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On behalf of the Biotechnology Innovation Organization

Before the United States House of Representatives Committee on Financial Services,
Subcommittee on Capital Markets, Securities, and Investment

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*The JOBS Act at Five:*
*Examining Its Impact and Ensuring the Competitiveness of the U.S. Capital Markets*

*March 22, 2017*

## Executive Summary

- GlycoMimetics is a clinical-stage biotechnology company based in Rockville, Maryland. The Biotechnology Innovation Organization (BIO) represents GlycoMimetics and 1,100 other innovative biotech companies, the vast majority of which are pre-revenue small businesses.
- GlycoMimetics undertook a successful IPO in January 2014 using key provisions in the Jumpstart Our Business Startups (JOBS) Act. In the five years since the JOBS Act became law, 212 biotech companies have gone public as emerging growth companies (EGCs).
- The next generation of medical advances is being funded by capital raised through JOBS Act IPOs. JOBS Act biotechs have 696 therapies currently in development, and the FDA has approved 18 new treatments from JOBS Act companies.
- The JOBS Act has supported IPOs from companies across a wide range of therapeutic areas and stages of development. Notably, the law has led to increased funding for early-stage research and certain disease areas that have historically been difficult to finance.
- BIO supports policies to build on the success of the JOBS Act that *increase* the flow of capital to innovative small businesses and *decrease* capital diversions from the lab to unnecessary compliance burdens.
- BIO supports the Fostering Innovation Act, which would extend the JOBS Act's Sarbanes-Oxley (SOX) Section 404(b) exemption for an additional five years for former EGCs that maintain a public float below $700 million and average annual revenues below $50 million.
- BIO supports the Corporate Governance Reform and Transparency Act, which would provide for SEC oversight of proxy advisory firms and foster accountability, transparency, responsiveness, and competition in the proxy advisory firm industry.
- BIO supports targeted capital formation provisions in the Financial CHOICE Act, including the Fostering Innovation Act, the Corporate Governance Reform and Transparency Act, the Small Company Disclosure Simplification Act, the Small Business Capital Formation Enhancement Act, and the proposed Small Issuer Exemption from Internal Control Evaluation.
- BIO supports enhanced short selling transparency in order to shine a light on manipulative trading behaviors that disincentivize long-term investment in innovation.

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## Testimony of Brian Hahn

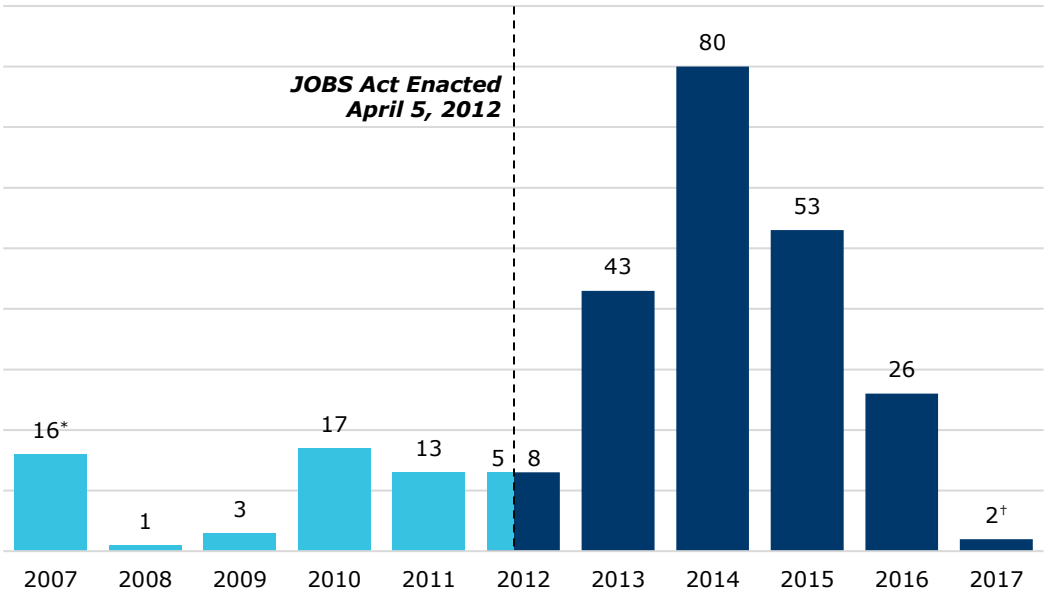
Good afternoon Chairman Huizenga, Ranking Member Maloney, and Members of the Subcommittee. My name is Brian Hahn, and I am the Chief Financial Officer of GlycoMimetics, Inc., a 45-employee public biotech company based in Rockville, Maryland. I am also the Co-Chair of the Finance and Tax Committee at the Biotechnology Innovation Organization (BIO), which represents GlycoMimetics and over 1,100 other growth-stage biotechs that are driving the search for the next generation of cures and breakthrough medicines.

I am thrilled to be here today to talk about the successes of the Jumpstart Our Business Startups (JOBS) Act, which over the last five years has spurred a surge of IPOs in the biotech industry, allowing emerging companies developing a wide range of potential therapies to raise the capital necessary to bring life-saving treatments to patients. The Financial Services Committee should be commended for its hard work on the JOBS Act five years ago – which is still paying dividends – and I would further like to applaud the ongoing bipartisan efforts to build on the successes of JOBS in order to support the next generation of emerging growth companies (EGCs).

### The JOBS Act and the Biotech Industry

Since the JOBS Act was signed into law five years ago, 212 emerging biotech companies have used provisions in the law to go public. (For comparison, there were just 55 biotech IPOs in the five years leading up to the JOBS Act.) The ability of growing businesses to access the public markets, as supported by the JOBS Act, is of paramount importance to biotechnology innovation because investment capital is the lifeblood of scientific advancement. It costs over $1 billion to develop a single life-saving treatment, and most companies spend more than a decade in the lab before their first therapy is approved. During this long development process, virtually every dollar spent by an emerging biotech comes directly from investors. Expenses ranging from buy-in-bulk beakers to $150 million clinical trials are all funded by investment capital because biotechs remain pre-revenue through their entire time in the lab and the clinic.

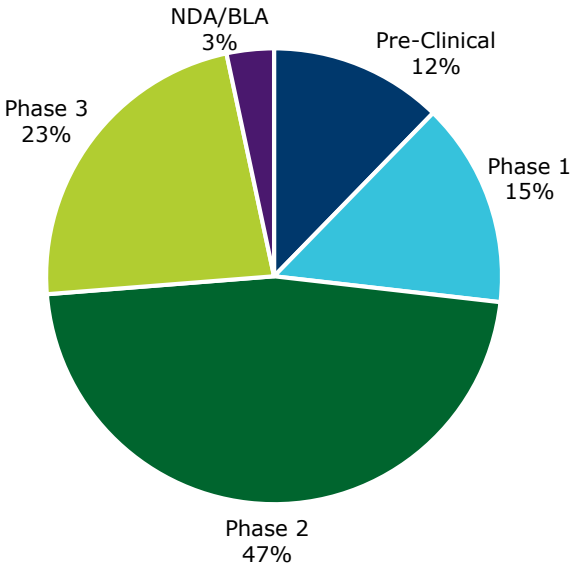
***Biotech IPOs Per Year, April 2007—March 2017***



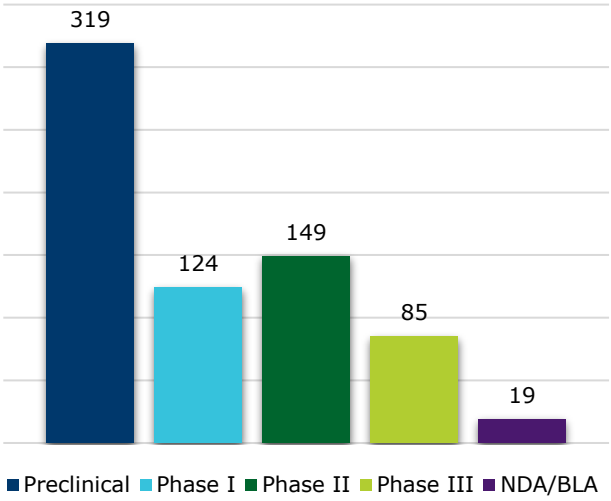
Early-stage innovators do not have the luxury of funding their product development through sales revenue. Instead, the groundbreaking research that leads to a company's first product is funded by a series of financing rounds from angel investors, venture capitalists, large pharmaceutical companies, and, eventually, public market investors. The capital burden of a pivotal clinical trial – which can require hundreds of patients in the clinic to meet the stringent safety and efficacy standards necessary to ensure patient care – often necessitates an IPO to fund this critical stage of the research process. The 212 IPOs undertaken using the JOBS Act are the clearest indication of its success.

The next generation of medical advances is being funded by capital raised through these JOBS Act IPOs. JOBS Act biotechs have 696 therapies currently in development, and the FDA has approved 18 new treatments from JOBS Act companies.

***Lead Phase of Development at IPO, JOBS Act Therapeutic Biotechs***
***(n=189)***



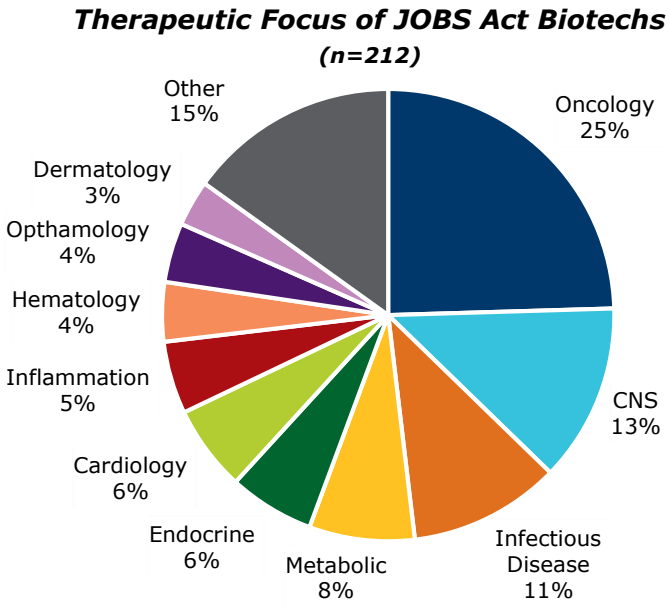

***Treatments Currently in Development, JOBS Act Therapeutic Biotechs***
***(n=696)***




Importantly, the success of the JOBS Act has supported a surge of financing for early-stage research. In the last five years, there have been 48 IPOs by biotechs in the earliest stages of research (pre-clinical R&D and Phase I clinical trials), compared to just three preclinical and Phase I IPOs in the five years before the JOBS Act. Biotech investment is riskiest during the early stages of development – scientists discover thousands of compounds for every one that makes it through the FDA approval process – but early-stage innovation is critical to the health of the biotech industry and to patients waiting for breakthrough treatments and cures. The JOBS Act has allowed younger companies to access public financing, driving capital to early-stage research that holds the potential to lead to the next generation of innovative medicines.

The promise of JOBS Act biotechs is also spread across a wide range of therapeutic areas. The largest percentage of companies are working in the oncology space, advancing cutting-edge treatment approaches like immuno-oncology, targeted antibodies, and selective kinase inhibitors to treat deadly cancers that impact families across America. Other therapeutic areas that have seen a large number of IPOs over the last five years include central nervous system (CNS) and infectious disease companies, which are leading the charge on pressing health care challenges like Alzheimer's disease and antibiotic-resistant bacteria, respectively.

Notably, the JOBS Act has also allowed companies advancing therapies in often-overlooked disease areas to access capital. For example, there were just two IPOs from endocrine-focused companies from 2007 to 2011, but there have been 13 under the JOBS Act. The most common therapeutic focus for endocrine companies is diabetes, which is the 7th leading cause of death in the U.S. The increased funding for diabetes research will hopefully lead to scientific advancements that save and improve millions of lives.




**Why the JOBS Act works**

The many JOBS Act success stories in the biotech industry are attributable to the one-two punch at the core of the law: First, it allows small companies enhanced access to investors, increasing the capital potential of an offering. It then institutes a relaxed regulatory burden, decreasing the amount of capital diverted from research. This combination is critical for biotech innovators and has increased the viability of the public market for growing companies looking to fund their capital-intensive development programs.

GlycoMimetics was a key beneficiary of the new approach to a public offering created by the JOBS Act's IPO On-Ramp. During our 2014 IPO, which raised $64.4 million to fund our clinical research into treatments for sickle cell disease, acute myeloid leukemia, and multiple myeloma, we took full advantage of the law's testing-the-waters, confidential filing, and regulatory relief provisions.

In the lead-up to our IPO, the ability to conduct testing-the-waters meetings and increase our dialogue with potential investors was a game-changer. More than half of our testing-the-waters meetings eventually resulted in the investor participating in the IPO, and across the board we saw substantially increased investor awareness of our company and interest in the offering. Biotech companies like GlycoMimetics have complicated technology, an opaque regulatory pathway, and a complex commercial story – and the additional time with investors gave us time to clarify questions about these aspects of our business in a more robust way that would not have been possible in a traditional half-hour roadshow meeting.

This entire process took place while we were on file confidentially with the SEC. The JOBS Act's confidential filing provision allowed us to conduct our investor meetings out of the glare of the media spotlight and without the heightened scrutiny that could have placed an undue expectations burden on the company or our potential investors. Filing confidentially also allowed us to effectively time our offering, enabling us to wait until the market was strong before we made our S-1 public and began our roadshow.

Both at the time of our IPO and continuing for our first five years as a public company, the JOBS Act's regulatory relief provisions have helped preserve capital for R&D and allowed us to focus on our research. The Act takes a significant step away from costly one-size-fits-all regulations by reducing the regulatory burden on EGCs, ensuring that the capital raised in an

offering is not subsequently diverted from R&D and company growth. In particular, the five-year exemption from Sarbanes-Oxley (SOX) Section 404(b) continues to save us hundreds of thousands of dollars per year.

Because pre-revenue small businesses like GlycoMimetics utilize only investment dollars to fund our work, we place a high value on policies like the JOBS Act that incentivize investment in innovation and prioritize resource efficiency. Any policy that increases the flow of innovation capital to emerging companies could lead to funding for a new life-saving medicine – while any policy that diverts capital to unnecessary and costly regulatory burdens could lead to the same treatment being left on the laboratory shelf. The JOBS Act has been an unqualified success, enhancing capital formation and allowing companies to focus on science rather than compliance.

**Building on the success of the JOBS Act**

Given the strong impact that the JOBS Act has had on biotech capital formation, I am encouraged that the Financial Services Committee has made progress over the past several years to continue to support the growth of small public companies. The 212 newly public biotech EGCs benefitted greatly from the IPO On-Ramp, but they now face the day-to-day challenges of being a public company. BIO appreciates the ongoing work to build on the success of the JOBS Act, and we look forward to working with the Subcommittee to ensure that emerging biotechs can continue to access innovation capital on the public market. BIO supports many of the capital formation provisions found in Chairman Hensarling's Financial CHOICE Act, along with other targeted reforms that will support funding for life-saving cures and treatments.

*The Fostering Innovation Act*

The most direct policy impact of the JOBS Act has been the five-year exemption from Section 404(b) of SOX. Section 404(b) requires an external auditor's attestation of a company's internal financial controls that provides little-to-no insight into the health of an emerging biotech company – but is very costly for a pre-revenue innovator to comply with, making the JOBS Act exemption extremely valuable.

Biotech investors demand information about the growth-stage companies in which they invest – and spend countless hours learning as much as they can about the company's science, the diseases it is treating, the patient population, the FDA approval pathway, and a hundred other variables that will determine the company's ultimate success or failure. The testing-the-waters process created by the JOBS Act has been so successful for the biotech industry because it allows companies a platform to disseminate *more* and *more detailed* information to potential investors. But the information that these investors want and need does not align with what is required by SOX – and yet virtually all biotechs are subject to this one-size-fits-all mandate that can cost them over $1 million per year once their EGC exemption expires.

Over the last three years since our IPO, GlycoMimetics has benefitted from being able to spend dollars on R&D and job creation that otherwise would have been earmarked for SOX compliance, and we still have two years of IPO On-Ramp eligibility remaining. However, it remains the case that the biotech development timeline is a decades-long affair. It is extremely likely that GlycoMimetics will still be in the lab and the clinic when our EGC clock expires – which is to say that we will still not be generating product revenue. Our audit fees increased by roughly $400,000 after our IPO due to the existing regulatory environment for public companies, and we expect our SOX 404(b) compliance obligations alone to further increase costs by more than $350,000 annually starting in year 6 post-IPO. Those valuable

funds could cover clinical costs for a more than a dozen patients, but our innovation capital will instead be spent on unnecessary reporting burdens.

Most biotechs that went public under the JOBS Act will find themselves in the same predicament at the dawn of year 6 on the market – still reliant on investor capital to fund their research, but facing a full-blown compliance burden identical to that faced by commercial leaders and multinational corporations.

In the 114th Congress, Rep. Kyrsten Sinema introduced the Fostering Innovation Act, which would extend the JOBS Act's SOX 404(b) exemption for certain small companies beyond the existing five-year expiration date. This important bill recognizes that a company that maintains the characteristics of an EGC but has been on the market beyond the five-year EGC window is still very much an emerging company.

The Fostering Innovation Act would apply to former EGCs that have been public for longer than five years but maintain a public float below $700 million and average annual revenues below $50 million. These small businesses would benefit from an extended SOX 404(b) exemption for years 6 through 10 after their IPO. The additional five years of cost-savings would have the same impact as the first five years – emerging companies would be able to spend investor capital on growing their business. In the biotech industry, that means small business innovators can remain laser-focused on the search for breakthrough medicines.

If a company eclipses $50 million in average annual revenues, its full SOX 404(b) compliance obligations would kick in. The Fostering Innovation Act does not grant a carte blanche exemption – it is targeted specifically at pre-revenue companies, because revenue is the key indicator of company size, and of the ability to pay for expensive compliance obligations like Sarbanes-Oxley. Maintaining the JOBS Act's public float test of $700 million while drastically lowering the revenue test from $1 billion to $50 million limits the Fostering Innovation Act to a specific universe of truly small companies – instituting a company classification regime for years 6 through 10 post-IPO that accurately reflects the nature of small businesses while also supporting their growth.

Under current law, small, pre-revenue companies are often required to file the same reports as revenue-generating, profitable multinational corporations. Under the Fostering Innovation Act, these emerging companies will save millions of dollars that can be utilized to fund groundbreaking R&D and life-saving medical research. BIO commends Rep. Sinema for her continued leadership in support of this vital legislation, which last year was approved on a bipartisan basis by the House Financial Services Committee and then passed by the House via voice vote. The bill is also included in the Financial CHOICE Act. I am hopeful that the Subcommittee will support the Fostering Innovation Act in the 115th Congress in order to enhance capital formation and company growth at America's pre-revenue businesses.

*The Corporate Governance Reform and Transparency Act*

Proxy advisory firms often have outsized influence on the decision-making processes of emerging companies and their shareholders. The firms' influence has grown in recent years, with their rise to prominence largely coinciding with the rise in institutional ownership of American stocks. Institutional investors currently own more than 70% of shares in public companies, and 91% of these investors regularly vote their shares. Institutional investors' reliance on proxy firms, combined with an overall rise in shareholder activism, has dramatically increased the firms' ability to influence proxy votes and company decisions. Recent studies have shown that a firm's recommendation can swing the shareholder vote by as much as 25%.

Despite their significant influence on emerging companies, proxy advisory firms (the universe of which is functionally limited to just two firms) generally refuse to engage in a productive or transparent dialogue with smaller issuers, instead relying on one-size-fits-all recommendations that do not take into account a company's or its shareholders' unique circumstances. Furthermore, the conflicts of interest inherent in the business model of those firms which engage in business consulting in addition to providing proxy recommendations raise serious concerns.

For growing biotech companies, these issues are particularly acute. Biotech small businesses operate in a unique industry that values a strong relationship with investors, yet they often are held to standards that are not applicable to their company and forced to engage in proxy fights over issues that do not add value for shareholders. When a proxy firm issues a recommendation that is not applicable to an emerging biotech and remains unwilling to consider alternative approaches or methodologies, it can harm a company's relationship with its shareholders and distract management from the core business of the company. Even in instances where a proxy firm has not yet made a recommendation, their influence is felt in boardrooms across the industry as companies strive to structure their corporate policies to satisfy the firms – rather than making decisions in the best interest of the company's growth.

BIO believes that proxy advisory firms should be more transparent and open to input in their standard-setting process, particularly with regard to issues unique to small businesses. We also believe that the firms with conflicted business models should be required to avoid potential conflicts of interest.

In the 114th Congress, Rep. Sean Duffy introduced the Corporate Governance Reform and Transparency Act, which would provide for SEC oversight of proxy advisory firms; the bill was also incorporated into the Financial CHOICE Act. The Corporate Governance Reform and Transparency Act is designed to foster accountability, transparency, responsiveness, and competition in the proxy advisory firm industry. By ensuring that firms have adequate resources to provide accurate recommendations on emerging companies as well as processes in place engage in a dialogue with smaller issuers, the legislation would make it more likely that a firm's recommendation is relevant to a company's business model. Further, the bill's regulation of conflicts of interest would ensure that the proxy firms are actually acting in the best interests of shareholders.

BIO strongly supports the Corporate Governance Reform and Transparency Act, which last year passed the House Financial Services Committee on a bipartisan basis. We applaud Rep. Duffy for his continued interest in this important bill, and we are hopeful that the Subcommittee will support it in the 115th Congress.

*The Financial CHOICE Act*

BIO appreciated the inclusion of both the Fostering Innovation Act and the Corporate Governance Reform and Transparency Act in the Financial CHOICE Act in the 114th Congress, and we are hopeful that they will both remain an important part of the CHOICE Act when Chairman Hensarling re-introduces the legislation this year. These bipartisan bills would support small company growth and capital formation across the biotech industry. BIO also supports other key provisions included in the Financial CHOICE Act in the 114th Congress that incorporate the work done by the Financial Services Committee to ensure that America's capital markets allow for the capital formation necessary to fund the decades-long, billion-dollar development timeline faced by emerging biotech companies, including:

- **Small Issuer Exemption from Internal Control Evaluation.** Many emerging biotechs have high public floats despite being small businesses without any product revenue. The Financial CHOICE Act would reflect that reality by expanding the existing small issuer exemption from SOX Section 404(b) to companies with a public float below $250 million. We understand that the bill introduced for the 115th Congress may be updated to include an expanded exemption for companies up to $500 million in public float. BIO supports expanding the exemption beyond the current $75 million public float cap in order to allow these growing companies to focus their precious innovation capital on science rather than compliance.

- **Small Company Disclosure Simplification.** BIO believes that growing companies should not have to bear the costs of the eXtensible Business Reporting Language (XBRL) reporting requirement until it has been demonstrated to be cost effective and useful to investors. The Financial CHOICE Act would exempt EGCs and certain low-revenue issuers from XBRL while requiring the SEC to study and improve the compliance mechanism.

- **Small Business Capital Formation Enhancement.** The annual SEC Government-Business Forum on Small Business Capital Formation has historically been adept at suggesting policies that have a real impact on growing companies, including many of the provisions that made up the JOBS Act. An enhanced role for the Forum, as directed by the Financial CHOICE Act, would provide an important opportunity for small businesses to recommend policy changes to the SEC that would reduce regulatory burdens and enhance capital formation.

*Short Selling Transparency*

The unique business model of groundbreaking innovation leaves emerging biotechs particularly vulnerable to stock manipulation via abusive short selling strategies. Biotech companies depend on the public market for the capital necessary to fund late-stage clinical trials. However, the high-stakes nature of their research, their often-thinly-traded stocks, the limited publicly available information about ongoing trials, and their dependence on a small portfolio of products or product candidates can be exploited by short sellers who prioritize short-term profits over the long-term health of patients. Abusive short trading strategies harm growing companies and disincentivize long-term investment in innovation.

BIO acknowledges that appropriate shorting can support the stable, liquid markets that fuel the growth of emerging biotech innovators. However, we strongly believe that the current lack of transparency related to short positions is enabling trading behaviors that unfairly harm growing companies, long-term investors, and, most importantly, patients. BIO members face a consistent and significant risk of manipulation by short sellers, who are protected by the lack of disclosure required of short positions.

Specifically, growing innovators face campaigns mounted by manipulative short investors who spread online rumors about small biotech companies, or publish false or misleading data about clinical trials or marketed therapies, in order to drive down their stock price. The end goal of this manipulation is to generate a quick profit for short sellers at the expense of the long investors who support life-saving innovation. Recently, a new strategy has emerged wherein hedge fund managers take a short position in a biotech company's stock and then immediately file a series of spurious patent challenges through the Patent Office's *inter partes* review (IPR)

process, initiating a stock drop that, again, benefits short sellers but harms long-term innovation.

BIO believes that increased short transparency, designed to complement the existing long disclosure regime, would shine a light on manipulative behaviors, allow market participants to make informed trading decisions, and ensure equitable rules for all types of investments. As the Subcommittee continues to consider how to support the growth of EGCs and other small business issuers, we look forward to continuing to discuss the manipulation that growing biotechs face and how to ensure that long-term investment in innovation is encouraged.

**Conclusion**

The bipartisan JOBS Act showed that targeted policymaking designed to support job creation and capital formation at small businesses can have a dramatic real world impact. The 212 biotech companies that have gone public over the last five years are living proof that Congress can make a difference for emerging innovators. Many of these companies are conducting promising early-stage research that might have been overlooked by investors before the JOBS Act; others are working in a therapeutic area that has historically been difficult to finance. Under the JOBS Act, they were able to raise the capital necessary to fund their life-saving R&D, bringing the next generation of medical advances closer to patients.

The extraordinary success of the JOBS Act in the biotech industry means that the work of the Subcommittee has taken on increased import for emerging biotech companies. The search for capital in our industry is always ongoing – it does not end at the IPO. As such, BIO and I strongly support the efforts of the Subcommittee build on the success of the JOBS Act. Legislation designed to enhance the capital formation ecosystem, reduce regulatory burdens, and incentivize funding for the next generation of breakthrough medicines can have a dramatic impact on pre-revenue biotech companies.

BIO and I believe that important reforms like the Fostering Innovation Act, the Corporate Governance Reform and Transparency Act, the capital formation provisions in the Financial CHOICE Act, and enhanced short selling transparency will support the growth of emerging innovators beyond the IPO On-Ramp, incentivizing scientific advancement and sustaining small innovative businesses as they continue their efforts to bring life-saving treatments to patients who desperately need them.

I am thankful that Congress was able to pass the JOBS Act five years ago, which supported GlycoMimetics's public offering, and I am hopeful that it will be able to enact further legislation that could support the search for breakthrough treatments at the next generation of emerging growth biotechs. I appreciate your dedication to these vital issues, and I look forward to supporting your work in any way I can.