

AVEO PHARMACEUTICALS INC

Form EFFECT

July 25, 2018

ted documentation, and object code for a package of software programs and products known as SoftPro.

The SoftPro software is a related series of software programs and products that have historically been used, and continue to be used, in various locations by a number of FNT's title insurance subsidiaries, including CTI, Fidelity National Title Insurance Company, and Ticor Title Insurance Company. In addition to the use license, under this agreement, upon the occurrence of certain events, such as the bankruptcy of the registrant's subsidiary, a breach of a material covenant, or the subsidiary's notification to FNT that it has ceased to provide maintenance or support for SoftPro, then subject to certain conditions, FNT will also receive the SoftPro source code for purposes of integration, maintenance, modification and enhancement. FNT will also receive the SoftPro source code if the registrant's subsidiary fails to fulfill FNT's requests for development or integration services or FNT cannot reach agreement on the commercial terms for that development. The registrant's subsidiary receives fees from FNT for the use of the SoftPro software based on the number of workstations and the actual number of SoftPro software programs and products used in each location. Fees are billed monthly based on presentation of an invoice. During the term of the agreement, the registrant's subsidiary retains ownership of SoftPro and is responsible for defending any claims brought by third parties against FNT for infringement based upon the software. The registrant's subsidiary and FNT each agree to indemnify each other for property damage arising out of any negligence, breach of statutory

duty, omission or default in performing their respective obligations under the Amended and Restated Software License Agreement. With regard to dispute resolution, the agreement includes procedures by which the parties can attempt to resolve disputes amicably, but if those disputes cannot be resolved timely, then arbitration proceedings can be instituted.

While the SoftPro Amended and Restated Software License Agreement is perpetual, FNT can terminate the license on not less than 90 days prior notice. In addition, if FNT discloses any of the SoftPro software, or a material part of the documentation related thereto, to a competitor of the registrant, then if FNT fails to discontinue the unauthorized disclosure after a 30-day cure period, SoftPro may terminate the license as to the portion of the SoftPro software that FNT so disclosed on 30 days' notice. In that event, the registrant would also retain the right to pursue other remedies, including claims for damages, for the unauthorized disclosure.

Additional Amended and Restated Software License Agreements

A subsidiary of the registrant is a party to three amended and restated software license agreements with a subsidiary of FNT with respect to three software programs known as OTS/OTS GOLD, SIMON, and TEAM, which are owned by FNT. The OTS/OTS GOLD software is an application used in order tracking. The SIMON software is used in title and escrow production. The TEAM software is also used in the title business.

Under these license agreements, the FNT subsidiary grants the registrant's subsidiary a worldwide, non-exclusive, perpetual and irrevocable right to use the licensed software and certain bundled third party software in return for the licensee's payment of fees specified on exhibits to the amended and restated license agreements. The license agreements stipulate certain circumstances under which the licensee is granted access to the source code to the licensed software.

The FNT subsidiary may terminate the licenses if the licensee discloses the software to a competitor of FNT and a subsidiary of the licensee ceases being able to use the licensed software if it is no longer a subsidiary of the licensee.

Amended and Restated Cross Conveyance and Software Development and Property Allocation Agreements

A subsidiary of the registrant is a party to an Amended and Restated Cross Conveyance and Joint Ownership Agreement, dated as of the effective date of the Merger, with an FNT subsidiary whereby the parties have conveyed their respective interests in certain proprietary software, known as eLender, so that both parties are the joint owners of the software. Under the agreement each party conveys an undivided half interest in the eLender software to the other party. This agreement also sets forth the terms and conditions under which they will have joint ownership of the eLender software.

A subsidiary of the registrant is also a party to an Amended and Restated Software Development Agreement and Property Allocation Agreement with an FNT subsidiary whereby the parties have agreed to further develop the jointly owned eLender software. Each party owns an undivided one-half interest in the developed software. This agreement expires on

December 31, 2006, but may be extended by the FNT subsidiary for additional 1-year increments beginning January 1, 2007 (with 90 days prior written notice). This agreement may be terminated by mutual agreement or in the event of a breach that remains uncured for more than 30 days (subject to extension in certain circumstances).

One of the registrant's subsidiaries is a party to a joint software development and ownership agreement with an FNT subsidiary whereby the registrant's subsidiary provides development services for proprietary software, known as Titlepoint, to be used in connection with the title plants owned by FNT's title insurance subsidiaries. Pursuant to this agreement, FNT's subsidiary pays fees and expenses to the registrant's subsidiary for development services per FNT's specifications. Upon delivery by the registrant's subsidiary of software that meets acceptance criteria, both parties will jointly own the developed software. This agreement expires forty-five days after acceptance of the agreed upon software releases, but may be terminated prior to that time by mutual agreement or in the event of a breach that remains uncured for more than 30 days (subject to extension in certain circumstances).

Agreements Relating to Real Estate Title Information

Subsidiaries of the registrant are party to several amended and restated agreements with FNT that relate to the maintenance or management of FNT's title plants and the use of those title plants. These agreements are described below.

Amended and Restated Master Title Plant Access Agreement

A subsidiary of the registrant is a party to an Amended and Restated Master Title Plant Access Agreement, dated as of the effective date of the Merger, with an FNT subsidiary which sets for the terms under which the registrant's subsidiary will provide access to the title plants that it manages on behalf of various owners to FNT's subsidiary in exchange for an access fee and exclusivity arrangement from FNT's subsidiary. For access, FNT's subsidiary pays the registrant's subsidiary an access fee on a plant-by-plant basis that is generally consistent with current intercompany charges for such access.

The agreement has an indefinite term but may be terminated by mutual agreement of the parties, by one party upon the occurrence of an uncured material breach of the agreement by the other party or the bankruptcy of the other party or upon a change of control of the other party (with change of control events not including the Merger). In addition, either party may terminate the agreement upon five years prior written notice given after the fifth anniversary of the effective date of the agreement.

The registrant's subsidiary accepts no liability under the master title plant access agreement for any errors in the title plant information. FNT's subsidiary is required to indemnify the registrant's subsidiary from claims brought by any of the customers of FNT's subsidiary arising out of errors in title plant data furnished pursuant to this agreement.

Edgar Filing: AVEO PHARMACEUTICALS INC - Form EFFECT

Amended and Restated Title Plant Master Services Agreement

A subsidiary of the registrant entered into an Amended and Restated Title Plant Master Services Agreement with a subsidiary of FNT on the effective date of the Merger under which the registrant's subsidiary provides FNT's subsidiary certain title plant services related to title plant construction in California, Oregon and Washington. The registrant's subsidiary also agrees to perform certain other services requested by the Chairman of FNF and FNT's subsidiary.

The term of the agreement continues until there is no longer any work to be performed under the agreement. The agreement may be terminated sooner if the parties mutually agree to do so or by one party to the agreement if the other party materially breaches the agreement and does not cure the breach during a stipulated cure period.

Assignment, Assumption and Novation Agreement

In order to assume the rights and obligations of Former FIS under certain agreements that were previously entered into by FNT, the registrant entered into an assignment, assumption and novation agreement with Former FIS with respect to the corporate services agreement and the reverse corporate services agreement. FNT and its relevant subsidiaries have consented to this assignment and assumption arrangement and entered into a novation of each of these agreements with the registrant. The consideration for the assumption by the registrant of the obligations under the novated corporate services agreements is the assumption and assignment to the registrant of all rights and interests under these agreements and no other consideration will be paid under the assignment, assumption and novation agreement.

Arrangements with FNF

FNF Corporate Services Agreement

As of the effective date of the Merger, the registrant entered into a separate Corporate Services Agreement with FNF, pursuant to which FNF has agreed to provide the registrant with corporate and other support services. These services include:

senior management services, including the time and attention of its chief executive officer, chief financial officer, and other senior officers;

corporate accounting services;

corporate finance and mergers and acquisitions services;

corporate legal and other related services, including SEC and regulatory reporting, investor relations and communications services;

internal auditing services;

treasury, cash management, and related services;

tax services;

risk management and corporate insurance services; and

other general administrative and management services.

The terms and provisions of the FNF Corporate Services Agreement are generally similar to those in the amended and restated corporate services and reverse corporate services agreements between the registrant and FNF, except for the services provided by FNF.

Amended and Restated Employee Matters Agreement

The Amended and Restated Employee Matters Agreement provides for certain employees of the registrant to participate in various employee benefit plans and programs sponsored by FNF. Specifically, employees of Former FIS, and certain FIS employees who are hired after the effective date of the Merger, will be eligible (subject to generally applicable plan limitations and eligibility conditions) to participate in FNF's 401(k) plan, non-qualified deferred compensation plan, employee stock purchase plan, and its health, dental, disability, and other welfare benefit plans until the registrant establishes its own plans. The agreement requires that the registrant establish such plans and programs no later than December 31, 2006.

The agreement requires FNF to provide at least 30 days prior written notice to the registrant of any termination or material amendment of the FNF-sponsored plans and precludes FNF from amending the plans in a manner that materially changes the benefits provided to the registrant's employees or the cost of such benefits, without the consent of the registrant. The agreement gives the registrant the right to terminate the participation of registrant in the FNF-sponsored plans at any time in its discretion upon reasonable notice to FNF. Also, the agreement contains dispute resolution provisions comparable to those in the Amended and Restated Corporate Services Agreement.

Under the Amended and Restated Employee Matters Agreement, as long as the employees of the registrant participate in FNF's plans, the registrant will be required to contribute to the plans the cost of its employees' participation in such plans. Such costs will include, for example, payment of 401(k) matching contributions for the registrant's employees and payment of the employer portion of the cost of health, dental, disability and other welfare benefits provided to the registrant's employees.

The contributions the registrant will be required to make to FNF's plans under the Amended and Restated Employee Matters Agreement depends on factors that cannot be predicted with certainty at this point, such as the level of employee participation and the costs of providing health, dental and other benefits.

To the extent the employees of Former FIS hold FNF stock-based incentives, such as FNF stock options or restricted stock, related accounting charges under SFAS 123 or SFAS 123R will be allocated to the registrant by treating any such accounting charges that are recognized by FNF as FNF contributions to the capital of the registrant.

Tax Matters Agreement Amendment

Edgar Filing: AVEO PHARMACEUTICALS INC - Form EFFECT

The Tax Matters Agreement provides for the allocation and payment of taxes for periods during which Former FIS and FNF were included in the same consolidated group for federal

income tax purposes or the same consolidated, combined, or unitary returns for state tax purposes, and various related matters. Under the agreement, Former FIS and FNF are limited in their ability to amend returns if the amendment would result in an increase of the tax liability of either party.

In connection with the Merger, the parties have agreed to amend the Tax Matters Agreement for purposes of clarifying that FNF will indemnify the registrant and its subsidiaries (including Former FIS) against liability for any taxes allocable to FNF, FNT or any of their respective subsidiaries (other than the registrant or any of its subsidiaries) under the Tax Matters Agreement.

Each corporation that is a member of a consolidated group during any portion of the group's tax year is severally liable for the federal income tax liability of the group for that year. As a result, the registrant could be liable in the event federal tax liability allocated to FNF is incurred but not paid by FNF or any other member of FNF's consolidated group for years the registrant was part of the FNF consolidated group. In this event, the registrant would be entitled to indemnification by FNF.

Amended and Restated Intellectual Property Cross License Agreement

Historically, Former FIS and its subsidiaries were permitted, as subsidiaries of FNF, to utilize various trademarks, copyrights, trade secrets and know-how, patents, and other intellectual property owned by FNF and its other subsidiaries. Likewise, FNF and its other subsidiaries were permitted to utilize various trademarks, copyrights, trade secrets and know-how, patents and other intellectual property owned by Former FIS and its subsidiaries but used by them in the conduct of their business. The cross licenses between the two groups of companies have been preserved in this Agreement.

This agreement governs the respective responsibilities and obligations between the registrant and FNF with respect to the applicable intellectual property. The intellectual property licensed by FNF to the registrant will include the use of the name "Fidelity National" and the logo widely used by the registrant and its subsidiaries.

Terms of the Cross License

The intellectual property licensed by or to the registrant, and by or to FNF, relates to a variety of aspects of the lines of business in which the registrant and FNF and their respective subsidiaries are engaged. With respect to each item of intellectual property licensed, the party that owned the intellectual property originally continues to own the item, but has granted a broad license for use of the intellectual property item to the other party without giving up any ownership rights. Subject to certain limitations and early termination events (limited to bankruptcy, insolvency, and the like), the licenses are perpetual, irrevocable, and non-terminable. In addition, as to each item of intellectual property, the license to any subsidiary terminates on the date that the entity ceases to be a subsidiary of the party receiving the benefit of the license. The licenses are also non-exclusive and allow the licensing party to fully utilize its intellectual property, including the granting of licenses to third parties.

Pricing and Payment Terms.

Given the nature of the intellectual property to be licensed and the historical relationship between the parties, the registrant and FNF determined that the licenses to each party should be royalty-free with the consideration for each party's license of its intellectual property being the receipt of a license of the other's intellectual property. As a result, no payments will be made to the registrant or received by the registrant under the intellectual property cross license agreement.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial statements of businesses acquired

The following historical audited financial statements and related notes of Fidelity National Information Services, Inc., a Delaware corporation, and its subsidiaries and affiliates, together with the report thereon signed by KPMG LLP, are filed as Exhibit 99.33 to this report:

Report of Independent Registered Public Accounting Firm

Combined Balance Sheets as of December 31, 2004 and 2003;

Combined Statements of Earnings for the years ended December 31, 2004, 2003 and 2002;

Combined Statements of Equity and Comprehensive Earnings for the years ended December 31, 2004, 2003 and 2002;

Combined Statements of Cash Flows for the years ended December 31, 2004, 2003 and 2002; and

Notes to the Combined Financial Statements.

The following historical unaudited financial statements and related notes of Fidelity National Information Services, Inc., a Delaware corporation, and its subsidiaries and affiliates, are filed as Exhibit 99.34 to this report:

Unaudited Condensed Consolidated and Combined Balance Sheets as of September 30, 2005 and December 31, 2004;

Unaudited Condensed Consolidated and Combined Statements of Earnings for the Nine Months Ended September 30, 2005 and 2004;

Unaudited Condensed Consolidated and Combined Statements of Cash Flows for the Nine Months Ended September 30, 2005 and 2004;

Notes to the Unaudited Condensed Consolidated and Combined Financial Statements;

(b) Pro forma financial information

The following unaudited pro forma combined financial data of Certegy Inc., a Georgia corporation, and Fidelity National Information Services, Inc., a Delaware corporation, is filed as Exhibit 99.35 to this report:

Unaudited Pro Forma Combined Balance Sheet as of September 30, 2005;

Unaudited Pro Forma Combined Statement of Continuing Operations for the Nine Months Ended September 30, 2005; and

Unaudited Pro Forma Combined Statement of Continuing Operations for the Year Ended December 31, 2004.

(d) Exhibits.

Exhibit Number	Description
2.1	Agreement and Plan of Merger among Certegy Inc., C Co Merger Sub, LLC and Fidelity National Information Services, Inc. dated as of September 14, 2005 (incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K, filed September 16, 2005)
3.1	Amended and Restated Articles of Incorporation of Fidelity National Information Services, Inc.
3.2	Amended and Restated Bylaws of Fidelity National Information Services, Inc.
23.1	Consent of Independent Registered Public Accounting Firm (KPMG LLP)
99.1	Registration Rights Agreement, dated as of February 1, 2006, among Fidelity National Information Services, Inc., f/k/a Certegy Inc., and the securityholders named therein
99.2	Term Loan Agreement, dated as of January 31, 2006, by and between Certegy Inc., as Borrower, and SunTrust Bank, as Administrative Agent and Lender
99.3	Term Loan Note, dated as of January 31, 2006, issued by Certegy Inc. to and for the benefit of SunTrust Bank
99.4	Credit Agreement, dated as of March 9, 2005, among Fidelity National Information Solutions, Inc., Fidelity National Tax Service, Inc., Fidelity National Information Services, Inc., and various financial institutions (the FIS Credit Agreement) (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K of Fidelity National Financial, Inc., filed March 15, 2005)
99.5	Amendment No. 1 and Addendum, dated as of September 26, 2005 and effective as of February 1, 2006, to the FIS Credit Agreement

Edgar Filing: AVEO PHARMACEUTICALS INC - Form EFFECT

Exhibit Number	Description
99.6	Joinder Agreement, dated as of February 1, 2006, by and between Fidelity National Information Services, Inc. and Bank of America, N.A., under the FIS Credit Agreement
99.7	Subsidiary Guaranty Supplement, dated as of February 1, 2006, by Certegy Card Services, Inc. Certegy Check Services, Inc., Certegy E-Banking Services, Inc., Certegy First Bankcard Systems, Inc., Certegy Payment Services, Certegy Payment Recovery Services, Inc., Certegy Transaction Services, Inc., Crittson Financial Corporation, GameCash Inc., Game Financial Corporation, and Game Financial Corporation of Wisconsin, under the FIS Credit Agreement
99.8	Amended and Restated Certegy Inc. Stock Incentive Plan
99.9	Fidelity National Information Services, Inc. 2005 Stock Incentive Plan (incorporated by reference to Exhibit 10.84 to the Annual Report on Form 10-K of Fidelity National Financial, Inc., filed March 16, 2005)
99.10	Form of Option Agreement between Fidelity National Information Services, Inc. and Lee A. Kennedy
99.11	Form of Option Agreement between Fidelity National Information Services, Inc. and Jeffrey S. Carbiener
99.12	Amended and Restated Corporate Services Agreement, dated as of February 1, 2006, between Fidelity National Title Group, Inc. and Fidelity National Information Services, Inc.
99.13	Amended and Restated Reverse Corporate Services Agreement, dated as of February 1, 2006, between Fidelity National Title Group, Inc. and Fidelity National Information Services, Inc.
99.14	Amended and Restated Starters Repository Access Agreement, dated as of February 1, 2006, among Fidelity National Title Group, Inc. and Fidelity National Information Services, LLC
99.15	Amended and Restated Back Plant Repository Access Agreement, dated as of February 1, 2006, between Fidelity National Title Group, Inc. and Fidelity National Information Services, LLC
99.16	Amended and Restated License and Services Agreement, dated as of February 1, 2006, between Fidelity National Title Group, Inc. and Fidelity National Information Services, LLC
99.17	Amended and Restated Lease Agreement, dated as of February 1, 2006, between Fidelity Information Services, Inc. and Fidelity National Title Group, Inc.

Edgar Filing: AVEO PHARMACEUTICALS INC - Form EFFECT

Exhibit Number	Description
99.18	Amended and Restated Master Information Technology Services Agreement, dated as of February 1, 2006, between Fidelity National Title Group, Inc. and Fidelity Information Services, Inc.
99.19	Amended and Restated SoftPro Software License Agreement, dated as of February 1, 2006, between Fidelity National Information Solutions, Inc. and Fidelity National Title Group, Inc.
99.20	Amended and Restated OTS and OTS Gold Software License Agreement, dated as of February 1, 2006, between Rocky Mountain Support Services, Inc. and Fidelity National Tax Service, Inc.
99.21	Amended and Restated SIMON Software License Agreement, dated as of February 1, 2006, between Rocky Mountain Support Services, Inc. and Fidelity National Tax Service, Inc.
99.22	Amended and Restated TEAM Software License Agreement, dated as of February 1, 2006, between Rocky Mountain Support Services, Inc. and Fidelity National Tax Service, Inc.
99.23	Amended and Restated Cross Conveyance and Joint Ownership Agreement dated February 1, 2006 between LSI Title Company and Rocky Mountain Support Services, Inc.
99.24	Amended and Restated eLender Solutions Software Development and Property Allocation Agreement dated as of February 1, 2006 between Rocky Mountain Support Services, Inc. and LSI Title Company.
99.25	Amended and Restated Titlepoint Software Development and Property Allocation Agreement, dated as of February 1, 2006, between Rocky Mountain Support Services, Inc. and Property Insight, LLC
99.26	Amended and Restated Master Title Plant Access Agreement, dated as of February 1, 2006, between Rocky Mountain Support Services, Inc. and Property Insight, LLC
99.27	Amended and Restated Title Plant Master Services Agreement, dated as of February 1, 2006, between Rocky Mountain Support Services, Inc. and Property Insight, LLC
99.28	Assignment, Assumption and Novation Agreement dated as of February 1, 2006 between Fidelity National Information Services, LLC and Fidelity National Information Services, Inc.
99.29	FNF Corporate Services Agreement dated as of February 1, 2006 between Fidelity National Financial, Inc. and Fidelity National Information Services, Inc.

Edgar Filing: AVEO PHARMACEUTICALS INC - Form EFFECT

Exhibit Number	Description
99.30	Amended and Restated Employee Matters Agreement dated as of February 1, 2006 among Fidelity National Financial, Inc., Fidelity National Information Services, Inc., and Fidelity National Information Services, LLC
99.31	First Amendment to the Tax Matters Agreement dated as of February 1, 2006 between Fidelity National Financial, Inc., Fidelity National Information Services, LLC
99.32	Amended and Restated Intellectual Property Cross License Agreement, dated as of February 1, 2006, between Fidelity National Financial, Inc. and Fidelity National Information Services, Inc.
99.33	Audited Financial Statements of Fidelity National Information Services, Inc., a Delaware corporation, and its subsidiaries and affiliates
99.34	Unaudited Financial Statements of Fidelity National Information Services, Inc., a Delaware corporation, and its subsidiaries and affiliates
99.35	Unaudited Pro Forma Combined Financial Data of Certegy Inc., a Georgia corporation, and Fidelity National Information Services, Inc., a Delaware corporation
99.36	Form of Amendment to Change in Control Letter Agreements

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**FIDELITY NATIONAL INFORMATION
SERVICES, INC.**

Date: February 6, 2006

By: /s/ Jeffrey S. Carbiener
Jeffrey S. Carbiener
Executive Vice President and Chief Financial
Officer