BIOTECHNOLOGY INDUSTRY ORGANIZATION
1201 Maryland Avenue SW, Suite 900, Washington, DC 20024
202-962-9200, www.bio.org

July 25, 2011

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

Re: Docket No. FDA–1999–D–0792: Draft Guidance for Clinical Investigators, Industry, and FDA Staff: Financial Disclosure by Clinical Investigators

Dear Sir/Madam:

The Biotechnology Industry Organization (BIO) thanks the Food and Drug Administration (FDA) for the opportunity to submit comments on the *"Draft Guidance for Clinical Investigators, Industry, and FDA Staff: Financial Disclosure by Clinical Investigators."* This Draft Guidance is intended to assist clinical investigators, industry and FDA staff in interpreting and complying with FDA's regulations in 21 C.F.R. part 54, which requires the submission of information regarding compensation and financial interests of clinical investigators, to accompany applications for marketing approval.

BIO represents more than 1,100 biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial and environmental biotechnology products, thereby expanding the boundaries of science to benefit humanity by providing better healthcare, enhanced agriculture, and a cleaner and safer environment.

BIO has long taken the position that actual and potential conflicts of interest in research should be identified, disclosed, and appropriately managed. We support policies that emphasize disclosure of financial interests, rather than prohibiting certain relationships. It is important to recognize that relationships between industry and researchers have had an enormously beneficial impact on both research and patient care, and that policies addressing financial disclosure should not create disincentives for fruitful collaborations. The submission of information regarding financial relationships between sponsors and clinical investigators is an important means of assuring the integrity of data and avoiding

reliance on data that may be subject to a conflict of interest. BIO supports FDA efforts to provide additional guidance and clarity on this issue, as clarity contributes to more uniform reporting. In that vein, we note that FDA's Draft Guidance coincides with efforts of other federal agencies and entities addressing relationships between industry and the medical community, including the National Institutes of Health (NIH) rulemaking on "*Responsibility of Applicants for Promoting Objectivity in Research for which Public Funding is Sought and Responsible Prospective Contractors*," and the Centers for Medicare and Medicaid Services (CMS), in its role of implementing the Physician Transparency and Reporting ("Sunshine") provisions enacted in 2010 as part of the Patient Protection and Affordable Care Act (PPACA). BIO participated in a meeting sponsored by the Institute of Medicine on July 7, 2011, on "Harmonizing the Conflict of Interest (COI) Process." We urge FDA to consider harmonization of the various reporting requirements as the Agency moves forward with this Draft Guidance. The majority of BIO members are small companies that do not yet have a product on the market. Ensuring that this Draft Guidance aligns with other reporting requirements will reduce inefficiencies and unnecessary regulatory burdens, thereby benefiting small companies with limited resources that seek to develop new products for patients.

BIO appreciates the opportunity to seek clarity on certain points raised in the Draft Guidance. Our specific comments are addressed below and in the attached chart.

I. Q&A. B.5.: Representative Responsible to Sign Financial Certification/Disclosure Forms

BIO requests that this section of the Draft Guidance clarify who would be considered an "other responsible corporate official or representative of the applicant" to sign and date financial certification/disclosure forms. Currently, only the Chief Financial Officer position is listed explicitly. Additional possible language would define other representatives, such as regulatory representatives of the applicant, various functions in medical affairs, etc. The rationale for this is that, in many companies, the CFO will not be involved in the collection of such information.

II. Q&A. B.6.: Sponsor Due Diligence Efforts to Locate Investigators

BIO appreciates that the Draft Guidance provides more robust direction on what "due diligence" means in regard to a sponsor seeking to locate an investigator who has not completed a financial disclosure form or from whom information cannot be obtained for some other reason. However, BIO suggests that FDA's additional guidance provided in B.6. on "reasonable efforts" to obtain a complete certification from a missing investigator should be less prescriptive and not require a "one size fits all" approach. BIO suggests that FDA's description of two documented phone calls and two documented certified letters serve as an example of what would qualify as due diligence, and notes that other approaches, including email contact with a response, can meet the due diligence requirement as well. BIO suggests that sponsors should have the discretion to determine the specific reasonable efforts to conduct, given varying circumstances, locations, local laws, technology advances, and other factors.

III. Q&A B.6.: Sponsor Search Of Records

Searching internal records with regard to payments is problematic for several reasons. First, there is no way to identify an investigator's spouse and dependent children. Second, if the investigator is employed by or associated with a major institution, information on all payments made to that institution to confirm that they are for the benefit of an investigator may not be available. Third, disclosing information from records not provided on a financial disclosure form may violate some international privacy laws, notably the European Union's Directive on Data Protection. BIO recommends that the Draft Guidance be revised to state that if the financial disclosure information cannot be obtained, the Sponsor should conduct an internal search for payments made specifically to the investigator and for information that royalties on sales of the product will be due to the investigator. Subject to any privacy laws, the Sponsor should then provide what it can find to the FDA.

IV. Q&A C.1.: Significant Payments of Other Sorts (SPOOS) Requirements

BIO recommends that SPOOS disclosure not be of the specific nature and size. Rather, the sum of payments can serve as adequate information to determine the overall financial interest of an investigator. BIO believes detailed disclosure may deter potential clinical investigators from participating in clinical studies. BIO also requests clarification as to whether the recommendation relates to SPOOS disclosure to the public, SPOOS disclosure to the Agency, or both.

V. Q&A E. 5.: Definition of a Sponsor

BIO requests that FDA provide more clarity on when an entity would qualify as a Sponsor under financial disclosure requirements. For example, if a clinical research organization (CRO) is providing material support, question E.5. in the Draft Guidance states that financial disclosure information must be collected for the CRO. However, in the vast majority of cases, all such support is fully paid for by the biopharmaceutical company working with the CRO. In the case of flat fee arrangements in which a CRO assumes much of the risk of a study costing more than originally anticipated, would the CRO then qualify as a Sponsor? Please clarify the circumstances that would result in a CRO being considered a Sponsor under financial disclosure requirements.

VI. Q&A H.6.: Potential Disclosure of Financial Interests

FDA's Draft Guidance asks under what circumstances FDA would publicly disclose financial interests and arrangements that have been provided to the Agency. BIO believes that disclosure of this information is not warranted or beneficial. As mentioned earlier, FDA's effort is occurring in parallel with other federal efforts to collect information regarding financial relationships between investigators and biopharmaceutical companies. The Sunshine provisions of the PPACA require comprehensive reporting by manufacturers of payments to physicians and academic medical centers. Given that this information will be compiled by CMS and made

publicly available, any additional posting by FDA would be unnecessary and potentially confusing to the public.

CONCLUSION:

BIO appreciates this opportunity to comment on the "Draft Guidance for Clinical Investigators, Industry, and FDA Staff: Financial Disclosure by Clinical Investigators." Specific, detailed comments are included in the following chart. We would be pleased to provide further input or clarification of our comments, as needed.

Sincerely,

/S/

Sandra J.P. Dennis
Deputy General Counsel for Healthcare Affairs
Biotechnology Industry Organization

/S/

Kelly Lai
Director, Science & Regulatory
Biotechnology Industry Organization

SPECIFIC COMMENTS

SECTION	ISSUE	PROPOSED CHANGE
I. QUESTIONS AND ANSWERS		
C.2.	Fluctuating stock values could present a challenge for sponsors if an investigator is silent or not diligent in monitoring stock value.	To avoid ambiguity, please provide a reasonable baseline threshold for sponsors when monitoring equity value. An example of this would be asking a sponsor to request data at the beginning and end of a study.
C.3. and C.4.	Investigators may hold equity interests in other equivalent retirement funds.	Please add "or equivalent" to account for investigators who are the business owners and may subscribe to a retirement fund plan equivalent to a 401(k) plan, such as a Roth IRA.
C.5.	This text refers to family members, which is unclear terminology.	For consistency, the term "family members" should be changed to indicate "spouse and dependent children."
D.2.	It is unclear whether Study Coordinators are included as Investigators.	Please clarify whether Study Coordinators are included as Investigators for purposes of this Guidance.
H.4.	This question reads as though actions 1-4 are all required, however, question H.4. says the Agency "may" take these actions.	"FDA will take any action...including" could be changed to "FDA will take any action...<CFR reference>. Actions may include, but are not limited to..."