September 14, 2020

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-0609

Re: File No. S7-08-20: Reporting Threshold for Institutional Investment Managers

Dear Secretary Countryman,

The Biotechnology Innovation Organization (BIO) appreciates the opportunity to provide comments to the Securities and Exchange Commission's (SEC or the Commission) proposed amendments to the exempt offering framework to promote capital formation for entrepreneurs and simplify the current exempt offering reporting structure while increasing opportunities for investors and enhancing protections.

BIO represents nearly 1,000 companies and firms in the biotechnology industry across the United States. Our members are responsible for innovating the next generation of treatments, diagnostics, and cures that will secure the health and safety of our Nation. Even in today's uncertain times, America's small biotechnology (biotech) companies, both public and private, continue to lead efforts to address the most devastating health risks and diseases in the world.

In fact, 76% of all global research and development (R&D) aimed at tackling the COVID-19 pandemic is generated by small biotech companies.[1] Small biotech companies are also responsible for 80% of all scientific R&D.[2] Almost all of these companies started as a revolutionary idea in a laboratory that was nurtured by private market financing, such as exempt offerings.

The Importance of Investor Positioning Data

As the Commission noted in their proposed rulemaking[3], the original intent of the 13(f) filings, which were added as part of the Amendments of 1975, was to elucidate "information about the purchase, sale, and holdings of securities by major classes of institutional investors" and was designed to capture a sufficiently large percentage of assets under management while minimizing the total number of reporting managers. BIO believes that the current proposal strikes against the spirit of the law, particularly when it comes to specialist investment managers such as those that are instrumental to the success of the biotechnology industry.

[1] https://www.bio.org/policy/human-health/vaccines-biodefense/coronavirus/therapeutic-development/bio-covid-19-therapeutic-development-tracker
[2] https://www.iqvia.com/insights/the-iqvia-institute/reports/emerging-biopharmas-contribution-to-innovation
[3] https://www.sec.gov/rules/proposed/2020/34-89290.pdf

In the proposal, SEC Staff interpret the three primary goals of the 13(f) section of the 1975 Amendments as (1) to create a database of the investment activities of institutions, (2) to improve the body of data regarding the holdings of institutions in an effort to better understand the influence and impact of institutions on securities markets, and (3) to increase investor confidence in the U.S. equity market. BIO contends that the proposal, as written undercuts all three goals and is inconsistent with the overall intent of the 13(f) amendments.

Over the last 45 years, as the equity markets became more transparent and the democratization of market data increased, corporate managers harnessed 13(f) filings to inform decision-making across various corporate verticals. This information provides a vital service to corporate planners, especially in emerging growth and smaller reporting companies, who seek to understand and engage with their existing shareholders while also targeting their desired investor base as they plot their growth strategies.

Every corporate executive wants investors that believe in his/her company's mission, vision, values, and product pipeline; and are willing to stay invested through all the ups and downs that occur along the way. This is especially true in biotechnology where products take more than a decade to come to market and have a high probability of receiving FDA questions and delays along the way, which brings volatility to stock prices.

These long and uncertain product pipelines make it hard for shares of small biotechnology companies to be included in exchange-traded funds and mutual funds and leaves them exposed to the volatility of short-term traders and activists. It, therefore, becomes instrumental for biotechnology corporate planners to carefully monitor changes in shareholder structure, while harnessing peer group data to research, engage, and pursue the specialist investors that truly understand biotechnology investments.

BIO contends that raising the threshold for 13(f) filing from $100 million to $3.5 billion will completely eradicate the decades-old practice of leveraging 13(f) information content for the biotechnology industry's corporate managers to better understand and engage with their shareholders, and for corporate planners to create peer benchmarks to plot their path to institutional investor holdings.

<u>Recommendation</u>

Do not raise the 13(f)-reporting threshold to the equity market growth-adjusted level of $3.5 billion as this will eliminate 70% of the information content provided by healthcare specialist investment advisors and asset managers. These data are critical for corporate planning and decision-making purposes, which have been refined over the last few decades.

Even raising the threshold to the inflation-adjusted level of $450 million will eliminate 50% of healthcare-specialist fund managers that are vital to emerging biotechnology companies.

Discussion

BIO supports the SEC's path of streamlining disclosure and reporting regulations to lower the burdens of market participants and companies. To date, BIO has supported a great number of the SEC's initiatives that broadened access for Main Street investors, enhanced capital formation and reduced costs for small companies, and leveled the playing field between market participants and corporations.
However, in this instance, BIO believes that the policy arguments and economic analysis underpinning this proposed rulemaking are inconsistent with the spirit of the SEC's recent policy path, are diminishing rather than enhancing transparency, and are creating unintended consequences, damaging Main Street investors as well as having deleterious effects on corporate planning, particularly in healthcare.

BIO vehemently opposes the proposed $3.5 billion threshold, an equity market-adjustment, an inflation-adjustment, and a flow of funds-adjustment of the existing threshold as doing so would create catastrophic information asymmetries in the healthcare sector, negatively affect investor confidence, and completely erode decades-old corporate planning practices.

The Signal from the Noise
Biotechnology entrepreneurs, as with any other company in the business of innovation, rely on specialist investors to finance their niche endeavors. When these biotechnology entrepreneurs are looking forward, attempting to treat a myriad of ailments or tackling the various problems that society faces, they rely on the long-term perspective and understanding of specialist investors that are willing to finance the long pipelines and volatile path of translating scientific discovery into novel products.

Knowing when and how to target these investors is crucial for biotechnology corporate planners to formulate funding strategies that are often projected several years forward. This entire planning process has been instrumental in financing innovation for decades.

13(f) data have been at the core of these efforts.

Planning the Road Ahead
With these data, planners can better understand the investor landscape that is not easily apparent or readily available. Where the data are easily apparent or readily available, they come at an expensive premium from third party database providers. Most biotechnology startups that enter public markets do so with the singular focus of raising capital to further develop their treatments, and do not have the discretionary capital to allocate to these database providers.

Biotechnology investor relations and corporate finance professionals have for decades harnessed 13(f) data to formulate peer benchmarking, which is the process by which new entrants into financial markets glean insights from similar companies that have already navigated these hurdles.

These 13(f) data help corporate planners understand the landscape, construct peer benchmarks, and further understand an investor's preferences for research and development stage (e.g. does Investor X tend to invest in Pre-Clinical companies), preferences for therapeutic areas (e.g. does Investor X focus on oncology therapeutics or are they agnostic), average holding period (e.g. does Investor X only hold through clinical trials phases and then exits once a product is introduced to market), and portfolio concentration (e.g. is Investor A overly exposed to oncology).

Together, company planners can understand which investors to approach for which stages of corporate and product lifecycle as they synthesize a long-term financial strategy.

Emerging oncology companies that are planning to file an S-1 in 12 months now have a roadmap for investor engagement and what to expect in various scenarios.

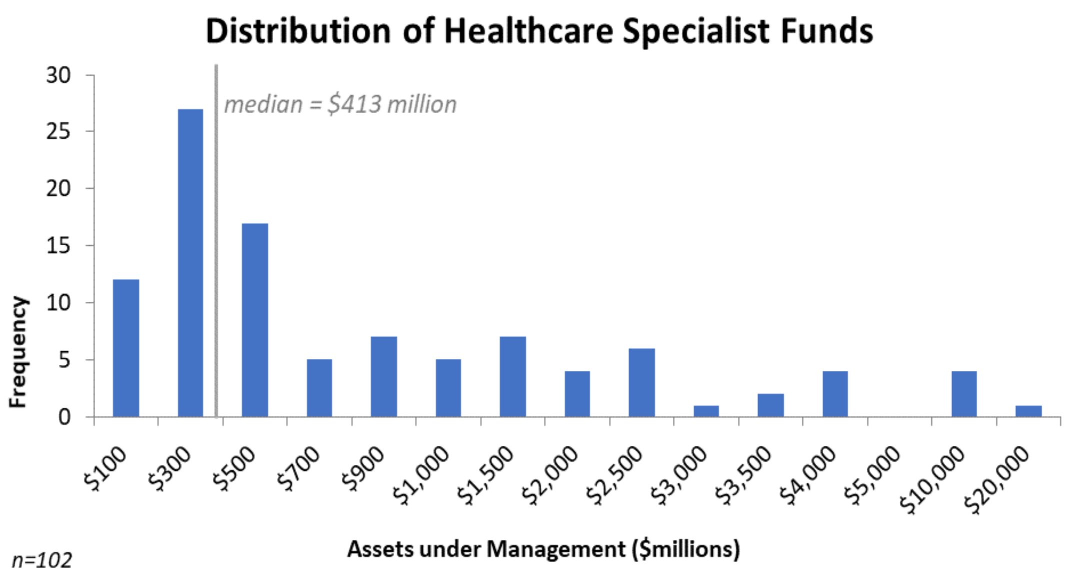
Innovation is a capital intensive process, and the idiosyncrasies of investor mandates and risk limit the opportunity set, requiring a great degree of effort in understanding the landscape and pursuing the right investors at the right time who can understand the scientific pursuit, appreciate the goals, and have the necessary risk tolerance for each stage of growth. Ultimately, every company wants long-term investors, such as financial institutions that package shares into mutual funds and exchange-traded funds. But these investors are earned over time with consistent execution and proper diligence.

This entire process begins and ends with 13(f) filing data.

Using 13(f) data accumulated and sorted by WhaleWisdom[4] BIO scraped 13(f) data to find over 100 investors that are concentrated in the healthcare space. Many of these investors are established names with whom many biotechs are familiar, and many are smaller, niche players that were only known to member companies with personnel that have operated in the selected space for a long time.

As the chart below illustrates, the median assets under management (AUM) for specialist healthcare investors is $413 million, which is significantly below the SEC's intended threshold of $3.5 billion and below the inflation-adjusted threshold of $450 million.

If the SEC proceeds as planned, the biotechnology industry will lose 70% of the information content that these filings historically supplied. And because of the skew of the distribution of AUM in the healthcare investor sector, we also find that adjusting the threshold by inflation would similarly remove 50% of the information content that has been historically supplied by 13(f) filings.



4 https://whalewisdom.com/

As many respondents have noted already, this lack of transparency will be deleterious to Main Street investors and to the biotechnology industry, in particular, as it relies heavily on these data to plan financing and investor targeting strategies.

Investor Engagement and Activist Monitoring
Just as with seeking to plan a company's financial forward path, company managers must also carefully monitor and engage with existing shareholders. Understanding the composition of existing shareholders allows corporate representatives the ability to create strategic communications to address shareholder questions and concerns. This enables more fruitful interactions between management and shareholder while also ensuring that company executives' time is used wisely and efficiently on behalf of the Board and shareholders.

Moreover, understanding the current composition of shareholders is necessary when it comes to the positioning of known activist investors. It is critical to be able to see the accumulating position of known activists so that corporate managers can engage, understand priorities, solicit feedback, and resolve differences over time in order to avoid costly proxy fights down the road.

BIO understands that the presence of activists in the market is necessary and, in certain cases, beneficial to shareholder return. However, in many cases, these returns are short-term in nature and sacrifice long-term plans. It is necessary to engage with activists early on to better understand and bridge differences.

The alignment of all stakeholders and the management of risks (including operational, financial, and legal risks) are all critical components of sound corporate governance, which, in part, relies on good data. Raising the reporting threshold as proposed will erode this aspect of sound governance and management, and may lead to higher corporate costs, such as legal fees to fight proxy battles and director and officer (D&O) insurance costs as companies will not be able to sufficiently mitigate risks.

Biotechnology companies already face structurally higher D&O costs due to the legal asymmetries that exist between the risks and uncertainties inherent in the scientific discovery process and shareholder class action lawsuit rights granted by states. The inability to adequately mitigate potential proxy fights with activists (legal liability) may inadvertently raise D&O costs for companies that need every dollar to advance critical research and development for novel therapeutics.

Conclusion

BIO contends that the Commission should not raise the reporting threshold for 13(f) filings as this would erode existing corporate decision-making process in place for decades that are instrumental to planning and investor engagement. As shown in the discussion, raising the threshold to $3.5 billion would eradicate 70% of healthcare specialist investors who, given their focus in understanding healthcare sector peculiarities, are critical partners in the decades-long product planning process undertaken by every biotechnology company domiciled in the United States. Raising the threshold would be deleterious to the financial planning that has been characteristic of the innovation economy. Moreover, raising the threshold may have the unintended consequence of raising costs for biotechnology companies who are among the most target by litigious and activist investors.

BIO looks forward to working with the SEC on these important issues. If we can provide further information regarding these comments, please contact me at cpasseri@bio.org.

<u>Outstanding SEC Questions</u>

Following, please find BIO's responses to select SEC Staff's questions on the proposal that were not addressed in our discussion above.

8. Are the Form 13F filing obligations burdensome to smaller managers? If so, how? Are they burdensome in absolute terms, relative terms, or both? Are the burdens on smaller managers different in character from the burdens on larger managers?

BIO contends that filing 13(f) forms is not uniquely burdensome among the numerous reporting burdens imposed upon small managers, and thus relief from 13(f) filings alone will not provide meaningful burden reduction. A dedicated regulatory reporting or compliance specialist is a salaried, full-time employee typically responsible for filing all regulatory filings. Removing a single filing will not save operating costs associated with this one employee. In the event that the small firm outsources compliance to consultants, as is the common practice, service contracts are typically fixed-cost, annual amounts with statements of work that include a variety of routine regulatory filings. Removing the 13(f) form would not materially change fixed-cost service contracts in this regard as ongoing filings are numerous.

9. What, if any, are the benefits to investors and markets for the markets to have access to Form 13F data from smaller managers? Do these benefits justify the filing burdens? If so, why?

In healthcare, the median investor AUM is $413 million with a mean of $300 million. Small manager reporting is necessary for the smooth functioning of this niche market as specialist funds tend to be small. These investors tend to engage in more fruitful discussions with management, have the appropriate risk tolerance, and possess a more sophisticated knowledge base for the sciences and technologies being developed by innovators in the space.

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