



DIVISION OF  
CORPORATION FINANCE

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

March 1, 2019

Brian D. Miller  
Latham & Watkins LLP  
brian.miller@lw.com

Re: PDL BioPharma, Inc.  
Incoming letter dated January 14, 2019

Dear Mr. Miller:

This letter is in response to your correspondence dated January 14, 2019 and February 21, 2019 concerning the shareholder proposal (the "Proposal") submitted to PDL BioPharma, Inc. (the "Company") by Kenneth Steiner (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated February 3, 2019. 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/corpfina/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,

M. Hughes Bates  
Special Counsel

Enclosure

cc: John Chevedden  
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March 1, 2019

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: PDL BioPharma, Inc.  
Incoming letter dated January 14, 2019

The Proposal relates to board declassification.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(f). We note that the Proponent appears to have failed to supply, within 14 days of receipt of the Company's request, documentary support sufficiently evidencing that he satisfied the minimum ownership requirement for the one-year period as required by rule 14-8(b). Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f).

Sincerely,

Kasey L. Robinson  
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 matters 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 proposal 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 and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate 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 adversarial procedure.

It is important to note that the staff'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 shareholder 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 company's management omit the proposal from the company's proxy materials.

Brian D. Miller  
Direct Dial: 202-637-2332  
brian.miller@lw.com

555 Eleventh Street, N.W., Suite 1000  
Washington, D.C. 20004-1304  
Tel: +1.202.637.2200 Fax: +1.202.637.2201  
www.lw.com

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February 21, 2019

**VIA ELECTRONIC MAIL**

Office of the Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: **PDL BioPharma, Inc.**  
**Stockholder Proposal of Kenneth Steiner**  
**Securities Exchange Act of 1934 — Rule 14a-8**

Ladies and Gentlemen:

Reference is made to the letter, dated January 11, 2019 (the “No-Action Request”), submitted to the staff of the Division of Corporation Finance (the “Staff”) on behalf of PDL BioPharma, Inc. (the “Company”) relating to the stockholder proposal and supporting statement (the “Proposal”) from John Chevedden (the “Representative”) on behalf of Kenneth Steiner (the “Proponent”) for inclusion in the proxy materials for the Company’s 2019 annual meeting of stockholders (the “Proxy Materials”). Further reference is made to the letter, dated February 3, 2019, submitted by the Representative on behalf of the Proponent (the “Representative’s Letter”).

The Representative’s Letter states that the Company “did not provide any evidence that a letter requesting a broker letter was delivered to anyone.” We viewed such evidence as unnecessary because on November 20, 2018, the Representative actually responded to the Company’s letter of November 16, 2018 requesting a broker’s letter (the “Deficiency Letter”) with the aforementioned broker’s letter, dated November 20, 2018. While providing evidence of the Company’s request for a broker’s letter is unnecessary in light of the Representative’s response to the Deficiency Letter, it is provided here for the sake of completeness.

Attached hereto as **Exhibit A** is a copy of the email, dated November 16, 2018, addressed to the Representative and delivering the Deficiency Letter. Attached hereto as **Exhibit B** is a copy of the proof of delivery from FedEx verifying delivery of a supplemental hard copy of the

Deficiency Letter to the Representative on November 19, 2018.<sup>1</sup> And attached hereto as **Exhibit C** is the broker's letter, dated November 20, 2018, which was delivered by the Representative to the Company on that date.

With this documentation and the documentation provided in the No-Action Request, it is clear that the Company provided timely notice to the Representative of the procedural defect and that the Representative responded to the Deficiency Letter. The Representative's response did not cure the defect because it did not establish that the Proponent had held the requisite \$2,000 in market value, or 1%, of the Company's securities for at least one year by the date the Proposal was submitted, as requested in the Deficiency Letter. Because the Representative's response did not cure the procedural defect, the Proposal may be properly excluded from the Proxy Materials.

It is well established that where an issuer provides proper notice of a procedural defect to a Proponent and the Proponent's response fails to cure the defect, the issuer is not required to provide any further opportunities for the Proponent to cure. In fact, Section C.6. of Staff Legal Bulletin 14 states that a company may exclude a proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) if "the shareholder timely responds but does not cure the eligibility or procedural defect(s)." *See, e.g., TheStreet, Inc.* (avail. Mar. 1, 2016) (concurring with the exclusion of a proposal where a proponent's timely response to a deficiency notice failed to sufficiently establish the required share ownership, and the company did not send a second deficiency notice); *American Airlines Group, Inc.* (avail. Feb. 20, 2015) (same); *Coca-Cola Co.* (avail. Dec. 16, 2014) (same); *Mondelez Int'l Inc.* (avail. Jan. 15, 2013) (same); *Johnson & Johnson* (avail. Jan. 8, 2013) (same); *H&R Block, Inc.* (avail. May 18, 2012) (same); *Comcast Corp.* (avail. Mar. 26, 2012) (same); *The Boeing Co.* (avail. Jan. 19, 2012) (same); *Time Warner Inc.* (avail. Feb. 19, 2009) (same); *Alcoa Inc.* (avail. Feb. 18, 2009) (same). Thus, because the Company timely delivered the Deficiency Letter to the Representative and the Representative's response of November 20, 2018 failed to cure the defect cited in the Deficiency Letter within 14 days of receipt of the Company's request, the Proposal was not properly submitted and may be excluded from the Company's Proxy Materials.

The Representative's Letter states that the Proponent "owns more than 300 shares." If that is the case, the broker's letter delivered on November 20, 2018 should have established that claim. Yet the broker's letter received in response to the Deficiency Letter did not do so. The Proponent never provided any evidence to the Company that the Proponent has held at least \$2,000 in market value or 1% of the Company's securities for at least one year by the date the Proposal was submitted. The Proponent's deadline for responding to the Deficiency Letter with any such proof was November 30, 2018, 14 calendar days from the date the Representative received the Deficiency Letter. Any proof delivered after that date would be untimely.

Based upon the analysis in the No-Action Request in addition to the foregoing facts, the Company respectfully reiterates its request for confirmation that the Staff will not recommend

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<sup>1</sup> The No-Action Request incorrectly stated this was delivered on November 18, 2018, which was a Sunday. The deliveries were in fact made on Monday, November 19, 2018 as indicated in Exhibit B.

**LATHAM & WATKINS** LLP

enforcement action to the Securities and Exchange Commission if the Proposal is excluded from the Company's Proxy Materials pursuant to Rule 14a-8(f), as the Proponent has not demonstrated that he has continuously held at least \$2,000 in market value, or 1%, of the Company's securities for at least one year by the date the Proposal was submitted, as required by Rule 14a-8(b).

\* \* \* \*

If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, the Company requests that the Proponent and the Representative copy the undersigned on any response it may choose to make to the Staff, pursuant to Rule 14a-8(k).

Please contact the undersigned at (202) 637-2332 to discuss any questions you may have regarding this matter.

Very truly yours,



Brian D. Miller  
of LATHAM & WATKINS LLP

Enclosures

cc: Kenneth Steiner  
John Chevedden  
Nathan Kryszak, PDL BioPharma, Inc.

**Exhibit A**

**Email of November 16, 2018  
Delivering the Deficiency Letter**

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**From:** Steele, Jacob (SD)  
**Sent:** Friday, November 16, 2018 4:51 PM  
**To:** \*\*\*  
**Subject:** PDL BioPharma, Inc. - 14a-8 Deficiency Letter  
**Attachments:** PDL BioPharma, Inc. - 14a-8 Stockholder Proposal.pdf

Mr. Chevedden,

Attached please find correspondence relating to the stockholder proposal submitted to PDL BioPharma, Inc. by Kenneth Steiner.

Best regards,

Jacob

**Jacob D. Steele**

**LATHAM & WATKINS LLP**  
12670 High Bluff Drive  
San Diego, CA 92130  
Direct Dial: +1.858.523.3950  
Email: [jacob.steele@lw.com](mailto:jacob.steele@lw.com)  
<http://www.lw.com>

Jacob Steele  
Direct Dial: (858) 523-3950  
jacob.steele@lw.com

12670 High Bluff Drive  
San Diego, California 92130  
Tel: +1.858.523.5400 Fax: +1.858.523.5450  
www.lw.com

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November 16, 2018

**VIA FEDEX AND ELECTRONIC MAIL**

John Chevedden

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File No. 058051-0006

Re: Stockholder Proposal

Dear Mr. Chevedden,

On November 6, 2018, PDL BioPharma, Inc. (the “Company”) received correspondence from Kenneth Steiner (the “Proponent”) submitting a stockholder proposal (the “Proposal”) for inclusion in the Company’s proxy statement for its next annual meeting of stockholders. The correspondence indicates that the Proponent intended for the Proposal to meet the requirements of Rule 14a-8 of the Securities Exchange Act of 1934, as amended (“Rule 14a-8”), including the continuous ownership of the required share value for at least one year by the date the Proponent submitted the Proposal, which is November 6, 2018, and continuous ownership through the date of the stockholder meeting. This notice is to inform you that we have not received verification of the Proponent’s stock ownership, and thus the Proponent has not demonstrated that he is eligible to submit the Proposal under Rule 14a-8.

In order to establish the Proponent’s eligibility to submit the Proposal under Rule 14a-8, the Proponent is required to provide the Company with documentation regarding his ownership of Company securities, or the Proponent must direct his broker to send such documentation to the Company. The documentation must demonstrate that the Proponent has continuously held at least \$2,000 in market value, or 1%, of the Company’s securities entitled to be voted at the meeting for at least one year preceding and including the date the Proponent submitted the Proposal, which is November 6, 2018. Rule 14a-8(b) provides that the Proponent may prove his eligibility to the Company in two ways. The Proponent may either submit:

- a written statement from the “record” holder of the Proponent’s securities (usually a broker or bank) verifying that, at the time the Proponent submitted the Proposal, which was November 6, 2018, the Proponent continuously held the Company’s securities for at least one year; or

- a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the shares as of or before the date on which the one-year eligibility period begins.

To help stockholders comply with the requirement to prove ownership by providing a written statement from the "record" holder of the shares, the staff of the SEC's Division of Corporation Finance (the "SEC Staff") published Staff Legal Bulletin No. 14F ("SLB 14F"). In SLB 14F, the SEC Staff stated that only brokers or banks that are Depository Trust Company ("DTC") participants will be viewed as "record" holders for the purposes of Rule 14a-8. Thus, stockholders must obtain the required written statement from the DTC participant through which their shares are held.

If the Proponent is not certain whether his broker or bank is a DTC participant, he may check the DTC's participant list, which is currently available on the Internet at:

<http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>

If the Proponent's broker or bank is not on DTC's participant list, he will need to obtain proof of ownership from the DTC participant through which his securities are held. The Proponent should be able to find out who the DTC participant is by asking his broker or bank. If the DTC participant knows of the holdings of the Proponent's broker or bank, but does not know the Proponent's holdings, the Proponent may satisfy the proof of ownership requirement 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 by the Proponent for at least one year – with one statement from the Proponent's broker or bank confirming the Proponent's ownership, and the other statement from the DTC participant confirming the broker or bank's ownership. Please see the enclosed copy of SLB 14F for further information.

Please note that the documentation must establish the Proponent's ownership of the required share value for at least one year by the date he submitted the Proposal. This period covers the entire one-year period preceding and including November 6, 2018, the date the Proposal was submitted.

In order for the Proposal to be properly submitted, the Proponent must provide the Company with the proper verification of his stock ownership, as described above. Such verification of stock ownership must be postmarked or transmitted no later than 14 calendar days from the date you receive this notice. For your information, we have attached a copy of Rule 14a-8 regarding stockholder proposals.

Please note that the Company has made no inquiry as to whether or not the Proposal, if properly submitted, may be excluded pursuant to Rule 14a-8(i) or for any other reason. The Company will make such a determination once the Proposal has been properly submitted.

Sincerely,



Jacob Steele  
of LATHAM & WATKINS LLP

Enclosures

cc: Kenneth Steiner  
Nathan Kryszak, PDL BioPharma, Inc.  
Brian D. Miller, Latham & Watkins LLP













**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](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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

## **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.<sup>4</sup> 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.<sup>5</sup>

## **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.<sup>6</sup> 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<sup>2</sup> 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,<sup>8</sup> 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/downloads/membership/directories/dtc/alpha.pdf>.

*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.<sup>9</sup>

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).<sup>10</sup> 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]."<sup>11</sup>

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).<sup>12</sup> 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.<sup>13</sup>

**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,<sup>14</sup> 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.<sup>15</sup>

**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.<sup>16</sup>

#### **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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<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> 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.").

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> See Exchange Act Rule 17Ad-8.

<sup>6</sup> See Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] (“Net Capital Rule Release”), at Section II.C.

<sup>7</sup> 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.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

<sup>9</sup> 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.

<sup>10</sup> 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.

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

<sup>12</sup> 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.

<sup>13</sup> 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.

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

<sup>15</sup> 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.

<sup>16</sup> 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/cfs1b14f.htm>

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[Home](#) | [Previous Page](#)

Modified: 10/18/2011

**Exhibit B**

**Proof of Delivery of the Deficiency Letter via FedEx on November 19, 2018**

**From:** TrackingUpdates@fedex.com  
**Sent:** Monday, November 19, 2018 8:52 AM  
**To:** Beebe, Patricia (SD)  
**Subject:** FedEx Shipment \*\*\* Delivered

## Your package has been delivered

Tracking # \*\*\*

Ship date: <b>Fri, 11/16/2018</b>		Delivery date: <b>Mon, 11/19/2018 8:50 am</b>
<b>Jacob Steele</b> Latham & Watkins LLP San Diego, CA 92130 US	<b>Delivered</b>	<b>John Chevedden</b> *** US



### Personalized Message

PSShip eMail Notification

### Shipment Facts

Our records indicate that the following package has been delivered.

<b>Tracking number:</b>	***
<b>Status:</b>	Delivered: 11/19/2018 08:50 AM Signed for By: Signature not required
<b>Reference:</b>	***
<b>Signed for by:</b>	Signature not required
<b>Delivery location:</b>	Redondo Beach, CA
<b>Delivered to:</b>	Residence
<b>Service type:</b>	FedEx Priority Overnight®
<b>Packaging type:</b>	FedEx® Envelope
<b>Number of pieces:</b>	1
<b>Weight:</b>	0.50 lb.
<b>Special handling/Services:</b>	No Signature Required Deliver Weekday Residential Delivery

**Standard transit:**

11/19/2018 by 10:30 am

---

**This tracking update has been requested by:**

**Company name:** Latham & Watkins LLP

**Name:** Jacob Steele

**Email:** Jacob.Steele@lw.com

 Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 10:51 AM CST on 11/19/2018.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

This tracking update has been sent to you by FedEx on behalf of the Requestor Jacob.Steele@lw.com. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update.

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

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Thank you for your business.

**From:** TrackingUpdates@fedex.com  
**Sent:** Monday, November 19, 2018 6:40 AM  
**To:** Beebe, Patricia (SD)  
**Subject:** FedEx Shipment \*\*\* Delivered

## Your package has been delivered

Tracking # \*\*\*

Ship date: <b>Fri, 11/16/2018</b>		Delivery date: <b>Mon, 11/19/2018 9:32 am</b>
<b>Jacob Steele</b> Latham & Watkins LLP San Diego, CA 92130 US	<b>Delivered</b>	<b>Kenneth Steiner</b> *** US

### Personalized Message

PSShip eMail Notification

### Shipment Facts

Our records indicate that the following package has been delivered.

<b>Tracking number:</b>	***
<b>Status:</b>	Delivered: 11/19/2018 09:32 AM Signed for By: Signature not required
<b>Reference:</b>	***
<b>Signed for by:</b>	Signature not required
<b>Delivery location:</b>	Great Neck, NY
<b>Delivered to:</b>	Residence
<b>Service type:</b>	FedEx Priority Overnight®
<b>Packaging type:</b>	FedEx® Envelope
<b>Number of pieces:</b>	1
<b>Weight:</b>	0.50 lb.
<b>Special handling/Services:</b>	No Signature Required Deliver Weekday Residential Delivery



**Standard transit:**

11/19/2018 by 10:30 am

---

**This tracking update has been requested by:**

**Company name:** Latham & Watkins LLP

**Name:** Jacob Steele

**Email:** Jacob.Steele@lw.com

 Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 8:39 AM CST on 11/19/2018.

All weights are estimated.

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Thank you for your business.

**Exhibit C**

**TD Ameritrade Letter Received by the Company on November 20, 2018  
in Response to the Deficiency Letter**



**Ameritrade**

11/20/2018

Kenneth Steiner

\*\*\*

Re: Your TD Ameritrade Account Ending in \*\*\* in TD Ameritrade Clearing Inc DTC #0188

Dear Kenneth Steiner,

Thank you for allowing me to assist you today. As you requested, this letter confirms that, as of close of business on November 19, 2018, you have continuously held no less than 300 shares of each of the following stocks in the above referenced account since October 1, 2017

PDL BioPharma, Inc. (PDLI)  
Ladenburg Thalmann Financial Services, Inc. (LTS)  
Xerox Corporation (XRX)  
TheStreet, Inc. (TST)  
Bank of America Corporation (BAC)  
The McLatchy Company (MNI)  
AT&T, Inc. (T)  
American International Group, Inc. (AIG)  
Alcoa Corporation (AA)  
Citigroup (C)

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

Matt Beckman  
Resource Specialist  
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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February 3, 2019

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

**# 1 Rule 14a-8 Proposal**  
**PDL BioPharma, Inc. (PDLI)**  
**Elect Each Director Annually**  
**Kenneth Steiner**

Ladies and Gentlemen:

This is in regard to the January 14, 2019 no-action request.

Mr. Kenneth Steiner owns more than 300 shares. The company did not provide any evidence that a letter requesting a broker letter was delivered to anyone.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,



John Chevedden

cc: Kenneth Steiner

Nathan Kryszak <[nathan.kryszak@pdl.co](mailto:nathan.kryszak@pdl.co)>

Brian D. Miller  
Direct Dial: 202-637-2332  
brian.miller@lw.com

555 Eleventh Street, N.W., Suite 1000  
Washington, D.C. 20004-1304  
Tel: +1.202.637.2200 Fax: +1.202.637.2201  
www.lw.com

## LATHAM & WATKINS LLP

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Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Seoul
Houston	Shanghai
London	Silicon Valley
Los Angeles	Singapore
Madrid	Tokyo
Milan	Washington, D.C.

January 14, 2019

### VIA ELECTRONIC MAIL

Office of the Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: **PDL BioPharma, Inc.**  
**Stockholder Proposal of Kenneth Steiner**  
**Securities Exchange Act of 1934 — Rule 14a-8**

Ladies and Gentlemen:

This letter is submitted on behalf of PDL BioPharma, Inc. (the “Company”) pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The Company has received a stockholder proposal and supporting statement (the “Proposal”) from John Chevedden (the “Representative”) on behalf of Kenneth Steiner (the “Proponent”) for inclusion in the proxy materials for the Company’s 2019 annual meeting of stockholders (the “Proxy Materials”).

The Company hereby advises the staff of the Division of Corporation Finance (the “Staff”) that it intends to exclude the Proposal from its 2019 Proxy Materials. The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the “Commission”) if the Company excludes the Proposal pursuant to Rule 14a-8(f), as the Proponent has not demonstrated that he has continuously held at least \$2,000 in market value, or 1%, of the Company’s securities for at least one year by the date the Proponent submitted the Proposal, as required by Rule 14a-8(b).

By copy of this letter, we are advising the Proponent of the Company’s intention to exclude the Proposal. In accordance with Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008), we are submitting by electronic mail (i) this letter, which sets forth our reasons for excluding the Proposal; and (ii) the Proponent’s letter submitting the Proposal.

Pursuant to Rule 14a-8(j), we are submitting this letter not less than 80 days before the Company intends to file its Proxy Materials.

## **I. Background.**

On November 6, 2018, the Company received the Proposal, which is attached to this letter as **Exhibit A**. The cover letter accompanying the Proposal stated that the Proponent “will meet Rule 14a-8 requirements including the continuous ownership of the required stock value,” however verification of the Proponent’s stock ownership was not submitted with the Proposal. The cover letter also instructed the Company to “direct all future communications regarding [the] [R]ule 14a-8 proposal” to the Representative.

On November 16, 2018, after confirming that the Proponent was not a stockholder of record of the Company’s common stock, the Company sent a letter to the Proponent and the Representative acknowledging receipt of the Proposal and notifying the Proponent and the Representative that the Proponent had failed to include with the Proposal the required proof of beneficial ownership of the Company’s common stock (the “Deficiency Letter”). The Deficiency Letter (attached hereto as **Exhibit B**) requested that the Proponent provide the Company with documentation regarding his ownership of Company securities and specifically explained:

- the ownership requirements of Rule 14a-8(b);
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b); and
- that the Proponent’s response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Representative received the Deficiency Letter.

Enclosed with the Deficiency Letter was a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F. The Deficiency Letter was delivered to the Representative via email on November 16, 2018 and delivered via FedEx to the Proponent and the Representative on November 18, 2018.

On November 20, 2018, the Company received an email from the Representative including correspondence from TD Ameritrade (the “TD Ameritrade Letter”), purportedly verifying the Proponent’s eligibility to submit the Proposal. The TD Ameritrade Letter (attached hereto as **Exhibit C**) states that the Proponent, Mr. Kenneth Steiner, has since October 1, 2017 “continuously held no less than 300 shares of . . . PDL BioPharma, Inc. (PDLI).”

The Proponent’s deadline for responding to the Deficiency Letter was November 30, 2018, which is 14 calendar days from November 16, 2018, the date the Representative received the Deficiency Letter. As of the date of this letter, the Company has not received any additional correspondence from the Proponent or the Representative.

## **II. Basis for Exclusion.**

Rule 14a-8(f) provides that a company may exclude a stockholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required

time. Specifically, Rule 14a-8(f) provides that (i) within 14 days of receiving the proposal, the company must notify the proponent in writing of any procedural or eligibility deficiencies and provide the proponent with the timeframe for the proponent's response and (ii) the proponent must respond to the company and correct such deficiency within 14 days from the date the proponent received the company's notification.

The Company satisfied its obligation under Rule 14a-8(f) by sending the Deficiency Letter to the Proponent and the Representative ten days after receipt of the Proposal, stating that the Proponent had not met the eligibility requirements of Rule 14a-8(b) and requesting verification of the Proponent's sufficient stock ownership for at least one year by the date the Proponent submitted the Proposal. The Deficiency Letter clearly informed the Proponent and the Representative of the eligibility requirements of Rule 14a-8(b), how to cure the eligibility deficiency and the need to respond to the Company to cure the deficiency within 14 days from the receipt of the Deficiency Letter.

As discussed below, the Proponent failed to provide timely documentary evidence of his eligibility to submit a stockholder proposal in response to the Company's proper and timely Deficiency Letter. The TD Ameritrade Letter indicated that the Proponent had held \$811.50 in market value of the Company's securities for approximately thirteen months as of the date the Proposal was submitted. Thus, the TD Ameritrade Letter failed to establish that the Proponent satisfied the minimum ownership requirements for the requisite one-year period. The Company has received no further correspondence from the Proponent or the Representative regarding the Proponent's proof of stock ownership. Accordingly, the Company intends to exclude the Proposal pursuant to Rule 14a-8(f) because the Proponent failed to supply, within 14 days of receipt of the Deficiency Letter, documentary support sufficiently evidencing that he satisfied the minimum ownership requirement for the one-year period as required by Rule 14a-8(b).

Rule 14a-8(b) provides that, in order to be eligible to submit a proposal, a stockholder 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 [company's meeting of stockholders]* for at least one year by the date [the stockholder] submit[ted] the proposal." (Emphasis added). In Staff Legal Bulletin No. 14, the Staff stated that to determine whether a stockholder satisfied the minimum stock ownership requirement, the Staff looks "at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at \$2,000 or greater, based on the average of the bid and ask prices."

During the 60 calendar days preceding and including November 6, 2018, the date on which the Proposal was submitted, the highest average of the bid and ask prices was \$2.705 on October 3, 2018. The TD Ameritrade Letter confirmed that the Proponent "continuously held no less than 300 shares of . . . PDL BioPharma, Inc. (PDLI)." Multiplying the highest average of the bid and ask prices by the number of shares stated as held by the Proponent in the TD Ameritrade Letter, the market value of the Proponent's securities is \$811.50, which does not meet the \$2,000 minimum value required by Rule 14a-8(b). In addition, as stated in the Company's Form 10-Q for the quarterly period ended September 30, 2018, as of October 30, 2018 there were 145,976,212 shares of the Company's common stock outstanding. The 300 shares held by the Proponent represent less than 1% of the Company's securities entitled to be voted at the next

annual meeting of stockholders. Accordingly, the Proponent has not demonstrated his continuous ownership of at least \$2,000 in market value, or 1%, of the Company's securities.

The Staff has consistently concurred in the exclusion of Proposals under Rule 14a-8(f) where the proponent has failed to provide satisfactory evidence of continuous ownership of at least \$2,000 in market value, or 1%, of the company's securities, as required by Rule 14a-8(b). *See, e.g., Allegheny Technologies Inc.* (avail. Feb. 27, 2018) (concurring with the exclusion of a proposal where the proponent held 70 shares and the market value of these shares was not at least \$2,000); *QEP Resources, Inc.* (avail Dec. 27, 2017) (concurring with the exclusion of a proposal where the proponent held 200 shares and the market value of these shares was \$1,854.00); *American Airlines Group Inc.* (avail. Feb. 20, 2015) (concurring with the exclusion of a proposal where the proponent held 35 shares and the market value of these shares was 1,800.23); *Coca-Cola Co.* (avail. Dec. 16, 2014) (concurring with the exclusion of a proposal where the proponent held 40 shares and the market value of these shares was \$1,794.80); *PulteGroup, Inc.* (avail. Jan. 6, 2012) (concurring with the exclusion of a proposal where the proponent held 246 shares and the market value of these shares was \$1,552.26).

Consistent with the precedent cited above, the proof of beneficial ownership provided by the Proponent does not demonstrate that the Proponent has owned at least \$2,000 in market value, or 1%, of the Company's securities. Accordingly, the Company intends to exclude the Proposal under Rule 14a-8(f), because the Proponent has not demonstrated that he is eligible to submit the Proposal under Rule 14a-8(b).

### **III. Conclusion.**

Based upon the foregoing analysis, the Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Commission if the Proposal is excluded from the Company's Proxy Materials pursuant to Rule 14a-8(f), as the Proponent has not demonstrated that he has continuously held at least \$2,000 in market value, or 1%, of the Company's securities for at least one year by the date the Proposal was submitted, as required by Rule 14a-8(b).

\* \* \* \*

If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, the Company requests that the Proponent copy the undersigned on any response it may choose to make to the Staff, pursuant to Rule 14a-8(k).

**LATHAM & WATKINS** LLP

Please contact the undersigned at (202) 637-2332 to discuss any questions you may have regarding this matter.

Very truly yours,

A handwritten signature in black ink that reads "Brian D. Miller". The signature is written in a cursive style with a large, prominent "B" and "M".

Brian D. Miller  
of LATHAM & WATKINS LLP

Enclosures

cc: Kenneth Steiner  
John Chevedden  
Nathan Kryszak, PDL BioPharma, Inc.

**Exhibit A**

**Proposal**

Kenneth Steiner

\*\*\*

Mr. Christopher Stone  
PDL BioPharma, Inc. (PDLI)  
932 Southwood Boulevard  
Incline Village, NV 89451  
PH: 775-832-8500

Dear Mr. Stone,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

\*\*\*

at:

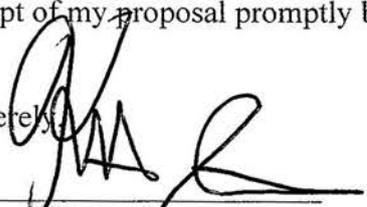
\*\*\*

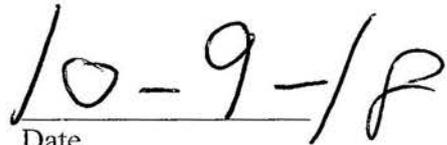
to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to

\*\*\*

Sincerely,

  
\_\_\_\_\_  
Kenneth Steiner

  
\_\_\_\_\_  
Date

[PDLI: Rule 14a-8 Proposal, November 6, 2018]  
[This line and any line above it – *Not* for publication.]

**Proposal [4] – Elect Each Director Annually**

RESOLVED, shareholders ask that our Company take all the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year for a one-year term.

Arthur Levitt, former Chairman of the Securities and Exchange Commission said, “In my view it’s best for the investor if the entire board is elected once a year. Without annual election of each director shareholders have far less control over who represents them.”

A total of 79 S&P 500 and Fortune 500 companies, worth more than \$1 Trillion dollars, also adopted this important proposal topic since 2012. Annual elections are widely viewed as a corporate governance best practice. Annual election of each director could make directors more accountable, and thereby contribute to improved performance and increased company value.

Please vote yes:

**Elect Each Director Annually – Proposal [4]**

[The above line – *Is* for publication.]

Kenneth Steiner,

\*\*\*

sponsors this proposal.

Notes:

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

\*\*\*

**Exhibit B**  
**Deficiency Letter**

Jacob Steele  
Direct Dial: (858) 523-3950  
jacob.steele@lw.com

12670 High Bluff Drive  
San Diego, California 92130  
Tel: +1.858.523.5400 Fax: +1.858.523.5450  
www.lw.com

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November 16, 2018

**VIA FEDEX AND ELECTRONIC MAIL**

John Chevedden

\*\*\*

File No. 058051-0006

Re: Stockholder Proposal

Dear Mr. Chevedden,

On November 6, 2018, PDL BioPharma, Inc. (the “Company”) received correspondence from Kenneth Steiner (the “Proponent”) submitting a stockholder proposal (the “Proposal”) for inclusion in the Company’s proxy statement for its next annual meeting of stockholders. The correspondence indicates that the Proponent intended for the Proposal to meet the requirements of Rule 14a-8 of the Securities Exchange Act of 1934, as amended (“Rule 14a-8”), including the continuous ownership of the required share value for at least one year by the date the Proponent submitted the Proposal, which is November 6, 2018, and continuous ownership through the date of the stockholder meeting. This notice is to inform you that we have not received verification of the Proponent’s stock ownership, and thus the Proponent has not demonstrated that he is eligible to submit the Proposal under Rule 14a-8.

In order to establish the Proponent’s eligibility to submit the Proposal under Rule 14a-8, the Proponent is required to provide the Company with documentation regarding his ownership of Company securities, or the Proponent must direct his broker to send such documentation to the Company. The documentation must demonstrate that the Proponent has continuously held at least \$2,000 in market value, or 1%, of the Company’s securities entitled to be voted at the meeting for at least one year preceding and including the date the Proponent submitted the Proposal, which is November 6, 2018. Rule 14a-8(b) provides that the Proponent may prove his eligibility to the Company in two ways. The Proponent may either submit:

- a written statement from the “record” holder of the Proponent’s securities (usually a broker or bank) verifying that, at the time the Proponent submitted the Proposal, which was November 6, 2018, the Proponent continuously held the Company’s securities for at least one year; or

- a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the shares as of or before the date on which the one-year eligibility period begins.

To help stockholders comply with the requirement to prove ownership by providing a written statement from the "record" holder of the shares, the staff of the SEC's Division of Corporation Finance (the "SEC Staff") published Staff Legal Bulletin No. 14F ("SLB 14F"). In SLB 14F, the SEC Staff stated that only brokers or banks that are Depository Trust Company ("DTC") participants will be viewed as "record" holders for the purposes of Rule 14a-8. Thus, stockholders must obtain the required written statement from the DTC participant through which their shares are held.

If the Proponent is not certain whether his broker or bank is a DTC participant, he may check the DTC's participant list, which is currently available on the Internet at:

<http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>

If the Proponent's broker or bank is not on DTC's participant list, he will need to obtain proof of ownership from the DTC participant through which his securities are held. The Proponent should be able to find out who the DTC participant is by asking his broker or bank. If the DTC participant knows of the holdings of the Proponent's broker or bank, but does not know the Proponent's holdings, the Proponent may satisfy the proof of ownership requirement 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 by the Proponent for at least one year – with one statement from the Proponent's broker or bank confirming the Proponent's ownership, and the other statement from the DTC participant confirming the broker or bank's ownership. Please see the enclosed copy of SLB 14F for further information.

Please note that the documentation must establish the Proponent's ownership of the required share value for at least one year by the date he submitted the Proposal. This period covers the entire one-year period preceding and including November 6, 2018, the date the Proposal was submitted.

In order for the Proposal to be properly submitted, the Proponent must provide the Company with the proper verification of his stock ownership, as described above. Such verification of stock ownership must be postmarked or transmitted no later than 14 calendar days from the date you receive this notice. For your information, we have attached a copy of Rule 14a-8 regarding stockholder proposals.

Please note that the Company has made no inquiry as to whether or not the Proposal, if properly submitted, may be excluded pursuant to Rule 14a-8(i) or for any other reason. The Company will make such a determination once the Proposal has been properly submitted.

Sincerely,



Jacob Steele  
of LATHAM & WATKINS LLP

Enclosures

cc: Kenneth Steiner  
Nathan Kryszak, PDL BioPharma, Inc.  
Brian D. Miller, Latham & Watkins LLP













**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](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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

## **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.<sup>4</sup> 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.<sup>5</sup>

## **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.<sup>6</sup> 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<sup>7</sup> 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,<sup>8</sup> 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/downloads/membership/directories/dtc/alpha.pdf>.

*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.<sup>9</sup>

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).<sup>10</sup> 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]."<sup>11</sup>

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).<sup>12</sup> 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.<sup>13</sup>

**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,<sup>14</sup> 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.<sup>15</sup>

**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.<sup>16</sup>

#### **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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<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> 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.").

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> See Exchange Act Rule 17Ad-8.

<sup>6</sup> See Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] (“Net Capital Rule Release”), at Section II.C.

<sup>7</sup> 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.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

<sup>9</sup> 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.

<sup>10</sup> 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.

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

<sup>12</sup> 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.

<sup>13</sup> 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.

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

<sup>15</sup> 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.

<sup>16</sup> 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>

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Modified: 10/18/2011

**Exhibit C**

**TD Ameritrade Letter**



11/20/2018

Kenneth Steiner

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Re: Your TD Ameritrade Account Ending in \*\*\* in TD Ameritrade Clearing Inc DTC #0188

Dear Kenneth Steiner,

Thank you for allowing me to assist you today. As you requested, this letter confirms that, as of close of business on November 19, 2018, you have continuously held no less than 300 shares of each of the following stocks in the above referenced account since October 1, 2017

PDL BioPharma, Inc. (PDLI)  
Ladenburg Thalmann Financial Services, Inc. (LTS)  
Xerox Corporation (XRX)  
TheStreet, Inc. (TST)  
Bank of America Corporation (BAC)  
The McLatchy Company (MNI)  
AT&T, Inc. (T)  
American International Group, Inc. (AIG)  
Alcoa Corporation (AA)  
Citigroup (C)

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

Matt Beckman  
Resource Specialist  
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.