DEPARTMENT OF HEALTH & HUMAN SERVICES

MEMORANDUM

Food and Drug Administration
Rockville MD 20857

DATE: September 15, 2006

TO: Randall Lutter, Ph.D.
Associate Commissioner for
Policy and Planning
Food and Drug Administration

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

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

SUBJECT: Conflict of Interest Waiver for Janet Andersen, M.D.

I am writing to request a waiver for Janet Andersen, M.D., a member of the Antiviral Drugs Advisory Committee, from the conflict of interest prohibitions of 18 U.S.C. §208(a). The appointing official may grant waivers under 18 U.S.C. §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 208. Therefore, you have the authority to grant Dr. Janet Andersen waiver under section 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 her employer has a financial interest. Since Dr. Andersen is a special Government employee, she 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 her, her spouse, minor child, or general partner; an organization or entity for which she serves as an officer, director, trustee, general

partner, or employee; and, a person with whom she is negotiating for, or has an arrangement concerning, prospective employment.

The function of the Antiviral Drugs Advisory Committee, as stated in its Charter, is to review and evaluate available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome, human immunodeficiency virus related illnesses, and other viral, fungal and mycobacterial infections, and to make appropriate recommendations to the Commissioner of Food and Drugs.

Dr. Andersen has been asked to participate in all official matters concerning the discussion of the clinical trial design issues such as the identification of appropriate control arms, populations for study, endpoints, and long-term follow-up in the development of products for the treatment of chronic hepatitis C infections. These matters are coming before the Antiviral Drugs Advisory Committee for consideration and are particular matters of general applicability.

Dr. Andersen has advised the Food and Drug Administration (FDA) that her employer has financial interests that could potentially be affected by her participation in the matter at issue. **Dr. Andersen's employer, the Harvard School of Public Health, was awarded a federal grant from the National Institutes of Allergy and Infectious Disease (NIAID) to serve as the Statistical and Data Analysis Center for all of the Adult Acquired Immune Deficiency Syndrome (AIDS) Clinical Trial Group (ACTG) studies. Dr. Anderson is involved in the clinical ACTG studies of affected products. She does not receive any personal remuneration or salary support from the grant.**

As a member of Antiviral Drugs Advisory Committee, Dr. Andersen could potentially become involved in matters that could affect her employer's financial interest. Under section 208, she 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. Andersen 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. Janet Andersen that would allow her to participate fully in the matter described previously.

First, with respect to Dr. Andersen's employer's interests in NIAID, it is important to note that she herself has no financial interests in either the drugs or the Firms. Although the financial interests of an employer impute to the individual under 18 U.S.C. §208, generally there is less likelihood that the judgment of the individual will be affected by the imputed interest of an employer than by a personal financial interest.

Second, Dr. Andersen's imputed financial interests are not so substantial as to preclude her from participating in this matter. The funding from NIAID, a government agency, is not substantial in relation to the Harvard School of Public Health's yearly operating budget. For 2005, Harvard received approximately 13 million from NIAID for ACTG studies. Harvard has two Statistical Data Analysis Center locations (Boston and Buffalo), with over — employees conducting over 150 studies for ACTG. For the fiscal year 2005, the Harvard School of Public Health's operating budget was approximately ————————.

Third, the uniqueness of Dr. Andersen's qualification justifies granting this waiver. Dr. Andersen is the only biostatistician participating in this advisory committee meeting as a member. In order to have a balanced discussion of the clinical trial design issues in the development of products for the treatment of chronic HCV infections, a biostatistician is critical to provide input regarding endpoints and related deltas, powering of studies, as well as appropriate comparator arms and treatment durations. In addition, Dr. Andersen's research experience and knowledge of clinical trial design and protocol development makes her uniquely qualified to participate in the meeting.

Fourth, the difficulty of locating a similarly qualified individual without a disqualifying financial interest to serve on the committee also justifies granting this waiver. The division is unable to locate a less conflicted biostatistician with Dr. Andersen's level of expertise in clinical research on HCV-HIV co-infections.

Moreover, this waiver is also justified, in part, because of the general nature of particular matters of general applicability. It is well recognized that particular matters of general applicability pose far less risk of a conflict of interest. Particular matters of general applicability include regulations, legislation, guidelines, points-to-consider, and policies governing classes of organizations, individuals, and products. Particular matters of general applicability do not include particular matters involving specific parties, such as specific grants, contracts, recommendations regarding a specific product, or enforcement matters involving known parties. The committee's discussions of clinical trial design issues such as the identification of appropriate control arms, populations for study, endpoints, and long-term follow-up in the development of products for the treatment of chronic hepatitis C infections will not have a unique and distinct impact on Dr. Andersen's financial interest, but rather may affect classes of similarly situated products and manufacturers to the same extent. While this participation may be covered by section 208, it poses far less risk of bias than participation in matters that relate specifically to a particular firm or organization in which Dr. Andersen has an interest.

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 advisory committee. Also, the committee's 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. Janet Andersen, M.D., is the Executive Director of the Center for Biostatistics in AIDS Research (CBAR) at the Harvard School of Public Health, Associate Director of the Statistics and Data Analysis Center (SDAC) for the Adult Clinical Trial Group (ACTG), Section Head within SDAC for the ACTG Hepatitis Scientific Committee. She received her medical degree in Biostatistics from Harvard School of Public Health. Dr. Andersen's research interests are in clinical trials, protocol development, experimental design and analysis and statistics in biological research. She is a member of many professional societies such as American Statistical Association, International Biometric Society, Meta-Analysis Group in Cancer. Since Dr. Andersen has extensive

experience in design, development, review and conduct of clinical trials of HIV and Hepatitis, I believe that her participation will contribute to the diversity of opinions and expertise represented on the committee and will provide a foundation for developing advice and recommendations that are fair and comprehensive.

Accordingly, I recommend that you grant Janet Andersen, M.D., a waiver that would allow her to participate in all official matters concerning the discussion of the clinical trial design issues such as the identification of appropriate control arms, populations for study, endpoints, and long-term follow-up in the development of products for the treatment of chronic hepatitis C infections. I believe that such a waiver is appropriate because in this case, the need for the services of Dr. Andersen outweighs the potential for a conflict of interest created by the financial interest attributable to her.

CONCURRENCE: /s/ 9/26/06

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

Date

DECISION:

X 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.

/s/ 9/28/06

Randall Lutter, Ph.D.
Associate Commissioner for
Policy and Planning
Food and Drug Administration

Date