ALLERGAN INC
Form 425
April 22, 2014

Filed by Valeant Pharmaceuticals International, Inc. (Commission File No. 001-14956) pursuant to Rule 425 under the Securities Act of 1933 and deemed filed pursuant to Rule 14a-12 under the Securities Exchange Act of 1934

Subject Company: Allergan, Inc.

Commission File No.: 001-10269

The following letter was delivered to the Chairman and Chief Executive Officer of Allergan, Inc. and its Board of Directors on April 22, 2014:

J. Michael Pearson
Chairman & Chief Executive Officer

2150 St. Elzéar Blvd. West
Laval, Quebec H7L 4A8
Canada

April 22, 2014

Mr. David Pyott

Chairman & CEO Allergan

Allergan, Inc.

2525 Dupont Drive

Irvine, California 92612

Dear Mr. Pyott,

Valeant is pleased to provide Allergan shareholders with the opportunity to consider a strategically compelling and enormously value-creating opportunity to merge with Valeant. Our merger offer is comprised of $48.30 in cash and 0.83 of a Valeant share for each Allergan share based on the fully diluted number of Allergan shares outstanding. Shareholders will be able to elect their mix of cash and shares, subject to proration, in the combined company hereafter referred to as the New Company. Allergan shareholders will receive a substantial premium over Allergan s April 10, 2014, unaffected stock price of $116.63 and will own 43% of the New Company.

We firmly believe that applying Valeant s operating philosophy, strategy, and financial discipline to a broader set of superb assets will create extraordinary returns for shareholders over the short, intermediate, and long term.

A Highly Strategic Combination

The New Company will be extremely well positioned in the markets it serves. Our portfolios are extremely complementary the New Company will be a leader in ophthalmology, dermatology, aesthetics, dental products, and the emerging markets healthcare segments that are forecasted to grow well above overall industry growth rates over the next decade. In light of the markets served and the marketing efficiencies created by the combination, we are confident that New Company will generate high single-digit organic growth rates for the foreseeable future.

The New Company will generate stable and recurring cash flows: approximately 75% of its revenue will come from durable products, 90% of the New Company s combined revenue is not expected to face any significant patent cliffs over the next decade, and 70% of the New Company s business is expected to be cash-pay or third-party reimbursed, with only 30% exposed to government reimbursement. With this transaction, we expect 25-30% pro forma 2014 Cash EPS accretion assuming the transaction closed and full synergies realized on January 1, 2014. We expect Cash EPS in year 2 and beyond to grow 15-20% plus, depending upon the deployment of free cash flow.

Mr. David Pyott

April 22, 2014

R&D and Product Development

The New Company will spend more than $300 million per annum on research and development in Phase III programs, current and future line extensions, and life cycle management programs. The New Company will continue to fund both companies late stage development programs, including those in dry eye, diabetic macular edema, glaucoma, migraine, eye whitening, psoriasis, and other dermatology areas.

The New Company will sell or eliminate Allergan s earlier stage programs where Allergan s track record has been largely unproductive over the past 16 years. The New Company will fuel future growth through business development with a focus on currently marketed products or products nearing approval. The combination will add to Valeant s robust industry-leading product launch productivity. In 2014 alone, Valeant will launch 19 new products in the U.S. and 300 new products in markets around the world.

Synergies

Based on our operating model, our detailed analysis of Allergan, our knowledge of the dermatology, aesthetics and ophthalmology markets, and our extensive market research, we estimate that the annual cost synergies from the combination will be at least $2.7 billion, 80% of which we expect to realize within the first six months of closing, with the balance over the following 12 months. As you may be aware, since 2008 and over 100 transactions, Valeant has never failed to exceed its preannounced cost synergies in any acquisition.

Capital Allocation and Taxation

The New Company will have a strong balance sheet with approximately 3.0 times net debt/adjusted EBITDA, approximately $28 billion in net debt, and post-synergy free cash flow of more than $6.0 billion per year and growing. This strong balance sheet and free cash flow will allow the New Company to accelerate growth by executing its business development strategy and returning capital to shareholders with buybacks or dividends as appropriate. At closing, we expect to institute a dividend at the current $0.20 annual dividend rate of Allergan. The New Company will remain a Canadian company and will have a high single-digit tax rate.

No Material Contingencies

We do not believe that there are any obstacles to completing this transaction expeditiously. Our board has approved and strongly supports the transaction. Our antitrust advisors at Skadden, Arps, Slate, Meagher & Flom LLP, Sullivan & Cromwell LLP, and Osler, Hoskin & Harcourt LLP have conducted antitrust analysis of the transaction and, based on their extensive industry knowledge and publicly available information, have independently determined that there are no material obstacles to completing the transaction. We are willing to assume all regulatory risks because any potential divestitures will not have a material impact on the economics of the transaction. Our legal counsel have engaged with the FTC and are working cooperatively with the FTC staff. We are also actively engaged in discussions with third parties with respect to assets we expect to sell.

Our transaction is not subject to a financing contingency. We have worked closely with our financial advisors and have obtained a debt financing commitment of $15.5 billion from Barclays and RBC Capital Markets.

Valeant has completed a detailed review of publicly available information and extensive external research relating to Allergan. Our proposal is subject to the negotiation and execution of a mutually agreeable merger agreement containing customary terms and closing conditions. We are concurrently delivering to you our proposed form of merger agreement.

Valeant Business Performance

Valeant is off to a strong start in 2014. We expect to meet or beat analysts cash earnings per share First Call analyst consensus expectations for the first quarter of 2014 and, given our strong start and the pending closing of our PreCision deal, we are raising 2014 revenue guidance to $8.3 - $8.7 billion from $8.2 - $8.6 billion, Cash EPS guidance to $8.55-$8.80 from $8.25-$8.75, and adjusted cash flow from operations to $2.7 - $2.8 billion from $2.4 - $2.6 billion, despite foreign exchange headwinds of approximately $0.15 of Cash EPS.

Mr. David Pyott

April 22, 2014

Pershing Square

With 9.7% ownership, Pershing Square Capital Management, L.P., led by William A. Ackman, CEO, is Allergan s largest shareholder. Pershing Square has carefully reviewed publicly available information on Allergan and completed substantial due diligence on Valeant based on a review of Valeant s public and confidential information. Pershing Square has fully considered the proposed transaction, and is strongly in favor of the combination and will be a co-proponent of the transaction. Pershing Square has agreed to elect only stock consideration in the transaction and intends to remain a long-term shareholder of New Company.

No Material Social Issues

We would have preferred to negotiate this transaction in a confidential manner, but given that Allergan has not been receptive to our overtures for over eighteen months and has made it clear both privately and publicly that it is not interested in a deal with us, we chose to present this proposal to Allergan shareholders directly. We are open to discussing and addressing social issues such as board composition, senior management team composition, U.S. headquarters location and other concerns that you may have. Shareholder value is our primary consideration.

We encourage Allergan to enter into discussions with us promptly so that we can consummate this mutually beneficial transaction in a timely manner. We look forward to hearing from you.

Sincerely,

J. Michael Pearson

cc: Allergan, Inc. Board of Directors

Forward-looking Statements

This communication may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and Canadian securities laws. These forward-looking statements include, but are not limited to, statements regarding Valeant Pharmaceuticals International, Inc. s (Valeant) offer to acquire Allergan, Inc. (Allergan), its financing of the proposed transaction, its expected future performance (including expected results of operations and financial guidance), and the combined company s future financial condition, operating results, strategy and plans. Forward-looking statements may be identified by the use of the words anticipates, expects, intends, plans, should, could, would, may, will, believes, estimates, potential, target, opportunity, tentative, positioning predict, project, seek, ongoing, upside, increases or continue and variations or similar expressions. These s are based upon the current expectations and beliefs of management and are subject to numerous assumptions, risks and uncertainties that change over time and could cause actual results to differ materially from those described in the forward-looking statements. These assumptions, risks and uncertainties include, but are not limited to, assumptions, risks and uncertainties discussed in the company s most recent annual or quarterly report filed with the Securities and Exchange Commission (the SEC) and the Canadian Securities Administrators (the CSA) and assumptions, risks and uncertainties relating to the proposed merger, as detailed from time to time in Valeant s filings with the SEC and the CSA, which factors are incorporated herein by reference. Important factors that could cause actual results to differ materially from the forward-looking statements we make in this communication are set forth in other reports or documents that we file from time to time with the SEC and the CSA, and include, but are not limited to:

- the ultimate outcome of any possible transaction between Valeant and Allergan including the possibilities that Valeant will not pursue a transaction with Allergan and that Allergan will reject a transaction with Valeant;

- if a transaction between Valeant and Allergan were to occur, the ultimate outcome and results of integrating the operations of Valeant and Allergan, the ultimate outcome of Valeant s pricing and operating strategy applied to Allergan and the ultimate ability to realize synergies;

- the effects of the business combination of Valeant and Allergan, including the combined company s future financial condition, operating results, strategy and plans;

- the effects of governmental regulation on our business or potential business combination transaction;

ability to obtain regulatory approvals and meet other closing conditions to the transaction, including all necessary stockholder approvals, on a timely basis;

our ability to sustain and grow revenues and cash flow from operations in our markets and to maintain and grow our customer base, the need for innovation and the related capital expenditures and the unpredictable economic conditions in the United States and other markets;

the impact of competition from other market participants;

the development and commercialization of new products;

the availability and access, in general, of funds to meet our debt obligations prior to or when they become due and to fund our operations and necessary capital expenditures, either through (i) cash on hand, (ii) free cash flow, or (iii) access to the capital or credit markets;

our ability to comply with all covenants in our indentures and credit facilities, any violation of which, if not cured in a timely manner, could trigger a default of our other obligations under cross-default provisions; and

the risks and uncertainties detailed by Allergan with respect to its business as described in its reports and documents filed with the SEC.

All forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by this cautionary statement. Readers are cautioned not to place undue reliance on any of these forward-looking statements. These forward-looking statements speak only as of the date hereof. Valeant undertakes no obligation to update any of these forward-looking statements to reflect events or circumstances after the date of this communication or to reflect actual outcomes.

ADDITIONAL INFORMATION

This communication does not constitute an offer to buy or solicitation of an offer to sell any securities. This communication relates to a proposal which Valeant has made for a business combination transaction with Allergan. In furtherance of this proposal and subject to future developments, Valeant and Pershing Square Capital Management, L.P. (Pershing Square) (and, if a negotiated transaction is agreed, Allergan) may file one or more registration statements, proxy statements or other documents with the U.S. Securities and Exchange Commission (the SEC). This communication is not a substitute for any proxy statement, registration statement, prospectus or other document Valeant, Pershing Square and/or Allergan may file with the SEC in connection with the proposed transaction. INVESTORS AND SECURITY HOLDERS OF VALEANT AND ALLERGAN ARE URGED TO READ THE PROXY STATEMENT(s), REGISTRATION STATEMENT, PROSPECTUS AND OTHER DOCUMENTS FILED WITH

THE SEC CAREFULLY IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE AS THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION. Any definitive proxy statement(s) (if and when available) will be mailed to stockholders of Allergan and/or Valeant, as applicable. Investors and security holders will be able to obtain free copies of these documents (if and when available) and other documents filed with the SEC by Valeant and/or Pershing Square through the web site maintained by the SEC at http://www.sec.gov.

Information regarding the names and interests in Allergan and Valeant of Valeant and persons related to Valeant who may be deemed participants in any solicitation of Allergan or Valeant shareholders in respect of a Valeant proposal for a business combination with Allergan is available in the additional definitive proxy soliciting material in respect of Allergan filed with the SEC by Valeant on April 21, 2014. Information regarding the names and interests in Allergan and Valeant of Pershing Square and persons related to Pershing Square who may be deemed participants in any solicitation of Allergan or Valeant shareholders in respect of a Valeant proposal for a business combination with Allergan is available in additional definitive proxy soliciting material in respect of Allergan filed with the SEC by Pershing Square. The additional definitive proxy soliciting material referred to in this paragraph can be obtained free of charge from the sources indicated above.

AGREEMENT AND PLAN OF MERGER

among

Valeant Pharmaceuticals International, Inc.,

[MERGER SUB]

and

Allergan, Inc.

Dated as of May [ ], 2014

TABLE OF CONTENTS **Page**

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (hereinafter called this "**Agreement**"), dated as of May [ ], 2014, is by and among Valeant Pharmaceuticals International, Inc., a continued British Columbia corporation ("**Parent**"), [Merger Sub], a Delaware corporation and a wholly owned subsidiary of Parent ("**Merger Sub**"), and Allergan, Inc., a Delaware corporation (the "**Company**").

RECITALS

WHEREAS, the respective boards of directors of each of Merger Sub and the Company have approved the merger of Merger Sub with and into the Company (the "**Merger**") upon the terms and subject to the conditions set forth in this Agreement and have approved and declared advisable this Agreement and the board of directors of Parent has approved the Merger and this Agreement; and

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements in connection with this Agreement.

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I

The Merger; Closing; Effective Time

1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub shall be merged with and into the Company and the separate corporate existence of Merger Sub shall thereupon cease. The Company shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the "**Surviving Corporation**"), and the separate corporate existence of the Company, with all of its rights, privileges, immunities, powers and franchises, shall continue unaffected by the Merger, except as set forth in Article II. The Merger shall have the effects specified in the Delaware General Corporation Law, as amended (the "**DGCL**").

1.2 Closing. Unless otherwise mutually agreed in writing between the Company and Parent, the closing for the Merger (the "**Closing**") shall take place at the offices of Sullivan & Cromwell LLP, 1888 Century Park East, 32nd Floor, Los Angeles, California, at 9:00 A.M. (New York City time) on the fifth (5th) business day (the "**Closing Date**") following the day on which the last to be satisfied or waived of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions) shall be satisfied or waived in accordance with this Agreement; provided, however, that, notwithstanding the satisfaction or waiver of the conditions set forth in Article VII, Parent and Merger Sub shall not be obligated to effect the Closing prior to the second (2nd) business day following the final day of the Marketing Period, unless Parent

shall request an earlier date on two (2) business days prior written notice (but, subject in such case, to the satisfaction or waiver of the conditions set forth in Article VII (other than any such conditions which by their terms cannot be satisfied until the Closing Date, which shall be required to be so satisfied or waived on Parent s requested Closing Date)). For purposes of this Agreement, the term **business day** shall mean any day ending at 11:59 p.m. (Eastern Time) other than a Saturday or Sunday or a day on which banks are required or authorized to close in the City of New York. **Marketing Period** shall mean the first period of twenty (20) consecutive calendar days, commencing after the date hereof throughout which and on the first and last day of which (a) Parent shall have received the Required Information and the Required Information is Compliant and (b) the conditions set forth in Section 7.1 shall have been satisfied or waived (other than those conditions which by their terms cannot be satisfied until the Closing Date), and nothing has occurred and no condition exists that could reasonably be expected to cause any of the conditions set forth in Section 7.2 to fail to be satisfied assuming the Closing would be scheduled at any time during such consecutive calendar day period; provided that (a) if the Company shall in good faith reasonably believe it has provided Required Information that is Compliant, it may deliver to Parent a written notice to that effect (stating when it believes it completed such delivery), in which case the Company shall be deemed to have complied with the requirement to deliver the Required Information unless Parent in good faith reasonably believes the Company has not completed the delivery of Required Information that is Compliant and, within four (4) business days after the delivery of such notice by the Company, delivers a written notice to the Company to that effect (stating with specificity which Required Information the Company has not delivered or is not Compliant), (b) the Marketing Period shall end on any earlier date that is the date on which the Debt Financing is consummated and (c) for purposes of the Marketing Period (i) July 3, 2014 and November 28, 2014 shall not be considered calendar days, (ii) if such period has not ended prior to August 18, 2014, such period shall be deemed not to have commenced until September 2, 2014 and (iii) if such period has not ended prior to December 19, 2014, such period shall be deemed not to have commenced until January 5, 2015. Notwithstanding the foregoing, the Marketing Period shall not commence and shall be deemed not to have commenced if, on or prior to the completion of such twenty (20) consecutive calendar days, (i) the Company s independent registered accounting firm shall have withdrawn its authorization letter or audit opinion with respect to any financial statements contained in the Required Information, in which case the Marketing Period shall not be deemed to commence until the time at which, as applicable, a new authorization letter or unqualified audit opinion is issued with respect to the consolidated financial statements for the applicable periods by the Company s independent registered accounting firm or another independent registered accounting firm acceptable to Parent, (ii) the Company indicates its intent to restate any financial statements or material financial information included in the Required Information or (iii) the Required Information is not Compliant at any point throughout and on the first and last day of such period; then, in each case, a new twenty (20) consecutive calendar days period thereafter shall commence upon the Company receiving updated Required Information that is Compliant and the other conditions set forth in this Section 1.2 being met. **Compliant** means, without giving effect to any supplements or updates, (i) the Required Information does not contain any untrue statement of a material fact or omit to state any material fact, in each case with respect to the Company or its Subsidiaries, necessary in order to make such Required Information, in light of the circumstances

under which the statements contained in the Required Information are made, not misleading, (ii) all information necessary to constitute Required Information that is Compliant throughout and on the first and last day of the Marketing Period has been delivered by the Company to Parent on the first day of the Marketing Period and (iii) the financial statements contained in the Required Information are sufficient for the delivery of a customary accountants comfort letter under SAS 100 (including customary negative assurance) with respect to financial information regarding the Company and its Subsidiaries, and the Company s independent registered accounting firm has delivered a draft comfort letter in customary form and indicated that they are willing to deliver the comfort letter in customary form upon any pricing and closing of a securities offering during the Marketing Period.

1.3 Effective Time. As soon as practicable following the Closing, the Company and Parent will cause a Certificate of Merger (the **Delaware Certificate of Merger**) to be executed, acknowledged and filed with the Secretary of State of the State of Delaware as provided in Section 251 of the DGCL. The Merger shall become effective at the time when the Delaware Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or at such later time as may be agreed by the parties in writing and specified in the Delaware Certificate of Merger (the **Effective Time**).

ARTICLE II

Certificate of Incorporation and By-Laws

of the Surviving Corporation

2.1 The Certificate of Incorporation. At the Effective Time, the certificate of incorporation of the Surviving Corporation (the **Charter**) shall be amended in its entirety to be identical to the certificate of incorporation of Merger Sub, until thereafter amended as provided therein or by applicable Law.

2.2 The By-Laws. The parties hereto shall take all actions necessary so that the by-laws of Merger Sub in effect immediately prior to the Effective Time shall be the by-laws of the Surviving Corporation (the **By-Laws**), until thereafter amended as provided therein or by applicable Law.

ARTICLE III

Directors and Officers of the Surviving Corporation

3.1 Directors and Officers of the Surviving Corporation. The parties hereto shall take all actions necessary so that (a) the board of directors of Merger Sub at the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Charter and the By-Laws and (b) the officers of the Company at the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Charter and the By-Laws.

ARTICLE IV

Effect of the Merger on Capital Stock;

Exchange of Certificates

4.1 Effect on Capital Stock. At the Effective Time, as a result of the Merger and without any action on the part of the holder of any capital stock of the Company:

(a) Merger Consideration. Each share (a "**Share**" or, collectively, the "**Shares**") of the Common Stock, par value $0.01 per share, of the Company (the "**Company Common Stock**") issued and outstanding immediately prior to the Effective Time (other than (i) Shares owned by Parent, Merger Sub or any other direct or indirect wholly owned Subsidiary of Parent and Shares owned by the Company or any direct or indirect wholly owned Subsidiary of the Company, and in each case not held on behalf of third parties, (ii) Shares that are owned by stockholders ("**Dissenting Stockholders**") who have perfected and not withdrawn a demand for appraisal rights pursuant to Section 262 of the DGCL (the Shares referred to in this clause (ii) being referred to herein collectively as "**Dissenting Shares**" and the Shares referred to in this clause (ii) and the preceding clause (i) being referred to herein collectively as "**Excluded Shares**") and (iii) Company Restricted Shares (which shall be converted pursuant to Section 4.3(d)) shall be converted, at the election of the holder thereof in accordance with Section 4.2(b), into:

(i) for each Share with respect to which a Standard Election has been made pursuant to Section 4.2(b) and remains in effect at the Election Deadline, (1) a number of validly issued, fully paid and non-assessable shares of the Common Stock, no par value, of Parent (the "**Parent Common Stock**") equal to the Standard Share Number and (2) an amount of cash equal to the Standard Cash Amount, subject to Section 4.1(a)(ii) and (iii) below;

(ii) for each Share with respect to which a Cash Election has been made pursuant to Section 4.2(b) and remains in effect at the Election Deadline, an amount of cash equal to the Un-prorated Cash Election Amount;

provided, however, that if the Aggregate Cash Payable for Shares and Awards would be greater than the Aggregate Cash Consideration, the number of Shares covered by Cash Elections shall automatically be deemed reduced pro rata (but not below zero) by the least amount required so that the Aggregate Cash Payable for Shares and Awards is no longer greater than the Aggregate Cash Consideration (and each Share no longer covered by a Cash Election as a result of the pro rata reduction shall thereupon automatically be deemed covered by a Stock Election); and

provided further, that if after giving effect to the foregoing proviso there are no Shares covered by Cash Elections and the Aggregate Cash Payable for Shares and Awards is still greater than the Aggregate Cash Consideration, the number of Shares covered by Standard Elections shall automatically be deemed reduced pro rata by the least amount required so that the Aggregate Cash Payable for Shares

and Awards is no longer greater than the Aggregate Cash Consideration (and each Share no longer covered by a Standard Election as a result of the pro rata reduction shall thereupon automatically be deemed covered by a Stock Election);

(iii) for each Share with respect to which a Stock Election has been made pursuant to Section 4.2(b) and remains in effect at the Election Deadline, a number of validly issued, fully paid and non-assessable shares of Parent Common Stock equal to the Un-prorated Stock Election Number;

provided, however, that if the Aggregate Cash Payable for Shares and Awards would be less than the Aggregate Cash Consideration, the number of Shares covered by Stock Elections shall automatically be deemed reduced pro rata by the least amount required so that the Aggregate Cash Payable for Shares and Awards is no longer less than the Aggregate Cash Consideration (and each Share no longer covered by a Stock Election as a result of that pro rata reduction shall thereupon automatically be deemed to be covered by a Cash Election); and

provided further, that if after giving effect to the foregoing proviso there are no Shares covered by Stock Elections and the Aggregate Cash Payable for Shares and Awards is still less than the Aggregate Cash Consideration, the number of Shares covered by Standard Elections shall automatically be deemed reduced pro rata by the least amount required so that the Aggregate Cash Payable for Shares and Awards is no longer less than the Aggregate Cash Consideration (and each Share no longer covered by a Standard Election as a result of the pro rata reduction shall thereupon automatically be deemed covered by a Cash Election).

For purposes of performing any proration described in Section 4(a)(ii) and (iii) above, the proration shall initially be performed pro rata in accordance with the number of Shares covered by each Election without rounding and then, for each Election that has been prorated, the reduction in the number of Shares covered by the Election as a result of the proration shall be rounded to the nearest Share.

(b) At the Effective Time, all of the Shares shall cease to be outstanding, shall be cancelled and shall cease to exist, and each certificate (a **Certificate**) formerly representing any of the Shares and each non-certificated share represented by book entry (a **Book Entry Share**) (other than, in each case, Excluded Shares) shall thereafter represent only the right to receive the applicable Merger Consideration, without interest.

(c) Cancellation of Excluded Shares. Each Excluded Share shall, by virtue of the Merger and without any action on the part of the holder of such Excluded Share, cease to be outstanding, be cancelled without payment of any consideration therefor and shall cease to exist, subject to any rights the holder thereof may have under Section 4.2(i) and the DGCL.

(d) Merger Sub. At the Effective Time, each share of common stock, par value $0.001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one share of common stock, par value $0.01 per share, of the Surviving Corporation.

(e) Surviving Corporation. In addition to the foregoing conversion, at the Effective Time, the Surviving Corporation shall issue 10,000,000 shares of common stock, par value $0.01 per share, of the Surviving Corporation to Parent or a person designated by Parent in consideration for the deposit of the Merger Consideration with the Exchange Agent.

(f) For purposes of this Agreement, the following terms shall have the following meanings:

(i) **Aggregate Cash Consideration** means (x) $15,000,000,000 *plus* the aggregate net cash the Company shall have received (or *minus* the aggregate net cash the Company shall have paid) on or after the date of execution of this Agreement and before the Effective Time in connection with the settlement of Company Awards *times* (y) the Non-Dissenting Percentage.

(ii) **Aggregate Cash Payable for Shares and Awards** means the aggregate cash payable in respect of Shares pursuant to this Section 4.1 and Company Vested Options, Company RSUs and Company Restricted Shares pursuant to Section 4.3.

(iii) **Election Deadline** means 5:00 p.m., New York City time, on the business day that is two (2) trading days prior to the Closing Date or such other date and time as determined and publicly announced by Parent in Parent s reasonable discretion.

(iv) **Merger Consideration** means, as applicable, the Cash Election Consideration, Standard Election Consideration or the Stock Election Consideration.

(v) **Non-Dissenting Percentage** means (a) the Share Equivalent Number *divided by* (b) the sum of the Share Equivalent Number and the number of Dissenting Shares.

(vi) **Share Equivalent Number** means the sum of (a) the number of Shares (including Company Restricted Shares but excluding Excluded Shares) issued and outstanding immediately prior to the Effective Time, (b) a number of Shares having an aggregate value (based on the Company Average Closing Price) equal to the aggregate Spread for all Vested Company Options issued and outstanding immediately prior to the Effective Time and (c) a number of Shares equal to the aggregate number of Shares covered by Company RSUs issued and outstanding immediately prior to the Effective Time.

(vii) **Standard Cash Amount** means $48.30, without interest.

(viii) **Standard Share Number** means 0.83.

(ix) **Un-prorated Cash Election Amount** means $[ ], without interest.

(x) **Un-prorated Stock Election Number** means [ ].

4.2 Exchange of Certificates.

(a) Exchange Agent. At the Effective Time, Parent shall deposit, or shall cause to be deposited, with an exchange agent selected by Parent with the Company s prior approval (such approval not to be unreasonably withheld or delayed) (the **Exchange Agent**), for the benefit of the holders of Shares, an aggregate number of shares of Parent Common Stock (taking into account any reduction related to Shares held by Dissenting Stockholders) and the Aggregate Cash Consideration required to be delivered under Section 4.1(a). In addition, Parent shall deposit with the Exchange Agent, as necessary from time to time after the Effective Time, any dividends or other distributions payable pursuant to Section 4.2(d) and cash in lieu of any fractional shares payable pursuant to Section 4.2(e). All shares of Parent Common Stock, cash, dividends and distributions deposited with the Exchange Agent pursuant to this Section 4.2 shall hereinafter be referred to as the **Exchange Fund**. The Company shall notify Parent in writing prior to the Effective Time of the number of Shares and Excluded Shares outstanding immediately prior to the Effective Time. The Exchange Agent shall invest the cash portion of the Exchange Fund as directed by Parent; provided that such investments shall be in obligations of or guaranteed by the United States of America in commercial paper obligations rated A-1 or P-1 or better by Moody s Investors Service, Inc. or Standard & Poor s Corporation, respectively, in certificates of deposit, bank repurchase agreements or banker s acceptances of commercial banks with capital exceeding $1 billion, or in money market funds having a rating in the highest investment category granted by a recognized credit rating agency at the time of acquisition or a combination of the foregoing and, in any such case, no such instrument shall have a maturity exceeding three months. Any interest and other income resulting from such investment shall become a part of the Exchange Fund, and any amounts in excess of the amounts payable under Section 4.1(a) and Sections 4.2(d) and 4.2(e) shall be promptly returned to Parent. No investment of the funds shall relieve Parent, the Surviving Corporation or the Exchange Agent from making the payments required by this Article IV, and following any net losses from any such investment, Parent shall promptly provide additional funds to the Exchange Agent for the benefit of the applicable holders of Shares immediately prior to the Effective Time in the amount of such net losses, which additional funds shall be deemed to be part of the Exchange Fund. No investment of the funds shall have maturities that could prevent or delay payments to be made pursuant to this Agreement.

(b) Election and Exchange Procedures. Each holder of a Share shall have the right, subject to the limitations set forth in this Section 4.2(b), to submit an election (each, an **Election**) in accordance with the following procedures:

(i) Each holder of a Share may specify in a request made in accordance with the provisions of this Section 4.2(b) whether such holder elects to receive with respect to a specified number or all of such holder s Shares either (A) the consideration set forth in Section 4.1(a)(i) (such consideration, the **Standard Election Consideration**) and, such Election with respect to such number of Shares, the **Standard Election**), (B) the consideration set forth in Section 4.1(a)(ii) (such consideration, the **Cash Election Consideration**) and, such Election with respect to such number of Shares, the **Cash Election**), or (C) the consideration set forth in Section 4.1(a)(iii) (such consideration, the

Stock Election Consideration and, such Election with respect to such number of Shares, the **Stock Election**).

(ii) Any holder of a Share who does not properly make an Election in accordance with the provisions of this Section 4.2(b), or whose Election is not received by the Exchange Agent prior to the Election Deadline in the manner provided in Section 4.2(b)(iv), will be deemed to have made the Election made for the greatest number of Non-Co-Bidder Shares in respect of which an affirmative Election was made (the **Default Election**). As used herein, **Non-Co-Bidder Shares** are Shares with respect to which PS Fund 1, LLC, a Delaware limited liability company advised by Pershing Square Capital Management, L.P., does not control the Election.

(iii) Parent shall cause the appropriate form of election and transmittal materials (the **Transmittal Letter**) to be provided by the Exchange Agent to holders of record of the Shares advising such holders (A) of the procedure for exercising their right to make the Election, (B) that delivery shall be effected, and risk of loss and title to the Certificates and Book Entry Shares shall pass, only upon delivery of the Certificates (or affidavits of loss in lieu of the Certificates as provided in Section 4.2(h)) or surrender of Book Entry Shares to the Exchange Agent and (C) instructions for use in effecting the surrender of the Certificates (or affidavits of loss in lieu of the Certificates as provided in Section 4.2(h)) or Book Entry Shares in exchange for the applicable Merger Consideration.

(iv) Any Election set forth in Section 4.2(b)(i) shall have been made properly only if the Exchange Agent shall have received, by the Election Deadline, a Transmittal Letter properly completed and signed indicating such Election.

(v) Any holder of a Share may, at any time prior to the Election Deadline, change such holder s Election by written notice received by the Exchange Agent prior to the Election Deadline accompanied by a properly completed and signed revised Transmittal Letter. If Parent shall determine in its reasonable discretion that any Election is not properly made with respect to any Share (it being understood that no party to this Agreement nor the Exchange Agent is under any duty to notify any holder of any such defect), such Election shall be deemed to be not in effect, subject to Section 4.2(b)(ii).

(vi) Any holder of a Share may, at any time prior to the Election Deadline, revoke such holder s Election by written notice received by the Exchange Agent prior to the Election Deadline.

(vii) Parent, in the exercise of its reasonable discretion, shall have the right to make all determinations, not inconsistent with the terms of this Agreement, governing (A) the validity of the Transmittal Letter and compliance by any holder of a Share with the Election procedures set forth herein, and (B) the manner and extent to which Elections are to be taken into account in making the determinations prescribed in Section 4.1(a).

(c) After the Effective Time, and upon surrender of a Certificate (or affidavit of loss in lieu of the Certificate as provided in Section 4.2(h)) or upon delivery to the Exchange Agent of instructions authorizing transfer and cancellation of Book Entry Shares in accordance with Section 4.1(b), the terms of the Transmittal Letter and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificate or Book Entry Shares shall be entitled to receive in exchange therefor, and the Exchange Agent shall be required to deliver to each such holder, (i) the number of shares of Parent Common Stock and an amount of cash, if any, that such holder is entitled to receive pursuant to Section 4.1(a) (after taking into account all Shares then held by such holder and the Election(s) made with respect to such Shares by such holder), and (ii) the amounts, if any, due to such holder under Section 4.2(d) and (iii) any cash in lieu of fractional shares which the holder has the right to receive pursuant to Section 4.2(e). The Certificate or Book Entry Shares that are the subject of such authorization shall forthwith be cancelled. No interest will be paid or accrued on any amount payable upon such transfer and cancellation of any Certificate or Book Entry Share. The stock portion of the applicable Merger Consideration issued and paid and the cash portion of the applicable Merger Consideration paid in accordance with the terms of Section 4.1(a) and this Section 4.2(c) upon conversion of any Shares (including any amount, if any, due under Section 4.2(d) and any cash paid in lieu of fractional shares pursuant to Section 4.2(e)) shall be deemed to have been issued and paid in full satisfaction of all rights pertaining to such Shares. In the event of a transfer of ownership of any Shares that is not registered in the transfer records of the Company, the proper number of shares of Parent Common Stock and the proper amount of cash may be transferred by the Exchange Agent to such a transferee if written instructions authorizing the transfer of the Book Entry Shares are presented to the Exchange Agent, in any case, accompanied by all documents required to evidence and effect such transfer and to evidence that any applicable stock transfer Taxes have been paid. If any portion of the Merger Consideration is to be delivered to a Person other than the holder in whose name any Book Entry Shares are registered, it shall be a condition of such exchange that the Person requesting such delivery shall pay any transfer or other similar Taxes required by reason of the transfer of Shares or the payment of the applicable cash portion of the Merger Consideration to a Person other than the registered holder of any Book Entry Shares, or shall establish to the satisfaction of the Company or the Exchange Agent that such Tax has been paid or is not applicable. The shares of Parent Common Stock constituting the stock portion of the Merger Consideration, at Parent s option, shall be in uncertificated book entry form, unless a physical certificate is otherwise required under applicable Law.

(d) Distributions with Respect to Unexchanged Shares. All shares of Parent Common Stock to be issued pursuant to the Merger shall be deemed issued and outstanding as of the Effective Time and, if a dividend or other distribution is declared by Parent in respect of the Parent Common Stock, the record date for which is at or after the Effective Time, that declaration shall include dividends or other distributions in respect of all shares of Parent Common Stock issuable in the Merger. No dividends or other distributions in respect of the Parent Common Stock shall be paid to any holder of any unsurrendered Certificate or Book Entry Shares until such Certificate (or affidavit of loss in lieu of the Certificate as provided in Section 4.2(h)) or Book Entry Shares are surrendered for exchange in accordance with this Article IV. Subject to the effect of applicable Laws, following surrender of any such Certificate (or affidavit of loss in lieu

of the Certificate as provided in Section 4.2(h)) or Book Entry Shares, there shall be issued and/or paid to the holder of shares of Parent Common Stock issued in exchange therefor, without interest, at the time of such surrender, the dividends or other distributions with a record date after the Effective Time theretofore payable with respect to such whole shares of Parent Common Stock and not paid.

(e) Fractional Shares. Notwithstanding any other provision of this Agreement, no fractional shares of Parent Common Stock will be issued and any holder of Shares entitled to receive a fractional share of Parent Common Stock but for this Section 4.2(e) shall be entitled to receive a cash payment in lieu thereof (rounded to the nearest cent), which payment shall be determined by multiplying (i) the average of the closing prices of shares of Parent Common Stock quoted on the New York Stock Exchange (the **NYSE**) on each of the last fifteen (15) trading days ending on the day which is the second trading day immediately preceding the Effective Time (the **Parent Average Closing Price**) by (ii) the fraction of the share (rounded to the nearest thousandth when expressed in decimal form) of Parent Common Stock which such holder would otherwise be entitled to receive pursuant to Section 4.1(a). **trading day** means any day on which the NYSE is open for trading.

(f) Transfers. From and after the Effective Time, there shall be no transfers on the stock transfer books of the Company of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, any Certificate is presented to the Surviving Corporation, Parent or the Exchange Agent for transfer, it shall be cancelled and exchanged for the Merger Consideration to which the holder of the Certificate is entitled pursuant to this Article IV.

(g) Termination of Exchange Fund. Any portion of the Exchange Fund (including the proceeds of any investments of the Exchange Fund) that remains unclaimed by the stockholders of the Company for one (1) year after the Effective Time shall be delivered to the Surviving Corporation. Any holder of Shares (other than Excluded Shares) who has not theretofore complied with this Article IV shall thereafter look only to the Surviving Corporation for payment of the applicable Merger Consideration (after giving effect to any required Tax withholdings as provided in Section 4.2(j)) upon due surrender of its Certificates (or affidavits of loss in lieu of the Certificates) or Book Entry Shares, without any interest thereon. Notwithstanding the foregoing, none of the Surviving Corporation, Parent or the Exchange Agent shall be liable to any former holder of Shares for any amount properly delivered to a public official pursuant to applicable abandoned property, escheat or similar Laws. For the purposes of this Agreement, the term **Person** shall mean any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or nature.

(h) Lost, Stolen or Destroyed Certificates. In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent, the posting by such Person of a bond in customary amount and upon such terms as may be reasonably required by Parent as indemnity against any claim that may be made against it or the Surviving Corporation with respect to such Certificate, the

Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the shares of Parent Common Stock and/or a check in the amount (after giving effect to any required Tax withholdings as provided in Section 4.2(j)) equal to the number of Shares represented by such lost, stolen or destroyed Certificate multiplied by the applicable Merger Consideration.

(i) Appraisal Rights. No Person who has perfected a demand for appraisal rights pursuant to Section 262 of the DGCL shall be entitled to receive any Merger Consideration with respect to the Shares owned by such Person unless and until such Person shall have effectively withdrawn or lost such Person s right to appraisal under the DGCL. Each Dissenting Stockholder shall be entitled to receive only the payment provided by Section 262 of the DGCL with respect to Shares owned by such Dissenting Stockholder, except that all Dissenting Shares held by holders of Shares who shall have failed to perfect or who effectively shall have withdrawn or lost their rights to appraisal of such Shares under such Section 262 of the DGCL shall thereupon be deemed to have been converted into, and to have become exchangeable for, as of the Effective Time, the right to receive the same consideration (subject to the same proration) as if such holders had not demanded appraisal rights and had made the Default Election, without any interest thereon. The Company shall give Parent (i) prompt notice of any written demands for appraisal, attempted withdrawals of such demands, and any other instruments served pursuant to applicable Law that are received by the Company relating to stockholders rights of appraisal and (ii) the opportunity to direct all negotiations and proceedings with respect to demand for appraisal under the DGCL. The Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to any demands for appraisal, offer to settle or settle any such demands or approve any withdrawal of any such demands.

(j) Withholding Rights. Each of Parent, the Surviving Corporation, and the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of Shares, Company Options, Company RSUs or Company Restricted Shares (such Company Options, Company RSUs and Company Restricted Shares, collectively, the **Company Awards**), such amounts as it is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the **Code**), or any other applicable federal, state, provincial, local or foreign Tax Law. To the extent that amounts are so withheld by the Surviving Corporation, Parent or the Exchange Agent, as the case may be, such withheld amounts (i) shall be remitted by Parent, the Surviving Corporation or the Exchange Agent, as applicable, to the applicable Governmental Entity, and (ii) shall be treated for all purposes of this Agreement as having been paid to the holder of Shares or Company Awards, as applicable, in respect of which such deduction and withholding was made by the Surviving Corporation, Parent or the Exchange Agent, as the case may be. Parent, the Surviving Corporation or the Exchange Agent, as applicable, shall provide commercially reasonable notice to each applicable holder of Shares and Company Awards, as applicable, upon becoming aware of any such withholding obligation and shall cooperate with such holder to the extent reasonable to obtain reduction of or relief from such deduction and withholding.

4.3 Treatment of Stock Plan Awards.

(a) Treatment of Unvested Options. Each option to purchase Shares granted under the Stock Plans (a **Company Option**) that is unvested and outstanding immediately prior to the Effective Time (an **Unvested Company Option**) shall cease to represent an option to purchase Shares and shall be converted, at the Effective Time, into an option to purchase that number of shares of Parent Common Stock equal to the product (rounded down to the nearest whole number) of (x) the number of Shares subject to the Unvested Company Option immediately prior to the Effective Time and (y) the Equity Exchange Ratio, at an exercise price per share (rounded up to the nearest whole cent) equal to the per-share exercise price applicable to such Unvested Company Option immediately prior to the Effective Time divided by the Equity Exchange Ratio; provided, however, that the exercise price and the number of shares of Parent Common Stock purchasable pursuant to the Unvested Company Options shall be determined in a manner consistent with the requirements of Section 409A of the Code and provided further, that in the case of any Unvested Company Option to which Section 422 of the Code applies, the exercise price and the number of shares of Parent Common Stock purchasable pursuant to such option shall be determined in accordance with the foregoing, subject to such adjustments as are necessary in order to satisfy the requirements of Section 424(a) of the Code. For purposes of this Agreement, **Equity Exchange Ratio** shall mean the quotient of (x) the average of the closing prices of shares of Company Common Stock quoted on the NYSE on each of the last 15 trading days ending on the day which is the second trading day immediately preceding the Effective Time (the **Company Average Closing Price**) divided by (y) the Parent Average Closing Price. The converted options to purchase Parent Common Stock shall be subject to the same terms and conditions (including vesting conditions) as applied to such original Unvested Company Options immediately prior to the Effective Time.

(b) Treatment of Vested Options. Each Company Option that is vested and outstanding immediately prior to the Effective Time (a **Vested Company Option**) shall be cancelled and shall only entitle the holder thereof to receive (as soon as reasonably practicable following the Effective Time) the same consideration (subject to the same proration) as if the Vested Company Option had instead been a number of Shares having an aggregate value (based on the Company Average Closing Price) equal to the Vested Company Option s Spread and the holder were deemed to have elected the Default Election. As used herein, the **Spread** for any Vested Company Option is the product of (x) the number of Shares subject to the Vested Company Option immediately prior to the Effective Time and (y) the excess, if any, of the Company Average Closing Price over the per Share exercise price for such Vested Company Option. For the avoidance of doubt, each Vested Company Option that has a per Share exercise price that equals or exceeds the Company Average Closing Price shall be cancelled and shall cease to exist without entitling the holder thereof to receive any payment under this Section 4.3(b).

(c) Treatment of Restricted Stock Units. Each restricted stock unit granted under the Stock Plans (a **Company RSU**), whether vested or unvested, that is outstanding immediately prior to the Effective Time shall, as of the Effective Time, cease to represent an award based on Shares and shall be converted into an award to receive the same consideration (subject to the same proration) as if the Company RSU had instead

been a number of Shares equal to the number of Shares covered by the Company RSU and the holder were deemed to have elected the Default Election. The converted award shall be subject to the same terms and conditions (including vesting conditions) as applied to such original Company RSU immediately prior to the Effective Time.

(d) Treatment of Restricted Shares. Each Share that is subject to restrictions and that was granted under the Stock Plans (a **Company Restricted Share**), that is outstanding immediately prior to the Effective Time shall, as of the Effective Time, cease to represent a Share and shall be converted into an award to receive the same consideration (subject to the same proration) as if the Company Restricted Share had instead been an unrestricted Share and the holder were deemed to have elected the Default Election. The converted award shall be subject to the same terms and conditions (including vesting conditions) as applied to such original Company Restricted Share immediately prior to the Effective Time.

(e) Notice of Rights. As soon as practicable after the Effective Time, Parent shall deliver to the holders of Unvested Company Options, Company RSUs and Company Restricted Shares appropriate notices setting forth such holders rights pursuant to the respective Stock Plans and agreements evidencing the grant of such Unvested Company Options, Company RSUs and Company Restricted Shares, and stating, as applicable, that (i) such Unvested Company Options have been assumed by Parent and shall continue in effect on substantially the same terms and conditions as applied to such original Unvested Company Option immediately prior to the Effective Time (but subject to the adjustments required by Section 4.3(a)) and (ii) such Company RSUs and Company Restricted Shares have been converted into awards and assumed by Parent and shall continue in effect on substantially the same terms and conditions as applied to such original Company RSU and Company Restricted Shares, as applicable, immediately prior to the Effective Time.

(f) Corporate Actions. At or prior to the Effective Time, the Company, the board of directors of the Company and the compensation committee of the board of directors of the Company, as applicable, shall adopt any resolutions and take any actions which are necessary to effectuate the provisions of Sections 4.3(a), 4.3(b), 4.3(c) and 4.3(d). The Company shall take all actions necessary to ensure that, from and after the Effective Time, neither Parent nor the Surviving Corporation will be required to deliver Shares or other capital stock of the Company to any Person pursuant to or in settlement of Company Awards. Parent shall reserve for issuance a number of shares of Parent Common Stock at least equal to the number of shares of Parent Common Stock that will be subject to Parent stock options, Parent restricted stock units and Parent restricted shares as a result of the actions contemplated by Sections 4.3(a), (c) and (d).

(g) Form S-8 Registration Statement. As soon as practicable following the Effective Time, Parent shall file a registration statement on Form S-8 (or any successor form, or if Form S-8 is not available, other appropriate forms) with respect to the shares of Parent Common Stock subject to options to purchase Parent Common Stock, Parent restricted stock units and Parent restricted shares as a result of the actions contemplated by Sections 4.3(a), 4.3(c) and 4.3(d) and shall maintain effectiveness of such registration statement or registration statements (and maintain the current status of

the prospectus or prospectuses contained therein) for so long as such awards remain outstanding.

4.4 Adjustments to Prevent Dilution. In the event that the number of Shares or shares of Parent Common Stock or securities convertible or exchangeable into or exercisable for Shares or Parent Common Stock shall have changed into a different number of shares or securities, or a different class, as a result of a reclassification, stock split (including a reverse stock split), stock dividend or distribution, recapitalization, issuer tender or exchange offer, or other similar transaction, the Merger Consideration and the treatment in Section 4.3 shall be equitably adjusted; provided, however, that nothing in this Section 4.4 shall be construed to permit the Company, any Subsidiary of the Company or any other Person to take any action that is prohibited by the terms of this Agreement.

ARTICLE V

Representations and Warranties

5.1 Representations and Warranties of the Company. Except as set forth in the Company Reports filed with the SEC, since January 1, 2014 and publicly available prior to the date of this Agreement, by the Company pursuant to the Exchange Act or the Securities Act (excluding, in each case, any disclosures set forth in any risk factor section or in any other section to the extent they a