



June 29, 2009

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: SEC File Number S7-08-09

Dear Chairman Schapiro:

The Biotechnology Industry Organization (BIO) thanks the Securities and Exchange Commission (SEC or Commission) for the opportunity to submit comments on a proposed rule to address whether short sale price restrictions or circuit breaker restrictions should be imposed and whether such measures would help promote market stability and restore investor confidence.

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 biotechnology products, thereby expanding the boundaries of science to benefit humanity by providing better healthcare, enhanced agriculture, and a cleaner and safer environment.

Over the past 18 months, the extreme market conditions have contributed to the deterioration of investor confidence. Many emerging biotechnology companies have experienced their security prices substantially driven down and diminishing investors confidence which ultimately impairs liquidity and the viability of these companies. Furthermore, the excessive fluctuations of securities prices and the disruption of the current markets have further exasperated the ability of emerging biotechnology companies' ability to raise capital to further their research and development of promising new therapies.

As the SEC looks to address market manipulation, BIO member companies are supportive of appropriate regulatory and enforcement actions against market manipulation and illegal short selling activities for all public companies. While BIO continues to be supportive of the SEC's recent actions to combat abusive activities and restore investor confidence, including

implementation of Rule 10b-21 and Hard T+3 Close-Out Requirement, it is important to balance these actions with market liquidity, capital formation and pricing efficiency provided by legitimate short selling.

As the Commission reevaluates whether the short sale price or circuit breaker restrictions would help promote market stability and restore investor confidence, BIO hopes that the SEC will consider the following:

- 1. BIO strongly urges the SEC to consider implementing a pilot program that includes biotechnology companies to examine the impact of various short selling restrictions.**

At the SEC's May 5, 2009 roundtable on short selling, some experts recommended that a pilot program is an effective way to determine the advantages and disadvantages of the SEC's proposed short selling restrictions. As BIO suggested in its October 23, 2008 comment letter, the SEC should study whether or not a price test and/or circuit breaker rule would be an effective measure to help mitigate the negative impact of abusive short sales. Before the SEC implements a final short selling restriction, the Commission should administer a pilot program similar to its 2004 pilot program which examined the effectiveness of the uptick rule.

Market manipulation by short sellers, such as abusive naked short selling and false rumors, whether conducted by short sellers alone or groups of short sellers acting in concert, is adversely impacting emerging biotechnology companies. BIO strongly urges the Commission to implement a pilot program in which emerging biotechs should be adequately represented. Due to the high-risk, high-reward nature of biotechnology, emerging companies are very dependent on capital, including using the public markets as a source of financing. With the recent severe market fluctuations, emerging biotech companies are particularly vulnerable to market manipulation by abusive short selling practices. As biotechnology companies' stock prices are driven down, investor confidence is undermined resulting in the companies' inability to raise capital for research and development of promising therapies. Thus, it is imperative that SEC take a closer look at the effectiveness of the various proposals particularly on emerging biotech companies.

- 2. BIO recommends that the SEC use its enforcement and regulatory authority to restore investor confidence by combating false rumors.**

Investor confidence plays a critical role in any industry, but its importance is elevated in the biotechnology industry. Due to the unique business model of the industry, emerging biotechnology companies are continually faced with challenges in obtaining sufficient capital to fund high-risk, high-reward research and development for promising therapies. Promising biotechnology research has a long and arduous road. It is estimated to take between 8 and 12 years to bring a biotechnology therapy to market and costs between \$800 million and \$1.2

billion. Thus, strong investor confidence is necessary to attract capital to fund research and development therapeutic projects.

The current economic crisis has made it nearly impossible for emerging biotech companies to raise capital. Currently, 30 percent of small, publicly-traded biotechnology companies are now operating with less than 6 months of cash on hand, a 90 percent increase relative to 2007. Forty-five percent of these companies have less than 1 year of cash remaining. The total capital raised by the industry in 2008 has seen a steep decline (down 55 percent in 2008 compared to 2007).

According to some experts at the SEC's May 5, 2009 roundtable, preventing rapid declines in stock prices strengthens investor confidence. The biotechnology industry has become increasingly vulnerable to investors who illegally spread false rumors in an effort to manipulate security prices. This type of illegal behavior is especially detrimental to emerging biotechnology companies whose value is so dependent on the results of their research and development efforts. False rumors of clinical trial results have substantially driven down the stock price of numerous biotechnology companies, and it can take a significant period of time for the stock price to recover its value.

Furthermore, BIO supports your recent comments before the House Subcommittee on Financial Services and General Government recognizing the need for vigorous enforcement to restore confidence in the capital markets. Since the President has endorsed increasing SEC enforcement by requesting a 7 percent increase in FY 2010, BIO urges that Congress concur with the Administration's request and that the SEC would use a substantial portion of this increased funding to maximize their enforcement efforts on combating false rumors plaguing the markets.

BIO appreciates the SEC's continued effort to combat market manipulation and looks forward to working with the Commission to ensure that the securities of all public companies, including the biotechnology industry, are protected against illegal short selling behavior and false rumors. 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". The signature is fluid and cursive, with a large initial "A" and "E".

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