BerkeleyLaw
UNIVERSITY OF CALIFORNIA

Berkeley Center for Law, Business and the Economy

University of California, Berkeley
School of Law
2850 Telegraph Ave, Suite 500
Berkeley, CA 94705-7220

Ph: 510.642.0532 – Fax: 510.643.7095
E-mail: BCLBE@law.berkeley.edu
http://www.law.berkeley.edu/bclbe.htm

Valeant and Ackman's Hostile Takeover Falls Through But Still Pays Out

By Grace Meador, J.D. Candidate 2016 | November 25, 2014

Valeant's aggressive and longstanding pursuit of Allergan, Inc. has finally been resolved with an unlikely twist: a deal between Allergan and Actavis. As of November 16, Allergan has agreed to be acquired by Actavis for $66 billion, representing a valuation of about $219.00 per share in cash and stock. This deal leaves Valeant and William Ackman, who joined forces to acquire Allergan, with a victory that defies conventional wisdom; the stock acquired in their bid to control Allergan's board is now worth $2.6 billion, with 15% to go to Valeant and the remaining $2.2 billion to be collected by Ackman's hedge fund.

Valeant teamed up with activist investor William A. Ackman, founder and manager of Pershing Square Capital Management, in April of 2013 to begin its hostile takeover attempt of Botox maker Allergan, Inc. After Ackman quietly acquired 9.7% of Allergan's stock without triggering FTC disclosure requirements, Valeant offered multiple hostile bids over the course of a year and a half, ranging from $47 billion to $53 billion—the current value of their final bid. Allergan consistently rejected all of Valeant's valuations, resulting in criticism of chief executive David E. I. Pyott. However, Pyott's protests that "Valeant's offer is grossly inadequate and substantially undervalues Allergan" have been vindicated with the advent of the Actavis agreement.

The deal will make Actavis one of the ten largest drug manufacturers globally, and will produce an expected $23 billion in revenues next year as Botox, Allergan's powerhouse drug, is marketed alongside Actavis' existing buffet of dermatological and women's health remedies. The agreement seems more palatable to Allergan in other ways as well. Actavis has emphasized its commitment to continue spending in research and development, while Valeant had touted its intentions to gut Allergan's 17% of revenue spent on R&D, with Valeant CEO J. Michael Pierson saying "We do believe we could probably spend a little bit less and still get the same indications."

The ramifications of this deal carry over into the legal world as well. A significant lawsuit regarding insider trading was spawned in this Tom and Jerry-esque chase, which may remain unresolved in the wake of Actavis' intercession. It began in August, when Allergan sued Ackman in California federal court for allegedly violating insider-trading laws through his and Valeant's tag-team hostile takeover tactics.

The strategy of acquiring a target's stock before a hostile takeover attempt—also known as a "toehold"—is not a new one. The novelty comes in the alliance between large companies and active investors, which is a recent development on the M&A scene. With the activist-company toehold strategy yielding billions even without closing the desired deal, it would be unsurprising for similar alliances to emerge in future takeover strategies. Clearly, the result of Allergan's insider trading litigation would be very influential in dictating this possible trend.
In a November 4 ruling, the judge presiding over the case declined to institute a permanent injunction to block Ackman's ability to vote his Allergan shares at a special December 18

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meeting. However, since it is likely that the current Allergan lawsuit will be dropped in light of the Actavis deal, whether the courts consider the activist investor-company alliance legitimate may be a question for another day and a future deal.