

MEMORANDUM

To: Members of the Authority

From: Caren S. Franzini
Chief Executive Officer

Date: September 24, 2010

Subject: Pfizer, Inc.
Application P32901
Madison, New Jersey

Purpose:

This memorandum addresses the legal matters of Pfizer, Inc. and its affiliates related to the company's application for a BEIP grant.

Background:

Pfizer, Inc. is a research-based, global biopharmaceutical company headquartered in New York with over 100,000 employees worldwide. On August 13, 2010, Pfizer applied for a BEIP grant to support the company's decision to expand in New Jersey. The company proposes to create 225 new jobs in New Jersey over two years. Pfizer's application earned a score of 70% resulting in a BEIP award of an estimated \$9.2 million over ten years.

The business activities of Pfizer and its subsidiaries are regulated by a number of federal, state, and local regulatory agencies including the Food and Drug Administration and the United States Department of Health and Human Services. From time to time, Pfizer and its subsidiaries have been the subject of examinations, inquiries, or investigations by such regulatory agencies, some of which have resulted in the payment of fines or other penalties.

Analysis of Litigation as Grounds for Possible Disqualification:

Pursuant to the Authority's regulations on disqualification (N.J.A.C. 19:30-2.1 et seq), the Authority may decline to give financial assistance, or approval as a tenant in any Authority financed project, or contract with any persons for certain reasons which include: commission of an offense indicating a lack of business integrity; violation of any law governing the occupations or professions of regulated industries; and violation of any law which may bear upon a lack of responsibility or moral integrity.

Listed below are the facts of the regulatory actions, including the company to which it is related and the fine assessed and paid, as provided by Pfizer and reviewed by the Attorney General's Office:

1. In May 2004, Warner-Lambert, a then newly acquired subsidiary of Pfizer, pled guilty to a felony violation of the Federal Food, Drug, and Cosmetic Act relating to illegal promotion of Neurontin for off-label uses and paid an aggregate \$430 million to resolve criminal and civil charges. As part of this aggregate payment, it also agreed to settle claims under the False Claims Act relating to Medicaid reimbursement. The cited activity occurred prior to Pfizer's acquisition of Warner-Lambert. Pfizer entered into a corporate integrity agreement (CIA) in 2002 that addressed various compliance activities and included a review of certain government pricing activities.
2. In April 2007, Pharmacia & Upjohn Company, a Pfizer subsidiary, pled guilty to a felony violation of the Federal Food, Drug, and Cosmetic Act and entered into two separate settlements totaling \$34.7 million. First, Pharmacia & Upjohn Company pled guilty to offering an illegal kickback, specifically, offering \$12.3 million in excess payments on a distribution contract with a subsidiary of a pharmacy benefit manager to improve the formulary positioning of certain drugs. A pharmacy benefit manager (PBM) acts as a middleman between pharmaceutical companies and health insurers and often recommends products to health plans. In this case, Pharmacia offered to overpay a subsidiary of a PBM in the expectation that the PBM would in turn recommend Pharmacia's products. Under this plea agreement, Pharmacia agreed to pay a \$19.68 million criminal fine and was excluded permanently from participation in all federal health care programs. Pharmacia also entered into a Deferred Prosecution Agreement (DPA) to resolve charges that the company promoted Genotropin for off-label uses such as anti-aging, cosmetic use, and athletic performance enhancement. In connection with the DPA, the company agreed to pay an additional \$15 million penalty. For the 36 month term of the DPA, the federal government agreed not to prosecute Pharmacia if it complied with the terms of the DPA. In 2010, the federal government notified Pfizer that it had successfully completed its obligations under the DPA. The activity in question occurred between the years 2000 and 2003, prior to Pharmacia's acquisition by Pfizer.
3. In September 2009, Pharmacia & Upjohn Company, a Pfizer subsidiary, pled guilty to a felony violation of the Federal Food, Drug, and Cosmetic Act relating to its illegal marketing of various prescription drugs. The company paid an aggregate of \$2.3 billion in a global resolution that the company had promoted some of its drugs for unapproved uses including Bextra (from 2005-2008), Geodon (from 2001-2007), Zyvox (from 2001-2008), and Lyrica (from 2005-2008). Also covered under the resolution were claims that the company paid kickbacks to increase sales of numerous drugs from 2001-2005. The global resolution also included a civil component by which Pfizer agreed to pay \$1 billion to the federal government and certain states to settle allegations that the company violated federal and state false claims statutes relating to Medicaid reimbursements for the illegally marketed drugs. This resolution resulted in the company entering into a CIA in 2009 with the federal government which expanded procedures and reviews required by previous CIAs entered into in 2002 and 2004.

Mitigating Factors:

1. The activities by Warner-Lambert, as well as the activities by Pharmacia & Upjohn that were covered under the 2007 resolution, occurred prior to those companies' acquisition by Pfizer.
2. The 2009 resolution resulted in Pfizer entering into a CIA with the federal government that expanded procedures required by the company's 2002 and 2004 agreements. As part of the CIA, Pfizer moved its compliance function from the legal division and created a separate compliance division. The Chief Compliance Officer now reports directly to the CEO and makes regular reports to the audit committee of Pfizer's Board of Directors. The Chief Compliance Officer is now also a member of Pfizer's Executive Leadership Team. In addition, the CIA acknowledged that Pfizer had instituted the compliance

measures described below and required maintaining these measures and reporting to the federal government with respect to these measures for five years. A material breach of the CIA could lead to Pfizer being excluded from federal healthcare programs. To date, Pfizer is in compliance with the CIA.

3. Pfizer's compliance program is in accordance with the "Compliance Program Guidance for Pharmaceutical Manufacturers" issued by the Office of the Inspector General. Some elements of the program were enhanced around the time of the CIA to strengthen Pfizer's compliance efforts.

- a) During 2008, Pfizer revised its policies on business conduct, known as Pfizer's "Blue Book". The effort included input from 150 internal experts, outside counsel and vendors. Physical copies were provided to U.S. staff and comprehensive online Blue Book training is provided throughout the global organization.
- b) In 2009, dedicated full-time Lead Compliance Counsel positions were created and embedded within key business divisions.
- c) With the goal of systematizing the company's corrective efforts, a new Corrective Action group was introduced to the Corporate Compliance division in late 2009. This group is charged with determining and ensuring consistent standards for disciplinary actions across Pfizer.
- d) Beginning in March 2009, Pfizer began a program to issue tablet PCs to sales representatives to aid in sales calls. This program supports compliance related controls by limiting opportunities for policy violation and increasing monitoring of the sales force. This is done through e-signature requirements to verify information requests and sample distributions for doctors as well as enhanced controls related to the presentation of approved promotional materials.
- e) In 2009, Pfizer formed its Promotional Quality Assurance group whose purpose is to review relevant records, such as memorandums and emails, to identify signals for potential inappropriate promotion of Pfizer's pharmaceutical products.
- f) In February 2009, Pfizer announced a plan to publicly disclose its payments to U.S. physicians, healthcare professionals and clinical investigators. Through this initiative, the company hopes that the transparency of key financial transactions will help to support proactive compliance monitoring.

Conclusion:

Staff has performed a review of these regulatory actions with assistance from the Attorney General's Office. Staff has weighed the seriousness of the offenses in conjunction with the mitigating factors presented by Pfizer and staff does not believe disqualification is warranted.

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Prepared by: Kevin McCullough

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - BUSINESS EMPLOYMENT INCENTIVE PROGRAM**

APPLICANT: Pfizer Inc.

P32901

PROJECT LOCATION: 5 Giralda Farms

Madison Borough (N)

Morris County

GOVERNOR'S INITIATIVES:

Urban Edison Core Clean Energy

APPLICANT BACKGROUND/ECONOMIC VIABILITY:

Pfizer, Inc. is a research-based, global biopharmaceutical company that ranks number one in sales in the world. Pfizer was founded in 1849 by cousins Charles Pfizer and Charles Erhardt, and today remains dedicated to discovering and developing new, and better ways to prevent and treat disease and improve health and well being for people around the world. The company has its corporate headquarters in New York City, with its research headquarters in Groton, Connecticut. Pfizer's diversified global health care portfolio includes human and animal biologic and small molecule medicines and vaccines, as well as nutritional products and consumer health care products. Some of the company's most well known pharmaceuticals include Zolofit, Lipitor, Viagra, and Celebrex. Pfizer's stock trades on the NYSE under the ticker PFE and the company's share price is a component of the Dow Jones Industrial Average. The company is economically viable.

MATERIAL FACTOR:

In October 2009, Pfizer finalized the acquisition of industry giant Wyeth Pharmaceuticals and its subsidiaries. As a result of the Wyeth acquisition, Pfizer is evaluating its locations world-wide and determining the feasibility of relocating some of its corporate headcount which at present is heavily concentrated in New York City. Under consideration are locations in Collegeville, Pennsylvania; Groton, Connecticut; and Madison, New Jersey. Management has indicated that a favorable decision by the Authority to award a BEIP grant is a material factor in the company's decision to increase employment in New Jersey.

APPROVAL REQUEST:

PERCENTAGE: 70%

TERM: 10 years

The Members of the Authority are asked to approve the proposed BEIP grant and award percentage to encourage Pfizer Inc. to increase employment in New Jersey. The recommended award percentage is based on the company meeting the criteria as set forth on the attached Formula Evaluation and is contingent upon receipt by the Authority of evidence that the company has met said criteria to substantiate the recommended award percentage. If the criteria met by the company differs from that shown on the Formula Evaluation, the award percentage will be raised or lowered to reflect the award percentage that corresponds to the actual criteria that have been met.

TOTAL ESTIMATED GRANT AWARD OVER TERM OF GRANT: \$ 9,182,250
 (not to exceed an average of \$50,000 per new employee over the term of the grant)

NJ EMPLOYMENT AT APPLICATION: 1,900

ELIGIBLE BEIP JOBS: Year 1 180 Year 2 45 Base Years Total = 225

ESTIMATED COST PER ELIGIBLE BEIP JOB OVER TERM: \$40,810

ANTICIPATED AVERAGE WAGES: \$130,000

ESTIMATED PROJECT COSTS: \$9,803,000

ESTIMATED GROSS NEW STATE INCOME TAX - DURING 10 \$13,117,500

ESTIMATED NET NEW STATE INCOME TAX - DURING 15 \$10,494,000

PROJECT IS: (X) Expansion (X) Relocation New York, New York

CONSTRUCTION: (X) Yes () No

PROJECT OWNERSHIP HEADQUARTERED IN: New York

APPLICANT OWNERSHIP:(X) Domestic () Foreign

DEVELOPMENT OFFICER: D. Johnson

APPROVAL OFFICER: K. McCullough

FORMULA EVALUATION

<u>Criteria</u>	<u>Score</u>
1. Location: Madison Borough	N/A
2. Job Creation 225 Targeted : _____ Non-Targeted : <u> X </u>	4
3. Job at Risk: 0	0
4. Industry: Pharmaceuticals Designated : <u> X </u> Non-Designated : _____	2
5. Leverage: 3 to 1 and up	2
6. Capital Investment: \$9,803,000	2
7. Average Wage: \$ 130,000	4
TOTAL:	14

Bonus Increases (up to 80%):

Located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan	20%	<u>20%</u>
Located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan AND creation of 500 or more jobs	30%	_____
Located in a former Urban Coordinating Council or other distressed municipality as defined by Department of Community Affairs	20%	_____
Located in a brownfield site (defined as the first occupants of the site after issuance of a new no-further action letter)	20%	_____
Located in a center designated by the State Planning Commission, or in a municipality with an endorsed plan	15%	_____
10% or more of the employees of the business receive a qualified transportation fringe of \$ 30.00 or greater.	15%	_____
Located in an area designated by the locality as an "area in need of redevelopment"	10%	_____
Jobs-creating development is linked with housing production or renovation (market or affordable) utilizing at least 25% of total buildable area of the site	10%	_____
Company is within 5 miles of and working cooperatively with a public or non-profit university on research and development	10%	_____

Total Bonus Points:

20 %

Total Score :

Total Score per formula:	14 = 45 %
Construction/Renovation :	5 %
Bonus Increases :	20 %
Total Score (not to exceed 80 %):	70 %



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

SUBJECT: Barclays Bank Plc./Lehman Brothers Holdings, Inc.
Structured Finance Program

DATE: September 24, 2010

Purpose:

Extend the closing date on the transfer/sale of the Lehman Brothers' structured finance assets to Barclays for 60 days to provide time to complete the documentation negotiation. If agreement cannot be reached by November 1, the members will be advised, and, may be asked to consider an alternate proposal at the November 9 board meeting.

Background:

On July, 13, 2010, EDA's Board approved a 2 month extension (until September 22, 2010) to allow Barclays a reasonable amount of time to negotiate the fee and the necessary documentation for the asset acquisition.

Since Board approval in July, staff in conjunction with the Attorney General's Office has been negotiating the documents to effectuate the purchase of the assets by Barclays.

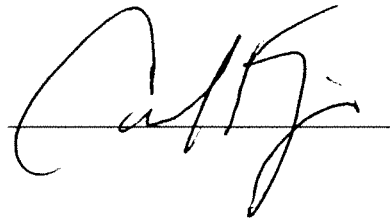
On August 10, 2010, EDA's Board approved Barclays' offer to purchase the structured finance assets and commit to a number of items including but not limited to maintaining a minimum statewide job count, the payment of a reset fee of \$117,829, and making no further purchases under this program.

As recently as this week, Barclay's attorneys have raised issues with perfecting their ownership interest in the assets, and ensuring Lehman Brothers would have no future claims to those assets. Although claims to those assets by Lehman's would involve the resolution of the bankruptcy through reorganization which is unlikely, Barclays is unwilling to sign the documents without further negotiation of same. As a result, Barclays has requested another extension to the deadline be provided to allow time to ensure the agreements with the Authority adequately protect its interests.

Recommendation:

Consent to extending the September 22, 2010 acquisition deadline 60 days to November 22, 2010 to allow Barclays a reasonable amount of time to negotiate the necessary documentation.

If the agreement is not signed by November 1, the members will be advised, and may be asked to consent to a revised proposal which will be presented to the Board for consideration at the November 9th meeting.

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Prepared by John Rosenfeld