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

December 13, 2018

U.S. 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. – 2019 Annual Meeting  
Omission of Shareholder Proposal of  
James McRitchie

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, Gilead Sciences, Inc., a Delaware corporation (“Gilead”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with Gilead’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by James McRitchie, with John Chevedden authorized to act as Mr. McRitchie’s agent (Mr. McRitchie and Mr. Chevedden are referred to collectively as the “Proponent”), from the proxy materials to be distributed by Gilead in connection with its 2019 annual meeting of shareholders (the “2019 proxy materials”).

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of Gilead’s intent to omit the Proposal from the 2019 proxy materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to Gilead.

## **I. The Proposal**

The text of the resolution contained in the Proposal is set forth below:

Resolved, Gilead Sciences shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law. This includes shareholder ability to initiate any topic for written consent consistent with applicable law.

## **II. Basis for Exclusion**

We hereby respectfully request that the Staff concur in Gilead's view that it may exclude the Proposal from the 2019 proxy materials pursuant to Rule 14a-8(i)(10) upon confirmation that Gilead's Board of Directors (the "Board") has approved the resolutions, described below, approving and submitting for stockholder approval at the 2019 annual meeting of stockholders the Charter Amendment (as defined below) and approving, contingent upon effectiveness of the Charter Amendment, the Bylaw Amendment (as defined below) that, collectively, will substantially implement the Proposal.

## **III. Background**

### *A. The Proposal*

Gilead received an initial version of the Proposal, via email, on November 24, 2018, accompanied by a cover letter from the Proponent, dated November 24, 2018. On November 25, 2018, via email, Gilead received a revised version of the Proposal, accompanied by a cover letter from the Proponent. On November 28, 2018, Gilead received an email from the Proponent containing a letter from TD Ameritrade, dated November 26, 2018, verifying Mr. McRitchie's stock ownership (the "Broker Letter"). Copies of the Proposal, the cover letters, the Broker Letter and related correspondence are attached hereto as Exhibit A.

*B. Gilead's Charter Amendment and Bylaw Amendment*

Gilead's Restated Certificate of Incorporation (the "Certificate of Incorporation") and Gilead's Amended and Restated Bylaws (the "Bylaws") currently provide that "no action shall be taken by the stockholders by written consent." Based upon discussion by the Board at a Board meeting in October 2018, the Board is expected, at a Board meeting in early February 2019 (the "February Board Meeting"), to consider resolutions (i) approving an amendment to the Certificate of Incorporation to permit stockholder action by written consent (the "Charter Amendment"), declaring the Charter Amendment advisable and in the best interest of the Company and its stockholders, directing that the Charter Amendment be submitted to stockholders for adoption at the 2019 annual meeting and recommending that stockholders vote to adopt the Charter Amendment and (ii) approving, contingent upon the effectiveness of the Charter Amendment, an amendment to the Bylaws to permit stockholder action by written consent (the "Bylaw Amendment"). In the event that the Board adopts the resolutions described above, and the stockholders at the 2019 annual meeting approve the Charter Amendment, it is expected that stockholders holding at least 20% of Gilead's outstanding common stock will be able to request that the Board set a record date for stockholders to act by written consent (consistent with the ownership percentage required to request a special meeting of stockholders) and, pursuant to Section 228(a) of the Delaware General Corporation Law (the "DGCL"), action would be approved if consents in writing are provided to Gilead by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize such action at a meeting at which all shares entitled to vote thereon were present and voted. The text of the Charter Amendment and the Bylaw Amendment, marked to show proposed revisions, will be included in the supplemental letter, as described below, notifying the Staff of the Board's action on this matter shortly after the February Board Meeting.

**IV. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(10) Because the Company Will Have Substantially Implemented the Proposal.**

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission adopted the "substantially implemented" standard in 1983 after determining that the "previous formalistic application" of the rule defeated its purpose, which is to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the "1983 Release") and Exchange Act Release No. 34-12598 (July 7, 1976). Accordingly, the actions requested by a proposal need not be "fully effected" provided that they have been "substantially implemented" by the company. *See* 1983 Release.

Applying this standard, the Staff has permitted exclusion under Rule 14a-8(i)(10) when the company's policies, practices and procedures compare favorably with the guidelines of the proposal. *See, e.g., Exxon Mobil Corp.* (Mar. 17, 2015) (permitting exclusion of a proposal requesting that the company commit to increasing the dollar amount authorized for capital distributions to shareholders through dividends or share buybacks where the company's long-

standing capital allocation strategy and related “policies, practices and procedures compare[d] favorably with the guidelines of the proposal and . . . therefore, substantially implemented the proposal”); *Walgreen Co.* (Sept. 26, 2013) (permitting exclusion of a proposal requesting elimination of certain supermajority vote requirements where the company’s elimination from its governing documents of all but one such requirement “compare[d] favorably with the guidelines of the proposal”); *General Dynamics Corp.* (Feb. 6, 2009) (permitting exclusion of a proposal requesting a 10% ownership threshold for special meetings where the company planned to adopt a special meeting bylaw with an ownership threshold of 10% for special meetings called by one shareholder and 25% for special meetings called by a group of shareholders).

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10) where a company already addressed the underlying concerns and satisfied the essential objective of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. In *Wal-Mart Stores, Inc.* (Mar. 30, 2010), for example, the proposal requested that the company adopt six principles for national and international action to stop global warming. The company argued that its Global Sustainability Report, available on the company’s website, substantially implemented the proposal. Although the report referred to by the company set forth only four principles that covered most, but not all, of the issues raised by the proposal, the Staff concluded that the company had substantially implemented the proposal. *See also, e.g., Oshkosh Corp.* (Nov. 4, 2016) (permitting exclusion on substantial implementation grounds of a proposal requesting six changes to the company’s proxy access bylaw, where the company amended its proxy access bylaw to implement three of six requested changes); *MGM Resorts International* (Feb. 28, 2012) (permitting exclusion on substantial implementation grounds of a proposal requesting a report on the company’s sustainability policies and performance, including multiple objective statistical indicators, where the company published an annual sustainability report); *Exelon Corp.* (Feb. 26, 2010) (permitting exclusion on substantial implementation grounds of a proposal requesting a report disclosing policies and procedures for political contributions and monetary and non-monetary political contributions where the company had adopted corporate political contributions guidelines); *Masco Corp.* (Mar. 29, 1999) (permitting exclusion on substantial implementation grounds where the company adopted a version of the proposal with slight modifications and clarification as to one of its terms).

Applying the principles described above, the Staff has permitted exclusion under Rule 14a-8(i)(10) of proposals substantially similar to the Proposal, seeking the ability for shareholders to act by written consent, where the board lacked unilateral authority to adopt the necessary amendments to the governing documents (which is the case with respect to the Certificate of Incorporation and, indirectly, with respect to the Bylaws so that the Bylaws do not conflict with the Certificate of Incorporation), but substantially implemented the proposal by approving the proposed amendments and directing that they be submitted for shareholder approval at the next annual meeting. *See The Southern Co.* (Jan. 20, 2015) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company’s board of directors approved a bylaw amendment that would remove a provision requiring unanimous written consent for stockholders to alter, amend, or repeal the bylaws and submitted the amendment for stockholder approval at

the next annual meeting); *Omnicom Group, Inc.* (Mar. 29, 2011) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company's board of directors approved an amendment to the certificate of incorporation that would allow stockholder action by written consent and submitted the amendment for stockholder approval at the next annual meeting).

Similarly, the Staff has consistently permitted exclusion under Rule 14a-8(i)(10) of proposals seeking to eliminate supermajority vote provisions where the board lacked unilateral authority to adopt the amendments, but substantially implemented the proposal by approving the proposed amendments and directing that they be submitted for shareholder approval at the next annual meeting. *See, e.g., Dover Corp.* (Dec. 15, 2017); *QUALCOMM Inc.* (Dec. 8, 2017); *Korn/Ferry International* (July 6, 2017) (each permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting with an opportunity to approve amendments to the company's certificate of incorporation that, if approved, would eliminate the supermajority voting provisions in the company's governing documents).

As in the foregoing letters, the anticipated Charter Amendment and Bylaw Amendment substantially implement the Proposal. Specifically, in the event that the Board adopts the resolutions described above, Gilead's stockholders will be asked at Gilead's 2019 annual meeting to vote to adopt the Charter Amendment that would, if approved, permit stockholders to act by written consent and, upon the effectiveness of the Charter Amendment, the conforming Bylaw Amendment also would become effective. Gilead's proposed Charter Amendment and Bylaw Amendment will address the underlying concerns of the Proposal – permitting stockholder action by written consent. As a result, in the event the Board adopts the resolutions described above, the Company will have addressed the essential objective of the Proposal.

We submit this no-action request now to address the timing requirements of Rule 14a-8(j). We will submit a supplemental letter notifying the Staff of the Board's action on this matter, which will include a copy of the amendments approved by the Board, shortly after the February Board Meeting. The Staff consistently has permitted exclusion under Rule 14a-8(i)(10) where a company has notified the Staff that it intends to recommend that its board of directors take certain action that will substantially implement the proposal and then supplements its request for no-action relief by notifying the Staff after that action has been taken by the board of directors. *See, e.g., AbbVie Inc.* (Feb. 16, 2018); *The Southern Co.* (Feb. 24, 2017); *Visa Inc.* (Nov. 14, 2014); *Hewlett-Packard Co.* (Dec. 19, 2013); *Starbucks Corp.* (Nov. 27, 2012) (each permitting exclusion of a proposal under Rule 14a-8(i)(10) where the board of directors was expected to take action that would substantially implement the proposal, and the company supplementally notified the Staff of the board action).

Accordingly, the Company believes that once the Board takes the actions described above, the Proposal will have been substantially implemented and may be excluded under Rule 14a-8(i)(10).

**V. Conclusion**

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if Gilead excludes the Proposal from its 2019 proxy materials.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Gilead's 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 (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

cc: Brett A. Pletcher  
Executive Vice President, General Counsel and Chief Compliance Officer  
Gilead Sciences, Inc.

John Chevedden

EXHIBIT A

(see attached)

\*\*\*

Mr. Brett A. Pletcher  
Gilead Sciences, Inc. (GILD)  
333 Lakeside Dr  
Foster City CA 94404  
PH: 650 574-3000  
FX: 650 578-9264 (Def) FX: (650) 522-5771  
Brett.Pletcher@gilead.com

Dear Corporate Secretary,

I am pleased to be a shareholder in Gilead Sciences, Inc. (GILD) and appreciate the leadership GILD has shown in several areas. However, I also believe GILD unrealized potential that can be unlocked through low or no cost corporate governance reform, such as the attached initiative aimed at giving shareholders the **right to act by written consent**. As noted in the proposal, this topic already won 50.9% support at our 2018 annual meeting. Why has the Board failed to follow the will of shareholders?

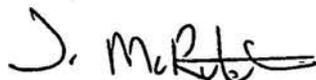
I am submitting the attached shareholder proposal for a vote at the next annual shareholder meeting. The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year and I pledge to continue to hold the required amount of stock until after the date of the next shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms that I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

at: \*\*\* to facilitate prompt communication. Please identify me as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors are appreciated in responding to this proposal. Please acknowledge receipt of my proposal promptly by email to \*\*\*

Sincerely,



James McRitchie

November 24, 2018

Date

cc: Ruey-Li Hwang <RueyLi.Hwang@gilead.com>  
PH: 650-522-1869  
FX: 650-522-5853  
Marissa Song <Marissa.Song@gilead.com>  
investor\_relations@gilead.com

[GILD Rule 14a-8 Proposal, November 24, 2018]  
[This line and any line above it – *Not* for publication.]  
Proposal 4\* - Right to Act by Written Consent

Resolved, Gilead Sciences shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law. This includes shareholder ability to initiate any topic for written consent consistent with applicable law.

Supporting Statement: Shareholder rights to act by written consent and to call a special meeting are two complimentary ways to bring an important matter to the attention of both management and shareholders outside the annual meeting cycle. This is important because there could be 15-months between annual meetings.

A shareholder right to act by written consent is one method to equalize our restricted provisions for shareholders to call a special meeting. For instance it takes 20% of shareholders at our company to call a special meeting when many companies allow 10% of shareholders to do so.

This proposal topic won majority shareholder support at 13 major companies in a single year. This included 67% support at both Allstate and Sprint. Last year the topic won majority votes at Netflix, Kansas City Southern, Newell Brands, L3 Technologies, Eastern Chemical Company, and HP.

This proposal topic won 50.9% support at our 2018 annual meeting, up from 48.5% in 2017 and 46.7% in 2016. Support would have undoubtedly been higher if small shareholders had access to the same corporate governance information as large shareholders. According to Proxy Insight, 279 funds voted in favor, 94 opposed and 4 abstained, including Capital Research Global Investors, Dodge & Cox, Geode Capital Management, Capital International Investors, Franklin Templeton Investments, Norges Bank, UBS Global Asset Management, AllianceBernstein LP, and Parnassus Investments.

We believe more funds and individual shareholders will vote “for” this year, given our company’s continued underperformance relative to the Nasdaq over the lastest two and five year periods. Hundreds of major companies enable shareholders to act by written consent, including 70% of the S&P 500 and 73% of the S&P 1500.

Increase Shareholder Value  
Vote for Right to Act by Written Consent – Proposal [4\*]  
[This line and any below are *not* for publication]  
Number 4\* to be assigned by GILD

James McRitchie,

\*\*\*

sponsors this proposal.

Notes:

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

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

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

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

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

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

\*\*\*

\*\*\*

Mr. Brett A. Pletcher  
Gilead Sciences, Inc. (GILD)  
333 Lakeside Dr  
Foster City CA 94404  
PH: 650 574-3000  
FX: 650 578-9264 (Def) FX: (650) 522-5771  
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REVISED 25 NOV 2018

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Date

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PH: 650-522-1869  
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[GILD Rule 14a-8 Proposal, November 24, 2018 Revised 11/25/18]

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Increase Shareholder Value

Vote for Right to Act by Written Consent – Proposal [4\*]

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Number 4\* to be assigned by GILD

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- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

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

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

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

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11/26/2018

James McRitchie  
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Re: Your TD Ameritrade Account Ending in \*\*\*

Dear James McRitchie,

Thank you for allowing me to assist you today. As you requested, this letter is to confirm that as of the date of this letter, James McRitchie held, and had held continuously for at least thirteen months, 200 shares of Gilead Sciences, Inc. (GILD) common stock in his account ending in \*\*\* at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

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

Sincerely,

A handwritten signature in black ink that reads 'James Van Eepoel'.

James Van Eepoel  
Resource Specialist  
TD Ameritrade

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

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

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