UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

April 21, 2016

Via Facsimile and U.S. Mail

David J. Goldschmidt, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036-6522

RE: Baxter International Inc. | Exchange Offer

Dear Mr. Goldschmidt:

We are responding to your letter dated April 21, 2016 addressed to Michele M. Anderson and Nicholas P. Panos, as supplemented by telephone conversations with the Staff, with regard to Baxter International, Inc.'s request for no-action relief. To avoid having to recite or summarize the facts set forth in your letter, our response is attached to the enclosed copy of your letter. Unless otherwise noted, capitalized terms in this letter have the same meaning as in your letter.

On the basis of your representations and facts presented in your letter, the Staff of the Division of Corporation Finance will not recommend that the Commission take enforcement action under Rules 13e-4(d)(1), 13e-4(e)(3), 13e-4(f)(1)(ii) or 14e-1(b) under the Exchange Act if Baxter conducts the Exchange Offer in the manner described in your letter. In issuing these no-action positions, we considered the following facts, among others:

- Baxter's disclosure of a specified dollar value of Baxalta common stock that tendering Baxter security holders will receive in exchange for a dollar value of tendered Baxter common stock (subject to an upper limit on the exchange ratio);

- The Pricing Mechanism for determining the number of shares of Baxalta common stock to be received in exchange for shares of Baxter common stock will be disclosed in the tender offer materials disseminated to security holders;

- The Pricing Mechanism will remain constant throughout the duration of the Exchange Offer, and if there is a change in the Pricing Mechanism, the Exchange Offer will remain open for at least ten business days thereafter;

- Baxter will provide a toll-free number that its security holders can use to obtain daily indicative exchange ratios and, after announcement of the final exchange ratio, the final exchange ratio (including whether the upper limit to the exchange ratio is in effect);

- Baxter will publish the final exchange ratio (including an announcement whether the limit on the exchange ratio is in effect) in a press release no later than 9:00 a.m., New York City time, on the trading day immediately preceding the expiration date, file the information as a Rule 425 filing pursuant to Rule 165 of the Securities Act of 1933, and file an amendment to its Schedule TO on the same date setting forth the same information;

- Baxter will make available forms of notice of guaranteed delivery and a notice of withdrawal in its printed materials, and will disclose the procedures for after-hours tenders and withdrawal, including the times and methods by which tenders and withdrawals must be made; and

- Baxter common stock and Baxalta common stock are listed on the NYSE.

The foregoing no-action positions are based solely on your representations and the facts presented in your letter dated April 21, 2016, as supplemented by telephone conversations with the Commission Staff. This relief is strictly limited to the application of the rules listed above to use of the Pricing Mechanism and with respect to Baxter's specification of the number of shares of Baxter common shares sought in the Exchange Offer. Baxter should discontinue the Exchange Offer pending further consultations with the Staff if any of the facts or representations set forth in your letter change.

We also direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 9(a), 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws rests with the participants in the Exchange Offer. The Division of Corporation Finance expresses no view with respect to any other questions that the Exchange Offer may raise, including, but not limited to, the adequacy of the disclosure concerning, and the applicability of any other federal or state laws to, the Exchange Offer. This response expresses the Division's position on enforcement action only and does not express any legal conclusion on the question presented.

Sincerely,

For the Division of Corporation Finance,

Michele M. Anderson

Michele M. Anderson
Associate Director, Legal
Division of Corporation Finance

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
FOUR TIMES SQUARE
NEW YORK 10036-6522

TEL: (212) 735-3000
FAX: (212) 735-2000
www.skadden.com

April 21, 2016

Securities Exchange Act of 1934
Rules 13e-4(d)(l), 13e-4(e)(3),
13e-4(f)(1)(ii) and 14e-1(b)

BY EMAIL

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Mergers and Acquisitions
100 F Street, N.E.
Washington, DC 20549-3628
Attention: Michele M. Anderson, Associate Director (Legal)
Nicholas P. Panos, Senior Special Counsel

Re: Baxter International Inc. Exchange Offer

Ladies and Gentlemen:

We are writing on behalf of our client, Baxter International Inc. ("Baxter"), in connection with an exchange offer to be potentially commenced on or after April 21, 2016. In the exchange offer (the "Exchange Offer"), Baxter will offer holders of its common stock the opportunity to exchange all or a portion of their common stock in Baxter for shares of common stock in Baxalta Incorporated ("Baxalta") as described below. The Exchange Offer adopts substantially the same pricing mechanism as the one used by (i) General Electric Company ("GE") in its exchange offer (the "GE Exchange Offer") with respect to the common stock of Synchrony Financial (the "GE Pricing Mechanism"), (ii) Bristol-Myers Squibb Company ("BMS") in its exchange offer (the "BMS Exchange Offer") with respect to the common stock of Mead Johnson Nutrition Company (the "BMS Pricing Mechanism") and (iii) Procter & Gamble Company ("P&G") in its exchange offer (the "P&G Exchange Offer") with respect to the shares of The J.M. Smucker Company as part of a Reverse Morris Trust transaction (the "P&G Pricing Mechanism"), all of which employed "Day 18" pricing mechanisms, as described below. The proposed pricing mechanism for the Exchange Offer is also similar to the one used by (i) The Dow Chemical Company ("TDCC") in its exchange offer (the "TDCC Exchange Offer") with respect to the common stock of Olin Corporation as part of a Reverse Morris Trust transaction (the "TDCC Pricing Mechanism"), (ii) Weyerhaeuser Company ("Weyerhaeuser") in its exchange offer (the "Weyerhaeuser-Tri Pointe Exchange Offer") with respect to the common stock of Tri Pointe

Homes, Inc. as part of a Reverse Morris Trust transaction (the "Weyerhaeuser-Tri Pointe Pricing Mechanism"), (iii) CBS Corporation ("CBS") in its exchange offer (the "CBS Exchange Offer") with respect to the common stock of CBS Outdoor Americas Inc. (the "CBS Pricing Mechanism"), (iv) Pfizer Inc. ("Pfizer") in its exchange offer (the "Pfizer Exchange Offer") with respect to the Class A common stock of Zoetis, Inc. (the "Pfizer Pricing Mechanism"), (v) Halliburton Company ("Halliburton") in its exchange offer (the "Halliburton Exchange Offer") with respect to the common stock of KBR, Inc. (the "Halliburton Pricing Mechanism"), (vi) Weyerhaeuser in its exchange offer (the "Weyerhaeuser-Domtar Exchange Offer") with respect to the common stock of Domtar Corporation (the "Weyerhaeuser-Domtar Pricing Mechanism"), (vii) McDonald's Corporation ("McDonald's") in its exchange offer (the "McDonald's Exchange Offer") with respect to the Class B Common Stock of Chipotle Mexican Grill, Inc. (the "McDonald's Pricing Mechanism"), (viii) PPG Industries, Inc. ("PPG") in its exchange offer (the "PPG Exchange Offer") with respect to the common stock of Georgia Gulf Corporation as part of a Reverse Morris Trust transaction (the "PPG Pricing Mechanism"), and (ix) Kraft Foods Inc. ("Kraft") in its exchange offer (the "Kraft Exchange Offer") with respect to the common stock of Ralcorp Holdings, Inc. as part of a Reverse Morris Trust transaction (such pricing mechanism, the "Kraft Pricing Mechanism"), all of which employed "Day 20" pricing mechanisms, as described below. The GE Exchange Offer, the BMS Exchange Offer, the P&G Exchange Offer, the TDCC Exchange Offer, the Weyerhaeuser-Tri Pointe Exchange Offer, the CBS Exchange Offer, the Pfizer Exchange Offer, the Halliburton Exchange Offer, the Weyerhaeuser-Domtar Exchange Offer, the McDonald's Exchange Offer, the PPG Exchange Offer and the Kraft Exchange Offer, are collectively referred to herein as the "Similar Exchange Offers."[1]

We respectfully request that the Staff confirm that it will not recommend that the U.S. Securities and Exchange Commission (the "Commission") take enforcement action pursuant to Rule 13e-4(d)(1) (requiring the specification of consideration offered and the specification of the total number of securities sought in an issuer tender offer), Rule 13e-4(e)(3) (requiring such an offer remain open for at least ten business days upon a change in the amount of securities sought), and Rules 13e-4(f)(1)(ii) and 14e-1(b) (requiring such an offer remain open for at least ten business days upon a change in the consideration offered or a change in the percentage of the class of securities being sought) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") with respect to the pricing mechanism for the Exchange Offer as described below (the "Pricing Mechanism") and with respect to the specification of the number of shares sought in the Exchange Offer as described below. The issues presented are substantially identical to those to which the Staff did not object in connection with the GE, BMS and P&G Exchange Offers. The issues presented are also similar to those to which the Staff did not object in the TDCC, Weyerhaeuser-Tri Pointe, CBS, Pfizer, Kraft, Halliburton, Weyerhaeuser-Domtar,

[1] *See General Electric Company* (avail. Oct. 19, 2015); *Bristol-Myers Squibb Company* (avail. Nov. 16, 2009) and *Procter & Gamble* (avail. Oct. 8, 2008). *See also The Dow Chemical Company* (avail. Sept. 2, 2015); *Weyerhaeuser Company* (avail. June 26, 2014); *CBS Corporation* (avail. June 11, 2014); *Pfizer Inc.* (avail. May 22, 2013); *Halliburton Company* (avail. Mar. 21, 2007); *Weyerhaeuser Company* (avail. Feb. 23, 2007); *McDonald's Corporation* (avail. Sept. 27, 2006); *PPG Industries, Inc.* (avail. Dec. 21, 2012); and *Kraft Foods Inc.* (avail. July 1, 2008).

McDonald's and PPG Exchange Offers, but with the simplified time-table and procedures like that used in GE, BMS and P&G and by Lazard Freres & Co. ("Lazard") in its offer (the "Lazard Offer") and TXU Corp ("TXU") in its offer (the "TXU Offer").[2]

I. BACKGROUND

A. Parties to the Transaction

1. Baxter

Baxter, a Delaware corporation, provides a broad portfolio of essential renal and hospital products through its subsidiaries, including home, acute and in-center dialysis; sterile IV solutions; infusion systems and devices; parenteral nutrition; biosurgery products and anesthetics; and pharmacy automation, software and services. Baxter's global footprint and critical nature of its products and services play a key role in expanding access to healthcare in emerging and developed countries. These products are used by hospitals, kidney dialysis centers, nursing homes, rehabilitation centers, doctors' offices and by patients at home under physician supervision. As of December 31, 2015, Baxter manufactured products in approximately 25 countries and sold them in approximately 120 countries.

As of December 31, 2015, Baxter had approximately 50,000 employees and conducted business in over 100 countries. Baxter generates approximately 60% of its revenues outside the United States, and maintains approximately 50 manufacturing facilities and over 100 distribution facilities in the United States, Europe, Asia-Pacific, Latin America and Canada.

Baxter is also a well-known seasoned issuer, subject to the information reporting requirements of the Exchange Act pursuant to Section 12(b) thereof. Accordingly, it files with the Commission periodic reports, proxy statements and other information relating to Baxter's business, financial results and other matters. Baxter is current in its periodic reporting obligations under the Exchange Act.

As of February 29, 2016 there were 549,217,816 shares of Baxter common stock, par value $1.00 per share ("Baxter Common Stock"), outstanding. Baxter Common Stock is listed on the New York Stock Exchange (the "NYSE"). Each share of Baxter Common Stock is entitled to one vote per share for all matters submitted to a vote of stockholders.

2. Baxalta

Baxalta is a publicly held corporation incorporated in Delaware. Baxalta is a global, innovative biopharmaceutical leader with a sustainable portfolio of differentiated therapies that seek to address unmet medical needs across many disease areas, including hemophilia, immunology and oncology. More specifically, Baxalta develops, manufactures and markets a

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[2] *See Lazard Freres & Co.* (avail. Aug. 11, 1995) and *TXU Corporation* (avail. Sept. 13, 2004).

diverse portfolio of treatments for hemophilia and other bleeding disorders, immune deficiencies, alpha-1 antitrypsin deficiency, burns and shock, and other chronic and acute medical conditions, as well as oncology treatments for acute lymphoblastic leukemia. Baxalta is also investing in emerging technology platforms, including gene therapy and biosimilars.

On July 1, 2015, Baxter completed the distribution of approximately 80.5% of the outstanding common stock of its biopharmaceuticals business, Baxalta, to Baxter stockholders. The distribution was made to Baxter's stockholders of record as of the close of business on June 17, 2015. After completion of the distribution, Baxter retained approximately 19.5% of the then outstanding Baxalta Common Stock. As a result of the distribution, Baxalta is now an independent public company trading under the symbol "BXLT" on the NYSE. Accordingly, Baxalta is subject to the information reporting requirements of the Exchange Act pursuant to Section 12(b) thereof, and Baxalta files with the Commission periodic reports, proxy statements and other information relating to its business, financial results and other matters. Baxalta is current in its periodic reporting obligations under the Exchange Act.

On January 11, 2016, Baxalta and Shire plc ("Shire") announced that they had entered into an Agreement and Plan of Merger, pursuant to which Shire has agreed to acquire all of the outstanding stock of Baxalta (the "Merger"), subject to the satisfaction of customary closing conditions, including the approval of the Merger by the respective stockholders of Shire and Baxalta. Shire (LSE: SHP, NASDAQ: SHPG), a company incorporated in Jersey, Channel Islands and based in Dublin, Ireland, is a biopharmaceutical company that focuses on developing and marketing innovative medicines for patients with rare diseases and other specialty conditions.

As of February 29, 2016, there were 681,241,198 shares of Baxalta common stock, par value $0.001 per share ("Baxalta Common Stock") outstanding. Baxalta Common Stock is listed on the NYSE. Each share of Baxalta Common Stock is entitled to one vote per share for all matters submitted to a vote of stockholders. Pursuant to a shareholder's and registration rights agreement with Baxalta, Baxter agreed to vote any shares of Baxalta Common Stock that it retains immediately after the distribution in proportion to the votes cast by Baxalta's other stockholders.

Baxter currently beneficially owns approximately 4.5% of the outstanding shares of Baxalta Common Stock.

B. Purpose of the Exchange Offer

The Exchange Offer is a tax-efficient way for Baxter to seek to divest all or a portion of its remaining interest in Baxalta. Baxter and Baxalta have significantly different competitive strengths and operating strategies. The Exchange Offer is an efficient means of placing Baxalta common stock with holders of Baxter common stock who wish to directly own an interest in Baxalta.

C. The Steps of the Exchange Offer

The terms of the Exchange Offer will be more fully described in the Prospectus (the "Prospectus") included in Baxalta's Registration Statement on Form S-4 filed by Baxalta. The Exchange Offer will also be described in the Schedule TO (the "Schedule TO") to be filed by Baxter. Set forth below is a description of the key components of the Exchange Offer.

Baxter will distribute shares of Baxalta Common Stock to Baxter stockholders pursuant to the Exchange Offer. In the Exchange Offer, Baxter is offering holders of Baxter Common Stock the opportunity to exchange all or a portion of their Baxter Common Stock for shares of Baxalta Common Stock. Following the completion of the Exchange Offer, in the event that more than the minimum amount of shares are tendered but not enough shares of Baxter common stock are tendered to allow Baxter to exchange all of its remaining shares of Baxalta common stock, Baxter intends to dispose of its remaining ownership interest in Baxalta by way of one or more contributions to the Baxter U.S. pension plan or a distribution to Baxter's stockholders as a special dividend, on a pro rata basis, in each case, prior to any Shire or Baxalta stockholder vote with respect to the Merger, and, in any event, during the 18-month period following the initial distribution on July 1, 2015. To the extent Baxter holds any Baxalta common stock or Shire securities received in exchange for such common stock pursuant to the Merger at the end of the 18-month period, as the case may be, Baxter will dispose of such stock in one or more transactions (including potentially through underwritten equity offerings) as soon as practicable thereafter, taking into account market conditions and its business judgment, but in no event later than five years after the distribution.

II. THE EXCHANGE OFFER

Baxter is adopting the Pricing Mechanism (described below) for the Exchange Offer. The terms of the Exchange Offer are more fully described in the Prospectus. Participation in the Exchange Offer is voluntary, and Baxter, Baxalta and the dealer managers have not and will not make any recommendation about whether holders of Baxter Common Stock should participate. Subject to compliance with Baxter's securities trading policy, directors and officers of Baxter may participate in the Exchange Offer, but the terms of the offer do not provide them with any advantage relative to other Baxter stockholders.

As in the Similar Exchange Offers, the Exchange Offer does not set forth a fixed exchange ratio at the outset of the Exchange Offer. Rather, the Exchange Offer price is expressed as a ratio of Baxalta Common Stock for each $100.00 of Baxter Common Stock tendered pursuant to the Exchange Offer (subject to the upper limit on the exchange ratio described below). This value relationship will reflect a discount to the estimated value of Baxalta Common Stock in order to encourage participation in the Exchange Offer.

Consistent with the Similar Exchange Offers, the Pricing Mechanism will calculate the per-share values for Baxter Common Stock and Baxalta Common Stock by reference to the simple arithmetic average of the daily volume-weighted average price (or daily "VWAP") of each stock over a three-business day period (the "Averaging Period"). Whereas in the TDCC, Weyerhaeuser-Tri Pointe, CBS, Pfizer, Kraft, Halliburton, Weyerhaeuser-Domtar and McDonald's Exchange Offers, per-share values of underlying stocks were determined by reference to the daily VWAP of each stock during an averaging period ending on and including the expiration date of the exchange offer, the Averaging Period, consistent with the GE Exchange Offer, the BMS Exchange Offer, the P&G Exchange Offer, the Lazard Offer and the TXU Offer, will end on and include the second trading day preceding the expiration date, allowing investors two full trading days to consider the final exchange ratio and decide to tender or withdraw. Also, consistent with GE, BMS, P&G and the other Similar Exchange Offers, the trading data to be used to set the value of Baxter Common Stock and Baxalta Common Stock will be the trading data for Baxter Common Stock and Baxalta Common Stock, respectively, on the NYSE. The daily VWAP for Baxter Common Stock and Baxalta Common Stock will be the VWAP per share of the applicable stock on the NYSE during the period beginning at 9:30 a.m., New York City time (or the then official open of trading), and ending at 4:00 p.m., New York City time (or the then official close of trading), on such day. The daily VWAP for Baxter Common Stock and Baxalta Common Stock will be determined by Baxter for each day during the Averaging Period, and Baxter will calculate the simple arithmetic average of such VWAPs of each stock. Baxter believes that the Averaging Period offers stockholders a reasonable balance between the objectives of providing the most current pricing practicable, while reducing price distortions that could occur if prices were established at a single point in time.

Consistent with the Similar Exchange Offers, Baxter stockholders participating in the Exchange Offer will receive a maximum number of shares of Baxalta Common Stock for each share of Baxter Common Stock accepted for exchange, which limit will be established using the closing price for Baxter Common Stock on the last trading day prior to the commencement of the Exchange Offer, and a discount to the closing price for Baxalta Common Stock on such date (referred to as the "upper limit"). This upper limit is intended to protect non-tendering holders of Baxter Common Stock against an unusual or unexpected drop in the trading price of Baxalta Common Stock, relative to the trading price of Baxter Common Stock, and the prospective loss of value to them (as continuing Baxter investors) if Baxalta Common Stock were exchanged at an unduly high exchange ratio. No later than 9:00 a.m., New York City time, on the trading day immediately following the Averaging Period, which will be the trading day immediately preceding the expiration date, Baxter will issue a press release and make a Rule 425 filing with the Commission to announce the final exchange ratio and whether the upper limit is in effect leaving Baxter stockholders two trading days to tender or withdraw. Consistent with the Similar Exchange Offers, the Exchange Offer will not include any minimum exchange ratio because, were such a limit to be triggered, it would provide tendering stockholders with a windfall return for Baxter Common Stock tendered and accepted.

Also consistent with the Similar Exchange Offers, if, upon the expiration of the Exchange Offer, Baxter stockholders have validly tendered more Baxter Common Stock than Baxter is able to accept for exchange, Baxter will accept for exchange Baxter Common Stock validly tendered and not withdrawn by each tendering stockholder on a pro rata basis (other than with respect to odd-lot tenders). Baxter will first calculate a "Proration Factor," which will equal (i) the total number of shares of Baxter Common Stock that Baxter is able to accept (taking into account the final exchange ratio and the total number of shares of Baxalta Common Stock owned by Baxter) divided by (ii) the total number of shares of Baxter Common Stock validly tendered and not withdrawn (in all cases after adjustment for odd-lot tenders that are not subject to proration as described below). The Proration Factor will then be applied to each Baxter stockholder with respect to the total number of shares of Baxter Common Stock validly tendered by such Baxter stockholder pursuant to the Exchange Offer and not withdrawn (except for holders of less than 100 shares of Baxter Common Stock who validly tender all of their shares and elect not to be subject to proration).

The Pricing Mechanism will be disclosed in the Prospectus and will be constant throughout the Exchange Offer. Any change in the Pricing Mechanism (including in the upper limit described above) will be made no later than ten business days before offer expiration and would be published in a press release and in a Rule 425 filing with the Commission. That information and the press release will also be included in an amendment to Baxter's Schedule TO to be filed in connection with the Exchange Offer.

The Exchange Offer commenced by Baxter relies on traditional, timely methods of disclosing the pricing information consistent with the "day 18" pricing mechanisms used in the GE Exchange Offer, the BMS Exchange Offer, the P&G Exchange Offer, the Lazard Offer and the TXU Offer. Consistent with the GE Exchange Offer, the BMS Exchange Offer, the P&G Exchange Offer, the Lazard Offer and the TXU Offer, GE will make pricing information available as follows:

- Indicative exchange ratios will be available on each day of the Exchange Offer period prior to the announcement of the final exchange ratio by contacting the information agent for the Exchange Offer at a toll-free telephone number that will be disclosed in the Prospectus.

- Prior to the Averaging Period, commencing on the third trading day of the Exchange Offer,[3] the indicative exchange ratios for each day will be calculated based on the indicative calculated per-share values of Baxter Common Stock and Baxalta Common Stock on each day, calculated as though that day were the expiration date of the Exchange Offer. In other words, assuming that a given day is a trading day, the indicative exchange ratio will be calculated based on the simple arithmetic average of the daily VWAPs of Baxter Common Stock and Baxalta Common Stock for that day and the immediately preceding two trading days. The indicative exchange ratio will also reflect whether the upper limit would have been in effect had such day been the expiration date of the Exchange Offer.

- During the Averaging Period, the indicative exchange ratios will be calculated as follows: (i) on the first day of the Averaging Period, the indicative exchange ratio will be calculated based on the daily VWAPs of Baxter Common Stock and Baxalta Common Stock for that first day of the Averaging Period and (ii) on the second day of the Averaging Period, the indicative exchange ratio will be calculated based on the

[3] Consistent with Halliburton and McDonald's, indicative exchange ratios will not be posted until the third trading day of the Exchange Offer (the second for McDonald's), because the requisite number of trading days during the Exchange Offer to calculate such ratio has not elapsed.

simple arithmetic average of the daily VWAPs of Baxter Common Stock and Baxalta Common Stock for the first and second day of the Averaging Period.

- The final exchange ratio (including an announcement about whether the upper limit on the exchange ratio described above is in effect) will be published by Baxter in a press release issued no later than 9:00 a.m., New York City time, on the trading day immediately preceding the expiration date of the Exchange Offer. That information and the press release will also be included in an amendment to Baxter's Schedule TO filed on the same day. Following such announcement, the final exchange ratio will also be available by contacting the information agent at a toll-free telephone number disclosed in the Prospectus.

Consistent with the "day 18" pricing mechanisms used in the GE Exchange Offer, the BMS Exchange Offer, the P&G Exchange Offer, the Lazard Offer and the TXU Offer, Baxter may elect not to provide special internet-based information concerning daily VWAPs during the exchange offer period, because that type of disclosure was required in the TDCC, Weyerhaeuser-Tri Pointe, CBS, Pfizer, Kraft, Halliburton, Weyerhaeuser-Domtar and McDonald's Exchange Offers only because of the "day 20" pricing timetable used in those exchange offers.

Consistent with the Similar Exchange Offers, withdrawal rights will be available throughout the Exchange Offer. Because the offer will terminate at 11:59 p.m., New York City time, on the expiration date and Baxter will announce the final exchange ratio by 9:00 a.m., New York City time, on the trading day immediately preceding the expiration date, holders of Baxter Common Stock will have two full trading days to consider the final exchange ratio and decide to tender or withdraw. In this regard, we note the following:

- Holders of Baxter Common Stock will be able to send via fax (through their brokers or similar institutions if they do not hold their shares directly) notices of withdrawal to the exchange agent.

- Baxter will make available to holders of Baxter Common Stock in printed materials a notice of guaranteed delivery and a notice of withdrawal, and the procedures for after-hours tenders and withdrawal will be explained in the Prospectus, including the times and methods by which tenders and withdrawals must be made.

III. DISCUSSION

We respectfully request on behalf of Baxter that the Staff confirms that it will not recommend that the Commission take enforcement action pursuant to Rules 13e-4(d)(1), 13e-4(e)(3), 13e-4(f)(1)(ii) and 14e-1(b) under the Exchange Act (requiring the specification of consideration offered and the extension of the offer on a change in consideration) with respect to Baxter's use of the Pricing Mechanism as described above.

We believe that the Pricing Mechanism is consistent with the protection of investors because it results in a fixed, constant dollar value exchange (subject to the upper limit on the exchange ratio described above) and provides greater certainty about the ultimate return to investors and absolute certainty about the maximum number of shares of Baxalta Common Stock receivable per share of Baxter Common Stock tendered. This approach is identical to the pricing mechanisms in the GE, BMS and P&G Exchange Offers, which builds on the pricing mechanisms in the other Similar Exchange Offers and the other traditionally available pricing structures, including formula-based and "Dutch auction" structures previously approved by the Staff, and provides investors with advantages not available in those offers. In addition, the Pricing Mechanism adopts the simplified timetable and procedures used in the GE Exchange Offer, the BMS Exchange Offer, the P&G Exchange Offer, the Lazard Offer and the TXU Offer, thereby ensuring that the investors have ample time to decide whether to tender or withdraw.

A. Fixed Exchange Ratios

The Pricing Mechanism allows investors to better predict the value they will receive in the Exchange Offer than they would in an offer using the traditional pricing method of a fixed exchange ratio. In fixed-ratio offers, the return to investors depends on the value at the time of expiration of the offer of both what is offered and what is tendered. These values fluctuate independently and without constraint during the offer period, and an investor only realizes the actual discount or premium initially embedded in the exchange ratio if the prices of the underlying stocks on offer expiration are equal to their prices at the offer's inception. Sophisticated investors may seek at the start of the offer to lock in the initial discount through a variety of trading strategies that, when implemented, could make them economically indifferent to subsequent changes in trading prices for the stocks involved. Less sophisticated investors, such as small retail investors, generally will not lock in the discount at the offer's inception. Instead, their participation decision may be more heavily influenced by the relative prices of each stock at the offer's end, which may not reflect the discount originally provided.

B. Formula-Based Exchange Ratios and Pricing Structures

For various reasons, including to mitigate the disadvantages of fixed-ratio offers and to permit a more current market valuation of the securities involved in an exchange, market participants have sought, and the Staff has granted, relief under the tender offer rules when the exchange ratio is based on a formula using trading data over a specified period (typically 10 trading days).[4] In Lazard, the first of these no-action letters, the Staff nonetheless required that the exchange ratio be set no later than the second full business day preceding the offer expiration. The Staff has extended the relief granted in Lazard to other circumstances involving formula-based pricing, but in many instances has continued to require that the final consideration be set no later than two trading days prior to the expiration of the offer. For example, the Staff permitted AB Volvo ("AB Volvo") to set the redemption price for AB Volvo common stock using a formula-based on volume-weighted average trading prices of that stock on the Stockholm Stock Exchange on three specified days during a three-week period ending two U.S. trading days

4 *Lazard Freres & Co.* (avail. Aug. 11, 1995). *See also BBVA Privanza International (Gibraltar) Limited* (avail. Dec. 23, 2005); *TXU Corporation* (avail. Sept. 13, 2004); *Epicor Software Corp.* (avail. May 13, 2004); and *AB Volvo* (avail. May 16, 1997).

before the expiry of the U.S. offer.[5] Similarly, the Staff permitted TXU to offer to purchase certain equity-linked securities for a price fixed at least two days prior to the expiration of the exchange offer and indexed to the daily VWAP of TXU's stock for the 10-day period then ended.[6]

1. "Day 18" versus "Day 20" Pricing

Consistent with the formulas used in the GE, BMS, P&G, Lazard, AB Volvo and TXU offers, the Pricing Mechanism uses an Averaging Period ending on and including the second trading day preceding the expiration date, providing for a two trading day window between pricing and offer expiration. This "day 18" pricing reflects an effort to balance potentially conflicting considerations: on one hand, the need for adequate dissemination of information about the absolute consideration being offered to investors and, on the other hand, the desire to minimize the artificially imposed exposure to market risk resulting from the imposition of an arbitrary time delay between pricing and offer expiration. The result is that the final exchange ratio in the Exchange Offer can and will be announced by 9:00 a.m., New York City time, on the trading day immediately preceding the expiration date, allowing investors two full trading days to consider the final exchange ratio in the Exchange Offer and decide to tender or withdraw at any time during that two trading day period. Baxter intends to rely on traditional, timely methods of disclosure of the final pricing and exchange ratio described herein consistent with the "day 18" pricing mechanisms used in the GE Exchange Offer, the BMS Exchange Offer, the P&G Exchange Offer, the Lazard Offer and the TXU Offer, and may not provide special internet-based information concerning daily VWAPs during the exchange offer period, because that type of disclosure was required in the other Similar Exchange Offers only because of the "day 20" pricing timetable used in those exchange offers.

2. Length of Averaging Period

Consistent with GE, BMS, P&G, TDCC, Weyerhaeuser-Tri Pointe, CBS, Pfizer, PPG, Kraft, Halliburton and Weyerhaeuser-Domtar, the Pricing Mechanism uses a three-business day Averaging Period. For the same reasons stated above, we believe that the 10-business day averaging period used in Lazard and TXU is not as favorable to retail investors as the three-business day averaging period incorporated in the Pricing Mechanism. The underlying policy favoring a longer pricing period is in principle that it protects investors against potential manipulation and other unusual price movements that could distort the value of consideration offered to investors. A lengthy averaging period, however, increases the likelihood that market-

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5 *AB Volvo* (avail. May 16, 1997).

6 *TXU Corporation* (avail. Sept. 13, 2004). *See also, e.g., Epicor Software Corp.* (avail. May 13, 2004) (permitting Epicor to determine the magnitude of an offer price adjustment by reference to the average closing price per share of Epicor common stock during the 10 trading-day period ending two trading days before expiration of the offer); *BBVA Privanza International (Gibraltar) Limited* (avail. Dec. 23, 2005) (permitting BBVA Gibraltar to price a tender offer for preference shares based on a stated fixed spread over yield on a specified benchmark U.S. Treasury security on the second business day immediately preceding the expiration of the tender offer period).

wide fluctuations may influence the calculation and that the prices of the underlying securities at the end of such averaging period will differ significantly from the value ascribed to them by the Pricing Mechanism – a result that could particularly adversely affect less sophisticated investors who decide whether to participate in an exchange offer based on the final values of the stocks involved. The Pricing Mechanism uses more current pricing through a shorter averaging period, while still providing protection against the manipulation that could arise using "point in time" pricing, and thus should benefit investors as a whole.

The Pricing Mechanism enables investors to consider whether to accept or reject an exchange or tender offer based on a fixed dollar value of Baxalta Common Stock receivable per $100.00 of Baxter Common Stock tendered (subject to the upper limit on the exchange ratio described above). "Day 18" pricing also provides that tendering holders will know prior to the last day of the Exchange Offer period the precise number of shares of Baxalta Common Stock they will receive per share of Baxter Common Stock tendered. The Pricing Mechanism also offers significant advantages to investors in that it:

- minimizes the potential for pricing disparities between the announced ratio and the final ratio in exchange offers using fixed and formula-based exchange ratios;

- is simple to understand, because it focuses on the relative value relationship between two stocks (the central consideration for investors);

- relies on more current information about the value of the stocks in question, because it uses a shorter averaging period, while at the same time incorporating protections against manipulation; and

- announces the final exchange ratio by 9:00 a.m., New York City time, on the trading day immediately preceding the expiration date, allowing investors two full trading days to evaluate the Exchange Offer and decide whether to tender or withdraw their shares.

Practical experience also suggests that smaller investors have participated effectively in offers using market-based pricing and that they would readily understand the simpler and more intuitive Pricing Mechanism used in the Exchange Offer. While they arose in an employee compensation context, the issuer tender offers conducted by Comcast and Microsoft, among others,[7] demonstrate that tens of thousands of individual investors - some with no remaining connection to the issuer - were able to evaluate market-based offers where the exchange ratio was not fixed at the start of the exchange offer. It is noteworthy that neither employees nor former employees can be distinguished from other security holders in either their need for

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[7] *See, e. g.*, *Comcast Corp.* (avail. Oct. 7, 2004) (permitting transfers of options, more than 85% of which were "out-of-the-money," to a broker as part of an employee compensation mechanism, where the exact compensation to be paid to employees in respect of those options was determined after expiration of the transfer period); *Microsoft Corp.* (avail. Oct. 15, 2003) (similar option transfer program where all of the eligible options were "out-of-the-money").

adequate and timely pricing information or their ability to analyze and act on market-based pricing. We also note that the Similar Exchange Offers were well oversubscribed. For example, the GE Exchange Offer was approximately 3.2-times oversubscribed (671,366,809 shares accepted for exchange out of 2,149,128,195 shares validly tendered), the TDCC Exchange Offer was approximately 5-times oversubscribed (34,108,738 shares accepted for exchange out of 161,106,659 shares validly tendered), the Weyerhaeuser-Tri Pointe Exchange Offer was approximately 3.5-times oversubscribed (58,813,151 shares accepted for exchange out of 205,186,689 shares validly tendered), the CBS Exchange Offer was approximately 7-times oversubscribed (44,723,131 shares accepted for exchange out of 300,229,143 validly tendered), the Pfizer Exchange Offer was approximately 4-times oversubscribed (405,117,195 shares accepted for exchange out of 1,674,974,996 validly tendered), the PPG Exchange Offer was approximately 7-times oversubscribed (10,825,227 shares accepted for exchange out of 68,933,881 shares validly tendered), the BMS Exchange Offer was approximately 2-times oversubscribed (269,285,601 shares accepted for exchange out of 499,484,935 shares validly tendered), the Kraft Exchange Offer was approximately 12-times oversubscribed (46,119,899 shares accepted for exchange out of 568,543,287 validly tendered), the P&G Exchange Offer was approximately 12.5-times oversubscribed (38,652,878 shares accepted for exchange out of 484,121,230 shares validly tendered), the Weyerhaeuser-Domtar Exchange Offer was approximately 4.5-times oversubscribed (25,490,196 shares accepted for exchange out of 114,204,244 shares validly tendered) and the McDonald's Exchange Offer was approximately 14-times oversubscribed (18,628,187 shares accepted for exchange out of 262,183,800 shares validly tendered).

The Pricing Mechanism is also consistent with the relief granted in Lazard and its progeny in all other material respects: (i) the value relationship expressed as a ratio of a specified dollar value of Baxalta Common Stock for each $100.00 worth of Baxter Common Stock is fixed and will remain constant during the Exchange Offer (subject to the upper limit on the exchange ratio described above), such that holders will be able to determine the value they will receive in consideration for tendering their shares; (ii) the final exchange ratio will be based on readily observable average trading prices for securities listed on a national securities exchange over a specified period; (iii) Baxter will issue a press release announcing the final exchange ratio by 9:00 a.m. on the trading day immediately preceding the expiration date and will file an amendment to its Schedule TO on the same day setting forth the final exchange ratio and including the press release as an exhibit, thus allowing investors two full trading days to consider the final exchange ratio and decide to tender or withdraw; and (iv) holders of Baxter Common Stock can also contact Baxter's information agent at a toll-free number disclosed in the Prospectus to obtain indicative exchange ratios prior to the announcement of the final exchange ratio and the final exchange ratio once it has been publicly announced.

C. The Number of Shares of Baxter Common Stock Sought in the Exchange Offer

Rule 13e-4(f)(1)(ii) and Rule 14e-1(b) prohibit an issuer from changing the percentage of the class of securities being sought (provided that acceptance for payment of an additional amount of the shares not to exceed two percent of outstanding shares shall not be deemed to be an increase in the percentage of the class of securities being sought) unless the exchange offer remains open for at least ten business days from the date the change is announced. The Prospectus will clearly and unambiguously disclose that the maximum number of shares of Baxter Common Stock that will be accepted if the Exchange Offer is completed will be equal to the number of shares of Baxalta Common Stock offered by Baxter in the Exchange Offer divided by the final exchange ratio (which will be subject to the upper limit). If a greater number of shares of Baxter Common Stock are validly tendered and not withdrawn, then those tendered shares would be subject to proration as described above.[8] If a lesser number of shares of Baxter Common Stock are validly tendered and not withdrawn, then subject to the satisfaction, or when permissible, waiver of the conditions of the Exchange Offer, including any minimum tender condition, Baxter will accept the shares so tendered.

As in GE, BMS, P&G, TDCC, Weyerhaeuser-Tri Pointe, CBS, Pfizer, Kraft, Halliburton, Weyerhaeuser-Domtar, PPG and McDonald's, Baxter believes that defining the amount of securities Baxter may accept in the Exchange Offer in accordance with the above, which will be clearly and unambiguously described in the Prospectus, is consistent with the regulatory, disclosure and investor protection objectives of Rule 13e-4(f)(1)(ii) and Rule 14e-1(b) under the Exchange Act, is not coercive or unfair and should be permitted. In this regard, we note:

- The method by which the actual number of shares of Baxter Common Stock that Baxter will accept in the Exchange Offer, as well as the upper limit, will be described in detail in the Prospectus and made available to all holders of Baxter Common Stock in a clear, easy to understand manner. Assuming Baxter does not change that method, we do not believe that the application of that method at expiration is a "change" in the percentage of the securities being sought.

- We believe the disclosure in the Prospectus will fully define the material terms and features of the Exchange Offer as required by Item 4 of Form S-4 under the Securities Act of 1933, as amended (the "Securities Act"), and by Item 4 of Schedule TO (including Item 1004(a) and (b) of Regulation M-A referenced therein).

- Pursuant to Rule 13e-4 under the Exchange Act and Rule 162 under the Securities Act, Baxter will provide withdrawal rights and allow withdrawals until the expiration of the Exchange Offer.

- Baxter will announce the final exchange ratio by 9:00 a.m. on the trading day immediately preceding the expiration of the Exchange Offer, allowing investors two full trading days to consider the final exchange ratio and decide to tender or withdraw their shares of Baxter Common Stock.

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[8] This is similar to the scenario faced in the Citizens Republic Bancorp, Inc. exchange offer, where, because the percentage of securities accepted was dependent on the average VWAP of the subject securities (and the resulting exchange ratios) as well as the percentage of the securities of each class validly tendered, the issuer was unable to specify the exact percentage of the securities being sought. *See Citizens Republic Bancorp* (avail. Aug. 21, 2009).

We understand that, pursuant to Rule 13e-4(e)(3), if there is a change in the Pricing Mechanism and/or the upper limit, then such change would be viewed as change in the amount of securities sought, thus requiring that at least ten business days remain in the Exchange Offer period following the announcement of such change.

D. <u>Other Precedents</u>

The Staff also has an established interpretation of its tender offer pricing rules to permit modified Dutch auction tender offers, although these offers do not provide security holders with the final offer price until offer expiration, subject to certain conditions. We believe that the Pricing Mechanism is consistent with the Staff's position on Dutch auction tender offers and, indeed, provides certain advantages to investors. Like modified Dutch auction tender offers, (i) the Exchange Offer will provide for pro rata acceptance throughout the Exchange Offer with all securities participating equally in prorationing; (ii) withdrawal rights will exist throughout the offer period; (iii) there will be prompt announcement of the final exchange ratio; and (iv) the offeror will exchange all accepted securities at the highest consideration paid to any security holder under the offer.[9] Unlike the Pricing Mechanism, however, Dutch auction pricing provides significantly less visibility to investors about the value they will receive, since it merely establishes a range of prices at the outset without providing any visibility during the offer as to likely outcomes. Indeed, we believe that this disadvantage of Dutch auction pricing in part led to the need for the relief granted in the case of "day 18" and "day 20" pricing constructs.[10]

Consistent with the Similar Exchange Offers, Baxter has not incorporated a minimum exchange ratio because it believes that it could potentially result in a windfall to tendering stockholders. Indeed, incorporating a minimum exchange ratio in the Pricing Mechanism would not correlate to the low end of the range specified in a Dutch auction in which the final exchange ratio is determined independently of the values of the stocks in question based on investor indications of interest in a process that is not transparent to the market generally.

E. <u>Similarities and Differences from Precedent</u>

1. Final Exchange Ratio Timing and Disclosure

The Pricing Mechanism is consistent with GE, BMS, P&G, TXU and Lazard but differs from the pricing mechanisms used in TDCC, Weyerhaeuser-Tri Pointe, CBS, Pfizer, PPG, Kraft, Halliburton, Weyerhaeuser-Domtar and McDonald's, with respect to the following points:

- Whereas in the TDCC, Weyerhaeuser-Tri Pointe, CBS, Pfizer, PPG, Kraft, Halliburton, Weyerhaeuser-Domtar and McDonald's Exchange Offers, the per-share values of underlying stocks were determined by reference to the daily VWAP of each stock during an averaging period ending on and including the expiration date of the

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9 SEC Rel. No. 33-6653 (July 11, 1986).

10 *See Lazard Freres & Co.* (avail. Aug. 11, 1995).

exchange offer, the Averaging Period will end on and include the second trading day preceding the expiration date allowing investors two full trading days to consider the final exchange ratio in the Exchange Offer and decide to tender or withdraw at any time during that two-day period.

- The Exchange Offer to be commenced by Baxter will rely on traditional, timely methods of disclosure of the final pricing and exchange ratio described herein consistent with the “day 18” pricing mechanisms used in the GE, BMS, P&G, TXU and Lazard offers and may not provide special internet-based information concerning daily trading prices during the Averaging Period because that was required in the TDCC, Weyerhaeuser-Tri Pointe, CBS, Pfizer, PPG, Kraft, Halliburton, Weyerhaeuser-Domtar and McDonald’s Exchange Offers, only because of the “day 20” pricing timetable used in those offers.

2. Proxy Pricing

Consistent with CBS, Pfizer, GE, BMS, Halliburton and McDonald’s, no proxy is used to determine the value of Baxalta Common Stock, whereas in TDCC, Weyerhaeuser-Tri Pointe, P&G, PPG, Kraft and Weyerhaeuser-Domtar the value of the distributed shares was determined by reference to the trading data for an acquiring company. Because Baxalta Common Stock is already listed and traded on the NYSE, no proxy is required to determine the value of Baxalta Common Stock.

3. Averaging Period

The Pricing Mechanism is consistent with GE, BMS, P&G, TDCC, Weyerhaeuser-Tri Pointe, CBS, Pfizer, PPG, Kraft, Halliburton and Weyerhaeuser-Domtar in that the exchange ratio of the Exchange Offer is based on a three-business day averaging period, while in McDonald’s the exchange ratio was based on a two-business day averaging period and in TXU and Lazard the exchange ratio was based on a ten-business day averaging period.

IV. REQUESTED NO-ACTION RELIEF

Based on the foregoing, we respectfully request on behalf of Baxter that the Staff confirm that it will not recommend that the Commission take enforcement action pursuant to Rule 13e-4(d)(1) (requiring the specification of consideration offered and the specification of the total number of securities sought in an issuer tender offer), Rule 13e-4(e)(3) (requiring such an offer remain open for at least ten business days upon a change in the amount of securities sought), and Rules 13e-4(f)(1)(ii) and 14e-1(b) (requiring such an offer remain open for at least ten business days upon a change in the consideration offered or a change in the percentage of the class of securities being sought) under the Exchange Act with respect to Baxter’s use of the Pricing Mechanism and specification of the number of shares of Baxter Common Stock sought in the Exchange Offer. We note that the relief sought is consistent with the position previously taken by the Staff in GE, BMS and P&G. It is also consistent with the position previously taken by the Staff in TDCC, Weyerhaeuser-Tri Pointe, CBS, Pfizer, PPG, Kraft, Halliburton, Weyerhaeuser-Domtar and McDonald’s, and to the extent that the Exchange Offer differs from TDCC, Weyerhaeuser-Tri Pointe, CBS, Pfizer, PPG, Kraft, Halliburton, Weyerhaeuser-Domtar and McDonald's, such differences are consistent with the position previously taken by the Staff in GE, BMS, P&G, TXU and Lazard and do not affect the adequate dissemination of pricing related information or Baxter's stockholders' ability to make informed investment decisions with respect to whether or not to participate in the Exchange Offer.

We respectfully request that the Staff issue the requested no-action relief as soon as practicable.

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If you have any questions or comments with respect to this matter, please call me at (212) 735-3574 or Joseph Miron at (312) 407-0582.

Very truly yours,

David J. Goldschmidt

cc: David P. Scharf, Corporate Vice President, Corporate Vice President, General Counsel & Corporate Secretary
Brian V. Breheny, Skadden, Arps, Slate, Meagher & Flom LLP
Joseph Miron, Skadden, Arps, Slate, Meagher & Flom LLP