BIO ISSUE BRIEF

Biotechnology Innovation Organization

CAPITAL MARKETS & FINANCIAL SERVICES

Issue Background

Because of the unique capital needs of groundbreaking research, growing biotech companies often turn to the public market for financing. Thus, fair, liquid, and efficient capital markets are vital to their success. Though the public capital markets are an essential component of the biotech financing ecosystem, roadblocks that decrease the capital potential of an offering, increase regulatory costs, reduce long-term liquidity and shareholder value, or distract a company from its core mission have the potential to deter or delay necessary offerings. These barriers reduce the viability of the public market as a capital formation option for emerging biotechs, ultimately harming issuers, investors, and patients alike.

Given the importance of America's world-leading capital markets for life-saving innovation, BIO supports policies that incentivize investment in breakthrough innovation, reduce costly regulatory burdens, and stimulate capital formation for emerging companies.

Policy Position

- **Fostering Innovation Act** — JOBS Act companies qualify for a five-year exemption from SOX 404(b). However, most biotechs remain pre-revenue long after their exemption expires. BIO supports the cost-saving Fostering Innovation Act (H.R. 1645 / S. 2126), which would allow pre-revenue small businesses to maintain their SOX 404(b) exemption for years 6-10 post-IPO.
- **SEC Small Company Classifications** — Companies qualify as both a smaller reporting company and a non-accelerated filer with a public float below $75 million, making them eligible for important regulatory cost-savers like an exemption from SOX 404(b). BIO supports expanding these definitions to include any small business with a public float below $250 million or revenues below $100 million.
- **Short Selling Disclosures** — Short sellers currently face no public disclosure requirements (unlike long investors), leading to information asymmetry, a lack of transparency, and, in some cases, market manipulation. BIO supports a short disclosure framework modeled on the existing long disclosure rules, which we believe would shine a light on manipulative behavior, allow market participants to make informed trading decisions, and ensure fair rules for all types of investments.
- **Proxy Advisory Firms** — Proxy firms have outsized market influence, and their opaque standards, one-size-fits-all recommendations, and conflicts of interest negatively impact emerging biotechs. BIO supports the Corporate Governance Reform and Transparency Act (H.R. 4015), which would provide for SEC oversight of proxy advisory firms and foster accountability, transparency, responsiveness, and competition in the proxy firm industry.
- **XBRL** — All public companies are required to file their financial statements in the XBRL data format, even though it is costly and little-used by biotech investors. BIO supports making XBRL compliance optional for EGCs and certain low-revenue issuers while the SEC studies how to improve XBRL.

Key Points

- ✓ The JOBS Act has supported **nearly 250 emerging biotech IPOs** as of January 2018.
- ✓ BIO supports capital markets policies that **increase the flow of capital** to innovative small businesses and **decrease capital diversions from the lab** to unnecessary compliance burdens.
- ✓ Emerging biotechs **do not generate product revenue** during their decades of research, but a strong public market gives them access to capital formation that supports life-saving R&D.
- ✓ High regulatory costs and other costly roadblocks represent a **damaging diversion of innovation capital from science to compliance**.