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when the exchange opens for business.

So EASDAQ has its first biotechnology stock. But there is still considerable concern about the level of interest in EASDAQ from investors. The formation of EASDAQ has been driven by venture capitalists and banks whose research had suggested significant interest in the market from buyers and companies. However, a number of prominent industry watchers, particularly those in the UK, hold private views that there will simply not be enough buying and selling of stock-liquidity. This, in turn, would mean insufficient commissions for brokers, who are the conduit for the large, institutional investors. One possible outcome would be that non-UK companies—whose domestic money markets are less effective or accessible—will opt for EASDAQ, while UK firms will probably launch on LSE or AIM. The next few months will indicate whether or how quickly EASDAQ will be able to attain the necessary critical mass.

A contributory factor to the anticipated lack of investor interest in EASDAQ is poor analyst coverage. Although the number of analysts in UK finance houses with more than a passing interest in bioscience stocks has risen from 3 in 1992 to more than 40 now, EASDAQ cannot expect this level of detailed analyst coverage early in its development, according to Jos Peeters of Capricorn Ventures (Brussels). Peeters says, however, that this is currently being addressed: Several EASDAQ supporters are actively recruiting specialist analysts to cover the various sectors that will be represented on EASDAQ.

EASDAQ's founders do expect the LSE to be its major competitor. Other exchanges, they argue, cannot be able to attract a critical mass of high-quality companies, or deliver valuations or investors. Companies listing on London's AIM, for example, have no limits placed on market capitalization, the number of shares to be traded, or the presence of a market maker. EASDAQ is following the rules of NASDAQ's small cap market, which requires a company to have total assets of $4 million and offer at least $1 million worth of shares in a flotation of at least 100,000 shares. The minimum bid price of any floated shares is $3.

Mike Ward

Californian law changes encourage biotech litigation

Biotechnology companies that are publicly quoted on US stock exchanges will have to hope that Californian voters throw out ballot measure 211 when they go to the polls on November 5. Measure 211 is designed, say its proposers—Citizens for Retirement Protection and Security (CRPS, San Diego, CA)—to protect pension and retirement investment from corporate fraud and misconduct. However, the most tangible consequence of it for biotechnology companies and their executives could be a flood of suits from lawyers representing individual retirement investors.

Measure 211 would reverse controversial US federal reforms to securities laws that were introduced in December 1995 to limit "frivolous" lawsuits—such as certain shareholder actions—that benefited lawyers far more than the investors they represented. One result of those December reforms, according to Jeff McCord, public information advisor to CRPS, is that litigants who once took actions to federal courts—where more experienced judges are more able to handle the complexities of securities fraud—must now turn to state courts to circumvent the federal reforms. The problem then is that each state has a unique compendium of laws and Supreme Court decisions. Thus, states like California with large technology presences are seeking to reform state law.

Galvinizing the opposition to measure 211 is Taxpayers Against Frivolous Lawsuits (TAFL, Sacremento, CA), a coalition of industry and private groups. TAFL's main concerns are that the California state courts will become tied up with baseless lawsuits, and that the raised prospect of litigation will drive out high-technology companies offering high-paying jobs. A report from the Law and Economics Consulting Group (Emeryville, CA) predicts a $1.5 billion-a-year increase in the total operating costs of California businesses.

But the implications of measure 211 extend far beyond California, as US president, Bill Clinton, has recognized. "It just goes too far and has national implications," he said, following meetings with Silicon Valley entrepreneurs and investors. Republican presidential candidate Bob Dole has also expressed opposition.

The most vulnerable targets of measure 211 are high-technology companies—including biotechnology companies—that are susceptible to fluctuating stocks and uncertain scientific and economic factors. Although it is Californian companies and organizations that are most avidly opposing the measures, non-Californian companies need also beware: if any one of its shareholders is a California resident, the company could be sued in a California court under the measure.

Measure 211 would change many things. Individual investors with retirement groups and plans—and not just the groups themselves, as under the current federal law—would be able to sue for securities fraud. Measure 211 would reverse the federal law that puts the onus on investors to demonstrate that they relied upon the faulty information from companies when they bought stock. In addition, companies would no longer be able to pay for legal actions taken against an executive of the company; the executives themselves would be at financial risk. "I think the first shock waves [of 211] would be on the governance of companies," said David Gollaher, president of the California Healthcare Institute (La Jolla, CA). "Members of boards of directors would resign, knowing that they could be liable for punitive damages."

Perhaps most disturbing aspect of measure 211, however, concerns its effects on the disclaimers companies make on their public statements such as press releases. The December 1995 federal reforms established certain forms of wording that allowed companies in high-risk markets an opportunity to predict the market as long as those predictions were indicated clearly as "forward-looking statements." The proposed law would strip companies in businesses such as biotechnology and microelectronics of the protection of such disclaimers.

That would leave investors with one less source of valuable information, according to Michael Rogers, vice president, CFO, and treasurer of AutoImmune (Lexington, MA). Before the federal reforms, "investors had been clamoring for [market predictions] for a long time. [Forward-looking statements] work as long as they're given in good faith with reasonable assumptions." he said.

But the proposer of measure 211, CRPS, believes that the federal reforms left retirement investors too few protections against securities fraud. The group compiled a list of 50 news stories detailing fraud and financial misconduct investigations between June 4 and August 1, 1996. CRPS also points to a report from the Legislative Analyst Office (LAO, Sacramento, CA)—a nonpartisan advisory organization created by the California legislature—that predicts increases in California court costs would be "insignificant," should proposition 211 pass. LAO's analysis did not include the report from the Law and Economics Consulting Group. LAO's Deputy Legislative Analyst, Mac Taylor, called the assumptions "highly speculative," and said they had no empirical evidence to back them up.

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