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Role of Long-Term Shareholders in Hostile Takeovers

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On Friday November 13, 2015, shareholders of Perrigo Company plc convincingly rejected Mylan N.V.'s hostile takeover attempt, with holders of over 60% of Perrigo's shares refusing to tender into what was the largest hostile offer in history to go to the very end. The outcome demonstrates that a well-articulated strategy and proven record of performance, and concerns about the corporate governance of a bidder offering stock, resonate with long-term shareholders as against a premium bid of questionable merit, even in the absence of transaction alternatives.

Mylan announced its unsolicited proposal in April 2015, which Perrigo's board rejected as undervaluing the company. Because Perrigo had become an Irish company in a prior inversion transaction, it was prevented from adopting typical defenses, such as a rights plan, by a prohibition on the taking of "frustrating actions" against Mylan's offer. The saga took numerous twists and turns over the following months, with Teva Pharmaceuticals Industries Ltd. announcing its own bid for Mylan shortly thereafter, which it later withdrew in favor of an alternative deal after facing fierce resistance from Mylan; proceedings before courts and regulators on three continents; and extensive public and investor relations campaigning and shareholder outreach.

Perrigo consistently emphasized its own long track record of substantial shareholder returns and growth, consistently high trading multiple and shareholder-focused corporate governance. These were contrasted with Mylan's relatively weaker historical performance and significant governance concerns, demonstrated by its use of extreme defenses, such as a self-perpetuating board structure and the issuance of 50% of Mylan's voting power to a Dutch trust, to fend off Teva's 48% premium bid. Perrigo also repeatedly criticized the low premium being offered, Mylan's weak growth prospects, and the substantial dilutive effect of the transaction on Mylan's EPS, raising questions about the value of the Mylan shares being offered.

Along the way, much was discussed about whether merger arbitrageurs seeking short-term gains, who had acquired almost 25% of the shares, would be able to deliver Perrigo into Mylan's hands. Much was also made about the fact that Perrigo did not agree to sell to a "white knight" or to do large acquisitions of its own, raising questions about whether a premium offer, even a questionable one, had put Perrigo on a "shot clock" to do the least bad deal that it could find. It did not. Perrigo's long-term shareholders also accepted the judgment of the Perrigo board that Mylan's offer was too low to serve as a basis for discussion, rejecting the often-asserted notion that a board is obliged to negotiate with any bidder who offers a premium. Friday's result shows that a target company can win a takeover battle and defeat short-

term pressures by pursuing a shareholder-focused stand-alone strategy of value creation, especially where it fights for and wins the backing of its long-term shareholders.