needs without doing or saying the kinds of things that have plaintiffs' attorneys singing in the shower.

- Avoid predictions and projections whenever possible and establish written policies to that effect. Be particularly careful with regulatory and market-potential issues.
- Be aware that you are walking a tightrope when dealing with securities analysts. While it is in a company's interest to offer analysts information, commenting on their projections can result in "adopting" those projections.
- Consider a regular discussion of risk factors, including regulatory issues, in quarterly and annual financial reports.
- Be keenly sensitive to how the timing of insider stock sales will look to a lay outsider, regardless of how innocent the motive truly is. From the plaintiff's perspective, any insider selling prior to a significant decline in stock price guarantees the filing of a class action.
- Purchase a good directors-and-officers liability-insurance policy. Without such a policy, an average settlement can destroy a small or mid-sized biotechnology company's cash reserves.

The basic laws governing the issuance and trading of public securities, including the disclosure of information, were passed in 1933 and 1934. They are extremely vague, general statutes. They also were written long before most research-and-development-based industries existed and certainly before there were so many companies trading on the public markets with far horizons to product revenues and earnings. With new national mandates for U.S. competitiveness and employment, we hope the climate is right for new, more sophisticated legislation.

When companies willingly or recklessly mislead the investing public, they should pay the price. But securities litigation shouldn't be a cost of doing business for an entire industry. Moreover, there is a cost to the general public as well. For the $170 million paid in settlement by life-science companies, a new drug might have been designed, developed, tested, and brought to the market. ///

Clinton likes biodiversity treaty

WASHINGTON, D.C.—President Clinton recently announced that he would sign the biodiversity treaty by the June deadline, thereby reversing the decision by former President Bush not to do so. Although Clinton's move is being welcomed by the biotechnology industry, it has stirred confusion behind the scenes over interpretive statements that U.S. officials are promising to complete before the treaty is signed. Those interpretive statements are intended to address problems in the treaty on such touchy subjects as intellectual-property rights.

The treaty makes bold statements about the need to preserve the world's biodiversity. That natural wealth is recognized as a valuable source of genetic materials that industry can develop into new drugs and other valuable products. Thus, points out Carl Feldbaum, president of the Biotechnology Industry Organization (Washington, DC), "We support the treaty, because biodiversity is the lifeblood of biotechnology."

In seeking to preserve biodiversity, the treaty states that each nation has rights over the genetic resources in its territories and that a nation can regulate access to, or require payment for the use of, those resources. In considering those and related terms of the treaty, industry and environmental groups in the U.S. have not agreed over whether any concessions should be made to industrialized nations that want to see their intellectual-property rights—generally, patent protection—strengthened in countries from which such resources are obtained.

One concern of industry's is that the treaty appeared to open the door for genetic-resource countries to force compulsory licensing of high-technology processes and products developed by companies in industrialized countries. For instance, a genetic-resource country might not want to buy a product that a company developed from resources within its borders, so it might insist on licensing that company's technology to make the product itself. That concern, however, appears to have been allayed somewhat simply by a careful reexamination of the treaty's language. That the treaty would "grant adequate and effective protection to intellectual-property rights," upon reexamination, was considered strong enough language to protect companies against demands for compulsory licensing.

A related interest expressed by representatives of U.S. biotechnology companies—namely, that the interpretive language calls on non-industrialized countries to fortify their laws to honor industrialized nations' patent rights—will likely not be incorporated into the Clinton administration's interpretive statements, some observers now speculate. The approaching June deadline for signing the treaty also is churning concerns that its provisions could interfere with the General Agreement on Tariffs and Trade negotiations. These negotiations, which represent another route toward strengthening intellectual-property-rights agreements between nations, are not under as tight a deadline.

Precisely what will go into the interpretive statements promised by Clinton was not clear, as State Department officials and other officials from the administration were trying to complete their version of the document before the deadline. Because those efforts are under way without obvious assistance from representatives of the biotechnology industry or the environmental groups that have been most involved in this issue, observers suspect that the final version may be considerably streamlined compared to a compromise draft that an *ad hoc* group of industry and environmental representatives had publicized earlier this year.

All of this maneuvering may not matter that much anyway. The treaty itself declares that signatory nations are not permitted to add individual "reservations" over its provisions, because that was seen as undermining the entire document. Thus, the fine tuning of language promised from the Clinton administration's interpretive statements, because it is not legally binding on the treaty, may not prove so important after all. Or, in an adaptation of the administration's campaign phrase: "It's the treaty, stupid."

—Jeffrey L. Fox

Clinton's decision has stirred confusion over interpretive statements that he has promised to add to the treaty. These statements will address intellectual-property rights.