

BOGER JOSHUA S
Form 4
December 02, 2011

FORM 4 UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL
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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
BOGER JOSHUA S

2. Issuer Name and Ticker or Trading Symbol
VERTEX PHARMACEUTICALS
INC / MA [VRTX]

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

(Last) (First) (Middle)

3. Date of Earliest Transaction
(Month/Day/Year)
12/01/2011

Director 10% Owner
 Officer (give title below) Other (specify below)

C/O VERTEX
PHARMACEUTICALS
INCORPORATED, 130 WAVERLY
ST

(Street)

4. If Amendment, Date Original Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check Applicable Line)
 Form filed by One Reporting Person
 Form filed by More than One Reporting Person

CAMBRIDGE, MA 02139

(City) (State) (Zip)

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V Amount (A) or (D) Price			
Common Stock	12/01/2011		M	4,946 A \$ 24.66	732,341	D	
Common Stock	12/01/2011		S ⁽¹⁾	4,946 D \$ 29.23 (2) (3)	727,395	D	
Common Stock					13,286	I	401(k)

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. Subject to certain exceptions, an interested stockholder is a person who, together with that person's affiliates and associates, owns, or within the previous three years did own, 15% or more of the voting stock of the corporation.

Under certain circumstances, Section 203 makes it more difficult for a person who would be an interested stockholder to effect various business combinations with a corporation for a three-year period. The provisions of Section 203 may encourage companies interested in acquiring Visteon to negotiate in advance with our board of directors because the stockholder approval requirement would be avoided if our board of directors approves either the business combination or the transaction that results in the stockholder becoming an interested stockholder. These provisions also may make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

Board of Directors. Our second amended and restated certificate of incorporation and our second amended and restated bylaws provide that the number of directors shall be fixed by the board of directors from time to time. The board of directors shall initially consist of the nine members identified in the Plan and shall always consist of not less than 3 nor more than 15 members. Under our second amended and restated bylaws, at all meetings of stockholders for the election of directors at which a quorum is present, a plurality of the votes cast shall be sufficient to elect a director. Under our second amended and restated certificate of incorporation and our second amended and restated bylaws, a vote of a majority of all then outstanding capital stock entitled to vote at an election of directors is required to remove a director with or without cause and fill the resulting vacancy, except that any director elected separately by the holders of any class or series of stock shall be subject to removal with or without cause at any time by such stockholders, who will fill the resulting vacancy. Vacancies resulting from newly created directorships by reason of an increase in the size of the board of directors shall be filled by a majority vote of the board of directors, provided a quorum is present. Further, vacancies resulting from reasons other than removal or an increase in the size of the board of directors shall be filled by a majority vote of the board of directors, even if less than a quorum. These provisions may deter a stockholder from removing incumbent directors and simultaneously gaining control of the board of directors by filling the vacancies created by this removal with its own nominees.

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Advance Notice Procedures. Our second amended and restated bylaws establish an advance notice procedure for stockholder proposals to be brought before an annual meeting of stockholders, including proposed nominations of persons for election to the board of directors. Stockholders at an annual meeting will only be able to consider proposals or nominations specified in the notice of meeting or brought before the meeting by or at the direction of the board of directors or by a stockholder who was a stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has given our corporate secretary timely written notice, in proper form, of the stockholder's intention to bring that business before the meeting. Although our second amended and restated bylaws will not give the board of directors the power to approve or disapprove stockholder nominations of candidates or proposals regarding other business to be conducted at a special or annual meeting, our second amended and restated bylaws may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed or may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempting to obtain control of the company.

Action by Written Consent; Special Meetings of Stockholders. Our second amended and restated certificate of incorporation provides that stockholder action can be taken only at an annual or special meeting of stockholders and cannot be taken by written consent in lieu of a meeting. Our second amended and restated certificate of incorporation and our second amended and restated bylaws provide that, except as otherwise required by law, special meetings of the stockholders can only be called by our chairman of the board, our chief executive officer, pursuant to a resolution adopted by a majority of our board of directors or by our secretary following receipt of on or more demands to call a special meeting of the stockholders, in accordance with the provisions of our second amended and restated bylaws, from stockholders who hold, in the aggregate, at least twenty percent of the voting power of all shares entitled generally to on the election of directors (without reference to any terms of any preferred stock).

Authorized but Unissued Shares. Our authorized but unissued shares of common stock and preferred stock will be available for future issuance without stockholder approval, subject to the rules and regulations of any applicable stock exchange or similar rules. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued shares of common stock and preferred stock could render more difficult or discourage an attempt to obtain control of a majority of our common stock by means of a proxy contest, tender offer, merger or otherwise.

Limitations on Directors and Officers Liability. Our second amended and restated certificate of incorporation contains a provision eliminating the personal liability of our directors to Visteon or any of its stockholders for monetary damages for breach of fiduciary duty to the fullest extent permitted by applicable law. Our second amended and restated certificate of incorporation and our second amended and restated bylaws also contain provisions generally providing for indemnification and prepayment of expenses to our directors and officers to the fullest extent permitted by applicable law.

Amendment of Certificate of Incorporation and Bylaws. Our second amended and restated certificate of incorporation expressly authorizes the board of directors to adopt, amend, alter or repeal any provision of our second amended and restated certificate of incorporation or our second amended and restated bylaws by a majority vote. The stockholders may also adopt, amend, alter or repeal our second amended and restated bylaws. Stockholder approval is also required to amend, alter, change or repeal any provision of our second amended and restated certificate of incorporation or our second amended and restated bylaws inconsistent with any provision in our second amended and restated certificate of incorporation or our second amended and restated bylaws that requires a particular vote of stockholders in order to take the action specified in such provision.

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Tax Benefit Preservation. Our second amended and restated certificate of incorporation provides, subject to certain exceptions therein, that any attempted transfer of Visteon's securities prior to the earliest of:

December 31, 2019,

the repeal, amendment or modification of Section 382 of the Internal Revenue Code of 1986, as amended (Section 382) in such a way as to render the restrictions imposed by Section 382 no longer applicable to Visteon,

the beginning of a taxable year of Visteon in which no net operating loss carryovers, capital loss carryovers, alternative minimum tax credit carryovers and foreign tax credit carryovers or any loss or deduction attributable to a net realized built-in loss within the meaning of Section 382 of Visteon or any of its direct or indirect subsidiaries (Tax Benefits) are available, and

the date on which the limitation amount imposed by Section 382 in the event of an ownership change of Visteon, would not be materially less than the net operating loss carry forward or net unrealized built-in loss of Visteon (the Restriction Release Date), or

any attempted transfer of Visteon's securities pursuant to an agreement entered into prior to the Restriction Release Date,

shall be prohibited and void ab initio insofar as it purports to transfer ownership or rights in respect of such stock to the purported transferee:

if the transferor is a person or group of persons that is identified as a 5-percent shareholder of Visteon pursuant to Treasury Regulation § 1.382-2T(g) other than a direct public group as defined in such regulation (a Five-Percent Stockholder), or

to the extent that, as a result of such transfer, either any person or group of persons shall become a Five-Percent Stockholder or the percentage stock ownership interest in Visteon of any Five-Percent Stockholder shall be increased.

These restrictions could prohibit or delay the accomplishment of an ownership change with respect to Visteon by (i) discouraging any person or group from being a Five-Percent Stockholder and (ii) discouraging any existing Five-Percent Stockholder from acquiring more than a minimal number of additional shares of Visteon's stock.

Business Opportunities. In recognition that our investors and their officers, directors, agents, stockholders, members, partners, affiliates and subsidiaries may serve as our directors and/or officers and that our investors may engage in similar activities or lines of business that we do, our second amended and restated certificate of incorporation provides for the allocation of certain business opportunities between us and our investors. Specifically, none of our investors or any officer, director, agent, stockholder, member, partner or affiliate of an investor has any duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business that we do. In the event that any investor acquires knowledge of a potential transaction or matter which may be a business opportunity for itself and us, we will not have any expectancy in such business opportunity, and the investor will not have any duty to communicate or offer such business opportunity to us and may pursue or acquire such business opportunity for itself or direct such opportunity to another person. In addition, if a director or officer of us who is also an officer, director, agent, stockholder, member, partner or affiliate of any

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investor acquires knowledge of a potential transaction or matter which may be a business opportunity for us and an investor, we will not have any expectancy in such business opportunity unless such business opportunity is expressly offered to such person solely in his or her capacity as a director or officer of us.

No such person shall be liable to Visteon or any of its subsidiaries for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such person pursues or acquires such business opportunity, directs such business opportunity to another person or fails to present such business opportunity, or information regarding such business opportunity, to Visteon or its subsidiaries.

These provisions of our certificate of incorporation are permitted by Section 122 of the DGCL, and, accordingly, we and all of our stockholders will be subject to them.

Transactions with Interested Directors or Officers. In recognition that we may engage in material business transactions with one or more of our directors or officers, an entity in which one or more of our directors or officers are its directors or officers or have a financial interest, our second amended and restated bylaws provide that such a contract or transaction will not be void or voidable solely because a director or officer is interested, or solely because the director or officer is present at or participates in the meeting which authorizes the contract or transaction, or solely because such person's votes are counted for such purpose if:

the material facts as to such person's or persons' relations or interest as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of disinterested directors, even though the number of disinterested directors may be less than a quorum; or

the material facts as to such person's or person's relationship or interest as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

the contract or transaction is fair as to us as of the time it is authorized, approved or ratified by the board of directors, a committee thereof or the stockholders.

Transfer Agent and Registrar

Mellon Investor Services LLC is the transfer agent and registrar for our common stock.

Item 2. Exhibits

Exhibit No. Description

- 2.1 Fifth Amended Joint Plan of Reorganization, filed August 31, 2010 (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 7, 2010).
- 3.1 Form of Second Amended and Restated Certificate of Incorporation of Visteon Corporation.
- 3.2 Form of Second Amended and Restated Bylaws of Visteon Corporation.
- 10.1 Form of Warrant Agreement by and between the Company and Mellon Investor Services LLC as warrant agent.
- 10.2 Form of Warrant Agreement by and between the Company and Mellon Investor Services LLC as warrant agent.

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SIGNATURE

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the Registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereto duly authorized.

Date: September 30, 2010

VISTEON CORPORATION

By: /s/ Michael K. Sharnas

Name: Michael K. Sharnas

Title: Vice President and General Counsel

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Exhibit Table

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