



August 26, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-0609

Re: File No. S7-12-16: *Amendments to Smaller Reporting Company Definition*

To whom it may concern:

The Council of State Bioscience Associations (CSBA) is a confederation of state-based, non-profit trade organizations representing the biotechnology industry at the state level. The bioscience companies represented by our 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.

The biotech industry is a strong economic driver – our member companies directly employ more than 1.66 million Americans at over 77,000 companies. The total employment impact of the industry is more than 9.2 million jobs. As members of CSBA, we represent these businesses and their employees – and we appreciate the opportunity to provide comment on how the recent Securities and Exchange Commission (SEC) proposal to amend the smaller reporting company (SRC) definition could impact them.

In short, we appreciate that the SEC has acknowledged that the \$75 million public float marker in the current SRC definition is inaccurate and overly restrictive. However, we are disappointed that the SEC did not apply this same reasoning to the non-accelerated filer definition.

Because of their promising research, many biotech companies have public floats in excess of the existing \$75 million cap – but that does not mean they have excess capital available to spend on costly compliance burdens. By broadening the definition of an SRC, the SEC's proposal takes a promising step toward creating more accurate company classifications, but the proposed rule falls short by failing to similarly reform the non-accelerated filer definition.

As the proposing release notes, non-accelerated filers are exempt from the auditor attestation requirement in Sarbanes-Oxley (SOX) Section 404(b). The SEC's 2009 SOX Study found that accelerated filers spend, on average, more than \$1 million complying with Section 404(b). Many of our members – which, again, have relatively high public floats despite their lack of product revenue – are forced into accelerated filer status, and thus SOX 404(b) compliance, by the outdated public float markers in Rule 12b-2. This miscategorization leads to millions of dollars in innovation capital being diverted from science to compliance.

Similarly, the overreliance on public float as the ultimate arbiter of company size has proven to be extremely costly for emerging biotechs. We believe that the SEC should institute an alternative revenue test for both the SRC and non-accelerated filer definitions so as to avoid

stifling the growth of pre-revenue biotechs that can ill afford costly compliance burdens like SOX 404(b), which often serve as roadblocks on the decades-long, billion-dollar path to a new technology.

We applaud the SEC for being willing to re-examine the SRC classification, and we encourage it to extend this effort to the non-accelerated filer definition. We also urge the SEC to include a revenue test in both the SRC and non-accelerated filer definitions. If the final rule includes these important reforms, it will support our members across the country as they continue their search for next generation scientific advancements.

Sincerely,

Arizona BioIndustry Association
BioAlabama
Biocom
BioFlorida
BioForward
BioKansas
Bio Nebraska Life Sciences Association
BioNJ
BioOhio
Bioscience Association of North Dakota
BioUtah
California Life Sciences Association
Colorado BioScience Association
CURE (Connecticut United for Research Excellence)
Delaware BioScience Association
Georgia Bio
Illinois Biotechnology Industry Organization
Indiana Health Industry Forum
INDUNIV/Puerto Rico Bio Alliance
Iowa Biotech Association
Kentucky Life Sciences Council
Life Science Tennessee
Medical Alley Association
MichBio
Missouri Biotechnology Association
Montana BioScience Alliance
Nevada Biotechnology & Health Science Consortium
New Mexico Biotechnology & Biomedical Association
NewYorkBIO
North Carolina Biosciences Organization
Oregon Bioscience Association
Pennsylvania Bio
SCBIO
Southern California Biomedical Council
South Dakota Biotech
Tech Council of Maryland
Texas Healthcare & Bioscience Institute
Virginia Biotechnology Association