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August 6, 2019

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Ms. Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street N.E.  
Washington, D.C. 20549-1090

Re: File No. S7-05-19, *Amendments to Financial Disclosures about Acquired and Disposed Businesses* (Release No. 33-10635; 34-85765)

Dear Ms. Countryman:

Eli Lilly and Company ("Lilly") appreciates the opportunity to comment on the Security and Exchange Commission's ("the SEC") proposed File No. S7-05-19, *Amendments to Financial Disclosures about Acquired and Disposed Businesses* (the "Request for Comment"). Lilly is a Fortune 200 multinational pharmaceutical company with approximately 170 legal entities in over 65 jurisdictions and has been publicly traded since 1952 (NYSE: LLY).

Lilly supports and appreciates the continued efforts of the SEC Staff to improve upon the financial information provided to investors, thereby aiding investors in making well-informed investing and voting decisions. Our observations in this response, which focus on certain of the topics included in the Request for Comment, reflect our extensive experience as an SEC-compliant financial statement preparer and issuer and are summarized using the outline format used in the Request for Comment as follows:

**A. Proposed Amendments to Generally Applicable Financial Statement Requirements for Acquired Businesses**

Significance Tests – We agree with the changes suggested, as they will improve upon how the tests are performed and allow for more meaningful determinations of significance for purposes of Rule 1-02(w).

- Using aggregate worldwide market value (when available) in lieu of the carrying value of the registrant's total assets is more accessible and better reflects the economic significance of the acquisition to the registrant.

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- Adding a revenue component to the Income Test and modifying the calculation to the net income component will ease the number and complexity of results.
  - Basing the net income component calculation of the Income Test so that it is based on income/(loss) from continuing operations *after* income taxes will simplify the registrant's calculation and allow it to use amounts directly from the income statement.
  - Requiring the use of absolute values of equity and net income for the Income Test will ensure that the calculations are consistently interpreted and the spirit of the calculation maintained.
  - We believe the Income Test as proposed is sufficient and generally disagree with more granular calculations such as those considered in Questions #10 & #11 in the Request for Comment.
  - With regard to Request for Comment Question #17, we believe the SEC should revise its rules to more explicitly state that the "significant subsidiary" determinations should be made using amounts derived from consolidated financial statements of the tested subsidiary and consolidated financial statements of the registrant.

Audited Financial Statements for Significant Acquisitions – We agree with the change to require up to two years of financial statements of an acquired business (instead of three years) and concur with the SEC's reasoning that the third-year financial statements can be less relevant due to their age and in turn less reflective of the current state of, and changes in, financial condition and results of operations. We also concur with eliminating the comparative interim period when only one year of audited Rule 3-05 financial statements is required.

Financial Statements for Net Assets that Constitute a Business – We are supportive of the changes suggested and appreciate the SEC's efforts to accommodate flexibility in certain circumstances.

Timing and Terminology of Financial Statement Requirements – We are aligned with the clarifications suggested to the existing rules.

## **B. Proposed Amendments Relating to Rule 3-05 Financial Statements Included in Registration Statements and Proxy Statements**

Omission of Rule 3-05 Financial Statements for Businesses That Have Been Included in the Registrant's Financial Statements – We are aligned with the proposal to no longer require Rule 3-05 Financial Statements once the acquired business is reflected in filed post-acquisition audited consolidated financial statements of the registrant for a complete fiscal year, as it will (a) simplify the application of the rule, (b) reduce costs for registrants, and (c) not affect the sufficiency of information available to investors.

Use of Pro Forma Financial Information to Measure Significance – We are supportive of the changes suggested and appreciate the SEC's efforts to provide an alternative, under certain

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circumstances, where a registrant can use pro forma financial information for significance testing. We do not believe that using pro forma financial information in the circumstances described should be *required* for determining significance; rather, it should remain *optional*.

Disclosure Requirements for Individually Insignificant Acquisitions – We are aligned with the requirement for registrants to provide pro forma financial information depicting the aggregate impact of the acquisitions for which financial statements are either not required or not yet required in all material respects, and feel this will improve the information provided to investors.

#### **D. Pro Forma Financial Information**

Adjustment Criteria and Presentation Requirements – We appreciate the efforts by the SEC to modify the existing pro forma adjustment criteria to provide clarity and conformity in their execution. However, we are largely opposed to a number of the changes and overall strategy suggested, especially with regard to the proposal to include future-looking activities within the pro forma financial statements. We believe the proposed changes to the pro forma adjustment criteria will not provide additional clarity or consistency in application, and the inclusion of adjustments for the potential effects of post-acquisition actions expected to be taken by management is exceedingly broad and precarious to attempt to quantify in the early stages of an acquisition, where few, if any, such actions are reasonably estimable and/or expected to occur in the near term.

In the case of a business acquisition, we do not believe that registrants typically have full visibility to all of an acquiree's financial and non-financial information at consummation of the transaction, and thus lack the means to reasonably estimate future consolidated activities and synergies within the time-frame necessary to have such pro forma financial information prepared per the deadlines necessary under Form 8-K. While a registrant's due diligence process will uncover certain financial and non-financial information that is helpful in management's decision-making processes in acquiring a business, such information may be significantly redacted and otherwise limited due to competitive reasons and industry regulations, among other restrictions. Decisions regarding closing facilities, selling assets, terminating redundant employees and modifying or cancelling redundant contracts can only be made when all information regarding an acquiree's obligations, processes, facilities and other pertinent evidence is fully assembled and assessed, and scenarios modeled and otherwise contemplated. In many cases, such potential synergies are of a very confidential and sensitive nature with scenarios continually being vetted out by management in the months following the transaction.

Because of this, we feel most registrants would find that to reasonably estimate most potential synergies and other effects of the transaction within the timeframe prescribed per Form 8-K rules would be extremely difficult. Providing estimates in a "Management's Adjustments" column based on such limited information and analysis could result in material assumptions that are misleading to users of the pro forma financial information, and in the

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case of confidential/sensitive information, could cause undue distress to the registrant's business before any final decisions are made, especially with regard to workforce synergies. Further, we believe that such a robust change to the pro forma financial information rules will yield heightened awareness that increases the risk that a registrant's auditors will take a stance that such information must be reviewed under a Registration Act filing, thus increasing the costs to registrants.

As such, we believe the SEC should retain the existing single-column pro forma adjustment criteria.

Significance and Business Dispositions – We agree with the proposal to raise the significance threshold for the disposition of a business from 10% to 20% as this will reduce compliance burdens and allow for conformity to the tests to determine significance of an acquired business while continuing to provide material, decision-useful information to investors.

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We appreciate the opportunity to express our view and concerns regarding the Request for Comment. If you have any questions regarding our response, or would like to discuss our comments further, please call me at [REDACTED].

Sincerely,

ELI LILLY AND COMPANY

/s/Donald A. Zakrowski

Donald A. Zakrowski  
Vice President, Finance and  
Chief Accounting Officer