biogen idec

August 7, 2009

Via electronic mail: *rule-comments@sec.gov*
Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: File S7-10-09
Release Nos. 33-9046; 34-60089; IC-28675
Facilitating Shareholder Director Nominations

Ladies and Gentlemen:

Biogen Idec Inc. is a global biotechnology company that creates new standards of care in therapeutic areas with high unmet medical needs. We have over 4,700 employees worldwide. I serve as Chairman of the Board of Directors and have been the independent Chairman of the Board since 2006. Ten of our twelve directors are independent and our Finance & Audit, Compensation and Management Development, Corporate Governance and Transaction Committees all consist solely of independent directors. Under a bylaw recommended by our Board of Directors and approved by our shareholders at our 2009 annual meeting, our directors will be elected by majority vote in future uncontested elections.

We appreciate this opportunity to comment on the Commission's proposal to facilitate shareholder director nominations. During the past two years, our company has had substantial experience with proxy contests for the election of directors. In each of the last two years a dissident shareholder has nominated directors for election to our Board of Directors and has run proxy contests for their election. We believe that this experience lends weight and credibility to our point of view. For both policy and practical reasons, we believe the proposal should not be adopted because it will not help companies attract and retain qualified directors, it does not establish an appropriate role for the Commission in an area traditionally reserved to state corporate law and it would impose an unworkable "one-size-fits all" model on all public companies.

Our detailed comments follow below.

1. **A contested election is not the best method of identifying and selecting qualified directors and will encourage shareholders with single-minded agendas to advance their personal interests**

An effective board of directors needs a mix of talents among its members. This need is particularly acute for a global biotechnology company, which needs directors with experience in research & development, regulatory matters, finance, marketing and international, just to name a

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few. Our Corporate Governance Committee spends considerable time and effort attempting to identify the appropriate skills that would complement the existing strengths of our Board of Directors. The members of the committee, acting as fiduciaries for the benefit of all shareholders, take this responsibility very seriously. Over the past three years, the committee has recruited five new board members who have added considerable expertise for the benefit of our shareholders. In contrast, as a result of the proxy contest at our 2009 Annual Meeting, our director with the broadest and deepest experience in financial, accounting and auditing matters lost his seat on our Board.

If the Commission's access proposal is adopted, a shareholder with a personal agenda could nominate a director and "free ride" on the company's proxy statement – paid for by all of the shareholders – without regard to whether the shareholder's nominee possesses any of the skills that the Corporate Governance Committee has identified for the Board of Directors. We do not believe that the access proposal will result in more qualified directors being presented for board service. Indeed, we can imagine that in some situations a qualified director might decide that service on a board of directors that is fractionalized with individuals carrying personal and competing agendas would simply not be worth his or her while.

We are similarly concerned that providing proxy access will encourage shareholders with personal agendas to advance nominees who will pursue that agenda. Although we recognize that shareholders may not elect a candidate with a truly personal agenda, we do not believe that an election contest in which shareholder nominees are not elected is without cost or consequence to the corporation and its shareholders. There is the obvious cost of compliance with the access rules and dealing with the nominator, as well as the less obvious but considerable cost of Board and management time spent dealing with what is in effect an election contest over a personal agenda. We had direct costs of approximately $11 million in 2008 and more than $9 million in 2009 – in addition to the substantial indirect costs in management time and attention - as a result of the proxy contests at our company. Moreover, allowing proxy contests on an annual basis at company expense could have the consequence of increasing the pressure on the Board and management to deliver short term results to the potential detriment of creating long term shareholder value. We believe that adding these incremental costs and increasing the short term focus of boards of directors and managements will not be helpful to the competitive posture of United States based companies in the current global economic environment.

2. **The Commission's proposal intrudes inappropriately on matters that have historically have been reserved to state corporate law**

Corporations are creatures of state law, and the duties that directors owe to the corporation and its shareholders are determined by state law. With all due respect, we disagree with the Commission's assertion that the federal proxy rules stand in the way of a shareholder's ability to nominate and elect directors to company board of directors. Shareholders of Biogen Idec have the unfettered right to nominate directors, subject only to compliance with a reasonable requirement of advance notice to the company. Nothing in the federal proxy rules impedes that ability. The ability to have those nominees elected, of course, is different story. Even here, though, it is not the federal proxy rules themselves that impede the ability of a shareholder to have a nominee elected: it is the fact that compliance with the Commission's rules costs money.

The Commission's proposal seeks to solve that problem by in effect shifting that cost to all of the shareholders instead of placing it on the dissident shareholders.

Decisions about how a corporation spends money are the province of the board of directors. We believe that it is not an appropriate role for the Commission to mandate that a board of directors incur an expense on behalf of a particular shareholder even if the board believes that expenditure is not in the best interests of the corporation and its shareholders. That matter is something that has historically been reserved to state law and we see no reason here to upset that principle.

3. **A "one size fits all," top-down approach is sure to fit no situation exactly**

Proxy access is a complicated subject that has been a topic of discussion for a long time. Despite the longevity of the issue, we are not confident that a Commission rulemaking mandate can be made to work neatly at every public company in the United States. There are bound to be matters that simply have not been – indeed could not have been – anticipated that will enmesh the Commission in an interpretive morass. One need only look to the strain of the Rule 14a-8 shareholder proposal process on Commission resources to question whether the Commission could be setting itself up for a similar effort.

During the past decade public companies have shown themselves to be adaptive and responsive to the concerns of shareholders. The changes may not have come as quickly as many would have liked, but they have come nonetheless. The sources of that change have been many - the Sarbanes Oxley Act, the listing standards of the stock exchanges, state corporate laws, Commission disclosure initiatives and increased involvement by shareholders and proxy advisory firms. Public companies now have more independent chairmen, more independent directors, more board committees consisting solely of independent directors, more majority voting for directors and fewer rights plans or "poison pills" than would have been expected ten or even five years ago. Many of these changes did not come from detailed, mandatory rulemaking but instead from direct dialogue with shareholders and experimentation until a particular feature became the appropriate one for a particular company and its shareholders. We believe that leaving proxy access up to individual companies to devise a solution that works best for them will result in more functional Boards with greater diversity of skills than adherence to a mandated, "one size fits all" approach.

4. **If the Commission decides to adopt the proposal, there are several items that need to be addressed**

If the Commission decides to adopt proxy access in a form similar to the proposal, we believe several items need to be addressed:

- **Length of ownership**. We believe that a one-year holding period is not long-term ownership. It is barely enough time to get to know a company. At least two years of ownership should be required.
- **Beneficial Ownership**. The Commission's proposal relies heavily on the concept of beneficial ownership, but the proposal does not provide a definition. We believe that the right to nominate a director should only be available to a shareholder who has (i) the right

to vote the shares, (ii) the right to dispose of the shares and (iii) the full economic interest in the shares for the entire holding period.

- **Policing "group" activity**. We note that the permitted activity among shareholders wishing to nominate a director will only increase the need for the Commission to police group activity that may be undertaken with an undisclosed control intent.
- **Inapplicability in contested elections**. We believe that proxy access should not be available in situations where a traditional proxy contest is being conducted. The risks of shareholder confusion, and for collusive activity, are simply too great.
- **Applicability of Board Policies and Procedures**. Any access nominee who is elected should be required to comply with the policies and procedures applicable to all board members, including in such areas as retirement, tender of resignation upon change in circumstances, confidentiality of board actions and deliberations, compliance with conflict of interest policies, compliance with trading restrictions and window period policies, selling only under approved Rule 10b5-1 plans and the like.
- **Independence**. To reduce the likelihood that an access director is promoting the personal agenda of the shareholder nominator, as was the case in the Commission's 2003 proposal, we believe that the nominee should be independent of the nominator.
- **Triggering Events.**. The Commission should consider specifying triggering events as conditions precedent to proxy access, as was the case in the 2003 proposal.

We appreciate your consideration of these comments.

Very truly yours,

Bruce R. Ross
Chairman of the Board