

From: Boris Nikolic <[REDACTED]>
To: jeffrey E. <jeevacation@gmail.com>
Subject: FMI/Roche standstill
Date: Sun, 25 Feb 2018 20:57:44 +0000

Hi!

Will call you later today. Please in future, always use this email and not my Hotmail. I am barely using it.

You are correct re FMI that I should exercise soon.

There are however few upcoming catalysts – next week FDA/CMS final NCD for reimbursement.

March 7 – last year final results and projection for 2018.

And most importantly April 6! April 6 is three years after Roche acquired in tender 58.5% of FMI.

Roche will be able to acquire the rest of FMI for the first time after April 6th,

Roche just acquired Flatiron Health for 2B

<https://www.forbes.com/sites/matthewherper/2018/02/15/roche-to-buy-big-data-upstart-flatiron-health-for-1-9-billion/#3d2d610f1e85>

Flatiron works very closely with FMI. Roche really needs both pieces. FMI genetic data are getting combined with Flatiron clinical data for the full picture.

Current FMI share price is \$77.65/share

If Roche make an acquisition they need to buy the minority of company so it will not cost them that much.

There is a rumor of \$190-200/share.

There is few unique features of that acquisition that are negotiated before a tender.

Below is the standstill language from the original 8-K released on the 1/12/2015 announcement of the Roche tender offer. There are a couple important points – first, there cannot be any private or public communication about the intent to acquire further shares of FMI (meaning no preparatory talk leading up to 4/6/2018) – and second, following the 3-year Original Standstill Period," and before the ending of the 5-year standstill, any action to acquire further FMI ownership must be an offer to purchase the entirety of shares outstanding (not a tender, not a slow continual acquisition of shares). A take-out offer in full like this is an easier, quicker event than the alternatives disallowed by section 3.01.

Thus, I am giving 75% chance for the April/May take-out thesis.

<https://www.sec.gov/Archives/edgar/data/1488613/000119312515007166/d850129dex41.htm>

Section 3.01. Standstill.

(a) Subject to Section 3.01(d), for a period of three years following the Closing (such three-year period, the "Original Standstill Period"), or such shorter period as may apply in accordance with Section 3.02, the Investor shall not, and shall not permit any of its Representatives (acting at the Investor's direction) or Affiliates to, directly or indirectly, in any manner, effect or seek, offer or propose (whether publicly or otherwise) to effect, or announce any intention to effect or otherwise participate in, any acquisition of Company Securities (including in derivative form) or any tender or exchange offer, merger, consolidation, business combination or other similar transaction involving the Company or any of its Subsidiaries.

(b) Except as provided in Section 3.01(c)(iii), during the Original Standstill Period and for so long thereafter as the Investor has the right to designate at least one Investor Designee on the Board pursuant to Section 2.02(a)(i), or such shorter period as may apply in accordance with Section 3.02, the Investor shall not, and shall not permit any of its Representatives (acting at the Investor's direction) or Affiliates to, directly or indirectly, in any manner, (i) effect or seek, offer or propose (whether publicly or otherwise) to effect, or announce any intention to effect or otherwise participate in, any "solicitation" of "proxies" (as such terms are used in the proxy rules of the SEC) to vote any Shares in connection with the election of directors or the removal of any director, (ii) solicit, knowingly encourage or knowingly facilitate, directly or indirectly, any third party to engage in any such solicitation, or (iii) make any public statement (or statement to another stockholder of the Company) in support of any such third-party solicitation or against any of the Company's director nominees.

(c) Without limiting Section 3.01(a) or Section 3.01(b), the Investor agrees that, subject to Section 3.01(d), for as long as the Aggregate Ownership Percentage of the Investor Group is at least 20%:

(i) the Investor shall not, and shall not permit any of its Affiliates or Representatives (acting at the Investor's direction) to, directly or indirectly, in any manner, effect or seek, offer or propose (whether publicly or otherwise) to effect, or announce any intention to effect or otherwise participate in, any acquisition of Company Securities (including in derivative form) or any tender or exchange offer, merger, consolidation, business combination or other similar transaction involving the Company or any of its Subsidiaries, in each case unless the Investor (through itself or one of its Affiliates) offers to purchase all of the outstanding Shares held by stockholders of the Company other than the Investor Group (an "Investor Buyout Offer");

(ii) prior to the fifth anniversary of the Closing, any Investor Buyout Offer shall be (A) made solely on a confidential basis to the Company and/or the Board, (B) subject to Disinterested Director Approval and (C) subject to a non-waivable condition requiring receipt of the approval of stockholders holding a majority of the Shares not beneficially owned by the Investor Group (or, in the event that the Investor Buyout Offer is proposed as a tender or exchange offer, a condition requiring that a majority of the Shares held by stockholders other than the Investor Group are validly tendered and not withdrawn); and

(iii) from and after the fifth anniversary of the Closing, (A) any Investor Buyout Offer shall be subject to a non-waivable condition requiring receipt of the approval of stockholders holding a majority of the Shares not beneficially owned by the Investor Group (or, in the event that the Investor Buyout Offer is proposed as a tender or exchange offer, a condition requiring that a majority of Shares held by stockholders other than the Investor Group are validly tendered and not withdrawn), and (B) if the Investor or any of its Affiliates makes an Investor Buyout Proposal, notwithstanding anything in this Agreement to the contrary, at any subsequent annual stockholder meeting of the Company (or special meeting called for the purpose of electing directors), the Investor Group will be entitled to nominate, in lieu of any member(s) of the Board, individual(s) who would be Independent Directors and the restrictions set forth in Section 3.01(b) shall not apply in connection with such election of directors; *provided* that, in connection with such election, the Investor Group shall vote its Shares in the same proportion as the votes cast by all stockholders of the Company other than the Investor Group. For the avoidance of doubt, any Investor Buyout Offer made after the fifth anniversary of the Closing may be made publicly and/or directly to the stockholders of the Company (including pursuant to a tender offer) without the review, evaluation or approval of the Board or the Disinterested Directors.

(d) Nothing in this Section 3.01 shall restrict, prevent or otherwise limit (i) any acquisition of beneficial ownership of Shares by the Investor or any of its Affiliates as permitted by Section 4.03 or Section 4.04(b), (ii) subject to Section 2.07, activities relating to existing or potential licensing, development, cooperation or other commercial agreements between the Company on the one hand, and the Investor or any of its Affiliates on the other hand, including any activities under or relating to the Collaboration Agreements, (iii) any Investor Designee from taking any action in connection with the satisfaction of his or her fiduciary duties as a director of the Board, voting on matters put to the Board or any committee thereof, influencing officers, employees, agents, management or the other directors of the Company in connection with his or her Board directorship, taking any action or making any statement at any meeting of the Board or any committee thereof, or otherwise acting in his or her capacity as a director of the Board, (iv) any disclosure or statements required to be made by any Investor Designee, the Investor or any of its Affiliates under Applicable Law or under applicable stock exchange rules on which the capital stock of the Investor or any of its Affiliates is traded; *provided* that such disclosure requirement does not arise from a breach of this Section 3.01; and *provided, further*, that the Investor provides the Company with prior notice of any such required disclosure, to the extent practicable and legally permitted, so that the Company may seek confidential treatment, an applicable protective order or similar relief, and the Investor shall reasonably cooperate (at the Company's expense) with such efforts by the Company, (v) the Investor Group's right to exercise the voting rights with respect to their Shares in their discretion on any matter (subject to Section 2.02(e) and Section 2.06), (vi) any action that the Investor or any of its Affiliates is expressly required to take pursuant to any provision of this Agreement or any other Transaction Document or (vii) any action by the Investor or any of its Affiliates, taken at the election of the Investor or such Affiliate, upon the request of a majority of the Disinterested Directors or a committee thereof.

(e) The Investor shall not request that the Company amend or waive any provision of this Article 3, including this Section 3.01(e); *provided* that nothing in this Agreement shall prevent the Investor or any of its Affiliates from making confidential requests to the Board to amend or waive any provision of this Article 3, including this Section 3.01(e), that would require the Company, or the Investor or any of its Affiliates, to make any public disclosure with respect thereto.

Section 3.02. *Early Termination of Standstill*. Notwithstanding anything to the contrary set forth herein, the restrictions set forth in the preceding Section 3.01 shall automatically terminate, without any further action being required by any party hereto, and shall have no further force or effect, upon the Company entering into a definitive agreement with respect to, or the Board recommending to the Company's stockholders, a transaction whereby any Person or group (as defined in Section 13(d)(3) of the Exchange Act) would acquire, directly or indirectly, voting securities of the Company representing more than 20% of the aggregate voting power of all then-outstanding voting securities of the Company (it being understood that share repurchases by the Company that are not consummated for the purpose of increasing any person's or group's percentage ownership of the Company shall not be deemed to trigger the termination of this Section 3.01).