DEPARTMENT OF HEALTH & HUMAN SERVICES

MEMORANDUM

Food and Drug Administration
Rockville MD 20857

DATE: December 20, 2005

TO: Sheila Dearybury Walcoff, Esq.
Associate Commissioner for External Relations
Food and Drug Administration

THROUGH: Jenny Slaughter
Director, Ethics and Integrity Staff
Office of Management Programs
Office of Management

FROM: Igor Cerny, Pharm.D.
Director, Advisors and Consultants Staff
Center for Drug Evaluation and Research

SUBJECT: Conflict of Interest Waiver for Terrence F. Blaschke, M.D.

I am writing to request a waiver for Terrence F. Blaschke, M.D., a member of the Nonprescription Drugs Advisory Committee, from the conflict of interest prohibitions of 18 U.S.C. §208(a). The appointing official may grant waivers under section 208(b)(3) where "the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved" and where the individual has made a disclosure of the financial interests at issue. We have determined that you are the appointing official for purposes of section Therefore, you have the authority to grant Dr. Blaschke a waiver under 18 U.S.C. §208(b)(3).

Section 208(a) prohibits Federal executive branch employees, including special Government employees, from participating personally and substantially in matters in which the employee, or any other person whose interests are imputed to the employee under 18 U.S.C. §208, has a financial interest. Since Dr. Blaschke is a special Government employee, he is under a statutory obligation to refrain from participating in an official capacity in any particular matter having a direct and predictable effect on a financial interest attributable to him, his spouse, minor child, or general partner; an organization or entity for which he serves as an officer, director, trustee, general partner, or employee; and, a person with whom he is

negotiating for, or as an arrangement concerning, prospective employment.

Dr. Blaschke has been asked to participate in all official matters concerning discussions of the continued need for the designation of over-the-counter (OTC) epinephrine-metered dose inhalers (MDIs) for the treatment of asthma as an essential use of ozone-depleting substances (ODSs) under 21 CFR 2.125. The committees' discussions will not focus on any particular product or sponsor and are a particular matter of general applicability. This matter is coming before a joint meeting of the Nonprescription Drugs Advisory Committee and the Pulmonary Allergy Drugs Advisory Committee for consideration.

In addition, Dr. Blaschke has been asked to participate in the joint Nonprescription Drugs Advisory Committee and Endocrinologic and Metabolic Drugs Advisory Committee meeting to consider the safety and efficacy of new drug application (NDA) 21-887, proposing over-the-counter (OTC) use of Orlistat (tetrahydrolipstatin) 60 milligram (mg) capsules, sponsored by GlaxoSmithKline Consumer Healthcare, L.P., an associate of GlaxoSmithKline PLC, to promote weight loss in overweight adults when used along with a reduced calorie and low fat diet.

The function of the Nonprescription Drugs Advisory Committee is to review and evaluate available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products, or any other FDA-regulated product, for use in the treatment of a broad spectrum of human symptoms and diseases and advise the Commissioner either on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded or on the approval of new drug applications for such drugs. The Committee also serves as a forum for the exchange of views regarding the prescription and nonprescription status, including switches from one status to another, of these various drug products and combinations thereof.

The Pulmonary Allergy Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms and makes appropriate recommendations to the Commissioner of Food and Drugs.

The function of the Endocrinologic and Metabolic Drugs Advisory Committee is to review and evaluate data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders, and to make appropriate recommendations to the Commissioner of Food and Drugs.

Dr. Blaschke has advised the Food and Drug Administration that he has financial interests that could potentially be affected by his participation in the matters previously described. Dr. Blaschke is a consultant to [redacted] on an unrelated issue, and he receives minimal compensation. [redacted] and [redacted] subsidiaries of [redacted] make [redacted]

In addition, Dr. Blaschke is a consultant to [redacted]. His consulting is unrelated to Orlistat and its competing products. Dr. Blaschke hasn't received any remuneration to date, but anticipates receiving a nominal amount per year. [redacted] distributes [redacted], under license from [redacted] is one of the products that could be affected by the discussions of OTC epinephrine-metered dose inhalers.

As a member of the Nonprescription Drugs Advisory Committee, Dr. Blaschke potentially could become involved in matters that could affect his financial interests. Under 18 U.S.C. §208(a), he is prohibited from participating in such matters. However, as noted above, you have the authority under 18 U.S.C. §208(b)(3) to grant a waiver permitting Dr. Blaschke to participate in such matters as you deem appropriate.

For the following reasons, I believe that it would be appropriate for you to grant a waiver to Dr. Blaschke that would permit him to participate in the matters previously described.

First and foremost, this waiver is justified, in part, because of the general nature of particular matters of general applicability. Dr. Blaschke's participation in the discussions of the continued need for the designation of OTC epinephrine-MDI's for the treatment of asthma as an essential use of ozone-depleting substances will not have a unique and distinct impact on any of his personal financial interests, but rather may affect classes of similarly situated products and manufacturers to the same extent. It is well recognized that particular matters of general applicability pose far less risk of a conflict of interest because they do not focus on any particular product or sponsor.

Second, this waiver is justified because arguably, Dr. Blaschke's interests do not constitute financial interests in the particular matter within the meaning of 18 U.S.C. §208(a). Dr. Blaschke's consults on products unrelated to Orlistat, its competing products, and the products that could be affected by the committees' discussions of the continued need for the designation of OTC epinephrine-MDIs for the treatment of asthma as an essential use of ozone-depleting substances. Nevertheless, in the utmost of caution, I recommend that this waiver be granted.

Moreover, Dr. Blaschke's financial interests are not so substantial as to preclude his participation in the matters described previously. He receives minimal compensation for his consulting.

Further, the Federal Advisory Committee Act requires that committee memberships be fairly balanced in terms of the points of view represented and the functions to be performed by the various advisory committee members and Dr. Blaschke's participation will contribute to the balance of views represented and the diversity of opinions and

expertise. The Committees' intended purpose would be significantly impaired if the agency could not call upon experts who have become eminent in their fields, notwithstanding the financial interests and affiliations they may have acquired as a result of their demonstrated abilities. Dr. Blaschke is Associate Dean for Medical Study Advising, Professor of Medicine-Clinical Pharmacology, and Professor of Molecular Pharmacology at Stanford University School of Medicine. He specializes in internal medicine and clinical pharmacology, with subspecialties in hypertension, antiretroviral pharmacology and drug-drug interactions. Dr. Blaschke's ongoing Stanford research activities involve studies on the clinical pharmacology of drugs used in HIV-infected patients. A focus of his laboratory's efforts in investigating drugs used in HIV-infected patients is to optimize the individual benefit/risk of pharmacotherapy of HIV or opportunistic infections by discovering and quantifying the pharmacokinetics and pharmacodynamics of drugs used in such therapy; i.e., the distribution of individual-specific dose-concentration-effect relationships in the population. Dr. Blaschke's laboratory has a special interest in understanding the relationships between antiviral drug exposure and virologic and toxicological responses. In the past this has lead to studies examining drug-taking behavior in these patients, since exposure is a function of both individual variability in pharmacokinetics and individual patterns of drug-taking behavior. Another interest is drug-drug interactions between antiretroviral drugs and drugs used to treat opportunistic infections, in particular drugs used to treat tuberculosis. Dr. Blaschke is a member of numerous professional societies, such as the American Association for the Advancement of Science, the American Federation for Clinical Research, and the American Society for Clinical Pharmacology and Therapeutics. He is also an associate editor, *Annual Review of Pharmacology and Toxicology*, and on the Editorial Board of *Clinical Pharmacology and Therapeutics*. I believe that Dr. Blaschke's expertise in clinical pharmacology is essential to the committees' deliberations and will help provide a foundation that for developing advice and recommendations that are fair and comprehensive.

Accordingly, I recommend that you grant Terrence F. Blaschke, M.D., a waiver that will permit him to participate in all official matters concerning (1) the committees' discussions of the continued need for the designation of over-the-counter epinephrine-metered dose inhalers for the treatment of asthma as an essential use of ozone-depleting substances under 21 CFR 2.125; and, (2) consideration of the safety and efficacy of new drug application (NDA) 21-887, proposing over-the-counter use of Orlistat tetrahydrolipstatin) 60 milligram (mg) capsules, sponsored by GlaxoSmithKline Consumer Healthcare, L.P., an associate of GlaxoSmithKline PLC, to promote weight loss in overweight adults when used along with a reduced calorie and low fat diet. I believe that such a waiver is appropriate because in this case, the need for the services of Dr. Blaschke outweighs the potential for a conflict of interest created by the financial interests attributable to him.

CONCURRENCE: _____ 12/27/05

Jenny Slaughter
Director, Ethics and
Integrity Staff
Office of Management Programs
Office of Management

Date

DECISION:

✓ Waiver granted based on my determination, made in accordance with section 208(b)(3) that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest attributable to the individual.

_____ Waiver denied.

_____ 12/29/05

Sheila Dearybury Walcoff, Esq.
Associate Commissioner for External Relations
Food and Drug Administration

Date