UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

June 1, 2016

O. Keith Hallam III
Cravath, Swaine & Moore LLP
khallam@cravath.com

Re: ARIAD Pharmaceuticals, Inc.
Incoming letter dated March 21, 2016

Dear Mr. Hallam:

This is in response to your letters dated March 21, 2016 and March 23, 2016 concerning the shareholder proposal submitted to ARIAD by Thomas Z. Costas. We also have received a letter from the proponent dated March 28, 2016. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Thomas Z. Costas

*** FISMA & OMB Memorandum M-07-16 ***

June 1, 2016

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: ARIAD Pharmaceuticals, Inc.
Incoming letter dated March 21, 2016

The proposal would require the board to respond to questions specified in the proposal.

There appears to be some basis for your view that ARIAD may exclude the proposal under rule 14a-8(i)(7), as relating to ARIAD's ordinary business operations. Accordingly, we will not recommend enforcement action to the Commission if ARIAD omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which ARIAD relies.

Sincerely,

Evan S. Jacobson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matter under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholders proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

Thomas Z. Costas

*** FISMA & OMB Memorandum M-07-16 ***

March 28, 2016

ARIAD Pharmaceuticals, Inc.
Shareholder Proposal of Thomas Z. Costas
Securities Exchange Act of 1934 – Rule 14a-8
Appeal to SEC in Consideration of ARIAD Intention to Exclude from Proxy

Ladies and Gentlemen of the Security and Exchange Commission, et al:

I, Thomas Z. Costas ("Proponent"), received correspondence from Cravath, Swaine & Moore LLP in which they purport to be writing to you on behalf of ARIAD Pharmaceuticals, Inc. ("ARIAD" or the "Company") of the Company's intention to exclude from its proxy statement and form of Proxy ("Proxy") for the 2016 Annual Meeting of Shareholder's ("AGM") the Proponent's shareholder proposal ("Proposal").

As detailed in this letter ("Appeal"), the Proponent believes the ARIAD attributed and stated "Grounds for Omission" expressed in the March 21, 2016 in Exhibit 4 of this Appeal to the SEC are defective in every stated case.

Accordingly, the Proponent respectfully submits the following Requests:

1) First Request: That the Security and Exchange Commission and its appropriate Divisions and Staffs "(SEC") recommend and pursue enforcement action against ARIAD if ARIAD omits, whether in accordance with any paragraph of Rule 14a-8 under the Security Exchange Act of 1934 ("Exchange Act") or otherwise, the Proposal from its 2016 Proxy, and

2) Second Request: In direct relationship to very underlying events of Proponent's Proposal, that the SEC immediately commence appropriate criminal and/or civil investigations into the dealings of the ARIAD Board of Directors ("BoD") related to:

   a) allegations and statements of potential "breach of fiduciary responsibilities" made by a i) BoD member against the BoD, and/or ii) that BoD member and Reporting Person Sarissa Capital Management LP ("Sarissa) against members of the Issuer ARIAD BoD as detailed in Sarissa's extraordinary Schedule 13D/A filed February 19, 2015, and

   b) subsequent arrangements and contracts made between ARIAD and a BoD member/Sarissa which allegedly sought to conceal the alleged illegal actions of the BoD, and furthered the alleged "breach of fiduciary responsibilities" through a 'quid pro quo' arrangement between the BoD and Sarissa in which both the BoD and Sarissa potentially benefitted to the exclusion of all shareholders of ARIAD, except those in the aforementioned arrangement.

   c) In support of the First and Second Requests, that the SEC investigate and take any necessary action against ARIAD and Sarissa if found in violation of any aspect of SEC Rule 205, or other rule.

   Potentially, the civil violations and criminal acts that may have been committed by ARIAD and/or Sarissa before and/or after the arrangement include i) Conspiracy to defraud, ii) self-dealing iii) Sarbanes-Oxley violations, iv) certain crimes under RICO, v) certain violations of Delaware General Corporation Law ("Delaware Law"), and vi) violations of SEC Rule 205.

NOTE: At the time of that February 19, 2015 Sarissa 13D/A, an ARIAD BoD member, Dr. Alexander Denner ("Denner"), who was a founding partner of Sarissa Capital Management LP, was also the chief investment officer of Sarissa ("Denner/Sarissa") and a signer for the February 19, 2015 Sarissa 13D/A.

The primary purpose of this Appeal is to provide support for the First Request of the Proponent.

In fulfilling the purpose of the First Request, the SEC is unavoidably provided the full factual basis to proceed on the Second Request, even though the Second Request is not a consideration in the SEC determination of ARIAD's request regarding the Proponent's Proposal.

Understand that the Proponent is not an attorney, nor has the Proponent hired any attorney in the writing of the Proposal or this particular Appeal communication. The Proponent is a shareholder of common stock in the Company now and continuously for nearly the past 8 years. The Proponent asks for your indulgence and understanding in those regards as you consider these requests.

Harry Markopolos	21
Cravath, Swaine & Moore LLP	47

How does this score matter? Why should it? See Section III.

Note that this Appeal to the SEC is copied electronically to ARIAD, and to Cravath, Swaine & Moore LLP based on their and others' purported representation regarding ARIAD. Accordingly, statements made in this communication are to be understood by the SEC to be in response to all ARIAD purported attempts to omit the Proposal from its 2016 Proxy should any such attempts be or having been made by directly them, if any, and by any entity actually, or purporting to represent ARIAD in such attempts. Understand that "ARIAD" shall be used from this point forward to identify a presumed owner and creator of all such efforts and matters presented to the SEC as represented in Exhibit 4 of this letter.

This Appeal is hereafter organized as follows:

I. Background and Timeline of Certain Events Cited in this Appeal
II. Point by Point 14a-8 Response, Defense of, and Justification for the Proposal
III. Considerations and Closing Statement

Exhibits

1. February 19, 2015 Sarissa 13D
2. April 28, 2015 Sarissa 13D "Agreement with ARIAD"
3. March 28, 2016 Request for ARIAD documents
4. March 21, 2016 ARIAD Request to SEC to Omit Proposal from Proxy
5. December 1, 2008 Resignation of Several BoD Members in 2008

I. Background and Timeline of Certain Events Cited in this Appeal

As background for the Proponent's refutation of the ARIAD claims, a brief timeline of events and certain other documents and extracts and activities are presented. These documents and events provide documentation in defense of the Proponent's Proposal and justifications for Proponent's First and Second Requests:

1. February 19, 2015 — Schedule 13D, Sarissa (ARIAD), SEC Filing (Exhibit 1) Dr. Alexander Denner, CIO of Sarissa, an ARIAD BoD member, alleges knowledge of other ARIAD BoD members' "breach of fiduciary responsibilities", a material business matter as defined under SEC Rule 205.

2. April 28, 2015 — Schedule 13D, Sarissa (ARIAD), SEC Filing (Exhibit 2) Sarissa establishes a connection and benefits exchanged between ARIAD and Sarissa, e.g. Dr. Berger's retirement, appointment of another Sarissa BoD member, and Dr. Denner's agreement to stay silent.

3. July 23, 2015 — ARIAD 2015 Annual Meeting of Shareholders ("AGM") No BoD member physically attends or participates in an official duty at the meeting, or responds or even identifies themselves as present via speakerphone. Question ("Question" or "Questions") on 2015 Proxy item (1) one is not answered despite 'material' accusations of "breach of fiduciary responsibilities" posed as to nominees prior to vote, and under Delaware Law, ARIAD failed to perform 'duty of disclosure or candor', as required.

4. October 1, 2015 — Letter from Thomas Z. Costas (Proponent) to ARIAD "Questions for the Ariad Board of Directors, et al" (Exhibit 3). The Questions not answered at 2015 AGM, are asked in the letter.

5. October 5, 2015 (appx.) — Complaints to the SEC – Proponent, as whistleblower, lays out case on www.sec.gov. Case # TCR1443988665528

6. November 3, 2015 — Conference Call on Q3 Earnings - Despite being invited to ask questions on the call by CAO DesRosier, Proponent is then denied the opportunity by ARIAD.

7. December 18, 2015 — ARIAD, in an email, refuses to answer questions posed in Item 4, above.

8. March 2, 2016 — Proponents Proposal Recorded at ARIAD.

9. March 21, 2016 — ARIAD requests SEC permission to omit Proposal from 2016 Proxy. Their request is actually in BoD furtherance of its violation of Delaware Law defined BoD duties of "care and loyalty" with regard to providing material information.

10. March 23, 2016 — Phone call between Proponent and Cravath Swaine and Moore LLP. Their O. Keith Hallam, III does not categorically confirm he is 'acting as an 'Agent' for ARIAD, when asked by Proponent.

NOTE: In section II below, the text of ARIAD's arguments in i, ii, etc. were electronically imported from ARIAD's SEC filing and provided in this document Exhibit 4 as a convenience. Readers should use ARIAD's original transmission to ensure an accurate representation of ARIAD's arguments.

In Exhibit 4, this .pdf file originally provided by ARIAD may in certain cases not permit the paper printing of the included work of Potter Anderson Corroon LLP, a Delaware law firm.

Likewise, some Exhibit files are provided as separate files in the email transmission of this Appeal due to similar technical formatting constraints.

II. Point by Point 14a-8 Defense of, and Justification for the Proposal

A point-by-point defense is presented against arguments in the ARIAD (Cravath Swaine & Moore LLP) March 21, 2016 document in " **II. Grounds for Omission".**

ARIAD Purports as Grounds for Omission:

ARIAD believes that the Proposal may be properly omitted from its 2016 Proxy Materials pursuant to Rules 14a-8(i)(7), 14a-8(i)(1) and 14a-8(b) and (f).

Proponent Asserts:

In summary, the Proponent believes the ARIAD attributed and stated "Grounds for Omission" ("Grounds") as expressed in ARIAD's March 21, 2016 letter to the SEC in Exhibit 4 herein are defective in every aspect. Their arguments only provide 47 pages of obfuscating defilade for ARIAD's improper actions and subsequent objections to the Proponent's Proposal. Many of the Grounds have similar components in their arguments. Furthermore, the SEC *in Rule 205* requires attorneys to report material evidence of securities laws to the Chief Legal Officer ("CLO"), or Chief Executive Officer ("CEO"), which may not have been acted on in good faith or without conflict by ARIAD's CEO or BoD as the allegation if so made involved them, Likewise by Sarissa's CLO, in accordance with SEC Rule 205, Sarissa's CEO acted on such suspected Rule 205 claims which would have been deemed as accepted as true, warranting action, and which apparently resulted in a 13F filing (Exhibit 1). Under Rule 205, somebody should have denied the existence of the alleged claims made by Sarissa, but no such denial has been made to the Proponents knowledge. Consider Proponent's point-by-point defenses asserted to any one Ground to also apply as appropriate to other Grounds as they may appear elsewhere in ARIADs purported Grounds, i.e. the Proponent's assertions for one Ground could possibly apply to any and all the Grounds. Please read them as such.

Three key assertions that furthermore likely make moot every ARIAD purported 'Ground for Omission':

1) **The Proponent's Proposal does not deal with ARIAD's 'ordinary business operations'. The ARIAD Chairman of the Board, when as a BoD member and 'Stockholder Sarissa' publicly having approached the same topic as the Proponent, has already publically established that the nature of the Proposal is not about 'ordinary business', and could not be resolved as such, as in Exhibit 2, and**
2) **Delaware Law mandates that ARIAD must provide the requested information in the Proponent's 2016 Proposal as the information pertained and pertains to shareholder actions and to any vote requested at the 2015 AGM or 2016 AGM. Furthermore, by definition, the omission of the information establishes that ARIAD has already violated Delaware Law by not providing such 'disclosure' prior to relevant matters voted at the 2015 AGM , notably voted Items 1a, 1b, and 1c, election of officers, of which at least one officer allegedly stood accused of undisputed 'breach of fiduciary responsibilities' allegations, and**
3) **ARIAD has already set precedent at the 2015 AGM for the propriety of the proposed 2016 Proxy Proposal and the Questions therein, and the requirement they must be answered.**

The bases and justifications for the above Proponent assertions are found in responses in the Section II point-by-point responses below.

ARIAD Purports as Grounds for Omission:

A. Rule 14a-8(i)(7)—Management functions.

ARIAD believes that the Proposal may be properly omitted from its 2016 Proxy Materials pursuant to Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations. In particular, the Proposal (i) relates to tasks "so fundamental to management's ability to run a company on a day-to-day basis that

they could not, as a practical matter, be subject to direct shareholder oversight," and (ii) probes too deeply into matters upon which shareholders would not be in a position to make an informed judgment.

i. Background on Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to its "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word"; instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 4
Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Id.
The Commission identified in the 1998 Release two central considerations that underlie this policy. One of these considerations is whether a proposal relates to "tasks . . . so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight."
The other is whether a proposal seeks to "micromanage" a company by probing too deeply into matters upon which shareholders would not be in a position to make an informed judgment. The 1998 Release notes that these considerations may come into play in circumstances "where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." Id. The Proposal implicates each of the ordinary business rule's underlying concerns.

Proponent Asserts:

There is nothing ordinary (irrespective of any definition of 'ordinary') about the business operations which the Proposal deals, unless ARIAD and the SEC agree to consider "ordinary" 1)allegations made by a sitting BoD member made publically regarding "breaches of fiduciary responsibility" by the rest of the BoD, and that further implied threats, coercion and possibly implied extortion of the ARIAD board by Denner/Sarissa in leveraging knowledge of certain board actions and activities, and 2) possible violations of SEC rule 205 and Delaware Law.

The Proposal addresses aspects of this matter as found in the February 19, 2015 Sarissa 13-D Exhibit 1., a matter so extraordinary, that its genesis is the product of the filing made by Denner, a sitting ARIAD BoD member and his company Sarissa. Clearly ARIAD could not address the nature of Sarissa's claim in the course of 'ordinary business' or such a public filing would not be necessary. The Sarissa 13D/A also cites the failure of the conduct of 'Ordinary Business' to resolve the matters presented.

A fuller perspective of the nature of the extraordinary nature of the business of the corporation with which the Proposal is judged, is found in the February 19, 2015 Sarissa 13-D, Exhibit 1.

In this Sarissa/Denner assert:

"Item 4. Purpose of Transaction.
Item 4 of the Initial Schedule 13D is hereby amended by adding the following:

The Reporting Persons have been in negotiations with certain members of the Issuer's board of directors and the board's advisors in an attempt to avoid a potential proxy contest by the Reporting Persons at the 2015 annual meeting. As part of those discussions, the Reporting Persons have indicated their belief that based on their experiences and interactions with the Issuer, it is in the best interests of the Issuer and its shareholders that the board undertake measures to effect and facilitate the imminent retirement of Harvey Berger as CEO of the Issuer and that any settlement of a potential proxy contest must include the CEO's retirement. Unfortunately, the Reporting Persons have not been able to reach a settlement.

Given the impasse with the board on a settlement and the conduct of certain members of the board (including as described in the following paragraph), the Reporting Persons believe that the board as currently constructed (particularly in its leadership roles) is not up to the task of providing the stewardship necessary to optimally navigate the Issuer. Therefore, on February 19, 2015, the Reporting Persons notified the Issuer that the Reporting Persons intend to appear at the Issuer's 2015 annual meeting of stockholders to nominate and seek to elect Richard C. Mulligan, Ph.D. and Anna Protopapas to the Issuer's eight member staggered board of directors. The Reporting Persons intend to seek to unseat Harvey Berger, the Issuer's Chairman and CEO, and Wayne Wilson, the lead independent director, with their two nominees at the 2015 annual meeting and reserve the right to add an additional nominee prior to the February 25, 2015 deadline to nominate directors under the Issuer's bylaws. The respective biographies of their two nominees are set forth below.

In addition, the Reporting Persons are extremely concerned with the conduct of certain members of the Issuer's board, particularly with respect to compensation, governance and financial matters. For example, the Reporting Persons are especially disturbed by the decision to renew Harvey Berger's employment contract in October 2013 and, given the egregious terms of that employment agreement, urge the Issuer to immediately disclose to shareholders any discussions of the board and the compensation committee regarding the decision to renew this agreement. In this regard, the Reporting Persons may seek to compel such disclosure and may ultimately initiate court proceedings to seek to remove one or more directors for cause based on potential breaches of their fiduciary duties."

This is what these paragraphs reveal, assert and portend:

- **Denner is also Sarissa (by signature proof), and**
- **At the time of the filing, Denner was also a member of the ARIAD BoD. (For the record, he is now Chairman of the ARIAD of the BoD.)**
- **He believed the board to be insufficiently competent to run the company, as in "not up to the task".**
- **He sought to "compel such disclosure" of the "egregious terms" of then Chm. and CEO Berger's contract renewal, matters so serious, this BoD member thought that ARIAD should disclose to shareholders, i.e. ALL shareholders, what he Denner knew about what they knew. This was proper adherence to SEC Rule 205.**

And importantly,

- **Denner/Sarissa (either/or both) raise questions of conduct with respect to "compensation, governance and financial matters" with the BoD. These questions, detailed later in that "Purpose of Transaction" statement, that could not be settled as 'ordinary business' as they were not, and, in fact might not even be settled with a proxy question, and were prepared perhaps to skip right to the final step and go straight to court. The BoD acted in a manner that the issue was unconfined. Moreover, the veracity, legality, ethics, capabilities, personal integrity and character and every BoD member and the BoD collectively was challenged. These allegations were potentially harmful to shareholders, yet neither the accused not their accuser was held accountable in some fashion for such harm.**

Ergo, the Proponent's Proposal deals with what was not 'ordinary business' then, and not now. ARIAD has never responded to, nor denied any "breach of fiduciary responsibilities" allegations per se . History cannot change that 13-D and its claims.

But what ARIAD subsequently did with shareholder Denner/Sarissa, was to make an unholy deal with them. This 'quid pro quo' deal was made only with Denner/Sarissa, and with no other Stockholder. No Denner 'immediate disclosure' made, or any disclosure. Denner used his 'insider information' not for the benefit of all shareholders, but for himself and Sarissa. The board didn't have to admit their alleged improper and alleged illegal acts, and Denner

got his deal. Classic 'Quid pro quo'. The alleged original bad acts live on with new partners. Had Denner been 'blowin' smoke', the board would not have rewarded him so lavishly, and should have sanctioned him appropriately.

The Proponent asks for no more than what shareholder Denner asked for...immediate disclosure. Classically, as Arizona Cardinals' Coach Dennis Green might say of Denner/Sarissa, 'they (the BoD) were who Denner/Sarissa thought they were, and they let them off the hook'; but Denner did so only in return for a deal benefitting only Denner and Sarissa, and the BoD itself, but not all the shareholders who Denner was bound to faithfully serve.

That deal notwithstanding, the alleged wrongdoing by the board still happened, was never denied, and never revealed. Those BoD members that Denner cornered still serve at $300,000+/year compensation…shareholders not protected…fiduciary responsibility apparently violated, alleged Delaware Law and SEC violations, and especially under Rule 205, allegedly committed with impunity.

SEC Rule 14a-8 should not be used to protect this conduct, and proper enforcement of Delaware Law and Rule 205 wouldn't let it. Rule 14a-8 should open a door for shareholders to learn what Denner on hind legs wanted shareholders to know…'immediately', and what various CLOs or CEOs might have revealed fully upon discovery under SEC Rule 205.

The Proponent read and fully understood the meanings of Sarissa's 13D/A filings (Exhibits 1 and 2) and the simple language 'purposes' of each document presented therein, and knows the timeless 5th grade deal of "I won't tell if you do this for me". Undoubtedly, just about any adult shareholder could figure it out. The nature of the Proposal has been the topic of public debate on the public internet, in SEC filings, and the twittersphere.

As far as "oversight" or "micromanaging issues, or probing 'too deeply' claims go, the answers to the Proponents Proposal Questions are unrelated to the Proponent's ability to have any oversight over the BoD or ARIAD. The Proponent's Proposal is not suggesting to ARIAD on how to clean test tubes. There is no limit on flexibility imposed or proposed on any ARIAD ordinary business operation.

The Proponent asks only for the truth in ARIAD's answers to six Questions, and just answers. These answers do not secure or propose any power that would manage anything at ARIAD. These 3 yes or no, and 3 'other' Questions have answers that are only historical in nature, and do not provide solutions or invite further AGM debate or problem solving. The history is the history; history shouldn't change.

The SEC ought to want to probe more deeply, and let the Proponent's Proposal stand.

This argument alone ought to make moot any and all other ARIAD objections to the Proponent's Proposal.

And the SEC should not likewise let ARIAD 'off the hook', as did Denner, or as did the Arizona Cardinals with the Chicago Bears, 2006.

ARIAD Purports as Grounds for Omission:

ii. *The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to ARIAD's shareholder relations and communications, tasks "so fundamental to management's ability to run a company on a dayto-day basis that they could not, as a practical matter, be subject to direct shareholder oversight."*

A key objective of the Proposal is to compel a specific process and mouthpiece for, as well as the form, volume and timing of, direct communication between the Company and its shareholders. In this case, the method for accomplishing this objective is to "compel" the Company's directors to answer a long series of questions

from one particular shareholder. In doing so, the Proposal reaches beyond analogous proposals that the Staff has consistently agreed may be excluded pursuant to the "fundamental tasks" consideration of Rule 14a-8(i)(7).

The Staff has consistently taken the position that shareholder proposals relating primarily to the nature of communications between a company and its shareholders may be excluded as relating to ordinary business. In particular, it has become the Staff's consistent practice to allow the exclusion of proposals requesting additional shareholder communications through the means of specific arrangements for shareholder questions and answers. In Servotronics, Inc. (Feb. 19, 2015), the Staff concurred with the company's exclusion of a proposal that "a question-and-answer period be included in conjunction with the Servotronics Annual Shareholder Meetings." Faced with a similar proposal in Citigroup Inc. (Feb. 7, 2013), the Staff agreed with exclusion of a proposal to "allocate a reasonable amount of time before and after the annual meeting for shareholder dialogue with our directors . . . regarding the operations of our company." In Exxon Mobil Corp. (Mar. 2, 2005), the Staff agreed that a company could exclude a proposal that the company "set aside [time] on the agenda at each annual meeting for shareholders to ask questions, and receive replies directly from, the nonemployee directors." Similarly, in AmSouth Bancorp (Jan. 15, 2002), the Staff permitted the company to exclude a proposal that requested it provide shareholders a minimum of 30 minutes at shareholder meetings to ask questions. In The Walt Disney Company (Nov. 5 29, 2002), the Staff agreed with exclusion of a proposal requesting that a decision to adjourn the annual meeting be subject to objection by shareholders. And in Bank of America Corp. (Dec. 22, 2009), the Staff went so far as to agree that a company could exclude a proposal to entitle shareholders to attend and speak at such meetings at all.

The Staff's consistent position that proposals attempting to influence the form or timing of a company's shareholder communications relate to the company's ordinary business operations—and thus are excludable under Rule 14a-8(i)(7)—extends beyond the shareholder meeting context. In Peregrine Pharmaceuticals, Inc. (July 16, 2013), the Staff agreed with exclusion of a shareholder proposal requesting that the company's management, board and consultants respond to investors' operations-related questions and concerns on all of the company's public conference calls. In Jameson Inns, Inc. (May 15, 2001), the Staff permitted exclusion of a proposal urging the company's board of directors simply to consider new ideas for improving shareholder communications, including allowing shareholders to ask questions during quarterly conference calls. In Advanced Fibre Communications, Inc. (Mar. 10, 2003), the Staff concurred with the exclusion of a shareholder proposal requesting the creation of an office of the board of directors to enable direct communications between management and shareholders. If the general handling of shareholder questions and answers is a matter of ordinary business, then the Company's analysis of which shareholder questions to answer, when presented with them, should be a matter of ordinary business as well.

The Proposal takes issue with ARIAD for its handling of the Proponent's questions, criticizing the Company and its board for "not providing answers to my questions . . . 1) . . . at the 2015 [annual shareholder meeting] when asked prior to and in regard to Item to be voted 1 [sic] . . . , 2) when asked over phone conference during that meeting, 3) in response to my subsequent detailed letter on the matter, and 4) when I was refused on the Q3 conference call (after being invited/encouraged during the Annual meeting to ask there by the CAO Tom DesRosier)." Embedded in this criticism, however, is a series of occasions on which the Company has provided and even "invited/encouraged" the Proponent, an individual shareholder, with opportunities to ask questions. The Company has simply declined to disclose new information in response to those questions—a decision entirely within its authority, in accordance with its routine and considered shareholder communications decision-making. Moreover, the Proposal suggests that all shareholders and ARIAD's shareholder relations would be improved if shareholders "compel" the board to answer the Proponent's long series of questions.

Accordingly, like the shareholder proposals in Peregrine Pharmaceuticals, Inc. and Exxon Mobil Corp., and the proposals in the other letters cited above, the Proposal is excludable pursuant to Rule 14a-8(i)(7) because it relates to ARIAD's shareholder relations and, more specifically, seeks board action to improve or alter those relations and communications with respect to shareholder questions and answers.

The Company faces many of the competing considerations noted in letters such as Peregrine Pharmaceuticals, Inc. and Exxon Mobil Corp. in determining how to conduct its shareholder communications. The Company believes that communicating with its shareholders is an important aspect of its corporate governance. Historically at annual shareholder meetings, the Chairman/Chief Executive Officer has responded to

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questions from shareholders. More generally, outside of the annual shareholder meeting context the Company's Chief Executive Officer and its Senior Vice President, Corporate Affairs have fielded questions from shareholders. The Company also carefully considers, on an ongoing basis, what information to disclose to shareholders, as well as when and by whom. As a competing concern, however, the Company's directors owe the Company a duty of confidentiality, "inherent" in their duty of loyalty under Delaware law, which may require that certain questions posed by shareholders about pending or sensitive business decisions not be answered at the time the question is asked. See, e.g., Malone v. Brincat, 722 A.2d 5, 11 (Del. 1998) ("The directors' duty to disclose all available material information in connection with a request for shareholder action must be balanced against its concomitant duty to protect the corporate enterprise, in particular, by keeping certain financial information confidential."); Henshaw v. Am. Cement Corp., 252 A.2d 125, 129 (Del. Ch. 1969) (in upholding a director's demand for inspection of books and records, the Court of Chancery noted that a remedy for breach of fiduciary duty would exist if such director were to "abuse his position as a director [by making] information available to persons hostile to the Corporation or otherwise not entitled to it"); Kerbawy v. McDonnell, No. CV 10769-VCP, 2015 WL 4929198, at 22 (Del. Ch. Aug. 18, 2015) ("As a legal matter, the proposition . . . that '[i]nherent in the duty of loyalty is an obligation to protect the corporation by maintaining the confidentiality of its sensitive information,' seems indisputable."). See also Holdgreiwe v. Nostalgia Network, Inc., No. CIV. A. 12914, 1993 WL 144604, at 6 (Del. Ch. Apr. 29, 1993) ("[A director] is already under an obligation to maintain the confidences of [the company]; to use its confidential information only to inform discussion among directors and action by the board or a committee. Disclosure of such information to [a third party] is a violation of duty whether or not a [confidentiality agreement] is entered."). The Company's officers and directors also routinely weigh Regulation FD considerations on a case-by-case basis. Such competing concerns demand that the Company's management and board have the flexibility to weigh all of these considerations. That flexibility necessarily includes the leeway to choose the form, timing and speaker of shareholder communications—as well as whether to speak at all on a given subject.

In light of such considerations, as the Proposal itself makes clear and is described above, the Company already provides opportunities for shareholders to pose questions about Company operations. In doing so, the Company believes that its management makes every reasonable effort to respond to questions posed by shareholders. In fact, as noted in the Proposal, the Company's Executive Vice President, Chief Legal and Administrative Officer and Secretary responded to a question posed by the Proponent at the 2015 annual shareholder meeting. At various points in time, the Proponent has also communicated with and posed questions to the Company's current Chairman as well as its Senior Vice President, Corporate Affairs. The Company, however, is not required to answer such questions and needs to have the flexibility to decide how and whether or not to do so.

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ARIAD also has established policies for shareholder relations, including policies on directors' shareholder communication1 and a Regulation FD disclosure

policy. In establishing and abiding by such policies, ARIAD recognizes that in making any public disclosure, it is in the discretion of the Company as to what to say and how and when to say it—as well as who says it. With the Proposal, however, the Proponent seeks to impose his own judgment over that of the Company's management and board with regard to such determinations. It is not practicable for the shareholders to decide how to resolve these issues. For good reason, the Staff has determined that these types of proposals regarding shareholder communications are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." 1998 Release. Accordingly, the Proposal should be excluded under Rule 14a-8(i)(7).

Proponent Asserts:

ARIAD purports to characterize the Proponent's Proposal as dealing with everything but as a proper Proposal, and ignores a central aspect of the Question it presents. That aspect of the Proposal concerns compensation practices and governance regarding senior officers. In Battle Mountain Gold Company (February 13, 1992), the SEC states on its website: "We do not agree with the view of companies that they may exclude proposals that concern only senior executive and director compensation in reliance on rule 14a-8(i)(7)."

The ARIAD CEO and ARIAD BoD, i.e. Directors, made out pretty good according to BoD member Denner, and the Proponent agrees with Denner that all shareholders should 'immediately' be informed.

SEC Rule 14a-8 is not some newfangled mouthpiece for stockholder to communicate with Companies. Under SEC Rule 14a-8, shareholders have a right to put forward proposals. The Proposal does not propose to solve anything or create a new policy.

Because BoD member and Chairman of ARIAD Dr. Harvey Berger and no BoD member (business leaders) were physically present to conduct the meeting, the role of Chairman (in fact for the meeting and in that regard, by proxy as Chairman of the Company), and was purported to fall to Thomas DesRosier, the chief Counsel and Chief Administrative Officer, and CLO, and proxy for the CEO, Dr. Harvey Berger. He was assisted by the CFO at the time, Edward Fitzgerald.

Ergo, In that AGM, Mr. DesRosier acted in a dual capacity, as 'business' Chairman of the business meeting of the AGM, and also, in answering one sole question, as CLO.

Mr. DesRosier, in the business role of Chairman of the meeting permitted discussion of Proxy Item 1, i.e. 1a, 1b, and 1c the election of Dr. Berger, et al . As such, he allowed the Proponent to read, essentially verbatim, Questions identical to the Proponents Proposal. There was no objection from the Chairman, Mr. DesRosier. The business topic was the pertinent business reasons to be considered around the election of Dr. Berger, et al.

Item 1 was clearly a business matter vote, not a legal issue requiring the CLO. It was agreed that no addressed BoD member, of whom the Questions were asked, was present in the room, or otherwise responding by proxy or by telephone to the Questions. No objections were heard to the reading of the Proponent's Question, even though, reportedly, some BoD were on a speakerphone, and Mr. DesRosier was proffered Chairman 'by proxy' status. Accordingly, precedence for the Proposal, being identical to the Questions, was established as suitable for an AGM, without objection by ARIAD. No attorney-client privilege exists as the privilege was forever breached by the pure nature of the business role on a business decision Mr. DesRosier was fulfilling in the matter. The answers to the Questions should have been provided under 'Note Funding v. Bobian, and under the Delaware Law of disclosure of material information.

Note Funding Corp. v. Bobian Investment Co., No. 93 Civ. 7427, 1995 U.S. Dist. LEXIS 16605 (S.D.N.Y. Nov. 9, 1995)

In furtherance of the Proposal's acceptability for the proxy, on February 10, 2015, Keith F. Higgins, Director, Division of Corporation Finance said in New York, NY, " Section 14(a) and our rules provide shareholders with the information and

means to make informed voting decisions.[5] And the Commission adopted the shareholder proposal rule, Rule 14a-8, with this principle very much in mind. The rule allows a qualified shareholder to include in a company's proxy materials a proposal that he or she could otherwise present at a shareholder meeting…"

That is the case with the Proponent's Proposal. The Proposal should be included in the Proxy.

Importantly, the Questions sought information about serious allegations made against Dr. Berger and Wayne Wilson, et al, material to the vote on their election, and for which disclosure is required under Delaware Law. Such compliance to Delaware Law was not performed by ARIAD. The BoD did not respond to the Questions which were asked and permitted as proper. Moreover, the Questions alone are not what Delaware Law obligates ARIAD to be disclosed, it's the information in the answers to the Questions.

With no BoD response, when asked of Mr. DesRosier about the BoD response, he related he would not nor could speak for the board, even though so empowered on this business issue. Still, under Delaware Law, ARIAD was required to respond because of the shareholder action (i.e. vote) to be asked. The election of Dr. Berger was therefore improper and should be void.

See also, Proponent's claims of ARIAD as to the dual role of Mr. DesRosier at the 2015 AGM in Exhibit 3 .

Furthermore, when asked of Mr. DesRosier what he found in his investigation, he being the CLO, to the same questions, he answered concisely and clearly in exactly 5 words. He stated, 'there was nothing to it'. If the CAO could answer truthfully in 5 words, the business person chair could also if in agreement, and if this were the case, and the expansive characterizations by the ARIAD BoD of the Proposal appear way overdone. But clearly, this is not the case. The business person Mr. DesRosier, Chairman, by not answering, was essentially stating the opposite, i.e. there was something to Denner's allegations. At some point in the meeting, Mr. DesRosier also said there was no connection between Dr. Berger's retirement and the Agreement made with Sarissa, in conflict with Sarissa's claims as found in the in the 13-D/A April 28,2015 Exhibit 2.

The ARIAD 8-k filed version of the Exhibit 2 Sarissa 13D/A Agreement does not mention a connection. The Exhibit 2 Sarissa 13D/A filed version for the Agreement makes an indisputable connection. But for the election of Dr. Berger to have been valid, under Delaware Law, the Questions of the BoD on 2015 Proxy items 1a, 1b and 1c most certainly should have been answered by someone authorized to speak on the BoD's behalf. Ergo, the Question as contained in Proponent's Proposal as a matter of Delaware Law must be answered.

Regarding disclosure in Delaware, Directors are obligated to disclose all material information when soliciting stockholder action. *Stroud v. Grace*, 606 A.2d 75, 84 (Del. 1992). The duty of disclosure is an application of both the duties of care and loyalty. *Pfeffer v. Redstone*, 965 A.2d 676, 684 (Del. 2009).

Mr. DesRosier's CLO conclusions were not on behalf of the ARIAD BoD. Under ARIAD By-laws, the BoD must investigate such allegations as Denner's. The CAO's determinations while interesting, were not the BoD's. The BoD, by being absent and silent, not only failed to comply with Delaware Law, arguably, they actively made efforts to not comply. Somebody from the BoD should have attended the vote and informed shareholders, or spoken up on the speakerphone. No BoD member did. Not only did they not comply with the disclosure requirements of Delaware Law and SEC Rule 205 (to report conclusions), the BoD also failed in its Delaware Law basic duty of care and loyalty.

- Directors cannot "consciously and intentionally disregard[ ] their responsibilities, [or] adopt[ ] a 'we don't care about the risks' attitude concerning a material corporate decision." *Id.* at 754-55 (citing *In re Walt Disney Co. Derivative Litigation*, 825 A.2d 275, 289 (Del. Ch. 2003)). The duty of good faith is a subset of the duty of loyalty. *Stone ex rel. AmSouth Bancorporation v. Ritter,* 911 A.2d 362, 370 (Del. 2006).

Accordingly, by 'consciously' having not attended in person and/or staying silent at the BoD meeting, the BoD failed stockholders even more egregiously, by consciously and intentionally disregarding their responsibilities, and adopting a

'we don't care about the risks' attitude concerning a material corporate decision.", i.e. the election requiring a shareholder action, i.e. a vote.

[1] Consistent with the statutory delegation of authority, the Bylaws provide that "[e]xcept as otherwise provided in the Certificate of Incorporation, the business and affairs of the [Company] shall be managed by or under the direction of the Board." Bylaws at Article 3, Section 3.1.

[2] Even when the duty of disclosure is implicated, a board of directors is required to disclose to stockholders only information that is within its control and that is material. See, e.g., Malone, 722 A.2d at 12; Arnold v. Soc'y for Savings Bancorp, Inc., 650 A.2d 1270, 1277 (Del. 1994). Under Delaware law, a fact is "material" if there is a substantial likelihood that a reasonable stockholder would consider it important in deciding how to vote or whether to tender shares in a tender offer. See, e.g., Bershad v. Curtiss-Wright Corp., 535 A.2d 840, 846 (Del. 1987).

Furthermore, as the Delaware Court of Chancery explained in Raskin vs. Birmingham Steel Corp., 1990 WL 193326 at *5 (Del. Ch. Dec. 4, 1990) ,

... [S]ince the company did not seek the vote of the shareholders, offer them an exchange, or otherwise seek any action from them, the only possible breach of candor claim would necessarily rest upon the existence of a duty to inform the market accurately of material developments. No Delaware case establishes such a duty to my knowledge and, in my opinion, no such duty exists. The state law duty of candor arises when the board elects to or has a duty to seek shareholder action; in that setting the board is under a duty to make shareholder action meaningful by supplying information relevant to the question presented. If the board does not seek shareholder action at a meeting, through consent, in a tender or exchange offer, or otherwise, it has, in my opinion, no distinctive state law duty to disclose material developments with respect to the company's business.

Essentially, it stands to reason that if the Company does seek shareholder action as in a vote, and the information is material, there is a duty to supply information relevant to the Question presented.

In other words, Delaware Law may require the Questions to be answered and therefore the Proposal should be permitted on shareholder voted matters.

Materiality has been proven, as is clear in Exhibit 1 and elsewhere in this Appeal. The Sarissa CLO reported the issues and Dr. Denner obviously knows the answer to the Questions. Whoever told Denner the answer knows the answers. The ARIAD Audit committee likely knew and definitely should have known, and the entire BoD likely knew the answers to the Questions posed in the Proposal before and on July 23, 2015, and since then. ARIAD has 'control'.

What is apparent in Delaware Law is that despite the protections afforded by Delaware sanctioned corporations' By-laws and Certificates of Incorporation, 'when the duty to disclose is implicated, a board of directors is required to disclose to stockholders only information that is in its control and material. Both conditions of 'information that is in its control and material' were met.

The Question is prima facie materially related to the 2015 re-election of Dr. Harvey Berger, and likely in every voted matter at the 2015 AGM, and every voted matter at future AGM's. The Proponent was permitted to ask the same Questions (Proponent actually read them) in discussion of 2015 Proxy 1 for vote, the reelection of Dr. Berger, et al. While the Question in no way would have been a violation of any rule, the Question and answer were unquestionably material to the vote. Asked of the BoD Audit Committee, no answer was provided by the ARIAD BoD.

More specifically, the Proponent's proposed Proxy Question would be material to almost any future re-election or election vote on any pre-July 23, 2015 BoD member, and certainly be so to the ratification of the of the 2016 Independent Registered Public Accounting Firm.

Without the candor Delaware Law did and would compel on ARIAD, at least two possibilities are raised. 1) that the 2016 Proxy will not call for any elections or shareholder votes, and 2) the 2015 elections on Proxy Item 1a were invalid as the Question asked was material and went unanswered, despite access to BoD members participating via proxy afforded Mr. DesRosier, or possibly via phone (though, again, remarkably, none were physically present in the meeting room).

There undoubtedly will be a qualifying shareholder vote required in a 2016 proxy. At ARIAD, votes are the only reason ARIAD holds the meetings, and does so perfunctorily, and why usually and primarily a proxy is presented in the first place.

The possibility exists that Dr. Berger's 2015 AGM re-election was improperly voted. As such, the possibility exists that Dr. Berger's contract with ARIAD terminated on his contractual termination date prior to his (re-) election and retirement date. He alone as the designated Chair of the Annual meeting (though delegated to a proxy), would be responsible for that circumstance. It is possible that all subsequent payments and benefits of all types provide by ARIAD to Dr. Berger after the termination of his contract, might be recoverable, whether the Questions are eventually answered at some point, or not.

The Proponent represents that he has submitted several "Demand" Letters to ARIAD, one with specific relevance to 2015 Proxy vote 1a, 1b, and 1c, and future AGM proxy votes. No relevant 1a, 1b or 1c demands have been satisfied by ARIAD. Ergo, the Proponent's 2016 Proposal is asserted as permissible under Delaware Law.

As to communications policies, the Proponent considers compliance with Delaware Law to not be solely a communications function. The Proponent Proposal, in observation that Delaware Law has been disregarded by ARIAD in the past, is merely recognition of that fact and it is tendered in the interest of all shareholders, for their contemplation in voted matters, past and future.

Furthermore, as to communications policies, ARIAD has them, they just don't follow them. No one who would speak on the Questions was present at the 2015 AGM for the BoD to answer fully and appropriately shareholder questions. The Investor Relations ("IR") contact, Kendra Adams, while competent, did not answer. Ed Fitzgerald, the CFO at the time did not. The SVP of Corporate Affairs, Ms. Maria Cantor ("Cantor"), who in the Proponent understands has direct responsibility for shareholder communications and IR, amazingly, did not even attend the 2015 AGM. (Despite the Proponent's active attendance at 3 AGM's, the Proponent cannot recall to have ever seen or spoken to Ms. Cantor.) In fact, and again – amazingly, IR called the Proponent and other ARIAD stockholders prior to the AGM, and actively discouraged their attendance at the event. With respect to these questions otherwise submitted in writing to ARIAD, Cantor had Kendra Adams called one time to set a meeting to answer the 'non-BoD' questions, but a time could not be coordinated.

Note, when the Proponent made the aforementioned written attempt to get answers to the Questions not answered at the 2015 AGM, Mr. DesRosier emailed the Proponent that the BoD would not entertain any Questions due to confidentiality and competitive issues.

Furthermore, Mr. DesRosier, at the 2015 AGM advised the Proponent to call in on a quarterly conference call to ask the Questions. When the Proponent did so, the operator advised the Proponent that ARIAD was reneging on the offer.

ARIAD Purports as Grounds for Omission:

iii. The Proposal seeks to "micromanage" the Company by probing too deeply into matters upon which shareholders would not be in a position to make an informed judgment—in particular, requesting reports of specific, complex, intricately detailed and confidential information about ordinary business.

In addition to seeking to dictate procedural matters such as the form, timing, volume and origin of the Company's shareholder communications, the Proposal also would fundamentally interfere with the Company's substantive disclosure determinations. Such determinations are ordinary, both in that the Company must apply its internal legal compliance policies and in that the Company must analyze and apply relevant law in light of its business. As Devon Energy Corporation noted in a no-action letter granted on March 18, 2015, "Beyond compliance with applicable legal and regulatory requirements, it is the responsibility of management to determine what information is most appropriately disclosed to investors and the public." In addition, in a recent response to a no-action letter, the Staff stated that "[p]roposals that concern a company's legal compliance program are generally excludable under Rule 14a-8(i)(7)." Navient Corp. (Mar. 26, 2015).

Exclusion of the Proposal on the grounds of such interference is consistent with a line of precedents where the Staff has determined that Rule 14a-8(i)(7) applies to proposals seeking to "micromanage" internal disclosure determinations, including as they relate to legal compliance, corporate governance and financial matters. Such proposals, like the one at issue here, attempted to allow shareholders to delve into complex, detailed and even confidential management analyses through the Rule 14a-8 shareholder proposal process. See, e.g., AT&T Inc. (Feb. 5, 2016) (agreeing with exclusion of a proposal requesting that the company issue a report disclosing additional information about certain

[1] "Generally, stockholders who have questions or concerns should contact our Investor Relations department at (617) 494-0400, extension 2208. However, any stockholders who wish to submit written communications to the Board or any individual director should send their communications to our Secretary at ARIAD Pharmaceuticals, Inc., 26 Landsdowne Street, Cambridge, MA 02139-4234. Communications will be distributed to the Board, or to any individual director or directors as appropriate, depending on the facts and circumstances outlined in the communications. Items that are unrelated to the duties and responsibilities of the Board may be excluded, such as junk mail and mass mailings, resumes and other forms of job inquiries, surveys and solicitations or advertisements. In addition, any material that is unduly hostile, threatening or illegal in nature may be excluded, provided that any communication that is filtered out will be made available to any director upon request." ARIAD's definitive proxy statement filed June 25, 2015.

policies on providing information to law enforcement and intelligence agencies, and assessing risks arising from such policies and practices); Navient Corp. (Mar. 26, 2015) (permitting the company to exclude a proposal recommending that it prepare a report on its internal controls over its student loan servicing operations, including a discussion of the actions taken to ensure compliance with applicable law); Devon Energy Corp. (Mar. 18, 2015) (concurring in exclusion of a proposal requesting disclosure of all communications between all company "employees/lawyers" and all employees of all federal, state and local government agencies be made public on an ongoing basis); The TJX Companies, Inc. (Mar. 29, 2011) (agreeing with exclusion of a proposal requesting that the board annually assess and disclose risks created by the company's actions to avoid or minimize income taxes); AmerInst Insurance Group, Ltd. (Apr. 14, 2005) (concurring with omission of a proposal to require the company's board "to provide a full, complete and adequate disclosure of the accounting, each calendar quarter, of the company's line items and amounts of Operating and Management expenses"); Refac (Mar. 27, 2002) (permitting exclusion of a proposal that the company's board take necessary steps to amend and improve corporate disclosure practices). In each of these instances, the excluded proposal sought to go above and beyond legal disclosure requirements and attempted to micromanage the company's decision making process about what information to disclose on various topics.

In this situation, the Company has made determinations about what

information to disclose. The Proposal, however, inappropriately seeks to insert itself into these deliberations and micromanage the Company's decisions. As the Staff has recognized, a company's management is best suited to supervise matters related to legal compliance and disclosure decisions. ARIAD's approach to such matters necessarily involves a balancing of a wide range of business and legal considerations. Such considerations are precisely the kind of "matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." See 1998 Release. Accordingly, the Company believes the Proposal is properly excludable under Rule 14a-8(i)(7).

iv. The Proposal is not precluded from omission pursuant to Rule 14a-8(i)(7) because it addresses ordinary business matters rather than a significant policy issue.

An exception to Rule 14a-8(i)(7) exists for shareholder proposals that raise "significant policy considerations." Under this exception, proposals that have raised "significant policy considerations" or that are "the subject of widespread public debate" are considered "beyond the realm of an issuer's ordinary business operations" and therefore not subject to exclusion under Rule 14a-8(i)(7). See Exchange Act Release No. 12598 (Jul. 7, 1976). The Staff tends to take two key factors into consideration in determining whether an issue raises significant social policy considerations. First and foremost, media coverage and public debate on a particular issue weigh in favor of that issue's status as a significant policy issue. Second, where the Staff has made such a determination, heightened regulatory or legislative activity has been present. See Tyson Foods, Inc. (Dec. 15, 2009) (proposal regarding the use of antibiotics in raising livestock,

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an issue of widespread public debate and the subject of current legislation, includable upon reconsideration because it related to a significant social policy issue).

As with the no-action letters discussed in section II.A(ii) and II.A(iii) above for which the Staff agreed with exclusion, the issues addressed by the Proposal are not significant social policy issues. The Proposal, for example, does not address a significant policy issue in the realm of shareholder relations. The proponent in Exxon Mobil Corp. unsuccessfully argued that "shareholder-board member communications" in general constituted an important policy consideration that should preclude the proposal's exclusion pursuant to Rule 14a-8(i)(7). The Staff declined to concur with this interpretation of the issue. The Exxon Mobil Corp. precedent applies here, given the Proposal's focus on dictating both the form and the substance of the Company's shareholder communications. The Proposal also does not address a significant policy regarding the Company's internal legal analysis with respect to disclosure. The Staff has granted no-action relief in situations involving proposals seeking heightened disclosure with respect to legal compliance issues. See, e.g., Sempra Energy (Jan. 12, 2012) (agreeing with exclusion where the proposal requested that directors produce an annual report on the political, legal and financial risks relating to the company's operations in countries where corrupt practices may have been more prominent); The Home Depot, Inc. (Jan. 25, 2008) (permitting exclusion of a proposal asking the board to publish a report outlining the company's product safety policies and describing management's efforts to address recent product safety concerns); Family Dollar Stores, Inc. (Nov. 6, 2007) (concurring with the company's omission of a proposal requesting a report evaluating the company's policies and procedures for minimizing customers' exposure to toxic substances and hazardous components in its marketed products).

Furthermore, the questions raised in the Proposal do not themselves raise significant social policy issues. In fact, rather than address a significant policy consideration or a topic that is the subject of widespread public debate, the Proponent has set forth a series of questions that have no relevance or applicability outside of this Company-specific context and therefore do not extend beyond the realm of ARIAD's ordinary business operations. In addition, the Company believes that the topics addressed by the Proponent's questions do not relate to an area of heightened regulatory or

legislative action.
The Proposal can therefore be excluded under Rule 14a-8(i)(7) because it focuses on the Company's policies and actions with respect to matters of shareholder relations, as well as of the Company's internal analysis with respect to disclosure, each of which is a matter of ordinary business and not a significant policy issue.
B. Rule 14a-8(i)(1)—Improper under state law.
The Proposal is not a proper subject for shareholder action under Delaware law and may be properly omitted under Rule 14a-8(i)(1).
Rule 14a-8(i)(1) provides an exclusion for shareholder proposals that are "not a proper subject for action by shareholders under the laws of the jurisdiction of the 10 company's organization." The Proposal would require action that, under Delaware law, falls within the scope of the powers of the Company's board of directors as a Delaware corporation. Section 141(a) of the Delaware General Corporation Law states that the "business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation." No such exceptions apply. Absent circumstances in which Delaware law requires directors to disclose material information regarding the business or affairs of the corporation (i.e., in connection with a request for a stockholder vote or other action by stockholders or as necessary to correct prior disclosure), the decision as to whether, when and how to disclose non-public information to stockholders falls within the managerial authority of the board of directors, consistent with the mandate of Section 141(a). See, e.g., Malone v. Brincat, 722 A.2d 5, 11 (Del. 1998); Raskin v. Birmingham Steel Corp., 1990 WL 193326, at 5 (Del. Ch. Dec. 4, 1990).
The Staff has consistently permitted the exclusion of shareholder proposals mandating or directing a company's board of directors to take certain action inconsistent with the discretionary authority provided to the board of directors under state law. See, e.g., Target Corp. (Mar. 21, 2014); The Goldman Sachs Group, Inc. (Feb. 7, 2013); National Technical Systems, Inc. (Mar. 29, 2011); Bank of America Corp. (Feb. 16, 2011); MGM MIRAGE (Feb. 6, 2008) (in each case, concurring in exclusion where a proposal mandated, rather than requested, that the company take a specific action). The Note to Rule 14a-8(i)(1) provides, "Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law." The Proposal is not drafted as a request of, or as a recommendation to, the board of directors, but rather mandates action by the board: "I propose the Board of Directors be compelled by shareholder vote to answer these questions: . . ." (emphasis added). Yet the Proposal relates to matters upon which only the board has the power to act. The Staff consistently has concurred that mandatory shareholder proposals may be excluded from the proxy statements of Delaware corporations. See, e.g., IEC Electronics Corp. (Oct. 31, 2012) and Bank of America Corp. (Feb. 16, 2011).
Accordingly, as discussed in the legal opinion from Delaware law firm Potter Anderson & Corroon LLP, attached hereto as Exhibit C, the Proposal is not a proper subject for shareholder action under Delaware law and is properly excludable under Rule 14a-8(i)(1).

Proponent Asserts:

The relevant points raised in these objections are addressed elsewhere in response to item i. and ii. As to "Micromanaging", Delaware Law requiring the information be provided (though it wasn't in in the 2015 AGM voting, the proponent is only asking requesting what Delaware demands), and vetting on legal issue propriety (done by the CAO in 2015 AGM), have all been addressed.

Delaware Law demands the information be provided overruling ARIAD's BoD discretionary power on the matter, and the Proponent just wants what Delaware Law demands and ARIAD has not provided.

The language of "compel" was perfectly acceptable for stockholder and Chairman of the Board Denner, in his 13D/A filing. He set precedent and got a deal to boot. The use of any other word besides 'compel' is not in conflict with the 'demand' aspect of what Delaware Law requires.

ARIAD Has Written Regarding Rule 14a-8(f)(1) and Rule 14a-8(b)—

On March 22, 2016, the Proponent submitted via email (see Exhibit A) adequate proof of ownership in a timely manner. As indicated in the No-Action Request, we are now promptly informing the Staff that we have received a timely response to the deficiency notice that cured the deficiency and therefore withdraw our argument to exclude the Proposal pursuant to Rules 14a-8(b) and 14a-8(f).

Proponent Asserts:

Done and done.

III. Considerations and Closing Statements

In furtherance of this Appeal and the responses to ARIAD, it is understood that the SEC exercises flexibility with prudence its interpretations of 14a-8. If examined in the light of 'What is the mission and purpose of the SEC', and 'What is purpose of 'Rule 14a-8', from the SEC's website the Proponent quotes,

- "The mission of the U.S. Securities and Exchange Commission is to protect investors…"
- the SEC requires public companies to disclose meaningful financial and other information to the public.
- Crucial to the SEC's effectiveness in each of these areas is its enforcement authority.

So far, ARIAD shareholders have not enjoyed the benefits of any of these SEC mandates. The ARIAD BoD is defective as their own members have pointed out time and again, so no help there for stockholders. If the Proponent fails, the SEC will fail also. All Shareholder protections just fail.

It is understood that the SEC has a big job and must review hundreds or more of various proxy related documents. As the SEC website advises, "That's why investing is not a spectator sport…". Just as in the nation's streets and subways where everyone is implored 'if you see something, say something', likewise, the investing public must assist the SEC and other authorities. The Proponent goes to the AGM meetings, even as the ARIAD BoD chooses not to. Accordingly, the Proponent is saying 'something' to the SEC authorities, on behalf of all ARIAD shareholders. Writ large, ARIAD's alleged misdeeds are hiding in plain sight on your EDGAR website. Let the Proponent's Proposal stand, and agree to the Proponent's two (2) Requests to the SEC.

From a historical perspective, previous, honorable ARIAD BoD members have made brutal accusations of then Chairman Dr. Harvey Berger, as Dr. Denner did in his February 19, 2015 Sarissa 13-D filing. The Honorable Michael Kishbauch, Sandford Smith, Burton Sobel, and Elizabeth Wyatt attributed their en masse 2008 resignations from the ARIAD BoD (Exhibit 6) due to 'vigorous disagreements with you (Berger) over fundamental matters of corporate policy, professional ethics and proper standards of corporate governance on behalf of all ARIAD stockholders'. They further called out the ' self-interested, combative and obstructionist actions of ' Dr. Berger and still active ARIAD BoD member Jay LaMarche. Please take a moment to read Exhibit 5.

One might ask, why is ARIAD fighting so hard to rule out the Proposal? Are they hiding something from shareholders, something Delaware Law says they must disclose anyway, but haven't?

If the SEC feels challenged as they very well could by the amount of misbehavior in corporate boards in the U.S., imagine what small investors must feel when they are engaged over matters such as the Proponent's by companies with near unlimited resources to secure mercenary forces to defend against any attempt to bring misbehavior to light. Practically speaking, at the very heart of the Proposal, is the request of an ARIAD common shareholder trying to ask a few questions of ARIAD management. To boot, three (3) of the Questions are simple "yes/no" Questions. If ARIAD governance documents and By-laws mean anything, all the Questions already have answers as they would have been revealed.

Yet, despite several attempts detailed herein, this shareholder has encountered extraordinary obstacles in the search for simple truths. The ARIAD BoD operates the Company with near total impunity, in total isolation from its shareholder owners, insulating itself with By-Laws, and self-protecting governance with an usurped, added defense shield provided by the SEC in the enigmatic 14a-8. There is almost no limit to ARIAD's resources for defense. Despite ARIAD having its own lawyers specializing in governance and the SEC, ARIAD apparently engaged Cravath, Swaine, and Moore LLP, a goliath law firm in the practice of Federal Securities Law, and Cravath integrated the assistance of a highly specialized law firm in the practice of Delaware Corporate law, Potter Anderson and Caroon LLP, to defend against one shareholder Proposal. To respond, the Proponent, of limited resources, has himself, his PC, the internet, Kinko's, and a credit card.

Harry Markopolos wrote to the SEC multiple times to bring to their attention the Madoff Ponzi scheme. To describe his view of the biggest Ponzi the world may have ever seen, one of his writings was reportedly 21 pages long. While the ARIAD activity the Proponent brings to the attention of the SEC in this Appeal is by itself not likely on the level of Madoff, ARIAD has paid 10's of $thousands to construct a 47 page defense, a wall surrounded by a moat, to deter the Proponent and the SEC

from the presentation of a shareholder Proxy Proposal item that would potentially reveal civil and /or criminal wrong-doing. ARIAD doth protest too much, methinks. Insolation, Isolation, Impunity. Harry Markopolos 21, Cravath et al, 47.

Furthermore for the SEC to consider more generally, the amount and expense and hours and hours (well in advance of, and including this document creation) required for a shareholder to file a proxy proposal, and the appeal to a company's 'Grounds for Omission' to simply learn what an ARIAD BoD member urged to be immediately to disclosed to all shareholders is a disservice to all shareholders. E.g., if the Proponent is limited to 500 words, perhaps ARIAD should be limited to five (5) citations and 2500 words of omission effort. Still, 2500 words is plenty to drown a Proponent in legal backwater, much less 47 pages.

After years of management consulting on Wall Street, the Proponent has discovered it is easy to figure out where the criminal activity is…simply pattern who is making the most money? (HFT insider and microsecond, private, front-running trading of public trades are making huge money with no risk –yes. But the SEC should also take notice of Hedge Funds taking over Biotech companies and companies in general. So far in 2016, ARIAD's CEO has left the company with a huge payout, the CFO has resigned suddenly, the entire BoD has been asked to tender 'conditional resignations' (whatever ARIAD might be planning to – who knows, they haven't said). As was the case with Kalobios, and Valeant and ARIAD, a hedge fund came in, 'egregiously paid' CEOs gone or paid out, CFOs gone, boards pretty much gone and under fire, and stockholders – devastated. Time for a closer look at this activity. (The Proponent's Proposal is a start.)

Finally, whatever actions the SEC may take with ARIAD on the Proponent's Second Request, please do it a way that holds the innocent stockholders harmless. This BoD had destroyed 90% of shareholder value for some owners. Don't make it worse. The shame is, that as the Proponent previously wrote to ARIAD:

"Science has always been a great strength of ARIAD. Sadly, it has become clearer than ever to major investors and retail alike, that the business decisions around the science have failed the science time and again. "

ARIAD management has failed the science, the patients, the doctors, shareholders, and every stakeholder.

Based on this Appeal, the Proponent respectfully requests that the SEC concur with the view of the Proponent that the Proposal be included in ARIAD's 2016 Proxy, and that the First Request and Second Request above be affirmatively decided. The Proponent asks for the opportunity to amend, augment, supplement and/or otherwise change the information contained in this appeal based on information Proponent may receive as requested from ARIAD in Exhibit 3.

If the Staff has any questions with respect to this Appeal, or if for any reason the SEC does not agree with the First Request or Second Request, please contact me at (917) 854-3658. Please provide any responses to the Proponent via

*** FISMA & OMB Memorandum M-07-16 ***

Very truly yours,

/s/ Thomas Z. Costas
Thomas Z. Costas

Exhibit 1

February 19, 2015 Sarissa (ARIAD) 13-D

20150219 Sarissa
13D ARIAD.pdf

Note: This 13-D document is inserted as an 'Adobe Object' in the icon above, and additionally in this document in .htm format from the SEC website. Accordingly, the .htm original formatting and organic pagination may not be faithfully reflected in this Exhibit below. The content is fully faithful to the original filing.

The document is easily available on the ARIAD website; it is the 13D/A filed February 20, 2015. It is also included as a separate document with the electronic transmission of this document.

SC 13D/A 1 a021315.htm AMENDMENT NO. 4

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934
(Amendment No. 4)*

ARIAD Pharmaceuticals, Inc.

(Name of Issuer)

Common Stock, $0.001 par value

(Title of Class of Securities)

04033A100

(CUSIP Number)

Mark DiPaolo
General Counsel
Sarissa Capital Management LP
660 Steamboat Road, 3rd Floor
Greenwich, CT 06830
203-302-2330

With a copy to:
Russell Leaf
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019
212-728-8000

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

February 19, 2015

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box. ☐

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.
*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 04033A100 Page 3 of 5 Pages

SCHEDULE 13D

Item 1. Security and Issuer.

This statement constitutes Amendment No. 4 to the Schedule 13D relating to the Common Stock, par value $0.001 (the "Shares"), issued by ARIAD Pharmaceuticals, Inc. (the "Issuer"), and hereby amends the Schedule 13D filed with the Securities and Exchange Commission on October 29, 2013 and amended by Amendment Nos. 1, 2 and 3 thereto (as amended, the "Initial Schedule 13D"), on behalf of the Reporting Persons (as defined in the Initial Schedule 13D), to furnish the additional information set forth herein. All capitalized terms contained herein but not otherwise defined shall have the meanings ascribed to such terms in the Initial Schedule 13D.

Item 4. Purpose of Transaction.

Item 4 of the Initial Schedule 13D is hereby amended by adding the following:

The Reporting Persons have been in negotiations with certain members of the Issuer's board of directors and the board's advisors in an attempt to avoid a potential proxy contest by the Reporting Persons at the 2015 annual meeting. As part of those discussions, the Reporting Persons have indicated their belief that based on their experiences and interactions with the Issuer, it is in the best interests of the Issuer and its shareholders that the board undertake measures to effect and facilitate the imminent retirement of Harvey Berger as CEO of the Issuer and that any settlement of a potential proxy contest must include the CEO's retirement. Unfortunately, the Reporting Persons have not been able to reach a settlement.

Given the impasse with the board on a settlement and the conduct of certain members of the board (including as described in the following paragraph), the Reporting Persons believe that the board as currently constructed (particularly in its leadership roles) is not up to the task of providing the stewardship necessary to optimally navigate the Issuer. Therefore, on February 19, 2015, the Reporting Persons notified the Issuer that the Reporting Persons intend to appear at the Issuer's 2015 annual meeting of stockholders to nominate and seek to elect Richard C. Mulligan, Ph.D. and Anna Protopapas to the Issuer's eight member staggered board of directors. The Reporting Persons intend to seek to unseat Harvey Berger, the Issuer's Chairman and CEO, and Wayne Wilson, the lead independent director, with their two nominees at the 2015 annual meeting and reserve the right to add an

additional nominee prior to the February 25, 2015 deadline to nominate directors under the Issuer's bylaws. The respective biographies of their two nominees are set forth below.

In addition, the Reporting Persons are extremely concerned with the conduct of certain members of the Issuer's board, particularly with respect to compensation, governance and financial matters. For example, the Reporting Persons are especially disturbed by the decision to renew Harvey Berger's employment contract in October 2013 and, given the egregious terms of that employment agreement, urge the Issuer to immediately disclose to shareholders any discussions of the board and the compensation committee regarding the decision to renew this agreement. In this regard, the Reporting Persons may seek to compel such disclosure and may ultimately initiate court proceedings to seek to remove one or more directors for cause based on potential breaches of their fiduciary duties.

BIOGRAPHIES

Richard C. Mulligan, Ph.D. – Richard C. Mulligan, Ph.D. is a founding partner of Sarissa Capital Management LP, a registered investment advisor formed in 2012. Sarissa Capital focuses on improving the strategies of companies to better provide shareholder value. In 2013, Dr. Mulligan became the Mallinckrodt Professor of Genetics, Emeritus, at Harvard Medical School, after serving as the Mallinckrodt Professor of Genetics and Director of the Harvard Gene Therapy Initiative since 1996. Prior to that, he was Professor of Molecular Biology at the Massachusetts Institute of Technology, a member of the Whitehead Institute for Biomedical Research, and the Chief Scientific Officer of Somatix Therapy Corporation, a drug discovery and development company that he founded. Dr. Mulligan was named a MacArthur Foundation Fellow in 1981. Since 2009, Dr. Mulligan has served as a member of the board of directors of Biogen Idec, Inc., a biopharmaceutical company. Previously, Dr. Mulligan had also served as a director of Cellectis SA, Enzon Pharmaceuticals and ImClone Systems Incorporated, all healthcare companies. Dr. Mulligan received his S.B. degree from the Massachusetts Institute of Technology and his Ph.D. in biochemistry from Stanford University School of Medicine.

Anna Protopapas – From October 2010 to October 2014, Anna Protopapas served as a member of the Executive Committee of Takeda Pharmaceutical Co and in various senior management positions at the company. Specifically, from April 2013 to October 2014, she served as the President of Millennium Pharmaceuticals, where she was responsible for leading Takeda's oncology business. Within that period, she also held the role of Executive VP of Global Business

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Development of Takeda where she was responsible for global acquisitions, partnering, licensing and venture investing. In this role, Ms. Protopapas was instrumental in developing and executing an acquisition strategy that helped globalize Takeda, including leading the company's $12 billion acquisition of Nycomed. From October 1997 to October 2010, Ms. Protopapas served in various positions at Millennium Pharmaceuticals including as the Senior Vice President of Strategy and Business Development and a member of the Executive Committee, where she led the company's business development initiatives and played an integral role in the transformation of the company from a genomics start-up to a fully integrated oncology leader and led the process that resulted in the sale of Millennium to Takeda for approximately $8.8 billion. Ms. Protopapas received a Bachelor in Science and

Engineering from Princeton University, a Master in Chemical Engineering Practice from the Massachusetts Institute of Technology and a Master in Business Administration from Stanford Graduate School of Business.

CUSIP No. 04033A100 Page 5 of 5 Pages

SCHEDULE 13D

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: February 20, 2015

SARISSA CAPITAL MANAGEMENT LP

By: /s/ Mark DiPaolo
Name: Mark DiPaolo
Title: General Counsel

SARISSA CAPITAL DOMESTIC FUND LP
By: Sarissa Capital Fund GP LP, its general partner

By: /s/ Mark DiPaolo
Name: Mark DiPaolo
Title: Authorized Person

SARISSA CAPITAL OFFSHORE MASTER FUND LP
By: Sarissa Capital Offshore Fund GP LLC, its general partner

By: /s/ Mark DiPaolo
Name: Mark DiPaolo
Title: Authorized Person

/s/Alexander J. Denner
Alexander J. Denner

Exhibit 2

April 28, 2015 Sarissa 13D "Agreement with ARIAD"

20150428 Sarissa 13D ARIAD.pdf

Note: This 13-D document is inserted as an 'Adobe Object' in the icon above, and additionally in this document in .htm format from the SEC website. Accordingly, the .htm original formatting and organic pagination may not be faithfully reflected in this Exhibit below. The content is fully faithful to the original filing.

The document is easily available on the ARIAD website; it is the 13D/A filed April 29, 2015. It is also included as a separate document with the electronic transmission of this document.

SC 13D/A 1 s13daa.htm SCHEDULE 13D/A, #6

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934
(Amendment No. 6)*

ARIAD Pharmaceuticals, Inc.

(Name of Issuer)

Common Stock, $0.001 par value

(Title of Class of Securities)

04033A100

(CUSIP Number)

Mark DiPaolo
General Counsel
Sarissa Capital Management LP
660 Steamboat Road, 3rd Floor
Greenwich, CT 06830
203-302-2330

With a copy to:
Russell Leaf
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019
212-728-8000

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

April 28, 2015

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box. ☐

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

SCHEDULE 13D

Item 1. Security and Issuer.

This statement constitutes Amendment No. 6 to the Schedule 13D relating to the Common Stock, par value $0.001 (the "Shares"), issued by ARIAD Pharmaceuticals, Inc. (the "Issuer"), and hereby amends the Schedule 13D filed with the Securities and Exchange Commission on October 29, 2013 and amended by Amendment Nos. 1 through 5 thereto (as amended, the "Initial Schedule 13D"), on behalf of the Reporting Persons (as defined in the Initial Schedule 13D), to furnish the additional information set forth herein. All capitalized terms contained herein but not otherwise defined shall have the meanings ascribed to such terms in the Initial Schedule 13D.

Item 4. Purpose of Transaction.

Item 4 of the Initial Schedule 13D is hereby amended by adding the following:

On April 28, 2015, the Reporting Persons entered into an agreement with the Issuer (the "Settlement Agreement") to settle the proxy contest contemplated by the Reporting Persons in respect of the Issuer's 2015 annual meeting of stockholders (the "2015 Annual Meeting").

In connection with the Settlement Agreement, Harvey J. Berger has decided to retire as Chairman, CEO and President of the Issuer effective upon a successor CEO being appointed by the Issuer's board of directors (the "Board") but in no event later than December 31, 2015. The Board has formed a CEO search committee chaired by Alex Denner of Sarissa Capital to promptly find a successor CEO.

In addition, under the terms of the Settlement Agreement, the Board has appointed Anna Protopapas to fill a current vacancy on the Board and the Reporting Persons will withdraw their proposed slate of director nominees, which included Ms. Protopapas, for election at the 2015 Annual Meeting. The Reporting Persons have also agreed to vote all of their Shares in favor of the Board's nominees at the 2015 Annual Meeting.

A copy of the Settlement Agreement is filed herewith as an exhibit and incorporated herein by reference, and any description herein of the Settlement Agreement is qualified in its entirety by reference to the Settlement Agreement filed herewith.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.

Item 6 of the Initial Schedule 13D is hereby amended by adding the following:

See Item 4

Item 7. Material to Be Filed as Exhibits.

1 Settlement Agreement

CUSIP No. 04033A100 Page 3 of 3 Pages

SCHEDULE 13D

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: April 28, 2015

SARISSA CAPITAL MANAGEMENT LP

By: /s/ Mark DiPaolo
Name: Mark DiPaolo
Title: General Counsel

SARISSA CAPITAL DOMESTIC FUND LP
By: Sarissa Capital Fund GP LP, its general partner

By: /s/ Mark DiPaolo
Name: Mark DiPaolo
Title: Authorized Person

SARISSA CAPITAL OFFSHORE MASTER FUND LP
By: Sarissa Capital Offshore Fund GP LLC, its general partner

By: /s/ Mark DiPaolo

Name: Mark DiPaolo
Title: Authorized Person

/s/Alexander J. Denner
Alexander J. Denner

EX-99.1 2 s13dab.htm SETTLEMENT AGREEMENT

Exhibit 99.1

AGREEMENT

This AGREEMENT (the "**Agreement**") is made as of April 28, 2015 by and among ARIAD Pharmaceuticals, Inc., a corporation organized and existing under the laws of the State of Delaware (the "**Company**"), and the persons and entities listed on Schedule A hereto (collectively, the "**Sarissa Group**"). In consideration of the covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Certain Definitions. Unless the context otherwise requires, the following terms, for all purposes of this Agreement, shall have the meanings specified in this Section 1:

"**2015 Annual Meeting**" means the Company's 2015 annual meeting of stockholders.

"**2016 Annual Meeting**" means the Company's 2016 annual meeting of stockholders.

"**2017 Annual Meeting**" means the Company's 2017 annual meeting of stockholders.

"**2016 Notice Window**" means the period during which notice of nominations or other business to be brought before the 2016 Annual Meeting by a stockholder would be considered timely under the Company's bylaws.

"**Affiliate**" shall have the meaning set forth in Rule 12b-2 of the rules and regulations promulgated under the Exchange Act; provided, however, that for purposes of this Agreement, (a) the members of the Sarissa Group and their Affiliates, on the one hand, and the Company and its Affiliates, on the other, shall not be deemed to be "Affiliates" of one another and (b) any business entity of which the Sarissa Designee is a member of the board (or similar governing body) shall not be deemed to be an "Affiliate" of the Sarissa Group solely due to such relationship. For the avoidance of doubt, Alexander J. Denner shall be deemed an Affiliate of the Sarissa Group.

"**Agreement Press Release**" shall have the meaning set forth in Section 5.1 below.

"**Beneficially Own**," "**Beneficial Owner**" or "**Beneficial Ownership**" shall have the meaning (or the correlative meaning, as applicable) set forth in Rule 13d-3 of the rules and regulations promulgated under the Exchange Act; provided that, for purposes of Sections 3.2(a) and (b) and Section 4.1(a) below, "Beneficially Own" and "Beneficial Ownership" shall include securities which are beneficially owned, directly or indirectly, by the Sarissa Group, as a Receiving Party; provided,

however, that the number of shares of Common Stock that a person is deemed to beneficially own pursuant to this proviso in connection with a particular Derivatives Contract shall not exceed the number of Notional Common Shares with respect to such Derivatives Contract.

"**Berger Retirement Date**" means the date on which Harvey J. Berger's retirement as director, Chief Executive Officer and President of the Company is effective and he is no longer employed in any position with or is otherwise providing services to the Company or any Subsidiary thereof, other than as Special Advisor (as defined in the Retirement Agreement).

"**Board**" means the Board of Directors of the Company.

"**CEO Search Committee**" shall have the meaning set forth in Section 2.2 below.

"**Common Stock**" shall mean shares of the Common Stock of the Company, $0.001 par value.

"**Confidentiality Agreement**" shall mean the Confidentiality Agreement dated February 20, 2014, between the Company and the Sarissa Group.

"**Derivatives Contract**" shall mean a contract between two parties (the "**Receiving Party**" and the "**Counterparty**") that is designed to produce economic benefits and risks to the Receiving Party that correspond substantially to the ownership by the Receiving Party of a number of shares of Common Stock specified or referenced in such contract (the number corresponding to such economic benefits and risks, the "**Notional Common Shares**"), regardless of whether (a) obligations under such contract are required or permitted to be settled through the delivery of cash, shares of Common Stock or other property or (b) such contract conveys any voting rights in shares of Common Stock, without regard to any short or similar position under the same or any other Derivative Contract. For the avoidance of doubt, interests in broad-based index options, broad-based index futures and broad-based publicly traded market baskets of stocks approved for trading by the appropriate federal governmental authority shall not be deemed to be Derivatives Contracts.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

"**Existing Agreement**" shall mean the Nomination and Standstill Agreement dated as of February 20, 2014, by and among the Company and the Sarissa Group.

"**Net Long Position**" shall mean such Common Stock Beneficially Owned, directly or indirectly, that constitute such person's net long position as defined in Rule 14e-4 under the Exchange Act; provided that, for the avoidance of doubt, "Net Long Position" shall not include any shares as to which such person has entered into a derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares.

"**New Sarissa Designee**" shall have the meaning set forth in Section 2.1 below.

"**Press Releases**" shall have the meaning set forth in Section 5.1 below.

"**Replacement**" shall have the meaning set forth in Section 2.1 below.

"**Representatives**" shall mean the directors, officers, employees and independent contractors, agents or advisors (including attorneys, accountants and investment bankers) of the specified party or any of its Subsidiaries.

"**Retirement Agreement**" means the letter agreement entered into between the Company and Harvey J. Berger on the date hereof pursuant to which Harvey J. Berger has agreed to, among other things, retire as Chief Executive Officer of the Company on the terms set forth therein, together with all other documents and agreements entered into pursuant to the terms thereof.

"**Retirement Press Release**" shall have the meaning set forth in Section 5.1 below.

"**Rights Plan**" shall mean that certain Section 382 Rights Agreement dated as of October 31, 2013, between the Company and Computershare Trust Company, N.A., as amended.

"**Sarissa Designee**" shall have the meaning set forth in the Existing Agreement.

"**Sarissa Nomination and Proposal**" shall have the meaning set forth in Section 4.4 below.

"**SEC**" or "**Commission**" means the Securities and Exchange Commission or any other federal agency at the time administering the Exchange Act.

"**Standstill Period**" shall mean the period beginning on the Berger Retirement Date and ending on the earliest of (a) the date when the Sarissa Designee resigns from the Board, (b) the date, if any, within the 2016 Notice Window on which the Sarissa Group gives notice in accordance with Section 2.6.1 of the Company's bylaws of the nomination of one or more directors to stand for election at the 2016 Annual Meeting and (c) the date of the 2016 Annual Meeting.

"**Subsidiaries**" shall mean each corporation, limited liability company, partnership, association, joint venture or other business entity of which any party or any of its Affiliates owns, directly or indirectly, more than 50% of the stock or other equity interest entitled to vote on the election of the members of the board of directors or similar governing body.

"**Voting Stock**" shall mean shares of the Common Stock and any other securities of the Company having the ordinary power to vote in the election of members of the Board.

2. **Appointment of the Sarissa Group's Nominee to the Board; Formation of CEO Search Committee; Retirement of Harvey J. Berger**

2.1 The Company will on the date hereof add Anna Protopapas (the "**New Sarissa Designee**") to the Board as a Class 2 director with a term expiring at the 2017 Annual Meeting to fill the existing vacancy in such class. If, from the date hereof until the completion of the 2017 Annual Meeting, the New Sarissa Designee ceases to serve (or indicates to the Company her desire to cease to serve) as a director of the Company for any reason, for so long as the Sarissa Designee is a member of the Board, the Sarissa Group shall have the right to submit the name of a replacement, which person will (i) not be an officer or employee of the Sarissa Group and (ii) qualify as "independent" pursuant to Nasdaq listing standards (the "**Replacement**") to the Company for its reasonable approval and who,

following such approval and following the New Sarissa Designee's cessation of service as a director, the Company shall appoint, as promptly as practicable, to serve as a director in substitution for the New Sarissa Designee for the remainder of the term expiring at the 2017 Annual Meeting. If the proposed Replacement is not approved by the Company, the Sarissa Group shall have the right to submit another proposed Replacement to the Company for its reasonable approval. The Sarissa Group shall have the right to continue submitting the name of a proposed Replacement to the Company for its reasonable approval until the Company approves that such Replacement may serve as a director, at which time such person is appointed as the Replacement. The Company agrees that upon being requested to approve a proposed Replacement, it shall grant or withhold its reasonable approval as promptly as practicable, subject to the Company conducting its customary vetting and review processes for such person, which may include, among other things, customary telephonic interviews. For the avoidance of doubt, any such Replacement who becomes a Board member in replacement of the New Sarissa Designee shall be deemed to be the New Sarissa Designee for all purposes under this Agreement.

2.2(a) The Company shall not be obligated to include the New Sarissa Designee on the slate of directors proposed for election at any of the Company's annual meetings of stockholders. So long as (i) both the Sarissa Designee and the New Sarissa Designee is a member of the Board and (ii) the Sarissa Group (together with their Affiliates) Beneficially Own an aggregate Net Long Position in at least 6,000,000 shares of Common Stock (as adjusted from time to time for any stock dividends, combinations, splits, recapitalizations and the like), the Company shall notify the Sarissa Group in writing no less than 25 calendar days before the advance notice deadline for submission of stockholder director nominations set forth in the Company's bylaws whether or not the New Sarissa Designee will be nominated by the Company for election as a director at any annual meeting thereof if the term thereof as a director otherwise expires at such meeting. If the Sarissa Group is so notified by the Company that the New Sarissa Designee will be so nominated, the Company shall so nominate the New Sarissa Designee and shall use reasonable best efforts to cause the election of the New Sarissa Designee so nominated by the Company (including listing the New Sarissa Designee in the proxy statement and proxy card prepared, filed and delivered in connection with such meeting and recommending that the Company's stockholders vote in favor of the election of the New Sarissa Designee (along with all other Company nominees) and otherwise supporting him or her for election in a manner no less rigorous and favorable than the manner in which the Company supports its other nominees in the aggregate).

(b) Notwithstanding anything to the contrary in this Agreement, if at any time after the date hereof, the members of the Sarissa Group (together with their controlled Affiliates) cease collectively to Beneficially Own an aggregate Net Long Position in at least 6,000,000 shares of Common Stock (as adjusted from time to time for any stock dividends, combinations, splits, recapitalizations and the like), then the New Sarissa Designee shall promptly tender her resignation from the Board and any committee of the Board on which she is a member.

2.3 The Company will commence a search for a new Chief Executive Officer of the Company promptly following the date hereof. In connection therewith, on the date hereof, the Board

will form a new committee of the Board (the "**CEO Search Committee**"), comprised of Alexander J. Denner (as Chairman), Norbert G. Riedel, Sarah J. Schlesinger and Wayne Wilson. The CEO Search Committee will be responsible for running the process for the selection of, and negotiating the terms and conditions of the employment of, the new Chief Executive Officer and will have the authority to engage an executive search firm and legal counsel selected by it in its discretion, the fees and expenses of which shall be paid by the Company. The Board will not change the composition (or chairmanship) of the CEO Search Committee (or increase or decrease its size) or form any sub-committee thereof or any other committee of the Board to perform a similar function or suspend or terminate the search for a new Chief Executive Officer or fill any vacancy on the CEO Search Committee, in each case without the prior written consent of the Sarissa Group.

2.4The Company shall enforce the terms and provisions of the Retirement Agreement in accordance with the terms set forth therein as in effect on the date hereof (or on the date of the execution thereof) and shall not amend or modify the terms or provisions thereof or waive any provisions thereunder, in each case without the prior written consent of the Sarissa Group. The Company shall promptly notify the Sarissa Group in writing of any material breach or threatened material breach of the Retirement Agreement by Harvey J. Berger that is known to the Company. Notwithstanding the foregoing, if at any time after the date hereof, the members of the Sarissa Group (together with their controlled Affiliates) cease collectively to Beneficially Own an aggregate Net Long Position in at least 6,000,000 shares of Common Stock (as adjusted from time to time for any stock dividends, combinations, splits, recapitalizations and the like), the Company shall not have to comply with this Section 2.4 and this Section 2.4 shall be of no further force and effect.

---

3. **Representations and Warranties and Covenants**

3.1 Each of the parties hereto represents and warrants to the other parties that:

(a) such party has all requisite corporate or other authority and power necessary to execute and deliver this Agreement and to consummate the transactions contemplated hereby;

(b) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all required corporate or other action on the part of such party and no other proceedings on the part of such party are necessary to authorize the execution and delivery of this Agreement or to consummate the transactions contemplated hereby;

(c) this Agreement has been duly and validly executed and delivered by such party and constitutes the valid and binding obligation of such party enforceable against such party in accordance with its terms; and

(d) this Agreement will not result in a violation of any terms or provisions of any agreements to which such person is a party or by which such party may otherwise be bound or of any law, rule, license, regulation, judgment, order or decree governing or affecting such party.

3.2 Each member of the Sarissa Group jointly represents and warrants that, as of the date of this Agreement, (a) the Sarissa Group Beneficially Owns an aggregate of 12,850,000 shares of

Voting Stock of the Company, (b) except for (i) such ownership, (ii) $8,800,000 in aggregate principal amount of ARIAD's 3.625% Convertible Senior Notes due 2019 and (iii) equity awards granted to Alexander J. Denner in his capacity as a director of the Company (in each case, to the extent any of the foregoing constitutes Beneficial Ownership of Voting Stock), no member of the Sarissa Group, individually or in the aggregate with all other members of the Sarissa Group and its Affiliates has any other Beneficial Ownership of any Voting Stock and (c) the Sarissa Group, collectively with its Affiliates, has a Net Long Position of 12,850,000 shares of Voting Stock.

3.3 The Company represents that since January 1, 2013, there have been: (i) no amendments to the Company's bylaws other than as publicly disclosed; and (ii) no material amendments to compensatory arrangements applicable to named executive officers other than as publicly disclosed.

3.4 During the Standstill Period, as long as the Sarissa Group has not intentionally and materially breached this Agreement or the Existing Agreement and failed to cure such breach within five business days of written notice from the Company specifying any such breach, the Company shall not make or issue, or cause to be made or issued, any public disclosure, statement or announcement (including any SEC filing) negatively commenting upon any member of the Sarissa Group or its principals or employees, including the Sarissa Group's corporate strategy, business, corporate activities, governing body or management (and including making any statements critical of the Sarissa Group's business, strategic direction, capital structure or compensation practices). This Agreement is not intended to, and shall be interpreted in a manner that does not, limit or restrict the Company or any Affiliate thereof from exercising any legally protected whistleblower rights (including pursuant to Rule 21F under the Exchange Act).

3.5 From and after the date of this Agreement, the New Sarissa Designee shall be covered by the same indemnification and insurance provisions and coverage as are applicable to the individuals that are currently directors of the Company.

3.6 The Company represents, warrants, covenants and agrees (a) that, for purposes of the Company's 2005 Executive Compensation Plan, the appointment of the New Sarissa Designee to the Board has been endorsed by a majority of the members of the Board before the date hereof and (b) that, upon her appointment to the Board, the New Sarissa Designee shall be deemed to be, or shall constitute, a "Continuing Director" for purposes of indemnification arrangements with any officers or directors.

3.7 The Company hereby agrees that it shall not, for so long as the New Sarissa Designee is a member of the Board adopt any policies applicable to directors that are inconsistent with the provisions of this Agreement and to the extent any such policies are inconsistent with the terms of this Agreement, the terms of this Agreement shall govern.

4. **Covenants of the Sarissa Group.**

4.1 Standstill.

During the Standstill Period, so long as the Company has not intentionally and materially breached this Agreement or the Existing Agreement and failed to cure such breach within five business

days of written notice from the Sarissa Group specifying any such breach, the Sarissa Group and its Affiliates will not, without the prior written consent of the Company:

(a) acquire, offer, seek or propose to acquire, or agree to acquire, directly or indirectly, by purchase or otherwise (but excluding any action by the Company such as a stock dividend), Beneficial Ownership of Voting Stock of the Company if after giving effect to such acquisition the Sarissa Group would Beneficially Own more than the higher of (x) 6.96% of the outstanding shares of Voting Stock of the Company and (y) such higher amount that any other person or group required to file on Schedule 13D is permitted to buy or own pursuant to the terms of, or as a result of being waived through, the Rights Plan (including any amendments thereto) or any replacement thereof or other rights plan implemented by the Company (and the Company agrees not to include a "trigger amount", applicable to any other person or group not required to file on Schedule 13D, under the Rights Plan (including any amendments thereto) or any replacement thereof or other rights plan implemented by the Company, of more than 15% Beneficial Ownership of Voting Stock of the Company, unless such higher "trigger amount" also applies to any person or group required to file on Schedule 13D) or, if the Rights Plan (including any amendments thereto) and any replacement thereof and any other rights plan implemented by the Company, have expired or are otherwise no longer in effect, such higher amount that any other person or group is permitted to buy or own pursuant to the terms of, or as a result of being approved to acquire in accordance with, Section 203 of the Delaware General Corporation Law (and the Company agrees that it will grant similar waivers or approvals to the Sarissa Group under the Rights Plan (including any amendments thereto) or replacement thereof or other rights plan implemented by the Company or Section 203, as it has granted or hereafter does grant, to any such person or group);

(b) make, or in any way participate, directly or indirectly, in any "solicitation" of "proxies" to vote (as such terms are used in the rules of the SEC), or seek to advise or influence any person with respect to the voting of, any Voting Stock of the Company (other than in the Sarissa Designee's capacity as a member of the Board in a manner consistent with the Board's recommendation in connection with such matter);

(c) separately or in conjunction with any other person in which it is or proposes to be either a principal, partner or financing source or is acting or proposes to act as broker or agent for compensation, submit a proposal for or offer of (with or without conditions) (including to the Board), any Extraordinary Transaction. "**Extraordinary Transaction**" means any of the following involving the Company or any of its Subsidiaries or its or their securities or a material amount of the assets or businesses of the Company or any of its Subsidiaries: any tender offer or exchange offer, merger, acquisition, business combination, reorganization, restructuring, recapitalization, sale or acquisition of material assets, liquidation or dissolution; provided, however, this subparagraph (c) shall not prevent the Sarissa Designee acting in his capacity as a director of the Company from raising such matter at the Board;

(d) form, join or in any way participate in a 13D Group (other than the Sarissa Group);

(e) present at any annual meeting or any special meeting of the Company's stockholders or through action by written consent any proposal for consideration for action by stockholders or (except

as explicitly permitted by this Agreement) propose any nominee for election to the Board or seek the removal of any member of the Board, other than through action at the Board by the Sarissa Designee acting in his capacity as such;

(f) grant any proxy, consent or other authority to vote with respect to any matters (other than to the named proxies included in the Company's proxy card for an annual meeting or a special meeting) or deposit any of the Voting Stock (or any securities convertible, exchangeable for or otherwise exercisable to acquire such Voting Stock) held by the Sarissa Group or its Affiliates in a voting trust or subject them to a voting agreement or other arrangement of similar effect.

(g) make or issue, or cause to be made or issued, any public disclosure, statement or announcement (including any SEC filing) (x) in support of any solicitation described in clause (b) above, or (y) negatively commenting upon the Company, including the Company's corporate strategy, business, research and development, corporate activities, Board or management (and including making any statements critical of the Company's business, strategic direction, capital structure or compensation practices). This Agreement is not intended to, and shall be interpreted in a manner that does not, limit or restrict the Sarissa Group or any Affiliate thereof from exercising any legally protected whistleblower rights (including pursuant to Rule 21F under the Exchange Act).

(h) institute, solicit, assist or join, as a party, any litigation, arbitration or other proceeding against or involving the Company or any of its current or former directors or officers (including derivative actions) other than to enforce the provisions of this Agreement;

(i) make any request under Section 220 of the Delaware General Corporation Law;

(j) request the Company or any of its Representatives, directly or indirectly, to amend or waive any provision of this Section 4.1; provided that the Sarissa Group may confidentially request the Company to amend or waive any provision of this Section 4.1 in a manner that would not be reasonably likely to require public disclosure; or

(k) direct, instruct, assist or encourage any of their respective Subsidiaries, Representatives or Affiliates to take any such action.

Notwithstanding the foregoing, nothing in this Section 4.1 shall be deemed to restrict or limit the Sarissa Group from making or issuing, or causing to be made or issued, any public disclosure, statement or announcement stating whether the Sarissa Group is in favor of or against any potential Extraordinary Transaction that has been announced by a third party and the reasons for that position. For the avoidance of doubt, all parties acknowledge and agree that the standstill provisions set forth in the Existing Agreement are and shall continue to be of no force or effect. Prior to the

commencement of the Standstill Period, the Sarissa Group and its Affiliates shall not take any of the actions described in clauses (b) through (j) in this Section 4.1 or direct, instruct, assist or encourage any of their respective Subsidiaries, Representatives or Affiliates to take any such actions, in each case, if the taking of such action involves public disclosure, or would require public disclosure, by the Sarissa Group, any of its Subsidiaries, Representatives or Affiliates or, based upon advice of its outside legal counsel, would require public disclosure by the Company, unless and until the matters prompting such action are discussed at a Board meeting that shall be called with reasonable promptness following the Sarissa Designee's request therefor; provided that no such discussions with the Board shall be required for the Sarissa Group or its Affiliates to make a public disclosure, statement or announcement (including any SEC filing) in response to a public disclosure, statement or announcement (including any SEC filing) made by or on behalf of the Company or any of its Representatives that references, directly or indirectly, the Sarissa Group or any of its Affiliates.

4.2 Reserved.

4.3 Voting. So long as the Company has not intentionally and materially breached this Agreement or the Existing Agreement and failed to cure such breach within five business days of written notice from the Sarissa Group specifying any such breach, the Sarissa Group shall, and shall cause its Affiliates, to (a) cause in the case of all Voting Stock of the Company owned of record, and (b) instruct the record owner, in the case of all Voting Stock of the Company Beneficially Owned but not owned of record, directly or indirectly, by them, as of the record date for the 2015 Annual Meeting that are entitled to vote at the 2015 Annual Meeting or at any adjournments or postponements thereof, to be present for quorum purposes, and to be voted in favor of all directors nominated by the Board for election at the 2015 Annual Meeting; provided, however, that in the event that Harvey J. Berger shall have intentionally and materially breached the Retirement Agreement and failed to cure such breach within five business days of written notice from the Company specifying any such breach, the Sarissa Group shall not be required to cause any such Voting Stock to be voted in favor of Dr. Berger. The Company shall duly convene and hold the 2015 Annual Meeting no later than July 25, 2015.

4.4 Withdrawal. The Sarissa Group hereby irrevocably withdraws its Stockholders' Notice of Stockholder Business and Nominations at the 2015 Annual Meeting of Stockholders dated February 19, 2015, as restated as of February 24, 2015, providing notice to the Company of its intention to nominate certain individuals for election as directors of the Company at the 2015 Annual Meeting and of its intention to make the shareholder proposal set forth therein at the 2015 Annual Meeting (the "**Sarissa Nomination and Proposal**"). The Sarissa Group hereby further agrees that all of its members and Affiliates shall not, directly or indirectly, solicit proxies or participate or engage in a proxy contest with respect to the election of directors at the 2015 Annual Meeting or any other proposal to be considered at the 2015 Annual Meeting or present any other proposal for consideration at the 2015 Annual Meeting and shall immediately cease all efforts, direct or indirect, in furtherance of the Sarissa Nomination and Proposal and any related solicitation in connection with the Sarissa Nomination and Proposal.

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5. **Miscellaneous.**

5.1 Public Announcements. No earlier than 7:30 a.m. and no later than 9:00 a.m., New York City time, on the first trading day after the date hereof, the Company and the Sarissa Group shall

announce this Agreement and the material terms hereof by means of two press releases, one in the form attached to this Agreement as Exhibit A (the "**Agreement Press Release**") and one in the form attached to this Agreement as Exhibit B (the "**Retirement Press Release**" and together with the Agreement Press Release, the "**Press Release**"). Neither the Company nor the Sarissa Group shall make (and each shall cause their Representatives not to make) any public announcement or statement that is inconsistent with or contrary to the statements made in the Press Release or the terms of this Agreement or the Retirement Agreement, except as required by law or the rules of any stock exchange or with the prior written consent of the other party which will not be unreasonably withheld. The Company acknowledges that the Sarissa Group intends to file this Agreement and the agreed upon Press Release (or any of them) as an exhibit to its Schedule 13D pursuant to an amendment that the Company shall have the opportunity to review in advance. The Sarissa Group shall have an opportunity to review in advance the Form 8-K to be made by the Company with respect to this Agreement and the Retirement Agreement.

5.2 Existing Agreement; Confidentiality Agreement. The Company and the Sarissa Group hereby acknowledge and confirm that, except as expressly set forth in this Agreement, nothing herein shall affect the Confidentiality Agreement or the Existing Agreement, which shall remain in full force and effect in accordance with their terms (except to the extent expressly modified by any of the provisions set forth herein).

5.3 Governing Law; Jurisdiction. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware without giving effect to the principles of conflicts of laws. Any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement may be brought or otherwise commenced in any state or federal court located in the State of Delaware. Each party hereto agrees to the entry of an order to enforce any resolution, settlement, order or award made pursuant to this Section 5.3 by the state and federal courts located in the State of Delaware and in connection therewith hereby waives, and agrees not to assert by way of motion, as a defense, or otherwise, any claim that such resolution, settlement, order or award is inconsistent with or violative of the laws or public policy of the laws of the State of Delaware or any other jurisdiction.

5.4 Successors and Assigns; No Third Party Beneficiaries. This Agreement shall not be assigned or assignable by any of the parties to this Agreement without the prior written consent of each of the non-assigning parties. This Agreement, however, shall inure to the benefit of, and be binding upon, the successor and assigns of the parties hereto. This Agreement is solely for the benefit of the parties named hereto, is not enforceable by any other persons.

5.5 Entire Agreement; Amendment. This Agreement, the Existing Agreement and the Confidentiality Agreement constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof. Except for the Existing Agreement and the Confidentiality Agreement, any previous agreements among the parties relative to the specific subject matter hereof are superseded by this Agreement. Neither this Agreement nor any provision hereof may be amended, changed, waived, discharged or terminated other than by a written instrument signed by the party against who enforcement of any such amendment, change, waiver, discharge or termination is sought.

5.6 Notices, etc. All notices and other communications required or permitted hereunder shall be effective upon receipt by email to all persons whose email addresses are set forth below, with a copy also sent by express overnight delivery service, to the party to be notified, at the respective addresses set forth below, or at such other address which may hereinafter be designated in writing:

If to the Sarissa Group:

Sarissa Capital Management LP
660 Steamboat Road, 3rd Floor
Greenwich, Connecticut 06830
Attention: Mark DiPaolo
Email: mdipaolo@sarissacap.com

with a copy to:

Willkie Farr & Gallagher LLP
787 Seventh Ave.
New York, NY 10019
Attention: Russell Leaf
Email: Rleaf@willkie.com

If to the Company, to:

ARIAD Pharmaceuticals, Inc.
26 Landsdowne Street
Cambridge, Massachusetts 02139
Attention: Thomas J. DesRosier, Executive Vice President, Chief Legal and Administrative Officer
Email: thomas.desrosier@ariad.com

with a copy to:

Cravath, Swaine & Moore LLP

825 Eighth Avenue
New York, New York 10019
Attention: Scott A. Barshay, Esq. and George F. Schoen, Esq.
Email: sbarshay@cravath.com and gschoen@cravath.com

5.7 Severability. If any provision of this Agreement shall be judicially determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

5.8 Titles and Subtitles. The titles of the Articles and Sections of this Agreement are for convenience of reference only and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any of its provisions.

5.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

5.10 Delays or Omissions. It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party upon any breach or default of any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any

such breach or default, or any acquiescence therein, or of any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement, or any waiver of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in writing, and that all remedies, either under this Agreement, by law or otherwise, shall be cumulative and not alternative.

5.11 Consents. Any permission, consent, or approval of any kind or character under this Agreement shall be in writing and shall be effective only to the extent specifically set forth in such writing.

5.12 SPECIFIC PERFORMANCE. THE PARTIES HERETO AGREE THAT IRREPARABLE DAMAGE WOULD OCCUR IN THE EVENT THAT ANY OF THE PROVISIONS OF THIS AGREEMENT WERE NOT PERFORMED IN ACCORDANCE WITH ITS SPECIFIC INTENT OR WERE OTHERWISE BREACHED. IT IS ACCORDINGLY AGREED THAT THE PARTIES SHALL BE ENTITLED TO AN INJUNCTION OR INJUNCTIONS, WITHOUT BOND, TO PREVENT OR CURE BREACHES OF THE PROVISIONS OF THIS AGREEMENT AND TO ENFORCE SPECIFICALLY THE TERMS AND PROVISIONS HEREOF, THIS BEING IN ADDITION TO ANY OTHER REMEDY TO WHICH THEY MAY BE ENTITLED BY LAW OR EQUITY, AND ANY PARTY SUED FOR BREACH OF THIS AGREEMENT EXPRESSLY WAIVES ANY DEFENSE THAT A REMEDY IN DAMAGES WOULD BE ADEQUATE.

5.13 Construction of Agreement. Each of the parties hereto acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement, and that it has executed the same with the advice of said counsel. Each party and its counsel cooperated and participated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto exchanged among the parties shall be deemed the work product of all of the parties and may not be construed against any party by reason of its drafting or preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any party that drafted or prepared it is of no application and is hereby expressly waived by each of the parties hereto, and any controversy over interpretations of this Agreement shall be decided without regards to events of drafting or preparation. The term “including” shall in all instances be deemed to mean “including without limitation.”

5.14 Section References. Unless otherwise stated, any reference contained herein to a Section or subsection refers to the provisions of this Agreement.

5.15 Variations of Pronouns. All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the context in which they are used may require.

5.16 Expenses. The Company shall reimburse the Sarissa Group for the invoiced fees and expenses of Willkie Farr & Gallagher LLP in connection with this Agreement and the Sarissa Nomination and Proposal (such reimbursement not to exceed $150,000 in the aggregate) with payment

to be made by the Company to the Sarissa Group by certified check or wire transfer of immediately available funds promptly following the receipt of an invoice for such fees and expenses.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be duly executed and delivered by their proper and duly authorized officers as of the day and year first written above.

ARIAD PHARMACEUTICALS, INC.

By: /s/ Thomas J. DesRosier
Name: Thomas J. DesRosier
Title: Executive Vice President, Chief Legal and Administrative Officer

SARISSA CAPITAL MANAGEMENT LP

By: /s/ Mark DiPaolo
Name: Mark DiPaolo
Title: General Counsel

SARISSA CAPITAL DOMESTIC FUND LP

By: /s/ Mark DiPaolo
Name: Mark DiPaolo

Title: Authorized Person

SARISSA CAPITAL OFFSHORE MASTER FUND LP

By: /s/ Mark DiPaolo
Name: Mark DiPaolo
Title: Authorized Person

SARISSA CAPITAL FUND GP LP

By: /s/ Mark DiPaolo
Name: Mark DiPaolo
Title: Authorized Person

SARISSA CAPITAL OFFSHORE FUND GP LLC

By: /s/ Mark DiPaolo
Name: Mark DiPaolo
Title: Authorized Person

SCHEDULE A

SARISSA GROUP

Sarissa Capital Management LP

Sarissa Capital Domestic Fund LP

Sarissa Capital Offshore Master Fund LP

Sarissa Capital Fund GP LP

Sarissa Capital Offshore Fund GP LLC

EXHIBIT A

FORM OF AGREEMENT PRESS RELEASE

EXHIBIT B

FORM OF RETIREMENT PRESS RELEASE

Exhibit 3

March 28, 2016 Request of ARIAD

Thomas Z. Costas
(Ariad shareholder)

*** FISMA & OMB Memorandum M-07-16 ***

ARIAD Board of Directors and Mr. Thomas J. DesRosier, Esq.
ATTN: Mr. Thomas J. DesRosier, Secretary, EVP, CAO and Chief Legal Officer "CLO"
ARIAD Pharmaceuticals, Inc.
26 Landsdowne Street
Cambridge, MA 02139-4234

March 28, 2016

Request for Information, Re: Defense of Proxy Proposal TIME SENSITIVE

Dear ARIAD,

To the ARIAD Board of Directors (BoD"), as you may know, ARIAD has asked the SEC to permit, without penalty, the omission of my 2016 Proxy Proposal from the ARIAD 2016 Proxy. I am contesting ARIAD's request to the SEC by filing an 'Appeal' to the SEC.

I believe this entire matter is at a new beginning. I ask that the BoD perform their fiduciary duties for all Ariad shareholders. In my opinion, as a start, it includes the resignation of all BoD members who may have not acted faithfully in their fiduciary responsibilities to ARIAD shareholders, or had given even the appearance of impropriety in their actions as regards Dr. Denner's' 13D allegations of February 19, 2015, and in every related action the BoD and ARIAD has taken since.

I also reiterate that I believe your deliberate choice to not physically attend the 2015 Annual Meeting of Shareholders, i.e. 'AGM', and for those purportedly on speakerphone to not even to speak, was an affront to all shareholders, and a serious misjudgment. The BoD's action may have brought to light potentially serious ARIAD violations of SEC Rule 205, and Delaware General Corporation Law.

Regarding SEC Rule 205, Sarissa may have had similar obligations and now issues.

At the 2015 AGM meeting, I assert that Mr. DesRosier served dual roles, one as business Chairman as bestowed by Dr. Harvey Berger et al, and second as Chief Legal Officer ("CLO") of ARIAD. This represented a clear conflict of interest, and accordingly, a clear breach of 'attorney-client privilege' occurred, entitling shareholders to receive all attorney work product and related ARIAD 'confidential' information related to the Denner 13D and all subsequent and prior related actions. The legal justification for this request is found in the Appeal made to SEC regarding ARIAD's request to omit my 2016 Proxy Proposal. ARIAD and Sarissa have the Appeal document.

Accordingly, or not, of the ARIAD BoD and Mr. DesRosier, and for the defense of my Proxy Proposal to the SEC, I ask that you immediately provide the following information to me so that I might use it in that defense effort:

1) Any notes, conclusions and papers of Mr. DesRosier's (or any person acting as CLO, General Consul of ARIAD) independent investigation of the BoD regarding Dr. Denner's allegations on the matter of 'breach of fiduciary responsibilities'.

2) Any notes, conclusions and papers and meeting minutes of Mr. DesRosier's and any other person acting as Corporate Secretary, documenting any BoD and its various BoD committees' meetings and decisions regarding Dr. Denner's allegations, any and all related prior and subsequent actions, including any discussions or negotiations with Sarissa, and any and all meetings and discussions regarding Dr. Berger's contract negotiations whether in October 2013 or other times.
3) All current working papers as they relate to CEO Mr. Paris Panayiotopoulos' current strategy study.
4) ARIAD D&O Insurance policy #'s and coverages and reinsurance policy #'s and coverages through the date of this letter.
5) Copies of and BoD 'Conditional Letters of Resignation' given to the CEO this year.
6) A roll call of BoD and other persons who attended the 2015 AGM via the speakerphone conference.

Be also advised, as stated in my Appeal, as per Delaware Law, the elections at the 2015 ARIAD AGM were likely illegal, and likely every vote requested was illegal and is subject to nullification.

Best Wishes,

/s/Thomas Z. Costas

Thomas Z. Costas

Distributed VIA EMAIL

cc: Mr. Mark DiPaolo, General Counsel, Sarissa Capital Management LP

Exhibit 4

March 21, 2016 ARIAD Request to SEC to Omit Proposal from Proxy

Adobe Acrobat
Document

Exhibit 5

Resignation of BoD Members in 2008

EX-99.1 2 b73139apexv99w1.htm EX-99.1 LETTER, DATED DECEMBER 1, 2008, FROM THE RESIGNING DIRECTORS.

MICHAEL D. KISHBAUCH SANDFORD D. SMITH

BURTON E. SOBEL, M.D. ELIZABETH H.S. WYATT

December 1, 2008

Harvey J. Berger, M.D.
Chairman & Chief Executive Officer
ARIAD Pharmaceuticals, Inc.
26 Landsdowne Street
Cambridge, Massachusetts 02139

Re: Resignation from the Board of Directors

Dear Harvey:

We are writing to confirm our immediate resignations as four independent members of the board of directors (the "Board") of ARIAD Pharmaceuticals, Inc. ("ARIAD") due to our vigorous disagreements with you over fundamental matters of corporate policy, professional ethics and proper standards of corporate governance on behalf of all ARIAD stockholders.

Throughout our Board tenure, we have understood that our primary role as independent directors has been to promote the success of ARIAD and to act in the best interests of all ARIAD stockholders. We worked diligently to ensure there would be a level playing field for all ARIAD stockholders as a result of the recent AGTI transaction, in which you and Jay LaMarche had a clear conflict of interest. Unfortunately, the recent completion of the AGTI merger transaction has obviously been the trigger for your grossly inappropriate behavior in your dealings with the four independent directors who approved the AGTI merger despite your unjustified objections.

Our resignation is prompted by your self-interested, combative and obstructionist actions — particularly over the last month — involving implementation of the AGTI merger, the replacement of the Company's general counsel, the mishandling of the AGTI appraisal litigation, your manipulative conduct prior to and at the November 3 meeting of the Board, the recomposition of the Board to allow your surrogates to control the Board's decisions without regard to or even inviting our input, the removal of the vice chairman of the Board at a precipitously called meeting in which you knew we could not participate, your installation of a close personal family friend as lead director of the Board, and your determination to cause ARIAD to breach agreements approved by the Board over your opposition.

The four of us have irreconcilable differences with you and the four other directors constituting the current Board majority on the foregoing matters, the present and future policies of ARIAD, and your tenure as Chairman and CEO of ARIAD. Accordingly, we are required to resign and publicly disclose our disagreements.

The acts of unfair dealing against the four independent directors by you and the current Board majority have created a toxic environment within the company's leadership ranks and inside the boardroom. Regrettably, you are now responsible for causing the departure of four more independent directors, as well as the prior departures of officers and other directors who were not full supporters of what we now recognize to be your personally motivated agenda for running ARIAD.

We are disappointed that your recent actions have caused a split on the Board which causes the simultaneous departure of four independent directors. The resigning directors include the senior officer of a sizeable publicly traded biopharmaceutical company and former vice chairman of the Board who has served ARIAD since its inception, a long-serving director who was a nationally respected member of ARIAD's scientific advisory board, a CEO of a publicly- traded biotech company, and the former head of technology transfer of a major pharmaceutical company. In our many decades of public company experience, we have never before witnessed the egregious misbehavior in which you have engaged during recent weeks. We cannot continue to serve on ARIAD's Board under these circumstances.

Our resignations are without prejudice to any of our rights (including indemnification, advancement, D&O insurance or exculpation) to which we may be entitled, by reason of the fact that we have been directors of ARIAD, under the ARIAD certificate of incorporation, the ARIAD bylaws, any applicable insurance policy, any agreement to that any of us is a party, or any applicable law.

We depart with the recognition that the scientific personnel and programs at ARIAD are first-rate and we continue to hope that they will be commercially successful. We hope that this success ultimately comes with a commitment by the Board to strong ethics and good corporate governance in which the ARIAD stockholders' best interests are paramount. It is the abrogation of these fundamental principles at ARIAD today that prompts these resignations.

Sincerely,

/s/ Michael D. Kishbauch	/s/ Burton E. Sobel, M.D.
Michael D. Kishbauch	Burton E. Sobel, M.D.
/s/ Sandford D. Smith	/s/ Elizabeth H.S. Wyatt
Sandford D. Smith	Elizabeth H.S. Wyatt

cc: Raymond T. Keane, Esq., Vice President, General Counsel & Secretary

CRAVATH, SWAINE & MOORE LLP

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WRITER'S DIRECT DIAL NUMBER
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WRITER'S EMAIL ADDRESS
khallam@cravath.com

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KRIS F. HEINZELMAN
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PHILIP A. GELSTON
RICHARD W. CLARY
JAMES D. COOPER
STEPHEN L. GORDON
DANIEL L. MOSLEY
ROBERT H. BARON
KEVIN J. GREHAN
C. ALLEN PARKER
SUSAN WEBSTER
DAVID MERCADO
ROWAN D. WILSON
CHRISTINE A. VARNEY
PETER T. BARBUR
SANDRA C. GOLDSTEIN
THOMAS G. RAFFERTY
MICHAEL S. GOLDMAN
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ANDREW W. NEEDHAM
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ROBERT I. TOWNSEND, III
WILLIAM J. WHELAN, III
SCOTT A. BARSHAY
PHILIP J. BOECKMAN
ROGER G. BROOKS
WILLIAM V. FOGG
FAIZA J. SAEED
RICHARD J. STARK
THOMAS E. DUNN
MARK I. GREENE
DAVID R. MARRIOTT
MICHAEL A. PASKIN
ANDREW J. PITTS
MICHAEL T. REYNOLDS
ANTONY L. RYAN
GEORGE E. ZOBITZ
GEORGE A. STEPHANAKIS
DARIN P. MCATEE
GARY A. BORNSTEIN
TIMOTHY G. CAMERON
KARIN A. DEMASI
LIZABETHANN R. EISEN
DAVID S. FINKELSTEIN

DAVID GREENWALD
RACHEL G. SKAISTIS
PAUL H. ZUMBRO
JOEL F. HEROLD
ERIC W. HILFERS
GEORGE F. SCHOEN
ERIK R. TAVZEL
CRAIG F. ARCELLA
TEENA-ANN V. SANKOORIKAL
ANDREW R. THOMPSON
DAMIEN R. ZOUBEK
LAUREN ANGELILLI
TATIANA LAPUSHCHIK
ERIC L. SCHIELE
ALYSSA K. CAPLES
JENNIFER S. CONWAY
MINH VAN NGO
KEVIN J. ORSINI
MATTHEW MORREALE
JOHN D. BURETTA
J. WESLEY EARNHARDT
YONATAN EVEN
BENJAMIN GRUENSTEIN
JOSEPH D. ZAVAGLIA
STEPHEN M. KESSING

LAUREN A. MOSKOWITZ
DAVID J. PERKINS
JOHNNY G. SKUMPIJA
J. LEONARD TETI, II
D. SCOTT BENNETT
TING S. CHEN
CHRISTOPHER K. FARGO
KENNETH C. HALCOM
DAVID M. STUART
JONATHAN L. DAVIS
AARON M. GRUBER
O. KEITH HALLAM, III
OMID H. NASAB
DAMARIS HERNÁNDEZ
JONATHAN J. KATZ

SPECIAL COUNSEL
SAMUEL C. BUTLER
GEORGE J. GILLESPIE, III

OF COUNSEL
MICHAEL L. SCHLER

March 23, 2016

ARIAD Pharmaceuticals, Inc.
Shareholder Proposal of Thomas Z. Costas
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

On behalf of our client, ARIAD Pharmaceuticals, Inc., a Delaware corporation (the "Company"), we write to follow up on our March 21, 2016 letter (the "No-Action Request") informing the Staff of the Division of Corporation Finance (the "Staff") of the Company's intention, in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, to exclude from its proxy statement and form of proxy for its 2016 Annual Meeting of Shareholders (collectively, the "2016 Proxy Materials") a shareholder proposal and related supporting statement (the "Proposal") submitted by Thomas Z. Costas (the "Proponent").

The No-Action Request requested confirmation that the Staff will not recommend any enforcement action to the Securities and Exchange Commission if, in reliance on Rules 14a-8(i)(7), 14a-8(i)(1) or 14a-8(b) and (f), the Company omits the Proposal from its 2016 Proxy Materials for the reasons set forth in the No-Action Request. With respect to Rules 14a-8(b) and (f), we noted in the No-Action Request that we had advised the Proponent that he had failed to provide adequate proof of ownership to satisfy Rule 14a-8(b) and that, as of the time we submitted the No-Action Request, the Company had not yet received proof that the Proponent satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company. On March 22, 2016, the Proponent submitted via email (*see* Exhibit A) adequate proof of ownership in a timely manner. As indicated in the No-Action Request, we are now promptly informing the Staff that we have received a timely response to the deficiency notice that cured the deficiency and therefore withdraw our argument to exclude the Proposal pursuant to Rules 14a-8(b) and 14a-8(f).

However, we continue to believe for the reasons set forth in the No-Action Request that the Proposal may be properly omitted from the Company's 2016 Proxy Materials in reliance on Rules 14a-8(i)(7) and 14a-8(i)(1).

If the Staff has any questions with respect to the foregoing, please contact me at (212) 474-1458. I would appreciate your sending any response via e-mail to me at khallam@cravath.com as well as to the Company, attention of Thomas J. DesRosier, Executive Vice President, Chief Legal and Administrative Officer and Secretary, at Thomas.DesRosier@ariad.com.

Very truly yours,

/s/ O. Keith Hallam III
O. Keith Hallam III

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

VIA EMAIL: shareholderproposals@sec.gov

Encls.

Copy w/encls. to:

Thomas Z. Costas

*** FISMA & OMB Memorandum M-07-16 ***

VIA EMAIL:

*** FISMA & OMB Memorandum M-07-16 ***

VIA FEDERAL EXPRESS

Copy w/encls. to:

Thomas J. DesRosier, Esq.
Executive Vice President, Chief Legal
and Administrative Officer and Secretary
ARIAD Pharmaceuticals, Inc.
26 Landsdowne Street
Cambridge, MA 02139-4234

VIA EMAIL: Thomas.DesRosier@ariad.com

VIA FEDERAL EXPRESS

Exhibit A

14a-8 Proof of Ownership - Thomas Z. Costas

Tom Costas to: Thomas DesRosier 03/22/2016 11:54 AM

History: This message has been forwarded.

Dear Mr. DesRosier,

Please find attached my 14a-8 related 'proof of ownership' as required for my 2016 proxy question proposal dated February 28, 2016.

Please advise me if you find the document deficient for your purposes in considering my proposal. Feel free to contact Scottrade at any of its coordinates.

I shall send you the original in the U.S. Mail.

Best Wishes,

Tom

*** FISMA & OMB Memorandum M-07-16 ***

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Scottrade®

MEMBER FINRA/SIPC

313 E Lancaster Ave
Wayne, PA 19087-4201
610-688-2279 • 1-888-268-1980

March 17, 2016

Thomas Z Costas

*** FISMA & OMB Memorandum M-07-16 ***

Re: Scottrade Account *** FISMA & OMB Memorandum M-07-16 ***

Dear Mr. Costas,

Per your request, this letter is to verify the following information for the account listed above:

Your Scottrade account has held shares of Ariad Pharmaceuticals Inc. (ARIA) with a market value in excess of $2,000.00 continuously for the one year period preceding and including March 1, 2016. All assets have been held in street name at Scottrade. Scottrade uses the Depository Trust and Clearing Corporation (DTC) for our clearing and settlement services.

If you need any additional information regarding your holdings, please contact us at the Wayne, PA branch (610)688-2279.

Sincerely,

Tony Sarracino
Branch Manager

CRAVATH, SWAINE & MOORE LLP

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LAUREN A. MOSKOWITZ
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D. SCOTT BENNETT
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CHRISTOPHER K. FARGO
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SPECIAL COUNSEL
SAMUEL C. BUTLER
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OF COUNSEL
MICHAEL L. SCHLER

March 21, 2016

ARIAD Pharmaceuticals, Inc.
Shareholder Proposal of Thomas Z. Costas
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

On behalf of our client, ARIAD Pharmaceuticals, Inc., a Delaware corporation ("ARIAD" or the "Company"), we write to inform you of ARIAD's intention, in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to exclude from its proxy statement and form of proxy for its 2016 Annual Meeting of Shareholders (collectively, the "2016 Proxy Materials") a shareholder proposal and related supporting statement (the "Proposal") submitted by Thomas Z. Costas (the "Proponent"). The Proposal is dated February 28, 2016, and was received by the Company on March 2, 2016. The Proposal is set forth below and the related correspondence is attached hereto as Exhibit A and Exhibit B respectively.

We respectfully request confirmation that the Staff of the Division of Corporation Finance (the "Staff") will not recommend any enforcement action to the Securities and Exchange Commission (the "Commission") if, in reliance on Rules 14a-8(i)(7), 14a-8(i)(1) or 14a-8(b) and (f), ARIAD omits the Proposal from its 2016 Proxy Materials for the reasons set forth below. ARIAD has advised us as to the factual matters, determinations and beliefs set forth below.

In accordance with Rule 14a-8(j), this letter is being filed with the Commission not less than 80 days before ARIAD plans to file its 2016 definitive proxy statement. Pursuant to Rule 14a-8(j) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), we have submitted this letter and its attachments to the Staff via e-mail at shareholderproposals@sec.gov in lieu of mailing paper copies. Also, in accordance with Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company's intention to omit the Proposal from the 2016 Proxy Materials.

Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of ARIAD pursuant to Rule 14a-8(k) and SLB 14D.

I. The Proposal

The Proponent requests that the following matter be submitted to a vote of the shareholders at ARIAD's next Annual Meeting of Shareholders:

> "Chm. Alexander Denner made extraordinary allegations in (his) Sarissa's February 19, 2015 13D filing that Board members have potentially breached their fiduciary responsibilities. It was written:
>
> "In addition, the Reporting Persons are extremely concerned with the conduct of certain members of the Issuer's board, particularly with respect to compensation, governance and financial matters. For example, the Reporting Persons are especially disturbed by the decision to renew Harvey Berger's employment contract in October 2013 and, given the egregious terms of that employment agreement, urge the Issuer to immediately disclose to shareholders any discussions of the board and the compensation committee regarding the decision to renew this agreement. In this regard, the Reporting Persons may seek to compel such disclosure and may ultimately initiate court proceedings to seek to remove one or more directors for cause based on potential breaches of their fiduciary duties. "
>
> The board subsequently has never denied Sarissa's allegations. They settled with Sarissa, and Dr. Denner cannot relate any information he has discovered except in court. This matter was extraordinary, not ordinary business of the board.
>
> The board did not provide answers to my questions regarding this and other Board actions 1) to me at the 2015 AGM when asked prior to and in regard to Item to be voted 1, the reelection of former Board member Dr. Harvey Berger (not one Board member was in physical attendance at the Annual Shareholders meeting), 2) when asked over phone conference during that meeting, 3) in response to my subsequent detailed letter on the matter, and 4) when I was refused on the Q3 conference call (after being invited/encouraged during the Annual meeting to ask there by the CAO Tom DesRosier). I thought my questions regarding the Sarissa matter important at the 2015 meeting as Dr. Berger was standing for election to the board with this allegation yet unaddressed.

I propose the Board of Directors be compelled by shareholder vote to answer these questions:

-Were any of the actions of the type alleged against BoD members in the Denner/Sarissa February 19, 2015 13D SEC filing committed? Were such actions permitted under the Ariad Code of Conduct and Ethics?

- As CAO DesRosier stated at the AGM, 'speaking only on his own investigation' (not the BoDs, if any) that according to his investigation there 'was nothing to the allegations' and the extensive agreement with Sarissa and Dr. Berger's retirement 'were all unrelated', if his conclusions are true and the same as the board's, then why was the Agreement with Denner and Sarissa executed or necessary at all? If not true, conversely, why was Sarissa and Alex Denner not somehow investigated/sanctioned for alleging of his fellow board members that they committed serious and possibly criminal SEC violations that were eventually determined to not have occurred, allegations that clearly could damage the reputation of the CEO, and the effectiveness, ethics, propriety and veracity of the BoD, and perhaps even Ariad itself? Was there any substance whatsoever to the Denner/Sarissa claims? If so, what?"

II. Grounds for Omission

ARIAD believes that the Proposal may be properly omitted from its 2016 Proxy Materials pursuant to Rules 14a-8(i)(7), 14a-8(i)(1) and 14a-8(b) and (f).

A. Rule 14a-8(i)(7)—Management functions.

ARIAD believes that the Proposal may be properly omitted from its 2016 Proxy Materials pursuant to Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations. In particular, the Proposal (i) relates to tasks "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight," and (ii) probes too deeply into matters upon which shareholders would not be in a position to make an informed judgment.

i. *Background on Rule 14a-8(i)(7)*

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to its "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word"; instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998

Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *Id.*

The Commission identified in the 1998 Release two central considerations that underlie this policy. One of these considerations is whether a proposal relates to "tasks . . . so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The other is whether a proposal seeks to "micromanage" a company by probing too deeply into matters upon which shareholders would not be in a position to make an informed judgment. The 1998 Release notes that these considerations may come into play in circumstances "where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *Id.* The Proposal implicates each of the ordinary business rule's underlying concerns.

ii. *The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to ARIAD's shareholder relations and communications, tasks "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight."*

A key objective of the Proposal is to compel a specific process and mouthpiece for, as well as the form, volume and timing of, direct communication between the Company and its shareholders. In this case, the method for accomplishing this objective is to "compel" the Company's directors to answer a long series of questions from one particular shareholder. In doing so, the Proposal reaches beyond analogous proposals that the Staff has consistently agreed may be excluded pursuant to the "fundamental tasks" consideration of Rule 14a-8(i)(7).

The Staff has consistently taken the position that shareholder proposals relating primarily to the nature of communications between a company and its shareholders may be excluded as relating to ordinary business. In particular, it has become the Staff's consistent practice to allow the exclusion of proposals requesting additional shareholder communications through the means of specific arrangements for shareholder questions and answers. In *Servotronics, Inc.* (Feb. 19, 2015), the Staff concurred with the company's exclusion of a proposal that "a question-and-answer period be included in conjunction with the Servotronics Annual Shareholder Meetings." Faced with a similar proposal in *Citigroup Inc.* (Feb. 7, 2013), the Staff agreed with exclusion of a proposal to "allocate a reasonable amount of time before and after the annual meeting for shareholder dialogue with our directors . . . regarding the operations of our company." In *Exxon Mobil Corp.* (Mar. 2, 2005), the Staff agreed that a company could exclude a proposal that the company "set aside [time] on the agenda at each annual meeting for shareholders to ask questions, and receive replies directly from, the non-employee directors." Similarly, in *AmSouth Bancorp* (Jan. 15, 2002), the Staff permitted the company to exclude a proposal that requested it provide shareholders a minimum of 30 minutes at shareholder meetings to ask questions. In *The Walt Disney Company* (Nov.

29, 2002), the Staff agreed with exclusion of a proposal requesting that a decision to adjourn the annual meeting be subject to objection by shareholders. And in *Bank of America Corp.* (Dec. 22, 2009), the Staff went so far as to agree that a company could exclude a proposal to entitle shareholders to attend and speak at such meetings at all.

The Staff's consistent position that proposals attempting to influence the form or timing of a company's shareholder communications relate to the company's ordinary business operations—and thus are excludable under Rule 14a-8(i)(7)—extends beyond the shareholder meeting context. In *Peregrine Pharmaceuticals, Inc.* (July 16, 2013), the Staff agreed with exclusion of a shareholder proposal requesting that the company's management, board and consultants respond to investors' operations-related questions and concerns on all of the company's public conference calls. In *Jameson Inns, Inc.* (May 15, 2001), the Staff permitted exclusion of a proposal urging the company's board of directors simply to consider new ideas for improving shareholder communications, including allowing shareholders to ask questions during quarterly conference calls. In *Advanced Fibre Communications, Inc.* (Mar. 10, 2003), the Staff concurred with the exclusion of a shareholder proposal requesting the creation of an office of the board of directors to enable direct communications between management and shareholders. If the general handling of shareholder questions and answers is a matter of ordinary business, then the Company's analysis of which shareholder questions to answer, when presented with them, should be a matter of ordinary business as well.

The Proposal takes issue with ARIAD for its handling of the Proponent's questions, criticizing the Company and its board for "not providing answers to my questions . . . 1) . . . at the 2015 [annual shareholder meeting] when asked prior to and in regard to Item to be voted 1 [*sic*] . . . , 2) when asked over phone conference during that meeting, 3) in response to my subsequent detailed letter on the matter, and 4) when I was refused on the Q3 conference call (after being invited/encouraged during the Annual meeting to ask there by the CAO Tom DesRosier)." Embedded in this criticism, however, is a series of occasions on which the Company has provided and even "invited/encouraged" the Proponent, an individual shareholder, with opportunities to ask questions. The Company has simply declined to disclose new information in response to those questions—a decision entirely within its authority, in accordance with its routine and considered shareholder communications decision-making. Moreover, the Proposal suggests that all shareholders and ARIAD's shareholder relations would be improved if shareholders "compel" the board to answer the Proponent's long series of questions. Accordingly, like the shareholder proposals in *Peregrine Pharmaceuticals, Inc.* and *Exxon Mobil Corp.*, and the proposals in the other letters cited above, the Proposal is excludable pursuant to Rule 14a-8(i)(7) because it relates to ARIAD's shareholder relations and, more specifically, seeks board action to improve or alter those relations and communications with respect to shareholder questions and answers.

The Company faces many of the competing considerations noted in letters such as *Peregrine Pharmaceuticals, Inc.* and *Exxon Mobil Corp.* in determining how to conduct its shareholder communications. The Company believes that communicating with its shareholders is an important aspect of its corporate governance. Historically at annual shareholder meetings, the Chairman/Chief Executive Officer has responded to

questions from shareholders. More generally, outside of the annual shareholder meeting context the Company's Chief Executive Officer and its Senior Vice President, Corporate Affairs have fielded questions from shareholders. The Company also carefully considers, on an ongoing basis, what information to disclose to shareholders, as well as when and by whom. As a competing concern, however, the Company's directors owe the Company a duty of confidentiality, "inherent" in their duty of loyalty under Delaware law, which may require that certain questions posed by shareholders about pending or sensitive business decisions not be answered at the time the question is asked. *See, e.g.*, *Malone v. Brincat*, 722 A.2d 5, 11 (Del. 1998) ("The directors' duty to disclose all available material information in connection with a request for shareholder action must be balanced against its concomitant duty to protect the corporate enterprise, in particular, by keeping certain financial information confidential."); *Henshaw v. Am. Cement Corp.*, 252 A.2d 125, 129 (Del. Ch. 1969) (in upholding a director's demand for inspection of books and records, the Court of Chancery noted that a remedy for breach of fiduciary duty would exist if such director were to "abuse his position as a director [by making] information available to persons hostile to the Corporation or otherwise not entitled to it"); *Kerbawy v. McDonnell*, No. CV 10769-VCP, 2015 WL 4929198, at 22 (Del. Ch. Aug. 18, 2015) ("As a legal matter, the proposition . . . that '[i]nherent in the duty of loyalty is an obligation to protect the corporation by maintaining the confidentiality of its sensitive information,' seems indisputable."). *See also Holdgreiwe v. Nostalgia Network, Inc.*, No. CIV. A. 12914, 1993 WL 144604, at 6 (Del. Ch. Apr. 29, 1993) ("[A director] is already under an obligation to maintain the confidences of [the company]; to use its confidential information only to inform discussion among directors and action by the board or a committee. Disclosure of such information to [a third party] is a violation of duty whether or not a [confidentiality agreement] is entered."). The Company's officers and directors also routinely weigh Regulation FD considerations on a case-by-case basis. Such competing concerns demand that the Company's management and board have the flexibility to weigh all of these considerations. That flexibility necessarily includes the leeway to choose the form, timing and speaker of shareholder communications—as well as whether to speak at all on a given subject.

In light of such considerations, as the Proposal itself makes clear and is described above, the Company already provides opportunities for shareholders to pose questions about Company operations. In doing so, the Company believes that its management makes every reasonable effort to respond to questions posed by shareholders. In fact, as noted in the Proposal, the Company's Executive Vice President, Chief Legal and Administrative Officer and Secretary responded to a question posed by the Proponent at the 2015 annual shareholder meeting. At various points in time, the Proponent has also communicated with and posed questions to the Company's current Chairman as well as its Senior Vice President, Corporate Affairs. The Company, however, is not required to answer such questions and needs to have the flexibility to decide how and whether or not to do so.

ARIAD also has established policies for shareholder relations, including policies on directors' shareholder communication[1] and a Regulation FD disclosure policy. In establishing and abiding by such policies, ARIAD recognizes that in making any public disclosure, it is in the discretion of the Company as to what to say and how and when to say it—as well as *who* says it. With the Proposal, however, the Proponent seeks to impose his own judgment over that of the Company's management and board with regard to such determinations. It is not practicable for the shareholders to decide how to resolve these issues. For good reason, the Staff has determined that these types of proposals regarding shareholder communications are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." 1998 Release. Accordingly, the Proposal should be excluded under Rule 14a-8(i)(7).

iii. *The Proposal seeks to "micromanage" the Company by probing too deeply into matters upon which shareholders would not be in a position to make an informed judgment—in particular, requesting reports of specific, complex, intricately detailed and confidential information about ordinary business.*

In addition to seeking to dictate procedural matters such as the form, timing, volume and origin of the Company's shareholder communications, the Proposal also would fundamentally interfere with the Company's substantive disclosure determinations. Such determinations are ordinary, both in that the Company must apply its internal legal compliance policies and in that the Company must analyze and apply relevant law in light of its business. As Devon Energy Corporation noted in a no-action letter granted on March 18, 2015, "Beyond compliance with applicable legal and regulatory requirements, it is the responsibility of management to determine what information is most appropriately disclosed to investors and the public." In addition, in a recent response to a no-action letter, the Staff stated that "[p]roposals that concern a company's legal compliance program are generally excludable under Rule 14a-8(i)(7)." *Navient Corp.* (Mar. 26, 2015).

Exclusion of the Proposal on the grounds of such interference is consistent with a line of precedents where the Staff has determined that Rule 14a-8(i)(7) applies to proposals seeking to "micromanage" internal disclosure determinations, including as they relate to legal compliance, corporate governance and financial matters. Such proposals, like the one at issue here, attempted to allow shareholders to delve into complex, detailed and even confidential management analyses through the Rule 14a-8 shareholder proposal process. *See, e.g., AT&T Inc.* (Feb. 5, 2016) (agreeing with exclusion of a proposal requesting that the company issue a report disclosing additional information about certain

[1] "Generally, stockholders who have questions or concerns should contact our Investor Relations department at (617) 494-0400, extension 2208. However, any stockholders who wish to submit written communications to the Board or any individual director should send their communications to our Secretary at ARIAD Pharmaceuticals, Inc., 26 Landsdowne Street, Cambridge, MA 02139-4234. Communications will be distributed to the Board, or to any individual director or directors as appropriate, depending on the facts and circumstances outlined in the communications. Items that are unrelated to the duties and responsibilities of the Board may be excluded, such as junk mail and mass mailings, resumes and other forms of job inquiries, surveys and solicitations or advertisements. In addition, any material that is unduly hostile, threatening or illegal in nature may be excluded, provided that any communication that is filtered out will be made available to any director upon request." ARIAD's definitive proxy statement filed June 25, 2015.

policies on providing information to law enforcement and intelligence agencies, and assessing risks arising from such policies and practices); *Navient Corp.* (Mar. 26, 2015) (permitting the company to exclude a proposal recommending that it prepare a report on its internal controls over its student loan servicing operations, including a discussion of the actions taken to ensure compliance with applicable law); *Devon Energy Corp.* (Mar. 18, 2015) (concurring in exclusion of a proposal requesting disclosure of all communications between all company "employees/lawyers" and all employees of all federal, state and local government agencies be made public on an ongoing basis); *The TJX Companies, Inc.* (Mar. 29, 2011) (agreeing with exclusion of a proposal requesting that the board annually assess and disclose risks created by the company's actions to avoid or minimize income taxes); *AmerInst Insurance Group, Ltd.* (Apr. 14, 2005) (concurring with omission of a proposal to require the company's board "to provide a full, complete and adequate disclosure of the accounting, each calendar quarter, of the company's line items and amounts of Operating and Management expenses"); *Refac* (Mar. 27, 2002) (permitting exclusion of a proposal that the company's board take necessary steps to amend and improve corporate disclosure practices). In each of these instances, the excluded proposal sought to go above and beyond legal disclosure requirements and attempted to micromanage the company's decision making process about what information to disclose on various topics.

In this situation, the Company has made determinations about what information to disclose. The Proposal, however, inappropriately seeks to insert itself into these deliberations and micromanage the Company's decisions. As the Staff has recognized, a company's management is best suited to supervise matters related to legal compliance and disclosure decisions. ARIAD's approach to such matters necessarily involves a balancing of a wide range of business and legal considerations. Such considerations are precisely the kind of "matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *See* 1998 Release. Accordingly, the Company believes the Proposal is properly excludable under Rule 14a-8(i)(7).

iv. *The Proposal is not precluded from omission pursuant to Rule 14a-8(i)(7) because it addresses ordinary business matters rather than a significant policy issue.*

An exception to Rule 14a-8(i)(7) exists for shareholder proposals that raise "significant policy considerations." Under this exception, proposals that have raised "significant policy considerations" or that are "the subject of widespread public debate" are considered "beyond the realm of an issuer's ordinary business operations" and therefore not subject to exclusion under Rule 14a-8(i)(7). *See* Exchange Act Release No. 12598 (Jul. 7, 1976). The Staff tends to take two key factors into consideration in determining whether an issue raises significant social policy considerations. First and foremost, media coverage and public debate on a particular issue weigh in favor of that issue's status as a significant policy issue. Second, where the Staff has made such a determination, heightened regulatory or legislative activity has been present. *See Tyson Foods, Inc.* (Dec. 15, 2009) (proposal regarding the use of antibiotics in raising livestock,

an issue of widespread public debate and the subject of current legislation, includable upon reconsideration because it related to a significant social policy issue).

As with the no-action letters discussed in section II.A(ii) and II.A(iii) above for which the Staff agreed with exclusion, the issues addressed by the Proposal are not significant social policy issues. The Proposal, for example, does not address a significant policy issue in the realm of shareholder relations. The proponent in *Exxon Mobil Corp.* unsuccessfully argued that "shareholder-board member communications" in general constituted an important policy consideration that should preclude the proposal's exclusion pursuant to Rule 14a-8(i)(7). The Staff declined to concur with this interpretation of the issue. The *Exxon Mobil Corp.* precedent applies here, given the Proposal's focus on dictating both the form and the substance of the Company's shareholder communications. The Proposal also does not address a significant policy regarding the Company's internal legal analysis with respect to disclosure. The Staff has granted no-action relief in situations involving proposals seeking heightened disclosure with respect to legal compliance issues. *See, e.g.*, *Sempra Energy* (Jan. 12, 2012) (agreeing with exclusion where the proposal requested that directors produce an annual report on the political, legal and financial risks relating to the company's operations in countries where corrupt practices may have been more prominent); *The Home Depot, Inc.* (Jan. 25, 2008) (permitting exclusion of a proposal asking the board to publish a report outlining the company's product safety policies and describing management's efforts to address recent product safety concerns); *Family Dollar Stores, Inc.* (Nov. 6, 2007) (concurring with the company's omission of a proposal requesting a report evaluating the company's policies and procedures for minimizing customers' exposure to toxic substances and hazardous components in its marketed products).

Furthermore, the questions raised in the Proposal do not themselves raise significant social policy issues. In fact, rather than address a significant policy consideration or a topic that is the subject of widespread public debate, the Proponent has set forth a series of questions that have no relevance or applicability outside of this Company-specific context and therefore do not extend beyond the realm of ARIAD's ordinary business operations. In addition, the Company believes that the topics addressed by the Proponent's questions do not relate to an area of heightened regulatory or legislative action.

The Proposal can therefore be excluded under Rule 14a-8(i)(7) because it focuses on the Company's policies and actions with respect to matters of shareholder relations, as well as of the Company's internal analysis with respect to disclosure, each of which is a matter of ordinary business and not a significant policy issue.

B. Rule 14a-8(i)(1)—Improper under state law.

The Proposal is not a proper subject for shareholder action under Delaware law and may be properly omitted under Rule 14a-8(i)(1).

Rule 14a-8(i)(1) provides an exclusion for shareholder proposals that are "not a proper subject for action by shareholders under the laws of the jurisdiction of the

company's organization." The Proposal would require action that, under Delaware law, falls within the scope of the powers of the Company's board of directors as a Delaware corporation. Section 141(a) of the Delaware General Corporation Law states that the "business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation." No such exceptions apply. Absent circumstances in which Delaware law requires directors to disclose material information regarding the business or affairs of the corporation (i.e., in connection with a request for a stockholder vote or other action by stockholders or as necessary to correct prior disclosure), the decision as to whether, when and how to disclose non-public information to stockholders falls within the managerial authority of the board of directors, consistent with the mandate of Section 141(a). *See, e.g.*, *Malone v. Brincat*, 722 A.2d 5, 11 (Del. 1998); *Raskin v. Birmingham Steel Corp.*, 1990 WL 193326, at 5 (Del. Ch. Dec. 4, 1990).

The Staff has consistently permitted the exclusion of shareholder proposals mandating or directing a company's board of directors to take certain action inconsistent with the discretionary authority provided to the board of directors under state law. *See, e.g.*, *Target Corp.* (Mar. 21, 2014); *The Goldman Sachs Group, Inc.* (Feb. 7, 2013); *National Technical Systems, Inc.* (Mar. 29, 2011); *Bank of America Corp.* (Feb. 16, 2011); *MGM MIRAGE* (Feb. 6, 2008) (in each case, concurring in exclusion where a proposal mandated, rather than requested, that the company take a specific action). The Note to Rule 14a-8(i)(1) provides, "Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law." The Proposal is not drafted as a request of, or as a recommendation to, the board of directors, but rather mandates action by the board: "I propose the Board of Directors *be compelled* by shareholder vote to answer these questions: . . ." (emphasis added). Yet the Proposal relates to matters upon which only the board has the power to act. The Staff consistently has concurred that mandatory shareholder proposals may be excluded from the proxy statements of Delaware corporations. *See, e.g.*, *IEC Electronics Corp.* (Oct. 31, 2012) and *Bank of America Corp.* (Feb. 16, 2011).

Accordingly, as discussed in the legal opinion from Delaware law firm Potter Anderson & Corroon LLP, attached hereto as Exhibit C, the Proposal is not a proper subject for shareholder action under Delaware law and is properly excludable under Rule 14a-8(i)(1).

C. Rule 14a-8(f)(1) and Rule 14a-8(b)—Absence of proof of ownership.

In the event that the Staff does not agree that the Proposal may be excluded from the 2016 Proxy Materials pursuant to Rule 14a-8(i)(7) or 14a-8(i)(1), we note that we have advised the Proponent that he has failed to provide adequate proof of ownership to satisfy Rule 14a-8(b), which states that, in order to be eligible to submit a proposal for inclusion in a company's proxy statement, a proponent "must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year" prior to

submission of the proponent's proposal. If the proponent is not the record holder of the securities, the proponent must provide a "written statement from the 'record' holder" which verifies that, at the time of the proponent's submission, the proponent continuously held the securities for at least one year.

In this case, the Company's stock records did not indicate that the Proponent was the record owner of sufficient shares to satisfy the requirements of Rule 14a-8(b). In addition, to date the Company has not yet received proof that the Proponent has satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company. In the Proponent's initial communication to the Company in which he submitted the Proposal (*see* Exhibit A) and which was received by the Company on March 2, 2016, the Proponent failed to provide adequate proof of ownership. On March 14, 2016 (12 calendar days after it received the Proposal), ARIAD sent the Proponent a deficiency notice indicating that the Proponent had not provided adequate proof of ownership as required by Rule 14a-8(b) and requested that he provide such proof in a timely manner (*see* Exhibit B). The Company's letter with the deficiency notice was sent to the Proponent via Federal Express overnight delivery and was received by him on March 15, 2016. Under Rule 14a-8(f)(1), the Proponent has 14 days from the receipt of the deficiency notice to provide adequate proof of ownership. If the Proponent fails to provide such proof, the Proposal is properly excludable under Rule 14a-8(f)(1) and 14a-8(b). If the Company receives a timely response to the deficiency notice that cures the deficiency we will promptly inform of the Staff and withdraw our argument to exclude the Proposal pursuant to Rules 14a-8(b) and 14a-8(f).

III. Conclusion

Based on the foregoing, we hereby respectfully request that the Staff concur in our view that the Proposal may be properly excluded from ARIAD's 2016 Proxy Materials. If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that ARIAD may omit the Proposal from its 2016 Proxy Materials, please contact me at (212) 474-1458. I would appreciate your sending your response via e-mail to me at khallam@cravath.com as well as to ARIAD, attention of Thomas J. DesRosier, Executive Vice President, Chief Legal and Administrative Officer and Secretary, at Thomas.DesRosier@ariad.com.

Very truly yours,

/s/ O. Keith Hallam III
O. Keith Hallam III

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE Washington, DC 20549

VIA EMAIL: shareholderproposals@sec.gov

Encls.

Copy w/encls. to:

Thomas Z. Costas

FISMA & OMB MEMORANDUN M-07-16

VIA EMAIL: ***FISMA & OMB MEMORANDUN M-07-16***

VIA FEDERAL EXPRESS

Copy w/encls. to:

Thomas J. DesRosier, Esq.
Executive Vice President, Chief Legal
and Administrative Officer and Secretary
ARIAD Pharmaceuticals, Inc.
26 Landsdowne Street
Cambridge, MA 02139-4234

VIA EMAIL: Thomas.DesRosier@ariad.com

VIA FEDERAL EXPRESS

Exhibit A

Thomas Z. Costas
(Ariad shareholder)

FISMA & OMB MEMORANDUN M-07-16

ATTN: Corporate Secretary
ATTN: Thomas J. DesRosier, Esq. Executive Vice President, Chief Legal and Administrative Officer
Ariad Pharmaceuticals, Inc.
26 Landsdowne Street
Cambridge, MA 02139-4234

February 28, 2016

Re: Proxy Proposal

Dear Ariad:

I, Thomas Z. Costas, an Ariad Stockholder since 2008, with residence at ***FISMA & OMB MEMORANDUN M-07-16*** In compliance with current Ariad By- Laws, I provide this notice that I am making the following proposal to be included in the proxy for the Ariad 2016 Annual Shareholders Meeting. My record of Ariad common holdings is attached. If Ariad cannot confirm my ownership in its records, I will secure and provide brokerage statements. I have continuously held shares since 2008. I intend to hold such shares through the occurrence of the upcoming election.

Proposal

"Chm. Alexander Denner made extraordinary allegations in (his) Sarissa's February 19, 2015 13D filing that Board members have potentially breached their fiduciary responsibilities. It was written:

"In addition, the Reporting Persons are extremely concerned with the conduct of certain members of the Issuer's board, particularly with respect to compensation, governance and financial matters. For example, the Reporting Persons are especially disturbed by the decision to renew Harvey Berger's employment contract in October 2013 and, given the egregious terms of that employment agreement, urge the Issuer to immediately disclose to shareholders any discussions of the board and the compensation committee regarding the decision to renew this agreement. In this regard, the Reporting Persons may seek to compel such disclosure and may ultimately initiate court proceedings to seek to remove one or more directors for cause based on potential breaches of their fiduciary duties. "

The board subsequently has never denied Sarissa's allegations. They settled with Sarissa, and Dr. Denner cannot relate any information he has discovered except in court. This matter was extraordinary, not ordinary business of the board.

The board did not provide answers to my questions regarding this and other Board actions 1) to me at the 2015 AGM when asked prior to and in regard to Item to be voted 1, the reelection of former Board member Dr. Harvey Berger (not one Board member was in physical attendance at the Annual Shareholders meeting), 2) when asked over phone conference during that meeting, 3) in response to my subsequent detailed letter on the matter, and 4) when I was refused on the Q3 conference call (after being invited/encouraged during the Annual meeting to ask there by the CAO Tom DesRosier). I thought

my questions regarding the Sarissa matter important at the 2015 meeting as Dr. Berger was standing for election to the board with this allegation yet unaddressed.

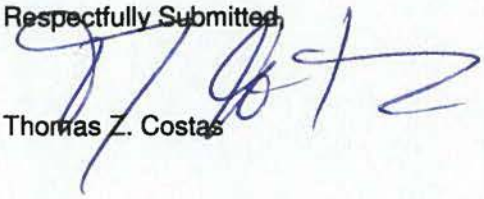
I propose the Board of Directors be compelled by shareholder vote to answer these questions:

-Were any of the actions of the type alleged against BoD members in the Denner/Sarissa February 19, 2015 13D SEC filing committed? Were such actions permitted under the Ariad Code of Conduct and Ethics?

- As CAO DesRosier stated at the AGM, 'speaking only on his own investigation' (not the BoDs, if any) that according to his investigation there 'was nothing to the allegations' and the extensive agreement with Sarissa and Dr. Berger's retirement 'were all unrelated', if his conclusions are true and the same as the board's, then why was the Agreement with Denner and Sarissa executed or necessary at all? If not true, conversely, why was Sarissa and Alex Denner not somehow investigated/sanctioned for alleging of his fellow board members that they committed serious and possibly criminal SEC violations that were eventually determined to not have occurred, allegations that clearly could damage the reputation of the CEO, and the effectiveness, ethics, propriety and veracity of the BoD, and perhaps even Ariad itself? Was there any substance whatsoever to the Denner/Sarissa claims? If so, what?"

497 words End of Proposal

Respectfully Submitted,



Thomas Z. Costas

Pages 16 through 18 redacted for the following reasons:
- -
FISMA & OMB MEMORANDUN M-07-16

Exhibit B

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GEORGE A. STEPHANAKIS
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KARIN A. DEMASI
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DAVID S. FINKELSTEIN

DAVID GREENWALD
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SPECIAL COUNSEL
SAMUEL C. BUTLER
GEORGE J. GILLESPIE, III

OF COUNSEL
MICHAEL L. SCHLER

March 14, 2016

Re: Proxy Proposal

Dear Mr. Costas:

I am writing on behalf of ARIAD Pharmaceuticals, Inc. (the "Company"), which received on March 2, 2016 via Federal Express your stockholder proposal submitted pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2016 Annual Meeting of Stockholders (the "Proposal").

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that stockholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the stockholder proposal was submitted. The Company's stock records do not indicate that you are the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof that you have satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company.

To remedy this defect, you must submit sufficient proof of your continuous ownership of the requisite number of Company shares for the one-year period preceding and including the date the Proposal was submitted to the Company. In accordance with SEC Staff Legal Bulletin No. 14G, we consider March 1, 2016 to be the date of submission of the Proposal, since it is the date the Proposal was mailed to us via Federal Express. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

(1) a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that you continuously held the requisite number of Company shares for the one-year period preceding and including March 1, 2016; or

(2) if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the requisite number of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the requisite number of Company shares for the one-year period.

If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC's participant list, which is available online.[1] In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

(1) If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the requisite number of Company shares for the one-year period preceding and including March 1, 2016.

(2) If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the requisite number of Company shares for the one-year period preceding and including March 1, 2016. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including March 1, 2016, the requisite number of Company shares were continuously held: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that your response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this

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[1] The participant list is available at:
http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx.

letter. Please address any response to Mr. Thomas J. DesRosier, Executive Vice President, Chief Legal and Administrative Officer and Secretary, 26 Landsdowne Street, Cambridge, Massachusetts 02139-4234. Alternatively, you may transmit any response by facsimile or email to Mr. DesRosier at (617) 494-8144 or Thomas.DesRosier@ariad.com, respectively.

If you have any questions with respect to the foregoing, please contact me at the address or phone number above. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin Nos. 14F and 14G.

Regards,

O. Keith Hallam III

Thomas Z. Costas

FISMA & OMB MEMORANDUN M-07-16

Encls.

Copy w/encls. to:

Thomas J. DesRosier, Esq.
Executive Vice President, Chief Legal
and Administrative Officer and Secretary
ARIAD Pharmaceuticals, Inc.
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SPECIAL COUNSEL
SAMUEL C. BUTLER
GEORGE J. GILLESPIE, III

OF COUNSEL
MICHAEL L. SCHLER

March 15, 2016

Re: Proxy Proposal

Dear Mr. Costas:

Enclosed are the copies of Rule 14a-8 and Staff Legal Bulletin Nos. 14F and 14G referenced in my letter dated March 14, 2016.

Regards,

O. Keith Hallam, III

Thomas Z. Costas

FISMA & OMB MEMORANDUN M-07-16

Encls.

Copy w/encls. to:

Thomas J. DesRosier, Esq.
Executive Vice President, Chief Legal
and Administrative Officer and Secretary
ARIAD Pharmaceuticals, Inc.
26 Landsdowne Street
Cambridge, MA 02139-4234

Title 17: Commodity and Securities Exchanges
PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

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§240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1:* What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a

company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections:* If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal:* If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented:* If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its

submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010]

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://tts.sec.gov/cgi-bin/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.

B. The types of brokers and banks that constitute "record" holders

under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.[1]

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.[2] Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.[3]

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.[4] The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.[5]

3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales

and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/~/media /Files/Downloads/client-center/DTC/alpha.ashx.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC

participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of

the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

> "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."[11]

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c).[12] If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.[13]

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.[16]

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for

companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

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[1] *See* Rule 14a-8(b).

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

[3] If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

[4] DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. *See* Proxy Mechanics Concept Release, at Section II.B.2.a.

[5] *See* Exchange Act Rule 17Ad-8.

[6] *See* Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

[8] *Techne Corp.* (Sept. 20, 1988).

[9] In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. *See* Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

[10] For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

[11] This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

[12] As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

[13] This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

[14] *See, e.g.*, Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

[15] Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

[16] Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

http://www.sec.gov/interps/legal/cfslb14f.htm

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://tts.sec.gov/cgi-bin/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D, SLB No. 14E and SLB No. 14F.

B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)...."

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.[1] By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.[2] If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

C. Manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was

submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters. For example, some companies' notices of defect make no mention of the gap in the period of ownership covered by the proponent's proof of ownership letter or other specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f).

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposals. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to

website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.[3]

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.[4]

1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company's proxy materials. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted,

provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company files its definitive proxy materials.

3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute "good cause" for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company's request that the 80-day requirement be waived.

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[1] An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

[2] Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

[3] Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

[4] A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

http://www.sec.gov/interps/legal/cfslb14g.htm

Exhibit C

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March 21, 2016

ARIAD Pharmaceuticals, Inc.
26 Landsdowne Street
Cambridge, MA 02139

Re: Stockholder Proposal Submitted by Thomas Z. Costas

Ladies and Gentlemen:

You have requested our opinion as to certain matters of Delaware law in connection with your request that the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") grant no-action relief to ARIAD Pharmaceuticals, Inc., a Delaware corporation ("ARIAD" or the "Company"), with respect to a stockholder proposal and a statement in support thereof (the "Proposal") submitted by Thomas Z. Costas (the "Proponent"). The Proposal, if adopted, would compel the board of directors of the Company (the "Board") to respond to certain questions submitted by the Proponent as part of the Proposal. The Proposal is more fully set forth in the attached Exhibit A.

In connection with your request for our opinion, we have reviewed the following documents, all of which were supplied by the Company or were obtained from publicly available records: (1) the Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware on January 11, 2016 (the "Certificate"); (2) the Amended and Restated Bylaws of the Company, as adopted on April 28, 2014 (the "Bylaws"); and (3) the Proposal.

With respect to the foregoing documents, we have assumed (i) the authenticity of all documents submitted to us as originals and the conformity with authentic originals of all documents submitted to us as copies or forms, and (ii) that the foregoing documents, in the forms submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinions as expressed herein. We have not reviewed any documents other than the documents listed above for purposes of rendering our opinion as expressed herein, and we assume that there exists no provision of any such other document that is inconsistent with our opinion expressed herein. Moreover, for purposes of rendering this opinion, we have conducted no independent factual investigation of our own, but have relied exclusively upon (i) the documents listed above, the statements and information set forth therein, and the additional matters related or assumed therein, all of which we have assumed to be true, complete, and accurate in all material respects, and (ii) the additional information and facts related herein, as to which we have been

advised by the Company, all of which we have assumed to be true, complete, and accurate in all material respects.

Based upon and subject to the foregoing, and upon such legal authorities as we have deemed relevant, and limited in all respects to matters of Delaware law, for the reasons set forth below, it is our opinion that the Proposal is not a proper subject for stockholder action under Delaware law.

The Proposal

The Proposal reads, in pertinent part, as follows:

> I propose the Board of Directors be compelled by shareholder vote to answer these questions:
>
> - Were any of the actions of the type alleged against BoD members in the Dennis/Sarissa February 19, 2015 13D SEC filing committed? Were such actions permitted under the Ariad Code of Conduct and Ethics?
>
> - As CAO DesRosier stated at the AGM, 'speaking only on his own investigation' (not the BoD, if any) that according to his investigation there 'was nothing in the allegations' and the extensive agreement with Sarissa and Dr. Berger's retirement 'were all unrelated', if his conclusions are true and the same as the board's, then why was the Agreement with Denner and Sarissa executed or necessary at all? If not true, conversely, why was Sarissa and Alex Denner not somehow investigated /sanctioned for alleging of his fellow board members that they committed serious and possibly criminal SEC violations that were eventually determined to not have occurred, allegations that clearly could damage the reputation of the CEO, and the effectiveness, ethics, propriety and veracity of the BoD, and perhaps even Ariad itself? Was there any substance whatsoever to the Denner/Sarissa claims? If so, what?

Discussion

The Proposal is not a proper subject for stockholder action because it would purport to require the Board to disclose information under circumstances in which disclosure is not required under Delaware law and thus would purport to require the Board to take actions in areas committed by statute and case law to the discretion of the Board. The Proposal is an attempt to micromanage the Board – and to impose the Proponent's judgment on the Board – with respect to Board decisions regarding what information should be disclosed to stockholders (if any), and when and how any such information should be conveyed. The Proposal is not phrased as a request or recommendation to the Board; rather, it proposes that the Board "be compelled by shareholder vote to answer" the questions set forth therein. If adopted, the Proposal would represent an

improper attempt by stockholders to compel the Board to act and to exercise management authority that is expressly reserved to the Board by the General Corporation Law of the State of Delaware (the "DGCL"). Section 141(a) of the DGCL provides the board of directors of a Delaware corporation, and not the stockholders, with the express statutory authority to manage the business and affairs of the corporation. 8 Del. C. § 141(a). Section 141(a) of the DGCL provides as follows:

> The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation. If any such provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the certificate of incorporation.

8 Del. C. § 141(a). Significantly, any variation from the mandate of Section 141(a) of the DGCL can only be as "otherwise provided in [the DGCL] or in [the corporation's] certificate of incorporation." 8 Del. C. § 141(a); see also Lehrman v. Cohen, 222 A.2d 800, 808 (Del. 1966). The Certificate does not empower anyone other than the Board to manage the business and affairs of the Company. Thus, the Board possesses the full and exclusive power and authority to manage the business and affairs of the Company.[1]

The Delaware Supreme Court has held that, under Delaware law, in the absence of a request for a stockholder vote or other action or the need for directors to correct prior voluntary disclosure that is misleading, directors of Delaware corporations are "not require[d] to provide shareholders with information concerning the finances or affairs of the corporation." Malone v. Brincat, 722 A.2d 5, 11 (Del. 1998). See also In re Wayport, Inc. Litig., 76 A.3d 296, 314-15 (Del. Ch. 2013) (describing the most common scenarios giving rise to a board of directors' duty to disclose information to stockholders); Bragger v. Budacz, 1994 WL 698609, at *5 (Del. Ch. Dec. 7, 1994) ("Since no shareholder action was sought by the [i]nformation [s]tatement a fiduciary obligation of full disclosure is not implicated."); Herd v. Major Realty Corp., 1990 WL 212307, at *12 n.2 (Del. Ch. Dec. 21, 1990) ("[T]he duty of candor requires disclosure of all material facts only in connection with a transaction on which shareholders are asked to vote.").[2] As the Delaware Court of Chancery explained in Raskin v. Birmingham Steel Corp.,

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[1] Consistent with the statutory delegation of authority, the Bylaws provide that "[e]xcept as otherwise provided in the Certificate of Incorporation, the business and affairs of the [Company] shall be managed by or under the direction of the Board." Bylaws at Article 3, Section 3.1.

[2] Even when the duty of disclosure is implicated, a board of directors is required to disclose to stockholders only information that is within its control and that is material. See, e.g., Malone, 722 A.2d at 12; Arnold v. Soc'y for Savings Bancorp, Inc., 650 A.2d 1270, 1277 (Del. 1994). Under Delaware law, a fact is "material" if there is a substantial likelihood that a reasonable stockholder would consider it important in deciding how to vote or whether to tender shares in a tender offer. See, e.g., Bershad v. Curtiss-Wright Corp., 535 A.2d 840, 846 (Del. 1987).

> ... [S]ince the company did not seek the vote of the shareholders, offer them an exchange, or otherwise seek any action from them, the only possible breach of candor claim would necessarily rest upon the existence of a duty to inform the market accurately of material developments. No Delaware case establishes such a duty to my knowledge and, in my opinion, no such duty exists. The state law duty of candor arises when the board elects to or has a duty to seek shareholder action; in that setting the board is under a duty to make shareholder action meaningful by supplying information relevant to the question presented. If the board does not seek shareholder action at a meeting, through consent, in a tender or exchange offer, or otherwise, it has, in my opinion, no distinctive state law duty to disclose material developments with respect to the company's business.

Raskin v. Birmingham Steel Corp., 1990 WL 193326, at *5 (Del. Ch. Dec. 4, 1990). While directors must fully and fairly disclose information when they voluntarily choose to make disclosure,[3] they have no affirmative obligation to disclose information absent the specific circumstances described above.

Thus, absent circumstances in which Delaware law requires directors to disclose material information regarding the business and affairs of a corporation – *i.e.*, a solicitation of stockholder votes or other stockholder action or the need to correct voluntary disclosures that are misleading – and putting aside certain disclosures that may be required under federal securities laws and/or applicable stock exchange rules and regulations, the decision as to whether, when and how to make disclosures to stockholders is a matter committed to the managerial authority of the board. Indeed, maintaining control over a corporation's non-public information and the disclosure (or non-disclosure) thereof is an important component of a board of directors' charge to manage a corporation's business and affairs. See, e.g., Malone, 722 A.2d at 12 ("The directors' duty to disclose all available material information in connection with a request for shareholder action must be balanced against its concomitant duty to protect the corporate enterprise, in particular, by keeping certain financial information confidential."); Stroud v. Grace, 606 A.2d 75, 85 (Del. 1992) (noting that, although "Delaware law imposes upon a board of directors the fiduciary duty to disclose fully and fairly all material facts within its control that would have a significant effect upon a stockholder vote ... [t]he board is not required to disclose all available information"; further observing, in the context of a disclosure claim stemming from a notice of special meeting of the stockholders of a private corporation called for the purpose of approving a charter amendment, that the board of directors was not obligated to disclose anything beyond what is required pursuant

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[3] See, e.g., Malone, 722 A.2d at 11; A.R. DeMarco Enterprises, Inc. v. Ocean Spray Cranberries, Inc., 2002 WL 31820970, at *4 (Del. Ch. Dec. 4, 2002) (rejecting motion to dismiss breach of fiduciary duty claims made in connection with allegedly misleading disclosures and noting that, "[s]hareholders are entitled to rely upon the truthfulness of all information disseminated to them by the directors they elect to manage the corporate enterprise[;] ... [e]ven if no duty of disclosure existed, once the board decided to provide information to the shareholders, it had to do so honestly and in good faith."); Jackson Nat. Life Ins. Co. v. Kennedy, 741 A.2d 377, 381 (Del. Ch. 1999) ("[W]hen the directors of a Delaware corporation voluntarily communicate with stockholders, they must do so with honesty and fairness ....").

to Sections 222 and 242 of the DGCL in the absence of a proxy solicitation); Kerbawy v. McDonnell, 2015 WL 4929198, at *22 (Del. Ch. Aug. 18, 2015) ("[i]nherent in the duty of loyalty is an obligation to protect the corporation by maintaining the confidentiality of its sensitive information").

Unless expressly provided in the certificate of incorporation, stockholders cannot usurp or attempt to exercise the managerial prerogative of the board of directors. The Delaware Supreme Court has described the grant of managerial authority to directors expressed in Section 141(a) of the DGCL as a "cardinal precept of the [DGCL] ...." Aronson v. Lewis, 473 A.2d 805, 811 (Del. 1984); see also Maldonado v. Flynn, 413 A.2d 1251, 1255 (Del. Ch. 1980), rev'd on other grounds sub nom., Zapata Corp. v. Maldonado, 430 A.2d 779 (Del. 1981) ("[T]he board of directors of a corporation, as the repository of the power of corporate governance, is empowered to make the business decisions of the corporation. The directors, not the stockholders, are the managers of the business affairs of the corporation."); see also McMullin v. Beran, 765 A.2d 910, 916 (Del. 2000) (stating that "[o]ne of the fundamental principles of the [DGCL] is that the business affairs of a corporation are managed by or under the direction of its board of directors"); Quickturn Design Sys., Inc. v. Shapiro, 721 A.2d 1281, 1291 (Del. 1998) (stating that "[o]ne of the most basic tenets of Delaware corporate law is that the board of directors has the ultimate responsibility for managing the business and affairs of a corporation"). The Delaware Supreme Court has explained that "[n]o such broad management power is statutorily allocated to the shareholders" and that it is "well-established" that stockholders "may not directly manage the business and affairs of the corporation, at least without specific authorization in either the statute or the certificate of incorporation." CA, Inc. v. AFSCME Emps. Pension Plan, 953 A.2d 227, 232 (Del. 2008); see also Gorman v. Salamone, 2015 WL 4719681, at *5 (Del. Ch. July 31, 2015) (invalidating a bylaw authorizing stockholders to remove officers on the basis that the bylaw usurped the board of directors' statutory authority to manage the corporation, relying, in part, on the Supreme Court's decision in CA, Inc., 953 A.2d 227). Accordingly, stockholders do not have the power to act to require directors to take, or restrict them from taking, actions involving matters that form part of the board's broad managerial authority. See, e.g., CA, Inc., 953 A.2d at 239 (holding that a proposed stockholder-adopted bylaw that would have required the board of directors to reimburse stockholders' expenses in connection with nominating candidates in a contested election of directors was invalid because it would "prevent the directors from exercising their full managerial power in circumstances where their fiduciary duties would otherwise require them to deny reimbursement to a dissident slate."); Oberly v. Kirby, 592 A.2d 445, 458 (Del. 1991) ("Beyond the power to vote for directors and to participate in annual meetings, shareholders have limited direct authority."); Abercrombie v. Davies, 123 A.2d 893 (Del. Ch. 1956) (holding that a stockholders' agreement was invalid because it had the effect of restricting in a substantial way the freedom of directors to make decisions on matters of management policy and, as a result, violated the duty of each director to exercise his or her own best judgment on matters coming before the board), rev'd on other grounds, 130 A.2d 338 (Del. 1957).

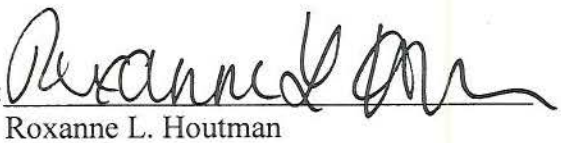
If implemented, the Proposal would require the Board to disclose certain information to one or more of the Company's stockholders, irrespective of whether the Board determines that doing so (in the first place or in the manner set forth in the Proposal) is in the best interests of the Company and its stockholders. As indicated above, the Board has an obligation to disclose information pertaining to the Company's business or affairs only under a limited set of circumstances prescribed by statute and case law. The Proponent's request for answers to the

questions specified in the Proposal does not arise under any of such circumstances, and the Board is not obligated under Delaware law to provide disclosure in response thereto. Moreover, the power to manage the business and affairs of the Company, including whether to disclose to stockholders non-public information regarding the affairs of the Company and the substance, timing, and method of delivering any such disclosure, is expressly and exclusively reserved to the Board. The Proposal, if adopted, intrudes upon the authority of the Board to manage the Company's business and to conduct its affairs in the manner the Board determines is in the best interests of the Company and its stockholders. By requiring the disclosure of the information specified in the Proposal, in the manner set forth therein, the Proponent is impermissibly imposing his own judgment on the Board in respect of matters over which the Board possesses the exclusive authority. For such reasons, the Proposal is not a proper subject for stockholder action.

This opinion is rendered solely for your benefit in connection with the foregoing and may not be relied upon by any other person or entity, or be furnished or quoted to any person or entity for any purpose, without our prior written consent; provided that this opinion may be furnished to or filed with the Commission in connection with your no-action request relating to the Proposal.

Very truly yours,

POTTER ANDERSON & CORROON LLP

By: 
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