May 29, 2007

Dockets Management Branch (HFA-305)
Food and Drug Administration
5600 Fishers Lane, Rm. 1061
Rockville, MD 20852

Re: Docket No. 2007D-0101: Procedures for Determining Conflict of Interest and Eligibility for Participation in FDA Advisory Committees

Dear Sir/Madam:

The Biotechnology Industry Organization (BIO) appreciates the opportunity to share with you our views on an issue of critical importance to our members. Our industry adheres to the highest ethical standards and we welcome the Food and Drug Administration's (FDA's) initiatives to provide additional clarity when determining eligibility for advisory committee participation.

BIO represents more than 1,100 biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States. BIO members are involved in the research and development of healthcare, agricultural, industrial and environmental biotechnology products.

Advisory committees play an important role in making the highest quality scientific information available to FDA for use in the drug evaluation process. Only through continued access to this type of peer review using the best available information and most knowledgeable and highly qualified individuals can the Agency maintain the highest standards in regulating our nation's drug supply. BIO has consistently supported efforts to ensure that FDA advisory committees continue to be diverse, unbiased and well-balanced, and we support FDA's continued authority to apply rules and procedures to ensure these goals are met. In order to achieve the needed level of expertise for peer review, we believe FDA should continue to have significant discretion to grant waivers regarding financial conflicts of interest for potential advisory committee members whose expertise is essential. Entrusting FDA with this responsibility to be carried out in a fully

transparent and public manner will not diminish the quality or utility of the peer review process, and should serve to enhance the process overall.

FDA Should Promote Flexibility when Valuable Scientific Expertise is Limited:

Many biotechnology products represent cutting-edge science and next-generation innovation and the FDA advisory committee process offers the invaluable opportunity for scientific peer review of complex and often highly technical issues. In many cases, only a handful of qualified experts may exist. For example, for certain rare diseases areas or highly technical, cutting-edge issues or product categories, the universe of highly knowledgeable and qualified individuals may be quite small. In some circumstances, virtually the only experts in an area are individuals who are involved as advisors or participants in the research and development leading to the innovation being reviewed by the Agency. These individuals, who may be determined under the proposed guidance's algorithm to have financial "interest" and thus a potential conflict, can be essential to a meaningful discussion of the issue, and disqualifying them, or limiting their ability to meaningfully participate, could adversely impact the ability of an Advisory Committee to comprehensively evaluate a particular issue. Allowing such individuals to participate in an FDA advisory committee is vitally important because making decisions based on the best and most relevant science depends on the Agency's ability to seek and use the advice of these experts. Flexibility in the issuance of waivers is crucial to achieving this goal.

While we agree that individuals with conflicts of interest should be excluded from the advisory process where complete and meaningful advice can be obtained without them, we are pleased that the draft guidance allows FDA to retain its discretion to allow certain individuals who fully disclose a conflict to participate if the Agency determines the benefits of their participation outweigh the potential risks.

Guidance Criteria Should Support the Broad Participation of Scientific Thought Leaders:

BIO is concerned that if the exclusionary criteria of the guidance are applied excessively, FDA would be forced to rely on second-tier scientific advice. BIO appreciates the importance of maintaining FDA's scientific independence and integrity, but we question the premise asserted by critics of the advisory committee process that thought leaders who work with industry are necessarily biased. Thought leaders who serve as high-level advisors are sought out by industry, their own teaching institutions and regulatory bodies such as FDA because they have unique expertise and experiences that make them invaluable resources. To assume that these experts are necessarily biased would underestimate their professional ethics and scientific integrity.

Significantly, some of these experts may receive income from industry for services that benefit patients, such as clinical research for the discovery and advancement of new therapies; that benefit health care providers, such as medical education; or that benefit the

field, such as advice to guide clinical programs. If funding for these kinds of activities, or the participation of the most highly regarded experts in these efforts, is limited in the future simply to avoid indictments of conflict of interest, the entire health and medical research community will suffer.

BIO is concerned that if the exclusionary criteria in the guidance were applied too broadly, the result could be the evolution of two classes of experts. The first class, those who work with industry and are thus connected to the highest level of cutting edge science in the field, would be entirely barred from participating in advisory committees or prevented from serving on those committees in a voting capacity. Because of these restrictions, the FDA could be forced to rely on the advice of a second class of experts, those who have only limited expertise because they are distant from critical activities like drug development, clinical research, and medical education.

BIO urges the FDA to avoid implementing a rigid system of arbitrary exclusions and disqualifications; to continue to be flexible in evaluating potential experts on a case-by-case basis; and to issue waivers when appropriate to allow highly-qualified thought leaders to participate fully in the FDA advisory process.

Recommendations:

While we are pleased that the FDA guidance provides additional clarity regarding conflict of interest waivers, we believe some steps can be taken to allow for additional FDA discretion and to streamline the process.

For instance, as currently drafted, the guidance would forbid an advisory committee member from being a voting participant of the committee if the member has any financial conflict. We believe FDA staff should have the flexibility to grant a "voting status" waiver on a case-by-case basis. Current practice permits voting status on a case-by-case basis in recognition of the fact that financial conflicts can be incidental or unlikely to result in bias. Much of the public criticism has been centered around the lack of transparency and public disclosure regarding the financial interests of voting member, rather than their actual voting participation on a case-appropriate basis. In the interest of public health, any "voting status" waiver should be made with full public disclosure.

Additionally, the guidance suggests that in rare cases when a conflict of interest waiver is appropriate where the combined value of the disqualifying financial interests exceeds $50,000, the Commissioner would make the determination to grant the waiver. We believe it would be appropriate to delegate that authority to an FDA official more closely involved in the product review, such as the division director.

Finally, the $50,000 limit appears to be an arbitrary figure that does not appear to have been derived from any specific examples or "real world" advisory committee experience. It would be prudent to assess the impact of various financial limitations on the actual availability of scientific experts before establishing a specific dollar threshold.

Conclusion:

BIO appreciates this opportunity to comment on FDA's Draft Guidance: *Procedures for Determining Conflict of Interest and Eligibility for Participation in FDA Advisory Committees.* We look forward to working with FDA to ensure that the Agency continues to meet the highest levels of ethical integrity without limiting access to the best available scientific information and expertise. We would be pleased to provide further input or clarification of our comments, as needed.

Sincerely,

/S/

Andrew J. Emmett
Director
Science and Regulatory Affairs