DEPARTMENT OF HEALTH & HUMAN SERVICES Public Health Service

Food and Drug Administration
Rockville MD 20857

DATE: October 26, 2007

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

THROUGH: Vince Tolino /S/ 10-31-07
Director, Ethics and Integrity Staff
Office of Management Programs
Office of Management

Michael F. Ortwerth, Ph.D. /S/ 11-8-07
Deputy Director, Advisory Committee Oversight and Management Staff
Office of Policy, Planning, and Preparedness

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

SUBJECT: 208(b)(3) Conflict of Interest Waiver for S. Gail Eckhardt, M.D.

I am writing to request a waiver for S. Gail Eckhardt, M.D., a member of the Oncologic Drugs Advisory Committee, from the conflict of interest prohibitions of 18 U.S.C. §208(a). Waivers under section 208(b)(3) may be granted by the appointing official 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. Eckhardt a 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. Because Dr. Eckhardt is a special Government employee, she is under a statutory obligation to refrain from participating in any deliberations that involve a particular matter having a direct and predictable effect on a financial interest attributable to her or her employer.

The function of the Oncologic Drugs Advisory Committee 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 cancer, and to make appropriate recommendations to the Commissioner of Food and Drugs.

Dr. Eckhardt has been asked to participate in all official matters concerning supplemental BLA 125085/91, Avastin (bevacizumab), sponsored by Genentech, Inc., proposed indication, in combination with paclitaxel, for the treatment of patients who have not received chemotherapy for their locally recurrent or metastatic, HER2 negative breast cancer.

This matter is coming before a meeting of the Oncologic Drugs Advisory Committee. This issue is a particular matter involving specific parties.

Dr. Eckhardt has advised the Food and Drug Administration (FDA) that she has a financial interest that could potentially be affected by her participation in the matter described above. Dr. Eckhardt is a consultant to [redacted] on unrelated issues. [redacted]

In addition, Dr. Eckhardt's employer, University of Colorado Health Science Center, has contracts with [redacted] that are unrelated to the issues to be discussed and the competing products. Arguably, her employer's interests do not constitute a financial interest in the particular matter under section 208(a) since they are unrelated to the issue at hand. Nevertheless, in the utmost of caution, I recommend that this wavier be granted.

As a member of the Oncologic Drugs Advisory Committee, Dr. Eckhardt potentially could become involved in matters that could affect her financial interests. Under section 208, she is prohibited from participating in such matters. However, as noted above, you have the authority under section 208(b)(3) to grant a waiver permitting Dr. Eckhardt 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. Eckhardt that would allow her to participate in the matter described because the need for her services greatly outweighs the conflict of interest created by this financial interest.

First, a main focus of the meeting will be on the primary endpoint of the trial being used to support the resubmission of the supplemental BLA for Avastin, as well a focus on data collection in this trial. Dr. Eckhardt's expertise in the science of clinical trial design and data interpretation will bring necessary expertise to a meeting of this type. Dr. Eckhardt's participation will aid the discussions concerning data collection and interpretation as well as an overall understanding of endpoint determination in clinical trials. Dr. Eckhardt's experience in clinical trial research and developmental therapeutics, prior service as an Oncologic Drugs Advisory Committee member and as a special Government employee consultant to FDA on Phase 3 trial design issues, along with her status as a Medical Oncologist brings a wide range of knowledge to the committee.

Locating similarly qualified individuals without similar or greater disqualifying financial interests to serve on this advisory committee has been very difficult, even after screening all committee members and numerous SGEs. The Division of Oncology Drug Products feels that because of the nature of the issues to be discussed it is imperative that the committee have a sufficient number of members with an expertise in Medical Oncology in order to have a meaningful discussion of the application under review. In an attempt to gain this necessary expertise, the Division along with the Advisors and Consultants Staff contacted 3 other committee members with Medical Oncology expertise. Two are able to attend and Dr. Eckhardt requires a waiver. Two more Medical Oncology experts were invited to the meeting but one was recused through conflict of interest screening and the other possibly less conflicted candidate declined to attend the meeting. Therefore, the Center for Drug Evaluation and Research requests that Dr. Eckhardt be allowed to participate as there has been a genuine effort to secure individual participation and representation with minimal conflict of interest.

Moreover, Dr. Eckhardt's interest in ——— is unrelated to Avastin and the competing products. ——— is a large, well-established firm with multiple product lines and global presence. Given the nature of the unrelated consulting Dr. Eckhardt provides to them, it is unlikely that Committee recommendations will significantly impact the economic stability of the company or her continued relationship with them.

Further, Dr. Eckhardt's financial interest in ——— is not so substantial as to preclude her participation in this meeting. She receives minimal compensation for serving as a consultant.

Additionally, 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. I believe that participation by Dr. Eckhardt in the committee's deliberations will contribute to the balance of views represented and the diversity of opinions and expertise. represented on the committee.

Accordingly, I recommend that you grant S. Gail Eckhardt, M.D., a waiver that would allow her to participate in all official matters concerning supplemental BLA 125085/91, Avastin (bevacizumab), sponsored by Genentech, Inc., proposed indication, in combination with paclitaxel, for the treatment of patients who have not received chemotherapy for their locally recurrent or metastatic, HER2 negative breast cancer. I believe that such a waiver is appropriate

because in this case, the need for the services of Dr. Eckhardt outweighs the potential for a conflict of interest created by the financial interest attributed to her.

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/ 11-15-07

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