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MoFo's monthly newsletter chronicling developments in hostile M+A

Editors: Jeffery Bell, Enrico Granata, Spencer Klein, Jonathan Melmed, Jessie Redden

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## Featured Article

### CO-BIDDER STATUS IN TENDER OFFERS

By Spencer Klein, Jeffery Bell, Louisa Zhou, and Stephanie Ference

The recent *Allergan* litigation in California District Court involved the allegation that Pershing Square Capital Management, LP (together with certain of its affiliates, "Pershing Square") had violated the prohibition, under Rule 14e-3 of the Securities Exchange Act of 1934 (the "Exchange Act"), against trading on certain information related to tender offers obtained from the offering person. In its defense, Pershing Square analogized to Section 14(d) of the Exchange Act and Regulation 14D thereunder (which contemplate the possibility of two persons or entities ("Persons") acting together as co-bidders) to argue that Pershing Square was a co-offering person for purposes of Rule 14e-3 and therefore could not have violated the rule. The arguments, and the court's analysis, provide a timely reminder of the rules regarding whether a Person is a co-bidder for purposes of Regulation 14D. In this article, we discuss the limited available guidance on this topic and factors to consider when determining whether a Person is a co-bidder under Regulation 14D. [Read more](#)

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