



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

November 24, 1993

Mr. Benjamin F. Stephens
Bogle & Gates
Two Union Square
601 Union Street
Seattle, Washington 98101-2346

Re: Bioject Medical Technologies Inc.

Dear Mr. Stephens:

In regard to your letter of October 8, 1993 our response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter.

Sincerely

A handwritten signature in cursive script that reads "Meredith B. Cross".

Meredith B. Cross
Chief Counsel

BOGLE & GATES

RECEIVED
OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

93 OCT 14 PM 4:16

LAW OFFICES

BENJAMIN F. STEPHENS

Two Union Square
601 Union Street
Seattle, Washington 98101-2346

Main Office: (206) 682-5151
Facsimile: (206) 621-2660
Direct Dial: (206) 621-1523

Anchorage
Bellevue
Portland
Tacoma
Vancouver, B.C.
Washington, D.C.
Yakima

October 8, 1993

Mark Green
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Interpretive Advice with Respect to
Rule 16(b)-3(c)(2)(i)

Ladies and Gentlemen:

In accordance with recent conversations with the Staff of the Division of Corporation Finance, we are writing on behalf of Bioject Medical Technologies Inc. to request interpretive advice with respect to the "Disinterested Administration" provisions under Rule 16(b)-3(c)(2)(i).

The Disinterested Administration provisions under new Rule 16(b)-3, as promulgated in Release No. 34-28869, provide that a director will be considered a "disinterested person" if he or she has not, during the one year prior to service as an administrator, been granted or awarded equity securities pursuant to certain plans of the issuer. In Joseph A. Grundfest (8/10/91) the Staff confirmed that the one year period is a rolling period measured prior to the date of current service as a plan administrator.

We wish to confirm that for purposes of determining whether a director is disinterested, the rolling one year period "looks back" from the date of service to the date the plan administrators approved a grant or award of securities, or otherwise exercised discretion with respect to the grant or award of securities under a discretionary plan to the director in question, even though such grant was made subject to shareholder approval which is not obtained until a later date.

The Staff has taken the position in no-action letters issued with respect to the new six month holding period under Rule 16(b)(3)(c)(1) that grants of equity securities subject to subsequent shareholder approval are not deemed acquired by the recipient until shareholder approval is obtained. See Frederick W. Cook & Co., Inc. (July 3, 1991), and Skadden, Arps, Slate, Meagher & Flom (April 25, 1991).

We believe that the policy considerations underlying the one year period during which directors must not participate in discretionary plans in order to be disinterested differs from that underlying the six month hold period in 16b-3(c)(1), and therefore a different measurement date should be used for determining when the director was granted a derivative security. In Release No. 34-28869, the Staff stated:

"The disinterested administration requirement of Rule 16(b)-3 is designed to prevent insiders from having, directly or indirectly, any control over the terms of their own awards, and therefore removes the ability of the insiders to time their acquisitions under the plan to take advantage of inside information. It also provides assurance that plan administrators cannot be influenced by their own expectation of awards in plans of the issuer and accordingly shields them from any potential pressure from insiders to act in a less than independent fashion."

We believe this language reflects the Commission's desire to impose sufficient time between a director's receipt of securities under a plan and when the director subsequently exercises discretion with respect to the grant of securities under a plan in order to minimize any pressure on directors "to act in a less than independent fashion." The receipt of shareholder approval does not appear to be relevant with respect to this objective. Consequently, we believe the relevant dates for purposes of determining whether the required one year period has passed should be the dates the directors exercise discretion under the plan, without regard to whether subsequent shareholder approval is required.

