DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
Rockville MD 20857

MEMORANDUM

DATE: July 16, 2007

TO: Randall W. Lutter, Ph.D.
Deputy Commissioner for Policy
Food and Drug Administration

THROUGH: Vince Tolino
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 John R. Teerlink, M.D.

I am writing to request a waiver for John R. Teerlink, M.D., a member of the Cardiovascular and Renal Drugs Advisory Committee, from the conflict of interest prohibitions of 18 U.S.C. §208(a). Waivers under section 208(b)(1) may be granted by the appointing official where "the [financial] interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee" 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 John R. Teerlink, M.D., a waiver under section 208(b)(1).

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. Teerlink is a full-time 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 has an arrangement concerning, prospective employment.

Dr. Teerlink has been asked to participate in the discussion of updated information on the risks and benefits of erythropoeisis-stimulating agents (ARANESP, Amgen, Inc., EPOGEN, Amgen, Inc. and PROCRIT, Amgen, Inc.) when used in the treatment of anemia due to chronic renal failure. This discussion follows a March 9, 2007, FDA Public Health Advisory regarding the use of these agents. This matter is coming before a joint meeting of the Cardiovascular and Renal Drugs and the Drug Safety and Risk Management Advisory Committees. This issue is a particular matter involving specific parties.

The function of the Cardiovascular and Renal 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 cardiovascular and renal disorders and to make appropriate recommendations to the Commissioner of Food and Drugs.

The function of the Drug Safety and Risk Management Advisory Committee is to advise the Commissioner of Food and Drugs on risk management, risk communication, and quantitative evaluation of spontaneous reports for drugs for human use and for any other product for which the Food and Drug Administration has regulatory responsibility. The committee also advises the Commissioner of Food and Drugs regarding the scientific and medical evaluation of all information gathered by the Department of Health and Human Services and the Department of Justice with regard to safety, efficacy, and abuse potential of drugs or other substances, and recommends actions to be taken by the Department of Health and Human Services with regard to the marketing, investigation, and control of such drugs or other substances.

Dr. Teerlink has advised the Food and Drug Administration that he has financial interests which could potentially be affected by his participation in the matter described above. **Dr. Teerlink serves as a blinded endpoint reviewer for the ——— in heart failure ——— ——— clinical trial, sponsored by ——— ———. The purpose of this study is to determine whether ——— ——— is superior to placebo in reducing mortality and cardiovascular morbidity, defined as the occurrence of death from any cause or hospitalization due to cardiovascular disease, in subjects with heart failure ———**

[redacted]. [redacted], an investigational erythropoeisis-stimulating product, is a trademark of [redacted].

Dr. Teerlink is negotiating a consulting agreement with [redacted] related to development of [redacted] for the treatment of heart failure. He has no immediate plans for reimbursable activities and has not received any funds to date. [redacted] is the sponsor of [redacted], an investigational erythropoeisis-stimulating agent.

Dr. Teerlink also owns a moderate number of shares in a health sector mutual fund. This fund [redacted] represents less than [redacted]% of his total net worth.

As a member of the Cardiovascular and Renal Drugs Advisory Committee, Dr. Teerlink 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)(1) to grant a waiver permitting Dr. Teerlink 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. Teerlink that would permit him to participate in the matter described above.

First, it is significant to note that Dr. Teerlink's consulting is unrelated to the issue coming before the committees.

Second, with respect to Dr. Teerlink's financial interest in a health sector mutual fund, it is important to consider that he has no influence over the specific investments in fund or the strategies that are employed by the fund manager. It is also important to consider that this fund represents a small portion of his total net worth.

Third, the uniqueness of Dr. Teerlink's qualification justifies granting this waiver. Dr. Teerlink has extensive experience in adult cardiovascular medicine, including vast research and patient care experience. Dr. Teerlink has special experience with echocardiography and vast experience specifically in the diagnosis and management of congestive

heart failure, one of the important risks for use of the erythropoiesis-stimulating agents. In this respect, Dr. Teerlink's clinical and imaging experience is unique among the committee members and his insights and perspectives would provide an in-depth focus upon the congestive heart failure risks for these products.

Lastly, the difficulty in locating a similarly qualified individual without a disqualifying financial interest to serve on the committee also justifies this waiver. Cardiovascular expertise is essential to the meeting, because the adverse events associated with the erythropoeisis-stimulating agents include an increased risk of thromboembolic events. Eight [8] invited cardiologists and vascular medicine specialists whose expertise overlap with that of Dr. Teerlink were invited. Three [3] can not attend, due to scheduling conflicts. Of the five [5] planning to attend, Dr. Teerlink's expertise in congestive heart failure, an important risk with the erythropoeisis-stimulating agents, sets him apart.

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. Dr. Teerlink is Director of the Heart Failure Clinic and Director of Clinical echocardiography at the San Francisco Veterans Administration Medical Center. He is also Associate Professor of Medicine at the University of California, San Francisco. Dr. Teerlink's clinical research interests include the study of the pathogenesis and therapy of heart failure on both an experimental and clinical level. He is a member of several prestigious medical societies including the American College of Physicians, the American Heart Association and the American College of Cardiology. He has given numerous national and international presentations, and has published extensively on various cardiology issues, such as acute heart failure and acute coronary syndrome. I believe that Dr. Teerlink will bring an enormous amount of experience and knowledge that is critical to the committees' discussions and his participation will help provide a foundation for developing advice and recommendations that are fair and

comprehensive.

Accordingly, I recommend that you grant John R. Teerlink, M.D., a waiver that will permit him to participate in all official matters concerning the discussions of updated information on the risks and benefits of erythropoeisis-stimulating agents (ARANESP, Amgen, Inc., EPOGEN, Amgen, Inc. and PROCRIT, Amgen, Inc.) when used in the treatment of anemia due to chronic renal failure. This discussion follows a March 9, 2007, FDA Public Health Advisory regarding the use of these agents. I believe that in this case, Dr. Teerlink's financial interests are not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from him.

CONCURRENCE: /S/ 8/08/07

Vince Tolino Date
Director, Ethics and Integrity Staff
Office of Management Programs
Office of Management

DECISION:

X Waiver granted based on my determination, made in accordance with section 18 U.S.C. §208(b)(1), that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee.

_____ Waiver denied.

/S/ 8/20/07

Randall W. Lutter, Ph.D. Date
Deputy Commissioner for Policy
Food and Drug Administration