



December 24, 2013

**VIA EMAIL** (shareholderproposals@sec.gov)

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

RE: Gilead Sciences, Inc. – 2014 Annual Meeting  
Omission of Shareholder Proposal of Michael  
Weinstein

Ladies and Gentlemen:

This letter is submitted on behalf of Gilead Sciences, Inc., a Delaware corporation (the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended. The Company has received a shareholder proposal and supporting statement (the “Proposal”) from Michael Weinstein (the “Proponent”) for inclusion in the proxy materials to be distributed by the Company in connection with its 2014 annual meeting of stockholders (the “2014 Proxy Materials”). For the reasons stated below, the Company intends to omit the Proposal from the 2014 Proxy Materials.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), this letter and its attachments are being emailed to the staff of the Division of Corporation Finance (the “Staff”) at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), copies of this letter and its attachments are being sent simultaneously to the Proponent as notice of the Company’s intent to omit the Proposal from the 2014 Proxy Materials.

Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that they elect to submit to the Securities and Exchange Commission (the “Commission”) or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the

Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company.

## **I. INTRODUCTION**

### **A. The Proposal.**

On November 20, 2013, the Company received the Proposal and a cover letter, copies of which are attached hereto as Exhibit A.

The text of the resolution contained in the Proposal is copied below:

RESOLVED, that the shareholders of Gilead Sciences, Inc. (“Gilead” or the “Company”) request the Board of Directors to adopt a policy that incentive compensation for the Chief Executive Officer (“CEO”) should include non-financial measures based on patient access to the Company’s medicines. For purposes of this resolution, “patient access” refers to the extent to which patients are unable to obtain prescribed medications manufactured by Gilead Sciences.

Shareholders recommend a reduction in incentive compensation for the CEO based on – but not limited to – the following measures:

- The enactment of funding cuts or other restrictions to publicly financed pharmaceutical assistance programs or prescription drug plans that prevent eligible patients from obtaining prescribed medications.
- The inclusion of Gilead medicines by private or publicly financed prescription drug plans into formulary categories that increase the co-payment or cost sharing requirement for patients.

### **B. The Company and the Proponent.**

The Company is a research-based biopharmaceutical company whose portfolio of products and pipeline of investigational drugs is primarily focused on treatments for human immunodeficiency virus (HIV), liver diseases such as hepatitis

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B virus (HBV) and hepatitis C virus (HCV), serious cardiovascular and respiratory conditions, and oncology/inflammation. A substantial portion of the Company's revenues is derived from its HIV products.

The Proponent is the president of the AIDS Healthcare Foundation ("AHF"). According to its website (<http://www.aidshealth.org>), AHF is a non-profit provider of medical care and supplies that operates outpatient healthcare centers, pharmacies, a clinical research unit, a disease management program and a Medicaid managed care program for people with AIDS. Timothy Boyd, who submitted the Proposal on behalf of the Proponent and whom the Proponent authorizes to respond to questions related to the submission of the Proposal, is AHF's Director of Domestic Policy. AHF operates pharmacies in California, Florida, Georgia, New York, Washington and the District of Columbia. In connection with AHF's pharmacies, AHF is a purchaser of the Company's products.

AHF has engaged in a longstanding public relations, media and protest campaign against the Company. AHF has organized multiple protests at the Company's offices over the past three years, as well as protests at the Company's 2012 and 2013 annual meetings, to protest the Company's drug pricing policies. At certain protests, the AHF protestors have worn masks imprinted with the face of the Company's CEO and carried signs with slogans such as "Truvada Pricing is MURDER." In 2011, AHF organized a protest and "die-in," staging a mock funeral procession from Oakland to the Company's headquarters, complete with cars, escorts and protestors dressed in black, wearing skeleton masks and bearing a coffin. AHF's website further reports that in December 2013, "more than 50 HIV/AIDS activists—spearheaded by AIDS Healthcare Foundation—stormed Gilead's booth at the International AIDS Conference in Washington D.C." On several occasions, AHF has employed a mobile billboard with a 20-foot banner bearing the Company's logo with the word "GREED" superimposed over the Company's name, which was continuously driven throughout the neighborhood where the Company's headquarters are located and, in one instance, around the site of the Company's annual meeting. The images represented on the banner, photographs of the aforementioned protests (more such images are readily available on AHF's website) and a list of dates when these activities occurred are attached hereto as Exhibit B.

Further to its protest activities, AHF has sent post cards to the Company's officers, employees and members of the Board of Directors at their homes, as well as to the general public in the San Francisco Bay area where the Company is based, bearing messages such as "Gilead's Greed." The postcards claim that the Company's profits come at the expense of patients and drug assistance programs, and contain statements such as "[The Company's CEO] refuses to lower prices." Examples of these postcards are attached hereto as Exhibit C. AHF also has run 30-

second television spots on MSNBC and CNN in the Bay area entitled “Gilead: AIDS Drug Prices to Die For.”

In addition to its own website, which contains numerous posts attacking the Company and its CEO (examples of which are attached hereto as Exhibit D), AHF has created at least two other websites: nomagicpills.org, which attacks one of the Company’s products and contains reprints of ads published in several media outlets across the country maligning both the Company and its products, and 2gilead.org, which bears a logo containing a representation of the Company’s CEO in a Mickey Mouse-style hat with dollar signs on the ears, surrounded by a banner that reads “AIDS PROFITEER.” Copies of these websites and the aforementioned ads, some of which purport to have been authored personally by the Proponent, are attached hereto as Exhibit E.

Finally, AHF has issued numerous press releases and public statements concerning the Company, most of which are available on AHF’s website and a representative list of which is attached hereto as Exhibit F. The Proponent’s view of the Company is stated succinctly in a December 6, 2013 AHF press release, “For Gilead, we have outrage, pure and simple.”

## **II. BASES FOR EXCLUSION**

We hereby respectfully request that the Staff concur with the Company’s view that the Proposal may be excluded from the 2014 Proxy Materials pursuant to:

- Rule 14a-8(i)(4) because the Proposal relates to the redress of a personal claim or grievance against the Company and is designed to result in a benefit to the Proponent which is not shared by the other shareholders at large;
- Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company’s ordinary business operations; and
- Rule 14a-8(i)(3) because the Proposal is materially false and misleading in violation of the proxy rules.

### III. ANALYSIS

#### A. **The Company May Exclude the Proposal Pursuant to Rule 14a-8(i)(4) Because the Proposal Relates to the Redress of a Personal Claim or Grievance Against the Company and Is Designed to Result in a Benefit to the Proponent Which is Not Shared by the Other Shareholders at Large.**

Rule 14a-8(i)(4) permits the exclusion of shareholder proposals related to the redress of a personal claim or grievance against a company or any other person, or designed to result in a benefit to a proponent or to further a personal interest of a proponent, which other shareholders at large do not share. In adopting this rule, the Commission stated that it “does not believe that an issuer’s proxy materials are a proper forum for airing personal claims or grievances.” Exchange Act Release No. 34-12999 (Nov. 22, 1976). The Commission also has stated that Rule 14a-8(i)(4) is designed to “insure that the security holder proposal process [is] not abused by proponents attempting to achieve personal ends that are not necessarily in the common interest of the issuer’s shareholders generally.” Exchange Act Release No. 34-20091 (Aug. 16, 1983). The Commission has also noted that “Rule 14a-8 . . . is not intended to provide a means for a person to air or remedy some personal claim or grievance or to further some personal interest. Such use of the security holder proposal procedures is an abuse of the security holder proposal process, and the cost and time involved in dealing with these situations do a disservice to the interests of the issuer and its security holders at large.” Exchange Act Release No. 34-19135 (Oct. 14, 1982) (the “1982 Release”).

##### 1. **The Proposal Relates to the Redress of a Personal Claim or Grievance Against the Company.**

The 1982 Release made clear that even if the shareholder proposal is phrased in broad terms that “might relate to matters which may be of general interest to all security holders,” the proposal may be omitted from a company’s proxy materials “if it is clear from the facts . . . that the proponent is using the proposal as a tactic designed to redress a personal grievance or further a personal interest.” The Staff on numerous occasions has concurred in the exclusion of a proposal that included a facially neutral resolution but where the facts demonstrated that the proposal was submitted to redress a personal claim or grievance. For example, in *International Business Machines Corp.* (Ludington) (Jan. 31, 1994) the Staff agreed that the company could exclude under the predecessor to Rule 14a-8(i)(4) a proposal that would have required the company to provide shareholders with a list of all parties that receive corporate donations over \$5,000 in any one fiscal year. The proposal was submitted by a proponent who had been engaged in a year-long campaign to

stop corporate donations to charities that the proponent believed supported illegal immigration; the company established the proponent's true intent from his correspondence with the company. *See also State Street Corp.* (Jan. 5, 2007) (concurring in the exclusion of a facially neutral proposal that the company separate the positions of chairman and CEO and provide for an independent chairman as a personal grievance when brought by a former employee after being ejected from the company's previous annual meeting for disruptive conduct and engaging in a lengthy campaign of public harassment against the company and its CEO); *MGM Mirage* (Mar. 19, 2001) (concurring in the exclusion of a proposal that would require the company to adopt a written policy regarding political contributions and furnish a list of any of its political contributions submitted on behalf of a proponent who had filed a number of lawsuits against the company based on the company's decisions to deny the proponent credit at the company's casino and, subsequently, to bar the proponent from the company's casinos); *International Business Machines Corp.* (Soehnlein) (Jan. 31, 1995) (concurring in the exclusion of a proposal to institute an arbitration mechanism to settle customer complaints brought by a customer who had an ongoing complaint against the company in connection with the purchase of a software product).

As described in Section 1.B above, the Proponent and the organization he leads have been engaged in an extensive, aggressive and longstanding campaign of harassment against the Company. This multi-year effort by AHF has included protests, "die-ins," mobile billboards, mailings to employee personal residences, mass mailings, televised commercials and websites all intended to publicly pressure the Company to lower prices for certain Company products. The Proposal is yet another attempt in an ongoing and personal crusade to harass the Company. Under these facts and circumstances, inclusion of the Proposal in the Company's 2014 Proxy Materials would be an abuse of the shareholder proposal process to advance the Proponent's own ends rather than advancing the interests of shareholders generally.

Accordingly, the Company believes the Proposal is excludable under Rule 14a-8(i)(4).

**2. The Proposal Is Designed to Result in a Benefit to the Proponent Which is Not Shared by the Other Shareholders at Large.**

In the 1982 Release, the Commission stated that a proposal is excludable under Rule 14a-8(i)(4) if it is used to give the proponent some particular benefit or to accomplish objectives particular to the proponent. In addition, the Staff has indicated that proposals reflecting a proponent's monetary self-interest are properly

excludable. For example, in *Northern States Power Co. (Shark)* (Feb. 16, 1995), in which the proposal required that the company “study, design, and implement” a revised compensation incentive plan, the proponent was an attorney who attempted to receive compensation for his efforts with respect to his own proposal under a pre-existing retainer agreement between himself and the company. The company argued that the “proponent’s intent [was] to use the shareholder proposal process as a tactic toward his own financial gain.” The Staff concurred in the company’s view that the proponent had a personal interest in the proposal not common to the shareholders at large because the proponent would receive compensation, and thus concurred in the exclusion of the proposal under the predecessor to Rule 14a-8(i)(4). *See also The Dow Chemical Co.* (Mar. 5, 2003) (concurring in the exclusion of a proposal to establish a committee to recommend “how the Company can compensate those who evidence bodily damage as a result of exposure to our Company’s product without adequate warning” when the Proponent had asserted such injuries and would potentially be entitled to compensation); *Exxon Corp. (upon reconsideration)*, Jan. 29, 1999) (concurring in the exclusion of a proposal that the company form a committee to determine if a violation of the Fair Credit Billing Act resulted from the company’s sale of its credit card unit and, if so, “that prompt and adequate compensation be offered to those Exxon Customers adversely effected [*sic*]” when the proponent had previously asserted such financial claims against the company).

As described above, the Proponent is the president of an organization that provides medical care and supplies to people suffering from HIV and AIDS and operates pharmacies in a number of states. In particular, AHF describes its mission as “providing cutting-edge HIV medical care, regardless of a person’s ability to pay.” Notably, AHF’s most recent financial report (available on its website) identifies medical services, supplies and drugs as the organization’s largest expense. Any decrease in the pricing of the Company’s HIV products, which AHF already purchases at substantially discounted prices, would directly or indirectly benefit AHF and the Proponent by decreasing one area of significant AHF expense. Accordingly, the Proponent and his organization have a direct financial interest in the Proposal not shared by the Company’s other stockholders.

As a result, the Company believes that the Proposal is designed to result in a benefit to the Proponent that is not shared by stockholders generally and, therefore, is excludable under Rule 14a-8(i)(4).

**B. The Company May Exclude the Proposal Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with a Matter Relating to the Company's Ordinary Business Operations.**

Rule 14a-8(i)(7) states that a company may exclude a shareholder proposal if the proposal “deals with a matter relating to the company’s ordinary business operations.” The policy underlying the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” SEC Release No. 34-40018 (May 21, 1998) (the “1998 Release”). The 1998 Release states that there are two “central considerations” underlying the ordinary business exclusion. The first, relating to the subject matter of the proposal, is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The second is “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.”

The 1998 Release notes an exception to the ordinary business exclusion for proposals “focusing on sufficiently significant social policy issues” as transcending day-to-day business matters and raising policy issues so significant that it would be appropriate for a shareholder vote. The Staff provided additional guidance in Staff Legal Bulletin No. 14C (June 28, 2005), noting that, in determining whether a proposal focuses on a significant social policy issue, the Staff considers “both the proposal and the supporting statement as a whole.”

The Staff has held that a proposal focusing on ordinary business operations may be excluded despite the inclusion of a significant policy concern. *See, e.g., CIGNA Corp.* (Feb. 23, 2011) (concurring in exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (concurring in exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter); *General Electric Co.* (Feb. 3, 2005) (same).

Particularly instructive is the Staff’s concurrence that the proposal in *Walt Disney Co.* (St. Joseph Health System) (Dec. 15, 2004) was excludable as relating to an ordinary business matter. In *Walt Disney*, the proponent proposed that the company’s board “when setting executive compensation ... include social



responsibility and environmental (as well as financial) criteria among the goals that executives must meet.” The supporting statement cited an analysis of depictions of smoking in the company’s movies and referred to various comments concerning youth smoking rates. The Staff concurred in the exclusion of the proposal because “although the proposal mentions executive compensation, the thrust and focus of the proposal is on the ordinary business matter of the nature, presentation and content of programming and film production.”

In this instance, similar to the proposal in *Walt Disney*, the Proponent is attempting to camouflage the Proposal as relating to executive compensation when, in fact, the thrust and focus of the Proposal is a matter of ordinary business. Particularly in light of AHF’s long-running campaign against the Company, it is clear that the main focus of the Proposal is to further reduce the prices the Company charges for its products. While the resolution and supporting statement include references to compensation paid to the Company’s CEO, a reading of the Proposal as a whole makes clear that the focus of the Proposal is to have the Company make its products available at a reduced cost. Decisions such as these—relating to how a company makes its products available and at what price—are ordinary business decisions that are fundamental to management’s running of the company on a day-to-day basis and involve complex business judgments that shareholders are not in a position to make. *See, e.g., Equity LifeStyle Properties, Inc.* (Feb. 6, 2013) (concurring in the exclusion of a proposal requesting a report on risks associated with, among other things, setting unfair, inequitable and excessive rent increases that caused undue hardship to older homeowners, because the proposal related to “rental pricing policies,” noting that the “setting of prices for products and services is fundamental to management’s ability to run a company on a day-to-day basis”); *Western Union Co.* (Mar. 7, 2002) (concurring in the exclusion of a proposal requesting board review of the company’s remittance practices on communities served, including comparison of fees, exchange rates and pricing structures, because the proposal related to the company’s ordinary business operations, “i.e., the prices charged by the company”); *see also Johnson & Johnson* (Jan. 12, 2004) (concurring in the exclusion of a proposal requesting board review of pricing and marketing policies and a report on the company’s response to pressure to increase access to prescription drugs because it related to the company’s ordinary business operations “i.e., marketing and public relations”).

Accordingly, the Proposal deals with matters relating to the Company’s ordinary business operations, specifically product pricing and distribution, and therefore is excludable under Rule 14a-8(i)(7).

**C. The Company May Exclude the Proposal Pursuant to Rule 14a-8(i)(3) Because it is Materially False and Misleading in Violation of the Proxy Rules.**

Under Rule 14a-8(i)(3), a shareholder proposal may be excluded from a company's proxy materials if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in a company's proxy materials. The Staff has recognized that a proposal may be excluded pursuant to Rule 14a-8(i)(3) if "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." Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.").

**1. The Proposal is Impermissibly Vague and Indefinite so as to be Materially Misleading.**

The Staff has consistently concurred with the exclusion of proposals on Rule 14a-8(i)(3) grounds where an integral aspect of the proposal is defined by reference to sources outside of the proposal and neither the proposal nor supporting statement include a definition or a substantive description of the term. *See, e.g., Exxon Mobil Corp.* (Naylor) (Mar. 21, 2011) (concurring in the exclusion of a proposal as vague and indefinite and noting that "the proposal does not sufficiently explain the 'guidelines from the Global Reporting Initiative' and that, as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires"); *JPMorgan Chase & Co.* (Domini) (Mar. 5, 2010) (concurring in exclusion of proposal requesting that the company provide a report disclosing "[p]ayments (both direct and indirect) used for grassroots lobbying communications as defined in 26 CFR § 56.4911-2" and noting that the proposal "does not sufficiently explain the meaning of 'grassroots lobbying communications' "); *The Ryland Group, Inc.* (Jan. 19, 2005) (concurring in the exclusion of a proposal seeking a "GRI-based sustainability report" as vague and indefinite).

In the executive compensation context, the Staff has permitted exclusion of proposals where the proposal failed to define key terms or otherwise failed to provide necessary guidance on its implementation. In these circumstances, because

neither the company nor shareholders would be able to determine with any reasonable certainty what actions or measures the proposal requires, the Staff has concurred that such proposals were impermissibly vague and indefinite and excludable under Rule 14a-8(i)(3). For example, in *General Electric Co.* (Newby) (Feb. 5, 2003), the Staff permitted the exclusion of a proposal requesting that the board “seek shareholder approval of all compensation for Senior Executives and Board members not to exceed 25 times the average wage of hourly working employees,” where the proposal failed to define critical terms such as “compensation” and “average wage” and also failed to provide guidance on how the proposal should be implemented. *See also General Dynamics Corp.* (Jan. 10, 2013) (concurring in the exclusion of a proposal requesting a policy that, in the event of a change of control, there would be no acceleration in the vesting of future equity pay to senior executives, provided that any unvested award may vest on a pro rata basis, where it was unclear how to apply the “pro rata” vesting provision); *PepsiCo, Inc.* (Steiner) (Jan. 10, 2013) (same); *The Boeing Co.* (Mar. 2, 2011) (concurring in the exclusion of a proposal requesting that senior executives relinquish preexisting “executive pay rights,” where the proposal did not sufficiently explain the meaning of “executive pay rights”); *General Motors Corp.* (Mar. 26, 2009) (concurring in the exclusion of a proposal to “eliminate all incentives for the CEOs and the Board of Directors,” where the proposal did not define “incentives”); *Verizon Communications Inc.* (Feb. 21, 2008) (concurring in the exclusion of a proposal requesting that the board adopt a new senior executive compensation policy incorporating criteria specified in the proposal, where the proposal failed to define critical terms such as “industry peer group” and “relevant time period”); *General Electric Co.* (Jan. 23, 2003) (concurring in the exclusion of a proposal seeking “an individual cap on salaries and benefits of one million dollars for G.E. officers and directors,” where the proposal failed to define the critical term “benefits” and also failed to provide guidance on how benefits should be measured for purposes of the proposal); *Eastman Kodak Co.* (Kuklo) (Mar. 3, 2003) (concurring in the exclusion of a proposal seeking to cap executive salaries at \$1 million “to include bonus, perks [and] stock options,” where the proposal failed to define key terms such as “perks” and did not specify how options were to be valued).

The Proposal uses terms such as “pharmaceutical assistance programs” and “formulary categories.” These terms are not defined or explained and many shareholders are likely unfamiliar with these terms. Shareholders unversed in the complexities of drug cost reimbursement programs are unlikely to understand the bases on which the Proposal suggests that the incentive compensation of the Company’s CEO should be evaluated and potentially reduced. As in the letters cited above, without an explanation of terms such as “pharmaceutical assistance programs” and “formulary categories,” shareholders are unlikely to understand the substance of the Proposal and the action it would require, and would not be able to cast an

informed vote on the Proposal or understand how the Proposal would be implemented.

In addition, the Proposal is vague and misleading because it falsely implies that certain matters are within the control or influence of the Company or the CEO. The first bullet point of the Proposal recommends a reduction in incentive compensation for the Company's CEO based on "[t]he enactment of funding cuts or other restrictions to publicly financed pharmaceutical assistance programs or prescription drug plans . . ." The Company, however, does not determine the funding or other terms of publicly financed programs. Nevertheless, a shareholder reading the Proposal would be wrongly led to believe that the determination of such funding or other terms are within the CEO's control. Likewise, the Company lacks control over the Proposal's second bullet point: "The inclusion of Gilead medicines by private or publicly financed prescription drug plans into formulary categories that increase the co-payment or cost sharing requirement for patients." Whether privately or publicly financed, the plans themselves, and not the Company, determine formulary categories. Yet the phrasing of the Proposal and the Proponent's use of the term "incentive compensation" may well mislead reasonable shareholders to mistakenly believe that the Company has the power to decide the formulary categories in which its products are included.

Given the foregoing, it would be unclear both to stockholders voting on the Proposal and to the Company's Board of Directors on what basis the Board is to evaluate "patient access" or in what particular way this consideration should affect executive compensation. The Proposal also recommends a reduction in the CEO's compensation "based on—but not limited to—" the patient access-enumerated measures, leaving shareholders and the Board to speculate as to what other patient access factors should be taken into consideration.

The Staff has, on numerous occasions, concurred that a shareholder proposal was sufficiently misleading so as to justify its exclusion where a company and its shareholders might interpret the proposal differently, such that "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal." See *Fuqua Indus., Inc.* (Mar. 12, 1991) (concurring in the exclusion of a proposal that would have prohibited "any major shareholder . . . which currently owns 25% of the Company and has three Board seats from compromising the ownership of the other stockholders" and noting that the "meaning and application of terms and conditions . . . in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations"). See also *Bank of America Corp.* (Jun. 18, 2007) (concurring in the exclusion of a proposal calling for the board of directors to compile a report "concerning the thinking of the Directors

concerning representative payees” as “vague and indefinite”); *AT&T Corp.* (March 7, 2002) (concurring in the exclusion of a proposal requesting that the company implement a plan “until the Company returns to a respectable level of profitability, the dividends are raised, and share price increases considerably”); *Puget Energy, Inc.* (Mar. 7, 2002) (concurring in the exclusion of a proposal requesting that the company’s board of directors “take the necessary steps to implement a policy of improved corporate governance”).

## **2. The Proposal is Materially False and Misleading.**

In SLB 14B, the Staff confirmed that exclusion under Rule 14a-8(i)(3) may be appropriate where the “company demonstrates objectively that a factual statement is materially false or misleading.” Accordingly, the Staff has permitted companies to exclude shareholder proposals where the proposal contained key factual statements that were materially false or misleading.

For example, in 2006 and 2007, the Staff repeatedly concurred in the exclusion of proposals requesting that the board adopt a policy that shareholders be given the opportunity to vote on an advisory management resolution at each annual meeting to approve the Compensation Committee report in the proxy statement. These proposals were submitted after the date on which the Commission revised the disclosure requirements on executive compensation, effectively removing all disclosure on executive pay and policies out of the Compensation Committee Report and into the Compensation Discussion and Analysis section of the proxy statement. *See, e.g., Entergy Corp.* (Feb. 14, 2007); *Safeway Inc.* (Feb. 14, 2007); *Energy East Corp.* (Feb. 12, 2007). In its response in *Sara Lee Corp.* (Sept. 11, 2006), the Staff noted that the “the proposal’s stated intent to ‘allow stockholders to express their opinion about senior executive compensation practices’ would be potentially materially misleading as shareholders would be voting on the limited content of the new Compensation Committee Report, which relates to the review, discussions and recommendations regarding the Compensation Discussion and Analysis disclosure rather than the company’s objectives and policies for named executive officers described in the Compensation Discussion and Analysis.” *See also Jefferies Group, Inc.* (Feb. 11, 2008) (same); *The Ryland Group, Inc.* (Feb. 7, 2008) (same).

The Staff also has permitted exclusion of proposals on false and misleading grounds where the proposal has incorrectly described the standard being requested under the proposal. In *The Allstate Corp.* (Chris Rossi) (Feb. 16, 2009), the Staff permitted the exclusion of a proposal requesting that the board provide for an independent lead director who would be independent under the standard set by the Council of Institutional Investors (“CII”) because the proposal incorrectly described such standard. The proposal referred to CII’s independent director standard as “a

person whose directorship constitutes his or her only connection to the corporation.” However, contrary to the assertion in the proposal, the CII definition of independent director permitted certain types of “trivial” connections between a director and the company and also contemplated situations in which relationships among board members, *i.e.*, between a director and the chairman of the board, might impair a director’s independence even if the director’s only relationship to the corporation was his or her directorship. *See also General Electric Co.* (Jan. 6, 2009) (permitting exclusion of a proposal requesting that the board adopt a policy that directors who receive more than 25% withheld votes will not serve on key board committees where the concept of “withheld” votes did not apply to the company and its majority vote standard for director elections); *State Street Corp.* (Mar. 1, 2005) (permitting exclusion of a proposal that represented to shareholders that they may take action under a statute that was not applicable to the company).

In this instance, the Proposal contains a number of factual statements that are objectively false and misleading. The supporting statement states that the Company’s CEO was paid “more than \$90 million in total compensation” for 2012. The Company’s definitive proxy statement for the 2013 annual meeting of stockholders discloses 2012 total compensation for the CEO in the Summary Compensation Table as approximately \$15.3 million, or less than 20% of the figure given in the supporting statement. Similarly, the supporting statement refers to the CEO as having five-year compensation of more than \$250 million. A review of Summary Compensation Tables contained in the Company’s proxy statements reflects total compensation from 2008 – 2012 of approximately \$72.3 million, or less than 30% of the figure contained in the supporting statement. The supporting statement then describes the CEO’s sale of Company stock in September 2013 as having a total value of approximately \$300 million. A review of the Form 4 filing values the sale of shares at approximately \$17.2 million, or just over 5% of the amount asserted in the supporting statement. The supporting statement refers to this stock sale as “representing a 5.4% decrease in [the CEO’s] holdings in the company.” In fact, the Form 4 filing shows that this sale occurred concurrently with the CEO’s exercise of an option to buy an equal number of shares, resulting in exactly no change in the amount of Company stock owned by the CEO. In addition, the supporting statement states that “Gilead has received significant taxpayer investment for the research and development of new products.” This statement is false and misleading as the Company has not received any government funding for its research and development activities, other than the R&D tax credit applicable to all companies incurring qualified research and development expenses in the United States, the amount of which is immaterial compared to the Company’s research and development expenses. Further, the supporting statement states that “[t]he vast majority of Gilead revenues are derived from sales to U.S. taxpayer-funded health programs . . . .” However, as reported in the Company’s most recent earnings

release, for the nine months ended September 2013 more than 40% of the Company's revenues from product sales came from outside the U.S. To the extent the Proponent is attempting to portray the Proposal as one concerning executive compensation, these false and misleading statements relate to central aspects of the Proposal and are material. Moreover, the supporting statement grossly mischaracterizes the nature of the Company's research funding and source of revenues and would improperly mislead shareholders about the nature of the Company's business. Accordingly, the Company believes the Proposal is objectively false in violation of Rule 14a-9 and is therefore excludable under Rule 14a-8(i)(3).

In sum, the Company believes that the Proposal's use of terms that are integral to understanding the Proposal and are neither defined nor explained, its implicit suggestion that the Company or its CEO has the power to determine matters such as funding cuts to publicly financed pharmaceutical assistance programs or inclusion of the Company's products in certain formulary categories and the lack of clarity as to the action requested to be taken render the Proposal both vague and indefinite and materially misleading in violation of Rule 14a-9, and the objectively false statements contained in the supporting statement are in violation of Rule 14a-9. Accordingly, the Company believes the Proposal may be excluded pursuant to Rule 14a-8(i)(3).

#### **IV. CONCLUSION**

Based on the foregoing analysis, the Company respectfully requests that the Staff concur that it will not recommend enforcement action against the Company if the Company omits the Proposal in its entirety from the 2014 Proxy Materials.

Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
December 24, 2013  
Page 16

Should the Staff disagree with our conclusions regarding the omission of the Proposal, or should any additional information be desired in support of our position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (650) 574-3000 or Marc S. Gerber at Skadden, Arps, Slate, Meagher & Flom LLP at (202) 371-7233.

Very truly yours,

A handwritten signature in cursive script that reads "Brett A. Pletcher".

Brett A. Pletcher  
Senior Vice President and General Counsel

Attachment

cc: Michael Weinstein  
Timothy Boyd



**EXHIBIT A**

**Proposal and Cover Letter**

November 20, 2013

Michael Weinstein  
323-860-5200  
2332 Bronson Hills Drive  
Los Angeles, CA 90068

Corporate Secretary  
Gilead Sciences, Inc.  
333 Lakeside Drive  
Foster City, California 94404  
Fax: (650) 578-9264

**Re: Shareholder Proposal for the 2014 Gilead Sciences, Inc. Annual Meeting**

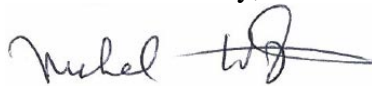
Dear Corporate Secretary:

I am submitting the enclosed shareholder proposal for inclusion in the proxy statement for the Gilead Sciences, Inc. 2014 annual general meeting.

In accordance with SEC regulation 17 CFR 240.14a-8, I have continuously held at least \$2,000 of Gilead securities for at least one year prior to the submission of this proposal. In addition, I intend to hold these securities beyond the date of the 2014 annual meeting, when this proposal will be presented to Gilead shareholders for consideration.

For questions related to the submission of this proposal, I hereby authorize Timothy Boyd to respond to such matters on my behalf. Mr. Boyd can be reached by phone at (213) 590-7375, by fax at (202) 543-5044, or by mail at 517 C Street NE Washington, DC 20002.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Weinstein", with a stylized flourish extending to the right.

Michael Weinstein

Cc: Timothy Boyd

## SHAREHOLDER PROPOSAL

### PATIENT ACCESS AS A CRITERION OF CEO COMPENSATION

RESOLVED, that the shareholders of Gilead Sciences, Inc. (“Gilead” or the “Company”) request the Board of Directors to adopt a policy that incentive compensation for the Chief Executive Officer (“CEO”) should include non-financial measures based on patient access to the Company’s medicines. For purposes of this resolution, “patient access” refers to the extent to which patients are unable to obtain prescribed medications manufactured by Gilead Sciences.

Shareholders recommend a reduction in incentive compensation for the CEO based on – but not limited to – the following measures:

- The enactment of funding cuts or other restrictions to publicly financed pharmaceutical assistance programs or prescription drug plans that prevent eligible patients from obtaining prescribed medications.
- The inclusion of Gilead medicines by private or publicly financed prescription drug plans into formulary categories that increase the co-payment or cost sharing requirement for patients.

### SUPPORTING STATEMENT

Investors are increasingly concerned about executive compensation in the pharmaceutical industry, especially when it is insufficiently linked to patient access, and when it diminishes the public image of the company.

In 2012, the CEO of Gilead, John C. Martin, was paid more than \$90 million in total compensation, making him one of the ten highest paid CEOs in the United States. Mr. Martin’s five-year compensation has exceeded more than \$250 million, more than any other chief executive in the pharmaceutical industry.

In September 2013, Mr. Martin sold over 282,000 Gilead shares with a total value of approximately \$300 million, representing a 5.4% decrease in his holdings in the company.

As a manufacturer of medicines to fight urgent public health threats, such as HIV/AIDS, viral hepatitis, and advanced flu, Gilead has received significant taxpayer investment for the research and development of new products.

The vast majority of Gilead revenues are derived from sales to U.S. taxpayer-funded health programs, such as Medicaid, Medicare, AIDS Drug Assistance Programs, and public employee health benefit plans. Given its reliance on taxpayer-funded

programs, shareholders believe the Company has a responsibility to ensure that patient access to its medicines is an important factor in determining CEO compensation.

The continued escalation of Mr. Martin's compensation, and that of other executives within the industry, has diminished the public perception of Gilead and other drug manufacturers. In addition, this negative public perception has resulted in legislators at all levels of government to propose price controls and stricter transparency on the industry. If enacted, these proposals may not only weaken the long-term financial growth of the Company, but shareholder value.

As shareholders, we believe it is necessary for Gilead, and the pharmaceutical industry as a whole, to act proactively in incorporating patient access as a factor in determining CEO compensation.

We urge shareholders to vote IN FAVOR of this proposal.

**EXHIBIT B**

**Materials Relating to Protests**



**GREED**

[JohnMartin-AIDSProfiteer.org](http://JohnMartin-AIDSProfiteer.org)





GILEAD

GILEAD

**GREED** [gred]  
-noun  
excessive or rapacious  
desire, esp for wealth  
or possessions.  
*see also*  
**GILEAD** 



Cent Out of Tuvalu

 GILEAD



ADVANCING CARE AROUND THE WORLD



GILEAD  
PROFITS  
BY  
PEOPLE!



TRUVADA  
ADAP: \$10,000



IN AFRICA:  
\$480 A YEAR

GILEAD!  
GREED  
DESTROYS  
ACCESS TO CARE





GILEAD!

BREED  
D  
ROY'S  
ACCES TO CAR

STIBILD  
\$28,500

STIBILD  
\$79 A PILL!!  
ON  
LEAD

STIBILD  
\$79  
NAME

SALE

## **Dates of Truck Billboard Drive-bys and Protests**

### **Truck Billboards:**

7/25/2011  
11/14/2012  
11/15/2012  
5/8/2013 – Coincided with protest

### **Protestors:**

3/6/2011  
6/29/2011  
8/3/2011  
8/18/2011  
8/31/2011  
9/14/2011  
11/1/2011  
11/30/2011  
5/30/2012  
11/30/2012  
12/18/2012 – Protestors staged a play inside the lobby  
5/8/2013 – Coincided with a truck billboard

**EXHIBIT C**

**Direct-Mail Postcards**

# GILEAD



Squeezing  
Every Last  
Cent Out  
of Truvada

AHF

Gilead is trying to ram Truvada for HIV prevention through the FDA despite serious concerns about its safety and effectiveness.

The multi-billion dollar profit Gilead is currently making on Truvada for its use as HIV treatment is not enough for them. Gilead now has its eyes on the billions of dollars that can be made by selling HIV drugs to people who don't have the disease.

This is an act of desperation to protect unsustainably high profits from Truvada, which will go off-patent in the next few years. Truvada utilizes the same active ingredient (Tenofovir) as nearly all of the company's other AIDS drugs. Gilead knows it doesn't have the pipeline to replace its Tenofovir-based drugs, so it's doing everything it can to squeeze out more profit – even if that means putting healthy people at risk.

It's time for Gilead to stop the greed and withdraw its FDA application for Truvada as HIV prevention now.

**FOR MORE INFORMATION  
PLEASE VISIT  
NOMAGICPILLS.ORG**

Nonprofit  
Organization

U.S. POSTAGE

**PAID**

Los Angeles, CA  
Permit No. 1163

MR MONTY PHAN  
OR CURRENT RESIDENT

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



The  
Need

 GILEAD'S  
**GREED**



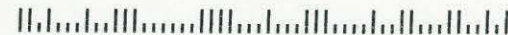
## The Need

- AIDS Drug Assistance Programs (ADAP) cannot keep pace with the skyrocketing costs of AIDS drugs. As a result, over 9,000 people languish on ADAP waiting lists unable to access lifesaving treatment. Thousands more have been shut out from the program completely due to reductions in eligibility
- Gilead's Patient Assistant Program is failing to provide treatment to many of the patients that it claims to be helping

## The Greed

- \$200 million in pay for CEO John Martin over 5 years, making him the 7th highest paid U.S. CEO
- \$6.5 billion in revenues for AIDS drugs in 2010
- 36% profit margin – the highest in the industry
- Millions of dollars in tax breaks for so-called "charitable" Patient Assistant Programs
- Charging publicly funded ADAP programs \$10,000 per year for Atripla, a drug which only costs pennies on the dollar to make

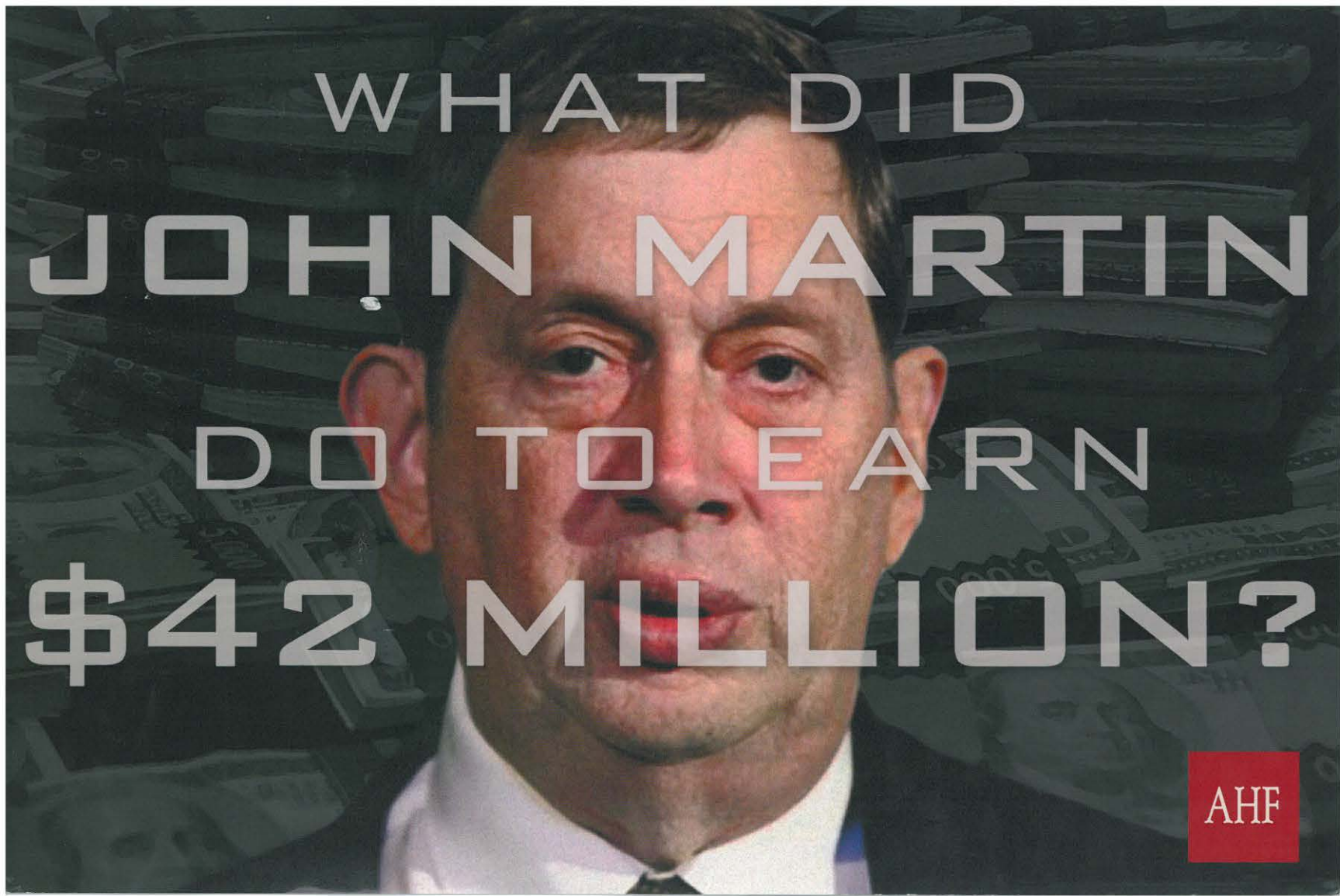
PRESORTED  
FIRST CLASS MAIL  
U.S. POSTAGE  
**PAID**  
LOS ANGELES, CA  
PERMIT NO. 1163



MR DENNIS G JACKSON

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

**VISIT 2GILEAD.ORG**



WHAT DID  
JOHN MARTIN  
DO TO EARN  
\$42 MILLION?

AHF



WITH OVER \$42 MILLION IN COMPENSATION IN 2011, AND \$200 MILLION OVER THE PAST FIVE YEARS, GILEAD'S CEO JOHN MARTIN IS THE 7TH HIGHEST PAID EXECUTIVE IN THE NATION. HE HAS A HIGHER ANNUAL COMPENSATION THAN THE HEADS OF EXXONMOBIL, COCA-COLA, AND MICROSOFT COMBINED. THE ANNUAL REVENUES OF THESE COMPANIES DWARF THOSE OF GILEAD SCIENCES, WHICH IS A NICHE MANUFACTURER OF AIDS DRUGS. HOWEVER, AIDS DRUGS ARE MORE PROFITABLE THAN OIL, COKE, AND XBOX, COSTING TENS OF THOUSANDS OF DOLLARS PER YEAR FOR A SINGLE PATIENT.

WITH THAT PROFITABILITY COMES BIG PROBLEMS FOR THE TAXPAYER FUNDED PROGRAMS THAT PURCHASE GILEAD'S DRUGS, LIKE THE FEDERAL-STATE AIDS DRUG ASSISTANCE PROGRAMS (ADAPs). ADAPs CAN NO LONGER AFFORD TO PAY THROUGH THE NOSE FOR THESE DRUGS, LEAVING THOUSANDS OF AMERICANS WITHOUT ACCESS TO LIFESAVING AIDS TREATMENT.

JOHN MARTIN REFUSES TO LOWER PRICES FOR ADAPs, EVEN THOUGH THIS WOULD HAVE LITTLE TO NO IMPACT ON GILEAD'S PROFITABILITY. INSTEAD OF CONDEMNING THIS BEHAVIOR, GILEAD'S BOARD AND SHAREHOLDERS HAVE REWARDED IT TO THE TUNE OF \$42 MILLION IN PAY FOR THEIR CEO.

IT'S TIME FOR GILEAD TO STOP THE GREED AND LOWER PRICES FOR CASH-STRAPPED ADAP PROGRAMS.

**FOR MORE INFORMATION  
PLEASE VISIT  
2GILEAD.ORG**

NONPROFIT  
ORGANIZATION  
U.S. POSTAGE  
**PAID**  
LOS ANGELES, CA  
PERMIT NO. 1163

MR MONTY PHAN  
OR CURRENT RESIDENT

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



## **EXHIBIT D**

### **Recent Posts from AHF Website**

Patients in Care:

275040

CUTTING EDGE MEDICINE AND ADVOCACY REGARDLESS OF ABILITY TO PAY.

SPEAK OUT!

LATEST NEWS:

ROSE PARADE SAME-SEX WEDDING: 'LOVE IS THE BEST PROTECTION'



Search results for: gilead



Protests at Gilead Booth in D.C.

Wearing masks of drug company Gilead Sciences' CEO John Martin, more than...

17 Dec 2013 - 0 Comments



AHF: Gilead Outrage!

\$84,000 for a twelve week supply of Sovaldi, Gilead's new Hepatitis C drug,...

08 Dec 2013 - 0 Comments

FIND A HEALTHCARE CENTER

SEARCH AHF

FOLLOW US!



AIDS Healthcare Fou...

+ Follow +1

+1,118



AHF Shareholder Advocates Challenge



Corporate Welfare Fuels Gilead's Record

MORE

- About AHF
- Get A Free HIV Test
- HIV/AIDS
- Medical Services
- Press Releases

- Contact Us
- Global Programs
- Media Center
- News Coverage
- Take Action

17 Dec 2013 - 0 Comments



### AHF Shareholder Advocates Challenge Gilead on Drug Pricing at AGM

Gilead acknowledges that a majority of its drug sales are to government programs...

09 May 2013 - 0 Comments



### Corporate Welfare Fuels Gilead's Record Q1 Profits

Gilead's profits and earnings in first quarter of 2013 are tied to price increases...

03 May 2013 - 0 Comments

AHF AIDS Healthcare Foundation

[g+ Follow](#) [+1](#)

+ 1,118

#### MORE

- [About AHF](#)
- [Get A Free HIV Test](#)
- [HIV/AIDS](#)
- [Medical Services](#)
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- [News Coverage](#)
- [Take Action](#)

#### JOIN US ON FACEBOOK

AHF AIDS Healthcare Foundation

[Like](#)

720,028 people like AIDS Healthcare Foundation.

Facebook: aahf.org



### AIDS, Hepatitis C advocates protest Gilead at C.R.O.I.; also host drug-pricing forum

AIDS Healthcare Foundation (AHF), Citywide Project, and the HCV Coalition...

04 Mar 2013 - 0 Comments



### Gilead Turns Tax-Supported Tax-Evader with Hep C Patent in Ireland

U.S.-based drug company Gilead Sciences' has filed a patent for its...

20 Feb 2013 - 0 Comments



### Gilead Q4 earnings release marks year of greed and price hikes, says AHF

Gilead's profits and earnings in 2012 tied to price increases on key...



### Study on generic HIV meds prompts AHF to demand Gilead cut ARV prices

Study published in the Annals of Internal Medicine shows generic AIDS medications...

## **EXHIBIT E**

### **Additional Websites and Advertisements**

Like 443 Tweet 11 +1 1 Share 15

**NO TEST?**



**NO PILLS.**



**Truvada for HIV Pre-Exposure Prophylaxis (PrEP) is a safety risk.**



**SEND AN E-LETTER TO THE FDA**

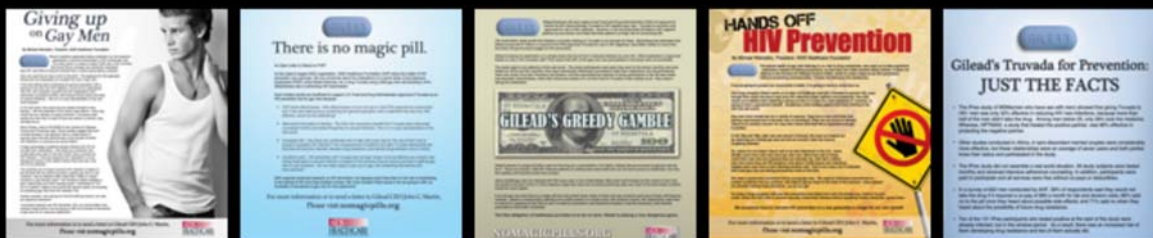
**SEND E-LETTER**

### **The Safety Risks of Truvada for HIV Pre-Exposure Prophylaxis (PrEP)**

- People who contract HIV while taking PrEP will be at significantly higher risk for developing drug resistance, which makes HIV untreatable with most medications. It could even lead to the spread of an untreatable strain of the virus.
- Taking Truvada for PrEP increases the risk of kidney disease and long-term kidney damage that persist even after people stop taking the drug.

# Take a look at our ads

You may have seen them in *Frontiers*, *Washington Blade*, *South Florida Gay News*, and other publications:



AHF

kidney damage, enabling providers to consider recommending the cessation of PrEP for their patients.



Gilead Sciences will soon apply to the Food and Drug Administration (FDA) for approval to market its HIV chemo-therapy Truvada to HIV negative gay men. Truvada is currently only approved for use in HIV+ patients. However, it can be prescribed off-label to HIV negative patients by any doctor who feels that their patient is at high risk of contracting HIV.

The multi-billion dollar profit that Gilead is currently making on Truvada is not enough for them. Bloomberg has estimated that Gilead would add \$1 billion in revenue if the FDA approves Truvada for use in HIV negatives. One billion dollars is more than the entire US government budget for HIV prevention.

Gilead is basing its application on a single study that found that it reduced infection by only 44%. What medication is approved based on only a 44% success rate? That means that 56% of the gay men who participated in the study were not protected.

The study itself is not reflective of the real world. The study participants were paid; they went to the doctor monthly and were tested for STDs and HIV monthly; they were individually intensively counseled to take their medication; the US participants were only drawn from San Francisco and Boston; and the overwhelming majority of study participants in the US were white and educated. Nevertheless, when their blood was tested, 51% of them had no Truvada in their system at all - they weren't taking the medication.



Gilead intends to charge \$10,000 a year for the drug as a preventative. It is highly unlikely that government programs will pay for it. There are already 7,000 HIV infected patients on waiting lists nationwide who do not have access to medication. So only the wealthy and insured would have access.

About 26,000 gay men are infected with HIV every year in the United States. More than half of these are the result of men who are positive but don't know it. If the majority of gay men were not currently practicing safer sex most of the time these numbers would be much higher.

If we tell gay men that there is a magic pill that will protect them, fewer of them will use condoms and more of them will become infected. Gilead is irresponsibly seeking more profits based on a single study with dubious results. We respectfully urge them to hold-off in applying to the FDA to use Truvada for prevention until extensive studies in real-life situations, with diverse populations have been completed.

**The first obligation of healthcare providers is to do no harm. Gilead is playing a very dangerous game.**

**NOMAGICPILLS.ORG**





# Giving up on Gay Men

By Michael Weinstein, *President, AIDS Healthcare Foundation*



Recent headlines applauded taking medication as 'pre-exposure prophylaxis' to prevent transmission of HIV among gay men.

The news came in a study of nearly 2,500 men in six countries that found that an average man taking the medication was 44% less likely to become infected than a control group taking a placebo.

How very sad that we have come to this point. The applause for this approach shows just how disposable we consider the lives of gay men.

If we were talking about protecting the general population with a treatment that was only 44% effective, would we be celebrating? The 44% who received a benefit from the medications were intensively counseled monthly, with frequent blood draws and tests for sexual infections. This is in no way representative of any real world situation.

In the real world, why would anyone subject himself to drug therapy—with the potential of very serious side effects—every day if they had any intention of using condoms? If someone tells almost any man that it is safe to have sex without a condom, they will likely do so.

Kevin Fenton, chief of HIV/AIDS for the Centers for Disease Control and Prevention said: *"Some studies suggest that even a small increase in risk behavior due to a false sense of security about the pills effectiveness could actually increase HIV infections, an outcome we cannot afford."*

A large percentage of patients already infected with HIV do not take their medications. How likely are uninfected men to take pills every day for the rest of their lives to prevent an HIV infection? If the pre-exposure HIV medication is not at therapeutic levels in their system before they have sex, they will not be protected.

The potential use of drugs to prevent HIV infection is based on the premise that we cannot succeed in getting gay men to use condoms. Has an effective effort really been made to market condoms in gay-friendly ways? Are condoms readily available in bars, bathhouses and other meeting spots? Advertised on TV? Do our political, religious and community leaders speak out forcefully for protecting gay men from HIV infection? No.

Another question: who will pay for this \$10,000 per person, per year pre-exposure treatment?

I commend research into HIV prevention. But, our communities must consider these points if we are going to offer up hundreds of thousands of gay men for an unproven experiment.

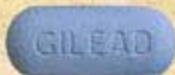


For more information or to send a letter to Gilead CEO John C. Martin,  
Please visit [nomagicpills.org](http://nomagicpills.org).

AIDS  
HEALTHCARE  
FOUNDATION

# HANDS OFF HIV Prevention

By Michael Weinstein, *President, AIDS Healthcare Foundation*



The sexual health of gay men belongs to us. Not to drug companies, who want us to take expensive medication instead of taking precautions, so that they can make another billion dollars. It does not belong to the Centers for Disease Control (CDC), which is under orders to do HIV prevention, "without promoting homosexuality." It does not belong to the academics.

If we are going to protect our community's health, it is going to have to come from us.

The drug company Gilead wants us to take a \$10,000-per-year pill (Truvada) to prevent HIV, even though their study showed it was only 44% effective under optimal circumstances. The CDC wants us to believe that collecting a group of men in a room for a few sessions of "sharing" is going to have a permanent benefit. Academics write endless papers that have nothing to do with the real world.

Gay men have unsafe sex for a variety of reasons. They love a man and think that having unprotected sex is the best way of showing it. They are too drunk or stoned. There is no condom around. Or, they don't think that their life is important enough to protect.

In the '80s and '90s, safer sex was almost universal. We were so freaked out by watching our friends get sick and die we wouldn't take the chance of getting infected.

So, where are we today? About half of all new infections in the U.S., some 28,000, come from men who have sex with men. More than half of those come from men who are unaware they are infected. So, with half a million men who know they are HIV-positive, only about 12,000 actual new infections happen each year from a man infecting another man. That is too many, but it indicates that most gay men are taking precautions most of the time.

We need a grassroots movement led by young gay men. We need an individual commitment to protect ourselves and our partners. We need to get as close to the heat of the moment—when people are actually making these decisions—as we can get.

So when a drug company tells you that prevention has failed and a pill will protect you, hold on to your wallet. When the CDC tries to prevent sexually transmitted disease without speaking frankly about sex, ignore them.

*We ourselves have to reinvent HIV prevention in a new generation's image for our own benefit.*



For more information or to send a letter to Gilead CEO John C. Martin,  
Please visit [nomagicpills.org](http://nomagicpills.org).



**EXHIBIT F**

**List of Press Releases**

## **AHF STATEMENTS ON GILEAD – DECEMBER 20, 2013**

### **[ADVISORY/ AHF: Gilead Outrage On Hep C Drug Price!](#)**

AIDS Healthcare Foundation Press Release (December 6, 2013)

### **[S.F. Voters Repudiate Gilead, Other Pharma's Greed With Prop. D Victory](#)**

AIDS Healthcare Foundation Press Release (November 7, 2013)

### **[AHF Wins Major Ruling Against FDA On Gilead Prevention Pill](#)**

AIDS Healthcare Foundation Press Release (August 7, 2013)

### **[AHF Shareholder Advocates Challenge Gilead On Drug Pricing At AGM](#)**

AIDS Healthcare Foundation Press Release (May 8, 2013)

### **[AHF Says Corporate Welfare Fuels Gilead's Record Q1 Profits](#)**

AIDS Healthcare Foundation Press Release (May 2, 2013)

### **[AHF: Congress Puts Foot Down On Funding High-Priced AIDS Drugs](#)**

AIDS Healthcare Foundation Press Release (March 27, 2013)

### **[AHF Demands FDA Reversal On Use Of Gilead's HIV Prevention Pill For Women](#)**

AIDS Healthcare Foundation Press Release (March 5, 2013)

### **[AIDS Advocates To Protest Gilead Sciences Over HIV And Hepatitis C Drug Pricing And Policies At C.R.O.I.](#)**

AIDS Healthcare Foundation Press Release (March 4, 2013)

### **['Stop Runaway Drug Pricing' Measure Qualifies for San Francisco Ballot, says the Committee on Fair Drug Pricing \(a.k.a. FAIR\)](#)**

AIDS Healthcare Foundation Press Release (March 1, 2013)

### **[Join AHF in Supporting Petition to Obama Administration Encouraging Release of Hepatitis C Cure](#)**

AIDS Healthcare Foundation Statement (February 26, 2013)

### **[Gilead Turns Tax-Supported Tax-Evader With Hep C Patent In Ireland, Says AHF](#)**

AIDS Healthcare Foundation Press Release (February 20, 2013)

### **[AHF Challenges Gilead Over AIDS Drug Price Gouging Of U.S. Gov't Programs On 'Stribild'](#)**

AIDS Healthcare Foundation Press Release (January 29, 2013)

### **[Lower Drug Pricing Key To Fix For Industry's Image, Says AHF](#)**

AIDS Healthcare Foundation Press Release (January 18, 2013)

[AHF: Gilead's Record 76% Profit Margin Squeezes Taxpayer-Funded AIDS Programs](#)

AIDS Healthcare Foundation Press Release (January 17, 2013)

[Study On Generic HIV Meds Prompts AHF To Demand Gilead Cut ARV Prices](#)

AIDS Healthcare Foundation Press Release (January 15, 2013)

[AHF Blasts Gilead Price Hike On Four Key AIDS Drugs](#)

AIDS Healthcare Foundation Press Release (January 10, 2013)

[AHF Launches S.F. Ballot Measure To 'Stop Runaway Drug Pricing'](#)

AIDS Healthcare Foundation Press Release (November 14, 2012; clip of November 19 Ballot Measure press conference available [here](#)) (Gilead and Stribild mentions)

[AHF: Gilead Scores Record Profits On AIDS Drug Price Gouging](#)

AIDS Healthcare Foundation (October 25, 2012)

[AHF Advocacy Against Gilead's Truvada As HIV Prevention Yields Stronger FDA Drug Warning Label](#)

AIDS Healthcare Foundation Press Release (October 11, 2012)

[AIDS Protesters Led By AHF Target Gilead's CEO John Martin Over Drug Pricing, Salary At USCA](#)

AIDS Healthcare Foundation Press Release (October 3, 2012)

[AHF: Gilead's Stribild Not Covered By NY Medicaid; State Also Explores 'Prior Auth' Status For AIDS Drug](#)

AIDS Healthcare Foundation Press Release (September 24, 2012)

[AHF: Gilead Must Offer ADAP AIDS Drug Price Cut To Medicaid, Medicare](#)

AIDS Healthcare Foundation Press Release (September 18, 2012)

[AHF: Greed Pays--Gilead's John Martin Cashes Out At Public's Expense](#)

AIDS Healthcare Foundation Press Release (September 7, 2012)

[AHF Supports Price Cut On New AIDS Drug, Prods Gilead To Expand Cut To Other Program](#)

AIDS Healthcare Foundation Press Release (September 6, 2012)

[AHF: Gilead's \\$28K 'Predatory Pricing' Of New AIDS Drug Prompts Ballot Measure In S.F. To Reign In Drug Costs](#)

AIDS Healthcare Foundation Press Release (August 28, 2012)

[AHF: As Gilead Prepares To Price The 'Quad,' 20 California Legislators Say Aids Drug Pricing "Unsustainable"](#)

AIDS Healthcare Foundation Press Release (August 18, 2012)

[AHF Asks State Health Departments & AIDS Directors, Private Insurers To Place Gilead's New 'Quad' Pill On 'Prior Authorization' Status](#)

AIDS Healthcare Foundation Press Release (August 17, 2012)

[AHF Lauds Rep. Alcee Hastings \(D, FL\) For Congressional Letter Cautioning Gilead On Pricing Of New AIDS Drug](#)

AIDS Healthcare Foundation (August 14, 2012)

[CDC's Support For Gilead's HIV Prevention Pill For Women Is Reckless Says AHF](#)

AIDS Healthcare Foundation Press Release (August 9, 2012)

[AHF: Gilead's "Phony Consensus" On HIV Prevention Pill](#)

AIDS Healthcare Foundation Press Release (August 9, 2012)

[AHF: Gilead's CEO Martin Joins "\\$50 Million Club"](#)

AIDS Healthcare Foundation Press Release (August 1, 2012)

[AHF: FDA 'Reckless' In Approving Gilead's Controversial HIV 'Prevention' Pill](#)

AIDS Healthcare Foundation Press Release (July 16, 2012)

[AHF To Gilead: "No Magic Pill" Ads Warn Against AIDS Drug As HIV](#)

AIDS Healthcare Foundation Press Release (March 9, 2011)

## **ADVISORY/ AHF: Gilead Outrage On Hep C Drug Price!**

December 6, 2013

### **AIDS Healthcare Foundation Press Release**

*\$84,000 for a twelve week supply of Sovaldi, Gilead's new Hepatitis C drug, (sofosbuvir), which was approved Friday by the F.D.A.--\$1,000 a pill!*

*Drug is only one portion of a two drug, twelve-week combination treatment for hepatitis; Gilead's predatory history of price gouging on lifesaving medications sets stage for action from government officials and drug purchasers for government programs to compel Gilead to cut pricing.*

WASHINGTON--(BUSINESS WIRE)--December 06, 2013-- AIDS Healthcare Foundation (AHF), the nation's largest HIV/AIDS nonprofit medical provider, expressed its profound outrage at Gilead Sciences over the price of Sovaldi, its new Hepatitis C drug, which was approved by the Food and Drug Administration (FDA) on Friday. Gilead set the price at \$84,000 Wholesale Acquisition Cost (WAC) for a twelve-week supply of the drug--\$1,000 per pill. The drug, known during drug trials as GS-7977 (sofosbuvir), is one component of a two-drug, twelve-week combination treatment for Hepatitis C, which affects an estimated 3.2 million people in the United States.

"For Gilead, we have outrage, pure and simple," said Michael Weinstein, President of AIDS Healthcare Foundation. "There can be no better example of the unbridled greed of the pharmaceutical industry than Gilead's latest move: pricing its new hepatitis drug at \$84,000 per 28-tablet bottle or \$1,000 per pill! Gilead's predatory pricing of Sovaldi is a direct threat to public health, and it sets the stage for legislators and advocates to demand that officials who purchase drugs for government programs like Medicaid, Medicare and the AIDS Drug Assistance Programs act decisively to rein in pricing and protect patient access to lifesaving medications."

**MEDIA AVAILABILITY:** AHF to comment on FDA approval, and Gilead's pricing, of its new Hepatitis C drug, Sovaldi (sofosbuvir).

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AIDS Healthcare Foundation (AHF), the largest global AIDS organization, currently provides medical care and/or services to more than 260,000 individuals in 32 countries worldwide in the US, Africa, Latin America/Caribbean, the Asia/Pacific Region and Eastern Europe. To learn more about AHF, please visit our website: [www.aidshealth.org](http://www.aidshealth.org), find us on Facebook: [www.facebook.com/aidshealth](http://www.facebook.com/aidshealth) and follow us on Twitter: @aidshealthcare

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