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

DIVISION OF
CORPORATION FINANCE

June 26, 2018

Allen Z. Sussman
Loeb & Loeb LLP
asussman@loeb.com

Re: CytRx Corporation
Incoming letter dated April 16, 2018

Dear Mr. Sussman:

This letter is in response to your correspondence dated April 16, 2018 and May 9, 2018 concerning the shareholder proposals submitted to CytRx Corporation (the "Company") by Gregory D. Callender ("Proposal #1" and "Revised Proposal #1"), Amer Elhaija ("Proposal #2"), Nelson Wert ("Proposal #3"), Michael G. Ferran ("Proposal #4") and Lance Patterson ("Proposal #5") (collectively, the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponents dated April 25, 2018, April 26, 2018, May 4, 2018, May 6, 2018 and May 7, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Gregory D. Callender
***

Amer Elhaija
***

Nelson Wert
***

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

Michael G. Ferran
mgferran@northstarexport.com

Lance Patterson
***

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

June 26, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: CytRx Corporation
Incoming letter dated April 16, 2018

Proposal #1 would amend the Company's certificate of incorporation to bar management and other employees from membership on the board of directors.

We are unable to concur in your view that the Company may exclude Proposal #1 under rule 14a-8(e)(2). We note that the Company received the proposal prior to the deadline for the receipt of shareholder proposals as disclosed in the Company's proxy materials. Accordingly, we do not believe that the Company may omit Proposal #1 from its proxy materials in reliance on rule 14a-8(e)(2).

There appears to be some basis for your view that the Company may exclude Proposal #1 under rule 14a-8(i)(1), as an improper subject for shareholder action under applicable state law. It appears that this defect could be cured, however, if the proposal were recast as a recommendation or request to the board of directors. Accordingly, unless the proponent revises Proposal #1 in this manner, within seven calendar days after receiving this letter, we will not recommend enforcement action to the Commission if the Company omits Proposal #1 from its proxy materials in reliance on rule 14a-8(i)(1).

There appears to be some basis for your view that the Company may exclude Proposal #1 under rules 14a-8(i)(2) and 14a-8(i)(8) to the extent it could, if implemented, disqualify previously-elected directors from completing their terms on the board. It appears, however, that this defect could be cured if the proposal were revised to provide that it will not affect the unexpired terms of directors elected to the board at or prior to the upcoming annual meeting. Accordingly, unless the proponent provides the Company with a proposal revised in this manner, within seven calendar days after receiving this letter, we will not recommend enforcement action to the Commission if the Company omits Proposal #1 from its proxy materials in reliance on rules 14a-8(i)(2) and 14a-8(i)(8).

Revised Proposal #1 recommends that the board actively seek to nominate only independent candidates of diverse backgrounds for membership on the board of directors.

There appears to be some basis for your view that the Company may exclude Revised Proposal #1 under rule 14a-8(e) because the Company received it after the deadline for submitting proposals. Accordingly, we will not recommend enforcement action to the Commission if the Company omits Revised Proposal #1 from its proxy materials in reliance on rule 14a-8(e). In reaching this position, we have not found it

necessary to address the alternative basis for omission of Revised Proposal #1 upon which the Company relies.

Proposal #2 would amend the Company's certificate of incorporation to direct the board to terminate the CEO "for cause" if a court of competent jurisdiction finds that the Company or the CEO is guilty of a felony.

We are unable to concur in your view that the Company may exclude Proposal #2 under rule 14a-8(e)(2). We note that the Company received the proposal prior to the deadline for the receipt of shareholder proposals as disclosed in the Company's proxy materials. Accordingly, we do not believe that the Company may omit Proposal #2 from its proxy materials in reliance on rule 14a-8(e)(2).

There appears to be some basis for your view that the Company may exclude Proposal #2 under rule 14a-8(i)(1), as an improper subject for shareholder action under applicable state law. It appears that this defect could be cured, however, if the proposal were recast as a recommendation or request to the board of directors. Accordingly, unless the proponent revises Proposal #2 in this manner, within seven calendar days after receiving this letter, we will not recommend enforcement action to the Commission if the Company omits Proposal #2 from its proxy materials in reliance on rule 14a-8(i)(1).

We are unable to concur in your view that the Company may exclude Proposal #2 under rules 14a-8(i)(2) and/or 14a-8(i)(6). Accordingly, we do not believe that the Company may omit Proposal #2 from its proxy materials in reliance on rules 14a-8(i)(2) and/or 14a-8(i)(6).

Proposal #3 recommends that any stock, options or warrants issued to management and directors within ten days prior to, or within sixty days following any public or private offering, shall be offered at pricing no lower than the share price 30 days prior to the latest dilution.

We are unable to concur in your view that the Company may exclude Proposal #3 under rule 14a-8(e)(2). We note that the Company received the proposal prior to the deadline for the receipt of shareholder proposals as disclosed in the Company's proxy materials. Accordingly, we do not believe that the Company may omit Proposal #3 from its proxy materials in reliance on rule 14a-8(e)(2).

We are unable to concur in your view that the Company may exclude Proposal #3 under rules 14a-8(i)(2) and/or 14a-8(i)(6). Accordingly, we do not believe that the Company may omit Proposal #3 from its proxy materials in reliance on rules 14a-8(i)(2) and/or 14a-8(i)(6).

We are unable to concur in your view that the Company may exclude Proposal #3 under rule 14a-8(i)(7). Accordingly, we do not believe that the Company may omit Proposal #3 from its proxy materials in reliance on rule 14a-8(i)(7).

Proposal #4 recommends that the board limit annual salary and benefit packages of each individual employed by the Company to no more than $300,000, plus one percent of mean net annual corporate profits of the preceding five years.

There appears to be some basis for your view that the Company may exclude Proposal #4 under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In this regard, we note that Proposal #4 relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors. Accordingly, we will not recommend enforcement action to the Commission if the Company omits Proposal #4 from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative bases for omission of Proposal #4 upon which the Company relies.

Proposal #5 recommends that the board include in all future employment contracts a requirement that any and all corporate funds which are used to defend an officer of the Company against a shareholder action shall be immediately repaid in full by the officer as a condition for continued employment within thirty days after a court of competent jurisdiction finds the officer guilty of one or more of the illegal actions alleged in the suit.

We are unable to concur in your view that the Company may exclude Proposal #5 under rule 14a-8(e)(2). We note that the proponent has provided evidence that the Company received Proposal #5 by the deadline for the receipt of shareholder proposals as disclosed in the Company's proxy materials. Accordingly, we do not believe that the Company may omit Proposal #5 from its proxy materials in reliance on rule 14a-8(e)(2).

Sincerely,

Evan S. Jacobson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

ALLEN Z. SUSSMAN
Partner

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May 9, 2018

Via E-Mail (***Shareholderproposals@sec.gov***)

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

Re: *CytRx Corporation*
Revised Proposal #1 Submitted by Gregory D. Callender
2018 Annual Meeting of Stockholders—Rule 14a-8

Ladies and Gentlemen:

We refer to our letter dated April 16, 2018 (the "***No-Action Request***") on behalf of CytRx Corporation, a Delaware corporation (the "***Company***"), pursuant to which we requested that the Staff of the Division of Corporation Finance (the "***Staff***") of the U.S. Securities and Exchange Commission (the "***Commission***") concur with our view that the five proposals and supporting statements received from Company shareholders and referred to in our No-Action Request may properly be omitted from the proxy statement and related materials (the "***Proxy Materials***") to be distributed by the Company in connection with its 2018 Annual Meeting of Stockholders (the "***2018 Annual Meeting***"). This letter supplements our No-Action Request.

This letter is in response to a letter addressed to the Staff and received by the Company on May 1, 2018 (the "***Proponent's New Letter***") from Gregory D. Callender ("***Proponent #1***"), who is identified as the proponent of Proposal #1 discussed in our original No-Action Request. Attached as Exhibit A is a copy of Proponent's New Letter. In accordance with Rule 14a-8(j), a copy of this letter is being sent to Mr. Callender.

The original Proposal #1 reads as follows:

"To approve an amendment to our Restated Certificate of Incorporation to bar management and other employees from membership on the board of directors, effective immediately."

In Proponent's New Letter, Mr. Callender seeks permission to "revise and resubmit" his Proposal #1 to read as follows ("***Revised Proposal #1*** "):

> *"To recommend to the Board of Directors that it actively seek to nominate only independent candidates of diverse backgrounds for membership on the Board of Directors. If any of the Company's executive officers are nevertheless elected to the Board of Directors or currently serving on the Board, then to the maximum extent permissible by current or future law, we recommend that they be restricted from voting. Moreover, the Directors are urged to choose an independent Director for the position of Chairman of the Board."*

On behalf of the Company, we request confirmation that the Staff will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, as amended, the Company omits Revised Proposal #1 from its proxy statement and related materials for the 2018 Annual Meeting. To the extent that the bases for exclusion discussed herein are premised on matters of state law, this letter also represents the opinion of Loeb & Loeb LLP as to such matters. Our detailed analysis is below.

A. Revised Proposal #1 is an entirely new proposal

Our original No-Action Letter submitted several bases on which the original Proposal #1 may be excluded from the Company's Proxy Materials, specifically Rule 14a-8(i)(1) (the proposal is improper under state law), Rule 14a-8(i)(8) (the proposal would remove a director from office before his term expired), and Rule 14a-8(i)(2) (the proposal would violate applicable law). With respect to these bases, Proponent #1 has, in effect, conceded that the Company's arguments are correct on the merits by suggesting detailed and extensive amendments to Proposal #1 in order to cure the offending items. The Proponent seeks to "revise and resubmit" his original proposal in the form of Revised Proposal #1.

As the Staff has noted in Staff Legal Bulletin 14B (September 15, 2004) ("***SLB 14B***"), there is no provision in Rule 14a-8 that allows a proponent to revise a proposal and supporting statement. SLB 14B states that the Staff has had a long-standing practice of permitting proponents to make revisions that are "minor in nature and do not alter the substance of the proposal" in order to deal with proposals that "comply generally with the substantive requirements of Rule 14a-8, but contain some minor defects that could be corrected easily." However, SLB 14B explains further that it may be appropriate for companies to exclude an "entire proposal, supporting statement or both as materially false or misleading if a proposal or supporting statement would require detailed and extensive editing in order to bring it into compliance with the proxy rules." The Staff's accommodation for minor clarifying amendments was not designed to permit the proponent to amend a proposal in a manner so material that it has the effect of allowing the proponent to essential submit a new proposal.

In this case, Revised Proposal #1 is an entirely new proposal that materially alters the substance and meaning of the original Proposal #1. The revised proposal seeks to influence the

nominating process directly, restrict the voting rights of directors, and change the eligibility for service as Chairman of the Board. These changes do not constitute minor clarifying amendments from the original proposal under any reasonable interpretation, and we believe that Revised Proposal #1 does not satisfy the Staff's guidance in SLB 14B. It cannot be consistent with, or permitted under, the requirements of Rule 14a-8, that after the deadline, and after reading the Company's letter pointing out the deficiencies in Proposal #1, the Proponent has another opportunity to, in effect, submit a new proposal.

In addition, in Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("***SLB 14D***"), the Staff noted that where there is some basis for the company to omit a proposal in reliance on Rule 14a-8(i)(1) (improper under state law), Rule 14a-8(i)(2) (violation of law), or Rule 14a-8(i)(6) (absence of power/authority), "if the company meets its burden of establishing that applicable state law requires any such amendment to be initiated by the board and then approved by shareholders . . . the Staff may permit the proponent to revise the proposal to provide that the board of directors 'take the steps necessary' to amend the company's charter."

The Revised Proposal #1 does not meet this standard, since it attempts to correct the defects in Proposal #1 by making various precatory recommendations to the Board, but *the proposal has not been recast as a recommendation for a charter amendment* as described in SLB 14D. We do not believe that Revised Proposal #1 satisfies the guidance in SLB 14D, nor do we believe it would be appropriate or fair to allow the Proponent to revise his proposal for a second time in an attempt to fall within the guidance of SLB 14D.

B. <u>Revised Proposal #1 is Untimely</u>

The Revised Proposal #1 was received by the Company on May 1, 2018, which was after the deadline for submitting shareholder proposals for inclusion in the Proxy Materials. The actual legal deadline under Rule 14a-8 was January 22, 2018, and the deadline that was disclosed in the Company's 2017 proxy statement (which was addressed in our original No-Action Request) was March 14, 2018, which in both cases were well before May 1, 2018.

The Staff has provided applicable guidance for this situation in Section D.2. of Staff Legal Bulletin 14F (October 18, 2011), which reads as follows:

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

On the basis of the above guidance, the Company intends to treat Revised Proposal #1 as a second proposal, and intends to exclude Revised Proposal #1 from its Proxy Materials in reliance upon Rule 14a-8(e) and Rule 14a-8(j). In addition, the Company still intends to exclude the original Proposal #1 from its Proxy Materials for the reasons discussed in our original No-Action Request dated April 16, 2018.

C. Rule 14a-8(c)

Rule 14a-8(c) provides that a shareholder "may submit no more than one proposal to a company for a particular shareholders' meeting." The one-proposal limitation applies not only to proponents who submit multiple proposals in multiple submissions, but also to proponents who submit multiple proposals as elements or components of an ostensibly single proposal. The Staff has consistently 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. *See, e.g., Textron Inc.* (December 23, 2011).

In this case, the three parts of Revised Proposal #1 are not related to the same broad concept – instead they are separate and not linked to a combined purpose. Revised Proposal #1 contains the following three parts, referred to herein as Parts (a), (b) and (c):

a) *Recommend to the Board of Directors that it actively seek to nominate only independent candidates of diverse backgrounds for membership on the Board of Directors.*

b) *If any of the Company's executive officers are nevertheless elected to the Board of Directors or currently serving on the Board, then to the maximum extent permissible by current or future law, we recommend that they be restricted from voting.*

c) *Moreover, the Directors are urged to choose an independent Director for the position of Chairman of the Board.*

Part (a) relates to eligibility of candidates for *nomination* as director, and recommends that the Board seek to nominate candidates who are "independent" and "of diverse backgrounds."

Part (b) recommends that inside directors who are elected to the Board should be restricted from voting *after* such a person becomes a director. This is a separate and distinct proposal that is unrelated to Part (a), which relates to the nomination of director candidates. Separately, we note that the Board lacks the power or authority to implement Part (b), since Section 141(d) of the Delaware General Corporation Law requires that any differential voting power among directors must be set forth in a company's charter. On this basis, it appears that Part (b) is also excludable under Rule 14a-8(i)(6).

Lastly, Part (c) "urges" the Directors to choose an independent Chairman. This proposal relates to the functioning and hierarchy within the Board of Directors, and again is a separate and distinct proposal which is almost entirely unrelated to the concepts contained in Parts (a) and (b). Separately, it is unclear what the proponent means in Part (c) by "urging" Directors to choose an independent Chairman. Urging action by the Directors is not a proposal that is capable of a definitive vote by shareholders, but rather seems to be written as a supporting statement. Nevertheless Part (c) is specifically included in the proposal by the proponent. It therefore seems that Part (c) of Revised Proposal #1 is vague and indefinite, and cannot be understood by shareholders or implemented by the Company with certainty, and should be excludable in its entirety pursuant to Rule 14a-8(i)(3).

While any of these three parts could potentially stand as independent proposals, taken together they are not sufficiently closely related or essential to a single well-defined unifying concept. The Company therefore intends to exclude all of Revised Proposal #1 under Rule 14a-8(c), since it includes more than one proposal.

* * * * *

Pursuant to Rule 14a-8(j) under the Exchange Act, we have filed this letter with the Commission and have concurrently sent copies of this correspondence to Proponent #1. Rule 14a-8(k) of the Exchange Act and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission and the Staff. Accordingly, we are taking this opportunity to inform Proponent #1 that if he elects to submit additional correspondence to the Commission or the Staff with respect to his Revised Proposal #1, then a copy of such correspondence should concurrently be furnished to the undersigned on behalf of the Company.

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 Allen Z. Sussman, Esq., on behalf of the Company, via email at asussman@loeb.com or via facsimile at (310) 919-3934, and to the Company via email at cbirardi@cytrx.com. Should you require any further information, please contact the undersigned directly at (310) 282-2000.

Sincerely,

Allen Z. Sussman
of Loeb & Loeb LLP

Exhibit A
Proponent's New Letter

Received May 1, 2018

April 26, 2018

Via E-Mail (shareholderproposals@sec.gov)

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

Re: CytRx Corporation Shareholder Proposal #1 for 2018 Annual Meeting of Stockholders

Ladies and Gentlemen:

Please confirm that you have received this letter by replying to my email address.

I am writing in response to the request made by Loeb & Loeb LLP on behalf of CytRx management, seeking the permission of the SEC to exclude my shareholder proposal from inclusion in the Proxy Statement for this year's Annual Meeting of Shareholders. My proposal is as follows:

Proposal 1: To approve an amendment to our Restated Certificate of Incorporation to bar management and other employees from membership on the Board of Directors, effective immediately.

Supporting Statement: This proposal will establish whether the shareholders holding a majority of voted shares believe that the persons overseeing the corporate officers should include some of the officers themselves. I believe that this represents a potential conflict of interest, which should be avoided for appearance's sake, if for no other reason. I further assert that it concentrates too much power in one individual. Note that this proposal does not preclude officers from regularly attending meetings of the Board of Directors and sharing their knowledge and experience.

Loeb & Loeb lists several bases on which they request exclusion of my proposal.

They began their discussion by noting that I am the lead plaintiff in a pending securities action case against CytRx. Why they chose to highlight this fact is a mystery to me and I do not see its relevance. Very simply, I am a shareholder and have every right to file a shareholder proposal.

They also claim that my proposal was received late. This claim is false, according to at least three printed statements by CytRx management.

For at least the past few years, CytRx has always listed a February 22 to March 14 deadline for submission of shareholder proposals in their Proxy Statements. This is part of what I see as a consistent, longstanding pattern of intentional deception. The following are excerpts from the last three DEF 14A Proxy Statements, showing that CytRx lies about the deadline consistently.

From the August 2017 Proxy Statement, Page 11:

Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2018 must be received by

us on or before March 14, 2018. Notice of stockholder proposals submitted outside of Rule 14a-8 of the Exchange Act will be considered untimely if received by us after that date. Only proper proposals under Rule 14a-8 which are timely received will be included in the Proxy Statement in 2018.

From the 2016 Proxy Statement, Page 40:

"Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2017 must be received by us on or before March 14, 2017."

From the 2015 Proxy Statement:

"Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2015 must be received by us on or before February 22, 2016."

I am a shareholder of CytRx, not a securities law expert. I relied on the integrity of the management of the company which I co-own to provide trustworthy information to me. Now they are trying to use their own lies as a reason why the company's owners should be denied the freedom to vote on matters of mutual concern. I urge the Commission to reject this twisted argument.

As another example of what I see as management's longstanding effort to disenfranchise shareholders, I would like to mention the special meeting of shareholders held in October 2017. On the CytRx website's special section concerning this upcoming meeting, management craftily listed the address of a car dealership as the location of the meeting. This can be verified using the SEC's "look-back" computer. Apparently uncertain that this was sufficient to thwart shareholders from attending this important meeting, management then cancelled the meeting less than 24 hours in advance, and rescheduled the meeting for a week later. This caused shareholders to lose nonrefundable air fare, and to not be able to attend due to scheduling conflicts. As a result of these two actions, only four shareholders (excluding management, Directors and affiliated brokers) were able to find the correct address and arrive at the correct location for this critical vote on a reverse split.

While I have numerous concerns that management falls short on various issues, they seem to be remarkably adept at finding every means possible to keep the company's owners from having any influence in decisions affecting our investment.

The rest of Loeb & Loeb's arguments center around the specific wording of my proposal, and not the intention, which is to enhance the Board's ability to work in the best interests of shareholders, particularly when those interests run counter to the interests of the executive officers. Many of their arguments hang on the supposition that Mr. Kriegsman is the "people's choice." Specifically, Loeb and Loeb would have you believe that this proposal would run counter to our democratic tradition of fair elections by unseating a Board member duly elected by the will of the voters. That's not quite the case. I believe that Loeb and Loeb state incorrectly that "Director Steven A. Kriegsman . . . was re-elected to the Board at the Company's 2017 annual meeting of stockholders for a three-year term ending at the 2020 annual meeting of stockholders."

In reality, according to the 8-K filed on July 17, 2017, Mr. Kriegsman lost the election with 31,094,549 "FOR" votes and 40,333,756 "WITHHELD" votes. While I recognize that Delaware General Corporation Law has adopted Board election standards which do not allow any individuals to run against management's chosen candidate, it violates all democratic standards to seat candidates who have nevertheless been rejected by the electorate. In my view, Loeb and Loeb would be more accurate stating that "Kriegsman was appointed to the Board to fill a vacant position after the previous Board member, Steven A. Kriegsman, failed to win a majority of the votes at the 2017 annual meeting of shareholders."

In order to restore some balance in the management and direction of CytRx Corporation, I respectfully request that I be permitted to revise and resubmit my proposal as follows:

Proposal 1: To recommend to the Board of Directors that it actively seek to nominate only independent candidates of diverse backgrounds for membership on the Board of Directors. If any of the Company's executive officers are nevertheless elected to the Board of Directors or currently serving on the Board, then to the maximum extent permissible by current or future law, we recommend that they be restricted from voting. Moreover, the Directors are urged to choose an independent Director for the position of Chairman of the Board.

Supporting Statement: This proposal will establish whether the shareholders holding a majority of voted shares believe that the persons overseeing the corporate officers should include some of the officers themselves. I believe that this represents a potential conflict between the interests of shareholders, which it is the duty of the Board to protect, and the personal interests of corporate officers. In my opinion, this conflict of interest has been a factor in numerous class action and derivative lawsuits. I further assert that it concentrates too much power in one individual. Note that this proposal does not preclude officers from regularly attending meetings of the Board of Directors and sharing their knowledge and experience.

Thank you.

Sincerely,

Gregory D. Callender

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

Re: CytRx Corporation Shareholder Proposal #3 for 2018 Annual Meeting of Stockholders

Ladies and Gentlemen:

Please confirm that you have received this letter by replying to my email address.

I am writing in response to the request made by Loeb & Loeb LLP on behalf of CytRx management, seeking the permission of the SEC to exclude my shareholder proposal from inclusion in the Proxy Statement for this year's Annual Meeting of Shareholders. My proposal is as follows:

Proposal #3: To recommend to the Board of Directors that any stock, options, or warrants issued to management and directors within ten days prior to, or within sixty days following any public or private offering, shall be offered at pricing no lower than the price 30 days prior to the latest dilution.

Supporting Statement: With the goal of avoiding any appearance of impropriety, we believe that it is incumbent upon our Board of Directors to avoid issuing share-based benefits to themselves and/or officers of the Company during periods when the share price may be expected to be adversely affected by secondary offerings. If such benefits are distributed during periods when the share price is depressed as a direct result of actions of the Board or of management, such events can and do leave the impression that the timing was deliberate in order to maximize the potential for profit by directors and officers, at the ultimate expense of shareholder owners of the Company. In contrast, when the share-based benefits are offered on dates quite distant from the dates of offerings, shareholders can be more confident that the pricing was determined by market forces rather than insider timing.

Loeb & Loeb lists two bases on which they request exclusion of my proposal:

First, they claim that my proposal was received late. This claim is false, according to at least three printed statements by CytRx management.

For at least the past few years, CytRx has always listed a February 22 to March 14 deadline for submission of shareholder proposals in their Proxy Statements. This is part of what I see as a consistent, longstanding pattern of intentional deception. The following are excerpts from the two preceding DEF 14A Proxy Statements, showing that CytRx lies about the deadline consistently.

From the August 2017 Proxy Statement, Page 11:

“Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2018 must be received by us on or before March 14, 2018. Notice of stockholder proposals submitted outside of Rule 14a-8 of the Exchange Act **will be considered untimely if received by us after that date**. Only proper proposals under Rule 14a-8 which are timely received will be included in the Proxy Statement in 2018.”

“Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2017 must be received by us on or before March 14, 2017.”

“Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2015 must be received by us on or before February 22, 2016.”

I am a shareholder of CytRx, not a securities law expert. I relied on the honesty and integrity of the management of the company which I co-own to provide trustworthy information to me. Now they are trying to use their own lies or repetitious errors as a reason why the company’s owners should be denied the freedom to vote on matters of mutual concern. I urge the Commission to reject this twisted argument.

Their second argument is as follows:

Please be advised that the Company is bound by that certain “Stipulation and Agreement in Settlement” dated August 28,2015 (the "Settlement Agreement'), entered in the Court of Chancery of the State of Delaware in connection with the litigation entitled In re CytRx Corp. Stockholder Derivative Litigation, C.A. No. 9864-VCL. The Company is also bound by that certain "Order and Final Judgment of the Delaware Chancery Court," dated November 20,2015 (the "Court Order”), approving and directing the Company to implernent the Settlement Agreement. Copies of the Settlement Agreement and Court Order are attached as Exhibit F to this letter.

"Stock options granted to all officers, directors, and employees shall be granted only on pre-set dates, which shall be set by the Compensation Committee prior to the beginning of the fiscal year in which the options are to be granted. The method used to determine the pre-set grant dates, and any future changes thereto, shall be publicly reported at least ninety (90) days prior to becoming effective."

I am glad that management is able to recall this Stipulation and Agreement of Settlement. My proposal is made specifically for the purpose of enforcing the spirit and letter of this agreement.

On December 13, 2016, the Company announced an $8.1 million registered direct offering of common stock. This offering was suspiciously timed to occur two days before the pre-set date for granting stock options which was set in accordance with the Settlement Agreement. The

closing price for CytRx shares was (adjusted for a subsequent reverse stock split) $3.0323. The closing price on December 14 was $2.5961 (a 14.4% decline), and on December 15 it was $2.5679 (a 15.3% decline). One of these two dates was the pre-set grant date.

The reason that the Settlement Agreement stipulated that the options awards must be calculated based on the closing price on a date chosen in advance was that CytRx consistently selected days when the share price was at a low point for the awarding of options to management, thereby maximizing their financial gain at the expense of shareholders. As an example, in 2013, the Stipulation and Agreement caused the options to be repriced from the original exercise price of $2.39 to an exercise price of $4.66 (the share price at market closing on December 20, 2013).

Once the Agreement was in force, I hypothesize that management deliberated to find a way around it so that they could continue to benefit themselves by receiving awards at prices significantly discounted to present market price. They were no longer able to move the grant date to the day when the share price was low, so they decided to move the events which cause share prices to plummet in order to place them just before the grant date. This, in my opinion, is what they did in December 2016.

Loeb & Loeb claims that my proposal conflicts with the Settlement Agreement. This is false. To comply with both, management has two options. First, they only need to avoid scheduling stock offerings within the specified time frames. Alternatively, they may schedule stock offerings within the time frame I specified and observe the rules of my proposal regarding the price basis of the options. I see no reason that the Delaware Court of Chancery nor the shareholders will complain if the options are priced higher than they would be absent my proposal. The Delaware court has ruled against schemes intended to generate low-priced option awards. In contrast, management's never-ending goal of self-enrichment at the expense of the Company and its owners is in direct and blatant disregard for the spirit and intention of the Stipulation to which they agreed. Again, my recommendation does not affect the date of options awards stipulated in the Settlement Agreement. It only affects the share price of the awards should management set an offering date immediately prior to the option awards date for the purpose of benefiting themselves.

Sincerely,

Dr. Nelson Wert 5/7/2018

Dr. Nelson Wert

From: - -
To: ShareholderProposals
Subject: Cytrx Shareholder Proposal- response to management objection
Date: Sunday, May 06, 2018 10:32:40 PM

Ladies and Gentlemen:

Please confirm that you have received this letter by replying to my email address.

I am writing in response to the request made by Loeb & Loeb LLP on behalf of CytRx management, seeking the permission of the SEC to exclude my shareholder proposal from inclusion in the Proxy Statement for this year's Annual Meeting of Shareholders. My proposal is as follows:

Proposal 4: To recommend to the Board of Directors that, to the maximum extent permissible by law, the Board of Directors shall limit annual salary and benefit packages (including bonuses and equity incentive compensation) of each individual employed by the Company to no more than $300,000, plus one percent of mean net annual corporate profits of the preceding five years. If previously binding contracts prevent the Board from effecting this limitation in a given year, the Board shall include a table in the printed discussion below the Advisory Vote on Executive Compensation in the Proxy Statement showing the dollar amount to which each executive officer's compensation package exceeds this mean annual profit or loss.

Supporting Statement: According to data from the Thelander–PitchBook 2015 Private Compensation Survey , as reported in https://pitchbook.com/news/articles/a-biotech-executive-makes-how-much, the median compensation package for CEOs of discovery stage biotech companies raising up to $15 million in capital per year was $250,000 to $320,000 per year. In contrast, the Board provided compensation of $5,009,150 over the two year period of 2015 and 2016 to Mr. Kriegsman. During this same period, CytRx shares declined in value from $16.3197 (adjusted for the reverse split) to $2.226, and cash, cash equivalents and investments declined from $77.8 million to about $57.0 million according to corporate documents. Based on these statistics, or in spite of them, the Board rated Mr. Kriegsman as having consistently exceeded expectations regarding "building shareholder value as reflected in our market capitalization and our working capital" and other criteria. I do not believe that the Company is in a position to pay out a compensation package nearly ten times the going rate, particularly in view of the failure to achieve stated criteria on which compensation is claimed to be based. Unfortunately, the annual advisory referendum on executive compensation consists of a single vote for the executive management team as a group, so that it is not suitable for determining shareholder sentiment regarding individual compensation packages.

Loeb & Loeb lists several bases on which they request exclusion of my proposal:

First, they claim that my proposal was received late. This claim is false, according to at least two printed statements by CytRx management. I relied on their own printed publication identifying the deadline date to submit proposals:

For at least the past two years, CytRx has always listed a March 14 deadline for submission of shareholder proposals in their Proxy Statements. This is part of what I see as a consistent,

longstanding pattern of intentional deception. The following are excerpts from the last three DEF 14A Proxy Statements, showing that CytRx lies about the deadline consistently.

From the August 2017 Proxy Statement, Page 11:

- "Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2018 **must be received by us on or before March 14, 2018**."

From the 2016 Proxy Statement, Page 40:

- "Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2017 **must be received by us on or before March 14, 2017."**

I am a shareholder of CytRx and I relied on the honesty and integrity of the management of the company which I co-own to provide trustworthy information to me. They have confirmed delivery receipt of my proposal on March 13, 2018 which is before the deadline they published. Now they are using lawyers paid by shareholders to defend their deliberate deceptions which are attempts to deny us the freedom to vote on matters of mutual concern. I urge the Commission to reject this twisted argument.

As another example of what I see as management's longstanding effort to deceive and disenfranchise shareholders, I would like to mention the special meeting of shareholders held in October, 2017. On the CytRx website's special section concerning this upcoming meeting, management craftily listed the address of a **car dealership** as the location of the meeting. The car dealership was not aware of any Cytrx Shareholder's meeting. This can be verified using the SEC's "look-back" computer. Apparently uncertain that this was sufficient to thwart shareholders from attending this important meeting, management then cancelled the meeting less than 24 hours in advance, and rescheduled the meeting for a week later. This caused shareholders to lose nonrefundable air fare, and to not be able to attend due to scheduling conflicts. As a result of these two actions, only four shareholders (excluding management, directors and affiliated brokers) were able to find the correct address and arrive at the correct location for this critical vote on a reverse split.

While I have numerous concerns that management falls short on various issues, they are remarkably adept at finding every means possible to minimize the influence of the company's owners in decisions affecting our investment. I also urge you to respond to the many shareholder complaints filed with **Senior Counsel Jonathan M. Jacobs of the SEC** documenting their deceptive practices over the years.

Next, Loeb & Loeb make a variety of claims regarding the terms used in my proposal. For example, they claim to be unfamiliar with the fact that net loss is defined as a negative net profit. When calculating net profit (or net loss), losses are subtracted from income. For their education, I include the following definitions
from https://www.myaccountingcourse.com/accounting-dictionary/net-loss:

Definition: Net **loss**, also called **loss**, refers to a company's **financial** position when total expenses exceed total revenues.... Net **loss** is calculated by subtracting total expenses from total revenues.

Definition: **Profit**, also called net income, is the amount of earnings that exceed expenses for the period.

Furthermore, Loeb & Loeb claims that "it is unclear what is meant by the phrase 'mean net annual corporate profits'" even though the phrase is part of a sentence discussing "the Company." Clearly, the word "corporate" is an adverb which specifies that the noun "profits" refers to the Corporation under discussion, e.g. CytRx Corporation.

While I realize that these attorneys are well paid to identify or invent as many excuses as possible, I leave it to the SEC to determine the cogency or veracity of this particular argument.

Next, Loeb & Loeb note a variation in language used in what they describe as "part A" and "part B" of my proposal. It is encouraging to see that they were successful in distinguishing the differences between the phrases "mean annual profit or loss" and "mean net annual corporate profits." The latter clearly refers to a positive value, while the former can be a positive or negative value. Thus, in so-called part A, mean net annual corporate profits (but not losses) shall be used in the calculations, while in part B, the mean of the annual net profits or losses of the preceding five years shall be reported. Parts A and B are clearly related, since Part B only takes effect when Part A is not effected.

However, in case the Staff agrees with Loeb & Loeb on this question or any other issue, I would like to amend my proposal to read as follows:

Proposal 4: To recommend to the Board of Directors that, to the maximum extent permissible by law, the Board of Directors shall limit total annual compensation (including bonuses and equity incentive compensation) of each senior executive officer employed by the Company to no more than $300,000 until Cytrx is in receipt of the first royalty payment from Aldoxorubicin's commercial sale. Once the first royalty payment is received, the Board shall vote to approve additional compensation commensurate with the successful commercialization of Aldoxorubicin.

Supporting Statement: According to data from the Thelander–PitchBook 2015 Private Compensation Survey , as reported in https://pitchbook.com/news/articles/a-biotech-executive-makes-how-much, the median compensation package for CEOs of discovery stage biotech companies raising up to $15 million in capital per year was $250,000 to $320,000 per year. In contrast, the Board provided compensation of $5,009,150 over the two year period of 2015 and 2016 to Mr. Kriegsman. During this same period, CytRx shares declined in value from $16.3197 (adjusted for the reverse split) to $2.226, and cash, cash equivalents and investments declined from $77.8 million to about $57.0 million according to corporate documents. Based on these statistics, or in spite of them, the Board rated Mr. Kriegsman as having consistently exceeded expectations regarding "building shareholder value as reflected in our market capitalization and our working capital" and other criteria. I do not believe that the Company is in a position to pay out a compensation package nearly ten times the going rate, particularly in view of the failure to achieve stated criteria on which compensation is claimed to be based. Unfortunately, the annual advisory referendum on executive compensation consists of a single vote for the senior executive team as a group, so that it is not suitable for determining shareholder sentiment regarding individual compensation packages.

Management has indicated that the licensee, Nantcell, is under no obligation to file a New Drug Application (NDA) for Aldoxorubicin or to report its progress in developing

Aldoxorubicin for commercial production. In fact, Mr. Kriegsman is on record indicating that he has no way of knowing how or when Nantcell will reach the primary milestone of filing an NDA with the Food and Drug Administration in order to initiate the process of commercializing Cytrx's only marketable asset. Furthermore, Mr. Kriegsman has refused to reveal the terms of the licensing agreement to shareholders.

Indeed, the company's only viable asset was essentially sold through an open ended license agreement that requires no performance guarantee or development milestone in order to expedite commercialization in a timely manner. Due to management's concealment of terms and management's insistence that Cytrx cannot compel the licensee's performance, shareholders are unable to determine the value of the license agreement despite the published terms which promise payments and royalties which according to management representations, the licensee is not even obligated to provide. Furthermore, the licensee obtained not only complete and total control of the company's only viable asset, but also was given enough shares in the company to become the single largest shareholder in Cytrx Corporation. Management has ceded total control of the drug Aldoxorubicin to Nantcell while also ceding partial control of the Cytrx Corporation to that same licensee without a shareholder vote.

Thank you for your consideration.

Sincerely,

Michael G Ferran
Managing Director
Northstar Export Co.
tel no. 415 531 9107

Lance Patterson

***

Date: May 4, 2018

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

Re: CytRx Corporation Shareholder Proposal #5 for 2018 Annual Meeting of Stockholders

Ladies and Gentlemen:

Please confirm that you have received this letter by replying to my email address.

I am writing in response to the request made by Loeb & Loeb LLP on behalf of CytRx management, seeking the permission of the SEC to exclude my shareholder proposal from inclusion in the Proxy Statement for this year's Annual Meeting of Shareholders. My proposal is as follows:

Proposal 5: To recommend that the Board of Directors include in all future employment contracts a requirement that any and all corporate funds which are used to defend an officer of the Company against a shareholder action shall be immediately repaid in full by the officer as a condition for continued employment within thirty days after a court of competent jurisdiction finds the officer guilty of one or more of the illegal actions alleged in the suit. Such repayment shall be made without regard to further appeals which, however, may continue to be funded by corporate monies to a maximum of $100,000, with the same repayment requirement if and when the appellate court finds the officer guilty of any of the alleged actions. Conversely, if the final trial court finds the officer innocent of all charges, the Board may reimburse the officer for court expenses that he had repaid.

Supporting Statement: Shareholder owners of the Company do not take part in the decisions and actions made by officers of the Company. We therefore believe that officers should bear personal financial responsibility for their own illegal actions, if any. When corporate funds are disbursed to defend an officer for his illegal actions, the shareholders' funds are being used without their permission to defend an officer who has acted illegally. This misuse of corporate resources is particularly egregious when the party filing the suit is a shareholder or class of shareholders. In those cases, the considerable resources of a corporation are being marshaled against one or more of the owners of the corporation without the consent of these owners, or of the shareholders as a whole. At the same time, we recognize that the officers should be entitled to some assistance in defending against frivolous claims. This proposal places these conflicting interests into balance for the first time.

Loeb & Loeb lists a single basis on which they request exclusion of my proposal:

They claim that my proposal was received late. This claim is false, according to at least three printed statements by CytRx management.

For at least the past few years, CytRx has always listed a February 22 to March 14 deadline for submission of shareholder proposals in their Proxy Statements. This is part of what I see as a consistent, longstanding pattern of intentional deception. The following are excerpts from the last three DEF 14A Proxy Statements, showing that CytRx lies about the deadline consistently.

From the August 2017 Proxy Statement, Page 11:

Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2018 **must be received by us on or before March 14, 2018**."

From the 2016 Proxy Statement, Page 40:

"Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2017 must be received by us on or before March 14, 2017."

From the 2015 Proxy Statement:

"Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2015 must be received by us on or before February 22, 2016."

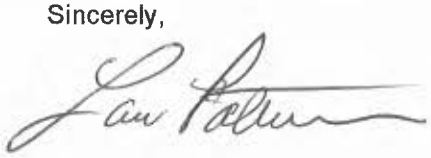
I am a shareholder of CytRx, not a securities law expert. I relied on the honesty and integrity of the management of the company which I co-own to provide trustworthy information to me. Now they are trying to use their own lies as a reason why the company's owners should be denied the freedom to vote on matters of mutual concern. I urge the Commission to reject this twisted argument.

As another example of what I see as management's longstanding effort to disenfranchise shareholders, I would like to mention the special meeting of shareholders held in October 2017. On the CytRx website's special section concerning this upcoming meeting, management craftily listed the address of a car dealership as the location of the meeting. This can be verified using the SEC's "look-back" computer. Apparently uncertain that this was sufficient to thwart shareholders from attending this important meeting, management then cancelled the meeting less than 24 hours in advance, and rescheduled the meeting for a week later. This caused shareholders to lose nonrefundable air fare, and to not be able to attend due to scheduling conflicts. As a result of these two actions, only four shareholders (excluding management, directors and affiliated brokers) were able to find the correct address and arrive at the correct location for this critical vote on a reverse split.

While I have numerous concerns that management falls short on various issues, they seem to be remarkably adept at finding every means possible to keep the company's owners from having adequate influence in decisions affecting our investment.

Loeb & Loeb further assert that my proposal was not received at CytRx Corporation until March 20, 2018. This statement is also false. I have enclosed two United States Postal Service receipts and a USPS Delivery Confirmation, which confirms that my documents reached CytRx on March 14th.

Sincerely,



Lance Patterson

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Proof of Delivery ⌄

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** FISMA & OMB Memorandum M-07-16

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DURANT
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3926290206
03/13/2018 (800)275-8777 8:19 AM

Product Description	Sale Qty	Final Price
PM Exp 1-Day Flat Rate Env (Domestic) (LOS ANGELES, CA 90049) (Flat Rate) (Signature Waiver) (Scheduled Delivery Date) (Wednesday 03/14/2018 03:00 PM) (Money Back Guarantee) (USPS Tracking #) ***	1	$24.70
PM Exp Insurance (Up to $100.00 included)	1	$0.00
Total		$24.70
Credit Card Remtd (Card Name:MasterCard) (Account: ***) (Approval #:466257) (Transaction #:953)		$24.70

Includes up to $100 insurance

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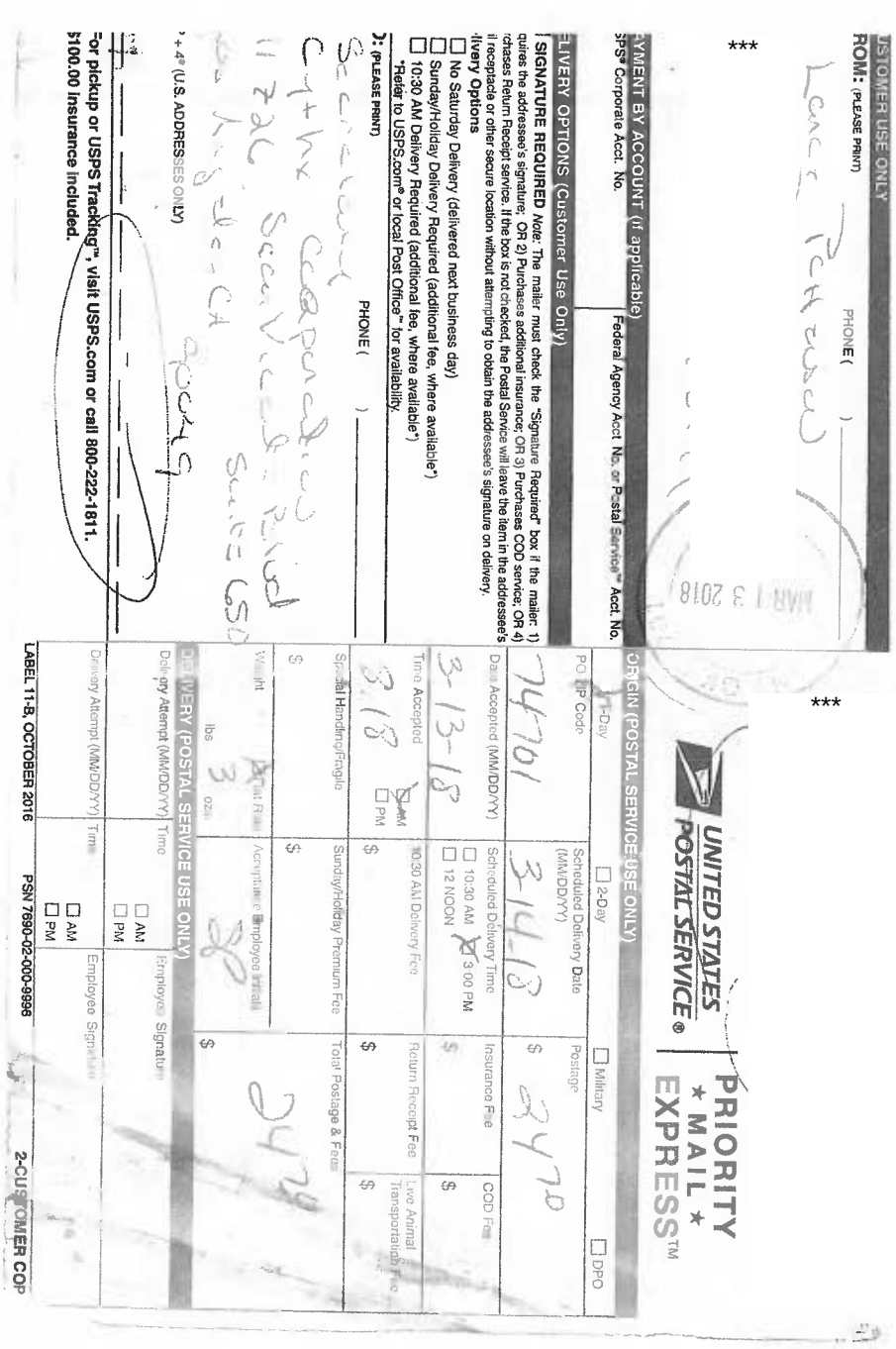
*** FISMA & OMB Memorandum M-07-16



From: Greg C.
To: ShareholderProposals
Date: Thursday, April 26, 2018 5:46:11 PM

April 26, 2018

Via E-Mail (shareholderproposals@sec.gov)

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

Re: CytRx Corporation Shareholder Proposal #1 for 2018 Annual Meeting of Stockholders

Ladies and Gentlemen:

Please confirm that you have received this letter by replying to my email address.

I am writing in response to the request made by Loeb & Loeb LLP on behalf of CytRx management, seeking the permission of the SEC to exclude my shareholder proposal from inclusion in the Proxy Statement for this year's Annual Meeting of Shareholders. My proposal is as follows:

Proposal 1: To approve an amendment to our Restated Certificate of Incorporation to bar management and other employees from membership on the Board of Directors, effective immediately.

Supporting Statement: This proposal will establish whether the shareholders holding a majority of voted shares believe that the persons overseeing the corporate officers should include some of the officers themselves. I believe that this represents a potential conflict of interest, which should be avoided for appearance's sake, if for no other reason. I further assert that it concentrates too much power in one individual. Note that this proposal does not preclude officers from regularly attending meetings of the Board of Directors and sharing their knowledge and experience.

Loeb & Loeb lists several bases on which they request exclusion of my proposal.

They began their discussion by noting that I am the lead plaintiff in a pending securities action case against CytRx. Why they chose to highlight this fact is a mystery to me and I do not see its relevance. Very simply, I am a shareholder and have every right to file a shareholder proposal.

They also claim that my proposal was received late. This claim is false, according to at least three printed statements by CytRx management.

For at least the past few years, CytRx has always listed a February 22 to March 14 deadline for submission of shareholder proposals in their Proxy Statements. This is part of what I see as a consistent, longstanding pattern of intentional deception. The following are excerpts from the last three DEF 14A Proxy Statements, showing that CytRx lies about the deadline consistently.

From the August 2017 Proxy Statement, Page 11:

Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2018 must be received by us on or before March 14, 2018. Notice of stockholder proposals submitted outside of Rule 14a-8 of the Exchange Act will be considered untimely if received by us after that date. Only proper proposals under Rule 14a-8 which are timely received will be included in the Proxy Statement in 2018.

From the 2016 Proxy Statement, Page 40:

"Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2017 must be received by us on or before March 14, 2017."

From the 2015 Proxy Statement:

"Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2015 must be received by us on or before February 22, 2016."

I am a shareholder of CytRx, not a securities law expert. I relied on the integrity of the management of the company which I co-own to provide trustworthy information to me. Now they are trying to use their own lies as a reason why the company's owners should be denied the freedom to vote on matters of mutual concern. I urge the Commission to reject this twisted argument.

As another example of what I see as management's longstanding effort to disenfranchise shareholders, I would like to mention the special meeting of shareholders held in October 2017. On the CytRx website's special section concerning this upcoming meeting, management craftily listed the address of a car dealership as the location of the meeting. This can be verified using the SEC's "look-back" computer. Apparently uncertain that this was sufficient to thwart shareholders from attending this important meeting, management then cancelled the meeting less than 24 hours in advance, and rescheduled the meeting for a week later. This caused shareholders to lose nonrefundable air fare, and to not be able to attend due to scheduling conflicts. As a result of these two actions, only four shareholders (excluding management, Directors and affiliated brokers) were able to find the correct address and arrive at the correct location for this critical vote on a reverse split.

While I have numerous concerns that management falls short on various issues, they seem to be remarkably adept at finding every means possible to keep the company's owners from having any influence in decisions affecting our investment.

The rest of Loeb & Loeb's arguments center around the specific wording of my proposal, and not the intention, which is to enhance the Board's ability to work in the best interests of shareholders, particularly when those interests run counter to the interests of the executive officers. Many of their arguments hang on the supposition that Mr. Kriegsman is the "people's choice." Specifically, Loeb and Loeb would have you believe that this proposal would run counter to our democratic tradition of fair elections by unseating a Board member duly elected by the will of the voters. That's not quite the case. I believe that Loeb and Loeb state incorrectly that "Director Steven A. Kriegsman . . . was re-elected to the Board at the Company's 2017 annual meeting of stockholders for a three-year term ending at the 2020 annual meeting of stockholders."

In reality, according to the 8-K filed on July 17, 2017, Mr. Kriegsman lost the election with 31,094,549 "FOR" votes and 40,333,756 "WITHHELD" votes. While I recognize that Delaware General Corporation Law has adopted Board election standards which do not allow any individuals to run against management's chosen candidate, it violates all democratic standards to seat candidates who have nevertheless been rejected by the electorate. In my view, Loeb and Loeb would be more accurate stating that "Kriegsman was appointed to the Board to fill a vacant position after the previous Board member, Steven A. Kriegsman, failed to win a majority of the votes at the 2017 annual meeting of shareholders."

In order to restore some balance in the management and direction of CytRx Corporation, I respectfully request that I be permitted to revise and resubmit my proposal as follows:

Proposal 1: To recommend to the Board of Directors that it actively seek to nominate only independent candidates of diverse backgrounds for membership on the Board of Directors. If any of the Company's executive officers are nevertheless elected to the Board of Directors or currently serving on the Board, then to the maximum extent permissible by current or future law, we recommend that they be restricted from voting. Moreover, the Directors are urged to choose an independent Director for the position of Chairman of the Board.

Supporting Statement: This proposal will establish whether the shareholders holding a majority of voted shares believe that the persons overseeing the corporate officers should include some of the officers themselves. I believe that this represents a potential conflict between the interests of shareholders, which it is the duty of the Board to protect, and the personal interests of corporate officers. In my opinion, this conflict of interest has been a factor in numerous class action and derivative lawsuits. I further assert that it concentrates too much power in one individual. Note that this proposal does not preclude officers from regularly attending meetings of the Board of Directors and sharing their knowledge and experience.

Thank you.

Sincerely,

Gregory D. Callender

From:	Amer Elhaija
To:	ShareholderProposals
Subject:	Re: CytRx Corporation Shareholder Proposal #2 for 2018 Annual Meeting of Stockholders
Date:	Thursday, April 26, 2018 12:09:29 AM

April 25, 2018

Via E-Mail (shareholderproposals@sec.gov)

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

Re: CytRx Corporation Shareholder Proposal #2 for 2018 Annual Meeting of Stockholders

Ladies and Gentlemen:

Please confirm that you have received this letter by replying to my email address.

I am writing in response to the request made by Loeb & Loeb LLP on behalf of CytRx management, seeking the permission of the SEC to exclude my shareholder proposal from inclusion in the Proxy Statement for this year's Annual Meeting of Shareholders. My proposal is as follows:

Proposal 2: To approve an amendment to our Restated Certificate of Incorporation to direct the Board of Directors to terminate the Chief Executive Officer "for cause" if a court of competent jurisdiction finds, at any time subsequent to the approval of this proposal by the majority of shares voted by shareholders of the Company, that the Company or the Chief Executive Officer is guilty of a felony.

Supporting Statement: This proposal stands on its own merits, and requires no discussion.

Loeb & Loeb lists two bases on which they request exclusion of my proposal:

First, they claim that my proposal was received late. This claim is false, according to at least three printed statements by CytRx management.

For at least the past few years, CytRx has always listed a February 22 to March 14 deadline for submission of shareholder proposals in their Proxy Statements. This is part of what I see as a consistent, longstanding pattern of intentional deception. The following are excerpts from the two preceding DEF 14A Proxy Statements, showing that CytRx lies about the deadline consistently.

From the August 2017 Proxy Statement, Page 11:

Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2018 must be received by us on or before March 14, 2018. Notice of stockholder proposals submitted outside of Rule 14a-8 of the Exchange Act **will be considered untimely if received by us after that date**. Only proper proposals under Rule 14a-8 which are timely received will be included in the Proxy Statement in 2018.

"Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 at our next Annual Meeting of Stockholders to be held in 2017 must be received by us on or before March 14, 2017."

"Any proposal which a stockholder intends to present in accordance with Rule 14a-8 of the Securities Exchange Act

of 1934 at our next Annual Meeting of Stockholders to be held in 2015 must be received by us on or before February 22, 2016."

I am a shareholder of CytRx, not a securities law expert. I relied on the honesty and integrity of the management of the company which I co-own to provide trustworthy information to me. Now they are trying to use their own lies as a reason why the company's owners should be denied the freedom to vote on matters of mutual concern. I urge the Commission to reject this twisted argument.

As another example of what I see as management's longstanding effort to disenfranchise shareholders, I would like to mention the special meeting of shareholders held in October 2017. On the CytRx website's special section concerning this upcoming meeting, management craftily listed the address of a car dealership as the location of the meeting. This can be verified using the SEC's "look-back" computer. Apparently uncertain that this was sufficient to thwart shareholders from attending this important meeting, management then cancelled the meeting less than 24 hours in advance, and rescheduled the meeting for a week later. This caused shareholders to lose nonrefundable air fare, and to not be able to attend due to scheduling conflicts. As a result of these two actions, only four shareholders (excluding management, directors and affiliated brokers) were able to find the correct address and arrive at the correct location for this critical vote on a reverse split.

While I have numerous concerns that management falls short on various issues, they seem to be remarkably adept at finding every means possible to keep the company's owners from having any influence in decisions affecting our investment.

Their second argument indicates that the felony conviction issue is properly addressed in Mr. Kriegsman's employment agreement. If this is confirmed, I voluntarily withdraw my proposal.

Sincerely,

Amer Elhaija

ALLEN Z. SUSSMAN
Partner

10100 Santa Monica Blvd.
Suite 2200
Los Angeles, CA 90067

Direct 310.282.2375
Main 310.282.2000
Fax 310.919.3934
asussman@loeb.com

April 16, 2018

Via E-Mail (***Shareholderproposals@sec.gov***)

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

Re: *CytRx Corporation*
Shareholder Proposals for 2018 Annual Meeting of Stockholders—Rule 14a-8

Ladies and Gentlemen:

We submit this letter on behalf of our client CytRx Corporation, a Delaware corporation (the "***Company***"). The Company has received five (5) purportedly separate proposals (the "***Proposals***") and supporting statements (the "***Supporting Statements***") from shareholders of the Company (the "***Proponents***") relating to the Company's 2018 Annual Meeting of Stockholders (the "***Annual Meeting***").

The five Proposals are identified below, and copies of incoming correspondence from the Proponents are attached hereto as Exhibit A through Exhibit E respectively (copies of personal brokerage account statements submitted by the Proponents have been removed):

1. Proposal #1 received on February 28, 2018 from Gregory D. Callender
2. Proposal #2 received on March 5, 2018 from Amer Elhaija
3. Proposal #3 received on March 8, 2018 from Dr. Nelson Wert
4. Proposal #4 received on March 13, 2018 from Michael G. Ferran
5. Proposal #5 received on March 20, 2018 from Lance Patterson

Please note that all five Proposals appeared to be coordinated, since four of the Proposals name Michael G. Ferran as their proxy at the Annual Meeting, and the remaining Proposal is from Mr. Ferran himself. Please also note that the Proponent of the first Proposal, Gregory D. Callender, is the lead plaintiff in a pending securities class action case filed against the Company, entitled *In re CytRx Corp. Sec. Litig.*, Case No. 2:16-cv-05519-SJO-SK (C.D. Cal).

On behalf of the Company, we request 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, as amended (the "***Exchange Act***"), the Company omits each of Proposals #1 through #5 from the Company's proxy statement and related materials for the Annual Meeting (collectively, 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 Loeb & Loeb LLP as to such matters.

Each Proposal is Late under Rule 14a-8(e)

The date of the Company's proxy statement released to shareholders in connection with its 2017 annual meeting of stockholders was May 22, 2017. Pursuant to Rule 14a-8(e), the legal deadline for submitting shareholder proposals for inclusion in the Proxy Materials was 120 days before May 22, 2018, or January 22, 2018 (the "***Legal Deadline***"). All five of the Proposals were received after the Legal Deadline and are therefore late for purposes of Rule 14a-8(e), and each of the Proposals is therefore excludable by the Company in reliance on Rule 14a-8(e)(2). The late nature of the submissions cannot be remedied by the Proponents, and the Company has therefore not sent separate notification of such deficiency to the Proponents, other than by this letter, in reliance on Rule 14a-8(f). Please note that the Company's Bylaws also require advance notice of shareholder proposals received outside of Rule 14a-8 using the same test for timeliness as Rule 14a-8.

Please also note that page 46 of the Company's 2017 proxy statement incorrectly reported March 14, 2018 as the deadline for proposals to be submitted at the 2018 Annual Meeting pursuant to Rule 14a-8. Nevertheless, the correct Legal Deadline is easily determinable on the face of the 2017 proxy statement, which was dated May 22, 2018. It is incumbent on the Proponents to independently calculate the proper deadlines when making their Proposals. The Company therefore requests that the Staff agree that the Company may properly exclude each of the Proposals, since none of the Proposals was timely submitted pursuant to Rule 14a-8(e)(2).

If the Staff does not agree with this conclusion, then we respectfully request that the reported deadline of March 14, 2018 be considered as the alternative deadline for determining the timeliness of shareholder proposals for purposes of Rule 14a-8(e)(2).

In order to ensure that the Staff is able to review this letter on a timely basis, the Company has scheduled the 2018 Annual meeting for August 9, 2018, and intends to begin distributing its definitive proxy materials for the Annual Meeting on or about July 5, 2018, which is 80 days from the date of this letter.

Substantive Analysis of the Proposals

While the Company believes that each Proposal was late and may be excluded from the Proxy Materials under Rule 14a-8(e)(2), we are providing the following analysis of the substantive issues raised by each Proposal under Rule 14a-8(i), in the event the Staff does not concur with this conclusion with respect to any of the Proposals:

1. Proposal #1 received on February 28, 2018 from Gregory D. Callender:

"To approve an amendment to our Restated Certificate of Incorporation to bar management and other employees from membership on the board of directors, effective immediately."

Rule 14a-8(i)(1). The Company believes it may properly omit Proposal #1 from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(1), as this Proposal is improper under state law. The Proposal is not a proper subject for action by shareholders under the laws of the State of Delaware. Rule 14a-8(i)(1) permits an issuer to exclude a shareholder proposal from its proxy materials "[i]f the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization."

In Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("***SLB 14D***"), the Staff noted that, "[i]f a proposal recommends, requests, or requires the board of directors to amend the company's charter, we may concur that there is some basis for the company to omit the proposal in reliance on rule 14a-8(i)(l) . . . if the company meets its burden of establishing that applicable state law requires any such amendment to be initiated by the board and then approved by shareholders in order for the charter to be amended as a matter of law."

The Company is a Delaware corporation. Under Section 242(b)(1) of the Delaware General Corporation Law (the *"**DGCL**")*, before an amendment to a company's certificate of incorporation may be considered by the shareholders, the company's "board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the stockholders." The only exception to this requirement for shareholder approval is for amendments solely to change a corporation's name or to delete obsolete provisions of the certificate of incorporation. Delaware law requires that any other type of amendment to a company's charter must be first initiated by the company's board of directors and then approved by shareholders.

Proposal #1 on its face purports to amend the Charter by the Company's shareholders alone and without due consideration and an initial resolution of the Company's Board of Directors (the *"**Board**")*, as required by the DGCL. Accordingly, Proposal #1 is not a proper subject for action by the shareholders of the Company and may be omitted from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(l).

Rule 14a-8(i)(8). Rule 14a-8(i)(8) provides that a company may omit a proposal which "would remove a director from office before his or her term expired." If adopted, Proposal #1 would require that no employee or member of management may serve on the Board, effective immediately. The Proposal does not attempt to establish qualifications for future director eligibility, but rather seeks to make all employees and members of management immediately ineligible for service on the Board. This would have the effect of removing any such Board members from office effective immediately upon adoption of the Proposal.

Director Steven A. Kriegsman is also Chief Executive Officer of the Company, and was re-elected to the Board at the Company's 2017 annual meeting of stockholders for a three-year term ending at the 2020 annual meeting of stockholders. Proposal #1, if adopted, would have the effect of making Mr. Kriegsman ineligible for service on the Board and removing him from office effective immediately, before his term expires in 2020, and is therefore excludable under Rule 14a-8(i)(8).

Rule 14a-8(i)(2). Rule 14a-8(i)(2) provides that a company may omit a proposal which "would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." Implementing Proposal #1 would have the effect of requiring the Company to remove a sitting director from the Board, in violation of Section 141(k) of the DGCL.

Section 141(k) of the DGCL contains the default rule that stockholders of a Delaware corporation have the right to vote to remove directors from the board "with or without cause," except in the case of a corporation whose board is "classified" under Section 141(d) (i.e., has multiple classes of directors with staggered terms of service), in which case "stockholders may effect such removal only for cause." Court of Chancery precedent interpreting Section 141(k) includes *In re Vaalco Energy Stockholder Litigation*, C.A. No. 11775-VCL (Del. Ch. Dec. 21, 2015) (invalidated charter and bylaw provisions that purported to limit the stockholders' right to remove directors to "for cause" removal, where the company had an unclassified board consisting of a single class of directors), and *Rohe v. Reliance Training Network, Inc.*, 2000 WL 1038190 (Del. Ch. July 21, 2000).

Proposal #1 purports to bar all employees and members of management from eligibility to serve as a director, without good cause or any other reason. The Supporting Statement given for Proposal #1 only gives a rationale for the Proposal that is generic and unrelated to cause (the Supporting Statement refers to "potential conflict of interest, which should be avoided for appearance's sake" and "it concentrates too much power in one individual"). Proposal #1, if adopted, would violate Section 141(k) of the DGCL, and is therefore excludable under Rule 14a-8(i)(2).

We acknowledge the Staff's position, as articulated in SLB 14D, that shareholder proponents may be permitted to revise and resubmit their proposals under certain circumstances. However, if the Proponent is allowed to revise Proposal #1 to avoid the defect raised above under Rule 14a-8(i)(1) (improper under state law), for example by recasting the

proposal as a recommendation to the Board of Directors, Proposal #1 would still violate Rule 14a-8(i)(6), since the Board would lack the power or authority to either (i) authorize a charter amendment immediately barring employees from service on the Board, due to the provisions of the DGCL cited above, or (ii) directly remove sitting directors from the Board who are also employees, since the Board does not have the power to remove sitting directors under Section 141 of the DGCL, other provisions of Delaware law, or the Company's charter or bylaws.

2. Proposal #2 received on March 5, 2018 from Amer Elhaija:

> *"To approve an amendment to our Restated Certificate of Incorporation to direct the Board of Directors to terminate the Chief Executive Officer "for cause" if a court of competent jurisdiction finds, at any time subsequent to the approval of this proposal by the majority of shares voted by shareholders of the Company, that the Company or the Chief Executive Officer is guilty of a felony."*

Rule 14a-8(i)(1). The Company believes it may properly omit Proposal #2 from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(1), since the proposal seeks to amend the Company's Restated Certificate of Incorporation without the prior approval of the Board. As discussed above with respect to Proposal #1, Section 242(b)(1) of the DGCL requires that an amendment to a company's certificate of incorporation must first be initiated by a resolution of a company's board of directors declaring the advisability of the proposed amendment. Proposal #2 on its face purports to amend the Company's certificate of incorporation directly by the shareholders and without due consideration or an initial resolution of the Board, as required by the Board's legal and fiduciary duties and the procedures required by Section 242(b)(1) of the DGCL. Proposal #2 is therefore improper under Delaware law and excludable under Rule 14a-8(i)(1).

Rule 14a-8(i)(6) and Rule 14a-8(i)(2). Rule 14a-8(i)(6) provides that a company may omit a proposal "if the company would lack the power or authority to implement the proposal." Rule 14a-8(i)(2) provides that a company may omit a proposal which "would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject."

In this case, Company is bound by an employment agreement with its CEO, Steven A. Kriegsman, which expires by its terms on December 31, 2021. The employment agreement contains specific provisions which require the Company to handle the issues raised in Proposal #2 (potential felony conviction while in office) in a certain manner. The employment agreement establishes procedures requiring the Company to notify the CEO in the event the Board intends to terminate him for "cause," which is defined to include being charged or found guilty of certain types of criminal activity.[1] If adopted, Proposal #2 would require the

[1] The Company's employment agreement with Steven A. Kriegsman, publicly available as Exhibit 10.1 to the Company's Form 8-K filed with the Commission on October 19, 2012, contains the following relevant provisions:

Company to violate its employment agreement with Mr. Kriegsman by directing the Board to handle a potential felony conviction in a manner differently than as explicitly required under his employment agreement. In particular, the Proposal would cause the Company to deny to Mr. Kriegsman the benefit of the procedural safeguards and protections that were negotiated for and are set forth in his employment agreement. To avoid any ambiguity, we point out to the Staff that Mr. Kriegsman has never been charged with or convicted of a felony offense, nor to our knowledge has any such credible allegation been asserted against him.

The Staff has consistently taken the position that a shareholder proposal that would cause a breach of a company's existing contracts may be excluded. As the Staff stated in Staff Legal Bulletin No. 14B (Sept. 15, 2004): "Proposals that would result in the company breaching existing contractual obligations may be excludable under rule 14a-8(i)(2), rule 14a-8(i)(6), or both, because implementing the proposal would require the company to violate applicable law or would not be within the power or authority of the company to implement." *See, e.g.*, *WMIH Corp.* (January 27, 2017) (permitting exclusion of a proposal that would place limits on executive compensation and incentive pay packages); *Sensar Corp.* (May 14, 2001) (permitting exclusion of a proposal that would cause company to violate option agreements); *International Business Machines Corp.* (Feb. 27, 2000) (permitting exclusion of a proposal that would cause company to violate an employment contract); and *OGE Energy Corp.* (Mar. 4, 1999) (permitting exclusion of a proposal that would cause company to breach employment agreements with executive officers).

> "Employer may terminate Employee's employment hereunder for "Cause" (as defined below), provided that Employer has complied with the provisions of this Section 7.1. Employee shall be given written notice by Employer's Board of Directors of the intention to terminate him for Cause. Such notice shall state in reasonable detail the particular circumstances that constitute Cause for termination. Employee shall have 15 days after receiving such notice in which to cure such circumstances, to the extent such cure is possible. If cure is not possible, or if he fails to cure such circumstances, Employee shall then be entitled to a hearing before the Board. Such hearing shall be held within 20 days of his receiving such notice, provided that he requests such hearing within 15 days of receiving such notice. If, within five days following such hearing, the Board gives written notice to Employee confirming that, in the judgment a majority of the members of the Board (excluding Employee), Cause for terminating his employment on the basis set forth in the original notice exists, the Term and Employee's employment hereunder shall be terminated for Cause.
>
> The term "Cause" for purposes of this . . . Employment Agreement shall mean any of the following: (b) Employee is (i) convicted of, or has entered a plea of guilty or nolo contendere to, any felony that in the reasonable judgment of Employer's Board of Directors is materially injurious to Employer or its reputation or (ii) is convicted of, or has entered a plea of guilty or nolo contendere to, any misdemeanor, felony or other crime of moral turpitude that in the reasonable judgment of the Board of Directors of Employer is materially injurious to Employer or its reputation; provided, however, that in the event Employee is indicted for, or charged with, the commission of any felony that in the judgment of the Board of Directors could reasonably be expected to result in substantial lasting harm to Employer or its reputation, Employer shall be entitled summarily to suspend Employee's services to Employer hereunder, without a loss to Employee of his compensation and other benefits hereunder, during the pendency of such indictment or charge; [Emphasis added]

The adoption of Proposal #2 would not merely constitute a theoretical breach of Mr. Kriegsman's employment agreement, but may result in an anticipatory breach by the Company of the employment contract, in violation of California law. The principles of anticipatory breach are set forth in Section 1440 of the California Civil Code, which states that "[i]f a party to an obligation *gives notice to another*, before the latter is in default, that he will not perform the same upon his part, and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part in favor of the former party." [Emphasis added] In this case, the Proposal would clearly constitute "notice" that the Company does not intend to abide by Mr. Kriegsman's employment agreement.

In summary, Proposal #2, if implemented, would cause the Company to breach, or anticipatorily breach, its existing employment agreement with Mr. Kriegsman, and is therefore excludable under Rule 14a-8(i)(6) and Rule 14a-8(i)(2). We note that if the Proponent is allowed to revise Proposal #2 to avoid the defect raised above under Rule 14a-8(i)(1) (improper under state law), for example by recasting the proposal as a recommendation to the Board of Directors, the Proposal would still violate Rule 14a-8(i)(6) and Rule 14a-8(i)(2), since the Board lacks the power or authority to implement the Proposal for the same reasons cited above with respect to Proposal #2.

3. Proposal #3 received on March 8, 2018 from Dr. Nelson Wert:

> *"To recommend to the Board of Directors that any stock, options, or warrants issued to management and directors within ten days prior to, or within sixty days following any public or private offering, shall be offered at pricing no lower than the share price 30 days prior to the latest dilution."*

Rule 14a-8(i)(6) and Rule 14a-8(i)(2). Rule 14a-8(i)(6) provides that a company may omit a proposal "if the company would lack the power or authority to implement the proposal." Rule 14a-8(i)(2) provides that a company may omit a proposal which "would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject."

Please be advised that the Company is bound by that certain "Stipulation and Agreement of Settlement," dated August 28, 2015 (the "***Settlement Agreement***"), entered in the Court of Chancery of the State of Delaware in connection with the litigation entitled *In re CytRx Corp. Stockholder Derivative Litigation*, C.A. No. 9864-VCL. The Company is also bound by that certain "Order and Final Judgment of the Delaware Chancery Court," dated November 20, 2015 (the "***Court Order***"), approving and directing the Company to implement the Settlement Agreement. Copies of the Settlement Agreement and Court Order are attached as Exhibit F to this letter.

Paragraph 2.6 of the Settlement Agreement contains specific provisions relating to the future pricing of the Company's stock option awards, as follows:

> "Stock options granted to all officers, directors, and employees shall be granted only on pre-set dates, which shall be set by the Compensation Committee prior to the beginning of the fiscal year in which the options are to be granted. The method used to determine the pre-set grant dates, and any future changes thereto, shall be publicly reported at least ninety (90) days prior to becoming effective."

While Proposal #3 only purports to make recommendations to the Board and is therefore precatory, the Board would be unable to implement this Proposal without violating the letter and spirit of the Settlement Agreement, making the Proposal excludable under Rule 14a-8(i)(6). Furthermore, implementing the Proposal in violation of the Settlement Agreement would violate the Court Order of the Delaware Chancery Court, making this Proposal also excludable under Rule 14a-8(i)(2).

Rule 14a-8(i)(7). Rule 14a-8(i)(7) permits an issuer to exclude a shareholder proposal from its proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain 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. 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.

In this case, Proposal #3 seeks to manage the pricing of equity awards given to management and directors. It is unclear from the Proposal what is meant by "management" or if the Proponent intends to include "executive officers." However, the entire subject of equity awards and their pricing has been delegated to the Compensation Committee of the Board. As stated in the Charter of the Compensation Committee:

> "Pursuant to the Committee's purpose, the Committee shall. . . . [w]ith sole and exclusive authority (except as explicitly delegated to the Company's Chief Executive Officer), make and approve stock option grants and other discretionary awards under the Company's stock option or other equity incentive plans to all persons who are Board members or Officers."

Pricing of equity awards is *per se* a task that is managerial in nature and not suited to micro-management by shareholders. There are typically legitimate, confidential business factors and concerns that are known only to the Board and Compensation Committee in making equity awards, that would be ill-suited and potentially harmful to the Company's ability to properly use equity awards to provide management incentives if subject to an arbitrary rule on pricing that is determined by shareholders without actual knowledge of these considerations.

Furthermore, the Company's existing equity incentive plans, in addition to the

Settlement Agreement discussed above, contain specific provisions dealing with pricing of equity awards, and were already approved by shareholders prior to their effectiveness. The Company's Amended and Restated 2008 Stock Incentive Plan (publicly available as Exhibit 10.6 to the Company's Annual Report on Form 10-K filed on March 13, 2012) (the "***2008 Plan***") was approved by shareholders and contains provisions that govern the pricing and form of consideration for stock option and restricted stock awards. The 2008 Plan requires that "the exercise price of each Incentive Stock Option shall be not less than the Fair Market Value of the Common Stock subject to the Option on the date the Option is granted" and "[t]he exercise price of each Nonstatutory Stock Option shall be not less than the Fair Market Value of the Common Stock subject to the Option on the date the Option is granted."

The Company's shareholders have considered and approved the 2008 Plan, and in so doing approved the principle that pricing of awards would be managed by the Board or a committee of the Board, subject to the definition of "Fair Market Value" provided in the 2008 Plan. Based on the above analysis, the recommendation set forth in Proposal #3 is a routine matter relating to the Company's ordinary business operations, and is excludable under Rule 14a-8(i)(7).

4. Proposal #4 received on March 13, 2018 from Michael G. Ferran:

> *"To recommend to the Board of Directors that, to the maximum extent permissible by law, the Board of Directors shall limit annual salary and benefit packages (including bonuses and equity incentive compensation) of each individual employed by the Company to no more than $300,000, plus one percent of mean net annual corporate profits of the preceding five years. If previously binding contracts prevent the Board from effecting this limitation in a given year, the Board shall include a table in the printed discussion below the Advisory Vote on Executive Compensation in the Proxy Statement showing the dollar amount to which each executive officer's compensation package exceeds this mean annual profit or loss."*

Rule 14a-8(i)(3). Pursuant to Rule 14a-8(i)(3), a company may exclude a shareholder proposal from its proxy materials if the proposal or its supporting statement is contrary to the Commission's proxy rules, including Rule 14a-9, which prohibits false or misleading statements in proxy soliciting materials. In Staff Legal Bulletin No. 14B (Sept. 15, 2004), the Staff noted that shareholder proposals may be excluded under Rule 14a-8(i)(3) when the company demonstrates that "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." A proposal may be vague, and thus misleading, when it fails to address essential aspects of its implementation.

The Staff has also 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. *See e.g., Verizon Communications Inc.* (Feb. 21, 2008)

(concurring with the exclusion under Rule 14a-8(i)(3) of a proposal prohibiting certain executive compensation unless Verizon's returns to shareholders exceeded those of its undefined "Industry Peer Group"). The Staff has also consistently concurred with the exclusion of shareholder proposals involving executive compensation matters when such proposals have included terms that are subject to multiple interpretations. For example, in *PepsiCo Inc. (Steiner)* (Jan. 10, 2013), the Staff concurred 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) where the company 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.

In this case, Proposal #4 contains two parts (referred to as "***Part (a)***" and "***Part (b)***"):

a) Recommend to the Board of Directors that, to the maximum extent permissible by law, the Board of Directors shall limit annual salary and benefit packages (including bonuses and equity incentive compensation) of each individual employed by the Company to no more than $300,000, plus one percent of mean net annual corporate profits of the preceding five years.

b) If previously binding contracts prevent the Board from effecting [the foregoing] limitation in a given year, the Board shall include a table in the printed discussion below the Advisory Vote on Executive Compensation in the Proxy Statement showing the dollar amount to which each executive officer's compensation package exceeds this mean annual profit or loss.

Part (a) refers to "one percent of mean net annual corporate profits of the preceding five years" as a key element to be used in determining allowable executive compensation. However it is unclear what is meant by the phrase "mean net annual corporate profits." Does this refer to *the Company's* operating results or those of all public companies, or perhaps only peer group public companies in the biopharmaceutical sector? Also, the term "corporate profits" is not defined in the Proposal, nor is it a financial term that is used or defined in the Company's financial statements or periodic filings, or under generally accepted accounting principles. The Supporting Statement submitted by the Proponent with this Proposal is not instructive in clarifying what the Proponent meant by the phrase "mean net annual corporate profits."

In fact, the Company has incurred only net losses and no profits for each of the preceding five years, since it is a biopharmaceutical research and development company in the drug development stage. One percent of the Company's mean annual net losses over the preceding five years is equal to $(443,894). It is unclear how to interpret or properly apply Part (a), or how to reconcile the Company's results with the Proponent's reference to "corporate profits." Part (a) of Proposal #4 is therefore vague and indefinite, and cannot be understood by shareholders or implemented by the Company with certainty, and is excludable in its entirety pursuant to Rule 14a-8(i)(3).

In addition, Part (b) of Proposal #4 asks the Company to add disclosure about the "dollar amount to which each executive officer's compensation package exceeds this mean annual profit or loss." However, the reference to "*this mean annual profit or loss*" conflicts with Part (a), which refers only to "*mean net annual corporate profits*". Assuming the plain English meaning of these terms, "mean annual profit or loss" is not the same as "mean net annual corporate profits", since the latter term excludes losses. Part (b) is therefore logically inconsistent with Part (a), and also impossible for the Company to implement as written, as well as potentially confusing to shareholders. For these reasons, the Company believes that Part (b) of Proposal #4 should therefore be excludable under Rule 14a-8(i)(3).

Rule 14a-8(i)(7). Rule 14a-8(i)(7) permits an issuer to exclude a shareholder proposal from its proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations". As discussed above with respect to Proposal #3, the policy considerations stated by the Commission underlying this exclusion rest on the principles that certain tasks are fundamental to management's responsibilities, and the shareholders should not be permitted to "micro-manage" the company regarding complex matters.

Employee compensation is, of course, a highly important but nonetheless routine business matter. It is necessarily entrusted by shareholders to management, who has the knowledge of competitive conditions, employee incentives and other expertise to determine appropriate compensation terms. Accordingly, it has been the Staff's long-standing position that shareholder proposals relating to "general compensation issues" may be omitted from proxy materials as relating to ordinary business operations, while proposals relating to senior executive compensation could present "significant policy implications" and, therefore, may not be excluded from proxy materials. This distinction between executive compensation and general compensation matters has been generally followed by the Staff since the adoption of Exchange Act Release No. 34-30851 (June 23, 1992).

In this case, Part (a) of Proposal #4 relates solely to compensation paid to "each individual employee" and is *not* limited in coverage to "executive compensation" or "senior executive compensation" (as that term is used in Release No. 34-30851). Part (a) of Proposal #4 is therefore a routine matter that should be excluded under Rule 14a-8(i)(7).

Rule 14a-8(c). Rule 14a-8(c) provides that a shareholder "may submit no more than one proposal to a company for a particular shareholders' meeting." The one-proposal limitation applies not only to proponents who submit multiple proposals in multiple submissions, but also to proponents who submit multiple proposals as elements or components of an ostensibly single proposal. The Staff has consistently 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. *See, e.g., Textron Inc.* (December 23, 2011).

In this case, while the two parts of Proposal #4 could arguably be characterized as relating to the same broad concept, they are separate and not linked to a combined purpose.

Part (a) is precatory and recommends that the Board affirmatively limit actual compensation paid to *all employees*, not just executive officers. Part (b) is mandatory and requires additional disclosure in the proxy statement about compensation paid to "named executive officers" whose compensation cannot be limited due to "previously binding contracts". These are not sufficiently closely related or essential to a single well-defined unifying concept, and should be excluded under Rule 14a-8(c), since they represent more than one proposal. The Company does not believe this deficiency can be remedied without completely recasting Proposal #4 as a new shareholder proposal.

5. Proposal #5 received on March 20, 2018 from Lance Patterson:

> *"To recommend that the Board of Directors include in all future employment contracts a requirement that any and all corporate funds which are used to defend an officer of the Company against a shareholder action shall be immediately repaid in full by the officer as a condition for continued employment within thirty days after a court of competent jurisdiction finds the officer guilty of one or more of the illegal actions alleged in the suit. Such repayment shall be made without regard to further appeals which, however, may continue to be funded by corporate monies to a maximum of $100,000, with the same repayment requirement if and when the appellate court finds the officer guilty of any of the alleged actions. Conversely, if the final trial court finds the officer innocent of all charges, the Board may reimburse the officer for court expenses that he had repaid."*

Proposal #5 was received by the Company after both the Legal Deadline and the reported deadline of March 14, 2018, as discussed at the beginning of this letter. The Company therefore intends to exclude Proposal #5 pursuant to Rule 14a-8(e)(2) and Rule 14a-8(f). The late submission cannot be remedied by the Proponent, and the Company has therefore not sent a separate notification of such deficiency to the Proponent other than by this letter.

If the Staff does not concur that Proposal #5 was untimely, we would appreciate an opportunity to confer with the Staff concerning our substantive objections to this Proposal prior to the issuance of a Rule 14a-8 response.

* * * * *

Pursuant to Rule 14a-8(j) under the Exchange Act, we have filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission, and have concurrently sent copies of this correspondence to the Proponents. Rule 14a-8(k) of the Exchange Act and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission and the Staff. Accordingly, we are taking this opportunity to inform the Proponents that if they elect to submit additional correspondence to the

Commission or the Staff with respect to their Proposals, then a copy of such correspondence should concurrently be furnished to the undersigned on behalf of the Company.

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 Allen Z. Sussman, Esq., on behalf of the Company, via email at asussman@loeb.com or via facsimile at (310) 919-3934, and to the Company via email at cbirardi@cytrx.com. Should you require any further information, please contact the undersigned directly at (310) 282-2000.

Sincerely,

Allen Z. Sussman
of Loeb & Loeb LLP

Exhibit A
Proposal #1

Via Certified Mail

February 22, 2018

Secretary
CytRx Corporation
11726 San Vicente Boulevard
Suite 650
Los Angeles, CA 90049

Dear Secretary,

I am submitting the following proposal for consideration by the stockholders at the next annual meeting. I do not know whether other stockholders support my proposal.

Proposal: To approve an amendment to our Restated Certificate of Incorporation to bar management and other employees from membership on the board of directors, effective immediately.

Supporting Statement: This proposal will establish whether the shareholders holding a majority of voted shares believe that the persons overseeing the corporate officers should include some of the officers themselves. I believe that this represents a potential conflict of interest, which should be avoided for appearance's sake, if for no other reason. I further assert that it concentrates too much power in one individual. Note that this proposal does not preclude officers from regularly attending meetings of the board of directors and sharing their knowledge and experience.

I am the holder of record of at least $2,000 in market value of common shares of CytRx Corporation. I have held these shares continuously over the past full year and I pledge to continue to hold at least $2,000 in market value of these same shares until after the date of the July 2018 annual meeting, including any extensions thereof. I am entitled to vote at the July 2018 annual meeting.

I intend to be represented at the meeting by my proxy, Michael G. Ferran, who will present my proposal for consideration by the stockholders.

Respectfully,

Gregory D. Callender

***

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

Exhibit B
Proposal #2

Proposal for consideration by the stockholders at the July 2018 CytRx annual meeting

Secretary
CytRx Corporation
11726 San Vicente Boulevard
Suite 650
Los Angeles, CA 90049

Dear Sir/Madam
I am the holder of record of at least $2,000 in market value of common shares of CytRx Corporation. I have held these shares continuously over the past full year and I pledge to continue to hold at least $2,000 in market value of these same shares until after the date of the July 2018 annual meeting, including any extensions thereof.
I am entitled to vote at the July 2018 annual meeting.
I intend to be represented at the meeting by my proxy, Michael G. Ferran, who will present my proposal for consideration by the stockholders.

Regards

Amer Elhaija
***

Proposal: To approve an amendment to our Restated Certificate of Incorporation to direct the Board of Directors to terminate the Chief Executive Officer "for cause" if a court of competent jurisdiction finds, at any time subsequent to the approval of this proposal by the majority of shares voted by shareholders of the Company, that the Company or the Chief Executive Officer is guilty of a felony.

Supporting Statement: This proposal stands on its own merits, and requires no discussion.

Exhibit C
Proposal #3

March 5, 2018

Secretary
CytRx Corporation
11726 San Vicente Boulevard
Suite 650
Los Angeles, CA 90049

Good day,

I wish to submit the following proposal for consideration by the stockholders at the next annual meeting. I am the holder of record of at least $2000.00 in market value of common shares of CytRx Corporation. I have held these shares continuously over the past full year and I pledge to continue to hold at least $2,000 in market value of these same shares until after the date of the July 2018 annual meeting, including any extensions thereof. Attached is confirmation from my broker and account trading records that I held 128,010 shares (pre-r/s) as of 03/05/2017, all being held over one year, presently holding 21,402 share (post-r/s). I am entitled to vote at the July 2018 annual meeting. I submit my proposal as an individual shareholder and do not know of any other shareholders who support my proposal. I intend to be represented at the meeting by my proxy, Michael G. Ferran, who will present my proposal for consideration by the stockholders.

Proposal: To recommend to the Board of Directors that any stock, options, or warrants **issued to management and directors** within ten days prior to, or within sixty days following any public or private offering, shall be offered at pricing no lower than the share price 30 days prior to the latest dilution.

Supporting Statement: With the goal of avoiding any appearance of impropriety, I believe that it is incumbent upon our Board of Directors to avoid issuing share-based benefits to themselves and/or Officers of the Company during periods when the share price may be expected to be adversely affected by a recent secondary offering authorized by the Board. If such benefits are distributed to the Board of Directors and/or Officers during periods when the share price is depressed as a direct result of actions of the Board and/or Officers, such events can and do leave the impression that the timing and/or pricing of the offering was deliberately determined in order to maximize the potential for profit by directors and officers at the ultimate expense of shareholder owners of the Company. It is troublesome to investors when the Board and/or Officers of a company, after informing shareholders that the company has sufficient funds for the foreseeable future, unexpectedly issue a secondary offering immediately followed by the granting of shares, options, or warrants to the Board and/or Officers based on the significantly discounted share price resulting from said dilution of shares. In contrast, when the share-based benefits are offered on dates quite distant from the dates of offerings, shareholders can be more confident that the pricing was determined by market forces rather than insider timing or financial interests. Avoiding any appearance of impropriety is crucial to continued support by institutional and retail investors.

Sincerely, Dr. Nelson Wert

Dr. Nelson Wert

***

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

Exhibit D
Proposal #4

Cytrx Shareholder Proposal via USPS Priority

I am the holder of record of at least $2,000 in market value of common shares of CytRx Corporation. I have held these shares continuously over the past full year and I pledge to continue to hold at least $2,000 in market value of these same shares until after the date of the July 2018 annual meeting, including any extensions thereof.
I am entitled to vote at the July 2018 annual meeting. I intend to appear in person at the meeting to present my proposal for consideration by the stockholders.

Proposal: To recommend to the Board of Directors that, to the maximum extent permissible by law, the Board of Directors shall limit annual salary and benefit packages (including bonuses and equity incentive compensation) of each individual employed by the Company to no more than $300,000, plus one percent of mean net annual corporate profits of the preceding five years. If previously binding contracts prevent the Board from effecting this limitation in a given year, the Board shall include a table in the printed discussion below the Advisory Vote on Executive Compensation in the Proxy Statement showing the dollar amount to which each executive officer's compensation package exceeds this mean annual profit or loss.

Discussion:
According to data from the Thelander–PitchBook 2015 Private Compensation Survey , as reported in https://pitchbook.com/news/articles/a-biotech-executive-makes-how-much, the median compensation package for CEOs of discovery stage biotech companies raising up to $15 million in capital per year was $250,000 to $320,000 per year. In contrast, the Board provided compensation of $5,009,150 over the two year period of 2015-2016 to Mr. Kriegsman. During this same period, CytRx shares declined in value from $16.3197 (adjusted for the reverse split) to $2.226, and cash, cash equivalents and investments declined from $77.8 million to about $57.0 million according to corporate documents. Based on these statistics, or in spite of them, the Board rated Mr. Kriegsman as having consistently exceeded expectations regarding "building shareholder value as reflected in our market capitalization and our working capital" and other criteria. Additionally, after repeatedly stating at investor conferences and in the website's Corporate Presentation (as late as November 3, 2017) that the Company would file a New Drug Application (NDA) for Aldoxorubicin in the fourth quarter of 2017, the NDA has been indefinitely delayed placing further strain on company resources. This complete change in strategy merits a complete change in management's compensation due to the rapid operational burn rate and undetermined time until Cytrx realizes any revenue from Aldoxorubicin. I do not believe that the Company is in a position to pay out a compensation package nearly ten times the going rate, particularly in view of the failure to achieve stated criteria on which compensation is claimed to be based. Unfortunately, the annual advisory referendum on executive compensation consists of a single vote for the executive management team as a group, so that it is not suitable for determining shareholder sentiment regarding individual compensation packages.

Submitted by Shareholder: Michael G Ferran

Signature and Date: MAR. 9 2018

THIS PROPOSAL IS SUPPORTED BY ROBERT W. FERRAN JR. WHO HAS HELD AT LEAST 10,000 SHARES OF CYTRX COMMON SINCE AT LEAST 1 YEAR AGO AND WHO INTENDS TO HOLD SAID SHARES FOR AT LEAST ANOTHER YEAR FROM THE DATE OF THE NEXT SHAREHOLDERS MEETING. ROBERT FERRAN RESIDES AT

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

Exhibit E
Proposal #5

*** ***

March 12, 2018

Dear Sir or Madam:

I am submitting the proposal that follows for consideration by the stockholders at the next annual meeting. I do not know of any other stockholders who support this proposal.

I am the holder of record of at least $2,000 in market value of common shares of CytRx Corporation. I have held these shares continuously over the past full year and I pledge to continue to hold at least $2,000 in market value of these same shares until after the date of the July 2018 annual meeting, including any extensions thereof. I am entitled to vote at the July 2018 annual meeting.

Please note the enclosed proof from my brokerage firm.

I intend to be represented at the meeting by my proxy, Michael G. Ferran, who will present my proposal for consideration by the stockholders."

Sincerely,

Lance Patterson

Proposal: To recommend that the Board of Directors include in all future employment contracts a requirement that any and all corporate funds which are used to defend an officer of the Company against a shareholder action shall be immediately repaid in full by the officer as a condition for continued employment within thirty days after a court of competent jurisdiction finds the officer guilty of one or more of the illegal actions alleged in the suit. Such repayment shall be made without regard to further appeals which, however, may continue to be funded by corporate monies to a maximum of $100,000, with the same repayment requirement if and when the appellate court finds the officer guilty of any of the alleged actions. Conversely, if the final trial court finds the officer innocent of all charges, the Board may reimburse the officer for court expenses that he had repaid.

Supporting Statement: Shareholder owners of the Company do not take part in the decisions and actions made by officers of the Company. We therefore believe that officers should bear personal financial responsibility for their own illegal actions, if any. When corporate funds are disbursed to defend an officer for his illegal actions, the shareholders' funds are being used without their permission to defend an officer who has acted illegally. This misuse of corporate resources is particularly egregious when the party filing the suit is a shareholder or class of shareholders. In those cases, the considerable resources of a corporation are being marshaled against one or more of the owners of the corporation without the consent of these owners, or of the shareholders as a whole. At the same time, we recognize that the officers should be entitled to some assistance in defending against frivolous claims. This proposal places these conflicting interests into balance for the first time.

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

Exhibit F
Settlement Agreement
and
Order and Final Judgment of the Delaware Chancery Court

EFiled: Aug 28 2015 03:29PM EDT
Transaction ID 57784055
Case No. 9864-VCL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE CYTRX CORP. STOCKHOLDER DERIVATIVE LITIGATION	)	Consolidated C.A. No. 9864-VCL

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement dated August 28, 2015 (the "Stipulation"), is made and entered into by and among the following Parties (as defined further in ¶ 1.11), to the action captioned *In re CytRx Corp. Stockholder Derivative Litigation*, pending before the Court of Chancery of the State of Delaware (the "Court of Chancery" or the "Court") under C.A. No. 9864-VCL, (the "Action"), each by and through their respective counsel: (i) Plaintiffs Herbert Silverberg ("Silverberg"), Joseph Schwartz ("Schwartz") and David Johnson ("Johnson" together with Silverberg and Schwartz, "Plaintiffs"), derivatively on behalf of CytRx Corporation ("CytRx" or the "Company"); (ii) the Individual Defendants (as defined in ¶ 1.7); and (iii) nominal defendant CytRx (together with the Individual Defendants, "Defendants"). This Stipulation is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims (as defined in ¶ 1.16), upon and subject to the terms and conditions hereof.

I. BACKGROUND AND PROCEDURAL HISTORY

On April 10, 2014, plaintiff Silverberg made a demand under 8 *Del. C.* § 220 (the "220 Demand") on the Board of Directors (the "Board") of CytRx to inspect certain books and records of the Company concerning grants of stock option awards made by the Compensation Committee of the Board (the "Compensation Committee") to the members of the Board and other CytRx executive officers on December 10, 2013.

On July 7, 2014 and July 15, 2014, respectively, plaintiffs Schwartz and Johnson filed in the Court of Chancery complaints captioned *Schwartz v. Ignarro, et al.*, C.A. No. 9864-VCL and *Johnson v. Ignarro, et al.*, C.A. No. 9884-VCL (together, the "Schwartz/Johnson Actions"), each brought derivatively on behalf of nominal defendant CytRx asserting claims against the Board and the other Individual Defendants for breaches of fiduciary duty, waste of corporate assets and unjust enrichment in connection with the December 10, 2013 stock option awards.

On July 21, 2014, after obtaining responsive confidential CytRx documents in response to his 220 Demand, plaintiff Silverberg filed in the Court of Chancery an action captioned *Silverberg v. Kriegsman, et al.*, C.A. No. 9919-VCL (the "Silverberg Action"), brought derivatively on behalf of CytRx and asserting claims against the Individual Defendants substantially similar to those asserted in the Schwartz/Johnson Actions.

On September 5, 2014, Plaintiffs filed a joint stipulation to consolidate the Schwartz/Johnson and Silverberg Actions and appoint lead counsel, which the Court granted on September 10, 2014.

On October 9, 2014, Plaintiffs filed in the Court of Chancery a Verified Consolidated Stockholder Derivative Complaint (the "Complaint"). The Complaint asserts derivative claims on behalf of CytRx concerning the December 10, 2013 granting of stock options, alleging that: (i) the members of the Compensation Committee deliberately granted to themselves and the other Individual Defendants stock option awards that were spring-loaded; and (ii) each of the option recipients knew the options were spring-loaded in contravention of both the terms of CytRx's stockholder-approved equity plan and the affirmative representations the Individual Defendants made to CytRx stockholders that they would not grant spring-loaded equity awards.

On November 10, 2014, Defendants filed a motion to dismiss the Complaint (the "Motion to Dismiss") pursuant to Delaware Court of Chancery Rules 23.1 and 12(b)(6) and a motion to stay (the "Motion to Stay") the Action in favor of a federal securities class action pending in the United States District Court for the Central District of California captioned *In re CytRx Corp. Securities Litig.*, No. 14-cv-01956 (C.D. Cal.). At the Court's request, on November 17, 2014, the parties submitted an agreed-to schedule regarding an expedited schedule to brief the

Motion to Stay. After briefing was completed on both the Motion to Stay and the Motion to Dismiss, on January 8, 2015, the Court held oral argument on both motions. At the conclusion of the argument, the Court issued a ruling from the bench denying the Motion to Dismiss in its entirety and denying, in part, the Motion to Stay.

On January 30, 2015, Plaintiffs served their First Request for Production of Documents upon CytRx and the Individual Defendants. On January 31, 2015, Defendants filed answers to the Complaint. Thereafter, the Parties held numerous telephonic meet-and-confer calls and exchanged multiple letters and correspondence regarding Defendants' objections, the scope of discovery and related issues. As a result of such discussions and exchanges of correspondence, Defendants produced over 4,000 pages of documents on a rolling basis in April 2015.

On February 26, 2015, the Court granted a Stipulation and Proposed Scheduling Order governing proceedings in this case.

On or around February 2015, the Parties commenced discussions regarding a potential resolution of the Action and agreed to retain a mediator, the Hon. Dickran M. Tevrizian (Ret.), an experienced mediator and former judge for the U.S. District Court for the Central District of California for over twenty-one (21) years. On April 15, 2015, in furtherance of the Parties' settlement discussions, Plaintiffs sent

Defendants a settlement demand. On April 16, 2015, Plaintiffs and Defendants each submitted their respective confidential mediation statements to Judge Tevrizian. On April 24, 2015, the Parties participated in an all-day mediation session with Judge Tevrizian. At the conclusion of the mediation, Judge Tevrizian made a proposal to resolve the Action which included the repricing of options and the appointment of a new independent director to the Board and the Compensation Committee with additional governance to be negotiated. The Parties subsequently accepted the Mediator's proposal. Thereafter, the Parties continued their settlement discussions regarding the governance reforms to be required as part of a settlement.

As a result of those discussions, on June 1, 2015, the Parties entered into a Memorandum of Understanding (MOU) documenting their agreement in principal for the settlement of the Action and submitted the MOU to the Court that same day.

II. CLAIMS OF THE PLAINTIFFS AND BENEFITS OF SETTLEMENT

Plaintiffs believe that the claims they have asserted in the Action on behalf of CytRx have merit. Plaintiffs, however, recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against the Individual Defendants through trial and appeals. Plaintiffs and their counsel have also taken into account the uncertain outcome and the risk of any litigation,

especially in complex actions such as the Action, as well as the difficulties and delays inherent in such litigation and the potential difficulties in collecting upon any judgment. Plaintiffs and their counsel are also mindful of the inherent problems of proof and possible defenses to the claims asserted in the Action. Based on their evaluation, Plaintiffs and their counsel have determined that the Settlement set forth in this Stipulation is fair, reasonable and adequate and in the best interests of CytRx. Plaintiffs' Counsel believe that the Settlement set forth in this Stipulation confers substantial benefits upon CytRx and its stockholders. Plaintiffs' Counsel base this conclusion upon, among other things, the nature of the issues and relief, the Court's ruling on the Motion to Dismiss, their extensive investigation during the development, prosecution and settlement of the Action, which included, *inter alia*: (i) inspecting, reviewing and analyzing documents produced by CytRx in response to the 220 Demand; (ii) inspecting, reviewing and analyzing the Company's filings with the Securities and Exchange Commission ("SEC"); (iii) researching corporate governance issues; (iv) researching the applicable law with respect to the claims asserted in the Action and the potential defenses thereto; and (v) reviewing and analyzing over 4,000 pages of non-public documents and other information provided by the Company.

III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

Defendants have denied, and continue to deny, that they committed or aided and abetted the commission of any unlawful or wrongful acts alleged in the Action, and expressly maintain that they diligently and scrupulously complied with their fiduciary duties and other legal duties. Defendants are entering into the Stipulation solely because the proposed Settlement will eliminate the burden and expense of further litigation.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs (derivatively on behalf of CytRx), the Individual Defendants and CytRx, by and through their respective counsel or attorneys of record, as follows.

1. Definitions

As used in this Stipulation, the following terms have the meanings specified below. In the event of any inconsistency between any definition set forth below and any definition set forth in any other document related to the Settlement set forth in this Stipulation, the definitions set forth below shall control.

1.1 "Action" means the stockholder derivative actions consolidated under and captioned *In re CytRx Corp. Stockholder Derivative Litigation*, C.A. No. 9864-VCL, pending in the Court of Chancery.

1.2 "Court" or the "Court of Chancery" means the Court of Chancery of the State of Delaware.

1.3 "CytRx" or the "Company" means CytRx Corporation, including, but not limited to, its predecessors, successors, controlling stockholders, partners, joint venturers, subsidiaries, affiliates, divisions and assigns.

1.4 "Defendants" means the Individual Defendants and nominal defendant CytRx.

1.5 "Effective Date" means the first date by which all of the events and conditions specified in ¶ 6.1 of this Stipulation have been met and have occurred.

1.6 "Final" means the time when the Order and Final Judgment has not been reversed, vacated, or modified in any way and is no longer subject to appellate review, either because of disposition on appeal and conclusion of the appellate process or because of passage, without action, of time for seeking appellate review. More specifically, it is that situation when: (1) either no appeal has been filed and the time has passed for the timely filing of any notice of appeal in the Action; or (2) an appeal has been filed and the Delaware Supreme Court has either affirmed the judgment or dismissed that appeal and the time for any reconsideration or further appellate review has passed; or (3) the Delaware Supreme Court has granted further appellate review and that court has either

affirmed the underlying judgment or affirmed the court of appeals' decision affirming the judgment or dismissing the appeal.

1.7 "Individual Defendants" means defendants John Y. Caloz, Louis Ignarro, Steven A. Kriegsman, Benjamin S. Levin, Daniel J. Levitt, Joseph Rubinfeld, the Estate of Marvin L. Selter, Richard L. Wennekamp and Douglas Scott Wieland.

1.8 "Mediator" means the Hon. Dickran M. Tevrizian (Ret.).

1.9 "Notice" means the notice of the Settlement to be provided by CytRx, substantially in the form attached hereto as Exhibit C.

1.10 "Order and Final Judgment" or "Judgment" means the order and final judgment to be rendered by the Court, substantially in the form attached hereto as Exhibit B.

1.11 "Parties" means, collectively, each of (i) the Plaintiffs, derivatively on behalf of CytRx; (ii) the Individual Defendants; and (iii) CytRx.

1.12 "Person" means an individual, corporation, limited liability company, professional corporation, partnership, limited partnership, limited liability partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.13 "Plaintiffs" means plaintiffs Herbert Silverberg, Joseph Schwartz and David Johnson.

1.14 "Plaintiffs' Counsel" means Abraham, Fruchter & Twersky, LLP, Rosenthal, Monhait & Goddess, P.A., Kessler Topaz Meltzer & Check, LLP and Prickett, Jones & Elliott, P.A."Related Persons" means each of a Person's spouses, heirs, executors, estates, or administrators, each of a Person's present and former attorneys, legal representatives, and assigns in connection with the Action, and all of a Person's past and present directors, officers, agents, advisors, employees, affiliates, predecessors, successors, and parents.

1.15 "Released Claims" means all actions, suits, claims, demands, rights, liabilities, and causes of action, including both known claims and Unknown Claims (as defined herein), that have been or that might have been asserted by Plaintiffs, CytRx or any CytRx stockholder derivatively on behalf of CytRx against any Released Persons that are based upon or related to the facts, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act which were alleged in the Action including any and all claims arising out of the institution, prosecution, settlement or resolution of litigation against any Released Person. Notwithstanding the foregoing, Released Claims shall not include (i) claims asserted in *In re CytRx Corp. Stockholder Derivative Litigation*, Master File No. 2:14-cv-6414-GHK (C.D. Cal.), other than any and all allegations and claims

relating to the issuance of stock option grants alleged in this Action, and (ii) claims to enforce the Settlement or any Fee Award. The Settlement also is not intended to and does not release the direct claims asserted in *In re CytRx Corp. Sec. Litig*., No. 14-cv-01956 (C.D. Cal.) and *Rajasekaran v. CytRx Corp., et al.*, Case No. B6 541426 (Los Angeles Super. Ct.).

1.16 "Released Persons" shall mean the Defendants or any of their families, parent entities, controlling persons, associates, affiliates or subsidiaries and each and all of their respective past or present officers, directors, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, estates, administrators, predecessors, successors and assigns.

1.17 "Scheduling Order" means the order to be rendered by the Court preliminarily approving the Settlement, substantially in the form of the attached Exhibit A.

1.18 "Settlement" means the settlement documented in this Stipulation.

1.19 "Unknown Claims" means any and all claims that were alleged or could have been alleged in the Action by Plaintiffs, CytRx or any CytRx

stockholder derivatively on behalf of CytRx, which any Plaintiffs, CytRx, or CytRx stockholders derivatively on behalf of CytRx do not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons, including claims which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, the Plaintiffs and CytRx shall expressly waive, and each of CytRx' stockholders by operation of the Judgment shall have, expressly waived, the provisions, rights and benefits of California Civil Code § 1542, which provides:

> ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.***

The Parties acknowledge that they may discover facts in addition to or different from those now known or believed to be true by them, with respect to the Released Claims, as the case may be, but it is the intention of the Parties to completely, fully, finally, and forever compromise, settle, release, discharge, and

extinguish any and all of the Released Claims known or unknown, suspect or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts.

2. Settlement Consideration

2.1 CytRx acknowledges that the pendency and prosecution and settlement of the Action and the litigation efforts of Plaintiffs and their counsel were a material and substantial cause of the Settlement consideration described below and that the Settlement and each of its terms are fair, reasonable and adequate and in the best interest of CytRx.

2.2 **Financial Consideration**

Consistent with the Mediator's proposal, CytRx shall re-price 2,095,000 stock options that were collectively granted to defendants Steven A. Kriegsman, Louis Ignarro, Joseph Rubinfeld, Marvin L. Selter (now the Estate of Marvin L. Selter), Richard L. Wennekamp, John Y. Caloz and Benjamin S. Levin, on December 10, 2013 from the current exercise price of $2.39 to an exercise price of $4.66 (the share price at market closing on December 20, 2013) for total increased consideration upon potential exercise of $4,755,650 while maintaining the existing expiration date of those options. The foregoing options shall not be exercised prior to entry of the Order and Final Judgment.

2.3 **Corporate Governance Reforms**

The Board of Directors of CytRx has or shall adopt resolutions and amend committee charters to the extent necessary for the implementation of the Corporate Governance Reforms set forth below in paragraphs 2.4 through 2.14. For the Corporate Governance Reforms that have not already been implemented during the course of the Action, CytRx shall implement such reforms within sixty (60) days following the entry of the Order and Final Judgment.

2.4 The Nominating and Corporate Governance Committee has identified and appointed a new independent director who has been nominated for election to the Board in connection with the 2015 annual meeting of stockholders of the Company. This director has been appointed to serve on the Compensation Committee and shall remain a member following election to the Board. If the director is unable to serve out his term a new independent director shall by appointed in his place.

2.5 Richard L. Wennekamp did not seek reelection to the Board at the 2015 annual meeting of stockholders of the Company, which was held on June 23, 2015, and thus will no longer serve on the Compensation Committee.

2.6 Stock options granted to all officers, directors, and employees shall be granted only on pre-set dates, which shall be set by the Compensation Committee prior to the beginning of the fiscal year in which the options are to be granted. The

method used to determine the pre-set grant dates, and any future changes thereto, shall be publicly reported at least ninety (90) days prior to becoming effective.

2.7 All stock option grants, other than initial option grants to new employees, shall be made only at a properly constituted meeting of the Compensation Committee, either in person or telephonic, and not by unanimous written consent.

2.8 The Compensation Committee shall determine the grantees, amounts, dates, and prices of all stock options and shall not delegate these responsibilities.

2.9 Outside counsel or the Company's general counsel must participate in any Board or committee meeting at which stock option grants are approved and shall promptly prepare minutes of the meeting within seven (7) business days thereafter.

2.10 The exercise prices of all stock options shall be at least 100% of the closing price of the Company's stock, as quoted on the NASDAQ or other relevant national exchange on which the stock is listed, on the date of grant.

2.11 The Company shall not lower the exercise prices of any stock options after they are granted, nor exchange stock options for options with lower exercise prices, without stockholder approval.

2.12 Written documentation identifying grantees, amounts, and prices of all stock options granted on a particular date shall be complete and final on the date of

grant and signed by all members of the Compensation Committee on the date of grant. This signed documentation shall be transmitted to the Company's legal and accounting departments on the date of grant.

2.13 The Company shall maintain all records relating to all stock option grants until at least five (5) years after the expiration of the pertinent stock options.

2.14 All grants shall clearly define the exercise price, the grant date and fair market value of the grants. In no event shall the exercise price or value of an award be determined by reference to the fair market value of CytRx stock on a day other than the grant date of the award.

3. Procedure for Implementing the Settlement

3.1 Within five (5) business days after execution of the Stipulation, Plaintiffs shall submit the Stipulation together with its related documents to the Court, and shall apply to the Court for entry of the Scheduling Order, in the form annexed hereto as Exhibit A.

3.2 CytRx shall undertake the administrative responsibility for giving notice to CytRx stockholders at the time of entry of the Scheduling Order and CytRx shall be responsible for all costs and expenses related to the Notice. Within ten (10) business days after entry of the Scheduling Order, CytRx shall: commence mailing the Notice (in the form annexed hereto as Exhibit C) to CytRx

stockholders who were stockholders of record at the time of entry of the Scheduling Order.

3.3 At least twenty (20) business days prior to the Settlement Hearing, CytRx's counsel shall serve on counsel in the Action and file with the Court an appropriate affidavit or declaration with respect to the notice to be given CytRx stockholders pursuant to ¶ 3.2.

4. Releases

4.1 Upon the Effective Date, CytRx, each Plaintiff (each acting on his own behalf and derivatively on behalf of CytRx), and each of CytRx's stockholders (solely in their capacity as CytRx stockholders) shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged the Released Claims against the Released Persons and any and all claims arising out of, relating to, or in connection with, the defense, settlement or resolution of the Action against the Released Persons. CytRx, Plaintiff (each acting on his own behalf and derivatively on behalf of CytRx) and each of CytRx's stockholders (solely in their capacity as CytRx's stockholders) shall be deemed to have, and by operation of the Judgment shall have, covenanted not to sue any Released Person with respect to such Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting the Released Claims against the Released Persons

except to enforce the releases and other terms and conditions contained in this Stipulation and/or Judgment entered pursuant thereto.

4.2 Upon the Effective Date, Defendants shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged Plaintiffs and Plaintiffs' Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims. Nothing herein shall in any way impair or restrict the rights of any Party to enforce the terms of the Stipulation or any Fee Award.

5. Plaintiffs' Counsel's Attorneys' Fees and Expenses

5.1 After negotiation of the principal terms of the Settlement, counsel for Plaintiffs and CytRx, with the assistance and oversight of the Mediator, negotiated the amount of attorneys' fees and expenses to be paid to Plaintiffs' Counsel. As a result of these negotiations, Plaintiffs and CytRx agreed Plaintiffs' Counsel will request Court of Chancery approval of an award of fees and expenses of $1,100,00.00 in the aggregate (the "Fee Award"), and Defendants will not oppose or object to the requested Fee Award. The Fee Award shall be paid by CytRx or its insurers. The Fee Award shall be paid to Plaintiffs' Counsel within thirty (30) days of the entry of an order awarding the Fee Award, to Abraham, Fruchter & Twersky, LLP and Kessler Topaz Meltzer & Check, LLP as the receiving agents,

notwithstanding the existence of any timely filed objections to the Settlement, or potential appeal, but subject to Plaintiffs' Counsel's joint and several obligation to refund any amounts by which the fee award may be subsequently reduced upon appeal or by collateral attack.

5.2 The Settlement of this Action is not contingent on approval of the Fee Award or the amount requested.

5.3 Except as expressly provided herein, Plaintiffs and Plaintiffs' Counsel shall bear their own fees, costs and expenses, and no Released Person shall assert any claim for expenses, costs or fees against Plaintiffs or Plaintiffs' Counsel.

5.4 In the event that there is an appeal and any order approving the Settlement does not become Final, Plaintiffs' Counsel shall refund the advanced amount consistent with such reversal or modification within ten (10) business days after entry of such order. Notwithstanding the foregoing, any reduction, reversal, modification or non-approval of the Fee Award shall not in any way delay or preclude the Order and Final Judgment from becoming Final.

6. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

6.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

A. The dismissal with prejudice of the Action without the award of any damages, costs, fees or the grant of any further relief except

for an award of fees and expenses the Court may make pursuant to section __ of this Stipulation;

B. The entry of a final judgment in the Action approving the proposed Settlement and providing for the dismissal with prejudice of the Action and approving the grant of the releases described herein;

C. The inclusion in the final judgment of a provision enjoining Plaintiffs, CytRx stockholders, and CytRx from asserting any of the Released Claims;

D. The entry by the Court of the Order and Final Judgment substantially in the form of Exhibit B hereto; and

E. The Order and Final Judgment has become Final.

6.2 If any of the conditions specified in ¶ 6.1 are not met, then this Stipulation shall be canceled and terminated unless the Parties mutually agree in writing, by and through their respective counsel, to proceed with the Stipulation.

6.3 In the event that the Stipulation or Settlement is not approved by the Court, or the Settlement is terminated for any reason, the Parties shall be restored to their respective positions in the Action as of the last date before this Stipulation, and all negotiations, proceedings, documents prepared and statements made in connection herewith, including this Stipulation and the MOU, shall be without prejudice to the Parties, shall not be deemed or construed to be an admission by any Party of any fault, liability or wrongdoing as to any facts, claims or defenses that have been or might have been alleged or asserted in the Action, or any other act or proceeding or each thereof, nor shall they be interpreted, construed, deemed,

invoked, offered or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding. In such event, the terms and provisions of the Stipulation shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or orders entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*.

7. Miscellaneous Provisions

7.1 The Parties (a) acknowledge that it is their intent to consummate this Stipulation; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of this Stipulation.

7.2 The Parties intend this Settlement to be a final and complete resolution of all disputes between Plaintiffs, the Individual Defendants, and CytRx with respect to the Action. The Settlement comprises claims which are contested and shall not be deemed an admission by any Party as to the merits of any claim, allegation, or defense. The Parties further agree that the claims are being settled voluntarily after consultation with competent legal counsel.

7.3 Pending final determination of whether the Settlement should be approved, all proceedings in the Action and all further activity between the Parties

regarding or directed toward the Action, save for those activities and proceedings relating to this Stipulation and the Settlement, shall be stayed.

7.4 Pending the Effective Date of this Stipulation or the termination of the Stipulation according to its terms, Plaintiffs and any other CytRx stockholders, and their Related Persons, are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claims against any Released Person.

7.5 The provisions contained in this Stipulation (including any exhibits attached hereto) shall not be deemed a presumption, concession, or admission by any Party of any fault, liability, or wrongdoing, or lack of merit as to any facts or claims alleged or asserted in the Action or in any other action or proceeding, and shall not be interpreted, construed, deemed, invoked, offered, or received into evidence or otherwise used by any person in the Action or in any other action or proceeding, whether civil, criminal, or administrative, except in connection with any proceeding to enforce the terms of the Settlement or any Fee Award. The Released Persons may file the Stipulation and/or the Order and Final Judgment in any action that has been or may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction, claim preclusion or issue preclusion, or any other theory.

7.6 The exhibits to this Stipulation are material and integral parts hereof and are fully incorporated herein by this reference.

7.7 The Stipulation may be amended or modified only by a writing signed by the signatories hereto.

7.8 This Stipulation and the exhibits attached hereto constitute the entire agreement among the Parties and no representations, warranties or inducements have been made to any Party concerning the Stipulation or any of its exhibits other than the representations, warranties and covenants contained and memorialized in such documents. Except as otherwise provided herein, each Party shall bear its own costs.

7.9 Each counsel or other Person executing this Stipulation or its exhibits on behalf of any Party hereby warrants that such Person has the full authority to do so.

7.10 This Stipulation may be executed in one or more counterparts. A faxed or pdf signature shall be deemed an original signature for the purposes of this Stipulation. All executed counterparts, and each of them, shall be deemed to be one and the same instrument. A complete set of counterparts, either originally executed or copies thereof, shall be filed with the Court.

7.11 This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties and the Released Persons.

7.12 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and the Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

7.13 This Stipulation and the exhibits attached hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Delaware, and the rights and obligations of the parties to this Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Delaware without giving effect to that State's choice-of-law principles.

7.14 Plaintiffs have not assigned, encumbered, or in any manner transferred in whole or in part any of the Released Claims.

7.15 All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Stipulation.

7.16 Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation. If any of the conditions specified in ¶ 6.1 are not met, then the Stipulation shall be canceled and terminated unless counsel for the Parties mutually agree in writing to proceed with the Stipulation.

IN WITNESS WHEREOF, the Parties have caused the Stipulation to be executed by their duly authorized attorneys and dated August 28, 2015.

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Co-Lead Counsel for Plaintiffs

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE CYTRX CORP. STOCKHOLDER DERIVATIVE LITIGATION	)	Consolidated C.A. No. 9864-VCL

[PROPOSED] ORDER AND FINAL JUDGMENT

The Stipulation and Agreement of Compromise, Settlement and Release, dated August 28, 2015 (the "Stipulation") and all exhibits thereto in the above-captioned action (the "Action") and the settlement contemplated thereby (the "Settlement") having been presented at the Settlement Hearing on November 20, 2015, pursuant to the Scheduling Order entered herein on September 3, 2015 (the "Scheduling Order"), which Stipulation was entered into between (i) plaintiffs Herbert Silverberg ("Silverberg"), Joseph Schwartz ("Schwartz") and David Johnson ("Johnson" together with Silverberg and Schwartz, "Plaintiffs"), derivatively on behalf of CytRx Corporation ("CytRx" or the "Company"); (ii) defendants John Y. Caloz, Luis J. Ignarro, Steven A. Kriegsman, Benjamin S. Levin, Daniel J. Levitt, Joseph Rubinfeld, the Estate of Marvin L. Selter, Richard L. Wennekamp and Douglas Scott Wieland (collectively, the "Individual Defendants"); and (iii) nominal defendant CytRx (together with the Individual Defendants, "Defendants"), all by and through their undersigned attorneys; and the Court of Chancery of the State of Delaware (the "Court") having determined that notice of

said hearing was given in accordance with the Scheduling Order and that said notice was adequate and sufficient; and the parties having appeared by their attorneys of record; and the attorneys for the respective parties having been heard in support of the Settlement of the Action, and an opportunity to be heard having been given to all other persons desiring to be heard as provided in the notice, and the entire matter of the Settlement having been considered by the Court;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Order and Final Judgment ("Judgment") incorporates herein and makes a part hereof, the Stipulation, including the exhibits thereto. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Action, including all matters necessary to effectuate the Settlement, and over all Parties.

3. The record shows that Notice of Pendency and Settlement of Action ("Notice") has been given to CytRx's stockholders in the manner approved by the Court in its Scheduling Order, proof of the mailing of the Notice has been filed with the Court and a full opportunity to be heard has been afforded to all parties to the Action, CytRx stockholders, and persons in interest. The Court finds that such Notice: (i) constitutes reasonable and the best notice practicable under the circumstances; (ii) constitutes notice that was reasonably calculated, under the

circumstances, to apprise all CytRx stockholders who could reasonably be identified of the pendency of the Action, the terms of the Settlement, and CytRx's stockholders' right to object to and to appear at the Settlement Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice in accordance with Court of Chancery Rule 23.1(c); and (iv) meets the requirements of due process.

4. The Court hereby fully and finally approves the Settlement, pursuant to Court of Chancery Rule 23.1(c), as set forth in the Stipulation in all respects, and finds that the Settlement is, in all respects, fair, reasonable, and adequate, and in the best interests of CytRx and CytRx's stockholders. This Court further finds the Settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of CytRx, CytRx's stockholders, and the Individual Defendants. The Court has considered any submitted objections to the Settlement and hereby overrules them.

5. The Parties are hereby directed to implement and consummate the Settlement according to the terms and provisions of the Stipulation.

6. The Action is hereby dismissed in its entirety as to Defendants, with prejudice in its entirety on the merits, and without costs to any party to the Action, except as otherwise provided in the Stipulation. The parties to the Action are to bear their own costs, except as otherwise provided in the Stipulation.

7. Upon the Effective Date of the Settlement (as defined in ¶ 1.5 of the Stipulation), CytRx, each Plaintiff (each acting on his own behalf and derivatively on behalf of CytRx), and each of CytRx's stockholders (solely in their capacity as CytRx stockholders) shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged the Released Claims against the Released Persons and any and all claims arising out of, relating to, or in connection with, the defense, settlement or resolution of the Action against the Released Persons. Upon the Effective Date of the Settlement, CytRx, Plaintiffs (each acting on his own behalf and derivatively on behalf of CytRx) and each of CytRx's stockholders (solely in their capacity as CytRx's stockholders) shall be permanently barred, enjoined, and precluded from asserting, commencing, prosecuting, assisting, instigating, continuing, or in any way participating in the commencement or prosecution of any action, whether directly, representatively, derivatively, or in any other capacity, asserting any claims that are, or relate in any way to, the Released Claims against any Released Persons.

8. Upon the Effective Date of the Settlement (as defined in ¶ 1.5 of the Stipulation), each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of CytRx, Plaintiffs, Plaintiffs' Related Persons and Plaintiffs' Counsel from all claims (including Unknown Claims) arising out of,

relating to, or in connection with, the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims.

9. The provisions contained in the Stipulation (including any exhibits attached thereto) shall not be deemed a presumption, concession, or admission by any of the Parties of any fault, liability, or wrongdoing, or lack of merit as to any facts or claims alleged or asserted in the Action or in any other action or proceeding, and shall not be interpreted, construed, deemed, invoked, offered, or received into evidence or otherwise used by any person in the Action or in any other action or proceeding, whether civil, criminal, or administrative, except in connection with any proceeding to enforce the terms of the Settlement or any Fee Award. The Released Persons may file the Stipulation and/or the Order and Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10. Plaintiffs' counsel are hereby awarded fees and expenses of $\$ 1,100,000.00$ in the aggregate, which the Court finds to be fair, reasonable and adequate.

11. Without affecting the finality of this Judgment, the Court retains continuing and exclusive jurisdiction over all matters relating to administration, consummation, enforcement and interpretation of the Stipulation, the Settlement, and of this Judgment, to protect and effectuate this Judgment, and for any other necessary purpose. Plaintiffs, Defendants and each CytRx stockholder are hereby deemed to have irrevocably submitted to the exclusive jurisdiction of this Court, for the purpose of any suit, action, proceeding or dispute arising out of or relating to the Settlement or the Stipulation, including the exhibits thereto, and only for such purposes. Without limiting the generality of the foregoing, and without affecting the finality of this Judgment, the Court retains exclusive jurisdiction over any such suit, action or proceeding. Solely for purposes of such suit, action or proceeding, to the fullest extent they may effectively do so under applicable law, Plaintiffs, Defendants and each CytRx stockholder are hereby deemed to have irrevocably waived and agreed not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

12. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, this Judgment shall be vacated, and all Orders entered and releases delivered in connection with the Stipulation and this Judgment shall be null and void, except as otherwise provided for in the Stipulation.

13. This Judgment is a final, appealable judgment and should be entered forthwith by the Clerk in accordance with Court of Chancery Rule 58.

IT IS SO ORDERED.

DATED: 11/20/15

Vice Chancellor Laster