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

A Giant Merger in the Generic Drug Industry

By Omer Selamoglu, LL.M. Candidate 2016 | April 8, 2015

In accordance with its 8-K filing of Auspex Pharmaceuticals, Inc. ("Auspex") with the U.S. Securities and Exchange Commission on March 30, 2015, Teva Pharmaceuticals Industries Ltd. ("Teva"), entered into a merger agreement with Auspex at a purchase price of $101 per share. The total amount of purchase will be about $3.2 billion.

Teva, an Israeli company, is the world's largest generic drugs producer. It operates through a fully owned subsidiary, Aurum Merger Sub, Inc., located in Delaware, and its shares are registered before NASDAQ and NYSE. According to FDA a generic drug is "identical – or bioequivalent – to a brand name drug in dosage form, safety, strength, route of administration, quality, performance characteristics and intended use."

Since the announcement of merger agreement the price of its shares has risen steadily. The merger agreement is expected to strengthen Teva's position in the market for drugs used in the treatment of core central nervous system diseases, and enhance Teva's mid- to long-term revenue and earnings growth profile.

However, the merger agreement may not go uncontested. A law firm has started an investigation as to whether Auspex's Board acted to maximize shareholder profit prior to entering into the agreement. The law firm alleges that the price per share should be $105 instead of $101. If the investigation uncovers a breach of fiduciary duty, it may prove harmful to merger agreement by leading to an SEC investigation or costly litigation.