



DIVISION OF
CORPORATION FINANCE

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

March 8, 2019

Lisa A. Atkins
Bristol-Myers Squibb Company
lisa.atkins@bms.com

Re: Bristol-Myers Squibb Company
Incoming letter dated December 21, 2018

Dear Ms. Atkins:

This letter is in response to your correspondence dated December 21, 2018 concerning the shareholder proposal (the "Proposal") submitted to Bristol-Myers Squibb Company (the "Company") by Trinity Health et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. 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: Catherine M. Rowan
Trinity Health
rowancm@trinity-health.org

March 8, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Bristol-Myers Squibb Company
Incoming letter dated December 21, 2018

The Proposal urges the compensation and management development committee to report annually on the extent to which risks related to public concern over drug pricing strategies are integrated into the Company's incentive compensation policies, plans and programs for senior executives.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7). In our view, the Proposal, which seeks disclosure on the extent to which certain risks are integrated into senior executive compensation decisions, transcends ordinary business matters because it focuses on the performance measures used to determine awards for senior executives and on the Company's drug pricing strategy, which appear to be significant issues for the Company. We are also unable to conclude that the Proposal micromanages the Company to such a degree that exclusion of the Proposal would be appropriate. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

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.



Lisa A. Atkins
Senior Counsel

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Tel 212-546-4044 Fax 212-546-9966
lisa.atkins@bms.com

December 21, 2018

VIA E-MAIL: 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 Trinity Health, The Sisters of Charity of Saint Elizabeth, The Sisters of St. Francis of Philadelphia, Mercy Investment Services, Inc., Daughters of Charity, Inc., Catholic Health Initiatives, Bon Secours Mercy Health, School Sisters of Notre Dame Cooperative Investment Fund, UAW Retiree Medical Benefits Trust and Monasterio de San Benito

Dear Ladies and Gentlemen:

This letter is submitted by Bristol-Myers Squibb 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 Trinity Health, The Sisters of Charity of Saint Elizabeth, The Sisters of St. Francis of Philadelphia, Mercy Investment Services, Inc., Daughters of Charity, Inc., Catholic Health Initiatives, Bon Secours Mercy Health, School Sisters of Notre Dame Cooperative Investment Fund, UAW Retiree Medical Benefits Trust and Monasterio de San Benito (collectively, the “*Proponents*”). 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. 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 Proponents as notice of the Company’s intent to omit the

Proposal from the 2019 Proxy Materials. Likewise, we take this opportunity to inform the Proponents that if they elect to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company.

THE PROPOSAL

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

RESOLVED, that shareholders of Bristol-Myers Squibb Company (“BMS”) urge the Compensation and Management Development Committee (the “Committee”) to report annually to shareholders on the extent to which risks related to public concern over drug pricing strategies are integrated into BMS’s incentive compensation policies, plans and programs (together, “arrangements”) for senior executives. The report should include, but need not be limited to, discussion of whether (i) incentive compensation arrangements reward, or not penalize, senior executives for adopting pricing strategies, or making and honoring commitments about pricing, that incorporate public concern regarding prescription drug prices; and (ii) such concern is taken into account when setting financial targets for incentive compensation arrangements.

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)(7).

ANALYSIS

Rule 14a-8(i)(7) permits the exclusion of shareholder proposals dealing with matters relating to a company’s “ordinary business operations.” The Commission has stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” Exchange Act Release No. 40018 (May 21, 1998). The term “ordinary business” in this context refers to “matters that are not necessarily ‘ordinary’ in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” *Id.*

The ordinary business exclusion rests on two central considerations: (1) the subject matter of the proposal (i.e., whether the subject matter involves a matter of ordinary business), provided the proposal does not raise significant social policy considerations that transcend ordinary business; and (2) the degree to which the proposal attempts to micromanage a company by “probing too deeply into matters of a complex nature upon which shareholders as a group, would not be in a position to make an informed judgment.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”); Exchange Act Release No. 20091 (Aug. 16, 1983).

A proposal may involve micromanagement if it “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” *Id.* Determinations as to the excludability of proposals on the basis of micromanagement “will be made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.” *Id.* As recently explained by the Staff, the consideration of the excludability of a proposal based on micromanagement “looks only to the degree to which a proposal seeks to micromanage” and does not focus on the subject matter of the proposal. Staff Legal Bulletin No. 14J (Oct. 23, 2018) (“*SLB 14J*”). The Staff further explained in *SLB 14J* that “Unlike the first consideration [of the ordinary business exclusion], which looks to a proposal’s subject matter, the second consideration looks only to the degree to which a proposal seeks to micromanage. Thus, a proposal that may not be excludable under the first consideration may be excludable under the second if it micromanages the company.” Although the Staff has historically not permitted exclusion of proposals addressing senior executive or director compensation on the basis of micromanagement given the subject matter of the proposal, the Staff indicated in *SLB 14J* that it no longer “believe[s] there is a basis for treating executive compensation proposals differently than other types of proposals” when analyzing a micromanagement argument. *Id.*

Here, the Proposal seeks to micromanage the Company by requiring the Compensation and Management Development Committee (the “*Committee*”) to produce a detailed annual report regarding the extent to which risks associated with public concern over drug pricing strategies are integrated into the Company’s incentive compensation arrangements for senior executives. Where proposals have requested reports regarding company decisions that are inherently based on complex business considerations outside the knowledge and expertise of shareholders, the Staff has consistently permitted exclusion. *See, e.g., JPMorgan Chase & Co.* (Mar. 30, 2018) (proposal requesting a report on the reputational, financial and climate risks associated with the management of particular financial products and services was excludable because the proposal “micromanages the company by seeking to impose specific methods for implementing complex policies”); *Bristol-Myers Squibb Company* (Feb. 10, 2017) (proposal requesting report listing rates of year-over-year price increases on top 10 selling pharmaceutical products, including rationale for the increases, excludable); *Dominion Resources, Inc.* (Jan. 27, 2014) (proposal that would have required the company to “share a report analyzing and making projections on the costs to ratepayers as those costs may appear on cost recovery applications ... for certain wind projects” excludable); *Wal-Mart Stores, Inc.* (Feb. 27, 2008) (proposal related to company policies and practices related to product safety excludable); *cf. Niagara Mohawk Holdings, Inc.* (Jan. 3, 2001) (proposal recommending a nuclear fuel management plan to achieve fuel cost savings and minimize nuclear waste excludable where the company argued that the proposal “would put the shareholders in the position of micromanaging a highly technical operational matter as to which they are unable to act on an informed basis”). Relatedly, the Staff has recently permitted exclusion of proposals on the basis of micromanagement under Rule 14a-8(i)(7) where the implementation of the proposal would have involved micromanagement by dictating a detailed course of action in response to complex issues. *See, e.g., EOG Resources, Inc.* (Feb. 26, 2018, reconsideration denied Mar. 12, 2018) (permitting exclusion of a proposal that requested adoption of “company-wide, quantitative, time-bound targets for reducing GHG emissions” and issuance of a report on the basis of micromanagement); *Verizon Communications*

Inc. (Mar. 6, 2018) (proposal requesting a report evaluating feasibility of achieving net zero GHG emissions by 2030).

When the Proposal is considered within the framework set forth in SLB 14J and the no-action letters cited above, it is clear that it seeks to impermissibly micromanage the Company. The Proposal requests that the Committee produce a detailed annual report regarding the extent to which risks associated with public concern over drug pricing strategies are integrated into the Company's incentive compensation arrangements for senior executives, including a discussion of whether the Company's incentive compensation arrangements reward executive officers for adopting pricing strategies that incorporate public concern over drug prices and whether the Committee considers such concern when setting financial targets for incentive compensation arrangements. This intricate detail regarding the Committee's process of determining executive compensation, which the Proponents request to be included in an annual report to shareholders, would constitute micromanagement of a highly complex process that falls squarely within the Committee's purview. For instance, the targets established by the Committee in determining executive compensation each year require significant judgment and are informed by a myriad of factors, including long-term strategic plans, historical performance, budget, operational priorities, product pipeline and external factors, such as external expectations, competitive developments and the regulatory environment. *Bristol-Myers Squibb and Company Proxy Statement* (Mar. 22, 2018) (the "2018 Proxy Statement"). Requiring detailed disclosure in a separate report on the Committee's consideration of a single factor as part of this complex process reaches too far in "micromanag[ing] the [C]ompany by seeking to impose specific methods for implementing complex policies." *JPMorgan Chase & Co.*

In addition, as noted in the Company's periodic reports filed with the Commission, the Company markets more than 10 product brands around the globe. The factors underlying the Company's pricing strategies are themselves dynamic and extraordinarily complex, varying by product, region and, in some cases, country, for a variety of reasons, including due to varying healthcare regulatory regimes and differences in payment methods and programs depending on the jurisdiction in which a patient is located. The value of scientific innovation for patients and society in the context of overall healthcare spend, economic factors impacting the healthcare systems' capacity to provide appropriate, rapid and sustainable access to patients, and the necessity to sustain the Company's research and development investment in innovative platforms to continue to address serious unmet medical needs also factor into pricing decisions. *2018 Proxy Statement*. The Company does not believe it could prepare the report requested by the Proponents without disclosing aspects of those commercially sensitive decisions and strategies. The Staff previously permitted the Company to exclude a proposal seeking similar disclosure on drug pricing, albeit outside of the executive compensation process. *See Bristol-Myers Squibb Company* (Feb. 10, 2017).

Furthermore, the preparation of the requested report on an annual basis would involve ongoing micromanagement due to the evolving nature of the Company's executive compensation program from year-to-year. By requesting such intricate detail in a report on the Company's executive compensation arrangements, the Proposal "prob[es] too deeply into matters of a complex nature upon which shareholders as a group, would not be in a position to make an informed judgment." *1998 Release*.

The Proposal's Supporting Statement reinforces the micromanagement conclusion. It states that "it is important that [executive incentive compensation] arrangements align with company strategy and encourage responsible risk management" and that the requested report "would allow shareholders to better assess the extent to which compensation arrangements encourage senior executives to responsibly manage risks relating to drug pricing and contribute to long-term value creation." However, the Company's board of directors (the "Board") established the Committee to assist it in making these determinations and ensuring senior executives are appropriately incentivized. The purpose of the Committee, as set forth in its charter, includes "reviewing, approving and reporting to the Board on major compensation plans, policies and programs of the Company." The Committee's responsibilities in carrying out this purpose include, *inter alia*, "oversee[ing] the Company's compensation philosophy and strategy," and "annually reviewing incentive compensation programs to confirm incentive pay does not encourage unnecessary risk-taking." Notably, the description of the Company's compensation philosophy in its 2018 Proxy Statement specifically notes that the Company "has structured its compensation program to closely align the interests of executives with . . . those of shareholders" and has also designed its compensation program with certain principles in mind, including "to implement best practices in compensation governance, including risk management and promotion of effective corporate policies." The 2018 Proxy Statement further notes that as a part of the administration of the Board's risk oversight function, the Committee annually conducts a worldwide review of the Company's compensation policies and practices to "determine whether incentive pay encourages excessive risk or inappropriate risk taking," and discusses the manner in which the Company seeks to address and mitigate these risks. Thus, despite the Proposal's contrary suggestion, the Board, through the Committee, remains in a better position than shareholders to evaluate and manage the complexity and risks surrounding the Company's executive compensation arrangements.

The Company annually discloses the material factors considered by the Committee in making compensation determinations for the Company's named executive officers – and the Committee's consideration of these risks – in the proxy statement, thereby providing shareholders access to the information concerning the key drivers of the Company's executive compensation program. For instance, the 2018 proxy statement describes the Committee's risk assessment of executive compensation matters as follows:

The Committee believes that [its] compensation program does not encourage executives to take excessive or inappropriate risks that could maximize short-term results at the expense of sustainable long-term value creation that may harm shareholder value. [The Company's] compensation program achieves this by striking an appropriate balance between short-term and long-term incentives, using a diversity of metrics to assess performance and payout under [its] incentive programs, placing caps on [its] incentive award payout opportunities, following equity grant practices that limit potential for timing awards and having stock ownership and retention requirements. For example, [its] current long-term equity incentive program . . . incorporates the [C]ompany's stock price into its performance measures and generally magnifies the impact of changes in [its] stock price as well as relative total shareholder return . . . performance over the

mid and longer-term. Also embedded in the Committee's annual review is the ongoing assessment of enterprise risk, including reputational risks stemming from the dynamic external environment. In addition, [the Company] evaluate[s] the performance of each of [the Company's] executives based on a number of factors, including how they demonstrate . . . Company behaviors in the execution of their day-to-day decisions. Those behaviors include, among others, accountability. This evaluation is one input into the determination of payouts under both the annual incentive and long-term equity incentive programs.

2018 Proxy Statement. Preparing a detailed report that highlights only one component that may have played a role in the Committee's complex decisions in determining executive compensation would impose unnecessary expense on the Company and divert management and Committee time and attention from focusing on long-term value creation for Company shareholders. This diversion of Company resources to respond to matters that are "fundamental to management's ability to run" the Company in the ordinary course of its business is precisely the sort of micromanagement the Commission seeks to prevent through Rule 14a-8(i)(7). *SLB 14J.*

The Company acknowledges that the Staff has reached different conclusions when addressing ordinary business arguments under Rule 14a-8(i)(7) on similar proposals in the past. However, when the Proposal is considered within the framework articulated by the Staff in SLB 14J and the facts and circumstances described in this letter, it is clear that the Proposal seeks to micromanage the Company to such a degree that exclusion under Rule 14a-8(i)(7) is proper. A detailed annual report – separate and apart from the Company's annual proxy statement – regarding the extent to which the Committee integrates risks associated with public concern over drug pricing strategies into the Company's incentive compensation arrangements for senior executives would be excessively detailed and complex and, as a result, would unduly micromanage the Company, and more specifically the Committee. Accordingly, we believe the Proposal seeks to micromanage the Company by imposing specific methods for implementing complex policies and is therefore excludable under Rule 14a-8(i)(7) as a matter relating to the Company's ordinary business operations.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 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 should be sent to Kerry S. Burke at kburke@cov.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 546-5727 or Kerry at (202) 662-5297.

Sincerely,



Lisa A. Atkins

Senior Counsel, Corporate Governance & Securities
Bristol-Myers Squibb Company
430 E. 29th Street
New York, NY 10016

Enclosures

cc: Sandra Leung, Bristol-Myers Squibb Company
Kate Kelly, Bristol-Myers Squibb Company
James Cotton, Bristol-Myers Squibb Company
Trinity Health
The Sisters of Charity of Saint Elizabeth
The Sisters of St. Francis of Philadelphia
Mercy Investment Services, Inc.
Daughters of Charity, Inc.
Catholic Health Initiatives
Bon Secours Mercy Health
School Sisters of Notre Dame Cooperative Investment Fund
UAW Retiree Medical Benefits Trust
Monasterio de San Benito

Exhibit A

Proposal

See attached



Catherine M. Rowan
Director, Socially Responsible Investments
766 Brady Avenue, Apt. 635
Bronx, NY 10462
Phone: (718) 822-0820
Fax: (718) 504-4787

E-Mail Address: rowan@bestweb.net

November 5, 2018

Katherine R. Kelly
Associate General Counsel and Corporate Secretary
Bristol-Myers Squibb Company
430 East 29th Street, 14th Floor
New York, NY 10016

Dear Ms. Kelly,

Trinity Health has appreciated participating in shareholder dialogues with Bristol-Myers Squibb on issues of concern. We feel there is still progress to be made on the issues raised in the shareholder proposal we filed last year, and therefore submit the proposal again.

Trinity Health is the beneficial owner of over \$2,000 worth of stock in Bristol-Myers Squibb Company. Trinity Health has held these shares continuously for over twelve months and will continue to do so at least until after the next annual meeting of shareholders. A letter of verification of ownership is enclosed.

I am authorized to notify you of our intention to present the attached proposal for consideration and action by the stockholders at the next annual meeting. I submit this proposal for inclusion in the proxy statement, in accordance with Rule 14-a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

As the representative for Trinity Health, I am the primary contact for this shareholder proposal and intend to present it in person or by proxy at the next annual meeting of the Company. Other BMS shareholders may be co-filing this same proposal as well.

We look forward to speaking with you about this proposal at your convenience.

Sincerely,

Catherine Rowan

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RESOLVED, that shareholders of Bristol-Myers Squibb Company ("BMS") urge the Compensation and Management Development Committee (the "Committee") to report annually to shareholders on the extent to which risks related to public concern over drug pricing strategies are integrated into BMS's incentive compensation policies, plans and programs (together, "arrangements") for senior executives. The report should include, but need not be limited to, discussion of whether (i) incentive compensation arrangements reward, or not penalize, senior executives for adopting pricing strategies, or making and honoring commitments about pricing, that incorporate public concern regarding prescription drug prices; and (ii) such concern is taken into account when setting financial targets for incentive compensation arrangements.

SUPPORTING STATEMENT

As long-term investors, we believe that senior executive incentive compensation arrangements should reward the creation of sustainable long-term value. To that end, it is important that those arrangements align with company strategy and encourage responsible risk management.

A key risk facing drug companies is the increased criticism from the public and actions that legislators and regulators are taking regarding pharmaceutical prices. A March 2018 Kaiser Family Foundation poll found that 52% of respondents ranked lowering drug prices as a "top priority" for the President and Congress. The White House released a "Blueprint" for lowering drug prices in May 2018. The NY Times reported that as of August 2018, twenty-four states have passed 37 bills this year to curb rising prescription drug costs. <<https://www.nytimes.com/2018/08/18/us/politics/states-drug-costs.html>>

We are concerned that the incentive compensation arrangements applicable to BMS's senior executives may not encourage them to take actions that result in lower short-term financial performance even when those actions may be in BMS's best long-term financial interests. BMS uses revenue and non-GAAP earnings per share, along with a pipeline goal and individual performance factors, as metrics for the annual bonus, and revenue and non-GAAP operating margin as metrics for performance share unit awards. (2018 Proxy Statement, at 41-43, 46)

A May 2018 Credit Suisse analyst report stated that "US drug price rises contributed 80% of industry EPS growth in 2017". The report identified BMS as having the "greatest exposure to specialty drug pressure" of major pharmaceutical firms. (*Global Pharmaceuticals: Connection Series*, May 25, 2018, at 9) In our view, excessive dependence on drug price increases is a risky and unsustainable strategy, especially when price hikes drive large senior executive compensation payouts. For example, coverage of the skyrocketing cost of Mylan's EpiPen noted that a 600% rise in Mylan's CEO's total compensation accompanied the 400% EpiPen price increase. (See, e.g., <https://www.nbcnews.com/business/consumer/mylan-execs-gave-themselves-raises-they-hiked-epipen-prices-n636591>; <https://www.wsj.com/articles/epipen-maker-dispenses-outsize-pay-1473786288>; <https://www.marketwatch.com/story/mylan-top-executive-pay-was-second-highest-in-industry-just-as-company-raised-epipen-prices-2016-09-13>)

The disclosure we request would allow shareholders to better assess the extent to which compensation arrangements encourage senior executives to responsibly manage risks relating to drug pricing and contribute to long-term value creation. We urge shareholders to vote for this Proposal.

November 5, 2018



Northern Trust

TO WHOM IT MAY CONCERN,

Please accept this letter as verification that as of November 5, 2018 Northern Trust as custodian held for the beneficial interest of
Trinity Health 84,040 shares of Bristol Myers Squibb Co..

As of November 5, 2018 Trinity Health has held at least \$2,000 worth of Bristol Myers Squibb Co. continuously for over one year. Trinity Health has informed us it intends to continue to hold these shares through the date of the company's next annual meeting.

This letter is to confirm that the aforementioned shares of stock are registered with Northern Trust, Participant Number 2669, at the Depository Trust Company.

Sincerely,

Ryan Stack
2nd Vice President
The Northern Trust Company
50 South La Salle Street
Chicago, Illinois 60603

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Katherine R. Kelly
Associate General Counsel and Corporate Secretary
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