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maxygen

Letter of Comment No: 4877 File Reference: 1102-100

June 28, 2004

Financial Accounting Standards Board Director of Major Projects 401 Merritt 7 P.O. Box 5116 Norwalk, Connecticut 06856-5116

Re: Share-Based Payment, an amendment of FASB Statements No. 123 and 95

Gentlemen/Ladies:

I am writing to express my grave concerns with the stock-option expensing requirements described in Proposed Statement of Financial Accounting Standards, Share-Based Payment, an amendment of FASB Statements No. 123 and 95 (the "Exposure Draft"). Without question, this proposal, if implemented, will have a negative impact on the future of the biotechnology industry in the United States and the ability of Maxygen, Inc. to attract future capital and provide accurate and meaningful financial information to its stockholders. I urge you to delay implementation of these requirements and to consider as an alternative approaches that would require enhanced footnote disclosure of employee stock options.

Over the past decade, biotechnology has become a global industry. What's more, the U.S. biotech industry has become the standard other countries aspire to in developing robust, entrepreneurial biotech communities. The vast majority of companies that comprise this community in the U.S. do not yet have products in the marketplace. Instead they are engaged in a 10 to 15 year effort to get their first product approved and into the marketplace. During this period, they use stock options to leverage tight payroll budgets and attract the world's best and brightest scientists and technicians and to retain them through the product development cycle. Although I believe inclusion of stock options as an expense will result in a confusing and less meaningful statement of income for many developing biotech companies, it will put pressure on companies to reduce stock option grants. This in turn will result in talented scientists and researchers being less inclined to leave the security and high current income positions in large pharmaceutical companies for positions in small, risky biotech companies. Such a result would be a major negative for the development of new and innovative biotech products that could contribute to the growth of the U.S. economy and to world health.

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In addition to the detrimental effect on industry recruitment, the FASB completely disregarded widespread concerns about the inability to accurately value employee stock options. There is no single formula or set of assumptions that provides a reasonable approximation of the value of stock options on a consistent basis for early stage companies without earnings and with highly volatile stock prices. Application of common option valuation formulas, using the highly subjective assumptions necessary to the valuation methodologies, combined with the high stock price volatility of the biotech industry will result in inaccurate valuations and in the amount of expense attributable to stock option varying widely between comparable companies. While it may be useful to disclose a hypothetical charge in the footnotes to the financial statements, the inclusion of employee stock option expense in the statement of income will result in less clarity, consistency and reliability of financial statements.

Because it costs hundreds of millions of dollars over the course of a decade to bring a new product to market, biotech companies rely on a steady influx of capital from investors to fund research and development. As investors weigh competing opportunities, they look to financial statements for clear, accurate information about each company's performance. Mandatory expensing under the FASB's proposed approach, however, will cause unnecessary distortion in the companies' financial statements. As a result, biotech companies forced to expense the estimated fair value of stock options may well find themselves at a disadvantage versus other types of ventures with shorter product development cycles.

Once again, I urge you to delay implementation of these requirements and to consider alternatives that would require enhanced footnote disclosure of employee stock options.

Very truly yours,

Lawrence W. Briscoe

CC: Ernst & Young