FOOD & DRUG ADMINISTRATION

TRANSPARENCY LISTENING SESSION
WITH REGULATED INDUSTRY

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DR. JOSHUA SHARFSTEIN: (In progress) – in care of the transparency taskforce and why don't we go around and see who's here? And then just I'd just like to give a couple of general comments about why we're here and what we're really looking to accomplish, which is very concrete actually, out of this series of meetings, and what have you. So why don't we start with you, Diane?

DIANE MALONEY: Okay, so I'm Diane Maloney. I'm the associate director for policy at CBER.

AFIA ASAMOAH: I'm Afia Asamoah and I'm a special assistant in the office of the commissioner.

UROS DJEKIC: I'm Uros Djekic, one of the commissioner fellows.

CAROLYN BECKER: Carolyn Becker. I'm in the – (inaudible) – in the office of regulatory affairs.

JOANNE BINKLEY: Joanne Binkley, deputy director, office, communications, CBER.

BRIDGET ROSSITER ELIS: Bridget Elis from the Plasma Protein Therapeutics Association.

ANDREW EMMETT: Andrew Emmett with BIO, the Biotechnology Industry Organization.

JEFFREY FRANCER: Jeff Francer from PhRMA.

ALAN GOLDHAMMER: Alan Goldhammer from PhRMA.

DR. JENNIFER STOTKA: Jen Stotka from Eli Lilly and Company.

MS. : Melissa – (inaudible, background noise) – Center for Drug Evaluation and Research. (Inaudible.)

MICHAEL CHAPPELL: And I'm Mike Chappell, office of regulatory affairs.

DR. SHARFSTEIN: Great. And are there some people on the phone, also?

DR. RICHARD CARNEVALE: Yes, I'm Dr. Rich Carnevale from the Animal Health Institute – and could I ask the volume be turned up a bit? It's hard to hear.

DR. SHARFSTEIN: Sure.

MS. ASAMOAH: Will do.

DR. CARNEVALE: Thank you.

DR. SHARFSTEIN: Anyone else on the phone? (Pause.) Is there anyone else on the phone?

MS. : I think I heard someone from the AABB but we couldn't hear you.

AARON LYSS: Sorry, this is Aaron Lyss from the American Association of Blood Banks. (Pause.) Can you hear me?

DR. SHARFSTEIN: Yup, yes, that's great. Thank you. And –

JANE AXELRAD: Jane Axelrad, associate director for policy, CDER.

DR. SHARFSTEIN: Great, well, I want to thank you all for coming. Just by the way of a brief introduction before we jump in, as you know, we've been working on the transparency effort, now, since about – a little more than six months. And we've gotten a lot of input. We've had two public meetings, had over 900 different types of comments submitted. We've rolled out the first stage of transparency, which is the "FDA Basics" Web site.

And one of the themes that came up during the meetings and in a number of the comments was that there's parts of FDA that are frustrating industry because of lack of transparency. And it relates not so much to the broader transparency issue, but sort of, within the regulatory process, you know, what are reasonable expectations of companies that are seeking approval for things, for example, to understand about their applications at different stages?

And as with all these transparency issues, which are balances, there are obviously balances in this, too, because to get the work done, you know, there are certain things that the agency has to have its own process and integrity to the process to decide. On the other hand, there is a clear interest in having a process that people can understand how it works and what stage they're in and what they need to do to accomplish the next stage, if that's the situation that they're in.

So we felt like we heard that message, but we really didn't have enough of the details and we wanted another chance to hear from industry directly about that and have the chance to ask some questions, as it comes up. And we're – you know, like all these aspects of transparency, we consider this issue very important and we're going to take it very seriously and we're going to listen to the comments that you have very seriously. Afia Asamoah has been the transparency effort leader; do you have anything else you want to mention?

MS. ASAMOAH: No, I think that this will be helpful to help us get a sense of what issues and suggestions you have for the taskforce as we move ahead in phase three, so we encourage you to give us comments that we can consider making recommendations on.

And we also want to let you know the plan is to provide a detailed summary of all the listening sessions we're having in the industry. We'll solicit broadly for comments on that, and based on all the comments we receive from folks. We'll use that to make recommendations to

Commissioner Hamburg in phase three. And I just want to – for folks on the phone, can you put your phone on "mute" for now because we're getting weird interference on this end? Thank you.

DR. SHARFSTEIN: Great. Any other comments by any of the other FDA staff? Then maybe, Afia, do you want to get going?

MS. ASAMOAH: Yes, I think the folks asked about the format of the meeting. I think maybe a good way to begin is to just go around the table to all the industry representatives and give you about five minutes to introduce yourselves and put whatever issues and comments you want to put on the table, and that can serve as discussion for the rest of the group.

DR. SHARFSTEIN: Yeah, and I think from there, it may be that we're going to be asking verifying questions. That's really kind of the approach. Great. Do you have a particular order you want to go in?

MS. ASAMOAH: I do not. Is anyone volunteering?

DR. SHARFSTEIN: Want to maybe just start at this end of the table and go down?

MS. ELIS: I'll go first, sure. As I said, I'm Bridget Elis from the Plasma Protein Therapeutics Association, otherwise known as PPTA. PPTA would like to thank the transparency task force for the opportunity to participate today. PPTA is the international trade association and standards-setting organization for the world's major producers of plasma-derived and recombinant analog therapies. Our members provide 60 percent of the world's needs for source plasma and protein therapies.

These include therapies for individuals with bleeding disorders, immunoglobulins to treat a complex of diseases in persons with immune deficiencies, therapies for individuals who have alpha-1 anti-trypsin deficiency which typically manifests as an adult-onset emphysema and substantially limits life expectancy, and also albumin, which is used in emergency room settings for shock, trauma and burns. PPTA members are committed to assuring the safety and availability of these medically needed life-sustaining therapies.

PPTA supports the agency in its effort to improve transparency, as it is beneficial to both industry and the general public to understand how and why decisions are made. In previous comments to the taskforce, PPTA made recommendations that would enhance policies already in place and allow for greater openness and predictability. Those recommendations are aimed at improving the necessary cooperative working relationship that is necessary for both industry and FDA while increasing public confidence in agency decisions.

PPTA would also like to reiterate previous comments that it believes overall the agency has made efforts to become more open and transparent. There's an abundance of information available on the FDA Web site regarding product approvals, recalls, guidance documents and regulations. To this point, PPTA believes FDA's newest Web-based resource, FDA Basics, will assist the public in better understanding the agency's function and the information already available.

PPTA looks forward to the open discussion that will occur today on how to increase transparency. A recommendation made by PPTA in our previous comments was the development of a real-time submission tracking feature for applications. This electronic system would provide tracking information in real-time that could be accessed by the manufacturer.

Often, PPTA members complain about the unpredictability of the review process or the lack of information available on the status of their application. Allowing the manufacturer to better understand the review process and determine the status of their particular application would alleviate this major concern for our industry and move us closer to a more transparent and predictable review process.

The transparency task force meeting in November focused on soliciting information on when and if the disclosure of information to the public should occur regarding the filing of an application, withdrawal of an application, an agency decision about pending product applications. PPTA strongly supports efforts to improve transparency for all stakeholders. It is important that consumers as well as industry have confidence in the agency that plays such a vital role in consumer protection and safety.

PPTA believes that disclosing information simply to appear more transparent will not assist the general public in understanding agency functions or build confidence in agency decisions. On the other hand, agency efforts like FDA Basics that help explain and provide education on the processes and procedures that occur within the agency will shed light on unfamiliar topics and allow the general public to feel more confident in the decisions that are made.

Currently, PPTA members readily share information with FDA without fear that it will be accessible to competitors, allowing the agency the ability to fully asses a product's quality, safety and efficacy. It is important that as we move forward in this process to create a more transparent agency and consider possible changes to current disclosure practices that a balance is struck to ensure the necessary trust is maintained between industry and FDA. Again, PPTA appreciates the opportunity to participate today and looks forward to the open discussion.

DR. SHARFSTEIN: Great. Thank you.

MR. EMMETT: So I guess I'm up. Again, I'm Andrew Emmett. I'm with BIO, and BIO represents about 1,000 different biotechnology companies in all 50 states. And they're active in areas primarily in health care but also in food and agricultural and industrial and environmental biotech.

And again, thank you for convening the taskforce, for providing BIO the opportunity to testify at the first meeting, to submit comments at the first meeting and second meeting. And we really agree with where you're coming from and appreciate that you recognize that transparency with industry is really a key part of driving biomedical innovation, and ultimately, will benefit patients.

I think that it's very important to consider some of the recent reports that have come out regarding first-time filers and first-cycle review that have noted that some of the smaller, less experienced filers have a much decreased rate of first-cycle approval. And we have done some work with FDA with the office of new drugs to hold some seminars on that and we look at ways that we can increase the first-cycle approval rate for the smaller, less experienced filers.

And as part of the transparency dialogue, I hope you'll consider several areas that we think will move that initiative forward. And a lot of issues in the area of policy, scientific dialogue and consistent regulatory practice. First, in the area of policy, I think that really the heart of transparency is clearly communicating FDA's criteria and expectations regarding approval standards. And through regulation and guidance, this is fairly the best means of communications with the industry.

We do have some concerns, though, that the guidance development process as currently structured can take an extensively long time to get a guidance developed and finalized. And we believe that this sometimes burdensome process can create a disincentive for FDA to develop guidance in certain areas that would really benefit industry and move innovation forward.

So as part of this, we hope that you would take a look at the guidance development process, recognizing that some parts of that are at the OMB level and out of FDA's control. But to review the guidance development process and ensure there are adequate resources and structure provided to facilitate the timely issuance of guidance documents and also to ensure that guidance documents are applied consistency and that the staff are trained on these various guidances. So that's in the area of policy.

In the area of scientific exchange, we consistently hear from our members the importance of meeting with FDA to have that scientific dialogue in that spirit of collaboration in a development program. And we have heard anecdotally that some meetings are not being granted on a consistent basis. And we're currently in the process of serving BIO's membership to gain some additional information about exactly where there may be some potential barriers to granting meetings.

But we would hope that the transparency initiative would look at that as an area where, on a case-by-case basis, there's additional transparency in the scientific dialogue between FDA and sponsors. And we would also hope that as part of that, the taskforce can evaluate how FDA and sponsors communicate within meetings and through the meeting minutes.

You often hear the term "regulatory-speak" to discuss some of the terms that FDA often uses to communicate their recommendations, which, unless industry has the correct dictionary to interpret that, the FDA and sponsor can often just speak right past each other. And in some of the workshops, we've tried to address this issue of more effectively communicating with the – (background noise) – so both FDA and industry can act on them appropriately.

Thirdly, we'd also note that on occasion, we've heard from our members that there are some inconsistencies in regulatory practices across FDA review of issues. And that can really hinder predictability and consistency, which really are a very key part of transparency. And as

part of the 21st century review program, OMB is implementing the good review manage practices across all the review divisions. That's something we strongly support and we'd really like to see continued support from FDA leadership on the task force on further implementing the GRMPs through the 21st century review program.

And finally, I'll just note that in the second public workshop, there was some discussion of FDA's public crisis communication. And as part of that process, we believe that there is an opportunity for FDA-sponsor dialogue to ensure that there are complementary communications approaches in times of crisis or a public health emergency. And we would hope that FDA would provide the sponsor with some notifications prior to a public communication.

Of course, that length of time will be determined on what the public health crisis is, the severity of what the public health intervention is, but we believe that the most efficient means of communication is taking advantage of both FDA's communications capacity as well as the sponsor and manufacturers' communications. And that's the best way to target patients.

So we'd be happy to articulate some of these a little bit further in BIO's comments. I understand there's going to be a comment period open for another 30 days after this. Is that correct?

MS. ASAMOAH: That's correct.

MR. EMMETT: So we'd be happy to provide written comments on these.

DR. SHARFSTEIN: Great, thank you.

MR. FRANCER: Good morning, everybody. I met most of you around the table. I'm Jeff Francer, assistant general counsel from PhRMA. And thank you very much for having this meeting and taking the time to do it. And thank you to Afia for coordinating. She has, I know, put in countless hours on this project. That's very important.

PhRMA and its members are highly supportive of FDA's initiative to make itself more transparent, not only to industry but to consumers, health-care professionals. And we're especially encouraged that FDA intends to improve transparency to manufacturers. I think we all share the goal around this table to help avoid delays that can unnecessarily postpone patient access to new medical products.

And to that end, I'm joined by Dr. Jennifer Stotka, who's vice president of global regulatory affairs for Lilly, who can provide some details for our manufacturers' perspective; and my colleague, Dr. Alan Goldhammer, from PhRMA, is going to provide more details on safety communications. So I just want to hand it over to Dr. Stotka.

DR. STOTKA: Okay. Good morning, everyone. My name is Jen Stotka. I'm a physician and vice president, as Jeff said, of global regulatory affairs at Eli Lilly. I have 19 years of industry experience – 10 of that in regulatory affairs and nine in clinical development. I'm

here today with my former colleagues, and thank you very much for hosting this session. I think they are very important and Lilly is fully supportive of these initiatives.

A key point that I'd like to make regards timely FDA communications during the review process. And I think that the agency could vastly improve its transparency by two ways. One, comparable to what my colleague from BIO mentioned, was issuing or updating the guidance that clarifies expectation and enhances the dialogue. In the 2005 guidance on good review management principles and practices, we strongly believe that that should be updated to include all of the FDOPT (ph) legislative changes, such as REMS.

If this guidance were updated and 21st century process was fully implementing the spirit, and in practices that are just as spotty pilots across divisions, that would vastly improve the dialogue, enhance the scientific exchange and provide better understanding between the agency and the sponsor.

Second, we believe that FDA should consider adopting some new procedures that would facilitate the communications, too, and one of those would be a mid-cycle review. And that would highlight issues that have surfaced during the review process. And we would strongly urge that technical experts, the reviewers, be allowed to participate in these scientific dialogues instead of just having status reports by the project managers.

The project managers at the agency are very good but they don't have the in-depth understanding of the deliberations or the scientific issues, nor do the 74-day letters – when we do get them – have a level of detail that provide the clarity that we need to address the issues. So I think this would provide us with an early course correction to address the issues and move forward very quickly. And with that, I'm going to turn it over to Alan to talk about the safety.

MR. GOLDHAMMER: Thank you. I'm Alan Goldhammer. I've been handling regulatory affairs at PhRMA for just over 10 years now and have seen the transparency program evolve. And I think we certainly believe that this is a key initiative of the current leadership of the agency and I think will go a long way to both helping out the public understand how FDA works as well as sponsors who have license applications or other things before FDA.

I'd like to focus on the communication of safety and efficacy information, which, of course, is key to transparency. It's the critical issue that I think both patients, prescribers and the general public are interested in, and certainly enhanced communication will allow for better understanding and rationale of agency decisions. The agency does a good job, by and large, of communicating decisions. There have been a number of efforts, Web-based efforts, over the last several years to do this.

The larger problem, I think as we see it, is that the same consistency does not exist in terms of communicating the underlying data and analytical methods to sponsors. And you have to remember that the sponsor is the primary custodian of the product and responsible to shepherding that product once it enters into commerce.

And if there is confusion about the FDA analysis versus the sponsor's analysis, it's important that rationale be communicated early so that the sponsor can look at it. And if there is a discrepancy between these analyses, that those can be reconciled. And that's an area where I think that we've been observing has been probably happening more often than we think is useful.

So there needs to be access to data sets, case reports and analytical methods so that the sponsor can then go back in-house, look at how they've approached it, look at their interpretation, and if there is a discrepancy, then meet with the agency to figure out what's the reason for these different interpretations.

The other key thing here – and this has been one that, as you know, has been somewhat problematic in that you've got two offices that are responsible for product management, if you will, within FDA. You've got the office of new drugs, which has the primary responsibility for approving the product; you've got the office of surveillance and epidemiology, which has the primary responsibility once the product is on the market for tracking safety issues and so forth. And we've observed over the last several years that there may be discrepancies between conclusions that the office of new drugs might arrive at versus the office of surveillance and epidemiology.

I know this is a difficult one and as Jane knows, we've certainly had discussions on this; it's arisen during different negotiations. But certainly one area, I think if you were to highlight in terms of working on transparency issues, is on that particular issue, as well. So those would be three of, I think, the key issues as we see it regarding transparency related to safety-related issues.

DR. SHARFSTEIN: Great. Is there anyone else in the room? I think we're going to go to the phones. Okay, maybe Dr. Carnevale? (Pause.) Richard, are you on the line?

DR. CARNEVALE: Oh, hello, yes, I'm sorry. I had my phone on mute. (Laughter.) I'm Dr. Rich Carnevale from the Animal Health Institute. I'm vice president for regulatory, scientific and international affairs at AHI.

And first of all, thank you for holding this session. I'd like to state that AHI and member companies have had an excellent relationship with CVM. CVM personnel have always and readily made themselves available to participate in our industry meetings. So we've had a good and transparent relationship with them.

I would just focus you to our August 7th, 2009 comments. One particular area of frustration that does still remain between the industry and CVM is in the area of guidance development. And in our comments, you will see that our main concern is the unwillingness of CVM to participate in industry discussions at an early stage regarding development.

It seems that some in the center believe that the Administrative Procedure Act, or the good guidance practice regulations prohibit the center from entertaining any discussion with industry even at the earliest stages of guidance development. We think that interpretation is wrong; we think that the center ought to take a more reasonable approach on when a final draft

of the guidance is available. And at that point, clearly, interactions with industry would not be appropriate.

But earlier in that – just because someone has sat down and maybe put pen to paper or even thought about the issue should not preclude the agency or the center from engaging in at least discussions with the industry so that we can at least provide our viewpoints on maybe how guidance ought to be developed. I think the biggest concern is we may not find out for years later that guidance has been under development. And at that time, it's kind of late to have much input.

So I guess that our main concern is the ability of the industry to interact with CVM at an early stage of guidance development. With that, I'll suspend my comments. And again, thank you for allowing us to participate.

DR. SHARFSTEIN: Great. Thank you. And is someone else on from the Association of Blood Banks? I'm sorry I didn't catch the name.

MS. ASAMOAH: Aaron Lyss?

MR. LYSS: (Off mike.)

MS. ASAMOAH: Aaron, can you speak up just a bit? We're having some difficulty hearing you.

MR. LYSS: Yes, I'm sorry. Yes, my name is Aaron Lyss and I am a public policy specialist for AABB, formally known as the American Association of Blood Banks. AABB members include more than 1800 hospital and community blood centers for transfusion and transplantation services, as well as 5,800 individuals involved in activities related to transfusion, cytotherapy and transplant fusion medicine.

AABB is focused on the expansion of science – (inaudible, off mike) – transfusion medicine – (inaudible) – biological therapy in developing programs and services to optimize patient and donor – (inaudible). AABB would like to thank FDA for convening the transparency taskforce. We believe transparency in the FDA is critical to our goal of advancing patient safety and donor care. We appreciate the opportunity to participate in this session and hope that we'll be invited in the future to participate in this type of session.

Of the issues that were discussed so far, I would like to reiterate what I've heard regarding transparency in the guidance development process and guidance publication process. And I think I'll just turn it over from here to the other speakers and continue to listen to these discussions.

DR. SHARFSTEIN: Great. Thank you. Is that everybody, then? Okay, great. Well, I think this is already helpful in terms of hearing about some of the themes but I'm sure we have some follow-up questions. I wanted to see –

MS. ASAMOAH: Is there nobody else on the phone?

DR. SHARFSTEIN: Nobody else on the phone. (Pause.) If there's anybody else on the phone, now is the chance to speak up. (Pause.) I wanted to ask Dr. Goldhammer just to articulate a little bit more about the three areas that you refer to – (background noise) – to safety. The first one I had as the communications safety and advocacy information. And is that in the context – maybe just explain a little bit more about that.

MR. GOLDHAMMER: Yeah, FDA has been struggling in the communication of early stage-safety. And I think that it's been renamed at least three times, like, can't go back –

DR. SHARFSTEIN: Like the early communications.

MR. GOLDHAMMER: Yeah, the early communications. And there were some issues – and we've communicated – we've had discussions with the agency on this that sponsors would basically all of a sudden see something put up on the Web site or an announcement comes from the agency that there's been an early – we've noticed the safety issue with Drug X and we're communicating this to the public.

And the sponsor all of a sudden is getting a bunch of phone calls into the medical affairs office saying, did you know about this? And they're saying, no, we didn't; we found out about it in real-time just like everybody else. And that's part of the problem. And I think that the agency has kind of moved, and I believe the current way this is being handled is on a quarterly basis in maintaining a database.

And there are disclaimers now up on the Web site saying, these are just preliminary safety issues; they may or may not hold up in the long term; please talk to your physician; don't discontinue drugs – which was the big concern because we were observing, a number of patients when this would happen would discontinue therapy. And of course, if it is something that is needed on a daily basis, therapy discontinuation could have potentially dire effects. That's part of it.

The other part of it, I think as I tried to note, has to do with how analyses are done within the agency and that similar analyses are being done at the companies. The companies getting AE reports coming in, they're doing their due diligence on those. They may or may not arrive at a different conclusion than the agency.

But I think, as we've heard from the regulatory people within the companies, is too often, while they get the communication that there is a safety issue, the methodology in the data sets that are used in arriving at those conclusions may not be provided to the sponsor. And so I think what we're looking at is in the efforts to move on transparency there needs to be more work done in that area so that the sponsor can go back.

We're all, I think, fallible to certain degrees. And the sponsor may have overlooked something in analysis or the FDA may have overlooked something in analysis. But unless

there's a sharing of the methods and the data sets, one really can't have an informed discussion in that regard.

DR. SHARFSTEIN: So just to separate these two things, the first one relates to FDA comes out with a safety announcement, people call the company and the company may not know what it is or what it isn't. And the issue you're raising is separate from whether it's right –

MR. GOLDHAMMER: Yes. Two separate issues.

DR. SHARFSTEIN: – that an early notice you could pair to be able to be engaged in this issue when it hits the public would be. That's the point you're making.

MR. GOLDHAMMER: Correct.

DR. SHARFSTEIN: And just in terms of that point, what kind of time frame would you – just to get a sense of what you're recommending.

MR. GOLDHAMMER: You know, I have to get back to you and look at what our correspondence on that said. It was either 24, 48 or 72 hours, and I'm not sure which of those it was. (Chuckles.)

DR. SHARFSTEIN: Right, a multiple of 24.

(Off-side conversation.)

MR. GOLDHAMMER: It was clearly a multiple of 24 but a small multiple of 24.

MR. FRANCER: It's basically a time where the internal folks can start to look at the data and they have to instruct call centers how to respond to calls.

DR. STOTKA: And deal with other stakeholders, too; investment communities, the media, the press, and the international community global regulators.

DR. SHARFSTEIN: The analysis question is, I think – both the issue you're raising is kind of part transparency and part scientific, but maybe a scientific issue – (inaudible). And then your last point was that there are sometimes differences between OND and OSE on particular issues. Could you make the connection between that and transparency?

MR. GOLDHAMMER: Well, I think it's a bit of a black box. I can remember during the discussions when the FDAAA was being worked on in Congress that there was a fair amount of discussion about whether OSE should be given increased authorities or powers versus OND. And I know FDA is still working through this.

I've had conversations with Dr. Woodcock and others over the last year or so on this as things are put into place in terms of making sure there's compliance with FDAAA. And it's part

of a larger – I think in our minds – bigger issue because you've got separate groups with separate responsibilities.

And it goes to the whole equation of benefit and risk. And we've been very careful at PhRMA – since I'm usually the one that does almost all the media outreach on this – to very carefully point out that there's no such thing as a risk-free drug, including over-the-counter drugs. Over-the-country drugs have certain risks; they're usually deemed to be of a minimal nature, which is why they can go over the counter, but still, patients need to be made aware of those.

But the larger issue, as we see it, is that you can't make a safety decision in the absence of considering what the benefit of the drug might be. Now, there may be – and there certainly have been cases in the past, where safety decisions have clearly outweighed benefits. Now, that can be dealt with in a number of ways, by changing labeling, putting in place – now that you've got REMS authorities – doing that.

One would hope that taking things off the market is, really, only a very last effort, and only done, you know, if there's really a sound reason to do so – that you can't assure ongoing safe use. But that being said, you've got these two offices, each which have different mandates, and I think, in our view, there's somewhat of a lack of transparency there.

DR. SHARFSTEIN: So you think – I'm just – I'm really trying to – oh, go ahead?

DR. STOTKA: I was just going to add to some of the things Alan was saying. When there's the OSE-OND divergence of opinion, basically, it makes it harder for each individual company, because we never know what's the basis of the decision. How are factors being weighed? What factors are being included?

With consultations from other parts of the agency, we often don't even get access to those to know what other people are thinking, to inform the decision, or how the government's process is made. And also, these are the decisions that tend to be revisited over and over and over again. And so that arena, as Alan said, is a black box; it's very opaque. And so we would appeal for strong governance and clear decisions that aren't revisited.

Now, don't get me wrong; you know, we do think that people need to have a strong voice and all voices must be heard, but at some point, you have to declare and end to the deliberations and we get in these do-loops (ph) constantly, of revisiting the decisions. And so – well, as Alan also said, we would really like to promote the benefit-risk framework, too, because that would give us a solid framework from which to work and convey and communicate decisions.

MR. EMMETT: And I'll just add, with respect to OSE, I understand there have been some instances where OSE has harbored safety concern and has not raised it at meetings with sponsors, and it's really come up at the 11th hour, at the very end of the review process. And that really prevents the sponsor from responding to their concerns in a timely way, when there's no transparency between the sponsor and FDA regarding that safety concern, unless they raise it early enough in the review process.

ANN WITT: Can I just try to get some clarification? Are you asking, in part, for FDA to explain how FDA – well, not FDA – CDER is going to reconcile divergent views between OND and OSE?

DR. STOTKA: It would be very helpful to understand that process. If there's a group that comes together and a decision is made, if that could be communicated effectively – and what the basis of the decisions were, because oftentimes, we're asked to implement a decision, yet we don't understand the methodological approach, the analyses, the decision. And it's very divergent from our own, yet we're the ones that have to implement it and explain it to our stakeholders and customers. And so that whole process needs to be more transparent.

DR. SHARFSTEIN: It sounds like there are two separate issues you're raising. One is sort of an FDA basics for industry, because it sounds like you're not quite clear on how these decisions are made within the agency, right, which is just, you know, regardless of any individual case. And then, in an individual case, you're raising the question of, I guess, what different groups within the agency –

DR. STOTKA: Clarity of the procedures and access to the analyses. I mean, many times, when we're working with divisions, they're like we're not obligated to share anything with you; we don't have to share what oncology counsel told us in cardio/renal. Get it through FOIA – you know, years later. It's not helpful.

DR. SHARFSTEIN: And just for my understanding, like, what kinds of things would come up? This would be, like, a labeling change discussion, or what sorts of scenarios would this –

DR. STOTKA: It could come up in many different scenarios. Commonly, during the review process, if a reviewer has an issue that's identified – I'll give you a couple of examples. A reviewer says, you know, I think I see a cancer signal. I need you to go back to you site and collect more data on 300, 500 patients. And there's no governance body by which you can say, does this really make sense? Is it statistically valid?

And you end up – if you're going to argue that or you're going to implement it, either one is going to take months to do. So it could be on data collection; it could be on labeling changes, where somebody thinks they see a signal, or there is a valid signal, and we have a dispute. What are the analyses? What data set did you use? How did you cut it? Why are we reaching different conclusions? So liver issues, cardiovascular issues, a lot of times safety issues.

MR. GOLDHAMMER: I think that there are some things that we can point to, as to where things are working well. We met with metabolic and endocrine five months ago, now – you know, a dialogue session with them to talk about cardiovascular assessment because clearly, some of the type 2 diabetes drugs have high-profile – there were cardiovascular issues with some, but not all, of them. And the question is, do you routinely build into your preclinical and clinical program CV assessments for these categories of drugs?

So we had a very good meeting. One of the things that came out of it was – the consulting physician from cardio/renal there – was that some of definitions that people are using for adverse events may not be useful, in terms of using those during clinical development, to do these kinds of assessments. So they set up a separate work stream, and there were some physicians from industry, from academia, that were involved. We had a meeting in, I want to say, early November with stakeholders from all sides – academia, industry and the FDA – to discuss and work through these things.

That's being done. And I guess to get to a point where somebody was talking about early-stage guidance development, this ultimately will end up in a guidance. So there was clear outreach to all of these stakeholders to look at that. And that's something that we can't stress hard enough, that, that is a good model to work from. And at the early stages, you can get in and say, okay, this won't work, that won't work, and then FDA can come up with a better draft guidance. And that addresses part of the transparency problem because then you can say okay, well, here's part of how decisions will be made, if this guidance is followed.

It doesn't address, I think, the other point that Jen made, and that's at the end of the day, you know, there may be different interpretations of how a decision has been made, even though the core, raw data may have been the same in each case. But you know, somebody took Road A to get to an answer; somebody else took Road B. We don't know. One might be the right one, one might not be the right one. FDA's might be right; the industry's might be right. But unless you are prepared to have a sharing of that information, then it becomes important.

And I think in the current framework where REMS can be used both preapproval and post-approval, you're in a very much different state than you were pre-2007, because you've got, now, these firm authorities to do all this. But we still have to remember, you know, to do it right from a benefit/risk perspective for both physicians and patients.

DR. SHARFSTEIN: Well, I certainly think that, as far as – that's helpful – as far as the general questions that you think need clarification – that's your, you know, have a chance to communicate with us after the meeting if there are particular questions. It would be helpful to know the specific questions, you know, in general. When there's a dispute about whether an additional safety evaluation is necessary, how does that get resolved? You know, questions like that, I think, would be very helpful to have so people understand the process. Other questions?

MS. AXELRAD: I'll ask a couple. I take it that you would like to have the sharing of information before the approval, and that the fact that something might be – you would certainly have some access to the staff's reasoning, in terms of analysis, if the drug is presented to an advisory committee, which most NMEs are. So you would have that public window on our thinking anyway.

And also, once the approval package is put together, presumably the different opinions of whoever was weighing in would appear in the approval package, which gets posted some weeks after approval – you know, eight or 10 weeks after approval. So I gather, since you're asking for something else, you would like some sharing of information earlier than that – I mean, for approval?

DR. STOTKA: That gets to the point on the mid-cycle reviews. Instead of having just communiqués or a project manager status report, if you could actually get the people in the room – the scientists in the room, the clinicians in the room – and say, these are the issues that have been identified; what's the best course of action that we could address these, that we understand, clearly, each other, what we're dealing with, so that we're taking definitive action as early as possible to answer the questions, that would be the most helpful. So yeah, it gets to the essence – the scientific debate, the scientific dialogue.

MS. AXELRAD: I'm sure, in part, that's a matter that will be taken up in PDUFA V, because it's clearly a resource –

MR. GOLDHAMMER: Put it up on the – put it on the table. (Laughter.)

MS. AXELRAD: Yeah, I already took down – (inaudible, laughter) – anything, I'm sure that I'll be hearing about it.

(Cross talk.)

MS. : – context of transparency if we don't deal with it in transparency.

MR. FRANCER: Right. But it's not necessarily a PDUFA issue. I mean, it could be solved without PDUFA.

MS. AXELRAD: Well, it could be if we had the resources to have a mid-cycle meeting with everybody and finish enough of our reviews that we would be able to communicate on what the issues are at the midpoint, which is hard – I mean, it's hard enough to identify by the endpoint, let alone by the midpoint.

DR. STOTKA: Well, we may solve the problems earlier, though, and not have to go to an advisory committee and, in the end, you may save time. So if you address – instead of letting these things –

MS. AXELRAD: Well, we don't take things to an advisory committee just for a dispute; we take things to an advisory committee for other purposes.

MR. GOLDHAMMER: But you know, that was the paradigm, at least in the early era, of approval of HIV drugs, where there was – you know, one could arguably say that was a public health emergency because even after we got AZT and the first couple approved, they weren't the best drugs, in retrospect.

And I think there was the recognition that we did need to take a bold stance, both from the perspective of the industry and the FDA, to make sure that things got in and out in a very timely manner. And I think if you look at the history of Crixivan and other HIV therapies, there was an incredibly interactive NDA period. And that put – and I will grant you, you know, it

stressed the agency, but it also stressed the sponsor. Because I think in return for that, I know with one company – because I asked them – they got a very quick approval.

And they said you wouldn't believe – we had to give some of our key medical people two months leave because they were so stressed because we had guaranteed the FDA that when we got a question back, there would be a 24-hour turnaround in terms of an answer. So you know, there's a resource implication on both sides.

And I'm not sure – and this is me speaking personally, not on behalf of PhRMA – do we restrict something like this only to NMEs, or is it more broad? I mean, this might be a discussion we have during PDUFA to really look at the resource implications and how one might do it. But it is something that did work in the past.

MS. WITT: Is this more of an issue in the preapproval context than the post-marketing safety issues that arise?

DR. STOTKA: It is and it isn't, and let me just clarify that. You know, sometimes, if we just have access to the data and can have one telephone call with a technical expert, it doesn't take, you know a meeting. It gets basically to the data access. Sometimes it takes more people to deliberate with OSE and OND; it depends on how many of the internal and external stakeholders are involved. So it can be either, but it is, in my mind, more the preapprove thing.

MS. AXELRAD: Following up on some of the comments about the guidance development process, we have good guidance practices, and in good guidance practices, we invite the agency to give us suggestions for guidances that would be helpful. And my sense is, that doesn't happen very often. And I think that, you know, your point about the dialogue session about the cardiovascular assessments for diabetes drugs – I think that it would be helpful if we had a mechanism by which people would more routinely suggest topics like that.

You know, we have to sort of come to the conclusion among ourselves that something is enough of an issue that we want to have a dialogue session or we want to do a guidance on it. But I think industry, who might see issues coming up frequently in reviews and across divisions and things like that might be in a better position to suggest topics to us for guidance development.

So do you have some thoughts on how one might do that differently than what we do right now? We publish a guidance agenda that talks about the guidances that we expect to publish in the next year. We have long lists of guidances that are under development, some of which we are involved in workshops and things like that with the industry, doing, I think, adaptive trial designs. There have been issues in, certainly, the liver hepatotoxicity guidances. For the very big ones, we are already engaging in discussions with the industry.

MR. GOLDHAMMER: We have – certainly in the time I've been at PhRMA – made proposals to the agency. It may be, probably, less frequently than perhaps might be optimal from the agency's perspective. This is certainly, I think, a good issue for us to take back in house and mention to the regulatory and clinical people, to look across some of the various divisions. And

you know, we can certainly take the regulatory agenda that you've published and say okay, does this line up with things that we need.

We have been quite active with the anti-infectives division. I think I spent almost all my time last year speaking at advisory committees that Ed Cox was putting together on that. I know I think we spoke at three advisory committees on various topics there. So that is one area where, I think, there's been a lot of engagement. There may be some other areas where there haven't been. I think it would be useful for us to go back and survey people.

It may be the feeling is, in some of the divisions, you know, the existing guidance is maybe all that's needed. Certainly, some of the hot areas, we're well aware of – we've been engaged with the agency, again, in CV assessment – have had talks and had a long history of that in anti-infectives. I think in oncology, we've also been engaged. But those would be, certainly, the four key areas right off the top. There may be others that would warrant us going back and taking a fresh look. So I've got that as an option.

MR. EMMETT: Yeah, we'll take a look and, you know, I think that, when coming out with the guidance agenda, there might be an opportunity for public comment, either prior or after the publication of the agenda, or some sort or workshop around some of the suggested guidances. But I think what also might be helpful is some additional information on where each of those guidances stand, and essentially a progress report.

Because you often look at it and see a number of guidances that have been on there four or 5 years and, you know, you don't feel the need to engage because they haven't particularly moved. But if you see, oh, there's been A, B and C meetings facilitating the scientific dialogue on this topic, it might engage stakeholders a bit more.

MS. ELIS: And I also think it's also an improvement to the actual process because a lot of them stay in draft form for such a significant amount of time, you're not really sure, have a clear picture of what the FDA's – if you want to say – current thinking or thoughts – whatever the term is now. But I think, at least for the members of PPTA, that's the thing, is you send in comments to draft guidance documents and then you don't hear anything back, and they stay in draft form.

And it's not until a draft guidance is actually finalized that you get a clear picture of the policies that are being set forth. And then you'll have a reviewer have a draft guidance and wants a company to implement it, but then another reviewer doesn't. And I think that's probably where the inconsistencies and the predictability could be improved.

It's really the process of just, maybe if there was a timeframe – I mean, in our comments, we suggested possibly six to 12 months. If a draft guidance was out for public comment, it closes and the final wasn't out for 12 months, you would have to republish it, just because –

MS. AXELRAD: Great. (Laughter.) That would really help us to get them out faster.

MS. ELIS: But information may change in that 12 months. I mean, that's the thing, is we are all part of a scientific community where things and technologies change quickly. And if they're out for a number of years, it can be difficult for companies to truly understand what the policies are, of the agency.

MS. MALONEY: I had just a question picking up on the guidance as well – and you know, we do put out the agenda – but you also talked about the workshops we have and a lot of times have to do – you know, get more background and more information gathering. So I guess one question I have is, how helpful have the workshops been in doing that?

And you pointed, I guess, to one example where it was helpful. And we do have workshops. And again, we're always interested in – you know, it's a common goal. We want to get products to patients; we want to figure out what are the big-ticket items where we can make a difference. So the communication back is really helpful to us, but do the workshops work?

MR. GOLDHAMMER: No, they do. And we have – I can cite one example in 2001. We convened, along with FDA and the American Association for the Study of Liver Disease, a large stakeholder meeting – I think it was like 500 people attended that out at Westfield Conference Center – talking about preclinical, clinical, post-marketing analysis of hepatotoxicity signals.

And we kept that up. We've met – we meet yearly. We've got a meeting coming up in a couple months, right down the road. We're now using the George Meany (sp) Conference Center for that, to continue exploring the scientific issues related to liver toxicity. And I think that activity has been quite useful. I know a lot of the information that has come out of those meetings have found their way not only into guidance, but I think even more subtle than guidance, is how medical reviewers interpret data, which is something that's less tangible than what might be written.

And that's important, because the more that we can have these discussions – and again, as long as the stakeholders – all the relevant stakeholders can come to the table and have input – I think those activities are useful. I think this cardiovascular thing – you know, there's been some hiccups along the way. We're hoping that the input that has – that CEDR has gotten from that will lead to a guidance that we can all then put into place. But that's, I think, where we're looking at heading on this.

I think then what flows out of that are the process issues that are needed within the center to improve transparency. Because just to say that there's a guidance there doesn't necessarily mean that that's the end of the day. We don't want to have a checkbox mentality. Yep, guidance done, guidance done. You know, regulation proposed; regulation finalized. Because there's still – at the end of the day, whether you're in the company or you're in FDA, these are individual or collective, if it's a group, decisions that get made. And one needs to have mechanisms for exploring how those collective decisions get made. And I think that's what –

MR. EMMETT: Yeah, it's important to train on them and ensure that they're applied consistently.

MS. MALONEY: Can I – I just also wanted to ask because, you know, Jane asked this notion of industry can actually develop and submit guidances to us. And the times, in my experience, that, that's happened, I think you actually are walking in our shoes as well, and you understand it's not so easy to get from here to there, and that it actually takes you as long as us to come up – so if you have any secrets to share – (laughter) – you know, we would love to hear them. But truly, that's been my experience when I've watched that. So if you can speak to that a little –

MR. GOLDHAMMER: A good cat herder works. (Laughter.)

DR. SHARFSTEIN: Well, one – I have a question about a couple aspects of the guidance issue. It sounds like guidances exist as a germ of an idea first, and then they get proposed and then they get finalized. So there's an agenda that says where we're intending to do guidances before the draft guidances come out – some of them, at least.

MS. AXELRAD: We used to do a guidance agenda that I think had everything on it, and then we were given direction that, instead, we should have them put things on the guidance agenda that we're going to publish in the next year, I believe.

DR. SHARFSTEIN: But it might be – I mean, obviously, sometimes there are emergency situations and you've got to get guidance out there quickly – but it sounds like it might be useful if there were a way to know more about the status of different guidances, and people could understand the status they're in.

I mean, in my experience, just relatively new to FDA, is that guidance is something that both the industry and FDA really likes to do, and you know, in a lot of circumstances. And having a way to look at it would be possibly a way to know more about it, and also if it is, in fact, a resource issue or other types of issue for the agency, it would be right there. People could see what the challenges facing the agency are.

MR. EMMETT: With respect to the resource issue, I think it's two points. One, ensuring that enough financial or fiscal resources are going towards the guidance development process, but also ensuring that the scientific resources are going to it. And there are really only a handful of reviewers who actually have the expertise to do certain guidances. But at the same time, they also have to do their day-to-day reviewing activities.

So with only 24 hours in the day, there's only so much they can do. And that leads to a bit of a bottleneck within the guidance development process. So I don't know if the answer is bringing more scientists on board to talk about the policy areas or additional reviewers to create the time for those senior reviewers, but it – (inaudible).

MR. GOLDHAMMER: I mean, we did have a discussion, I think both Andrew and Jane know, during the last PDUFA cycle where in, I want to say five guidances that we put in the letter – something around that – where we had identified – and I think the FDA had identified – you know, these key areas for guidance development.

And we had a good discussion within the resources – both financial and people – you know, here's the timeline for getting to these guidances. And there was, you know, a fair amount of discussion – final guidance, draft guidance and so forth – but finally, I think, agreed on an approach forward. And that worked.

I think what we've also got to do, though, as Jane suggested, is go back and look division by division, are we satisfied with the current status quo with regard to guidance? I know in the anti-infectives area, the reason for this plethora of advisory committees is, as you know, an antibiotic may have multiple – in most cases, does have multiple – indications. And that argues for multiple guidance documents. And I think, at one point, the division had 15 or 16 guidances – or 18 – in draft stage, going back to 1997.

DR. STOTKA: They were all issued at the same time – 18, I think.

MR. GOLDHAMMER: Yeah, they all came out at the same time, people commented on them, but a fair number of them – in fact, the majority of them – still have not been finalized. Now, it may be that these are niche therapeutic areas and people are working in that area and you know, just having final guidance may or may not be terribly useful. Certainly, some of the other areas, like community-acquired pneumonia, non-inferiority trials are kind of critical ones, and those are what the advisory committee's dealt with this past year.

And that's one way to do it. And that's fine. It's transparent and certainly, if you do it in an advisory, not only does PhRMA have the opportunity to present, but other stakeholders do, as well. And certainly, I know the Infectious Disease Society for America has been very active because, you know, they're looking at this as a critical area. If we don't get new antibiotics out there, we're going to have resistance problems coming up with no way to treat them.

MS. WITT: I think BIO mentioned, in sort of general terms, that there were inconsistencies in how guidances and other regulatory decisions were being made or applied across review divisions. Do you have specific issues that you want to raise that – where there are things that are being applied inconsistently? And also, how do you see that relating to transparency?

MR. EMMETT: Okay. First, with respect – well, we're still in the guidance development area. And I think you've seen some instances where draft guidances are being applied before they're finalized, or in some instances, they're not being applied because they're not final. So there's really no predictability for the sponsor there, and without any predictability, there's a lack of transparency.

You know, I could take this back and try to pinpoint some exact examples of that. The companies would be happy to provide that. And I'm sure there are plenty of examples of where final guidances, in some instances, haven't been applied consistently. But the other issue with consistent regulatory practices – and my colleagues at PhRMA also mentioned the 21st century review program, which is something we fully support through PDUFA IV, and that's being phased in over several years of PDUFA IV.

And the problem is that a lot of the major milestones within the review process – when the labeling discussions were initiated, when discussion around post-marketing commitments and requirements are initiated, more recently when discussions around REMS are initiated – are really popping up at the 11th hour, at the very end of the review process. And we really encouraged OND and others to establish those milestones a little bit earlier in the review process – a more predictable, transparent approach to when you would see those exact dialogues and exchanges between FDA and the sponsor.

And that enhances transparency knowing when you're going to be initiating that labeling discussion, assuming that you submit a complete application. And so we think that FDA and OND are making substantial progress towards implementing the GRMPs. And those are the type of improvements that we'd like to continue to see.

MS. AXELRAD: I'd like to just make one comment on the issue of applying draft guidances. Sometimes we have a policy that we're already applying across various applications, and the draft guidance is written to document that we're actually doing that and to be transparent about what we're doing and seek public comment. In those cases, we would be continuing to apply whatever principles we put in the guidance at the same time we're getting comments on the guidance. We aren't going to stop applying the principles and approving applications until we finalize the guidance.

MR. EMMETT: The other point I was making is that when a company follows the draft guidance, then the FDA staff may not necessarily agree with what the company has done. That's the – (inaudible).

MS. AXELRAD: Yeah, we know we have issues about that. But guidances are also not binding on either FDA or industry. We have processes in place that if somebody disagrees with what's the express policy, and how to handle that, for both internally and for the company.

DR. SHARFSTEIN: Let me ask about an idea that just came up at the beginning, about having, like, an online way to check the status of the application and you know, where it stands, sort of like Facebook status. (Laughter.)

MR. FRANCER: It could be the next iteration of the transparency blog. (Laughter.)

DR. SHARFSTEIN: Is that, you know – obviously, it's important for companies to know where they are in the review process. Is that something that – I'm curious about the other parts of the industry – how do you react to that, that idea of kind of a –

MR. GOLDHAMMER: You know, we discussed that. And I'm trying to remember when it was – several years ago – and I think that's before there was a level of security in the Internet that there is today. Because I remember at least one of the aspects of the discussion is, could somebody hack into – could a competitor or somebody hack in –

DR. SHARFSTEIN: Right. I mean, the thought crossed my mind –

MR. GOLDHAMMER: Yeah, I mean, that was the issue that came up. I suspect that, that's –

MR. FRANCER: Or another country.

MR. GOLDHAMMER: I think that's probably less of an issue today because we're all comfortable doing commerce over the Internet, as individuals. And certainly, companies do a fair amount –

DR. SHARFSTEIN: Let's just, for the sake of the discussion, assume the security issue – the security issue might tank the whole thing, no question about it. But you know, I mean, if we were comfortable on the security issue, what would it be here?

MR. EMMETT: It would certainly save the project manager plenty of time having to field calls from – (inaudible).

DR. STOTKA: I think more important than the status reports, though, is getting the common understanding of the roadmap up front. And the GRMP guidance does discuss, get a communications strategy and plan together.

You know, is this division going to issue a 74-day letter? Will you have an orientation meeting? When will you start – is it going to an advisory committee? How are you going to share information to get prepared for that? I mean, I think the strategic underpinning is more important than the status reports, frankly. I wish more emphasis was put there.

MR. EMMETT: But you could imagine some sort of electronic system where you have all those milestones laid out in an electronic format and you see a little dot moving along as –

DR. STOTKA: That would be nice!

MR. EMMETT: So I think that would be something that would be helpful.

DR. STOTKA: But get the roadmap established.

DR. SHARFSTEIN: One of the things that I understand, as you talk about the 21st century review process, is a discussion, kind of after the fact, of how things went, you know, or if questions come up. And is that – so we've talked a lot about in-advance safety communications, in-advance other things; but is there any thought about the issues that would be helpful to understand after the fact – that, you know, FDA's done X.

You know, it's sort of a general conversation, as I understand it, after the review process, for the 21st century review process. But is that concept something that would be useful in other ways to industry or applied in other settings? I'm just raising that question.

MR. GOLDHAMMER: We did have a discussion of that with OND, and I know that these kind of post-hoc meetings have taken place from time to time over the years. I mean, that's not necessarily a new concept, because I think going back even 10, 15 years ago, there were some divisions that would do that on occasion.

It does offer some advantages, again – you know, to pre-empt what Jane is going to say – (laughter) – there's a resource issue there, both from the company and the FDA, that if you're going to bring people together for what may be a half-day meeting or maybe a full-day meeting to kind of go over, what worked, what didn't work, obviously it's going to have to be addressed, but I think if there are some kind of key lessons learned that can be used by both sides – and obviously, it would be up to the industry sponsor to come back to their trade association and maybe share those.

Because there's going to be some proprietary issues that are going to be discussed that the FDA is not going to be able to universally share. But I think it would also benefit the FDA in terms of, well, we might get – the next application may be similar to this and here's some better ways to do something.

So it is something – it's a useful concept, you know, we'll need to explore. I know that there have been – at least, some sponsors have told me, over the last year, where this has been done on an informal basis. And again, it would be something useful to get back to you as to whether this is something that more broadly ought to be utilized.

DR. SHARFSTEIN: Other questions? Yeah?

MS. BINKLEY: I have a question. As we talk with you – and you've explained to us how you want us to be more transparent – we've also spoken with consumers. And they want us to be more transparent about the IND process, and what INDs are in house, and make more information public about that – for instance, the protocols, the adverse events, the number of patients that have taken a particular product and what the outcome's been, efficacy/non-efficacy – those types of things. And this has been clamored for years. And FDA has always had – now NIH has clinicaltrials.gov – but FDA has always not disclosed that information.

DR. SHARFSTEIN: I want to jump in here because it's a little bit out of bounds for this discussion because we've had, you know, two meetings where we went right at some of these issues and there's been a lot of public comment on them. So I would say – not that we can't talk about it – but I think we want to make sure that we're using the time for phase three of this. And I do think that we had some very thoughtful comments on both sides of the IND issue, that we're – the taskforce is really looking at.

MR. EMMETT: And that's an issue that's under consideration for phase two?

DR. SHARFSTEIN: Phase two, right, exactly.

MS. MALONEY: I just wanted to ask from some of the comments here, I guess about a bunch of different areas that you talked about, in wanting more with the companies, then, in

terms of communicating outside on general issues – (inaudible) – and then communicating outside on specific types of products – how you can get them here to there.

But I just wanted to go back to the one-on-ones. And when you talked about sometimes, in meetings, there might be divergent views being expressed, are you getting, "here's what we think you need to do," but divergent views on the underlying reason for doing it, or are you actually getting divergency (sic) in terms of trying to figure out which path to take?

MR. GOLDHAMMER: Both.

DR. STOTKA: Both.

MS. MALONEY: And this is –

DR. STOTKA: Across divisions.

MR. GOLDHAMMER: Well, and there's a whole other big issue here, and that's whether the special protocol assessment pathway is working as it was designed back in PDUFA II. And I think if you'd ask a number of PhRMA sponsors, the answer to that would be no, at this point in time. And of course, that's when you – you know, if you've got your pivotal clinical study and you want to get agreement on it with the FDA, that is what it was designed for.

And too often, we're seeing that there's disagreement, things go back and sponsors will, on occasion, say it's just not worth continuing to pursue it. We've pretty much got an idea of what we need to do and we're going to go off and do it and we're not going to go through and try to get this protocol agreed to before we start our trials because it's just going to take too long.

DR. STOTKA: But to that point, too, there's a wide diversity of how the special protocol assessments are used across divisions. Some divisions want just a protocol one-page concept sheet, and other divisions want the entire protocol, all the case report forms, before they'll reach and agreement – so vastly different, vastly different.

MS. MALONEY: But I think – are you saying how useful it is to industry – it's not necessarily something that is being completely embraced – the special protocol assessments.

MR. GOLDHAMMER: Well, it was designed, you know, to help both sides – that we can agree on what the program looks like and unless there is a safety issue that comes up or new science that comes up – because everybody agrees, you know, you don't want to have something rigid put into place that sacrifices new knowledge, whether from safety side or from some other aspect of the development program – that, that then serves as the goalpost for both the sponsor and the agency. And if you've met your statistics and so forth, then that's the protocol that gets used during the license review.

What we're seeing is that it's getting increasingly difficult to agree on those for a variety of reasons. I – you know, PhRMA doesn't have any SPAs – doesn't have any products, other

than a lot of hot air, I guess. (Laughter.) But this is what we're hearing. And it is an issue that we hope to take up with Dr. Jenkins at a subsequent meeting.

MR. EMMETT: And I think the issue is that there's not an understanding between FDA and sponsors, across review divisions, what level of granularity is actually needed to reach an agreement on an SPA. And that can lead to multiple review cycles. So some additional common understanding about what level of granularity is necessary for an SPA agreement would be helpful.

MS. MALONEY: But this is – I'm just trying to understand some of this, too. Does some of this go to – you talked about more information, more dialogue. And the more you have that, is there less of a need for the special protocol assessment?

DR. STOTKA: If you can have access to the individuals that are going to be working with you in partnership during the development – that you can get common understandings of the approach, the methodologies, the types of analyses that are needed, it's helpful now. Where it's not helpful is where you have a lot of transition or turnover. And if you have a new reviewer coming in, you know, you don't have something set forth in the special protocol assessment. That's where it was most helpful with – when you were hiring a lot of individuals – and you know, these development programs take years.

DR. SHARFSTEIN: We actually had a meeting recently where we were asking people at the agency who are getting calls from the public, what are the types of calls that they're getting, just to understand – and actually, a lot of the calls that they're getting are from companies not understanding the rules of different things, particularly in the food area, but in other areas, too. And we were talking about how having – one of the outcomes of that will probably some of the most common questions, we're going to start to develop answers to and put up proactively.

But I think that some of the discussion today has been helpful in kind of understanding that there may be some additional things that, just in terms of basic process and having clarity, some of them we may be able to put into a form that could be put up there that everybody could understand. Because it sounds like in some areas that may help us to make sure of whether we do have a clear process, and in others, it might be helpful explaining it so that people don't have to be confused.

So we do have this talk – (inaudible) – and I would definitely encourage you to think on those terms. What we heard, also – that there are specific things within each review process that would be helpful. But this general idea of how these processes are supposed to work – you know, what questions – if you could imagine – if you're looking at FDA basics, which is mainly for the public, if you're thinking like an FDA basics for industry, what would be the kinds of questions that you would want to see up there? That might be helpful for us to see that on the docket.

MR. EMMETT: At this time, do you have a general timeframe for how – when you'd like to roll out phase two, and ultimately, phase three?

DR. SHARFSTEIN: Sure. What we've been saying is that phase two is going to be in the form of a draft for public comment. That's what we've been saying. And we anticipate that, you know, ballpark, end of February. And then we would hope, maybe on the order of a couple months later, to be going to phase three.

And you know, some things might not need public comment, but just explaining something. Like FDA basics didn't need public comment. But if there are parts of this which would change our process, where we're doing something different, we probably would do that for public comment for phase three, too.

MR. FRANCER: I was wondering if I could just make one more, kind of, summarizing point in a minute or two. Going back to the discussion we had before about PDUFA, I think this project is great, as a matter of good governance. And I think one thing that we all agree on is that neither the review process nor post-market safety issues should be a game of "gotcha." And we understand the need for resources when reviewers have to go beyond what they may be expected to do in terms of meetings.

But we hope that we and the agency can try to think creatively about what can be done within existing resources – and I think three suggestions that come up during this meeting is, number one, notifying sponsors 24 to 72 hours before the agency is going to make an early communication. That list clearly takes time to develop and then it goes out on the Web. I don't think it's an added expense to at least give the sponsor a heads up so that they can prepare for phone calls, et cetera.

Secondly, when the clinical review team is going to ask for additional data, whether it's additional clinical trial data or whatever, they should be ready to provide their rationale for doing so. And I don't think – they already have a rationale, so it shouldn't take additional resources to be able to provide it to the sponsor, especially given that, that does create a real expense, both on the health-care system during clinical trials and, obviously, to the sponsor during the development process.

And then finally, during the review process, when the team recognizes a significant issue – when the application is in hand – try to communicate it as soon as possible, whether it's a 72-day letter or whatever. It doesn't have to be a full-blown meeting, but try to give the company a heads up so that the company can try to begin to address it and avoid what many people are saying are now 11th-hour communications. And we're happy to put that in writing, if you'd like it.

DR. SHARFSTEIN: Sure. I think you should. That's helpful.

MR. FRANCER: And we really appreciate you having the meeting. It's been a very frank, and I think valuable, discussion.

DR. SHARFSTEIN: Good, okay. Anybody else want to make any final comments? All right, well, let me thank you all for coming and dialing in. I really appreciate it. And you know, the docket's open. This session will go on the docket and will be looked at very seriously.

MR. GOLDHAMMER: Good, thank you.

MS. AXELRAD: Thank you.

MS. ELIS: Thanks.

(END)

FOOD & DRUG ADMINISTRATION

TRANSPARENCY TASKFORCE LISTENING SESSION WITH REGULATED INDUSTRY

MODERATOR:
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PRINCIPAL DEPUTY COMMISSIONER, FDA

AFIA ASAMOAH,
COORDINATOR, FDA TRANSPARENCY INITIATIVE

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RICAHRD EATON AND STEPHEN VASTAGH;
MEDICAL IMAGING & TECHNOLOGY ALLIANCE

JEFF SHUREN, LYNNE RICE AND NANCY STADE;
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH

THURSDAY, JANUARY 28, 2010
2:00 P.M.
SILVER SPRING, MARYLAND

Transcript by
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Washington, D.C.

AFIA ASAMOAH: For folks on the phone, Dr. Sharfstein will be joining us a little later but he asked us to get started. I think we'll just go around and get a sense of who's joining us today. We'll start with folks on the phone.

JEFF SECUNDA: This is Jeff Secunda from AdvaMed.

STEPHEN VASTAGH: This is Stephen Vastagh from MITA.

MS. ASAMOAH: Great. This is Afia Asamoah from the Office of the Commissioner and I'm coordinating the Transparency Initiative.

CAROLYN BECKER: Carolyn Becker, Office of Regulatory Affairs.

MICHAEL CHAPPELL: Mike Chappell, Office of Regulatory Affairs of the FDA.

RICHARD EATON: I'm Richard Eaton from MITA.

TARA FEDERICI: Tara Federici with AdvaMed.

JANET TRUNZO: Janet Trunzo, AdvaMed.

JOHN MANTHEI: John Manthei from Latham & Watkins on behalf of MDMA.

MARK LEAHEY: Mark Leahey with MDMA.

THOMAS NOVELLI: Thomas Novelli with MDMA.

LYNNE RICE: Lynne Rice with Center for Devices and Radiological Health.

LESLEY MALONEY: Lesley Maloney, Office of External Relations.

NANCY STADE: Nancy Stade, CDRH.

JEFF SHUREN: Jeff Shuren, CDRH.

ANN WITT: Ann Witt, Office of the Commissioner.

MS. ASAMOAH: Great. So Dr. Sharfstein asked me to give a brief update on the Transparency Initiative and where we are in that process. I'll talk a little bit about how the meeting is going to be run today. And then I'll just open it up for folks to begin giving their introductory remarks.

The Transparency Initiative, as you probably all know, was launched this summer. It responds to the Obama's administration's Open Government Initiative. Dr. Hamburg charged Dr. Sharfstein with forming an internal transparency taskforce and the goal of the taskforce is to look at transparency at the agency and develop recommendations in terms of the ways that the

agency can better explain its decisions, make its processes and useful information more readily accessible to the public.

To do so, we decided to solicit public comment. I know some of you attended or participated in one or both of our public meetings. We opened a docket, and also launched an online blog and based on all those comments, we decided to address the Transparency Initiative in three phases.

The first phase, based on a lot of comments we got, was to present basic information about the agency. We launched, earlier this month, FDA Basics. It's a Web-based resource that's geared toward consumers. And the goal is to provide basic information about what the agency does and how it does its work.

The second phase, which we're in the middle of now, is looking at the information that the agency actually has in its possession and looking at the comments that we received with respect to that information and deciding what information should be more – made more readily available to the public, recognizing that all information should not be available and some information needs to be protected, as appropriate.

We're thinking that the recommendations of report with respect to phase two will be released sometime in late February, early March. The third phase is what this listening session is actually part of and its transparency to regulated industry. When we requested comments, we got a lot of comments about the agency's relationship with industry and how we could be more transparent in those relationships.

But before making recommendations on that score, we thought it will be helpful to hear from industry, get a better sense of the issues that should on the table. Once we get that – those issues from industry, we're planning on soliciting comments on those particular topics and the taskforce will make recommendations to Commissioner Hamburg with respect to that – (inaudible).

In terms of the meeting today, we're having these types of listening sessions with all regulated industry: drugs, biologics, foods, medical devices. The thinking was that we get people around the table, and this is an opportunity for you to put on the table the concerns or suggestions you have for the agency in terms of improving transparency to regulated industry.

For the format of this meeting, we thought it would helpful to go around, give people up to five minutes to make introductory remarks and then we'll have an open discussion. Folks from the centers and from the transparency taskforce may ask you follow-up questions or clarification questions to get a better idea in terms of what direction you would suggest that the taskforce take regarding this particular phase of the Initiative and what types of recommendations we should make to Commissioner Hamburg.

We are going to issue a Federal Register notice along with – that summarizes the comments that are being raised by regulated industry and we'll put that out for comment. This meeting, this listening session, is being transcribed. We're also going to make that available.

And once we get all the comments, we will probably be making recommendations a couple months from now with respect to transparency to regulated industry. Any questions at this point?

JANET TRUNZO: I'm trying to understand the process a little bit. You've done this phase two process. You're going to be making recommendations about what information should really be made available to the public. When are those going to be coming out?

MS. ASAMOAH: That, we're aiming for late February, early March.

MS. TRUNZO: And what was – I mean, how did you arrive at these recommendations? Was it based on the information that you received during the public meetings? Was it based on the information from the comments? Internal processes? I mean, can you explain that a little more?

MS. ASAMOAH: Yes. So the recommendations are based on public comment, generally. Comments that we received to the docket, comments that we received to the blog, comments that were made at the public meeting. The transparency taskforce took all of those comments into consideration in making a set of recommendations that will be delivered both to Commissioner Hamburg and put out to the public for comment.

MS. TRUNZO: So these recommendations will be for public comment. They're not going to be set in stone or anything like that.

MS. ASAMOAH: No, no, no. They're going to be draft recommendations, and the point is we want to hear from the public in terms of the direction the taskforce thinks the agency should be moving. But we do want to get comments from folks in terms of whether – comments, suggestions, anything else that they have with respect to those recommendations.

MS. TRUNZO: Sorry, I just –

MS. ASAMOAH: No problem.

MS. TRUNZO: This meeting that you're holding today, you mentioned that you're going to summarize what was going to be said or what will be said at this meeting. And then you're going to put it up for comment?

MS. ASAMOAH: So the thinking is during the – based on all the comments we received, we did get comments that the agency could do certain things to improve transparency to regulated industry, but it wasn't something that we had focused on, we had not posed any focused questions about it. And so this is just one opportunity for us to learn more, basically – in terms of areas that the taskforce should look at, think about, in making recommendations to Commissioner Hamburg.

The thinking is that you start with industry – have you help us identify issues that we may want to consider making recommendations on, and then we put that out for public comment. And hear ideas from the public in terms of what they think about those specific issues. And based on comments from the public and comments from regulated industry, we would issue a report that makes recommendations to Commissioner – again, a draft report – that makes recommendations to Commissioner Hamburg in terms of transparency to regulated industries.

MS. TRUNZO: So these summary comments that will go out for public comment, will it also include the written comments that we submitted to the docket as trade associations?

MS. ASAMOAH: Oh, yes. Yes. This is not separate from those.

(Cross talk.)

MS. ASAMOAH: Yes, we're not giving you more work. We've already put out everything that you have submitted, that is in the public record. We are going to be considering that and that is part of a process. But this is an opportunity for folks to submit comments that did not think of transparency as broadly, including transparency to regulated industry. We just want to make sure that we got all of those comments on the table, also, before we proceed any further.

MS. TRUNZO: Now, are you holding similar processes with any other stakeholders, or is this really focused on regulated industry?

MS. ASAMOAH: This is focused on transparency to regulated industry. We did feel that a good number of the comments were focused on regulated industry, and it was worth having a phase that was dedicated to that. So with that – I'll be available for more questions, but I think it would be helpful to go around the room and start hearing people's remarks, and then we can start discussion. So if you guys don't mind, we will start with people on the phone. Jeff Secunda?

MR. SECUNDA: I have no specific comments. I'm here to support the others'– other – (inaudible).

MS. ASAMOAH: Great. What about Stephen Vastagh? Mr. Vastagh?

MR. VASTAGH: Yes, hello?

MS. ASAMOAH: Yes, hello.

MR. VASTAGH: I was hoping to get a message on the phone, to hear the comments around the room and then to jump in with mine. But I'll be happy if that cannot be done.

MS. ASAMOAH: No, that would be fine. Mr. Eaton, would you mind starting?

MR. EATON: First, I want to thank FDA for holding this meeting. We very much appreciate FDA's recognition that transparency of agency policy and procedure is important. And we're glad that that recognition is there. Transparency is very important to both industry

and FDA: It saves time, helps avoid misunderstandings, clarifies regulatory requirements and we think leads to a more efficient use of resources for both FDA and industry.

My remarks are based largely on a comment letter that MITA submitted November 6th, that you'll see a definite parallel between my remarks and that letter. Due to the crunch of time I'm going to make a few points, very, very briefly, and these are basically examples of some areas where we think FDA transparency could be improved.

The first issue deals with what we would characterize as a lack of responsiveness in terms of, where FDA had requested input from industry on particular regulatory issues, but did not respond to industry. And as an example, I will present – in 2008 FDA had asked our manufacturers to provide some proposals regarding software requirements for 510(k) applications, and we submitted proposals and the suggested process to address these issues in early last year. However, for a number of months FDA – we received no response from FDA at all, and after a period of several months had transpired, the only communication we had received from FDA was that the original contact, with whom we had been dealing, had been changed. And when we spoke to the new contact, we were informed that the software-requirements issue was not a high priority for FDA.

So as a result, no progress has been made, and it's 2 years since this process started, and it's – no forward momentum has happened. As a suggestion, we would like to propose that FDA respond to industry in a timely and efficient manner, particularly if the agency has asked industry to submit proposals and also to notify industry promptly if key contacts who were dealing with particular issues have changed. MITA is very interested in establishing an ongoing iterative process of dialogue on regulatory issues. We think that it's very important to clear misunderstandings and to gain the perspectives of both industry and FDA. So we're very much in favor of that.

The second example deals with a failure to provide the status of the expected date of issuance of documents. And here what I'm talking about is an FDA CADe panel meeting in March of 2008. We had requested that FDA issue a guidance document on CADe. We contributed material to help assist in its development. The expected date of issuance of this document was October 21st of last year, but from the fall of 2008 to the actual date when this draft guidance was issued, FDA had not presented to industry the actual date when they would be issued, and we only learned this from a Federal Register announcement on October the 21st.

In this regard, we think – again, it's critical to keep the channels of communication open. And we believe industry should not need to rely on an announcement of the Federal Register to learn when a guidance draft was issued.

We also think it's important that FDA announce if there's a delay in the issuance of the guidance, and to explain the reasons for the delay, and to state what the expected date of the availability of the guidance would be. The result of all this is that the lack of the FDA guidances on CADe has stopped CADe submissions in its tracks, which is very deleterious to technological innovation and promotion of CADe as a benefit.

We also want to suggest that some of the performance measures under MDUFMA for FDA processing time, for 510(k)'s and PMAs – we'd like to see some kind of performance measures instituted regarding, for example, the number of days pegged by FDA from the expected issuance date of the guidance to the date when an announcement is made that a guidance will be delayed. This would be very helpful to manufacturers in planning product introductions.

The last example I want to give is more a general lack of communication in certain instances. And here my example deals with an FDA radiological device advisory panel meeting on the 17th and 18th of November, which addressed both CADe and mammography issues. Our understanding was that FDA had received the transcript on the 3rd of December, and had reportedly released this transcript for posting on the 10th of December. Notification was given that the transcripts were posted on the 5th of January, but upon review, the mammography transcript which was posted was actually from a 2006 mammography meeting. As of the 7th of January, the CADe transcript of November 18th had not been posted, but was finally posted on the 13th.

The problem here is that the due date for comments on what was raised in that hearing was January the 19th. So in effect, there were like four working days to provide comments. That just isn't enough to prepare and provide thoughtful responses. So in that case, we would like FDA to timely post transcripts of panel meetings and, of course, the transcript which is appropriate to the specific panel meeting should be posted. Errors should be promptly corrected, and transcripts of panel meetings should be posted, but allow stakeholders an adequate time for comment. And four working days, as I mentioned, is not sufficient, really, to fully review a transcript and prepare comments. So I hope I didn't go too far over my five minutes. (Chuckles.)

MS. ASAMOAH: Thank you, Mr. Eaton. Ms. Federici?

MS. TRUNZO: Could we just do – by association? First of all, we submitted two sets of comments to the agency on transparency – comments from the first trial phase, which were dated August 6, 2009, and then subsequent comments on November 6, 2009. So what I propose that I do right now is, I'm just going to pull a couple of points, highlight a couple of points from the August 6th comment and then talk about the general theme of the comments that were submitted on November the 6th.

In our comment on August 6th, I'll pull out three important points related to transparency. First of all, this is in relationship to guidance documents. And before I go through these comments, I do want to express my appreciation for this opportunity. I'm really glad to see that you're holding this stakeholder meeting, that you're giving us an opportunity because sometimes, when you submit written comments, you never really get a chance to talk to FDA about them. You know, you submit them and you just hope that a few people over there might read them. (Chuckles.) But now you're giving me an opportunity to really highlight some of the things in these comments and I like that. So I think this a good – so thank you for that.

We really do appreciate the – we really appreciate the idea of transparency, and just like Rich said, we believe it adds to the efficiency. It's important to both the agency and the industry, and I think there are ways in which it can be improved. And that was the intent of our comment, to really come up with some ideas about how things can be improved. But so I'll talk about those and then November 6th.

First of all, on good guidance practices: It is so important for the industry to have guidance that is current, and tells companies what is expected. Our industry will do whatever is expected of them in order – especially for some of the product submissions – and we sometimes know that FDA makes changes along the way, sets up new requirements. And we do very much appreciate the guidance document development process, and how lengthy that can be, and the challenges internally that you have with doing guidance documents. But they are an important part of the regulatory process and we hope that FDA can continue to try to improve the development of more of those guidance documents.

There's something that we said in our comment that I just wanted to bring up to you. And I've said it before at some other FDA meetings: I know that sometimes FDA changes its current thinking on, maybe, what the requirements are for a certain product type, and companies sometimes find this out, usually during the review process, when the submission is there and we get a request for additional information, or major deficiency. It's important to get that information out as soon as possible, and maybe there might be some sort of interim method by which FDA can do this before the guidance document is finalized. Maybe, like just a "points to consider." It's a way to alert the entire industry of FDA's change in thinking.

This particularly happens probably more in the 510(k) process, because some of the requirements are changing over time. And so I hope that FDA will consider doing something like that, and improving that, or getting the message out. And the other point about when FDA's making changes in its current thinking is that seeking input as early as possible, or finding ways to get input from experts and people in the industry probably will help to, in the end, to create a guidance document that's pretty meaningful.

The second point I wanted to bring up about the comments from August is that, on the 510(k)s, the office of in vitro diagnostics does something with its 510(k)'s that we recommend that the rest of ODE do. And this is their 510(k) decisions summary. This is a summary that OIVD does where it describes, it summarizes the information and the data, or the rationale for the decision of the 510(k). It's actually placed on the Web site. I think a similar process – we made that recommendation in our comment – for ODE to do something like that, would, I think, really create a lot of transparency in the rationale for decisions. I think it would do a lot for those who read those databases to understand that decision-making process that FDA has come up with because it's not insignificant.

And then, one other point in our comment is on recalls, classification of recalls. We mentioned in the letter that sometimes – it would be good to have more visibility to how FDA classifies recalls. Sometimes companies are not quite sure, we don't have any visibility to the health-hazard evaluation, and at the end it would be nice to have more visibility to that.

And the other point we made in this, in recall classification, is that it's very good to have that recall-classification decision – sometimes there's a lag time – so a company may have already conducted the recall, maybe even closed out the recall. But then the recall-classification decision is made. It comes out in the enforcement report, and then the companies get calls from customers saying, is this another recall of the same product that's already been taken care of? So that's the point on that one.

The comments from November really focus on our point that we made – we, and I will say again, that we support the transparency initiative. We think it's a very important initiative for FDA, and we like these opportunities that you're giving us. But as we talk about making information available, readily available to the public, our concern is that we must ensure protection of confidential, proprietary information – commercial, confidential information – and any kinds of information that – trade-secret information.

We go into length about this because we were trying to answer some of the questions that FDA had about communicating negative decisions and the status of those decisions. So I'm not going to go into detail on this because my five minutes is up, but I just wanted to point out that this is very important for the industry to maintain its ability to continue to innovate – is to be able to be sure that its proprietary trade-secret, commercial confidential information is protected. Thank you for allowing me to speak.

MS. ASAMOAH: Thanks, Janet. John?

MR. LEAHY: I want to first echo what Rich and Janet said, and to express our appreciation for another face meeting, but meetings we've had throughout the year, and the public meetings that you've held. I think, as I said, that first public meeting, and afterwards – being able to sit – having those meetings and being able to hear the different perspectives from patient groups and others, I mean, it really does allow you to see issues from all perspectives, and I've actually had some pretty good follow-up conversations with patients' advocates on a one-on-one basis afterwards. So I think they're very helpful, and we appreciate that.

I think, you know, one of the things I'll just flag, and maybe the workload – they can't avoid it, but the fact that, from kind of a process standpoint – again, I think transparency equals predictability. And, you know, we deal with quite a few venture capitalists, a lot of portfolio companies. I mean, these are – I would say that you're seeing kind of small companies, as maybe 10 years ago – these are sophisticated, serial entrepreneurs who've started multiple companies, and they really do have kind of a method to – the VCs and the engineers and the incubators get together, bring it to the market, show adoption and then ultimately, you know, transfer it usually to a larger company to get it out through the distribution channels.

And when you talk to these smaller companies, you know, predictability – that is the singular focus. If they can have milestones, they know how the process is going to work, they say: Set us up, give us the rules, and then we'll work those out. We understand that science isn't always – it can be a moving target, and some things change – but I think as Janet pointed out as well, to the extent that there's a mechanism to provide the latest thinking in real time to these

folks, so they don't hear about it as they're in the queue – I think allows companies to address those situations more quickly.

So I don't know – and we realize that there is red tape associated with putting this up. I think that's certainly an area we would echo with Janet, one, with you know, the confidentiality issue with trade secrets I think that is.

And we want to be as transparent as possible, get the information out there but particularly with smaller companies, we want to be sensitive that this information or sensitive information isn't out there that would perhaps compromise their IP or because unlike the drug industry, we have a molecule and you know, you can get those patents surrounded and really protected, there's a lot of reengineering that can go on in the device phase and so I think that's a practical concern that's a little different than the drug world.

I do want to express thanks because one of the issues we brought up is the need to improve the FDA panel process. I think we talked at length about how right now, both from the panel composition and also the process – there had been a period of time when some of the panel members, you know, weren't, I would say, it was evident that they hadn't read the panel packs prior to the panel meeting.

They were asking questions outside of the scope of safety advocacy. They were asking how about a project should be reimbursed, things of that nature. And we appreciate that some of those comments were heard FDA. I understand that you have gone ahead and started staffing the panels with executive assistants to kind of help train the panel members and that's much appreciated. I think they're continuing to build off that, but I wanted to let you know that you know, it is – you know, the membership is pleased when they raise an issue and you all respond. So thank you for that.

I think, you know, looking forward on some of the issues and this gets to process and the transparency I think, you know, we all understand the 510(k) issue is a big issue for 2010 and I think a lot of us were looking towards you know, the IOM and engaging in that process. And then you know, the February 9th meetings, it was noticed that we're still weighing in on that and then for the February 18th meeting that popped up as well.

You know, two meetings within a 10-day period and by about a three-and-half weeks notice for the February 18th meeting. And these are big issues with a lot of questions. We want to be thoughtful in the response and, you know, maybe there were circumstances out of your control for timing, but I think that's something that, particularly as a small organization and poor John is going to be very busy putting all these comments together.

But we really want to do a good job and we have 230 companies that we represent. We have a lot of VCs who have portfolio companies outside our scope so we want to make our input as robust as possible. We understand there will be changes likely needed to the system and as long as they're reasonable ones, then you know, we welcome that.

But I think that's just something that just from a process standpoint has been a bit overwhelming that we've tried to attack over the last week or so. So looking forward, if there's a way to even maybe keep the docket open a little bit longer or to just space those meetings out because we realize, one, there are two distinct meetings but I think there is a commonality on some of the issues between the two and so that's just something I think I'd want to flag.

And then lastly, again, I think you all have, you know, the quarterly MDUFA meetings that we have kind of keeping us up to speed about performance and new policies that may be on the horizon. It's very, very helpful, but I think – you know and this is kind of a – goes beyond the MDMA, AdvaMed or MITA. I think there are hundreds, if not thousands of companies that belong to none of these organizations. So to the extent that that information can be made readily available to the masses in real time, I think, is important as well.

So, again, thanks for the opportunity. I look forward to continue to engage and again, bottom line is – my perspective: Transparency equals predictability, which is in everyone's interest and I think the extent that you all engage, not only the scientists, the academics, the epidemiologists, but also the industry.

And quite frankly, I think the investment community because I think what can get lost in the dynamic is this forming an alliance between drugs and devices and the models of innovation are much, much different. And I think if we put elements or programs in place that work for the drug side and they can fit in the device side, I'm very concerned about what that will do to this whole innovation ecosystem. So thank you for the time today.

MS. ASAMOAH: Thanks. I'll now turn to the folks on the phone. Do you guys want to make any comments before we open it up for discussion?

MR. VASTAGH: Yes. This is Stephen Vastagh from MITA. Thank you. I'd like to add a couple of points to Richard's discussion of the CADe industry. I'd like to – folks who want to follow up on these matters note a couple of document references where, in more detail, these issues are discussed, namely, the November 17th digital mammography panel meeting transcript, particularly pages 109 to 143 and the November 18th, 2009 CADe panel meeting transcript pages 192 to 227.

In the case of the CADe, the lack of concerns has basically caused the industry to look at – come to a standstill and basically in a point of dying. There have been no products approved since 2006 or cleared. That's compared to the previous 3 years where 10 products were cleared. The industry's near death and one of the witnesses described it as follows – never heard – (inaudible) – statements that I heard today, words like we heard today, we will not have a CADe industry.

It doesn't matter if you are a startup million-, billion-dollar company; if it is not economical, it's not going to happen. And right now, this is on a crash course, on the tipping point of not having these products available to all, page 227 of the CADe hearing.

The point is and the recommendation out of this is that when there is public testimony on the lack of – the devastating impact of delay within FDA and due to the lack of transparency, of no understanding on the part of the outsiders as to the cause of the delay, FDA management should have a process of supervising, overseeing and beginning to look at it in view of the devastating impact that the FDA lack of transparency has caused.

So recommendation one I'm putting forward is to let us know what it is within the FDA that triggers management's review of these issues that are at impasse. The second point that I'd like to make has to do with the digital mammography guidance. We talked a lot about guidance and this is one – another case.

There is a gruesome chronology of it: In May 2006, a radiological device panel recommended the declassification of digital mammography with aids. Total silence until May 2008 – 2 years, industry has no idea what's going on and why the panel recommendations are not heeded. I don't know how to define transparency, but in my mind and in our mind, when you don't know what's going on for a couple of years or more then it's clearly a lack of transparency.

So I hope that you define it the same way so that indeed, these examples are relevant. Now we are at May 2008: draft guidance issued, comments resoundingly rejected by everybody in the public, both sides, nothing. May 2009, in our frustration, we wrote to the branch chief with copies to the division director, office director and the center director outlining the chronology, giving the summary of the argument and asking for a public workshop to discuss issues of science, assuming that, that is what's behind the dilemma and the delay because the delay, again, brings companies to the brink of financial disaster.

There are other consequences of this particular case. Over time, no products approved or cleared because the burden is excessive, as presented by the FDA. In fact, the draft guidance created burdens that were greater for 510(k) declassified product submissions than for PMA submissions. Declassification is indicating that there is a lower risk so it's counterintuitive why higher requirement is made.

Now, the result of this is that while there are – (inaudible) – companies selling digital mammography product, new products, improved products, products that have lower dose because, this is one of the improvements that was made by technology. And we know, especially of late, how much we focus on those patients.

These drug companies are selling products in Europe and elsewhere in the world and there are only four companies that are selling in the United States. So women in the United States can take no advantage of the improved products for years and years. Now, we have, again, in our frustration, wrote this letter in June 2009 and absolute silence, no response, no acknowledgement of the receipt, no response to the request on a reaction to the letter.

Obviously, there is no process within FDA to somehow put such industry suggestions into that – (inaudible) – where this is evaluated and decision is made on it. We assume that management does not – or did not look at this letter because the issues raised were sufficient to

prompt management response. But apparently, there is no process which puts this into management review.

Finally, in the next milestone is November 2009: The second panel meeting on digital mammography and both of these panel meetings have left totally out of consideration the fact that this issue was studied by a taxpayer-financed study of $27 million involving 50,000 women; and, at the end, was part of the design of the study, as testified on page 110 of the panel meeting.

The results showed that the results of the study and millions and millions of scans with this technology showed that its risk is low and its safety and efficiency is proven. Yet we are now looking – unless management reviews this issue or the transparency taskforce comes up with recommendations, we don't know how many years we are looking at again for a final guidance.

And we don't know whether the recommendations and the comments made by industry upon the draft guidance and at the panel meetings 2 years later will again be ignored as they were in the case of the draft guidance. And so –

MS. ASAMOAH: Mr. Vastagh –

MR. VASTAGH: My comments have come to the proposition – the recommendation which is that when there is such long-lasting dilemma within the agency of what to do, apparently not being able to resolve the concept of bringing the two factions –

MS. ASAMOAH: Mr. Vastagh?

MR. VASTAGH: Yes.

MS. ASAMOAH: I'm going to open it up to discussion at this point. You'll have an opportunity to incorporate more of your comments at that time, but the five minutes that we've allocated to people –

MR. VASTAGH: Five seconds?

MS. ASAMOAH: Yes, all right.

MR. VASTAGH: Give me five seconds to make my last –

MS. ASAMOAH: Yeah, you can – yeah, that's fine.

MR. VASTAGH: And that is that at times of such extended dilemma, there should be an opportunity – a new venue introduced to bring the issue out to the public for scientific discussion and such workshop would be such a forum where you invite academics and others in the scientific community to discuss the pros and cons of the situation.

And I submit that this new venue is necessary because the panel meetings are not conducive to this and I finish with that. At the panel meeting, you have five minutes, just like I have five minutes now. There is no way to treat a scientific problem in five minutes.

And that's why a workshop venue gives proper time to scientific discussion on the topic, would be an improvement in the process and would tremendously improve transparency. And I do thank you for allowing me to finish my statement.

MS. ASAMOAH: Thank you. Mr. Secunda, do you want to add anything before we open up for discussion?

MR. SECUNDA: No, I'd like to hear the open discussion myself.

MS. ASAMOAH: So I will turn it to the members of the taskforce that are here to see if they have any questions.

DR. JOSHUA SHARFSTEIN: First, let me just jump in and say I apologize for being a little bit late. I'm glad that you got started without me. This is Josh Sharfstein speaking from the phone. I'm the principal deputy and the chair of the transparency taskforce and I just wanted to – I'm sure you probably heard this from Afia, but just – I'll very briefly say that this issue of transparency to regulated industry did really jump out at us when we got the initial wave of comments in.

And we felt like it's something we wanted to focus sustained attention on, get more information and bring people in, get more public comment and have a whole section on that effort devoted to that. So I appreciate that you went through the trouble of coming out here, thinking through this.

Obviously, they're quite important to you, which is what we really heard in the first part of the transparency effort and we – this is the third meeting we've had with different parts of the industry and there certainly are some themes that cut across, you know, the industry and I think there'll be a lot for us to work through on this. But I do want everyone to know this is very important to us to make progress on. We're going to be taking the comments you're making orally now and if you want to submit in very seriously.

MS. ASAMOAH: Thank you.

DR. SHARFSTEIN: Then, I will – I will then relay Afia's comment that – or questions or people from that agency might have or things that come up.

MR. SHUREN: I'll first say, just to echo what Dr. Sharfstein just said, we really take this very seriously and we do very much appreciate the input that we have gotten. We actually have, right? (Laughter.) Normally, with the people who read your comments, we do have people view them. We then transfer them to other parts of the agency. (Laughter.) It'll be up on our Web site. I want to echo, you know, some of the themes that you raised from what you know in the – (inaudible) – to us.

So first off, I had mentioned the value of predictability and laying out FDA's expectations and guidance and to try to do so in a timely manner and maybe think about, are there mechanisms for communication before we go through an issue – (inaudible). And that is uppermost in our minds at the center. And in fact, the reason we are holding this public meeting on February 8th –

MR. : Ninth.

MS. : Ninth.

MR. SHUREN: Thank you, make sure I have the right date on my calendar. On the use of new science and regulatory decision-making is to very much, again, have this particular issue of why we created the taskforce to look at the use of new science because as science develops, our understanding of the risk-benefit profile, other device or types of device changes how do we incorporate that information into our expectations.

When do we make that decision? When should things change? And how do we communicate that to industry in a way that allows for maximum predictability? Because we do recognize how challenging it is if you first learn of something while that product is going through your review. Now, keep in mind, even if we work this out, there may be products that are actually before us at the time we make the decision, but can we do a much better job of it?

Can we also be much more predictable in when we actually – when those expectations change based on new science and it's a well-informed change in policy? And that's what we're going to talk about on the 9th. And I'm hoping that will be a rather lively and informal dialogue and we're going to take those comments back and think it through. We have no – we have reached no preformed conclusions and so forth.

The second is, I mentioned with guidance and we do think there's a lot of value through guidance. We are, in fact, I think you'll see in the strategic priorities that we issue, the fact that we are now actually creating a more centralized group within the office of the center director, kind of oversee the guidance development process and the regulation development process so that we have a much more top-down approach and oversight to guidance development, and things don't get lost in the folds.

In addition, we're going to be putting together a much more standardized approach to guidance development through the center. So we're much more consistent with what we do. Now, that's not going to be an end-all/be-all resolution. I think, as you know in our prior discussions, we do the best we can with what we have, but we are trying to be as efficient as we possibly can.

And we'll be announcing more to the public as we start implementing those changes. You know, 510(k) we talked about. I will offer my apologies at this meeting. Here's one of the challenges when we have an independent party do something like the Institute of Medicine. They decide on their own when they hold public meetings and we had, of course, settled in when

we were going to hold ours and then we have to go through the process of a Federal Register notice to announce it before we can say something.

So I think that's more of an issue of two bodies acting independently and the time suddenly came up. It was not intended to create more work. In fact, it's creating more work for us because we have to not only be prepared for our public meeting; we have to be prepared for the IOM meeting.

I will take back and look at, you know, if there's something we can do about maybe additional time for providing comments. But I think from both meetings, it's very much kind of the same issues on –

MR. LEAHEY: I think there are some overlaps – (inaudible, cross talk).

MR. SHUREN: It's a lot of overlap on the table, but that was not intended. Even we are not that mischievous.

MR. LEAHEY: I didn't suggest you were. (Laughter.)

MR. SHUREN: And lastly, I'll say this issue about information we put out in terms of regulatory decision-making and how we can get information out there that is more useful. We are looking at that and different things that we can push out and I'm hoping I'll be actually able to supply some more information about that, what we're in fact going to be able to do like you've raised regarding the – (inaudible).

MS. TRUNZO: Can I do a follow-up question? On the standardized approach for the development of guidance documents, would it – this approach, is it from the inception of the current thinking to the actual draft? And will there be opportunities for input from regulated industry during those initial phases? Or can you not tell?

MR. SHUREN: Nothing is settled yet. I mean we have heard, too, about the interest of how to get input into particular issues early on. At the same token, sort of balancing that when you have a process that actually doesn't take forever for each conclusion and how we in fact do that. So we're working through those issues, but clearly what we're going to look at from a process standpoint, it's really a focus in tone – (inaudible) – from start to finish.

DR. SHARFSTEIN: Let me just raise a – ask a question. I don't know to what extent this has come up in this meeting, but it did come up in the other meetings, which relates to – the topics that you've hit are very big policy-related topics. And I heard them from everybody, from Mr. Vastagh to you all here in the room.

There's also a question of a different kind of transparency, which is about some of the basics of how companies work with the agency. And we had a meeting here where I met with the people who handle phone calls from the public in different parts of the agency. And in certain parts of the agency, a lot of their phone calls are from companies not understanding the real basics of what they're supposed to be doing – not only what they're supposed to be doing,

but how FDA works, how they interact with FDA, what does it mean for really key things to be done?

And I know that there are a lot of small device companies out there, and I guess the question I would have is, how well do you think people understand the basics of the FDA process? They know that there is an office and a device center that is charged with that and is – how well is that going? Is there more that the agency could do to make basic information processes available to the industry?

MR. LEAHEY: From my perspective, I actually think obviously it depends on the sophistication of the company there. So I think the information is there, and I think between the Office of Small Business and just kind of, you know, medical device 101, I think you have a link on that about how the products are regulated. I think all the information is there – I think it's laid out pretty straight-forward. I probably get the same people calling me, and that I actually refer them not to the phone number of the FDA, but actually put it on the Web site, and usually it's a pretty good starting point.

So I think as far as the basics out there – and I think also with just the Internet itself, there's so much out there, with FDLI, with programs re-run. I think that there is a lot of information out there. I think you're always going to get people who probably pick up the phone, though, and then maybe, even if it was laid out as eloquently as possible on a Web site, they would still want to talk to someone and have them walk them through it.

So bottom line is, I think, I think you guys do a great job of having it available on the Web site. I think there are a variety of resources outside of FDA that kind of replicate that, and I think if you're trying to figure out what are the needs, and how do we allocate resources in this process, I think, I personally think, small companies shouldn't be out there saying, we don't know what FDA wants, as relates to the basics – (inaudible).

DR. SHARFSTEIN: That's great to hear – I mean, that's great to hear. Your organization has been, is more of a small company, is that right?

MR. LEAHEY: Right. Yeah.

DR. SHARFSTEIN: It's especially good to hear that from you. It's not necessarily the same perspective of the other industries that FDA engages with, but it's good to –

MR. LEAHEY: Again, you guys do great – I mean, whenever we need to talk to someone, whether it's myself – (inaudible) – association, there are companies who don't belong to any of the groups, but again, I think, if they're going to the Web site, I would – I think in that scenario you're doing a very good job.

(Cross talk.)

DR. SHARFSTEIN: – a model for other places.

MR. MANTHEI: Right, I think I'll go off of a comment that Mark made, as well, which is then critical to that effort. Josh has been – just the availability of key FDA personnel from ODE participating in FDA primer programs. MDMA and I knowAMTA as well – I know this is very expensive for the center to do this, to send out its leadership for a day of programs from Silicon Valley to Orange County to work with whoever that might be.

With that little of interaction and that availability, and the talks that they give as far as not only just kind of the nuts and bolts but also practical expectations, is critical. We urge you to continue to support that.

MS. TRUNZO: I wanted to make a similar comment. I think in my comments at the public meeting last year, I pointed out the FDA Web site and how effective it is at device advice. Like Mark, I have had numerous calls from members within my association about how to do something, and I walked them through that, through the Web site. And it is invaluable information. So I think that's wonderful.

I was going to bring up the same point that John Manthei brought up, is that our learning institute at AdvaMed that has for at least 10 years held a – it's called a workshop, on how to put together a 510(k), how to do IDEs and how to do a PMA. It's a real workshop where companies actually send people who have been charged with that responsibility within the company to put those together. And they are probably the most well-attended workshops that our learning institute does every year. So as John said, I encourage FDA to continue to support that activity, because it goes a long way to the educational process of companies.

MR. VASTAGH: This is Stephen Vastagh. I am so gratified to hear Jeff mentioning the establishment of the work on the office in the – in his office, to oversee the guidance development and standardize it. And I trust that that will also mean more information available on the progress of the guidance. And then, since this is such a small, new thing, and so I'm not recorded, just us between ourselves –

(Cross talk.)

MR. MANTHEI: It is being recorded.

MR. SHUREN: But feel free to continue speaking. (Laughter.)

MR. VASTAGH: But I – very often we hear from the folks who write the guidance, that the guidance is done. Science is done. And it's now waiting for the Office of Legal Counsel. And then they say that that kind of, that legal review can take a huge amount of time. In my estimate, these guidances are 95 percent science and regulatory and maybe 5 percent legal, maybe not as much.

So you guys have 80 lawyers at FDA. It's hard to believe that they can't get through these guidances a little faster than six, eight, nine, 10 months. These are an incredible amount of time, as we hear from folks, that it takes to do the legal review. And then, of course, I talk to the

FDA lawyer, who says, no, we don't take that long. So where is the truth and is there a way to speed that up under the new system, Jeff, that you are going to set up?

DR. SHARFSTEIN: But let me just say, let me just say, real quick, before Jeff answers, that you may know that Jeff's job before he went into this job was as the associate commissioner for policy and planning, where he has a tremendous knowledge of the guidance process from start to finish, including the finish part. And where, because, I think having him say he's setting up an office to oversee guidances within his office is kind of like, you know, Michael Jordan setting up a small basketball team. (Laughter.)

So I think that the device world will appreciate the fact that Jeff's bringing a lot of other understanding of the documents to this. I don't know how, you know, what specific answers he might have, but I would say that I think – I'm hearing him saying he's recognizing this to be an issue, and it's not that he's sort of a newcomer to the area.

MR. SHUREN: Well, all I was going to say is that Steve's comments, I just want you to know, we're not actually sponsored or paid for on behalf of Steve right now – (laughter) – regarding the review of our terms.

MS. STADE: I just wanted to make one more observation on this guidance point, and from what I'm hearing, people are saying that actually the more informal communications are going pretty well. They're able to talk to individual staff members; our Web site works. It's the more formal communications, the guidances, where maybe they're taking a bit too long, they're not – you're not hearing enough about where they are.

Is there value in more informal communications, that have the type of information that you would ordinarily expect to see in something communicated formally? And I guess I'm just putting that out there, as something we would be interested in hearing more about.

MR. MANTHEI: Absolutely. I mean, I think, looking over the last 15-odd years of my career, and looking at the most successful guidance documents that – (inaudible) – are ones where there is a level of interaction with industry in helping develop those. Short of – I mean, this is the transparency initiative dockets. Your availability with industry is all phenomenal.

But I think to be able to take it to develop a guidance document that actually enables you to benefit from those who understand the devices – (inaudible) – the practical implication of actually taking the guidance, whether it be post-market or pre-market issue, I think, engaging industry in it with an informal process to keep folks – (inaudible) – I think is going to be critical to that effort being successful.

I look at the reforms – anticipated reforms or enhancements for the reward we want to use for the 510(k) program. You know, if I think your program is – (inaudible) – device innovations – (inaudible). You know, 90 percent of the applications you guys have seen since then, and I think if there are reforms coming, the opportunity to have really meaningful interaction with ODE in an informal setting, whatever that may be, with key leaders from industry, I think it's going to be critical to not only have those be accepted by industry – to the

extent that they need to be accepted by industry – but I think to have both sides be on the same page – (inaudible). I think that will level their actions.

MR. EATON: I'd like to add another point about the virtues of interaction. I've been around my association for a long time. One of the things I was involved in early on was the development of the ultrasound guidance. This was moved out of the specific guidance. I think there's some definite lessons in terms of how interaction can be both advantageous for both FDA and industry. By interacting and going over this in detail, we saved so much time, we cleared up so many potential misunderstandings, and we worked hand in hand in development, and I think it was a really successful, successful way to go.

And I would strongly recommend that there be a lot more interaction in terms of developing the guidance itself. It has always surprised me how a particular term or particular sentence or phrase can be interpreted so differently between agency and between the industry. In interaction, you can head that off a lot of times. And – so I want to put a strong recommendation for a lot more interaction in terms of guidance development, and I'm hoping that the agency will let us do that, much like in the beginning. It's so helpful.

MR. VASTAGH: Is that going to require a change of regulation? Because what we hear now is, we're liking your guidance, my lips are sealed, my ears are closed, I can't talk to you, we're writing the guidance. So we're talking about just the opposite. But I think that they are referring to actually regulatory restrictions that they are currently under, which apparently wasn't there in the ultrasound case. So is that really there?

DR. SHARFSTEIN: No, this is Josh Sharfstein. This is a question that's come up in some of the other meetings, and it's one of the things that we'll look at as we evaluate this question that's been squarely placed on the agenda for this part of the transparency taskforce to take a look at this. And if, you know, basically the approach we're taking is we're trying to figure out what the right policy is, and if the right policy require a change in legislation or regulation, or something like that, then we'll mention what it would take to accomplish that.

But the first question is what the right thing to do is, so we'll be talking about that at the taskforce. And I can tell you this has come up – this question of how guidances are developed is a very big issue for the other parts of the industry also.

MR. LEAHEY: Just to follow up a little bit, too, I think, you know, while the, I'd say, the communication on the policy level has been very good and interactive and people always responding, I will say that there's still – and this is, with any organization, you're not going to have uniformity across the boards, but you aspire to it.

But I think there's still a sense from some companies that the interaction with a particular reviewer throughout the process within the free-market side is one that is variable on, seems to be the variable is on the reviewer's experience level, and again, I don't have data points to support; I'm just telling you – and then of maybe 10 reports in the last six months or so, where they say that it just, it's – there seems to always be a disconnect between the interact review guidance, for example.

We're kind of working collaboratively through issues as that process goes, you know, say for 510(k) where issues are flagged in real time and they hear about it as per the interact review guidance, versus others where on that 89th day, you get a request for additional information, it's the first time these companies have heard about this issue. So again, any organization has these pockets where it doesn't function with the broader mandates or guidance.

But to the extent – I know you've done an extraordinary job, too, of increasing training resources for new reviewers as well, but to the extent that you can continue to do this is, I think, it is something that particularly, in today's environment, where the timelines are already extended through a variety of issues, this just one additional element. So just encourage additional training of folks so they understand the importance. And again, this doesn't mean that they agree, but just to kind of put companies on notice when issues arise, so that the companies can start responding in real time, and not wait till that 89th day to receive everything at once.

DR. SHARFSTEIN: Any other questions for me on the FDA side? I don't know – did you go over the basic plan themes?

MS. ASAMOAH: Yeah.

MR. LEAHEY: I'm sorry, I just, I have this – (inaudible) – for phase two, for – that's going to be up late February, early March. Right. And the phase – I mean this is the first, we had a similar timeline of, I know you're seeking feedback from the – (inaudible) – stakeholders now, and the public –

DR. SHARFSTEIN: We'll probably open a docket so we're probably thinking a couple months behind the phase two, okay?

MR. LEAHEY: With final recommendations, fall, maybe?

DR. SHARFSTEIN: Well, again, I think, the, you know, the plan is going to be draft recommendations for public comment, and we'll look at it, and we'll probably see what comes in. And I'm getting that kind of figured out from there. But, you know, we're really, our goal is very clear progress across all these different areas.

MS. FEDERICI: So phase three is actually the draft recommendations and – (inaudible).

DR. SHARFSTEIN: Oh, okay. Phase one was FDA basics, phase two is the draft recommendations about public disclosure and phase three is transparency to the regulated industry, which – there's a little bit of an overlap with phase two, but not – there's actually some varied, there's enough difference that it made sense to us to really focus on this.

I don't know if Afia mentioned that the transparency blog was named one of the top five government blogs: GovernmentExecutive.com, which is my new favorite Web site. (Laughter.)

(Cross talk.)

MR. VASTAGH: Can we make another comment or question?

DR. SHARFSTEIN: Sure.

MR. VASTAGH: The – one of the reasons mentioned earlier for long delays seems to be the standstill or stand-off within the FDA reviewers as being the faction that clearly favors a lot of clinical data, and the other faction that doesn't necessarily think that that is written and required.

There are times when the companies are all disagreeing with this excessive requirement, and then – I don't know if there is a process within the FDA to deal with it, whether or not management has another scientific body that they can reach for, an advisory committee that is not set up by the reviewers.

And it's not like the panels to somehow referee these issues when there is a standstill because a standstill, as I said, are disasters, consequences, expectations – (inaudible) – and we don't know if FDA management has the tools to resolve these two sides. And I don't know if there is access to other scientific advisory panels that the FDA management can reach to referee.

DR. SHARFSTEIN: I appreciate the comment. This is Josh. I think we're really trying to focus, at this meeting, at some of the basic policies related to transparency, and not so much a specific issue, which I know is very, very, very important to you. But my thought would be that might a better discussion to have with CBRH than with this forum, but Jeff, is there anything you want to add to that?

MR. SHUREN: No. I would just say –

MR. VASTAGH: That's a good enough answer for me. Thank you.

DR. SHARFSTEIN: But I do hear what you're saying there. I again wanted to thank everybody for the time, because I really – I know you've got, it sounds like you've got many dockets that you're, and presentations and things coming on, so we'll take that into account when we set this one up. But this is one that we know, in addition to the others, that we think is very important as kind of sowing the seeds for progress for the agency. Thank you.

(Off-side conversation.)

(END)

FOOD & DRUG ADMINISTRATION

TRANSPARENCY TASKFORCE LISTENING SESSION WITH REGULATED INDUSTRY

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UNITED FRESH PRODUCE ASSOCIATION

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DR. JOSHUA SHARFSTEIN: Okay, good. Welcome. Why don't we go around? I'm Josh Sharfstein. I'm the principal deputy and the chair of the Transparency Taskforce. Thanks for coming or calling in.

MARIBETH LAVECCHIA: I'm Maribeth Lavecchia, from CFSAN.

MS. : Clemton Maleny (ph), Office of external relations.

JENNY MURPHY: My name is Jenny Murphy; I'm from FDA Center for Veterinary Medicine.

JEFFREY BARACH: Jeff Barach with science policy at Grocery Manufacturers Association.

DOUGLAS MACKAY: I am Douglas MacKay, with the Council for Responsible Nutrition and Dietary Supplements.

CAROLYN BECKER: Carolyn Becker, Office of Regulatory Affairs, FDA.

AFIA ASAMOAH: This is Afia Asamoah, media officer of the commissioner, FDA.

STEVE SOLOMON: Steve Solomon; I'm the assistant commissioner for compliance policy in the Office of Regulatory Affairs.

DR. SHARFSTEIN: Great. And who's on the line?

DAVE GOMBAS: This is Dave Gombas with the United Fresh Produce Association.

RICHARD CRISTOL: Richard Cristol with the Kellen Company. We're an association-managing firm that manages 20 food associations.

DR. SHARFSTEIN: Great. Well, I thought maybe it would be useful just to put this meeting in context. I can do that very quickly and then Afia can kind of explain and will handle things. The Transparency Taskforce here was set up by Dr. Hamburg, about, maybe seven or eight months ago, with the idea of helping to open up the FDA, explain to people what we do.

We've had a docket and a blog. In fact, we just learned today, it's the fourth-most promising government blog according to Government Executive magazine. I might be getting that slightly wrong. But we've gotten in the ballpark of a thousand different comments from people. We had two public meetings. And we heard a lot of different things from a lot of people.

One of the themes that we heard, actually, that had come up from industry was that there are transparency issues. Rather than – we originally thought of transparency as just broadly, to the public, but there certainly, we've heard from different parts of industry that the agency can

do a better job of communicating its thinking and how it approaches issues for the industry also. So we actually divided a transparency effort into three phases.

The first phase was a general effort to educate people about what the FDA does. And we called that "FDA Basics," and launched it a couple weeks ago on the Web site. There is a basic – come on, we're just getting started – and I was just saying that the first part of the transparency effort was the "FDA Basics," that we launched a couple weeks ago, really responding to a lot of questions about: What are the rules? How does the FDA regulate things? What are just, you know, a lot of comments saying it would be extremely helpful if you gave people a basic grounding in what the agency does. So we have interviews with, I think, more than 10 people from the agency online, and we have a whole series of ways to get feedback on basic questions that people are interested in. And that has been pretty well-received.

The second phase relates to information that the agency has, that it would consider releasing to the public, and that's one where we got a lot of comments, and the Transparency Taskforce is working on it quite a bit. That was the subject of public meetings, for the most part, and particular question – we've put out a little bit for that, when we have information on applications that have – under what circumstances should we be prepared to release that, and what are the countervailing values and how do you strike the right balance?

The third that we've decided to move to and, a third topic, a third page, which is transparency to regulated industry, which we're kind of defining as where the agency can be more clear to companies that are regulated by FDA. And we felt like it would be important to reach out to industry – to have specific opportunity to hear from you on that topic. So that's what this meeting's about.

We're doing several meetings with different parts of the industry and the format is kind of similar to some of the meetings we've had before where we're interested in your comments and the people who are kind of representing the Transparency Taskforce might ask clarifying questions. But and then Afia can explain kind of how it will work from here.

We're hoping in terms of the timing – if that question comes up – that towards the end of February, beginning of March, we'd be able to release our draft recommendations for phase two which would go for public comment. And then maybe a couple months behind that we would release the phase three recommendations. So that's our basic timing. So it's not that long a timeframe for our intent. Afia, do you want to take it from here?

MS. ASAMOAH: Sure. Yes, we just thought it would be helpful to give you a sense of how we're going to solicit comments for phase three. So this is the first step – an informal listening session with industry, just to hear your – get issues on the table and hear what things you think would be helpful in terms of improving transparency at the agency.

Once we get that information, we will release it. We're going to open a public docket and solicit comments from the public more broadly in terms of the direction they think the agency should go. And the transparency taskforce will take into account all of these comments

in drafting recommendations to give to Commissioner Hamburg with respect to transparency to regulated industry.

In terms of the meeting today, it is being transcribed. We will release both the transcription as well as a detailed summary in the Federal Register notice and allow the public to comment on that. And I think that's it in terms of the process.

DR. SHARFSTEIN: Any questions?

DEBORAH WHITE: No, I think it's pretty clear. I just – would you be able to throw out some thought questions on transparency to the regulated industry and what you're looking for and I guess I hadn't expected – (laughter) – that you were going to be looking for ideas from us beyond some of the things that have been discussed in some of the recent Federal Register notices like when do you release information to the public and when is it sure enough that –

(Cross talk.)

DR. SHARFSTEIN: Yeah, no – so that's definitely not the topic.

MS. WHITE: Right, so you've already done that topic. So this in terms of transparency to the regulated industry is that about food additive petitions and is that about how the agency is evaluating regulated products – is that what you're looking for?

DR. SHARFSTEIN: It could be about that. Anything where industry is asking questions about FDA – you know, looking for information from FDA about different things. It could be about – I mean, I'll mention that we had a meeting of the different offices around the agency that get kind of public inquiries and I was asking them what common questions they get from the public are. And one of the most popular questions that comes in to the CFSAN call line is – are actually businesses asking basic questions about how FDA regulation works.

You know, so I mean, there's clearly – I just, you know, it just made me think, you know, there may be companies out there that really don't understand how FDA regulation works and that's an element of transparency so that people can know that. But you know, that's one other –

MS. WHITE: That might be addressed in your phase one, right, which is how do you do things.

DR. SHARFSTEIN: Well, phase one – yeah, so we didn't have so much of an industry focus for phase one. It was more kind of the public. So we're looking at the idea of having like a FDA basics-like Web site, but really directed to industry – particularly small industry because the bigger companies seem to be more likely to know the ropes. But it's kind of the smaller companies that tend to be calling and that might be an opportunity to, you know, answer questions.

And one of the things that we asked at the previous meeting – and I'm jumping in, but it would be definitely worthwhile getting from you all – would be, if we were going to do that,

what were the basic questions you think the FDA should be answering, you know? What are the five to 10 questions that, you know, the companies would want to – you know, you think are just really basic questions that we could put out there, have people talking about on videos, that you could direct people to if they're calling you and saying I don't know, you know, I'm going into business in dietary supplements, what's the basic process?

What, you know, is there – or how does FDA handle A, B and C? Then there could be an answer for those things. So we're looking at that and it would be helpful to have questions that you think might be useful.

MS. WHITE: One of the things that I've worked on with the Environmental Protection Agency was helping them design a portal that was geared more towards, you know, industry and easy interfacing with it. So you just go to the EPA Web site, it's on the office of solid waste and the office of air and the office of water and it's a little difficult to approach that.

And what they did – because every time there was a regulator, it's always like – (inaudible) – parking lots and what do we do with the trash and if we got spoiled milk and throw it, you know, in the drainage ditch – they designed a Web site that came more from the perspective of the person asking the questions.

So that might be something to consider as well, in addition to what types of information you'd have available, how it's presented to the public and how the public, you know, so that it thinks more like that person who's coming to it than – (inaudible).

DR. SHARFSTEIN: That's a very important principle. And in fact, maybe we'll look at that. What I want to – maybe what we'd like to do is maybe start with the people on the phone this time, if that's okay. And I think we were thinking that, you know, maybe about five minutes of thoughts that you want to do that. Maybe Mr. Cristol, do you want to get us started?

MR. CRISTOL: Well, I would really just offer two comments. One, I think your comment just a moment ago about educating people that might contact, some of our associations, is really critical. But I think it also would be very useful for younger people, new hires coming into the industry as a way of getting your help from the agency to help educate them and bring them up to speed so they can be more effective quickly. So I think that's a real positive.

Second thing – and this is kind of a minor hot button with me, but you know – very frequently, FDA announces in the Federal Register that they are undertaking some type of research activity in support of potential regulations or policy determination, that sort of thing. And yet, trying to get – for industry to try to get copies of the actual survey document so that it might offer suggestions or recommendations is really like pulling teeth. So that's kind of just a hot button of mine and I will certainly put it in written comments, at the appropriate time.

DR. SHARFSTEIN: Yes, and that would be very helpful to put in written comments, and if there's an example that you could send us, that would be helpful, so we can – yeah, but that's a good, interesting topic to raise. Okay, Mr. Gombas?

MR. GOMBAS: Hi, yes. Thank you for the opportunity to participate on this today. I agree with Richard about the opportunity for folks who do not work that closely with FDA to have some kind of a basic understanding, some kind of a training mechanism, on what FDA does, how it does and why it does what it does. There's a lot of misunderstanding and confusion out in the produce industry, as well as the rest food industry about it, so I think it would be useful.

Personally, I have found working with the FDA staff very rewarding. I have found them to be very open about what goes on and very helpful with the questions that I've had. But most of that's been based on personal contacts. There were times when I'd get into a question I don't have a personal contact for and then I find the experience is not as rewarding. I sometimes have to wait quite some time, if not forever, to get responses to specific questions. So having some way of being able to ask those questions if I don't know who the right contact is would be very helpful.

My little pet peeve, you know, since Richard offered one, has to do with different departments working on the same issue. For example, in the produce world I know who the division of produce safety is in the office of food safety and the individuals working there, I'm very comfortable working with them. And then once in a while, something will come out that's relevant to produce and these folks were not aware of it and there's a surprise to me.

And trying to find who is – which office is actually running that activity can be problematic. Even the folks that I'm working with at FDA don't know who's running that particular activity. So getting a little more transparency as to who is involved on some of these activities would be useful.

The final one I'll mention gets into the more official activities that FDA gets involved in. I'm referring to rulemaking and outbreak investigations. During other times, communication with FDA is not difficult and again, there's a good working relationship between the produce industry and the FDA staff.

But when we get into the official times, there seem to be obstacles to working with FDA. During the produce – oh I'm sorry – during rulemaking periods, FDA traditionally gets sequestered and there's very little opportunity for FDA to share what its thinking is while the rule is being written, which I think is exactly the wrong time to go silent.

And then during outbreak investigations, as we saw in 2008, there appeared obstacles to FDA being able to share with industry what its thinking is, what information it has, what information it needs. And likewise, this becomes an obstacle for industry; it will share necessary information that would help in the investigation. So if there was mechanisms created that would clear some of those obstacles, I think we'd all benefit.

DR. SHARFSTEIN: Okay, that's – I really appreciate those comments. Should we start here with you?

MR. MACKAY: I'll have to say I was thrown off by the title of the seminar – a "listening session" – I thought I would be doing that. (Laughter.) But anyway, I think for our industry, you know, GMP's relatively new, the actual inspections as well as the AER law. And these are two areas that are somewhat of a black box for our industry right now. You know, how consistent are they going to be at the different sites across the country? What exactly checklists are they working from? What can the manufacturers expect? You know, it's all new.

So as you guys learn more from what you're seeing, being able to use that as a teaching tool for industry to be more prepared for, you know, being ready for inspections and being the manufacturing facilities that you want to see in the dietary supplements – so using first wave of inspections and allowing that information to feed back into the industry – I know that, you know, inspection quotes are available through FOIA. However, you know, redacted – you know, really, what are you guys learning from those? How are you guys taking that information and using it as a guideline for the future of what you want to see?

So – and AER is in a similar way. As you guys get these AERs, you know, what leads you to something like what we saw with Hydroxycut? What is the decision? I know there's been some meeting, but you know, more clarification on that. For example, I know there was somewhat of a surprise that, you know, elevated liver enzymes would be on the list of serious adverse events, when you read the definition technically, you know, it doesn't – there's some interpretation there. And so, you know, the eagerness and willingness there is to comply, but there's a bit of a black box about where we go this.

And other than that, you know, we would like to reinforce how appreciative we are when you do participate in speaking engagements to our industry webinars, where we're able to ask a specific question and have someone from the inside put something together and bring it back to us via webinar or a speaking engagement because then that information really gets broad exposure through the industry.

And I know, over the last two years – I'm fairly new to this position – but over the last two years I've seen even an uptick in the willingness to be talked at, you know, when we ask, when we invite, you guys tend to say yes and do a great job of getting the information back to the industry. So that's a good example of what we like to see, the transparency.

And then a similar thing with the new dietary ingredient notification process – and I know there's been some discussion of guidelines being there – but that's been a similar black box, you know, and until there's guidelines available to the industry, you know, there's a lot of confusion around that. That's about what I've prepared to say, unprepared.

DR. SHARFSTEIN: Well, that's helpful. And again, you know, it would be great if you could think about those types of questions and give us a list of them. They are very helpful.

MR. MACKAY: Okay. That would be – okay. And so there's an opportunity to follow up after this meeting?

DR. SHARFSTEIN: Yeah, you could definitely send a letter in. Afia can give you –

MS. ASAMOAH: Yeah, I can give you my contact information.

(Cross talk.)

DR. SHARFSTEIN: – information and that will go in the record. And you know, what – for example, the issue of how does FDA decide when pattern of adverse events is significant enough for a major regulatory action. (Inaudible) – a pretty good question, a fair question to ask. You know, to be able to answer basic questions like that. (Inaudible, off mike) – but having a place on the Web site where people could go and see that.

MR. MACKAY: Even from both sides – public and industry would probably fairly interested, because I think public is confused too, you know, because you have the variety of responses about – well, there are so few, why do they take action and, wait a minute, there was too many – why is it still in the market? You know, and you get that whole variety and I think knowing where your decisions are helps.

DR. SHARFSTEIN: Okay.

MR. BARACH: Good, yeah I've got kind of a diverse list – nothing in particular order, but several of the issues that we face, this probably be the opportunity to bring them out and talk a little bit about them. One of them has to do with rules that are proposed by the agency. Many times, we go through the process of – the comment process and we hear back about the number of comments that were received, but we really don't have any mechanism for tracking where this is.

There are oftentimes proposed rules that are on the books for years and years and years, that we don't know what the status is. There's no place to go look that I know of and find out what's holding it up – why is this rule always frozen in a proposed state and not finalized? Because there are many rules that we would like to see finalized.

We build these rules together, you know – the industry and the agency work and in many cases they are very productive and they will give the agency oversight, and give the industry some basis for making decisions on food safety issues and other issues. So working towards some mechanism for finding out where proposed rules are and what the hurdles are and moving forward on that would be good.

Another topic that just comes to mind, too, is the interagency process that FDA works with other agencies. This is kind of, as Doug said, sort of a black box. We don't know what goes on here; we don't get information about what the agencies are working on together. We know that this is often brought up as a topic – that, yes, it has been discussed at interagency meetings, but we don't have any idea. So this is totally non-transparent as far as I can tell.

The FDA, in the past, has put together – another topic – has put together their strategic plans, and then prioritized the issues based on that, as a number-one priority, two, three priority. So the industry kind of knows – and then this is published in the Federal Register – the industry

knows what the agency's thinking is on the different issues and what the priorities are, and then we can comment back on that.

But more importantly, we can see what the agency feels is the high-priority issues. I haven't seen that in a while. I think that was a product of Joe Levitt's (area ?), where he put the strategic plan together and then prioritized it. I think that was very useful to us.

Another area has to do with the agency's actions to communicate information to the public. I think that this has gotten better over the past years. Say, for instance, when there is a recall, or when there's a chemical concern, like VPA, the agency does come out in a fairly rapid manner in reporting what the status is. I would encourage that that process – whatever you're doing, do it. Continue to do it, and see if you can enhance that so that information gets to the public about the status of different things in a very rapid and transparent manner.

I guess the resistance is sometimes that we don't have all the answers. And so there's a hesitancy not to say anything until we do. But I think it's important to continue to build on that communication effort, to get the information to the public quickly, because many times the public just assumes the worst until they hear the official word of what the status is, and they have a word to rely on.

And one of the final things that I want to bring up has to do with our GMA personal experiences with the food-additive petition process. We have had both good experiences as well as not-so-good experiences with petitions. The one that we're still working on now that has been in the FDA's hands for 9 years has to do with food radiation of ready-to-eat-type products.

The whole process of when we started the petition to where we are today – there is a lot of mystery in what the FDA is expecting us to do or require – requesting from us. To move this forward, there's no official written plan about where the hold-ups are, or what actions need to be taken. Basically, there's a dialogue back and forth between the petitioner and the agency, with no real substance in many cases.

So it would be very helpful in the petition process – and this is just our experience; maybe other have had better experiences – where there is some written action plan on what the hold-up is or what the next action-item steps are, or how to move the process forward. It just seems like something as important as a food-additive petition – we know how to write it, we know how to submit it – but the follow-up and the discussions after that are not really clear as to what the next steps are.

So that would make that a much more transparent process, and help the industry to make decisions based on what's needed or what the next steps are or how much research is needed, or what information is needed to move it forward. So those are some of the things that I thought about.

And like Doug, I think I was thinking that we were going to talk a little bit about the consumers, and the public Web site, which I – I went on the public Web site, and browsed around a little bit. It's a very good start. It has some of the basics in there. But the FDA's total

Web site has so much more information, that I would think that there should be some links between some of the questions and where other, supplementary information can be found.

DR. SHARFSTEIN: We tried to do that as much as possible. But if there's a place in here you think you're missing – you look in one and go, ah, you should link to this page, you could put it there and we can add that. Some of them have very extensive links, some of the questions and answers. If you want to know about all drugs, go to this page, and search for that –

MR. BARACH: I think it's better on the drug side than the food side. Like, I went into the recalls, to look up some information on food recalls, and just to find the basic information on what are the different classes of recall? It's on the FDA Web site but it's not linked to or hooked into this site.

DR. SHARFSTEIN: So we're definitely looking to – (inaudible) – on that. Similar, I appreciate your raising the issues with regulation and food-additive petition. One of the things we heard on the drug and device side, when we met with them, related to guidances, and where those are in various stages – that was a common theme. (Inaudible) – somewhat similar.

MS. WHITE: Thank you for getting a public – the remarks – (inaudible) – thank you for having us here, for inviting us. For the record, since I walked in late, I'm Deborah White with the Food Marketing Institute, and I think there were a lot of good themes that were raised by the people who just spoke.

I think one of the real tensions – and I think FDA does a pretty good job of guidance documents – better than some other agencies. So there is guidance that comes out of the agency, and tends to be written in a pretty general fashion for lots of good reasons, many of which are governed by your legal folks, who don't want to be too specific.

And then the other hand, you have a real need for interpretation, and for the regulated community to be able to understand, okay, does A, B, and C equal X? And what do you really mean by Y? We understand it's a vague standard, but how are we supposed to interpret it in the day-to-day application? And I think that's one of those probably unanswerable questions, just like when do you have enough information in order to release something to the public about food safety?

But I would agree that making yourselves available, doing industry presentations, taking what you learn from your inspections, to come out with some sort of updated guidance, reflect, okay this is what we're seeing, we really think the line is at least here, and you really need to be aware of that as a regulated industry. I'd agree too with what Dave said about the facility of working with people that you know within FDA.

But if you've got a question that doesn't fall within somebody's area, that can be very difficult to get an answer, then, as an example – and I do, actually, know a bunch of the people who work in the reportable food registry area – the regulated community is required to submit a report within 24 hours, of when they determine a food constitutes a reportable food. I've had

people who submitted questions, I've submitted questions, and then take six weeks to get an answer back. It's very difficult to expect the regulated – if you guys who are experts can't answer the question in an – anything close to 24 hours, it's really hard for us to do it.

And likewise – and I know it's a new program; really I'm not trying to pick on it. It's just something that comes to mind is, similarly, hotline folks aren't really well-educated about the particulars. They might be able to read the guidance document, but we can do that, too. And so when somebody has a real issue, and they're trying to figure out, okay, is this reportable, what should I be doing about it, and we're faced with a 24-hour clock, it would be really helpful to be able to get some quick answers from people who really understand it.

On the issue, who is doing what – a more detailed organizational chart, I think, would be helpful. I've worked with this agency for a number of years, and I still don't have a really good sense of where everybody is and how the boxes relate. And you guys probably have that at the tip of your fingers. I think that's pretty much the notes that I scribbled in thinking about what other people were saying.

I guess the other thing I would say is some sort of standing bodies for communication. I don't really know how to actualize that, but it goes to the issue that Jeff raised about, if there was a recall and there was maybe some industry insight that could help you guys solve the issue, and it would help us to understand a little bit about what you guys are thinking.

And then maybe we can provide you with different information. Again, I don't know how you actualize with that within the Drug and Cosmetic Act in effect and all the other restraints that you guys have. But I think if some standing method for communication in a crisis would be very helpful.

DR. SHARFSTEIN: Even if there was some sort of basic protocol at the agency.

MR. BARACH: Could I just build on something that Deb said, because that reminded me that even if – there is always interest in getting a head's up on what is possibly going to happen to some of their products. So when the agency is investigating a product, even sometimes months ahead, they will have a hint that there's a possible problem. Don't wait too long – (laughter) – before you contact somebody in the industry to let them know that the situation's developing.

I know that there's probably, there's a point there where it's a go or no-go; We have to identify something to the industry so that they can initiate a recall. Well, that's way down the line – there are hints and information that perhaps could be helpful and that the industry can share back what we know about the issue, rather than waiting until a full-fledged recall. So a little more transparency in investigative standpoint, before recalls actually happen, would be helpful, and that could facilitate some of the things that Deb was talking about as far as recall.

MR. MACKAY: And I'll echo that for just the dietary supplement ingredients. If there's an ingredient like Ephedra that's raised your awareness, and even though there's no causative connection, there's an interest, I think, that that would be helpful for industry to know way ahead

of time, because there are some players in the industry that are very conservative, that would quickly step away from an ingredient that was of interest.

DR. SHARFSTEIN: Rather than waiting until rereading about it in the newspaper. (Laughter.)

MS. WHITE: Agency is very concerned about – (inaudible).

DR. SHARFSTEIN: Okay. I want to see whether some of the other agency staff have any questions about any of these issues that were raised.

MR. SOLOMON: Just on the question – the last piece, there, about when we're investigating something or exploring something early. Now that is, you see as part of just the industry communication?

MR. : Mm-hmm.

MR. SOLOMON: Okay, so that would be a separate process that you were talking about there.

MS. LAVECCHIA: I have a question for Deb, where you were talking about the people that respond to some of your questions, not being knowledgeable. I know you didn't really mean it that way, but what do you really mean in terms of who are you contacting?

The Recent example that I'm thinking of is the reportable food registry hotline. Again, I really, I know they're working very hard, and they're trying very hard, so this is not a slam on them. But my experience has been – and really, it's been more the experience of the members of FMI, who will say, we tried an answer to this, we called up the hotline, and basically they read back to us what the guidance document said.

And it's not that you guys are poor about putting out guidance documents; FDA is very good about putting out guidance documents. But there's always the question of interpretation. When you get the general standard, be it in a regulation or a guidance document, the real issue is, how do you interpret that? How do you apply it to an actual fact pattern, to an actual situation?

And in the reportable food registry scenario, you're talking about people who need to make an interpretation within 24 hours about what that language means and how it applies in a certain circumstance. And so getting help and making that interpretation rapidly, be it in reportable food registry or anything else, just the leap from general language to application of a specific instance. And I think that's what the other folks were talking about as well, is that it's your knowledge and expertise, in how you interpret something in particular scenarios, that's most helpful.

DR. SHARFSTEIN: Another way to say that is, maybe, that – there might be some questions that the first-level people might not be able to answer. How does the agency deal with those?

MS. LAVECCHIA: Right, or how people do get to – is there a mechanism for referring them quickly so that you can get an answer. Right now, in the reportable food registry context, it's "send us the question in writing," and then I – it literally took six weeks for me to get an answer back to the question I submitted.

DR. SHARFSTEIN: Was it a good answer? (Laughter.)

MS. WHITE: Yes, and it was one that I expected, until – I really – I'd already given guidance based on my interpretation of the law, but you know. (Laughter.)

DR. SHARFSTEIN: Just, just – (inaudible, laughter). Okay.

MS. BECKER: May I just ask a follow-up question?

DR. SHARFSTEIN: Sure.

MS. BECKER: In other contexts, we've done Q&A documents and things like that. Is that sort of what you envision would be helpful or – I mean, are you looking for a person that can answer right then and there, which I suspect, with the 24-hour turnaround, would be the most advantageous way, or would some sort of Q&A mechanism also be helpful?

MS. WHITE: I think it's a blend of everything. As long as we're pie-in-the-sky talking about anything – different mechanisms that might help people – you know, I think throwing everything on the table, but yes, I think Q&A documents are very helpful. And you know, in fairness to the folks on the reportable food registry stuff, they worked very had on a Q&A document that did answer a lot of very practical questions and that's been helpful and I know – I believe that's going through revision again right now.

So yeah, again, I think FDA is very good at putting out guidance documents and doing Q&As. And I think we started this discussion by talking about some people who, you know, may be new to a particular industry and may just need to know the basics and so for those people, you know, the information on good manufacturing practices and basic sanitation or – you know, I think you need, sort of, layers of information and communication on different things.

DR. SHARFSTEIN: One thing that I'm wondering is, you know, are there certain issues or certain times, certain things that may rise to a level where maybe we want to have more engagement – that there's an issue that there really is a fair amount of confusion on? You know, this did come up once in dietary supplements where there was a particular question and we wound up having a big meeting with different people from the agency to talk to the industry and try to – you know, my sense was most people found that useful.

But we don't have like kind of an organized process for, you know – if we were to say like every single thing the agency does, big meeting with industry, like half the time people wouldn't show up and it'd be like this huge amount of effort to do that. But you know, I'm

wondering whether one of the things we should consider is like a mechanism for, you know, where there seems like, really hearing that there's a big issue that we should try to deal with, with a, you know, getting all of the people from the agency together, having a webinar, getting questions in advance and trying to answer as many questions as we can.

MR. MACKAY: I think there – I'm not involved with this – but I believe there's a process like this starting with the dietary supplement – I think, CHBAs involved in the fair-trade associations and they're going to try to do an annual to semiannual meeting of sorts where, I think, topics are proposed from both sides. What does FDA want to know from the industry and what does the industry know from FDA? I think it's going to be a day-long event.

And with – if it's known to have a regular pattern – at least this is the thinking on the inside as we're discussing it – it allows the industry to get together and discuss, well, what are our hot issues for the current time pattern? Let's get together and let's agree what we want to get out on the table, have this dialogue in this less-threatening format and since there's no crisis at hand, these are just hot issues that we want to have a two-way communication so you can know what we're thinking.

And I believe you've been doing this with the OTC industry for a while. Is that possible? Because I know, like, for example, I was shared an experience where, you know, where the industry shared with FDA what it takes to do a label change – you know, all of the issues around a label change from the industry's perspective and the feedback from the FDA.

That's incredibly valuable because, you know, we had no idea. We thought you'd just change a few numbers and, you know, the next day you'd have a new label. But obviously, it's a lot more expensive and extensive. So that that information's able to affect both parties' way we approach these issues. So I think regularly scheduled events where the industry can gather its questions and FDA can gather its are – can be very incredibly valuable.

DR. SHARFSTEIN: Great.

MS. WHITE: I would agree. You know, on the way more elaborate end of the spectrum, you've got the Conference for Food Protection that produces the food code on a – I'm not sure, I think every 2 years or so – basis. And that, I think, our industry has found remarkably useful and valuable.

And so they do meet in committees and groups with regulators and industry and they do talk about, I don't know, the right temperature for holding hot foods and all sorts of very specific issues. So you know, and I don't know how you go about setting it up with every industry or how to do it, but I think it's a great opportunity.

MR. MACKAY: I think it also protects you from being expected to – oh, we have an issue, can we meet again, can we meet again? You know, so it's just sort of a – save it for these and then you prioritize and, you know, only bring important ones to the table.

MS. WHITE: Is there – yeah, and I think having it be a two-way street is a really good thing. If there's something that industry to help educate you all about – you know, the comment was made about how difficult it is to change a label. Well, you know, I don't know, walking through a distribution center so you understand what the implications of traceability would be or, I mean, I guess I would just put on the table, are there opportunities to provide information that might help inform what you do as well?

DR. SHARFSTEIN: We'd be happy to participate in your transparency initiatives. (Laughter.)

(Cross talk.)

MR. BARACH: Well, I think one way that you all do participate in that type of activity is through pilot studies. Like, with traceability, there are some pilot studies that are underway. So yeah, that – we'd continue to encourage that type of thing.

DR. SHARFSTEIN: Any comments from anybody on the phone? Okay. Other questions from FDA?

I think this has been very helpful; I appreciate your coming out and we'll keep you posted on how this process is moving forward. But I do want to let you know we're taking it very seriously; that's why made it – are doing it in phases and there's going to be a series of meetings about it within the agency and we'll take everything that you sent us and review it very carefully and hopefully have something that is a real step forward.

MS. WHITE: I apologize if this is written somewhere and I missed it, but you talked about three phases – is this the third and final phase, are there more phases?

DR. SHARFSTEIN: This would be the third and final phase.

MS. WHITE: This is the third and final phase. Okay. Sort of basic information about what FDA does, how do you balance providing information to the public and then transparency of the regulated industry.

DR. SHARFSTEIN: Right.

MS. WHITE: Okay. And you're coming out with phase two – a Federal Register notice in February or March?

DR. SHARFSTEIN: Well, phase two probably wouldn't be a Federal Register notice, probably would be a draft report –

MS. WHITE: Guidance, a report.

DR. SHARFSTEIN: Yeah, just – probably draft recommendations from the taskforce for public comment so that way everybody will get a chance to look at it and see how we're putting things together, tell us what they're thinking about that.

MR. BARACH: I have sort of a process question. Back in – I think it was August of last year, when transparency was first discussed – there was a Federal Register notice. There was a meeting, a public meeting, and then there was comments submitted after that. Is that tracking along the same as this or –

DR. SHARFSTEIN: Yes.

MR. BARACH: – if we put comments together differently, should we submit them or – is submitting comments appropriate, or what?

DR. SHARFSTEIN: I think, well, I'll let Afia answer how – most of those comments were – well, we got some comments that are relevant to third phase, when we open the docket, which is why we created the third phase and so all those count for us to be able to do this. But then we are probably going to reopen a docket on this, is that right?

MS. ASAMOAH: Yes. Yes, on this specifically. We did get a couple of comments about transparency on regulated industry, but we thought it was worth kind of having a separate phase.

MR. BARACH: You wanted to talk.

MS. ASAMOAH: Yeah, exactly. So to have a more focused comment.

DR. SHARFSTEIN: But if something's covered before, it counts. It's just not quite like a regulatory process; it's really a – information-gathering and so then we can use it for – (inaudible).

MS. WHITE: Do you guys work with SBA at all, the Small Business Administration? I was just thinking about the, kind of, introductory – if you're making a move, this is what you need to think about? I don't know, that might be useful.

DR. SHARFSTEIN: It's a good suggestion. Yeah, some parts of the agency do a lot of small business work – the vice group does, for example, but I don't know the level, to what extent the work with SBA to –

MS. WHITE: Okay, all right, maybe internally –

MR. MACKAY: So are you suggesting in writing – you mentioned I could expand in writing on the specifics. You're going to open another docket for that?

MS. ASAMOAH: Yes.

DR. SHARFSTEIN: Right.

MR. MACKAY: So we can share that with our members and start getting this –

MS. ASAMOAH: Yes. Oh, please do.

DR. SHARFSTEIN: Yeah, oh that would be great. And as we do this if individual companies want to write in, you know, about the general topics of this initiative and to develop, you know, and application – this wouldn't be the – (inaudible).

MR. MACKAY: Right, right.

MS. WHITE: I'm thinking of our independent operators, our small stores. You know, the other thing that just occurred to me. I mean, we're here to talk about food, but a lot of supermarkets also sell tobacco products and there will be – I mean, part of what you guys are working on is employee training. And there are some programs that already exist in the industry, but that may be another area for outreach and interpretation and explanation and help as well, to make sure that those – to make sure that employees in grocery stores are doing the right thing in terms of checking ages – age verification.

DR. SHARFSTEIN: Good. Okay. Thank you all for your time – (inaudible) – and sitting on the taskforce.

MS. WHITE: Thank you. Thank you for your –

MS. ASAMOAH: Thanks to the folks on the phone for joining us.

MS. WHITE: Thank you. I'm glad you're going to be doing a Federal Register notice and we'll have an opportunity to think about this and surprise won't come – (laughter).

DR. SHARFSTEIN: I'm sorry about – inform you of the listening session, yeah.

(Cross talk.)

MS. WHITE: Yeah, I'll take a good stimulating comment before –

MR. BARACH: You definitely got top-of-mind ideas today. (Laughter.)

MR. MACKAY: Yeah, and Steve, the president would have come, I think, if he knew this was the setup.

DR. SHARFSTEIN: Well, give him my best. (Laughter.) We got plenty of time. We're not – this isn't the – (inaudible). All right, thank you all.

(END)