IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SAN ANTONIO FIRE & POLICE PENSION FUND, on behalf of itself and all others similarly situated,	)	
Plaintiff,	)	C.A. No. 4446-VCL
v.	)	
DANIEL M. BRADBURY, JOSEPH C. COOK, Jr., ADRIAN ADAMS, STEVEN R. ALTMAN, TERESA BECK, KARIN EASTHAM, JAMES R. GAVIN, GINGER L. GRAHAM, HOWARD E. GREENE, Jr., JAY S. SKYLER, JOSEPH P. SULLIVAN, JAMES N. WILSON, and AMYLIN PHARMACEUTICALS, INC.	)	
Defendants.	)	

VERIFIED AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff San Antonio Fire & Police Pension Fund ("Plaintiff" or "SAF&P"), on behalf of itself and all other similarly situated public shareholders of Amylin Pharmaceuticals, Inc. (hereinafter "Amylin" or the "Company") (the "Class"), for its complaint against defendants Daniel M. Bradbury, Joseph C. Cook, Adrian Adams, Steven R. Altman, Teresa Beck, Karin Eastham, James R. Gavin, Ginger L. Graham, Howard E. Greene, Jay S. Skyler, Joseph P. Sullivan, James N. Wilson and Amylin (collectively, "Defendants"), makes the following allegations upon personal knowledge as to itself and on information and belief (including the investigation of counsel and review of publicly available information) as to all other matters:

SUMMARY OF ACTION

1. In this action, Plaintiff seeks to disable debt acceleration provisions in two debt instruments of the Company triggered by a shareholder vote to replace the incumbent board (the "Proxy Puts") that are preventing Amylin's stockholders from

freely electing a new board of directors without coercion at a crucial time in the Company's history.

2. Earlier this year, following years of abysmal financial performance at the Company and a staggering loss of shareholder value, two shareholders holding more than 20% of the outstanding shares of the Company – Icahn Capital LP and affiliated funds ("Icahn") and Eastbourne Capital Management ("Eastbourne") – separately announced their intention to nominate five-person slates for election at Amylin's next annual meeting, which is tentatively scheduled for May 27, 2009. Amylin shareholders, however, will have to consider more than the merits of each nominee when casting their ballots. As explained below, if a majority of Amylin's twelve incumbent directors are replaced in a proxy contest, the Proxy Puts will be triggered, forcing the Company to repay immediately at face value more than $900 million in outstanding debt – an amount exceeding one-half of the market value of the Company.

3. Amylin implemented the Proxy Puts in 2007, in the wake of takeover speculation swirling around the Company. Specifically, the Company embedded these provisions in an indenture agreement (the "2007 Indenture") for $575 million of convertible senior notes it issued in June 2007 (the "2007 Notes") and a credit agreement it entered in December 2007 (the "Credit Agreement") for a $125 million term loan (the "Term Loan") and $15 million revolving credit facility (the "Revolver"). Notably, in 2004, the Company issued $200 million of convertible senior notes (the "2004 Notes") pursuant to an indenture (the "2004 Indenture") that did *not* contain a proxy put. However, the 2004 Indenture has a cross-default provision that may be triggered if the Company defaults on paying the 2007 Notes or the Term Loan.

4. Significantly, the 2004 and 2007 Notes trade publicly at significant discounts to their face values. According to the Company's 2008 annual report, the fair value of these notes, which have a combined face value of $775 million, was only about $410 million at year end. Thus, if the Company were forced to purchase these securities at face value following a change in board majority, Amylin would pay a premium of hundreds of millions of dollars. Given the catastrophic effect triggering the Proxy Puts would have on the Company and its shareholders, Icahn and Eastbourne had no choice but to structure their respective slates to avoid triggering these provisions by targeting only a minority of Amylin's directors for replacement. If both of their slates are elected, however, a majority of the incumbent directors will be replaced and the Proxy Puts, absent judicial intervention, would be triggered. Indeed, since shareholders supporting either Icahn's or Eastbourne's nominees cannot know how many other non-incumbent directors may be elected, the only rational choice is to support only the incumbent directors.

5. The Proxy Put in the 2007 Indenture can be neutralized by board action approving the nomination of the Icahn and Eastbourne slates. But Amylin's incumbent board of directors, whose *non-employee* members received on average over $400,000 in cash and stock compensation in 2007 alone, has taken no such action. To the contrary, in a transparent attempt to intimidate shareholders from voting them out of office and ending their rich payouts, Amylin responded to the nomination of the Icahn and Eastbourne slates by disclosing in its 2008 annual report the existence of the Proxy Puts and the devastating financial impact they would have on the Company and its shareholders if triggered, without disclosing that

most of this harm can readily be avoided if the board simply approves the two slates for shareholder consideration.

6. Delaware law gives primacy to the interests of shareholders to exercise their franchise rights free from coercion as the ultimate safeguard against entrenchment, corporate mismanagement and the like. The threat of financial chaos to Amylin that the triggering of the Proxy Puts would cause prevents Amylin shareholders from freely exercising their franchise rights at the very moment in the Company's history when those rights are most important. The Proxy Puts were adopted and are being applied in violation of fundamental precepts of Delaware law and should be invalidated.

THE PARTIES

7. Plaintiff San Antonio Fire & Police Pension Fund is a public pension fund for police officers and fire firefighters in the city of San Antonio, Texas. SAP&F is and has been at all relevant times the beneficial owner of 108,200 shares of Amylin common stock, the market value of which currently exceeds $1.3 million.

8. Defendant Daniel M. Bradbury has been Amylin's Chief Executive Officer since March 2007, serving as President since June 2006 and as Chief Operating Officer since June 2003. He also has been a director of Amylin since June 2006. Bradbury received over $4 million in total compensation from Amylin in 2007, the last year for which Amylin has publicly disclosed its compensation figures.

9. Defendant Joseph C. Cook, Jr. has been the Chairman of the Amylin board since March 1998 and a director since 1994. He also served as Amylin's Chief Executive Officer from March 1998 until September 2003. Cook received compensation of $929,469 in cash and stock and option awards in 2007 for serving as an Amylin board member.

10. Defendant Adrian Adams has been a director of Amylin since October 2007. Adams received compensation of $17,326 in option awards in 2007 for serving as an Amylin board member. His cash compensation commenced in the first quarter of 2008.

11. Defendant Steven R. Altman has been a director of Amylin since March 2006. Altman received compensation of $426,792 in cash and option awards in 2007 for serving as an Amylin board member.

12. Defendant Teresa Beck has been a director of Amylin since March 2007. Beck received compensation of $272,833 in cash and option awards in 2007 for serving as an Amylin board member.

13. Defendant Karin Eastham has been a director of Amylin since September 2005. Eastham received compensation of $415,701 in cash and option awards in 2007 for serving as an Amylin board member.

14. Defendant James R. Gavin III, M.D., Ph.D. has been a director of Amylin since December 2005. Gavin received compensation of $406,961 in cash and option awards in 2007 for serving as an Amylin board member.

15. Defendant Ginger L. Graham has been a director of Amylin since November 1995 and became a non-employee director in the second quarter of 2007. Graham also served as Amylin's President and Chief Executive Officer from September 2003 until June 2006, serving as Chief Executive Officer from June 2006 until March 2007. Graham received compensation of $28,750 in cash in 2007 for serving as an Amylin board member in addition to receiving over $4 million in total compensation that year for serving as Chief Executive Officer.

16. Defendant Howard E. Greene, Jr. is a co-founder of Amylin and a director of Amylin since its inception in 1987. Greene received compensation of $304,046 in cash and option awards in 2007 for serving as an Amylin board member.

17. Defendant Jay S. Skyler, M.D. has been an Amylin director since August 1999. Skyler received a compensation of $304,046 in cash and option awards in 2007 for serving as an Amylin board member.

18. Defendant Joseph P. Sullivan has been an Amylin director since September 2003. Sullivan received compensation of $407,865 in cash and option awards in 2007 for serving as an Amylin board member.

19. Defendant James N. Wilson has been an Amylin director since March 2002. Wilson received compensation of $324,046 in cash and option awards in 2007 for serving as an Amylin board member.

20. The Amylin directors' compensation for service on the Amylin board is markedly higher than comparable public companies. A report from the National Association of Corporate Directors ("NACD") determined that medium size companies with revenues between $1 billion to $2.5 billion had a median total 2006 compensation of $132,760 per director. Even though Amylin's revenues were significantly lower (approximately $510 million in 2006 and $780 million in 2007), the average compensation paid to non-employee directors who served on the board for the full year in 2007 (Cook, Altman, Eastham, Gavin, Greene, Skyler, Sullivan and Wilson) was a staggering $439,865 – more than three times the 2006 NACD average for medium sized companies.

21. Defendant Amylin is a biopharmaceutical company incorporated in Delaware and based in San Diego, California. The Company is engaged in the discovery, development and

commercialization of drug candidates for the treatment of diabetes, obesity and other diseases. One of the Company's leading drugs to treat diabetes is the BYETTA® (exenatide) injection. Amylin has an agreement with Eli Lilly and Company ("Lilly") for the global development and commercialization of exenatide, including BYETTA® and other formulations. The common stock of Amylin trades on The NASDAQ Global Market. As of February 10, 2009, there were 138,072,689 shares of Amylin common stock outstanding.

FACTUAL BACKGROUND

A. Amylin's Poor Financial Performance

22. Amylin, which was founded in 1987, has never achieved profitability, suffering poor financial performance for many years.

23. The Company has incurred significant operating losses each year since its inception. During the past five years, the Company has suffered increasing operating losses as follows: $145 million (2004), $167 million (2005), $223 million (2006), $224 million (2007) and $297 million (2008). As of December 31, 2008, the Company had an accumulated deficit of approximately $1.7 billion.

24. Less than two years ago, in the third quarter of 2007, Amylin's common stock traded in the range of $40.86 to $53.25 per share. Amylin's stock price has declined precipitously since then, reaching a low of $5.50 per share during the fourth quarter of 2008. As of March 20, 2009, the closing price of the Company's common stock was $11.35 per share, equating to a market capitalization for the Company of approximately $1.57 billion.

B. Amylin's Balance Sheet

25. As of December 31, 2008, Amylin reported approximately $237.3 million in cash and cash equivalents and approximately $579.6 million in short term investments on its balance sheet.

26. As of December 31, 2008, Amylin reported approximately $900 million of indebtedness on its balance sheet, consisting of the 2004 Notes, the 2007 Notes and the Term Loan.

27. The 2004 Notes consist of $200 million aggregate principal amount of unsecured, convertible senior notes that were issued in a private placement in April 2004 and are due on April 15, 2011. They bear interest at 2.5% per year, payable in cash semi-annually. The 2004 Notes trade publicly. The Company's 2008 annual report states that the fair value of the 2004 Notes, as determined by observed market prices, was $150 million at December 31, 2008. The 2004 Indenture does not contain a proxy put but does contain a cross-default provision that may require repayment of the 2004 Notes at face value plus accrued interest upon the acceleration of any other indebtedness of the Company exceeding $25 million that is not discharged.

28. The 2007 Notes consist of $575 million aggregate principal amount of unsecured, convertible senior notes that were issued in a private placement in June 2007 and are due on June 15, 2014. They bear interest at 3.0% per year, payable in cash semi-annually. The 2007 Notes trade publicly at a discount. The Company's 2008 annual report states that the fair value of the 2007 Notes, as determined by observed market prices, was $260.4 million at December 31, 2008.

29. The principal amount of the Term Loan is $125 million. The Term Loan is repayable on a quarterly basis, with no payments due during the first quarters, 6.25% of the outstanding principal due during quarters five through eleven and 56.25% of the outstanding

principal due in quarter twelve (*i.e.*, December 2011). Interest on the Term Loan is paid quarterly. The Term Loan and the $15 million Revolver (together, the "Loans") are governed by the Credit Agreement. The Credit Agreement contains various covenants, including a requirement to maintain unrestricted cash and cash equivalent balances, as defined therein, exceeding $400 million, below which certain limitations provided for in the agreement become effective. Loans made under the Revolver are collateralized by substantially all of the assets of the Company and its two domestic subsidiaries, other than intellectual property and certain other excluded collateral.

C. Amylin Implements a Proxy Put in its 2007 Notes in Reaction to Takeover Interest in the Company

30. In April 2007, AstraZeneca plc, another pharmaceutical company, announced it was buying MedImmune for $58.00 per share or $15.2 billion, which at the time was the largest biotechnology deal ever. This announcement fueled expectations of consolidation in the pharmaceutical industry. Several sources identified Amylin as the next likely candidate for a takeover in the sector. For example, on April 25, 2007, Morningstar.com identified Amylin as a target for a potential takeover in the article "Five Firms Big Pharma Should Buy Next." The article suggested that "one could argue that Amylin's partner Lilly would still stand to gain by taking out its 50/50 partner for novel diabetes drug Byetta (exenatide)."

31. In June 2007, Amylin issued the 2007 Notes, consisting of $575 million in principal amount of convertible senior notes due June 15, 2014, pursuant to the 2007 Indenture, a copy of which is attached as Exhibit A.

32. Holders of the 2007 Notes have the right to demand immediate repayment, at face value, of the 2007 Notes plus accrued interest in the event of a "Fundamental Change," which is set forth in Section 11.01 of the 2007 Indenture, and provides that, if a "Fundamental Change"

has occurred, "… each Holder shall have the right, at such Holder's option, to require the Company to repurchase all of such Holder's Notes or any portion thereof that is an integral multiple of $1,000 principal amount, for cash on the date specified by the Company ….at a repurchase price equal to 100% of the principal amount thereof, together with accrued and unpaid interest thereon to. . ."

33. The 2007 Indenture defines a "Fundamental Change" as follows, which includes a change in a majority of the incumbent board of directors:

> (1) any Person acquires beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of the Company's Capital Stock entitling the Person to exercise 50% or more of the total voting power of all shares of the Company's Capital Stock entitled to vote generally in elections of directors, other than [certain exceptions listed] … or
>
> (2) the Company (i) merges or consolidates with or into any other Person (other than a Subsidiary), another Person merges with or into the Company, or the Company conveys, sells, transfers or leases all or substantially all of the Company's assets to another Person (other than to one or more of the Company's wholly-owned Subsidiaries) or (ii) engages in any recapitalization, reclassification or other transaction in which all or substantially all of the Common Stock is exchanged for or converted into cash, securities or other property, in each case other than an Exempt Parent Merger or a merger or consolidation [having certain characteristics] … or
>
> ***(3) at any time the Continuing Directors do not constitute a majority of the Company's Board of Directors (or, if applicable, a successor Person to the Company); or***
>
> (4) the Company is liquidated or dissolved or Holders of Common Stock approve any plan or proposal for the Company's liquidation or dissolution; or
>
> (5) if shares of the Common Stock, or shares of any other common stock or American Depositary Receipts in respect of shares of common stock into which the Notes are convertible pursuant to the terms of the Indenture, are not listed for trading any of the New York Stock Exchange, the American Stock Exchange, the NASDAQ Global Market or the NASDAQ Global Select Market (or any of their respective successors).

(Emphasis added).

34. Wholly apart from whether the Company has sufficient liquidity or could obtain the funds necessary to repurchase the 2007 Notes at face value if it were forced to do so, the triggering of the Proxy Put in the 2007 Indenture provision would impose an enormous financial penalty on the Company and its shareholders. According to Amylin's 2008 annual report, the fair value of the 2007 Notes was only $260.4 million at December 31, 2008 – over $300 million less than the face value of the 2007 Notes. The triggering of the Proxy Put for the 2007 Notes, in other words, would force Amylin to pay these noteholders a premium exceeding 100 percent of the year-end value of the 2007 Notes.

35. Significantly, the inclusion of the Proxy Put in the 2007 Indenture departed from the way the Company previously issued debt. While the 2004 Indenture also accelerates repayment upon the occurrence of a "Fundamental Change," the definition of that term in the 2004 Indenture does *not* include a change of a majority of the Company's board of directors. To the contrary, the 2004 Indenture defines a "Fundamental Change," in relevant part, as follows:

> … (i) the acquisition by any person … of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchase, merger or other acquisition transaction or series of purchase, merger or other acquisition transactions of shares of the Company's capital stock entitling that person to exercise 50% or more of the total voting power of all shares of the Company's capital stock entitled to vote generally in elections of directors, other than [certain exceptions listed] … or (ii) the consolidation or merger of us with or into any other person, any merger of another person into us, or any conveyance, transfer, sale, lease or other disposition of all or substantially all of the Company's properties and assets to another person, other than any transaction [having certain characteristics] …

36. The 2007 Indenture permits a majority of the incumbent Amylin board (or a committee of the board) to neutralize the effect of the Proxy Put by approving the nomination of a candidate proposed by a stockholder. Specifically, the 2007 Indenture defines "Continuing

Directors" to include "… ***any new directors*** whose election to the Board of Directors or ***whose nomination for election by the stockholders of the Company was approved by at least a majority of the directors then still in office*** (or a duly constituted committee thereof) either who were directors on the Issue Date or whose election or nomination for election was previously so approved." (Emphasis added). This exemption to the Proxy Put is referred to hereafter as the "Proxy Put Exemption." In effect, the Proxy Put Exemption gives the incumbent directors a veto right over the election of directors they have not "approved."

37. Section 1.10 of the 2007 Indenture contains a severability provision. It states: "In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby."

D. Amylin Implements a Proxy Put in its 2007 Credit Agreement in Response to Continued Takeover Interest in the Company

38. After the issuance of the 2007 Notes, takeover speculation concerning Amylin continued. In November 2007, CNBC analyst Pete Najarian reported that big pharmaceutical companies would look to conduct takeovers in the biotech sector to improve their drug pipelines, highlighting Amylin as a "takeover play." Once again, the Amylin board reacted by implementing an additional Proxy Put provision in its loan documents.

39. In December 2007, Amylin entered into the Credit Agreement a copy of which is attached as Exhibit B, whereby the Company obtained a $125 million Term Loan and a $15 million Revolver.

40. Similar to the 2007 Notes, lenders under the Credit Agreement have the right to demand immediate repayment of the principal amount of any Loans and accrued interest in the event of a "Change of Control." Specifically, under Section 8.01(k) of the Credit Agreement,

a "Change in Control" constitutes an "Event of Default" that would, among other things, make immediately due and payable the outstanding principal amount and accrued interest of any Loans under the Credit Agreement and terminate the obligation of each of the lenders under the Credit Agreement to make any additional Loans.

41. "Change in Control" is defined in the Credit Agreement to include the election of a majority of the Amylin board whose initial nomination resulted from a proxy solicitation initiated by a shareholder:

> "Change of Control" means an event or series of events by which:
>
> (a) any "person" or "group" … becomes the "beneficial owner" … directly or indirectly, of 35% or more of the equity securities of the Company entitled to vote for members of the board of directors … on a fully –diluted basis …
>
> (b) during any period of 24 consecutive months, a majority of the members of the board of directors or other governing body of the Company cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by the individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body ***(excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors*).**

(Emphasis added).

42. In other words, unlike the 2007 Indenture, the Credit Agreement does not contain a Proxy Put Exemption that would allow the Amylin board to approve the nomination of all potential directors and thus avoid accelerating the Loans if the Proxy Put were triggered. Thus,

if any combination of the Icahn and Eastbourne nominees are elected resulting in a new majority of the Amylin board of directors, the Loans under the Credit Agreement will, absent judicial intervention, be accelerated.

43. Section 10.12 of the Credit Agreement contains a severability provision. It states, in relevant part: "If any provision of this Agreement … is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement … shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions."

E. The Nomination of the Icahn and Eastbourne Slates and Amylin's Intimidating and Misleading Response

44. Amylin's by-laws contain an advance notice provision requiring any stockholder who wishes to nominate a director for election to the Company's board to provide notice of such intention no later than 120 days prior to the first anniversary of the preceding year's annual meeting of stockholders. Amylin's 2008 annual meeting of stockholders was held on May 30, 2008. Thus, under Amylin's by-laws, the deadline for stockholders to nominate directors for consideration at Amylin's 2009 annual meeting of stockholders was January 30, 2009.

45. On January 29, 2009, Icahn LP and affiliated funds (as defined above, "Icahn"), submitted a notice to the Company stating its intention to nominate a slate of five directors to stand for election at the Company's 2009 annual meeting consisting of Dr. Alexander J. Denner, Dr. Thomas F. Deuel, James Haimovitz, Dr. Peter Liebert and Dr. David Sidransky. The notice stated that, as of January 29, 2009, the Icahn entities were the beneficial owners of 12,126,157 shares of Amylin common stock, representing approximately 8.8% of the Company's

outstanding shares. The Icahn notice also stated its intention to submit a proposal for shareholder approval requesting that the Company reincorporate in the state of North Dakota, asserting that "North Dakota is the most stockholder-friendly jurisdiction in the United States and that being incorporated there ... would give the stockholders considerably more protection against management entrenchment."

46. On January 30, 2009, Eastbourne Capital Management LLC (as defined above, "Eastbourne") submitted a notice to the Company stating its intention to nominate a slate of five directors to stand for election at the Company's 2009 annual meeting consisting of Dr. Kathleen Behrens, Marina Bozilenki, Charles Fleischman, William Nuerge and Jay Sherwood. As of the date of this notice, Eastbourne had been a major shareholder of Amylin for nearly four years and held 17,200,000 shares of Amylin common stock, representing approximately 12.5% of the Company' outstanding shares.

47. In a letter to the Amylin board dated February 1, 2009, Eastbourne noted that Amylin had lost nearly 80% of its market value since it hit its all-time high stock price on October 5, 2007, and explained that while it had "not lost faith in the potential of Amylin's products and pipeline," it had "lost confidence in the ability of Amylin's current board and management team to execute an operational strategy that is in the best interest of shareholders." The letter also noted the recent nomination of the Icahn slate and asked the board to take action to prevent adverse consequences to the Company threatened by the Proxy Puts if a majority of the Company's incumbent directors were replaced:

> We recently learned from public filings that Icahn Capital LP nominated a slate of five Directors for election at the next annual meeting …. Our intention is not to compete with Icahn Capital's slate of Directors, but to present the Board with an additional slate of five highly qualified individuals. Under Amylin's agreement with its bondholders, only the Board can change a majority of the Directors without adverse consequences to the Company and we believe the Board should

> seriously consider doing so. We urge the Board to use this opportunity to assemble a slate of Directors that includes a significant number of Eastbourne and Icahn nominees so they can take Amylin in a positive new direction.

48. On February 27, 2009, Amylin filed its annual report for the year ended December 31, 2008. The Company used this opportunity to disclose for the first time – in an intimidating and misleading manner – the defensive nature of the Proxy Puts, highlighting the adverse consequences that could befall the Company by the triggering of those provisions:

> If as a result of this potential proxy contest a majority of our Board of Directors ceases to be composed of the existing directors or other individuals approved by a majority of the existing directors, then a "change of control" under the Term Loan and a "fundamental change" under the indenture for 2007 Notes will be triggered. If triggered, the lenders under the Term Loan may terminate their commitments and accelerate our outstanding debt and the holders of our 2007 Notes may require us to repurchase the notes. We may not have the liquidity or financial resources to do so at the times required or at all.
>
> * * * * *
>
> ***We could be negatively affected as a result of a threatened proxy fight and other actions of activist shareholders***
>
> If a proxy contest results from one or both notices received from the Icahn Group or Eastbourne announcing their intent to each nominate five individuals for election to our Board of Directors at the 2009 annual meeting … our business could be adversely affected because …
>
> - If a majority of our Board of Directors ceases to be composed of the existing directors or other individuals approved by a majority of the existing directors, we may be required to repay $575 million under our 2007 Notes, $125 million under our Term Loan and any amounts that may be outstanding under our $15 million revolving credit facility, and if a cross-default is triggered, $200 million under our 2004 Notes.

(Emphasis in original).

49. Absent from the discussion of the Proxy Puts in the annual report is any explanation of the fact that the incumbent board could eliminate the effect of the Proxy Put in the 2007 Indenture – the provision that would inflict most of the financial harm if a new board

majority were elected – by simply approving the Icahn and Eastbourne slates for the shareholders to consider at the 2009 annual meeting.

50. Amylin's disclosure also misleadingly implies that even if only one of the dissident slates is elected, the Proxy Puts will be triggered. Because a majority of the board must be replaced for that to happen, the election of only one five-person slate would not constitute a "Fundamental Change." Nevertheless, given the uncertainty about how other stockholders may vote, rational stockholders are effectively prevented from voting for either slate because they cannot take the chance that a majority of stockholder-nominated candidates, i.*e.*, a combination of Icahn and Eastbourne nominees, will be elected.

51. On March 9, 2009, Eastbourne sent a letter to the Amylin board, a copy of which is attached as Exhibit C, questioning the legitimacy of the Proxy Puts and calling upon the board to use its power to remove any obstacle to the operation of the democratic process. Eastbourne's letter points out that the Proxy Put in the 2007 Indenture states that an acceptable majority of the board can include any new director "whose nomination for election by the stockholders of the Company was approved by" the incumbent board. The letter urges the Amylin board to resist pursuing "a campaign of financial terrorism" by adopting resolutions approving the Icahn and Eastbourne slates and seeking any necessary waivers to permit the Company's shareholders "to exercise the free and unfettered franchise that is their right and elect the directors they collectively determine best to lead the Company.

52. On March 17, 2009, the Company's CEO, Daniel Bradbury, stated publicly that the tentative date for Amylin's 2009 annual meeting is May 27, 2009. To date, the Company has not taken any action to approve any of the candidates nominated by Icahn and Eastbourne or to otherwise nullify the effect of the Proxy Puts.

CLASS ACTION ALLEGATIONS

53. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Court of Chancery on behalf of itself and all other holders of Amylin common stock (other than Defendants and any persons or entities related to or affiliated with Defendants and/or their successors-in-interest) who have been harmed and/or are threatened with harm as a result of Defendants' wrongful conduct alleged herein (as defined above, the "Class").

54. This action is properly maintainable as a class action.

55. The Class is so numerous that joinder of all members is impracticable. As of February 10, 2009, there were 138,072,689 shares of Amylin common stock outstanding, which were held by individuals and entities too numerous to bring separate actions. At all relevant times, the beneficial holders of Amylin stock have been geographically dispersed throughout the United States and internationally.

56. There are questions of law and fact that are common to the Class and that predominate over any issues affecting only individual Class members, including, among others:

(a) whether Defendants have fulfilled their fiduciary duties to Plaintiff and the other members of the Class;

(b) whether Plaintiff and the other members of the Class have been harmed by Defendants' alleged failure to fulfill their fiduciary duties; and

(c) whether Plaintiff and the other members of the Class would suffer irreparably harm absent the declaratory and injunctive relief requested herein.

57. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

58. The prosecution of separate actions by individual members of the Class would create a risk of (a) inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants, or (b) adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

59. Defendants have acted or refused to act on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

60. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation make it impracticable for Class members individually to seek redress for the wrongful conduct alleged herein. Plaintiff anticipates that there will be no difficulty in the management of this litigation as a class action.

COUNT I

(Breach of Fiduciary Duty)
(Implementation of the Proxy Puts)

61. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

62. The director defendants owe the Plaintiff and the Class the utmost fiduciary duties of care and loyalty, including the obligation to act in good faith.

63. In violation of their fiduciary duties, the director defendants adopted the Proxy Puts in the 2007 Indenture and Credit Agreement in response to takeover interest surrounding the Company for the sole purpose of entrenching themselves as directors of the Company and

preventing their removal by shareholder vote. The adoption of these measures was a violation of the fundamental franchise rights of the Plaintiff and the Class, was not entirely fair to Plaintiff and the Class, and constitutes an unreasonable response to the possibility of a takeover of the Company.

64. Defendants' breaches of their fiduciary duties have caused and are continuing to cause harm to Plaintiff and the Class by, *inter alia*, depriving them of the opportunity to exercise their franchise rights free of coercion and to elect a new board majority if they see fit.

65. Plaintiff and the Class have no adequate remedy at law.

COUNT II

(Breach of Fiduciary Duty)
(Failure to Exercise the Proxy Put Exemption in the 2007 Indenture)

66. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

67. The director defendants owe the Plaintiff and the Class the utmost fiduciary duties of care and loyalty, including the obligation to act in good faith.

68. The Proxy Put in the 2007 Indenture contains an exemption (the Proxy Put Exemption) that permits the director defendants to render the provision inoperable by approving a stockholder's nominees for election to the Company's board of directors.

69. Icahn and Eastbourne have each nominated separate slates of five directors for election at the Company's 2009 annual meeting of stockholders.

70. In violation of their fiduciary duties, the director defendants have refused to utilize the Proxy Put Exemption to approve the Icahn and Eastbourne nominees for consideration by the Company's shareholders at its next annual meeting for the sole purpose of entrenching themselves as directors of the Company and preventing their removal by shareholder vote. The

director defendants' refusal to take this action violates the fundamental franchise rights of the Plaintiff and the Class.

71. Defendants' breaches of their fiduciary duties have caused and are continuing to cause harm to Plaintiff and the Class by, *inter alia*, depriving them of the opportunity to exercise their franchise rights free of coercion and to elect a new board majority if they see fit.

72. Plaintiff and the Class have no adequate remedy at law.

COUNT III

(Violation of 8 Del. C. § 141(a)) (Approval of the Credit Agreement)

73. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

74. Section 141(a) of the Delaware General Corporation Law prohibits contractual arrangements that commit the board of directors to a course of action that would preclude them from fully discharging their fiduciary duties to the corporation and its shareholders.

75. The Proxy Put in the Credit Agreement removes from the board of directors the power to disable the Proxy Put by approving any new director whose nomination or assumption of office "occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors."

76. The Proxy Put in the Credit Agreement impermissibly prevents the board of directors from exercising their full managerial power and duty to approve nominations of qualified individuals by a shareholder and thereby avoid creating financial penalties that hinder a full and fair election.

77. Plaintiff and the Class have no adequate remedy at law.

COUNT IV

(Breach of Fiduciary Duty)
(Coercive Disclosure)

78. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

79. The director defendants owe the Plaintiff and the Class the utmost fiduciary duties of care and loyalty, including the duty to act with the utmost candor when disseminating information to the Company's shareholders.

80. As discussed above, in response to the nomination of the Icahn and Eastbourne slates, the director defendants knowingly caused the Company to issue a Form 10-K that discloses in a coercive and misleading manner the existence of the Proxy Puts and the adverse consequences that could befall the Company by the triggering of those provisions without mentioning the highly material fact that the directors defendants could eliminate the effect of the Proxy Put in the 2007 Indenture – the provision that would inflict most of the financial harm if a new board majority were elected – by simply approving the Icahn and Eastbourne slates for the shareholders to consider at the 2009 annual meeting.

81. Defendants' breaches of their fiduciary duties have caused and are continuing to cause harm to Plaintiff and the Class by, *inter alia*, providing them with false and misleading information concerning the Proxy Puts and depriving them of the opportunity to exercise their franchise rights free of coercion to elect a new board majority if they see fit.

82. Plaintiff and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment in favor of itself and the Class and against Defendants, as follows:

(a) declaring that this action is properly maintainable as a class action;

(b) declaring that the director defendants have breached their fiduciary duties to Plaintiff and the Class by implementing the Proxy Puts;

(c) declaring that the Proxy Puts are invalid and unenforceable;

(d) declaring that the director defendants have breached their fiduciary duties to Plaintiff and the Class by refusing to approve the Icahn and Eastbourne slates in accordance with the Proxy Put Exemption;

(e) declaring that the director defendants have breached their fiduciary duties to the Plaintiff and the Class by making coercive and misleading disclosures relating to the Proxy Puts;

(e) entering a mandatory injunction requiring the director defendants to approve the nomination of the Icahn and Eastbourne slates for shareholder consideration at the Company's 2009 annual meeting and to correct their coercive and misleading disclosures;

(f) awarding Plaintiff the costs of pursuing this action, including, but not limited to, Plaintiff's attorneys' fees and expenses and experts' fees; and

(g) awarding such other and further relief as the Court deems just and proper.

Dated: March 27, 2009

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