

Vis Email (shareholderproposals@sec.gov) August 24, 2020

US securities and Exchange Commission

Office of Chief Counsel

Division of Corporate Finance

100 F Street NE

Washington DC 20549

Re: Bio-Path Holdings, Inc.—Request to Omit Shareholder Proposal from Richard Grant

Ladies and Gentlemen

This letter is in response to the August 21, 2020 letter submitted by Bio-Path Holdings, Inc seeking to supplement their August 10, 2020 letter.

That Letter, offered as a defense of their actions, instead supports my earlier response, in particular that they acted and continue to act in bad faith.

Notwithstanding statements to the contrary regarding the past SEC Chairman's comments, their behavior is precisely what she meant when she said

But companies in many cases should consider other possible steps they could take in response to a proposal rather than just saying no. Sometimes, foregoing technical objections could be the right response

The Company has not taken "other possible steps" but once again made numerous "technical" arguments, most a repetition of their original Letter¹, which I will address in detail below. The Company's main objection seems to be the "shareholders" have already spoken on the issue² of the CEO's compensation.³ If true, then why is the Company trying so hard and spending valuable resources (their only revenue is sales of shares—not denied by them) to avoid including my proposal. If 85% of the

¹ I would note the Company that claims to have acted in "good faith" has never suggested any language that would be acceptable to them or address their "issues" either timely when my Proposal was first submitted, which would have avoided this coming before the Commission, or later when I replied.

² As I stated in my first letter, the two proposals, their 2019 Proxy and my Proposal, read side by side convey completely different messages

³ This argument is disingenuous. The Company's resolution was in the 2019 Proxy. The Company's share price on August 22, 2019 was \$12.25 its latest is \$5.16. Because the Company did an "advisory" proposal one year, does that preclude a shareholder proposal the next year after a more than 50% decline in price? How many years must pass before the Company will not oppose another CEO compensation proposal?

shareholders already "approved" of what they are doing as they "claim", and the cost of including the proposal is effectively "\$0"⁴, what do they fear. I believe the answer is obvious.

What do they fear and what are they hiding?

I concede that it is strong possibility that an independent compensation professional(s), when faced with a CEO who presided over a loss of 98% of the Company's market value, has failed to create a single commercial product or a dime of revenue might "suggest" to the Board that they "consider" getting a new CEO. The Board would have the right to reject that "suggestion", but instead of hiding behind "internal" committees and internal compensation reviews⁵, they would have to stand behind that decision. Let the "light" shine on their decision. The Commission should ask itself a simple question. Why wouldn't the Company engage an independent third-party compensation expert(s) to address the issues raised rather than spend money engaging outside counsel to "fight it".

What the Company also "omits" about my proposal and the 2019 Proxy proposals is that they relate to completely different subject matters. The 2019 Proxy advisory vote on CEO compensation is for past "disclosed" compensation(amnesty?). It specifically states:

"RESOLVED. that the Company's stockholders approve, on an advisory basis, the compensation paid to the Company's named executive officers, as disclosed in the Company's Proxy Statement for the 2019 Annual Meeting of Stockholders pursuant to the compensation disclosure rules of the Securities and Exchange Commission, including the "Summary Compensation Table" and the related compensation tables and narrative discussion."

It does not relate to future actions which is the subject of my Proposal. ⁶ That the Company also cites the 2019 Proxy Fourth Proposal regarding how often the Company should ask for "amnesty" when read in conjunction with my communications regarding my intent to bring the issue before shareholders makes clear their "intent". Using a proposal to "advise" the Company on CEO pay, is not a proposal to "deny" or limit any shareholder now or in the future from bringing any proposal.

Because the Company is apparently confused by the term "good faith", I looked it up in Merriam Webster, whose definition is

honesty or lawfulness of purpose

I'll let the Commission decide whether "good faith" defines their actions.

⁴ They make no argument that including my proposal would be cost prohibitive. I would suspect if it really took the Company "41" days to prepare the letter and an additional week for their latest response, the money they spent on outside counsel is likely more than would have spent to engage the outside compensation professionals

⁵ They admit they have not had an independent compensation analysis done by a third party, but instead rely on their statement that the compensation committee members are "independent".

⁶ The 2019 Fourth Proposal seeks "on an advisory basis" guidance on how often they should seek such "advice". These are clearly attempts by the Company to get "amnesty" for past conduct and "amnesty" for future actions. The Company knew at the time they submitted the 2019 Proxy that I intended to bring the issue to the shareholders.

Specific responses. (not in any order)²

Company-the waiver email is not a waiver and we acted in "good faith"³

The email correspondence in question does not act as a waiver of the Company's ability to submit a no action request addressing non-procedural deficiencies in the Initial Proposal or the Updated Proposal. Instead, such correspondence represents the Company's good faith compliance with Rule 14a-8(f). (emphasis added)

This is perhaps the most "laughable" assertion by the Company. They claim that it is "good faith" to notify me of "some" of the deficiencies of the Proposal, but not "all" of the deficiencies. That "might" have sufficed from a strictly "legal" interpretation (clearly not from a good faith perspective), had they not sent the follow up correspondence which stated

we believe the deficiencies we previously identified have been corrected.

The email correspondence in question does not use the term "non-procedural deficiencies". Specifically, it says

Upon review of your submission, we noted deficiencies in your submission.

And the following paragraph

In order to correct the deficiencies in your submission,

The "current" Company position is that they only meant "procedural" deficiencies. I would note again that Mr. Rohrlich the author of the letters to the Commission, which cite numerous Commission rules and precedents, was copied on both correspondence but chose not to "clarify" their "waiver". For the Company to claim, "good faith" or a non-waiver, at the very least, would have required that Mr. Rohrlich, as counsel for the Company include a "disclaimer" such as

"this only relates to "procedural deficiencies".⁴

Consistent with the Company's position that failure to include the email in their first letter, I assume they will argue that their "failure to clarify" was also "unintentional" the same argument regarding failure to include the "waiver" email. Good faith?"

² All Company assertions will not be addressed. For example, "Moreover, the statements, as provided do not even form complete sentences". I do not believe grammar is a basis for rejecting my Proposal. As already stated, the Proposal is limited to 500 words.

³ This letter will quote sections of their letter, as it is available to the Commission to consider any issues raised by the Company relating to "context".

⁴ This is particularly troubling as had the Company representative not been a "Board Member" and had Mr. Rohrlich not been copied their waiver argument may have had some credibility. But with both involved in particular counsel who drafted both letters, it strains credibility that this was "unintentional". Mr. Rohrlich in particular would have had specific knowledge of any deficiency not just "procedural" ones but nevertheless failed to act.

Company

The Updated Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations and micromanages the Company.

Response False and misleading

This argument is disingenuous. The Proposal does not direct the Company or Board to do "anything"

Resolved, that the Company's stockholders approve, on an advisory basis

Contrary to the Company's assertion, the "Board" is not directed to do anything. The Shareholders are simply asked if they think it would be a "good idea". The Proposal language is eerily like the Company's 2017 Proxy Proposal

"RESOLVED. that the Company's stockholders approve, on an advisory basis, the compensation paid to the Company's named executive officers

So if I'm to understand the Company's "current position" a Proposal they sponsored asking for approval "on an advisory basis" does not "micromanage" the Company or relate to the Company's "ordinary business operations" but one that uses the identical language proposed by a shareholder "does".

Because my "Proposal" is "advisory" even if the Board chose not to follow "any" of the items set out therein, the Board would be free to do so. The difference is the Board's actions would "see the light of day". Good faith?

The 2019 Proxy proposal includes this statement

This vote is not intended to address any specific item of compensation, but rather the overall compensation of our NEOs and the philosophy, policies and practices described in this Proxy Statement.

So apparently it is "fine" for the Company to refer outside of the Proposal, but not a Shareholder.

The Letter states in referring to quotes from Company documents:

It appears the Proponent is attempting to manipulate the Company's cautionary language as evidence of the Company's "poor Performance." Such manipulation is clearly an attempt to mislead stockholders and does not provide any benefit to those voting on the matter

I would remind the Company of the "500" word limit on Proposals. Further the Company itself in the 2019 Proxy Proposal makes references outside of the actual proposal. Thus the "current" Company view is that Shareholders are quite capable of looking at the entirety of the 2019 Proxy but not capable of looking at or considering other Company documents "even when they are specifically referenced!" Good faith?

My Proposal specifically states

". (please review Proxy and Company's Annual Report for context),(emphasis added)

Ironically the Company admits in referring to the proposal's quotes:

These statements are contained in the Company's applicable Annual Report on Form 10-K and Quarterly Reports on Form 10-Q, and are included in such documents as risk factors that should be considered when making an investment into the Company.

Without including in the Proposal all documents, which is impossible given the 500-word limit, and which the Company has likewise not done, the Company position is that any such Proposal must be rejected. Good faith?

Company The Updated Proposal may be excluded pursuant to Rule 14a-8(i)(10) because the requested actions have been substantially implemented by the Company

Response False and Misleading

As set out above, the Company's primary rebuttal is that the CEO compensation issue is resolved.

First, as discussed above the 2019 Proxy advisory related to "amnesty" for past compensation but not future issues.

Second, the Company admits that it has not conducted an "independent third party" study.

The fact that the Company has not employed "an independent third party" specifically for the purpose of reviewing the CEO's performance and compensation.

The "track record" of the Board and in particular the "independent" Compensation Committee actions with respect to the compensation of a CEO who has presided over almost the complete destruction of share price and company value using only internal sources, is self-explanatory. Through the 2019 proxy the CEO has not had his salary reduced. Doing another "internal" analysis defeats the purpose of using an independent "third party". Why the Company would not choose to engage such professionals but instead spend Company resources to fight it, is instructive. It is entirely possible that the independent review will not "confirm" that the Board has acted appropriately—is that their concern?

Finally, my initial letter discusses a side by side comparison of the two proposals which leaves little doubt that they are not comparable. As previously stated how the question is asked can be as important as the issue. The Company "vanilla" proposal appears crafted to create only one desired result

For the sake of brevity, I will now collectively address certain of the Company's current assertions

Claim: The Updated Proposal may be excluded because it requests the Board make a determination on the continued employment of the CEO of the Company.

False: The Proposal related to the compensation study suggested guidelines for the study not requirements of the Board. It is also "advisory" by its clear unambiguous language.¹⁰ The Board is free to accept or reject any recommendation. Further this assertion is particularly troubling, as it is the Board's affirmative fiduciary duty to "make a determination of the continued employment of the CEO of the Company". If the Board, in particular the Compensation Committee is not doing so, this would be a

¹⁰ The Company's position here is inconsistent with their own 2019 Proxy proposal. If that Proposal had been defeated is it their position that they would have been "required" to change the CEO's compensation?

breach of their fiduciary duties as Directors. Further the following statement of the Company is false and misleading

If the Company were to follow such a proposal, the result would be the Board delegating its duty to review, hire and terminate the executives of the Company to an outside party.

This statement is false in that the Proposal does not direct the Board to do anything and in particular does not direct them, to "delegate" any of their "fiduciary duties" to an outside party. Under the Company's current theory, any third party "studies" would abrogate their fiduciary duties. I would submit the following example.

The Company is looking for new office space. The Board consents to hire an outside expert/consultant to review space needs, cost, location etc. and "make a recommendation to the Board". Under the Company's current "position" before this Commission it would be precluded from doing so because any "consultants' recommendation relates to the Company's ordinary business operations and micromanages the Company.

This cannot really be a serious position by the Company as it would mean they could never hire any consultant who would make any "recommendation" which defeats the purpose of hiring an expert consultant in the first place. Specifically, I assume they have hired outside experts to guide them through their sales of shares—is the Commission to believe that these "experts" provided no recommendations?¹¹

Claim. If the Company were to follow such a proposal, the result would be the Board delegating its duty to review, hire and terminate the executives of the Company to an outside party. Accordingly, the Updated Proposal is precisely the type of proposal that the Staff has permitted to be excluded because it interferes with the Company's ability to control decisions related to the hiring, promotion or termination of employees.

Response: False and misleading

The Proposal does not request or direct the Board to delegate any of its duties in such regard. See discussion above. Neither does it direct the Board to hire or terminate anyone.

Claim: The "proposal involves 'intricate detail,' or seeks to impose specific time frames or methods for implementing complex policies." Staff Legal Bulletin No. 14E (Oct. 27, 2009).

Response False and misleading. The Proposal again is advisory as are the "details" set out therein. The Board is free to accept or reject them. Further the Company has already conceded that one of the details is already in their Compensation Committee charter²².

"using companies of comparable size, industry and complexity, and considering the

¹¹ A simple verification on this would be to have the Company disclose all third-party engagements they have made and whether any of them included a "recommendation"

²² "In order to make this determination the Updated Proposal states that the study should be conducted "using companies of comparable size, industry and complexity, and considering the performance of the Company and such other companies." The language used by the Proponent comes directly from the Compensation Committee's charter

performance of the Company and such other companies.”

Claim . The Updated Proposal may be excluded pursuant to Rule 14a-8(i)(3) because the Updated Supporting Statement contains a number of materially false and misleading statements

Response False and Misleading.

This section is essentially a regurgitation of the Company’s previous representations.¹³ Generally the Company’s position is that the Proposal should have included all language from Company’s documents that are cited “for context”, that the disclaimer “ please review Proxy and Company’s Annual Report for context” is insufficient and that the Shareholders are incapable of reading and understanding the documents and their “context”. The quotes are not “false” and the Company does not claim they are, only that they are incomplete. The Company knows the 500-word limit precludes this but is free to include all the documents in the Proxy if they so choose.

The Company states

Similarly, the final sentence of the Updated Supporting Statement contains a misleading statement where the Proponent states that the request to eliminate the CEO’s salary was rejected in part because “Mr. Nielsen’s holdings have been impacted...by the reverse stock splits just as all shareholders’ ignoring the fact that Nielsen continued to receive his full salary while shareholders holdings were destroyed.

The document says what it says and as importantly the quote is accurate. The Company now says the words of its prior Compensation Committee Chairman are taken out of context.

Although the response did contain a statement that Mr. Nielsen’s holdings had been impacted just as all other stockholders, such a statement was not provided as a factor that the Compensation Committee used in its analysis. Rather, the statement was made to highlight the fact that the CEO has a similar interest in seeing the Company’s stock perform well.

I reacted to that letter in part as follows (letter attached and to which the Company did not respond)¹⁴:

Second, frankly having run a number of companies and served as a director of a public company, I have never experienced a Board member, much less the Chair of Compensation Committee, use as a justification for either the retention or compensation for CEO of the Company to use your words that “his holdings have been impacted by the reverse stocks splits just as all other shareholders” or as you state “Has a considerable amount of options that currently have no value due to the recent trend on the stock value”. You and the board can’t seriously believe that the Shareholder’s should have any sympathy for Peter who I believe received most if not all of his shares as grants or options unlike the other shareholders

The context is clear, but apparently the “context the Company is looking for” quoting their letter

¹³ I would note that once again the Company makes technical arguments but does not in “good faith” propose how simple wording issues can be resolved.

¹⁴ While the Board will not be providing a formal response, it acknowledges your concerns and appreciates your engagement. Email from Morris 2/16/29

the Company's Compensation Committee (the "Compensation Committee") responded to the Proponent (such response attached hereto as Exhibit C) and provided a number of factors that were considered in rejecting his demand

To clear this up I would be agreeable to adding the following language (assuming it doesn't put me over the 500-word limit)"

"but the Company wants you to know notwithstanding the loss of 98%¹⁵ of the Company's market value that the CEO has a similar interest in seeing the Company's stock perform well.

I'm not sure how that "context" helps the Company.

Claim. Contrary to suggestions made by the Proponent, at no point has the Company received a shareholder proposal from any stockholder, including the Proponent, prior to July 1, 2020, nor has it ever received a request for a special meeting of stockholders

Response. Intentionally misleading

The Company does not deny that it was approached by shareholders in 2017 nor that it changed the 25% shareholder requirement for a special shareholder meeting. The Company only states that no "formal" requests were made.

What they don't respond to or include:

Were there any discussions with shareholders in particular involving Mr. Morris and a former Board member Mr. Garrison around March of 2017. Was the 25% shareholder meeting discussed with Garrison and/or Morris regarding a special shareholder meeting at that time and did the Company change the 25% requirement around that time.

Now that the Company has made this an issue in its denial it is ripe for investigation.

Unintentional omissions and timing of filings

The Company denies any wrongdoing or intentional acts any omissions or timing were unintentional, and the Company claims to have only acted in "good faith". Actions speak louder than words. They have not denied the following:

- The "waiver" email was omitted was never "conditioned or corrected" and specifically stated "the deficiencies we previously identified have been corrected"
- Counsel knew almost immediately that there were deficiencies and the Company pointed out "a few" of them and should have know of these when the "waiver" email was sent
- The Company has not performed an independent third-party compensation review
- It took 41 days for the Company to put the August 10, 2020 letter together but only 7 to respond in detail to mine and the letter was filed outside the period where I could either correct the proposal or submit a new one

¹⁵ At the time my letter said a loss of 95% its now 98% I'm comfortable using either one.

- The Company never offered a single example of “acceptable” language but made numerous “technical arguments” but claims that demonstrates “good faith” on n their part

Conclusion

The Company has failed to act in good faith but instead has acted to obstruct the inclusion of a Shareholder proposal. The Company’s actions including both of its letter submissions, show a “pattern” of behavior that requires both the rejection of their request but also the initiation of a n investigation as proposed in my initial letter.

Perhaps most troubling by the Company’s actions and response is that even if the shareholders overwhelming adopted my proposal, the Board could still “reject” it and stand by all the arguments they’ve made before this Commission.

I end with a simple question.

If the Company truly believes that it has acted appropriately with the respect to the issues raised in my Proposal, as it is advisory only, and there is no cost associated with including it, why are they so afraid of it being put before the shareholders?

Respectfully submitted

Richard Grant

A handwritten signature in black ink, appearing to read "Richard Grant", written in a cursive style.

Re: Bio-Path Response letter to your email re: Nielsen Compensation

From: Doug Morris (doug.morris10@gmail.com)

To: ***

Date: Saturday, February 16, 2019, 11:08 AM EST

Rick,

Thank you for your latest correspondence, which has been reviewed by the Board of Directors. While the Board will not be providing a formal response, it acknowledges your concerns and appreciates your engagement.

Regards,

Doug

On Tue, Feb 12, 2019, 2:06 PM Rick Grant *** wrote:

Doug

Here is my response. Please share this with Mr. Colonnese and all the other Directors. I look forward to the Board's response

Sincerely
Rick

On Monday, February 4, 2019 05:24:27 PM EST, Doug Morris <doug.morris10@gmail.com> wrote:

Dear Rick:

Attached is a letter from Bio-Path Holdings, Inc. Compensation Committee Chairman – Mark Colonnese. This letter responds to your email sent to me on January 25, 2019.

Thank you,

Doug Morris

Sent from [Mail](#) for Windows 10

August 21, 2020

Via Email (shareholderproposals@sec.gov)

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

Re: Bio-Path Holdings, Inc. – Request to Omit Stockholder Proposal from Richard Grant

Dear Ladies and Gentlemen:

This letter concerns the request, dated August 10, 2020 (the “Initial Request Letter”), that we submitted on behalf of our client, Bio-Path Holdings, Inc., a Delaware corporation (the “Company”), seeking confirmation that the staff (the “Staff”) of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “Commission”) will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the “Exchange Act”), the Company omits the shareholder proposal (together with the supporting statement, the “Initial Proposal”) submitted by Richard Grant (the “Proponent”), from the Company’s proxy materials for its 2020 Annual Meeting of Stockholders (the “Proxy Materials”). The Proponent submitted a letter to the Staff, dated August 14, 2020 (the “Proponent Letter”), which contained an updated shareholder proposal (together with the updated supporting statement, the “Updated Proposal”) and asserted his view that the Updated Proposal should be required to be included in the Proxy Materials. The full text of the Updated Proposal is attached hereto as Exhibit A.

We submit this letter on behalf of the Company to supplement the Initial Request Letter and respond to the claims made in the Proponent Letter. On behalf of the Company, we request confirmation that the Staff will not recommend enforcement action to the Commission if the Company omits the Updated Proposal from its Proxy Materials in reliance on Rule 14a-8.

I. Background

On July 1, 2020, the Company received an email from the Proponent submitting the Initial Proposal for inclusion in the Company’s Proxy Materials. The Initial Proposal requested that the Company’s stockholders approve a resolution that would have required the Company to (1) reduce the CEO’s salary by ninety percent (90%) and tie any future salary to the performance of the Company’s shares; (2) conduct a compensation study; and (3) make a determination on whether the CEO should continue to be employed.

On July 9, 2020, the Company responded to the Proponent noting some procedural and eligibility deficiencies with the Initial Proposal. On July 13, 2020, the Proponent cured such procedural and eligibility deficiencies, and on July 14, 2020, the Company responded acknowledging that such procedural and eligibility deficiencies had been corrected. On August 10, 2020, we submitted, on behalf the Company, the Initial Request Letter requesting confirmation the Company could properly omit all or parts of the Initial Proposal from the Proxy Materials based on the following:

- Rule 14a-8(i)(1) because the Initial Proposal required the Company to take certain actions and was therefore not a proper subject for action by stockholders under Delaware law;
- Rule 14a-8(i)(2) because the Initial Proposal would have caused the Company to violate its governing documents and Delaware state law;
- Rule 14a-8(i)(3) because the Initial Proposal contained a number of vague and indefinite and thus materially false and misleading statements in violation of Rule 14a-9;
- Rule 14a-8(i)(7) because the Initial Proposal related to the Company's ordinary business operations;
- Rule 14a-8(i)(10) because the Initial Proposal had already been substantially implemented by the Company; and
- Rule 14a-8(c) because the Initial Proposal constituted more than one proposal.

On August 14, 2020, the Proponent submitted the Proponent Letter and Updated Proposal, which amended the Initial Proposal and argued that the Updated Proposal should be required to be included in the Proxy Materials. For the reasons discussed below, the Company believes the Updated Proposal may be properly excluded from the Proxy Materials. Additionally, on behalf of the Company, we address some of the claims that were made about the Company by the Proponent in the Proponent Letter.

II. The Updated Proposal

The resolution included in the Updated Proposal reads as follows:

Resolved, that the Company's stockholders approve, on an advisory basis that the Company have a comprehensive compensation study conducted by an independent third party, which at a minimum considers the salary and other cash compensation, including but not limited to bonus, of the current CEO [and] whether it should be reduced, how any future compensation, [sic] should be tied to performance of the [C]ompany's share price using companies of comparable size, industry and complexity, and considering the performance of the Company and such other companies and as part of that study make a recommendation as to whether the CEO should be retained based upon his performance and the performance of the Company share price and report back to the shareholders.

III. Reasons for Omission

The Proponent argues that the Staff should prohibit the exclusion of the Updated Proposal, at least in part, based on a quote from a former Chair of the Commission. Although the Company does not disagree that in many cases shareholder proposals should be included in a company's proxy materials, the Company does not agree that the Initial Proposal is the type of shareholder proposal Ms. White was addressing for the reasons described in the Initial Request Letter. Similarly, the Company does not agree that the Updated Proposal is the type of proposal that should be presented to the stockholders of the Company.

In addition to the reasons discussed in the Initial Request Letter regarding the Initial Proposal, as described in more detail below, the Company believes the Updated Proposal may be excluded pursuant to Rule 14a-8(i)(3), Rule 14a-8(i)(10) and Rule 14a-8(i)(7).

IV. Analysis

A. The Updated Proposal may be excluded pursuant to Rule 14a-8(i)(10) because the requested actions have been substantially implemented by the Company.

The Updated Proposal is properly excludable under Rule 14a-8(i)(10) because the Updated Proposal has been substantially implemented by the Company. The Updated Proposal requests that the Company have a compensation study conducted by an independent third party that would ultimately make a recommendation as to the level of compensation the CEO should receive, the structure of that compensation and whether the CEO should continue to be employed by the Company. In order to make this determination the Updated Proposal states that the study should be conducted "using companies of comparable size, industry and complexity, and considering the performance of the Company and such other companies." The language used by the Proponent comes directly from the Compensation Committee's charter.

The Updated Proposal has been substantially implemented because the Company's Compensation Committee, which consists entirely of independent directors, already conducts an annual compensation study and annually reviews the CEO's performance. Moreover, as noted in the Compensation Committee's charter, the study already compares compensation "using companies of comparable size, industry and complexity, and considering the performance of the Company and such other companies." As highlighted in the Initial Request Letter, the Compensation Committee most recently conducted the annual study and review in March 2020 as required by the Compensation Committee's charter.

Similarly, the essential purpose of the Updated Proposal has been substantially implemented in light of the most recent say-on-pay vote. Taken as whole, the Initial Proposal, the Updated Proposal, the supporting statements for each proposal and the Proponent Letter all evidence the Proponent's dissatisfaction with the CEO's compensation and his desire to allow the stockholders the opportunity to express their views on the CEO's compensation. As discussed in the Initial Request Letter, the stockholders are already aware of the CEO's compensation, and over 85% of the voted shares expressed approval for the CEO's compensation at the 2019 Annual

Meeting of Stockholders of the Company. Thus, Rule 14a-8(i)(10), the purpose of which is to prevent stockholders from having to consider matters which have already been favorably acted upon, permits the Company to exclude the Updated Proposal.

The Staff has consistently stated substantial implementation does not require a proposal to be implemented exactly as proposed. The fact that the Company has not employed “an independent third party” specifically for the purpose of reviewing the CEO’s performance and compensation should not be determinative in this analysis. Rather, because the Company has satisfied the underlying goal and essential objective of the Updated Proposal, the Updated Proposal has been substantially implemented and therefore may be excluded under rule 14a-8(i)(10).

B. The Updated Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to the Company’s ordinary business operations and micromanages the Company.

The Updated Proposal may be excluded because it relates to the Company’s ordinary business operations and because it micromanages the Company.

1. The Updated Proposal may be excluded because it requests the Board make a determination on the continued employment of the CEO of the Company.

As discussed in the Initial Request Letter, the Staff has consistently held that proposals relating to the dismissal, termination or hiring of executive officers, including the CEO, may be properly omitted because they relate to ordinary business operations.

The Updated Proposal requests that the Company employ an independent third party that will “make a recommendation as to whether the CEO should be retained based upon his performance and the performance of the Company share price.” If the Company were to follow such a proposal, the result would be the Board delegating its duty to review, hire and terminate the executives of the Company to an outside party. Accordingly, the Updated Proposal is precisely the type of proposal that the Staff has permitted to be excluded because it interferes with the Company’s ability to control decisions related to the hiring, promotion or termination of employees. Because the Updated Proposal relates to the Company’s ordinary business operations, in seeking the termination of the CEO, it may be properly excluded pursuant to Rule 14a-8(i)(7).

2. The Updated Proposal may be excluded because it attempts to micromanage the Company.

As discussed in the Initial Request Letter, a violation of Rule 14a-8(i)(7) can be looked at through two central considerations. The second consideration in 14a-8(i)(7)’s analysis is whether a proposal seeks to micromanage the affairs of a company. This consideration becomes relevant when the “proposal involves ‘intricate detail,’ or seeks to impose specific time frames or methods for implementing complex policies.” Staff Legal Bulletin No. 14E (Oct. 27, 2009).

As it relates to senior executive compensation, the Staff has clarified that proposals may be excluded if the proposal attempts to micromanage a company, even if the proposal relates to an

area of public concern. Staff Legal Bulletin No. 14J (Oct. 23, 2018). In Staff Legal Bulletin 14K the Staff further clarified that whether a proposal micromanages a company “rests on an evaluation of the manner in which a proposal seeks to address the subject matter raised, rather than the subject matter itself.” The Staff has also stated that the framework for evaluating whether a shareholder proposal micromanages a company applies to proposals that call for studies and reports. *See id.*

The Updated Proposal requests that the Company engage a third party consultant to conduct a compensation study that will at a minimum consider whether the CEO’s current salary be reduced, how any future compensation be tied to the performance of the Company’s shares, and whether the CEO should continue to be employed by the Company. It should be noted that, in accordance with the Compensation Committee’s charter, the Compensation Committee has the authority, in its sole discretion, to engage a third party to assist in its duties, which would include engaging a compensation consultant. However, the Compensation Committee conducted studies in the manner it deems appropriate, including by periodically requesting the Company’s executive compensation counsel compile compensation data for peer group identification and compensation comparison purposes based on parameters set by the Compensation Committee.

By requesting that a compensation study be undertaken by an independent third party and that such third party be asked to make specific determinations and recommendations on the CEO’s salary, including the structure of his salary, and his continued employment, the Updated Proposal clearly attempts to control the “intricate details” of a study addressing an inherently complex issue. Moreover, such parameters would directly contradict the decisions made by the Board and the Compensation Committee. As such, the Updated Proposal attempts to micromanage the Company and may therefore be excluded under Rule 14a-8(7).

C. The Updated Proposal may be excluded pursuant to Rule 14a-8(i)(3) because the Updated Supporting Statement contains a number of materially false and misleading statements.

As discussed in the Initial Request Letter, the Company believes the Proponent’s supporting statement contains a number of materially false and misleading statements. Although the Proponent has modified his supporting statement (as modified, the “Updated Supporting Statement”), the Proponent failed to remove the materially false and misleading statements from the Updated Supporting Statement. Because including such statements in the Proxy Materials would violate Rule 14a-9, the Updated Proposal may be excluded pursuant to Rule 14a-8(i)(3).

The first misleading statement can be found where the Proponent states that “[p]er the Company’s 2019 proxy, ‘[w]e expect to continue to incur significant operating expenses in connection with our ongoing activities’ and ‘[w]e have not generated significant revenues to date. Our ability to generate revenues from our drug candidates, which we do not expect will occur for many years.’” The Updated Supporting Statement merely adds a passing cross reference to the other proxy materials. These statements are contained in the Company’s applicable Annual Report on Form 10-K and Quarterly Reports on Form 10-Q, and are included in such documents as risk factors that should be considered when making an investment into the Company. Moreover, the statements, as provided do not even form complete sentences. It appears the Proponent is attempting to manipulate the Company’s cautionary language as evidence of the Company’s “poor

performance.” Such manipulation is clearly an attempt to mislead stockholders and does not provide any benefit to those voting on the matter. As such, including this portion of the Updated Supporting Statement would violate Rule 14a-9.

Similarly, the final sentence of the Updated Supporting Statement contains a misleading statement where the Proponent states that the request to eliminate the CEO’s salary was rejected in part because ““Mr. Nielsen’s holdings have been impacted...by the reverse stock splits just as all shareholders’ ignoring the fact that Nielsen continued to receive his full salary while shareholders holdings were destroyed.” While the Updated Supporting Statement removes references to the 2015 Proxy Statement, the Company does not believe the changes alter the misleading nature of the statements.

As disclosed in the Initial Request Letter, the Proponent previously sent an email demanding that all cash compensation paid to the CEO and to the entire Board be eliminated. On January 25, 2019, the Company’s Compensation Committee (the “Compensation Committee”) responded to the Proponent (such response attached hereto as Exhibit C) and provided a number of factors that were considered in rejecting his demand. Although the response did contain a statement that Mr. Nielsen’s holdings had been impacted just as all other stockholders, such a statement was not provided as a factor that the Compensation Committee used in its analysis. Rather, the statement was made to highlight the fact that the CEO has a similar interest in seeing the Company’s stock perform well. By including the statement out of context, the Proponent is misleading the stockholders in an attempt to influence the stockholders’ vote on the Updated Proposal. Such a goal is clearly contrary to Rule 14a-9, which prohibits materially false or misleading statement in a company’s proxy materials.

The Updated Supporting Statement still contains a number of the false and misleading statements discussed in the Initial Request Letter. Many of the statements provided are taken from Company documents and provided out of context. Moreover, some statements are incomplete and none of the statements provide any value for the stockholders who are being asked to vote on the Updated Proposal. Because of this, the Proposal may, as currently written, be excluded from the Company’s Proxy Materials under Rule 14a-8(i)(3) and Rule 14a-9.

V. Proponent Letter

On behalf of the Company, we feel it is important to address the some of the many inappropriate claims made by the Proponent in the Proponent Letter. Although the Company does not feel this is the proper forum to argue with a stockholder, the repeated claims of bad faith are frivolous and inappropriate and deserve further comment by the Company.

The Proponent has claimed that the Company intentionally left out an email from Exhibit B of the Initial Request Letter and that such an action shows that the Company has acted in bad faith in an attempt to deceive the Staff and silence the Proponent. The referenced email (now included in Exhibit B), which was unintentionally omitted, is the final email sent to Proponent prior to the submission of the Initial Request Letter and notes that all the procedural and eligibility deficiencies that the Company previously identified have been corrected.

This unintentional oversight in no way proves any bad faith on the part of the Company and the Company expressly denies any such intent. The email correspondence in question does not act as a waiver of the Company's ability to submit a no action request addressing non-procedural deficiencies in the Initial Proposal or the Updated Proposal. Instead, such correspondence represents the Company's good faith compliance with Rule 14a-8(f). As the Staff is aware, Rule 14a-8 does not require the Company to put the Proponent on notice of its intent to submit a no-action request for non-procedural deficiencies.

The Proponent has also claimed that the Company intentionally delayed the submission of the Initial Request Letter in an attempt to preclude the Proponent from revising the Initial Proposal so that it may be included in the Proxy Materials. To be clear, there was no "delay" in the submission of the Initial Request Letter. The period of time between the receipt of the Initial Proposal and the submission of the Initial Request Letter was only the result of preparation of the Initial Request Letter and was submitted within the period of time required by Commission rules.

Finally, throughout the Proponent Letter, the Proponent refers to correspondence between the Company and the Proponent that occurred in prior years, including his requests for publicly available information that had been provided to him through the Company's proxy materials. The Proponent uses this correspondence as "evidence" of the Company's "bad faith" in handling the Initial Proposal. Contrary to suggestions made by the Proponent, at no point has the Company received a shareholder proposal from any stockholder, including the Proponent, prior to July 1, 2020, nor has it ever received a request for a special meeting of stockholders. In addition, the referenced say-on-pay vote was wholly unrelated to any prior correspondence with the Proponent and was included in the Company's 2019 proxy materials in compliance with Commission rules regarding such a vote. All prior referenced correspondence is unrelated to both the Initial Proposal and the Updated Proposal and does not support any of the Proponent's accusations.

VI. Conclusion

For the reasons stated in this letter and the Initial Request Letter, the Company believes it may properly exclude the Updated Proposal from the Proxy Materials.

* * * * *

This letter, including all attachments, is being submitted electronically to the Staff at shareholderproposals@sec.gov. A copy of this letter is being sent simultaneously to the Proponent at grantlng@yahoo.com as notification of the Company's intention to omit the Proposal from the Proxy Materials.

If you have any comments or questions concerning this matter, please contact us, on behalf of the Company, at (281) 681-5912 or wrohrlich@winstead.com.

On behalf of the Company, we take this opportunity to remind the Proponent that if he elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company in accordance with Rule 14a-8(k) and SLB 14D.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'William R. Rohrlich, II', written over a horizontal line.

William R. Rohrlich, II, Winstead PC

Enclosures

cc: Peter H. Nielsen
Bio-Path Holdings, Inc.

Richard Grant

Exhibit A
The Updated Proposal

[See Attached]

PROPOSAL: VOTE ON COMPENSATION AND RETENTION OF CHIEF EXECUTIVE OFFICER

As of June 30, 2020, the Company's market capitalization was less than \$20 million dollars based upon a share price of approximately \$5. On July 1, 2016 the Company share price (adjusted for the reverse splits) was \$358 per the NASDAQ website, representing a per share loss of approximately 98%. Per the Company's filings, Peter H. Nielsen, the Company CEO received Salary of \$456,250 and a bonus of \$140,000 in 2016, a salary of \$475,000 and a bonus of \$118,000 in 2017, a salary of \$490,000 in 2018 and a salary of \$490,000 in 2019. Per the Company's 2019 proxy, "We expect to continue to incur significant operating expenses in connection with our ongoing activities" and "We have not generated significant revenues to date. Our ability to generate revenues from our drug candidates, which we do not expect will occur for many years". (please review Proxy and Company's Annual Report for context), It appears the company intends to fund expenses through capital raises, which will dilute existing shareholders and therefore expense management and reduction in particular G&A must be managed. G &A expenses have increased from \$3.014 million in 2016 to \$4,108 million in 2019. The Board has chosen in addition to not replacing the CEO based upon the Company's poor share price performance to not reduce the CEO's salary, or at a minimum base it directly on the Company's share price performance. The CEO's salary represents approximately 12% of the company G&A expense. One year ago a request was made to preserve cash by reducing or eliminating the CEO's salary but it was rejected by the head of the compensation committee and included a statement that "Mr. Nielsen's holdings have been impacted ..by the reverse stock splits just as all shareholders" ignoring the fact that Neilson continued to receive his full salary while shareholders holdings were destroyed. A copy of the letter is available from the Company. Therefore, it is requested that the shareholders to consider in a non-binding advisory vote for the following resolution

Resolved, that the Company's stockholders approve, on an advisory basis that the Company have a comprehensive compensation study conducted by an independent third party, which at a minimum considers the salary and other cash compensation, including but not limited to bonus, of the current CEO whether it should be reduced, how any future compensation, should be tied to the performance of the company's share price using companies of comparable size, industry and complexity, and considering the performance of the Company and such other companies and as part of that study make a recommendation as to whether the CEO should be retained based upon his performance and the performance of the Company share price and report back to the shareholders.

Exhibit B
Proponent Correspondence

[See Attached]

Proxy Submission Request

From: Doug Morris (dmorris@biopathholdings.com)

To: ***

Cc: wrohrlich@winstead.com

Date: Tuesday, July 14, 2020, 04:18 PM EDT

Richard,

Thank you for your email and follow-up materials. Upon review of the materials, we believe the deficiencies we previously identified have been corrected.

Thanks,

Doug

Get [Outlook for iOS](#)

From: Rick Grant

Sent: Wednesday, July 1, 2020 11:20 AM

To: Doug Morris <dmorris@biopathholdings.com>

Subject: Re: Is Bio-Path Holdings, Inc. (NASDAQ:BPTH) Excessively Paying Its CEO? - Simply Wall St News

Dear Doug

In accordance with the SEC requirements, I certify that I have over 2300 shares of Biopath stock (in three different brokerage houses) and that I am submitting this shareholder resolution to be included in the company's proxy. The resolution is less than the 500 word maximum and contains facts from the company's SEC filings and I've also attached the letter referenced in the resolution.

This is being submitted is timely

This is being submitted based upon the Company's continued failure to address the issues and destruction of shareholder value.

Please acknowledge your receipt of this on behalf of the company.

Sincerely

Richard Grant

On Thursday, July 9, 2020, 01:00:34 PM EDT, Doug Morris <dmorris@biopathholdings.com> wrote:

Mr. Grant,

Thank you for your email. Upon review of your submission, we noted deficiencies in your submission. First, we were not able to verify that you are the record holder of shares of common stock of Bio-Path. Because it does not appear that you are the record holder of the shares, we suspect that you may hold your shares in "street name" with your broker or bank. Second, your submission did not confirm that you intend to continue holding the securities through the date of the company's annual meeting.

In order to correct the deficiencies in your submission, please provide: (i) your written statement that you intend to continue holding the securities through the date of Bio-Path's annual meeting; and (ii) a written statement from the record holder of the securities (for example, your broker or bank where the shares are held) verifying that, at the time you submitted the proposal, you continuously held the securities for at least one year.

If Bio-Path does not receive this confirmation within 14 days of your receipt of this email, your proposal will not be included in the proxy statement.

Please note, if you obtain a written statement from the record holder of the securities, the SEC suggests the record holder use the following language:

"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]."

If you have any other questions please see the attached Rule 14a-8.

Regards,

Doug

From: Rick Grant ***
Sent: Monday, July 13, 2020 10:02 AM
To: Doug Morris <dmorris@biopathholdings.com>
Cc: Rohrlich, Billy <wrohrlich@winstead.com>; Daniel Gifford ***
Subject: Re: Response to your email Re: Proxy Resolution(s) Submission

Dear Mr. Morris

Attached is a letter form TD Ameritrade, which shows I hold the requisite number of shares and have held them prior to July 1, 2019, i.e. one year before my submission. In fact I have held these shares for at least several years, in addition to the shares I hold at Fidelity and E*TRADE

Further as you requested "your written statement that you intend to continue holding the securities through the date of Bio-Path's annual meeting" **this is to confirm in writing that I intend to continue to hold the securities through the date of Bio-Paths annual meeting.**

~~Please confirm that you have received this email and that I have complied with Rule 14a-8., as I have provided the information you requested, well within the time frame you stated.~~

Sincerely
Richard Grant

07/11/2020

Richard Grant

Dear Richard Grant,

Per our records, you have held a total of 904 shares of BPTH - Bio-Path Holdings Inc between your two accounts from 7/01/2019 to 7/01/2020. Your Individual account ending in *** currently holds 404 of BPTH. Your Traditional IRA ending in *** currently holds 500 shares of BPTH. Both accounts had the shares purchased prior to 7/01/2019.

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,



Akbar Chughtai
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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Exhibit C
2019 Correspondence

[See Attached]



February 1, 2019

Via Email

Richard Grant

Re: Response to email dated January 25, 2019

Dear Mr. Grant:

Bio-Path Holdings, Inc. (the "Company") received your email dated January 25, 2019. Your email was provided to each member of the board of directors of the Company (the "Board"), including each member of the Compensation Committee of the Board (the "Committee"). I am providing this response to your email on behalf of the Committee as chair of the Committee.

Pursuant to the Committee's charter, and as disclosed in the Company's Proxy Statement filed with the U.S. Securities and Exchange Commission (the "SEC") on November 2, 2018, all decisions with respect to the compensation of the Company's CEO are determined and approved either solely by the Committee or together with other independent directors, as directed by the Board. Further, the Committee also reviews director compensation levels and practices. The Committee periodically assesses compensation in relation to companies of comparable size, industry and complexity, taking the performance of the Company and such other companies into consideration. Periodically, the Committee requests the Company's executive compensation counsel to compile compensation data from proxies and compensation surveys to allow the Committee to assess director and officer compensation levels at the Company to add additional rigor to our review process.

As disclosed in the Company's Proxy Statement filed with the SEC on November 12, 2015, the Committee adjusted executive base salaries in 2014 to be more competitive with salaries for comparable positions within companies of comparable size, industry and complexity. Even with these adjustments, Mr. Nielsen's base salary was below the 25th percentile of salaries of comparable executives within the Company's peer group at that time. Further adjustments were made in 2016 after review of the Company's peer group. Again, Mr. Nielsen's base salary was below the 25th percentile of salaries of comparable executives within the Company's peer group at that time, as disclosed in the Company's Proxy Statement filed with the SEC on November 3, 2017. Finally, as disclosed in the Company's Proxy Statement filed with the SEC on November 2, 2018, Mr. Nielsen did not receive an increase in base salary in 2017 (Mr. Nielsen's increase in base salary in 2016 was not retroactive to January 1, 2016, resulting in the difference between 2017 and 2016 base salaries reflected in the Proxy Statement).

In addition to base salary, bonuses are awarded to executives to motivate and reward performance achievement. Mr. Nielsen's bonus paid in 2017 was a discretionary bonus based on performance achievement relating to 2016, among other factors. Executive compensation relating to 2018 will be disclosed in the Company's upcoming Annual Report on Form 10-K, which we encourage you to review when it becomes available.

Furthermore, Mr. Nielsen periodically receives stock-based compensation and has a considerable amount of options that currently have no value due to the recent trend in the stock price. In addition, as disclosed in the Company's Proxy Statement filed with the SEC on November 3, 2017, Mr. Nielsen owned 5,164,433 shares of record as of October 18, 2017 (prior to giving effect to the reverse stock splits in 2018 and 2019). Mr. Nielsen's holdings have been impacted by the reverse stock splits just as all other shareholders. He has every incentive to make decisions and take action to increase the stock price, so as to benefit like all of our shareholders.

Your email suggests that Mr. Nielsen's and the Board's historical compensation is not appropriate in light of recent performance; however, historical compensation is unrelated to current performance. Rather, consistent with the Committee's duties under its charter and with its historical practice, the Committee reviews the compensation of executive officers on a regular basis, taking the performance of the Company into consideration. Accordingly, the Committee will review Mr. Nielsen's overall compensation package at the Committee's upcoming meetings in accordance with the Committee's duties under its charter. To respond directly to the demand in your letter, the Committee does not believe that eliminating all cash compensation to Mr. Nielsen and the Board would be in the best interests of the Company and its stockholders and would be inconsistent with the Committee's duties under its charter.

We appreciate your engagement and interest as a shareholder, and we value your feedback.

Regards,



Mark P. Colonnese
Chair of the Compensation Committee

Vis Email (shareholderproposals@sec.gov)

August 14, 2020

US securities and Exchange Commission

Office of Chief Counsel

Division of Corporate Finance

100 F Street NE

Washington DC 20549

Re: Bio Path Holdings, Inc.—Request to Omit Shareholder Proposal from Richard Grant

Ladies and Gentlemen

This letter is in response to the August 10, 2020 letter submitted by Bio-Path Holdings, Inc seeking confirmation from the Staff of the Division of Corporate Finance (Staff) of the Securities and Exchange Commission, requesting that such Staff will not recommend enforcement action to the Commission if my Proposal is excluded from Proxy Materials(Letter). I strongly oppose such action for the reasons stated herein.

As I am not a Securities lawyer, so I will not be responding to all of the myriad of legal arguments the Company makes¹, but rather to provide the Commission and Staff further information to consider, in particular as to the bad faith exhibited by the Company. While I view the Company's Letter as effectively a "boiler plate" response, it is important the Commission have additional relevant facts, including omitted documents and including the Company's history of impeding shareholder proposals and self-serving actions of the executives and Board especially as the Company has now chosen this Commission as the venue.

While not necessarily determinative a quick internet search resulted in the following quote from a June 20, 2015 speech by Mary Jo White then Chair of the SEC, and posted on the SEC website (entire speech attached)

I am not suggesting that management should never object to or oppose a shareholder proposal. Company management **in good faith can believe** that particular proposals are not in the best interests of their shareholders and there are also costs involved in processing shareholder proposals. ***But companies in many cases should consider other possible steps they could take in response to a proposal rather than just saying no. Sometimes, foregoing technical objections could be the right response. Letting shareholders state their views on matters may be a relatively low cost way of sounding out and preventing potential problems down the line***

As the Commission will be able to readily ascertain, the path Chairman White suggested is not the path the Company has chosen.

¹ The Company claims to be transparent with respect to the Compensation of the CEO then spends 14 pages and spends precious Company resources arguing the opposite. This submission is 15 pages plus exhibits. I am assuming that as the Company's submission was 14 pages plus exhibits that this complies with your requirements.

Biopath is a small Company with a current market Cap of approximately \$18 million dollars. It is thus unlikely that individual shareholders will have either the desire or wherewithal to challenge the Executives and Board except perhaps through Shareholder Proposals such as I have proposed. To allow the Company through "technical objections". It is notable that my correspondence on making a shareholder proposal was well in advance of the "CEO advisory Proposal" the Company proffered, which as shown below was something the Company sought to avoid. To quash the efforts of a Shareholder to hold them accountable, especially when they have acted in bad faith is something, I hope the Commission will not sanction.

I am respectfully requesting that the Commission direct the Company to include the attached Proposal² (the clean copy would be the actual version included) in this year's Proxy or if Company fails to include it, recommend enforcement action. In addition, should it be included in the Proxy, that the Board/Company be directed that they make "no recommendation" as to its approval. i.e. that it does not recommend voting against the Proposal.

I am also formally requesting that the Commission initiate action to investigate the Company as to their actions with respect to the Proposal, whether the Company has acted in a similar manner with respect to other Shareholders³, and finally whether previous actions, relating to the granting of options and board actions to limit Shareholders rights, such as the calling of special shareholders meetings were properly done⁴.

Also, as I am concerned that the Commission may make a decision prior to this response,⁵ I apologize in advance for any misquotes (I will provide the entire documents in the Exhibits), incorrect citations, duplications or typo's I assure you they are unintentional.

Argument and discussion.

The Company stated in writing on July 13, 2020 that the deficiencies under Rule 14a-8 they communicated to me "have been corrected"

The Commission should reject the letter in its entirety and initiate an investigation into the Company and its practices with respect to Executive Compensation and interface/obstruction with Shareholders including Shareholder proposals. As set out herein, the Company in particular Mr. Rohrlich (also Counsel) the author of the letter, knew on July 13, 2020 that the Company had communicated to me in writing that I had complied with the provisions of Section 14a-8, the very provision under which the Company and Counsel submitted their Letter of August 10, 2020. That July 13, 2020 email waived any rights the Company had with respect to Rule 14a-8⁶.

² The attached Proposal is not identical to the original Proposal but instead has been modified to reflect the concerns of the Company which if disclosed timely by the Company could easily have been resolved.

³ I am unaware a the whether the Company has ever included any "shareholder" proposal

⁴ Based on information and belief the Board took action in 2013 where without shareholder approval raised the maximum options grant from 500,000 to 1.5 million granted the maximum to the CEO and vested ½ immediately. See Grant email to Nielsen (attached) Also based on information and belief in 2017 there was an effort by shareholders to call a special shareholders meeting with the intent of adding new Directors, which at the time required 25% of the outstanding shares. When the Company was put on notice, rather than allowing the special shareholder meeting the Board changed the requirement and avoided the meeting.

⁵ I have assumed I don't have the 40 days the Company took to submit their Letter

⁶ The Company's assertion that the Proposal would violate various statutes is disingenuous at best, as these would have been resolved through easy modifications which are included in the Proposal in Exhibit 2. i.e. making the requested actions non-binding and advisory as the Company did in its Compensation Proposal in the 2019 Proxy.

In a showing of good faith, unlike the Company, I have attached a redlined version of my original proposal (hereinafter Proposal), which addresses the issues raised by the Company and Counsel, in particular where they argue that certain actions might require them to “violate” the law. As the Commission can readily ascertain, these “modifications” could have easily been made and done within a time frame which would have permitted the Proposal to be included in the Proxy⁷.

The Company omitted their email confirming that I had corrected the deficiencies they identified.

The Company’s Letter submission included a string of emails dated July 1, 2020, July 9, 2020⁸ and July 13, 2020, but omitted the final July 13, 2020 email in that chain⁹. This email from Mr. Morris¹⁰ and copied to Mr. Rohrlich responded to my specific request made to Morris and copied to Rohrlich on July 13, 2020:

“Please confirm that you have received this email and that I have complied with Rule 14a-8, as I have provided the information you requested well within the time frame”

In the final/next email in that chain dated July 13, 2020, (attached) Mr. Morris again copied Mr. Rohrlich and replied

Richard,

Thank you for your email and follow-up materials. ***Upon review of the materials, we believe the deficiencies we previously identified have been corrected.***

Thanks,

Doug

The Company, with Mr. Rohrlich’s i.e. Counsels full knowledge,¹¹ stated unequivocally that “we believe the deficiencies we previously identified have been corrected “. There are only two interpretations of the actions of the Company and Mr. Rohrlich. One, that they had no idea of the provisions of Rule 14a 8 and that Mr. Rohrlich has somehow gained incredible expertise over the past month to submit the 14 page detailed Letter, or two, they acted in bad faith intentionally misrepresented their intentions and then delayed submitting the Letter until the period had run for me to either amend/correct the Proposal or submit a new one per the SEC’s guidelines.

⁷ If the Commission has suggestions, I am open to them.

⁸ In this email Counsel attached the heading says “On Thursday July 9, 2020, 01:00.34 Doug Morris dmorris@biopathholdings.com wrote....Omitted from that copy provided in the Letter is that Mr. Rohrlich was copied on it. So as of July 9, 2020 Rohrlich, was informed about the “deficiencies” (see attached). The other emails attached include all parties copied.

⁹ While I am not aware of whether Counsel was required to submit this email, it is notable that Counsel did not even mention its existence in the Letter.

¹⁰ Doug Morris is both a Director of the Company and listed on the Company website as Director of Investor Relations and a co-founder of the Company.

¹¹ I fully expect the Company will respond that this only related to the listed deficiencies, and they did not confirm Compliance with the entire rule. I would ask the Commission to take note of the fact that Mr. Morris did not state this in his confirming email, that the Email was copied to William Rohrlich II, the very counsel who submitted the Letter, that Mr. Rohrlich did not “qualify” Mr. Morris representations, and perhaps as importantly Mr. Rohrlich did not provide this email to the Commission. Query, has the Company acted in “good faith”?

It is informative as to the Company's behavior/intentions that the email initiating a discussion of deficiencies in my Proposal also came from Mr. Morris on behalf of the Company (again copied to Mr. Rohrlich) in a July 9, 2020 email which stated in relevant part:

Thank you for your email. Upon review of your submission, ***we noted deficiencies in your submission (emphasis added)***

If Bio-Path does not receive this confirmation within 14 days of your receipt of this email, your proposal will not be included in the proxy statement.

Thus it was the Company that initiated and stated there were "deficiencies" in my Proposal, and the Company with the full knowledge of Counsel, indicated in writing that I had "corrected" the deficiencies and complied with Rule 14a-8 but waited until August 10, 2020 to submit a request under that very Rule. By doing so the Company and Counsel knew that the submission date for Proxy proposals would have passed.

The delay in submitting the Letter was intentional and intended to preclude any further opportunity by me to submit a proposal for the 2020 Proxy

It was not until some 28 days later, August 10, 2020, that the Company by Mr. Rohrlich, submitted their Letter to the Commission identifying deficiencies, but whose timing precluded me from resubmitting or amending the Proposal to correct any deficiencies and have it included in this year's Proxy.¹² The Commission will need to consider whether this and other issues and omissions addressed herein need to be investigated by enforcement and whether the Letter was submitted to the Commission in "good faith".

The Company also acted in bad faith to preclude me from timely "curing" any deficiencies, in particular by waiting 40 days after the Proposal was submitted, and 31 days after they notified me of deficiencies, and 28 days after they informed me that the deficiencies have been "corrected" to advise me through the Letter that there were "additional deficiencies" under Rule 14a 8. This unexplained delay caused the period for submitting Proposals to pass, thus without the intervention of the Commission, I would be precluded from submitting a Proposal for another year. The Company because of said action therefore should be estopped from rejecting my Proposal.¹³

Issues raised in the Letter

Pages 1 through 6 "***legal theory***"

¹² In early 2019 (see attached February 12, 2019 email to Morris) I began making repeated requests to Mr. Morris and Mr. Colonnese who was then the Compensation Committee Chairman to advise me on when I could submit a Proposal for the 2019 Proxy. See sequence set out hereinbelow. Finally, in October Morris responded Rick, Thank you for your email. After speaking with our legal counsel, the deadline for stockholder proposals for inclusion in the Company's proxy statement ***was approximately three months ago***, as determined under federal securities laws. emphasis added. This precluded me from making a Proposal, but allowed the Company, which was fully aware of the deadlines, to make their "competing" vanilla proposal.

¹³ At a minimum, the Commission should require that the Company provide a period to cure any "deficiencies" including a requirement that they act in good faith in doing so. I have attached a redline version of the Proposal, which includes language addressing the issues raised by the Company. Making these changes took less than one hour, further demonstrating that if the Company instead of misleading had timely raised the issues, any deficiency could have been corrected within the relevant period.

The Company goes to great lengths (and perhaps expense) to argue that the Proposal, as written would cause them to violate various laws. What the Company fails to mention is that there was a “simple fix” available, (included in the attached redlined proposal), had they brought to my attention during the 14-day cure period. This is accomplished by simply converting the Proposal to a “non-binding advisory vote” as the Company did with respect to CEO compensation. Instead the Company emailed me that “we believe the deficiencies we previously identified have been corrected” leading me to believe they would act in good faith and include the Proposal in the Proxy and that no further action on my part was required. The Company instead waited until the submission period had passed, some 41 days after my submission and sent the letter to the Commission.¹⁴ To once again quote Chairman White

Sometimes, foregoing technical objections could be the right response

This clearly is not the path the Company and Counsel followed.

Page 7. “**performance of the company’s shares is ambiguous**”.

This argument by the Company is without merit¹⁵. For example, stock option awards are awarded and generally have no value unless the share price increases. There is no ambiguity.

The Company’s December 1, 2019 Proxy includes a request “To approve an amendment to the Company’s 2017 Stock Incentive Plan to increase the number of shares of common stock that may be issued under the plan by 600,000 shares for a total of 660,000 shares”. The Company in seeking approval of “Stock Incentive Plan” has tied this part of compensation directly to the performance of the Shares¹⁶, i.e. share price goes down below the grant price, they are worthless. As stated in the Colonnese letter,

Mr. Nielsen periodically received stock-based compensation and has a considerable amount of options ***that currently have no value due to the recent trend in the stock price*** (emphasis added).

It is undisputed that the Company’s share price has been in freefall over the past several years resulting in significant destruction of shareholder value as a function of share price.¹⁷ The Company has stated:

¹⁴ I assume the Company and Counsel will argue that they had no obligation to “fix” my Proposal. However, once they affirmatively stated to me that there were no deficiencies, and as importantly did not correct or qualify that statement, that argument was gone. Further, the Company knew or should have known when I tendered my Proposal of all of the issues raised in the Letter. Their failure to act in good faith, and by affirmatively notifying me that “deficiencies’ had been corrected and waiting until the submission period had passed, is a clear indication that their actions were knowingly and intentionally undertaken in bad faith. No plausible argument can be made that it took them 41 days from my submission to “discover” their issues.

¹⁵ Under their “theory” an investor that “shorted” the stock is pleased with the Company’s performance and that is the measure of performance. Also, any Shareholder wishing to make a Proposal must have held the shares for at least one year and agree to hold it until the annual meeting. On July 1, 2019 one year before I tendered the Proposal the Share price was approximately \$13 today it is less than \$5 a loss of over 60%.

¹⁶ The 2019 Proxy states “A stock option is the right to purchase shares of common stock at a future date at a specified price per share **generally equal to, but not less than, the fair market value of a share on the date of grant.(emphasis added)**

¹⁷ Ironically, the Company maintains in its letter that “shareholder holdings are destroyed is misleading... “Such a statement is entirely subjective and ignores the timing of any given stockholders’ investment” at page 9. It is undisputed that the Company’s market cap has collapsed by over 95%. It is likewise undisputed that the Company

The Compensation Committee understands that for the Company and its stockholders to achieve long-term success, the compensation programs need to attract, retain, develop and motivate a strong leadership team. As a result, our executive compensation programs are designed to pay for performance, enable talent attraction, retain top talent and ***closely align the interests of our executives with those of our stockholders (emphasis added) 2019 Proxy at page 12.***

In its letter to the Commission, the Company also states

“It is also important to note that the CEO is the only named executive officer of the Company”
page 11

Thus, the only “executive” the Company intends to “align” is the CEO. Perhaps the best indicator of the “performance” of the Company’s shares is the 2019 proxy statement as it relates to the CEO’s stock options. As of close on August 11, 2020 the share price was \$4.84. Per the Proxy, Nielsen’s exercise prices are “\$92, \$550 and \$36.80” rendering them “effectively” worthless¹⁸. What better measure of performance? Finally, I would note that the proxy is replete with representations by the Compensation committee regarding compensation guidelines.¹⁹ I would also direct the Commission to footnote 22 below which lays out the in the Proxy the “performance metrics” set out in the Stock Incentive Plan

Page 7 “**key terms are undefined**”

This “issue” is likewise without merit. The Company first states that the term “compensation” needs “further definition” stating it is “unclear” whether the study includes all elements of the CEO’s compensation. This frankly is again disingenuous as the Company’s SEC filings discuss “compensation” at some length including the 2019 Proxy which states

The Compensation Committee’s role is to assist the Board in fulfilling its responsibilities relating ***to all forms of compensation of the Company's executive officers***, administering the Company's incentive compensation plan and other benefits plans, including a deferred compensation plan, if applicable, and producing any required report on executive compensation for use in the Company's proxy statement or other public disclosure. *emphasis added*

Any reasonable interpretation of a “compensation study” would include “all forms of compensation”.

Next the Company complains that the term “comparable sized company” needs further definition. The Company’s 2019 Proxy states

The Compensation Committee periodically assesses compensation of our executive officers in ***relation to companies of comparable size, industry and complexity, taking the performance of the Company and such other companies into consideration.*** At page 10.

because it has no revenue has raised funds through sales of shares at greatly reduced prices because of the share price collapse. The argument raised by the Company in this regard is disingenuous at best. See also footnote 15 above

¹⁸ Perhaps the Companies 2019 Proxy request to increase the number of Options by “tenfold” from 60,000 to 600,000 is directly related to the fact that the only “named executive”, the CEO, current stock options, which are directly related to share performance, are worthless. It is disingenuous for the Company to make this argument, when its own records in particular as they relate to stock options show the opposite.

¹⁹ E.g. The Compensation Committee periodically assesses compensation of our executive officers in relation to companies of comparable size, industry and complexity, taking the performance of the Company and such other companies into consideration. Proxy at page 10

The Proposal contained the “comparable sized” company parameter, and as the Company claims to have already identified the “peer” group this needs no further explanation. This is also addressed in the red line Proposal attached.

Page 8 and 9. **Supporting statement excluded because of a number of materially false and misleading statements.**

Company states that “figures relating to the Company’s share price and CEO’s 2017 compensation are incorrect. The CEO’s 2017 compensation is taken directly off the 2019 Proxy Statement, and the share price is public record. Conveniently the Company fails to disclose what specifically is “incorrect” and whether it is “material”.

The Company also references “previous email correspondence” “demanding that the Board eliminate all cash compensation” to the CEO. Conveniently the Company, while referencing the request does not include the actual correspondence, my January 25, 2019 email to Morris which is attached and the February 12, 2019 in response to Colonnese email where I indicated a specific intention to “bring this before the shareholders in the form of a resolution”. It is notable that both these correspondence were well in advance of the “CEO advisory Proposal” the Company proffered, which as shown below was something the Company sought to avoid.

The Company argues the Proposal contains “misleading” statements because in the Proposal I did not include all other quotes from public Biopath SEC documents²⁰. Ironically, the Company incorporates by reference in its Proxy other of its SEC documents. The Company’s position must assume its shareholders are unaware of the existence of these documents, the red line includes a reference to other filings.

The Company argues that the Proposal statement regarding the “Company’s poor performance” is “misleading because he doesn’t clarify “what measurements he uses to state that the Company has been performing poorly.” Except for the seriousness of the issues before this Commission, this claim is laughable. The beginning of the Proposal states

As of June 30, 2020, the Company’s market capitalization was less than \$20 million dollars based upon a share price of approximately \$5. On July 1, 2016 the Company share price (adjusted for the reverse splits) was \$358 per the NASDAQ website, representing a per share loss of approximately 98%

Any objective analysis of a Company’s performance must include its share price. (note Nielsen option price as set out in the 2019 Proxy of \$550 versus today’s sub \$5 price) No Company that has lost 98% of its share price could be anything other than performing poorly. This is even more relevant for Biopath because its shares appear to be its only access to capital, and it is incurring significant losses with no end in sight.

We have incurred significant operating losses since our inception. As of December 31, 2019, we had an accumulated deficit of \$56.3 million. To date, we have not generated any revenue from the sale of our drug candidates and **we do not expect to generate any revenue from sales of our drug candidates for the foreseeable future. We expect to continue to incur significant operating losses and we anticipate that our losses may increase substantially as we expand our drug development programs and commercialization efforts** Biopath FORM 10-K for the year ending December 31, 2019 (10K) at page 29

²⁰ There is also 500 Word limit on Shareholder Proposals.

The Company assertion that it might be more “accurate” to “judge the Company’s performance on drug development efforts” is likewise laughable.

The Company has no revenue, and no commercial product. It exists because it has raised funds through share offerings. Through December 31, 2019 the Company had accumulated \$56.3 million in losses, including most recently from page 52 of the 2019 10K

Net Operating Loss. Our net loss from operations was \$8.7 million for the year ended December 31, 2019, an increase of \$0.1 million compared to the year ended December 31, 2018. Net Loss. Our net loss for each of the years ended December 31, 2019 and December 31, 2018 was \$8.6 million.

The Company is completely dependent by their own admission on raising capital. Lower share price translates into a higher cost of capital (and generally limits how much can be raised).

We currently do not have any commercial drug products or an organization for the sales and marketing of pharmaceutical products 2019 10K at 22

We will continue to require substantial additional capital for the foreseeable future. If we are unable to raise additional capital when needed, we may be forced to delay, reduce or eliminate our drug development programs and commercialization efforts. 2019 10k at page 30

The lower the share price, the more the “funds” used in its operations cost²¹ and the more existing shareholdings are diluted. Simply put unless the Company can raise funds, it will cease to exist and therefore its “**drug development efforts**” will likewise cease to exist.²² Under the Company’s performance theory the shareholders price could go to “zero”²³ as long as they had any “drug development efforts”²⁴ and the Company would not be “performing poorly”. How much more than a

²¹ Without revenues the G&A costs of the Company are funded through the sale of shares. The lower the G&A (or other costs) the less money needed to be raised. In 2018 the Company’s’ G&A expense was \$ 2.906 million, Nielsen’s salary was \$490,000 per the Proxy

²² Per the Proxy on the Stock Option Plan: The performance metrics set forth in the 2017 Plan are: revenue; net revenue; revenue growth; net revenue growth; earnings before interest, taxes, depreciation and amortization (“EBITDA”); adjusted EBITDA; EBITDA growth; adjusted EBITDA growth; funds from operations; funds from operations per share; operating income (loss); operating income growth; operating cash flow; adjusted operating cash flow return on income; net income; net income growth; pre- or after-tax income (loss); cash available for distribution; cash available for distribution per share; cash and/or cash equivalents available for operations; net earnings (loss); earnings (loss) per share; earnings per share growth; return on equity; return on assets; **share price performance (based on historical performance or in relation to selected organizations or indices); total stockholder return; total stockholder return growth**; economic value added; improvement in cash-flow (before or after tax); successful capital raises; successful completion of acquisitions; and confidential business unit objectives. **Almost without exception the metrics are financial in nature. Missing is the Company’s “new” performance metric of “drug development efforts”.**

²³ the Company has recently done two reverse stock splits of 10 and 20. It is my understanding that these were done to keep from being delisted on NASDAQ as the Company would need to maintain a share price over \$1. My simple calculation is that a current \$5 share price without the reverse splits would be \$0.025 per share (two and ½ cents per share) $\$5/20 = \0.25 . $\$0.25/10 = \0.025 . Thus, the Company because of the tremendous destruction of share price was forced to reverse split its shares not once but twice in order to avoid being delisted and face considerable uncertainty in raising required capital. Note even the first 10 reverse would not have been sufficient to avoid delisting.

²⁴ This claim is indeed ironic as by the Company’s admission it has no revenue or commercial product since its creation in 2007.

98% loss of Shareholder value, and “zero” commercial drug products would be necessary before the Company admits it is “performing poorly”.

Pages 8 and 9.

The Company is also aware of the limitation that the Proposal be 500 words or less (see pages 8 and 9 of the letter) but raise issues relating to disclosure that the Proposal should have made, but which are already included in the Company’s SEC filings. For example

“the final sentence of the Supporting Statement contains a false statement where the Proponent states that the request to eliminate the CEO’s salary was “rejected “based upon a 2015 proxy statement”. Pages 8 and 9 (I have now attached the letter from Mr. Colonnese.) At page 9 “these statements are also incomplete and out of context” page 9.

First the letter from Colonnese the Chairman of the Company’s compensation committee, did reference the 2015 Proxy. The Proposal also included a direct quote, regarding the Company’s position that regarding the loss of shareholder value and the impact on Nielsen. With a 500 word limit it was not possible to include the entire note (I did previously ask that Colonnese letter be part of the Company’s formal records) and frankly the point was that while Shareholders lost millions, the Company did not adjust the CEO’s salary in fact it may have increased it. The redline eliminates the 2015 Proxy language (again an easy fix) to avoid confusion and direct shareholders to the Company to get a copy.

Pages 10, 11 and 12

Proposal excluded because “the requested actions have been substantially implemented by the Company”

Shareholder vote on CEO compensation.

Perhaps most demonstrative of the Company’s bad faith is the claim the Shareholders have already spoken on the issue. The sequence of events was that in early 2019, an unhappy Shareholder (me) raised significant issues regarding the CEO pay and direction of the Company (see attached chain of emails beginning with an email of January 25, 2019 to Morris)

After an exchange with the Company on February 16, 2019 Morris respond in part

While the Board **will not be providing a formal response**, it acknowledges your concerns and appreciates your engagement.

From early February 2019 the Company and Board was faced with the knowledge that a Shareholder was going to present a proposal to the shareholders questioning the Boards actions. In a February 16, 2019 they were put on notice

Doug

Very disappointing response

I’m concerned this is another failure of the board to protect the shareholders interests.

Please advise me as soon as it is known when I can provide resolutions for the next shareholders meeting to be included in the proxy, as I intend to bring these issues including the boards response (or lack thereof) before them (emphasis added)

The movement of those meeting dates in the past has made it difficult for shareholders to present resolutions for consideration within the deadlines the company has established and I would expect now that the board has been put on notice of these issues and that and that I intend to present resolutions I will be afforded reasonable notice

Sincerely

Rick

What did the Company do?

First ignored my repeated attempts to determine when I could make a proposal to be included in the 2019 Proxy, a proposal they knew would present to shareholders uncomfortable issues in particular the "failure of the board to protect the shareholders' interests". This occurred until October 3, 2019 when Morris informed me the deadline had passed "3 months" before, but at least 7 months "after" they were notified that I intended to make a shareholder proposal.

What did the Company/Board do next?

Instead of presenting the issues I had laid out to the shareholders, they proffered a "vanilla" advisory proposal. Now, The Company uses that same "advisory" as proof that the Shareholders approved of the CEO.

I would ask that the Commission compare the Company "Proposal" to the one I proffered. Often the "answer" to a question depends on how the question is asked/presented. This thinly veiled attempt by the Company to insulate itself from liability/issues relating to CEO compensation is laughable

Additional detail:

By January 2019 I had already raised the issue of the CEO's compensation in some detail and the Company was fully aware that I would raise this with the Shareholders.²⁵ In my February 12, 2019 email to Morris in response to Colonnese I stated:

Further if you don't take action, ***I plan on bringing this before the shareholders in the form of a resolution(s)*** and so would ask that you inform me when I can tender the resolutions for consideration at the next shareholder meeting, as the Company controls the schedule for this.(emphasis added)

As detailed in emails to Morris and the Company, the issues I raised some of which were included in the Proposal were to highlight the Companies performance and that the CEO's cash compensation was a severe drain on a Company whose only source of "cash" is the sale of shares and the share price had plummeted. My Proposal highlighted the loss of shareholder value in the destruction of share price and the CEO's compensation.

The Company's response. We are not taking any action. (see Colonnese letter attached)

²⁵ As set out in the emails below, I made repeated requests to the Company to ensure that I could get the Proposal in the 2019 Proxy. Instead they failed to respond and delayed until finally telling me it was too late. At the same time the Company proffered the vanilla "non binding advisory vote" in the 2019 Proxy. Had my Proposal also been included in the 2019 Proxy, I question whether the Company would have had the same response to theirs. No "good faith" argument can be made by the Company for their actions.

Instead fully aware that I intended to bring this issue before the Shareholders, the Company proposed the “non-binding” resolution below, having impeded my efforts, to approve the compensation information included in the Proxy. A “vanilla” proposal couched in such terms as to be innocuous and the Company. the Proxy provides in relevant part:

ADVISORY VOTE TO APPROVE NAMED EXECUTIVE OFFICER COMPENSATION

“RESOLVED, that the Company’s stockholders approve, **on an advisory basis**, the compensation paid to the Company’s named executive officers, as disclosed in the Company’s Proxy Statement for the 2019 Annual Meeting of Stockholders pursuant to the compensation disclosure rules of the Securities and Exchange Commission, including the “Summary Compensation Table” and the related compensation tables and narrative discussion.”

“The Board recommends that the stockholders vote “FOR” the approval, **on a non-binding advisory basis**, the compensation of the Company’s NEOs as set forth in this Proxy Statement. emphasis”

Because of the manner in which the Company has submitted this Letter, including omission of relevant documents, other Company representations need to be discussed/analyzed. For example:

Company states “it” conducts the study, not an independent third-party review nor that the study would consider whether current CEO has performed. In the attached letter from Mr. Colonnese, states

Periodically, the Committee requests the Company’s executive compensation counsel ²⁶to compile compensation data from proxies and compensation surveys to allow the Committee to assess director and officer compensation levels at the Company to add addition rigor to our review.

Company states it already conducts an annual compensation review using the Company’s peer group, a group which it apparently determines. Previously before the significant drop in share price the Company would include a chart comparing it to other “peers”.

A compensation study which only considers the compensation for the position, in this case the CEO, is incomplete. For example, did the Compensation Committee review determine whether any CEO in their “peer Group” retained his or her position with a 98% loss of shareholder value? With no revenue or prospect for revenue or and commercial products? These are areas the independent review would consider.²⁷

My Proposal requests that two separate issues be addressed/studied, the level and structure of the compensation for the CEO position, and whether the current CEO based on performance should be retained (or at a minimum determine whether any CEO in the peer Group had similar stock performance and retained their current position and compensation.)

²⁶ Was this Mr. Rohrlich, the author of the Letter?

²⁷ Using a sports analogy. The team determines that a starting pitcher is “valued” at \$5 million per year. The \$5 million dollars is the price they are willing to pay. The separate question is the team willing to pay \$5 million to its existing player, or should it sign someone else who brings it that “value”. The same issue relates to CEO Compensation. A study which only compares what the CEO “position” is worth does not consider whether the current CEO is worth that amount and should be retained. Current performance of the Company does not support that conclusion.

The Compensation Committee performance clearly indicates that an independent third-party review is warranted. For example, according to online charts tracking the Company's share price, on December 30, 2016 the price was \$270 per share (adjusted for the reverse splits). On December 29, 2017 effectively one year later the share price was \$40.50.²⁸ In 2017 Mr. Nielsen received a bonus of \$118,750 in addition to his \$475,000 salary according to the Company's proxy. (see also Colonnese letter for the Company's explanation)

Page 12 Part E Excluding the Proposal **"because it relates to the Company's ordinary business operations"** This has already been addressed by making the proposal a non-binding advisory vote

Page 13 **Excluding the Proposal because it constitutes more than one proposal**

The Company in its 2019 proxy proposed the following

"RESOLVED, that the Company's stockholders approve, on an advisory basis, the compensation paid to the Company's named executive officers, as disclosed in the Company's Proxy Statement for the 2019 Annual Meeting of Stockholders pursuant to the compensation disclosure rules of the Securities and Exchange Commission, including the "Summary Compensation Table" and the related compensation tables and narrative discussion."

Using the logic employed by the Company this could be considered as 3 separate proposals, one to consider the "Summary Compensation Table, one to consider the "related compensation tables" and one to consider the "narrative discussion".

As discussed above, the Company did not timely raise this issue and as with the other "deficiencies" could have been resolved easily had it be raised. The red line addresses this issue by adopting the same structure that the Company used above with this language

Resolved, that the Company's stockholders approve, on an advisory basis that the Company have a comprehensive compensation study conducted by an independent third party, which at a minimum considers the salary and other cash compensation, including but not limited to bonus, of the current CEO whether it should be reduced, how any future compensation, should be tied to the performance of the company's share price using companies of comparable size, industry and complexity, and considering the performance of the Company and such other companies and as part of that study make a recommendation as to whether the CEO should be retained based upon his performance and the performance of the Company share price and report back to the shareholders.

Other considerations and communications:

Previous attempts to make a Shareholder Proposal and the Company's actions.

I have attempted over the past several years to make a Shareholder Proposal and contacted the Company through Mr. Morris to seek the appropriate information and guidance (also to Mr. Colonnese) Attached are copies of these emails. For illustrative purposes I have quoted some of the emails to show the efforts I have made to make a Shareholder Proposal and the Company's response.

Response to Colonnese (February 12, 2019) attached

²⁸ Because these prices come off an online service by Bing they may not be exact. This is to illustrate the loss of shareholder value during 2017.

I would also ask that you respond to my earlier request for information on Directors and Officers insurance and the steps the Company is taking with respect to potential shareholder actions. Further if you don't take action, **I plan on bringing this before the shareholders in the form of a resolution(s) and so would ask that you inform me when I can tender the resolutions for consideration at the next shareholder meeting, as the Company controls the schedule for this.**(emphasis added)

February 16, 2020 email to Morris(attached)

Doug

Very disappointing response

I'm concerned this is another failure of the board to protect the shareholders interests. **Please advise me as soon as it is known when I can provide resolutions for the next shareholders meeting to be included in the proxy, as I intend to bring these issues including the boards response (or lack thereof) before them**

The movement of those meeting dates in the past has made it difficult for shareholders to present resolutions for consideration within the deadlines the company has established and I **would expect now that the board has been put on notice of these issues and that and that I intend to present resolutions I will be afforded reasonable notice** (emphasis added)

Sincerely

On Jul 16, 2019, I sent the attached email to Doug Morris, Board Member, requesting that he let me know when the annual meeting was to be held as I intended to submit a Shareholder resolution

Doug

Please let me know if/when the annual meeting has been set as I intend to tender shareholder resolutions

Regards

Morris responded

Hi Rick:

I will let you know.(emphasis added) The meeting date is set in the last two weeks in September.

Best,

Doug

On Sep 9, 2019, I followed up:

Doug

As we are getting close I just wanted to follow up again

Thanks

Hearing no response, I followed up again

On Sep 27, 2019, at 6:16 PM, Rick Grant *** wrote:

Doug

Any update

I intend to offer resolutions for the annual meeting and do not want to be blocked from doing so and having them included in the proxy

Please advise

Regards

Again no response so I followed up again on October 3, 2019

Doug

The company's bylaws indicate that the Secretary of the Corporation must be given timely notice. Your website does not list such a position, but you are listed as in charge of investor relations. **Please treat this as formal notice of my intent to put forward business before the shareholders including resolutions to be included in the proxy (emphasis added)**

As the stock continues to crater it is important that the board take decisive action Please advise as to when I need to proffer my resolutions to be included in the proxy

Sincerely

Rick Grant

Morris responded the same day

Rick,

Thank you for your email. After speaking with our legal counsel, the deadline for stockholder proposals for inclusion in the Company's proxy statement **was approximately three months ago, as determined under federal securities laws.** Thanks, **(emphasis added)**

Same day I responded

Doug

I find this very troubling as I have been in contact with you regarding my intentions since the beginning of the year and asked for you to provide me the information that would have allowed me to have this included in the proxy

The company has taken a number of steps and actions over the years which I believe are inconsistent with responsibilities of the board. Compensation options oversight are but a few. The stock has now lost almost all of its value and yet the board takes no actions (eg see my email to the compensation committee where the response was no action to be taken)

I still plan on presenting at the shareholders meeting

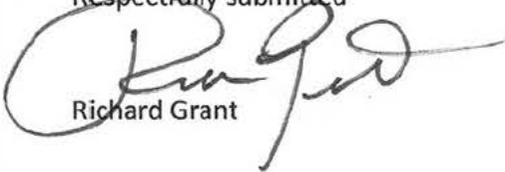
Please have your legal counsel send me the provisions he/she relies upon as I will be contacting the SEC to determine what actions I can take

Conclusion

For all the above stated reason, I respectfully request that the Commission reject the request of the Company, direct them to include the attached Proposal (the attached clean copy would be the actual version included) in this year's Proxy or if the Company fails to include it recommend enforcement action.

I am also formally requesting that the Commission initiate action to investigate the Company as to their actions with respect to the Proposal, whether the Company has acted in a similar manner with respect to other Shareholders, and finally whether previous actions, relating to the granting of options and board actions to limit Shareholders rights, such as the calling of special shareholders meetings were properly done.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Richard Grant", written over the typed name.

Richard Grant

Cc William R Rohrllich



February 1, 2019

Via Email

Richard Grant

Re: Response to email dated January 25, 2019

Dear Mr. Grant:

Bio-Path Holdings, Inc. (the "Company") received your email dated January 25, 2019. Your email was provided to each member of the board of directors of the Company (the "Board"), including each member of the Compensation Committee of the Board (the "Committee"). I am providing this response to your email on behalf of the Committee as chair of the Committee.

Pursuant to the Committee's charter, and as disclosed in the Company's Proxy Statement filed with the U.S. Securities and Exchange Commission (the "SEC") on November 2, 2018, all decisions with respect to the compensation of the Company's CEO are determined and approved either solely by the Committee or together with other independent directors, as directed by the Board. Further, the Committee also reviews director compensation levels and practices. The Committee periodically assesses compensation in relation to companies of comparable size, industry and complexity, taking the performance of the Company and such other companies into consideration. Periodically, the Committee requests the Company's executive compensation counsel to compile compensation data from proxies and compensation surveys to allow the Committee to assess director and officer compensation levels at the Company to add additional rigor to our review process.

As disclosed in the Company's Proxy Statement filed with the SEC on November 12, 2015, the Committee adjusted executive base salaries in 2014 to be more competitive with salaries for comparable positions within companies of comparable size, industry and complexity. Even with these adjustments, Mr. Nielsen's base salary was below the 25th percentile of salaries of comparable executives within the Company's peer group at that time. Further adjustments were made in 2016 after review of the Company's peer group. Again, Mr. Nielsen's base salary was below the 25th percentile of salaries of comparable executives within the Company's peer group at that time, as disclosed in the Company's Proxy Statement filed with the SEC on November 3, 2017. Finally, as disclosed in the Company's Proxy Statement filed with the SEC on November 2, 2018, Mr. Nielsen did not receive an increase in base salary in 2017 (Mr. Nielsen's increase in base salary in 2016 was not retroactive to January 1, 2016, resulting in the difference between 2017 and 2016 base salaries reflected in the Proxy Statement).

In addition to base salary, bonuses are awarded to executives to motivate and reward performance achievement. Mr. Nielsen's bonus paid in 2017 was a discretionary bonus based on performance achievement relating to 2016, among other factors. Executive compensation relating to 2018 will be disclosed in the Company's upcoming Annual Report on Form 10-K, which we encourage you to review when it becomes available.

Furthermore, Mr. Nielsen periodically receives stock-based compensation and has a considerable amount of options that currently have no value due to the recent trend in the stock price. In addition, as disclosed in the Company's Proxy Statement filed with the SEC on November 3, 2017, Mr. Nielsen owned 5,164,433 shares of record as of October 18, 2017 (prior to giving effect to the reverse stock splits in 2018 and 2019). Mr. Nielsen's holdings have been impacted by the reverse stock splits just as all other shareholders. He has every incentive to make decisions and take action to increase the stock price, so as to benefit like all of our shareholders.

Your email suggests that Mr. Nielsen's and the Board's historical compensation is not appropriate in light of recent performance; however, historical compensation is unrelated to current performance. Rather, consistent with the Committee's duties under its charter and with its historical practice, the Committee reviews the compensation of executive officers on a regular basis, taking the performance of the Company into consideration. Accordingly, the Committee will review Mr. Nielsen's overall compensation package at the Committee's upcoming meetings in accordance with the Committee's duties under its charter. To respond directly to the demand in your letter, the Committee does not believe that eliminating all cash compensation to Mr. Nielsen and the Board would be in the best interests of the Company and its stockholders and would be inconsistent with the Committee's duties under its charter.

We appreciate your engagement and interest as a shareholder, and we value your feedback.

Regards,



Mark P. Colonnese
Chair of the Compensation Committee

EXHIBIT 2
PROPOSALS

PROPOSAL: VOTE ON COMPENSATION AND RETENTION OF CHIEF EXECUTIVE OFFICER

As of June 30, 2020, the Company's market capitalization was less than \$20 million dollars based upon a share price of approximately \$5. On July 1, 2016 the Company share price (adjusted for the reverse splits) was \$358 per the NASDAQ website, representing a per share loss of approximately 98%. Per the Company's filings, Peter H. Nielsen, the Company CEO received Salary of \$456,250 and a bonus of \$140,000 in 2016, a salary of \$475,000 and a bonus of \$118,000 in 2017, a salary of \$490,000 in 2018 and a salary of \$490,000 in 2019. Per the Company's 2019 proxy, "We expect to continue to incur significant operating expenses in connection with our ongoing activities" and "We have not generated significant revenues to date. Our ability to generate revenues from our drug candidates, which we do not expect will occur for many years". (please review Proxy and Company's Annual Report for context). It appears the company intends to fund expenses through capital raises, which will dilute existing shareholders and therefore expense management and reduction in particular G&A must be managed. G &A expenses have increased from \$3.014 million in 2016 to \$4,108 million in 2019. The Board has chosen in addition to not replacing the CEO based upon the Company's poor share price performance to not reduce the CEO's salary, or at a minimum base it directly on the Company's share price performance. The CEO's salary represents approximately 12% of the company G&A expense. One year ago a request was made to preserve cash by reducing or eliminating the CEO's salary but it was rejected by the head of the compensation committee and based included a statement upon a 2015 proxy statement and that "Mr. Nielsen's holdings have been impacted ...by the reverse stock splits just as all shareholders" ignoring the fact that Neilson continued to receive his full salary while shareholders holdings were destroyed. A copy of the letter is available from the Company.

Therefore, it is requested that the shareholders to consider in a non binding advisory vote approve the following resolutions

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Resolved, that the Company's stockholders approve, on an advisory basis that the Company have a comprehensive compensation study conducted by an independent third party, which at a minimum considers the salary and other cash compensation, including but not limited to bonus, of the current CEO whether it should be reduced, how any future compensation, should be tied to the performance of the company's share price using companies of comparable size, industry and complexity, and considering the performance of the Company and such other companies and as part of that study make a recommendation as to whether the CEO should be retained based upon his performance and the performance of the Company share price and report back to the shareholders.

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1. ~~That's the salary and other cash compensation, including but not limited to bonus, of the current CEO be reduced by 90% effectively immediately and any future salary, including increases or bonuses be tied directly to the performance of the company's shares.~~

2. ~~That a compensation study be conducted using peers for the CEO of comparable sized company~~

3. ~~That the company be directed as part of that study to make a determination as to whether the CEO should be retained based upon his performance and report back to the shareholders.~~

~~“RESOLVED, that the Company’s stockholders approve, on an advisory basis, the compensation paid to the Company’s named executive officers, as~~

~~disclosed in the Company’s Proxy Statement for the 2019 Annual Meeting of Stockholders pursuant to the compensation disclosure rules of the Securities and~~

~~Exchange Commission, including the “Summary Compensation Table” and the related compensation tables and narrative discussion.”~~

PROPOSAL: VOTE ON COMPENSATION AND RETENTION OF CHIEF EXECUTIVE OFFICER

As of June 30, 2020, the Company's market capitalization was less than \$20 million dollars based upon a share price of approximately \$5. On July 1, 2016 the Company share price (adjusted for the reverse splits) was \$358 per the NASDAQ website, representing a per share loss of approximately 98%. Per the Company's filings, Peter H. Nielsen, the Company CEO received Salary of \$456,250 and a bonus of \$140,000 in 2016, a salary of \$475,000 and a bonus of \$118,000 in 2017, a salary of \$490,000 in 2018 and a salary of \$490,000 in 2019. Per the Company's 2019 proxy, "We expect to continue to incur significant operating expenses in connection with our ongoing activities" and "We have not generated significant revenues to date. Our ability to generate revenues from our drug candidates, which we do not expect will occur for many years". (please review Proxy and Company's Annual Report for context), It appears the company intends to fund expenses through capital raises, which will dilute existing shareholders and therefore expense management and reduction in particular G&A must be managed. G &A expenses have increased from \$3.014 million in 2016 to \$4,108 million in 2019. The Board has chosen in addition to not replacing the CEO based upon the Company's poor share price performance to not reduce the CEO's salary, or at a minimum base it directly on the Company's share price performance. The CEO's salary represents approximately 12% of the company G&A expense. One year ago a request was made to preserve cash by reducing or eliminating the CEO's salary but it was rejected by the head of the compensation committee and included a statement that "Mr. Nielsen's holdings have been impacted ..by the reverse stock splits just as all shareholders" ignoring the fact that Neilson continued to receive his full salary while shareholders holdings were destroyed. A copy of the letter is available from the Company. Therefore, it is requested that the shareholders to consider in a non-binding advisory vote for the following resolution

Resolved, that the Company's stockholders approve, on an advisory basis that the Company have a comprehensive compensation study conducted by an independent third party, which at a minimum considers the salary and other cash compensation, including but not limited to bonus, of the current CEO whether it should be reduced, how any future compensation, should be tied to the performance of the company's share price using companies of comparable size, industry and complexity, and considering the performance of the Company and such other companies and as part of that study make a recommendation as to whether the CEO should be retained based upon his performance and the performance of the Company share price and report back to the shareholders.

EXHIBIT 1

CORRESPONDENCE AND SEC CHAIRMAN SPEECH

Proxy Submission Request

From: Doug Morris (dmorris@biopathholdings.com)

To: ***

Cc: wrohrlich@winstead.com

Date: Tuesday, July 14, 2020, 04:18 PM EDT

Richard,

Thank you for your email and follow-up materials. Upon review of the materials, we believe the deficiencies we previously identified have been corrected.

Thanks,

Doug

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Response to your email Re: Proxy Resolution(s) Submission

From: Doug Morris (dmorris@biopathholdings.com)

To: ***

Cc: wrohrlich@winstead.com

Date: Thursday, July 9, 2020, 01:00 PM EDT

Mr. Grant,

Thank you for your email. Upon review of your submission, we noted deficiencies in your submission. First, we were not able to verify that you are the record holder of shares of common stock of Bio-Path. Because it does not appear that you are the record holder of the shares, we suspect that you may hold your shares in "street name" with your broker or bank. Second, your submission did not confirm that you intend to continue holding the securities through the date of the company's annual meeting.

In order to correct the deficiencies in your submission, please provide: (i) your written statement that you intend to continue holding the securities through the date of Bio-Path's annual meeting; and (ii) a written statement from the record holder of the securities (for example, your broker or bank where the shares are held) verifying that, at the time you submitted the proposal, you continuously held the securities for at least one year.

If Bio-Path does not receive this confirmation within 14 days of your receipt of this email, your proposal will not be included in the proxy statement.

Please note, if you obtain a written statement from the record holder of the securities, the SEC suggests the record holder use the following language:

"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]."

If you have any other questions please see the attached Rule 14a-8.

Regards,

Doug



Rule 14a 8 (Shareholder Proposals).pdf
368kB

Re: Response to your email Re: Proxy Resolution(s) Submission

From: Rick Grant ***
To: dmorris@biopathholdings.com
Cc: wrohrlich@winstead.com; ***
Bcc: don@ici-coatings.com
Date: Monday, July 13, 2020, 11:01 AM EDT

Dear Mr. Morris

Attached is a letter form TD Ameritrade, which shows I hold the requisite number of shares and have held them prior to July 1, 2019, i.e. one year before my submission. In fact I have held these shares for at least several years, in addition to the shares I hold at Fidelity and E*TRADE

Further as you requested "your written statement that you intend to continue holding the securities through the date of Bio-Path's annual meeting" **this is to confirm in writing that I intend to continue to hold the securities through the date of Bio-Path's annual meeting.**

Please confirm that you have received this email and that I have complied with Rule 14a-8., as I have provided the information you requested, well within the time frame you stated.

Sincerely
Richard Grant

On Thursday, July 9, 2020, 01:00:34 PM EDT, Doug Morris <dmorris@biopathholdings.com> wrote:

Mr. Grant,

Thank you for your email. Upon review of your submission, we noted deficiencies in your submission. First, we were not able to verify that you are the record holder of shares of common stock of Bio-Path. Because it does not appear that you are the record holder of the shares, we suspect that you may hold your shares in "street name" with your broker or bank. Second, your submission did not confirm that you intend to continue holding the securities through the date of the company's annual meeting.

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If Bio-Path does not receive this confirmation within 14 days of your receipt of this email, your proposal will not be included in the proxy statement.

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“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].”

If you have any other questions please see the attached Rule 14a-8.

Regards,

Doug



tdamerbpthshares.pdf
22.7kB

RE: Is Bio-Path Holdings, Inc. (NASDAQ:BPTH) Excessively Paying Its CEO? - Simply Wall St News

From: Doug Morris (dmorris@biopathholdings.com)

To: ***

Date: Wednesday, July 1, 2020, 03:18 PM EDT

Rick:

I hereby acknowledge receipt of your email.

Doug

From: Rick Grant ***
Sent: Wednesday, July 1, 2020 11:20 AM
To: Doug Morris <dmorris@biopathholdings.com>
Subject: Re: Is Bio-Path Holdings, Inc. (NASDAQ:BPTH) Excessively Paying Its CEO? - Simply Wall St News

Dear Doug

In accordance with the SEC requirements, I certify that I have over 2300 shares of Biopath stock (in three different brokerage houses) and that I am submitting this shareholder resolution to be included in the company's proxy. The resolution is less than the 500 word maximum and contains facts from the company's SEC filings and I've also attached the letter referenced in the resolution.

This is being submitted is timely

This is being submitted based upon the Company's continued failure to address the issues and destruction of shareholder value.

Please acknowledge your receipt of this on behalf of the company.

Sincerely

Richard Grant

On Thursday, October 3, 2019, 01:37:02 PM EDT, Doug Morris <dmorris@biopathholdings.com> wrote:

Rick,

The SEC has established its own rules relating to stockholder proposals for inclusion in proxy statements. Rule 14a-8 governs this process.

Doug

Get [Outlook for Android](#)

From: Rick Grant ***
Sent: Thursday, October 3, 2019 9:15:35 AM
To: Doug Morris <dmorris@biopathholdings.com>; Daniel Gifford *** DON A. PATTERSON
<don@ici-coatings.com>
Subject: Re: Is Bio-Path Holdings, Inc. (NASDAQ:BPTH) Excessively Paying Its CEO? - Simply Wall St News

Doug

I find this very troubling as I have been in contact with you regarding my intentions since the beginning of the year and asked for you to provide me the information that would have allowed me to have this included in the proxy

The company has taken a number of steps and actions over the years which I believe are inconsistent with responsibilities of the board. Compensation options oversight are but a few. The stock has now lost almost all of its value and yet the board takes no actions (eg see my email to the compensation committee where the response was no action to be taken)

I still plan on presenting at the shareholders meeting

Please have your legal counsel send me the provisions he/she relies upon as I will be contacting the SEC to determine what actions I can take

Sincerely

Rick

Sent from my iPhone

On Oct 3, 2019, at 10:58 AM, Doug Morris <dmorris@biopathholdings.com> wrote:

Rick,

Thank you for your email. After speaking with our legal counsel, the deadline for stockholder proposals for inclusion in the Company's proxy statement was approximately three months ago, as determined under federal securities laws.

Thanks,

Doug

Get [Outlook for Android](#)

From: Rick Grant ***
Sent: Thursday, October 3, 2019 8:11:21 AM
To: Doug Morris <doug.morris10@gmail.com>; DON A. PATTERSON <don@ici-coatings.com>; Daniel Gifford *** ; Doug Morris <dmorris@biopathholdings.com>
Subject: Re: Is Bio-Path Holdings, Inc. (NASDAQ:BPTH) Excessively Paying Its CEO? - Simply Wall St News

Doug

The company's bylaws indicate that the Secretary of the Corporation must be given timely notice. Your website does not list such a position but you are listed as in charge of investor relations. Please treat this as formal notice of my intent to put forward business before the shareholders including resolutions to be included in the proxy

As the stock continues to crater it is important that the board take decisive action

Please advise as to when I need to proffer my resolutions to be included in the proxy

Sincerely

Rick Grant

Sent from my iPhone

On Sep 27, 2019, at 6:16 PM, Rick Grant *** wrote:

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Any update

I intend to offer resolutions for the annual meeting and do not want to be blocked from doing so and having them included in the proxy

Please advise

Regards

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Sent from my iPhone

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As we are getting close I just wanted to follow up again

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Rick

Sent from my iPhone

On Jul 16, 2019, at 12:06 PM, Doug Morris <doug.morris10@gmail.com> wrote:

Hi Rick:

I will let you know. The meeting date is set in the last two weeks in September.

Best,

Doug

Sent from my iPad

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Doug

Please let me know if/when the annual meeting has been set as I intend to tender shareholder resolutions

Regards

Sent from my iPad

On Apr 30, 2019, at 9:44 AM, Rick Grant *** wrote:

Doug

Please pass on the the compensation committee and full board

Thanks

Is Bio-Path Holdings, Inc. (NASDAQ:BPTH) Excessively Paying Its CEO?
Simply Wall St News

Peter Nielsen has been the CEO of Bio-Path Holdings, Inc. (NASDAQ:BPTH) since 2008. This analysis aims first to contrast CEO compensation with other companies that have similar market capitalization. Then we'll look at a snap shot of the business growth. And finally - as a second measure of performance - we will look at the returns shareholders have received over the last few years. This process should give us an idea about how appropriately the CEO is paid. See our latest analysis for Bio-Path [Read the full story](#)

Shared from [Apple News](#)

Rick

Sent from my iPhone

Biopath issues

From: Rick Grant ***
To: doug.morris10@gmail.com
Cc: don@ici-coatings.com; ***
Date: Friday, January 25, 2019, 10:35 AM EST

Dear Doug

As I do not have the email addresses for the other Biopath Board Members I would ask that you forward this to them.

The downward spiral of the company continues, as you've now destroyed over 95% of the Company's value over the last two years. Now you've taken actions that seem destined to continue this path. As a shareholder who held over 400,000 shares before the two recent reverse splits I've personally lost over \$1 million. Recently you raised a net \$1.1 million at a substantial discount then immediately did a direct offering to raise another \$1.7 million (gross) which served to tank the stock again. Incredibly the stock went up to \$5 per share that day until you announced the direct offering and the stock closed at \$1.71 a drop of 2/3rd.

Last year Dan Gifford and I requested that the Company reduce Peters cash compensation because of the impact it had on the Company's financials and you refused. Now we are faced with a situation where it is impossible to justify Peters compensation given the tremendous loss of corporate value and the material impact it has on the Company's ability to stay viable. In 2017 per the proxy Peters cash compensation was around \$600,000. This is over 1/2 the recent raise and 1/3 of the second offering. This is unsupportable and in direct conflict with the duties and responsibilities of the Board.

In any other company the board would not only have cut his compensation they would have terminated the CEO.

As a shareholder I am demanding that the board eliminate all cash compensation for Peter and the Board of Directors. Neither of you should be in a superior position to the shareholders who have seen their share value decimated while management stays in place and receives compensation, including incredibly a bonus in 2017 a year in which Company market value dropped substantially. .

Further given the precarious position the Board has placed the Company in I would like details on the Director and Officer Insurance and what steps you are taking with respect to what appears to me to be inevitable shareholder lawsuits.

The Board must take action immediately. There is no justification for continuing to reward poor performance at the expense of the shareholders

Sincerely

Richard Grant

Bio Path Response letter to your email re: Nielsen Compensation

From: Doug Morris (doug.morris10@gmail.com)

To: ***

Date: Monday, February 4, 2019, 05:24 PM EST

Dear Rick:

Attached is a letter from Bio-Path Holdings, Inc. Compensation Committee Chairman – Mark Colonnese. This letter responds to your email sent to me on January 25, 2019.

Thank you,

Doug Morris

Sent from [Mail](#) for Windows 10



Response to Grant letter 2-1-19.pdf
3.4MB

Re: Bio-Path Response letter to your email re: Nielsen Compensation

From: Rick Grant ***
To: doug.morris10@gmail.com
Cc: *** don@ici-coatings.com
Date: Tuesday, February 12, 2019, 04:05 PM EST

Doug

Here is my response. Please share this with Mr. Colonnese and all the other Directors. I look forward to the Board's response

Sincerely
Rick

On Monday, February 4, 2019 05:24:27 PM EST, Doug Morris <doug.morris10@gmail.com> wrote:

Dear Rick:

Attached is a letter from Bio-Path Holdings, Inc. Compensation Committee Chairman – Mark Colonnese. This letter responds to your email sent to me on January 25, 2019.

Thank you,

Doug Morris

Sent from [Mail](#) for Windows 10



Colonnese responses.docx
18.3kB

Dear Mr. Colonnese

I am in receipt of your letter of February 9, 2019 and find it very illuminating as to how you and the Board view your responsibilities.

First, having read it several times, I must admit I cannot see a single justification for his compensation or for that matter his retention as CEO based upon his performance, which I will discuss in detail below. All of your "justification" is for the job not the person. If you and the Board believe the salary is competitive you have the fiduciary obligation to replace an individual who is not performing with one that will, particularly in light of the incredibly poor performance of the Company and its share price and the potential for it to cease to exist if dramatic steps are not taken immediately.

Second, frankly having run a number of companies and served as a director of a public company, I have never experienced a Board member, much less the Chair of Compensation Committee, use as a justification for either the retention or compensation for CEO of the Company to use your words that "his holdings have been impacted by the reverse stocks splits just as all other shareholders" or as you state "Has a considerable amount of options that currently have no value due to the recent trend on the stock value". You and the board can't seriously believe that the Shareholder's should have any sympathy for Peter who I believe received most if not all of his shares as grants or options unlike the other shareholders. Further the intent behind stock options for executives is to compensate them for adding shareholder value in the form of a higher stock price. His options are worthless, because he has failed miserably in this regard with the stock having lost almost 95% of its value, generated no revenue to speak of and is staying alive by raising money at prices that dilute existing shareholders and drives down the stock price. As you know the company is bleeding cash, (in 2017 you had \$37,000 in revenue and with an \$8 million dollar annual burn rate) its operations are unsustainable, its shareholders have been crushed and without two reverse stock splits would have been delisted. You are raising money at dilutive rates and according to your 2017 annual report didn't have enough cash on hand to operate the company for 2018. The Company now has a total market cap of \$3.5 million and Peter is receiving \$500,000 to \$600,000 cash compensation. The situation is at a critical juncture and the Board must act immediately. As a preface, Daniel Gifford and I raised this exact issue over a year ago with Doug Morris and he likewise refused to take any action, and look where we are today, a stock that has plummeted over the last year.

The issue is not as you say the historical compensation (which I assume would be raised in any shareholder lawsuit) but whether the current CEO is performing at a level that justifies both his retention and compensation. While the Company may have done an analysis years ago (predating your election to Board) can you honestly maintain that a publicly traded Company with a market cap of \$3.5 million and which has lost over 95% of its market value can justify the retention of the CEO at his current compensation or at all? What does it take for the Board to act and protect its shareholders?

The only thing I might concede is that Peter may be valuable on the medicine development side, but the trials should have been run by a CRO, (Contract Research Organization.) As I understand the situation,

had Peter done that, he might have avoided the lack of protocol that caused failure in the trials due to poor controls in dosing some of the patients.

They would have also questioned the change of definition of targeted patient from the phase 1 trial to the expanded Phase 2 trial and may have seen consistent positive outcomes in relapsed and refractory AML patients, rather than trying to expand treatment to reach a wider population.

Additionally, the Company should have been led and should be led in the future by an experienced CEO with Biotech and drug trial experience. Since you maintain the compensation package is competitive this can be done.

There is no time for you or the Board to simply "consider" taking action on either the retention or compensation of the CEO. Before all shareholder value is lost you need to act

I would also ask that you respond to my earlier request for information on Directors and Officers insurance and the steps the Company is taking with respect to potential shareholder actions. Further if you don't take action, I plan on bringing this before the shareholders in the form of a resolution(s) and so would ask that you inform me when I can tender the resolutions for consideration at the next shareholder meeting, as the Company controls the schedule for this.

Please make this correspondence a permanent part of the Company's records and share it with the other Directors.

Sincerely

Richard Grant

Re: Is Bio-Path Holdings, Inc. (NASDAQ:BPTH) Excessively Paying Its CEO? - Simply Wall St News

From: Rick Grant ***
To: dmorris@biopathholdings.com; don@ici-coatings.com; ***
Date: Thursday, October 3, 2019, 01:43 PM EDT

Thanks

Sent from my iPad

On Oct 3, 2019, at 1:36 PM, Doug Morris <dmorris@biopathholdings.com> wrote:

Rick,

The SEC has established its own rules relating to stockholder proposals for inclusion in proxy statements. Rule 14a-8 governs this process.

Doug

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Sent: Thursday, October 3, 2019 9:15:35 AM
To: Doug Morris <dmorris@biopathholdings.com>; Daniel Gifford *** ; DON A. PATTERSON <don@ici-coatings.com>
Subject: Re: Is Bio Path Holdings, Inc. (NASDAQ:BPTH) Excessively Paying Its CEO? - Simply Wall St News

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Rick

Sent from my iPhone

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Rick Grant

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Please advise

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Doug

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Shared from [Apple News](#)

Rick

Sent from my iPhone

RE: Catching up

From: Peter Nielsen (pnielsen@biopathholdings.com)

To: ***

Date: Monday, December 9, 2013, 09:22 AM EST

Thanks again for your thoughts and analysis.

Best, Peter

From: Rick Grant ***
Sent: Thursday, December 5, 2013 4:40 PM
To: pnielsen@biopathholdings.com
Subject: Re: Catching up

Good luck at ASH.

Just so you know my issue wasn't granting you options (Clearly you deserve them) it was changing the corporations rules on grants to triple the number and at the same meeting granting the new maximum amount, and vesting half (150% of the prior max) of them immediately. If you had been granted the max under the old plan there would have been no issue (unless for example the board/executives had inside information that the stock was ready to go up). When I was with Suez as an insider we had black out periods around all announcements—even something like hiring a new advisor/broker. I was also in a company where a executive was guilty of insider trading and it is not something we want to go through especially as if you get listed on NYSE people make a very good living tracking and profiting on such things.

I took a quick look at NYSE and its even tighter so I'm assuming/hoping your counsel will provide guidance as I imagine the due diligence required will be substantial.

We all believe in technology, we just don't want business/corporate issues to get in the way of your success.

Regards

Rick

From: Peter Nielsen <pnielsen@biopathholdings.com>
To: 'Rick Grant' ***
Sent: Thursday, December 5, 2013 5:10 PM
Subject: RE: Catching up

Hey, good to hear from you. Stand by for the cold weather coming your way!! Thanks for the heads-up info on comp committee, etc. for the NASDAQ. FYI and not common knowledge know outside insiders, we are pursuing a NYSE listing, which we qualify for now. And of course, corporate governance is a big part of that... structure and independence that we'll have in place before listing. And we are in process. The progress of the technology has pulled along the market's upward valuation, so it is time to move to the next phase for the

Company, which we are in process doing. As for my options, remember, the last time I had a grant was in 2008, and I won't be done and ready because of vesting for anything new until 2017 (and really, will we be around by then or gobbled up!!). So we have done things in lumps, right or wrong, to make things easier and more transparent (at least I think so).

ASH meeting this weekend and it could put more of a spotlight on progress of the technology. We'll see!!

Best,

Peter

From: Rick Grant ***
Sent: Thursday, December 5, 2013 3:41 PM
To: Peter Nielsen
Subject: Catching up

Peter

Hope you had a good Thanksgiving. I meant to follow up with some of the info we discussed, especially relating to the options. As I mentioned I had just attended a Continuing Legal education seminar and the issue was covered in detail. I understand you're considering listing on NASDAQ so I wanted to forward the attached SEC Rule making. In addition to some hopefully useful information, and the current rule on executive compensation. In relevant part it states

On the other hand, the NASDAQ Stock Market ("Nasdaq") does not mandate that a listed issuer have a compensation committee, but requires that executive compensation be determined or recommended to the board for determination either by a compensation committee composed solely of independent directors or by a majority of the board's independent directors in a vote in which only independent directors participate.

As you can see by this, the options granted in August could not be done under these rules, particularly as Doug was the one recommending it. Also the class I attended went in to great detail about what outside consultant can be used as they also need to be independent. Its why after the class I had the concerns I discussed

Anyway would enjoy catching up some time.

Regards

Rick

Speech

Building Meaningful Communication and Engagement with Shareholders

Chair Mary Jo White

Society of Corporate Secretaries and Governance Professionals
69th National Conference
Chicago, Illinois

June 25, 2015

Thank you, Jeff, for that kind introduction.

I am honored to be with you here in Chicago at the Society's 69th National Conference. Over the years, the Society has consistently provided thoughtful comments to the Division of Corporation Finance and the Commission on a wide variety of issues and proposed rules. You understand the complexities that can affect multiple parties and recognize the importance of the interests of shareholders. All of you play a critical role in corporate governance. It is the decisions you make, the practical solutions you advance and the views you share with your boards that can, in large part, dictate the relationship between shareholders and companies.

Because of your central roles in your companies, many of the Commission's initiatives are of interest to you: our disclosure effectiveness review; the audit committee disclosures concept release the staff is working on; and any number of our rulemakings. My hope is that you will see near-term activity in these and other areas, including rules mandated by the Dodd-Frank Act, such as the clawbacks rule as required by Section 954, the pay ratio rule under Section 953(b) and the joint rulemaking on incentive compensation as required by Section 956. So stay tuned for those developments.

But today my focus is on a selection of proxy-related issues, another area of particular interest to you. And my overall theme complements the theme of your conference, "Connect, Communicate, Collaborate." Be proactive in building meaningful communication and engagement with your shareholders.

One of the most important ways that shareholders have to express their views to company management is through the annual proxy process. We know of your deep involvement and interest in maintaining a fair and efficient proxy voting system, a priority we share at the SEC. So, this morning, I will offer some of my thoughts on four proxy-related subjects that are topics currently under discussion: the delivery of preliminary proxy voting results by intermediaries; the concept of a universal proxy ballot; so-called "unelected" directors; and shareholder proposals.

Each of these issues has frequently placed companies and shareholders at odds and each has been the subject of calls for Commission or staff action to clarify the scope of our rules, to step-in to mediate a dispute, and, in certain cases, to write new rules. And we and the staff of the Division of Corporation Finance are reviewing the concerns raised to determine what the Commission or the staff can and should do in response. But, I ask you, as I share with you my views on these topics, to also consider what you could and should be doing in each of these areas.

Preliminary Voting Results

I will start with preliminary proxy vote information. As you know, in advance of a company's annual meeting, companies seek voting authority from their shareholders who do not plan to attend the annual meeting. Under the current system, proxy materials are distributed to shareholders directly, in the case of registered shareholders, and indirectly through brokers and banks, in the case of "street name" shareholders who own shares through their brokerage and bank accounts. Today, over 80% of the outstanding equity securities for publicly listed U.S. companies are estimated to be in street name.^[1]

The vast majority of banks and brokers retain an agent to send out the request for voting authority. In addition to delivering proxies to the company reflecting the instructions received from the beneficial owners, the agent makes preliminary vote tallies available to the company before the meeting. This allows the company to determine whether it will meet its quorum

requirement. In addition to providing information on the quorum, access to this information also allows the company to assess the “direction” a vote is taking and to adjust its proxy solicitation strategy. That information is obviously not just valuable to companies, but also to the other participants who are conducting solicitations.

In the past, Broadridge, which is the single largest agent collecting vote tallies, had established the practice of providing the voting tallies of street name shares to a shareholder proponent when the proponent had mailed exempted soliciting materials to shareholders and signed a confidentiality agreement. It did this so long as the banks and brokers did not raise an objection.^[2] But, in May 2013, certain brokers objected to the early release of voting data to shareholder proponents.^[3] Broadridge’s response was that, as an agent, it is contractually bound to follow the directions of the brokers.^[4] As a result, it no longer provides the preliminary voting tallies to shareholder proponents who have distributed exempted solicitation materials and are willing to sign a confidentiality agreement, unless the company subject to the solicitation affirmatively consents.^[5] Investor groups and academics have expressed concern about this turn of events and argue that equal access to the information is required.^[6]

A variety of interested parties have asked the Commission to either interpret existing rules or adopt new rules to clarify that brokers are obligated to require their agents to deliver preliminary vote tallies to all interested participants.^[7] The SEC’s Investor Advisory Committee, for example, has stated that the requirement that brokers and their agents act in an impartial fashion in distributing proxy materials should include the delivery of preliminary voting information.^[8] The Advisory Committee and others have criticized the selective disclosure of such information to companies and not shareholders and its potential effect on voting results.^[9]

The proxy rules are silent on preliminary vote tallies.^[10] The staff in the Division of Corporation Finance, after reviewing the various rules that govern proxy solicitations, has acknowledged that the current rules do not address directly whether a broker (or its agent) is required or permitted to share such preliminary vote tallies with other parties.^[11]

Our rules, of course, do not prohibit issuers from sharing this information. As I have said on other occasions,^[12] companies should seek to engage in a constructive dialogue with their shareholders and work to facilitate constructive solutions to issues they raise. In this context, since companies have direct access to the voting results, they should themselves consider leveling the field by agreeing or consenting to a mechanism that provides the interim vote tallies to shareholder proponents.^[13] We understand that it is customary in a contested, non-exempt solicitation for companies and shareholder opponents to share each other’s voting information in advance of the meeting. So we know it can be done. I would ask you to consider whether providing this information to the shareholder in an exempt solicitation is really that different.

If the Commission were to advance a rulemaking in this area, it could take several forms. A rule could condition the broker’s exemption from the proxy rules on an overall “impartiality” requirement to level the playing field, such that everyone gets preliminary vote tallies, or nobody gets them. Alternatively, a rule could permit brokers to provide issuers with the total votes that have been cast only in order to determine quorum, rather than a preliminary vote tally that would indicate how the shareholders have voted.

As with many issues, while rulemaking certainly can provide a remedy, I would like you to consider whether rulemaking is the only way to solve these concerns. I understand that a possible solution was being worked on by the Society, the Council of Institutional Investors and Broadridge, but those discussions broke down.^[14] That is unfortunate. A solution that you and the other interested parties develop together can achieve a good compromise and strengthen relationships. Indeed, companies should see this not as a problem to be solved, but as an opportunity to improve investor relations.

Universal Proxy Ballots

Universal proxy ballots: there has been renewed discussion about whether the proxy rules currently provide shareholders with a sufficient range of choice in exercising voting decisions in election contests if they are voting by proxy rather than in person at the company’s annual meeting. There are calls, as there were a number of years ago, for the Commission to consider requiring universal proxy ballots.^[15]

As you know, in a contested director election, it is not generally possible for shareholders to pick freely from nominees on each side’s proxy cards unless they attend and vote in person at the meeting. By operation of state law requirements, the proxy rules, and practical considerations, shareholders executing a proxy face an either/or proposition: they can vote for either the entire slate of candidates put forward by management or by a proponent — they cannot pick and choose the individuals that they believe are the best candidates from the two slates.

While a proponent putting forth a minority slate of candidates under our “short slate” rule may “round out” its slate with some company nominees, it is the proponent who chooses which company nominees shareholders using the proponent’s proxy card

must support.^[16] State law generally provides that a later-dated proxy revokes an earlier-dated one, which can make it impossible or at least impractical to vote for some nominees on each side's card.^[17] And while under current proxy rules, both sides' nominees can consent to appear on each other's proxy cards, that consent is given very rarely, if ever.^[18]

Given these obstacles, some have requested that the Commission revise the proxy rules to facilitate the use of a "universal proxy ballot," a single proxy card that would list both management's and a proponent's nominees in contested director elections, allowing shareholders to vote for a mix of nominees of their own choosing.

As you know, we held a roundtable in February on ways to improve the proxy voting process.^[19] One panel focused on the state of contested director elections and whether changes should be made to the federal proxy rules to facilitate the use of universal proxy ballots. It was, as always, a lively discussion.

Some strongly believed that it was past time to consider adopting the universal ballot. Others questioned whether effecting only this change to the current proxy voting system was appropriate when so many other issues have also been raised,^[20] and expressed concern about possible unintended consequences. Panelists thus differed on whether the adoption of a universal proxy ballot would increase or decrease shareholder activism or otherwise impact the outcome of election contests. Some believed that it would embolden activists to run more contests. Others posited that it could stimulate increased cooperation and settlements between issuers and activists, thereby decreasing contests. No one specifically called into question the fundamental concept that our proxy system should allow shareholders to do through the use of a proxy ballot what they can do in person at a shareholders' meeting. Given the diverse set of views represented at our roundtable, I took this as at least a bit of a breakthrough.^[21]

All of the participants agreed that if the Commission were to revise the proxy rules to implement a universal proxy ballot, the "devil would be in the details." Questions include when a universal ballot could be used, whether it would be optional or mandatory and under what circumstances, whether any eligibility requirements should be imposed on shareholders to use universal ballots, what the ballot would look like, and whether both sides must use identical universal ballots. While I agree that the "devil will be in the details," I have asked the staff to bring appropriate rulemaking recommendations before the Commission on universal proxy ballots.

But, like so many issues that seem to unnecessarily have shareholders and companies at odds, this is one where you do not have to wait for the Commission to act. Give meaningful consideration to using some form of a universal proxy ballot even though the proxy rules currently do not require it. If a company's or proponent's nominees gave their consent to appear on the other side's proxy card, then all shareholders would have the full range of voting options available to them. I realize that putting this into practice may have its challenges and that companies could choose different ways of making it work. But it could be beneficial for your shareholders. And we would welcome hearing about your experiences as we consider rulemaking in this area. Providing shareholders with the same voting rights that they would have if they were present at the meeting and eliminating procedural obstacles should be a shared goal of both companies and shareholders.

"Unelected" Directors

Let me turn to the issue of directors who do not receive a majority of shareholder votes but who continue to serve on the board, sometimes — and not fondly — dubbed as "unelected" directors.^[22] A recent study showed that 85% of these directors were still board members two years after an unfavorable vote.^[23]

Although such situations are rare, the seeming indifference of management when they do occur has understandably garnered significant interest.^[24] What does the continued presence of such directors say about a company's general responsiveness to its shareholders?

In recent years, there has been a shift away from corporate practices that simply allow directors to remain when less than a majority of shareholders wants them there. "Plurality plus resignation" and majority voting regimes have become the norm at larger companies, and require at least some action by the director and board.

Under a plurality plus resignation voting regime, the director nominees agree in advance to resign if they receive a majority of withhold votes. The remaining directors then determine, in their discretion, whether to accept or reject the resignation. Under a majority voting regime, directors are elected only if they receive a majority of the votes cast. But as a result of the "holdover" rule under state law, an incumbent director who does not receive the requisite votes may remain in office until the earlier of the successor's election and qualification or the incumbent director's resignation or removal.^[25] In these instances, the board may determine not to accept the incumbent director's resignation until a successor joins the board.

Some recent data suggests that shareholders' expression of disapproval in uncontested elections do have an impact. A 2015 study, for example, shows that withheld votes are associated with increased director turnover.^[26] The same study showed that

directors who face even a 30% dissent rate are more likely to depart from the board, and if they remain, they are more likely to be moved to less prominent positions on the board.[27]

Views differ on whether individuals should be prohibited from continuing to serve on boards when they do not receive a majority of shareholder votes. Ultimately, whether an individual can remain on the board following an election where they do not receive majority support is a question of state law and the governance decisions made by boards. Some, however, have recommended that the Commission require companies to disclose the specific reasons why the board chose to retain a director who did not receive a majority vote regardless of the type of voting regime in place.[28] Others favor an approach where the NYSE and NASDAQ would impose new listing standards requiring listed companies to adopt a majority voting regime that imposes reasonable limits on the ability of boards to reject the resignation of such directors.[29]

If a director receives a majority withhold vote and remains on the board, the company should consider that its shareholders may want to know about that director's service on the board and the decision to let the board member remain. It is hard, indeed, to imagine that a company would not want to provide its shareholders with a specific explanation of the board's thinking on retaining the board member.

We could certainly amend our proxy rules to, among other things, mandate more specific disclosures on these board decisions. But, any company that is serious about good corporate governance should provide such information on its own. It should share the board's thought process and reasons with shareholders — inform the shareholders in clear terms why the board member's resignation was not accepted, why the director was considered important for the strength of board decision-making, for the growth of the company, for the relevant experience represented, or for the expertise that would be lost. Be specific, and avoid boilerplate. Shareholders are interested and likely quite willing to listen to reasonable explanations. To be sure, they could evaluate the additional information and express disagreement with the decision not to remove the board member, which would provide further information for you to consider about your shareholders' views on removal.

Shareholder Proposals

My final topic is another area of shareholder engagement that is near and dear to all of you — shareholder proposals. As you know, it has been a busy and interesting season. The staff received more than 300 requests from over 200 companies to exclude shareholder proposals addressing a wide range of topics from human rights to proxy access. Overall, the number of requests was up approximately 10% from the prior season, but down slightly from two years ago.

This season, the matter that received the most attention was Rule 14a-8(i)(9), particularly as it related to proxy access proposals.

Rule 14a-8(i)(9), as you know, allows a company to exclude a shareholder proposal that "directly conflicts" with one of the company's own proposals. After an initial no-action letter was issued by the staff, questions, from me and others, were raised about the proper scope and application of the rule. After I directed the staff to review the application of the rule, the Division of Corporation Finance decided to express no view on the application of Rule 14a-8(i)(9) during this proxy season. These decisions were not made lightly as we fully recognize the need for clarity and certainty in the proxy process during every season. But it is important to get these issues right.

The suspension of staff views on the application of Rule 14a-8(i)(9) this season did give a window into some private ordering at work. More than 100 companies received proposals to adopt some form of proxy access.[30] Proxy access proposals received majority support at more than 40 companies, as compared to four last year.[31] At seven companies, the company's proxy access proposal was included alongside a proxy access proposal offered by a shareholder. Shareholders preferred management's proposals at three companies, and at three others, they preferred the shareholder's proposal. At one company, the shareholders did not approve either proposal and there were no instances where shareholders approved both proposals. While all of these results are informative, this last one may be of particular interest to you.

The Society and others were very concerned that shareholders would be confused by two "competing" proposals and that companies would not know what to do if shareholders voted in favor of both proposals.[32] Based on this year's experience, that did not occur. It seems that shareholders were able to sort it all out and express their views. The staff is considering that fact and the other results of the season as it completes its review of Rule 14a-8(i)(9) — obviously with the goal of providing clarity for next year's proxy season.

Like the controversy about Rule 14a-8(i)(9), the issues that generally get the most attention each proxy season are those that are the subject of requests for no-action letters. But I would like to focus some attention on the shareholder proposals our staff never sees.

Each proxy season, SEC staff gets involved in roughly 300 to 350 proposals that companies seek to exclude. The staff generally does not track the proposals that companies do not seek to exclude, but we estimate that another 300 to 400 proposals are included in management's proxy statement without any staff involvement.^[33] Even with respect to the no-action requests, companies consistently withdraw 15 to 20% of them before the staff ever provides its views. We do not always know precisely what happens, but it is our understanding that management and the shareholders generally have arrived at some resolution on their own. That is good and evidence that the company/shareholder relationship is working.

I am not suggesting that management should never object to or oppose a shareholder proposal. Company management in good faith can believe that particular proposals are not in the best interests of their shareholders and there are also costs involved in processing shareholder proposals. But companies in many cases should consider other possible steps they could take in response to a proposal rather than just saying no. Sometimes, foregoing technical objections could be the right response. Letting shareholders state their views on matters may be a relatively low cost way of sounding out and preventing potential problems down the line.

More thoughtful treatment of shareholder proposals is not a one-way exercise. Briefing boards, analyzing issues and determining how to communicate the company's views to shareholders and markets take time and resources, as does hiring lawyers to analyze the proper interpretation of the Commission's grounds for exclusion and preparing communications with the staff. And I would urge shareholder proponents to be mindful of the costs they can cause to be borne by their companies — and thus, by their fellow shareholders — and to use the shareholder proposal process responsibly. Seek engagement with the company on an issue first before turning to a shareholder proposal. Direct engagement with a company is likely to be more meaningful than a precatory vote on a 500-word proposal. Some companies are better at engagement than others, but I would urge more companies to embrace it so that more shareholders will be incentivized to choose direct engagement as their preferred first approach.

Conclusion

The four areas I talked about today obviously represent only a small part of the broader company-shareholder relationship and a small sample of proxy-related issues we are considering at the Commission. We are very interested in what you think and how you are approaching the full range of issues and practices that relate to enhanced shareholder engagement and more meaningful communications. Your leadership can help to constructively address the issues and to develop and share best practices. I wish you success at that and a very productive conference. Thank you for all you do.

[1] See Proxy Pulse Reports, *available at* <http://proxypulse.broadridge.com/about/> (information based on Broadridge's processing of shares held in street name).

[2] See Broadridge Financial Solutions, Inc. Independent Steering Committee Newsletter, July 2013, Vol. 3 *available at* http://go.broadridge.com/Steering-Committee-Newsletter-July-2013?utm_campaign=CIS%20Steering%20Committee%20Newsletter%20July%202013&utm_medium=email&utm_source=Eloqua#decision.

[3] *Id.*

[4] *Id.*

[5] See Broadridge Financial Solutions, Inc. Proxy Vote Reporting and "Interim Vote Status Information," April 2014 *available at* <http://media.broadridge.com/documents/Broadridge-Interim-Vote-Reports-A-Background-Document.pdf>. See also Letter from Jeff Mahoney, General Counsel of Council of Institutional Investors to Keith F. Higgins, Director of the Division of Corporation Finance (May 26, 2015), *available at* http://www.cii.org/files/issues_and_advocacy/correspondence/2015/5-26-15%20CII%20Letter%20Regarding%20Proxy%20Distributors%20Broadridge%20Preliminary%20Voting%20docx.pdf ("Mahoney 2015 letter") (indicating that Broadridge currently also requires that the shareholder proponent send a communication qualifying as an "exempt solicitation" and pay Broadridge for the distribution of that communication).

[6] See, e.g., Letter from Jeff Mahoney, General Counsel of Council of Institutional Investors to Keith F. Higgins, Director of the Division of Corporation Finance (May 22, 2014), *available at* http://www.cii.org/files/issues_and_advocacy/correspondence/2014/05_22_14_letter_to_SEC.pdf.

[7] See Mahoney letter, *supra* note 6.

[8] See Recommendations of the Investor Advisory Committee: Impartiality in the Disclosure of Preliminary Voting Results (October 9, 2014) *available at* <http://www.sec.gov/spotlight/investor-advisory-committee-2012/impartiality-disclosure-prelim-voting-results.pdf>.

[9] *Id.* See Mahoney 2015 letter, *supra* note 5, and Susanne Craig & Jessica Silver-Greenberg, *Shareholders Denied Access to JPMorgan Vote Results*, DealBook (May 15, 2013), *available at*

http://dealbook.nytimes.com/2013/05/15/jpmorgan-voters-are-denied-access-to-results/?_r=0 (“Broadly speaking, the ability to get real-time voting information is crucial for both Wall Street firms and the shareholders sponsoring proposals. A losing side may decide to pour more resources into its campaign, making additional calls or send additional correspondence to shareholders.”).

[10] See Regulation 14A of the Exchange Act.

[11] Rule 14a-2(a)(1) provides for an exemption from the majority of proxy rules, to brokers and banks acting as securities intermediaries when they seek voting instructions from their beneficial owners regarding how to execute the intermediary’s proxy card. In particular, the rule requires that the broker “does no more than . . . impartially request from the person solicited instructions as to the authority to be conferred by the proxy.”

[12] Chair Mary Jo White, Remarks at Tulane University Law School 27th Annual Corporate Law Institute, “A Few Observations on Shareholders in 2015” (March 19, 2015), *available at* <https://www.sec.gov/news/speech/observations-on-shareholders-2015.html>.

[13] See Yin Wilczek, Group Asks SEC to Address Impartiality Over Disclosure of Preliminary Vote Tallies, Bloomberg BNA (May 29, 2015), *available at* <http://www.bna.com/group-asks-sec-n17179927201> (“Chuck Callan, Broadridge’s senior vice president of regulatory affairs, told BBNA that as a practical matter, issuers may not wish to involve Broadridge in providing their vote status information to shareholders.”).

[14] See Mahoney 2015 letter, *supra* note 5.

[15] In considering and revising the proxy rules in 1992, the Commission also considered, but did not mandate, a universal proxy ballot. See Exchange Act Release No. 34-31326 (October 16, 1992).

[16] In 1992, the Commission adopted the “short slate” rule, which modified the bona fide nominee rule by permitting proponents who seek to elect less than a majority of the board to identify on their proxy cards the management nominees they will not vote for and indicate that they will vote for the rest of management’s slate. See Exchange Act Rule 14d-4(d)(4).

[17] See, e.g., *Standard Power & Light Corp. v. Investment Assocs.*, 51 A.2d 572, 608 (Del. 1947) (“ . . . when two proxies are offered bearing the same name, then the proxy that appears from the evidence to have been last executed will be accepted and counted under the theory that the latter — that is, more recent — proxy constitutes a revocation of the former.”); *Parshalle v. Roy*, 567 A.2d 19 (Del. Ch. 1989) (“Where two identical proxies having differing dates, the later-dated proxy will be given effect; thus where two proxies were submitted on behalf of the same record holder, purported to vote the same number of shares, and, each proxy was regular on its face; specifically, neither bore any facial indication that the person executing the proxy was unauthorized, both proxies were entitled to a presumption of validity, but the later-dated proxy would prevail.”).

[18] The consent requirement arises under the current “bona fide nominee rule,” which requires a nominee to provide consent to be named in the proxy statement and to serve if elected. See Exchange Act Rule 14d-4(d)(1).

[19] “SEC Announces Agenda, Panelists for Proxy Voting Roundtable,” *available at* <http://www.sec.gov/news/pressrelease/2015-32.html>.

[20] These issues include those discussed in the Commission’s Concept Release on the U.S. Proxy System, such as the proxy distribution and voting process, as well as communications and shareholder participation. See Release No. 34-62495 (July 14, 2010).

[21] Representatives of the private bar, academia, proxy advisory service firms, institutional investors, issuers, and activists participated on the panel.

[22] As a matter of state law and frequently a company’s by-laws, directors are, in fact, properly elected under plurality and a plurality plus resignation voting regime even when they do not receive a majority vote. Under both plurality voting regimes, for example, the director receiving the highest number of votes for a given seat is elected even if a majority of the votes withhold authority to vote for that director. If it is an uncontested election, a director thus only needs a single vote to be elected.

- [23] See Committee on Capital Markets Regulation, *Annual Shareholder Meetings and the Conundrum of "Unelected" Directors*, available at http://capmksreg.org/app/uploads/2015/03/Unelected_Directors_Statement_Updated_2015.pdf.
- [24] *Id.* The study found that among 97,958 director elections at Russell 3000 companies from 2010 to 2014, directors did not receive a majority of votes cast in 270 cases (0.28%).
- [25] See, e.g., DGCL Section 141(b).
- [26] See R. Aggarwal, S. Dahiya and N. Prabhala, *The Power of Shareholder Votes: Evidence from Director Elections* (May 2015) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2609532.
- [27] *Id.*
- [28] See, e.g. Letter from Hal Scott, Director of Committee on Capital Markets Regulation to Keith F. Higgins, Director of the Division of Corporation Finance (February 23, 2015), available at http://capmksreg.org/app/uploads/2015/03/2015-02-23.CCMR_SEC_.letter.pdf.
- [29] See Letter from Jeff Mahoney, General Counsel of Council of Institutional Investors to Keith F. Higgins, Director of the Division of Corporation Finance (July 8, 2014), available at http://www.cii.org/files/issues_and_advocacy/correspondence/2014/07_08_14_CII_letter_to_SEC.pdf.
- [30] EY Center for Board Matters, 2015 proxy season insights, Shareholder proposal landscape, available at <http://www.ey.com/GL/en/Issues/Governance-and-reporting/EY-shareholder-proposal-landscape#increasing-board-size>.
- [31] See Gibson, Dunn & Crutcher LLP, Shareholder Proposal Developments during the 2014 Proxy Season (June 25, 2014), available at <http://gibsondunn.com/publications/pages/Shareholder-Proposal-Developments-During-2014-Proxy-Season.aspx>.
- [32] See Letter from Center for Capital Markets Competitiveness to Chair Mary Jo White (February 25, 2015); letter from Faegre Baker Daniels LLP to the Division of Corporation Finance (March 6, 2015); letter from the Society of Corporate Secretaries & Governance Professionals to Keith Higgins, Director of the Division of Corporation Finance (March 25, 2015); letter from Gibson, Dunn & Crutcher LLP, Morrison & Foerster LLP, Sidley Austin LLP, Skadden, Arps, Slate, Meagher & Flom LLP, and Wilmer Cutler Pickering Hale and Dorr LLP to the Division of Corporation Finance (June 10, 2015), letters available at <http://www.sec.gov/comments/i9review/i9review.shtml>.
- [33] This estimate is based on information about the number of no-action requests the staff received related to proposals during the proxy season, as well as publicly-available information about proposals submitted to companies. See Gibson, Dunn & Crutcher LLP, Shareholder Proposal Developments during the 2014 Proxy Season (June 25, 2014), available at <http://www.gibsondunn.com/publications/pages/Shareholder-Proposal-Developments-During-2014-Proxy-Season.aspx>. See Sullivan & Cromwell LLP, 2014 Proxy Season Review (June 25, 2014), available at http://www.sullcrom.com/siteFiles/Publications/SC_Publication_2014_Proxy_Season_Review.pdf.

Modified: June 25, 2015

August 10, 2020

Via Email (shareholderproposals@sec.gov)

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

Re: Bio-Path Holdings, Inc. – Request to Omit Stockholder Proposal from Richard Grant

Ladies and Gentlemen:

This letter is submitted on behalf of our client, Bio-Path Holdings, Inc., a Delaware corporation (the “Company”). Pursuant to Rule 14a-8(j) of the rules and regulations promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Company hereby gives notice of its intention to omit from the Company’s 2020 proxy statement and form of proxy for the Company’s 2020 Annual Meeting of Stockholders (together, the “Proxy Materials”) a stockholder proposal (including its supporting statement, the “Proposal”) received from Richard Grant (the “Proponent”). The full text of the Proposal is attached hereto as Exhibit A. A copy of the Proponent’s supporting materials and correspondence from the Company regarding procedural defects to the Proposal are attached hereto as Exhibit B.

The Company believes it may properly omit the Proposal from the Proxy Materials for the reasons discussed below. On behalf of the Company, we respectfully requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend enforcement action to the Commission if the Company excludes the Proposal from the Proxy Materials. To the extent that the bases for exclusion discussed herein are premised on matters of state law, this letter also represents the opinion of Winstead PC as to such matters, provided that we have assumed the conformity to the original documents of all documents submitted to us as copies and the authenticity of the originals of such documents.

I. The Proposal

The resolution included in the Proposal reads as follows:

“[I]t is requested that the shareholders approve the following resolutions

1. That’s [sic] the salary and other cash compensation, including but not limited to bonus, of the current CEO be reduced by 90% effectively immediately and any future salary, including increases or bonuses be tied directly to the performance of the company’s shares.

2. That a compensation study be conducted using peers for the CEO of comparable sized company [sic]
3. That the company be directed as part of that study to make a determination as to whether the CEO should be retained based upon his performance and report back to the shareholders.”

For purposes of this letter, the portion of the Proposal in the first numbered paragraph shall be referred to as Part 1 of the Proposal, the portion of the Proposal in the second numbered paragraph shall be referred to as Part 2 of the Proposal, and the portion of the Proposal in the third numbered paragraph shall be referred to as Part 3 of the Proposal.

II. Reasons for Omission

As described in more detail below, the Company believes that Part 1 of the Proposal may be excluded pursuant to Rule 14a-8(i)(1), Rule 14a-8(i)(2), Rule 14a-8(i)(3), Rule 14a-8(i)(10), and Rule 14a-8(c); Part 2 of the Proposal may be excluded pursuant to Rule 14a-8(i)(1), Rule 14a-8(i)(2), Rule 14a-8(i)(3), Rule 14a-8(i)(10), and Rule 14a-8(c); Part 3 of the Proposal may be excluded pursuant to Rule 14a-8(i)(1), Rule 14a-8(i)(2), Rule 14a-8(i)(3), Rule 14a-8(i)(10), Rule 14a-8(i)(7), and Rule 14a-8(c); and the entire Proposal may be excluded because the Proposal’s supporting statement (the “Supporting Statement”) violates rule 14a-8(i)(3).

III. Analysis

A. The Proposal may be excluded pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by stockholders under Delaware law.

The Proposal is not a proper subject for action by shareholders because the Proposal would require the Board of Directors of the Company (the “Board”) to act contrary to Delaware law, the Company’s First Amended and Restated Bylaws (the “Bylaws”) and the Company’s Certificate of Incorporation, as amended (the “Certificate” together with the Bylaws the “Organizational Documents”). Rule 14a-8(i)(1) provides that a company may exclude a proposal if the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company’s organization.

The Company is a Delaware corporation and is subject to the General Corporation Law of the State of Delaware (the “*DGCL*”). Section 141(a) of the DGCL, 8 Del. C. § 141(a), provides in pertinent part as follows:

The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation.

Neither the Company's Certificate nor the Bylaws grant stockholders of the Company the power to manage the Company with respect to any specific or any general class of matters,

including, but not limited to, the employment and compensation of the Company's officers and employees.

To the contrary, Section 5.01 of the Certificate explicitly recognizes the principles set forth in the DGCL, providing:

Except as otherwise expressly provided by the DGCL or this Certificate of Incorporation, the management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors.

Similarly, Sections 4.1 and 4.2 of the Bylaws grant the Board the following powers related to the election and termination of the Company's executives:

The Board of Directors shall elect a Chairman of the Board from among its members and shall elect a President, Secretary and Treasurer or Chief Financial Officer. The Board of Directors may also elect a Chief Executive Officer, one or more Vice Presidents, one or more Assistant Secretaries or other officers as may be chosen by the Board of Directors.

The Board of Directors may remove any officer with or without cause at any time.

The DGCL clearly contemplates a division between the role of stockholders and the role of the board of directors, and such division has repeatedly been enforced by Delaware courts. *See Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984); *see also McMullin v. Beran*, 765 A.2d 910, 916 (Del. 2000). In the frequently cited case of *Aronson v. Lewis*, the Delaware Supreme Court stated, “[a] cardinal precept of the General Corporation Law of the State of Delaware is that directors, rather than shareholders, manage the business and affairs of the corporation.” *See also Schwartz v. Perseon Corp.*, 175 F. Supp. 3d 390, 398 (D. Del. 2016); *see also CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d. 227, 232 (Del. 2008) (“[I]t is well-established that stockholders of a corporation subject to the DGCL may not *directly manage* the business and affairs of the corporation.” (*emphasis added*)).

Implicit in the management of the business and affairs of a Delaware corporation is the principle that the board of directors, or persons duly authorized by the board of directors to act on its behalf, directs the decision-making process with respect to the employment of a corporation's officers. Such decision-making certainly includes having the final say on the salary and continued employment of such officers. *See Seinfeld v. Slager*, 2012 WL 2501105, at *6 (Del. Ch. June 29, 2012) (“Employment compensation decisions are core functions of a board of directors”).

Delaware courts have agreed with this interpretation stating the board of directors has “broad discretion to set executive compensation.” *White v. Panic*, 783 A.2d 543, 553 n.35 (Del. 1991); *see also Friedman v. Dolan*, 2015 WL 4040806, at *5 (Del. Ch. June 30, 2015) (Delaware courts are hesitant to scrutinize executive compensation decisions, recognizing that “[i]t is the essence of business judgment for a board to determine if a particular individual warrants large amounts of money.”) *see also Zucker v. Andreessen*, 2012 WL 2366448, at *8 (Del. Ch. June 21,

2012) (“While the discretion of directors in setting executive compensation is not unlimited, it is the essence of business judgment for a board to determine if a particular individual warrants large amounts of money, whether in the form of current salary or severance provisions.”); *see also In re Walt Disney Co. Derivative Litigation*, 731 A.2d 342, 362 (Del. Ch. 1998) (“in the absence of fraud, this court’s deference to directors’ business judgment is particularly broad in matters of executive compensation.”); *see also Haber v. Bell*, 465 A.2d 353, 359 (Del. Ch. 1983) (“[G]enerally directors have the *sole authority to determine compensation levels* [of corporate employees] and this determination is protected by the presumption of the business judgment rule in the absence of a showing that the business judgment rule does not apply because of a disabling factor”) (*emphasis added*) (citations omitted).

The distinction between the powers of the stockholders and the board is similarly acknowledged in a comment to Rule 14a-8(i)(1) where the Staff states, “some proposals are not considered proper under state law if they would be binding on the company if approved by the shareholders.” In fact, the Staff has warned shareholders against making binding proposals in its Staff Legal Bulletin No. 14 (July 13, 2001), stating, “[i]n our experience, we have found that proposals that are binding on the company face a much greater likelihood of being improper under state law and, therefore, excludable under Rule 14a-8(i)(1).”

The Staff has consistently concurred that a stockholder proposal mandating or directing a company's board of directors take certain action is inconsistent with the authority granted to a board of directors under state law and thus violates Rule 14a-8(i)(1). *See Kmart Corp.* (Mar. 27, 2000); *see also El Paso Energy Corporation* (March 8, 2001). In *El Paso*, the Staff determined that a proposal demanding no further salary increases be granted to any corporate officer, “until the corporation demonstrated the ability to return to a position of profitability,” was an improper subject for shareholder action under Delaware law. Similarly, in *Kmart Corp.*, the Staff stated that a shareholder proposal, which mandated that all bonuses be voted on by the shareholders and limited to 10% of the annual salaries of the executive officer's compensation, should be excluded unless the proposal was rewritten as a request.

The authorities discussed above make it clear that, under the DGCL and Delaware case law, the board of directors has the final say on determining the employment and compensation of executives of the company in the exercise of its powers and duties to manage the business and affairs of the company. This remains true as long as there are no provisions in the company’s organizational documents stating something to the contrary.

In the instant case, the Board has chosen to exercise its rights granted to it under the Bylaws and to vest the Company’s compensation committee (the “Compensation Committee”) with the power to set executive compensation. *See* Section 3.10 of the Bylaws. Indeed, the Compensation Committee’s Charter specifically states that the Compensation Committee shall be responsible for establishing the compensation of the CEO. *See* Compensation Committee Charter at <http://www.biopathholdings.com/corporate-governance/>. Similarly, the Bylaws provide that the

Board is responsible for electing and terminating company executives, including the CEO. *See* Section 4.1 and 4.2 of the Bylaws.

The Proposal requires that (1) the CEO's salary be reduced by 90% and that any increases be tied directly to the performance of the Company's shares; (2) the Company undertake a compensation study; and (3) the Company make a determination on whether the CEO should continue to be employed. Such requirements would preclude the Board from exercising the power granted to it under the DGCL. Similarly, such requirements are inconsistent with the Certificate, the Bylaws and the Compensation Committee Charter, which have vested such decision-making authority in the Board and the Compensation Committee. Therefore, because the Proposal is not stated in precatory language such that it suggests or recommends that the Board take certain actions, adopting and implementing the Proposal would violate Section 141(a) of the DGCL. As such, the Proposal is not a proper subject for action by the stockholders of the Company and may be excluded under Rule 14a-8(i)(1).

B. The Company may exclude the Proposal Under Rule 14a-8(i)(2) because implementation of the proposal would require the Company to violate state law.

Under Rule 14a-8(i)(2), a company is permitted to exclude a proposal "[i]f the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." If adopted and implemented, the Proposal would violate Sections 141 and 122, of the DGCL. Therefore, the Proposal may be excluded based on Rule 14a-8(i)(2).

As discussed above Section 141(a) of the DGCL provides, unless a company's governing documents state otherwise, the business and affairs of the company shall be managed exclusively by or under the direction of the board of directors. The Proposal, if implemented, would violate Section 141(a) because it would limit the Board's ability to manage the business and affairs of the Company by requiring the Company to reduce the CEO's salary and make a determination on whether the CEO should be retained.

Similarly, the Proposal's attempt to limit the Board's authority to establish the compensation of the CEO violates Section 122 of the DGCL. Under Section 122(5) "...[e]very corporation created under this chapter shall have power to appoint such officers and agents as the business of the corporation requires and to pay or otherwise provide for them suitable compensation." Additionally, Section 122(15) of the DGCL authorizes the Company to pay and establish "compensation plans...for any or all of its directors, officers and employees." If adopted and implemented, the Proposal would restrict the Board's ability to compensate the CEO in a manner the Board has determined appropriate. As such the Proposal, if adopted and implemented, would violate Sections 122(5) and 122(15) of the DGCL.

Because the Proposal, if adopted and implemented, would violate Sections 141(a), 122(5), and 122(15) of the DGCL, the proposal may be excluded based on Rule 14a-8(i)(2).

C. The Proposal may be excluded under Rule 14a-8(i)(3) because it is vague and indefinite, and thus materially false and misleading in violation of Rule 14a-9.

The Proposal may be excluded under Rule 14a-8(i)(3) and Rule 14a-9 because each part of the Proposal and the Supporting Statement contains materially false and misleading statements. Pursuant to Rule 14a-8(i)(3), a proposal may be excluded if the proposal or the supporting statement is contrary to any of the proxy rules, including Rule 14a-9. Rule 14a-9 prohibits materially false or misleading statements in proxy soliciting materials. The Staff has previously taken the position that shareholder proposals that are vague and indefinite are excludable under Rule 14a-8(i)(3) as inherently misleading because neither the shareholders voting on the proposal nor the board of directors of the relevant company seeking to implement the proposal would be able to determine with any reasonable amount of certainty what action or measures would need to be taken if the proposal were implemented.

The Staff has consistently permitted the exclusion of shareholder proposals relating to executive compensation matters when such proposals have failed to define certain terms necessary to implement them. For example, in *Verizon Communications Inc.* (Feb. 21, 2008), the Staff concurred with the exclusion of a proposal prohibiting certain executive compensation unless Verizon's returns to shareholders exceeded those of its undefined "Industry Peer Group."

The Staff also permitted the exclusion of a proposal in *Prudential Financial, Inc.* (February 16, 2007), that urged the board to seek shareholder approval for "senior management incentive compensation programs which provide benefits only for earnings increases based only on management controlled programs." The proposal was excluded because the proposal failed to define critical terms and was subject to differing interpretations. Similarly, the Staff permitted an exclusion in *Eastman Kodak Company* (March 3, 2003) because a proposal seeking to cap executive salaries at \$1 million "to include bonus, perks and stock options" failed to define various terms, and gave no indication of how options were to be valued.

Another example of the Staff permitting the exclusion of a proposal can be found in *General Electric Company* (February 5, 2003), where the proposal sought to "urge the [B]oard of Directors to seek shareholder approval for all compensation for Senior Executives and Board members not to exceed more than 25 times the average wage of hourly working employees." General Electric argued that the proposal was "vague and indefinite because neither the share owners nor the Company's Board would be able to determine, with any reasonable amount of certainty, what action or measures would be taken if the proposal were implemented." The Staff concluded that General Electric could omit the proposal from its proxy materials because it was vague and indefinite.

The Staff has also consistently concluded that a proposal may be excluded where the meaning and application of terms or the standards under the proposal "may be subject to differing interpretations." For example, in *PepsiCo Inc.* (Jan. 10, 2013), the Staff determined that a proposal requesting the adoption of a policy to limit the accelerated vesting of senior executives' equity awards following a change of control to vesting on "a pro rata basis," provided that any "performance goals must have been met" was excludable under Rule 14a-8(i)(3). The company successfully argued that it was unclear, among other things, what was meant by "pro rata basis,"

and for what period, and to what extent, the performance goals needed to be met. Similarly, in *Berkshire Hathaway Inc.* (March 2, 2007), the Staff permitted the exclusion a proposal restricting Berkshire from investing in securities of any foreign corporation that engages in activities prohibited for U.S. corporations by Executive Order, because the proposal did not adequately disclose to shareholders the extent to which the proposal would operate to bar investment in all foreign corporations.

As discussed below, the Company believes that each part of the Proposal may be excluded under Rule 14a-8(i)(3) and Rule 14a-9 because each part contains a number of materially false and misleading statements. Additionally, the Company believes the entire Proposal may be excluded under Rule 14a-8(i)(3) and Rule 14a-9 because the Supporting Statement also contains a number of materially false and misleading statements. However, if the Staff feels that only certain aspects of the Proposal are false and misleading, then, on behalf of the Company, we request that those portions of the Proposal be excluded.

1. Part 1 of the Proposal may be excluded because “performance of the company’s shares” is ambiguous.

Part 1 of the Proposal is subject to differing interpretation and highly subjective, providing only a vague requirement with respect to the implementation of its key element. Specifically, the portion of Part 1 that calls for “any future [CEO] salary, including increases or bonuses be tied directly to the performance of the company’s shares,” is subject to any number of interpretations.

The language in Part 1 of the Proposal provides no guidance as to what level of “performance of the company’s shares” would be required for an increase or decrease in the CEO’s salary. Nor does it provide for any factor of increase or adjustment, so the Company is incapable of knowing how much of an increase would be permitted or required. This is analogous to *Eastman Kodak Company*, where the Staff did not recommend enforcement action for the exclusion of the proposal because the proposal failed to explain a number of terms, including how “stock options” were to be valued. Parallels can also be drawn with *Berkshire Hathaway Inc.* because the stockholders have not been properly made aware of the effect such a requirement would have on the CEO’s overall compensation.

Because of the ambiguity, neither the stockholders in voting, nor the Board in implementing, could reasonably be expected to determine with any reasonable amount of certainty what action or measures would be required to be taken. Therefore, Part 1 of the Proposal may be excluded under Rule 14a-8(i)(3) and Rule 14a-9.

2. Part 2 of the Proposal may be excluded because key terms are undefined.

Part 2 of the Proposal does not adequately define key terms and may therefore be excluded based on Rule 14a-8(i)(3). The first term that needs further definition is “compensation.” It is unclear as to whether the Proponent is requesting a study of the CEO’s base salary, his salary including bonuses or his total compensation including the equity grants, benefits and other elements of compensation.

Similarly unclear is whom the proponent is requesting the Company compare itself to. This issue is nearly identical to the one addressed in *Verizon Communications Inc.* where the Staff concurred that the phrase “Peer Group” needed further definition. As it currently reads, the comparison should be made between the Company and a “comparable sized company.” However, it is unclear how the Proponent intends for the Company to measure whether a company is comparably sized to the Company. For example, reasonable measurements could include market capitalization, number of employees, number of drug candidates under development or amount of revenue, among other measurements. It is also not clear whether the comparable sized company must be within the same industry as the Company. The inclusion or exclusion of specific companies could significantly affect the outcome of the study.

Without additional clarity, including Part 2 of the Proposal risks misleading stockholders as to what the Company intends to do if the Proposal is passed. Because of this, Part 2 of the Proposal is excludable under Rule 14a-8(i)(3) and Rule 14a-9.

3. Part 3 of the Proposal may be excluded because it lacks reasonable guidance and boundaries.

Part 3 of the Proposal should be excluded under Rule 14a-8(i)(3) because it provides no guidance as to how the CEO’s performance should be judged or what level of underperformance would justify removal of the CEO. Similar to the issue addressed in *PepsiCo Inc.*, it is unclear as to how long, and to what extent, the Board is to assess the CEO’s “performance.” Additional ambiguity comes from the Proponent’s failure to identify any performance goals by which the CEO should be judged. Instead, Part 3 of the Proposal merely states that as part of the study required by Part 2 of the Proposal, the Company should determine whether to retain the CEO based on undefined performance goals. Part 3 of the Proposal is also similar to *General Electric*, because neither the stockholders, nor the Board will be able to determine what actions or measures would need to be taken if the Proposal were implemented. Therefore, because the Board would have no way of knowing the intent of the stockholders voting on the Proposal, Part 3 may be excluded under Rule 14a-8(i)(3) and Rule 14a-9.

4. The Supporting Statement may be excluded because it contains a number of materially false and misleading statements.

As discussed above, a proposal may be excluded under Rule 14a-8(i)(3) if “the proposal or supporting statement” contains materially false or misleading statements. Rule 14a-8(i)(3) permits the exclusion of all or part of a shareholder proposal or the supporting statement if, among other things, the company demonstrates objectively that a factual statement is materially false or misleading. The Staff has consistently permitted the exclusion of proposals where there have been violations of Rule 14a-8(i)(3) in the proposals’ supporting statements. See *Ferro Corporation* (March 17, 2015); see also *Energy East Corp.* (Feb. 12, 2007).

Looking at the Supporting Statement, there are a number of materially false statements. For example, the second and third sentences contain figures relating to the Company’s share price and CEO’s 2017 compensation that are incorrect. Additionally, the final sentence of the Supporting Statement contains a false statement where the Proponent states that the request to eliminate the

CEO's salary was rejected "based upon a 2015 proxy statement." The Proponent previously sent email correspondence directed at the Board demanding that the Board eliminate all cash compensation to the CEO and to the Board. After further discussion among the Board, the Board decided it would be appropriate for the chair of the Compensation Committee to respond to the Proponent. Although the Company's correspondence did reference the Company's 2015 Proxy Statement in passing, numerous reasons were provided, including that "[p]ursuant to the Committee's charter, and as disclosed in the Company's Proxy Statement filed with the U.S. Securities and Exchange Commission (the "SEC") on November 2, 2018, all decisions with respect to the compensation of the Company's CEO are determined and approved either solely by the Committee or together with other independent directors, as directed by the Board."

The Supporting Statement also contains misleading statements. For example, the Proponent states that the Company's 2019 Proxy Statement states, "[w]e expect to continue to incur significant operating expenses in connection with our ongoing activities" and that "[w]e have not generated significant revenues to date. Our ability to generate revenues from our drug candidates, which we do not expect will occur for many years." Not only are these statements included in the Company's applicable Annual Report on Form 10-K and Quarterly Reports on Form 10-Q (not the proxy statement), but these statements are also incomplete and out of context. The first statement comes from risk factors that explain the risks associated with investments in the Company. It leaves out important additional information contained in the risk factors that provide context about the nature of the Company's business and operations. The second quoted statement is also incomplete and misleading, as it is not even the complete sentence. This statement is found in the recent Management's Discussions & Analysis sections and is introductory language to a discussion of how revenues are or may be generated in the future. Again, it leaves out important context about the nature of the Company's operations.

Similarly misleading is the statement that "[t]he Board has chosen in addition to not replacing the CEO based upon the Company's poor performance to not reduce the CEO's salary, or at a minimum base it directly on the Company's performance." This statement is misleading because the Proponent does not clarify what measurements he is using to state that the Company has been performing poorly. This is an entirely subjective standard. For example, as a drug development Company, some might find that it is more accurate to judge the Company's performance on drug development efforts. Based on this standard, it can be argued the Company is performing well because, as noted in the Company's periodic reports, the Company currently has a number of drugs that are in development and that are progressing.

The final issue with the Supporting Statement is the contention that the CEO "continued to receive his full salary while shareholders holding were destroyed." Specifically, the statement that "shareholder's holdings were destroyed" is misleading. Such a statement is entirely subjective and ignores the timing of any given stockholder's investment.

Because, as highlighted in this section, the Supporting Statement contains a number of false and misleading statements, the Proposal may, as currently written, be excluded from the Company's Proxy Materials under Rule 14a-8(i)(3) and Rule 14a-9.

D. The Proposal may be excluded under Rule 14a-8(i)(10) because the requested actions have been substantially implemented by the Company.

The Proposal is properly excludable from the Proxy Materials under Rule 14a-8(i)(10) because each portion of the Proposal has been substantially implemented by the Company.

Rule 14a-8(i)(10) permits the exclusion of a proposal if the company has already substantially implemented the proposal. To demonstrate substantial implementation pursuant to Rule 14a-8(i)(10), a company must show that its actions compare favorably with the guidelines and essential purpose of the proposal. The Staff has stated that the Rule 14a-8(i)(10)'s purpose is to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See* 1983 Release and Exchange Act Release No. 34-12598 (July 7, 1976). Accordingly, the actions requested by a proposal need not be "fully effected," provided that they have been "substantially implemented" by the company. *See* 1983 Release.

The Staff has regularly allowed companies to exclude proposals under Rule 14a-8(i)(10) when they have determined that the company's policies, practices and procedures compare favorably with the guidelines of the proposal. For Example, in *Visa, Inc.* (Oct. 11, 2019), the Staff permitted Visa to exclude a proposal that recommended Visa's compensation philosophy and program "include social factors, such as CEO pay ratio, to enhance the Company's social responsibility." The Staff came to this conclusion because, although the company's then-current program did not go into "detail about the role of "social factors" in the Company's executive compensation philosophy and program," portions of the company's Compensation Discussion & Analysis did. The Staff felt that these other disclosures compared favorably with the ones requested.

Additionally, the Staff has permitted an exclusion under Rule 14a-8(i)(10) where a company has addressed the underlying concerns and satisfied the essential objectives of the proposal. This remains true even where the proposal had not been implemented exactly as proposed. Such a policy can be seen in *Hess Corporation* (Apr. 11, 2019), where the Staff concluded a policy should be considered substantially implemented when it "[c]ompared favorably with the guidelines of the [p]roposal." *See also, e.g., Exxon Mobil Corp.* (Apr. 3, 2019). The Staff reached a similar conclusion in *Exelon Corp.* (Feb. 26, 2010), where it was determined that substantial implementation requires only that the actions of the company satisfactorily address both the proposal's guidelines and its essential objective.

The Company believes that each part of the Proposal may be excluded under Rule 14(a)-8(i)(10) because each part has been substantially implemented by the Company. However, on behalf of the Company, we request that if the Staff determines only certain parts of the Proposal have been substantially implemented, that those parts be excluded.

1. Part 1 of the Proposal has been substantially implemented because the stockholders have recently voted in support of the CEO's salary.

Part 1 of the Proposal demands that the stockholders vote to reduce the CEO's compensation by ninety percent and that any future increases in salary be based on the performance

of the Company's shares. The essential objective of this resolution has already been substantially implemented because of the Company's "say-on-pay" vote. The last such vote occurred in December 2019 and asked the stockholders whether they approved of the CEO's proposed salary. Over 85% of the voted shares (which does not include broker non-votes) expressed approval for the CEO's compensation. It is also important to note that the CEO is the only named executive officer of the Company. This means that, unlike in the majority of say-on-pay votes, the stockholders are actually given the opportunity to vote on the CEO's specific compensation. Additionally, as part of the say-on-pay vote, the stockholders voted to review the CEO's compensation once every three years.

As discussed above, the purpose of the Rule 14a-8(i)(10)'s is to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See* 1983 Release. In this instance, the stockholders have already considered the CEO's compensation and determined that the current level is appropriate. Moreover, they have voted to only be asked to consider the matter once every three years. Accordingly, because the Company has addressed the "essential objective" of Part 1 of the Proposal, namely that the stockholders have an opportunity to vote on the CEO's compensation, it may be excluded from the Proxy Materials under Rule 14a-8(i)(10).

2. Part 2 of the Proposal has been substantially implemented because the Company already conducts an annual compensation study.

Part 2 of the Proposal demands that the Company conduct a compensation study comparing the CEO's of similarly sized companies. The Compensation Committee, which is comprised solely of independent directors as required by Nasdaq rules, already conducts an annual compensation study by comparing the compensation of other CEOs in the Company's peer group. This is consistent with the Compensation Committee's charter, which states the Compensation Committee shall be responsible for "assess[ing] compensation of executive officers in relation to companies of comparable size, industry and complexity, taking the performance of the Company and such other companies into consideration."

Most recently, in March 2020, the study included an analysis of CEO compensation for eleven companies within the same industry group with market caps in a range deemed appropriate by the Compensation Committee. After reviewing the study, the Compensation Committee set the CEO's compensation as it deemed appropriate. Because the Company already conducts an annual compensation review, it has substantially implemented Part 2 of the Proposal, and Part 2 of the Proposal may therefore be properly excluded from the Proxy Materials under Rule 14a-8(i)(10).

3. Part 3 of the Proposal has been substantially implemented because the Company conducts an annual performance review and the stockholders have already effectively expressed their opinion as to the CEO's performance.

Part 3 of the Proposal demands the Company make a determination as to whether the CEO should be retained based upon his performance. The Compensation Committee is charged with reviewing and approving corporate goals and objectives relevant to the compensation of the CEO

and evaluating the CEO's performance in light of such goals. The Compensation Committee conducts this review and approval during its annual compensation review process described above.

Additionally, the stockholders of the Company have already expressed their opinion as to the CEO's compensation in the latest say-on-pay vote that occurred at the most recent Annual Meeting of Stockholders in December 2019. During this vote, the shareholders were provided with information regarding the CEO's compensation, as contained in the proxy materials. As discussed above, a majority of stockholders expressed approval for the CEO's compensation. Based on this vote, it is reasonable to conclude that the stockholders are satisfied with both the performance and compensation of the CEO. This vote also serves to satisfy the Proposal's demand that the Company report back to the stockholders based on the findings of the compensation study.

As stated above, substantial implementation does not require the proposal to be implemented exactly as proposed. The fact that the Company has not "reported back to," the stockholders based explicitly on the results of the compensation study should not be determinative in this analysis. Rather, because the Company has satisfied the essential objectives of Part 3 of the Proposal, namely that the Company make a determination as to whether the CEO should be retained and that the stockholders be made aware of the compensation and performance of the CEO, Part 3 may be excluded from the Proxy Materials under Rule 14a-8(i)(10).

E. Part 3 of the Proposal may be excluded under Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations.

Part 3 of the Proposal may properly be excluded because the Proposal demands the Board make a determination on the continued employment of the CEO of the Company, which relates to the Company's ordinary business operations. The Staff has indicated Rule 14a-8(i)(7) is interpreted under two central considerations. The first consideration is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Staff Legal Bulletin No. 14E (Oct. 27, 2009). The second consideration relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* The second consideration becomes relevant when the proposal involves 'intricate detail,' or seeks to impose specific time-frames or methods for implementing complex policies." *Id.*

The Staff has consistently held that proposals relating to the dismissal, termination or hiring of executive officers, including the CEO, may be properly omitted because they relate to ordinary business operations. See *The Walt Disney Company* (December 16, 2002); *Wachovia Corporation* (February 17, 2002); *Merrill Lynch & Co., Inc.* (February 8, 2002); *Spartan Motors, Inc.* (March 13, 2001); *Wisconsin Energy Corporation* (January 30, 2001); *U.S. Bancorp* (February 27, 2000).

In *Walt Disney Company* the Staff concluded a proposal calling for the removal of Disney's CEO and management team was properly excludable under Rule 14a-8(i)(7) because such a proposal related to the termination, hiring, or promotion of employees. The Staff again agreed with the registrant in *Wachovia Corporation* where a proposal calling for the hiring of a new CEO and

firing of the then-current CEO was properly excluded. Similarly, in *Spartan Motors, Inc.*, the Staff concluded that a proposal requesting the board to remove the company's CEO and begin an immediate search for a replacement was excludable because it related to ordinary business operations.

Part 3 of the Proposal demands the company “make a determination as to whether the CEO should be retained based upon his performance.” The Proponent's statements relating to the Proposal clearly indicate his displeasure with the current CEO and the Proponent's belief that he should be replaced. Accordingly, Part 3 of the Proposal is precisely the type of proposal that the Staff has permitted to be excluded because it interferes with the Company's ability to control decisions related to the hiring, promotion or termination of employees, and accordingly, deals with the Company's ordinary business operations and matters that are more appropriately addressed by the board of directors.

Because Part 3 the Proposal relates to the conduct of the Company's ordinary business operations, in seeking the termination of the CEO, it may be properly omitted pursuant to Rule 14a-8(i)(7).

F. The Proposal may be excluded under Rule 14a-8(c) because it constitutes more than one proposal.

Each part of the Proposal should be excluded from the Proxy Materials because each part constitutes a separate proposal. Rule 14a-8(c) states, “[e]ach shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.”

The Staff has consistently relied on Rule 14a-8(c) to permit the exclusion of a proposal containing multiple elements. For example, in *Textron Inc.* (December 23, 2011), the Staff recognized that Rule 14a-8(c) permits the exclusion of proposals combining separate and distinct elements that lack a single well-defined unifying concept, even if the elements are presented as part of a single program and relate to the same general subject matter. Similarly, in *Compuware Corporation* (July 3, 2003) the Staff supported the exclusion of a proposal which would have required the company to take multiple steps that were each individually different.

The current Proposal contains three separate demands, each of which should be considered its own proposal. The first proposal is that the Company update its executive compensation policy by reducing the CEO's salary by 90% and link any increases to the CEO's compensation to the performance of the Company's shares. The second proposal is that the Company conduct an executive compensation study by comparing similarly sized companies. The third proposal is that the Company make a determination on whether the CEO should remain employed.

Although each of these proposals has a general focus on the CEO, there is no “well-defined unifying concept.” This is similar to *Textron* where the Staff concurred that simply relating multiple requests to the same general subject matter is not enough to be considered a single proposal. Because of this, the Company is permitted to exclude the Proposal under Rule 14a-8(c).

IV. Conclusion

For the foregoing reasons, the Company believes it may properly exclude the Proposal from the Proxy Materials.

* * * * *

This letter, including all attachments, is being submitted electronically to the Staff at shareholderproposals@sec.gov. Pursuant to Rule 14a-8(j), we have filed this letter with the Commission no later than 80 calendar days before the Company intends to file its definitive Proxy Materials with the Commission. A copy of this letter is being sent to the Proponent at *** as notification of the Company's intention to omit the Proposal from the Proxy Materials.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (October 18, 2011), we ask that the Staff provide its response to this request to William Rohrlich, on behalf of the Company, via email at wrohrlich@winstead.com or via telephone at (281) 681-5912. If you have any comments or questions concerning this matter, please contact the undersigned directly at (281) 681-5912 or wrohrlich@winstead.com.

We take this opportunity to remind the Proponent that if he elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company in accordance with Rule 14a-8(k) and SLB 14D.

Respectfully submitted,



William R. Rohrlich, II, Winstead PC

Enclosures

cc: Peter H. Nielsen
Bio-Path Holdings, Inc.

Richard Grant

Exhibit A
The Proposal

[See Attached]

PROPOSAL: VOTE ON COMPENSATION AND RETENTION OF CHIEF EXECUTIVE OFFICER

As of June 30, 2020, the Company's market capitalization was less than \$20 million dollars based upon a share price of approximately \$5. On July 1, 2016 the Company share price (adjusted for the reverse splits) was \$358 per the NASDAQ website, representing a per share loss of approximately 98%. Per the Company's filings, Peter H. Nielsen, the Company CEO received Salary of \$456,250 and a bonus of \$140,000 in 2016, a salary of \$475,000 and a bonus of \$118,000 in 2017, a salary of \$490,000 in 2018 and a salary of \$490,000 in 2019. Per the Company's 2019 proxy, "We expect to continue to incur significant operating expenses in connection with our ongoing activities" and "We have not generated significant revenues to date. Our ability to generate revenues from our drug candidates, which we do not expect will occur for many years". It appears the company intends to fund expenses through capital raises, which will dilute existing shareholders and therefore expense management and reduction in particular G&A must be managed. G &A expenses have increased from \$3.014 million in 2016 to \$4,108 million in 2019. The Board has chosen in addition to not replacing the CEO based upon the Company's poor performance to not reduce the CEO's salary, or at a minimum base it directly on the Company's performance. The CEO's salary represents 12% of the company G&A expense. One year ago a request was made to preserve cash by reducing or eliminating the CEO's salary but it was rejected by the head of the compensation committee based upon a 2015 proxy statement and that "Mr. Nielsen's holdings have been impacted ..by the reverse stock splits just as all shareholders" ignoring the fact that Neilson continued to receive his full salary while shareholders holdings were destroyed

Therefore, it is requested that the shareholders approve the following resolutions

1. That's the salary and other cash compensation, including but not limited to bonus, of the current CEO be reduced by 90% effectively immediately and any future salary, including increases or bonuses be tied directly to the performance of the company's shares.
2. That a compensation study be conducted using peers for the CEO of comparable sized company
3. That the company be directed as part of that study to make a determination as to whether the CEO should be retained based upon his performance and report back to the shareholders.

Exhibit B
Proponent Correspondence

[See Attached]

From: Rick Grant ***

Sent: Wednesday, July 1, 2020 11:20 AM

To: Doug Morris <dmorris@biopathholdings.com>

Subject: Re: Is Bio-Path Holdings, Inc. (NASDAQ:BPTH) Excessively Paying Its CEO? - Simply Wall St News

Dear Doug

In accordance with the SEC requirements, I certify that I have over 2300 shares of Biopath stock (in three different brokerage houses) and that I am submitting this shareholder resolution to be included in the company's proxy. The resolution is less than the 500 word maximum and contains facts from the company's SEC filings and I've also attached the letter referenced in the resolution.

This is being submitted is timely

This is being submitted based upon the Company's continued failure to address the issues and destruction of shareholder value.

Please acknowledge your receipt of this on behalf of the company.

Sincerely

Richard Grant

On Thursday, July 9, 2020, 01:00:34 PM EDT, Doug Morris <dmorris@biopathholdings.com> wrote:

Mr. Grant,

Thank you for your email. Upon review of your submission, we noted deficiencies in your submission. First, we were not able to verify that you are the record holder of shares of common stock of Bio-Path. Because it does not appear that you are the record holder of the shares, we suspect that you may hold your shares in "street name" with your broker or bank. Second, your submission did not confirm that you intend to continue holding the securities through the date of the company's annual meeting.

In order to correct the deficiencies in your submission, please provide: (i) your written statement that you intend to continue holding the securities through the date of Bio-Path's annual meeting; and (ii) a written statement from the record holder of the securities (for example, your broker or bank where the shares are held) verifying that, at the time you submitted the proposal, you continuously held the securities for at least one year.

If Bio-Path does not receive this confirmation within 14 days of your receipt of this email, your proposal will not be included in the proxy statement.

Please note, if you obtain a written statement from the record holder of the securities, the SEC suggests the record holder use the following language:

"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]."

If you have any other questions please see the attached Rule 14a-8.

Regards,

Doug

From: Rick Grant ***
Sent: Monday, July 13, 2020 10:02 AM
To: Doug Morris <dmorris@biopathholdings.com>
Cc: Rohrlich, Billy <wrohrlich@winstead.com>; Daniel Gifford ***
Subject: Re: Response to your email Re: Proxy Resolution(s) Submission

Dear Mr. Morris

Attached is a letter form TD Ameritrade, which shows I hold the requisite number of shares and have held them prior to July 1, 2019, i.e. one year before my submission. In fact I have held these shares for at least several years, in addition to the shares I hold at Fidelity and E*TRADE

Further as you requested "your written statement that you intend to continue holding the securities through the date of Bio-Path's annual meeting" **this is to confirm in writing that I intend to continue to hold the securities through the date of Bio-Paths annual meeting.**

~~Please confirm that you have received this email and that I have complied with Rule 14a-8., as I have provided the information you requested, well within the time frame you stated.~~

Sincerely
Richard Grant

07/11/2020

Richard Grant

Dear Richard Grant,

Per our records, you have held a total of 904 shares of BPTH - Bio-Path Holdings Inc between your two accounts from 7/01/2019 to 7/01/2020. Your Individual account ending in *** currently holds 404 of BPTH. Your Traditional IRA ending in *** currently holds 500 shares of BPTH. Both accounts had the shares purchased prior to 7/01/2019.

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,

A handwritten signature in black ink, appearing to read 'Akbar Chughtai'.

Akbar Chughtai
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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