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

DIVISION OF
CORPORATION FINANCE

March 7, 2022

Sarkis Jebejian
Kirkland & Ellis LLP

Re: Eli Lilly and Company (the "Company")
Incoming letter dated December 23, 2021

Dear Mr. Jebejian:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Trinity Health et al. for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal asks the board to report to shareholders on how it oversees risks related to anticompetitive practices, including whether the full board or board committee has oversight responsibility, whether and how consideration of such risks is incorporated into board deliberations regarding strategy, and the board's role in the Company's public policy activities related to such risks.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's public disclosures do not substantially implement the Proposal.

Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Catherine Rowan
Trinity Health

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

Sarkis Jebejian, P.C.
To Call Writer Directly:
+1 212 446 5944
sarkis.jebejian@kirkland.com

601 Lexington Avenue
New York, NY 10022
United States

+1 212 446 4800

www.kirkland.com

Facsimile:
+1 212 446 4900

December 23, 2021

VIA EMAIL

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

Email: shareholderproposals@sec.gov

Re: Shareholder Proposal of Trinity Health and co-filers

Ladies and Gentlemen:

We submit this letter on behalf of Eli Lilly and Company ("*Lilly*" or 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 2022 Annual Meeting of Shareholders (the "*2022 Annual Meeting*" and such materials, the "*2022 Proxy Materials*") a shareholder proposal and supporting statement (the "*Proposal*") submitted by Trinity Health and co-filed by certain other parties[1] (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 2022 Proxy Materials for the reasons discussed below.

The Company currently anticipates filing a preliminary proxy statement with the Commission on or around February 25, 2022 due to the inclusion in the 2022 Proxy Materials of proposals to amend the Company's Amended Articles of Incorporation and expects to file its definitive 2022 Proxy Materials on or around March 18, 2022. Accordingly, in compliance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended, we have filed this letter with the Commission no later than 80 calendar days before the Company intends to file its definitive 2022 Proxy Materials with the Commission. In light of the Company's timeline for filing a

[1] The following shareholders have co-filed the Proposal: The Sisters of Charity of Saint Elizabeth, Bon Secours Mercy Health, Mercy Investment Services, Inc., Adrian Dominican Sisters and Friends Fiduciary Corporation.

preliminary proxy statement, the Company requests that the Staff respond to this letter prior to February 25, 2022 if practicable.

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), 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 2022 Proxy Materials. Likewise, we take this opportunity to inform the Proponents that if the Proponents 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 sets forth the following resolution to be voted on by shareholders at the 2022 Annual Meeting:

> RESOLVED that shareholders of Eli Lilly and Company ("Eli Lilly") ask the board of directors to report to shareholders on how it oversees risks related to anticompetitive practices, including whether the full board or board committee has oversight responsibility, whether and how consideration of such risks is incorporated into board deliberations regarding strategy, and the board's role in Eli Lilly's public policy activities related to such risks. The report should be prepared at reasonable expense and should omit confidential or proprietary information, as well as information about existing litigation and claims of which Eli Lilly has notice.

SUPPORTING STATEMENT

> The anticompetitive practices of companies within the pharmaceutical supply chain, insulin manufacturers such as Eli Lilly, are receiving increasing scrutiny from the public, regulators, and enforcers. The criticism of Eli Lilly has focused on the company's insulin pricing strategy, which has resulted in massive price hikes for everyday consumers.
>
> In response, regulators and legislators have increasingly focused on the pricing strategies of insulin manufacturers. In early 2021, the Senate Finance Committee issued a Staff Report on the rising cost of insulin, noting that Eli Lilly's Humalog 50-50 Kwikpen had seen a 64% price increase between 2013 and 2017, and that insulin manufacturers had "aggressively raised the [wholesale acquisition cost] of their insulin products absent significant advances in the efficacy of the drugs." Additionally, in response to high insulin prices, eight states (CO, IL, ME, NM, NY,

UT, WA, WV) have capped the price of insulin within their jurisdiction and others are considering adopting similar policies.

Separately, the company is facing a multitude of lawsuits around the pricing of its insulin products, including claims from various state attorney generals, class action lawsuits, and other market participants. The allegations include claims that Eli Lilly violated both state and federal RICO statutes, was unjustly enriched, and violated various state level consumer protection laws. The number and magnitude of lawsuits continues to mount, with the Mississippi Attorney General recently filing a lawsuit against Eli Lilly, alleging that the company colluded with other insulin manufacturers and pharmacy benefit managers to artificially keep insulin prices high.

Eli Lilly's pricing strategies and the resulting mounting pressure on the company increase the likelihood of new regulation, increase risk for investors, and have a substantial impact on the public at large. Given the widespread concern and rapidly changing environment the company finds itself in, we believe that robust board oversight would improve Eli Lilly's management of the risks related to its anticompetitive practices and that shareholders would benefit from more information about the board's role.

Therefore, we urge Eli Lilly shareholders to vote FOR this proposal.[2]

BASIS FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

BACKGROUND

Lilly's Board of Directors (the "Board") "actively oversees and approves [the Company's] corporate strategy," "approv[es] major management initiatives," and its "board and board committee agendas are structured to engage [its] directors in informed reviews of strategic and forward-looking issues."[3] Specifically, Lilly's independent directors are "deeply engaged in key matters important to Lilly and [its] stakeholders, including the oversight over the company's

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[2] Proposal (citations omitted). The Proposal in full is attached hereto as Exhibit A.

[3] Lilly 2021 Proxy Statement ("2021 Proxy Materials"), *available at* https://www.sec.gov/Archives/edgar/data/59478/000005947821000104/llydef14a2021.htm, pages 7, 33.

approach to drug pricing and access."[4] Under this active oversight from the Board and its committees, Lilly has taken numerous steps to address drug pricing and access concerns.

For example, the "Accessibility and Affordability" page of Lilly's environmental, social and governance website (the "*ESG Website*") details significant Company initiatives enacted in recent years in furtherance of insulin affordability, including:[5]

- On August 1, 2018, the Company launched the Lilly Diabetes Solution Center to connect people with insulin affordability solutions.[6]
- On March 11, 2020, the Company announced participation in the Part D Senior Savings Model, allowing seniors enrolling in Medicare Part D plans in 2021 to purchase their monthly prescription of covered Lilly insulins for $35.[7]
- On September 10, 2020, the Company announced its long-term commitment to the Lilly Insulin Value Program, which "allows anyone with commercial insurance, or no insurance at all, to obtain their monthly prescription of Lilly insulin for $35 at retail pharmacies."[8]

In addition, on September 28, 2021, the Company announced that it lowered the list price of all Lilly's non-branded insulins by an additional 40% in the U.S. effective January 1, 2022, effectively bringing the list price to 2008 levels.[9] Over the past four years, the average monthly out-of-pocket cost for Lilly insulin has dropped to $28.05, a 27% decrease.

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[4] 2021 Proxy Materials, page 82.

[5] *Available at* https://esg.lilly.com/social, and attached hereto as Exhibit B.

[6] *See also* press release *available at* https://investor.lilly.com/news-releases/news-release-details/lilly-diabetes-solution-center-now-open-help-people-insulin.

[7] *See also* press release *available at* https://investor.lilly.com/news-releases/news-release-details/lilly-participate-new-model-designed-make-insulins-more.

[8] *See also* press release *available at* https://investor.lilly.com/news-releases/news-release-details/lilly-commits-insulin-value-program-featuring-35-copay-card.

[9] *Available at* https://investor.lilly.com/news-releases/news-release-details/lilly-again-reduces-list-price-insulin-lispro-injection-latest (the "*September 28, 2021 Press Release*"), and attached hereto as Exhibit C.

ANALYSIS

The Proposal May be Excluded Under Rule 14a-8(i)(10) Because the Company Has Substantially Implemented the Proposal.

A. Rule 14a-8(i)(10) Background

Rule 14a-8(i)(10) allows a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. The purpose of Rule 14a-8(i)(10) is "to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management." SEC Release No. 34-12598 (Jul. 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. SEC Release No. 34-20091 (Aug. 16, 1983). The 1998 amendments to Rule 14a-8 codified this position. *See* Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"), at n.30 and accompanying text. 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 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); *see also General Motors Corp.* (Mar. 4, 1996) (permitting exclusion of a proposal where the company argued, "[i]f the mootness requirement of paragraph (c)(10) were applied too strictly, the intention of [the rule]—permitting exclusion of 'substantially implemented' proposals—could be evaded merely by including some element in the proposal that differs from the registrant's policy or practice."). For example, in *PG&E Corp.* (Mar. 10, 2010), the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company provide a report disclosing, among other things, the company's standards for choosing the organizations to which the company makes charitable contributions and the "business rationale and purpose for each of the charitable contributions." In arguing that the proposal had been substantially implemented, the company referred to a website where the company had described its policies and guidelines for determining the types of grants that it makes and the types of requests that the company typically does not fund. Although the proposal appeared to contemplate disclosure of each and every charitable contribution, the Staff concluded that the company had substantially implemented the proposal. *See The Wendy's Co.* (Apr. 10, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report assessing human rights risks of the company's operations, including the principles and methodology used to make the assessment, the frequency of assessment and how the company would use the

assessment's results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its website the frequency and methodology of its human rights risk assessments); *see also MGM Resorts Int'l* (Feb. 28, 2012) (permitting exclusion under Rule 14a-8(i)(10) 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); *see also The Boeing Co.* (Feb. 17, 2011) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company review its policies related to human rights and report its findings, where the company had already adopted human rights policies and provided an annual report on corporate citizenship).

Notably, in *Pfizer* (Mar. 1, 2018), the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal that the board report on the risks to the company from rising pressure to contain U.S. prescription drug prices, including the likelihood and potential impact of those risks as applied to the company, the steps the company was taking to mitigate or manage those risks, and the board's oversight role. In arguing that the proposal had been substantially implemented, the company referred to its public disclosures regarding specific risks resulting from increasing pharmaceutical product pricing pressures, including the likelihood and potential impact of those risks as applied to the company, its response to such risks and the regulatory landscape of pharmaceutical pricing, and the role of its compliance committee in assessing and overseeing "current and emerging risks and regulatory enforcement trends that may affect [the company's] business operations, performance, or strategy." The Staff permitted exclusion, noting that the "Company's public disclosures compare[d] favorably with the guidelines of [Pfizer's] Proposal and that the Company has, therefore, substantially implemented [Pfizer's] Proposal."

B. The Company Has Substantially Implemented the Proposal.

The Company has substantially implemented the Proposal, which calls for the Board to produce a report on how it oversees risks from alleged anticompetitive practices. The supporting statement makes reference to, among other things, competition-related lawsuits and regulatory investigations that relate to the pricing of insulin from several years ago and that is out-of-date. The statements make clear the focus of the Proposal is to understand how the Board is addressing the alleged risks of increased regulatory scrutiny, citing insulin list price data from 2013 to 2017 in support of its argument.[10] In connection with such scrutiny and regulatory risk, the Proposal requests "more information about the [B]oard's role" in relation to risk oversight of pricing strategies.

[10] Proposal (Exhibit A) FN i (citing Senate Finance Committee Report, discussing list price of Company branded insulin from 2013 to 2017). The Proposal does not reference the Company's post-2017 pricing initiatives.

Lilly has already addressed the Proposal's essential objective, which is to promote Board oversight over risks from the Company's pricing of its medicines. As described above in the "Background" section, the Board actively oversees and approves Lilly's strategy, approves significant management initiatives, and structures its Board and Board committee agendas to engage directors in informed reviews of strategic and forward-looking issues, and Lilly's independent directors are deeply engaged in the oversight over Lilly's approach to drug pricing and access. Under this active oversight from the Board and its committees, the Company has already addressed the Proposal's underlying concerns through devoting substantial time and resources and implementing industry-leading initiatives in furtherance of insulin affordability. While the Proposal attempts to articulate alleged anticompetitive risks by relying on the "wholesale acquisition cost" (i.e., list price) data from 2017,[11] the fact is that since 2017, Lilly has not increased the list price of its insulin and instead has taken steps to bring lower list-priced insulin products to market and to substantially lower the average out-of-pocket cost of insulin by 27% over the past four years.[12]

The Company's disclosures also specifically address each of the essential elements of the Proposal, and its policies and procedures compare favorably with those of the Proposal. As detailed in the illustrative examples provided in the table below, (1) the Company's existing public filings clearly and prominently disclose specific risks regarding pricing practices, risks regarding increased regulatory and pricing scrutiny, and the mechanisms by which the Board oversees such risks; (2) the Affordability and Access section of the Company's ESG Website includes detailed disclosure about how the Board incorporates pricing decisions into its strategic considerations and Board oversight of pricing risk mitigation efforts; and (3) the Company provides information about the Board's role in public policy activities related to such risks on the Company's political participation website (the "*Political Participation Website*").[13] These disclosures collectively enable shareholders to assess how the Board oversees risks from the Company's pricing of its medicines. Therefore, consistent with the line of precedent cited above, the Company has substantially implemented the Proposal and, accordingly, the Proposal should be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(10).

For the convenience of the Staff, the following table illustrates the Company's substantial implementation of each request in the Proposal.

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[11] Proposal (Exhibit A), note ii (citing Senate Finance Committee Report).

[12] September 28, 2021 Press Release (Exhibit C).

[13] *Available at* https://www.lilly.com/policies-reports/public-policy-political-participation and attached hereto as Exhibit D.

Requests Made in Proposal	***Illustrative Implementation by the Company***
1. Disclose "[h]ow [Board] oversees risks related to anticompetitive practices, including whether the full board or board committee has oversight responsibility."	As noted in the 2021 Proxy Materials, the Board's role includes "approving corporate strategy, approving major management initiatives, . . . overseeing the [C]ompany's ethics and compliance program and management of significant business risks, . . . [and] overseeing the [C]ompany's approach to current and emerging political, social, environmental, and governance trends and public policy issues that may affect the [C]ompany."[14] *Board outlines risks relating to regulatory and pricing strategy in Company's Annual Report on Form 10-K (the "2020 Annual Report")*:[15] • The Business section of the 2020 Annual Report discloses that "[t]here continues to be considerable public and government scrutiny of pharmaceutical pricing, and measures to address the perceived high cost of pharmaceuticals are being considered at various levels of state and federal government."[16] • First risk factor listed under "Risks Related to Government Regulation" focuses exclusively on drug pricing risk: "Our business is subject to increasing government price controls and other public and private restrictions on

[14] 2021 Proxy Materials, page 33.

[15] Form 10-K for the fiscal year ended December 31, 2020 (the "*2020 Annual Report*"), *available at* https://www.sec.gov/ix?doc=/Archives/edgar/data/0000059478/000005947821000083/lly-20201231.htm.

[16] 2020 Annual Report, page 15.

Requests Made in Proposal	***Illustrative Implementation by the Company***
	pricing, reimbursement, and access for our drugs, which could have a material adverse effect on our reputation or business. Public and private payers continue to take aggressive steps to control their expenditures for pharmaceuticals by placing restrictions on pricing and reimbursement for, and patient access to, our medications. These pressures could continue to negatively affect our future revenues and net income. We expect governments and private payers worldwide to intensify their scrutiny of, and actions intended to address, pricing, reimbursement, and access to pharmaceutical products. Additional regulations, legislation, or enforcement, including as a result of the current U.S. presidential administration, could adversely impact our revenue."[17] *Role of Board and its committees in overseeing alleged anticompetitive practices and risks, including pricing, is outlined in the 2021 Proxy Materials and in the Board's committee charters and guidelines*: <u>2021 Proxy Materials</u>: • "Our board oversees the state of our compliance program and reviews our enterprise-level risks . . . ; our Audit

[17] 2020 Annual Report, pages 28–29 (italics removed).

Requests Made in Proposal	***Illustrative Implementation by the Company***
	Committee oversees our enterprise risk management processes and policies."[18] • "Lilly's current governance structure provides effective, independent oversight over key matters that are important to our stakeholders, including drug pricing and access." • "Our independent directors are deeply engaged in key matters important to Lilly and our stakeholders, including the oversight over the company's approach to drug pricing and access. Guided by this active oversight, Lilly already has taken numerous steps to address drug pricing and access concerns. For example, Lilly introduced two additional lower-priced versions of branded insulin in January 2020 and added the Lilly Insulin Value Program to Lilly's comprehensive suite of insulin affordability solutions in September 2020, which enables customers with commercial insurance or no insurance to purchase their monthly prescription of most Lilly insulins for $35. These examples, among others, demonstrate Lilly's commitment to providing effective oversight over drug pricing and access."[19] <u>Board Committee Charters and Guidelines</u>: • Audit Committee Charter charges the Audit Committee with monitoring "compliance with legal and regulatory

[18] 2021 Proxy Materials, page 7.

[19] 2021 Proxy Materials, page 82.

Requests Made in Proposal	*Illustrative Implementation by the Company*
	requirements" and "[p]rocesses and procedures related to identifying and mitigating enterprise level risks" and "[m]aterial reports or inquiries from regulators." [20] • Audit Committee Charter provides that the Audit Committee, "[t]ogther with the ethics and compliance committee, assist[s] the board in its oversight of legal and regulatory compliance and oversee the [C]ompany's compliance with its code of ethics."[21] • Ethics and Compliance Committee Charter states that the purpose of the Ethics and Compliance Committee is to "review, identify and when appropriate bring to the attention of the board legal and regulatory trends and issues, and compliance and quality matters that may have an impact on the business operations, financial performance or reputation of the [C]ompany." [22] • Ethics and Compliance Committee meets at least four times per year to oversee "policies and practices that relate to compliance" and identify "legal and regulatory trends" that may have an impact

[20] The Audit Committee Charter is available at https://assets.ctfassets.net/srys4ukjcerm/1Hl4heif5q53Rt1XhOpnhq/ef79ac4dd717b815b368dd3b102e93b8/Audit_Committee_Charter.pdf.

[21] Audit Committee Charter.

[22] The Ethics and Compliance Committee Charter is available at https://assets.ctfassets.net/srys4ukjcerm/2Z0C6Piw6Gsv1xXq5Rca8h/b1956e0b6ae873246af0730f00b185fe/Ethics_and_Compliance_Committee_Charter.pdf.

Requests Made in Proposal	***Illustrative Implementation by the Company***
	on business operations, financial performance or reputation of the [C]ompany, with semiannual private sessions with the Chief Ethics and Compliance Officer, the General Auditor, and the Senior Vice President, Global Quality.[23] • Audit Committee and Ethics and Compliance Committee meet jointly at least annually to review "[s]ignificant legal or regulatory compliance exposure," and "material reports or inquiries from regulators."[24] • Corporate Governance Guidelines provide that full Board "reviews a summary of the [C]ompany's assessment of and approach to enterprise level risks. Throughout the year, significant areas of risk are brought to the [B]oard, or the appropriate committee, for consideration."[25]
2. Disclose "whether and how consideration of such risks is incorporated into board deliberations regarding strategy."	*Board's considerations of pricing risk outlined in 2021 Proxy Materials:* • As noted above, the Board's key responsibilities include "approving corporate strategy" and "approving major management initiatives," which includes

[23] Ethics and Compliance Committee Charter.

[24] Ethics and Compliance Committee Charter.

[25] The Corporate Governance Guidelines are available at https://assets.ctfassets.net/1o78rkhl3da6/4s23VaYR1QhBzfnagYvMM4/01acf2bff4f787927dc7252ad4e847a9/Corporate_Governance_Guidelines.pdf.

Requests Made in Proposal	***Illustrative Implementation by the Company***
	"oversight over the company's approach to drug pricing and access."[26] • "[B]oard and [B]oard committee agendas are structured to engage our directors in informed reviews of strategic and forward-looking issues, as well as in constructive challenges to management initiatives and programs."[27] *Pricing and access initiatives designed to mitigate alleged risks are overseen by the Board and outlined on the Accessibility and Affordability Page on the ESG Website*:[28] • The Access and Affordability page discloses how the Company makes its pricing decisions: "[Lilly] aim[s] to strike a balance between access and affordability for patients while sustaining investments in life-changing treatments for some of today's most serious diseases. When making pricing considerations, [Lilly] take[s] into account the following: **Customer perspective** – The unmet needs that medicines can fulfill for patients and caregivers and how people can affordably access the treatment;

[26] 2021 Proxy Materials, pages 33, 82.

[27] 2021 Proxy Materials, page 7.

[28] Access and Affordability page on the ESG Website (Exhibit B).

Requests Made in Proposal	*Illustrative Implementation by the Company*
	Company considerations – The costs of research, development, manufacturing and support services for customers; business trends and other economic factors; as well as the medicine's potential market size, patent life and place within our larger portfolio of medicines; **Competitive landscape** – The benefits of our medicine compared to alternative medicines, where our medicine fits in treating conditions and existing contracts between payers and our competitors; **Other external factors** – Such as health system changes and policy guidelines." • Under the active oversight of the Board, the Company has taken substantial actions to address drug pricing and access concerns: o "In April 2020, Lilly unveiled the Lilly Insulin Value Program, a new co-pay card that allows anyone with commercial insurance, or no insurance at all, to obtain their monthly prescription of Lilly insulin for $35 at retail pharmacies. In September 2020, [Lilly] announced [its] long-term commitment to this program."[29]

[29] Access and Affordability Page on ESG Website (Exhibit B).

Requests Made in Proposal	***Illustrative Implementation by the Company***
	o Lilly "participate[s] in [a] . . . federal government demonstration program that allows seniors enrolled in participating Medicare Part D plans to purchase their monthly prescription of Lilly insulin for $35 during all phases of their Part D coverage – including deductibles, the coverage gap and co-pays."[30] o "Moreover, Lilly has not increased the list prices of any of [its] insulins since 2017."[31] o In addition, and as noted above, as the Company announced in a separate press release, on September 28, 2021, the Company lowered the list price of all of its non-branded insulins by an additional 40% in the U.S. effective January 1, 2022—bringing the list price to 2008 levels.[32] o These numerous affordability solutions, combined with insurance coverage, "have lowered the average monthly out-of-pocket cost for a prescription of Lilly Insulin (regardless of the number of vials or pens) to

[30] Access and Affordability page on the ESG Website (Exhibit B).

[31] Access and Affordability page on the ESG Website (Exhibit B).

[32] September 28, 2021 Press Release (Exhibit C).

Requests Made in Proposal	***Illustrative Implementation by the Company***
	$28.05, a 27 percent decrease over the past four years."[33] *Under the active oversight of the Board, the Company engages with other stakeholders to find long-term policy solutions to address gaps in the health-care system:*[34] • Rebate Pass Through: "We continue to advocate for insurers to pass through our negotiated rebates directly to consumers at the pharmacy counter." • First Dollar Coverage: "Lilly is supportive of efforts to exempt health care services for chronic conditions – including medicines such as insulins – from a health insurance plan's deductible ('first dollar coverage')." • Capping Out-of-Pocket Costs: "We believe a cap would provide a critical financial safeguard for patients, leading to better treatment adherence and improvements in overall health status."
3. Disclose the "[B]oard's role in Eli Lilly's public policy activities related to such risks."	*Board's role in public policy assessments disclosed in Board's committee charters and Corporate Governance Guidelines, 2021 Proxy Materials, and Political Participation Website:*

[33] September 28, 2021 Press Release (Exhibit C) (emphasis added).

[34] *Available at* https://www.lilly.com/resources/diabetes-solution-center/insulin-access-affordability, and attached hereto as Exhibit E.

Requests Made in Proposal	***Illustrative Implementation by the Company***
	Directors and Corporate Governance Committee Charter:[35] *Duties and Responsibilities* • The role of the Directors and Corporate Governance committee of the Board is to "[i]dentify and bring to the attention of the board as appropriate current and emerging social, environmental, political, and governance trends and public policy issues that may affect the business operations, performance or reputation of the company." Corporate Governance Guidelines:[36] *Key Board Responsibilities* • The role of the Board and the Directors and Corporate Governance Committee is to "oversee the [C]ompany's approach to current and emerging political, social, environmental, and governance trends and public policy issues that may affect our business operations, performance, or reputation." 2021 Proxy Materials: *Role of the Board* • Full Board exercises oversight over "current and emerging ***political***, social, environmental, and governance trends and

[35] The Directors and Corporate Governance Committee Charter is available at https://assets.ctfassets.net/srys4ukjcerm/3fGLMQ7uz6Ohr576Fe0oCQ/d59b4c33fe07beee041eadb7cf2a9c4d/Directors_and_Governance_Committee_Charter.pdf.

[36] Corporate Governance Guidelines.

Requests Made in Proposal	*Illustrative Implementation by the Company*
	public policy issues that may affect the company." (emphasis added)[37] Political Participation Website:[38] • "As a biopharmaceutical company that develops treatment for serious diseases, we play an important role in public health. We believe it is important for our company to be a responsible participant in political and public policy debates around the world. Our engagement in the political arena helps ensure that patients have access to needed medications—leading to improved patient outcomes. ***Through public policy engagement, we provide a way for all our locations globally to offer Lilly's perspective on the political environment in a manner that supports access to innovative medicines***. We also look for ways to engage on issues specific to local business environments." (emphasis added) • "The Lilly Board of Directors exercises governance oversight of [the Company's] political expenditures and lobbying activities to ensure that [the Company] fulfill[s] [its] ***commitment to stewardship of corporate funds and risk minimization with respect to such activities***, as well as other environmental, social and governance matters. . . . In addition, the full Board receives regular updates at Board meetings from [the Company's]

[37] 2021 Proxy Materials, page 33.

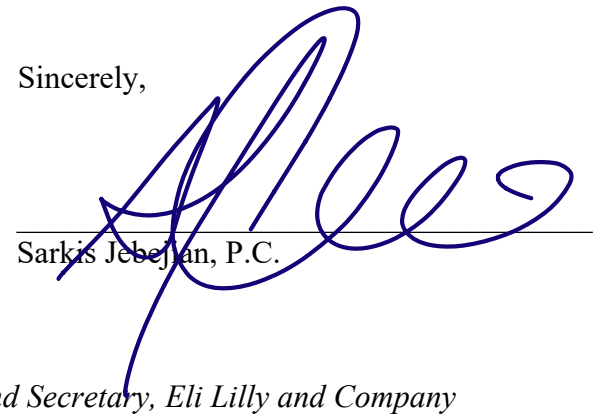
[38] Political Participation Website (Exhibit D).

Requests Made in Proposal	***Illustrative Implementation by the Company***
	Senior Vice President, Corporate Affairs and Communications, which include updates on public policy issues and the company's political corporate activity, as needed. The full Board also receives semi-annual updates on political engagement, including information on the contributions made by LillyPAC and the company, as well as trade association memberships." (emphasis added) • "Lilly's Vice President, U.S. Government Affairs reviews and approves all corporate political contributions to ensure these contributions are consistent with the company's guidelines and in accordance with applicable laws. The [C]ompany's General Counsel and the Chief Financial Officer, or their designees, also approve all corporate political contributions before they are made." • "The LillyPAC governing board is comprised of 16 U.S.-based employees who represent business areas throughout the company. The LillyPAC governing board reviews all contributions made by LillyPAC twice annually. Lilly's Vice President, U.S. Government Affairs manages LillyPAC operations, and a member of Lilly's Executive Committee serves as an executive sponsor and board chair of LillyPAC to ensure compliance and alignment with company priorities."

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2022 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 communication regarding this letter should be directed to me at sarkis.jebejian@kirkland.com or (212) 446-5944.

Sincerely,



Sarkis Jebejian, P.C.

cc: Anat Hakim
Senior Vice President, General Counsel and Secretary, Eli Lilly and Company

Catherine Rowan
Director, Socially Responsible Investments
(as authorized representative for Trinity Health and co-filers Friends Fiduciary Corporation and The Sisters of Charity of St. Elizabeth)

Lydia Kuykendal
Director of Shareholder Advocacy
(as authorized representative for co-filers Mercy Investment Services, Inc. and Bon Secours Mercy Health)

Judy Byron
(as authorized representative for Adrian Dominican Sisters)

Exhibit A

[Copy of the Proposal]

RESOLVED that shareholders of Eli Lilly and Company ("Eli Lilly") ask the board of directors to report to shareholders on how it oversees risks related to anticompetitive practices, including whether the full board or board committee has oversight responsibility, whether and how consideration of such risks is incorporated into board deliberations regarding strategy, and the board's role in Eli Lilly's public policy activities related to such risks. The report should be prepared at reasonable expense and should omit confidential or proprietary information, as well as information about existing litigation and claims of which Eli Lilly has notice.

SUPPORTING STATEMENT

The anticompetitive practices of companies within the pharmaceutical supply chain, insulin manufacturers such as Eli Lilly, are receiving increasing scrutiny from the public, regulators, and enforcers. The criticism of Eli Lilly has focused on the company's insulin pricing strategy, which has resulted in massive price hikes for everyday consumers.[i]

In response, regulators and legislators have increasingly focused on the pricing strategies of insulin manufacturers. In early 2021, the Senate Finance Committee issued a Staff Report on the rising cost of insulin, noting that Eli Lilly's Humalog 50-50 Kwikpen had seen a 64% price increase between 2013 and 2017, and that insulin manufacturers had "aggressively raised the [wholesale acquisition cost] of their insulin products absent significant advances in the efficacy of the drugs."[ii] Additionally, in response to high insulin prices, eight states (CO, IL, ME, NM, NY, UT, WA, WV) have capped the price of insulin within their jurisdiction and others are considering adopting similar policies.[iii]

Separately, the company is facing a multitude of lawsuits around the pricing of its insulin products, including claims from various state attorney generals, class action lawsuits, and other market participants.[iv] The allegations include claims that Eli Lilly violated both state and federal RICO statutes, was unjustly enriched, and violated various state level consumer protection laws.[v] The number and magnitude of lawsuits continues to mount, with the Mississippi Attorney General recently filing a lawsuit against Eli Lilly, alleging that the company colluded with other insulin manufacturers and pharmacy benefit managers to artificially keep insulin prices high.[vi]

Eli Lilly's pricing strategies and the resulting mounting pressure on the company increase the likelihood of new regulation, increase risk for investors, and have a substantial impact on the public at large. Given the widespread concern and rapidly changing environment the company finds itself in, we believe that robust board oversight would improve Eli Lilly's management of the risks related to its anticompetitive practices and that shareholders would benefit from more information about the board's role.

Therefore, we urge Eli Lilly shareholders to vote FOR this proposal.

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[i] https://www.finance.senate.gov/imo/media/doc/Grassley-Wyden%20Insulin%20Report%20(FINAL%201).pdf

[ii] *Id.*

[iii] https://www.nbcnews.com/news/us-news/states-are-trying-cap-price-insulin-pharmaceutical-companies-are-pushing-n1236766

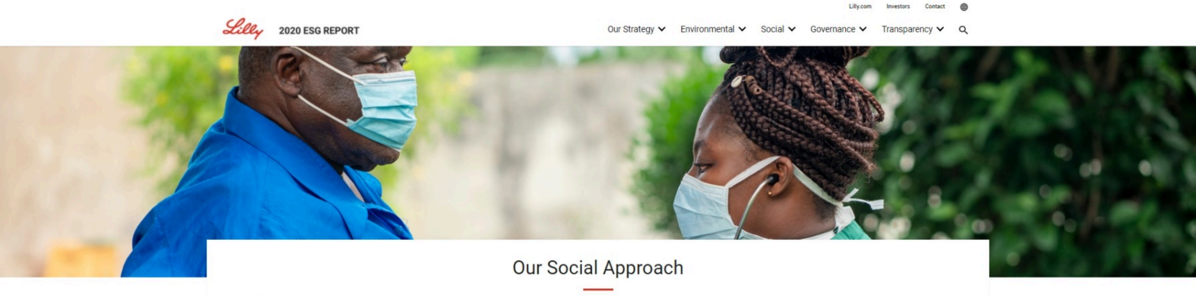
[iv] *See* Eli Lilly and Company 2020 Form 10-K, at 108-109 (https://investor.lilly.com/static-files/e724cf2c-3a2e-4180-beaf-944ecd588323).

[v] *Id.*

[vi] https://seekingalpha.com/news/3706905-eli-lilly-sanofi-and-novo-nordisk-sued-over-insulin-prices

Exhibit B

[Copy of Access and Affordability Page of the ESG Website]



Our Social Approach

Our approach to social impact starts with our medicines and our goal to expand access to quality health care. We work with global health systems and organizations to extend our reach by being part of the solution for complex global health challenges that disproportionately affect people living in settings with limited resources. We strive to provide an inclusive, high-performance workplace where our team members can bring their full authentic selves to work every day, and grow and thrive. And in our communities, we invest our time, expertise and resources to drive social impact, with a focus on health. We also engage in targeted social issues that affect our business and employees, with an emphasis on racial justice and education.

Goals and Highlights

Access and Affordability

Reach 30 million people in resource-limited settings annually by 2030, through investments in people, medicines and health systems.

Community Engagement

Lilly employees and retirees, along with match from the Lilly Foundation, contributed $13.4 million to United Way in 2020.

Diversity and Inclusion

Increase the number of women and minority group members in leadership; increase the current representation of Black/African Americans in our U.S. workforce from approximately 10% to 13%.

Employee Well-Being

Achieve zero severe injuries; develop safety leadership capabilities, reduce our most significant risks that could have life-altering or fatal consequences and manage business continuity risk.

Access and Affordability | Community Engagement | D&I | Employee Well-Being | Human Rights | Patient Safety

Access and Affordability

SASB Disclosures Covered: Access to Medicines **(HC-BP-240a.1, HC-BP-240a.2)**; Affordability & Pricing **(HC-BP-240b.2)**

Management Approach:

Throughout our nearly 150-year history, Lilly has pioneered many life-changing medicines – including insulin, penicillin, Prozac, and COVID-19 treatments, which have provided additional tools for prescribers in the fight against the global pandemic.

Lilly employees from across the globe come together from diverse backgrounds to harness the power of biotechnology and aim to bring relief to millions of people with serious illnesses. We are proud to invest in innovation that helps solve some of the world's most significant health challenges.

But we know that's just the start of the conversation.

Too many people, especially the most vulnerable among us, still lack access to the care and medicines they need. We are deeply committed to equitable and affordable access to our medicines so that our breakthroughs can transform more people's lives. We're also committed to expanding our impact on society by addressing complex global health challenges, with a focus on people living in communities with limited resources.

Reaching across industry boundaries, we collaborate with leading partners to reach more people and help them feel better in their daily lives. Our collective work benefits individual patients and the entire global health system.

In This Section

Access and Affordability

Improving Global Health

Access and Affordability

Lilly is committed to working with stakeholders in health-care systems to make sure people can get the medicines they need – at reasonable out-of-pocket costs and with pricing information they can understand. This includes finding new solutions that help address the affordability of our medicines, including for people who need insulin.

Innovative medicines can reduce the burden of disease, improve lives and save money. But as a society, we believe we also need more innovation on how to pay for medicines and better ways to deliver them to patients. That's why Lilly has been pursuing more value-based contracts, in which the price we receive depends on how much our medicines help patients. In the U.S., 20% of revenue flowing through our access-based contracts has a value-based component, and we have more than 300 alternative access contracts in other global markets, many of which are value-based.

In our efforts to bring innovative medicines to patients, we work to ensure our strategy fits with the needs and expectations of patients and other stakeholders. As we evaluate the various stakeholder perspectives, we take into account the following considerations:

- Health system needs and constraints (e.g., advanced technology, quality metrics, budget constraints)
- Patient and caregiver needs (e.g., education and support tools)
- Regulatory requirements (e.g., the need for ongoing post-market safety or outcomes studies)
- Public policy limitations (e.g., price controls) and enablers (e.g., additional research incentives)

COVID Antibody Pricing and Allocation

We believe cost should not be a barrier to access – including for patients who need Lilly's COVID-19 antibody therapies. Wherever possible, we negotiate contracts with governments to set patient out-of-pocket costs for our COVID-19 therapies at $0. The price we charge governments is $1,250 per dose for wealthy countries, with lower prices for countries with less ability to pay. In clinical trials, our antibodies have reduced hospitalizations for COVID-19, which in late 2020 average nearly $22,000 per person in the U.S.

Pricing in the U.S.

Pricing our medicines is one of the most important decisions we make as a company. We aim to strike a balance between access and affordability for patients while sustaining investments in life-changing treatments for some of today's most serious diseases. When making pricing considerations, we take into account the following:

- **Customer perspective** – The unmet needs that medicines can fulfill for patients and caregivers and how people can affordably access the treatment;
- **Company considerations** – The costs of research, development, manufacturing and support services for customers; business trends and other economic factors; as well as the medicine's potential market size, patent life and place within our larger portfolio of medicines;
- **Competitive landscape** – The benefits of our medicine compared to alternative medicines, where our medicine fits in treating conditions and existing contracts between payers and our competitors;
- **Other external factors** – Such as health system changes and policy guidelines.

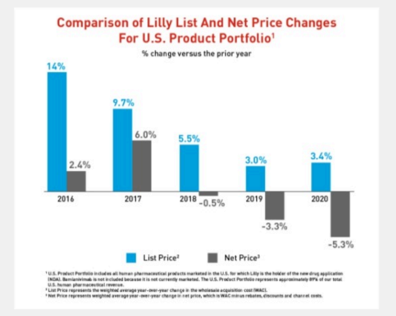
The way that medicines are paid for in the current health-care system may seem confusing. In the U.S., here's how we approach pricing our medicines:

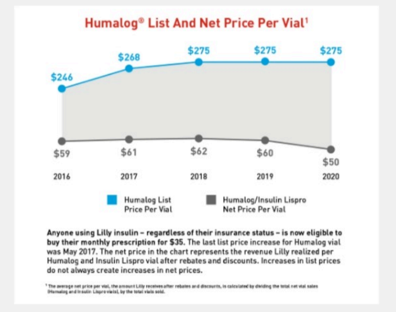
- We set a list price for each of our medicines, taking into account the value provided to patients, affordability, the competitive landscape, research costs, manufacturing, marketing and support services provided, as well as other factors such as health system changes.
- To expand patient access, we pay rebates and other discounts to payers, pharmacy benefit managers (PBMs) and other supply chain entities such as wholesalers and distributors.
- After paying these rebates and discounts, the final dollar amount that Lilly ultimately receives is called the net price.

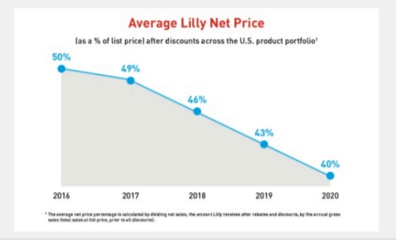
We are committed to increasing transparency around the price of our medicines. List prices for our medicines, as well as average out-of-pocket costs and financial assistance information are published here.

Changes in Lilly's Net Price: 2015-2020

The rebates and discounts we pay to PBMs, insurers, the government and other supply chain entities have continued to grow over the years, not just for insulin, but for Lilly's entire U.S. portfolio. We support the restructuring of financial incentives for the entire pharmaceutical supply chain to ensure patients directly benefit from these rebates and discounts at the pharmacy counter.







Addressing Insulin Affordability in the U.S.

For millions of people with diabetes, insulin is a life-saving medicine. Over the last century, this medical miracle has improved and extended countless lives around the world. Lilly takes its role as a leading diabetes company seriously – and that includes ensuring people have affordable access to treatments.

While many people in the U.S. have insurance coverage with affordable co-pays, others struggle to afford their out-of-pocket costs for insulin. Some people have large deductibles they must satisfy before insurance will cover their medicines, while others have no insurance at all. And for many people, insulin is just one of several interventions used to control diabetes, such as blood glucose monitoring devices and supplies, and other medicines.

In recent years, we've taken numerous steps to help ensure people can afford their insulin at retail pharmacies regardless of their personal circumstances – including establishing automatic discounts at retail pharmacies and launching non-branded insulins with list prices 50% lower than branded counterparts. We are committed to helping people with diabetes obtain the insulin they need at affordable costs regardless of whether they have insurance through an employer, Medicare or have no insurance at all.

In 2020, Lilly took two more important steps that make anyone, regardless of insurance status, eligible to obtain their monthly prescription of Lilly insulin for $35:

- **Lilly Insulin Value Program** – The COVID-19 pandemic cost the U.S. economy millions of jobs. People in all walks of life found themselves struggling financially – including those who use insulin to treat their diabetes. In April 2020, Lilly unveiled the Lilly Insulin Value Program, a new co-pay card that allows anyone with commercial insurance, or no insurance at all, to obtain their monthly prescription of Lilly insulin for $35 at retail pharmacies. In September 2020, we announced our long-term commitment to this program.
- **Medicare Part D Senior Savings Model** – We also participate in the Medicare Part D Senior Savings Model, a federal government demonstration program that allows seniors enrolled in participating Medicare Part D plans to purchase their monthly prescription of Lilly insulin for $35 during all phases of their Part D coverage – including deductibles, the coverage gap and co-pays. Lilly has committed all of our insulins to the Savings Model program, which went into effect in January 2021.

The Lilly Diabetes Solution Center helps people who use Lilly insulin find affordable solutions that fit their personal circumstances. Additionally, we are a financial supporter of getinsulin.org, a new tool launched in 2020 by the patient advocacy group, Beyond Type 1, that helps people easily find the most affordable insulin options in their area – regardless of brand or manufacturer. Both web and app-based, getinsulin.org is a convenient one-stop shop for people who use insulin, and is available in both English and Spanish.

These solutions are only helpful if people know about them, and Lilly has worked diligently to make people aware of their options. We published full-page advertisements printed in dozens of top English and Spanish-language newspapers to inform the public how they can lower their insulin costs. We have also aired public service announcements on radio stations, online and on streaming services – in both English and Spanish – about Lilly's affordability solutions.

All of these programs are making an impact and helping up to 20,000 people each month better afford their insulin. The average out-of-pocket monthly cost at retail pharmacies for a prescription of our most-commonly used insulin, Humalog, decreased 16% between June 2018 and June 2020. Moreover, Lilly has not increased the list prices of any of our insulins since 2017.

Other Long-term Insulin Pricing Policy Solutions

At Lilly, we feel that broader systemic change is needed to increase affordable access to insulin. In recent years, we have begun to see meaningful progress for people who live with diabetes. Payers in the health-care system, including insurance companies, are finding ways to pass rebates on to patients and lower co-pays for insulin.

These actions ease the burden for most people in these coverage gap areas, but we believe longer-term solutions are still needed. We're actively working with other stakeholders throughout the health-care system to seek policy solutions to address gaps. Some of these include:

- **Rebate Pass-Through** – We continue to advocate for insurers to pass through our negotiated rebates directly to consumers at the pharmacy counter.
- **First Dollar Coverage** – We support efforts to exempt certain health-care services for chronic conditions, including medicines such as insulin, from insurance plan deductibles.
- **Medicare Part D Out-of-Pocket Caps** – We support legislation to cap out-of-pocket costs for Medicare Part D patients. We believe a cap could provide a critical financial safeguard for patients.

We are committed to providing affordability options, and we continue to evaluate how financial needs are best met. However, we recognize broader reform is needed to move us from a series of patchwork solutions to systemic change that helps people afford vital medicines. We work with Congress on common-sense, patient-centered policy solutions, such as directly passing rebates paid to pharmacy benefit managers (PBMs) on to patients, called pass-through rebates, as well as exempting insulin from deductible requirements. We believe these long-term, much-needed reforms could provide lasting relief to those who struggle to afford their insulin. In the meantime, Lilly intends to continue providing affordability solutions to people who need them. The health of people living with diabetes is too important.

Value vs. Volume: An Alternative Way to Think About Medicines

When a patient seeks medical care, the health-care system's top goal should be to improve their health. Medical interventions, including medicines, should be evaluated based on how well the patient's health may improve. This seems obvious, but it's not how our current payment system works.

Under the existing fee-for-service model that is common in the U.S., payments are based on the number of treatments or services provided, not whether a patient actually sees improvements in their health. However, as health-care costs and rates of chronic disease continue to rise, there has been increased urgency to deliver care that brings greater value to both the patient and the health-care system as a whole.

We believe that innovative value-based arrangements (VBAs) could be an important part of the solution. VBAs allow Lilly to stand behind the health outcomes we expect our medicines to deliver, when the medicines are used appropriately. Such arrangements are designed to link the cost of our medicine more directly to patient outcomes.

A VBA includes predefined patient health outcomes and/or associated performance metrics based on the observed impact of a particular medicine on the person taking it. Such metrics can include favorable test results, reduced re-hospitalization rates or improved medication adherence. This approach can transform the health-care system to one that is about delivering value versus one about the volume of medicines purchased.

In the U.S., more than 20% of revenue flowing through our access-based contracts has a value-based component, and we have more than 300 alternative access contracts in other global markets, many of which are value-based. We use each VBA as an opportunity to learn more about the real-world data we need to gather to make these arrangements more effective

In many cases, VBAs improve access to a medicine for eligible patients and many patients may also get more personalized care, given medicines in these arrangements are generally made available based on how well they work in specific subpopulations. Over the long-term, the results from these arrangements may help inform and improve future research and development efforts.

We believe VBAs have the potential to improve patient outcomes while lowering costs for the entire health-care system, but they require increased collaboration between payers, health systems, patients and industry to be successful. We believe moving toward a system that is more value-based benefits patients – with better access to the medicines they need, and hopefully better health outcomes – and it also benefits payers with associated savings. At Lilly, we continue to advocate for legislative and regulatory changes that support this transition. We believe this is one of the most important long-term changes we can make as an industry.

Making Health Care More Affordable for All Employees

Employers are spending more than ever to provide health benefits to their workers in the U.S. Yet two out of every five workers say their employers could do better. Many, especially those with chronic illnesses, say they struggle with affordability and access to the care they need.

If more employers – especially large employers – reduce cost-sharing for high-value therapies, they could change the insurance market in ways that could improve health and productivity while constraining costs.

Like all employers, Lilly works every year to minimize the rising costs of health care for our organization. For more than a decade, we've offered exclusively high-deductible plans to our employees. But we take certain steps to make sure our high deductibles don't lead our people to skip or ration the care they need:

- We fund our employees' health savings accounts all at once at the beginning of the year. It shouldn't matter if someone gets sick around New Year's Day or Thanksgiving Day. We believe they should have money to help cover their health-care costs.
- We exempt preventive and chronic disease medications from our health plan deductibles. This means Lilly employees, retirees and their families pay only 10% to 20% of these medicines' prices instead of the full retail price.
- For all medicines, Lilly's health plan has lowered costs by passing through rebates to patients at the point of sale. Sharing these rebates helped nearly 10,000 of our health plan members save $423 on average in 2020 – or over $4 million collectively.
- We provide all insulins to our eligible employees, retirees and family members at zero cost. This helps ensure our health plan members can stay fully adherent to their therapy.
- Employees and their eligible family members with diabetes can receive a free connected glucose meter and related supplies, along with real-time support from trained diabetes educators.

As we've expanded these cost-saving policies, both company-paid and employee-paid premiums for our plans have grown an average of just 3% annually – half as fast as the trend among all U.S. employers.

Of course, not everyone in the U.S. has access to employer-based health coverage. Yet for the millions of Americans who do rely on their employers for their health-care coverage, we believe employers can take steps to make health care work better for their employees. For example, only one-third of the largest U.S. employers offer reduced or no cost arrangements for medicines treating chronic diseases.

We believe corporate leaders across the U.S. can also make longer-term decisions and trade-offs to more effectively manage health benefits. Working together, employers can progress good ideas forward and help provide a better way to make U.S. health care and health insurance work for all Americans.

Pricing Around the World

We sell medicines in approximately 125 countries around the world. Each country values medications and innovation differently, and each must balance competing demands for limited resources including other health-care products and services, as well as meeting other social needs, such as education or infrastructure. At Lilly, we consider country-specific conditions when pricing medicines on a market-by-market basis to help ensure patients have affordable access to the innovative medications we develop. We support public policies to meet this same end. We strive to price our medicines to enable affordable access for appropriate patients, reflecting the value provided to patients, providers, payers, caregivers, the health system and society as a whole. We define value in clinical, human and economic terms, and we base our assessment on the results of clinical trials, economic analysis and projected and measured health outcomes, as well as market research.

We explore new ways to achieve the right level of pricing in different markets, and we advocate for policy changes that help increase access to medicines. Value-based and outcomes-based reimbursement models are examples of payment initiatives that offer the ability to deliver greater economic and health value to health-care systems.

As a global company, we are particularly aware of the economic circumstances in many developing countries that may make access to medicines difficult. In response, Lilly has developed alternative business models, recognizing that poorer nations should pay less than wealthy nations. We also support efforts to decrease the final price of medicines to patients, such as minimizing taxes and limiting markups applied in the supply chain. In addition, Lilly has a long-standing policy of not seeking or enforcing patents for medicines in any of the least developed countries, as defined by the United Nations.

Lilly's Support of Universal Health Care Principles

In 2019, Lilly participated in the first-ever high-level meeting of the United Nations (UN) General Assembly focused exclusively on universal health coverage (UHC). The meeting featured heads of state, global health leaders and policymakers, who issued a collective call to elevate discussions of access to health care beyond ministries of health and to address the issue in a holistic way.

We support the principles of UHC, and its importance in fulfilling the 2030 Agenda for Sustainable Development, which provides a framework for member countries, the private sector and non-governmental organizations to work together towards achieving peace and prosperity for people and our planet by realizing the UN's Sustainable Development Goals. UHC means that all individuals and communities have access to quality health-care services, where and when they need them, without risk of financial hardship. Pharmaceutical companies are part of a much larger health ecosystem composed of public and private providers, health professionals, hospitals and clinics, laboratories and health insurers, and we recognize that no single organization or sector can achieve UHC on its own. We believe the private sector is well-positioned to contribute to UHC goals as we provide products and services to improve lives for many millions of people across the globe.

Improving Global Health

Medicines play an important role in making life better for people. When used appropriately, medications can help us live longer and healthier, slow the progression of disease, improve management of chronic conditions, enhance our quality of life, prevent or minimize complications and side effects of disease or even potentially eliminate the need for costly or painful hospitalizations and surgeries. But medicines can often be out of reach for those who need them the most. Ensuring access to medicines is an important component of investing in community health and well-being.

Our commitment to tackle complex global health challenges takes many forms. We work to develop and scale sustainable solutions while focusing on diseases where we have deep technical expertise.

Lilly 30x30

Through investments in people, medicines and health systems, we aim to improve access to quality health care for 30 million people living in limited resource settings annually by 2030. We call this global effort Lilly 30x30. To achieve our goal, we have structured Lilly 30x30 as a company-wide effort in strategic collaboration with valued external partners. Lilly 30x30 initiatives include activities across three areas of impact: pipeline, programs and partnerships. In each of these areas, we are leading cross-functional teams to develop high-impact, scalable projects and solutions.

Governance of 30x30

To embed accountability throughout the company, Lilly 30x30 is governed by a steering committee of five executive committee members and the head of Social Impact. Reporting to the CEO, this committee oversees management of key priorities and operational milestones to measure our progress and ensures the 30x30 program is strategically aligned with our business.

Measuring Patient Reach

To track our progress, we developed a measurement framework that allows us to estimate the number of people we reach through the full 30x30 portfolio. We continue to develop new initiatives with broad reach to achieve our 2030 goal. In 2020, our estimated 30x30 program reach was approximately 7.3 million people, an increase of about 2.3 million since 2015.

Measuring Patient Reach

Pipeline

In 2020, we continued to explore the repositioning/repurposing of internal assets and external collaborations for diseases disproportionately affecting people living in resource-limited settings. Our research efforts remained focused on our current and legacy products, and mid- to late-phase assets. We also engaged external groups to explore potential partnerships and business development models that further support the development of our Lilly 30x30 pipeline.

Drug Development and Repurposing

Not every Lilly scientific discovery will go on to become a marketed medicine, but some could still yield value in other ways. In response to the coronavirus pandemic, our 30x30 drug repurposing efforts uncovered an antibody previously studied in cancer could be evaluated against new disease targets. Our team identified the antibody's potential and advanced it to Phase 2 testing in pneumonia patients hospitalized with COVID-19 who were at higher risk of progressing to acute respiratory distress syndrome (ARDS). While the trial was eventually discontinued, we engaged an artificial intelligence company to assess additional opportunities for this asset based on trial learnings. Learn more about our response to the COVID-19 pandemic.

Lilly's internal scientific committee also reviewed the repurposing of two legacy molecules for infectious diseases in 2020. Despite strong hypotheses, the scientific evaluation did not support further pursuit of these ideas in light of the performance and availability of the current standards of care.

Antimicrobial Resistance (AMR) Action Fund

In 2020, we announced the launch of the Antimicrobial Resistance (AMR) Action Fund with over 20 leading biopharmaceutical companies. Joining forces with global charitable organizations and development banks, the AMR Action Fund aims to accelerate antibiotic development with the goal to deliver up to four new antibiotics to patients by 2030. The AMR Action Fund will strengthen and accelerate antibiotic development by investing in companies exploring innovative antibacterial treatments. Lilly is a top-tier investor, with $100 million commitment over the life of the fund.

Gates Foundation COVID-19 Collaboration

Also in 2020, we joined a cross-industry collaboration with the Bill & Melinda Gates Foundation to accelerate the development, manufacturing and delivery of vaccines, diagnostics and treatments for COVID-19. This consortium of life sciences companies was convened to work collectively with health authorities and the World Health Organization (WHO) to ensure promising studies are scaled up quickly to help more people around the world. Along with peer companies, we agree to share our proprietary library of molecular compounds for which we have appropriate threshold safety and efficacy data. Lilly is also committing human capital to this effort, including engaging the president of Lilly Research Labs and several of the company's top scientists in these efforts. Additionally, as we are committed to increasing equitable access to COVID-19 therapeutic options to people in low- and middle-income countries, we entered an agreement with Gates Foundation to facilitate access to our COVID-19 antibodies. After authorization in Morocco and Rwanda, we provided bamlanivimab – an investigational medicine used to treat mild to moderate symptoms of COVID-19 – to both countries as part of this agreement.

Read more about Lilly's response to COVID-19 here.

Programs

Through Lilly 30x30, we are strengthening our existing programs and developing new approaches to improve access to valuable Lilly products and services for people living in resource-limited settings. These efforts include exploring and expanding alternative business models, access strategies and patient support programs. Recently, we've initiated an analysis of the pharmaceutical supply chain in Sub-Saharan Africa as part of ensuring access to medicines in this region.

Patient Support Programs

Lilly offers more than 160 patient support programs across 40 countries that reach nearly 1.5 million people annually. These programs, including new insulin affordability efforts in the U.S., support people who are taking Lilly medicines as well as their caregivers and loved ones.

Our patient support programs fall into three categories – supporting patients through reimbursement and product access issues, answering questions related to living with disease and managing health, and providing information on Lilly medicines and training on Lilly devices. To help expand access to our medicines, some of our support programs take a patient's income level and ability to pay into consideration.

Alternative Access Programs

Lilly offers alternative programs in addition to standard, industry-wide pricing, reimbursement and access efforts. Our alternative programs facilitate appropriate patient access to Lilly medicines by addressing specific challenges faced by institutional payers, patients or channel partners.

Lilly 30x30 Fellow

In 2019, we launched the Lilly 30x30 Fellow program in our South and East Asia, Middle East and Africa (SAMETA) region. The fellows are focused on supporting our 30x30 initiatives in the region and identifying ways to increase access to treatments in the countries where Lilly has limited or no presence. The 30x30 Fellow program attracts talent interested in improving patient access to health care and expanding access to Lilly medicines. By end of 2020, four 30x30 Fellows from our affiliates in the region have rotated through the program.

Partnerships

Through strategic partnerships and collaborations, Lilly and the Lilly Foundation work to strengthen local health-care systems, improve access to care and advance government priorities. In conjunction with other organizations, Lilly uses its technology and expertise to find innovative, sustainable and scalable solutions to help address pressing global health concerns, including diabetes and cancer. We work to establish cross-industry collaborations and develop and test models of care to reach as many people as possible.

Our global health work is largely focused on non-communicable diseases NCDs, which disproportionately affect people living in settings with limited resources. More than three quarters of NCD deaths annually – 32 million – occur in low- and middle-income countries. Even in the U.S., NCDs have a greater impact on underserved communities. It's not uncommon for someone in a community with limited resources to live 10 to 15 years less than someone just 10 miles away.

We share data and lessons learned to help inform policy and advocate for the scale-up and replication of proven, cost-effective solutions.

Lilly Global Health Partnership

- **Focus areas** – Diabetes, Cancer and Health System Strengthening
- **Focus countries** – China, India, Mexico, Sub-Saharan Africa and U.S.

Collaborations to Advance the U.N. Sustainable Development Goals
We are members of several multi-stakeholder collaborations focused on tackling global health challenges including:

- Access Accelerated – A first-of-its-kind, multi-stakeholder collaboration focused on improving non-communicable disease NCD care globally. NCDs include cardiovascular diseases, cancer, chronic respiratory diseases, diabetes and mental illness
- NCD Alliance – Global thought leader on policy and practice related to non-communicable disease NCDs
- Shared Value Initiative – A global community of organizations committed to driving the adoption and implementation of shared value strategies among leading companies, civil society and government organizations

Notable Partnerships

- **Africa Health Worker Training Initiative** – In early 2020, we joined four other health-care companies and the Bill & Melinda Gates Foundation to launch a new fund to increase access to community-based primary health care for nearly 1.7 million people in up to six African countries by 2022. Led by nonprofit partners Last Mile Health and Living Goods, the initiative will employ 2,500 community health workers equipped with digital tools. Learn more about the partnership here.
- **Expanding Successful AMPATH Model** – Building on 30 years of success in western Kenya, Lilly and the Lilly Foundation's long-term partner, AMPATH (Academic Model Providing Access to Healthcare), is establishing new health sites in Puebla, Mexico, and Tamale, Ghana, with the potential to reach more than 7 million people by 2030. Lilly and the Lilly Foundation have supported AMPATH Kenya with nearly $150 million in product donations, financial support for oncology programming and employee volunteerism. New contributions to AMPATH are helping to support the expansion program, with the goal of demonstrating the scalability of the Kenyan model. Learn more about the partnership here.
- **Diabetes Impact Project in Indianapolis Neighborhoods (DIP-IN)** – Lilly and the Richard M. Fairbanks School of Public Health at Indiana University are collaborating on a five-year pilot to train newly-hired community health workers to help identify people with or at risk for developing diabetes and connecting them with quality care. The pilot has the potential to scale to health systems in Indiana and across the U.S. and could reach more than 250,000 people by 2030. Learn more about the partnership here
- **Partnership with Mexico's National Health Council and FUMEC** – Launched in 2020, the partnership aims to strengthen the Mexican health-care system and the treatment of chronic diseases, starting with type 2 diabetes. Mexico ranks 6th in the world for the prevalence for type 2 diabetes. This project will develop information tools for better decision-making and engagement between patients and health-care providers. This epidemiological surveillance system, called SANENT (National System for Analysis of Non-Communicable Diseases), aims to benefit more than 5.7 million people by 2030.

Product Donations

- **Life for a Child** – Since 2009, Lilly has donated more than 2.4 million vials of insulin related to support of the Life for a Child program. The program provides access to care, education and life-saving medicines and supplies to children with diabetes in developing countries with limited resources. In 2020, Life for a Child provided support to 23,553 young people in 42 countries. In early 2021, we announced plans to expand our support related to the Life for a Child program to increase access to care to approximately 150,000 youth annually over the next 10 years. To facilitate the expanded support, we will increase donations of mealtime and basal insulins and reusable pens, as well as financial support for the costs associated with arranging, packing and shipping to countries in conjunction with Direct Relief.
- **Partnering with Relief Agencies to Increase Access to Insulin** – As part of Lilly's commitment to identify gaps in the U.S. health-care system and find solutions that help people with diabetes live healthier lives, we announced in early 2020 that we would donate at least 200,000 KwikPens® to Direct Relief, Americares and Dispensary of Hope to stock insulin at nearly 300 U.S. free clinics through 2022. These donations will directly support people with limited resources living with diabetes who qualify for free clinic services. Separately, Lilly is donating $2 million to fund grants available through two relief organizations: Direct Relief and Americares. These agencies will distribute grant funds to a wide range of eligible free clinics to increase access in underserved communities. Learn more about our commitment here.

Over the past five years, Lilly has donated more than 10 million insulin vials and pens to U.S. charitable organizations, including Americares, Direct Relief, Dispensary of Hope and the Lilly Cares® Foundation.

Patient Assistance Programs

- **Lilly Cares® Foundation Patient Assistance Program** – Lilly donates medications to the Lilly Cares Foundation, a separate nonprofit organization. Lilly Cares operates the Lilly Cares Foundation Patient Assistance Program, which helps qualifying patients in the U.S. with significant financial need obtain certain donated Lilly medications at no cost. In 2020, Lilly Cares helped nearly 160,000 people obtain prescribed medications in the areas of mental health, diabetes, cardiovascular disease, men's health, osteoporosis, arthritis, cancer, psoriasis, migraine and growth hormone disorders.
- **China Primary Health Care Foundation** – In China, Lilly offers patient assistance programs for oncology and osteoporosis patients through the China Primary Health Care Foundation. In 2020, more than 3,000 new patients were registered and more than 10,000 patients were helped through the foundation's support programs.

2020 Contributions at a Glance

$90M	$1.8B	$29.4M
total committed to global health programming 2017-2022	2020 Total Product Donation	total cash donation including $26.6M from the Lilly Foundation

2.4M	$13.4M	1.2M
insulin vials donated as of 2020 related to support of the Life for a Child program since 2009	2020 total United Way contribution including $7.4M from the Lilly Foundation	number of employee volunteer hours through Lilly Global Day of Service since 2008

*All product donations in this report have been valued at wholesale acquisition or WAC.

This website contains forward-looking statements that are based on management's current assumptions and expectations, including statements regarding our sustainability targets, goals, commitments and programs and other business plans, initiatives and objectives. The words "estimate", "project", "intend", "expect", "believe", "target", "anticipate" and similar expressions are intended to identify forward-looking statements. All such statements are intended to enjoy the protection of the safe harbor for forward-looking statements provided by the Private Securities Litigation Reform Act of 1995, as amended. Actual results may differ materially due to various factors. The company's sustainability targets, goals, and commitments outlined in this website or elsewhere, as well as its operations, results, business, goals, and strategy may be affected by factors including, but not limited to, the impact of the evolving COVID-19 pandemic and the global response thereto; the significant costs and uncertainties in the pharmaceutical research and development process, including with respect to the timing and process of obtaining regulatory approvals; competitive developments affecting current products and the company's pipeline; regulatory actions regarding currently marketed products; litigation, investigations, or other similar proceedings involving past, current, or future products or commercial activities as the company is largely self-insured; the impact of business development transactions and related integration costs; the impact of global macroeconomic conditions and trade disruptions or disputes; and changes or developments in laws and regulations, including health care reform.

For additional information about the factors that affect the company's business, please see the company's latest Forms 10-K, 10-Q, and any 8-Ks filed with the Securities and Exchange Commission. The company expressly disclaims any obligation to update forward-looking statements except as required by applicable law.

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Exhibit C

[September 28, 2021 Press Release]

Lilly again reduces list price of Insulin Lispro Injection as latest change to affordability options

September 28, 2021

Lilly's Insulin Lispro Injection, 100 units/mL -- first introduced at half the list price of branded Humalog® (insulin lispro injection, 100 units/mL) in 2019 -- will now have a 70 percent lower list price than Humalog U-100 starting January 1, 2022

Insulin Lispro Injection can be ordered through all U.S. retail pharmacies

Monthly prescriptions for all Lilly insulins -- including Insulin Lispro Injection -- remain available for $35 through the Lilly Insulin Value Program and the Medicare Part D Senior Savings Model

INDIANAPOLIS, Sept. 28, 2021 /PRNewswire/ -- Eli Lilly and Company (NYSE: LLY) will lower the list price of Insulin Lispro Injection in the U.S. by an additional 40 percent effective January 1, 2022, effectively bringing the list price down to 2008 levels. The new list price will apply to all Lilly's non-branded insulins, including Insulin Lispro Injection, a lower list-priced alternative to Humalog U-100.

The new lower list price is the latest among numerous options that can reduce out-of-pocket costs for Lilly insulin at U.S. retail pharmacies. People using any Lilly insulin – including Insulin Lispro Injection – can fill their monthly prescription for $35 through the Lilly Insulin Value Program for people with commercial insurance or who are uninsured, and the Senior Savings Model for seniors in participating Medicare Part D plans.

The new list price for Insulin Lispro Injection will be $82.41 for individual vials and $159.12 for a pack of five pens – which is 70 percent less than Lilly's branded Humalog U-100 counterparts and can help people who have not activated one of Lilly's affordability solutions.

"Lilly has introduced numerous affordability programs since 2017. Collectively, these solutions are significantly lowering the out-of-pocket costs for people using our insulins," said David A. Ricks, Lilly's chairman and CEO. "Today's list price cut can further help people who are exposed within our healthcare system – the underinsured and uninsured. Half list-priced Insulin Lispro Injection has been adopted by a third of Humalog U-100 consumers. We hope this additional 40 percent cut can expand affordable insulin to more people with diabetes."

Lilly's numerous affordability solutions, combined with insurance coverage, have lowered the average monthly out-of-pocket cost for a prescription of Lilly insulin (regardless of the number of vials or pens) to $28.05, a 27 percent decrease over the past four years. In addition to lowering the list price of Insulin Lispro Injection, Lilly will keep other affordability programs in place for people using Lilly insulins – including the $35 co-pay card for the uninsured and people with commercial insurance, and the Senior Savings Model for people in participating Medicare Part D plans.

Insulin Lispro Injection Access

All major wholesalers stock and deliver Insulin Lispro Injection to U.S. pharmacies, and payers will continue to have the opportunity to make the lower list-priced insulins available to people living with diabetes. Pharmacists can substitute Insulin Lispro Injection U-100 for Humalog U-100 without a new prescription because they are the same insulin. Any retail pharmacy that does not stock Insulin Lispro Injection can obtain it from a wholesaler in 1-2 days.

Approximately 1 in 3 prescriptions for Lilly's U-100 mealtime insulin – Lilly's most commonly used insulin formulation – is for Insulin Lispro Injection.

The greatest benefit will be seen by people who face higher out-of-pocket costs – such as people without insurance and those with high deductible plans or co-insurance. Most people using Insulin Lispro Injection are unlikely to see a change in what they pay for their monthly prescription because they have fixed insurance co-pays or already use one of Lilly's affordability programs. Therefore, people should continue to refill insulin prescriptions at their normal pace. Given that out-of-pocket costs at the pharmacy can vary greatly due to insurance plan designs and co-pays, people should ask their pharmacist whether these lower list-priced options reduce their out-of-pocket costs.

"The affordability options we have introduced in recent years have helped many people who were struggling to afford their insulin," said Mike Mason, president, Lilly Diabetes. "Regardless of their circumstances, people who cannot afford their Lilly insulin should call the Lilly Diabetes Solution Center, or go to insulinaffordability.com, to find solutions to help them lower their out-of-pocket costs."

People who pay more than $35 a month for their prescription of Lilly insulin can lower their out-of-pocket costs by visiting insulinaffordability.com or by calling the Lilly Diabetes Solution Center at (833) 808-1234.

PURPOSE and SAFETY SUMMARY

Important Facts About Humalog® (HU-ma-log) and Insulin Lispro Injection

- Humalog is also known as insulin lispro injection.
- Humalog and Insulin Lispro Injection are fast-acting insulins. They are used to control high blood sugar in adults and children with diabetes. They are available only with a prescription.
- Humalog comes in two strengths: U-100 (100 units per milliliter) and U-200 (200 units per milliliter). The Humalog U-200 prefilled pen contains **2 times as much insulin** per 1 milliliter as standard (U-100) insulin. The dose window on the pen shows your insulin dose.
- It is not known if Humalog or Insulin Lispro Injection are safe and effective for children with type 2 diabetes or for children younger than 3 years of age with type 1 diabetes. There were no studies done with these insulins in these groups of children. If your doctor decides to give your child one of these insulins, he or she may give you special instructions.

Important Facts about Humalog® Mix50/50 ™, Humalog® Mix75/25 ™, and Insulin Lispro Protamine and Insulin Lispro Injectable Suspension Mix75/25

- Humalog Mix50/50 and Humalog Mix75/25 are known as insulin lispro protamine and insulin lispro injectable suspension.
- Humalog Mix50/50, Humalog Mix75/25, and Insulin Lispro Protamine and Insulin Lispro Injectable Suspension Mix75/25 are mixed U-100 insulins. This means they contain a mix of fast-acting and intermediate-acting insulins. They are used to control high blood sugar in people with diabetes. They are available only with a prescription.
- It is not known if Humalog Mix50/50, Humalog Mix75/25, or Insulin Lispro Protamine and Insulin Lispro Injectable Suspension Mix75/25 are safe and effective for children younger than 18 years of age. There were no studies done with these insulins in children younger than 18. If your doctor decides to give your child one of these insulins, he or she may give you special instructions.

All Humalog and Insulin Lispro Injection products contain insulin lispro. Humalog Mix50/50, Humalog Mix75/25, and Insulin Lispro Protamine and Insulin Lispro Injectable Suspension Mix75/25 contain insulin lispro protamine mixed with insulin lispro.

Warnings

Do not take Humalog, Insulin Lispro Injection, Humalog Mix50/50, Humalog Mix75/25, or Insulin Lispro Protamine and Insulin Lispro Injectable Suspension Mix75/25 if you have:

- symptoms of low blood sugar (hypoglycemia)
- an allergy to insulin lispro products or any of their ingredients.

Do not reuse needles or share your insulin injection supplies with other people. This includes your:

- prefilled pen for use by a single patient
- cartridges
- reusable pen that works with Lilly 3mL cartridges
- needles
- syringes

You or the other person can get a serious infection. This can happen even if you change the needle.

Do not change the type of insulin you take or your dose, unless your doctor tells you to. This could cause low or high blood sugar, which could be serious.

Do not use a syringe to remove Humalog from your prefilled pen. This can cause you to take too much insulin. Taking too much insulin can lead to severe low blood sugar. This may result in seizures or death.

Humalog, Insulin Lispro Injection, Humalog Mix50/50, Humalog Mix75/25, and Insulin Lispro Protamine and Insulin Lispro Injectable Suspension Mix75/25 may cause serious side effects. Some of these can lead to death. The possible serious side effects are:

- **Low blood sugar.** This can cause:

- dizziness or light-headedness
- headache
- shakiness
- irritability
- sweating
- blurred vision
- fast heartbeat
- mood change
- confusion
- slurred speech
- anxiety
- hunger

If you are at risk of having severely low blood sugar, your doctor may prescribe a glucagon emergency kit. These are used when your blood sugar becomes too low and you are unable to take sugar by mouth. Glucagon helps your body release sugar into your bloodstream.

- **Severe allergic reaction.**
  Get emergency help right away if you have:

- a rash over your whole body
- sweating
- extreme drowsiness
- swelling of your face, tongue, or throat
- trouble breathing
- a faint feeling
- dizziness
- a fast heartbeat
- shortness of breath
- confusion

- **Low potassium in your blood.** This can lead to severe breathing problems, irregular heartbeat, and death.

- **Heart failure.** Taking diabetes pills called thiazolidinediones (thIE-uh-zOH-li-dEEn-dIE-OHns), or "TZDs," with insulin lispro products may cause heart failure in some people. This includes people who do not have any heart problems. If you have heart failure, it may get worse if you take TZDs with these insulin lispro products. Tell your doctor if you have any new symptoms of heart failure, or if they get worse. Some symptoms of heart failure include: shortness of breath, swelling of ankles and feet, and sudden weight gain. Your doctor may need to change or stop treatment with TZDs and your insulin lispro product.

- **High blood sugar and ketoacidosis.** You can have these serious problems when your insulin pump or infusion set stops working. They can also happen if your insulin is no longer effective. For these reasons, always keep extra insulin injection supplies with you.

Common side effects

The most common side effects of **Humalog, Insulin Lispro Injection, Humalog Mix50/50, Humalog Mix75/25, and Insulin Lispro Protamine and Insulin Lispro Injectable Suspension Mix75/25** are:

- low blood sugar
- reactions where you have injected insulin
- swelling of your hands or feet
- itching
- allergic reactions
- changes in fat tissue where you have injected insulin
- weight gain
- rash

These are not all of the possible side effects. Tell your doctor if you have any side effects. You can report side effects at 1-800-FDA-1088 or www.fda.gov/medwatch.

Before using

Talk with your doctor about low blood sugar and how to manage it. Also tell your doctor:

- about all of the medicines you take, including over-the-counter medicines, vitamins, and herbal supplements.
- about any other prescription medicines you take, especially ones called TZDs.
- about all of your medical conditions, including if you have heart failure or other heart, liver, or kidney problems.
- if you are pregnant, breastfeeding, or plan to become pregnant or breastfeed.

How to take

Read the **Instructions for Use** that come with your **Humalog, Insulin Lispro Injection, Humalog Mix50/50, Humalog Mix75/25, or Insulin Lispro Protamine and Insulin Lispro Injectable Suspension Mix75/25**. Be sure to take your insulin lispro product and **check your blood sugar levels** exactly as your doctor tells you to. Your doctor may tell you to change your dose because of illness, increased stress, or changes in your weight, diet, or physical activity level. He or she may also tell you to change the amount or time of your dose because of other medicines or different types of insulin you take.

Before injecting your insulin lispro product

You can inject your insulin dose yourself, or you can have a trained caregiver inject it for you. Make sure you or your caregiver:

- Check the insulin label before each injection. This will help you make sure that you are taking the correct insulin.
- Use a new needle for each injection. You can get a serious infection or the wrong dose of insulin if you re-use needles.
- Change (rotate) where you inject your insulin with each dose. This can reduce your chance of getting pits, lumps, or thickened skin where you inject your insulin. **Do not** inject your insulin into the exact same spot or where the skin has pits or lumps. **Avoid** injecting into thickened, tender, bruised, scaly, hard, scarred, or damaged skin.

When you are ready to inject

- If you are taking Humalog or Insulin Lispro Injection, inject it under your skin within 15 minutes before or right after you eat a meal.
- If you are taking Humalog Mix50/50, Humalog Mix75/25, or Insulin Lispro Protamine and Insulin Lispro Injectable Suspension Mix75/25, inject it under your skin within 15 minutes before you eat a meal.

Staying safe while taking your insulin lispro product

To stay safe while taking your insulin, be sure to **never** inject Humalog U-200, Humalog Mix50/50, Humalog Mix75/25, or Insulin Lispro Protamine and Insulin Lispro Injectable Suspension Mix75/25 in your vein, muscle, or with an insulin pump. Also be sure **not to**:

- mix Humalog U-200, Humalog Mix50/50, Humalog Mix75/25, or Insulin Lispro Protamine and Insulin Lispro Injectable Suspension Mix75/25 with other insulins or liquids.
- drive or use heavy machinery until you know how your insulin lispro product affects you.
- drink alcohol or use other medicines that contain alcohol when taking your insulin lispro product.

Learn more

For more information, call 1-800-545-5979 or go to www.humalog.com or www.lillyinsulinlispro.com.

This summary provides basic information about Humalog, Insulin Lispro Injection, Humalog Mix50/50, Humalog Mix75/25, and Insulin Lispro Protamine and Insulin Lispro Injectable Suspension Mix75/25. It does not include all information known about these medicines. Read the information that comes with your prescription each time your prescription is filled. This information does not take the place of talking with your doctor. Be sure to talk to your doctor or other health care provider about your insulin lispro product and how to take it. Your doctor is the best person to help you decide if these medicines are right for you.

Humalog®, Humalog® Mix50/50 ™, and Humalog® Mix75/25 ™ are trademarks and registered trademarks owned or licensed by Eli Lilly and Company, its subsidiaries, or affiliates.

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For additional information, talk to your healthcare providers and please click to access Humalog Full Prescribing Information and Patient Information, Humalog U-200 Patient Information, Humalog Mix75/25 Full Prescribing Information and Patient Information, Humalog Mix50/50 Full Prescribing Information and Patient Information, Insulin Lispro Injection Full Prescribing Information and Patient Information, Insulin Lispro Protamine and Insulin Lispro Injectable Suspension Mix75/25 Full Prescribing Information and Patient Information.

Please see Instructions for Use included with the product.

About Diabetes
Approximately 34 million Americans[1] (just over 1 in 10) and an estimated 463 million adults worldwide[2] have diabetes. Type 2 diabetes is the most common type internationally, accounting for an estimated 90 to 95 percent of all diabetes cases in the United States alone.[2] Diabetes is a chronic disease that occurs when the body does not properly produce or use the hormone insulin.

About Lilly Diabetes
Lilly has been a global leader in diabetes care since 1923, when we introduced the world's first commercial insulin. Today we are building upon this heritage by working to meet the diverse needs of people with diabetes and those who care for them. Through research, collaboration and quality manufacturing we strive to make life better for people affected by diabetes and related conditions. We work to deliver breakthrough outcomes through innovative solutions—from medicines and technologies to support programs and more. For the latest updates, visithttp://www.lillydiabetes.com/ or follow us on Twitter: @LillyDiabetes and Facebook: LillyDiabetesUS.

About Eli Lilly and Company
Lilly is a global health care leader that unites caring with discovery to create medicines that make life better for people around the world. We were founded more than a century ago by a man committed to creating high-quality medicines that meet real needs, and today we remain true to that mission in all our work. Across the globe, Lilly employees work to discover and bring life-changing medicines to those who need them, improve the understanding and management of disease, and give back to communities through philanthropy and volunteerism. To learn more about Lilly, please visit us at lilly.com and lilly.com/newsroom. P-LLY

Lilly Cautionary Statement Regarding Forward-Looking Statements
This press release contains forward-looking statements (as that term is defined in the Private Securities Litigation Reform Act of 1995) and reflects Lilly's current beliefs. Among other things, there is no guarantee that future study results will be consistent with study findings to date. For further discussion of these and other risks and uncertainties, see Lilly's Form 10-K and Form 10-Q filings with the United States Securities and Exchange Commission. Except as required by law, Lilly undertakes no duty to update forward-looking statements to reflect events after the date of this release.

References

1. Centers for Disease Control and Prevention. National Diabetes Statistics Report, 2020. Atlanta, GA: Centers for Disease Control and Prevention, U.S. Dept. of Health and Human Services; 2020.
2. International Diabetes Federation. IDF Diabetes Atlas, 9th edn. Brussels, Belgium: International Diabetes Federation, 2019. Available at: http://diabetesatlas.org.

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Refer to: Greg Kueterman; kueterman_gregory_andrew@lilly.com; 317-432-5195 (Media)
Kristiane Bello; bello_kristiane@lilly.com; 317-315-9052 (Media)
Kevin Hern; hern_kevin_r@lilly.com; 317-277-1838 (Investors)

View original content to download multimedia:https://www.prnewswire.com/news-releases/lilly-again-reduces-list-price-of-insulin-lispro-injection-as-latest-change-to-affordability-options-301386117.html

Exhibit D

[Political Participation Website]

Public Policy Engagement and Political Participation

Political and Policy Participation

As a biopharmaceutical company that develops treatment for serious diseases, we play an important role in public health. We believe it is important for our company to be a responsible participant in political and public policy debates around the world. Our engagement in the political arena helps ensure that patients have access to needed medications—leading to improved patient outcomes. Through public policy engagement, we provide a way for all our locations globally to offer Lilly's perspective on the political environment in a manner that supports access to innovative medicines. We also look for ways to engage on issues specific to local business environments.

Through our policy research, development and stakeholder dialogue activities, Lilly focuses on several dynamic areas that are important to our company, our industry and the people we serve.

Our public policy efforts center on three key areas: innovation; health care delivery; and pricing and reimbursement. We disclose our lobbying activities in compliance with the Lobbying Disclosure Act. For additional information on Lilly's positions on healthcare policies, please see: lilly.com/policies-reports/public-policy.

Board Oversight

The Lilly Board of Directors exercises governance oversight of our political expenditures and lobbying activities to ensure that we fulfill our commitment to stewardship of corporate funds and risk minimization with respect to such activities, as well as other environmental, social and governance matters. The Directors and Corporate Governance Committee of the Board is responsible for identifying current and emerging social, environmental, political and governance trends and public policy issues that may affect the business operations, performance, or reputation of the company. In addition, the full Board receives regular updates at Board meetings from our Senior Vice President, Corporate Affairs and Communications, which include updates on public policy issues and the company's political corporate activity, as needed. The full Board also receives semi-annual updates on political engagement, including information on the contributions made by LillyPAC and the company, as well as trade association memberships.

Recipients of Company's Political Contributions

Where permitted, Lilly may make lawful political contributions in the United States to political candidate committees, political parties, political action committees, ballot measure committees, associations and other political organizations operating under section 527 of the Internal Revenue Code. Lilly will only fund other non-candidate expenditures by exception (e.g., certain ballot initiatives) and those contributions are disclosed in our annual Report of Political Financial Support.

Lilly has not made “independent expenditures,” such as by paying for advertisements in support of or opposition to candidates running for public office and does not have plans to make such expenditures. Nor does Lilly anticipate making “independent expenditures” in support of or opposition to ballot measures. Were Lilly to make an “independent expenditure” in the future, it would disclose this spending on its Report on Political Financial Support.

Political Contributions to Candidates for Public Office

Our political contributions promote the interests of the company and the patients and customers we serve. They are made without regard to the partisan affiliation of the candidate or the private political preferences of our officers and directors.

LillyPAC and corporate contributions are made based on several criteria, including:

- Voting record or announced positions on issues important to Lilly.
- Demonstrated leadership on key committees of importance to our business.
- Potential for legislative leadership.
- Dedication to improving the relationship between business and government.
- Representation of a state or district where Lilly has a facility or large concentration of employees.

Corporate Political Contributions

Corporate political contributions are made to state candidates and committees, where permissible. Lilly’s Vice President, U.S. Government Affairs reviews and approves all corporate political contributions to ensure these contributions are consistent with the company’s guidelines and in accordance with applicable laws. The company’s General Counsel and the Chief Financial Officer, or their designees, also approve all corporate political contributions before they are made.

Lilly voluntarily discloses its corporate political contributions on an annual basis. In 2020, Lilly provided corporate contributions to state candidates and committees totaling $241,000. For more information, please see our 2020 Report of Political Financial Support.

LillyPAC

Lilly’s Political Action Committee (LillyPAC) is funded solely from voluntary contributions from eligible employees and supports political candidates of all parties at the local, state and federal level who understand the policies that advance a positive environment for biopharmaceutical innovation. The LillyPAC governing board is comprised of 16 U.S.-based employees who represent business areas throughout the company. The LillyPAC governing board reviews all contributions made by LillyPAC twice annually. Lilly’s Vice President, U.S. Government Affairs manages LillyPAC operations, and a member of Lilly’s Executive Committee serves as an executive sponsor and board chair of LillyPAC to ensure compliance and alignment with company priorities.

LillyPAC voluntarily discloses its contributions on an annual basis. In 2020, LillyPAC contributions to local, state and federal candidates totaled $727,800. For more information, please see our 2020 Report of Political Financial Support.

View Previous Reports

2019 Report of Political Financial Support
2018 Report of Political Financial Support
2017 Report of Political Financial Support
2016 Report of Political Financial Support
2015 Report of Political Financial Support
2014 Report of Political Financial Support

2013 Report of Political Financial Support
2012 Report of Political Financial Support
2011 Report of Political Financial Support
2010 Report of Political Financial Support

Federal and State Lobbying Activities

Lilly conducts direct lobbying efforts at the federal, state, and local levels to educate policymakers on the specific implications that various legislation may have on the company, our community, and patients. Lilly's Vice President, U.S. Government Affairs is responsible for the company's lobbying activities.

When engaging in lobbying activities, we comply with the laws that govern such activities. Lilly employees must also comply with our global policies, core values and legal obligations, which are outlined in our written Code of Business Conduct, The Red Book.

Lilly complies with the Lobbying Disclosure Act and files quarterly reports that include information regarding our federal lobbying expenditures. These reports may be viewed on the U.S. Senate Lobbying Disclosure Act Database website. In all states where we operate, we comply with state registration and reporting requirements. Our state reporting may be viewed on each state's lobbying disclosure website. Lilly voluntarily provides this chart for locating its disclosures on each state's website.

In 2020, Lilly spent $5,420,000 on U.S. federal lobbying activities, which includes, but is not limited to, compensation and benefits for staff members, payment of external consultants, policy research funding and travel expenses.

Trade Association Memberships

Lilly maintains memberships in organizations that report lobbying activity to the U.S. federal government, including the Pharmaceutical Research and Manufacturers of America, the National Association of Manufacturers, the Biotechnology Innovation Organization, the U.S. Chamber of Commerce and the Business Roundtable. We support organizations that champion public policies that contribute to pharmaceutical innovation, healthy patients, and a healthy business climate.

Our membership in these organizations is evaluated annually by the company's U.S. Government Affairs leaders based on these organizations' expertise in healthcare policy and advocacy and support of key issues of importance to Lilly.

In addition to their positions on health care and business policy issues, we recognize that these organizations may engage in a broad range of other issues that extend beyond the scope of what is of primary importance to Lilly. If concerns arise about an organization's activities or involvement, we convey our concerns to these groups. We believe there is value in making sure our positions on issues important to Lilly and our industry are communicated and understood within those organizations. Lilly's membership in these groups comes with the understanding that we may not always agree with the positions of the larger organization and/or other members.

We disclose memberships in organizations to which Lilly pays annual membership dues of $50,000 or more, and which lobby in the U.S. at the federal and state level, as well as the percentage of dues collected from member companies utilized by that organization for federal and state lobbying and political expenditures. If Lilly has a board seat in any of those organizations, the board seat is also disclosed and noted with an asterisk.

- BIOCOM* (10%)
- Biotechnology Innovation Organization* (41%)
- Business Roundtable (40%)
- California Life Sciences (22%)
- Indy Chamber* (5%)
- International Federation of Pharmaceutical Manufacturers Association* (0%)
- Indiana Chamber of Commerce* (9%)
- National Association of Manufacturers* (20%)

- Pharmaceutical Research Manufacturers Association* (33%)
- U.S. Chamber of Commerce (25%)

Exhibit E

[Copy of Diabetes Solution Center]

Having Trouble Affording Your Lilly Medicine? Contact Us | Learn About Lilly's Global COVID-19 Response

Insulin Access and Affordability

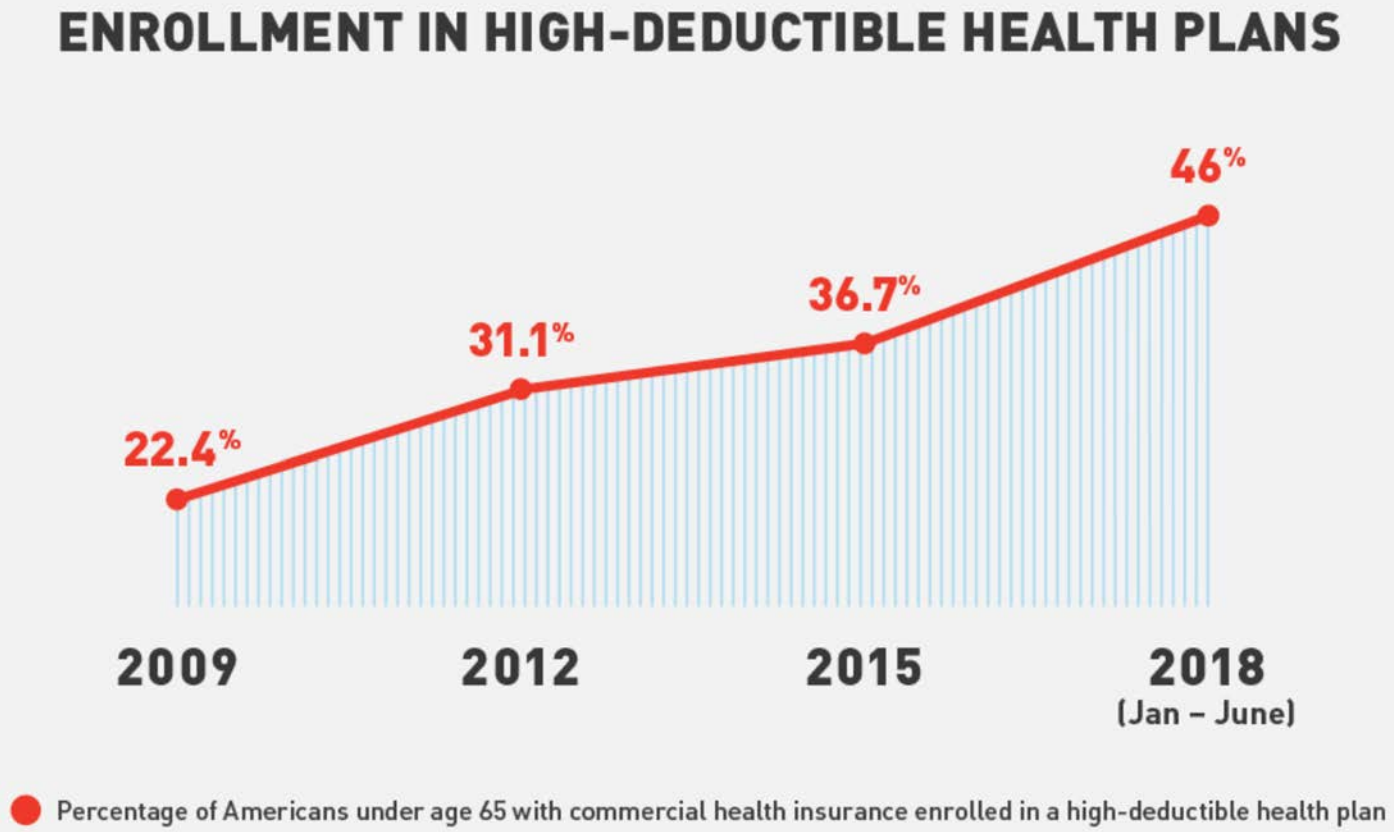
The Lilly Diabetes Solution Center

Changes in the U.S. health care system have led to greater consumer cost-sharing and a growing number of patients exposed to a medicine's full retail price. This has left some Americans struggling to pay for their medicine. Lilly is actively working with other key stakeholders to seek long-term policy solutions to address the gaps in our current health care system. We remain committed to finding solutions – both legislative and non-legislative – that will help people with chronic diseases have affordable access to their medicine. Find more information below.

The Current U.S. Health Care Environment

Insurance Design

Insurance design is changing and patients are responsible for more cost sharing. More and more, Americans do not pay for their medicines with a co-pay. Now, nearly half of adults with commercial insurance have a high-deductible health plan (HDHP), meaning people might pay thousands of dollars out-of-pocket before coverage kicks in. This is a big contributor to the insulin affordability issue.



Compiled using National Health Interview Survey Early Release Estimates. Data sourced from National Health Interview Survey's Early Release Estimates annual reports, 2009–2017, and 2018 January – June Early Release Report, available at https://www.cdc.gov/nchs/nhis/releases.htm. Last accessed February 19, 2019.

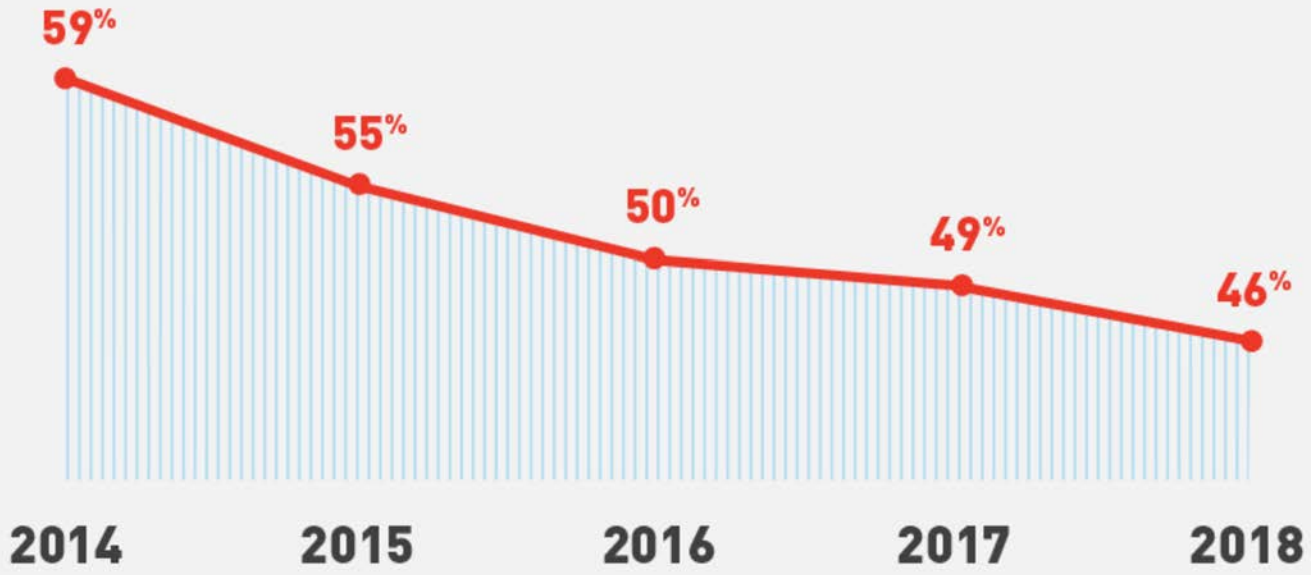
Rebates

Lilly, like other manufacturers, sets a list price for our medicines. To enable patient access, Lilly pays rebates and other discounts to payers and other supply chain entities. The final amount that Lilly ultimately realizes after paying these rebates and discounts is sometimes called the "net price." Across our U.S. product portfolio, Lilly's average net price after rebates and discounts – the final amount we receive – has fallen from 59 percent of list price in 2014 to 46 percent in 2018. The amount of Lilly's rebates and discounts continues to increase through a combination of factors – including increased market competition, pharmacy benefit managers' (PBMs') increased negotiation leverage and rising mandatory government discounts. For insulins, rebates to the government, in certain programs, result in net prices among the lowest in the world, and lower than developed markets with single-payer, direct-purchase models.

These rebates continue to widen the gap between list and net prices, the amount that is ultimately realized by Lilly. Because of these growing rebates and discounts, the average U.S. net price of Lilly medicines – the final amount we receive from selling our products – declined 0.5% last year.

Factors that create this gap also contribute to the rising costs consumers pay at the pharmacy. The trends toward high-deductible health plans and greater consumer cost-sharing have exposed some people to medicines' full retail prices. Under this type of insurance design, many consumers are not benefitting from the rebates Lilly provides and might pay the full retail price until they meet their deductible and a percentage of the retail price thereafter.

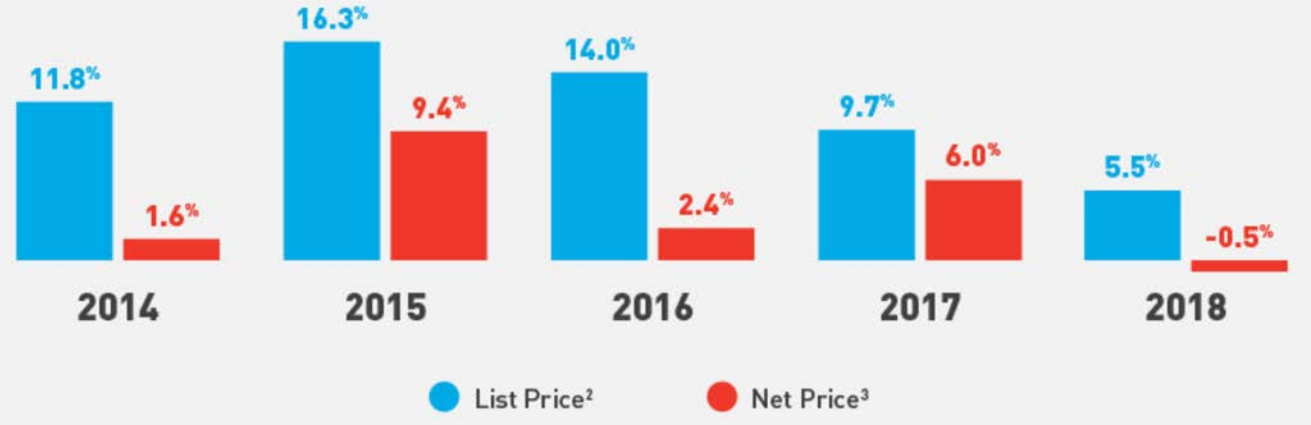
AVERAGE LILLY NET PRICE (AS A % OF LIST PRICE) AFTER DISCOUNTS ACROSS THE U.S. PRODUCT PORTFOLIO[1]



1. The average net price percentage is calculated by dividing net sales, the amount Lilly receives after discounts (rebates and channel cost), by the annual gross sales (total sales at list price, prior to all discounts).

COMPARISON OF LILLY LIST AND NET PRICE CHANGES FOR U.S. PRODUCT PORTFOLIO[1]

(% Change Versus the Prior Year)



1. U.S. Product Portfolio includes all human pharmaceutical products marketed in the U.S. for which Lilly is the holder of the new drug application (NDA). This represents approximately 95 percent of our total U.S. human pharmaceutical revenue. 2. List Price represents the weighted average year-over-year change in the wholesale acquisition cost (WAC). 3. Net Price represents weighted average year-over-year change in net price, which is WAC minus rebates, discounts, and channel costs.

Long-term Policy Solutions

Rebate Pass-through

We continue to advocate for insurers to pass through our negotiated rebates directly to consumers at the pharmacy counter.

The current rebate system needs to be reformed. Insurers should pass through the negotiated discounts and rebates directly to consumers. Doing so could save commercially insured patients with high deductibles and coinsurance more than $800 annually and would increase premiums by 1 percent or less.

A rebate pass-through would lower patients' out-of-pocket costs at the pharmacy counter, with the greatest benefit realized by patients taking more highly rebated products, such as insulin.

First Dollar Coverage

Lilly is supportive of efforts to exempt health care services for chronic conditions – including medicines such as insulins – from a health insurance plan's deductible ("first dollar coverage").

The Department of Treasury/Internal Revenue Service recently released guidance confirming that HDHPs may provide coverage of insulin and other listed chronic disease medicines without first satisfying the minimum deductible otherwise required for HDHPs.

Medicare Part D OOP Caps

Lilly supports legislative action to cap out-of-pocket costs for patients in Medicare Part D. We believe a cap would provide a critical financial safeguard for patients, leading to better treatment adherence and improvements in overall health status. Also, as of Jan. 1, 2021, Lilly offers all insulin formulations in the Centers for Medicare and Medicaid Services' Part D Senior Savings model, which makes Part D recipients eligible for the $35 monthly price if their insurance plan participates.

Employer-led Initiatives

Absent legislation around rebate pass-through and first dollar coverage, employers can play a key role in patient access and affordability by offering benefits that help reduce their own employees' medical costs. As an employer, Lilly provides the following benefits in our employee health plans:

- Prescription drug rebates are passed through to the consumer at the pharmacy counter to help our employees, retirees, and their families with their OOP medicine costs. In 2018, more than 11,000 Lilly employees, retirees and their families benefited – and their costs were reduced by more than $2 million.
- Preventive and chronic disease medications, such as insulin, are exempted from the deductible of our employees' health plans to ensure there are no barriers for accessing medicines critical to their overall health and well-being. In 2020, Lilly began reducing co-insurance to zero for insulins, meaning our plan participants pay nothing at all.
- Contributions are made to employees' and their families' Health Savings or Health Reimbursement accounts at the beginning of the year, with funds available immediately.
- Eligible employees and their family members with diabetes are provided a free connected glucose meter and related supplies, along with real-time support from trained diabetes educators.

Lilly Diabetes Solution Center

Get Help Paying For Your Insulin

The Insulin Affordability Conversation

Understanding Insulin Pricing

To speak to customer support:
Call (800) 545-5979

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Lilly

Trinity Health

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: rowancm@trinity-health.org

January 24, 2022

Via e-mail at shareholderproposals@sec.gov

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

Re: Request by Eli Lilly and Company to omit proposal submitted by Trinity Health and co-filers

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Trinity Health, together with five co-filers [1] (together, the "Proponents") submitted a shareholder proposal (the "Proposal") to Eli Lilly and Company ("Lilly" or the "Company"). The Proposal asks Lilly's board to report to shareholders on how it oversees risks related to anticompetitive practices, including whether the full board or board committee has oversight responsibility, whether and how consideration of such risks is incorporated into board deliberations regarding strategy, and the board's role in Lilly's public policy activities related to such risks.

In a letter to the Division dated December 23, 2021 (the "No-Action Request"), Lilly stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2022 annual meeting of shareholders. Lilly argues that it is entitled to exclude the Proposal in reliance on 14a-8(i)(10), on the ground that the Proposal has been substantially implemented. As discussed more fully below, Lilly has not met its burden of proving its entitlement to exclude the Proposal, and the Proponents respectfully request that Lilly's request for relief be denied.

The Proposal

The Proposal states:

> RESOLVED that shareholders of Eli Lilly and Company ("Lilly") ask the board of directors to report to shareholders on how it oversees risks related to anticompetitive practices,

[1] Adrian Dominican Sisters, Bon Secours Mercy Health, Friends Fiduciary Corporation, Mercy Investment Services and Sisters of Charity of St. Elizabeth

including whether the full board or board committee has oversight responsibility, whether and how consideration of such risks is incorporated into board deliberations regarding strategy, and the board's role in Lilly's public policy activities related to such risks. The report should be prepared at reasonable expense and should omit confidential or proprietary information, as well as information about existing litigation and claims of which Lilly has notice.

Substantial Implementation

Lilly claims that it has substantially implemented the Proposal and is entitled to omit it pursuant to Rule 14a-8(i)(10). A company need not implement a proposal exactly as it is drafted, but the company's actions must satisfy the proposal's "essential objective" in order to support exclusion. Because none of the disclosures Lilly identifies concern oversight of risks related to anticompetitive practices, its argument is unpersuasive.

Lilly's substantial implementation argument depends on mischaracterizing the Proposal's essential objective as "promot[ing] Board oversight over risks from the Company's pricing of its medicines."[2] The Proposal's resolved clause is quite clear that it focuses only on oversight of risks related to anticompetitive practices, never even mentioning pricing. The supporting statement refers to controversy over pricing only as background to illustrate why anticompetitive practices have garnered so much attention from legislators and regulators; no reasonable reading of the Proposal as a whole would conclude that it intends for the requested report to consist of information on board oversight of pricing-related risks.

For that reason, the disclosures Lilly highlights in the elaborate table on pages 8 through 19 of the No-Action Request are unresponsive to the Proposal. None of that disclosure mentions anticompetitive practices or risks related to competition, nor does it discuss risks related to specific anticompetitive practices relevant to Lilly such as pricing collusion. Instead, Lilly offers page after page of material on pricing, including the board's responsibility for overseeing pricing and various steps Lilly has taken to improve access to its medicines. To the extent that this discussion of pricing is meant to show that Lilly's risks from anticompetitive practices are low, Lilly can use its statement in opposition to the Proposal to make that argument. Information on board committee oversight of enterprise risks and legal and regulatory compliance, as well as disclosure regarding public policy activities, are similarly unresponsive, with no mention of lobbying relevant to anticompetitive practices or competition-related risk.

The Pfizer[3] determination, cited by Lilly, is easily distinguished. There, both the proposal and the company's own disclosures addressed pricing-related risks; the proponents argued that the disclosures were insufficiently detailed and that the company had not addressed all four elements of the proposal. By contrast, Lilly's disclosures are entirely silent on the Proposal's topic; as a result, Lilly has not implemented even a little bit the Proposal's essential objective of obtaining information on oversight of risks related to anticompetitive practices.

An argument much like Lilly's was rejected by the Staff in AmerisourceBergen,[4] where the proposal asked the company to report on governance changes it had made to address risks related to the opioid epidemic. AmerisourceBergen urged that it had substantially implemented the proposal, pointing to disclosures on risk oversight generally. The proponent countered that the company's disclosures never mentioned steps it had taken to better manage opioid-related risks, information the

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[2] No-Action Request, at 7.
[3] Pfizer Inc. (Mar. 1, 2018)
[4] AmerisourceBergen Corporation (Jan. 11, 2018).

proposal specifically sought. The Staff declined to concur with AmerisourceBergen, stating that the company's disclosures did not "compare favorably" with those requested in the proposal.

In sum, Lilly has not substantially implemented the Proposal because it has not disclosed any information about anticompetitive practices or competition-related risks, the Proposal's essential objective. Lilly thus has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(10), and the Proponents respectfully request that Lilly's request for relief be denied.

We appreciate the opportunity to be of assistance to the Staff in this matter. If you have any questions or need additional information, please contact me at (718) 822-0820.

Sincerely,

Catherine Rowan

cc: Sarkis Jebejian
sarkis.jebejian@kirkland.com

Co-filers

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

601 Lexington Avenue
New York, NY 10022
United States

+1 212 446 4800

www.kirkland.com

Sarkis Jebejian, P.C.
To Call Writer Directly:
+1 212 446 5944
sarkis.jebejian@kirkland.com

Facsimile:
+1 212 446 4900

February 4, 2022

VIA EMAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Email: shareholderproposals@sec.gov

Re: Shareholder Proposal and Proponent Response Letter of Trinity Health and co-filers

Ladies and Gentlemen:

We submit this letter on behalf of Eli Lilly and Company ("*Lilly*" or the "*Company*") to briefly respond to the letter from Trinity Health (the "*Proponent*"), dated January 24, 2022 (the "*Proponent Response Letter*"), with respect to the request from the Company, dated December 23, 2021 (the "*No-Action Letter*"), regarding the exclusion of a shareholder proposal and supporting statement (the "*Proposal*") submitted by the Proponent from the Company's proxy statement for its 2022 Annual Meeting of Shareholders (the "*2022 Proxy Materials*"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the No-Action Letter. A copy of both the Proponent Response Letter and the No-Action Letter are included with this letter as Exhibit A and Exhibit B, respectively.

In the No-Action Letter, the Company argues that it has substantially implemented the Proposal by illustrating that its extensive public disclosures specifically address each of the essential elements of the Proposal. We write to briefly respond to the Proponent Response Letter's mischaracterizations of (1) the Proposal's essential objective in a manner that is not consistent with the plain text of the Proposal and (2) the two Staff no-action determinations cited therein.

The Proposal asks the board to report to shareholders "on how it oversees risks related to anticompetitive practices, including whether the full board or board committee has oversight responsibility, whether and how consideration of such risks is incorporated into board deliberations regarding strategy, and the board's role in Eli Lilly's public policy activities related to such risks." While the Proposal's "resolved" clause does not define "anticompetitive practices," each of the four paragraphs of the Proposal's supporting statement focuses exclusively on alleged risks relating to the Company's insulin pricing strategy. For the Staff's reference, a copy of the entire Proposal (including the supporting

statement, which the Proponent notably omits from the Proponent Response Letter, rendering it misleading) is reproduced below:

> RESOLVED that shareholders of Eli Lilly and Company ("Eli Lilly") ask the board of directors to report to shareholders on how it oversees risks related to anticompetitive practices, including whether the full board or board committee has oversight responsibility, whether and how consideration of such risks is incorporated into board deliberations regarding strategy, and the board's role in Eli Lilly's public policy activities related to such risks. The report should be prepared at reasonable expense and should omit confidential or proprietary information, as well as information about existing litigation and claims of which Eli Lilly has notice.
>
> **SUPPORTING STATEMENT**
>
> The anticompetitive practices of companies within the pharmaceutical supply chain, insulin manufacturers such as Eli Lilly, are receiving increasing scrutiny from the public, regulators, and enforcers. The criticism of Eli Lilly has focused on the company's insulin pricing strategy, which has resulted in massive price hikes for everyday consumers.[1]
>
> In response, regulators and legislators have increasingly focused on the pricing strategies of insulin manufacturers. In early 2021, the Senate Finance Committee issued a Staff Report on the rising cost of insulin, noting that Eli Lilly's Humalog 50-50 Kwikpen had seen a 64% price increase between 2013 and 2017, and that insulin manufacturers had "aggressively raised the [wholesale acquisition cost] of their insulin products absent significant advances in the efficacy of the drugs."[2] Additionally, in response to high insulin prices, eight states (CO, IL, ME, NM, NY, UT, WA, WV) have capped the price of insulin within their jurisdiction and others are considering adopting similar policies.[3]
>
> Separately, the company is facing a multitude of lawsuits around the pricing of its insulin products, including claims from various state attorney generals, class action lawsuits, and other market participants.[4] The allegations include claims that Eli Lilly violated both state and federal RICO statutes, was unjustly enriched, and violated various state level

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[1] https://www.finance.senate.gov/imo/media/doc/Grassley-Wyden%20Insulin%20Report%20(FINAL%201).pdf

[2] *Id*.

[3] https://www.nbcnews.com/news/us-news/states-are-trying-cap-price-insulin-pharmaceutical-companies-are-pushing-n1236766

[4] *See* Eli Lilly and Company 2020 Form 10-K, at 108-109 (https://investor.lilly.com/static-files/e724cf2c-3a2e-4180-beaf-944ecd588323).

> consumer protection laws.[5] The number and magnitude of lawsuits continues to mount, with the Mississippi Attorney General recently filing a lawsuit against Eli Lilly, alleging that the company colluded with other insulin manufacturers and pharmacy benefit managers to artificially keep insulin prices high.[6]
>
> Eli Lilly's pricing strategies and the resulting mounting pressure on the company increase the likelihood of new regulation, increase risk for investors, and have a substantial impact on the public at large. Given the widespread concern and rapidly changing environment the company finds itself in, we believe that robust board oversight would improve Eli Lilly's management of the risks related to its anticompetitive practices and that shareholders would benefit from more information about the board's role.

As the Proponent has conceded in other response letters opposing exclusion under Rule 14a-8(i)(10), the supporting statement provides meaning to the Proponent's essential objective.[7] The same is true here. A plain reading of the Proposal leaves no doubt that, for the Proponent, "anticompetitive practices" refers to the Company's insulin pricing strategy. The Proposal's essential objective is therefore to promote board oversight over alleged anticompetitive risks arising from the Company's pricing strategies for insulin.

Conversely, the Proponent Response Letter mischaracterizes the essential objective of the Proposal in a manner that is not consistent with the Proposal's plain text. According to the Proponent Response Letter, the essential objective of the Proposal is "information about anticompetitive practices or competition-related risks," and the Proponent Response Letter argues that "[t]he Proposal's resolved clause is quite clear that it focuses only on oversight of risks related to anticompetitive practices, never even mentioning pricing" and references pricing "only as background."[8] But the fact that "pricing" or "prices" are referenced nine times in ten sentences in the supporting statement while "anticompetitive" appears only twice totally refutes the Proponent's "only as background" argument. Furthermore, the Proponent concedes in the supporting statement that "pricing collusion" is "relevant," and neither the Proposal nor the Proponent Response Letter identify any anticompetitive practice other than in respect of pricing, and the resolved clause is clear that it addresses "strategy," meaning "pricing strategy." Even

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[5] *Id*.

[6] https://seekingalpha.com/news/3706905-eli-lilly-sanofi-and-novo-nordisk-sued-over-insulin-prices

[7] For example, in Pfizer, Inc. (Mar. 1, 2018), in a proposal with an identical format as this Proposal (a "resolved" clause followed by the "supporting statement"), the Proponent argued the company had not substantially implemented the proposal, in part because the company did not address company-specific risks discussed in the supporting statement. *See* Letter from Trinity Health to the Staff at 8, Jan. 5, 2018. In MGM (Feb. 28, 2012), the Proponent also argued the company had not substantially implemented the proposal when the company did not address the proposal's concerns for a social sustainability report, a term defined solely outside of the "resolved" clause and in reference to the proposal's supporting statement. *See* Letter from Trinity Health to the Staff at 4, Feb. 14, 2014.

[8] *See* Proponent Response Letter at 2 (emphasis added).

the Proponent Response Letter cannot articulate "anticompetitive practices" or "competition-related risks" without referencing the supporting statement, and more specifically, price. If pricing is not the essential objective of the Proposal, then it is impossible to determine what else is. The Proponent's attempt to re-write the Proposal's essential objective in response to the No-Action Letter fails.

The Proponent's public statements regarding the Proposal further confirm the Proposal's focus on anticompetitive risks in relation to pricing strategies: on December 1, 2021, a press release published by the Interfaith Center on Corporate Responsibility ("ICCR") (of which the Proponent and the co-filers are all members) announced that the Proposal, together with a group of other shareholder proposals, were "united by the common goal of helping shareholders understand how pharma companies are addressing or failing to address access and affordability gaps."[9]

The Proponent also mischaracterizes the two Staff no-action determinations cited in the Proponent Response Letter. First, in AmerisourceBergen,[10] the proposal asked the company to report on governance changes it had made to address risks related to the opioid pandemic. There, the Staff declined to allow the company to exclude the proposal because the company's disclosures addressed risk oversight generally but did not address the proposal's specifically articulated concern, i.e., opioid-related risks. Here, by contrast, the Company's disclosures are not general but in fact specifically address the Proposal's specifically articulated concern, i.e., alleged risks relating to drug pricing strategies. For example, as described in the No-Action Letter, the Company (1) discloses specific risks regarding pricing practices, risks regarding increased regulatory and pricing scrutiny, and the mechanisms by which the board oversees such risks; (2) discloses how the board incorporates pricing decisions into its strategic considerations and board oversight of pricing risk mitigation efforts; and (3) provides information about the board's role in public policy activities related to such risks. This situation is in fact the opposite of AmerisourceBergen.

Second, with respect to Pfizer,[11] the argument in the Proponent Response Letter that Pfizer is distinguishable again mischaracterizes the Proposal's essential objective, which is expressly about anticompetitive risks related to pricing strategies. In Pfizer, the Staff concurred that the company's public disclosures compared favorably with the proposal's guidelines, notwithstanding the proponent's argument that the company's disclosures were too general. Here, the Company's disclosures are even more detailed than in Pfizer, specifically addressing the essential objective of the Proposal and satisfying the Proposal's request for Company-specific information.

For these reasons as well as those stated in the No-Action Letter, we believe that the Company may exclude the Proposal pursuant to Rule 14a-8(i)(10), because it has been substantially implemented

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[9] https://www.iccr.org/string-shareholder-proposals-2022-proxies-seek-move-pharma-companies-address-long-standing-access

[10] AmerisourceBergen Corporation (Jan. 11, 2018).

[11] Pfizer, Inc. (Mar. 1, 2018).

by the Company, and the Company's practices, policies and procedures compare favorably to the guidelines of the Proposal.

CONCLUSION

Based upon the foregoing analysis and the analysis set forth in the No-Action Letter, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2022 Proxy Materials. We respectfully request that the Staff not delay any response to the No-Action Letter for further correspondence due to the Company's anticipated timing to file its preliminary 2022 Proxy Materials on or about February 25, 2022. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of our 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 (212) 446-5944.

Sincerely,

Sarkis Jebejian, P.C.

cc: Anat Hakim
Senior Vice President, General Counsel and Secretary, Eli Lilly and Company

Catherine Rowan
Director, Socially Responsible Investments
(as representative for Trinity Health and authorized representative of co-filer Friends Fiduciary Corporation)

Sister Barbara Aires
Coordinator of Corporate Responsibility
(as representative for the Sisters of Charity of St. Elizabeth)

Lydia Kuykendal
Director of Shareholder Advocacy
(as representative for co-filer Mercy Investment Services, Inc. and authorized representative of co-filer Bon Secours Mercy Health)

Frances Nadolny, OP
Administrator
(as representative for Adrian Dominican Sisters)

Exhibit A

[Copy of Proponent Response Letter]

Trinity Health

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: rowancm@trinity-health.org

January 24, 2022

Via e-mail at shareholderproposals@sec.gov

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

Re: Request by Eli Lilly and Company to omit proposal submitted by Trinity Health and co-filers

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Trinity Health, together with five co-filers [1] (together, the "Proponents") submitted a shareholder proposal (the "Proposal") to Eli Lilly and Company ("Lilly" or the "Company"). The Proposal asks Lilly's board to report to shareholders on how it oversees risks related to anticompetitive practices, including whether the full board or board committee has oversight responsibility, whether and how consideration of such risks is incorporated into board deliberations regarding strategy, and the board's role in Lilly's public policy activities related to such risks.

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The Proposal

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> RESOLVED that shareholders of Eli Lilly and Company ("Lilly") ask the board of directors to report to shareholders on how it oversees risks related to anticompetitive practices,

[1] Adrian Dominican Sisters, Bon Secours Mercy Health, Friends Fiduciary Corporation, Mercy Investment Services and Sisters of Charity of St. Elizabeth

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Substantial Implementation

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For that reason, the disclosures Lilly highlights in the elaborate table on pages 8 through 19 of the No-Action Request are unresponsive to the Proposal. None of that disclosure mentions anticompetitive practices or risks related to competition, nor does it discuss risks related to specific anticompetitive practices relevant to Lilly such as pricing collusion. Instead, Lilly offers page after page of material on pricing, including the board's responsibility for overseeing pricing and various steps Lilly has taken to improve access to its medicines. To the extent that this discussion of pricing is meant to show that Lilly's risks from anticompetitive practices are low, Lilly can use its statement in opposition to the Proposal to make that argument. Information on board committee oversight of enterprise risks and legal and regulatory compliance, as well as disclosure regarding public policy activities, are similarly unresponsive, with no mention of lobbying relevant to anticompetitive practices or competition-related risk.

The Pfizer[3] determination, cited by Lilly, is easily distinguished. There, both the proposal and the company's own disclosures addressed pricing-related risks; the proponents argued that the disclosures were insufficiently detailed and that the company had not addressed all four elements of the proposal. By contrast, Lilly's disclosures are entirely silent on the Proposal's topic; as a result, Lilly has not implemented even a little bit the Proposal's essential objective of obtaining information on oversight of risks related to anticompetitive practices.

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[2] No-Action Request, at 7.
[3] Pfizer Inc. (Mar. 1, 2018)
[4] AmerisourceBergen Corporation (Jan. 11, 2018).

proposal specifically sought. The Staff declined to concur with AmerisourceBergen, stating that the company's disclosures did not "compare favorably" with those requested in the proposal.

In sum, Lilly has not substantially implemented the Proposal because it has not disclosed any information about anticompetitive practices or competition-related risks, the Proposal's essential objective. Lilly thus has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(10), and the Proponents respectfully request that Lilly's request for relief be denied.

We appreciate the opportunity to be of assistance to the Staff in this matter. If you have any questions or need additional information, please contact me at (718) 822-0820.

Sincerely,

Catherine Rowan

cc: Sarkis Jebejian
sarkis.jebejian@kirkland.com

Co-filers

Exhibit B

[Copy of No-Action Letter]

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

601 Lexington Avenue
New York, NY 10022
United States

+1 212 446 4800

www.kirkland.com

Sarkis Jebejian, P.C.
To Call Writer Directly:
+1 212 446 5944
sarkis.jebejian@kirkland.com

Facsimile:
+1 212 446 4900

December 23, 2021

VIA EMAIL

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

Email: shareholderproposals@sec.gov

Re: Shareholder Proposal of Trinity Health and co-filers

Ladies and Gentlemen:

We submit this letter on behalf of Eli Lilly and Company ("*Lilly*" or 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 2022 Annual Meeting of Shareholders (the "*2022 Annual Meeting*" and such materials, the "*2022 Proxy Materials*") a shareholder proposal and supporting statement (the "*Proposal*") submitted by Trinity Health and co-filed by certain other parties[1] (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 2022 Proxy Materials for the reasons discussed below.

The Company currently anticipates filing a preliminary proxy statement with the Commission on or around February 25, 2022 due to the inclusion in the 2022 Proxy Materials of proposals to amend the Company's Amended Articles of Incorporation and expects to file its definitive 2022 Proxy Materials on or around March 18, 2022. Accordingly, in compliance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended, we have filed this letter with the Commission no later than 80 calendar days before the Company intends to file its definitive 2022 Proxy Materials with the Commission. In light of the Company's timeline for filing a

[1] The following shareholders have co-filed the Proposal: The Sisters of Charity of Saint Elizabeth, Bon Secours Mercy Health, Mercy Investment Services, Inc., Adrian Dominican Sisters and Friends Fiduciary Corporation.

preliminary proxy statement, the Company requests that the Staff respond to this letter prior to February 25, 2022 if practicable.

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), 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 2022 Proxy Materials. Likewise, we take this opportunity to inform the Proponents that if the Proponents 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 sets forth the following resolution to be voted on by shareholders at the 2022 Annual Meeting:

> RESOLVED that shareholders of Eli Lilly and Company ("Eli Lilly") ask the board of directors to report to shareholders on how it oversees risks related to anticompetitive practices, including whether the full board or board committee has oversight responsibility, whether and how consideration of such risks is incorporated into board deliberations regarding strategy, and the board's role in Eli Lilly's public policy activities related to such risks. The report should be prepared at reasonable expense and should omit confidential or proprietary information, as well as information about existing litigation and claims of which Eli Lilly has notice.

SUPPORTING STATEMENT

> The anticompetitive practices of companies within the pharmaceutical supply chain, insulin manufacturers such as Eli Lilly, are receiving increasing scrutiny from the public, regulators, and enforcers. The criticism of Eli Lilly has focused on the company's insulin pricing strategy, which has resulted in massive price hikes for everyday consumers.
>
> In response, regulators and legislators have increasingly focused on the pricing strategies of insulin manufacturers. In early 2021, the Senate Finance Committee issued a Staff Report on the rising cost of insulin, noting that Eli Lilly's Humalog 50-50 Kwikpen had seen a 64% price increase between 2013 and 2017, and that insulin manufacturers had "aggressively raised the [wholesale acquisition cost] of their insulin products absent significant advances in the efficacy of the drugs." Additionally, in response to high insulin prices, eight states (CO, IL, ME, NM, NY,

UT, WA, WV) have capped the price of insulin within their jurisdiction and others are considering adopting similar policies.

Separately, the company is facing a multitude of lawsuits around the pricing of its insulin products, including claims from various state attorney generals, class action lawsuits, and other market participants. The allegations include claims that Eli Lilly violated both state and federal RICO statutes, was unjustly enriched, and violated various state level consumer protection laws. The number and magnitude of lawsuits continues to mount, with the Mississippi Attorney General recently filing a lawsuit against Eli Lilly, alleging that the company colluded with other insulin manufacturers and pharmacy benefit managers to artificially keep insulin prices high.

Eli Lilly's pricing strategies and the resulting mounting pressure on the company increase the likelihood of new regulation, increase risk for investors, and have a substantial impact on the public at large. Given the widespread concern and rapidly changing environment the company finds itself in, we believe that robust board oversight would improve Eli Lilly's management of the risks related to its anticompetitive practices and that shareholders would benefit from more information about the board's role.

Therefore, we urge Eli Lilly shareholders to vote FOR this proposal.[2]

BASIS FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

BACKGROUND

Lilly's Board of Directors (the "Board") "actively oversees and approves [the Company's] corporate strategy," "approv[es] major management initiatives," and its "board and board committee agendas are structured to engage [its] directors in informed reviews of strategic and forward-looking issues."[3] Specifically, Lilly's independent directors are "deeply engaged in key matters important to Lilly and [its] stakeholders, including the oversight over the company's

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[2] Proposal (citations omitted). The Proposal in full is attached hereto as Exhibit A.

[3] Lilly 2021 Proxy Statement ("2021 Proxy Materials"), *available at* https://www.sec.gov/Archives/edgar/data/59478/000000594782100010 4/llydef14a2021.htm, pages 7, 33.

approach to drug pricing and access."[4] Under this active oversight from the Board and its committees, Lilly has taken numerous steps to address drug pricing and access concerns.

For example, the "Accessibility and Affordability" page of Lilly's environmental, social and governance website (the "*ESG Website*") details significant Company initiatives enacted in recent years in furtherance of insulin affordability, including:[5]

- On August 1, 2018, the Company launched the Lilly Diabetes Solution Center to connect people with insulin affordability solutions.[6]
- On March 11, 2020, the Company announced participation in the Part D Senior Savings Model, allowing seniors enrolling in Medicare Part D plans in 2021 to purchase their monthly prescription of covered Lilly insulins for $35.[7]
- On September 10, 2020, the Company announced its long-term commitment to the Lilly Insulin Value Program, which "allows anyone with commercial insurance, or no insurance at all, to obtain their monthly prescription of Lilly insulin for $35 at retail pharmacies."[8]

In addition, on September 28, 2021, the Company announced that it lowered the list price of all Lilly's non-branded insulins by an additional 40% in the U.S. effective January 1, 2022, effectively bringing the list price to 2008 levels.[9] Over the past four years, the average monthly out-of-pocket cost for Lilly insulin has dropped to $28.05, a 27% decrease.

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[4] 2021 Proxy Materials, page 82.

[5] *Available at* https://esg.lilly.com/social, and attached hereto as Exhibit B.

[6] *See also* press release *available at* https://investor.lilly.com/news-releases/news-release-details/lilly-diabetes-solution-center-now-open-help-people-insulin.

[7] *See also* press release *available at* https://investor.lilly.com/news-releases/news-release-details/lilly-participate-new-model-designed-make-insulins-more.

[8] *See also* press release *available at* https://investor.lilly.com/news-releases/news-release-details/lilly-commits-insulin-value-program-featuring-35-copay-card.

[9] *Available at* https://investor.lilly.com/news-releases/news-release-details/lilly-again-reduces-list-price-insulin-lispro-injection-latest (the "*September 28, 2021 Press Release*"), and attached hereto as Exhibit C.

ANALYSIS

The Proposal May be Excluded Under Rule 14a-8(i)(10) Because the Company Has Substantially Implemented the Proposal.

A. Rule 14a-8(i)(10) Background

Rule 14a-8(i)(10) allows a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. The purpose of Rule 14a-8(i)(10) is "to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management." SEC Release No. 34-12598 (Jul. 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. SEC Release No. 34-20091 (Aug. 16, 1983). The 1998 amendments to Rule 14a-8 codified this position. *See* Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"), at n.30 and accompanying text. 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 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); *see also General Motors Corp.* (Mar. 4, 1996) (permitting exclusion of a proposal where the company argued, "[i]f the mootness requirement of paragraph (c)(10) were applied too strictly, the intention of [the rule]—permitting exclusion of 'substantially implemented' proposals—could be evaded merely by including some element in the proposal that differs from the registrant's policy or practice."). For example, in *PG&E Corp.* (Mar. 10, 2010), the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company provide a report disclosing, among other things, the company's standards for choosing the organizations to which the company makes charitable contributions and the "business rationale and purpose for each of the charitable contributions." In arguing that the proposal had been substantially implemented, the company referred to a website where the company had described its policies and guidelines for determining the types of grants that it makes and the types of requests that the company typically does not fund. Although the proposal appeared to contemplate disclosure of each and every charitable contribution, the Staff concluded that the company had substantially implemented the proposal. *See The Wendy's Co.* (Apr. 10, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report assessing human rights risks of the company's operations, including the principles and methodology used to make the assessment, the frequency of assessment and how the company would use the

assessment's results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its website the frequency and methodology of its human rights risk assessments); *see also MGM Resorts Int'l* (Feb. 28, 2012) (permitting exclusion under Rule 14a-8(i)(10) 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); *see also The Boeing Co.* (Feb. 17, 2011) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company review its policies related to human rights and report its findings, where the company had already adopted human rights policies and provided an annual report on corporate citizenship).

Notably, in *Pfizer* (Mar. 1, 2018), the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal that the board report on the risks to the company from rising pressure to contain U.S. prescription drug prices, including the likelihood and potential impact of those risks as applied to the company, the steps the company was taking to mitigate or manage those risks, and the board's oversight role. In arguing that the proposal had been substantially implemented, the company referred to its public disclosures regarding specific risks resulting from increasing pharmaceutical product pricing pressures, including the likelihood and potential impact of those risks as applied to the company, its response to such risks and the regulatory landscape of pharmaceutical pricing, and the role of its compliance committee in assessing and overseeing "current and emerging risks and regulatory enforcement trends that may affect [the company's] business operations, performance, or strategy." The Staff permitted exclusion, noting that the "Company's public disclosures compare[d] favorably with the guidelines of [Pfizer's] Proposal and that the Company has, therefore, substantially implemented [Pfizer's] Proposal."

B. The Company Has Substantially Implemented the Proposal.

The Company has substantially implemented the Proposal, which calls for the Board to produce a report on how it oversees risks from alleged anticompetitive practices. The supporting statement makes reference to, among other things, competition-related lawsuits and regulatory investigations that relate to the pricing of insulin from several years ago and that is out-of-date. The statements make clear the focus of the Proposal is to understand how the Board is addressing the alleged risks of increased regulatory scrutiny, citing insulin list price data from 2013 to 2017 in support of its argument.[10] In connection with such scrutiny and regulatory risk, the Proposal requests "more information about the [B]oard's role" in relation to risk oversight of pricing strategies.

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[10] Proposal (Exhibit A) FN i (citing Senate Finance Committee Report, discussing list price of Company branded insulin from 2013 to 2017). The Proposal does not reference the Company's post-2017 pricing initiatives.

Lilly has already addressed the Proposal's essential objective, which is to promote Board oversight over risks from the Company's pricing of its medicines. As described above in the "Background" section, the Board actively oversees and approves Lilly's strategy, approves significant management initiatives, and structures its Board and Board committee agendas to engage directors in informed reviews of strategic and forward-looking issues, and Lilly's independent directors are deeply engaged in the oversight over Lilly's approach to drug pricing and access. Under this active oversight from the Board and its committees, the Company has already addressed the Proposal's underlying concerns through devoting substantial time and resources and implementing industry-leading initiatives in furtherance of insulin affordability. While the Proposal attempts to articulate alleged anticompetitive risks by relying on the "wholesale acquisition cost" (i.e., list price) data from 2017,[11] the fact is that since 2017, Lilly has not increased the list price of its insulin and instead has taken steps to bring lower list-priced insulin products to market and to substantially lower the average out-of-pocket cost of insulin by 27% over the past four years.[12]

The Company's disclosures also specifically address each of the essential elements of the Proposal, and its policies and procedures compare favorably with those of the Proposal. As detailed in the illustrative examples provided in the table below, (1) the Company's existing public filings clearly and prominently disclose specific risks regarding pricing practices, risks regarding increased regulatory and pricing scrutiny, and the mechanisms by which the Board oversees such risks; (2) the Affordability and Access section of the Company's ESG Website includes detailed disclosure about how the Board incorporates pricing decisions into its strategic considerations and Board oversight of pricing risk mitigation efforts; and (3) the Company provides information about the Board's role in public policy activities related to such risks on the Company's political participation website (the "*Political Participation Website*").[13] These disclosures collectively enable shareholders to assess how the Board oversees risks from the Company's pricing of its medicines. Therefore, consistent with the line of precedent cited above, the Company has substantially implemented the Proposal and, accordingly, the Proposal should be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(10).

For the convenience of the Staff, the following table illustrates the Company's substantial implementation of each request in the Proposal.

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[11] Proposal (Exhibit A), note ii (citing Senate Finance Committee Report).

[12] September 28, 2021 Press Release (Exhibit C).

[13] *Available at* https://www.lilly.com/policies-reports/public-policy-political-participation and attached hereto as Exhibit D.

Requests Made in Proposal	***Illustrative Implementation by the Company***
1. Disclose "[h]ow [Board] oversees risks related to anticompetitive practices, including whether the full board or board committee has oversight responsibility."	As noted in the 2021 Proxy Materials, the Board's role includes "approving corporate strategy, approving major management initiatives, . . . overseeing the [C]ompany's ethics and compliance program and management of significant business risks, . . . [and] overseeing the [C]ompany's approach to current and emerging political, social, environmental, and governance trends and public policy issues that may affect the [C]ompany."[14] *Board outlines risks relating to regulatory and pricing strategy in Company's Annual Report on Form 10-K (the "2020 Annual Report")*:[15] • The Business section of the 2020 Annual Report discloses that "[t]here continues to be considerable public and government scrutiny of pharmaceutical pricing, and measures to address the perceived high cost of pharmaceuticals are being considered at various levels of state and federal government."[16] • First risk factor listed under "Risks Related to Government Regulation" focuses exclusively on drug pricing risk: "Our business is subject to increasing government price controls and other public and private restrictions on

[14] 2021 Proxy Materials, page 33.

[15] Form 10-K for the fiscal year ended December 31, 2020 (the "*2020 Annual Report*"), *available at* https://www.sec.gov/ix?doc=/Archives/edgar/data/0000059478/000005947821000083/lly-20201231.htm.

[16] 2020 Annual Report, page 15.

Requests Made in Proposal	***Illustrative Implementation by the Company***
	pricing, reimbursement, and access for our drugs, which could have a material adverse effect on our reputation or business. Public and private payers continue to take aggressive steps to control their expenditures for pharmaceuticals by placing restrictions on pricing and reimbursement for, and patient access to, our medications. These pressures could continue to negatively affect our future revenues and net income. We expect governments and private payers worldwide to intensify their scrutiny of, and actions intended to address, pricing, reimbursement, and access to pharmaceutical products. Additional regulations, legislation, or enforcement, including as a result of the current U.S. presidential administration, could adversely impact our revenue."[17] *Role of Board and its committees in overseeing alleged anticompetitive practices and risks, including pricing, is outlined in the 2021 Proxy Materials and in the Board's committee charters and guidelines*: <u>2021 Proxy Materials</u>: • "Our board oversees the state of our compliance program and reviews our enterprise-level risks . . . ; our Audit

[17] 2020 Annual Report, pages 28–29 (italics removed).

Requests Made in Proposal	*Illustrative Implementation by the Company*
	Committee oversees our enterprise risk management processes and policies."[18] • "Lilly's current governance structure provides effective, independent oversight over key matters that are important to our stakeholders, including drug pricing and access." • "Our independent directors are deeply engaged in key matters important to Lilly and our stakeholders, including the oversight over the company's approach to drug pricing and access. Guided by this active oversight, Lilly already has taken numerous steps to address drug pricing and access concerns. For example, Lilly introduced two additional lower-priced versions of branded insulin in January 2020 and added the Lilly Insulin Value Program to Lilly's comprehensive suite of insulin affordability solutions in September 2020, which enables customers with commercial insurance or no insurance to purchase their monthly prescription of most Lilly insulins for $35. These examples, among others, demonstrate Lilly's commitment to providing effective oversight over drug pricing and access."[19] <u>Board Committee Charters and Guidelines</u>: • Audit Committee Charter charges the Audit Committee with monitoring "compliance with legal and regulatory

[18] 2021 Proxy Materials, page 7.

[19] 2021 Proxy Materials, page 82.

Requests Made in Proposal	*Illustrative Implementation by the Company*
	requirements" and "[p]rocesses and procedures related to identifying and mitigating enterprise level risks" and "[m]aterial reports or inquiries from regulators." [20] • Audit Committee Charter provides that the Audit Committee, "[t]ogther with the ethics and compliance committee, assist[s] the board in its oversight of legal and regulatory compliance and oversee the [C]ompany's compliance with its code of ethics."[21] • Ethics and Compliance Committee Charter states that the purpose of the Ethics and Compliance Committee is to "review, identify and when appropriate bring to the attention of the board legal and regulatory trends and issues, and compliance and quality matters that may have an impact on the business operations, financial performance or reputation of the [C]ompany." [22] • Ethics and Compliance Committee meets at least four times per year to oversee "policies and practices that relate to compliance" and identify "legal and regulatory trends" that may have an impact

[20] The Audit Committee Charter is available at https://assets.ctfassets.net/srys4ukjcerm/1Hl4heif5q53Rt1XhOpnhq/ef79ac4dd717b815b368dd3b102e93b8/Audit_Committee_Charter.pdf.

[21] Audit Committee Charter.

[22] The Ethics and Compliance Committee Charter is available at https://assets.ctfassets.net/srys4ukjcerm/2Z0C6Piw6Gsv1xXq5Rca8h/b1956e0b6ae873246af0730f00b185fe/Ethics_and_Compliance_Committee_Charter.pdf.

Requests Made in Proposal	***Illustrative Implementation by the Company***
	on business operations, financial performance or reputation of the [C]ompany, with semiannual private sessions with the Chief Ethics and Compliance Officer, the General Auditor, and the Senior Vice President, Global Quality.[23] • Audit Committee and Ethics and Compliance Committee meet jointly at least annually to review "[s]ignificant legal or regulatory compliance exposure," and "material reports or inquiries from regulators."[24] • Corporate Governance Guidelines provide that full Board "reviews a summary of the [C]ompany's assessment of and approach to enterprise level risks. Throughout the year, significant areas of risk are brought to the [B]oard, or the appropriate committee, for consideration."[25]
2. Disclose "whether and how consideration of such risks is incorporated into board deliberations regarding strategy."	*Board's considerations of pricing risk outlined in 2021 Proxy Materials:* • As noted above, the Board's key responsibilities include "approving corporate strategy" and "approving major management initiatives," which includes

[23] Ethics and Compliance Committee Charter.

[24] Ethics and Compliance Committee Charter.

[25] The Corporate Governance Guidelines are available at https://assets.ctfassets.net/1o78rkhl3da6/4s23VaYR1QhBzfnagYvMM4/01acf2bff4f787927dc7252ad4e847a9/Corporate_Governance_Guidelines.pdf.

Requests Made in Proposal	*Illustrative Implementation by the Company*
	"oversight over the company's approach to drug pricing and access."[26] • "[B]oard and [B]oard committee agendas are structured to engage our directors in informed reviews of strategic and forward-looking issues, as well as in constructive challenges to management initiatives and programs."[27] *Pricing and access initiatives designed to mitigate alleged risks are overseen by the Board and outlined on the Accessibility and Affordability Page on the ESG Website*:[28] • The Access and Affordability page discloses how the Company makes its pricing decisions: "[Lilly] aim[s] to strike a balance between access and affordability for patients while sustaining investments in life-changing treatments for some of today's most serious diseases. When making pricing considerations, [Lilly] take[s] into account the following: **Customer perspective** – The unmet needs that medicines can fulfill for patients and caregivers and how people can affordably access the treatment;

[26] 2021 Proxy Materials, pages 33, 82.

[27] 2021 Proxy Materials, page 7.

[28] Access and Affordability page on the ESG Website (Exhibit B).

Requests Made in Proposal	*Illustrative Implementation by the Company*
	Company considerations – The costs of research, development, manufacturing and support services for customers; business trends and other economic factors; as well as the medicine's potential market size, patent life and place within our larger portfolio of medicines; **Competitive landscape** – The benefits of our medicine compared to alternative medicines, where our medicine fits in treating conditions and existing contracts between payers and our competitors; **Other external factors** – Such as health system changes and policy guidelines." • Under the active oversight of the Board, the Company has taken substantial actions to address drug pricing and access concerns: o "In April 2020, Lilly unveiled the Lilly Insulin Value Program, a new co-pay card that allows anyone with commercial insurance, or no insurance at all, to obtain their monthly prescription of Lilly insulin for $35 at retail pharmacies. In September 2020, [Lilly] announced [its] long-term commitment to this program."[29]

[29] Access and Affordability Page on ESG Website (Exhibit B).

Requests Made in Proposal	***Illustrative Implementation by the Company***
	○ Lilly "participate[s] in [a] . . . federal government demonstration program that allows seniors enrolled in participating Medicare Part D plans to purchase their monthly prescription of Lilly insulin for $35 during all phases of their Part D coverage – including deductibles, the coverage gap and co-pays."[30] ○ "Moreover, Lilly has not increased the list prices of any of [its] insulins since 2017."[31] ○ In addition, and as noted above, as the Company announced in a separate press release, on September 28, 2021, the Company lowered the list price of all of its non-branded insulins by an additional 40% in the U.S. effective January 1, 2022—bringing the list price to 2008 levels.[32] ○ These numerous affordability solutions, combined with insurance coverage, "have lowered the average monthly out-of-pocket cost for a prescription of Lilly Insulin (regardless of the number of vials or pens) to

[30] Access and Affordability page on the ESG Website (Exhibit B).

[31] Access and Affordability page on the ESG Website (Exhibit B).

[32] September 28, 2021 Press Release (Exhibit C).

Requests Made in Proposal	***Illustrative Implementation by the Company***
	$28.05, a 27 percent decrease over the past four years."[33] *Under the active oversight of the Board, the Company engages with other stakeholders to find long-term policy solutions to address gaps in the health-care system:*[34] • Rebate Pass Through: "We continue to advocate for insurers to pass through our negotiated rebates directly to consumers at the pharmacy counter." • First Dollar Coverage: "Lilly is supportive of efforts to exempt health care services for chronic conditions – including medicines such as insulins – from a health insurance plan's deductible ('first dollar coverage')." • Capping Out-of-Pocket Costs: "We believe a cap would provide a critical financial safeguard for patients, leading to better treatment adherence and improvements in overall health status."
3. Disclose the "[B]oard's role in Eli Lilly's public policy activities related to such risks."	*Board's role in public policy assessments disclosed in Board's committee charters and Corporate Governance Guidelines, 2021 Proxy Materials, and Political Participation Website:*

[33] September 28, 2021 Press Release (Exhibit C) (emphasis added).

[34] *Available at* https://www.lilly.com/resources/diabetes-solution-center/insulin-access-affordability, and attached hereto as Exhibit E.

Requests Made in Proposal	***Illustrative Implementation by the Company***
	Directors and Corporate Governance Committee Charter:[35] *Duties and Responsibilities* • The role of the Directors and Corporate Governance committee of the Board is to "[i]dentify and bring to the attention of the board as appropriate current and emerging social, environmental, political, and governance trends and public policy issues that may affect the business operations, performance or reputation of the company." Corporate Governance Guidelines:[36] *Key Board Responsibilities* • The role of the Board and the Directors and Corporate Governance Committee is to "oversee the [C]ompany's approach to current and emerging political, social, environmental, and governance trends and public policy issues that may affect our business operations, performance, or reputation." 2021 Proxy Materials: *Role of the Board* • Full Board exercises oversight over "current and emerging ***political***, social, environmental, and governance trends and

[35] The Directors and Corporate Governance Committee Charter is available at https://assets.ctfassets.net/srys4ukjcerm/3fGLMQ7uz6Ohr576Fe0oCQ/d59b4c33fe07beee041eadb7cf2a9c4d/Directors_and_Governance_Committee_Charter.pdf.

[36] Corporate Governance Guidelines.

Requests Made in Proposal	*Illustrative Implementation by the Company*
	public policy issues that may affect the company." (emphasis added)[37] Political Participation Website:[38] • "As a biopharmaceutical company that develops treatment for serious diseases, we play an important role in public health. We believe it is important for our company to be a responsible participant in political and public policy debates around the world. Our engagement in the political arena helps ensure that patients have access to needed medications—leading to improved patient outcomes. ***Through public policy engagement, we provide a way for all our locations globally to offer Lilly's perspective on the political environment in a manner that supports access to innovative medicines***. We also look for ways to engage on issues specific to local business environments." (emphasis added) • "The Lilly Board of Directors exercises governance oversight of [the Company's] political expenditures and lobbying activities to ensure that [the Company] fulfill[s] [its] ***commitment to stewardship of corporate funds and risk minimization with respect to such activities***, as well as other environmental, social and governance matters. . . . In addition, the full Board receives regular updates at Board meetings from [the Company's]

[37] 2021 Proxy Materials, page 33.

[38] Political Participation Website (Exhibit D).

Requests Made in Proposal	*Illustrative Implementation by the Company*
	Senior Vice President, Corporate Affairs and Communications, which include updates on public policy issues and the company's political corporate activity, as needed. The full Board also receives semi-annual updates on political engagement, including information on the contributions made by LillyPAC and the company, as well as trade association memberships." (emphasis added) • "Lilly's Vice President, U.S. Government Affairs reviews and approves all corporate political contributions to ensure these contributions are consistent with the company's guidelines and in accordance with applicable laws. The [C]ompany's General Counsel and the Chief Financial Officer, or their designees, also approve all corporate political contributions before they are made." • "The LillyPAC governing board is comprised of 16 U.S.-based employees who represent business areas throughout the company. The LillyPAC governing board reviews all contributions made by LillyPAC twice annually. Lilly's Vice President, U.S. Government Affairs manages LillyPAC operations, and a member of Lilly's Executive Committee serves as an executive sponsor and board chair of LillyPAC to ensure compliance and alignment with company priorities."

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2022 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 communication regarding this letter should be directed to me at sarkis.jebejian@kirkland.com or (212) 446-5944.

Sincerely,

_____
Sarkis Jebejian, P.C.

cc: Anat Hakim
Senior Vice President, General Counsel and Secretary, Eli Lilly and Company

Catherine Rowan
Director, Socially Responsible Investments
(as representative for Trinity Health)

Sister Barbara Aires
Coordinator of Corporate Responsibility
(as representative for The Sisters of Charity of St. Elizabeth)

Jerry Judd
Senior Vice President and Treasurer
(as representative for Bon Secours Mercy Health)

Lydia Kuykendal
Director of Shareholder Advocacy
(as representative for Mercy Investment Services, Inc.)

Jeffery W. Perkins
Executive Director
(as representative for Friends Fiduciary Corporation)

Frances Nadolny, OP