SYNERGETICS USA INC
Form SC 14D9
September 16, 2015
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

Solicitation/Recommendation Statement

Under Section 14(d)(4) of the Securities Exchange Act of 1934

SYNERGETICS USA, INC.

(Name of Subject Company)

SYNERGETICS USA, INC.

(Name of Person Filing Statement)

Common Stock, par value $0.001 per share

(Title of Class of Securities)

87160G107

(CUSIP Number of Class of Securities)

Peter Rasche

General Counsel

Synergetics USA, Inc.

3845 Corporate Centre Drive

O Fallon, Missouri 63368

(636) 939-5100

(Name, address and telephone number of person authorized to receive notices and communications on behalf of the person filing statement)

With copies to:

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¨ Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

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Item 1. Subject Company Information

Name and Address

The name of the subject company to which this Solicitation/Recommendation Statement on Schedule 14D-9 (this Schedule 14D-9) relates is Synergetics USA, Inc., a Delaware corporation (the Company or Synergetics). The address of the principal executive offices of the Company is 3845 Corporate Centre Drive, O Fallon, Missouri 63368, and the telephone number of the principal executive offices of the Company is (636) 939-5100.

Class of Securities

The title of the class of equity securities to which this Schedule 14D-9 relates is the Company s shares of common stock, par value $0.001 per share (each, a Share). As of September 11, 2015, there were 50,000,000 Shares authorized, of which 25,593,288 were outstanding.

Item 2. Identity and Background of Filing Person

Name and Address

The Company is the subject company and the person filing this Schedule 14D-9. The Company s name, address and business telephone number are set forth in Item 1 above under the heading Name and Address. The Company s website address is www.synergeticsusa.com. The information included in, or linked to through, the Company s website should not be considered part of this statement. The Company has included its website address in this statement solely as a textual reference.

Tender Offer

This Schedule 14D-9 relates to the tender offer by Blue Subsidiary Corp., a Delaware corporation (the Purchaser) and a wholly owned subsidiary of Valeant Pharmaceuticals International, a Delaware corporation (Parent), which is a wholly owned subsidiary of Valeant Pharmaceuticals International, Inc., a corporation continued under the laws of the Province of British Columbia (Valeant), to purchase all Shares that are issued and outstanding, at a price per Share of $6.50, net to the holder in cash (less any applicable withholding taxes and without interest), plus one non-transferable contractual contingent value right per Share (each, a CVR), which represents the right to receive up to two contingent payments (the Contingent Consideration Payments), if any, of up to $1.00 in the aggregate net to the holder in cash (less any applicable withholding taxes and without interest) (together, the Offer Price) upon the achievement of certain specified milestones within an agreed upon time period, at the times and upon the terms and subject to the conditions set forth in the Offer to Purchase, dated September 16, 2015 (together with any amendments or supplements thereto, the Offer to Purchase), and in the related Letter of Transmittal (together with any amendments or supplements thereto, the Letter of Transmittal and, together with the Offer to Purchase, the Offer). The Offer to Purchase and the Letter of Transmittal are filed as Exhibits (a)(1)(A) and (a)(1)(B) hereto, respectively, and are incorporated by reference herein. The Offer is described in a Tender Offer Statement on Schedule TO (as it may be amended or supplemented, the Schedule TO) filed by the Purchaser and Parent with the U.S. Securities and Exchange Commission (the SEC) on September 16, 2015.

The Offer is being made pursuant to an Agreement and Plan of Merger, dated as of September 1, 2015 (as it may be amended or supplemented, the Merger Agreement), by and among Parent, Purchaser and the Company, filed hereto as Exhibit (e)(1). A summary of the Merger Agreement is contained in Section 11 of the Offer to Purchase under the heading Purpose of the Offer and Plans for Synergetics; Summary of the Merger Agreement and Certain Other

Agreements   and is incorporated by reference herein. The Merger Agreement provides, among other things, that as soon as commercially practicable following the completion of the Offer and satisfaction or waiver of the remaining applicable conditions set forth in the Merger Agreement, Purchaser will merge with and into the Company (the   Merger   and, together with the Offer and the other transactions

contemplated by the Merger Agreement and the CVR Agreement, the Transactions), with the Company surviving as a wholly owned subsidiary of Parent (the Surviving Corporation). The Merger will be governed by Section 251(h) of the Delaware General Corporation Law (the DGCL) and effected without a vote of the Company s stockholders. At the effective time of the Merger (the Effective Time), each Share issued and outstanding immediately prior to the Effective Time (other than any Shares held in the treasury of the Company and each Share owned by Purchaser, Parent or any direct or indirect wholly owned subsidiary of Parent or by the Company immediately prior to the Effective Time, which will be canceled without any conversion thereof and no payment or distribution will be made with respect thereto and Dissenting Shares (as defined in Item 8 under the heading Additional Information Appraisal Rights), if any, will be canceled and will be converted automatically into the right to receive an amount per Share equal to the Offer Price (the Merger Consideration). In connection with the Merger, outstanding stock options and restricted Shares will be cancelled in exchange for the right to receive the Merger Consideration as set forth in Item 3 of this Schedule 14D-9 under the headings Agreements or Arrangements with Executive Officers and Directors of the Company Treatment of Stock Options and Agreements or Arrangements with Executive Officers and Directors of the Company Treatment of Restricted Stock Awards.

The Offer is initially scheduled to expire at 11:59 p.m., New York City time, on October 14, 2015, subject to extension in certain circumstances as required or permitted by the Merger Agreement, the SEC or applicable law (as the Offer may be so extended, the Expiration Time).

The foregoing summary of the Offer is qualified in its entirety by the more detailed description and explanation contained in the Offer to Purchase and the Letter of Transmittal.

Parent formed Purchaser solely for the purpose of engaging in the Transactions. To date, Purchaser has not carried on any activities other than those related to its formation, the Merger Agreement and the Transactions. The Offer to Purchase states that the principal executive offices of Purchaser and Parent are located at 400 Somerset Corporate Boulevard, Bridgewater, New Jersey 08807 and the telephone number is (908) 927-1400.

Item 3. Past Contacts, Transactions, Negotiations and Agreements

Except as described in this Schedule 14D-9 or in the Schedule TO, as of the date hereof, there are no material agreements, arrangements or understandings, nor any actual or potential conflicts of interest, between or among the Company or any of its affiliates and (i) its executive officers, directors or affiliates or (ii) Parent, Purchaser or their respective executive officers, directors or affiliates.

Arrangements between the Company, Parent and Purchaser

Confidentiality Agreement

In connection with Parent s evaluation of the potential business combination that resulted in the Offer, Valeant and the Company entered into a confidentiality agreement on January 6, 2015 (the Confidentiality Agreement). Pursuant to the Confidentiality Agreement, Valeant, on its own behalf and on behalf of certain of its representatives, and the Company agreed, among other things, not to disclose each party s confidential information and to use such information only for the purposes of considering, evaluating and negotiating possible mutually agreeable transactions (subject to certain exceptions) for a period of five years from the date of the Confidentiality Agreement. Under the Confidentiality Agreement, Valeant also agreed, for a period of one year following the date of the Confidentiality Agreement, to certain standstill provisions for the protection of the Company. Both parties agreed to certain employee non-solicitation provisions prohibiting each of the parties from soliciting each other s employees for a period of one

year from the date of the Confidentiality Agreement.

This summary does not purport to be complete and is qualified in its entirety by reference to the Confidentiality Agreement, which is filed as Exhibit (e)(3) to this Schedule 14D-9 and is incorporated by reference herein.

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Exclusivity Agreement

On August 19, 2015, the Company and Valeant entered into a letter agreement (the Exclusivity Agreement) providing Valeant the exclusive right to conduct due diligence and negotiate a potential acquisition of the Company for a period of two weeks after the date of the Exclusivity Agreement.

This summary does not purport to be complete and is qualified in its entirety by reference to the Exclusivity Agreement, which is filed as Exhibit (e)(4) to this Schedule 14D-9 and is incorporated by reference herein.

Merger Agreement

On September 1, 2015, the Company, Parent and Purchaser entered into the Merger Agreement. The summary of the Merger Agreement and the description of the terms and conditions of the Offer and related procedures and withdrawal rights contained in the Offer to Purchase are incorporated by reference herein. Such summary and description do not purport to be complete and are qualified in their entirety by reference to the Merger Agreement, which is filed as Exhibit (e)(1) to this Schedule 14D-9 and is incorporated by reference herein.

The Merger Agreement has been provided solely to inform investors of its terms. Factual disclosures about Parent, Purchaser or the Company or any of their respective affiliates contained in this Schedule 14D-9, in their respective public reports filed with the SEC and otherwise, as applicable, may supplement, update or modify the factual disclosures about Parent, Purchaser and the Company or any of their respective affiliates contained in the Merger Agreement. The representations, warranties, covenants and conditions made and agreed to in the Merger Agreement by Parent, Purchaser and the Company were qualified and subject to important limitations agreed to by Parent, Purchaser and the Company in connection with negotiating the terms of the Merger Agreement. In particular, the representations and warranties and certain closing conditions contained in the Merger Agreement and incorporated by reference into this Schedule 14D-9 were negotiated with the principal purposes of establishing the circumstances in which a party to the Merger Agreement may have the right not to complete the Offer or consummate the Merger and allocating risk between the parties to the Merger Agreement. The representations and warranties and closing conditions contained in the Merger Agreement do not establish matters of fact. The representations and warranties set forth in the Merger Agreement may also be subject to a contractual standard of materiality different from that generally applicable to stockholders and reports and documents filed with the SEC, and in some cases were qualified by disclosures that were made by each party to the other, which disclosures were not reflected in the Merger Agreement. Moreover, information concerning the subject matter of the representations and warranties, which do not purport to be accurate as of the date of this Schedule 14D-9, may have changed since the date of the Merger Agreement and subsequent developments or new information qualifying a representation or warranty may have been included in this Schedule 14D-9.

The Company s stockholders and other investors are not third-party beneficiaries under the Merger Agreement and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or conditions of the Company, Parent, Purchaser or any of their respective subsidiaries or affiliates on any date.

Contingent Value Rights Agreement

In connection with the Offer, Parent has entered into a Contingent Value Rights Agreement (the CVR Agreement) with American Stock Transfer & Trust Company, LLC, as rights agent, governing the terms and conditions of the Contingent Consideration Payments. Each CVR represents the right to receive contingent payments of up to $1.00 in cash in the aggregate, without interest thereon and less any applicable withholding taxes, if the following milestones

(the Contingent Consideration Milestones) are achieved: (i) $0.50 per Share in cash payable upon sales of the Surviving Corporation s ophthalmology products (as defined in the CVR

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Agreement) achieving $55.0 million during any period of four consecutive calendar quarters during the period starting on the first day of the first calendar quarter following the Effective Time through June 30, 2018 (the Milestone Achievement Period); and (ii) $0.50 per Share in cash payable upon sales of the Surviving Corporation s ophthalmology products achieving $65.0 million over any period of four consecutive calendar quarters during the Milestone Achievement Period (the Milestone 2 Target). If the Milestone 2 Target is not achieved during the Milestone Achievement Period and net sales of Surviving Corporation s ophthalmology products during the four calendar quarter period ending on June 30, 2018 are more than $55.0 million but less than $65.0 million, then Parent will pay an amount equal to (a) (i) net sales during the four calendar quarter period ending June 30, 2018, minus $55.0 million, divided by (ii) $10.0 million, multiplied by (b) $0.50. The CVRs are a contractual right only and will not be transferable, except in the limited circumstances specified in the CVR Agreement.

This summary does not purport to be complete and is qualified in its entirety by reference to the CVR Agreement, which is filed as Exhibit (e)(2) to this Schedule 14D-9 and is incorporated by reference herein.

Board Composition

Upon the purchase of Shares pursuant to the Offer, the Merger Agreement provides that the directors of Purchaser immediately prior to the Effective Time shall be the initial directors of the Company until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be. At Parent s request, the Company shall obtain and deliver to Parent the written resignations of each of the directors of the Company, to be effective at the Effective Time.

Tender Agreements

On September 1, 2015, Parent and Purchaser entered into tender agreements with all directors and certain officers of the Company (the Tender Agreements), pursuant to which each such officer and director agreed, among other things, to tender all of their Shares pursuant to the Offer. Shares subject to the Tender Agreements comprise approximately 2.9% of the outstanding Shares. The summary of the Tender Agreements contained in the Offer to Purchase in Section 11 under the heading Purpose of the Offer and Plans for Synergetics; Summary of the Merger Agreement and Certain Other Agreements is incorporated by reference herein. Such summary does not purport to be complete and is qualified in its entirety by reference to the Tender Agreements, which are filed as Exhibits (e)(5) through (e)(12) hereto and are incorporated by reference herein.

Agreements or Arrangements with Executive Officers and Directors of the Company

Certain of the Company s executive officers and directors may have financial interests in the Transactions that may be different from, or in addition to, the interests of the Company s stockholders generally. The Board was aware of these potentially differing interests and considered them, among other matters, in evaluating and negotiating the Merger Agreement and in reaching its decision to approve the Merger Agreement and the Transactions.

For further information with respect to the agreements or arrangements between the Company and its executive officers, directors and affiliates described in this Item 3, see the information included in Item 8 under the heading Additional Information Golden Parachute Compensation (which is incorporated by reference into this Item 3).

Any information contained in the documents incorporated by reference herein will be deemed modified or superseded for purposes of this Schedule 14D-9 to the extent that any information contained herein modifies or supersedes such information.

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Treatment of Outstanding Shares

The Company s directors and executive officers, including those that have agreed to tender all their Shares in the Offer pursuant to the Tender Agreements, will receive for their Shares the same consideration on the same terms and conditions as the other stockholders of the Company as follows, in each case subject to applicable withholding taxes and without interest: (i) the Cash Consideration; plus (ii) one CVR per Share. As of September 11, 2015, the Company s executive officers and directors owned 747,038 Shares in the aggregate (excluding Options (as defined below) and Restricted Shares (as defined below)). If all executive officers and directors were to tender all of their Shares (excluding Options and Restricted Shares) pursuant to the Offer, and those Shares were accepted for purchase and purchased by Purchaser, the executive officers and the directors would receive (in each case, subject to applicable withholding taxes and without interest) (i) an aggregate of approximately $4,855,747 as Cash Consideration; and (ii) an aggregate of approximately $747,038 as Contingent Consideration Payments, assuming maximum achievement of the Contingent Consideration Milestones, for a total maximum Offer Price of $5,602,785.

The table below sets forth the number of Shares (excluding Options and Restricted Shares) held by the directors and executive officers of the Company as of September 11, 2015, and the total Cash Consideration, Contingent Consideration Payments and Offer Price they will receive for those Shares, rounded to the nearest dollar (without taking into account any applicable tax withholdings), if all the directors and executive officers were to tender all of such Shares for purchase pursuant to the Offer and those Shares were accepted for purchase and purchased by Purchaser.

Executive Officer/Director	Number of Shares Owned	Cash Consideration for Shares	Maximum Contingent Consideration Payments for Shares*	Total Offer Price for Shares*
David M. Hable	77,048	$500,812	$77,048	$577,860
Pamela G. Boone	203,672	$1,323,868	$203,672	$1,527,540
Jason J. Stroisch	42,104	$273,676	$42,104	$315,780
Michael R. Fanning	60,261	$391,697	$60,261	$451,958
Robert H. Blankemeyer		$	$	$
Lawrence C. Cardinale	34,243	$222,579	$34,243	$256,822
Juanita H. Hinshaw	326,710	$2,123,615	$326,710	$2,450,325
D. Graeme Thomas	3,000	$19,500	$3,000	$22,500

*Assumes the achievement of all Contingent Consideration Milestones, such that each stockholder will receive the additional maximum Contingent Consideration Payments of $1.00 per Share.

Treatment of Stock Options

The Merger Agreement provides that, at the Effective Time, each outstanding option to purchase Shares (each, an Option) that is not then vested and exercisable will become fully vested and exercisable as of the Effective Time. At the Effective Time, all outstanding Options will be cancelled, and the holders of such Options will receive at, or as soon as practicable following, the Effective Time of the Merger, the following: (i) an amount of cash equal to (A) the

total number of Shares subject to the Option multiplied by (B) the excess, if any, of (x) the Cash Consideration over (y) the applicable per-share exercise price of such Option; and (ii) one CVR for each Share underlying such Option, in each case without interest and subject to any applicable tax withholding.

The table below reflects the number of vested and unvested Options with exercise prices below the Offer Price (the In-the-Money Options) that are held by the Company s executive officers and directors as of September 11, 2015, and reflects the gross amount payable to the Company s executive officers and directors

with respect to their In-the-Money Options, rounded to the nearest dollar (without taking into account any applicable tax withholdings). All of the Options held by the Company s executive officers and directors as of September 11, 2015 have exercise prices below the Cash Consideration and are In-the-Money Options. Based on the In-the-Money Options held on September 11, 2015, executive officers and directors of the Company would be entitled to receive (in each case, subject to applicable withholding taxes and without interest) (i) an aggregate of approximately $1,958,858 as Cash Consideration for all In-the-Money Options held by such directors and executive officers; and (ii) an aggregate of approximately $787,023 as Contingent Consideration Payments, assuming maximum achievement of the Contingent Consideration Milestones, for total Merger Consideration of $2,745,881 for all such In-the-Money-Options.

Executive Officer/Director	Number of Shares Underlying Vested/ Unexercised Stock Options	Number of Shares Underlying Unvested Stock Options	Total Cash Consideration for All Options	Maximum Contingent Consideration Payments for All Options*	Total Merger Consideration for All Options*
David M. Hable	135,601	155,314	$710,245	$290,915	$1,001,160
Pamela G. Boone	53,456	55,191	$284,839	$108,647	$393,486
Jason J. Stroisch	24,343	47,119	$162,388	$71,462	$233,850
Michael R. Fanning	23,741	42,258	$146,486	$65,999	$212,485
Robert H. Blankemeyer	17,500	2,500	$58,400	$20,000	$78,400
Lawrence C. Cardinale	87,500	2,500	$229,700	$90,000	$319,700
Juanita H. Hinshaw	97,500	2,500	$285,700	$100,000	$385,700
D. Graeme Thomas	37,500	2,500	$81,100	$40,000	$121,100

*Assumes the achievement of all Contingent Consideration Milestones, such that each stockholder will receive the additional maximum Contingent Consideration Payments of $1.00 per Share.

Treatment of Restricted Stock Awards

The Merger Agreement provides that, at the Effective Time, each outstanding Share of restricted stock (each, a Restricted Share) will become fully vested as of the Effective Time. At the Effective Time, all outstanding Restricted Shares will be cancelled, and the holders of Restricted Shares will receive at, or as soon as practicable following, the Effective Time of the Merger, the following: (i) an amount of cash equal to the Cash Consideration for each Restricted Share held by such holder, and (ii) one CVR for each Restricted Share held by such holder, in each case without interest and subject to any applicable tax withholding.

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The table below sets forth the number of unvested Restricted Shares held by the executive officers and directors of the Company as of September 11, 2015 that will become vested as of the Effective Time, and reflects the gross amount payable to the Company s executive officers and directors with respect to their Restricted Shares, rounded to the nearest dollar (without taking into account any applicable tax withholdings). Based on the Restricted Shares held on September 11, 2015, executive officers and directors of the Company would be entitled to receive (in each case, subject to applicable withholding taxes and without interest) (i) an aggregate of approximately $1,375,029 as Cash Consideration for all Restricted Shares held by such directors and executive officers; and (ii) an aggregate of approximately $211,543 as Contingent Consideration Payments, assuming maximum achievement of the Contingent Consideration Milestones, for a total Merger Consideration of $1,586,572 for all such Restricted Shares.

Executive Officer/Director	Number of Restricted Shares Owned	Cash Consideration for Restricted Shares	Maximum Contingent Consideration Payments for Restricted Shares*	Total Merger Consideration for Restricted Shares*
David M. Hable	108,177	$703,150	$108,177	$811,327
Pamela G. Boone	38,658	$251,277	$38,658	$289,935
Jason J. Stroisch	34,026	$221,169	$34,026	$255,195
Michael R. Fanning	30,682	$199,433	$30,682	$230,115
Robert H. Blankemeyer	-	-	-	-
Lawrence C. Cardinale	-	-	-	-
Juanita H. Hinshaw	-	-	-	-
D. Graeme Thomas	-	-	-	-

*Assumes the achievement of all Contingent Consideration Milestones, such that each stockholder will receive the additional maximum Contingent Consideration Payments of $1.00 per Share.

Change in Control Agreements

Each of Messrs. Hable, Fanning and Stroisch and Ms. Boone, all of the Company s executive officers, have entered into change in control agreements with the Company. The change in control agreements have rolling one-year terms and expire 30 days after the executive s employment is terminated. Payments to which the executive is due under the change in control agreement are not subject to reduction in the event he or she receives other compensation for services rendered after termination of employment, and the executive is under no duty to mitigate any payments.

The change in control agreements provide that if the executive s employment is terminated within one year following a change in control (as defined below) of the Company for cause or disability (as both are defined in the change in control agreement), as a result of his or her death or by the executive other than an involuntary termination (as defined in the change in control agreement), the Company shall pay to the executive all compensation earned or accrued through the employment termination date, including:

base salary;

reimbursement for reasonable and necessary expenses;

vacation pay;

bonuses and incentive compensation; and

all other amounts to which he or she is entitled under any compensation or benefit plan of the Company (collectively, Standard Compensation Due).

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If any of Messrs. Hable, Fanning or Stroisch or Ms. Boone is terminated within one year following a change in control without cause and for any reason other than death or disability, including involuntary termination, and provided the executive enters into a separation agreement (including a release of claims) within 30 days of the employment termination, the executive officer shall receive an amount equal to the sum of the following:

- all Standard Compensation Due;
- an amount equal to one times the executive officer s annual base salary at the rate in effect immediately prior to the change in control; and
- any amount payable as of the termination date under the Company s objectives-based incentive plan.

Such amount shall be paid in 12 equal monthly installments beginning in the month after such termination. Furthermore, all awards of restricted Shares or options shall immediately vest and the Options shall be exercisable for one year after the date of such termination (but not beyond their original expiration dates).

As defined in the change in control agreement, a change in control means:

- the acquisition by any person (as defined in the change in control agreement) of securities of the Company representing 51% or more of the combined voting power of the Company s outstanding voting securities;
- a change in the composition of the Board of Directors of the Company such that during any period of up to two consecutive years, individuals who constitute members of the Board of Directors at the beginning of the period cease to constitute the majority thereof; and
- the closing of certain mergers or consolidations of the Company with any other corporation.

Director and Officer Indemnification and Insurance

Pursuant to the terms of the Merger Agreement Parent has agreed to, for a period of six years from the Effective Time, (i) indemnify all past and present directors, officers and employees of the Company to the same extent such persons are indemnified as of the date of the Merger Agreement by the Company pursuant to its certificate of incorporation and bylaws and any indemnification agreements in existence on the date of the Merger Agreement for acts or omissions occurring at or prior to the Effective Time and, (ii) with respect to acts or omissions occurring in connection with the approval of the Merger Agreement and the consummation of the Transactions, to indemnify and hold harmless such persons to the fullest extent permitted by law.

The Merger Agreement also provides that Parent will cause the Surviving Corporation to provide, for an aggregate period of not less than six years from the Effective Time, the Company s current directors and officers an insurance and indemnification policy that provides coverage for events occurring prior to the Effective Time that is no less favorable than the Company s existing policy or, if substantially equivalent insurance coverage is unavailable, the best

available coverage; however, the Surviving Corporation will not be required to pay an annual premium for such insurance in excess of 300% of the last annual premium paid by the Company. In lieu of the foregoing, (i) Parent may substitute therefor a single premium tail coverage with respect to directors and officers insurance at a level at least as favorable as in the directors and officers insurance as of the date of the Merger Agreement, or (ii) if Parent does not make the substitution provided for in clause (a), then the Company may substitute single premium tail coverage with respect to such insurance at a level at least as favorable as in the directors and officers insurance for a premium not to exceed 300% of the last annual premium paid prior to the date of the Merger Agreement.

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Employee Matters

Pursuant to the Merger Agreement, for a period of one year following the acceptance of Shares for payment by Purchaser pursuant to the Offer (the Offer Closing), Parent will provide or cause the Surviving Corporation to provide to each individual who is employed by the Company or any of its subsidiaries immediately prior to the Effective Time (each, a Covered Employee) and who remains employed by Parent, the Surviving Corporation or any of their respective subsidiaries, with (i) compensation and employee benefits that, taken as a whole, have a value substantially comparable in the aggregate to the compensation and employee benefits provided by the Company as of the date of the Merger Agreement or (ii) compensation and employee benefits that, taken as a whole, have a value substantially comparable in the aggregate to the compensation and employee benefits provided to similarly situated employees of Parent and its subsidiaries. In either case, neither Parent nor Surviving Corporation shall be required to provide any equity based compensation.

In addition, Parent has agreed that each Covered Employee will, for certain purposes, be given credit for all service with the Company and its affiliates to the same extent as if such services had been rendered to Parent or the Surviving Corporation after the closing date of the Merger. Parent has agreed it will, or will cause the Surviving Corporation to, waive or use commercially reasonable efforts to cause its insurance carriers to waive, all pre-existing conditions limitations on participation and coverage applicable to each Covered Employee under any health or welfare plan in which such Covered Employee may be eligible to participate after the closing date of the Merger.

Item 4. THE SOLICITATION OR RECOMMENDATION

Recommendation

After careful consideration by the Board, including a review of the terms and conditions of the Merger Agreement, in consultation with the Company s financial and legal advisors, at a meeting of the Board held on September 1, 2015, the Board of Directors of the Company, by the unanimous approval of directors voting (with the Chief Executive Officer of the Company abstaining from the vote): (i) approved and declared the advisability of the Merger Agreement, the Tender Agreements, the CVR Agreement, the Offer, the Merger and the other Transactions; (ii) declared that it is in the best interests of Synergetics and its stockholders (other than Parent and the Purchaser) that Synergetics enter into the Merger Agreement and consummate the Transactions and that its stockholders tender their Shares pursuant to the Offer, in each case on the terms and subject to the conditions in the Merger Agreement; (iii) declared that the terms of the Offer and the Merger are fair to Synergetics and its stockholders (other than Parent and the Purchaser); and (iv) resolved to recommend that the holders of Shares accept the Offer and tender their Shares pursuant to the Offer.

The Board, by a vote of the voting directors (with the Chief Executive Officer of the Company abstaining from the vote), hereby unanimously recommends that the Company s stockholders accept the Offer and tender their Shares to Purchaser pursuant to the Offer.

On September 2, 2015, the Company and Valeant issued press releases announcing that they had entered into the Merger Agreement. Copies of these press releases are filed as Exhibits (a)(5)(A) and (a)(5)(B), respectively, to this Schedule 14D-9 and are incorporated by reference herein.

Background and Reasons for the Recommendation

Background of the Offer

The Board, together with the Company s management, from time to time evaluates the Company s strategic alternatives, including potential opportunities for acquisitions, joint ventures and other transactions designed to increase stockholder value. The Board considers such transactions in light of the business and

economic environment, as well as developments in the medical device industry as it related to the ophthalmic and neurosurgical markets. To this end, the Board retained Raymond James & Associates, Inc., as successor in interest to Morgan Keegan & Company, Inc. (Raymond James), several years ago as its advisor to assist with analyzing the Company s strategic alternatives.

In March 2014, Bausch & Lomb Incorporated (B+L), a subsidiary of Valeant, via its Senior Director of Marketing, Sandeep Lalit, approached the Company s Vice President of Domestic Sales, Michael Fanning, to discuss a potential strategic transaction between the two companies, possibly including a strategic cross-selling arrangement.

Mr. Fanning subsequently reported the subject of the call to Mr. Hable.

On March 11, 2014, Messrs. Fanning and Stroisch received an email from Mr. Lalit with a form of confidentiality agreement and requested further follow up.

Upon Mr. Fanning advising Mr. Hable of this development, Mr. Hable placed the potential transaction on the agenda for the Company s regular second quarter 2014 Board meeting and contacted a representative of Raymond James, the Company s financial advisor, to provide financial analysis and advice related to potential merger and acquisition activity.

On March 20, 2014, the Company s regular second quarter 2014 Board meeting was held. Taking into account the strategic planning meetings that had taken place in September and November of 2013 among other matters, the Board determined that the Company was making sufficient progress on its own strategic growth plans, and also determined that, while it would give due consideration to any sufficiently specific indication of interest regarding an acquisition of the Company, the present circumstances of the Company did not warrant engaging in any active attempts to solicit interest for an acquisition of the Company.

On March 25, 2014, Messrs. Lalit, Fanning and Hable participated in a conference call during which they delivered to Mr. Lalit the Board s conclusion related to the informal indication of interest from B+L.

On May 6, 2014, Mr. Fanning received an e-mail from Andrew Davis, Vice President of Corporate Development, Valeant, requesting an update on the Company s position regarding a potential acquisition. Mr. Fanning requested further instructions from Mr. Hable, who instructed Mr. Fanning to ask Mr. Davis to contact him directly.

On May 12, 2014, during a conference call among Mr. Davis and Mr. Hable, Mr. Hable provided to Mr. Davis the contact information for the Company s investment banker. As a follow-up to the conference call, Mr. Davis emailed to Mr. Hable a form of confidentiality agreement. Mr. Hable consulted with the Company s General Counsel, Peter Rasche, regarding the content of the confidentiality agreement, which Mr. Rasche revised.

On August 26, 2014, the Board held a strategic planning meeting, at which it discussed and considered various strategic alternatives.

During the period May through September 2014, Valeant and the Company corresponded from time to time about, among other matters, possibly entering into a confidentiality agreement and the terms thereof.

During the months of August through October, the Company and Valeant communicated regarding other potential business opportunities, none of which ultimately were determined to be pursued by both parties.

On December 5, 2014, Mr. Davis emailed Mr. Hable to inquire about setting up a meeting. A conference call between the two men was scheduled for December 8, 2014.

On December 8, 2014, Messrs. Hable and Davis conducted a conference call and discussed the various potential strategic opportunities for the two companies. They determined that entry into a confidentiality agreement between their respective companies would be the best way to proceed.

On December 12, 2014, the Board held its regular quarterly meeting, at which Mr. Hable reported to the Board regarding his December 8, 2014, call with Mr. Davis. The Board acknowledged that the communication with Mr. Davis should proceed in due course, including entry into the confidentiality agreement.

On January 6, 2015, Valeant and the Company entered into a confidentiality agreement.

In January 2015, representatives of Valeant requested initial information for purposes of evaluating a potential transaction and representatives of the Company provided certain information to Valeant in response to such request.

In February 2015, the Company continued to respond to requests for information from Valeant, and members of the Company s management participated in several due diligence conference calls with Valeant.

On March 19, 2015, the Board held its regular second quarter meeting at which Mr. Hable advised the Board of his perspectives regarding the competitive landscape and the status of the Company s preliminary discussions with Valeant.

On March 24, 2015, the Company terminated its engagement of Raymond James, as the Company s primary investment banking contact no longer worked for Raymond James.

During April, representatives of Valeant and the Company continued to exchange requests for information and responses thereto.

On April 16, 2015, representatives of Valeant and B+L, including Michael Pearson, Chairman of the Board and Chief Executive Officer, and Ari Kellen, Valeant Group Executive Vice President, met with Mr. Hable at a conference in San Diego, California. During the meeting, the parties discussed preliminary valuation of the Company. On April 22, 2015, Mr. Hess emailed Mr. Hable with an updated list of due diligence questions.

On May 4, 2015, Mr. Davis emailed to Mr. Hable a Letter of Intent (LOI), dated May 1, 2015, and additional requests for due diligence information, which Mr. Hable distributed to Messrs. Braswell, Blankemeyer and Rasche. The LOI expressed Valeant s non-binding offer to acquire 100% of the outstanding common stock of the Company for a 20% to 30% premium in cash, subject to entry into a period of exclusive negotiation and the execution of customary definitive agreements.

On May 6, 2015 and May 14, 2015, Messrs. Hable and Chang engaged in brief calls to discuss the additional information requests made of the Company. Mr. Hable provided certain information regarding the Company.

On May 18, 2015, the Board held a special meeting to review proposals from three investment banking firms to provide financial advisory services, generally, and to provide advice relating to the LOI. After due consideration of these presentations, the Board decided to seek written fee proposals from each of the three investment banking firms. The Board further determined that, in light of the value expected to be obtained through continued execution of the Company s strategic plan, including due consideration of the uncertainties inherent in attempting to successfully execute such plan, and further considering the preliminary information received from the investment banking firms regarding the Company s reasonable valuation in a sale transaction, accepting the offer proposed in the LOI was not in the best interest of the Company s stockholders at that time.

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On May 21, 2015, Mr. Hable sent a letter via email to Mr. Pearson, indicating that in the context of the Company s on-going assessment of strategic alternatives, the price range in the LOI was not in line with the Company s value range, and therefore, the proposed transaction was not in the best interest of the Company s stockholders.

On May 28, 2015, Mr. Pearson responded to Mr. Hable with a non-binding proposal (the May Revised Offer) for Valeant to acquire 100% of the outstanding common stock of the Company for a purchase price in the range of $5.50 to $6.00 per Share in cash, subject to entry into a period of exclusive negotiation and the execution of customary definitive agreements.

On May 29, 2015, the Company held a special Board meeting for purposes of engaging in strategic planning and discussing the response to the May Revised Offer. Topics discussed at the Board meeting with senior management of the Company included fiscal year 2015 strategic goals, macro market trends, Company strengths, potential growth business segments, financial planning matters and management s ongoing strategic initiatives. At the end of this meeting, the Board met in executive session (all directors, no non-director employees) to discuss alternative strategic initiatives, including investing in extending current business lines, divesting one or more current business lines, selling the Company and continuing to implement the current strategic initiatives. In light of the entire discussion during this meeting, the Board determined that the Company should continue to pursue the current strategic initiatives. However, acknowledging the value to the Board s on-going consideration of strategic planning for the Company, the Board determined that the discussion with Valeant regarding the May Revised Offer should continue.

On June 3, 2015, Mr. Hable called Mr. Davis to report that the Company was unwilling to respond to the May Revised Offer at that time but invited Valeant representatives to visit the Company in O Fallon, Missouri. Mr. Hable reported this conversation to the Board at the June 4, 2015 special Board meeting and also recommended engaging an investment banker to assist in evaluating the Valeant proposal and alternatives to accepting the same. Over the next two weeks, the on-site meeting was arranged for June 24, 2015.

On June 12, 2015, the Board approved the engagement of William Blair & Company, L.L.C. (William Blair) as financial advisor to the Company to assist the Board in reviewing strategic alternatives, particularly in the context of the proposal received from Valeant. The Board selected William Blair to do this work based on, among other considerations, its familiarity with, and knowledge of, the industry and industry participants, and its experience in the mergers and acquisitions market, particularly with respect to recent transactions in the ophthalmology space.

On June 16, 2015, senior management of the Company and William Blair had a preliminary discussion of other potential strategic or financial buyers that might reasonably have the interest and capability to consummate a transaction.

On June 18, 2015, the Board authorized William Blair to conduct a market check. Between June 18, 2015 and July 3, 2015, William Blair contacted the 10 strategic and financial parties initially identified by William Blair and the Company to assess their interest in a transaction involving the Company. In addition, as noted below, in the approximately four-week period subsequent to July 3, 2015, William Blair contacted two additional parties about a potential transaction with the Company and responded to an inquiry from one additional party about a potential transaction with the Company.

On June 24, 2015, representatives of Valeant, including Mr. Pearson, met in O Fallon, Missouri with representatives of the Company, including Mr. Hable, Ms. Boone, Mr. Fanning, Mr. Stroisch, and representatives of William Blair. At the meeting, the Company s management team provided Valeant a high-level presentation of the Company s business and Mr. Pearson indicated that Valeant would take into account the information obtained during the meeting and from its due diligence and consider re-submitting an indication of interest. The Board was provided an update on the

meeting as well as copies of the presentation materials.

On June 26, 2015, Mr. Davis emailed to Mr. Hable an updated offer letter (June Offer), which reiterated Valeant s interest in a potential acquisition of the Company on terms identical to those in the May Revised Offer.

On June 29, 2015, Mr. Davis sent the Company a proposed merger agreement for discussion by the parties. Later that day, the Board conducted a special meeting to discuss with William Blair its initial financial analysis of the May Revised Offer (containing the same price proposal as the June Offer received by the Company on June 26, 2015). William Blair discussed with the Board other potential strategic or financial buyers and whether any of them was likely to be in a position to offer a more attractive transaction to the Company s stockholders and capable of consummating a transaction. The Board then discussed the nature and potential timing of the market check it believed would be appropriate under the circumstances and the risks of conducting a broad and lengthy market check process, including the risks of distracting management and leaks and market rumors that could have a negative impact on the Company s business, employees and stockholders. As a result, the Board discussed a targeted market check process whereby the Company would contact the most likely strategic and financial buyers in order to assess their interest in a possible strategic transaction with the Company. The Board determined that senior management should not expand the group of strategic and financial parties contacted, as the group that had been identified already represented all parties that the Board believed might reasonably be interested in making a bid to acquire the Company and capable of consummating a transaction.

On June 30, 2015, William Blair reported to Mr. Hable that Mr. Davis had inquired about next steps and that William Blair had indicated the Company would not respond to the June Offer until receiving direction from the Board. That same day, the Board held special meetings at which Mr. Rasche advised the Board of their fiduciary duties relative to a decision regarding whether to sell the Company. The Board discussed William Blair s financial analysis and engaged in a detailed discussion regarding the Valeant proposal and the Company s strategic plan.

On July 1, 2015, the Board held a special meeting at which the Board continued to evaluate and discuss the Valeant proposal, and determined to request a price of $7.00 per Share. During the meeting, William Blair reviewed its market check process to date, summarizing its conversations with a majority of the potential bidders originally identified, none of which had expressed interest in pursuing a transaction with the Company. William Blair further indicated that in addition to potential strategic buyers, it was reaching out to a few potential financial buyers to assess their possible interest in a transaction with the Company. Following discussion, the Board authorized William Blair on behalf of the Company to reject the current offer and advise Valeant that it was prepared to proceed with a transaction with a $7.00 per Share purchase price. At an additional Board meeting on July 2, 2015, William Blair informed Mr. Hable that the William Blair team had had a call with representatives of Valeant to discuss the status of the Company s evaluation of Valeant s proposal and Valeant s perspective on valuation.

On July 3, 2015, William Blair reported to Mr. Hable that it had discussed with two potential acquirers their possible interest in the Company, one of which was concerned about product overlap and the other of which was not interested in the neurosurgical business.

On July 6, 2015, Valeant submitted a revised offer (the July Offer) orally to William Blair during a conference call. On July 7, 2015, the Board held a special meeting to discuss the July Offer. The July Offer comprised an all cash offer to purchase the outstanding Shares of Company common stock at a price of $6.30 per Share. William Blair updated the Board on the status of the market check process, indicating that it had further conversations with certain of the identified potential bidders, three of which had declined to bid, a Party A that requested additional information and a Party B that indicated its intent to submit a final response by the end of the week. The Board discussed Valeant s July Offer with William Blair and considered with its advisors how the Company should respond to the July Offer. The Board instructed William Blair not to respond to Valeant at that time.

On the same day, the Company signed a confidentiality agreement with Party A. Mr. Hable, Ms. Boone, and Mr. Rasche held a teleconference with certain representatives of Party A during which they provided Party A with a high-level presentation of the Company s business.

On July 10, 2015, the independent directors of the Board met in a special executive session to discuss the response to the July Offer. The independent directors determined that they would not accept the July Offer because they did not believe that it represented the highest price that could be achieved through continued negotiation. Mr. Blankemeyer informed Mr. Hable of the outcome of the executive session.

On July 12, Mr. Hable informed William Blair of the outcome of the July 10, 2015 special executive session of the independent directors, which William Blair reported to Mr. Pearson.

On July 13, 2015, Party A submitted to William Blair an indication of interest at a Share price ranging from $5.45 to $5.95 with doubtful ability to move significantly above that price range. Party A was informed that it would need to increase its valuation, as its current price range was not competitive.

On July 15, 2015, William Blair informed Mr. Hable that Party B had expressed interest in learning more about the Company and potentially submitting an indication of value. Party B indicated that its interest level was high and requested a video conference with the Company and some of its executive team members. It also submitted a form of confidentiality agreement. From July 16, 2015 to July 20, 2015, management finalized its presentation for Party B and, in consultation with the Company s General Counsel, negotiated a confidentiality agreement with Party B. On July 20, 2015, the confidentiality agreement was executed.

On July 22, 2015, following transmission of the management presentation to Party B, Mr. Hable, Ms. Boone, Mr. Stroisch, Mr. Fanning, Mr. Copeland, Mr. Rasche and representatives of William Blair participated in a conference call with certain representatives of Party B. Party B later declined to submit an indication of interest.

On July 25, 2015, Mr. Pearson sent a written proposal (the Final Letter of Intent) to Mr. Hable, including revised terms providing for payment of $6.50 per Share upfront in cash, contingent value rights of $0.50 if net sales of the Company s ophthalmology products achieve $55 million on a trailing four calendar quarter basis with the final quarter being the quarter ended December 31, 2017 and an additional $0.50 contingent value rights if net sales of the Company s ophthalmology products achieve $65 million on a trailing four calendar quarter basis with the final quarter being the quarter ended December 31, 2017. The offer was contingent on entering into a period of exclusive negotiation of, and execution of, customary definitive agreements. William Blair discussed with Mr. Hable its initial financial analysis of the contingent value rights.

On July 27, 2015, following management s analysis of the Final Letter of Intent and discussion with William Blair of the Final Letter of Intent, Mr. Hable forwarded to the Board materials related to Valeant s proposal, including the Final Letter of Intent and management s analysis of the Final Letter of Intent. The Board held a special meeting on July 27, 2015, at which William Blair summarized the status of the Valeant proposal and the market check process, indicating that of the 12 potential bidders it had contacted, eight had declined to make an offer, one had provided an offer at a price below $6.00, and three had not yet responded. William Blair indicated that a number of parties had declined to pursue a transaction because the Company derived a majority of its cash flow not from its ophthalmic business, but from its neurosurgical business, which has significant customer concentration risk. William Blair also presented a financial analysis of the contingent value rights. The Board, after full deliberation, determined that the Final Letter of Intent would be acceptable if the terms and conditions of the CVR Agreement could be negotiated. The Board authorized William Blair to inform Valeant of the Board s response.

William Blair reported to Mr. Hable that (i) it had reviewed with Valeant the Board s response to the Final Letter of Intent, (ii) Valeant indicated it would prepare a draft CVR Agreement as soon as possible and

(iii) Valeant requested that the Company review and respond to the previously transmitted merger agreement. Mr. Davis presented to Mr. Hable an exclusivity letter from Valeant requesting a 30 day exclusivity period but, upon evaluating the revised exclusivity letter and discussing with its advisors, management concluded that the Company needed to complete its market check prior to executing the exclusivity letter and that a 30-day exclusivity period was longer than it was willing to accept.

On July 31, 2015, Mr. Hable and William Blair participated in a conference call with Party C, which had reached out to Mr. Hable to discuss the possibility of purchasing the Company s neurosurgical assets. Party C was told that there was an unsolicited offer in existence for the entire Company and was queried as to whether Party C would consider making a bid for the entire Company. Party C indicated that it did not want to make a bid for the entire Company. As the Board had previously concluded, following discussion with William Blair, that selling the neurosurgical and ophthalmic assets in separate transactions was not likely to result in an aggregate valuation higher than a sale of the Company as a whole to a single bidder, Party C was advised that the Company was only interested in a sale of the entire Company. On the same day, representatives of Valeant submitted its initial draft of the CVR Agreement.

From July 30, 2015 to August 4, 2015, after discussing with its advisors the issues raised in the CVR Agreement, Armstrong Teasdale LLP, counsel to the Company (Armstrong Teasdale), and management continued to discuss and prepare a revised exclusivity letter and revised CVR Agreement.

On August 4, 2015, the Company discussed with William Blair the market data for termination fees for similarly sized, sell-side public deals since 2014. Following receipt of the CVR Agreement, the Board held a special meeting with William Blair and Armstrong Teasdale, at which it reviewed the progress with respect to the negotiation of the CVR Agreement and the key issues associated with the CVR Agreement. Mr. Rasche and Mr. Braswell advised the Board of the principal issues to be negotiated with respect to the CVR Agreement. Mr. Hable and William Blair reviewed with the Board the status of the ongoing market check process, indicating that the three outstanding potential bidders who had not yet responded by the July 27, 2015 Board meeting had all declined to present an indication of interest. The Board also discussed with William Blair certain financial matters, including the financial aspects of the Final Letter of Intent and the extension of the final quarter for the measurement of the CVR to June 30, 2018.

On August 5, 2015, William Blair forwarded to Valeant the Company s mark-up of the CVR Agreement. Management continued to analyze the financial impact of the CVR. On August 6, 2015, Valeant provided its comments to the CVR Agreement.

From August 6, 2015 to August 10, 2015, management discussed with William Blair the revised CVR Agreement and Valeant s position and continued to analyze and revise the exclusivity letter. On Ms. Boone s recommendation, the Company s independent accounting firm was consulted with respect to certain elements of the draft CVR Agreement.

On August 10, 2015, representatives of the Company provided a revised CVR Agreement and exclusivity letter to representatives of Valeant.

During the week of August 10, representatives of Skadden, Arps, Slate, Meagher & Flom LLP (Skadden Arps), counsel to Valeant, and Armstrong Teasdale continued to negotiate the draft CVR Agreement. On August 11, 2015, representatives of Valeant delivered to representatives of the Company a revised draft CVR Agreement and exclusivity letter. On August 12, 2015, representatives of the Company called representatives of Valeant to discuss the draft CVR Agreement and to coordinate a discussion between Armstrong Teasdale and Skadden Arps. Mr. Hable proposed to the Board for its consideration a consent resolution regarding the execution of change in control agreements for Messrs. Rasche and Copeland on the basis that the continued involvement of Messrs. Rasche and Copeland was integral to a possible transaction. Without change in control protections, Mr. Hable suggested that it

may be difficult to retain Messrs. Rasche and Copeland through a sale

process. The proposed change in control agreements for each of Mr. Rasche and Mr. Copeland were identical to those existing for other senior management. Mr. Hable also provided additional information regarding the terms of the existing change in control agreements and the compensation of Messrs. Rasche and Copeland. The Board unanimously approved the resolution.

Following receipt of the revised CVR Agreement and exclusivity letter, the Board held a special meeting on August 17, 2015 to discuss and evaluate such documents. The Board engaged in a detailed discussion of the financial issues impacting the CVR Agreement. At the meeting, Ms. Boone reported on the views of the Company s independent accounting firm on the matters she had consulted with them on in the CVR Agreement. The Board determined that the CVR Agreement and exclusivity letter would be acceptable, provided the Milestone Achievement Period in the CVR Agreement was extended from the ending date of December 31, 2017 to an ending date of June 30, 2018.

On August 18, 2015, representatives of the Company provided to Valeant a revised CVR Agreement that reflected changes requested by the Board, including an extension of the Milestone Achievement Period by six months (through June 30, 2018).

On August 19, 2015, Valeant agreed to the extension of the Milestone Achievement Period. The Board unanimously approved the resolution authorizing the Company to proceed with negotiations of the proposed transaction with Valeant and ent