Biotechnology Industry Organization

January 30, 2014

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. 265-28 – Investor Advisory Committee Meeting January 31, 2014; Recommendation of the Market Structure Subcommittee on Decimalization and Tick Sizes

To whom it may concern:

The Biotechnology Industry Organization (BIO) is pleased to submit comments to the Securities and Exchange Commission (SEC) Investor Advisory Committee (IAC) on the draft recommendation proposed by its Market Structure Subcommittee on decimalization and tick sizes.

BIO is a not-for-profit trade association that represents more than 1,100 biotechnology companies, academic institutions, state biotechnology centers, and related organizations in all 50 states. BIO members are working toward groundbreaking cures and treatments for devastating diseases, developing technologies for advanced biofuels and renewable chemicals, and researching novel gene traits for identifying food sources that could help combat global hunger.

In the biotechnology industry, it can take more than a decade and over $1 billion to bring a single lifesaving treatment from laboratory bench to hospital bedside. Further, the entire process is undertaken without the benefit of product revenue. Early-stage biotech companies do not have the luxury of using the sale of one product to finance the development of another. Rather, the entire cost of drug development is borne by external investors.

As companies near the later stages of research and begin conducting expansive clinical trials in human patients, they often turn to an IPO for capital formation. As such, a functioning public market is vital to the success of the biotech industry and the development of lifesaving treatments for patients. When effective, the markets provide innovation capital through an IPO, stimulate a liquid and profitable trading environment for investors, offer growing companies important leverage in M&A negotiations, and create an exit for early-stage venture capitalists.

The recent surge of biotech IPOs has shown the importance of public financing to emerging innovators. Since the passage of the Jumpstart Our Business Startups (JOBS) Act in April 2012, more than 50 small biotech companies have used the law's IPO On-Ramp to go public. The capital from their offerings is supporting research and spurring job creation, and the re-opened market has the potential to inspire growth in innovative companies at all stages of development. However, emerging issuers still face the challenges inherent to trading as a public company. Stagnant liquidity can stall their progress and decrease the appeal of an IPO for other growing companies. BIO believes that the SEC should take

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steps to support small company growth and maintain the essential role of the public market in biotech capital formation. Without appropriate action from regulators and lawmakers, newly public companies could be left to die on the vine, blunting the impact of the JOBS Act and hampering job creation and groundbreaking R&D.

Decimalization, Tick Size, and Small Issuer Liquidity

BIO applauds the IAC for engaging in the important discussion of how to enhance access to capital for smaller and emerging companies. At its January 31 meeting, the IAC will consider a recommendation from its Market Structure Subcommittee that would, unfortunately, insist that the SEC take no action to address the liquidity and capital formation concerns of smaller issuers. The Subcommittee's Recommendation #1, on decimalization and tick sizes, asks the SEC to maintain the ineffective one-size-fits-all tick size that has hampered small company growth since decimalization took effect in 2000.

When the SEC adopted decimalization, the goal was to increase trading activity for large issuers with millions of shares traded each day. However, as large companies enjoyed an influx of new investors, small issuers experienced a corresponding decrease in liquidity. Without strong liquidity available for small public companies, the public market ceases to be an effective capital formation outlet for emerging biotechs to raise the capital necessary to fund the decade-long, billion-dollar development timeline intrinsic to groundbreaking R&D.

Thinly traded stocks, like those of most small biotechs, often need market-makers to stimulate trading activity, and a decreased tick size removes their incentive to do so. Market-makers profit on large spreads, so a reduced tick diminishes their potential profit margin, changing their market-making habits and leaving small cap stocks stagnant. The public market plays a vital role in financing next generation R&D, but a sluggish market bereft of liquidity does nothing to spur capital formation or fund research. The current one-size-fits-all approach to tick size does not reflect the realities of the market and subjects smaller issuers to the same trading framework as large, multinational corporations with exponentially higher revenues, trading volumes, and market caps.

BIO supports flexibility in tick size for smaller issuers in order to address the needs of growing companies hamstrung by decimalization. A pilot program to allow small issuers to choose larger trading increments would meet this problem head on and give the SEC the opportunity to study the effects of an increased tick on small company trading. Allowing growing companies to trade at $0.05 or $0.10 increments would stimulate market-making activity in small company stock and lead to a corresponding increase in liquidity for growing issuers. Similarly, an increased tick would group bids and offers at the nickel or dime rather than spreading them across the existing penny options, facilitating the block trades that are vital to the health of many emerging companies on the market.

This increased trading volume would benefit issuers and investors alike. An effective pilot would allow companies to choose whether or not to participate, so an issuer that believes its investors share the Subcommittee's concerns could opt out. However, BIO believes that most issuers and investors on the market recognize the potential of tick size flexibility and would make their trading decisions accordingly.

A tick size pilot program could be targeted at companies that meet a certain revenue, public float, or trading volume test – or some combination of these and other metrics. The alternative recommendation submitted to the IAC suggests limiting eligibility to small-cap public companies, defined as those with a market cap below $750 million. The Small Cap Liquidity Reform Act (H.R. 3448), introduced in the House of Representatives by Reps. Sean

Duffy and John Carney and approved unanimously by the House Financial Services Committee in November, would create a pilot for companies with annual revenues below $750 million. Regardless of the specific rules for eligibility, any pilot program would clearly target a limited subset of companies for whom a modification in tick size could have a substantial impact. Alternative Recommendation #1 notes that its $750 million market cap test would apply to just 2% of the total trading volume on the public markets. The effect on the market at large or the general universe of investors is likely to be limited, but small issuers eligible for a pilot program could see a substantial increase in liquidity and investor interest.

Emerging companies should not be subjected to universal trading rules designed for exponentially larger corporations, and BIO urges the IAC and the SEC to support a pilot program that reflects this reality.

Conclusion

Allowing for tick size flexibility will increase the effectiveness of the public market as a capital formation tool and speed the development of cures and breakthrough medicines. As the JOBS Act continues to spur IPOs in the biotech industry, changes to the current one-size-fits-all trading regime must be made in order to alleviate the ongoing struggle to maintain healthy trading activity in small company stock.

BIO opposes Recommendation #1 of the Market Structure Subcommittee, and urges the IAC and, ultimately, the SEC to endorse true tick size reforms that will support small company liquidity, stimulate job creation, and maintain the vital role that public financing plays in the ongoing search for lifesaving therapies.

BIO looks forward to working with the SEC to implement market structure reforms that spur capital availability, company growth, and next generation research at innovative small businesses. If you have further questions or comments, please contact me or Charles Crain, Manager of Policy and Research, at (202) 962-9218.

Sincerely,

E. Cartier Esham
Executive Vice President, Emerging Companies
Biotechnology Industry Organization (BIO)