id.* None of these conditions on the right to call a Special Meeting appear in the Certificate of Incorporation.

Finally, under the Shareholder Rights Plan, the Pill is triggered if any non-exempt shareholder becomes the "Beneficial Owner" of ten percent (10%) or more of outstanding shares. *Id.* at ¶ 27 & Ex. A. A "Beneficial Owner" under the Rights Plan is defined to include any 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).

Id. at ¶ 28 & Ex. A, § 1.3.3.

ARGUMENT

In light of the complexity of the requirements to call a Special Meeting, PS Fund 1 will need the ability to communicate with and provide assistance to other shareholders in interpreting, understanding, and following those requirements. However, without assurances from the Company (or this Court) that such conduct will not trigger the Pill, PS Fund 1 cannot effectively engage in such communications without the risk of inadvertently triggering the Pill and losing billions of dollars through dilution of shares. The Company's strategic obfuscation on this issue perpetuates shareholder uncertainty and effectively precludes PS Fund 1 (and other shareholders) from exercising their right to call a Special Meeting, thereby justifying expedited proceedings.

I. Legal Standards for Expedition

Expedited proceedings are warranted where “the plaintiff has articulated a sufficiently colorable claim and shown a sufficient possibility of a threatened irreparable injury, as would justify imposing on the defendants and the public, the extra (and sometimes substantial) costs of an expedited . . . proceeding.” *Giammargo v. Snapple Beverage Corp.*, 1994 WL 672698, at *3 (Del. Ch. Nov. 15, 1994). In applying this standard, the Court “traditionally has acted

with a certain solicitude for plaintiffs . . . and thus has followed the practice of erring on the side of more [expedited] hearings rather than fewer.” *Id.* The Court is particularly sensitive to the need for expedition in the context of a contest for corporate control. *See Am. Stores Co. v. Lucky Stores, Inc.*, 1988 WL 909330, at *2 (Del. Ch. Apr. 13, 1988) (“[E]xpedited discovery . . . is quite conventional in litigation of this type for very good reason. Cases involving contests for corporate control are of necessity very fast-moving. . . . [T]akeover cases are fluid, constantly changing affairs”).

On a motion for expedition, the pleading standard for a colorable claim is liberal. The Court “ha[s] no real choice other than to accept the complaint’s assertions at face value,” *TCW Tech. Ltd. P’ship v. Intermedia Commc’ns, Inc.*, 2000 WL 1478537, at *2 (Del. Ch. Oct. 2, 2000), and it “need not determine the merits of the case or even the legal sufficiency of the pleadings at this stage of the proceedings,” *Morton v. Am. Mktg. Indus. Hldgs., Inc.*, 1995 WL 1791090, at *2 (Del. Ch. Oct. 5, 1995) (internal quotations omitted). To conclude that a claim is colorable, a court must find only that the party has asserted facts that, if true, are sufficient to establish all elements of the claim at issue. *See Raymond Revocable Trust v. MAT Five LLC*, 2008 WL 2673341, at *4 (Del. Ch. Jun. 26, 2008) (concluding that claim was “colorable” because plaintiff had alleged facts sufficient to satisfy elements of claim).

To secure expedition, a party need only show that there exists “some reason justifying departure from the sequence envisioned by the rules.” *Am. Stores Co.*, 1988 WL 909330, at *2. The Delaware Supreme Court has observed that “Delaware courts are always receptive to expediting any type of litigation in the interests of affording justice to the parties.” *Box v. Box*, 697 A.2d 395, 399 (Del. 1997).

As to PS Fund 1’s specific request that the Court truncate the length of time that claimants must wait before moving for summary judgment, “the Court may truncate the 20-day period when it is the opinion of the Court that doing so aids judicial efficiency without prejudicing the defendant.” *Loppert v. WindsorTech, Inc.*, 865 A.2d 1282, 1290 (Del. Ch. 2004). Similarly, as to the amount of time Defendant has to file an answer, Court of Chancery Rule 12(a) states that “[f]or cause shown the Court may shorten . . . the time periods specified herein.” Ct. Ch. R. 12(a); *see also Loew’s Theatres, Inc. v. Commercial Credit Co.*, 243 A.2d 78, 79 & n.1 (Del. Ch. 1968) (noting that the amount of time to file an answer under Rule 12(a) was shortened). As discussed more fully below, these standards are all satisfied here and thus the court has good cause to order expedition and truncate the 20-day periods found in Rule 56(a) and Rule 12(a).

II. PS Fund 1's Substantive Claims Are Colorable.

A. PS Fund 1's Construction of the Rights Plan is Colorable.

PS Fund 1 has a very colorable claim that the Pill is not triggered if it assists other shareholders so that they may fulfill the many complex bylaw requirements that are purportedly a prerequisite to calling a special meeting.

1. Under The Text of the Rights Plans, PS Fund 1 Does Not Trigger the Pill if it Assists Other Stockholders in the Completion, Execution, and Delivery of Special Meeting Request Forms.

As Allergan does not dispute, PS Fund 1's solicitation and receipt of revocable proxies in connection with requesting a special meeting would not in and of itself trigger the Rights Plan by its plain terms. Indeed, Allergan's plan has a safe harbor that expressly exempts joint efforts by shareholders from triggering Beneficial Ownership when the participation by other shareholders derives "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." (Compl. Ex. A). Any joint effort of shareholders to seek a special meeting occurring by way of PS Fund 1's solicitation of revocable proxies via a Schedule 14A is thus subject to the express safe harbor in Allergan's definition of beneficial ownership.

It follows, then, that the provision of assistance to Pershing Square's fellow shareholders to complete, execute, date, and deliver the Special Meeting Request forms and revocable proxies and consents would not trigger the Rights Plan. Because of the many technical requirements under the Bylaws for requesting a special meeting, cooperation and communication between shareholders is necessary to properly execute a special meeting request. Allergan has recognized the shareholders' right to solicit revocable proxies in order to request a special meeting without triggering the Rights Plan. But the right to solicit proxies to call a special meeting would be a hollow one if shareholders were prevented from taking the steps necessary to exercise that right because of the lingering specter (that Allergan refuses to dispel) of triggering the highly dilutive pill.

The text of the Rights Plan supports PS Fund 1's position that it may assist other shareholders. This Court has repeatedly examined language that is substantively identical to the relevant language in Allergan's Rights Plan and concluded that the breadth of the Beneficial Ownership definition exists not to interfere with stockholders' communicating with each other in order to call a special meeting but rather to prevent stockholders owning a certain amount of stock "from joining together as a group to finance and promote a joint slate through a proxy contest." *Yucaipa Am. Alliance Fund II, L.P. v. Riggio*, 1 A.3d

310, 335 (Del. Ch. 2010).² In *Yucaipa*, the Court noted that substantially identical language in Barnes and Nobles’ Pill was “essentially identical in scope to Rule 13d-5,” which applies “[w]hen two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer.” *Id.* (quoting 17 C.F.R. § 240.13d–5(b)(1)) (emphasis removed).

Here, PS Fund 1 does not seek to reach a voting agreement (let alone an agreement to act with the purpose of acquiring, holding, or disposing of shares). Nor will PS Fund 1’s communications with other shareholders trigger any disclosure obligations under Section 13D of the Exchange Act. (Compl. ¶ 30). Rather, it simply intends to take steps necessary to solicit revocable proxies to request a special meeting and help other shareholders correctly deliver those proxies. (*See id.* Ex. B at 1 (noting that filing is “for the purpose of soliciting revocable proxies from shareholders of the Company to empower us to deliver to the Company’s Secretary your Special Meeting Request Forms to call a special meeting of the Company’s shareholders”)). PS Fund 1’s assistance to other shareholders in this regard will be crucial; the onerous requirements found in the bylaws have required the proxy form to be accompanied by a nine item exhibit for

² *See also Yucaipa*, 1 A.3d at 341 (“Furthermore, the definition of beneficial ownership in *Stahl* was substantively identical to the definition here . . . and the *Stahl* court presumed, as did the parties, that that language unambiguously circumscribed the Apple Bancorp shareholders’ ability to reach agreements regarding the joint conduct of a proxy contest.”).

shareholders to fill out—an exhibit whose complexity requires three pages of instructions. (See Compl. Ex. B at Ex. A & proceeding instructions). Without being able to render assistance, PS Fund 1 cannot effectively solicit revocable proxies calling for a Special Meeting.

2. Any Remaining Ambiguities Must Be Resolved In Favor of Preserving the Shareholder Franchise.

Furthermore, even if there were any ambiguity remaining as to whether PS Fund 1’s would trigger the Pill simply by engaging in the type of shareholder communications essential to its effectively calling for a special meeting, there is strong presumption against construing corporate documents in a manner that disenfranchises shareholders. *See, e.g., In re Westech Capital Corp.*, 2014 WL 2211612, at *14 (Del. Ch. May 29, 2014) (“A court ought not to resolve doubts in favor of disenfranchisement.”); *Airgas, Inc. v. Air Prods. & Chems., Inc.*, 2010 WL 3960599, at *7 (Del. Ch. Oct. 8, 2010) (noting that “under the ‘rule of construction in favor of franchise rights,’ I cannot read the word ‘fiscal’ into the charter, and must instead construe the ambiguous terms against the board . . .”).

To construe Section 1.3.3 of the Rights Plan in a way that would prevent shareholders from cooperating to properly complete Special Meeting Request forms and submit revocable proxies and consents has a disenfranchising effect. In order to ensure that other shareholders effectively request a special meeting, PS

Fund 1 and any other investor seeking a special meeting must be able to assist all shareholders who will be delivering proxies and executing Special Meeting Request Forms. The percentage of shareholder support necessary to call a special meeting (25%) is greater than the percentage of Beneficial Ownership that will trigger the pill. A construction of the Rights Plan that allowed the shares of shareholders receiving assistance to be counted as being Beneficially Owned by the shareholder rendering the assistance is a construction under which no shareholder could ever in practice take the steps necessary to collect sufficient proxies to call a special meeting without triggering the Pill. This construction would effectively disenfranchise shareholders and would prevent PS Fund 1 from exercising its rights under the Company charter to call a special meeting so that the Board might be removed. The Court should not “construe [the] contract as disabling a majority of a corporate electorate from changing the board of directors unless that reading of the contract is certain and unambiguous.” *Rohe v. Reliance Training Network, Inc.*, 2000 WL 1038190, at *16 (Del. Ch. July 21, 2000). In sum, PS Fund 1’s claims regarding the interpretation of the Rights Plan are colorable.

B. PS Fund 1’s Claim Regarding the Conflict Between the Rights Plan and the Certificate of Incorporation is Colorable

Shareholders have a vested right under the Certificate of Incorporation, consistent with 8 *Del. C.* § 211(d),³ to call a special meeting. PS Fund 1 has a colorable claim that this right would exist in name only if shareholders may not, in an effort to exercise that right, cooperate to comply with the relevant bylaw requirements without triggering the pill. In *Paolino v. Mace Security International Inc.*, 985 A.2d 392, 403 (Del. Ch. 2009), this Court ruled that a Corporate provision “that conflicts with . . . the certificate of incorporation is *ultra vires* and void.” And the Supreme Court long ago noted that a provision “that restricts . . . the voting power of stock of a corporation as established by the law of its charter is of course, void.” *Standard Scale & Supply Corp. v. Chappel*, 141 A. 191, 196 (Del. 1928) (internal quotation marks omitted).

Thus, in situations in which one possible interpretation of a corporate provision “conflicts with the Certificate of Incorporation and one does not,” the Court will interpret the provision in a manner that “avoid[s] the conflict.” *Klaassen v. Allegro Dev. Corp.*, 2013 WL 5739680, at *25 (Del. Ch. Oct. 11, 2013). The Supreme Court has dealt with an analogous situation in cases

³ “Special meetings of the stockholders may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by the bylaws.” 8 *Del. C.* § 211(d).

regarding stockholder efforts to act via written consent under § 228 (another statute that, like § 211(d), gives companies and their shareholders the choice to specify in their charter whether they want their shareholders to enjoy certain rights). In that context, the Supreme Court has rejected “bylaws [that] are so pervasive as to intrude upon fundamental stockholder rights guaranteed by statute.” *Allen v. Prime Computer, Inc.*, 540 A.2d 417, 421 (Del. 1988) (internal quotation marks omitted); *cf. Lennane v. Ask Computer Sys., Inc.*, 1990 WL 154150, at *1537 (Del. Ch. Oct. 11, 1990) (“When the . . . the certificate of corporation . . . creates a right to vote on a matter, loyalty to shareholders will ordinarily require director[]s to establish a compelling justification for action that significantly impairs that right. In those circumstances, the right to vote is constitutional . . .”).⁴

C. PS Fund 1’s Claim Under 8 Del. C. § 109(a) is Colorable.

PS Fund 1’s claim under 8 Del. C. § 109(a) is also colorable. Delaware General Corporation Law establishes that directors’ ability to amend or repeal

⁴ This court has similarly held that companies cannot use advance notice bylaws to frustrate the shareholder franchise. *See Openwave Systems Inc. v. Harbinger Capital Partners Master Fund I, Ltd.*, 924 A.2d 228, 239 (Del. Ch. 2007) (“[W]hen advance notice bylaws unduly restrict the stockholder franchise or are applied inequitably, they will be struck down.”); *Accipiter Life Sciences Fund, L.P. v. Helfer*, 905 A.2d 115, 124-125 (Del. Ch. 2006) (“In the specific context of advance notice bylaws, *Schnell* has been understood to mean that such bylaws must on their face and in the particular circumstances ‘afford the shareholders a fair opportunity to nominate candidates.’ This matter of ‘basic fairness’ requires relief where inequitable conduct ‘interferes with a fair voting process.’” (footnote omitted)).

bylaws “shall not divest the stockholders or members of the power, nor limit their power to adopt, amend or repeal bylaws.” 8 *Del. C.* § 109(a). As noted above, if PS Fund 1 cannot help other shareholders navigate through the Bylaws’ onerous special meeting request requirements, it will be materially frustrated and impaired in its efforts to call a special meeting. Furthermore, any attempt by stockholders to act via written consent requires that the stockholder supporting such an action communicate with other stockholders so that holders of at least 25% of outstanding stock deliver requests that “describe the action proposed to be taken by written consent.” (Compl., Ex. E, Art. 9(b)). A broad reading of “Beneficial Ownership” could arguably have the collateral effect of foreclosing any shareholder written consents. The Rights Plan so interpreted, acting in conjunction with the Bylaws, would drastically limit stockholder power to adopt, amend or repeal Bylaws. As a practical matter, stockholders will only be permitted to amend the Bylaws at annual meetings called by the Board. This constitutes a violation of 8 *Del. C.* § 109(a). *See CA, Inc. v. AFSCME Emps. Pension Plan*, 953 A.2d 227, 232 (Del. 2008) (“[B]y its terms Section 109(a) vests in the shareholders a power to adopt, amend or repeal bylaws that is legally sacrosanct, *i.e.*, the power cannot be non-consensually eliminated *or limited* by anyone other than the legislature itself.” (emphasis added)).

D. PS Fund 1 States a Colorable Claim Under 8 Del. C. § 223(c).

Finally, PS Fund 1 has a colorable claim that it will not trigger the Pill when it coordinates with other shareholders to petition this Court for an election under 8 Del. C. § 223(c). Petitioning a court for relief is not an agreement within the scope of Beneficial Ownership (as defined in 13d-5 or the Rights Plan). But Allergan has refused to acknowledge this basic principle of law. The threshold of shares necessary to petition the Court under § 223(c) is equal to the threshold of shares that, if Beneficially Owned by one shareholder, will trigger the Pill. Thus, if an agreement among 10% or more of shareholders to petition for relief under § 223(c) were deemed to trigger the Rights Plan, the Rights Plan would effectively override a mandatory provision of the Delaware Code. Of course, Allergan lacks the authority to do this. *See, e.g., Hermelin v. K-V Pharm. Co.*, 54 A.3d 1093, 1095 (Del. Ch. 2012) (observing that corporate provision cannot control if it “conflicts with a mandatory statutory provision”); *cf. Paolino*, 985 A.2d at 403 (“A bylaw provision that conflicts with a mandatory provision of the General Corporation Law or the certificate of incorporation is ultra vires and void.”).

III. Plaintiffs Are Threatened With Irreparable Harm

Plaintiff (and all Allergan shareholders) face the prospect of irreparable harm if this matter is not resolved on an expedited basis. *First*, there is currently a nonbinding, premium offer for the Company and the current Board has refused to

negotiate. It is unclear how long market conditions will allow this offer to continue, and accordingly, each day that Allergan's Directors use uncertainty and ambiguity to improperly protect themselves from a special meeting (and possible removal) increases the risk of non-consummation. *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.").

Second, Delaware law clearly indicates that a Board's efforts to disenfranchise shareholders threaten irreparable harm. *See, e.g., Hubbard v. Hollywood Park Realty Enters., Inc.*, 1991 WL 3151, at *5 (Del. Ch. Jan. 14, 1991) (citing *Int'l Banknote Co. v. Muller*, 713 F. Supp. 612, 623 (S.D.N.Y. 1989), for the proposition that "[c]ourts have consistently found that corporate management subjects shareholders to irreparable harm by denying them the right to vote their shares or unnecessarily frustrating them in their attempt to obtain representation on the board of directors"); *Aprahamian v. HBO & Co.*, 531 A.2d 1204, 1208 (Del. Ch. 1987) (noting that when Board seeks to thwart shareholders' good faith efforts to solicit proxies, "[i]rreparable harm may be assumed"). This is particularly compelling in situations such as this, where the Board's actions are likely motivated by entrenchment. *See Schnell v. Chris-Craft Indus., Inc.*, 285 A.2d 437,

439 (Del. 1971) (granting preliminary injunction because “management has attempted to utilize the corporate machinery and the Delaware Law for the purpose of perpetuating itself in office; and, to th[a]t end, for the purpose of obstructing the legitimate efforts of dissident stockholders in the exercise of their rights to undertake a proxy contest against management. These are inequitable purposes, contrary to established principles of corporate democracy.”).

Furthermore, the fact that Allergan’s actions impermissibly impair Plaintiff’s rights under both the Certificate of Incorporation and various statutory provisions, including 8 *Del. C.* §§ 109(a), 211, and 228, provides additional justification for expedition. *See Plaza Sec. Co. v. O’Kelley*, 1985 WL 11539, at *901 (Del. Ch. Mar. 5, 1985) (finding that bylaw that limited the ability of shareholders to act by written consent threatened irreparable harm because “[w]here the legal right granted by the law appears to be clear, where interference with that legal right will necessarily occur in the absence of injunctive protection by the Court, and where it reasonably appears that money damages cannot adequately compensate for the interference with that legal right, the irreparable injury requirement is considered to be satisfied”); *Allen*, 540 A.2d at 421 (finding irreparable harm when a company’s “bylaws are so pervasive as to intrude upon fundamental stockholder rights guaranteed by statute” because “the deprivation of such a right, regardless of

duration, is an injury not reasonably compensable by damages” (internal quotation marks omitted)). PS Fund 1 has established a threat of irreparable harm.

IV. The Need for Expedition Justifies the Costs of Expedition

Under the circumstances of this case, the severity of the harms threatened justifies any increased costs of expedition. This case is narrowly focused on a small number of legal issues and may be decided on the basis of undisputed facts and the text of the corporate documents and recent correspondence with PS Fund 1, Pershing Square, and Valeant. PS Fund 1 does not intend to seek discovery, and other litigation costs are expected to be modest. In comparison to the relatively minimal costs of expedition, the harm threatened by Allergan’s actions compromise “the essential role of corporate democracy in maintaining the proper allocation of power between the shareholders.” *MM Cos. v. Liquid Audio, Inc.*, 813 A.2d 1118, 1132 (Del. 2003).

Regarding PS Fund 1’s requested briefing schedule including the truncation of the 20-day period specified by Court of Chancery Rule 56(a), such a schedule will not prejudice Defendants. Rule 56(a) is modeled after former⁵ Federal Rule 56(a), whose authors stated that the purpose of the twenty-day period is to “give[] the defendant an opportunity to secure counsel and determine a course of action.”

⁵ Federal Rule 56 now wisely allows Courts the discretion to, when appropriate, accept summary judgment briefs filed “at the commencement of an action.” Fed. R. Civ. P. 56, 2010 Amendment Note to Subdivision (b).

Fed. R. Civ. P. 56, 1946 Amendment Note to Subdivision (a). This rationale is inapplicable to Allergan, which announced on May 12 that it is being advised by Latham & Watkins, Richards Layton & Finger, and Wachtell, Lipton, Rosen & Katz (as well as Goldman Sachs and BofA Merrill Lynch) regarding Valeant's offer.⁶ The letter by which Allergan refused to provide the needed clarity on these issues came from Allergan's outside counsel. (Compl. Ex. D) Counsel for PS Fund 1 and counsel for Allergan have been exchanging correspondence on the issues addressed in this complaint for the last week. Allergan does not need twenty days to "secure counsel and determine a course of action."

⁶ Allergan Press Release, May 12, 2014.

CONCLUSION

For the reasons set forth above and in the complaint, PS Fund 1 submits that this action should proceed on an expedited basis, and therefore respectfully requests that the Court enter an Order in the form attached hereto granted expedited proceedings in this matter.

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

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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