



September 29, 2009

Ms. Florence Harmon
Deputy Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

RE: SEC Release No. 34-60611

Dear Deputy Secretary Harmon:

On behalf of its members, the Biotechnology Industry Organization ("BIO") is pleased to provide comments on the proposed rulemaking, SEC Release No. 34-60611, by the Securities and Exchange Commission ("SEC" or "Commission").

BIO represents more than 1,200 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 biotechnologies. The biotechnology industry has established itself as a leader in raising the standard of living in the United States. Through innovations in medicine, energy, defense, and agriculture, biotechnology companies are key players in the ongoing task of achieving public policy goals.

Emerging biotechnology companies are still feeling the strain of the downward turn of the economy. For about two years, these companies have been largely unsuccessful in accessing the capital to fund research and development of promising therapeutics. Biotech is a long term, high risk endeavor, requiring over a decade and more than \$1 billion in capital for a new product to get on to the market.

Prior to this recent crisis, investors readily took chances on emerging biotechnology companies that develop life-saving therapies. Today, because of the capital market crunch, these investors are looking elsewhere and leaving promising research and development on the shelves of these once promising companies. Of course, this has a considerable social impact as well: many promising projects that may help patients in areas of unmet medical need have been shelved due to a lack of financing.

1. BIO strongly supports the reinstatement of a temporary suspension of the minimum listing requirements.

BIO strongly supported the SEC's proposed rule last November 2008 which suspended the enforcement of the listing rules requiring a \$50 million minimum market value of publicly held shares as well as the minimum \$1 bid price. BIO further supported the Commission and the NASDAQ Stock Market LLC (NASDAQ) in extending these policies through the end of July 2009.

While we understand that this proposed rulemaking does not include an option to temporarily suspend NASDAQ's minimum listing requirements, BIO feels that a reinstatement of the suspension of listing standards is the best way to deal with the market volatilities occurring in our industry. Capital intensive emerging biotechnology companies still face significant challenges to raise capital in the current financial environment. Certain pockets of the capital markets have stabilized but the effects of this unprecedented economic crisis have not subsided for many of the small emerging biotechnology companies. Currently, 18 percent of biotechnology companies that trade on the NASDAQ are trading below the \$1 minimum bid price, and 19 percent are trading under the \$50 million market cap. Due to the expiration of the temporary suspension of the NASDAQ's minimum listing requirements, 24 biotechnology companies have received delisting warnings or notifications. Other emerging biotechnology companies are at risk of receiving such warnings or notifications in the near future if action is not taken. A reinstatement of the temporary extensions will allow emerging companies to withstand the current crisis. This would allow emerging companies to continue their primary focus on research and development on new innovative therapies for life saving diseases which is ultimately the best way to gain financing and restore investor confidence.

We understand that the suspension of the minimum requirements should only be a temporary solution but the fact remains that an extension is necessary to ensure that emerging biotechnology companies are able to get through the current financial environment. By allowing companies to weather the storm of this unprecedented crisis, these emerging biotechnology companies will be given the opportunity to become stronger than they were before. Thus, it is not in the best interest of the biotechnology industry investors to allow these emerging companies to be delisted.

2. BIO applauds the SEC and the NASDAQ for extending the compliance time for minimum requirements for market capitalization, public float and stockholder equity.

We are pleased that the SEC and the NASDAQ proposed extending the amount of time companies are allotted to comply with the minimum listing requirements. Of particular interest to the biotechnology industry is extending the number of days a company must fail to be in compliance from 10 to 30 consecutive days before entering the delisting process. As you know, market fluctuations still persist for emerging biotechnology companies, and it is difficult to predict where their market capitalizations will be on a given day. This change will allow companies to regain some stability during these tough economic times.

BIO also applauds increasing the time allotment for a company who fails to be in compliance of the stockholder's equity requirements to submit their plans to regain compliance with the listing standards. Increasing the amount of time to provide the NASDAQ with a plan to regain compliance to 45 days allows companies the necessary time to work with their existing and new investors to secure a long-term plan that will bring them back into compliance with listing standards.


3. BIO supports a temporary increase in the amount of time allotted to regain compliance with the minimum \$1 bid price and minimum market value from 180 days to 365 days.

While the Commission and the NASDAQ are considering extensions on compliance time for certain minimum listing requirements, we ask for temporary relief in increasing the allotted time for those companies who fail to comply with the minimum closing bid price and market value requirements. While the capital markets are slowly thawing, capital intensive emerging biotechnology companies who are working on research and development of new therapies need additional time to attract investors. Investments in biotechnology are a longer term, higher risk investments that take more time to attract investors, particularly after an economic downturn.

BIO understands that part of the rationale for issuing this proposal is to bring consistency to all compliance guidelines regarding listing standards. However, many emerging biotechnology companies remain unable to meet the current minimum closing bid price and market value requirements. While we fully support the notion of a unified set of timelines to regain compliance, we believe the Commission and the NASDAQ should consider a temporary extension of all the compliance timelines to be extended to 365 days.

BIO appreciates the efforts of the Commission and the NASDAQ to help our companies deal with the current challenges of this economic crisis. We have been encouraged by efforts to remain flexible during this time and ask for continued flexibility as emerging companies move towards regaining their footing in the capital markets. If you have further questions, please contact me or Shelly Mui-Lipnik, Director of Capital Formation and Financial Services Policy, at (202) 962-9200.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan F. Eisenberg", is centered below the "Sincerely," text.

Alan F. Eisenberg
Executive Vice President
Emerging Companies and Business Development
Biotechnology Industry Organization (BIO)