

**From:** [Carson, Timothy](#)  
**To:** [REDACTED]  
**Cc:** [Walsh, Kathryn E.](#); [Berg, Karen E.](#); [Gillis, Diana L.](#); [Shaffer, Kristin](#); [Storm, Evan](#); [Whitehead, Nora](#)  
**Subject:** RE: Help  
**Date:** Monday, January 09, 2017 9:54:28 AM

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[REDACTED]

The exemption does not apply based on the facts you lay out. The indicia listed in the SBP are illustrative and not an exhaustive list. Informal Interpretation 0009008 is no longer the position of the PNO, and we routinely receive filings with structures similar to what you describe.

**Timothy (Ty) Carson**

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**From:** [REDACTED]  
**Sent:** Thursday, January 05, 2017 1:49 PM  
**To:** Berg, Karen E.; Walsh, Kathryn E.  
**Cc:** [REDACTED]  
**Subject:** Help

Dear Kate and Karen,

Happy New Year!

I am writing to ask you to please help us confirm that the attached informal opinion reflects the current position of the FTC PNO regarding the application of the Investment Only Exemption and collaboration agreements in the pharmaceutical sector  
[https://www.ftc.gov/sites/default/files/documents/informal\\_interpretations/0009008-informal-interpretation/0009008.pdf](https://www.ftc.gov/sites/default/files/documents/informal_interpretations/0009008-informal-interpretation/0009008.pdf).

As in the attached informal opinion, there are two aspects to our transaction: an equity investment and a collaboration agreement:

1. Company A will acquire voting securities of Company B valued above the \$78.2 MM threshold; as a result, Company A will hold 10% or less of the outstanding voting securities of Company B. (None of the active investment indicia identified in the Statement of Basis and Purpose are satisfied: nominating a candidate for the board of directors of the issuer; proposing corporate action requiring shareholder approval; soliciting proxies; having a controlling shareholder, director, officer or employee simultaneously serving as an officer or director of the issuer; being a competitor of the issuer; or doing any of the foregoing with respect to any entity directly or indirectly controlling the issuer).

2. Company A and Company B will also enter into a collaboration agreement and a data access agreement to use some technology and data developed by Company A or Company B, including, for example, in connection with clinical trials. The general terms of the collaboration agreement are the following: Company A and Company B will grant to each other reciprocal exclusive licenses in their respective fields to use the data, reports, analysis and IP generated (if any) from the collaboration. Under the data access agreement, Company B will grant Company A co-exclusive (i.e., with Company A and potentially other third parties) access to Company B's data for use in the applicable therapeutic field.

There is no separate consideration for the licenses other than Company A's cash payment for the voting securities of Company B.

As in the attached informal opinion, we believe that the Investment Only Exemption should apply.

Thank you as always for your assistance.

Sincerely yours.

A solid black rectangular redaction box covering the signature area.