



DIVISION OF
CORPORATION FINANCE

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

March 6, 2019

Marc S. Gerber
Skadden, Arps, Slate, Meagher & Flom LLP
marc.gerber@skadden.com

Re: Gilead Sciences, Inc.
Incoming letter dated December 13, 2018

Dear Mr. Gerber:

This is in response to your correspondence dated December 13, 2018 and February 11, 2019 concerning the shareholder proposal (the "Proposal") submitted to Gilead Sciences, Inc. (the "Company") by James McRitchie (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated January 27, 2019 and February 12, 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

March 6, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Gilead Sciences, Inc.
Incoming letter dated December 13, 2018

The Proposal requests that the board undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting.

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 the amendment to its certificate of incorporation which, if approved, will permit written consent by shareholders. 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,

Courtney Haseley
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

JOHN CHEVEDDEN

February 12, 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
Gilead Sciences, Inc. (GILD)
Written Consent
James McRitchie

Ladies and Gentlemen:

This is in regard to the December 13, 2018 no-action request.

After 2-months the company finally came up with its last minute surprise after the offices were closed for 35-days – the longest most ironclad procedural version of a written consent right ever – to guarantee that it will be useless to shareholders as a practical matter.

Loads of companies complain of administrative burdens in their no action requests and management opposition statements. This company has no qualms about dishing out high administrative burdens to its shareholders.

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: James McRitchie

Brett A. Pletcher <brett.pletcher@gilead.com>

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BY EMAIL (shareholderproposals@sec.gov)

February 11, 2019

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

RE: Gilead Sciences, Inc. – 2019 Annual Meeting
Supplement to Letter dated December 13, 2018 Relating to
Shareholder Proposal of James McRitchie

Ladies and Gentlemen:

We refer to our letter dated December 13, 2018 (the “No-Action Request”), submitted on behalf of our client, Gilead Sciences, Inc., a Delaware corporation (the “Company”), pursuant to which we requested that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with the Company’s view that the shareholder proposal and supporting statement (the “Proposal”) submitted by James McRitchie, with John Chevedden authorized to act as Mr. McRitchie’s agent (Mr. McRitchie and Mr. Chevedden are referred to collectively as the “Proponent”), may be excluded from the proxy materials to be distributed by the Company in connection with its 2019 annual meeting of shareholders (the “2019 proxy materials”).

In accordance with Rule 14a-8(j), a copy of this letter also is being sent to the Proponent.

The No-Action Request indicated the Company’s view that the Proposal may be excluded from the 2019 proxy materials because the Company’s Board of Directors (the

“Board”) was expected, at its meeting in February 2019, to consider an amendment to the Company’s Restated Certificate of Incorporation (the “Certificate of Incorporation”) (and, contingent upon the effectiveness of the amendment to the Certificate of Incorporation, a conforming amendment to the Company’s Amended and Restated Bylaws (the “Bylaws”)) that would substantially implement the Proposal under Rule 14a-8(i)(10).

We submit this supplemental letter to notify the Staff that that, at its meeting on February 6, 2019, the Board adopted resolutions (i) approving an amendment to the Certificate of Incorporation to delete the current prohibition on stockholder action by written consent and add a new Section 3 to Article VI providing a stockholder right to act by written consent (the “Charter Amendment”), declaring the Charter Amendment advisable and in the best interest of the Company and its stockholders, directing that the Charter Amendment be submitted to stockholders for adoption at the 2019 annual meeting and recommending that stockholders vote to adopt the Charter Amendment and (ii) approving, contingent and effective upon approval of the Charter Amendment by stockholders and the filing of the Charter Amendment with the Office of the Secretary of State of the State of Delaware, a conforming amendment to the Bylaws. In the event that the Company’s stockholders approve the Charter Amendment at the 2019 annual meeting, stockholders holding at least 20% of the Company’s outstanding common stock will be able to request that the Board set a record date for stockholders to act by written consent (consistent with the ownership percentage required to request a special meeting of stockholders) and, pursuant to Section 228(a) of the Delaware General Corporation Law, action would be approved if consents in writing are provided to the Company by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize such action at a meeting at which all shares entitled to vote thereon were present and voted. The text of the Charter Amendment is attached hereto as Exhibit A.

As discussed in the No-Action Request, Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. Applying the principles described in the No-Action Request, the Staff has permitted exclusion under Rule 14a-8(i)(10) of proposals, substantially similar to the Proposal, seeking the ability for shareholders to act by written consent, where the board lacked unilateral authority to adopt the necessary amendments to the governing documents (which is the case with respect to the Certificate of Incorporation and, indirectly, with respect to the Bylaws so that the Bylaws do not conflict with the Certificate of Incorporation), but substantially implemented the proposal by approving the proposed amendments and directing that they be submitted for shareholder approval at the next annual meeting. *See The Southern Co.* (Jan. 20, 2015) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company’s board of directors approved a bylaw amendment that would remove a provision requiring unanimous written consent for stockholders to alter, amend, or repeal the bylaws and submitted the

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

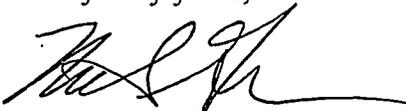
As in the letters referenced above and in the No-Action Request, the Charter Amendment substantially implements the Proposal. Specifically, the Company's stockholders will be asked at the Company's 2019 annual meeting to vote to adopt the Charter Amendment that would, if approved, allow stockholders to act by written consent. In addition, upon the effectiveness of the Charter Amendment, the conforming amendment to the Bylaws would become effective. Accordingly, the Company has addressed the essential objective of the Proposal.

Accordingly, consistent with the letters cited above and in the No-Action Request, the Company believes that the Proposal has been substantially implemented and may be excluded under Rule 14a-8(i)(10).

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

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

cc: John Chevedden

EXHIBIT A

(see attached)

**CERTIFICATE OF AMENDMENT
OF RESTATED CERTIFICATE OF INCORPORATION OF
GILEAD SCIENCES, INC.**

Gilead Sciences, Inc. (the "Corporation"), a Delaware corporation, does hereby certify that:

FIRST: Section 2(c) of Article VI of the Restated Certificate of Incorporation of the Corporation is hereby deleted in its entirety.

SECOND: Section 2(d) of Article VI of the Restated Certificate of Incorporation of the Corporation is hereby renumbered "Section 2(c)", but the provisions of such section otherwise remain unchanged and in full force and effect.

THIRD: Article VI of the Restated Certificate of Incorporation of the Corporation is hereby amended to add a new Section 3 to the end of Article VI, reading in its entirety as follows:

SECTION 3. STOCKHOLDER ACTION BY WRITTEN CONSENT.

(a) **Action by Written Consent.** All actions required or permitted to be taken by stockholders at an annual or special meeting of stockholders of the Corporation may be effected by the written consent of the holders of stock of the Corporation entitled to vote thereon. The holders of Common Stock may not act by written consent in lieu of a meeting of stockholders except (a) in accordance with this Article VI (including, without limitation, the requirements set forth herein with respect to submitting a request that the Board of Directors fix a record date for determining the stockholders entitled to take such action) or (b) pursuant to resolutions adopted by the Board of Directors authorizing one or more actions to be taken by written consent. Any written consent to take action in lieu of a meeting of stockholders may be revoked by the stockholder who executed such consent prior to the effectiveness of the stockholder action or actions set forth in such written consent by delivery to the Corporation of a revocation of such consent. References in this Article VI and the Bylaws to a written consent shall be deemed to include a telegram, cablegram or other electronic transmission consenting to an action to be taken if such transmission complies with Section 228 of the Delaware General Corporation Law.

(b) **Request for Record Date.** The record date for determining holders of Common Stock entitled to express consent to corporate action in writing without a meeting shall be fixed by the Board of Directors or otherwise established under this Article VI. Any stockholder seeking to have the holders of Common Stock authorize or take corporate action by written consent without a meeting shall, by written request addressed to the secretary of the Corporation and delivered to the Corporation and signed by holders of record of at least 20% of the outstanding shares of Common Stock, request that a record date be fixed for such purpose. The written request must contain the information set forth or identified in paragraph (c) of this Article VI. Following receipt of the request, the Board of Directors shall, by the later of (i) 20 days after delivery of a valid request to set a record date and (ii) 5 days after delivery of any information requested by the Corporation to determine the validity of the request for a record date or to determine whether the action to which the request relates may be effected by written consent, determine the validity of the request and whether the request relates to an action that may be taken by written consent pursuant to this Article VI and, if appropriate, may adopt a resolution fixing the record date for such purpose. The record date for such purpose shall be no more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors and shall not precede the date such resolution is adopted. If the request has been determined to be valid and to relate to an action that may be effected by written consent pursuant to this Article VI or if no such determination shall have been made by the date required by this Article VI, and in either event no record date has been fixed by the Board of Directors, the record date shall be the close of business on the first date on which a signed written consent setting forth the action taken or proposed to be taken by written consent is delivered to the Corporation in accordance with paragraph (f) of this Article VI and Section 228 of the DGCL; provided that, if prior action by the Board of Directors is

required under the provisions of Delaware law, the record date shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action. The Board of Directors may fix a record date to determine the stockholders entitled to deliver written requests, whether or not the Corporation has already received one or more written requests pursuant to this Article VI. A request to set a record date for determining the holders of Common Stock entitled to consent to an action may be revoked by the stockholder who submitted such request by delivery of a revocation of such request to the Corporation at any time prior to the time written requests to set a record date from the holders of 20% of the outstanding shares of Common Stock, submitted in accordance with this Article VI, are received by the Corporation.

(c) Notice Requirements. Any request required by paragraph (b) of this Article VI must be delivered by the holders of record of at least 20% of the outstanding shares of Common Stock (with evidence of such ownership attached to the request, including, if the record holders submitting such request are not the beneficial owners of such shares, evidence that the beneficial owners on whose behalf the request is submitted beneficially own at least 20% of the outstanding shares of Common Stock), must be executed by each stockholder of record submitting such request and must describe the action proposed to be taken by written consent of stockholders and must contain (i) such information and representations, to the extent applicable, then required by the Bylaws as though each such stockholder submitting a request was intending to make a nomination or to bring any other matter before a meeting of stockholders and (ii) the text of the proposal(s) (including the text of any resolutions to be adopted by written consent of stockholders and the language of any proposed amendment to the Bylaws of the Corporation). The Corporation may require the stockholder(s) submitting such request to furnish such other information as may be requested by the Corporation to determine the validity of the request for a record date and to determine whether the request relates to an action that may be effected by written consent under this Article VI, the Bylaws and applicable law. In connection with an action or actions proposed to be taken by written consent in accordance with this Article VI, the stockholders seeking such action or actions shall further update and supplement the information previously provided to the Corporation in connection therewith, if necessary, as of the record date for determining the stockholders entitled to consent to such action or actions as would be required by the Bylaws as of the record date for a meeting of stockholders if such action were a nomination or other matter proposed to be brought before a meeting of stockholders.

(d) Actions Which May Be Taken by Written Consent. The Board of Directors shall not be obligated to set a record date for an action by written consent if (i) the record date request does not, or record date requests were solicited in a manner that did not, comply with this Article VI, the Corporation's Bylaws or applicable law, (ii) such action relates to an item of business that is not a proper subject for stockholder action under applicable law, (iii) the record date request is delivered during the period commencing 90 days prior to the first anniversary of the date of the immediately preceding annual meeting of stockholders and ending on the earlier of (x) the date of the next annual meeting of stockholders or (y) 30 days after the first anniversary of the immediately preceding annual meeting of stockholders, (iv) an identical or substantially similar item (as determined in good faith by the Board of Directors, a "Similar Item"), other than the election of directors, was presented at an annual or special meeting of stockholders held not more than 12 months before the record date request is delivered, (v) a Similar Item was presented at an annual or special meeting of stockholders held not more than 90 days before the record date request is delivered (and, for purposes of this clause (v), the election of directors shall be deemed to be a "Similar Item" with respect to all items of business involving the election or removal of directors, changing the size of the Board of Directors and the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors), (vi) a Similar Item is included in the Corporation's notice of meeting as an item of business to be brought before an annual or special meeting of stockholders that has been called but not yet held or that is called for a date within 90 days of the receipt by the Corporation of a record date request, or (vii) the record date request was made, or record date requests were solicited, in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934 or other applicable law.

(e) Manner of Consent Solicitation. Holders of Common Stock may take action by written consent only if (i) consents are solicited by the stockholder or group of stockholders seeking to take action by written consent of stockholders from all holders of stock of the Corporation entitled to vote on the matter pursuant to and in accordance with this Article VI and applicable law and (ii) the solicitation materials delivered by such stockholders include a description of the action or actions proposed to be taken by written consent and, with respect to each person or entity directing such solicitation or on whose behalf such solicitation is made, a description of any material interest of such person or entity in the action or actions proposed to be taken by written consent, as well as any other information required under applicable law.

(f) Delivery of Consents. No consent shall be effective to take the corporate action referred to therein unless, within 60 days of the first date on which a consent is delivered in the manner required by this Article VI, and not later than 120 days after the record date for determining the stockholders entitled to consent to such action, consents signed by a sufficient number of stockholders to take such action are so delivered to the Corporation. No consents may be delivered to the Corporation or its registered office in the State of Delaware until 60 days after the delivery of a valid request to set a record date. Consents must be delivered to the Corporation in the manner required by Section 228 of the DGCL. Delivery must be made by hand or by certified or registered mail, return receipt requested. In the event of the delivery to the Corporation of consents, the secretary of the Corporation, or such other officer or agent of the Corporation as the Board of Directors may designate, shall provide for the safe-keeping of such consents and any related revocations and shall promptly conduct such ministerial review of the sufficiency of all consents and any related revocations and of the validity of the action to be taken by written consent as the secretary of the Corporation, or such other officer or agent of the Corporation as the Board of Directors may designate, as the case may be, deems necessary or appropriate, including, without limitation, whether the holders of a number of shares having the requisite voting power to authorize or take the action specified in consents have given consent; provided, however, that if the action to which the consents relate is the removal or replacement of one or more members of the Board of Directors, the secretary of the Corporation, or such other officer or agent of the Corporation as the Board of Directors may designate, as the case may be, shall promptly designate two persons, who shall not be members of the Board of Directors, to serve as independent inspectors (“Inspectors”) with respect to such consent and such Inspectors shall discharge the functions of the secretary of the Corporation, or such other officer or agent of the Corporation as the Board of Directors may designate, as the case may be, under this Article VI. If after such investigation the secretary of the Corporation, such other officer or agent of the Corporation as the Board of Directors may designate or the Inspectors, as the case may be, shall determine that the action purported to have been taken is duly authorized by the consents, that fact shall be certified on the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders and the consents shall be filed in such records. In conducting the investigation required by this section, the secretary of the Corporation, such other officer or agent of the Corporation as the Board of Directors may designate or the Inspectors, as the case may be, may, at the expense of the Corporation, retain special legal counsel and any other necessary or appropriate professional advisors as such person or persons may deem necessary or appropriate and, to the fullest extent permitted by law, shall be fully protected in relying in good faith upon the opinion of such counsel or advisors.

(g) Effectiveness of Consent. Notwithstanding anything in this Certificate of Incorporation to the contrary, no action may be taken by written consent except in accordance with this Article VI, the Bylaws and applicable law. The Board of Directors shall determine in good faith whether the requirements set forth in this Article VI and the Bylaws have been satisfied. If the Board of Directors shall determine in good faith that any request to fix a record date or any stockholder action by written consent was not properly made in accordance with, or relates to an action that may not be effected by written consent pursuant to, this Article VI, the Bylaws or applicable law, or the stockholder or stockholders seeking to take such action do not otherwise comply with this Article VI, the Bylaws or applicable law, then the Board of Directors shall not be required to fix a record date and any such purported action by written consent shall be null and

void to the fullest extent permitted by applicable law. No action by written consent without a meeting shall be effective until such date as the secretary of the Corporation, such other officer or agent of the Corporation as the Board of Directors may designate, or the Inspectors, as applicable, certify to the Corporation that the consents delivered to the Corporation in accordance with paragraph (f) of this Article VI, represent at least the minimum number of votes that would be necessary to take the corporate action at a meeting at which all shares entitled to vote thereon were present and voted, in accordance with Delaware law and this Certificate of Incorporation. The action by written consent will take effect as of the date and time of such certification and will not relate back to the date that the written consents were delivered to the Corporation.

(h) Challenge to Validity of Consent. Nothing contained in this Article VI shall in any way be construed to suggest or imply that the Board of Directors of the Corporation or any stockholder shall not be entitled to contest the validity of any consent or related revocations, whether before or after such certification by the secretary of the Corporation, such other officer or agent of the Corporation as the Board of Directors may designate or the Inspectors, as the case may be, or to take any other action (including, without limitation, the commencement, prosecution, or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(i) Board-solicited Stockholder Action by Written Consent. Notwithstanding anything to the contrary set forth above, (i) none of the foregoing provisions of this Article VI shall apply to any solicitation of stockholder action by written consent by or at the direction of the Board of Directors and (ii) the Board of Directors shall be entitled to solicit stockholder action by written consent in accordance with applicable law.

JOHN CHEVEDDEN

January 27, 2019

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

1 Rule 14a-8 Proposal
Gilead Sciences, Inc. (GILD)
Written Consent
James McRitchie

Ladies and Gentlemen:

This is in regard to the December 13, 2018 no-action request.

The company has not even submitted a draft of its purported February amendment regarding written consent. This is for a company that last filed its proxy on March 26, 2018.

This puts the Staff and the proponent at a disadvantage with insufficient time to see whether the purported amendment is so loaded with administrative burdens for shareholders as to be next to worthless.

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: James McRitchie

Brett A. Pletcher <brett.pletcher@gilead.com>

[GILD Rule 14a-8 Proposal, November 24, 2018 Revised 11/25/18]

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

Proposal 4* - Right to Act by Written Consent

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

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

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

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

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

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

Increase Shareholder Value

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

[This line and any below are *not* for publication]

Number 4* to be assigned by GILD

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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BY EMAIL (shareholderproposals@sec.gov)

December 13, 2018

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

RE: Gilead Sciences, Inc. – 2019 Annual Meeting
Omission of Shareholder Proposal of
James McRitchie

Ladies and Gentlemen:

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

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

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

I. The Proposal

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

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

II. Basis for Exclusion

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

III. Background

A. The Proposal

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

B. Gilead's Charter Amendment and Bylaw Amendment

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

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

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

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

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

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

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

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

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

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

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

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

V. Conclusion

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

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Gilead's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

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

John Chevedden

EXHIBIT A

(see attached)

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

Dear Corporate Secretary,

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

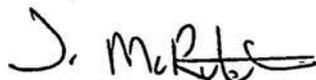
I am submitting the attached shareholder proposal for a vote at the next annual shareholder meeting. The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year and I pledge to continue to hold the required amount of stock until after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

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

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

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

Sincerely,



James McRitchie

November 24, 2018

Date

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

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

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

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

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

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

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

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

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

James McRitchie,

sponsors this proposal.

Notes:

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

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

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

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

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

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

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

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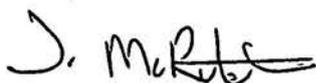
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The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email



11/26/2018

James McRitchie

Re: Your TD Ameritrade Account Ending in ***

Dear James McRitchie,

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

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

Sincerely,

James Van Eepoel
Resource Specialist
TD Ameritrade

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

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

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