

CAPITAL MARKETS & FINANCIAL SERVICES

Issue Background

Because of the unique capital needs of groundbreaking research, growing biotech companies often turn to the public market for financing. Thus, fair, liquid, and efficient capital markets are vital to their success. Though the public capital markets are an essential component of the biotech financing ecosystem, roadblocks that decrease the capital potential of an offering, increase regulatory costs, reduce long-term liquidity and shareholder value, or distract a company from its core mission have the potential to deter or delay necessary offerings. These barriers reduce the viability of the public market as a capital formation option for emerging biotechs, ultimately harming issuers, investors, and patients alike.

Given the importance of America's world-leading capital markets for life-saving innovation, BIO supports policies that incentivize investment in breakthrough innovation, reduce costly regulatory burdens, and stimulate capital formation for emerging companies.

Policy Position

- **Fostering Innovation Act** — JOBS Act companies qualify for a five-year exemption from SOX 404(b). However, most biotechs remain pre-revenue long after their exemption expires. BIO supports the cost-saving Fostering Innovation Act (H.R. 3886 / S. 452), which would allow pre-revenue small businesses to maintain their SOX 404(b) exemption for years 6-10 post-IPO.
- **SEC Accelerated Filer Definition** – Companies that qualify as “non-accelerated filers” with a public float below \$75 million are eligible for regulatory relief from SOX 404(b). BIO supports the recently proposed SEC amendments to the Accelerated Filer and Larger Accelerated Filer definitions that would expand the 404(b) exemption and provide much-needed regulatory relief for emerging biotech innovators.
- **Short Selling Disclosure** — Short sellers currently face no public disclosure requirements (unlike long investors), leading to information asymmetry, a lack of transparency, and, in some cases, market manipulation. BIO supports a short disclosure framework modeled on the existing long disclosure rules, which we believe would shine a light on manipulative behavior, allow market participants to make informed trading decisions, and ensure fair rules for all types of investments.
- **Proxy Advisory Firms** — Proxy firms have outsized market influence, and their opaque standards, one-size-fits-all recommendations, and conflicts of interest negatively impact emerging biotechs. BIO supports the Corporate Governance Reform and Transparency Act (H.R. 5116), which would provide for SEC oversight of proxy advisory firms and foster accountability, transparency, responsiveness, and competition in the proxy firm industry. BIO also supports the recently proposed SEC amendments to the exemptions from the Proxy Rules for Proxy Voting Advice, which would enhance conflicts of interest disclosure, standardize review and feedback procedures, and improve means for investors to be informed about differing views on the advice.

Key Points

- ✓ The JOBS Act has supported **more than 300 emerging biotech IPOs** as of November 2019.
- ✓ BIO supports capital markets policies that **increase the flow of capital** to innovative small businesses and **decrease capital diversions from the lab** to unnecessary compliance burdens.
- ✓ Emerging biotechs **do not generate product revenue** during their decades of research, but a strong public market gives them access to capital formation that supports life-saving R&D.
- ✓ High regulatory costs and other costly roadblocks represent a **damaging diversion of innovation capital from science to compliance**.