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Subcommittee on Capital Markets, Securities, and Investment

Hearing on Legislative Proposals to Help Fuel Capital and Growth on Main Street

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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 six years since the JOBS Act became law, 260 biotech companies have gone public as emerging growth companies (EGCs).

- GlycoMimetics will lose its status as an EGC in January 2019, five years after our IPO. By losing this status, we will immediately be subject to onerous documentation requirements as set forth in Section 404(b) of the Sarbanes-Oxley (SOX) Act .

- BIO fully supports policies which build on the success of the JOBS Act and increases the flow of capital to innovative small businesses. BIO also fully supports policies which decrease capital diversions from the lab to unnecessary compliance burdens and supports companies once they are public. These policies include:

    - Extend the JOBS Act exemption from Section 404(b) mandates from 5 years to 10 years for EGCs

    - Expand the exemption from Section 404(b) by aligning the SEC definition of a non-accelerated filer with the proposed expanded SRC definition

    - Institute reasonable and effective SEC oversight of proxy advisory firms.

    - Require disclosure of short sales to curb manipulative short selling.

    - Make XBRL compliance optional for EGCs, smaller reporting companies (SRCs), and non-accelerated filers.

Testimony of Brian Hahn

Good morning Chairman Huizenga, Ranking Member Maloney, and Members of the Capital Markets, Securities, and Investment Subcommittee. My name is Brian Hahn, and I am the Chief Financial Officer of GlycoMimetics, Inc., a 48-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.

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.

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.

I am pleased to be here today to discuss policies that will help small growth companies like biotechs. My testimony today will address legislative proposals as well as the recommendations in the recently released report, which BIO helped develop, titled, "Expanding the On-Ramp: Recommendations to Help More Companies Go and Stay Public". These proposals are the result of thoughtful consideration of the issues facing emerging companies like mine and would help small biotechs grow and eventually put a product on the market.

Extend the JOBS Act Exemption from Section 404(b) Mandates of the Sarbanes-Oxley Act from 5 years to 10 years for EGCs

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. It certainly helped pave the way for GlycoMimetics IPO in January 2014. As companies like mine face the end of the JOBS Act on ramp at the five-year mark, legislation being considered today that would extend this on ramp would be extremely beneficial for growing companies that stand to lose emerging growth company (EGC) status for no other reason than time, despite still qualifying by all other metrics.

When GlycoMimetics rolls off its EGC status in a few short months, we will be subject to onerous and expensive disclosure burdens as mandated by Sarbanes-Oxley (SOX) Section 404(b). This will be particularly damaging to our company as we are still years away from having a product on the market and generating revenue, but the disclosure requirements will siphon our precious capital away from science and divert it to compliance despite this.

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. As helpful as this five-year exemption is, the biotech development timeline is a decades-long affair. When I testified in front of this Committee in March 2017, I predicted that GlycoMimetics would 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. As we come to the end of our five-year exemption, this prediction is holding true.

After our IPO, our audit fees increased by roughly $500,000 due to the existing regulatory environment for public companies. Absent an additional exemption, we expect our Section 404(b) compliance obligations alone to more than double our costs to as much as $1.1 million annually starting in January 2019 when our five-year exemption ends. This is a substantial amount that will be diverted from R&D and the clinic, and instead spent on compliance requirements that offer little to no benefit to our investors. My company is far from being an outlier in this situation – as I stated earlier, more than 260 biotechs have gone public since the JOBS Act was enacted, and a majority of these companies are still in the lab and years away from getting their drug approved and becoming a profitable company. It is counterproductive for them to face a full-blown compliance burden identical to those faced by large, multi-national revenue-generating company.

I'd like to thank Representatives Kyrsten Sinema and Trey Hollingsworth for their efforts in drafting H.R. 1645, *The Fostering Innovation Act*, as well as the Capital Markets Subcommittee and the House of Representatives for passing this important piece of legislation. This bill recognizes that a company that maintains the characteristics of an EGC is very much still an emerging company, even if it has been public for longer than five years. It provides a targeted exemption from Section 404(b) compliance requirements to companies in years 6-10 of being public who have a public float less than $700M and average annual revenues less than $50M. These restrictions ensure that only companies who are truly still EGCs are eligible – if a company eclipses the average annual revenues of $50 million, their full compliance obligations kick in. I am hopeful that the Senate will also recognize the importance of the Fostering Innovation Act in a timely manner, before any more companies are rolled off the JOBS Act provisions and subject to the onerous auditor attestation burdens.

Expand the Exemption from Section 404(b) by Aligning the SEC Definition of a Non-Accelerated filer with the Proposed Expanded SRC Definition

Another way to help small business innovators avoid the burdens of Section 404(b) is to expand the definition of a non-accelerated filer under SEC rules. Under current SEC rules, companies qualify both as an SRC and a non-accelerated filer if their public float falls below $75 million. SRCs benefit from scaled obligations under Regulation S-K and Regulation S-X, while non-accelerated filers are exempt from Section 404(b).

The SEC has issued a proposed rule that would increase the public float cap for SRCs to $250 million and has asked for comment on adopting a similar definition for non-accelerated filers as well. Legislation being considered by this Committee today would also expand both definitions.

An expanded definition of non-accelerated filers would expand the universe of companies exempt from Section 404(b), which as I outlined above, would be a tremendous benefit to small business innovators like biotechs. As you might expect, the response to this request for comment has been overwhelmingly in support of also changing the definition of non-accelerated filers. In addition to BIO, there was strong support for this proposal by other industry leaders, including Nasdaq, NYSE, National Venture Capital Association, Independent Community Bankers of America, Advanced Medical Technology Association, CONNECT, and the Corporate Governance Coalition for Investor Value.

Further, this is an issue that has repeatedly garnered the attention of the SEC in a number of venues – raising the thresholds of both definitions has been recommended by the SEC Advisory Committee on Small & Emerging Companies in 2013, 2015, and 2017, and has been recommended on the SEC Government-Business Forum on Small Business Capital Formation *every year* since 2009. The Treasury Department and the NEC also endorsed this proposal in Treasury's 2017 Capital Markets Report.

Institute Reasonable and Effective SEC Oversight of Proxy Advisory Firms

With the rise of institutional investors over the last several decades, the role of proxy advisory firms has grown to have an outsized influence on the decision-making processes of emerging biotechs and their shareholders. Institutional investors own more than two-thirds of all shares in public companies, with more than 90% of them regularly voting their shares. These investors rely on proxy advisory firms to provide vote recommendations. However, these vote recommendations are not always in the best interests of the company, the shareholders, and most importantly, the patients.

Just two firms control over 97% of the proxy advisory firm market. As the report notes, this effective duopoly "operates with little transparency, significant conflicts of interest, and [has] been prone to making errors in analysis and when developing voting recommendations". For companies like GlycoMimetics and other biotechs, these issues are especially damaging. 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. I commend Representatives Sean Duffy and Gregory Meeks for introducing H.R. 4015, *The Corporate Governance Reform and Transparency Act of 2017*, and I want to thank this subcommittee, and the House of Representatives, for

passing it last December on a bipartisan basis. I am hopeful that the Senate will take up and pass the legislation soon.

BIO appreciates Rep Duffy's attention to the proxy issues small companies face and would also like to thank him for H.R. 5756, which would adjust certain resubmission thresholds for redundant shareholder proposals that burden many small biotechs.

Require Disclosure of Short Sales to Curb Manipulative Short Selling

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 strategy has emerged wherein manipulative short investors take a short position in a biotech company's stock and then immediately file spurious patent challenges through the Patent Office's *inter partes* review (IPR) process. The IPR process allows them to file a challenge even without a competing patent or any specific stake in the company's science. These spurious challenges are intended to drive down the stock price, which reliably happens as news spreads that the company's patents may be in jeopardy.

BIO believes that increased short transparency would shine a light on manipulative behaviors, allow market participants to make informed trading decisions, and ensure equitable rules for all types of investments.

Make XBRL Compliance Optional for EGCs, Smaller Reporting Companies (SRCs), and Non-Accelerated Filers.

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.

XBRL is an attempt to make it easier for investors to compare financial data, but as with many of the issues I have discussed today, it disproportionately affects smaller issuers due to its one-size-fits-all approach. The simple fact is, biotech investors are less concerned with

the reporting metrics that XBRL compares, and more concerned with the actual science of the company and their path toward FDA approval, and, ultimately, getting a drug on the market and to patients.

I'd like to thank Representative David Kustoff, for recognizing the outsized impact that XBRL compliance has on small companies like mine by introducing H.R. 5054, *The Small Company Disclosure Simplification Act of 2018* in February. Under this legislation, companies would still be able to opt-in if they or their investors deemed it necessary to do so. However, it would fully exempt EGCs from XBRL reporting requirements, and would also provide a temporary XBRL exemption for companies with revenues below $250 million. It is yet another example of the Financial Services Committee's willingness to support smaller emerging companies. The inclusion of a requirement for the SEC to study XBRL to improve its utility and cost-effectiveness also provides an opportunity for the SEC to improve XBRL in the future.

Conclusion

Thank you for the opportunity to testify today in support of policies to help small business innovators like biotech go public and continue to grow and thrive as public companies. As the IPO report and the testimony you've heard today demonstrate, despite the success of landmark legislation like the JOBS Act, there is still work to be done in order to make the public markets as efficient and strong as possible. Biotechs are in a constant search for capital as they undertake the monumental task of finding cures for patients, and going public is often one piece of the puzzle that ultimately leads to bringing those cures to the market. However, once a company goes public, an even larger puzzle of outdated disclosure regimes, as well as one-size-fits-all and overly burdensome requirements emerges.

I believe the proposals being considered before the Subcommittee today will support the growth of emerging, innovative companies, and continue to spur investment in breakthrough scientific discoveries, and ultimately lead to a new generation of therapies for patients across the country, and the world. I hope Congress recognizes the landmark success of the JOBS Act and its impact it has had on the biotechnology industry in the last six years. More importantly, I hope my testimony and this hearing today has shown that there is still work to be done in order to continue supporting the lifesaving innovative treatments companies like GlycoMimetics are developing today.

Finally, I would like to thank the Committee again for your efforts in finding new ways to support biotech companies like GlycoMimetics in our relentless pursuit to bring new therapies to patients. By constantly working to modernize legislation and recognizing that one-size-fits-all requirements for public companies are often especially onerous to smaller companies like my own, you are helping to support us in that pursuit. I look forward to working with you on these issues and I am happy to answer any questions you may have for me today.