



DIVISION OF  
CORPORATION FINANCE

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

March 2, 2018

Tiffany R. Benjamin  
Eli Lilly and Company  
benjamin\_tiffany\_r@lilly.com

Re: Eli Lilly and Company  
Incoming letter dated December 21, 2017

Dear Ms. Benjamin:

This letter is in response to your correspondence dated December 21, 2017 concerning the shareholder proposal (the "Proposal") submitted to Eli Lilly and Company (the "Company") by the New York State Common Retirement Fund (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated January 22, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair  
Senior Special Counsel

Enclosure

cc: Sanford Lewis  
sanfordlewis@strategiccounsel.net

March 2, 2018

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Eli Lilly and Company  
Incoming letter dated December 21, 2017

The Proposal requests that the Company prepare a report on lobbying contributions and expenditures that contains information specified in the Proposal.

We are unable to conclude that the Company has met its burden of establishing that it may exclude the Proposal under rules 14a-8(i)(5) or 14a-8(i)(7). Although your discussion of the board's analysis sets forth a number of factors, including an apparent lack of investor interest in the Company's lobbying activities or trade association memberships, as factors supporting exclusion, the Proponent accurately notes that the Company's shareholders have voted on a similar proposal that received approximately 25% of the vote. Because your discussion of the board's analysis does not adequately address these voting results, we are unable to conclude that the Company has met its burden of establishing that it may exclude the Proposal under rules 14a-8(i)(5) or 14a-8(i)(7). Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rules 14a-8(i)(5) or 14a-8(i)(7).

Sincerely,

M. Hughes Bates  
Special Counsel

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

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

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

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

# **SANFORD J. LEWIS, ATTORNEY**

January 22, 2018  
Via electronic mail

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

Re: Shareholder Proposal to Eli Lilly Inc. Regarding Comprehensive Report on Lobbying Expenditures on Behalf of the New York State Common Retirement Fund

Ladies and Gentlemen:

The New York State Common Retirement Fund (the “Proponent”) is beneficial owner of common stock of Eli Lilly Inc. (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the letter dated December 22, 2017 (“Company Letter”) sent to the Securities and Exchange Commission by Tiffany R. Benjamin, Eli Lilly Assistant Corporate Secretary. The Company Letter contends that the Proposal may be excluded from the Company’s 2017 proxy statement by virtue of Rule 14a-8(i)(5) and Rule 14a-8(i)(7).

I have reviewed the Proposal, as well as the Company Letter, and based upon the foregoing, as well as the relevant rules, it is my opinion that the Proposal must be included in the Company’s 2017 proxy materials and that it is not excludable by virtue of those rules. A copy of this letter is being emailed concurrently, as requested in the Company Letter, to Keir Gumbs of Covington and Burling.

## **SUMMARY**

The Proposal asks the Company to publish a comprehensive report on lobbying that gives a reasonably complete disclosure to investors of federal and state direct and indirect lobbying, grassroots lobbying communications, payments, recipients, trade association memberships and payments to tax-exempt organizations that write and endorse model legislation, as well as description of the related decision-making and oversight processes. The same corporate governance proposal has appeared on the proxy of about 100 companies, and the form of disclosure requested has been implemented by at least 50 companies.

The Company argues the Proposal is excludable because it is not relevant to its operations under Rule 14a-8(i)(5). The Company has not substantially implemented the Proposal and could not assert in its no action request that it has done so consistent with Staff rulings under Rule 14a-

8(i)(10). Nonetheless, the Company Letter also asserts that the “gap” between disclosure sought by the Proposal and the Company’s existing disclosure is lacking economic relevance (Rule 14a-8(i)(5)) and lacking significance to the Company (Rule 14a-8(i)(7)). In order to make this argument, the Company Letter mischaracterizes the frame of reference away from lobbying and toward what it perceives as mere gaps between its existing disclosure and that requested by Proponent. Instead, the question here is whether lobbying is relevant and/or significant.

State lobbying expenditures are relevant to the Company and disclosure thereof is highly significant to shareholders’ risk governance information needs. For example, while the fact does not appear to have been disclosed on the Company’s website or in the Company’s SEC filings, the Company spent \$4.5 million in 2016 against a California ballot initiative that would have limited the prices paid for drugs by state agencies in the largest state in the US.

The Company’s own SEC submissions and history demonstrate that the Proposal’s request is relevant and “otherwise significantly related to the company.” The disclosures sought by the Proposal include lobbying on issues known to very materially affect the success or failure of major segments of the Company, such as pharmaceutical price limits and the ability of pharmaceutical companies to control entry and exit of generic or international competition in local markets. Therefore, even though the *amounts* the Company expends on lobbying may be less than the economic thresholds of the first prong of Rule 14a-8(i)(5) relevance, they relate to the success of segments of the Company that are economically significant by any possible measure. Also, evidence shows that the public reputation of the pharmaceutical sector has suffered due to controversies regarding product pricing and the role of lobbyists.

Further, the Company’s participation in trade associations that take controversial positions on issues separate from the core business concerns of the Company, such as opposing climate change policies and easing controls on tobacco sales, are reasonably likely to pose significant reputational risk to the Company due to their inconsistency with the Company’s values and policies. Reputation affects the Company’s resiliency in the event of crisis. Erosion of reputation, a qualitative consideration, provides an additional important basis consistent with Rule 14a-8(i)(5) precedents for finding that the proposal is “otherwise significantly related” to the business.

The Company Letter also asserts that the Proposal is excludable under Rule 14a-8(i)(7) (ordinary business) because it does not raise a significant policy issue that transcends ordinary business. The Company and its Board assert that the disclosures would not be “significant” to the Company’s business. For the same reasons cited above that the Proposal is relevant to the Company, it is also significant to the Company. Further, 24.8% of Eli Lilly shareholders voted in favor of the same proposal (counting votes for and against) when it appeared on the proxy in 2017, demonstrating that a significant portion of shareholders believe the disclosures are appropriate for this Company.

## THE PROPOSAL

Whereas, we believe in full disclosure of Eli Lilly and Company's ("Lilly") direct and indirect lobbying activities and expenditures to assess whether Lilly's lobbying is consistent with its expressed goals and in the best interests of shareholders.

Resolved, the shareholders of Lilly request the preparation of a report, updated annually, disclosing:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.
2. Payments by Lilly used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.
3. Lilly's membership in and payments to any tax-exempt organization that writes and endorses model legislation.
4. Description of the decision making process and oversight by management and the Board for making payments described in section 2 and 3 above.

For purposes of this proposal, a "grassroots lobbying communication" is a communication directed to the general public that (a) refers to specific legislation or regulation, (b) reflects a view on the legislation or regulation and (c) encourages the recipient of the communication to take action with respect to the legislation or regulation. "Indirect lobbying" is lobbying engaged in by a trade association or other organization of which Lilly is a member.

Both "direct and indirect lobbying" and "grassroots lobbying communications" include efforts at the local, state and federal levels.

The report shall be presented to the Audit Committee or other relevant oversight committees and posted on Lilly's website.

### Supporting Statement

We encourage transparency in the use of corporate funds to influence legislation and regulation, both directly and indirectly. Since 2010, Lilly has spent over \$64 million on federal lobbying ([opensecrets.org](http://opensecrets.org)). This figure does not include lobbying expenditures to influence legislation in states, where Lilly also lobbies in 48 states ("Amid Federal Gridlock, Lobbying Rises in the States," *Center for Public Integrity*, February 11, 2016), but disclosure is uneven or absent.

Lilly is a member of the Pharmaceutical Research and Manufacturers of America (PhRMA), which spent over \$100 million fighting a California drug pricing initiative ("Big Pharma Fights 'Tooth and Nail' against California Drug Vote," *Bloomberg*, October 25, 2016), and belongs to

the Chamber of Commerce, which has spent over \$1.3 billion on lobbying since 1998. Lilly does not disclose its payments to trade associations, or the amounts used for lobbying. We are concerned that Lilly's lack of trade association lobbying disclosure presents reputational risks. For example, Lilly believes in providing affordable medicines, yet helps fund PhRMA's opposition to lower drug price initiatives, and Lilly supports smoking cessation, yet the Chamber works to block global smoking laws.

And Lilly does not disclose its contributions to tax-exempt organizations that write and endorse model legislation, such as its membership in the American Legislative Exchange Council (ALEC). Lilly's ALEC membership has drawn media scrutiny ("Kendall: Businesses Should Cut Ties with Union-busting Lobbyists," *Indianapolis Star*, July 27, 2016). Over 100 companies have publicly left ALEC, including Allergan, Amgen, AstraZeneca, GlaxoSmithKline, Medtronic and Merck.

## **BACKGROUND**

Consistent disclosure of corporate lobbying expenditures has been widely sought by shareholders. Proposals similar to the current Proposal have been voted on at least 200 times at more than 100 companies in recent years. For instance, in 2016, lobbying disclosure was sought by shareholder resolutions filed at 50 companies by 66 institutional and individual investors. As in the present Proposal, these requests for lobbying reports sought reporting in a single comprehensive company report disclosing federal and state lobbying payments, payments to trade associations used for lobbying, and payments to any tax-exempt organization that writes and endorses model legislation. Over the last five years, these proposals have led to improved disclosure at more than 50 companies.

Institutional investors, individual investors and coalitions have supported lobbying and political spending transparency across all publicly traded companies. The investing community has also expressed an unprecedented level of interest in disclosure of corporate political spending, including disclosure of trade association funding and other lobbying initiatives, through support of a rulemaking petition to the SEC. The petition received a record level of support: more than 1.2 million comment letters have been submitted on the petition, the vast majority in support of the proposed rule.

## **ANALYSIS**

### **I. RELEVANCE AND SIGNIFICANCE OF LOBBYING**

The Company Letter asserts that the Proposal seeking comprehensive disclosure of lobbying expenditures and relationships is neither relevant for purposes of Rule 14a-8(i)(5) nor "significant to the company" for purposes of Rule 14a-8(i)(7).

Reviewing the legal background on the two rules it is apparent that, as applied to the Proposal, the rules largely overlap. Considering the "relevance" and "significance to the company" of the Proposal in this instance requires focus on the same considerations.

**A. Proposals for Comprehensive Lobbying Disclosure Are Relevant Under Rule 14a-8(i)(5)**

Rule 14a-8(i)(5) provides for exclusion of a proposal:

If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

There are two prongs to the Rule:

1. Whether the Proposal Relates to Operations Accounting for 5% of Total Assets, Earnings

The Company asserts this prong to preclude the Proposal, arguing that lobbying expenditures do not account for 5% of assets, earnings or sales. Proponent believes this ignores that the Proposal does "relate to" activities of the Company accounting for well in excess of 5% of assets, earnings or sales. As discussed below, government action can be determinative of Eli Lilly's success or failures and lobbying is the means by which the Company seeks to affect government action.

2. Whether the Proposal is "Otherwise Significantly Related"

Regardless of applicability of the first prong, the Proposal, addressing the disclosure of lobbying, pertains to an issue that is "otherwise significantly related to the company's business." In the Proponent's view, lobbying activities are economically relevant per se for the reasons discussed below.

**a. Lobbying Disclosure Proposals have been found "otherwise significantly related" under Rule 14a-8(i)(5)**

The question of (i)(5) relevance of a comprehensive lobbying disclosure proposal was previously addressed by the Staff in *Devon Energy Corp.* (March 27, 2012) where a proposal nearly identical to the current Proposal was found to be "otherwise significantly related" to an oil and gas company.

The *Devon* proponent, in response to the argument that the disclosures were not "economically relevant" within the bounds of Rule 14a-8(i)(5), asserted:

the quantitative threshold on which Devon relies is not absolute. The Commission has stated that proposals dealing with "ethical issues" may be significantly related to a company's business "when viewed from a standpoint other than a purely economic one." In that regard, the Commission provided examples of nuclear power plant construction, doing business in South Africa and marketing of infant formula. (Exchange Act Release 19,135 (Aug. 16, 1983))

Devon's lobbying efforts are "otherwise significantly related" to its business due to the significant risks lobbying can create. Among the issues on which Devon lobbied, as described in its 2011

Fourth Quarter Lobbying Report, were the Fracturing Responsibility and Awareness of Chemicals Act of 2009, energy tax proposals and the Keystone Pipeline. (See <http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingId=16a00f2b-a41a-4ee6-b441-34aa4f0f38b6>) Hydraulic fracking (a method of extracting natural gas) and the Keystone Pipeline are controversial issues, and lobbying on them could thus give rise to reputational risks for Devon. Accordingly, exclusion of the Proposal on relevance grounds is inappropriate.

The Staff agreed with the proponent:

Based on the information presented, we are unable to conclude that the proposal is not "otherwise significantly related" to Devon Energy's business. Accordingly, we do not believe that Devon Energy may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(5).

Although lobbying is important and relevant to oil and gas companies, based on available information regarding the level of federal lobbying expenditures as well as disclosures regarding the issues at risk for such companies, lobbying is even more important – significant, material and relevant — to companies in the pharmaceutical sector, as is explained below.

#### **b. Lobbying Disclosure is a Governance Issue and Therefore Relevant and "Otherwise Significantly Related"**

On November 1, 2017, the SEC issued Staff Legal Bulletin 14I which invited boards of directors to provide their opinions as to whether a proposal is "otherwise significantly related" for purposes of Rule 14a-8(i)(5) and "significant to the company" for purposes of Rule 14a-8(i)(7). The Bulletin also stated that the Staff will scrutinize the Board's opinion in considering evidence for economic relevance in the particular circumstances of a company where the question is whether the proposal is "otherwise significantly related." However, the Bulletin expressly limits the case-by-case analysis, stating "**On the other hand, we would generally view substantive governance matters to be significantly related to almost all companies.**" [Emphasis added]

The Proponent's quest with other investors for comprehensive lobbying disclosure reports at the Company, as at all public companies, is a *corporate governance* issue, and therefore relevant under Rule 14a-8(i)(5).

The International Corporate Governance Network (ICGN) is a global membership organization of over 550 leaders in corporate governance based in 50 countries with investors collectively representing funds under management of around US\$18 trillion.<sup>1</sup> ICGN treats lobbying

---

<sup>1</sup> US members of ICGN include AllianceBernstein, Analytical Research, B Lab, Bernstein Litowitz Berger & Grossmann LLP, BlackRock, Blue Harbour Group, BNY Mellon - Depositary Receipts, Boston Common Asset Management, Brandes Investment Partners, Broadridge Financial Solutions Inc., CalPERS, CalSTRS, California State Teachers' Retirement System, CamberView Partners LLC, Cartica Capital Center for Audit Quality, CFA Institute, Charles Schwab Investment Management, Chevron Corporation, Coca-Cola Company USA, Colorado Public Employees' Retirement Association, Computershare Ltd, Cornerstone Capital Inc., Council of Institutional Investors, DRRT, Elliott Management Corporation, Ernst & Young, Fredrikson & Byron, P.A. Gilead Sciences, Inc., Glass Lewis, Global Proxy Watch, Goal Group, Goldman Sachs & Co., Grant & Eisenhofer, Harvard Law School Program on Corporate Governance, inter-American Investment Corporation, International Finance Corporation, IR Japan Kellogg School of Management, Kessler Topaz Meltzer & Check, LLP, Labaton Sucharow

disclosure as a governance issue:

Corporate involvement in public policy and the political process is a matter of corporate governance. When justified by a clear business case, it can be legitimate to corporate interests and of benefit to shareholders. However, there is considerable scope for illegitimate political activity and influence seeking, which can be breaches of basic business ethics and good corporate governance. ... Political lobbying can be a legitimate activity, but only if companies seek to influence public policy, legislation and regulation in ways that are transparent, appropriately controlled, linked to the company's strategy, clearly supportive of shareholders' interests and conducted within an ethical policy framework.<sup>2</sup>

An ICGN publication<sup>3</sup> written from an investor perspective notes:

Companies exist within society and must relate to society. Lobbying is part of that relationship but it is fraught with risks. Lobbying becomes unacceptable either when it serves the personal interests of the corporate leadership or when it is in the narrow interest of the company such as promoting regulations that are favourable to it but potentially damaging to society as a whole. Corporate lobbying becomes acceptable, if not positive, when it takes a longer term view aimed at the promotion of high quality regulation which will serve the broader social interest and thereby create a climate in which the company can deliver value and flourish.

ICGN suggests that its members consider additional action to support a positive approach. This could include supporting shareholder proposals on political and lobbying disclosure, supporting mandatory lobbying disclosure legislation such as the U.S. SEC rule-making process. There is also scope for investor and company engagement (both individual and collective) to allow companies to better explain the nature and purpose of their political activities and for investors to encourage robust governance practices in this area including both board oversight and company transparency.

The Proponent requests that the Staff take the opportunity presented by the present Proposal and no action request to clarify that by definition, proposals seeking comprehensive lobbying disclosure address a governance issue that is significantly related for purposes of Rule 14a-8(i)(5). Companies and boards of directors cannot, by fiat or evidence, make it irrelevant.

---

LLP, LACERA, Los Angeles County Employees Retirement Association, Lazard Asset Management, LLC, Maine Public Employees Retirement System, Microsoft, Morris, Nichols, Arshat & Tunnell LLP, Morrow Sodali, NASDAQ, Office of the NYC Comptroller, Ohio Public Employees Retirement System, ORIX USA Corporation, Parnassus Investments, PepsiCo, Inc., Pfizer Inc., Pomerantz LLP, Prudential Financial (USA), Reinhart Boerner Van Deuren s.c., Robbins Geller Rudman & Dowd LLP, Rockefeller & Co., Russell Reynolds Associates, Sinclair Capital/IRRC Institute, Stanford Management Company, State Board of Administration (SBA) of Florida, State of Wisconsin Investment Board, State Street Global Advisors, Sustainability Accounting Standards Board, The Institute of Internal Auditors, UAW Retiree Medical Benefits Trust, University of Delaware, ValueAct Capital ValueEdge Advisors LLC, Wachtell, Lipton, Rosen & Katz, Weil Gotshal & Manges LLP, Wellington Management Company LLP, Wespath Investment Management.

<sup>2</sup> ICGN Statement and Guidance on Political Lobbying and Donations (June 2011)

<sup>3</sup> Lauren Compere, Boston Common Asset Management, Corporate Lobbying Practices and the US elections, ICGN Viewpoint, September 2016.

In the event that the Staff chooses to undertake a case-by-case review, Proponent submits its Proposal is “otherwise significantly related” as set forth in Section II below.

**B. Lobbying is a significant policy issue for every company for purposes of Rule 14a-8(i)(7).**

The Staff has previously stated that for a proposal to be found to transcend ordinary business it must address a subject of widespread debate that has a “nexus” to the Company. The topic of nexus has been only informally described as relating to “factors such as the nature of the proposal and the circumstances of the company to which it is directed.”<sup>4</sup> In Staff Legal Bulletin 14 I and the initial Staff rulings under the Bulletin the Staff has made it clear that “nexus” relates to “significance to the company” of the significant social policy issue.<sup>5</sup>

As with its analysis under Rule 14a-8(i)(5), the Staff has long declined to grant no action relief under 14a-8(i)(7) on lobbying disclosure. The Staff has repeatedly found that proposals relating to lobbying disclosure address a significant policy issue of widespread public debate, and has found that the proposals are not excludable — the nexus of lobbying efforts has been evident for all companies. For example, in *International Business Machines* (avail. January 24, 2011) essentially the same proposal was found by the Staff to not be excludable under Rule 14a-8(i)(7) because it addressed a significant policy issue. The significance of lobbying as a policy issue for the company was briefed extensively in by the proponent in *International Business Machines*, arguing successfully that the intense public and media focus on corporate lobbying and its effect on the political process makes it a significant social policy issue.

In the past several years, an intense public debate has arisen over the extent and role of corporate involvement in both direct and grassroots lobbying activities. Direct lobbying encompasses efforts made directly by companies and their lobbyists, as well as lobbying undertaken by trade associations and other groups on behalf of their corporate members. Grassroots lobbying is an attempt to influence the general public, or segments thereof, with respect to elections, legislative matters or referenda. (See 26 U.S.C. section 162(e))

Extensive coverage in major national media outlets demonstrates that corporate lobbying has become a significant social policy issue. The public debate over corporate lobbying has greatly intensified in the past two years as a result of well-publicized corporate lobbying efforts against three pieces of reform legislation that enjoyed substantial public support--health care reform,

---

<sup>4</sup> Exchange Act Release No. 40018 (May 21, 1998) [63 FR 29106], cited in reference to nexus in Staff Legal Bulletin 14E.

<sup>5</sup> The standard, applicable in the present matter, was set forth most clearly in Apple Inc, (Jing Zhao), (December 21, 2017): “We are unable to conclude, based on the information presented in your correspondence, including the discussion of the board’s analysis on this matter, that this particular proposal is not sufficiently significant to the Company’s business operations such that exclusion would be appropriate...Further, the board’s analysis does not explain why this particular proposal would not raise a significant issue for the Company. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).”

climate change legislation and financial reform--as well as on other less high-profile measures.

In consideration of that proposal in *International Business Machines*, the Staff found:

We are unable to concur in your view that IBM may exclude the proposal under rule 14a-8(i)(7). In our view, the proposal focuses primarily on IBM's general political activities and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate. Accordingly, we do not believe that IBM may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).<sup>6</sup>

As will be evidenced in the following sections, it is clear that comprehensive lobbying disclosure provides information that is significant to the Company and to all public companies.

## II. APPLYING THE STANDARDS TO THE FACTS

### A. Lobbying is often determinative of pharmaceutical sector companies' success or failure.

The pharmaceutical industry has cultivate<sup>7</sup>d the most powerful industry lobby in Washington. Because it is so strongly affected by government regulatory interventions, the pharmaceutical industry through its trade associations as well as individual firm lobbying spends "far more than any other industry to influence politicians."<sup>8</sup> **The pharma industry is the largest lobbyist in the country spending more than tobacco for a number of years. Legislation and regulation are integral parts of determining the business future of companies in the sector.**

Partial lobbying information is available on the Open Secrets Database. Open Secrets is compiled from a single data source, information filed with the Senate office of public records regarding companies' lobbying. Through that database it becomes apparent that the pharmaceutical industry spends more than any other industry on lobbying. As of reports filed in December 2017, it spent \$209 million on lobbying in 2017 and \$246 million in 2016.

As reported by Open Secrets Database, between 1998 and 2017, the pharmaceuticals/health products industry has spent more than any other industry on lobbying (\$3,716,474,293 total).

Government actions at both the state and national level affect the future of pharmaceutical companies. When state or federal regulators debate allowing people to buy mail-order drugs from Canada, it affects the pharmaceutical sector. When state ballot initiatives attempt to put limits on drug prices - as happened in Ohio and California - when states debate opioid addiction, when Congress passes laws opening up the ability of competitors to sell generic versions of

---

<sup>6</sup> See also *Devon Energy Corp.* (March 27, 2012) for the same result and earlier decisions in *Wal-Mart Stores, Inc.* (March 29, 2010), *PepsiCo, Inc.* (February 26, 2010) and *JP Morgan Chase & Co.* (March 7, 2008) no-action letters where the Staff did not concur with the requests for exclusion of proposals requesting that the companies issue reports related to lobbying policy disclosure.

<sup>7</sup> <http://opensecrets.org>

<sup>8</sup> <https://www.theguardian.com/us-news/2017/oct/19/big-pharma-money-lobbying-us-opioid-crisis>

drugs, it affects company markets. Consider the following examples:

• **Medicare Part D** One target for lobbying by the pharmaceutical industry relates to the government's role as a major payer of prescription drug benefits through Medicare, Medicaid, Veterans Affairs, and other programs. Prior to 2003, the pharmaceutical industry had long opposed a drug benefit for Medicare, fearing that it would give leverage to the government over drug prices. Eventually, industry lobbyists proposed and supported creation of Medicare Part D in 2003. Logically, they structured it to benefit drug companies; the law forbade bulk purchasing, resulting in a \$205 billion benefit for the drugmakers.<sup>9</sup> Additionally, the law prohibits the federal government from seeking bids for the manufacture of drugs and medical devices. Instead, Medicare and Medicaid simply pay whatever price is offered, even though cheaper options may be available. In 2007 a bill to change this law was blocked by 42 senators after industry lobbying.<sup>10</sup> Clearly, this is favorable to the pharmaceutical sector, and demonstrates how changes to the law that might be detrimental to the pharmaceutical sector can be prevented through lobbying.

• **Trade Agreement Carveouts**. In 2005, after heavy lobbying, the pharmaceutical industry was able to win a carveout from the Central American Free Trade Agreement, protecting its U.S. business from foreign competition.<sup>11</sup> This lobbying resulted in a huge savings for companies like Eli Lilly. A similar carveout is currently being negotiated on behalf of American companies by trade negotiators regarding the sale of beef produced with Eli Lilly's bovine growth hormone to the United Kingdom, overcoming a long-standing ban on such sales in the EU.<sup>12</sup>

• **Affordable Care Act**. During the height of the debate over the Affordable Care Act in 2009, drugmaker lobbying hit \$273 million, and the industry successfully avoided a provision that might have given Medicare the ability to negotiate drug prices.<sup>13</sup>

• **Expediting Product Review**. President Obama signed into law a bill called the 21<sup>st</sup> Century Cures Act, which speeds up drug and device regulatory approval, despite critics who said that it could bring dangerous products to market.<sup>14</sup>

• **Funding Agreements**. President Trump signed a bill to reauthorize drug makers' funding agreements with the FDA in August 2017.<sup>15</sup> The industry reportedly spent \$20 million on federal

---

<sup>9</sup> <https://www.theatlantic.com/business/archive/2015/04/how-corporate-lobbyists-conquered-american-democracy/390822/>

<sup>10</sup> <http://www.nytimes.com/2007/04/18/washington/18cnd-medicare.html>

<sup>11</sup>

<http://query.nytimes.com/gst/fullpage.html?res=9D01E4DD1331F931A35754C0A9639C8B63&pagewanted=all>

<sup>12</sup> Apr 2017, <http://www.mintpressnews.com/trumps-top-trade-nominees-lobby-to-kill-uks-growth-hormone-meat-ban/230342/>

<sup>13</sup> <https://www.opensecrets.org/news/2015/10/pharmaceutical-industry-under-scrutiny-for-prices-has-history-of-big-political-wins/>

<sup>14</sup> <http://thehill.com/business-a-lobbying/310282-top-10-lobbying-victories-of-2016>

<sup>15</sup> <https://www.fda.gov/ForIndustry/UserFees/>

lobbying in the first quarter of 2017.

- **The Tax Bill.** The Tax Cut and Jobs Act, signed December 22, 2017, contains provisions expected to be beneficial to pharmaceutical companies to repatriate significant sums stored by the companies overseas at lower tax rates. This cash will likely be used to pay dividends to shareholders or make acquisitions.<sup>16</sup>

- **State Level Drug Pricing Initiatives.** During the last two years, pharmaceutical companies pulled out all the stops to block state ballot initiatives in Ohio and California that would have imposed price controls on drugs.

2017 Ohio ballot proposal. “Millions in financial contributions from pharmaceutical companies opposing an Ohio ballot proposal to cap prescription drug prices are being shielded from disclosure because they are being funneled through a nonprofit, limited liability company.”<sup>17</sup>

2016 California ballot proposal. \$100 million spent in California by the pharmaceutical industry. Californians voted 53 percent to 47 percent against a similar ballot issue to the one in Ohio. PhRMA gave \$64 million to a California fund established to defeat a proposal requiring state agencies to pay no more for drugs than does the federal Department of Veterans Affairs. Also supported by direct contributions from drug companies, the fund spent \$110 million last year to defeat the initiative. In 2017, California established a less comprehensive law requiring drug firms to give notice and explanation when they substantially raise prices. PhRMA recently sued to block that measure.<sup>18</sup>

In 2016, the pharmaceutical industry increased its spending by 25%. Then during the recent 2017 change of federal administrations in 2017, pharmaceutical companies increased their lobbying expenditures further.<sup>19</sup> As reported in *Kaiser Health News*:<sup>20</sup>

Facing bipartisan hostility over high drug prices in an election year, the pharma industry’s biggest trade group boosted revenue by nearly a fourth last year and spread the millions collected among hundreds of lobbyists, politicians and patient groups, new filings show.

It was the biggest surge for the Pharmaceutical Research and Manufacturers of America, known as PhRMA, since the group took battle stations to advance its interests in 2009 during the run-up to the Affordable Care Act.

“Does that surprise you?” said Billy Tauzin, the former PhRMA CEO who ran the organization a decade ago as Obamacare loomed. Whenever Washington seems interested in limiting drug prices, he said, “PhRMA has always responded by increasing its resources.”

The group, already one of the most powerful trade organizations in any industry, collected \$271 million in member dues and other income in 2016. That was up from \$220 million the year before, according to its latest disclosure with the Internal Revenue Service.

\* \* \*

---

<sup>16</sup> <http://fortune.com/2017/12/16/gop-tax-bill-winners-and-losers>

<sup>17</sup> <http://www.dispatch.com/news/20170802/drug-companies-find-way-to-dodge-ohio-campaign-disclosure-rules>

<sup>18</sup> <https://www.pbs.org/newshour/health/heres-where-the-nations-biggest-drug-lobby-spent-money-in-2016>

<sup>19</sup> <https://khn.org/news/drugmakers-dramatically-boosted-lobbying-spending-in-trumps-first-quarter/>

<sup>20</sup> Here’s where the nation’s biggest drug lobby spent money in 2016, Jay Hancock, *Kaiser Health News*, Dec 19, 2017.

PhRMA also gave big money to national political groups financing congressional, presidential and state candidates. The conservative-leaning American Action Network got \$6.1 million. The Republican Governors Association got \$301,375. Its Democratic counterpart got \$350,000.

PhRMA's state and federal lobbying spending rose by more than two-thirds from the previous year, to \$57 million.

\* \* \*

Threats seemed especially dire last year. Storms of bad publicity hit the industry in the form of stories about arrogant executives and thousand-dollar pills.

Democratic presidential candidate Hillary Clinton said some pharma companies were "making a fortune off of people's misfortune." Then-candidate Donald Trump, a Republican, suggested he could save \$300 billion annually by requiring drugmakers to bid on business.

Nonprofit organizations such as PhRMA must file detailed disclosures with the IRS. PhRMA, which submitted its 2016 report in early November, shared a copy with Kaiser Health News.

The group also aimed dollars at states where policymakers were considering drug-related measures such as price limits or greater price transparency, the document shows.

It gave \$64 million to a California fund established to defeat a proposal requiring state agencies to pay no more for drugs than does the federal Department of Veterans Affairs. Also supported by direct contributions from drug companies, the fund spent \$110 million last year to defeat the initiative, California regulatory filings show.

This year, California established a less comprehensive law requiring drug firms to give notice and explanation when they substantially raise prices. PhRMA recently sued to block that measure.

In Louisiana, where policymakers were considering proposals to make drug prices clearer to consumers, PhRMA gave campaign contributions directly to scores of state legislators last year. The group also gave hundreds of thousands of dollars to help defeat a ballot proposal for single-payer health care in Colorado.

Last year's massive mobilization underscores how besieged the industry felt over complaints about soaring medicine prices and high profits.

PhRMA's \$271 million in revenue for the year represented its biggest budget since 2009, when it recorded \$350 million in dues and other revenue.

The \$57 million it spent on lobbying was also the most since 2009, when the lobbying bill was \$70 million. So was the \$7 million spent on advertising, a cost that should rise this year, since the "Go Boldly" ads aired in 2017. PhRMA employed 237 people last year, up from fewer than 200 in 2011.

The association's 37 members include the biggest and best-known drug companies including Johnson & Johnson, Celgene, Merck, Pfizer, Eli Lilly and Amgen. Holly Campbell, a PhRMA spokeswoman, declined to make an executive available to discuss the report, saying it doesn't comment on contributions.

\*\*\*

During negotiations over Obamacare, PhRMA agreed to support overhauling health care relatively early in the process, in mid-2009. Then it threw its muscle into promoting the measure, which promised billions in new revenue for members. President Barack Obama signed it into law in March 2010.

PhRMA shrank substantially after that, taking in around \$205 million for several years in a row starting in 2010.

Last year it agreed to increase dues by 50 percent to raise an extra \$100 million, Politico reported.

\* \* \*

[Emphasis added]

**B. The subject matter of lobbying disclosure is highly significant and relevant to Eli Lilly.**

The Company Letter notes on page 6:

The Company's lobbying efforts have not historically been material.

Such a conclusion is difficult to reconcile with the material implications of lobbying and government policies spread throughout the Company's 10K and the company's history of successes and failures in the market. The weight of the evidence, including statements in the Company's own SEC filings as well as its recent and longer term history, demonstrates that the request of its investors for a comprehensive lobbying report is highly relevant and significant to the Company by any possible measure.

Although the full amounts that would be disclosed if the company complied with the requests of the Proposal are unknown, viewing the federally disclosed spending by the Company, between 2008 and 2017, Eli Lilly spent an average of \$8,549,018 per year on federal lobbying, according to OpenSecrets.org. This is significantly higher than the averages spent by similar-size peers Novo Nordisk (\$2,096,409), Bristol-Myers Squibb (\$3,438,252), Abbott Laboratories (\$3,793,636), and AstraZeneca (\$4,162,746). It is also a member of PhRMA, the pharmaceutical industry's principal lobbying organization.

According to the Center for Public Integrity, Eli Lilly lobbied in approximately 48 states between 2010 and 2014, showing that lobbying in every corner of the country is significant to Eli Lilly's business.<sup>21</sup> Yet, neither the amounts expended on lobbying, direct and indirect at the state level nor expenditures on grassroots lobby communications, are disclosed by the Company.

Eli Lilly uses lobbying at the state level as well as at the federal level to protect its business interests. For example, in 2015, Eli Lilly hired five registered lobbyists (compared to Novo

---

<sup>21</sup> <https://www.publicintegrity.org/2016/02/11/19283/here-are-interests-lobbying-every-statehouse>

Nordisk's and Sanofi's one each) to fight a Nevada proposal to put price controls on certain drugs. This demonstrates that Eli Lilly believes lobbying—even on a state bill in a relatively small state—is worthwhile because it can significantly affect the Company's business.

In its quarterly earnings call slides for the third quarter of 2017, Eli Lilly lists “regulatory” as one of its major topic areas, along with “commercial,” “clinical,” and “business development.” It also lists “regulatory submissions” and “regulatory actions” in its list of “Potential Key Events 2017.”<sup>22</sup>

Other members of the pharmaceutical industry disclose the amount of their trade association contributions to the public. Allergan, Amgen, Biogen, Bristol-Myers Squibb, Gilead Sciences, Merck, and Johnson & Johnson all disclose their trade association payments used for lobbying publicly. Merck spent over \$50M in payments to PhRMA for lobbying from 2011 – 2016. In 2016, Novartis Group companies contributed \$48 million to various major international, regional and country trade associations. Since Eli Lilly does not disclose similar information investors have no way of knowing how it compares to its peers.

### **1. Price Controls are a Lobbying Priority for Eli Lilly**

The pricing of Eli Lilly human pharmaceutical products has proven a preeminent issue of concern. The Eli Lilly 2016 10K notes:

Our human pharmaceutical business is subject to increasing government price controls and other public and private restrictions on pricing, reimbursement, and access for our drugs, which could have a material adverse effect on our business.

Public and private payers are taking increasingly aggressive steps to control their expenditures for human pharmaceuticals by placing restrictions on pricing and reimbursement for, and patient access to, our medications. These pressures could negatively affect our future revenues and net income.

We expect pricing, reimbursement, and access pressures from both governments and private payers inside and outside the U.S. to become more severe.

As noted above, substantial issues regarding drug prices are increasingly being fought out at the State level. The states of Ohio and California recently had ballot initiatives relating to price control for pharmaceutical products. The pharmaceutical industry including PhRMA poured millions of dollars into the states to defeat the initiatives. To what extent was Eli Lilly involved in grassroots lobbying communications and expenditures to defeat the legislation? Current company disclosures to investors do not make this clear.

---

<sup>22</sup> [http://files.shareholder.com/downloads/LLY/5846789483x0x960639/50A36D58-6F7B-4AF7-9A85-7FB924C59323/Q3\\_2017\\_Slides.pdf](http://files.shareholder.com/downloads/LLY/5846789483x0x960639/50A36D58-6F7B-4AF7-9A85-7FB924C59323/Q3_2017_Slides.pdf)

## **2. Intellectual property rights and exclusive market access are also priorities for Eli Lilly.**

Historically speaking, governmental actions that have been or could have been affected by lobbying by the Company have had highly material impacts on the company's profitability. One example is the fate of the Company's Prozac sales. The Company's Form 10K for 2016 discusses the material issues it *now* faces as a result of the enactment of a 1984 act giving market access to generic competitors:

In the U.S., the Drug Price Competition and Patent Term Restoration Act of 1984, commonly known as the Hatch-Waxman Act, authorizes the FDA to approve generic versions of innovative human pharmaceuticals (other than biologics) without completion of safety and efficacy studies, i.e., a complete New Drug Application (NDA) by filing an Abbreviated New Drug Application (ANDA). In an ANDA, the generic manufacturer must demonstrate only "bioequivalence" between the generic version and the NDA-approved drug—not safety and efficacy. Establishing bioequivalence is generally straightforward and inexpensive for the generic company.

In August 2001, in application of this law, Eli Lilly lost U.S. patent protection for Prozac after a series of legal conflicts. Barr Laboratories gained a six-month exclusive right to make a generic Prozac equivalent. Declining Prozac sales in the fourth quarter of 2001 led to a 14 percent reduction in company revenues. In January 2002 the U.S. Supreme Court rejected Lilly's final patent appeal without comment, which opened the door to several other companies making generic versions of the antidepressant drug. By the first quarter of 2002 the Company announced a loss of profit of 22% due to loss of most Prozac sales to cheaper generic copies. This demonstrates the impact that government action can have on the Company.

### **C. Lobbying is undermining the pharmaceutical sector companies' reputation with the consuming public.**

The pharmaceutical industry's emphasis on shaping government policy through lobbying has, according to many articles, undermined the reputation of the industry with the consuming public. For instance, the journal *Nature Biotechnology* published an article in 2014 about the pharmaceutical industry's flagging reputation and consumer mistrust.<sup>23</sup>

To some extent, reputational decline can be attributed simply to the fact that many pharma companies are large multinational corporations that are now facing strategic issues that require an adjustment to the traditional business model. The increasing price and cost pressure, patent expirations on blockbuster drugs leading to aggressive generic competition, public policy and changes in how consumers access medicine are leading to erosion of profit margins. Big pharma, like other industries, is not immune from the pressure of having to meet Wall Street quarterly earnings expectations; indeed, today's companies are measured on how well their stock performs and boards of directors incentivize management accordingly to meet Wall Street's demands. The needs of patients are secondary. This has resulted in a greater emphasis on a return on investment from R&D and reducing the amount of capital it is allocated. In turn, this has increased

---

<sup>23</sup> Mark Kessel, "Restoring the pharmaceutical industry's reputation, Big pharma's storehouse of trouble has fostered consumer mistrust and a negative view of the industry. How does the industry go about restoring its flagging reputation?" *Nature Biotechnology* 32, 983–990(2014)

offshoring, the elimination of in-house teams and the flight of scientific expertise into the biotech/biopharmaceutical sector.

\* \* \*

In the United States, big business has an increasingly long reach into policymaking in Washington, DC. As large corporations, US drug companies spend more than any other sector on lobbying each year: \$234 million in 2012, according to the Center for Responsive Politics (CRP), a nonprofit research group in Washington, DC. Prominent companies have sought to influence the outcome of elections through campaign donations and the activities of elected legislators. It is doubtful that the public perceives this lobbying power as fostering patient interests over industry profits.

\* \* \*

The public's trust in big pharma is likely to worsen unless both individual companies and the industry sector as a whole make a concerted effort to address the fundamental problems that are eroding reputation. Rebuilding this lost reputation will be difficult and will take years. In addition, as the reputation of a single company is affected by the actions of others in the same industry, rebuilding reputations in an industry that is itself declining will be even more arduous.

*Forbes* has also written about the flagging reputation of the pharmaceutical sector:<sup>24</sup>

In terms of reputation, the pharma industry was 7th of the 8 healthcare sectors evaluated. Only 34% of respondents gave pharma a “good” or “excellent” rating for reputation. Pharma trailed retail pharmacists (62%), medical device companies (50%), private healthcare services (46%), biotechs (44%), not-for-profit health insurers (39%) and generic drug makers (37%). Only for-profit health insurers trailed pharma with 24%

What is driving this negative view of pharma from a patient’s perspective? The patient groups listed a number of areas where pharma was rated as having a “poor” record including:

- 1) a lack of fair pricing policies leading to unseemly profits (50%);
- 2) a lack of transparency in all corporate activities (48%);
- 3) management of adverse event news (37%);
- 4) acting with integrity (32%).

In a 2017 article, the New York Times<sup>25</sup> highlighted the war over drug pricing:

In polls, Democrats and Republicans alike have lowering drug prices near the top of their health care priorities. Public anger has risen along with the skyrocketing prices for many essential medicines — insulin for diabetes, for example, and EpiPens for severe allergic reactions. But will efforts to reduce drug costs surmount the industry’s aggressive lobbying and campaign contributions?

\* \* \*

With billions in profit on the line, the pharmaceutical and health products industry has already

---

<sup>24</sup> John LaMattina , Pharma's Reputation Continues to Suffer -- What Can Be Done To Fix It?, *Forbes*, JAN 18, 2013 P.

<sup>25</sup> Eric Lipton and Katie Thomas, Drug Lobbyists’ Battle Cry Over Prices: Blame the Others, *New York Times*, May 29, 2017.

spent \$78 million on lobbying in the first quarter of this year, a 14 percent jump over last year, according to the Center for Responsive Politics. The industry pays some 1,100 lobbyists — more than two for each member of Congress.

No single proposal has emerged as a clear winner in the bid to lower prices. Mr. Trump has sent conflicting signals: On one hand, he has accused the industry of “price fixing” and has said the government should be allowed to negotiate the price of drugs covered by Medicare. At other times, he has talked about rolling back regulations and named an industry-friendly former congressman, Tom Price, to head the Department of Health and Human Services, and a former pharmaceutical consultant, Scott Gottlieb, to lead the Food and Drug Administration.

Members of Congress have put forward a grab-bag of options, each of which would help or hurt different industry players.

Some address minor aspects, such as a bipartisan bill that would force brand-name drugmakers to hand over samples of their drugs to generic competitors. One would allow for the importing of cheaper drugs. Another would force pharmacy benefit managers to disclose more information about how they did business.

For now, it is a free-for-all.

The industry’s own publication *American Pharmaceutical Review*, in March 2017 noted “Pharma’s Reputation Gap”:<sup>26</sup>

Pharma has an image problem; innovation is the answer. From pricing and value to safety and quality, there are few elements of the pharmaceutical industry that haven’t been subject to harsh criticism by society — it’s a long-term trend.

Headlines on exploitive pricing practices are just the most recent examples of pharma’s corporate social “irresponsibility” presented for public vilification. Right or wrong, pharma remains a perennial target and a popular bogeyman among politicians, the media and a broad range of interest groups.

Let’s face it, Americans have a terrible view of the pharmaceutical industry, which is “now rated one of the worst industries” according to Gallup analyst Jim Norman. In Gallup’s annual measure of 25 major U.S. business sectors, the percentage of Americans with a positive view of the pharmaceutical industry dropped from 40% in 2014 to 35% in 2015.<sup>1</sup> Gallup’s polling data revealed only the oil and gas industry (ranking last 10 times) and the federal government (which took the bottom spot itself for three years) have consistently scored lower.

Owning and addressing this reality with tangible action is crucial to our future. Pharma’s poor reputation is hurting our business, limiting available investment, and, perhaps most damaging, leading the brightest minds away from the pharmaceutical industry.

\* \* \*

---

<sup>26</sup> Kevin Haehl, Pharma’s Reputation Gap: Consumer Business Innovation, *American Pharmaceutical Review*, March 15, 2017.

#### Uncertainty Turns Away Investment

A poor reputation hits companies where it hurts — in the stock price. Investors shy away from such industries, and reduce investment even more as uncertainty increases. Part of pharma's consumer "brand" has become its alleged exploitive pricing — which continues to prompt remarks like those of the president. According to Forbes January 11, after Donald Trump's remarks targeted high drug prices, billions fled biotech and pharma stocks in a steep selloff. Shares of Pfizer, Endo and BMS were all identified by Forbes as the "biggest losers" in the wake of the Trump press conference. The uncertainty of future drug prices in light of the price controls proposed by Trump had a real negative impact on pharma stock valuation across the sector.

Top Lobbyist for Drug Makers Threads a Thicket of Outrage, New York Times, February 26, 2016:

WASHINGTON — Few lobbyists have walked into the kind of political inferno that greeted Stephen J. Ubl when he became the top pitchman for the pharmaceutical industry.

Mr. Ubl, the 47-year-old president and chief executive of the Pharmaceutical Research and Manufacturers of America, took charge in November, as the Obama administration, presidential candidates, members of Congress, consumer groups, health insurance companies and doctors were criticizing the prescription drug industry for charging prices they saw as exorbitant and excessive.

The anger has only grown worse.

\* \* \*

The pharmaceutical and health products industry spent more on federal lobbying than any other industry in 2015, according to the Center for Responsive Politics, an independent group that tracks money in politics. Within that sector, the Pharmaceutical Research and Manufacturers of America led the list, with \$18.4 million in spending on a wide range of health, trade and patent issues. Mr. Ubl's lobbying powerhouse has members that include giants like Amgen, Eli Lilly, Johnson & Johnson, Merck and Pfizer.

The group reported total expenses of nearly \$208 million in 2014, the most recent available filing with the Internal Revenue Service. Its 170 employees work at its headquarters here, as well as in nine offices in the United States and others in Tokyo and Dubai.

\*\*\*

But public outrage over drug prices is boiling. John C. Rother, who leads the Campaign for Sustainable Rx Pricing, backed by consumer, labor and physician groups, said Mr. Ubl was in an impossible position.

"The issue is prices," Mr. Rother said, and the lobby for drug makers, like other trade associations, "can't do much on prices without getting into trouble under the antitrust laws." Any efforts to control or suggest prices raise antitrust concerns, federal officials say.

Mr. Ubl (pronounced YOU-bul) said the drug lobby had been effective at beating back proposals like allowing the government to negotiate drug prices or import medicines from Canada. But, he said, it has not been as good at formulating and advancing a positive agenda. He hopes to change that.

\* \* \*

Senator Elizabeth Warren, Democrat of Massachusetts, said some drug companies had been caught defrauding Medicare and Medicaid while reaping "enormous profits as a result of federal research

investments.”

Mr. Ubl said drug companies and the government played “complementary and collaborative roles,” with drug makers pouring tens of billions of dollars into research and development each year.

\* \* \*

In recruiting a top lobbyist, drug companies said, they were impressed with Mr. Ubl’s effort to undo a tax on medical devices imposed by the Affordable Care Act. The tax took effect in 2013, but Congress recently approved a two-year moratorium, suspending it until Jan. 1, 2018.

\* \* \*

The pharmaceutical trade association supported the Affordable Care Act when it was adopted in 2010. But Mr. Ubl said he was concerned that “too many patients” have difficulty gaining access to the drugs they need because of high out-of-pocket costs, “prior authorization” requirements and other restrictions imposed by health plans sold on the insurance exchanges.

**C. Eli Lilly’s reputation is at risk in relation the issues that are a prime focus of lobbying.**

The Company finds itself in the crosshairs of government regulators and enforcement officials on the topic of pricing. As noted in a recent no action response<sup>27</sup> by Mercy Investments (regarding a proposal on the link between executive compensation and pricing):

Eli Lilly has been in high-profile conflict over the rapidly escalating price of insulin. Insulin prices have increased by over 240% in the past 10 years, leading some patients to skip doses and suffer consequences such as blindness and kidney failure. ([www.nbcnews.com/health/health-news/several-probes-target-insulin-drug-pricing-n815141](http://www.nbcnews.com/health/health-news/several-probes-target-insulin-drug-pricing-n815141); [www.bloomberg.com/news/articles/2017-06-29/the-crazy-math-behind-drug-prices](http://www.bloomberg.com/news/articles/2017-06-29/the-crazy-math-behind-drug-prices)) Frequent press coverage has focused on Eli Lilly’s prices and price increases, with headlines like “Eli Lilly’s Revenue Boosted by Jacking Up Cost of Insulin for Diabetics” and “Skyrocketing Insulin Prices Force Some to Choose Between Medicine and Food.” ([www.marketwatch.com/story/eli-lillys-revenue-boosted-by-higher-drug-prices-for-diabetics-2016-01-28](http://www.marketwatch.com/story/eli-lillys-revenue-boosted-by-higher-drug-prices-for-diabetics-2016-01-28); [www.wtae.com/article/skyrocketing-insulin-prices-force-some-to-choose-between-medicine-and-food/9588176](http://www.wtae.com/article/skyrocketing-insulin-prices-force-some-to-choose-between-medicine-and-food/9588176); see also [www.cbsnews.com/news/insulin-prices-rise-yet-again-causing-diabetics-to-cry-foul/](http://www.cbsnews.com/news/insulin-prices-rise-yet-again-causing-diabetics-to-cry-foul/); <https://www.cnbc.com/2017/05/10/eli-lilly-raised-prices-on-9-drugs-last-week.html>; <https://www.wthr.com/article/rising-insulin-prices-forcing-hoosiers-with-diabetes-to-make-tough-choices>) In September 2017, patients protested high insulin prices at Eli Lilly’s headquarters, demanding not only lower prices but also fuller disclosure regarding costs and profits. ([www.diabetesdaily.com/blog/diabetes-advocates-protest-at-eli-lilly-about-insulin-prices-482111/](http://www.diabetesdaily.com/blog/diabetes-advocates-protest-at-eli-lilly-about-insulin-prices-482111/)) Several state attorneys general have recently opened investigations into Eli Lilly’s insulin pricing. ([www.nbcnews.com/health/health-news/several-probes-target-insulin-drug-pricing-n815141](http://www.nbcnews.com/health/health-news/several-probes-target-insulin-drug-pricing-n815141)) A federal lawsuit filed in January 2017 accuses Eli Lilly, Novo Nordisk and Sanofi of colluding on insulin price increases. ([www.nytimes.com/2017/01/30/health/drugmakers-lawsuit-insulin-drugs.html](http://www.nytimes.com/2017/01/30/health/drugmakers-lawsuit-insulin-drugs.html)) In November 2016, two members of Congress asked the Department of Justice and Federal Trade Commission to investigate insulin price increases.

---

<sup>27</sup> Incoming no action request posted at <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2017/mercyuaw121517-14a8-incoming.pdf>

[www.sanders.senate.gov/newsroom/press-releases/sanders-cummings-request-doj-and-ftc-investigate-cost-of-diabetes-products](http://www.sanders.senate.gov/newsroom/press-releases/sanders-cummings-request-doj-and-ftc-investigate-cost-of-diabetes-products)) More recently, Minnesota Senator Amy Klobuchar sent letters to Eli Lilly, Sanofi and Novo Nordisk regarding high insulin prices.

(<https://www.klobuchar.senate.gov/public/index.cfm/2017/7/klobuchar-targets-rising-insulin-prices>)

Eli Lilly's track record on pricing has dogged Alex Azar II, the former president of its U.S. division, who has been nominated to serve as Secretary of Health and Human Services.

(<http://www.businessinsider.com/trumps-hhs-nominee-alex-azar-history-with-drug-pricing-at-lilly-2017-11>; (<http://www.businessinsider.com/trumps-hhs-nominee-alex-azar-history-with-drug-pricing-at-lilly-2017-11>); [https://www.nytimes.com/2017/11/26/us/politics/alex-azar-senate-confirmation-hearing-hhs.html?\\_r=0](https://www.nytimes.com/2017/11/26/us/politics/alex-azar-senate-confirmation-hearing-hhs.html?_r=0))

Opposition to his confirmation has focused on insulin price hikes occurring on his watch at Eli Lilly. (<https://aflcio.org/about/advocacy/legislative-alerts/opposition-nomination-alex-azar-be-secretary-department-health>; <https://www.saynotoazar.org/about-alex-azar/>)

The New York Times<sup>28</sup> has covered this high visibility controversy involving the Company:

A lawsuit filed Monday accused three makers of insulin of conspiring to drive up the prices of their lifesaving drugs, harming patients who were being asked to pay for a growing share of their drug bills.

The price of insulin has skyrocketed in recent years, with the three manufacturers — Sanofi, Novo Nordisk and Eli Lilly — raising the list prices of their products in near lock step, prompting outcry from patient groups and doctors who have pointed out that the rising prices appear to have little to do with increased production costs.

The lawsuit, filed in federal court in Massachusetts, accuses the companies of exploiting the country's opaque drug-pricing system in a way that benefits themselves and the intermediaries known as pharmacy benefit managers. It cites several examples of patients with diabetes who, unable to afford their insulin treatments, which can cost up to \$900 a month, have resorted to injecting themselves with expired insulin or starving themselves to control their blood sugar. Some patients, the lawsuit said, intentionally allowed themselves to slip into diabetic ketoacidosis — a blood syndrome that can be fatal — to get insulin from hospital emergency rooms.

A recent study in The Journal of the American Medical Association found that the price of insulin nearly tripled from 2002 to 2013.

“People who have to pay out of pocket for insulin are paying enormous prices when they shouldn't be,” said Steve Berman, a lawyer whose firm filed the suit on behalf of patients and is seeking to have it certified as a class action.

In a statement, Sanofi said, “We strongly believe these allegations have no merit, and will defend against these claims.” Lilly said it had followed all laws, adding, “We adhere to the highest ethical standards.”

\* \* \*

The rising costs of drugs has led to several hearings in Congress and has drawn the attention of

---

<sup>28</sup> Katie Thomas, Drug Makers Accused of Fixing Prices on Insulin, New York Times, Jan. 30, 2017.

President Trump, who this month pledged to address the issue and said the industry was “getting away with murder.”

\* \* \*

Several companies have recently tried to head off criticism by taking actions to address rising prices. In December, Lilly said it would offer a 40 percent discount off the list price of its insulin product, Humalog, for patients who are forced to pay full price.

The reputational issues raised around issues of pharmaceutical pricing by the company are interwoven with the Company’s lobbying and trade association efforts on price.

While companies seemingly maintain an arm’s-length relationship to trade associations, there is significant reputational risk associated when the role of a pharmaceutical company like Eli Lilly becomes clear in efforts, for example, to prevent price controls or guarantee their products exclusive access to markets. As the *Economist* notes:

In a letter to a Philip Morris executive just after he took over, Mr. Donohue [of the US Chamber of Commerce] said that small firms “provide the foot soldiers, and often the political cover, for issues big companies want pursued,” because Congress listens more to them than to big business.

That is not the only cover the Chamber provides. Oil and drug companies, among others, use it as a proxy through which to pursue their less popular causes anonymously, avoiding the pillorying they might incur if they spoke up directly.

Mr. Donohue...once told the Washington Monthly: ... “I want to give [members] all the deniability they need.”

The black-box nature of the Chamber makes deniability easier. As a “501(c)(6)” non-profit, it has to list all donations over \$5,000 but not the names of the givers. Its latest tax filing, for 2010, includes dozens of pages of individual contributions, each with a blank in the “name” field. (Only a handful of companies have voluntarily published their contributions.) Donations of \$1m or more accounted for over half of total contributions, suggesting that large firms dominate its funding.<sup>29</sup>

Trade associations are not required to disclose membership or the source of funds used for lobbying, and the amounts are substantial. For example, the U.S. Chamber of Commerce (“Chamber”) spent \$312 million to lobby in 2014–2016, and over \$1.3 billion on lobbying since 1998.

Concerns have been raised regarding positions taken by trade organizations that contradict an individual company’s policy positions, espoused values and public profiles. For instance, companies may assert they are giving priority to solving climate change, while simultaneously supporting trade groups that oppose legislative or regulatory climate change solutions. Healthcare companies may find that by supporting the US Chamber of Commerce they are

---

<sup>29</sup> *The Chamber of Secrets: The biggest business lobby in the United States is more influential than ever*, THE ECONOMIST (21 April 2012), available at <http://www.economist.com/node/21553020>.

indirectly lobbying in defense of tobacco even though such positions undermine public health.

One nonprofit membership organization that is absent from the Company's Membership Organizations page,<sup>30</sup> and yet in which the Company is known to participate is the American Legislative Exchange Council. Because the Council is focused on state-level policy and is a 501(c)(3) rather than 501(c)(4), it would be outside the ambit of disclosures that the Company discloses on its "Membership Organizations" webpage. ALEC has taken extreme positions on renewable energy, blocking paid sick leave, preempting minimum wage increases and opposing EPA regulation such as the Clean Power Plan. More than 105 companies have left ALEC in recent years due to these extreme positions, including Eli Lilly peers AstraZeneca, Allergan, Amgen, Bristol-Myers Squibb, GlaxoSmithKline, Johnson & Johnson, Medtronic, Merck and Sanofi, as well as companies like CVS Health, Hewlett-Packard, Mars, Unilever and Yahoo (these latter companies have also recently left the US Chamber of Commerce).

The Company wrote to an investor, Walden Asset Management:

In the case of ALEC, our involvement is limited to the Health and Human Services Task Force, which works to promote free-market, pro-patient health care reforms at the state level. Access to health care is obviously very important to our business, and we believe that our active participation in the health care debate benefits both the patients we serve and our shareholders. We do not participate in other ALEC task forces, and thus have no involvement in ALEC initiatives on other topics, including those referenced in your letter.

Neglected in such an approach by the Company is the potential spillover effect for the Company's reputation as it becomes associated with ALEC. Yet, affiliation with the Council has landed the Company in continued high visibility and reputation damaging publicity. There has already been some damaging visibility of the Company's affiliation with ALEC.<sup>31</sup>

**E. Investor interest in comprehensive lobbying disclosure reports demonstrates a significant policy issue for the Company.**

The Company Letter, at page 6, asserts that investors are not interested in the company's lobbying activities or trade association memberships:

**Lack of Investor Interest in the Company's Lobbying Activities or Trade Association Memberships.** The Company posts extensive disclosure relating to its lobbying activities on its website, however, when asked by the Board's Public Policy and Compliance Committee, management stated that they had seen minimal shareholder interest in the requested information, suggesting that the issue is not one of broad concern to shareholders of the Company. The lack of

---

<sup>30</sup> From Ely Lilly website:  
[https://assets.contentful.com/0ey4l950rsqi/1pIlewxCeMaYIceqWSKucO/939b1ab115d69e5dc11523e05af54be7/Lilly\\_Corporate\\_Memberships\\_of\\_50000\\_or\\_More.pdf](https://assets.contentful.com/0ey4l950rsqi/1pIlewxCeMaYIceqWSKucO/939b1ab115d69e5dc11523e05af54be7/Lilly_Corporate_Memberships_of_50000_or_More.pdf)

<sup>31</sup> See for instance <https://petitions.moveon.org/sign/alec-is-in-indiana-this>  
[https://act.credoaction.com/call/alec\\_eli\\_lilly/](https://act.credoaction.com/call/alec_eli_lilly/) <https://www.prwatch.org/news/2017/11/13299/alec-corporate-members-lay-off-12000-workers-2017> [http://act.colorofchange.org/call/ALEC\\_Lilly/](http://act.colorofchange.org/call/ALEC_Lilly/)

importance to Company's shareholders is further demonstrated by the fact that the Company's shareholders have rejected (by a considerable margin) a substantially similar proposal at the Company's last annual meeting.

The ostensible lack of investor interest is a straightforward contrast with the degree to which there is widespread consensus on the need for these disclosures. Comprehensive disclosure of lobbying is significant to the Company's investors, as demonstrated by the 24.8% vote — a quarter of the company's shareholders — voting in support of the same proposal on last year's proxy statement. This support by investors is not "insignificant."<sup>32</sup>

Also adding further demonstration of significant interest are the market wide efforts of investors and organizations like International Corporate Governance Network to seek consistent comprehensive lobbying disclosure reports from company to company.

**Comprehensive lobbying disclosure reports are needed so that shareholders can assess whether the Company's lobbying is in the best interest of the Company and of its investors.**

The Proponent believes that lobbying disclosure, including details of contributions to trade associations, allows shareholders to evaluate whether lobbying is consistent with a company's expressed goals and is in the best interests of the Company and shareholders. An issue of concern to investors is the misalignment of corporate lobbying objectives with investor interests. For instance, the US Chamber of Commerce, supported by numerous large companies, has embarked on an initiative to undermine the rights of shareholders to file shareholder proposals. This exploitation of shareholder resources against investors' rights and interests highlights substantial concerns to investors.

In the context of political contributions, the Supreme Court decision in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010) noted the importance of transparency of corporate spending to shareholders:

Shareholder objections raised through the procedures of corporate democracy ... can be more effective today because modern technology makes disclosures rapid and informative.

\* \* \*

With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are " 'in the pocket' of so-called moneyed interests." ... The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way.

This functionality is dependent on whether shareholders have access to transparent disclosures. The purpose of the current Proposal is to ensure that such transparency exists.

---

<sup>32</sup> The fraction would come to closer to a third of voting investors if one discounted insider votes that reflexively vote with management. By comparison, the SEC rules already provide "significant support" criteria. Under Rule 14a-8(i)(8) the threshold of significant support is demonstrated by the thresholds for resubmitting the proposal – 3% on a first-year vote, 6% on a second-year vote and 10% on a third year vote.

**F. Multiple gaps in the Company's disclosure are relevant and significant to the Company.**

The Company currently provides piecemeal disclosure of lobbying addressing some but not all of the information requested in the Proposal. The approach taken by the Company would force shareholders to engage in extensive research to assemble, analyze, and coordinate information which is already in Eli Lilly's possession. In the Company Letter, page 6, the Company claims that the only gap in disclosure as against the Proposal is the amounts given to trade associations:

As described above, the Company has in place extensive disclosure practices and measures to promote transparency in and oversight of its lobbying and political activity. The only ""gap"" to be addressed by the Proposal relates to the amounts given to trade associations that engage in lobbying.

However, there is not just one gap but several between Eli Lilly's current disclosures on this subject and the Proposal's request for comprehensive lobbying disclosure.

A very significant gap relates to disclosure of state lobbying expenditures. Some states do not require public disclosure of lobbying expenditures; relying on existing public filings to disclose lobbying on the state level leaves shareholders substantially uninformed about the full range of the Company's lobbying expenditures and activities.

The Company's disclosures of memberships in trade associations does not include amounts contributed, and apparently does not include disclosure of organizations directed toward state rather than federal lobbying initiatives. In addition, the Company lacks disclosure of its participation in organizations that draft model legislation as requested in the Proposal.

Notably the Company has not attempted to assert that the Proposal is substantially implemented. That is because it could not make such a claim. The Staff has concluded in numerous prior decisions that identical requests for comprehensive lobbying disclosure are not substantially implemented where other companies have taken actions essentially identical to the Company's own actions. For instance, in *Dominion Resources, Inc.* (February 28, 2014) the current Proponent rebutted similar arguments from the company Dominion Resources. The company claimed that the proposal was substantially implemented yet:

1. Anyone seeking to ascertain Dominion's state lobbying would have to undertake a search of state websites to determine the states in which the company conducts lobbying, and whether those states have disclosure requirements and websites. The same is true with Eli Lilly — the Company does not provide simple disclosure of its lobbying expenditures at the state level, but instead offers links to state websites where the information is scattered and inconsistent and often difficult to find.
2. As with the Proposal at issue here, the Dominion proposal asked that company to list all payments made for indirect lobbying (i.e., lobbying engaged in by a trade association). Dominion provided a "subset" of such information — disclosing such payments only if: a payment exceeds \$50,000 annually, and other conditions similar to the Eli Lilly's limited

disclosure of trade association payments.

3. As with the Proposal at issue here, the Dominion proposal asked for membership and contributions to tax-exempt groups that write model legislation, and Dominion did not disclose all tax-exempt groups that write model legislation including the American Legislative Exchange Council (ALEC). The same is true of Eli Lilly.

Since the Company could not, under SEC Staff precedents, assert substantial implementation, the Company and its Board have instead attempted to bypass implementing the Proposal by asserting that the lack of comprehensive lobbying disclosure as practiced by the company does not omit significant or relevant information. Yet the weight of the evidence demonstrates otherwise. This includes:

- evidence of the importance of lobbying to the pharmaceutical sector in matters of price controls and market access,
- statements regarding risk and public policy in the Company's own 10-K,
- the Company's recent and longer term history
- interest of investors in the disclosures.

All demonstrate that the request of the Proposal is highly relevant and significant to the Company.

## CONCLUSION

**The Proposal is “otherwise significantly related” to the Company’s business and therefore is “Relevant” and not excludable pursuant to Rule 14a-8(i)(5).**

Applying the standards for “otherwise significantly related” to the data and evidence on significance and relevance provided above, it is clear that the Proposal addresses issues which are “otherwise significantly related” to the Company.

First, as noted above, comprehensive lobbying disclosure is a **substantive governance matter** and therefore by definition is relevant and “otherwise significantly related” for purposes of Rule 14a-8(i)(5). Staff Legal Bulletin 14I made it clear that governance issues are inherently significant to a company: “On the other hand, we would generally view substantive governance matters to be significantly related to almost all companies.” There is ample evidence that lobbying disclosure is a corporate governance issue such that the determination of relevance need not be determined on a case by case basis by the Staff. Because it is a governance issue, it is economically relevant and “otherwise significantly related” for all companies.

If Staff’s analysis goes further to evaluate how comprehensive lobbying disclosure is “otherwise significantly related” to the Company, the relationship of lobbying at state and federal level to the success and failure of major segments of the Company provides the most straightforward and objective basis for finding relevance. Human Pharmaceuticals represent the Company’s largest division. Comprehensive lobbying disclosure is directly related to the success or failure both of

that division and its individual segments.<sup>33</sup>

The Eli Lilly and Company Form 10-K for the Year Ended December 31, 2016, enumerates the Company divisions:

Human Pharmaceutical Products	\$18,004MM
Endocrinology	\$8,083MM
Oncology	\$3,722MM
Cardiovascular	\$3,225MM
Neuroscience	\$2,270MM
Other Human	\$ 314MM
Animal Health Products — Elanco	\$3,181MM

The profitability of those human pharmaceutical products is subject to significant risk arising from price controls at the federal and state levels. The Company's lobbying expenditures are part and parcel of managing the risk of such price controls. Furthermore, developments in many other regulatory matters can also determine the success or failure of the Company and its segments. Therefore, the Proposal is "otherwise significantly related to the company" because the lobbying expenditures are directly connected to the success or failure of segments of the Company that are economically significant and material by any possible metric.

Moreover, the Proposal implicates significant reputational risk. As the National Association of Corporate Directors has noted:

"Corporate reputation is qualitative, difficult to measure, and absolutely critical to a company's long-term health."

One director asked, "Can you put [a good] reputation in the bank to draw on when a crisis occurs?" Attendees at the roundtables largely agreed that reputation can, in a sense, be accumulated as a form of capital. In the words of one participant: "Your pre-crisis reputation sets your level of resiliency." While not a silver bullet, a strong reputation established before a crisis can mitigate some of its potential damaging effects. In addition, it has become increasingly evident that no organization is immune. Many well-established brands have had to endure the often unflattering spotlight during a crisis. By

---

<sup>33</sup> Staff Legal Bulletin 14I notes: Where a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is "otherwise significantly related to the company's business." For example, the proponent can provide information demonstrating that the proposal "**may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities.**" The proponent could continue to raise social or ethical issues in its arguments, but it would need to tie those to a significant effect on the company's business. The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the "total mix" of information about the issuer. [emphasis added]

proactively building confidence in the company, attendees noted, a firm may be more likely to preserve key stakeholder relationships both during and after a crisis. Conversely stakeholders may be less inclined to support a company with a poor reputation when it matters.

Director Dialogue: Board Oversight of Reputation Risk  
December 2014 – National Assoc. of Corporate Directors<sup>34</sup>

As these quotes demonstrate, reputation is a corporate asset that is difficult to quantify, but which can often provide resiliency when a crisis arises. We respectfully disagree with the Board as to whether reputational risks are relevant or significant. The erosion of corporate reputation through non-transparency is an issue that also makes lobbying disclosure relevant for purposes of Rule 14a-8(i)(5), regardless of whether the dollar amount is quantifiable.

A particular concern for shareholders, and part of the focus of the Proposal, has been the participation of the Company in multi-issue organizations like the National Association of Manufacturers, US Chamber of Commerce and American Legislative Exchange Council. These organizations may advance some issues of concern to the Company, but also take positions and engage in advocacy that is incongruent with the Company's values and positions.

**The Proposal is “significant” to the Company and therefore is not excludable pursuant to Rule 14a-8(i)(7).**

As with the issue of relevance, the evidence clearly demonstrates that lobbying expenditures and the disclosure thereof are of great significance to the Company. First, as noted, the disclosure of such information is a governance issue and as the SLB stated regarding *relevance*, “substantive governance matters” are significantly related to almost all companies. Staff Legal Bulletin 14I.

Moreover, comprehensive disclosure of lobbying relates to product pricing, exclusivity of access to markets, as well as the reputation of the Company. The issue of drug pricing, one of the major lobbying issues for the Company, has been specifically recognized by the Staff as a significant policy issue. In the 2015 proxy season, proposals asked Gilead, Vertex and Celgene to report on the risks created by rising pressure to contain U.S. specialty drug prices. All three sought an ordinary business exclusion, arguing that the proposals concerned the prices charged for their products, which was not a significant social policy issue, and would micromanage the companies by asking for information on a complex matter that shareholders would not be in a position to understand. (*Gilead Sciences, Inc.* (Feb. 23, 2015); *Celgene Corporation* (Mar. 19, 2015); *Vertex Pharmaceuticals Inc.* (Feb. 25, 2015)) In each of those cases, the proponent successfully argued that high prices of specialty drugs are a significant social policy issue. The letters documented at length the significance of this issue as a social policy issue. We urge the Staff to apply the same recognition to the significant policy issue raised here.

Finally, it should be noted that the Proposal does not micromanage. The level of detail sought by the Proposal is consistent with proposals filed with a broad spectrum of companies, and a level of detail already being implemented by dozens of companies. It is also consistent with numerous

---

<sup>34</sup> <https://www.nacdonline.org/Resources/Article.cfm?ItemNumber=12913>

Staff decisions that have consistently found that this request for a comprehensive lobbying report does not micromanage and is not excludable under Rule 14a-8(i)(7). See, for instance *FirstEnergy Corp.* (February 19, 2015), *International Business Machines* (January 24, 2011).

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2018 proxy statement pursuant to Rule 14a-8(i)(5) or Rule 14a-8(i)(7). As such, we respectfully request that the Staff inform the company that it is denying the no action letter request. If you have any questions, please contact me at 413-549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,  
  
Sanford Lewis

Cc:  
Maureen Madden  
Patrick Doherty  
Keir Gumbs

## Appendix A

California voters turn down drug pricing initiative  
Deena Beasley, Reuters NOVEMBER 9, 2016

LOS ANGELES (Reuters) - California voters turned down a ballot initiative aimed at reining in rising prices for prescription drugs after pharmaceutical companies spent more than \$100 million to fight it.

File Photo - Pills line the shelves in the pharmacy at Venice Family Clinic in Los Angeles April 16, 2007. REUTERS/Lucy Nicholson

The California Drug Price Relief Act, also known as Proposition 61, sought to limit state health programs from paying more for medications than the U.S. Department of Veterans Affairs (VA), which receives the steepest discounts in the country.

As of Wednesday morning, with more than 99 percent of precincts partially reporting from Tuesday's election, the vote was 46 percent in favor of the measure and 54 percent opposed, according to California's Secretary of State.

"The pharmaceutical companies spent a lot to defeat this," said Stuart Schweitzer, professor of health policy and management at the University of California, Los Angeles Fielding School of Public Health. "They wanted to draw a line in the sand."

The measure's defeat "reaffirms the power of the biopharma lobby," Jefferies analyst Brian Abrahams said in a note to investors on Wednesday.

The rising cost of prescription drugs came under attack during the U.S. presidential campaign. Both President-elect Donald Trump and Democratic candidate Hillary Clinton called for cost-trimming measures including allowing Medicare, the federal health plan for seniors, to negotiate prices with drugmakers.

Shares in pharmaceutical and biotechnology shares, under pressure in recent weeks, soared on Wednesday as market fears of a win by Clinton and Democrats gaining power in Congress receded. The Nasdaq Biotechnology index .NBI advanced 7 percent and was on track for its biggest single-day gain in about five years.

Proposition 61's opponents, led by global drugmakers such as Pfizer Inc and Amgen Inc, spent around \$106 million. They argued that it would benefit only 12 percent of Californians, while putting the other 88 percent, and veterans across the country, at risk of higher drug costs.

Supporters, led by the AIDS Healthcare Foundation and AARP, which advocates for seniors, said only drug companies themselves can raise prices for veterans or other consumers. Vermont Independent Senator Bernie Sanders also campaigned in support of Proposition 61, calling on voters to "stand up to the greed of the pharmaceutical industry."

Proponents, who raised \$17 million to support the initiative, estimated it could save California taxpayers up to \$5.7 billion over 10 years, although a state legislative analysis said the financial impact is not clear.

UCLA's Schweitzer said the measure would have had only a modest impact on state drug costs.

There were also questions about how Proposition 61 would be implemented. The VA's mandated prices are listed publicly, but its steepest negotiated price discounts are required by law to be confidential.

The VA spends some \$6.1 billion a year on medicines for 6 million veterans. Proposition 61 would have extended those discounts to around 4.5 million Californians, including certain members of the state's low-income Medicaid plan, state employees and retirees, university teachers and prisoners.

A similar proposition has been approved for Ohio's 2017 November ballot.



**Eli Lilly and Company**

Lilly Corporate Center  
Indianapolis, Indiana 46285  
U.S.A.  
+1.317.276.2000  
[www.lilly.com](http://www.lilly.com)

December 21, 2017

*VIA E-MAIL:* [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: Shareholder Proposal of the New York Common Retirement Fund

Dear Ladies and Gentlemen:

This letter and the enclosed materials are submitted by Eli Lilly and Company (the "Company") to notify the Securities and Exchange Commission (the "Commission") that the Company intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (the "2018 Proxy Materials") a shareholder proposal and supporting statement (the "Proposal") submitted by the Comptroller of the State of New York, as trustee of the New York State Common Retirement Fund (the "Proponent"). We also request confirmation that the staff of the Division of Corporation Finance (the "Staff") will not recommend enforcement action to the Commission if the Company omits the Proposal from the 2018 Proxy Materials for the reasons discussed below.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are emailing this letter to the Staff at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended, we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company's intent to omit the proposal from the 2018 Proxy Materials. Likewise, we take this opportunity to inform the Proponent that if the Proponent elects to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company.

### **THE PROPOSAL**

The Proposal (attached hereto as Exhibit A) provides in pertinent part:

RESOLVED, that shareholders of Eli Lilly and Company ("Lilly") request the preparation of a report, updated annually, disclosing:

1. Lilly's policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications,
2. Payments by Lilly used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the receipt.
3. Lilly's membership in and payments to any tax-exempt organization that writes and endorses model legislation.
4. Description of the decision making process and oversight by management and the Board for making payments described in sections 2 and 3 above.

For purposes of this proposal, a "grassroots lobbying communication" is a communication directed to the general public that (a) refers to specific legislation or regulation, (b) reflects a view on the legislation or regulation and (c) encourages the recipient of the communication to take action with respect to the legislative or regulation. "Indirect lobbying" is lobbying engaged in by a trade association or other organization of which Lilly is a member.

Both "direct and indirect lobbying" and "grassroots lobbying communications" include efforts at the local, state and federal levels.

The report shall be presented to the Audit Committee or other relevant oversight committees and posted on Lilly's website.

### **BASES FOR EXCLUSION**

The Company hereby respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(5) and Rule 14a-8(i)(7).

### **ANALYSIS**

**I. The Proposal May Be Omitted Under Rule 14a-8(i)(5) Because The Proposal Is Not Relevant To The Company's Operations.**

**A. Rule 14a-8(i)(5) Background.**

Rule 14a-8(i)(5) allows a company to exclude a proposal from its proxy materials if the proposal relates to operations that account for less than 5 percent of the company's total assets, net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business. The Commission adopted the predecessor to Rule 14a-8(i)(5) in 1952 to allow companies to exclude shareholder proposals "designed primarily to promote general economic, political, racial, religious, social or similar causes." Rule X-14A-8(c)(1), as proposed and adopted, provided that management could exclude a

proposal if "it clearly appears that the proposal is submitted by the security holder ... primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes." In 1972, the Commission replaced the language referring to general economic and other classes with the language "not significantly related to the business of the issuer or not within its control," and in 1976, the Commission revised the rule further into its current formulation. In adopting the amendments in 1976, the Commission made clear in its intention that the rule would be articulated in the current formulation of the rule.

Prior to Staff Legal Bulletin No. 14I (November 1, 2017) ("SLB 14I"), where a shareholder proposal addressed an issue of broad social or ethical significance, the Staff generally did not grant no-action relief pursuant to Rule 14a-8(i)(5) even where a shareholder proposal was arguably not significantly related to a company's business. In SLB 14I, the Staff stated that its "application of Rule 14a-8(i)(5) has unduly limited the exclusion's availability because it has not fully considered the second prong of the rule as amended in 1982 - the question of whether the proposal 'deals with a matter that is not significantly related to the issuer's business' and is therefore excludable." The Staff further stated that going forward its "analysis will focus, as the rule directs, on a proposal's significance to the company's business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales."

*B. The Proposal Relates To Operations That Account For Less Than 5 Percent Of The Company's Total Assets, Net Earnings And Gross Sales.*

To exclude a shareholder proposal pursuant to Rule 14a-8(i)(5), a company must first demonstrate that the proposal relates to operations that account for less than 5 percent of the company's total assets, net earnings and gross sales for its most recent fiscal year. The Proposal notes that the Company spent \$64 million from 2010 to 2016 on federal lobbying. This amount equates to an average of approximately \$9.14 million per year over that timeframe. The Company had total assets of approximately \$38.81 billion as of December 31, 2016. For the year ended December 31, 2016, the Company had net revenues of approximately \$21.2 billion and net income of \$2.74 billion. The Company's reported federal lobbying expenditures accounted for less than one percent of 2016 total assets, net income and net revenues.

*C. The Proposal Is Not Otherwise Significantly Related to the Company's Business.*

In SLB 14I, the Staff stated that "proposals that raise issues of social or ethical significance may be included or excluded, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal's relevance to the company's business." The Staff further noted that "where a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is 'otherwise significantly related to the company's business', and that a proponent could continue to raise social or ethical issues in its arguments, but it would need to tie those to a significant effect on the company's business.

## **Board Process**

In contemplation of this no-action request, the Company's Board of Directors, through its the Public Policy and Compliance Committee, evaluated whether the Proposal was significantly related to the Company's business such that it had a significant effect on the business, as contemplated by Rule 14a-8(i)(5). To facilitate this evaluation, management of the Company solicited information from various functions at the Company, including its government affairs and its legal department regarding the Company's lobbying activities, trade association memberships, and associated considerations. On December 11, 2017, management presented the Proposal to the Board's Public Policy and Compliance Committee for consideration as to whether the Proposal was significantly related to the Company's business such that it had a significant effect on the business. After this presentation, the Public Policy and Compliance Committee engaged in a discussion with management regarding information presented, which included consideration of the factors behind management's recommendations relating to this Proposal. At the end of this discussion, the Public Policy and Compliance Committee concluded that neither the Proposal nor the public policy considerations raised by the Proposal are significantly related to the Company's business and expressed support for management's recommendation to submit this letter to the Commission on this basis.

## **Board Analysis**

As noted above, the Board of Directors, through the Public Policy and Compliance Committee, concluded that neither the Proposal nor the public policy considerations raised by the Proposal was significantly related to the Company's business such that the Proposal should be included in the Company's 2018 Proxy Statement. In reaching this conclusion, the Board, through its Public Policy and Compliance Committee, in addition to drawing on its own experience and expertise and knowledge of the Company and its business, consulted with senior management and legal counsel. The following discussion includes the material reasons and factors why the Board's Public Policy and Compliance Committee believes this proposal does not meet the required standards.

- **Stated Purpose of the Proposal.** The Proposal seeks a report disclosing (a) Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications; (b) payments by the Company used for (i) direct or indirect lobbying or (ii) grassroots lobbying communications, in each case including the amount of the payment and the recipient; (c) the Company's membership in and payments to any tax-exempt organization that writes and endorses model legislation; and (d) a description of management's and the Board's decision making process and oversight for making payments described above.

- **Underlying Goal of the Proposal.** The Company already provides most of the disclosures sought by the Proposal, with the exception of the details regarding payments to tax-exempt organizations. For example:
  - The Company's Public Policy Activities Statement, which can be found on its website, provides meaningful public disclosure about its lobbying policies and procedures and the Board's oversight of such activities.
  - Detailed corporate contributions, PAC contribution data, and the company's direct lobbying expenses are available to the public on the Federal Election Committee website and through individual state agencies.
  - In the Company's "Lilly Report of Political Financial Support" the Company discloses its memberships in trade associations that report lobbying activity to the U.S. government and to which the Company contributes \$50,000 per year or more. Organizations where the Company has a board seat are also noted.
  - The Company posts on its website a list, updated annually, of all corporate political contributions made by the Company as well as contributions made by its Political Action Committees.
  - All Company political contributions are subject to review by a Company PAC Board and political activity and memberships are reviewed annually by the Board.
  - The Company's government affairs staff receives training on any changes to lobbying rules to ensure ongoing compliance with federal and state requirements.
  
- Due to the fact that the Company already provides these disclosures, we believe that the real focus of the Proposal is the Company's membership in and payments to trade associations, particularly American Legislative Exchange Council, the U.S. Chamber of Commerce and the Pharmaceutical Research and Manufacturers of America. This is supported by statements in the Supporting Statement for the Proposal, which focus on trade association activity:
  - "This figure does not include lobbying expenditures to influence legislation in states, where Lilly also lobbies in 48 states ("Amid Federal Gridlock, Lobbying Rises in the States," Center for Public Integrity, February 11, 2016), but disclosure is uneven or absent."
  - "Lilly is a member of the Pharmaceutical Research and Manufacturers of America (PhRMA), which spent over \$100 million fighting a California drug pricing initiative ("Big Pharma Fights 'Tooth and Nail' against California Drug Vote," *Bloomberg*, October 25, 2016), and belongs to the

Chamber of Commerce, which has spent over \$1.3 billion on lobbying since 1998. Lilly does not disclose its payments to trade associations, or the amounts used for lobbying.”

- “We are concerned that Lilly’s lack of trade association lobbying disclosure presents significant reputational risk. For example, Lilly believes in providing affordable medicines, yet helps fund PhRMA’s opposition to lower drug price initiatives, and Lilly supports smoking cessation, yet the Chamber works to block global smoking laws.”
- “And Lilly does not disclose its contributions to tax-exempt organizations that write and endorse model legislation, such as its membership in the American Legislative Exchange Council (ALEC). Lilly’s ALEC membership has drawn media scrutiny...”
- **The Company’s Trade Association and Lobbying Expenditures Have Been Insignificant.** The Company has not made any payments to any trade associations in the last ten years that come anywhere near 5% of the Company’s earnings, assets and net sales. The Company’s lobbying efforts have not historically been material.
- **The Disclosure “Gap” Sought to be Addressed by the Proposal is Not Significant to the Company’s Business.** As described above, the Company has in place extensive disclosure practices and measures to promote transparency in and oversight of its lobbying and political activity. The only “gap” to be addressed by the Proposal relates to the amounts given to trade associations that engage in lobbying. These amounts and relationships are not significant to the Company’s operations.
- **Lack of Investor Interest in the Company’s Lobbying Activities or Trade Association Memberships.** The Company posts extensive disclosure relating to its lobbying activities on its website, however, when asked by the Board’s Public Policy and Compliance Committee, management stated that they had seen minimal shareholder interest in the requested information, suggesting that the issue is not one of broad concern to shareholders of the Company. The lack of importance to Company’s shareholders is further demonstrated by the fact that the Company’s shareholders have rejected (by a considerable margin) a substantially similar proposal at the Company’s last annual meeting.

The foregoing discussion of the information and factors considered by the Board, through its Public Policy and Compliance Committee, is not intended to be exhaustive, but includes the material factors considered by the Public Policy and Compliance Committee. The Board, through its Public Policy and Compliance Committee, did not undertake to make any specific determination as to whether any factor, or any particular aspect of any factor, supported or did not support its ultimate determination. The Board, through its Public Policy and Compliance Committee, based its recommendation on the total mix of the information

presented by management and information previously presented to the Board regarding these issues.

Based on the foregoing, in accordance with the framework set forth in SLB 14I, we believe that the Proposal's significance to the Company's business is not apparent on its face. The Proponent alludes to general social and ethical issues but does not tie these to any significant effect on the Company's business. In addition, while the Proponent states that "[w]e are concerned that Lilly's lack of trade association lobbying disclosures presents significant reputational risk," the Staff makes it clear in SLB 14I that "the mere possibility of reputational or economic harm will not preclude no-action relief." Accordingly, for the reasons set forth above, the Company believes the Proposal is excludable under Rule 14a-8(i)(5) for lack of economic relevance to the Company's business and is otherwise not significantly related to the Company's business.

**II. The Proposal May Be Omitted Under Rule 14a-8(i)(7) Because It Deals with a Matter Relating to the Company's Ordinary Business Operations.**

**A. Rule 14a-8(i)(7) Background.**

The Company respectfully requests that the Staff concur in its view that the Proposal may be excluded from the Company's 2018 Proxy Materials pursuant to Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations. The Staff has explained that the general policy underlying Rule 14a-8(i)(7) 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."<sup>1</sup> The first central consideration upon which that policy rests 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."<sup>2</sup> A proposal may be excludable on this basis, unless the proposal raises policy issues that are sufficiently significant to transcend day-to-day business matters. The second central consideration underlying the exclusion for matters related to the Company's ordinary business operations 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."<sup>3</sup> Where, as here, a proposal requests that the Company prepare a report on or create a committee to review a particular issue, "the staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7)."<sup>4</sup>

<sup>1</sup> See SEC Release No. 34-40018 (May 21, 1998)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> SEC Release No. 34-20091 (Aug. 16, 1983)

The Staff has historically taken the position that a shareholder proposal that raises significant social policy issues may not be excluded under Rule 14a-8(i)(7) if the policy issue has a significant nexus to the company's business.<sup>5</sup> As demonstrated by the historical distinction the Staff has drawn between retailer and manufacturers of products that raise significant policy issues, a social policy issue that is significant to one company's business, may not have a sufficient nexus to another Company's business for purposes of Rule 14a-8(i)(7).<sup>6</sup> The Staff noted in SLB 14I that the applicability of the significant policy exception to Rule 14a-8(i)(7) "depends, in part, on the connection between the significant policy issue and the company's business operations." The Staff noted further that whether a policy issue is of sufficient significance to a particular company to warrant exclusion of a proposal that touches upon that issue may involve a "difficult judgment call" which the company's board of directors "is generally in a better position to determine," at least in the first instance. A well-informed board, the Staff said, exercising its fiduciary duty to oversee management and the strategic direction of the company, "is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote." Accordingly, the analysis of a company's board of directors will be used to help the Staff decide whether a significant social policy issue has a sufficient "nexus" to the company's business.

*B. Decisions Regarding Disclosure in the Company's Filings Made with the Commission are Ordinary Business Matters.*

**Board Process**

In contemplation of this no-action request, the Board, through its Public Policy and Compliance Committee, evaluated whether the policy issues raised by the proposal have a sufficient nexus to the Company's business for purposes of the Rule 14a-8(i)(7) analysis. To facilitate this evaluation, management of the Company solicited information from various functions at the Company, including its government affairs and its legal department regarding the Company's lobbying activities, trade association memberships, and associated considerations. On December 11, 2017, management presented the Proposal to the Board's Public Policy and Compliance Committee for consideration as to whether the Proposal was significantly related to the Company's business such that it had a significant effect on the business. After this presentation, the Public Policy and Compliance Committee engaged in a discussion with management regarding information presented, which included consideration of the factors behind management's recommendations relating to this Proposal. At the end of this discussion, the Public Policy and Compliance Committee concluded that neither the Proposal nor the public policy considerations raised by the

---

<sup>5</sup> See Staff Legal Bulletin No. 14E (Oct. 27, 2009).

<sup>6</sup> See e.g., Kimberly-Clark Corp., (Feb. 22, 1990) ("In the Division's view, the proposal, which would call on the Board to take actions leading to the eventual cessation of the manufacture of tobacco products, goes beyond the realm of the Company's ordinary business"); compare Wal-Mart Stores, Inc., (Mar. 12, 1996) (granting relief under Rule 14a-8(c)(7) with respect to a proposal that the company refrain from selling tobacco products)

Proposals are significantly related to the Company's business and expressed support for management's recommendation to submit this letter to the Commission on this basis.

### **Board Analysis**

As noted above, Board, through its the Public Policy and Compliance Committee, concluded that the policy issues that the Proposal raises do not have a sufficient nexus to the Company's business. In reaching this conclusion, the Public Policy and Compliance Committee, in addition to drawing on its own experience and expertise and knowledge of the Company and its business, consulted with senior management and legal counsel.

The following discussion includes the material reasons and factors considered by the Committee in making its recommendation.

- All of the factors supporting a conclusion that the Proposal is not significantly related to the Company's business for purposes of the economic relevance exclusion in Rule 14a-8(i)(5) also support a conclusion that, while the Company could experience reputational harm from lobbying activities by trade associations, there has not been any significant reputational harm related to the Company's lobbying activities or its membership in trade associations in the past. Accordingly, the Board believes there is an insufficient nexus to the Company's business for purposes of the ordinary business exclusion in Rule 14a-8(i)(7).
- **The Company's Trade Association and Lobbying Expenditures Have Been Insignificant.** The Company has not made any payments to any trade associations in the last ten years that come anywhere near 5% of the Company's earnings, assets and net sales. The Company's lobbying efforts have not historically been material.
- **The Company's Membership in Trade Associations and Lobbying Activities Have Not Raised Been the Subject of Widespread Public Debate or other Adverse Attention.** The Proposal has not demonstrated that it addresses a significant issue with a nexus to the Company. In addition, it has not tied any general significant social or ethical issues addressed by the proposal to the Company's business as required under the framework set out in SLB 14I. The Staff noted in SLB 14I that the "mere possibility" of reputational or economic harm will not preclude no-action relief. Here, there has not been any significant reputational or economic harm related to the Company's lobbying activities or its membership in trade associations. For example, the Company has not experienced significant boycotts, labor stoppages, consumer defections, or other significant adverse impacts from its lobbying activities or trade association memberships.
- **The Disclosure "Gap" Sought to be Addressed by the Proposal is Not Significant to the Company's Business.** As described above, the Company has

in place extensive disclosure practices and measures to promote transparency in and oversight of its lobbying and political activity. The only "gap" to be addressed by the Proposal relates to the amounts given to trade associations that engage in lobbying. These amounts and relationships are not significant to the Company's operations.

- **Lack of Investor Interest in the Company's Lobbying Activities or Trade Association Memberships.** The Company posts extensive disclosure relating to its lobbying activities on its website, however, when asked by the Board's Public Policy and Compliance Committee, management stated that they had seen minimal shareholder interest in the requested information, suggesting that the issue is not one of broad concern to shareholders of the Company. The lack of importance to Company's shareholders is further demonstrated by the fact that the Company's shareholders have rejected (by a considerable margin) a substantially similar proposal at the Company's last annual meeting.

Based on the foregoing, in accordance with the framework set forth in SLB 14I, we do not believe that the policy issues that the Proposal raises have a sufficient nexus to the Company's business to prevent exclusion of the Proposal under Rule 14a-8(i)(7) as a matter relating to the Company's ordinary business operations.

#### CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2018 Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should you require any additional information in support of our position, we would welcome the opportunity to discuss these matters with you as you prepare your response.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to Keir Gumbs at [kgumbs@cov.com](mailto:kgumbs@cov.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (317) 433-2588 or Keir at (202) 662-5500.

Sincerely,



Tiffany R. Benjamin  
Assistant Corporate Secretary  
Eli Lilly and Company  
Lilly Corporate Center  
Indianapolis, IN 46285

Enclosures

cc: Comptroller of the State of New York

Exhibit A  
Proposal

See attached.

THOMAS P. DINAPOLI  
STATE COMPTROLLER



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

DIVISION OF CORPORATE GOVERNANCE  
59 Maiden Lane-30th Floor  
New York, NY 10038  
Tel: (212) 383-1428  
Fax: (212) 383-1331

October 25, 2017

Mr. Bronwen Mantlo  
Corporate Secretary  
Eli Lilly and Company  
Lilly Corporate Center  
Indianapolis, Indiana 46285

Dear Mr. Mantlo:

The Comptroller of the State of New York, Thomas P. DiNapoli, is the trustee of the New York State Common Retirement Fund (the "Fund") and the administrative head of the New York State and Local Retirement System. The Comptroller has authorized me to inform of his intention to offer the enclosed shareholder proposal for consideration of stockholders at the next annual meeting.

I submit the enclosed proposal to you in accordance with rule 14a-8 of the Securities Exchange Act of 1934 and ask that it be included in your proxy statement.

A letter from J.P. Morgan Chase, the Fund's custodial bank verifying the Fund's ownership of Eli Lilly and Company, shares, continually for over one year, is enclosed. The Fund intends to continue to hold at least \$2,000 worth of these securities through the date of the annual meeting.

We would be happy to discuss this initiative with you. Should Eli Lilly decide to endorse its provisions as company policy, the Comptroller will ask that the proposal be withdrawn from consideration at the annual meeting. Please feel free to contact me at (212) 383-1428 and or email at [pdoherty@osc.state.ny.us](mailto:pdoherty@osc.state.ny.us) should you have any further questions on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Patrick Doherty', written over a white background.

Patrick Doherty  
Director of Corporate Governance

Whereas, we believe in full disclosure of Eli Lilly and Company's ("Lilly") direct and indirect lobbying activities and expenditures to assess whether Lilly's lobbying is consistent with its expressed goals and in the best interests of shareholders,

Resolved, the shareholders of Lilly request the preparation of a report, updated annually, disclosing:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.
2. Payments by Lilly used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.
3. Lilly's membership in and payments to any tax-exempt organization that writes and endorses model legislation.
4. Description of the decision making process and oversight by management and the Board for making payments described in section 2 and 3 above.

For purposes of this proposal, a "grassroots lobbying communication" is a communication directed to the general public that (a) refers to specific legislation or regulation, (b) reflects a view on the legislation or regulation and (c) encourages the recipient of the communication to take action with respect to the legislation or regulation. "Indirect lobbying" is lobbying engaged in by a trade association or other organization of which Lilly is a member.

Both "direct and indirect lobbying" and "grassroots lobbying communications" include efforts at the local, state and federal levels.

The report shall be presented to the Audit Committee or other relevant oversight committees and posted on Lilly's website.

### Supporting Statement

We encourage transparency in the use of corporate funds to influence legislation and regulation, both directly and indirectly. Since 2010, Lilly has spent over \$64 million on federal lobbying (opensecrets.org). This figure does not include lobbying expenditures to influence legislation in states, where Lilly also lobbies in 48 states ("Amid Federal Gridlock, Lobbying Rises in the States," *Center for Public Integrity*, February 11, 2016), but disclosure is uneven or absent.

Lilly is a member of the Pharmaceutical Research and Manufacturers of America (PhRMA), which spent over \$100 million fighting a California drug pricing initiative ("Big Pharma Fights 'Tooth and Nail' against California Drug Vote," *Bloomberg*, October 25, 2016), and belongs to the Chamber of Commerce, which has spent over \$1.3 billion on lobbying since 1998. Lilly does not disclose its payments to trade associations, or the amounts used for lobbying. We are concerned that Lilly's lack of trade association lobbying disclosure presents reputational risks. For example, Lilly believes in providing affordable medicines, yet helps fund PhRMA's opposition to lower drug price initiatives, and Lilly supports smoking cessation, yet the Chamber works to block global smoking laws.

And Lilly does not disclose its contributions to tax-exempt organizations that write and endorse model legislation, such as its membership in the American Legislative Exchange Council (ALEC). Lilly's ALEC membership has drawn media scrutiny ("Kendall: Businesses Should Cut Ties with Union-busting Lobbyists," *Indianapolis Star*, July 27, 2016). Over 100 companies have publicly left ALEC, including Allergan, Amgen, AstraZeneca, GlaxoSmithKline, Medtronic and Merck.