Option to License Deals: Finding a Winning Balance

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Panelists

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Evaluating Potential Partnerships

- Exclusivity
  - Upfront and near-term milestones
  - Retain profit share option
  - Partner with resources, marketing expertise
- Innovation
  - Shared vision
  - Scientific alignment
  - Diverse partners
  - Complementary program to internal R&D
  - Ability to make rapid progress

SMALL INNOVATOR

POTENTIAL PARTNER
2012 Changes in Funding Sources

Increase due mainly to investments in medical device and diagnostics companies
Drug development / therapeutics remained flat

<table>
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<tr>
<th>July 2012 Life Sciences Scorecard (USD M)</th>
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<tr>
<td>Global Venture Capital</td>
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<td>U.S. VC</td>
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<td>IPOs (21 in 2012 v. 35 in 2011)</td>
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<td>U.S. IPOs (11 in 2012 v. 13 in 2011)</td>
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<td>Global PIPEs</td>
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<td>Global Other Equity</td>
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Pharma Licensing Trends 2007 - 2011

Number of Licensing Deals

Average Total Value of Licensing Deals

2012 Licensing Activity on the Decline

Aggregate Spend for JVs and Licenses
Products and Platform Technologies

Milestones
$13.8B
$8.6B
37%

Upfronts
$1.2B
$841.6M
30%

Size
$14.3B
$9.5B
34%

But Average Upfronts up 11% from last year

Source: Deloitte Recap Webinar Series, August 14, 2012
2012 Changes in Deal Size by Stage

Discovery Platform Technologies or Therapeutic Products –
Average Potential Size by Stage at Signing

Source: Deloitte Recap Webinar Series, August 14, 2012
2012 Changes in Deal Size by Therapeutic Area

Source: Deloitte Recap Webinar Series, August 14, 2012
Option-Based Licensing

The Rise and Fall of Option-Based Licensing

Percentage of Licenses Including An Option

Source: Deloitte Recap

*Percentages for Pharma and Biotech Licensing Deals based on licensing deals done between pharma/biotech, pharma/pharma and biotech/biotech

**Percentages for Pharma Licensing Deals based on licensing deals done between pharma/biotech and pharma/pharma
Option-Based Deals

- Option to License
- Option to Manufacture
- Option to Expand Territory
- Option to Acquire
- Option to Co-Promote
- Option to Finance
Drivers for the Company

- Funding/Resources
- Expertise
- Control
- Endorsement
Drivers for the Company

Funding/Resources

Expertise

Control

Endorsement

Downsides

- No Long-Term Commitment
- Development Risk
- Locking Up Too Early?
- Increased Transaction Costs
Drivers for the Partner

- Diversification/Risk Sharing
- Expertise
- Control
- Exclusivity

Partner
Drivers for the Partner

**Diversification/Risk Sharing**
- **Control**
- **Expertise**

**Downsides**
- Less Control Over Development
- Deal Terms Set Early
- Easier for Competitors to Match Option

**Exclusivity**
Protecting IP Assets: Drivers for Company

- Maintain Full Rights to Pre-Existing IP
- Extend Limited License for Evaluation Only
- Own Company Developed Option Period IP
- Keep License Narrow and Protect Next-Generation Technology
Protecting IP Assets: Drivers for Partner

- Obtain Broad Research License to Pre-Existing IP
- Own Partner Developed or Funded Option Period IP
- Take Opportunity to Seek Broad License
- Seek Right to Expand License and Access Improvements
Negotiating Option Deals: Secondary Protections of IP

- Mitigate Development Risk
- Plan for the Future
- Mitigate Termination Risk
- Maintain Control During Option Period
Negotiating Option Deals: Mitigate Development Risk

**Plan**
- Create a Concrete Development Plan including Goals, Contributions, Timelines and Budget

**Control**
- Maintain Control or Veto Rights over Changes to Development Plan

**Precision**
- Option Trigger Event Should be Well Defined
- Rapid and Streamlined Dispute Resolution
- Determine Appropriate Deadlines and Extensions
Negotiating Option Deals: Maintain Control During Option Period

Joint Steering Committee

Value
- R&D Guidance
- Communication Plan
- Collaborative Spirit
- Availability of Support

Risk
- Administrative Cost
- Partner Access to IP
- Claims to Joint Ownership of IP
Negotiating Option Deals: Mitigate Termination Risk

- What if Without Cause vs. Termination for Breach
- Options and Licenses Terminate Unless Option Exercised
- Consider How to Allocate IP at Outset
- Grantback of IP Upon Termination Where Appropriate
- Termination Fees or Payments
Negotiating Option Deals: Plan for the Future

Confidentiality Provisions Matter

**Announcements**
- Timing
- Content

**Disclosures**
- Advisors, Directors, Business Partners
- Investors and Acquirers

**Publications**
- Review and Input
- Exclusion of IP
Negotiating Option Deals: Plan for the Future

Assignment Provisions

**Company**
- Plan for Strategic Alternatives
- Maintain Exit Opportunities
- Provisions Often Reciprocal

**Partner**
- Protect Against Company Acquisitions by Competitors
- Assets Should Remain with the Company
Discussion

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