

Use of 'ticking fee' in Novartis-AveXis transaction

14 November 2018 | Contributed by [Ropes & Gray LLP](#)

On 6 April 2018 Novartis AG entered into a definitive agreement to acquire AveXis, Inc – a US-based, clinical stage gene therapy company – for approximately \$8.7 billion pursuant to a two-step tender offer transaction. Notably, the Novartis-AveXis merger agreement contained a variation of a 'ticking fee' provision in the event that Novartis elected to extend the closing date of the transaction in order to obtain regulatory approvals.

A more classic ticking fee provision would typically provide for an increase in the per-share cash consideration payable to stockholders as the time period between signing and closing passes certain milestones. However, Novartis and AveXis agreed to a ticking fee provision with two structural components. The first component was that if Novartis exercised its extension right, and the transaction closed, the \$218 per share consideration increased automatically by \$7 per share. The second component was that if Novartis exercised its extension right and the transaction did not close, Novartis's reverse termination fee (initially set at \$437 million) would increase by various increments (\$105 million, \$195 million and \$285 million), depending on how long after 6 July 2018 (the initial closing date) the merger agreement was terminated due to the inability to obtain regulatory approvals.

Because Novartis successfully completed its acquisition of AveXis in May 2018, Novartis did not have to pay for any regulatory delay under the ticking fee provision.

For further information on this topic please contact [John Sorkin](#), [Martin Crisp](#) or [Marvin Tagaban](#) at Ropes & Gray's New York office by telephone (+1 212 596 9000) or email (john.sorkin@ropesgray.com, martin.crisp@ropesgray.com or marvin.tagaban@ropesgray.com). Alternatively, contact [Michael DiMaio](#) at Ropes & Gray LLP's Boston office by telephone (+1 617 951 7000) or email (michael.dimaio@ropesgray.com) The Ropes & Gray website can be accessed at www.ropesgray.com.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

AUTHORS

[John Sorkin](#)



[Martin J Crisp](#)



[Marvin Tagaban](#)



[Michael DiMaio](#)

