MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
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ARIZONA CORPORATION COMMISSION

April 8, 2008

Marcie A. Goldstein, Esq.
Davis Polk & Wardwell
450 Lexington Avenue
New York, New York 10017

RE: Roche Holding AG
S-265-NOAC
A.R.S. § 44-1801(21)

Dear Ms. Goldstein:

On the basis of the facts set forth in your letter of March 20, 2008, and Dr. Gottlieb Keller's letter of March 27, 2008, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for failure to register under the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person.

We have attached a photocopy of your letter containing the facts upon which this position is based.

Very truly yours,

MATTHEW J. NEUBERT
Director of Securities

MJN:eb
Attachment

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MARCIE A. GOLDSTEIN
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March 20, 2008

Re: No Action Request relating to Grant of SSARs to Employees of Ventana Medical Systems, Inc.

Ms. Cheryl T. Farson
General Counsel
Corporation Commission
Securities Division
1300 West Washington Street, Third Floor
Phoenix, Arizona 85007

Dear Ms. Farson:

We are writing on behalf of Roche Holding AG ("Roche" or "Parent"), the indirect parent of Ventana Medical Systems, Inc. ("Ventana"), to request the Division's concurrence that the grant of Parent's stock settled stock appreciation rights ("SSARs") and issuance of Parent's shares upon exercise of the SSARs to or on behalf of employees of Ventana does not constitute a sale within the meaning of A.R.S. section 44-1801(21).

Background. Ventana is a company with approximately 950 employees that is headquartered in Arizona. Ventana was acquired by a holding company subsidiary of Parent on February 19, 2008. Under Parent's SSAR plan (the "Plan"), non-transferable SSARs are granted to key employees of Parent and its subsidiaries to increase the ability of Parent and its subsidiaries to attract, motivate and retain highly skilled employees. There are 210 employees of Ventana in Arizona to whom Parent would like to grant SSARs under the Plan. There are employees of Ventana in an additional 18 states who will receive SSARs under the Plan.

Stock appreciation rights are rights to the appreciation in the value of the underlying equity security of the issuer over time. While the stock appreciation rights granted by Parent are settled in shares of Parent's stock, specifically Genussscheine ("Swiss shares"), such shares are not delivered to employees in the

U.S. because there is no trading market for the Swiss shares in the U.S.[1] Instead, the Swiss shares are held by Parent in Switzerland for the benefit of such employees. At the employee's instruction, the Swiss shares are sold on the SWX Swiss Exchange and the sale proceeds are sent to the U.S. employee. The SSARs should not trigger any concern over the development of a market in unregistered securities in Arizona.

Under the Plan, a copy of which is attached, SSARs are granted to selected employees for no consideration. Participation in the Plan is involuntary and noncontributory. Recipients of SSARs do not contribute cash or any other tangible or definable consideration to acquire SSARs and do not pay to exercise SSARs. SSARs are not a substitute for another employee benefit. An employee may not opt out of participation in the Plan in exchange for cash or any other benefit and cannot bargain for the amount of SSARs awarded to them. Employees cannot make any contributions from salary or other sources to acquire additional SSARs or Swiss shares pursuant to the Plan

Under the Plan, unless otherwise stated in the grant notice, the SSARs vest over three years after the date of grant in one-third annual increments. Upon vesting, an employee may exercise the SSARs at any time until expiration (not less than 5 years nor longer than 10 years after the grant date), subject to the employee's continued employment.

Analysis under the Federal Securities Laws. Under the SEC's no sale theory, the grant to employees of SSARs or Swiss shares, upon exercise of SSARs, is not subject to the registration provisions of Section 5 of the Securities Act of 1933, as amended (the "Securities Act") because the grant does not involve a sale, as interpreted by the SEC. The no-sale theory has evolved from SEC releases, particularly Release No. 33-6188 (Feb. 1, 1980) (the "Release"), and subsequent no-action letters of SEC staff (the "Staff").

Section 5 of the Securities Act requires registration under the Securities Act prior to any "sale" of securities. The "sale" of a security is defined under Section 2(a)(3) of the Securities Act as a disposition "for value." While the Securities Act does not define "value," case law indicates that there is a sale for value when (i) a security is exchanged for traditional common law consideration, (ii) the recipient of the security foregoes a benefit or legal right or (iii) the recipient of the security is provided the opportunity to make an investment decision. As described above, employees of Ventana will receive SSARs and Swiss shares at the discretion of Parent and Ventana, without an opportunity for employees to bargain for the amount of SSARs received. There is no investment decision on the part of the employees and the employees tender no value for the SSARs or the Swiss shares. Accordingly, we believe that neither the grant of

[1] Parent is not a reporting company in the United States. None of Parent's securities are listed on any exchange in the United States nor is there any other active trading market in any of Parent's securities in the United States.

SSARs or the issuance of the Swiss shares should be viewed as a "sale" within the meaning of Section 2(a)(3) of the Securities Act.

In the Release, the Staff stated that "[r]egistration serves no purpose where a plan is involuntary, since a participant is not permitted to make an investment decision in such a circumstance." The Staff counted among such plans, stock bonus plans, including, explicitly, stock appreciation right plans, which the Staff defined as "plans under which an employer awards shares of its stock to covered employees at no direct cost to the employees." Section II.A.5(d). In particular, the Staff noted that

> [w]hile the stock awarded to employees under [stock bonus plans] is a security, the staff generally has not required it to be registered. The basis for this position generally has been that there is no "sale" in the 1933 Act sense to employees, since such persons do not individually bargain to contribute cash or other tangible or definable consideration to such plans. It also is justified by the fact that registration would serve little purpose in the context of a bonus plan, since employees in almost all instances would decide to participate if given the opportunity. Similarly, the interests of employees in bonus plans have not been subjected to registration. Section II.A.5(d).

There are a number of SEC no-action letters granted in circumstances similar to those here. For example, in McDonnell Douglas Corporation No-Action Letter, 1986 SEC No-Act. LEXIS 2021 (available April 21, 1986) ("McDonnell Douglas"), the SEC took no action with respect to the proposed grant to key employees of unregistered stock appreciation rights that were payable in cash or stock, at the option of the committee administering the plan. The stock appreciation rights were exercisable, as here, at the discretion of the recipient at a future date after the grant.

In a no-action letter to Verint Systems Inc., the Company, relying on the above-quoted passage from the Release, explained that "[t]he Grants, which will be broad-based, voluntary and non-contributory will be issued under the Plan," and that "because there will be no giving of 'value' by the broad class of participating Verint employees and since there the participants will not individually negotiate or bargain to contribute cash or other definable consideration to the Plan, the Grants will not constitute a 'sale' of securities or an 'offer to sell' securities as such terms are defined in Section 2(a)(3) of the 1933 Act." Verint Systems Inc. No-Action Letter, 2007 SEC No-Act. LEXIS 492 (available May 21, 2007); see also Goldman Sachs Group, Inc. No-Action Letter, 1998 SEC No-Act. LEXIS 852 (available August 24, 1998) and Cookson Group plc No-Action Letter, 1998 SEC No-Act. LEXIS 431 (available March 23, 1998).

In a no-action letter to Midwest Grain Products Inc., the SEC decided that the company's proposed stock bonus to employees who had performed exceptional service to the corporation would not result in a sale for purposes of the securities laws. See Midwest Grain Pro. Inc. No-Action Letter, 1989 SEC

No-Act. LEXIS 1272 (available December 4, 1989). The SEC focused on the fact that "[t]he employee [gave] nothing for value in order to receive the bonus stock." Id.; see also Howmedia, Inc., SEC No-Action Letter, [1971-1972 Binder] Fed. Sec. L. Rep. (CCH) ¶78,479, at 81,030 (Nov. 26, 1971) (issuance of shares as bonuses to reward outstanding service was not a sale).

In ING Groep, N.V. No-Action Letter, 2000 SEC No-Act. LEXIS 1038 (available December 29, 2000) ("ING Groep"), employees could be granted a bonus consisting of (i) a conditional share award – the conditional right to receive a number of ADRs of the company's foreign parent corporation, (ii) a conditional cash award – the conditional right to a cash amount, together with interest, or (iii) a phantom conditional share award – the conditional right to a cash amount calculated with reference to the market value of the number of ADRs comprised in the phantom conditional share award pursuant to the company's involuntary, noncontributory bonus plan. In addition, employees could elect to receive the bonus either in cash (a conditional cash award) or ADRs (a conditional share award); those who elected to receive ADRs were eligible for an extra 10% additional to their bonus award. The awards were "conditional" because their vesting was contingent on the employee's continued employment with the company and certain other conditions. In ING Groep, the Staff granted no-action relief based on the fact that the plan was a noncontributory bonus plan, the employees did not individually negotiate or bargain to contribute cash or other definable consideration to the plan, and there was no out-of-pocket expense or direct cost to the employees in obtaining ADRs.[2]

The fact that the receipt of the Swiss shares is dependent upon continued service should not change the "no-sale" analysis discussed above. Generally, labor can be considered consideration "only in the most abstract sense" and is not deemed to be consideration in the context of an employee benefit plan. See International Brotherhood of Teamsters v. Daniel, 99 S. Ct. 790, 797 (1979); AIL Systems, Inc. No-Action Letter, 1990 SEC No-Act. LEXIS 248 (available February 6, 1990). In the Release and several SEC no-action letters, the Staff has agreed that an employee's labor or services in the context of an employee benefit plan is not deemed "value" or "consideration" unless employees individually bargain to contribute their services or cash or other tangible or definable consideration in exchange for the securities issued under such plans. See, e.g., ING Groep; Digital Communications Associates, Inc., publicly available February 6, 1990. Further, several no-action letters confirm that the award and issuance of

[2] See also Oracle Corp. No-Action Letter, 2000 SEC No-Act. LEXIS 682, (available June 13, 2000) ("Oracle"). Oracle Corporation – UK modified its practice of awarding cash bonuses by adopting a plan under which its employees were given the opportunity to receive shares of common stock in its parent company, Oracle Corp. Participants in the plan did not contribute cash or other tangible definable consideration to the plan and awards were made at no direct cost to the employees. The Staff granted no-action relief based on counsel's argument that the issuances of the parent common stock did not constitute a "sale" or an "offer to sell" under the Securities Act because the plan was a noncontributory stock bonus plan of the sort contemplated by the Release and that registration under the Securities Act of shares issued by the plan was not required because participants made no investment decision with respect to their participation in the plan.

shares pursuant to non-contributory stock plans designed to provide an incentive for continued employment, and which therefore provide for the possibility of forfeiture of the shares (i.e., restricted shares), do not involve a "sale" of a security and therefore the grant of such shares need not be registered under the Securities Act.[3]

Similarly, the employees' ability to choose when to exercise the SSARs should not affect the no-sale analysis. Although an employee granted SSARs would make a timing decision about exercising once the SSARs vest – affecting the value of the SSARs at the time of exercise and the number of shares received – the employee is not contributing any additional value or consideration upon exercise. Consistent with the position expressed in the Release, the Staff has granted no-action relief from registration under the Securities Act for noncontributory plans even when those plans involve a decision that, under different circumstances, could be deemed an investment decision. As stated above, in McDonnell Douglas, the fact that stock appreciation rights were exercisable at the discretion of the recipient at a future date after the grant, and were not paid out automatically on a date set by the committee, did not alter the SEC's no-sale analysis.[4]

Analysis under the Arizona Securities Act (the "Arizona Act"). We believe there are several legal and policy reasons why the Commission should concur in our view that the grant of the SSARs and the issuance of the Swiss shares should not be deemed a sale under the Arizona Act.

Because Arizona's securities law is based on the Securities Act, Arizona courts look to the interpretation of the federal law for guidance in interpreting the state law. See First Citizens Fed. Sav. & Loan Ass'n v. Worthen Bank & Trust Co., 919 F.2d 510 (9th Cir. 1990), Daggett v. Jackie Fine Arts, Inc., 733 P.2d 1142 (Ariz. Ct. App. 1986). Accordingly, since the grant of SSARs and issuance of Swiss shares are not a disposition for value under the federal securities laws, we believe they should not be viewed as a sale under the Arizona Act.

The purpose of the securities laws is to provide investors with the information necessary to make an informed investment decision and to prevent

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[3] See, e.g., ING Groep. See also, e.g., JP Foodservice, Inc. No-Action Letter, 1997 SEC No-Act. LEXIS 680, (available June 13, 1997); Air Wis Services, Inc. No-Action Letter, 1988 SEC No-Act. LEXIS 1607, (available December 8, 1988). In each of these no-action letters, grants of stock were made to employees without consideration or individual bargaining on the part of the employees, but some or all of the stock was subject to forfeiture if the employee ceased to be employed by the company before a certain date. In each case, the Staff granted no-action relief from the registration requirements of the Securities Act based on the no-sale theory, i.e., that the grant was awarded without consideration and required no investment decision on the part of the employees.

[4] See also, e.g., ING Groep (election to receive the value of an award in either cash or ADRs); JDN Realty Corp. No-Action Letter, 1999 SEC No-Act. LEXIS 858, (available October 26, 1999) (choice between receiving dividend of preferred stock or common stock and between receiving cash or common stock and cash or preferred stock).

fraud and misrepresentation in the sale of securities. As discussed above, employees will receive SSARs involuntarily. They are not making an investment decision. Even if they were, as employees, they have access to information about the issuer that would not be available to an outside investor. As stated by the Arizona Court in Jackson v. Robertson, 90 Ariz. 405, 409-410, 368 P.2d 645, 648 (1962), "It is the capacity for harm and danger to the public as well as accomplished fraudulent transactions to which the Securities Act is directed." See also State v. Baumann, 125 Ariz. 404 (1980). Since no consideration is being paid and employees are receiving the SSARs involuntarily, we do not believe the grants raise concerns about fraud. For the same reasons, we do not believe that registration is warranted. In this connection, we note that many of the requirements of registration would be extremely burdensome to Parent, which is a Swiss corporation, with no attendant benefit for employees, particularly the requirement to reconcile Parent's financial statements with GAAP. We also note that the required undertakings with regard to related party transactions are inconsistent with Swiss law. Further as stated above, since Ventana employees will not receive the Swiss shares in the United States, the SSARs do not raise the regulatory concerns normally associated with stock settled rights. In view of the foregoing, we respectfully request that you take no action with regard to the grant of SSARs and issuance of Swiss shares to Ventana employees in Arizona.

Finally, we note that if you were willing to waive the requirement that Parent file financial statements prepared in accordance with GAAP and the size of the offering were limited to $500,000, the offering would qualify for the exemption under Rule R14-4-101 of the Arizona Act. Because Parent is Swiss, it would be prohibitively expensive to prepare GAAP reconciled financial statements. Also, while Parent could restrict the number of Ventana employees in Arizona to whom it grants SSARs, in order to fall below the $500,000 limit, this seems like a harsh remedy in view of the fact that Ventana employees elsewhere are able to receive SSARs.

Should you require any additional information, please do not hesitate to contact the undersigned at 212-450-4739, Jean McLoughlin at 212-450-4416 or Brian Blaney, our Arizona counsel, at 602-445-8322.

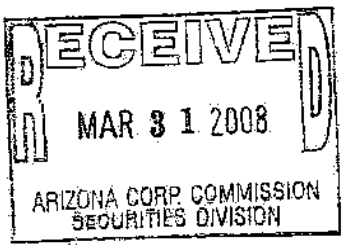
Very truly yours,

Marcie Goldstein

cc: Mr. Matthew Neubert

Dr. Gottlieb Keller
Secretary to the Board of Directors

Roche



Ms. Cheryl T. Farson
General Counsel
Corporation Commission
Securities Division
1300 West Washington Street, Third Floor
Phoenix, Arizona 85007

Basel, 27 March 2008
No Action Request relating to Grant of SSARs to Employees of Ventana Medical Systems, Inc

Dear Ms. Farson:

In support of our no action request and as required pursuant to A.R.S. section 44-1826(B)(7)-(9), please be advised that to the best of our knowledge, the transaction described in the no action request is not directly or indirectly the subject of any pending or final judicial, SRO or administrative proceeding. Further, the transaction described in the request has not commenced. Finally, we acknowledge that the request and supporting documents are public information that may be released for publication, except as otherwise provided by law. In this connection, we understand that the names of the parties are redacted when no action letters are published in the CCH Blue Sky Law Reporters and we accordingly request that the names of Roche Holding AG, Roche and Ventana Medical Systems, Inc. be removed from any such publication.

Should you require any additional information, please do not hesitate to contact Brian Blaney, our Arizona counsel, at 602-445-8322.

Very truly yours,

Dr. Gottlieb Keller