



DIVISION OF  
CORPORATION FINANCE

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

February 22, 2019

Crystal T. Williams  
Eli Lilly and Company  
williams\_crystal\_tamera@lilly.com

Re: Eli Lilly and Company  
Incoming letter dated December 21, 2018

Dear Ms. Williams:

This letter is in response to your correspondence dated December 21, 2018 concerning the shareholder proposal (the "Proposal") submitted to Eli Lilly and Company (the "Company") by John Chevedden (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated December 27, 2018, February 3, 2019 and February 5, 2019. 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,

M. Hughes Bates  
Special Counsel

Enclosure

cc: John Chevedden  
\*\*\*

February 22, 2019

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

Re: Eli Lilly and Company  
Incoming letter dated December 21, 2018

The Proposal requests that the Company take all the steps necessary to reorganize the board into one class with each director subject to election each year.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(10). In this regard, we note your representation that the Company will provide shareholders at its 2019 annual meeting with an opportunity to approve an amendment to the Company's articles of incorporation to provide for the annual election of directors. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Jacqueline Kaufman  
Attorney-Adviser

**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.

February 5, 2019

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

**# 3 Rule 14a-8 Proposal**  
**Eli Lilly and Company (LLY)**  
**Elect Each Director Annually**  
**Taking Up Space in the 2019 Proxy**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the December 21, 2018 no-action request.

The company did not present any evidence or opinion that the “essential objective” of the rule 14a-8 governance proposal was to take up space in the 2019 proxy. However taking up space is all the company proposes to do in 2019.

Based on the failed track record of the company in 2018 and 2011 the company is merely proposing to take up space in its 2019 proxy in regard to the topic of this proposal. It is foreseeable that a rerun of the company’s 2018 and 2011 approach will fail.

The company failed to distinguish its 2019 approach from its 2018 and 2011 ballot failures. The company has thus failed to address the underlying concerns of this proposal.

The company has other options. The company says nothing about a special solicitation, hiring a proxy solicitor or adjourning the annual meeting to obtain the votes needed. The company has the power to take these actions. The company does not even express a sentiment that it will try harder in 2019 to obtain the necessary vote.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

  
John Chevedden

cc: Crystal T. Williams <williams\_crystal\_tamera@lilly.com>

February 3, 2019

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

**# 2 Rule 14a-8 Proposal**  
**Eli Lilly and Company (LLY)**  
**Elect Each Director Annually**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the December 21, 2018 no-action request.

The company failed to address this sentence of the Resolved statement:  
“It is important that our company take each step necessary to adopt this proposal topic completely.”

This is critical because the company has a track record of being a 2-time looser in obtaining 80%-votes on this type of proposal in 2011 and 2018.

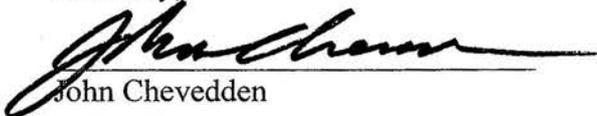
Thus the company must take steps beyond the failed steps the company took in 2011 and 2018.

The company also said “the Proposal’s essential objective is to remove the classified board structure.”

The company has thus failed to satisfy “the Proposal’s essential objective” through its limited 2019 steps that are simply a rerun of its failed 2011 and 2018 steps.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

  
John Chevedden

cc: Crystal T. Williams <williams\_crystal\_tamera@lilly.com>

December 27, 2018

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

**# 1 Rule 14a-8 Proposal**  
**Eli Lilly and Company (LLY)**  
**Elect Each Director Annually**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the December 21, 2018 no-action request.

The company failed to address this sentence of the Resolved statement:

“It is important that our company take each step necessary to adopt this proposal topic completely.”

This is critical because the company has a track record of being a 2-time loser in obtaining 80%-votes on this type of proposal according to the 2011 and 2018 attachments.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

  
John Chevedden

cc: Crystal T. Williams <williams\_crystal\_tamera@lilly.com>

e) By the following vote, the shareholders did not approve the proposal (which required the vote of 80 percent of outstanding shares) to amend the company's articles of incorporation to provide for annual election of directors:

For: 848,841,946  
Against: 145,932,392  
Abstain: 4,546,768

f) By the following vote, the shareholders did not approve the proposal (which required the vote of 80 percent of outstanding shares) to amend the company's articles of incorporation to eliminate all supermajority voting requirements:

For: 840,513,773  
Against: 151,928,189  
Abstain: 6,879,144

g) By the following vote, the shareholders approved the Eli Lilly and Company Executive Officer Incentive Plan:

For: 803,999,103  
Against: 70,125,135  
Abstain: 7,437,145  
Broker Nonvote: 117,759,723

As of the record date of the meeting, 1,157,664,779 shares of common stock were issued and outstanding.

#### **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**ELI LILLY AND COMPANY**  
(Registrant)

By: /s/ James B. Lootens  
Name: James B. Lootens  
Title: Corporate Secretary

Dated: April 19, 2011

2011

The proposal to amend the Articles of Incorporation to eliminate supermajority voting provisions did not receive the required vote of 80% of outstanding shares. The shareholders voted as follows:

e)

<b>For:</b>	679,682,534
<b>Against:</b>	133,344,580
<b>Abstain:</b>	2,132,160
<b>Broker Nonvote:</b>	112,161,406

f) By the following vote, the shareholders approved the Amended and Restated 2002 Lilly Stock Plan:

<b>For:</b>	780,122,923
<b>Against:</b>	33,048,675
<b>Abstain:</b>	1,987,676
<b>Broker Nonvote:</b>	112,161,406

g) By the following vote, a shareholder proposal seeking support for the descheduling of cannabis was not approved:

<b>For:</b>	12,756,730
<b>Against:</b>	793,887,229
<b>Abstain:</b>	8,515,315
<b>Broker Nonvote:</b>	112,161,406

h) By the following vote, a shareholder proposal requesting a report regarding direct and indirect political contributions was not approved:

<b>For:</b>	161,245,782
<b>Against:</b>	639,334,659
<b>Abstain:</b>	14,578,833
<b>Broker Nonvote:</b>	112,161,406

i) By the following vote, a shareholder proposal requesting a report on policies and practices regarding contract animal laboratories was not approved:

<b>For:</b>	25,959,167
<b>Against:</b>	780,403,894
<b>Abstain:</b>	8,796,213
<b>Broker Nonvote:</b>	112,161,406

2018

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[LLY: Rule 14a-8 Proposal, November 15, 2018 | Revised December 11, 2018]

[This line and any line above it – *Not* for publication.]

**Proposal [4] – Elect Each Director Annually**

RESOLVED, shareholders ask that our Company take all the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year. Although our company can adopt this proposal topic in one-year and the proponent is in favor of a one-year implementation, this proposal allows the option to phase it in over 3-years. It is critical to this proposal that our Company take all the steps necessary to reorganize the Board of Directors into one class.

The Board of Directors, with a fiduciary duty to shareholders, may find it necessary to adjourn the annual meeting to solicit the votes necessary for approval of this topic if the votes for approval are lacking during the annual meeting. To facilitate this – adjourn appears 18-times in the Eli Lilly governing documents.

However the Eli Lilly Board of Directors would not allow us to vote on adjourning the annual meeting, as part of this proposal, to solicit the votes necessary for approval of annual election of each director. The Chairperson of the Eli Lilly governance committee is Ms. Ellen Marram who received 20-times as many negative votes as each of the other Eli Lilly directors in 2018.

Arthur Levitt, former Chairman of the Securities and Exchange Commission said, “In my view it’s best for the investor if the entire board is elected once a year. Without annual election of each director shareholders have far less control over who represents them.”

A total of 79 S&P 500 and Fortune 500 companies, worth more than \$1 Trillion dollars, also adopted this important proposal topic since 2012. Annual elections are widely viewed as a corporate governance best practice. Annual election of each director could make directors more accountable, and thereby contribute to improved performance and increased company value.

It is an easy decision for shareholders to vote in favor of this proposal. Eli Lilly shareholders gave 84%-support to a proposal similar to this in 2012.

Meanwhile there are challenges facing our company that can best be managed and prevented from reoccurring by directors who need to justify their election each year:

Insulin: Proposed Class Action Suits over high prices; Criticism over alleged non-adherence to the drug price transparency law.

October 2018

Insulin: Multiple States launch investigation over anti-competitive practices.

October 2018

Jardiance: FDA warning on Diabetes Medication SGLT2 Inhibitors over alleged cause of serious infection; one death and 11 injuries.

September 2018

Labor authorities penalize Eli Lilly for alleged labor safety violations, Brazil.

February 2018

Actos: Lawsuits over alleged failure to warn the public regarding serious side effects.

February 2018

Byetta: Lawsuits alleging serious side effects.

February 2018

Prozac: Lawsuits over alleged failure to issue warning about serious birth defects linked to drug use.

February 2018

Please vote yes:

**Elect Each Director Annually – Proposal [4]**

[The above line – *Is* for publication.]



Eli Lilly and Company

Lilly Corporate Center  
Indianapolis, Indiana 46285  
U.S.A.  
+1.317.276.2000  
www.lilly.com

December 21, 2018

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 John Chevedden

Dear Ladies and Gentlemen:

This letter is 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 2019 Annual Meeting of Shareholders (the “*2019 Proxy Materials*”) a shareholder proposal and supporting statement (the “*Proposal*”) submitted by John Chevedden (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 2019 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 2019 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 PROPOSALS

The Proposal sets forth the following resolution to be voted on by shareholders at the 2019 Annual Meeting of Shareholders (the “*2019 Annual Meeting*”):

RESOLVED: shareholders ask that our Company take all the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year. Although our company can adopt this proposal topic in one-year and the proponent is in favor of a one-year implementation, this proposal allows the option to phase it in over 3-years. It is critical to this proposal that our Company take all the steps necessary to reorganize the Board of Directors into one class.

DC: 6928698-2

A copy of the Proposal, as well as related correspondence with the Proponent, is attached hereto as Exhibit A.

## **BASIS FOR EXCLUSION**

The Company hereby respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(10), which provides that a shareholder proposal may be omitted from a company's proxy materials if "the company has already substantially implemented the proposal." As described in greater detail below, the Company's Board of Directors (the "*Board*") approved amendments to the Company's Amended Articles of Incorporation (the "*Articles of Incorporation*") to eliminate the classified structure of the Board, directed that such amendments be submitted to shareholders for adoption at the Company's 2019 Annual Meeting and recommended that shareholders vote to adopt such amendments. As a result, the Company has substantially implemented the Proposal and believes the Proposal is excludable under Rule 14a-8(i)(10).

## **ANALYSIS**

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has "substantially implemented" the proposal. The Staff has stated that the purpose of the predecessor provision to Rule 14a-8(i)(10) was "to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management." *Exchange Act Release No. 12598* (July 7, 1976). Importantly, Rule 14a-8(i)(10) does not require a company to implement every detail of a proposal in order for the proposal to be excluded. The Staff has maintained this interpretation of Rule 14a-8(i)(10) since 1983, when the Commission reversed its prior position of permitting exclusion of a proposal only where a company's implementation efforts had "fully" effectuated the proposal. *Exchange Act Release No. 20091* (Aug. 16, 1983) and *Exchange Act Release No. 40018*, at n. 30 (May 21, 1998).

Based on this revised approach, the Staff has consistently taken the position that a proposal has been "substantially implemented" and may be excluded as moot when a company can demonstrate that it has already taken actions to address the essential elements of the proposal, and a company's policies, practices and procedures compare favorably with the guidelines of the proposal. *See, e.g., Eli Lilly and Co.* (Jan. 8, 2018), *Korn/Ferry International* (July 6, 2017) and *NETGEAR, Inc.* (Mar. 31, 2015) (in each case, permitting exclusion of a shareholder proposal under Rule 14a-8(i)(10) where (1) the proposals sought to eliminate supermajority voting provisions from the company's certificate of incorporation and bylaws and (2) the company planned to provide shareholders at the next annual meeting an opportunity to approve amendments to the company's certificate of incorporation to replace the supermajority voting provisions with a majority of outstanding shares voting standard). Applying this standard, the Staff has stated that "a determination that the Company has substantially implemented the proposal depends upon whether [the Company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company subscribe to the

Valdez Principles where the company had already adopted policies, practices and procedures with respect to the environment that compared favorably to the Valdez Principles).

Here, the Proposal calls for the Board to take all the steps necessary to reorganize the Board into one class with each director subject to election each year. On December 17, 2018, the Board approved, and unanimously recommended that the Company's shareholders approve, amendments to the Articles of Incorporation (the "*Charter Amendments*") to declassify the Board. If approved by shareholders at the 2019 Annual Meeting, the Charter Amendments would eliminate the classification of the Board over a three-year period beginning at the 2020 Annual Meeting of Shareholders. Directors would be elected to one-year terms following the expiration of the director's existing terms, resulting in all directors being elected annually beginning at the 2022 Annual Meeting of Shareholders. In accordance with the Articles of Incorporation, approving the Charter Amendments will require the affirmative vote of 80% of the outstanding shares of the Company's common stock. If approved, the Charter Amendments would become effective upon filing Amended and Restated Articles of Incorporation with the Secretary of State of Indiana, which the Company would do promptly after shareholder approval of the Charter Amendments is obtained. The text of the Charter Amendments, in which deletions are indicated by strikethroughs and additions are indicated by underlining, are attached hereto as Exhibit B. If shareholders approve the Charter Amendments, the Board has approved certain conforming changes to the Company's Bylaws (the "*Bylaws*"), which are attached hereto as Exhibit C, that would become effective upon the effectiveness of the Amended and Restated Articles of Incorporation.

The text of the Proposal makes clear that the Proposal's essential objective is to remove the classified board structure contained in the Articles of Incorporation and Bylaws. Applying the principles described above, the Staff consistently has concurred that board action directing the submission of a board declassification charter amendment for shareholder approval substantially implements a declassification shareholder proposal, and has permitted exclusion of such shareholder proposals under Rule 14a-8(i)(10). For instance, in *Costco Wholesale Corp.* (Nov. 16, 2018), the company, which had a classified board of directors divided into three classes with each class of directors elected for three-year terms, received a shareholder proposal substantially similar to this Proposal, requesting that the company "take the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year." The company's board of directors approved amendments to its amended and restated articles of incorporation and its amended and restated bylaws to declassify its board of directors over a three-year period beginning at the company's 2020 annual meeting of shareholders, but the amendments would only become effective upon shareholder approval of the proposed amendments to the company's amended and restated articles of incorporation at the company's 2019 annual meeting of shareholders. The company argued, and the Staff concurred, that no-action relief was appropriate under Rule 14a-8(i)(10) based on the actions taken by its board of directors and the forthcoming submission of the matter for the requisite approval by the company's shareholders. *See also PPG Industries, Inc.* (Jan. 23, 2018); *AbbVie Inc.* (Dec. 22, 2016); *iRobot Corp.* (Feb. 9, 2018); *Ryder System, Inc.* (Feb. 11, 2015); *St. Jude Medical, Inc.* (Feb. 3, 2015); *LaSalle Hotel Properties* (Feb. 27, 2014); *The Dun & Bradstreet Corporation* (Feb. 4, 2011); *Baxter International Inc.* (Feb. 3, 2011); *Allergan, Inc.* (Jan. 18, 2011);

*AmerisourceBergen Corporation (Nov. 15, 2010); Textron Inc. (Jan. 21, 2010); Del Monte Foods Company (June 3, 2009); and Visteon Corporation (Feb. 15, 2007).*

The Company believes that the facts in the present instance are analogous to the letters cited above and the Board's actions taken on December 17, 2018 substantially implement the Proposal. Specifically, the Board approved the Charter Amendments that would eliminate the classified structure of the Board contained in the Articles of Incorporation, directed that the Charter Amendments be submitted to shareholders for approval at the 2019 Annual Meeting and recommended that shareholders vote to adopt the Charter Amendments. If the Charter Amendments are approved by shareholders, certain conforming changes to the Bylaws would be effective upon the effectiveness of the Amended and Restated Articles of Incorporation. With these actions, the Board has taken the necessary steps to eliminate all provisions in the Company's governing documents that reference a classified board structure. Accordingly, the Company believes that it has satisfied the essential objective of the Proposal. As a result, the Company believes that the Proposal has been substantially implemented and is therefore subject to exclusion under Rule 14a-8(i)(10).

### CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2019 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. Any such correspondence regarding this letter should be sent to Kerry Burke at [kburke@cov.com](mailto:kburke@cov.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (317) 277-9011 or Kerry at (202) 662-5297.

Sincerely,



Crystal T. Williams

Assistant General Counsel and Assistant Corporate Secretary  
Eli Lilly and Company  
Lilly Corporate Center  
Indianapolis, IN 46285

cc: John Chevedden

Exhibit A

Proposal and Related Correspondence

John Chevedden

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Ms. Bronwen L. Mantlo  
Corporate Secretary  
Eli Lilly and Company (LLY)  
Lilly Corporate Center  
Indianapolis, IN 46285  
PH: 317-276-2000  
PH: 317-433-5455  
FX: 317-276-3492  
FX: 317-277-1680

Dear Ms. Mantlo,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

This proposal is for the annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal by email to \*\*\*

Sincerely,

  
John Chevedden

November 15, 2018  
Date

cc: Crystal T. Williams <williams\_crystal\_tamera@lilly.com>  
Assistant Corporate Secretary

[LLY: Rule 14a-8 Proposal, November 15, 2018]  
[This line and any line above it – *Not* for publication.]

**Proposal [4] – Elect Each Director Annually**

RESOLVED, shareholders ask that our Company take all the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year. Although our company can adopt this proposal topic in one-year and the proponent is in favor of a one-year implementation, this proposal allows the option to phase it in over 3-years. It is critical to this proposal that our Company take all the steps necessary to reorganize the Board of Directors into one class. This proposal includes taking the steps necessary to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the annual meeting.

Adjourn is mentioned 18-times in our bylaws. Arthur Levitt, former Chairman of the Securities and Exchange Commission said, “In my view it’s best for the investor if the entire board is elected once a year. Without annual election of each director shareholders have far less control over who represents them.”

A total of 79 S&P 500 and Fortune 500 companies, worth more than \$1 Trillion dollars, also adopted this important proposal topic since 2012. Annual elections are widely viewed as a corporate governance best practice. Annual election of each director could make directors more accountable, and thereby contribute to improved performance and increased company value.

It is an easy decision for shareholders to vote in favor of this proposal. Eli Lilly shareholders gave 84%-support to a proposal similar to this in 2012.

Meanwhile there are challenges facing our company that can best be managed and prevented from reoccurring by directors who need to justify their election each year:

Insulin: Proposed Class Action Suits over high prices; Criticism over alleged non-adherence to the drug price transparency law.

October 2018

Insulin: Multiple States launch investigation over anti-competitive practices.

October 2018

Jardiance: FDA warning on Diabetes Medication SGLT2 Inhibitors over alleged cause of serious infection; one death and 11 injuries.

September 2018

Brazil: Labor authorities penalize Eli Lilly for alleged labor safety violations.

February 2018

Actos: Lawsuits over alleged failure to warn the public regarding serious side effects.

February 2018

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Byetta: Lawsuits alleging serious side effects.

February 2018

Prozac: Lawsuits over alleged failure to issue warning about serious birth defects linked to drug use.

February 2018

Please vote yes:

**Elect Each Director Annually – Proposal [4]**

[The above line – *Is* for publication.]

Notes:

John Chevedden,

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sponsored this proposal.

Proposal [4] – Means [4] is the placeholder for the company to assign the number in the proxy.

Please note that the title of the proposal is part of the proposal. In the interest of clarity and to avoid confusion the title of this and each other ballot item is requested to be consistent throughout all the proxy materials.

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

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

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

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

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

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

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**Eli Lilly and Company**

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

November 28, 2018

**BY FEDERAL EXPRESS AND ELECTRONIC MAIL**

John Chevedden

\*\*\*

**Re: Notification of Deficiency under Rule 14a-8**

Dear Mr. Chevedden:

On November 15, 2018, we received via e-mail, a letter from you, dated November 15, 2018, requesting that Eli Lilly and Company (the "Company") include your shareholder proposal (the "Proposal") in the Company's proxy materials for its 2019 annual meeting of stockholders (the "Annual Meeting").

We have reviewed the Proposal and bring to your attention the following deficiency in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 (the "Exchange Act"):

- Your letter dated November 15, 2018 contains more than one proposal in that it proposes: 1) that the company amend its articles of incorporation to eliminate the classified board structure; and 2) that the company adjourn the annual meeting if the necessary votes to approve the first proposal are lacking during the meeting.

Rule 14a-8(c) of the Exchange Act states: "Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting." Your submission of two proposals is in violation of Rule 14a-8(c). You can cure this procedural defect by selecting one of the two proposals for inclusion in the Company's proxy materials for the Annual Meeting. We have included a copy of Rule 14a-8 for your convenience.

Rule 14a-8(f) of the Exchange Act requires you to correct the deficiency noted above in order to have the Proposal included in the Company's proxy materials for the Annual Meeting. The

John Chevedden

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Page 2

response to this letter must be postmarked or transmitted electronically no later than fourteen (14) calendar days from the date you receive this letter. Please send any correspondence to Crystal T. Williams, Assistant General Counsel and Assistant Corporate Secretary at [williams\\_crystal\\_tamera@lilly.com](mailto:williams_crystal_tamera@lilly.com).

The Company may exclude the Proposal if you do not meet the procedural requirements set forth in the enclosed rules. However, if you adequately correct the deficiency within the required time frame, the Company will then address the substance of your Proposal. Even if you remedy the defect noted above in a timely manner, the Company reserves the right to raise any substantive objections it has to your Proposal at a later date.

Sincerely,

A handwritten signature in black ink, appearing to read 'Crystal T. Williams', written in a cursive style.

Crystal T. Williams  
Assistant General Counsel and Assistant  
Corporate Secretary

CW:

John Chevedden

\*\*\*

Ms. Bronwen L. Mantlo  
Corporate Secretary  
Eli Lilly and Company (LLY)  
Lilly Corporate Center  
Indianapolis, IN 46285  
PH: 317-276-2000  
PH: 317-433-5455  
FX: 317-276-3492  
FX: 317-277-1680

REVISED 11 DEC 2018

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Dear Ms. Mantlo,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

This proposal is for the annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal by email to \*\*\*

Sincerely,

  
John Chevedden

November 15, 2018  
Date

cc: Crystal T. Williams <williams\_crystal\_tamera@lilly.com>  
Assistant Corporate Secretary

[LLY: Rule 14a-8 Proposal, November 15, 2018 | Revised December 11, 2018]

[This line and any line above it – *Not* for publication.]

**Proposal [4] – Elect Each Director Annually**

RESOLVED, shareholders ask that our Company take all the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year. Although our company can adopt this proposal topic in one-year and the proponent is in favor of a one-year implementation, this proposal allows the option to phase it in over 3-years. It is critical to this proposal that our Company take all the steps necessary to reorganize the Board of Directors into one class.

The Board of Directors, with a fiduciary duty to shareholders, may find it necessary to adjourn the annual meeting to solicit the votes necessary for approval of this topic if the votes for approval are lacking during the annual meeting. To facilitate this – adjourn appears 18-times in the Eli Lilly governing documents.

However the Eli Lilly Board of Directors would not allow us to vote on adjourning the annual meeting, as part of this proposal, to solicit the votes necessary for approval of annual election of each director. The Chairperson of the Eli Lilly governance committee is Ms. Ellen Marram who received 20-times as many negative votes as each of the other Eli Lilly directors in 2018.

Arthur Levitt, former Chairman of the Securities and Exchange Commission said, “In my view it’s best for the investor if the entire board is elected once a year. Without annual election of each director shareholders have far less control over who represents them.”

A total of 79 S&P 500 and Fortune 500 companies, worth more than \$1 Trillion dollars, also adopted this important proposal topic since 2012. Annual elections are widely viewed as a corporate governance best practice. Annual election of each director could make directors more accountable, and thereby contribute to improved performance and increased company value.

It is an easy decision for shareholders to vote in favor of this proposal. Eli Lilly shareholders gave 84%-support to a proposal similar to this in 2012.

Meanwhile there are challenges facing our company that can best be managed and prevented from reoccurring by directors who need to justify their election each year:

Insulin: Proposed Class Action Suits over high prices; Criticism over alleged non-adherence to the drug price transparency law.

October 2018

Insulin: Multiple States launch investigation over anti-competitive practices.

October 2018

Jardiance: FDA warning on Diabetes Medication SGLT2 Inhibitors over alleged cause of serious infection; one death and 11 injuries.  
September 2018

Labor authorities penalize Eli Lilly for alleged labor safety violations, Brazil.  
February 2018

Actos: Lawsuits over alleged failure to warn the public regarding serious side effects.  
February 2018

Byetta: Lawsuits alleging serious side effects.  
February 2018

Prozac: Lawsuits over alleged failure to issue warning about serious birth defects linked to drug use.  
February 2018

Please vote yes:

**Elect Each Director Annually – Proposal [4]**

[The above line – *Is* for publication.]

Notes:

John Chevedden,

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sponsored this proposal.

Proposal [4] – Means [4] is the placeholder for the company to assign the number in the proxy.

Please note that the title of the proposal is part of the proposal. In the interest of clarity and to avoid confusion the title of this and each other ballot item is requested to be consistent throughout all the proxy materials.

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

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

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

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

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

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

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Exhibit B

Proposed Amendments to the Amended Articles of Incorporation

(As amended and restated through ~~April 21, 2008~~May 6, 2019)

**ELI LILLY AND COMPANY**  
**(an Indiana corporation)**

**AMENDED ARTICLES OF INCORPORATION**

1. The name of the Corporation shall be  
  
ELI LILLY AND COMPANY.
2. The purposes for which the Corporation is formed are to engage in any lawful act or activity for which a corporation may be organized under the Indiana Business Corporation Law.
3. The period during which the Corporation is to continue as a corporation is perpetual.
4. The total number of shares which the Corporation shall have authority to issue is 3,205,000,000 shares, consisting of 3,200,000,000 shares of Common Stock and 5,000,000 shares of Preferred Stock. The Corporation's shares do not have any par or stated value, except that, solely for the purpose of any statute or regulation imposing any tax or fee based upon the capitalization of the Corporation, each of the Corporation's shares shall be deemed to have a par value of \$0.01 per share.
5. The following provisions shall apply to the Corporation's shares:
  - (a) The Corporation shall have the power to acquire (by purchase, redemption, or otherwise), hold, own, pledge, sell, transfer, assign, reissue, cancel, or otherwise dispose of the shares of the Corporation in the manner and to the extent now or hereafter permitted by the laws of the State of Indiana (but such power shall not imply an obligation on the part of the owner or holder of any share to sell or otherwise transfer such share to the Corporation), including the power to purchase, redeem, or otherwise acquire the Corporation's own shares, directly or indirectly, and without pro rata treatment of the owners or holders of any class or series of shares, unless, after giving effect thereto, the Corporation would not be able to pay its debts as they become due in the usual course of business or the Corporation's total assets would be less than its total liabilities (and without regard to any amounts that would be needed, if the Corporation were to be dissolved at the time of the purchase, redemption, or other acquisition, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those of the holders of the shares of the Corporation being purchased, redeemed, or otherwise acquired, unless otherwise expressly provided with respect to a series of Preferred Stock). Shares of the Corporation purchased, redeemed, or otherwise

acquired by it shall constitute authorized but unissued shares, unless prior to any such purchase, redemption, or other acquisition, or within thirty (30) days thereafter, the Board of Directors adopts a resolution providing that such shares constitute authorized and issued but not outstanding shares.

(b) Preferred Stock of any series that has been redeemed (whether through the operation of a retirement or sinking fund or otherwise) or purchased by the Corporation, or which, if convertible, have been converted into shares of the Corporation of any other class or series, may be reissued as a part of such series or of any other series of Preferred Stock, subject to such limitations (if any) as may be fixed by the Board of Directors with respect to such series of Preferred Stock in accordance with the provisions of Article 7 of these Amended Articles of Incorporation.

(c) The Board of Directors of the Corporation may dispose of, issue, and sell shares in accordance with, and in such amounts as may be permitted by, the laws of the State of Indiana and the provisions of these Amended Articles of Incorporation and for such consideration, at such price or prices, at such time or times and upon such terms and conditions (including the privilege of selectively repurchasing the same) as the Board of Directors of the Corporation shall determine, without the authorization or approval by any shareholders of the Corporation. Shares may be disposed of, issued, and sold to such persons, firms, or corporations as the Board of Directors may determine, without any preemptive or other right on the part of the owners or holders of other shares of the Corporation of any class or kind to acquire such shares by reason of their ownership of such other shares.

6. The following provisions shall apply to the Common Stock:

(a) Except as otherwise provided by the Indiana Business Corporation Law and subject to such shareholder disclosure and recognition procedures (which may include voting prohibition sanctions) as the Corporation may by action of its Board of Directors establish, shares of Common Stock shall have unlimited voting rights and each outstanding share of Common Stock shall, when validly issued by the Corporation, entitle the record holder thereof to one vote at all shareholders' meetings on all matters submitted to a vote of the shareholders of the Corporation.

(b) Shares of Common Stock shall be equal in every respect insofar as their relationship to the Corporation is concerned, but such equality of rights shall not imply equality of treatment as to redemption or other acquisition of shares by the Corporation. Subject to the rights of the holders of any outstanding series of Preferred Stock, the holders of Common Stock shall be entitled to share ratably in such dividends or other distributions (other than purchases, redemptions, or other acquisitions of shares by the Corporation), if any, as are declared and paid from time to time on the Common Stock at the discretion of the Board of Directors.

(c) In the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, after payment shall have been made to the

holders of any outstanding series of Preferred Stock of the full amount to which they shall be entitled, the holders of Common Stock shall be entitled, to the exclusion of the holders of the Preferred Stock of any and all series, to share, ratably according to the number of shares of Common Stock held by them, in all remaining assets of the Corporation available for distribution to its shareholders.

7. The Board of Directors is hereby expressly authorized to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock. Before any shares of any such series are issued, the Board of Directors shall fix, and hereby is expressly empowered to fix, by the adoption and filing in accordance with the Indiana Business Corporation Law, of an amendment or amendments to these Amended Articles of Incorporation, the terms of such Preferred Stock or series of Preferred Stock, including the following:

(a) the designation of such series, the number of shares to constitute such series and the stated value thereof if different from the par value thereof;

(b) whether the shares of such series shall have voting rights, in addition to any voting rights provided by law, and, if so, the terms of such voting rights, which may be general or limited and may include the right, under specified circumstances, to elect additional directors;

(c) the dividends, if any, payable on such series, whether any such dividends shall be cumulative, and, if so, from what dates, the conditions and dates upon which such dividends shall be payable, the preference or relation which such dividends shall bear to the dividends payable on any shares of stock of any other class or any other series of Preferred Stock;

(d) whether the shares of such series shall be subject to redemption by the Corporation and, if so, the times, prices and other conditions of such redemption;

(e) the amount or amounts payable upon shares of such series upon, and the rights of the holders of such series in, the voluntary or involuntary liquidation, dissolution or winding up, or upon any distribution of the assets, of the Corporation;

(f) whether the shares of such series shall be subject to the operation of a retirement or sinking fund and, if so, the extent to and manner in which any such retirement or sinking fund shall be applied to the purchase or redemption of the shares of such series for retirement or other corporate purposes and the terms and provisions relative to the operation thereof;

(g) whether the shares of such series shall be convertible into, or exchangeable for, shares of stock of any other class or any other series of Preferred Stock or any other securities (whether or not issued by the Corporation) and, if so, the price or prices or the rate or rates of conversion or exchange and the method, if any, of adjusting the same, and any other terms and conditions of conversion or exchange;

(h) the limitations and restrictions, if any, to be effective while any shares of such series are outstanding upon the payment of dividends or the making of other distributions on, and upon the purchase, redemption or other acquisition by the Corporation of, the Common Stock or shares of stock of any other class or any other series of Preferred Stock;

(i) the conditions or restrictions, if any, upon the creation of indebtedness of the Corporation or upon the issue of any additional stock, including additional shares of such series or of any other series of Preferred Stock or of any other class of stock; and

(j) any other powers, preferences and relative, participating, optional and other special rights, and any qualifications, limitations and restrictions thereof.

Except to the extent otherwise expressly provided in these Amended Articles of Incorporation or required by law (i) no share of Preferred Stock shall have any voting rights other than those which shall be fixed by the Board of Directors pursuant to this Article 7 and (ii) no share of Common Stock shall have any voting rights with respect to any amendment to the terms of any series of Preferred Stock; *provided however*, that in the case of this clause (ii) the terms of such series of Preferred Stock, as so amended, could have been established without any vote of any shares of Common Stock.

8. The Corporation shall have the power to declare and pay dividends or other distributions upon the issued and outstanding shares of the Corporation, subject to the limitation that a dividend or other distribution may not be made if, after giving it effect, the Corporation would not be able to pay its debts as they become due in the usual course of business or the Corporation's total assets would be less than its total liabilities (and without regard to any amounts that would be needed, if the Corporation were to be dissolved at the time of the dividend or other distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those of the holders of shares receiving the dividend or other distribution, unless otherwise expressly provided with respect to any outstanding series of Preferred Stock). The Corporation shall have the power to issue shares of one class or series as a share dividend or other distribution in respect of that class or series or one or more other classes or series.

9. The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation, and it is expressly provided that the same are intended to be in furtherance and not in limitation or exclusion of the powers conferred by statute:

(a) The number of directors of the Corporation, exclusive of directors who may be elected by the holders of any one or more series of Preferred Stock pursuant to Article 7(b) (the "Preferred Stock Directors"), shall not be less than nine, the exact number to be fixed from time to time solely by resolution of the Board of Directors, acting by not less than a majority of the directors then in office.

(b) Prior to the 2020 annual meeting of directors, the Board of Directors

(exclusive of Preferred Stock Directors) shall be divided into three classes, with the term of office of one class expiring each year. ~~At the annual meeting of shareholders in 1985, five directors of the first class shall be elected to hold office for a term expiring at the 1986 annual meeting, five directors of the second class shall be elected to hold office for a term expiring at the 1987 annual meeting, and six directors of the third class shall be elected to hold office for a term expiring at the 1988 annual meeting.~~ Commencing with the annual meeting of shareholders in ~~1986~~2020, each class of directors whose term shall then expire shall be elected to hold office for a ~~three~~one-year term: expiring at the next annual meeting of shareholders. In the case of any vacancy on the Board ~~of Directors, including a vacancy created by an increase in the number~~ of Directors, the vacancy shall be filled by election of the Board of Directors with the director so elected to serve for the remainder of the term of the director being replaced or, in the case of an additional director, ~~for the remainder of the term of the class to which the director has been assigned until the next annual meeting of shareholders.~~ All directors shall continue in office until the election and qualification of their respective successors in office. ~~When the number of directors is changed, any newly created directorships or any decrease in directorships shall be so assigned among the classes by a majority of the directors then in office, though less than a quorum, as to make all classes as nearly equal in number as possible.~~ No decrease in the number of directors shall have the effect of shortening the term of any incumbent director. Election of directors need not be by written ballot unless the By-laws so provide.

(c) Any director or directors (exclusive of Preferred Stock Directors) may be removed from office at any time, but only for cause and only by the affirmative vote of at least 80% a majority of ~~the~~ votes entitled to be cast by the holders ~~of all the outstanding shares~~ of Voting Stock (as defined in Article 13 hereof), voting together as a single class.

~~(d) Notwithstanding any other provision of these Amended Articles of Incorporation or of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class of Voting Stock required by law or these Amended Articles of Incorporation, the affirmative vote of at least 80% of the votes entitled to be cast by holders of all the outstanding shares of Voting Stock, voting together as a single class, shall be required to alter, amend or repeal this Article 9.~~

10. The Board of Directors of the Corporation is exclusively authorized (a) to adopt, repeal, alter or amend the By-laws of the Corporation by the vote of a majority of the entire Board of Directors and (b) to adopt any By-laws which the Board of Directors may deem necessary or desirable for the efficient conduct of the affairs of the Corporation, including, without limitation, provisions governing the conduct of, and the matters which may properly be brought before, meetings of the shareholders and provisions specifying the manner and extent to which prior notice shall be given of the submission of proposals to be submitted at any meeting of shareholders or of nominations of elections of directors to be held at any such meeting.

11. The Corporation shall, to the fullest extent permitted by applicable law now or hereafter in effect, indemnify any person who is or was a director, officer or employee of the

Corporation (an "Eligible Person") and who is or was involved in any manner (including, without limitation, as a party or a witness) or is threatened to be made so involved in any threatened, pending or completed investigation, claim, action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, any action, suit or proceeding by or in the right of the Corporation to procure a judgment in its favor) (a "Proceeding") by reason of the fact that such person is or was a director, officer or employee of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise (including, without limitation, any employee benefit plan), against all expenses (including attorneys' fees), judgments, fines or penalties (including excise taxes assessed with respect to an employee benefit plan) and amounts paid in settlement actually and reasonably incurred by such Eligible Person in connection with such Proceeding; provided, however, that the foregoing shall not apply to a Proceeding commenced by an Eligible Person except to the extent provided otherwise in the Corporation's By-laws or an agreement with an Eligible Person. The Corporation may establish provisions supplemental to or in furtherance of the provisions of this Article 11, including, but not limited to, provisions concerning the determination of any Eligible Person to indemnification, mandatory or permissive advancement of expenses to an Eligible Person incurred in connection with a Proceeding, the effect of any change in control of the Corporation on indemnification and advancement of expenses and the funding or other payment of amounts necessary to effect indemnification and advancement of expenses, in the By-laws of the Corporation or in agreements with any Eligible Person.

12. Except as otherwise expressly provided for in these Amended Articles of Incorporation, the Corporation reserves the right to amend, alter or repeal any provision contained in these Amended Articles of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon shareholders herein are subject to this reservation.

13. In addition to all other requirements imposed by law and these Amended Articles ~~and except as otherwise expressly provided in paragraph (c) of this Article 13~~, none of the actions or transactions listed in paragraph (a) below shall be effected by the Corporation, or approved by the Corporation as a shareholder of any majority-owned subsidiary of the Corporation if, as of the record date for the determination of the shareholders entitled to vote thereon, any Related Person (as hereinafter defined) exists, unless the applicable requirements of paragraphs (b), (c), (d), ~~(e)~~, and ~~(f)~~ of this Article 13 are satisfied.

(a) The actions or transactions within the scope of this Article 13 are as follows:

(i) any merger or consolidation of the Corporation or any of its subsidiaries into or with such Related Person;

(ii) any sale, lease, exchange, or other disposition of all or any substantial part of the assets of the Corporation or any of its majority-owned subsidiaries to or with such Related Person;

(iii) the issuance or delivery of any Voting Stock (as hereinafter defined) or of voting securities of any of the Corporation's majority-owned subsidiaries to such Related Person in exchange for cash, other assets or securities, or a combination thereof;

(iv) any voluntary dissolution or liquidation of the Corporation;

(v) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its subsidiaries, or any other transaction (whether or not with or otherwise involving a Related Person) that has the effect, directly or indirectly, of increasing the proportionate share of any class or series of capital stock of the Corporation, or any securities convertible into capital stock of the Corporation or into equity securities of any subsidiary, that is beneficially owned by any Related Person; or

(vi) any agreement, contract, or other arrangement providing for any one or more of the actions specified in the foregoing clauses (i) through (v).

(b) The actions and transactions described in paragraph (a) of this Article 13 shall have been authorized by the affirmative vote of ~~at least 80% of all~~ a majority of the votes entitled to be cast by holders of all the outstanding shares of Voting Stock, voting together as a single class.

~~(c) Notwithstanding paragraph (b) of this Article 13, the 80% voting requirement shall not be applicable if any action or transaction specified in paragraph (a) is approved by the Corporation's Board of Directors and by a majority of the Continuing Directors (as hereinafter defined).~~

~~(d)~~ (c) Unless approved by a majority of the Continuing Directors, after becoming a Related Person and prior to consummation of such action or transaction:

(i) the Related Person shall not have acquired from the Corporation or any of its subsidiaries any newly issued or treasury shares of capital stock or any newly issued securities convertible into capital stock of the Corporation or any of its majority-owned subsidiaries, directly or indirectly (except upon conversion of convertible securities acquired by it prior to becoming a Related Person or as a result of a pro rata stock dividend or stock split or other distribution of stock to all shareholders pro rata);

(ii) such Related Person shall not have received the benefit directly or indirectly (except proportionately as a shareholder) of any loans, advances, guarantees, pledges, or other financial assistance or tax credits provided by the Corporation or any of its majority-owned subsidiaries, or made any major changes in the Corporation's or any of its majority-owned subsidiaries' businesses or capital structures or reduced the current rate of dividends payable on the

Corporation's capital stock below the rate in effect immediately prior to the time such Related Person became a Related Person; and

(iii) such Related Person shall have taken all required actions within its power to ensure that the Corporation's Board of Directors included representation by Continuing Directors at least proportionate to the voting power of the shareholdings of Voting Stock of the Corporation's Remaining Public Shareholders (as hereinafter defined), with a Continuing Director to occupy an additional Board position if a fractional right to a director results and, in any event, with at least one Continuing Director to serve on the Board so long as there are any Remaining Public Shareholders.

(ed) A proxy statement responsive to the requirements of the Securities Exchange Act of 1934, as amended, whether or not the Corporation is then subject to such requirements, shall be mailed to the shareholders of the Corporation for the purpose of soliciting shareholder approval of such action or transaction and shall contain at the front thereof, in a prominent place, any recommendations as to the advisability or inadvisability of the action or transaction which the Continuing Directors may choose to state and, if deemed advisable by a majority of the Continuing Directors, the opinion of an investment banking firm selected by a majority of the Continuing Directors as to the fairness (or not) of the terms of the action or transaction from a financial point of view to the Remaining Public Shareholders, such investment banking firm to be paid a reasonable fee for its services by the Corporation. The requirements of this paragraph (ed) shall not apply to any such action or transaction which is approved by a majority of the Continuing Directors.

(fe) For the purpose of this Article 13

(i) the term "Related Person" shall mean any other corporation, person, or entity which beneficially owns or controls, directly or indirectly, 5% or more of the outstanding shares of Voting Stock, and any Affiliate or Associate (as those terms are defined in the General Rules and Regulations under the Securities Exchange Act of 1934) of a Related Person; *provided, however*, that the term Related Person shall not include (a) the Corporation or any of its subsidiaries, (b) any profit-sharing, employee stock ownership or other employee benefit plan of the Corporation or any subsidiary of the Corporation or any trustee of or fiduciary with respect to any such plan when acting in such capacity, or (c) Lilly Endowment, Inc.; and *further provided*, that no corporation, person, or entity shall be deemed to be a Related Person solely by reason of being an Affiliate or Associate of Lilly Endowment, Inc.;

(ii) a Related Person shall be deemed to own or control, directly or indirectly, any outstanding shares of Voting Stock owned by it or any Affiliate or Associate of record or beneficially, including without limitation shares

a. which it has the right to acquire pursuant to any agreement, or

upon exercise of conversion rights, warrants, or options, or otherwise or

b. which are beneficially owned, directly or indirectly (including shares deemed owned through application of clause a. above), by any other corporation, person, or other entity with which it or its Affiliate or Associate has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, or disposing of Voting Stock, or which is its Affiliate (other than the Corporation) or Associate (other than the Corporation);

(iii) the term "Voting Stock" shall mean all shares of any class of capital stock of the Corporation which are entitled to vote generally in the election of directors;

(iv) the term "Continuing Director" shall mean a director who is not an Affiliate or Associate or representative of a Related Person and who was a member of the Board of Directors of the Corporation immediately prior to the time that any Related Person involved in the proposed action or transaction became a Related Person or a director who is not an Affiliate or Associate or representative of a Related Person and who was nominated by a majority of the remaining Continuing Directors; and

(v) the term "Remaining Public Shareholders" shall mean the holders of the Corporation's capital stock other than the Related Person.

(g) A majority of the Continuing Directors of the Corporation shall have the power and duty to determine for the purposes of this Article 13, on the basis of information then known to the Continuing Directors, whether (i) any Related Person exists or is an Affiliate or an Associate of another and (ii) any proposed sale, lease, exchange, or other disposition of part of the assets of the Corporation or any majority-owned subsidiary involves a substantial part of the assets of the Corporation or any of its subsidiaries. Any such determination by the Continuing Directors shall be conclusive and binding for all purposes.

(hg) Nothing contained in this Article 13 shall be construed to relieve any Related Person or any Affiliate or Associate of any Related Person from any fiduciary obligation imposed by law.

(ih) The fact that any action or transaction complies with the provisions of this Article 13 shall not be construed to waive or satisfy any other requirement of law or these Amended Articles of Incorporation or to impose any fiduciary duty, obligation, or responsibility on the Board of Directors or any member thereof, to approve such action or transaction or recommend its adoption or approval to the shareholders of the Corporation, nor shall such compliance limit, prohibit, or otherwise restrict in any manner the Board of Directors, or any member thereof, with respect to evaluations of or actions and responses taken with respect to such action or transaction. The Board of Directors of the

Corporation, when evaluating any actions or transactions described in paragraph (a) of this Article 13, shall, in connection with the exercise of its judgment in determining what is in the best interests of the Corporation and its shareholders, give due consideration to all relevant factors, including without limitation the social and economic effects on the employees, customers, suppliers, and other constituents of the Corporation and its subsidiaries and on the communities in which the Corporation and its subsidiaries operate or are located.

~~(j) Notwithstanding any other provision of these Amended Articles of Incorporation or of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class of Voting Stock required by law or these Amended Articles of Incorporation, the affirmative vote of the holders of at least 80% of the votes entitled to be cast by holders of all the outstanding shares of Voting Stock, voting together as a single class, shall be required to alter, amend, or repeal this Article 13.~~

14. A total of 1,500,000 shares of the 5,000,000 shares of authorized Preferred Stock are designated as "Series B Junior Participating Preferred Stock" (the "Series B Preferred Stock"). Such number of shares may be increased or decreased by resolution of the Board of Directors; provided that no decrease shall reduce the number of shares of Series B Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series B Preferred Stock. The Series B Preferred Stock shall possess the rights, preferences, qualifications, limitations, and restrictions set forth below:

(a) The holders of shares of Series B Preferred Stock shall have the following rights to dividends and distributions:

(i) Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Series B Preferred Stock with respect to dividends, the holders of shares of Series B Preferred Stock, in preference to the holders of Common Stock, without par value (the "Common Stock"), of the Corporation, and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the tenth day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series B Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$10 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the

immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series B Preferred Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series B Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(ii) The Corporation shall declare a dividend or distribution on the Series B Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$10 per share on the Series B Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(iii) Dividends shall begin to accrue and be cumulative on outstanding shares of Series B Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series B Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series B Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series B Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

(b) The holders of shares of Series B Preferred Stock shall have the following voting rights:

(i) Subject to the provision for adjustment hereinafter set forth, each share of Series B Preferred Stock shall entitle the holder thereof to 1000 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series B Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(ii) Except as otherwise provided herein, in any other Articles of Amendment creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series B Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(iii) Except as set forth herein, or as otherwise provided by law, holders of Series B Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

(c) The Corporation shall be subject to the following restrictions:

(i) Whenever quarterly dividends or other dividends or distributions payable on the Series B Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series B Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

a. declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Preferred Stock;

b. declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series B Preferred Stock, except dividends paid ratably on the Series B Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

c. redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series B Preferred Stock; or

d. redeem or purchase or otherwise acquire for consideration any shares of Series B Preferred Stock, or any shares of stock ranking on a parity with the Series B Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(ii) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (i) of this Article 14(c), purchase or otherwise acquire such shares at such time and in such manner.

(d) Any shares of Series B Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Articles of Incorporation, or in any other Articles of Amendment creating a series of Preferred Stock or any similar stock or as otherwise required by law.

(e) Upon any liquidation, dissolution or winding up of the Corporation, no distribution shall be made (i) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Preferred Stock unless, prior thereto, the holders of shares of Series B Preferred Stock shall have received the greater of (a) \$1000 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, or (b) an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1000 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (ii) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series B Preferred Stock, except distributions made ratably on the Series B Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of

Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series B Preferred Stock were entitled immediately prior to such event under the proviso in clause (i) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(f) In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series B Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series B Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(g) The shares of Series B Preferred Stock shall not be redeemable.

(h) The Series B Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of the Corporation's Preferred Stock.

(i) The Amended Articles of Incorporation of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series B Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series B Preferred Stock, voting together as a single class.

(j) In the event that the Rights Agreement dated as of July 20, 1998 between the Corporation and First Chicago Trust Company of New York, as Rights Agent (or any successor Rights Agent) is terminated or expires prior to the issuance of any shares of Series B Preferred Stock, all shares of Series B Preferred Stock shall become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of

Preferred Stock subject to the conditions and restrictions on issuance set forth in the Articles of Incorporation or in any other Articles of Amendment creating a series of Preferred Stock or any similar stock or as otherwise required by law.

15. Subject to the rights of the holders of preferred stock to elect any directors voting separately as a class or series, at each annual meeting of shareholders, the directors to be elected at the meeting shall be chosen by the majority of the votes cast by the holders of shares entitled to vote in the election at the meeting, provided a quorum is present; provided, however, that if the number of nominees exceeds the number of directors to be elected, then directors shall be elected by the vote of a plurality of the votes cast by the holders of shares entitled to vote, provided a quorum is present. For purposes of this Article 15, a "majority of votes cast" shall mean that the number of votes cast "for" a director's election exceeds the number of votes cast "against" that director's election.

Exhibit C

Proposed Amendments to the Bylaws

# **ELI LILLY AND COMPANY**

## **BYLAWS**

As Amended through

~~August 29, 2017~~

May 6, 2019

# ELI LILLY AND COMPANY

## BYLAWS

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**BYLAWS**  
**of**  
**ELI LILLY AND COMPANY**  
(An Indiana Corporation)

**ARTICLE I**

**The Shareholders**

SECTION 1.0. *Annual Meetings.* The annual meeting of the shareholders of the Corporation for the election of directors and for the transaction of such other business as properly may come before the meeting shall be held on the third Monday in April in each year; provided, however, that for a particular year the Board of Directors may designate another date not later than June 30 of that year by resolution adopted by not less than a majority of the directors then in office. Failure to hold an annual meeting of the shareholders at such designated time shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the Corporation.

SECTION 1.1. *Special Meetings.* Special meetings of the shareholders may be called at any time by the Board of Directors or the Chairman of the Board of Directors.

SECTION 1.2. *Time, Place, and Conduct of Meetings.* Each meeting of the shareholders shall be held at such time of day and place, either within or without the State of Indiana, as shall be determined by the Board of Directors. Each adjourned meeting of the shareholders shall be held at such time and place as may be provided in the motion for adjournment. The chairman of each meeting shall have sole authority to decide questions relating to the conduct of that meeting.

SECTION 1.3. *Notice of Meetings.* The Secretary shall cause a written or printed notice of the place, day and hour and the purpose or purposes of each meeting of the shareholders to be delivered or mailed (which may include by facsimile or other form of electronic communication) at least ten (10) but not more than sixty (60) days prior to the meeting, to each shareholder of record entitled to vote at the meeting, at the shareholder's address as the same appears on the records maintained by the Corporation. Notice of any such shareholders meeting may be waived by any shareholder by delivering a written waiver to the Secretary before or after such meeting. Attendance at any meeting in person or by proxy when the instrument of proxy sets forth in reasonable detail the purpose or purposes for which the meeting is called, shall constitute a waiver of notice thereof. Notice of any adjourned meeting of the shareholders of the Corporation shall not be required to be given unless otherwise required by statute.

SECTION 1.4. *Quorum.* At any meeting of the shareholders a majority of the outstanding shares entitled to vote on a matter at such meeting, represented in person or by proxy, shall constitute a quorum for action on that matter. In the absence of a quorum, the chairman of the meeting or the holders of a majority of the shares entitled to vote present in person or by proxy, or, if no shareholder entitled to vote is present in person or by proxy, any

officer entitled to preside at or act as Secretary of such meeting, may adjourn such meeting from time to time, until a quorum shall be present. At any such adjourned meeting at which a quorum may be present any business may be transacted which might have been transacted at the meeting as originally called.

SECTION 1.5. *Voting*. Except as otherwise provided by statute or by the Articles of Incorporation, at each meeting of the shareholders each holder of shares entitled to vote shall have the right to one vote for each share standing in the shareholder's name on the books of the Corporation on the record date fixed for the meeting under Section 1.7. Each shareholder entitled to vote shall be entitled to vote in person or by proxy executed in writing (which shall include facsimile) or transmitted by electronic submission by the shareholder or a duly authorized attorney in fact. The vote of shareholders approving any matter to which the provisions of Article 9(c) ~~or 9(d)~~ or Article 13 of the Articles of Incorporation or of a statute are applicable shall require the percentage of affirmative vote therein specified. All other matters, except the election of directors, shall require that the votes cast in favor of the matter exceed the votes cast opposing the matter at a meeting at which a quorum is present. In the event that more than one group of shares is entitled to vote as a separate voting group, the vote of each group shall be considered and decided separately.

SECTION 1.6. *Voting Lists*. The Secretary shall make or cause to be made, after a record date for a meeting of shareholders has been fixed under Section 1.7 and at least five (5) days before such meeting, a complete list of the shareholders entitled to vote at such meeting, arranged in alphabetical order, with the address of each such shareholder and the number of shares so entitled to vote held by each which list shall be on file at the principal office of the Corporation and subject to inspection by any shareholder entitled to vote at the meeting. Such list shall be produced and kept open at the time and place of the meeting and subject to the inspection of any such shareholder during the holding of such meeting or any adjournment. Except as otherwise required by law, such list shall be the only evidence as to who are the shareholders entitled to vote at any meeting of the shareholders. In the event that more than one group of shares is entitled to vote as a separate voting group at the meeting, there shall be a separate listing of the shareholders of each group.

SECTION 1.7. *Fixing of Record Date*. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the Board of Directors shall fix in advance a date as the record date for any such determination of shareholders, not more than seventy (70) days prior to the date on which the particular action requiring this determination of shareholders is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, the determination shall, to the extent permitted by law, apply to any adjournment thereof.

SECTION 1.8. *Notice of Shareholder Business.*

(a) At an annual meeting of the shareholders, the only items of business that shall be conducted are those which are proper subjects for action by the shareholders under Indiana law and which have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by a shareholder. Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the “Exchange Act”), and included in the notice of meeting given by or at the direction of the Board of Directors, the foregoing clause (iii) shall be the exclusive means for a shareholder to propose business to be brought before the meeting. For any item of business (other than nomination of a person for election as a director which is subject to Section 1.9) to be properly brought before an annual meeting by a shareholder, the shareholder proposing the item of business (a “proposing shareholder”) must (A) have beneficial ownership of the Corporation’s common stock both at the time of giving the notice provided for in this Section 1.8 and at the time of the meeting, (B) be entitled to vote at the meeting, (C) have the legal right and authority to make the proposal for consideration at the meeting, (D) have given a notice which is timely as required by subsection (b) and in proper form as required by subsection (c), and (E) appear at the meeting in person or by a designated representative to present the item of business.

(b) To be timely, a proposing shareholder’s notice must be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation not less than one hundred twenty (120) calendar days nor more than one hundred eighty (180) calendar days in advance of the date of the Corporation’s proxy statement released to shareholders in connection with the previous year’s annual meeting of shareholders; provided, however, that in the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days from the date contemplated at the time of the previous year’s proxy statement, notice by the proposing shareholder to be timely must be so received not later than the close of business on the later of one hundred twenty (120) calendar days in advance of such annual meeting or ten (10) calendar days following the date on which public disclosure of the date of the meeting is first made. For purposes of this Section 1.8 and Section 1.9, “public disclosure” means disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14, or 15(d) of the Exchange Act. No adjournment of an annual meeting or announcement thereof shall commence a new time period for the giving of a timely notice as described above.

(c) To be in proper form, a proposing shareholder’s notice to the Secretary shall set forth (i) the name and record address of the proposing shareholder(s); (ii) the class and number of the Corporation’s shares which are beneficially owned by the proposing shareholder(s); (iii) a brief description of any derivative instrument (as defined in IND. CODE §23-1-20-6.5 as in effect on October 18, 2010) or other agreement, arrangement, or understanding (including any swaps, warrants, short positions, profits, interests, options, hedging transactions, or borrowed or loaned shares) with respect to the Corporation’s shares, engaged in, directly or indirectly by the proposing shareholder(s), where the purpose or effect of such instrument, agreement,

arrangement or understanding is to increase or decrease such shareholders' ability to share in the profits derived from any increase in the value of the Corporation's shares, mitigate economic exposure to changes in value of the shares, and/or increase or decrease the voting power of such shareholder(s); and (iv) as to each item of business being proposed (A) a brief description of the business to be brought before the annual meeting; (B) the reasons for conducting such business at the annual meeting; (C) the text of the proposal or business (including the text of any resolutions proposed for consideration); (D) any material interest of the proposing shareholder(s) in such business; (E) a brief description of all agreements, arrangements or understandings between or among the proposing shareholder(s) or between or among any proposing shareholder and any other person or entity in connection with such business; (F) a representation whether the proposing shareholder intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding shares required to approve the proposal and/or otherwise to solicit proxies from shareholders in support of the proposal; and (G) any other information relating to each such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies by each such person with respect to the proposed business to be brought by each such person before the annual meeting pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder. For purposes of this Section 1.8 and Section 1.9, the term "beneficial ownership" shall have the meaning specified in IND. CODE §23-1-20-3.5 as in effect on October 18, 2010;

(d) A proposing shareholder shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in the notice shall be true, correct and complete in all material respects (i) as of the record date for the meeting and (ii) as of the date that is ten (10) business days prior to the meeting or any adjournment thereof. Such updates shall be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation (A) in the case of the update required under subsection (i), not later than five (5) business days after the record date, and (B) in the case of the update required under subsection (ii), not later than seven (7) business days prior to the meeting or any adjournment thereof.

(e) No business shall be conducted at any annual meeting of shareholders except in accordance with the procedures set forth in this Section 1.8. The chairman of an annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section 1.8, and if the chairman should so determine, he or she shall so declare to the meeting any such business not properly brought before the meeting shall not be transacted, notwithstanding that proxies may have been solicited in respect of such business.

(f) The requirements of this Section 1.8 shall apply to any item of business to be brought before an annual meeting of shareholders (other than the election of directors and any proposal properly made pursuant to Rule 14a-8 of the Exchange Act) regardless of whether the business is presented to shareholders directly at the meeting or by means of an independently financed proxy solicitation. The requirements of this Section 1.8 are included to provide the Corporation notice of a shareholder's intention to bring business before an annual meeting and shall not be construed as imposing upon any shareholder the requirement to seek approval from the Corporation as a condition precedent to bringing any such business before an annual meeting.

(g) At any special meeting of the shareholders, only such business shall be conducted as shall have been brought before the meeting by or at the direction of the Board of Directors or the Chairman of the Board of Directors.

SECTION 1.9. *Notice of Shareholder Nominees.*

(a) Only persons who are nominated by or at the direction of the Board of Directors or by shareholders in accordance with the procedures set forth in this Section 1.9 shall be eligible for election as Directors. Nominations of persons for election to the Board of Directors in accordance with this Section 1.9 may be made (i) at or prior to a meeting of shareholders by or at the direction of the Board of Directors or by any nominating committee or person appointed by or at the direction of the Board of Directors, and (ii) at an annual meeting of shareholders or a special meeting of shareholders (but only if the election of Directors is a matter specified in the notice of special meeting) by any shareholder entitled to vote for the election of Directors at the meeting who complies with the notice procedures set forth in this Section 1.9 (a “nominating shareholder”). Such nominations shall be made pursuant to a notice which is timely as required by subsection (b) and in proper form as required by subsection (c) and any person proposed to be nominated (a “proposed nominee”) must be eligible for election as required by subsection (e).

(b) To be timely, a nominating shareholder’s notice, if it relates to an annual meeting of shareholders, must be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation not less than one hundred twenty (120) calendar days nor more than one hundred eighty (180) calendar days in advance of the date of the Corporation’s proxy statement released to shareholders in connection with the previous year’s annual meeting of shareholders; provided, however, that in the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days from the date contemplated at the time of the previous year’s proxy statement, notice by the nominating shareholder to be timely must be so received not later than the close of business on the later of one hundred twenty (120) calendar days in advance of such annual meeting or ten (10) calendar days following the date on which public disclosure of the date of the meeting is first made. No adjournment of an annual meeting or announcement thereof shall commence a new time period for the giving of a timely notice as described above. If the notice relates to a special meeting of shareholders, it must be delivered to or mailed and received by the Secretary of the Corporation at the principal executive offices of the Corporation not less than ninety (90) calendar days in advance of the date of the special meeting, or, if later, the tenth (10<sup>th</sup>) calendar day after public disclosure of the date of the special meeting is made.

(c) To be in proper form for purposes of this Section 1.9, a nominating shareholder's notice shall set forth: (i) the name and record address of the nominating shareholder(s), (ii) the class and number of the Corporation’s shares which are beneficially owned by the nominating shareholder(s), (iii) a brief description of any derivative instrument (as defined in Section 1.8(c)(iii)) or any other agreement, arrangement, or understanding engaged in, directly or indirectly, by the nominating shareholder(s) with respect to the Corporation’s shares, (iv) as to each proposed nominee, (A) the proposed nominee’s name, age, business address and residence address ; (B) the proposed nominee’s principal occupation or employment; (C) the class and number of the Corporation’s shares which are beneficially owned by the proposed nominee; (D)

a brief description of any derivative instrument (as defined in Section 1.8(c)(iii)) or any other agreement, arrangement, or understanding engaged in, directly or indirectly, by the proposed nominee with respect to the Corporation's shares; (E) a brief description of all material agreements, arrangements, understandings or relationships, including all direct or indirect compensatory arrangements, between or among the proposed nominee, the nominating shareholder(s) and any of their associates or affiliates; and (F) any other information relating to the proposed nominee that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Section 14 of the Exchange Act (including without limitation the proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected).

(d) A nominating shareholder shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in the notice shall be true, correct and complete in all material respects (i) as of the record date for the meeting and (ii) as of the date that is ten (10) business days prior to the meeting or any adjournment thereof. Such updates shall be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation (A) in the case of the update required under subsection (i), not later than five (5) business days after the record date, and (B) in the case of the update required under subsection (ii), not later than seven (7) business days prior to the meeting or any adjournment thereof.

(e) To be eligible as a director of the Corporation, a proposed nominee must deliver (in accordance with the time periods prescribed for delivery of notice under paragraph (b) of this Section 1.9) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of the proposed nominee (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that the proposed nominee (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "voting commitment") that has not been disclosed to the Corporation or (B) any voting commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (iii) would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

(f) The Corporation may require any proposed nominee to furnish such other information (i) as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or (ii) that could be material to a reasonable shareholder's understanding of the independence or lack of independence of such proposed nominee.

(g) No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 1.9. The chairman of the meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not so declared in accordance with the procedures prescribed by these Bylaws, and if the chairman should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded, notwithstanding that proxies in respect of such nomination may have been received by the Corporation. Notwithstanding the foregoing provisions of this Section 1.9, a shareholder shall also comply with all applicable requirements of the Exchange Act with respect to the nomination of any director that is subject to this Section 1.9.

## ARTICLE II

### Board of Directors

SECTION 2.0. *General Powers.* The property, affairs and business of the Corporation shall be managed under the direction of the Board of Directors.

SECTION 2.1. *Number and Qualifications.* The number of directors which shall constitute the whole Board of Directors shall be sixteen (16), which number may be either increased or diminished by resolution adopted by not less than a majority of the directors then in office; provided that the number may not be diminished below nine (9) and no reduction in number shall have the effect of shortening the term of any incumbent director. In the event that the holders of shares of preferred stock become entitled to elect two directors, the number of directors and the minimum number of directors shall be increased by two. Neither ownership of stock of the Corporation nor residence in the State of Indiana shall be required as a qualification for a director.

SECTION 2.2. *Classes of Directors and Terms.* Prior to the 2020 annual meeting of directors, the directors shall be divided into three classes as nearly equal in number as possible. ~~Except as provided in Article 9 of the Articles of Incorporation fixing one, two, and three year terms for the initial classified board, and~~ each class of directors shall be elected for a term of three (3) years. Commencing with the 2020 annual meeting of shareholders, each class of directors whose terms shall then expire shall be elected to hold office for a one-year term expiring at the next annual meeting of shareholders. In the event of vacancy, ~~either~~ by death, resignation, or removal of a director, ~~or by reason of an increase in the number of directors,~~ each replacement or new director shall serve for the balance of the term of the ~~class of the~~ director he or she succeeds ~~or~~. In the event of a vacancy caused by an increase in the number of directors, ~~of~~ the ~~class to which he or she is assigned~~ new director shall serve until the next annual meeting of shareholders. All directors elected for a term shall continue in office until the election and qualification of their respective successors, their death, their resignation in accordance with Section 2.6, their removal in accordance with Section 2.7, or if there has been a reduction in the number of directors and no successor is to be elected, until the end of the term. The classes and terms of the directors shall not be governed by IND. CODE §23-1-33-6(c).

SECTION 2.3. *Election of Directors.* Subject to the rights of the holders of preferred stock to elect any directors voting separately as a class or series, at each annual meeting of shareholders, the directors to be elected at the meeting shall be chosen by the majority of the votes cast by the holders of shares entitled to vote in the election at the meeting, provided a quorum is present; provided, however, that if the number of nominees exceeds the number of directors to be elected, then directors shall be elected by the vote of a plurality of the votes cast by the holders of shares entitled to vote, provided a quorum is present. For purposes of this Section 2.3, a “majority of votes cast” shall mean that the number of votes cast “for” a director's election exceeds the number of votes cast “against” that director's election. If a nominee fails to receive the required vote and is an incumbent director, the director shall promptly tender his or her resignation to the Board of Directors, subject to acceptance by the Board of Directors. The Directors and Corporate Governance Committee will make a recommendation to the Board of Directors whether to accept or reject the tendered resignation, or whether other action should be taken. The Board of Directors will act on the tendered resignation, taking into account the Directors and Corporate Governance Committee's recommendation, and publicly disclose (by a press release, a filing with the Securities and Exchange Commission, or other broadly disseminated means of communication) its decision regarding the tendered resignation and the rationale behind the decision within ninety (90) days from the date of the certification of the election results. The Directors and Corporate Governance Committee in making its recommendation and the Board of Directors in making its decision may each consider any factors or other information that they consider appropriate and relevant. The director who tenders his or her resignation will not participate in the recommendation of the Directors and Corporate Governance Committee or the decision of the Board of Directors with respect to his or her resignation. If an incumbent director's resignation is not accepted by the Board of Directors, such director shall continue to serve until the next annual meeting of shareholders and until his or her successor is duly elected, or his or her earlier resignation or removal. If a director's resignation is accepted by the Board of Directors, or if a nominee fails to receive the required vote and the nominee is not an incumbent director, then the Board of Directors may fill the resulting vacancy pursuant to the provisions of Article 9 of the Amended Articles of Incorporation or may decrease the size of the Board of Directors pursuant to the provisions of Article 9 of the Amended Articles of Incorporation and Section 2.2.

The election of directors by the shareholders shall be by written ballot if directed by the chairman of the meeting or if the number of nominees exceeds the number of directors to be elected.

Any vacancy on the Board of Directors shall be filled by the affirmative vote of a majority of the remaining directors.

If the holders of preferred stock are entitled to elect any directors voting separately as a class or series, those directors shall be elected by a plurality of the votes cast by the holders of shares of preferred stock entitled to vote in the election at the meeting, provided a quorum of the holders of shares of preferred stock is present.

#### SECTION 2.4. *Meetings of Directors.*

(a) Annual Meeting. Unless otherwise provided by resolution of the Board of Directors, the annual meeting of the Board of Directors shall be held at the place of and immediately following the annual meeting of shareholders, for the purpose of organization, the election of officers and the transaction of such other business as properly may come before the meeting. No notice of the meeting need be given, except in the case an amendment to the Bylaws is to be considered.

(b) Regular Meetings. The Board of Directors by resolution may provide for the holding of regular meetings and may fix the times and places (within or outside the State of Indiana) at which those meetings shall be held. Notice of regular meetings need not be given except when an amendment to the Bylaws is to be considered. Whenever the time or place of regular meetings shall be fixed or changed, notice of this action shall be mailed promptly to each director not present when the action was taken, addressed to the director at his or her residence or usual place of business.

(c) Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board and shall be called by the Secretary at the request of any three (3) directors. Except as otherwise required by statute, notice of each special meeting shall be mailed to each director at his or her residence or usual place of business at least three (3) days before the day on which the meeting is to be held, or shall be sent to the director at such place by facsimile transmission or other form of electronic communication or personally delivered, not later than the day before the day on which the meeting is to be held. The notice shall state the time and place (which may be within or outside the State of Indiana) of the meeting but, unless otherwise required by statute, the Articles of Incorporation or the Bylaws, need not state the purposes thereof.

Notice of any meeting need not be given to any director, however, who shall attend the meeting, or who shall waive notice thereof, before, at the time of, or after the meeting, in a writing signed by the director and delivered to the Corporation. No notice need be given of any meeting at which every member of the Board of Directors shall be present.

SECTION 2.5. *Quorum and Manner of Acting.* A majority of the actual number of directors established pursuant to Section 2.1, from time to time, shall be necessary to constitute a quorum for the transaction of any business except the filling of vacancies on the Board of Directors under Section 2.3 or voting on a conflict of interest transaction under Section 2.12. The act of a majority of the directors present at a meeting at which a quorum is present, shall be the act of the Board of Directors, unless the act of a greater number is required by statute, by the Articles of Incorporation, or by the Bylaws. Under the provisions of Article 13 of the Articles of Incorporation, certain actions by the Board of Directors therein specified require not only approval by the Board of Directors, but also approval by a majority of the Continuing Directors, as therein defined. Any or all directors may participate in a meeting of the Board of Directors by means of a conference telephone or similar communications equipment by which all persons participating in the meeting may simultaneously hear each other, and participation in this manner shall constitute presence in person at the meeting. In the absence of a quorum, a majority of the

directors present may adjourn the meeting from time to time until a quorum shall be present. No notice of any adjourned meeting need be given.

SECTION 2.6. *Resignations.* Any director may resign at any time by giving written notice of resignation to the Board of Directors, the Chairman of the Board, the Chief Executive Officer, or the Secretary. Unless otherwise specified in the written notice, the resignation shall take effect upon receipt thereof and unless otherwise specified in it, the acceptance of the resignation shall not be necessary to make it effective. In addition, a director who fails to receive a majority of the votes cast at an annual meeting of shareholders at which the number of nominees does not exceed the number of directors to be elected shall tender his or her resignation subject to acceptance in accordance with Section 2.3.

SECTION 2.7. *Removal of Directors.* Any director, other than a director elected by holders of preferred stock voting as a class, may be removed from office at any time but only for cause and only upon the affirmative vote ~~of at least eighty (80) percent of the~~ a majority of votes entitled to be cast by ~~the holders of all of the outstanding shares~~ of Voting Stock (as defined in Article 13 of the Articles of Incorporation), voting together as a single class.

SECTION 2.8. *Action without a Meeting.* Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if taken by all members of the Board of Directors or such committee, as the case may be, evidenced by a written consent signed by all such members and effective on the date, either prior or subsequent to the date of the consent, specified in the written consent, or if no effective date is specified in the written consent, the date on which the consent is filed with the minutes of proceedings of the Board of Directors or committee.

SECTION 2.9. *Attendance and Failure to Object.* A director, who is present at a meeting of the Board of Directors, at which action on any corporate matter is taken, shall be presumed to have assented to the action taken, unless (a) the director's dissent shall be entered in the minutes of the meeting, (b) the director shall file a written dissent to such action with the Secretary of the meeting before adjournment thereof, or (c) the director shall forward such dissent by registered mail to the Secretary immediately after adjournment of the meeting. The right of dissent provided for by the preceding sentence shall not be available, in respect of any matter acted upon at any meeting, to a director who voted in favor of such action.

SECTION 2.10. *Special Standing Committees.* The Board of Directors, by resolution adopted by a majority of the actual number of directors elected and qualified, may designate from among its members one or more committees. Such committees shall have those powers of the Board of Directors which may by law be delegated to such committees and are specified by resolution of the Board of Directors or by committee charters approved by the Board of Directors.

SECTION 2.11. *Appointment of Auditors.* The Board of Directors or the Audit Committee of the Board of Directors, prior to each annual meeting of shareholders, shall appoint a firm of independent public accountants as auditors of the Corporation. Such appointment shall be submitted to the shareholders for ratification at the annual meeting next following such appointment. Should the shareholders fail to ratify the appointment of any firm as auditors of the Corporation, or should the Board of Directors or Audit Committee for any reason determine that any such appointment be terminated, the Board of Directors or Audit Committee shall appoint another firm of independent public accountants to act as auditors of the Corporation and such appointment shall be submitted to the shareholders for ratification at the annual or special shareholders meeting next following such appointment.

SECTION 2.12. *Transactions with Corporation.* No transactions with the Corporation in which one or more of its directors has a direct or indirect interest shall be either void or voidable solely because of such interest if any one of the following is true:

(a) the material facts of the transaction and the director's interest are disclosed or known to the Board of Directors or committee which authorizes, approves, or ratifies the transaction by the affirmative vote or consent of a majority of the directors (or committee members) who have no direct or indirect interest in the transaction and, in any event, of at least two directors (or committee members);

(b) the material facts of the transaction and the director's interest are disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such transaction by vote; or

(c) the transaction is fair to the Corporation.

If a majority of the directors or committee members who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for purposes of taking action under subsection (a) of this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any actions taken under subsection (a) of this section.

SECTION 2.13. *Compensation of Directors.* The Board of Directors is empowered and authorized to fix and determine the compensation of directors and additional compensation for such additional services any of such directors may perform for the Corporation.

## **ARTICLE III**

### **Officers**

SECTION 3.0. *Officers, General Authority and Duties.* The officers of the Corporation shall be a Chairman of the Board, Chief Executive Officer, a President, two (2) or more Vice Presidents, a Secretary, a Chief Financial Officer, a Treasurer, a Chief Accounting Officer, and such other officers as may be elected or appointed in accordance with the provisions of Section

3.2. One or more of the Vice Presidents may be designated by the Board to serve as Executive Vice Presidents, Senior Vice Presidents, or Group Vice Presidents. Any two (2) or more offices may be held by the same person. All officers and agents of the Corporation, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the Corporation as may be provided in the Bylaws or as may be determined by resolution of the Board of Directors not inconsistent with the Bylaws.

SECTION 3.1. *Election, Term of Office, Qualifications.* Each officer (except such officers as may be appointed in accordance with the provisions of Section 3.2) shall be elected by the Board of Directors at each annual meeting. Each such officer (whether elected at an annual meeting of the Board of Directors or to fill a vacancy or otherwise) shall hold office until the officer's successor is chosen and qualified, or until death, or until the officer shall resign in the manner provided in Section 3.3 or be removed in the manner provided in Section 3.4. The Chairman of the Board and the Chief Executive Officer shall be members of the Board of Directors. Any other officer may but need not be a director of the Corporation. Election or appointment of an officer or agent shall not of itself create contract rights.

SECTION 3.2. *Other Officers, Election or Appointment.* The Board of Directors from time to time may elect such other officers or agents (including one or more Assistant Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, a Controller, and one or more Assistant Controllers) as it may deem necessary or advisable. The Board of Directors may delegate to any officer the power to appoint any such officers or agents and to prescribe their respective terms of office, powers and duties.

SECTION 3.3. *Resignation.* Any officer may resign at any time by giving written notice of such resignation to the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the Secretary of the Corporation. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof and unless otherwise specified in it, the acceptance of the resignation shall not be necessary to make it effective.

SECTION 3.4. *Removal.* The officers specifically designated in Section 3.0 may be removed, either for or without cause, at any meeting of the Board of Directors called for the purpose, by the vote of a majority of the actual number of directors elected and qualified. The officers and agents elected or appointed in accordance with the provisions of Section 3.2 may be removed, either for or without cause, at any meeting of the Board of Directors at which a quorum be present, by the vote of a majority of the directors present at such meeting, by any superior officer upon whom such power of removal shall have been conferred by the Board of Directors, or by any officer to whom the power to appoint such officer has been delegated by the Board of Directors pursuant to Section 3.2. Any removal shall be without prejudice to the contract rights, if any, of the person so removed.

SECTION 3.5. *Vacancies.* A vacancy in any office by reason of death, resignation, removal, disqualification or any other cause, may be filled by the Board of Directors or by an officer authorized under Section 3.2 to appoint to such office.

SECTION 3.6. *Chairman of the Board of Directors.* The Chairman of the Board shall preside at all meetings of the shareholders and of the Board of Directors if present and shall have such powers and perform such duties as are assigned to him or her by the Bylaws and by the Board of Directors. At any time in which the Chairman of the Board is unable to discharge the powers and duties of the office, then until such time as the Board shall appoint a new Chairman or determines that the Chairman is able to resume office, temporary authority to perform such duties and exercise such powers shall be granted to the Chief Executive Officer, or if he or she is unable to perform such duties and exercise such powers, to the Board's presiding or lead director (if one shall have been previously selected).

SECTION 3.7. *Chief Executive Officer.* The Chief Executive Officer shall, subject to the control of the Board of Directors, have general supervision over the management and direction of the business of the Corporation. He or she shall see that all orders and resolutions of the Board of Directors are carried into effect. The Chief Executive Officer shall have such other powers and perform such other duties as are assigned to him or her by the Bylaws or the Board of Directors. At any time in which the Chief Executive Officer is unable to discharge the powers and duties of the office, then until such time as the Board shall appoint a new Chief Executive Officer or determines that the Chief Executive Officer is able to resume office, temporary authority to perform such duties and exercise such powers shall be granted in the following manner:

- (a) First, to the President; or if he or she is unable to discharge such powers and duties,
- (b) To the executive officer in charge of the Corporation's largest business unit, measured by total revenue on a consolidated basis for the most recently completed fiscal year; or if he or she is unable to discharge such powers and duties,
- (c) To the Chief Financial Officer; or if he or she is unable to discharge such powers and duties,
- (d) To the executive officer serving as chief scientific officer.

SECTION 3.8. *President.* The President shall have such powers and perform such duties as are assigned to him or her by the Chief Executive Officer, the Bylaws or the Board of Directors.

SECTION 3.9. *Executive Vice Presidents.* Each Executive Vice President shall have such powers and perform such duties as may be assigned to him or her by the Chief Executive Officer, the President, or the Board of Directors.

SECTION 3.10. *Senior Vice Presidents and Group Vice Presidents.* Each Senior Vice President and each Group Vice President shall perform such duties and have such powers as may be assigned to him or her by the Chief Executive Officer, the President, or the Board of Directors.

SECTION 3.11. *Vice Presidents.* Each Vice President shall perform such duties and have such powers as may be assigned to him or her by the Chief Executive Officer, the President or the Board of Directors.

SECTION 3.12. *Secretary.* The Secretary shall:

(a) record all the proceedings of the meetings of the shareholders and Board of Directors in books to be kept for such purposes;

(b) cause all notices to be duly given in accordance with the provisions of these Bylaws and as required by statute;

(c) be custodian of the Seal of the Corporation, and cause such Seal to be affixed to all certificates representing shares of the Corporation prior to the issuance thereof (subject, however, to the provisions of Section 5.0) and to all instruments the execution of which on behalf of the Corporation under its Seal shall have been duly authorized in accordance with these Bylaws;

(d) subject to the provisions of Section 5.0, sign certificates representing shares of the Corporation the issuance of which shall have been authorized by the Board of Directors; and

(e) in general, perform all duties incident to the office of Secretary and such other duties as are given to the Secretary by these Bylaws or as may be assigned to him or her by the Chairman of the Board, the Chief Executive Officer, the President or the Board of Directors.

SECTION 3.13. *Assistant Secretaries.* Each Assistant Secretary shall assist the Secretary in his or her duties, and shall perform such other duties as the Board of Directors may from time to time prescribe or the Chief Executive Officer, the President or the Secretary may from time to time delegate. At the request of the Secretary, any Assistant Secretary may temporarily act in the Secretary's place in the performing of part or all of the duties of the Secretary. In the case of the death of the Secretary, or in the case of the Secretary's absence or inability to act without having designated an Assistant Secretary to act temporarily in his or her place, the Assistant Secretary who is to perform the duties of the Secretary shall be designated by the Chief Executive Officer or the Board of Directors.

SECTION 3.14. *Chief Financial Officer.* The Chief Financial Officer shall:

(a) have supervision over and be responsible for the funds, securities, receipts, and disbursements of the Corporation;

(b) cause to be kept at the principal business office of the Corporation and preserved for review as required by law or regulation records of financial transactions and correct books of account using appropriate accounting principles;

(c) be responsible for the establishment of adequate internal control over the transactions and books of account of the Corporation;

(d) be responsible for rendering to the proper officers and the Board of Directors upon request, and to the shareholders and other parties as required by law or regulation, financial statements of the Corporation; and

(e) in general, perform all duties incident to the office and such other duties as are given by the Bylaws or as may be assigned by the Chief Executive Officer, the President or the Board of Directors.

SECTION 3.15. *Treasurer*. The Treasurer shall:

(a) have charge of the funds, securities, receipts and disbursements of the Corporation;

(b) cause the moneys and other valuable effects of the Corporation to be deposited or invested in the name and to the credit of the Corporation in such banks or trust companies or with such bankers or other depositories or investments as shall be selected in accordance with resolutions adopted by the Board of Directors;

(c) cause the funds of the Corporation to be disbursed from the authorized depositories of the Corporation, and cause to be taken and preserved proper records of all moneys disbursed; and

(d) in general, perform all duties incident to the office of Treasurer and such other duties as are given to the Treasurer by the Bylaws or as may be assigned to him or her by the Chief Executive Officer, the President, the Chief Financial Officer, or the Board of Directors.

SECTION 3.16. *Assistant Treasurers*. Each Assistant Treasurer shall assist the Treasurer in his or her duties, and shall perform such other duties as the Board of Directors may from time to time prescribe or the President or the Chief Financial Officer may from time to time delegate. At the request of the Treasurer, any Assistant Treasurer may temporarily act in the Treasurer's place in performing part or all of the duties of the Treasurer. In the case of the death of the Treasurer, or in the case of the Treasurer's absence or inability to act without having designated an Assistant Treasurer to act in his or her place, the Assistant Treasurer who is to perform the duties of the Treasurer shall be designated by the Chief Executive Officer, the President, the Chief Financial Officer, or the Board of Directors.

SECTION 3.17. *Chief Accounting Officer*. The Chief Accounting Officer shall:

(a) keep full and accurate accounts of all assets, liabilities, commitments, revenues, costs and expenses, and other financial transactions of the Corporation in books belonging to the Corporation, and conform them to sound accounting principles with adequate internal control;

(b) cause regular audits of these books and records to be made;

(c) see that all expenditures are made in accordance with procedures duly established, from time to time, by the Corporation;

(d) render financial statements upon the request of the Board of Directors, and a full financial report prior to the annual meeting of shareholders, as well as such other financial statements as are required by law or regulation; and

(e) in general, perform all the duties ordinarily connected with the office of Chief Accounting Officer and such other duties as may be assigned to him or her by the Chief Executive Officer, the President, the Chief Financial Officer, or the Board of Directors.

SECTION 3.18. *General Counsel.* The Board of Directors may appoint a general counsel who shall have general control of all matters of legal import concerning the Corporation.

SECTION 3.19. *Other Officers or Agents.* Any other officers or agents elected or appointed pursuant to Section 3.2 shall have such duties and responsibilities as may be fixed from time to time by the Bylaws or as may be assigned to them by the Chief Executive Officer, the President or the Board of Directors.

SECTION 3.20. *Chairman Emeritus.* In recognition of distinguished service to the Corporation, the Board of Directors may designate a person who has served as Chairman of the Board and who is no longer an employee, officer, or director as Chairman Emeritus. The Chairman Emeritus may serve to represent the Corporation at the request of the Chairman of the Board.

SECTION 3.21. *Compensation.* The compensation of executive officers of the Corporation shall be fixed from time to time by the Compensation Committee (or successor committee) established pursuant to Section 2.10. Unless the Board of Directors by resolution shall direct otherwise, the compensation of employees who are not executive officers of the Corporation shall be fixed by the management of the Company. No employee shall be prevented from receiving compensation by reason of being a director of the Corporation.

SECTION 3.22. *Surety Bonds.* In case the Board of Directors shall so require, any officer or agent of the Corporation shall execute to the Corporation a bond in such sum and with such surety or sureties as the Board of Directors may direct, conditioned upon the faithful performance of his or her duties to the Corporation, including responsibility for negligence and

for the accounting of all property, funds or securities of the Corporation which the officer or agent may handle.

## **ARTICLE IV**

### **Execution of Instruments and Deposit of Corporate Funds**

SECTION 4.0. *Execution of Instruments Generally.* All deeds, contracts, and other instruments requiring execution by the Corporation may be signed by the Chairman of the Board, the Chief Executive Officer, the President or any Vice President. Authority to sign any deed, contract, or other instrument requiring execution by the Corporation may be conferred by the Board of Directors upon any person or persons whether or not such person or persons be officers of the Corporation. Such person or persons may delegate, from time to time, by instrument in writing, all or any part of such authority to any other person or persons if authorized so to do by the Board of Directors.

SECTION 4.1. *Notes, Checks, Other Instruments.* All notes, drafts, acceptances, checks, endorsements, and all evidences of indebtedness of the Corporation whatsoever, shall be signed by such officer or officers or such agent or agents of the Corporation and in such manner as the Board of Directors from time to time may determine. Endorsements for deposit to the credit of the Corporation in any of its duly authorized depositories shall be made in such manner as the Board of Directors from time to time may determine.

SECTION 4.2. *Proxies.* Proxies, powers of attorney, or consents to vote with respect to shares or units of other corporations or other entities owned by or standing in the name of the Corporation may be executed and delivered from time to time on behalf of the Corporation by the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or by any other person or persons thereunto authorized by the Board of Directors. Persons with authority to execute proxies, powers of attorney, or consents under this Section 4.2 may delegate that authority unless prohibited by the Board of Directors.

## **ARTICLE V**

### **Shares**

SECTION 5.0. *Certificates for Shares.* Shares in the corporation may be issued in book-entry form or evidenced by certificates. However, every holder of shares in the Corporation shall be entitled upon request to have a certificate evidencing the shares owned by the shareholder, signed in the name of the Corporation by the Chairman of the Board, the Chief Executive Officer, President or a Vice President and the Secretary or an Assistant Secretary, certifying the number of shares owned by the shareholder in the Corporation. The signatures of such officers, the signature of the transfer agent and registrar, and the Seal of the Corporation may be facsimiles. In case any officer or employee who shall have signed, or whose facsimile

signature or signatures shall have been used on, any certificate shall cease to be an officer or employee of the Corporation before the certificate shall have been issued and delivered by the Corporation, the certificate may nevertheless be adopted by the Corporation and be issued and delivered as though the person or persons who signed the certificate or whose facsimile signature or signatures shall have been used thereon had not ceased to be such officer or employee of the Corporation; and the issuance and delivery by the Corporation of any such certificate shall constitute an adoption thereof. Every certificate shall state on its face (or in the case of book-entry shares, the statements evidencing ownership of such shares shall state) the name of the Corporation and that it is organized under the laws of the State of Indiana, the name of the person to whom it is issued, and the number and class of shares and the designation of the series, if any, the certificate represents, and shall state conspicuously on its front or back that the Corporation will furnish the shareholder, upon written request and without charge, a summary of the designations, relative rights, preferences and limitations applicable to each class and the variations in rights, preferences and limitations determined for each series (and the authority of the Board of Directors to determine variations for future series). Every certificate (or book-entry statement) shall state whether such shares have been fully paid and are non-assessable. If any such shares are not fully paid, the certificate (or book-entry statement) shall be legibly stamped to indicate the percentum which has been paid up, and as further payments are made thereon, the certificate shall be stamped (or book-entry statement updated) accordingly. Subject to the foregoing provisions, certificates representing shares in the Corporation shall be in such form as shall be approved by the Board of Directors. There shall be entered upon the stock books of the Corporation at the time of the issuance or transfer of each share the number of the certificates representing such share (if any), the name of the person owning the shares represented thereby, the class of such share and the date of the issuance or transfer thereof.

SECTION 5.1. *Transfer of Shares.* Transfer of shares of the Corporation shall be made on the books of the Corporation by the holder of record thereof, or by the shareholder's attorney thereunto duly authorized in writing and filed with the Secretary of the Corporation or any of its transfer agents, and on surrender of the certificate or certificates (if any) representing such shares. The Corporation and its transfer agents and registrars, shall be entitled to treat the holder of record of any share or shares the absolute owner thereof for all purposes, and accordingly shall not be bound to recognize any legal, equitable or other claim to or interest in such share or shares on the part of any other person whether or not it or they shall have express or other notice thereof, except as otherwise expressly provided by the statutes of the State of Indiana. Shareholders shall notify the Corporation in writing of any changes in their addresses from time to time.

SECTION 5.2. *Regulations.* Subject to the provisions of this Article V, the Board of Directors may make such rules and regulations as it may deem expedient concerning the issuance, transfer and regulation of certificates for shares or book-entry shares of the Corporation.

SECTION 5.3. *Transfer Agents and Registrars.* The Board of Directors may appoint one or more transfer agents, one or more registrars, and one or more agents to act in the dual

capacity of transfer agent and registrar with respect to the certificates representing shares and the book-entry shares of the Corporation.

SECTION 5.4. *Lost or Destroyed Certificates.* The holders of any shares of the Corporation shall immediately notify the Corporation or one of its transfer agents and registrars of any loss or destruction of the certificate representing the same. The Corporation may issue a new certificate in the place of any certificate theretofore issued by it alleged to have been lost or destroyed upon such terms and under such regulations as may be adopted by the Board of Directors or the Secretary, and the Board of Directors or Secretary may require the owner of the lost or destroyed certificate or the owner's legal representatives to give the Corporation a bond in such form and for such amount as the Board of Directors or Secretary may direct, and with such surety or sureties as may be satisfactory to the Board of Directors or the Secretary to indemnify the Corporation and its transfer agents and registrars against any claim that may be made against it or any such transfer agent or registrar on account of the alleged loss or destruction of any such certificate or the issuance of such new certificate. A new certificate may be issued without requiring any bond when, in the judgment of the Board of Directors or the Secretary, it is proper so to do.

SECTION 5.5. *Redemption of Shares Acquired in Control Share Acquisitions.* Any or all control shares acquired in a control share acquisition shall be subject to redemption by the Corporation, if either:

(a) No acquiring person statement has been filed with the Corporation with respect to the control share acquisition; or

(b) The control shares are not accorded full voting rights by the Corporation's shareholders as provided in IND. CODE §23-1-42-9.

A redemption pursuant to Section 5.5(a) may be made at any time during the period ending sixty (60) days after the date of the last acquisition of control shares by the acquiring person. A redemption pursuant to Section 5.5(b) may be made at any time during the period ending two (2) years after the date of the shareholder vote with respect to the voting rights of the control shares in question. Any redemption pursuant to this Section 5.5 shall be made at the fair value of the control shares and pursuant to such procedures for the redemption as may be set forth in these Bylaws or adopted by resolution of the Board of Directors.

As used in this Section 5.5, the terms “control shares,” “control share acquisition,” “acquiring person statement” and “acquiring person” shall have the meanings ascribed to them in IND. CODE §23-1-42.

## ARTICLE VI

### Indemnification

SECTION 6.0. *Right to Indemnification.*

(a) The Corporation shall, to the fullest extent permitted by applicable law now or hereafter in effect, indemnify any person who is or was a director, officer or employee of the Corporation (“Eligible Person”) and who is or was involved in any manner (including, without limitation, as a party or a witness) or is threatened to be made so involved in any threatened, pending or completed investigation, claim, action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, any action, suit or proceeding by or in the right of the Corporation to procure a judgment in its favor) (a “Proceeding”) by reason of the fact that such Eligible Person is or was a director, officer or employee of the Corporation or is or was serving at the request of the Corporation as a director, officer, partner, member, manager, trustee, employee, fiduciary or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise (including, without limitation, any employee benefit plan) (a “Covered Entity”), against all expenses (including attorneys’ fees), judgments, fines or penalties against (including excise taxes assessed with respect to an employee benefit plan) and amounts paid in settlement actually and reasonably incurred by such Eligible Person in connection with such Proceeding.

(b) Notwithstanding Section 6.0(a), the Corporation shall not be obligated to indemnify an Eligible Person with respect to a Proceeding (or part thereof) commenced by such Eligible Person, except with respect to (i) a judicial adjudication or arbitration commenced by the Eligible Person under Section 6.4(e) or (f), as to which the rights to indemnification are provided pursuant Section 6.4(h), or (ii) a Proceeding (or part thereof) that was authorized or consented to by the Board of Directors of the Corporation.

(c) In the event a Proceeding arises out of an Eligible Person’s service to a Covered Entity, the indemnification provided by the Corporation under this Article shall be secondary to and not *pari passu* with any indemnification provided by the Covered Entity. However, the Corporation may provide indemnification to the Eligible Person in the first instance, in which case the Corporation shall be subrogated to the extent of such payment to the rights of the Eligible Person with respect to the indemnification provided by the Covered Entity and any insurance coverage maintained by the Covered Entity on behalf of the Eligible Person.

(d) Any right of an Eligible Person to indemnification shall be a contract right and shall include the right to receive, prior to the conclusion of any Proceeding, advancement of any expenses incurred by the Eligible Person in connection with such Proceeding in accordance with Section 6.3.

SECTION 6.1. *Insurance, Contracts and Funding.* The Corporation may purchase and maintain insurance to protect itself and any Eligible Person against any expense, judgments, fines and amounts paid in settlement as specified in Section 6.0 or incurred by any Eligible Person in connection with any Proceeding referred to in such section, to the fullest extent permitted by applicable law now or hereafter in effect. The Corporation may enter into agreements with any director, officer, employee or agent of the Corporation or any director, officer, employee, fiduciary or agent of any Covered Entity supplemental to or in furtherance of the provisions of this Article and may create a trust fund or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification and advancement of expenses as provided in this Article.

SECTION 6.2. *Non-Exclusive Rights; Applicability to Certain Proceedings.* The rights provided in this Article shall not be exclusive of any other rights to which any Eligible Person may otherwise be entitled, and the provisions of this Article shall inure to the benefit of the heirs and legal representatives of any Eligible Person and shall be applicable to Proceedings commenced or continuing after the adoption of this Article, whether arising from acts or omissions occurring before or after such adoption.

SECTION 6.3. *Advancement of Expenses.*

(a) Except as provided under Sections 6.3(b) and (c) below, all reasonable expenses incurred by or on behalf of an Eligible Person in connection with any Proceeding shall be advanced to the Eligible Person by the Corporation within sixty (60) days after the receipt by the Corporation of a statement or statements from the Eligible Person complying with this section and Section 6.4 requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding, unless a determination has been made pursuant to Section 6.4 that such Eligible Person is not entitled to indemnification. Any such statement or statements shall reasonably evidence the expenses incurred by the Eligible Person and shall include (i) a written representation that, in connection with the matters giving rise to the Proceeding, the Eligible Person was acting in good faith and in what he or she believed to be the best interests of the Corporation or at least not opposed to the best interests of the Corporation, and (ii) a written affirmation or undertaking to repay advances if it is ultimately determined that the Eligible Person is not entitled to indemnification under this Article.

(b) Notwithstanding Section 6.3(a), advancement of expenses shall not be mandatory, but shall be permissive at the discretion of the Corporation, for expenses incurred after the Eligible Person's conviction by a trial court of competent jurisdiction of, or plea of guilty or nolo contendere or its equivalent to, a crime arising from the circumstances giving rise to the Proceeding.

(c) Notwithstanding Section 6.3(a), advancement of expenses shall not be mandatory, but shall be permissive at the discretion of the Corporation, for expenses incurred by or on behalf of Eligible Persons for judicial adjudications or arbitrations under Section 6.4(e) or (f), except that advancement of such expenses shall be mandatory for judicial adjudications or arbitrations brought after a Change in Control in connection with expenses relating to underlying Proceedings arising from actions or failures to act prior to the Change in Control, provided the Eligible Person complies with the requirements of Section 6.3(a).

SECTION 6.4. *Procedures; Presumptions and Effect of Certain Proceedings; Remedies.* In furtherance, but not in limitation, of the foregoing provisions, the following procedures, presumptions and remedies shall apply with respect to and the right to indemnification and advancement of expenses under this Article.

(a) To obtain indemnification under this Article, an Eligible Person shall submit to the Secretary of the Corporation a written request, including such documentation and information as

is reasonably available to the Eligible Person and reasonably necessary to determine whether and to what extent the Eligible Person is entitled to indemnification (the “Supporting Documentation”). The determination of the Eligible Person’s entitlement to indemnification shall be made not later than sixty (60) days after receipt by the Corporation of the written request together with the Supporting Documentation. The Secretary of the Corporation shall, promptly upon receipt of such request, advise the Board in writing of the Eligible Person’s request.

(b) An Eligible Person’s entitlement to indemnification under this Article shall be determined in one of the following methods, such method to be selected by the Board of Directors, regardless of whether there are any Disinterested Directors (as hereinafter defined): (i) by a majority vote of the Disinterested Directors, if they constitute a quorum of the Board; (ii) by a written opinion of Special Counsel (as hereinafter defined) if (A) a Change in Control shall have occurred and the Eligible Person so requests or (B) a quorum of the Board consisting of Disinterested Directors is not obtainable or, even if obtainable, a majority of such Disinterested Directors so directs; (iii) by the shareholders of the Corporation (but only if a majority of the Disinterested Directors, if they constitute a quorum of the Board, presents the issue of entitlement to the shareholders for their determination); or (iv) as provided in subsection (d).

(c) In the event the determination of entitlement is to be made by Special Counsel, a majority of the Disinterested Directors shall select the Special Counsel, but only Special Counsel to which the Eligible Person does not reasonably object; provided, however, that if a Change in Control shall have occurred, the Eligible Person shall select such Special Counsel, but only Special Counsel to which a majority of the Disinterested Directors does not reasonably object.

(d) Except as otherwise expressly provided in this Article, if a Change in Control shall have occurred, the Eligible Person shall be presumed to be entitled to indemnification (with respect to actions or failures to act occurring prior to such Change in Control) upon submission of a request for indemnification together with the Supporting Documentation in accordance with subsection (a), and thereafter the Corporation shall have the burden of proof to overcome that presumption in reaching a contrary determination. In any event, if the person or persons empowered under subsection (c) to determine entitlement shall not have been appointed or shall not have made a determination within sixty (60) days after receipt by the Corporation of the request therefor together with the Supporting Documentation, the Eligible Person shall be deemed to be, and shall be, entitled to indemnification and advancement of expenses unless (i) the Eligible Person misrepresented or failed to disclose a material fact in making the request for indemnification or in the Supporting Documentation or (ii) such indemnification is prohibited by law. The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, adversely affect the right of an Eligible Person to indemnification or create a presumption that the Eligible Person did not act in good faith and in a manner which the Eligible Person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, that the Eligible Person had reasonable cause to believe that his or her conduct was unlawful.

(e) In the event that a determination is made that the Eligible Person is not entitled to indemnification (i) the Eligible Person shall be entitled to seek an adjudication of his or her entitlement to such indemnification either, at the Eligible Person’s sole option, in (A) an appropriate court of the state of Indiana or any other court of competent jurisdiction or (B) an

arbitration to be conducted in Indianapolis, Indiana, by a single arbitrator pursuant to the rules of the American Arbitration Association; (ii) in any such judicial proceeding or arbitration the Eligible Person shall not be prejudiced by reason of the prior determination pursuant to this Section 6.4; and (iii) if a Change in Control shall have occurred, in any such judicial proceeding or arbitration the Corporation shall have the burden of proving that the Eligible Person is not entitled to indemnification but only with respect to actions or failures to act occurring prior to such Change in Control.

(f) If a determination shall have been made or deemed to have been made that the Eligible Person is entitled to indemnification, the Corporation shall be obligated to pay the amounts incurred by the Eligible Person within ten (10) days after such determination has been made or deemed to have been made and shall be conclusively bound by such determination unless (i) the Eligible Person misrepresented or failed to disclose a material fact in making the request for indemnification or in the Supporting Documentation or (ii) such indemnification is prohibited by law. In the event that (A) any advancement of expenses is not timely made pursuant to Section 6.3 or (B) payment of indemnification is not made within ten (10) days after a determination of entitlement to indemnification has been made, the Eligible Person shall be entitled to seek judicial enforcement of the Corporation's obligation, to pay to the Eligible Person such advancement of expenses or indemnification. Notwithstanding the foregoing, the Corporation may bring an action, in an appropriate court in the State of Indiana or any other court of competent jurisdiction, contesting the right of the Eligible Person to receive indemnification hereunder due to the occurrence of an event described in clause (i) or (ii) of this subsection (f) (a "Disqualifying Event"); provided, however, that in any such action the Corporation shall have the burden of proving the occurrence of such Disqualifying Event.

(g) The Corporation shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 6.4 that the procedures and presumptions of this Article are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by the provisions of this Article.

(h) In the event that the Eligible Person seeks a judicial adjudication of or an award in arbitration to enforce his or her rights under, or to recover damages for breach of this Article, the Eligible Person shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation, against, any expenses actually and reasonably incurred by the Eligible Person in connection with such adjudication or arbitration if the Eligible Person prevails in such adjudication or arbitration. If it shall be determined in such judicial adjudication or arbitration that the Eligible Person is entitled to receive part but not all of the indemnification or advancement of expenses sought, the expenses incurred by the Eligible Person in connection with such judicial adjudication or arbitration shall be prorated accordingly.

#### SECTION 6.5. *Certain Definitions.* For purposes of this Article:

(a) "Change in Control" means any of the following events: (i) the acquisition by any "person," as that term is used in Sections 13(d) and 14(d) of the Exchange Act, other than (A) the Corporation, (B) any subsidiary of the Corporation, (C) any employee benefit plan or employee stock plan of the Corporation or a subsidiary of the Corporation or any trustee or fiduciary with respect to any such plan when acting in that capacity, or (D) Lilly Endowment, Inc., of

“beneficial ownership” as defined in Rule 13d-3 under the Exchange Act, directly or indirectly, of 20 percent or more of the shares of the Corporation’s capital stock the holders of which have general voting power under ordinary circumstances to elect at least a majority of the Board (or which would have such voting power but for the application of IND. CODE §§ 23-1-42-1 through 23-1-42-11) (“Voting Stock”); (ii) the first day on which less than one half of the total membership of the Board shall be Continuing Directors (as such term is defined in Article 13.(f) of the Articles of Incorporation); (iii) consummation of a merger, share exchange, or consolidation of the Corporation (a “Transaction”), other than a Transaction which would result in the Voting Stock of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50 percent of the Voting Stock of the Corporation or such surviving entity immediately after such Transaction; or (iv) approval by the shareholders of the Corporation of a complete liquidation of the Corporation or a sale of disposition of all or substantially all the assets of the Corporation.

(b) “Disinterested Director” means a Director who is not or was not a party to the Proceeding in respect of which indemnification is sought by the Eligible Person.

(c) “Special Counsel” means a law firm or a member of a law firm that neither presently is, nor in the past five years has been, retained to represent any other party to the Proceeding giving rise to a claim for indemnification under this Article. In addition, any person who, under applicable standards of professional conduct, would have a conflict of interest in representing either the Corporation or the Eligible Person in an action to determine the Eligible Person’s rights under this Article may not act as Special Counsel.

SECTION 6.6. *Indemnification of Agents.* Notwithstanding any other provisions of this Article, the Corporation may, consistent with the provisions of applicable law, indemnify any person other than a director, officer or employee of the Corporation who is or was an agent of the Corporation and who is or was involved in any manner (including, without limitation, as party or a witness) or is threatened to be made so involved in any threatened, pending or completed Proceeding by reasons of the fact that such person is or was an agent of the Corporation or, at the request of the Corporation, a director, officer, partner, member, manager, employee, fiduciary or agent of a Covered Entity against all expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding. The Corporation may also advance expenses incurred by such person in connection with any such Proceeding, consistent with the provisions of applicable law.

SECTION 6.7. *Effect of Amendment or Repeal.* Neither the amendment or repeal of, nor the adoption of a provision inconsistent with, any provision of this Article shall adversely affect the rights of any Eligible Person under this Article (a) with respect to any Proceeding commenced or threatened prior to such amendment, repeal or adoption of an inconsistent provision or (b) after the occurrence of a Change in Control, with respect to any Proceeding arising out of any action or omission occurring prior to such amendment, repeal or adoption of an inconsistent provision, in either case without the written consent of such Eligible Person.

SECTION 6.8. *Severability*. If any of this Article shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article (including, without limitation, all portions of any Section of this Article containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article (including, without limitation, all portions of any Section of this Article containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

## **ARTICLE VII**

### **Miscellaneous**

SECTION 7.0. *Corporate Seal*. The Seal of the Corporation shall consist of a circular disk around the circumference of which shall appear the words:

“ELI LILLY AND COMPANY, INDIANAPOLIS, INDIANA”

and across the center thereof the words:

“Established 1876 Incorporated 1901”.

SECTION 7.1. *Fiscal Year*. The fiscal year of the Corporation shall begin on the first day of January in each year and shall end on the thirty-first day of the following December.

SECTION 7.2. *Amendment of Bylaws*. These Bylaws may be amended or repealed and new Bylaws may be adopted by the affirmative vote of at least a majority of the actual number of directors elected and qualified at any regular or special meeting of the Board of Directors, provided that: (a) the notice or waiver of notice of such meeting states in effect that consideration is to be given at such meeting to the amendment or repeal of the Bylaws or the adoption of new Bylaws; (b) no provision of these Bylaws incorporating a provision of Articles 9, 13 or 14 of the Articles of Incorporation may be amended except in a manner consistent with those Articles as they may be amended in compliance with the requirements stated therein; and (c) any amendment to Articles I and VI of these Bylaws shall require the affirmative vote of a majority of (i) the actual number of directors elected and qualified, and (ii) the Continuing Directors, as defined in Article 13.(f) of the Articles of Incorporation.

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