

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

HIGH RIVER LIMITED PARTNERSHIP	:	ELECTRONICALLY FILED
	:	
Plaintiff,	:	
	:	
vs.	:	CIVIL ACTION NO. 04-
	:	
MYLAN LABORATORIES, INC.	:	
ROBERT COURY, PERRY CORP.,	:	
RICHARD C. PERRY, and DOES 1-100	:	
	:	
Defendants.	:	JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff High River Limited Partnership (“High River”), by its undersigned counsel Boies, Schiller & Flexner LLP and Pepper Hamilton LLP, avers, upon personal knowledge of its own acts and status, and upon information and belief as to all other matters, as follows:

**NATURE OF THE ACTION**

1. This action under the federal securities laws and Pennsylvania state law arises from the unlawful vote-buying by Defendant Perry Corp. (“Perry”), together with other hedge funds and arbitrageurs, with respect to the shares of

Defendant Mylan Laboratories, Inc. (“Mylan”), and Defendants’ fraudulent attempt to cause Mylan to acquire King Pharmaceuticals, Inc. (“King”) at an inflated price. Defendants conduct violates federal securities laws including in that Defendants have failed to disclose their discussions and understandings, which were material to the value of the Mylan stock, and have manipulated the market for Mylan stock by buying votes and engaging in sham transactions, and further violates Pennsylvania state law by entering into transactions to purchase shareholder votes solely to disenfranchise Mylan shareholders in an intrinsically unfair result. Perry, which is owned and controlled by Defendant Richard C. Perry, has no economic interest in Mylan, but significant interests in King, and stands to profit at the expense of the Mylan shareholders if the acquisition is consummated. Defendants knew and agreed, but did not disclose to Mylan shareholders, that Perry would exercise its purchased votes to swing the Mylan shareholder vote in favor of the proposed acquisition. Perry’s modus operandi has been to engage in discussions with corporate management to indicate that he will help to secure the shareholder approval of transactions, without disclosing to the investing public that he will profit from such transactions and obtain fraudulent profits through interests that are not aligned with his purported shareholder position in the corporation. By this Complaint, Plaintiff High River seeks to enjoin Defendants’ attempt to manipulate the market for Mylan stock, including by

rigging the Mylan shareholder vote, and to supervise Mylan's conduct to ensure that the voting process is fair. In the absence of this Court's intervention, Defendants' improper conduct will cause irreparable harm to Mylan's true shareholders.

2. Defendant Perry and other arbitrageurs have perfected a technique of purchasing significant blocks of shareholder voting rights, without at the same time acquiring economic interests in the shares, by purchasing reciprocal market positions in which the exposure to the underlying security is fully hedged. In effect, such arbitrageurs set up sham transactions, whereby a large brokerage firm sells them stock and, at the same time, through put contracts or otherwise, agrees to repurchase the stock at the same price at a later date. In this manner, while the stock is registered in Perry's name so that he can vote, he cannot lose (or gain) any money from the stock position no matter how the market moves. The brokerage firm also takes no risk because the broker has a call on the shares. The public has no way of knowing that these stock transfers are not true transfers but simply designed to manipulate the market. In substance and effect, the sole purpose of such transactions – which may involve the use of equity swaps, put and call arrangements, structured derivatives, or other arrangements that allow the buyer to go long and short on the stock at the same time – is to purchase shareholder votes. The transactions wholly separate the shareholder's voting right

from any actual interest in the corporation by eliminating any ownership interest from the record owner of the stock. Because the voting right is no longer aligned with shareholder interests in the corporation, this creates an obvious incentive for the vote-buyer to cause the corporation to transfer its assets to entities in which the vote-buyer does have an economic interest.

3. Unless checked, this unlawful technique of vote-buying will compromise the integrity of the securities markets. If shareholder voting rights are divorced from shareholder ownership, legitimate expectations of corporate democracy will be undermined. The technique in fact encourages the acquisition of voting rights for the specific purpose of dissipating corporate assets, because the vote-buyers – who have no interest in the corporation – will profit only if corporate assets are diverted from the corporation itself. In short, the practice threatens to destroy the foundations of the securities markets.

4. Hedge funds and other arbitrageurs have profited at shareholders' expense in connection with a number of high-profile transactions, such as the merger of Hewlett-Packard Company with Compaq Computer Corporation. The Hewlett Packard deal enabled such arbitrageurs to profit from positions in Compaq stock but caused large losses to unsuspecting Hewlett Packard shareholders. Here, Defendant Perry and other hedge funds and arbitrageurs have improperly failed to disclose discussions and understandings between such

arbitrageurs and Mylan, and have entered into a fraudulent scheme to purchase voting rights in order to transfer the assets of Mylan (in which they have no economic interest) to King (in which they are significant shareholders) through an overpriced acquisition. Because Perry fully hedged its investment in Mylan to ensure that its only purchase was of Mylan shareholder voting rights, it can exercise those voting rights *against* the interests of the company, without any effect on the value of its position in the Mylan shares, to profit at the expense of Mylan shareholders through its investment in King. If this scheme succeeds, Mylan shareholders will lose more than a billion dollars.

5. As *The New York Times* recently reported on December 2, 2004, under the headline “Nothing Ventured, Everything Gained”:

“A new trading tactic that could tip proxy fights and takeover battles has emerged from the shadows of the hedge fund industry, igniting outrage among some investors and corporate governance experts.

“The tactic is a complex hedging technique that allows an investor to buy a voting stake without actually holding an economic interest in the company. While Wall Street has long speculated about such a tactic, it was not until this week that the first signs of such a strategy were disclosed amid a takeover fight for King Pharmaceuticals, a generic drug maker, by its larger rival, Mylan Laboratories.

“The Perry Corporation, a New York-based hedge fund, owns seven million shares of King, hoping to profit from the spread between the price Mylan offered for King shares, \$16.49, and King’s actual share price, which closed yesterday at \$12.42. If the deal is completed, Perry stands to make over \$28 million, based on figures in a filing with the Securities and Exchange Commission on Friday.

“Perry appears to have set up a sophisticated swap trade with Bear Stearns and Goldman Sachs so that it now controls about 10 percent of Mylan’s vote, with limited or no exposure to fluctuations in Mylan’s share price....”

6. Defendants Mylan and Robert J. Coury (“Coury”) are complicit in Perry’s manipulative conduct, and had notice of Perry’s vote-buying before Plaintiff High River purchased its own shares in Mylan and before Perry’s position was uncovered by the media and disclosed to the market. Indeed, long before any solicitation of the Mylan shareholders, Coury told the beneficial owner of High River that Coury “had the votes” to force approval of the King acquisition. Mylan and Coury counted on the success of Perry’s manipulative scheme to rig the Mylan shareholder vote in favor of the merger.

7. The conspiracy and conduct complained of in this Complaint are classic examples of the kinds of manipulative arrangements that arbitrageurs and hedge funds are increasingly employing, outside of the public’s awareness and without effective regulation or oversight, to generate profits at the expense of ordinary shareholders. For these reasons, Plaintiff High River brings this action to enjoin Defendants’ fraudulent scheme to buy shareholder votes to manipulate the market in Mylan stock.

#### JURISDICTION AND VENUE

8. This action arises under Sections 10(b) and 13(d) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78j(b) and

78m(d), and Rules 10b-5 and 13d-1 thereunder, 17 C.F.R. §§ 240.10b-5 and 240.13d-1, and under Pennsylvania statutory and common law.

9. This Court has subject matter jurisdiction over this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331. The Court has supplemental jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.

10. Venue is proper in this district pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, 28 U.S.C. § 1391, and 15 Pa.C.S. §§ 102 and 1103. A substantial part of the events or omissions giving rise to the claims occurred in this district, and Defendant Mylan is a Pennsylvania corporation whose registered office is c/o Corporation Service Company and whose county for venue purposes is Dauphin County.

11. Jurisdiction and venue are also proper in this forum because the Defendants (other than Mylan) have conspired to engage in one or more unlawful vote-buying schemes aimed at manipulating the Mylan shareholder vote and that are, accordingly, directed at a Pennsylvania corporation that has chosen to have issues involving its internal affairs adjudicated in this county. By engaging in the vote-buying arrangements, the participating Defendants have purposefully availed themselves of the benefits and privileges of this forum, which has supervisory

power over, and the right and obligation to adjudicate the validity of, the Mylan shareholder vote under applicable state law.

#### THE PARTIES

12. Plaintiff High River Limited Partnership is the beneficial owner of, and has the right to vote, over 26.2 million shares of common stock in Mylan. Plaintiff is a limited partnership organized and existing under the laws of the State of Delaware with its principal business address at 100 South Bedford Road, Mount Kisco, New York 10549. High River's relationship with other affiliated persons who are or may be beneficial owners of the stock of Mylan within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934 is set forth in the Plaintiff's Schedule 13D (the "Plaintiff's Schedule 13D") filed with the Securities and Exchange Commission on September 7, 2004 and in Amendments Nos. 1 through 4 to the Plaintiff's Schedule 13D filed on September 17, October 29, and November 19 and 22, 2004. A true and correct copy of the Plaintiff's Schedule 13D and Amendments Nos. 1 through 4 is attached as Exhibit 1.

13. Defendant Mylan Laboratories, Inc. ("Mylan") is a Pennsylvania corporation with business offices at 1500 Corporate Drive, Canonsburg, PA 15317.

14. Defendant Perry Corp. (“Perry”) is a New York corporation that is an investment advisor and general partner to certain private investment funds, with a business address at 599 Lexington Avenue, New York, New York 10022.

15. Defendant Richard C. Perry, a citizen of New York, is President and the sole stockholder of Perry. Defendants Perry and Richard C. Perry and collectively referred to as the Perry Defendants.

16. Defendant Robert J. Coury, a citizen of Pennsylvania, is a Vice Chairman and Chief Executive Officer of Mylan.

17. Defendants Does 1 through 100 are persons whose identities are currently unknown to Plaintiff, but who, upon information and belief, have entered into transactions identical or similar to those into which Perry has entered, with the same or similar objectives, and who are acting either in concert with Perry or independently.

## FACTUAL BACKGROUND

### **A. The King Merger**

18. On July 23, 2004, Mylan and its wholly-owned subsidiary, Summit Merger Corporation (“Summit”), entered into an Agreement and Plan of Merger (the “Merger Agreement”) with King.

19. Pursuant to the Merger Agreement, Mylan is to acquire King in a stock-for-stock transaction structured as a triangular merger pursuant to which Summit will merge into King (the “Merger”). If the Merger is completed, King

shareholders will receive 0.9 shares of common stock of Mylan for each issued and outstanding share of common stock of King. Based upon the closing prices of Mylan and King stock on July 23, 2004, the date of the Merger Agreement, this offer price represented a 61% premium to King's shareholders.

20. The total market value of Mylan shares to be issued in the Merger is estimated at approximately \$4.0 billion.

21. On or about August 19, 2004, the Federal Trade Commission granted early termination of the waiting period with respect to High River's filing under the Hart-Scott-Rodino Antitrust Improvements Act, thus permitting High River and affiliated persons to purchase shares of Mylan having an aggregate acquisition cost of up to \$500 million, which equated at that time to approximately 11.9% of Mylan's outstanding shares.

22. On September 3, 2004, Mylan filed a Registration Statement on Form S-4 with the Securities and Exchange Commission (the "SEC"), for the purpose of registering for sale under Section 5 of the Securities Act of 1933, as amended, approximately 217.3 million shares to be issued in connection with the Merger.

23. On September 7, 2004, High River and affiliated persons filed Plaintiff's Schedule 13D with the SEC, disclosing that they had purchased 18.3

million common shares of Mylan, representing 6.8% of Mylan's outstanding shares.

24. Following SEC review of the Registration Statement and an order of the SEC declaring it effective, the joint proxy statement/prospectus, which is part of the Registration Statement, will be sent to the shareholders of Mylan in connection with a shareholder meeting to be held for the purpose of approving the issuance of Mylan shares in the Merger.

25. The Merger currently remains subject to the approval of the respective shareholders of Mylan and King, certain regulatory approvals, and other closing conditions. November 16, 2004 has been fixed as the record date for the determination of the shareholders of Mylan who will be entitled to vote upon the issuance of Mylan shares in connection with the Merger. High River believes, and therefore avers, that Mylan will schedule a shareholder vote on the Merger as soon as practicable.

26. On September 7, 2004, in the Plaintiff's Schedule 13D, High River and affiliated persons announced their intention to oppose the Merger in the Mylan shareholder vote.

27. In Amendment No. 1 to the Plaintiff's Schedule 13D, High River and affiliated persons disclosed that they had purchased additional shares of Mylan bringing their total number of shares to 23.9 million, representing a total of

8.9% of Mylan's outstanding shares. In Amendment No. 2 to the Plaintiff's Schedule 13D, High River and affiliated persons disclosed that they had purchased additional shares of Mylan bringing their total number of shares to about 26.3 million, representing a total of 9.78% of Mylan's outstanding shares.

28. As stated in the Plaintiff's Schedule 13D, it is the present intention of High River to oppose the Merger, and to solicit proxies against the Merger in order to prevent its consummation. Because the Merger is structured as a triangular merger in which the merging entities will be King and Summit, the shareholder vote will concern the proposed issuance of Mylan shares to King shareholders. A decision by Mylan shareholders against the issuance of Mylan shares will prevent the Merger Agreement from being consummated because the shares are the consideration for King's merger with Summit. High River believes that the Merger is not in the best interests of Mylan or its shareholders and that defeat of the Merger proposal will enhance Mylan's value.

**B. The Scheme or Schemes of the Perry Defendants**

29. On November 12, 2004, Perry filed a Schedule 13F with the SEC in which Perry reported that it owned 7 million shares in King and 16.9 million shares in Mylan as of September 30, 2004. Those Mylan shares represented over 6% of the outstanding shares of Mylan on September 30, 2004.

30. On November 29, 2004, the Perry Defendants filed a joint Schedule 13D (the “Perry Schedule 13D”) with the SEC in which the Perry Defendants disclosed that Perry was the indirect beneficial owner of over 26.6 million shares of common stock of Mylan, representing approximately 9.89% of the outstanding shares of Mylan.

31. The Perry Schedule 13D states that Perry supports the Merger and that Perry has hedged its position in Mylan common stock.

32. Upon information and belief, the effect of Perry’s hedging its position in Mylan common stock is that Perry has purchased the votes relating to the Mylan shares identified above without acquiring any economic interest or risk in those Mylan shares. Perry has done so with the purpose of voting those shares in favor of the Merger wholly without regard to whether the Merger would be in the best interests of Mylan or its shareholders.

33. Upon information and belief, the purpose of Perry’s scheme, as reported in a November 23, 2004 article in *The Daily Deal*, is to take substantial positions in both Mylan and King for the purpose of voting Mylan shares in favor of the deal in order to “capture the significant spread” between the value offered by Mylan for the King stock and the then-current market value of King stock (reported by *The Daily Deal* to be \$5.35 or 47% as of Monday, November 22, 2004).

34. Upon information and belief, *The Daily Deal* correctly reports that Perry and other persons whose identities are currently unknown to Plaintiff have similarly purchased votes in Mylan without acquiring an economic interest in the company, and that Perry and these other unknown persons may “control about 19% of Mylan’s votes” despite the fact that they do “not have any economic interest in the company.” These unknown persons are named as Defendants Does 1 through 100 herein, and, together with the Perry Defendants, are referred to herein as the “Vote Buying Defendants.”

35. Upon information and belief, the Vote Buying Defendants intend to enhance their likelihood of “capturing the spread” by engaging in a scheme to buy a substantial block of votes that they will cast at the Mylan shareholder meeting in favor of the Merger, substantially as follows: (a) participating Defendants “buy” Mylan shares for purposes of appearing as the record owners of such shares as of the record date for the Mylan shareholder vote; (b) participating Defendants also acquire a substantial position in King stock; (c) as a further part of the scheme, participating Defendants also enter into agreements pursuant to which their economic interest in the Mylan stock is eliminated through put and call arrangements, swap agreements or similar transactions; (d) participating Defendants then vote the Mylan stock in which they have no genuine economic interest in favor of the Merger; and (e) if the Mylan shareholder vote

approves the Merger (or if the Merger appears to be likely), the participating Defendants then “capture the spread” either by (x) receiving in the Merger the higher value 0.9 Mylan share for each share of King stock that they own, or (y) as is more likely, not waiting for the Merger and selling their King shares in the market before the Merger is consummated because the value of a King share will rise to the value of 0.9 Mylan share as the potential closing of the Merger becomes more likely.

36. Upon information and belief, the Vote Buying Defendants have wrongfully conspired to enter into a scheme or schemes (the “Vote Buying Scheme”) such as that described above or in all respects materially similar to or the economic equivalent to that described above. The Vote Buying Scheme is an unlawful vote buying scheme that is designed to operate, and that will operate: (a) as a fraud upon Mylan’s shareholders unless fully disclosed; (b) wrongfully to disenfranchise Mylan’s legitimate shareholders whether or not fully disclosed; and (c) in a manner that is intrinsically unfair to Mylan’s shareholders who have a genuine economic interest in their Mylan shares.

37. The Vote Buying Scheme constitutes unlawful vote buying because the scheme is designed to give the Vote Buying Defendants the ability to control the voting rights of the Mylan shares acquired pursuant to the scheme (hereinafter shares acquired pursuant to the scheme are referred to as the “Tainted

Stock”) without incurring any of the economic or investment risk attendant upon the ownership of the Tainted Stock.

38. The exact particulars of the agreements into which the “Vote Buying Defendants” have entered to eliminate their economic risk in the Tainted Stock are not known, since they have been negotiated and executed in secrecy. Upon information and belief, the agreements involve a system of derivative contracts (such as puts, calls, options, collars, swaps and/or similar investment arrangements) pursuant to which: (a) if the value of the Tainted Stock falls, the Vote Buying Defendants will have the right to dispose of that stock for the same price they paid for it; and (b) if the value of the Tainted Stock rises, the Vote Buying Defendants will have the obligation to dispose of that stock for the same price they paid for it; or (c) the Vote Buying Defendants will pay to the derivative contract counterparty an amount equal to any increase in the value of, or will be paid by the derivative contract counterparty an amount equal to any decrease in the value of, the Tainted Stock.

39. The effect of these arrangements is to allow the Vote Buying Defendants to vote substantial blocks of Mylan shares (the Tainted Stock together with any additional shares acquired pursuant to the scheme prior to the record date for the Mylan shareholder vote on the Merger) in favor of the Merger, with a view to influencing the shareholder vote in favor of obtaining approval of the Merger,

without incurring any of the economic risks attendant upon ownership of Mylan shares. In sum, the Vote Buying Defendants have in fact purchased only the voting rights of the shares divorced from all real ownership interest.

40. Upon information and belief, Vote Buying Defendants Does 1 through 100 have engaged in the same or similar wrongful conduct as Perry, either independently or in concert with Perry.

**C. Concealment of the Vote Buying Scheme**

41. Upon information and belief, the Vote Buying Defendants have not disclosed, and do not intend to disclose, the substance of the transactions underlying the Vote Buying Scheme, or their motives and objectives in supporting the Merger, to Mylan or its shareholders prior to the Mylan shareholder vote on the Merger.

42. Specifically, the Vote Buying Defendants do not intend to reveal to the legitimate Mylan shareholders: (a) that the Vote Buying Defendants have acquired substantial holdings in Mylan for the sole purpose of furthering their speculative investment in King stock; (b) that in substance the Vote Buying Defendants have purchased only the voting interest in the Tainted Stock, having divorced that interest from the economic interest in such stock; (c) that the Vote Buying Defendants are, accordingly, entirely indifferent to the effect the Merger will have on Mylan, on the value of the Tainted Stock or on the value of the shares

owned by legitimate Mylan shareholders who will be voting on the Merger; and (d) that the Vote Buying Defendants are motivated to vote in favor of the Merger without regard to whether they believe it will be good or bad for Mylan and its legitimate shareholders and, indeed, even if the Vote Buying Defendants believe that the Merger will harm Mylan and its legitimate shareholders.

43. Upon information and belief, in furtherance of the Vote Buying Scheme, the Vote Buying Defendants have wrongfully held themselves out, both through overt acts and acts of concealment and omission, as legitimate Mylan shareholders in an attempt to deceive the other Mylan shareholders.

44. Perry first disclosed a position in King in a Schedule 13F filed February 13, 2004, for the period ended 12-31-03. At the time Perry owned 300,000 King shares.

45. In a Schedule 13F filed by Perry on May 11, 2004, for the period ended 3-31-04, Perry disclosed that it had increased its ownership of King shares to 1.8 million shares.

46. In a Schedule 13F filed by Perry on August 13, 2004, for the period ended for 6-30-04, Perry disclosed that it had increased its ownership of King shares to 4.03 million shares.

47. Perry subsequently disclosed in a Schedule 13F filed on November 12, 2004, that it owned 7 million shares of King common stock as of

September 30, 2004. That Schedule 13F is the first time Perry disclosed that it owned shares of Mylan.

48. The Schedule 13D filed by Perry does not adequately disclose the nature of the “hedging transactions” that Perry has engaged in as an integral part of the Vote Buying Scheme and does not contain sufficient detail to permit a legitimate Mylan shareholder to understand that the Vote Buying Scheme is occurring or its implications.

49. In fact, the Perry Defendants did not file the Perry 13D until six days *after The Daily Deal* exposed the basic elements of their vote-buying scheme.

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50. The unlawful scheme and conspiracy described herein has been engaged in with the purpose, and will, absent relief from this Court, have the effect, of (a) defrauding Mylan’s legitimate shareholders, of (b) wrongfully infringing upon and diluting the voting power of Mylan’s legitimate shareholders, and (c) effecting an intrinsically unfair and inequitable interference with the Mylan shareholder franchise.

51. The unlawful scheme or conspiracy threatens Plaintiff with immediate and irreparable injury, all as more fully set forth throughout the body of this Complaint, in particular by depriving Plaintiff of the fair shareholder vote to which Plaintiff and other legitimate Mylan shareholders are entitled.

52. Plaintiff has no adequate remedy at law.

COUNT I  
SECTION 10(B) OF THE EXCHANGE ACT AND  
RULE 10B-5 THEREUNDER  
(Against Defendant Mylan)

53. Plaintiff realleges and incorporates by reference the allegations above and those set forth in subsequent counts as if fully set forth herein.

54. Count I is brought pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, against Mylan.

55. On July 23, 2004, Mylan issued a press release and held an investor conference call (a transcript of which along with investor slides were filed with the Securities and Exchange Commission) announcing that Mylan and its wholly-owned subsidiary, Summit Merger Corporation (“Merger Sub”), had entered into the Merger Agreement with King, pursuant to which Mylan would acquire King in a stock-for-stock transaction. Mylan also filed a Form 8-K announcing the Merger. During the investor conference call, and in the press release, investor slides, Form 8-K, and Merger Agreement, Mylan represented that the Merger was conditioned upon, among other things, approval by Mylan’s shareholders of the issuance of the Mylan common stock to be paid to King shareholders as compensation:

(a) Mylan's 8-K states: "The consummation of the Merger is subject to . . . the approval of the issuance of shares of common stock of Mylan to be issued in the Merger by the shareholders of the Company".

(b) The Merger Agreement (a copy of which was attached as an exhibit to Mylan's Form 8-K) states that a condition precedent to completion of the Merger was an "affirmative vote by a majority of the votes cast by holders of outstanding shares of Parent [Mylan] Common Stock at a meeting duly called and held for approval of the Stock Issuance in favor of the Stock Issuance and pursuant to Rule 312.03 in the Listed Company Manual of the NYSE";

(c) Mylan's press release states that the Merger is subject to "approval by the respective companies' shareholders."

(d) During the Forward Looking Statements sections of the investor conference call, press release, and investor slides, Mylan states that the transaction is subject to "satisfaction of the conditions to the acquisition, including requisite shareholder and regulatory approvals".

56. In its 10-Q for quarter ending on June 30, 2004 (filed with the SEC on August 9, 2004) and registration statement, dated September 3, 2004 (“Registration Statement”), which includes the joint proxy statement and prospectus for the Merger (“Proxy-Prospectus”), Mylan continued representing to the public that the transaction was conditioned upon approval of Mylan’s shareholders.

(a) The 10-Q states: “On July 23, 2004, we entered into an Agreement and Plan of Merger to acquire King Pharmaceuticals, Inc. (“King”) in a stock-for-stock transaction. The consummation of the acquisition requires the satisfaction of certain conditions to the acquisition that are beyond our control, including requisite shareholder and regulatory approvals.”

(b) The Registration Statement and Proxy-Prospectus “urge” Mylan’s shareholders to vote promptly, noting in bold **“YOUR VOTE IS IMPORTANT, SO PLEASE ACT TODAY.”**

(c) The Registration Statement and Proxy-Prospectus state: “The issuance of Mylan common stock to King shareholders, which is necessary to effect the merger, requires the affirmative vote of at least a majority of the votes cast by all shareholders

entitled to vote on the matter. If an insufficient number of affirmative votes have been received to approve the issuance, Mylan intends to adjourn or postpone the meeting to solicit additional proxies.”

(d) The Registration Statement and Proxy-Prospectus state: “To complete the merger, Mylan shareholders must approve the issuance of shares of Mylan common stock to King shareholders pursuant to the merger”;

(e) The Registration Statement and Proxy-Prospectus state: “Approval of the proposal to issue shares of Mylan common stock to King shareholders pursuant to the merger requires the affirmative vote of a majority of the votes cast at the special meeting by all shareholders entitled to vote thereon.”

(f) The Registration Statement and Proxy-Prospectus state: “Mylan shareholders will have one vote for each share of Mylan common stock that they owned on the Mylan record date. The issuance of Mylan common stock to King shareholders, which is necessary to effect the merger, requires approval by a majority of the votes cast at the Mylan special meeting by all shareholders entitled to vote thereon.”

(g) The Registration Statement and Proxy-Prospectus state:  
“During the course of its deliberations relating to the merger agreement and the merger, the Mylan board of directors considered . . . that Mylan shareholders will have an opportunity to vote upon the proposal to issue shares of Mylan common stock in connection with the merger.”

57. Mylan’s press release, investor slides, Form 8-K, and Merger Agreement, 10-Q, Registration Statement, and Proxy-Prospectus (as set forth above) are false and misleading statements and omissions of material fact, and omit to state material facts necessary to make the statements therein not misleading. Specifically, those statements represent that the Merger is subject to a shareholder vote, but omit to disclose that: (1) the shareholder vote for the Merger has been fixed through the illegal Vote Buying Scheme alleged herein; and (2) the purported voting rights accompanying shares purchased by Plaintiff are illusory. The inclusion of each of these omitted disclosures was necessary in order to make Mylan’s statements not false and misleading because without them Plaintiff had no way of knowing that a *de facto* controlling block of shares existed that had the ability to dictate the outcome of the shareholder vote.

58. Each of the misrepresentations and omissions alleged above is material. Plaintiff considered, and any similarly situated reasonable investor

would have considered, them important in deciding whether to acquire Mylan stock, and Plaintiff would not have purchased Mylan stock if it had known the true facts.

59. Mylan knew that each of the misrepresentations and omissions alleged herein were false at the time they were made. Because Mylan (acting through its Vice Chairman and Chief Executive Officer, Coury) knew long before the solicitation of shareholder votes that it “had the votes” to force approval of the King acquisition from the illegal Vote Buying Scheme, Mylan knew or consciously disregarded that in fact completion of the Merger was not contingent upon a legitimate shareholder vote.

60. Plaintiff relied on each of Mylan’s misrepresentations and omissions in purchasing Mylan stock between July 26, 2004, and at least September 23, 2004, and would not have purchased Mylan stock were it not for each of those misrepresentations and omissions.

61. The misrepresentations and omissions made by Mylan were made “in connection with” the purchase or sale of securities to Plaintiff. Each of the misrepresentations was made with the specific purpose of influencing the investment decision of the public and concerned the fundamental attributes of those securities: characteristics and attributes that would affect the value of the

security and would induce a purchaser to engage in purchases or sales of such investments.

62. Mylan's misrepresentations and omissions alleged herein have fraudulently caused Plaintiff to purchase securities with illusory voting rights. If the illegal Vote Buying Scheme is permitted to determine the outcome of the shareholder vote, Plaintiff will be irreparably harmed through the loss or impairment of voting rights that were bargained for, and should by law accompany, the Mylan stock purchased by Plaintiff.

63. In the alternative, if this Court denies Plaintiff's request for injunctive and equitable relief, Plaintiff seeks to recover damages, in an amount to be determined at trial, that are a direct and proximate result of Mylan's misrepresentations and omissions, as alleged herein.

COUNT II  
SECTION 10(B) OF THE EXCHANGE ACT AND  
RULE 10B-5 THEREUNDER  
(Against Defendants Perry and Does 1-100)

64. Plaintiff realleges and incorporates by reference the allegations above and those set forth in subsequent counts as if fully set forth herein.

65. Count II is brought pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, against Perry and Does 1 through 100.

66. In connection with the purchase and sale of Mylan stock, Perry and the other Vote Buying Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in that it (a) employed devices, schemes and artifices to defraud, (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and (c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiff.

67. Specifically, Perry and the other Vote Buying Defendants engaged in a scheme or artifice to defraud Plaintiff and other shareholders of Mylan by illegally buying voting rights in Mylan without acquiring any corresponding economic interest, and have used this device to become Mylan's largest block of vote holders. Neither Perry nor the other Vote Buying Defendants have disclosed the existence of the Vote Buying Scheme to the public.

68. Perry's and the other Vote Buying Defendants' acquisition of Mylan voting rights has no legitimate investment purpose, as is evidenced by their hedging of their economic exposure to Mylan, but was done solely in order to affect the outcome of the shareholder vote on the King merger. By acquiring the largest voting block of Mylan voting rights, Perry and the other Vote Buying Defendants (all of whom own significant holdings of King stock) will benefit from

the rigged vote by ensuring a virtually guaranteed profit from what would otherwise be a speculative investment in King stock.

69. Perry's and other Vote Buying Defendants' scheme or artifice to defraud was material. Plaintiff considers, and any similarly situated reasonable investor would have consider, knowledge of the scheme important in deciding whether to acquire Mylan stock, and Plaintiff would not have purchased Mylan stock if it had known the true facts

70. Perry's and the other Vote Buying Defendants' artifice and scheme to defraud (which has not been disclosed to the public) has defrauded Plaintiff and other Mylan shareholders of the right to an unrigged shareholder vote. If the illegal Vote Buying Scheme is permitted to determine the outcome of the shareholder vote, Plaintiff will be irreparably harmed through the loss or impairment of voting rights that were bargained for, and should by law accompany, the Mylan stock purchased by Plaintiff.

71. In the alternative, if this Court denies Plaintiff's request for injunctive and equitable relief, Plaintiff seeks to recover damages, in an amount to be determined at trial, that are a direct and proximate result of Perry's and the other Vote Buying Defendants' scheme and artifice to defraud, as alleged herein.

COUNT III  
SECTION 13(D) OF THE EXCHANGE ACT AND  
RULE 13D-1 THEREUNDER  
(Against Perry)

72. Plaintiff realleges and incorporates by reference the allegations above and those set forth in subsequent counts as if fully set forth herein.

73. Count III is brought pursuant to Section 13(d) of the Exchange Act, 15 U.S.C. § 78m(d) and Rule 13d-1 thereunder, 17 C.F.R. § 240-13d-1, against Perry.

74. On November 19, 2004, Perry filed a Schedule 13D announcing that it holds indirect beneficial ownership of 26,626,300 shares of common stock representing approximately 9.89% of Mylan's outstanding shares of common stock.

75. Perry's Schedule 13D contains false and misleading statements and omissions of material fact, and omit to state material facts necessary to make the statements therein not misleading. Specifically, Perry's Schedule 13D cursorily mentions that Perry has entered into stock loan transactions with Bear Stearns Securities Corp. and Goldman, Sachs & Co. in order to hedge the purchase, but it fails to disclose the full effect of this hedging scheme, including that Perry: (a) had acquired substantial holdings in Mylan for the sole purpose of furthering its speculative investment in King stock; (b) had, in substance, purchased only the voting interest in the Tainted Stock, having divorced that interest from the

economic interest in such stock; (c) is, accordingly, entirely indifferent to the effect the Merger will have on Mylan, on the value of the Tainted Stock or on the value of the shares owned by legitimate Mylan shareholders who will be voting on the Merger; and (d) is motivated to vote in favor of the Merger without regard to whether it believes the Merger will be good or bad for Mylan and its legitimate shareholders.

76. Perry and the other Vote Buying Defendants may constitute a group for the purpose of Section 13(d) and Rule 13d-1. Because the other Vote Buying Defendants may have been acting in concert with Perry, they may have had an obligation to file a Schedule 13D as a group disclosing their existence, intent, source of financing, and other information required by Schedule 13D.

77. Because the Schedule 13D is false and misleading, Mylan's shareholders were not, and have not, been adequately alerted to the significant acquisitions by Perry and its intentions with respect to the acquisitions. If the illegal Vote Buying Scheme is permitted to determine the outcome of shareholder vote, Plaintiff and other Mylan shareholders will be irreparably harmed through the rigged shareholder vote.

COUNT IV  
REQUEST FOR JUDICIAL SUPERVISION OF CORPORATE ACTION  
(Against Mylan, the Perry Defendants, and Does 1-100)

78. Plaintiff realleges and incorporates by reference the allegations above and those set forth in subsequent counts as if fully set forth herein.

79. Under Pennsylvania law, specifically 15 Pa.C.S. §§ 1791-1793, the courts in this District are charged with exercising judicial power over, and are authorized to determine the validity of, “corporate action,” which is defined in § 1791(a)(2) to include:

“The taking of any action on any matter that is required under this subpart [15 Pa.C.S. §§ 1101-4162] or under any other provision of law to be, or that under the bylaws may be, submitted for action to the shareholders, directors or officers of a business corporation.”

Specifically, pursuant to § 1793(a), “Upon application of any person aggrieved by any corporate action, the court may hear and determine the validity of the corporate action.” This Federal Court has the same broad equity powers.

80. The Merger and the vote by Mylan shareholders on whether to approve the issuance of the Mylan shares necessary to consummate the Merger constitutes the taking of an action that is required by law to be, or that under the bylaws of Mylan may be (as it in fact is being), submitted for action to the shareholders.

81. Accordingly, this Court has the authority to determine the validity of the corporate action at issue in this case, the shareholder vote on the Merger, and to enter appropriate relief including equitable relief to prevent an improper corporate action. In particular, this Court has the authority to review the conduct of the Vote Buying Defendants and to determine whether their participation in the vote should be allowed or disallowed given that they: (a) have no genuine economic interest in the Tainted Stock; (b) have engaged in an improper and unlawful vote-buying scheme to manipulate the vote at the Mylan shareholder meeting that will vote on the Merger; and (c) are motivated to vote for the Merger even if they believe it will injure Mylan and its shareholders because their sole objective and exclusive economic interest in the transaction is to participate in the premium that King shareholders will enjoy should the Merger be approved by Mylan's shareholders.

82. High River is a person "aggrieved" by the Vote Buying Defendants' interference with the Mylan shareholder vote. Specifically, Plaintiff is a substantial shareholder of Mylan whose interests may be seriously and adversely affected if the Vote Buying Defendants are permitted to manipulate the Mylan shareholder vote on whether the Merger should be approved. This is so because that scheme has the purpose and effect of interfering improperly, fraudulently and unfairly with the exercise of the shareholder franchise by Mylan's legitimate

shareholders in connection with a matter that is to be submitted to the shareholders, namely approval of the issuance of the shares necessary to consummate the Merger.

COUNT V  
DECLARATORY JUDGMENT  
(Against Mylan, the Perry Defendants, and Does 1-100)

83. Plaintiff realleges and incorporates by reference the allegations above and those set forth in subsequent counts as if fully set forth herein.

84. This claim for declaratory judgment is brought pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq. and Fed. R. Civ. P. 57, seeking a determination that the Vote Buying Defendants obtained their voting rights in the Tainted Stock through an improper vote-buying scheme designed to enrich the Vote Buying Defendants at the expense of legitimate Mylan shareholders, and, accordingly, that the Vote Buying Defendants should be precluded from voting the Tainted Stock with respect to the Merger or, alternatively, should be permitted to vote such stock only proportionally to the vote of Mylan's legitimate shareholders.

85. The dispute between High River and the Vote Buying Defendants is a real and actual controversy and is ripe for judicial determination since Mylan's Board of Directors has already established a record date for the shareholder vote and will next set the date of that vote.

86. Declaratory relief is appropriate because the declaration sought by High River as to the violation of the federal securities law by Mylan and Perry, and as to the voting rights of the Vote Buying Defendants, will resolve or assist the parties in resolving this controversy and will help to ensure that the Mylan shareholder vote will proceed in a proper, fair and equitable manner.

87. As the owner of a substantial number of shares in Mylan, High River's interest in this controversy is direct, substantial and present.

88. A declaratory judgment should be granted in favor of High River because: (a) Mylan and the Perry Defendants have violated Section 10(b) of the Exchange Act, (b) the Vote Buying Defendants have engaged in a wrongful conspiracy to buy votes and/or wrongfully manipulate the Mylan shareholder vote, and have otherwise acted in a manner that is intrinsically unfair as against Plaintiff and other legitimate Mylan shareholders; (c) the actions of the Vote Buying Defendants unfairly dilute the voting power of Mylan's legitimate shareholders, thus serving to disenfranchise those shareholders; and/or (d) the actions of the Vote Buying Defendants constitute a fraud upon Mylan's legitimate shareholders.

COUNT VI  
COMMON LAW FRAUD  
(Against the Perry Defendants and Does 1-100)

89. Plaintiff realleges and incorporates by reference the allegations above and those set forth in subsequent counts as if fully set forth herein.

90. The Vote Buying Defendants have engaged in a fraud upon the legitimate Mylan shareholders through their institution of and participation in the improper vote buying scheme, through their acts to conceal the lack of any real economic interest by the Vote Buying Defendants in the Tainted Stock and through the Vote Buying Defendants' fraudulent attempts to hold themselves out as legitimate shareholders in Mylan.

91. These acts and omission were undertaken with the knowledge of the Vote Buying Defendants that they were improper, wrongful, false and misleading and done for the purpose of allowing the Vote Buying Defendants to profit from the wrongful manipulation of the Mylan vote.

92. Through these acts the Vote Buying Defendants intended to deceive the other shareholders of Mylan into justifiably believing that the Vote Buying Defendants' vote with respect to the King Merger would be legitimate, lawful and undertaken in furtherance of what the Vote Buying Defendants believed were the best interests of Mylan and, thereby, to deprive the Mylan shareholders of a fair and proper vote on the Merger.

93. These acts were done as part of, and in perpetuation of, the civil conspiracy or conspiracies the Vote Buying Defendants aimed and directed at manipulating the Mylan shareholder vote so as to allow the Vote Buying Defendants to profit from their ownership of King stock.

94. The conduct of the Vote Buying Defendants complained of herein has the effect of working a fraud upon the legitimate shareholders of Mylan in that it is designed to permit the Vote Buying Defendants to influence the Mylan shareholder vote purportedly as Mylan shareholders while concealing from other Mylan shareholders the fact that the Vote Buying Defendants: (a) have no economic interest in the Tainted Stock; (b) have no interest in how the Merger will affect the value of the Tainted Stock or Mylan shares held by others; (c) are pursuing consummation of the Merger for reasons wholly extraneous to any interest they have in the Tainted Stock; and (d) in fact are motivated to vote in favor of the Merger even if they believe that the Merger will damage Mylan and the value of its shares.

95. As a natural and necessary consequence of these acts and omissions, High River and the other legitimate Mylan shareholders will suffer irreparable harm if the Vote Buying Defendants are allowed to continue their fraudulent scheme or schemes and vote the Tainted Stock with respect to the Merger since the legitimate Mylan shareholders will be deprived of a fair and proper vote.

96. The acts alleged in support of this claim have been taken in violation of statutory and common law.

**COUNT VII**  
**REQUEST TO ENJOIN UNFAIR DILUTION AND DISENFRANCHISEMENT**  
**(Against All Defendants)**

97. Plaintiff realleges and incorporates by reference the allegations above and those set forth in subsequent counts as if fully set forth herein.

98. Based on the acts complained of herein, the Vote Buying Defendants, with the knowledge and cooperation of Mylan and Coury, have sought to dilute, and are unfairly diluting, the voting power of High River and the other real and legitimate shareholders of Mylan through the scheme or schemes described above.

99. Based on the acts complained of herein, the Vote Buying Defendants, with the knowledge and cooperation of Mylan and Coury, have sought to disenfranchise, and are unfairly disenfranchising, the legitimate shareholders of Mylan and will, unless enjoined, succeed in disenfranchising and diluting the votes of Mylan's legitimate shareholders.

**COUNT VIII**  
**REQUEST TO SUPERVISE AND ENJOIN FUNDAMENTAL UNFAIRNESS**  
**AND INEQUITABLE CONDUCT IN CORPORATE ACTION**  
**(Against All Defendants)**

100. Plaintiff realleges and incorporates by reference the allegations above and those set forth in subsequent counts as if fully set forth herein.

101. The conduct of the Vote Buying Defendants has been engaged in for the improper purpose and with the improper effect of infringing on the rights

of genuine and legitimate Mylan shareholders to determine the merits of a management-sponsored Merger proposal on the basis of their real ownership interests in Mylan.

102. The Vote Buying Defendants' scheme is fundamentally unfair and inequitable in that it seeks, unbeknownst to Mylan's legitimate shareholders, to tip the balance in favor of the Merger by voting a substantial number of shares in favor of the Merger for a wholly collateral purpose and wholly without regard to the effect the Merger will have on Mylan or the value of its stock.

103. Upon information and belief, this scheme has been conducted through acts that are unlawful and/or improper.

104. Mylan's shareholders are entitled to a fundamentally fair vote based on full disclosure, and to a vote that does not allow persons masquerading as genuine Mylan shareholders, such as Perry, to participate in determining Mylan's course of action.

COUNT IX  
AIDING AND ABETTING FRAUD AND CONSPIRACY  
(Against Defendants Mylan and Coury)

105. Plaintiff realleges and incorporates by reference the allegations above and those set forth in subsequent counts as if fully set forth herein.

106. Upon information and belief, Mylan and Coury at all relevant times were and are aware of the improper vote buying conspiracy entered into by

the Vote Buying Defendants and were and are aware of the Vote Buying Defendants' intention to wrongfully manipulate and influence the Mylan vote with respect to the Merger to the detriment of Mylan's legitimate shareholders

107. Mylan and Coury provided substantial assistance and encouragement to the Vote Buying Defendants in their wrongdoing. They did so by, among other things, concealing the Vote Buying Defendants' scheme to improperly buy voting interests in substantial quantities of Mylan shares divorced from any real economic ownership interest in the stock.

108. In aiding and abetting the Vote Buying Defendants in their efforts intentionally and improperly to pursue the vote buying scheme, Mylan and Coury have acted with reckless indifference to the rights of Mylan's shareholders.

109. By such actions, Mylan, Coury, and the Vote Buying Defendants have threatened and continue to threaten Plaintiff and Mylan's other genuine and legitimate shareholders with immediate and irreparable harm that cannot be prevented absent injunctive relief to abate the wrongful conduct.

**COUNT X**  
**PROSPECTIVE BREACH OF DUTY TO HOLD FAIR ELECTION**  
**(Against Defendants Mylan and Coury)**

110. Plaintiff realleges and incorporates by reference the allegations above as if fully set forth herein.

111. Pursuant to 15 Pa.C.S. § 1105, shareholders in a Pennsylvania corporation are entitled to an injunction against a proposed plan of merger if fraud or fundamental unfairness are present.

112. The Merger has been structured so that it will actually take place with a wholly owned Mylan subsidiary, so that the Mylan shareholder vote scheduled to take place on the Merger is technically not a vote on a plan of Merger but is, rather, a vote on whether to issue Mylan stock in connection with the proposed Merger

113. In substance, however, the vote of the Mylan shareholders will be determinative of whether the Merger Agreement is consummated, since that vote will determine whether the Mylan shares necessary to consummate the Merger Agreement should be issued.

114. In addition, Plaintiff is entitled as a shareholder of Mylan to a fair election. 15 Pa.C.S. § 1709(c) requires that the presiding officer at a shareholder meeting adopt rules that are fair to the shareholders and conduct the meeting in a manner that is fair to the shareholders, and 15 Pa.C.S § 1765(a)(3) requires that the judge or judges of election at a shareholder meeting act in such a manner as to ensure that a vote is conducted with fairness to all shareholders.

115. Pursuant to these statutes, as well as basic principles of corporate democracy and equity, Plaintiff is legally entitled to have a fair election.

116. Given the nature of the Vote Buying Defendants' conduct, it would be fundamentally unfair and a fraud on Mylan's legitimate shareholders to allow the Vote Buying Defendants to vote the Tainted Stock, or to cause such shares to be voted, in favor of the Merger.

117. Absent an order requiring Mylan not to allow the Tainted Stock to be voted in favor of the King Merger, or requiring Mylan not to count any such votes that are made, Mylan (whose management favors the Merger and is complicit in the wrongdoing) will, upon information and belief, take the position that it lacks authority to prevent the voting of the Tainted Stock or to conduct the Mylan shareholder election so that votes cast with the Tainted Stock will not be counted.

WHEREFORE, Plaintiff respectfully requests that this Court:

(1) Schedule expedited discovery and an expedited hearing on Plaintiff's claims so that such claims may be fairly heard prior to the Mylan shareholder vote on whether to approve the Merger;

(2) After hearing, enter judgment in favor of Plaintiff and against Defendants:

(a) Declaring that Defendants' conduct violates §§ 10(b) and 13(d) of the Securities and Exchange Act of 1934 and the rules promulgated thereunder;

(b) Declaring the scheme in which the Vote Buying Defendants have engaged to be unlawful as a vote-buying arrangement that:

- (i) works a fraud upon legitimate Mylan shareholders;
- (ii) unfairly disenfranchises legitimate Mylan shareholders and/or;
- (iii) operates in a manner that is intrinsically unfair to legitimate Mylan shareholders.

(c) Declaring the scheme in which the Vote Buying Defendants have engaged to be unlawful as a common law fraud.

(d) Declaring that any attempt by the Vote Buying Defendants, or any of them, to vote the Tainted Stock or any part thereof in connection with the Mylan shareholder vote on the Merger shall be unlawful, null and void.

(e) Enjoining Mylan and its Judge or Judges of Election from considering any votes cast by or on behalf of the Vote Buying Defendants, or any of them, in favor of the Merger.

(f) Enjoining the Vote Buying Defendants, and any of them, from voting the Tainted Stock in favor of the Merger or causing the Tainted Stock to be so voted.

(g) In the alternative to the injunctions requested in subparagraphs (e) and (f) above, appointing a receiver who shall be authorized and instructed to vote the Tainted Stock in connection with the Mylan shareholder vote on the Merger proportionately with the votes cast by genuine and legitimate owners of Mylan shares.

(h) Awarding such damages to Plaintiff as may be just and proper.

(i) Entering the relief requested herein against each Doe Defendant by name to the extent such Doe Defendant shall have been specifically identified as of the time of the hearing on this matter and shall have been shown, at such hearing, to have participated in the Vote Buying Defendants' scheme or schemes, to have aided or abetted such scheme or schemes, or to have engaged in a scheme or schemes identical to or in all material respects similar to that engaged in by the Vote Buying Defendants specifically identified in this Complaint, or any of

them, or to have engaged in the scheme or schemes of the specifically identified Vote Buying Defendants in concert with such Defendants.

(j) Awarding Plaintiff its costs and fees incurred in connection with this action.

(k) Granting such other and further relief as to this Court shall appear just and proper.

Respectfully submitted,

Dated: December 10, 2004

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