

# Daily Journal

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## Corporate activist, acquirer team up to buy Irvine drugmaker with \$45.6B offer

By Dominic Fracassa  
Daily Journal Staff Writer

In a proposed deal that's forged a somewhat unusual alliance between an activist hedge fund and a corporate acquirer, Valeant Pharmaceuticals International Inc. formally announced on Tuesday that it had joined forces with Pershing Square Capital Management LP to submit an unsolicited \$45.6 billion buyout offer for Irvine-based cosmetic drug maker Allergan Inc.

Six law firms are helping to proctor the deal.

Sullivan & Cromwell LLP, Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates and Osler, Hoskin & Harcourt LLP are advising Quebec-based Valeant.

Kirkland & Ellis LLP and Davies Ward Phillips & Vineberg LLP are representing Pershing, and Latham & Watkins LLP is serving as counsel to Allergan, which is best known for its anti-wrinkle drug Botox.

Valeant and Pershing have offered \$48.30 per share in cash and 0.83 Valeant shares to Allergan stockholders, or about \$152.88 per share, a 7 percent premium over the company's closing share price on Monday. Allergan shareholders would own 43 percent of the combined company.

Allergan confirmed that it was considering the offer in a public statement Tuesday, advising shareholders to take no action at this time. As of Monday, Allergan said it "had no discussions with

either Valeant or Pershing Square with respect to this matter."

"While the Allergan CEO and board of directors made it clear, both privately and publicly, that they were unwilling to enter discussions with us about creating a value-enhancing combination, we are hopeful that our proposal for this extremely compelling combination will enable us to engage in productive discussions," said Valeant Chairman and CEO J. Michael Pearson in a statement after touting the proposed deal's operational advantages and cost-saving opportunities for both companies.

Pershing, a prominent activist fund led by investment magnate William A. Ackman, has been rapidly building its position in Allergan over the past two months, according to regulatory filings. Its 9.7 percent stake in the company currently makes the fund Allergan's largest shareholder.

In late February, Valeant agreed to contribute \$75.9 million to the fund Pershing used to amass its stake in Allergan, the filings show. Under the terms of the deal, Pershing would elect only a stock consideration and intends to remain a long-term shareholder of the combined company if Allergan acquiesces to the deal. Valeant said it has obtained \$15.5 billion in debt financing commitments from its financial advisers, Barclays and RBC Capital Markets.

Attorneys and legal observers said that while the joint effort by Pershing and Valeant to acquire

Allergan may seem like a case of strange bedfellows, there are a number of strategic advantages to be gained which benefit them both.

"In some ways, it allows them to legally 'sneak up' on Allergan and make it difficult to block the deal," said Osborn McDerby LLP partner Stephen M. Osborn. "It's using the ability to acquire shares without announcing yourself when you know the shares you're buying will be used for a takeover."

Additionally, Pershing's decision to accept only equity out of the deal is attractive to Valeant because "there's 10 percent of the purchase price you don't have to pay cash for," Osborn said.

Though the alignment may represent a departure from the traditional activist strategy of building a position to agitate for change in a company, San Francisco State University business professor Mitchell Lee Marks said Pershing's decision to instead help to catalyze a deal with a deep-pocketed partner like Valeant was a simple one.

"The hedge fund is just accelerating what they wanted to happen anyway," he said. "If you're the hedge fund, and you want to accelerate things rather than wait for a private equity buyer to come along, it makes good sense."

"I wouldn't be surprised if we saw more of this now because of the simplicity of it," he said.

Los Angeles partner Alison S.

Ressler is leading the Sullivan team for Valeant, and New York partner Stephen F. Arcano is leading the Skadden team. Toronto-based partner Clay Horner is leading the Osler team. None of the lead attorneys could be reached for comment.

Costa Mesa partner Cary K. Hyden and Los Angeles partner Paul D. Tosetti are leading the Latham team advising Allergan. A Latham spokesman said the firm couldn't yet comment on the offer because the matter is ongoing.

New York-based partners Stephen Fraidin and Richard M. Brand are leading the Kirkland team advising Pershing. Toronto partners Patricia L. Olasker and J. Alexander Moore are leading the Davies team. None of the attorneys advising Pershing could be reached.

The Sullivan & Cromwell team also includes Los Angeles partner Eric M. Krautheimer, special counsel Lisa A. Murison, associates Scott C. Campbell, Aaron B. Werner and Katherine J. Baudistel and Palo Alto partner Nader A. Mousavi.



CARY HYDEN  
Latham & Watkins

PAUL TOSETTI  
Latham & Watkins