Sheinberg, Samuel I.

[redacted]

[redacted]

From: Walsh, Kathryn E.
Sent: Friday, July 19, 2019 1:02:00 PM (UTC-05:00) Eastern Time (US & Canada)
To: [redacted]
Cc: [redacted]
Subject: RE: Request for ISO

[redacted]

Thanks for your patience – we've given your question a lot of thought. You'll be making a filing here, and that will trigger 803.7's one-year timeframe. We think that any option exercised beyond that one year is potentially reportable. That is, the filing you intend to make will not cover the exercise of options beyond the 803.7 one-year timeframe.

Kate

From: [redacted]
Sent: Tuesday, July 16, 2019 1:56 PM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; [redacted]
Cc: [redacted]
Subject: RE: Request for ISO

Kate, et al.,

I am writing to inquire regarding a potential transaction in the pharma space with a set of facts similar to the one set forth below. Based on verbal guidance from Kate subsequent to my email below, we are confirming PNO's current position on these questions.

The parties ("Company" and "Partner") have an existing collaboration agreement pursuant to which Partner acquired certain exclusive licenses from Company, as well as a minority of Company's voting securities, in a transaction for which the parties made HSR filings. Under a new set of agreements, the parties will collaborate on Company's R&D efforts (unrelated to the earlier collaboration), and Partner will have the option to acquire exclusive licenses to the Company's programs once certain developmental milestones have been met. This transaction involves the payment of a sizeable upfront fee by Partner, and additional consideration upon exercise of each option. The term for the agreement (the

period during which Partner may exercise its option to any qualifying Company program) is 10 years from execution of the agreement (extendible under certain circumstances). As before, the parties have also agreed to an equity investment whereby Partner will increase its stake in Company by the acquisition of additional voting securities, with such acquisition not conferring control of Company. For both the collaboration agreement and the equity investment agreement, you may assume at each step that all relevant thresholds are exceeded.

The parties now propose to each make a single HSR filing notifying the agencies of both the equity investment and the potential future acquisitions of exclusive licenses. Based on previous PNO guidance, we believe that once the waiting period is allowed to expire, the parties would then not need to make any subsequent HSR filings for Partner's future exercises of its options for exclusive licenses to Company technology.

Does this conclusion comport with PNO's current views on collaboration and license arrangements in the pharma space?

Thanks very much for your time and help.

Regards,

[redacted]

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