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

DIVISION OF
CORPORATION FINANCE

March 10, 2023

Sarkis Jebejian
Kirkland & Ellis LLP

Re: Eli Lilly and Company (the "Company")
Incoming letter dated December 23, 2022

Dear Sarkis Jebejian:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company for inclusion by Curtis Overway and Marcelina Cravat-Overway and co-filers in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company report to shareholders on the effectiveness of the Company's diversity, equity, and inclusion efforts, which should provide transparency on outcomes, using quantitative metrics for hiring, retention, and promotion of employees, including data by gender, race, and ethnicity.

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.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters because it raises human capital management issues with a broad societal impact and does not micromanage the Company.

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/2022-2023-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Luke Morgan
As You Sow

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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December 23, 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 of As You Sow

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 2023 Annual Meeting of Shareholders (the "*2023 Annual Meeting"* and such materials, the "*2023 Proxy Materials*") a shareholder proposal and supporting statement (the "*Proposal*") submitted by As You Sow on behalf of Curtis Overway and Marcelina Cravat-Overway and co-filed by As You Sow on behalf of two additional shareholders[1] (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 2023 Proxy Materials for the reasons discussed below.

The Company currently anticipates filing a preliminary proxy statement with the Commission on or around February 24, 2023 due to the inclusion in the 2023 Proxy Materials of proposals to amend the Company's Amended Articles of Incorporation and expects to file its definitive 2023 Proxy Materials on or around March 17, 2023. 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 2023 Proxy Materials with the Commission. In light of the Company's timeline for filing a

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[1] The following shareholders have co-filed the Proposal: As You Sow on behalf of Leslie Oelsner Bene IRA of S Berman (S) and Sarah B Sonnenfeld Rev Tr (S).

preliminary proxy statement, the Company requests that the Staff respond to this letter prior to February 24, 2023 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 2023 Proxy Materials. Likewise, we take this opportunity to inform the Proponents that if the Proponents elects to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company.

THE PROPOSAL

The Proposal sets forth the following resolution to be voted on by shareholders at the 2023 Annual Meeting:

> **RESOLVED:** Shareholders request that Eli Lilly and Co. ("Eli Lilly") report to shareholders on the effectiveness of the Company's diversity, equity, and inclusion efforts. The report should be done at reasonable expense, exclude proprietary information, and provide transparency on outcomes, using quantitative metrics for hiring, retention, and promotion of employees, including data by gender, race, and ethnicity.[2]

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

BASIS FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the 2023 Proxy Materials pursuant to:

- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal; and
- Rule 14a-8(i)(7) because it relates to the Company's ordinary business.

ANALYSIS

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

A. Background

The Company has set diversity, equity and inclusion ("*DEI*") goals as part of its commitment to increase the number of women in management globally, the number of minority group members ("*MGMs*") in U.S. management roles, the diversity of new hires as well as diversity in the workforce generally. To achieve these DEI goals, the Company has quantitatively monitored its progress to assess the Company's approach and reported its progress to its global workforce and shareholders. The Company maintains a publicly disclosed ESG report (the "*ESG Report*"),[3] which discloses significant information with respect to both the Company's ongoing DEI initiatives as well as data and metrics detailing the effectiveness of such programs including, without limitation, information regarding:

- the current demographic composition of the Company's employees, management positions, and Board of Directors;
- the Company's DEI programs, resource groups, and initiatives available to employees of the Company;
- the Company's prioritization of recruitment, hiring, and retention of diverse and underrepresented talent; and

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3 *Available at* https://esg.lilly.com/social and attached hereto as Exhibit B.

The company also voluntarily publishes its EEO-1 data[4], which discloses granular data regarding the number and percentage of women and MGMs across nine different employment levels and across the entire Company. Each year, the Company also assesses whether additional goals related to DEI are appropriate. Additionally, the Company has enhanced its disclosures concerning the effectiveness of the Company's DEI efforts in the Company's proxy statement for the 2022 annual meeting of shareholders (the "*2022 Proxy Materials*") [5] and on the Company's website[6] and in the ESG Report.

B. 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 permitted exclusion under Rule 14a-8(i)(10) when a proposal has been "substantially implemented" because the company has satisfied the "essential objective" of the proposal. *See, e.g.*, *Quest Diagnostics Inc.* (Mar. 17, 2016) where the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company adopt a proxy access by-law permitting a stockholder or a group of stockholders owning 3% of the company's stock for three years to nominate up to 25% of the board. The Staff concluded that the board had adopted a proxy access bylaw that had addressed the "essential objective" of the proposal by providing a proxy access procedure under which one or a group of stockholders who owned 3% or more of the company's stock for at least three years may include in the company's proxy statement and on the company's proxy card stockholder-nominated director candidates representing the greater of two directors or 20% of the number of directors on its board. Similarly in *PG&E Corp.* (Mar. 10, 2010), the Staff permitted exclusion

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4 *Available at* https://assets.ctfassets.net/1o78rkhl3da6/6wLmT50vEUg4JpqbvHpNr6/7f8d38b6bc2d6e00f7ed02a83ee1eea3/2021_Lilly_EEO1_Table_Final_for_ESG_Site.pdf and attached hereto as Exhibit C.

5 *Available at* https://www.sec.gov/Archives/edgar/data/0000059478/000005947821000104/llydef14a2021.htm, pages 3, 28, 33, 35-38, 51 and 73 and attached hereto as Exhibit D.

6 *Available at* https://www.lilly.com/impact/empowering-a-diverse-workforce and attached hereto as Exhibit E.

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 also, e.g., 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); *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); and *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).

The Staff has noted that "a determination that a company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991). Even if a company's actions do not go as far as those requested by the shareholder proposal, they nonetheless may be deemed to "compare favorably" with the requested actions. *See, e.g., Advance Auto Parts, Inc.* (Apr. 9, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company issue a sustainability report "in consideration of the SASB Multiline and Specialty Retailers & Distributors standard," on the basis that the company's "public disclosures compare favorably with the guidelines of the Proposal and that the Company has, therefore, substantially implemented the Proposal," where the company argued that a combination of its existing disclosures sufficiently addressed the core purpose of the proposal, acknowledging that the disclosures deviated in certain respects from the SASB standard); *Applied Materials, Inc.* (Jan. 17, 2018) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company "improve the method to disclose the [c]ompany's executive compensation information with their actual compensation," on the basis that the company's "public disclosures compare favorably with the guidelines of the [p]roposal and that the [c]ompany has, therefore, substantially implemented the [p]roposal," where the company argued that its current disclosures follow requirements under applicable securities laws for disclosing executive compensation); *Kewaunee Scientific Corporation* (May 31, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that non-employee directors no longer be eligible to participate in the company's health and life insurance programs, on the basis that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal and that Kewaunee…substantially implemented the proposal," where the board had adopted a policy prohibiting non-employee directors from participating in the company's health and life insurance programs after December 31, 2017, an effective date that was later than the effective date the proponent may have envisioned); *Exxon Mobil Corp.* (Mar. 23, 2009) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report regarding political contributions where the company's pre-existing political contribution policies and procedures compared favorably to the proposal at issue, despite the disclosures not being as fulsome as the proponent had contemplated, and the analysis not rising to the level of detail that the proponent desired); *Walgreen Co.* (Sept. 26, 2013) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting elimination of supermajority voting requirements in the company's governing documents where the company had eliminated all but one of the supermajority voting requirements); and *Johnson & Johnson* (Feb. 17, 2006) (permitting exclusion under Rule 14a-8(i)(10) of a proposal that requested the company confirm the legitimacy of *all* current and future U.S. employees because the company had verified the legitimacy of 91% of its domestic workforce).

C. The Company Has Substantially Implemented the Proposal

The Company has substantially implemented the essential elements of the Proposal, which call for the Company's board of directors (the "*Board*") to report to shareholders on the effectiveness of the Company's DEI efforts and provide transparency on outcomes, using quantitative metrics for hiring, retention, and promotion of employees, including data by gender, race, and ethnicity, because the Company already publicly reports information about its DEI efforts, including quantitative metrics, which allows shareholders to assess the effectiveness of the Company's DEI efforts.

As detailed in the table below, the Company has already taken actions to address the essential elements of the Proposal by providing shareholders the opportunity to directly assess the effectiveness of the Company's DEI efforts through existing disclosures in the Company's proxy statement, on the Company's website, and in the Company's ESG Report. These disclosures collectively enable shareholders to assess the effectiveness of the Company's DEI efforts with regard to the hiring, retention and promotion of employees. Therefore, consistent with the no-action precedent cited above, the Company has substantially implemented the Proposal and, accordingly, the Proposal should be excluded from the 2023 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 the essential elements of the Proposal.

Requests Made in Proposal	***Illustrative Implementation by the Company***
"[R]eport to shareholders on the effectiveness of the Company's diversity, equity and inclusion efforts…by gender, race and ethnicity."	Lilly already publicly discloses its DEI goals and efforts related to increasing the Company's hiring, retention and promotion of employees based on (x) gender and (y) race and ethnicity. Lilly also provides annual updates to its disclosures, including quantitative data across a range of different criteria, which allows shareholders to assess the effectiveness of the Company's DEI programs. **(x) Existing Disclosures Regarding Lilly's DEI Goals and Efforts Related to Increasing the Company's Hiring, Retention and Promotion of Employees Based on Gender:** *ESG Report* "Lilly has a history of promoting MGM representation in our hiring practices with a focus on continuous improvement. In 2018, we began establishing aspirational goals for recruiting to increase the representation of women and minority groups. In 2021, we set additional goals in certain areas for women globally, Black Americans, Asian and Latinx, and we are progressing toward achieving those goals." "Aspirational goals are important to our overall recruiting strategy and progress. At the end of 2021, women comprised 51% of our global workforce. Because we have achieved gender parity, we no longer have an aspirational recruiting goal for women. Maintaining our gains toward gender balance remains a key priority and we continue to focus on people development and retention."

Requests Made in Proposal	***Illustrative Implementation by the Company***
	Proxy Materials “We believe talent begins with the hiring process. We therefore require hiring managers to consider a diverse pool of candidates, and we strive to provide a diverse panel of interviewers for open positions. We believe that hiring in this way helps ensure that people from all backgrounds have equal opportunity to advance their careers.” “Employee resource groups (ERGs) are another important component of developing talent at Lilly. We currently have 11 ERGs representing groups including women, MGMs, LGBTQ+ individuals, veterans, and people with disabilities.” *Company Website* Empower a Diverse Workforce “At Lilly, we believe in the power of diversity, equity and inclusion (DEI) to fulfill our purpose of creating medicines that make life better for people around the world.” DiversityInc No. 3 Ranking Highlights Our Inclusive Culture “Our work to recruit, include and promote the best talent from all backgrounds is making a difference in our company, and it’s fueling the way we serve our customers.” “Lilly’s No. 3 ranking comes after an extensive submission of data and information about systems, processes and people metrics, to share how we build diversity and inclusion into our entire business.” **(y) Existing Disclosures Regarding Lilly’s DEI Goals and Efforts Related to Increasing the Company’s Hiring,**

Requests Made in Proposal	***Illustrative Implementation by the Company***
	<u>Retention and Promotion of Employees Based on Race and Ethnicity:</u> *ESG Report* "Lilly has a history of promoting MGM representation in our hiring practices with a focus on continuous improvement. In 2018, we began establishing aspirational goals for recruiting to increase the representation of women and minority groups. In 2021, we set additional goals in certain areas for women globally, Black Americans, Asian and Latinx, and we are progressing toward achieving those goals." "In October 2020, Lilly pledged to further increase the current representation of Black American employees from approximately 10% to 13% in our U.S. workforce to align more closely with U.S. demographics of the patients and communities we serve." "Lilly is actively developing programs to enable more jobs that sustain families for Black Americans and individuals from other marginalized communities through our Skills First initiative – the goal of which is to eliminate the requirement for a bachelor's degree for some jobs at Lilly." *Proxy Materials* "We believe talent begins with the hiring process. We therefore require hiring managers to consider a diverse pool of candidates, and we strive to provide a diverse panel of interviewers for open positions. We believe that hiring in this way helps ensure that people from all backgrounds have equal opportunity to advance their careers." "Employee resource groups (ERGs) are another important component of developing talent at Lilly. We currently have 11 ERGs

Requests Made in Proposal	***Illustrative Implementation by the Company***
	representing groups including women, MGMs, LGBTQ+ individuals, veterans, and people with disabilities." *Company Website* Empower a Diverse Workforce "At Lilly, we believe in the power of diversity, equity and inclusion (DEI) to fulfill our purpose of creating medicines that make life better for people around the world." DiversityInc No. 3 Ranking Highlights Our Inclusive Culture "Our work to recruit, include and promote the best talent from all backgrounds is making a difference in our company, and it's fueling the way we serve our customers." "Lilly's No. 3 ranking comes after an extensive submission of data and information about systems, processes and people metrics, to share how we build diversity and inclusion into our entire business."
"The report should…provide transparency on outcomes, using quantitative metrics for hiring, retention and promotion of employees, including data by gender, race and ethnicity."	Lilly's already-existing public disclosures of the Company's quantitative data related to the hiring, retention and promotion of employees based on (x) gender and (y) race and ethnicity are sufficient to enable shareholders to assess the effectiveness of the Company's DEI efforts. **<u>(x) Existing Disclosures of Quantitative Data Related To The Company's Hiring, Retention And Promotion Of Employees Based on Gender.</u>** *ESG Report* *See* Infographic from Proxy Statement and ESG Report provided in <u>Exhibit F</u>.

Requests Made in Proposal	***Illustrative Implementation by the Company***
	"Management-level aspirational goals: Between the end of 2017 and the end of 2021 the percentage of women in management positions globally increased from 41% to 48%. Representation of MGMs in U.S. management positions also increased during this time, from 16% at the end of 2017 to 24% at the end of 2021." "In 2021, we increased representation of women across our workforce globally to 51%." "Subsequent to the workforce [information in Exhibit F], and as part of our board refreshment process, as of May 15, 2022, the company's board composition changed to include five women and six MGMs on our 13-member board of directors." "We strive to develop top talent from diverse backgrounds through several signature programs. In 2018, we introduced Emerge, a three-day program led by our CEO that is designed to develop Minority Group Member (MGM) talent at Lilly. Four cohorts comprising Black/African American women, Latinx and Asian women, MGM men, and LGBTQ+ employees have participated in this enterprise-level program since its inception. Lilly also offers established leadership development programs for women and early career multicultural talent, as well as leaders at all levels." *Proxy Materials* "Since 2017, we have committed to increasing the number of women, Black/African American, Latinx, and Asian populations in leadership roles, and we actively monitor our progress. From the end of 2017 through the end of 2021, we increased the percentage of women in management globally from 41 percent to 48 percent. For MGM in the U.S.

Requests Made in Proposal	***Illustrative Implementation by the Company***
	over the same period, we increased management representation from 16 percent to 24 percent. Across all levels of our workforce, from the end of 2017 through the end of 2021, we have seen increased representation for MGMs in the U.S. and women globally. Our focus on DEI is also a critical component of our broader corporate governance. Five of fifteen current members (approximately 33 percent) of our executive committee (which includes our CEO) are women and two are MGM." *See* infographic from Proxy Statement and ESG Report is provided in Exhibit F. *Company Website* Our Diversity & Inclusion Progress Report (March 19, 2021)[7] "From the end of 2017 through the end of 2020, we increased the percentage of women in management globally from 41% to 46%. For racial and ethnic minorities and other non-majority members in the United States [from the end of 2017 through the end of 2020], we increased management representation from 16% to 22%. Across all levels of our workforce last year, we saw increased representation for minorities in the United States and women globally." **(y) Existing Disclosures of Quantitative Data Related To The Company's Hiring, Retention And Promotion Of Employees Based on Race and Ethnicity.** *ESG Report*

7 *Available at* https://www.lilly.com/news/stories/2020-integrated-summary-report-diversity-inclusion-progress-report and attached hereto as Exhibit G.

Requests Made in Proposal	***Illustrative Implementation by the Company***
	See Infographic from Proxy Statement and ESG Report provided in Exhibit F. “We strive to develop top talent from diverse backgrounds through several signature programs. In 2018, we introduced Emerge, a three-day program led by our CEO that is designed to develop Minority Group Member (MGM) talent at Lilly. Four cohorts comprising Black/African American women, Latinx and Asian women, MGM men, and LGBTQ+ employees have participated in this enterprise-level program since its inception. Lilly also offers established leadership development programs for women and early career multicultural talent, as well as leaders at all levels.” *Proxy Materials* *See* Infographic from Proxy Materials and ESG Report provided in Exhibit F. “Since 2017, we have committed to increasing the number of women, Black/African American, Latinx, and Asian populations in leadership roles, and we actively monitor our progress. From the end of 2017 through the end of 2021, we increased the percentage of women in management globally from 41 percent to 48 percent. For MGM in the U.S. over the same period, we increased management representation from 16 percent to 24 percent. Across all levels of our workforce, from the end of 2017 through the end of 2021, we have seen increased representation for MGMs in the U.S. and women globally. Our focus on DEI is also a critical component of our broader corporate governance. Five of fifteen current members (approximately 33 percent) of our executive committee (which includes our CEO) are women and two are MGM.”

Requests Made in Proposal	***Illustrative Implementation by the Company***
	Company Website Our Diversity & Inclusion Progress Report (March 19, 2021) "For racial and ethnic minorities and other non-majority members in the United States [from the end of 2017 through the end of 2020], we increased management representation from 16% to 22%. Across all levels of our workforce last year, we saw increased representation for minorities in the United States and women globally." Racial Justice Commitment: Confronting Racial Inequities Head On "In 2020, Lilly and the Lilly Foundation launched the Racial Justice Commitment to help decrease the burden of racial injustice and its effects on communities of color… Lilly developed a Professional Apprenticeship Program, which provides individuals without college degrees access to roles at Lilly that they may not have had through traditional recruiting means. More than 20 people have participated thus far, with larger cohorts planned for 2022 and beyond."

2. The Proposal May be Excluded Under Rule 14a-8(i)(7) Because it Relates to the Company's Ordinary Business

A. Background

Rule 14a-8(i)(7) permits the exclusion of shareholder proposals dealing with matters relating to a company's "ordinary business operations." The Commission has stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." 1998 Release. The term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.*

The ordinary business exclusion rests on two central considerations: (1) the subject matter of the proposal (i.e., whether the subject matter involves a matter of ordinary business), provided the proposal does not raise significant social policy considerations that transcend ordinary business; and (2) the degree to which the proposal attempts to micromanage a company by "probing too deeply into matters of a complex nature upon which shareholders as a group, would not be in a position to make an informed judgment." *Id.*

A shareholder proposal requesting the publication of a report is excludable pursuant to Rule 14a-8(i)(7) if the substance of the requested report deals with the ordinary business of the company. Exchange Act Release No. 20091 (Aug. 13, 1983) ("[T]he staff will consider whether the subject matter of the special report … involves a matter of ordinary business; where it does, the proposal will be excludable..."). *See also Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report describing how company management identifies, analyzes and oversees reputational risk related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making, noting that the proposal related to the ordinary business matter of the "nature, presentation and content of programming and film production").

B. The Proposal May Be Excluded Because It Relates to an Ordinary Business Matter, the Company's Management of Its Workforce

The Proposal focuses on the Company's "hiring, retention, and promotion of employees," which is an ordinary business matter under Rule 14a-8(i)(7). This fact is supported not only by Staff precedent, but also by a Commission-level release. In *United Technologies Corp.* (Feb. 19, 1993), the Staff provided the following examples of excludable ordinary business categories: "employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation." Subsequently, the Commission stated in the 1998 Release that a company's "management of [its] workforce, such as the hiring, promotion, and termination of employees" is a prime example of an excludable ordinary business matter. 1998 Release. Granting relief here would be consistent with the Commission's view expressed in 1998 as well as a long line of Staff no-action letter precedent that has allowed for the exclusion of proposals that deal with relations between a company and its employees and workforce management. In particular, the Staff has historically permitted the exclusion of proposals that, like the Proposal, refer to the hiring, retention, and promotion of employees. *See Delhaize America, Inc.* (Mar. 9, 2000) (permitting, under Rule 14a-8(i)(7), the exclusion of a proposal requesting that the company adopt a policy "to be more aggressive in employee retention when the issue of compensation is considered"); *Sprint Corporation* (Jan. 28, 2004) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on "the impact on the [c]ompany's recruitment and retention of employees due to the [c]ompany's changes to retiree health care and life insurance coverage"); *Consolidated Edison, Inc.* (Feb. 24, 2005) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the termination of certain employees because it related to "the termination, hiring, or promotion of employees"); *Merck & Co., Inc.* (Mar. 6, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting "that the company fill only entry-level positions with outside candidates and re-introduce its original policy of developing individuals for its higher level research and management positions exclusively from the ranks of its [current] employees" because in the Staff's view, "the proposal relates to procedures for hiring and promoting employees. Proposals concerning a company's management of its workforce are generally excludable under rule 14a-8(i)(7)."

The Proposal is comparable to the proposals in *Deere & Company* (Nov. 14, 2014, *recon. denied* Jan. 5, 2015) and *The Walt Disney Company* (Nov. 24, 2014, *recon. denied* Jan. 5, 2015) that requested the companies' boards of directors adopt anti-discrimination policies that protect employees' human rights. The Staff granted no-action relief pursuant to Rule 14a-8(i)(7), noting in each case "that the proposal relates to [the company's] policies concerning its employees." Here, the Proposal also relates to the Company's policies concerning its employees because it seeks a report on the company's "hiring, retention and promotion of employees" in order for investors to evaluate the Company's workforce management policies. As the Commission has stated, this is falls squarely within the ordinary business exclusion.

The Proposal is also comparable to several proposals that dealt with workforce management that the Staff determined were excludable pursuant to Rule 14a-8(i)(7) last proxy season. For example, in *Amazon.com, Inc.* (Apr. 7, 2022) (*UAW Retiree Medical Benefits Trust*), the proposal requested a report on risks to the company related to staffing of its business and operations, including data on the company's workforce. The supporting statement explained the purpose of the proposal: "A report to shareholders on workforce turnover will provide shareholders with material information regarding Amazon's human capital management practices." The company argued that the proposal was excludable under Rule 14a-8(i)(7) because it related to "the quintessential ordinary business topic of managing workforce staffing." The Staff agreed and permitted exclusion pursuant to Rule 14a-8(i)(7). Here, the Proposal also asks for a report on the Company's staffing of employees, including data on the Company's workforce. The recitals in the Proposal explain that the purpose of the Proposal is for "investors to determine the effectiveness of [the Company's] human capital management programs." The Staff should reach the same determination here as it did in *Amazon.com, Inc.* (*UAW Retiree Medical Benefits Trust*) and allow the Company to exclude the Proposal pursuant to Rule 14a-8(i)(7).

In addition, several companies last season received proposals requesting that they report information about the distribution of stock-based incentives to employees, including a matrix sorted by EEO-1 employee classification. *See, e.g.*, *Amazon.com, Inc.* (Apr. 8, 2022) (*James McRitchie*); *Repligen Corporation* (Apr. 1, 2022). The Staff permitted exclusion of these proposals pursuant to Rule 14a-8(i)(7). Stock-based incentives are often offered as a hiring or retention tool. Like in *Amazon.com, Inc.* (*James McRitchie*) and *Repligen Corporation*, the Proposal seeks a report on information related to employee retention, which at its core is the Company's ordinary business, and like in the proposals from last season, the Proposal requests the same type of demographic workforce data that is found in an EEO-1 report, including data by sex, race, and ethnicity. As another example from last season of a proposal that dealt with workforce management, in *Dollar Tree, Inc.* (May 2, 2022), the Staff pursuant to Rule 14a-8(i)(7) permitted exclusion of a proposal that requested a report on risks to the company's business strategy in the face of increasing labor market pressure, including a discussion of employee benefits and safety and paying particular attention to the company's lowest paid employees across geographies. The supporting statement contended that of particular concern was the effect of increasing labor market pressure on minority employees. The Staff last season also permitted exclusion pursuant to Rule 14a-8(i)(7) of the proposal in *BlackRock, Inc.* (Apr. 4, 2022) that requested a report on the risks of not having a more inclusive equal employment opportunity policy that prevents discrimination based on viewpoint and ideology. As one further example, in *Intel Corporation* (Mar. 18, 2022), the Staff permitted exclusion pursuant to Rule 14a-8(i)(7) of a proposal requesting a report on "whether and/or to what extent, the public display of the pride flag has impacted current, and to the extent reasonable, past and prospective employees' view of the company as a desirable place to work." As discussed further below, these proposals all referenced or touched on a significant social policy issue but were excludable because the focus of the proposals was on ordinary business matters. The Proposal should similarly be excludable pursuant to Rule 14a-8(i)(7).

The Proposal is directly comparable to the proposal in *Amazon.com, Inc.* (Apr. 8, 2022) (*AFL-CIO Reserve Fund*), which requested a report on "the impact of the [c]ompany's workforce turnover on the Company's diversity, equity, and inclusion." In its no-action request, the company explained that even though the proposal and supporting statement referenced diversity, equity, and inclusion, "the overall focus [was] on management of the [c]ompany's operations." Here, too, despite references to DEI, the goal of the Proposal is to provide investors with information so that they can oversee the Company's management of its workforce. This is a core matter involving the Company's business and operations and thus appropriately excludable under Rule 14a-8(i)(7).

C. The Proposal Does Not Focus on a Significant Social Policy Issue

The Company recognizes that the Staff recently changed its approach to how it evaluates significant social policy issues, explaining in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("*SLB 14L*"):

> proposals that the staff previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as

excludable under Rule 14a-8(i)(7). For example, proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company.

However, the Staff's shift in approach has not resulted in the significant social policy exception swallowing the rule that proposals dealing with ordinary business matters are excludable. Since the publication of SLB 14L, the Staff has continued to distinguish between proposals that focus on a significant social policy issue and those that contain references to significant social policy issues like DEI or human capital management but are actually directed at a company's ordinary business matters.

The no-action letters referenced in the preceding section relate to proposals that the proponent might argue raise a significant policy issue. For instance, the proposal in *Amazon. Inc.* (*UAW Retiree Medical Benefits Trust*) was drafted in a manner to suggest that human capital management was the focus of the proposal. However, the Staff determined that the focus was actually on workforce management and should come to the same determination with respect to the Proposal, despite references to DEI. As in *Amazon.com, Inc.* (*UAW Retiree Medical Benefits Trust*), references to "diversity, equity, and inclusion" in a proposal are not enough to transcend ordinary business where the report requested by the proposal focuses on workforce management.

Similarly, in *Amazon.com, Inc.* (*James McRitchie*) and *Repligen Corporation*, despite declarations in the supporting statements that the intention was for the proposals to address a significant social policy issue, the Staff concluded that the proposals addressed the companies' ordinary business matters and permitted exclusion pursuant to Rule 14a-8(i)(7).

D. The Proposal May Be Excluded Because It Seeks To Micromanage the Company

In addition to focusing on a core ordinary business matter and not on a significant social policy issue, the Proposal seeks to impermissibly micromanage the Company "by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." 1998 Release. The Staff recently explained in SLB 14L that going forward, when evaluating micromanagement as a basis for exclusion, it "will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management."

The Proposal is comparable to several proposals that the Staff permitted to be excluded last season under Rule 14a-8(i)(7) for seeking to micromanage the companies "by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the [companies'] employment and training practices." In *Deere & Company* (Jan. 3, 2022), *Verizon Communications Inc.* (Mar. 17, 2022), and *American Express* (Mar. 11, 2022), the proposals requested publication of employee-training materials to allow investors to evaluate management's handling of risk associated with employment discrimination. Here, the Proposal also seeks sweeping disclosure of information about the Company's employees so that investors can evaluate a quintessential management issue.

As argued by the company in *Deere & Company*:

> [D]ecisions concerning internal DEI efforts are multi-faceted and are based on a range of factors that are outside the knowledge and expertise of shareholders, and therefore inappropriate for such oversight and vote. The Proposal thus prescribes specific actions that the Company's management must undertake without affording management sufficient flexibility or discretion to address and implement its policy regarding the complex matter of diversity, equality, and inclusion.

In addition to limiting the Company's discretion in preparing the requested report by dictating the metrics and data the report must contain, the Proposal focuses on a complicated topic that is core to management's ability to run the business. The design and execution of the Company's hiring, promotion and retention decisions are part of our broader workforce management strategy and include multi-faceted processes guided by numerous factors. As described in our ESG report, we have multiple programs and processes in place to support DEI within these areas, and as a federal contractor we have affirmative action requirements that must be met as well. Based upon the complexity of the processes, shareholders are not in a position to make an informed judgment about these processes based on the content of the requested report. For example, promotion data includes multiple types of promotions that can occur across the organization: technical promotions, promotions within a role and promotions to new levels. All of these involve distinct processes and criteria that were designed in alignment with our DEI commitment and legal requirements. The Proposal's request for specific yet broad quantitative data is a request for an inappropriate level of granularity sought to limit the discretion of the Company in implementing its workforce management policies and practices.

Like in the proposals from *Deere & Company*, *Verizon Communications Inc.*, and *American Express*, the Proposal seeks to inappropriately insert shareholders into decision-making regarding a complex ordinary business matter. The Proposal seeks a report that provides "quantitative metrics for hiring, retention, and promotion of employees, including data by gender, race, and ethnicity." The information about diversity, equity, and inclusion currently provided by the Company is intended to be for informational purposes and not to involve shareholders in a core management function. The Company's hiring, retention, and promotion policies and practices are highly complex and shareholders would not be in a position to make an informed judgment about such policies and practices even if the Company provided the requested report. The Proposal is therefore excludable pursuant to Rule 14a-8(i)(7) for seeking to micromanage the Company.

Because the Proposal deals with the ordinary business matter of workforce management, does not focus on a significant social policy issue, and seeks to micromanage the Company, the Proposal is excludable pursuant to Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2023 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
Executive Vice President, General Counsel and Secretary, Eli Lilly and Company

Andrew Behar
Chief Executive Officer, As You Sow

Exhibit A

[Copy of Proposal]

RESOLVED: Shareholders request that Eli Lilly and Co. ("Eli Lilly") report to shareholders on the effectiveness of the Company's diversity, equity, and inclusion efforts. The report should be done at reasonable expense, exclude proprietary information, and provide transparency on outcomes, using quantitative metrics for hiring, retention, and promotion of employees, including data by gender, race, and ethnicity.

SUPPORTING STATEMENT: Quantitative data is sought so investors can assess and compare the effectiveness of the Company's diversity, equity, and inclusion programs.

WHEREAS: Eli Lilly has not shared sufficient quantitative hiring, retention, and promotion data to allow investors to determine the effectiveness of its human capital management programs.

Between September 2020 and September 2022, S&P 100 companies increased by 298 percent their release of hiring rate data by gender, race, and ethnicity; retention rate data by 481 percent; and promotion rate data by 300 percent.[1] Companies that release, or have committed to release, more inclusion data than Eli Lilly include CVS Health, Gilead Sciences, Illumina, Pfizer, and UnitedHealth Group.

Numerous studies have pointed to the benefits of a diverse workforce. Their findings include:

- There is a positive association between diversity in management and cash flow, net profit, revenue, and return on equity.[2]
- Companies in the top quartile for gender diversity are 21 percent more likely to outperform on profitability.[3]
- The 20 most diverse companies had an average annual five year-stock return that was 5.8 percentage points higher than the 20 least diverse companies.[4]

Similar to how an income statement pairs with a balance sheet, hiring, promotion, and retention rate data show how well a company manages its workforce diversity. Without this data, investors are unable to assess the effectiveness of a company's human capital management program.

Companies should look to hire the best talent. However, Black and Latino applicants face hiring challenges. Results of a meta-analysis of 24 field experiments found that, with identical resumes, White applicants received an average of 36 percent more callbacks than Black applicants and 24 percent more callbacks than Latino applicants.[5]

Promotion rates show how well diverse talent is nurtured at a company. Unfortunately, women and employees of color experience "a broken rung" in their careers; for every 100 men who are promoted, only 86 women are. Women of color are particularly impacted, comprising 17 percent of the entry-level workforce and only four percent of executives.[6]

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[1] https://www.asyousow.org/our-work/social-justice/workplace-equity
[2] https://www.asyousow.org/report-pages/workplace-diversity-and-financial-performance
[3] Ibid
[4] https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200
[5] https://hbr.org/2017/10/hiring-discrimination-against-black-americans-hasnt-declined-in-25-years
[6] https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2021.pdf

Retention rates show whether employees choose to remain at a company. Morgan Stanley has found that employee retention above industry average can indicate a competitive advantage and higher levels of future profitability.[7] Companies with high employee satisfaction have also been linked to annualized outperformance of over two percent.[8]

Investors have reason to be concerned as Eli Lilly has faced allegations of age, sex, and race discrimination.

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[7] https://www.morganstanley.com/im/publication/insights/articles/article_culturequantframework_us.pdf

[8] https://www.institutionalinvestor.com/article/b1tx0zzdhhnf5x/Want-to-Pick-the-Best-Stocks-Pick-the-Happiest-Companies?utm_medium=email&utm_campaign=The%20Essential%20II%20100721&utm_content=The%20Essential%20II%20100721%20CID_eb103a9e15359075f72a85f7ff534c79&utm_source=CampaignMonitorEmail&utm_term=Want%20to%20Pick%20the%20Best%20Stocks%20Pick%20the%20Happiest%20Companies

Exhibit B

[Copy of ESG Report]

Our Social Approach

Our approach to social impact starts with our medicines and our goal to expand access to quality health care. We work across global health systems to extend our reach by being part of the solution for complex 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 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, our communities 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 $12.6 million to United Way in 2021.

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 Safety

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.

Diversity, Equity and Inclusion

Management Approach

At Lilly, we believe in the power of diversity, equity and inclusion (DEI) to fulfill our purpose of creating medicines that make life better for people around the world. At our core, we know that by leveraging the varied backgrounds of our more than 35,000 employees – and by driving actionable and measurable strategies to improve DEI, including diversity within our clinical trials – we can better deliver scientific breakthroughs.

We are committed to fairness and nondiscrimination in our employment practices, and we deeply value diverse backgrounds, skills and global perspectives. Our long-standing values of integrity, excellence and respect for people foster an environment where team members are encouraged to speak up, share ideas and be fully engaged in our work while bringing their full authentic selves to work every day.

Lilly people have different experiences, perspectives and traditions, and we are committed to welcoming, respecting and valuing those differences. Because people are one of our priorities, we treat DEI like any other priority business objective. We set strategy, goals and
DEI metrics to drive progress on attracting, developing, promoting and retaining a diverse workforce. We take a data-driven approach to so that our business and employee base better reflect the world around us.

Over the past seven years, we have conducted in-depth employee research that has yielded important insights into employee-reported experiences. The research uncovered factors that employees say significantly influence their ability to contribute to their fullest potential. Our Employee Journeys research (explained further below) has led to a multifaceted People Strategy and companywide changes to improve our culture for everyone. Our People Strategy prioritizes DEI and enhances the employee experience to deliver on our employee value proposition, "Be part of a team that cares about you and our shared purpose to make life better."

People Strategy

Additional People Strategy goals include:

- Acquire, develop, engage and retain diverse talent
- Foster Lilly culture
- Build leadership excellence
- Enable critical capabilities
- Embed diversity, equity and inclusion across Lilly

Our commitment to DEI extends beyond our employees and into our broader business, including patient safety, clinical trials, access to and development of our medicines, and improving the diversity of our suppliers and partners.

In This Section

Leadership Commitment

DEI Progress

DEI Programs and Activities

Employee Resource Groups at Lilly

Diversity-Driven Talent Acquisition

Clinical Trial Diversity

Racial Justice Commitment

DEI Data

Leadership Commitment

Diversity, equity and inclusion at Lilly includes high-level governance, purposeful corporate culture and ongoing data analyses to inform our approach. Our CEO and Executive Committee consistently set expectations for inclusive leadership and hold leaders accountable for building diverse and inclusive teams. All executive officers have DEI goals included in their annual performance and compensation reviews.

In 2021, our executive leadership further integrated DEI within our human resources talent management organization. Lilly's senior vice president for human resources and diversity, a member of our Executive Committee, reports directly to our chair and CEO and is ultimately accountable for DEI at Lilly. Our chief DEI officer is a vice president reporting to the senior vice president for human resources and diversity and is also responsible for leading our talent management functions. This allows us to fully embed DEI into how we recruit, develop, promote and retain talent. Our head of DEI is an associate vice president who reports to the chief DEI officer.

- **Clarity of purpose and expectations for everyone** – The Red Book, our code of business conduct, summarizes our approach to creating an inclusive, nondiscriminatory environment.
- **Data to inform and measure** – We began setting aspirational goals in 2017 as part of our commitment to increase the number of women in management globally and minority group members (MGMs) in U.S. management roles. We also established recruiting aspirational goals to improve the diversity of our new hires. In 2021, Lilly expanded its aspirational goals to include employees on our research career path and the upper levels of our professional career path. Once aspirational goals are set, we monitor our progress over time to inform our approach and report progress to our global workforce.

Senior leaders have long coached, mentored and sponsored employees to become future Lilly business leaders. In 2021, formal sponsorship efforts continued and expanded through new efforts in functional areas and employee resource groups. Sponsorship efforts have grown, and there were more than 300 one-to-one formal sponsorship relationships in 2021 with a continued focus on women and U.S. MGM talent.

DEI Progress

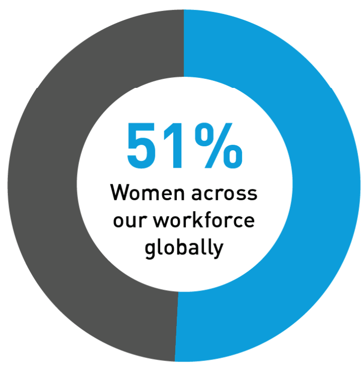
Building a more inclusive culture requires sustained focus and action and the holistic integration of DEI into our entire business. Leaders at Lilly are expected to lead more inclusively by valuing differences, recognizing and overcoming bias and fostering a speak-up culture where all colleagues feel their ideas and contributions are welcome and valued. We gauge employee feedback through surveys and other mechanisms and hold leaders accountable for progress.

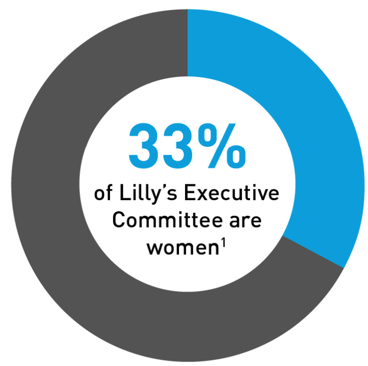
Our commitment to DEI is a core component of how we do business. Here are some examples of how this work is making a difference:

DEI Highlights

Women in management roles globally	
2017	2021
41%	48%

MGMs in U.S. management positions	
2017	2021
16%	24%





[1] As of February 25, 2022

- Management-level aspirational goals: Between the end of 2017 and the end of 2021 the percentage of women in management positions globally increased from 41% to 48%. Representation of MGMs in U.S. management positions also increased during this time, from 16% at the end of 2017 to 24% at the end of 2021.
- In 2021, we increased representation of women across our workforce globally to 51%.
- Subsequent to the workforce data below, and as part of our board refreshment process, as of May 15, 2022, the company's board composition changed to include five women and six MGMs on our 13-member board of directors.

DEI Programs and Activities

Employee Journeys

We believe that fostering DEI begins with understanding, and we have approached DEI with the same rigor as our other business-critical priorities. Our Employee Journeys research has yielded important insights about the experiences of women, Black/African American, Latinx, Asian and LGBTQ+ employees at Lilly. In response to insights from our Employee Journeys research, we developed, among other programs, an education and awareness program to help build cultural literacy and understanding about expectations for employees to feel psychologically safe at work.

More than 3,500 leaders and 13,000 employees have participated in required training to gain greater awareness of how unconscious bias and microaggressions can potentially harm team cohesiveness and hurt employee engagement. Our Employee Journeys research has also resulted in growing energy around DEI, with a companywide network of DEI champions, initiatives and teams across business areas – and an expanding appreciation of the value of different perspectives. The results of this research are reviewed by our senior leaders, and we deploy actions and activities in response to these insights to improve our workplace culture.

We recognize that there is more work to do, but these initiatives are making an impact. In our 2021 employee Pulse surveys, we saw continued progress on key questions related to inclusion such as "My work group has a climate in which diverse perspectives are valued" and "My management is open to different ideas and perspectives regardless of who or where they came from." Additionally, we plan to expand our Employee Journeys work in the coming years to include other underrepresented groups such as our employees with disabilities.

Supporting Diverse Employees

Our Employee Journeys research also helps to inform our efforts to support diverse employees. These efforts are focused on understanding and supporting diverse employees, giving them the opportunity to grow, advance and lead.

- **Explore Your Career** – We have continued our global rollout of Explore Your Career, expanding this framework of tools and resources for our employees. Explore Your Career ensures broader access for all employees to tools that aid in career development and advancement. Participation rates have been strong globally, including robust participation from MGMs.

- **Disability and Accessibility** – Lilly is committed to supporting employees around the world who work and live with disabilities. In 2019, we established a Global Disability Council with an initial focus on accessibility. We now have task forces and detailed action plans to improve accessibility in priority areas such as learning and development, facilities, digital tools and making internal communications and externally facing websites more accessible. In 2021, we signed the Business Disability Forum's Accessible Technology Charter and launched Access Lilly Software Solutions, providing guidance, tools and resources to help employees with disabilities thrive.

- **AccessLilly: Learning & Development** – The universally accessible, online programming we have introduced makes it more user friendly for everyone to use Lilly's learning and development offerings. We continue to update design standards for training courses to improve accessibility for people with disabilities or other access needs globally. Examples include ensuring that courses are compatible with assistive technologies such as screen readers for employees with visual impairment and providing transcripts for individuals with hearing impairments. Across Lilly, we intentionally design learning experiences and other communications technologies to be more inclusive and effective for everyone.

- **AccessLilly: Facilities** – We undertook a variety of activities to enhance accessibility in our facilities globally, including benchmarking best practices and approaches for improving technology and building navigation. We conducted accessibility assessments at sites in the UK, Ireland and Italy and are investing to improve accessibility for our employees and guests.

- **AccessLilly: Information Systems** – We've incorporated universal design standards in our guidance for the development of externally facing websites and are updating internal websites as well. We've also begun requiring captions for internal videos and virtual meetings.

- **Unconscious Bias** – We continue to offer a conscious inclusion program at Lilly, developed to help employees identify and overcome unconscious biases. Launched in 2017, the program is instructor-led and available on request.

- **Leadership Programs** – We've also introduced several signature programs to help develop top talent from diverse backgrounds. For example, in 2018, we introduced Emerge, a three-day program led by our CEO that is designed to develop underrepresented talent at Lilly. Four cohorts comprising Black/African American women, Latinx and Asian women, MGM men and LGBTQ+ employees have participated in this enterprise-level program since its inception. Lilly also offers established leadership development programs for women and early career multicultural talent, as well as leaders at all levels.

Promoting Cultural Literacy and Psychological Safety

In response to insights from our Employee Journeys research, we developed Make it Safe to Thrive, an education and awareness program to build cultural literacy and an understanding about expectations for employees to feel psychologically safe at work.

We emphasize that all people, whether from majority or minority groups, can fully share their diverse ideas, experiences, knowledge and insights only when they feel safe from bias and stereotypes.

We also launched the online version of the Make it Safe to Thrive training, which is required for all U.S.-based employees and available to all employees worldwide. Feedback on the program has been positive and we updated the program in 2021 to respond to evolving challenges posed by the COVID-19 pandemic, divisiveness in the world and issues of racial justice and equity.

Our Global Diversity, Equity and Inclusion Office also developed a new 12-part webinar series called Make it Safe to Thrive: Bringing the Outside IN. Through a series of lunch-and-learns in partnership with external DEI experts, the webinar series provided insights on the disparate employee experiences with COVID-19, access to health care and other topics that impact our diverse communities. The series helped build understanding across the company and offered support, resources and strategies to combat inequities in our communities. More than 16,000 employees attended the webinar series, and due to its success, a new series is planned for 2022.

Supporting DEI Goals through Technology Transformation

Lilly's Human Capital Management ("HCM") Transformation is also core to DEI and a key component of our People Strategy aimed at modernizing HR technology, processes and service delivery to enhance employee experience and help drive critical outcomes for the business. Improving our operational foundations support our company objectives by streamlining work, enabling leaders and increasing employee engagement.

From a technology perspective, we invested in a comprehensive, cloud-based human capital management software to replace our existing global HR information system as well as hundreds of other local HR systems around the world. The HCM Transformation emphasized standardization, increased transparency, self-service and data-driven decision-making.

Supporting Lilly's DEI objectives was one of our key requirements in selecting the new technology. Specific process changes include:

- Elimination of lead candidates in our internal job-posting process to drive more robust and diverse candidate pools and support equity for all
- Ability for employees to formally designate interest in specific job profiles
- Shift to competitive staffing (rather than succession planning) for many positions to drive more robust and diverse candidate pools
- More standardized onboarding experience, including the ability to assign peer coaches and mentors
- More standard expectations of manager responsibilities across the business areas and greater manager visibility and ownership of talent data and organizational management activities
- Ability for employees to easily self-identify at any time in the areas of gender, race, ethnicity, veteran status, disability, sexual orientation and gender identity.

Employee Resource Groups at Lilly

Employee resource groups (ERGs) are another important component of developing talent at Lilly. Our ERGs represent groups including women, MGMs, LGBTQ+ individuals, veterans and people with disabilities. ERGs offer our diverse workforce opportunities to build relationships, engage with senior leaders, advance our caring community, and offer unique insights and perspectives to improve our business.

More than 6,000 employees worldwide belong to one or more of our Lilly ERGs. Many geographies also have local organizations and U.S. and international ERGs work together wherever possible. In the U.S., most of our 11 headquarter-based ERGs also have associated field-based organizations. Ally organizations within Lilly are especially active in supporting women and LGBTQ+ employees at our company. Members of our Executive Committee provide executive sponsorship for each ERG.

Anyone from any background can join any ERG or ally group.

Employee Resource Groups

U.S. Based

- Africa, Middle East and Central Asia Network (AMECA)
- Black Employees at Lilly (BE@Lilly)
- Chinese Culture Network (CCN)
- EnAble US
- Early Career Professionals (ECP)
- Pride
- Japan International Leadership Network (JILN)
- Lilly India Network (LIN)
- Organization of Latinx at Lilly (OLA)
- Veterans Leadership Network (VLN)
- Women's Initiative for Leading at Lilly (WILL)

International

- International EnAble
- Gen-L
- International LGBTQ+ Allies
- Gender Inclusion Network-Women's Initiative [GIN WILL]

2021 Highlights of Employee Resource Groups

Diversity-Driven Talent Acquisition

We believe cultivating diverse talent starts with the recruitment and hiring process and continues through the learning and development, advancement and retention of people with wide-ranging backgrounds and experiences.

Lilly has a history of promoting MGM representation in our hiring practices with a focus on continuous improvement. In 2018, we began establishing aspirational goals for recruiting to increase the representation of women and minority groups. In 2021, we set additional goals in certain areas for women globally, Black Americans, Asian and Latinx, and we are progressing toward achieving those goals.

Aspirational goals are important to our overall recruiting strategy and progress. At the end of 2021, women comprised 51% of our global workforce. Because we have achieved gender parity, we no longer have an aspirational recruiting goal for women. Maintaining our gains toward gender balance remains a key priority and we continue to focus on people development and retention.

Each year, we assess whether additional aspirational recruiting goals are appropriate.

Our Approach to Diversity in Recruitment and Hiring

- **Diversity of Interview Panel and Candidates** – Since 2018, we have offered diverse slates of candidates to ensure that leaders look beyond their own perspective and cast the widest net for the best talent. In addition, we strive to provide diverse interview teams for open positions. This way, panels include individuals who may value different skills and strengths, leading to a more robust candidate calibration discussion. We believe a diverse panel improves equity, minimizes group favoritism and reduces potential unconscious bias – and that candidates are more likely to accept an offer when they see diversity among leaders and interviewers. Every hiring manager is instructed to hire only the best-qualified candidate for each job.

- **Campus Recruiting** – Our campus recruiting team helps establish the Lilly brand at each of our target universities. We build strong interpersonal relationships with university leaders, faculty, career services and student organizations – including veterans and disability offices on campus.

- **Traditional Targeted Recruitment** – Targeted recruitment is the process by which organizations externally recruit and advertise opportunities to individuals with certain characteristics through various sourcing channels. We partner with national and local diversity conferences and a wide range of professional associations such as the National Society of Black Engineers (NSBE), the Society of Hispanic Professional Engineers (SHPE) and National Black MBA Association (NBMBAA) and top colleges and universities. This includes Hispanic Serving Institutions (HSIs) and Historically Black Colleges and Universities (HBCUs). (See Racial Justice Commitment below for more on our work with HBCUs.)

- **Non-Traditional Recruiting: Diversity Sourcing** – Our diversity sourcing efforts help us identify non-traditional recruitment opportunities to set Lilly apart from our competition. Our programs include the Summer Experience Program and Community Partners Interview Day to connect diverse talent with Lilly opportunities, as early as high school. For certain roles, we are working to align better qualification criteria to the job, adjusting where appropriate to open opportunities for people who have certificates, are working on their bachelor's degree or have relevant work experience. We also host community partner events to connect with local community organizations and key community leaders to help recruit diverse talent.

Additional student programs include:

- **Summer Experience Program** – This program targets diverse students enrolled in college who are in their first or second year to give them an opportunity to leverage and build professional skills, develop a professional network and gain real-world experience.

- **Information and Digital Solutions High School Program** – This program targets local underrepresented minority youth to create real-world opportunities while exploring and developing their interest in information technology.

- **Corporate Intern Program** - We provide opportunities for students seeking internships and full-time positions by actively recruiting at targeted colleges and universities across the country. We have opportunities for all levels of advanced education, including BA, BS, MS, MBA and Ph.D. The corporate intern program brings in around 300-350 students every year.

Clinical Trial Diversity

Every time someone takes a medicine – even if it's over the counter – they are benefitting from the results of a clinical trial, a scientific study where researchers apply rigorous testing to ensure that medicine's safety and effectiveness.

Many factors impact how someone will respond to a treatment, including their genetic background, ethnicity, gender and lifestyle. Because illness, including cancer, doesn't discriminate, diverse participants in clinical trials are critical to developing safe and effective medicines for everyone.

Unfortunately, minority populations have been historically underrepresented in clinical trials. Although minorities make up nearly 40% of the U.S. population, they constitute less than 20% of participants in the key clinical trials that lead to the approval of new medicines, according to a 2015 study.

Lilly has established clear, measurable goals to increase diversity in our trials to better understand how the medicines we develop work for the patients who will be taking them.

These goals include:

- Working to enroll trial participants who match the composition of the patient population that might use the trial's medicine.
- Creating a robust clinical trial strategy and reaching diverse populations.
- Intentionally selecting a diverse range of trial sites and investigators.
- Increasing diverse representation through partnerships and collaboration.

Decentralized Clinical Trials

The global pandemic brought a new layer of complexity to clinical trial participation. With the goal of getting new medicines for people who need them, Lilly kept moving forward to study potential treatments across the portfolio. The company began identifying and implementing new ways to conduct research studies, and now, the learnings from remote clinical research – or decentralization of studies – is here to stay.

Time off work, travel to the site and other inconveniences of a typical clinical trial schedule can be a significant deterrent to patients deciding whether or not to participate. Decentralized clinical trials, or DCTs, use new services and technology to reduce the barriers some patients face. DCTs features include replacing some in-person appointments with telehealth visits, offering local or mobile service providers for things like blood tests or imaging scans, and using novel data collection methods such as electronic or wearable devices to capture results.

For example, in oncology, our Verzenio adjuvant breast cancer study, we've made the trial more convenient with increased telehealth visits, the ability for patients to use local imaging facilities and, in some cases, shipping medicine directly to patients.

Lilly is continuing to invest in the expansion and creation of new capabilities based on learnings from ongoing clinical trials and emerging technology. By engaging more patients in research studies through additional accessibility and convenience, we expect to increase access to potential new treatments and expand the reach of clinical trials to people who may not have participated in the past, all while maintaining the integrity and quality of data generated from clinical trials.

Racial Justice Commitment

We believe Lilly has a responsibility as a major employer to act on issues that affect our employees, business and communities. Bringing our purpose to life, driving change and addressing inequities has always been a part of our fabric. After the murder of George Floyd, we felt compelled to use our influence to do even more.

In 2020, Lilly and the Lilly Foundation launched the Racial Justice Commitment to help decrease the burden of racial injustice and its effects on communities of color. As part of this effort, Lilly pledged 25,000 volunteer hours and the Lilly Foundation committed $25 million over five years. The Racial Justice Commitment aims to drive change across five areas: internal people development, health equity, social impact, diversity partners and family sustaining jobs.

Racial Justice Commitment Progress

Since launching the effort, we have made important progress:

Internal People Development

- In October 2020, Lilly pledged to further increase the current representation of Black American employees from approximately 10% to 13% in our U.S. workforce to align more closely with U.S. demographics of the patients and communities we serve. This won't happen overnight, and numbers may fluctuate in the short-term, but we are accelerating our strategies to get there.

- Lilly is actively developing programs to enable more jobs that sustain families for Black Americans and individuals from other marginalized communities through our Skills First initiative – the goal of which is to eliminate the requirement for a bachelor's degree for some jobs at Lilly.

- Lilly developed a Professional Apprenticeship Program, which provides individuals without college degrees access to roles at Lilly that they may not have had through traditional recruiting means. More than 20 people have participated thus far, with larger cohorts planned for 2022 and beyond.

- Lilly developed and launched a new nationally registered Department of Labor Craft Apprenticeship Program, which will provide skill-based, on-the-job training for people while they earn a technical certification or associates degree at Ivy Tech Community College in Indiana. Lilly job roles that could be filled through students participating in this program include positions at our manufacturing sites such as maintenance mechanics, HVAC mechanics, instrument technicians and welders.

Health Equity

- Lilly committed $5 million over five years to Direct Relief to establish the Health Equity Fund in the U.S. Through this fund, health centers and free and charitable clinics, in both urban and rural areas, will be offered the opportunity to apply for grants from Direct Relief of up to $250,000 annually. Direct Relief will make grants aimed at strengthening the capacity of these organizations to provide high-quality, culturally appropriate health care and focus on social determinants of health for the underserved populations cared for by these organizations.

- In 2021, Lilly accelerated its efforts to improve diversity in its clinical trials, including for oncology and Alzheimer's studies using a decentralized clinical trial approach.

- In 2021, Lilly announced the expansion of our support of the Diabetes Impact Project in Indianapolis Neighborhoods (DIP-IN), committing an additional $5 million to the partnership that includes the Richard M. Fairbanks School of Public Health at Indiana University and other community partners. Initially launched in 2018, the goal of this partnership is to drive long-term improvements in diabetes diagnosis and care in three Indianapolis neighborhoods where residents are predominantly people of color.

Social Impact

- In 2021, Lilly employees completed 10,015 hours of 25,000 volunteer hours pledged over five years by Lilly as part of our Racial Justice Commitment.

- The Lilly Foundation awarded more than $10 million in grants in 2021 to combat racial injustice and inequity in Indianapolis. Funding to date has supported the launch of the Indianapolis Urban League Entrepreneurship Center to assist minority entrepreneurs with developing, sustaining and growing small businesses in Central Indiana and surrounding counties. Grants also supported the creation of the Business Equity for Indy Committee, a joint committee of the Indy Chamber of Commerce and the Central Indiana Corporate Partnership.

- Lilly committed more than $90 million to Black-led venture capital firms supporting Black, Latinx, women and LGBTQ+ startups. These commitments include an investment in Jumpstart Nova, a Black-owned venture capital firm that aims to invest exclusively in Black-founded and -led companies at the forefront of health care innovation. Additional commitments include funding to the Unseen Capital Health Fund, which focuses identifying, funding and support underrepresented founders of early-stage health care companies and those building solutions for marginalized communities, and Sixty8 Capital, an Indianapolis-based Black-owned venture capital firm.

Diversity Partners

- In 2020, Lilly set a goal to double its national annualized spend with Black suppliers by 2022. Lilly has increased its national spend with Black businesses by more than 50% in the past year, and we are on track to meet our goal of doubling the 2020 annualized spend with Black business enterprises in 2022. To reach this goal, Lilly mentored seven Black suppliers through the Lilly Mentor Protégé program, participated in an "Elevate Black" matchmaking program with Black suppliers in conjunction with Diversity Alliance for Science, and will implement Supplier Diversity training for employees in early 2022. Read about our additional progress on supplier diversity.

Family Sustaining Jobs

- Lilly joined OneTen, an organization that will combine the power of other committed American companies to upskill, hire and promote one million Black Americans over the next 10 years into jobs that can sustain families, with opportunities for advancement. To fulfill our OneTen goals, we launched multiple programs aimed at hiring Black Americans and underrepresented minorities, including people without college degrees.

- While Lilly previously had a robust recruitment pipeline with many Historically Black Colleges and Universities (HBCUs), we have expanded our outreach, establishing two new recruiting relationships with Morehouse School of Medicine and Charles R. Drew University of Medicine and Science. For the first time, we will be hosting an HBCU Day at Lilly Corporate Center in Indianapolis in 2022. Students from six HBCUs, where Lilly has not been as active in recruiting in the past, will participate.

Visit Lilly's Racial Justice Commitment webpage for more information.

DEI Data

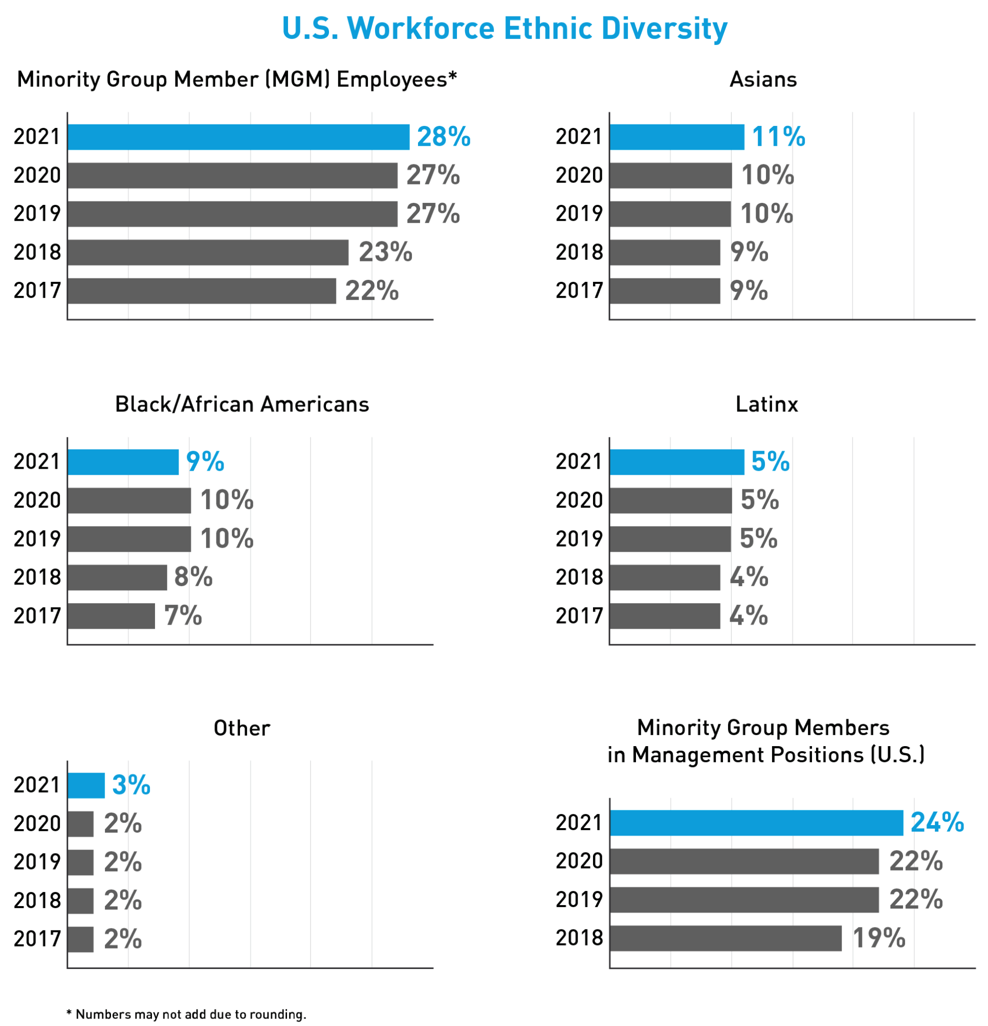
See our 2021 EEO-1 data.

2021 Data:

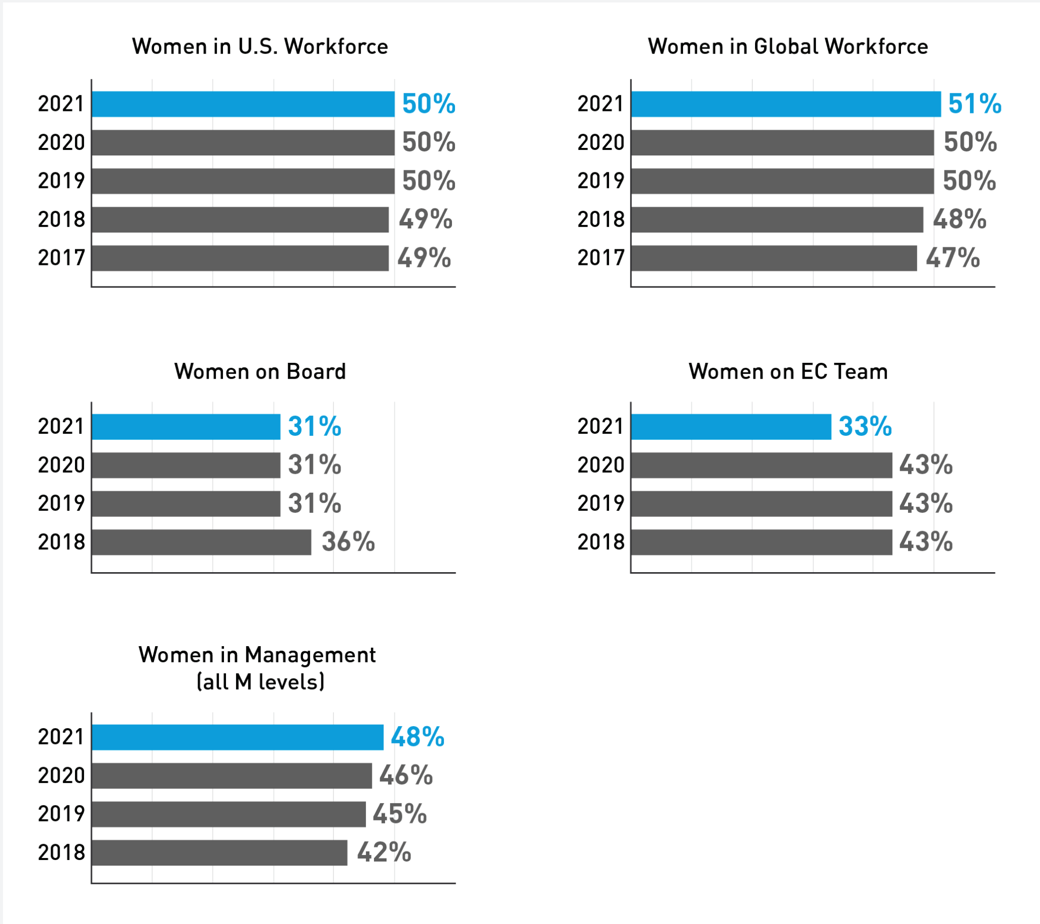
Board Diversity Update

Subsequent to the workforce data below, and as part of our board refreshment process, as of May 15, 2022, the company's board composition changed to include five women and six MGMs on our 13-member board of directors.

Workforce Diversity



Gender Diversity at Lilly



U.S Workforce Ethnic Diversity

	2018	2019	2020	2021
Minority Group Member (MGM)* Employees	23%	27%	27%	28%
Asians	9%	10%	10%	11%
Black/African Americans	8%	10%	10%	9%
Latinx	4%	5%	5%	5%
Other	2%	2%	2%	3%

*numbers may not add due to rounding

Minority Group Members in Management Positions (U.S.)

	2018	2019	2020	2021
Minority Group Members in Management Positions (U.S.)	19%	22%	22%	24%

Gender Diversity at Lilly

	2018	2019	2020	2021
Women on Board	36%	31%	31%	31%
Women on EC Team	43%	43%	43%	33%
Women in Management (all M levels)	42%	45%	46%	48%
Women in Global Workforce	48%	50%	50%	51%
Women in U.S. Workforce	49%	50%	50%	50%

Download Our 2021 ESG Data

See important information about our ESG report.

Exhibit C

[Copy of EEO-1 Data]

Below is the Eli Lilly and Company 2021 EEO-1 consolidated report, which includes data required by the U.S. Equal Employment Opportunity Commission, updated as of 5/2/2022. This EEO-1 report is a compliance survey mandated by federal statute and regulations. The survey requires company employment data to be categorized by race/ethnicity, gender and job category. Please note that the job categories differ in the way we categorize jobs and track DEI progress at Eli Lilly and Company.

Job Categories	Number of Employees (Report employees in only one category)														
	Race/Ethnicity														
	Hispanic or Latino		Not-Hispanic or Latino												Total Col A - N
			Male						Female						
	Male	Female	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	American Indian or Alaska Native	Two or more races	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	American Indian or Alaska Native	Two or more races	
	(A)	*(B)*	*(C)*	*(D)*	*(E)*	*(F)*	*(G)*	*(H)*	*(I)*	*(J)*	*(K)*	*(L)*	*(M)*	*(N)*	
Executive/Senior Level Officials and Managers (1.1)	5	-	67	5	1	10	1	-	33	6	-	8	-	1	137
	4%	0%	49%	4%	1%	7%	1%	0%	24%	4%	0%	6%	0%	1%	
First/Mid Level Officials and Managers (1.2)	32	35	560	46	-	92	1	6	482	66	-	63	1	9	1,393
	2%	3%	40%	3%	0%	7%	0%	0%	35%	5%	0%	5%	0%	1%	
Professionals (2)	229	223	3,347	252	4	646	12	103	3,368	393	7	826	10	102	9,522
	2%	2%	35%	3%	0%	7%	0%	1%	35%	4%	0%	9%	0%	1%	
Technicians (3)	1	4	92	20	-	3	-	5	75	15	-	5	-	1	221
	0%	2%	42%	9%	0%	1%	0%	2%	34%	7%	0%	2%	0%	0%	
Sales Workers (4)	83	101	693	121	1	31	11	15	1,130	140	4	56	11	34	2,431
	3%	4%	29%	5%	0%	1%	0%	1%	46%	6%	0%	2%	0%	1%	
Administrative Support Workers (5)	6	19	84	19	-	3	-	4	332	63	-	9	1	7	547
	1%	3%	15%	3%	0%	1%	0%	1%	61%	12%	0%	2%	0%	1%	
Craft Workers (6)	8	1	168	30	-	2	1	4	14	6	-	1	-	1	236
	3%	0%	71%	13%	0%	1%	0%	2%	6%	3%	0%	0%	0%	0%	
Operatives (7)	49	27	744	230	2	23	3	26	189	124	3	9	-	13	1,442
	3%	2%	52%	16%	0%	2%	0%	2%	13%	9%	0%	1%	0%	1%	
Laborers and Helpers (8)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Service Workers (9)	1	-	7	1	-	1	-	-	4	-	-	-	-	-	14
	7%	0%	50%	7%	0%	7%	0%	0%	29%	0%	0%	0%	0%	0%	
Total Employees (10)	**414**	**410**	**5,762**	**724**	**8**	**811**	**29**	**163**	**5,627**	**813**	**14**	**977**	**23**	**168**	**15,943**
	3%	3%	36%	5%	0%	5%	0%	1%	35%	5%	0%	6%	0%	1%	
Previous Report Total (11)	**381**	**379**	**5,688**	**705**	**8**	**731**	**29**	**161**	**5,578**	**838**	**12**	**834**	**24**	**158**	**15,526**
	2%	2%	37%	5%	0%	5%	0%	1%	36%	5%	0%	5%	0%	1%	

Exhibit D

[Copy of 2022 Proxy Materials]

Proxy Statement Summary

New in This Year's Proxy Statement

In response to the COVID-19 pandemic, we focused in 2020 on maintaining a reliable supply of our medicines, reducing the strain on the medical system, protecting the health, safety, and well-being of our employees, supporting our communities, and ensuring affordability of and access to our medicines, particularly insulin. In addition, we have been proud to mobilize our scientific and medical expertise to fight COVID-19. As of February 9, 2021, we have received three emergency use authorizations for our COVID-19 therapies, and we are working diligently to support affected patients, communities, and employees during these challenging times.

In addition, we have recently undertaken a comprehensive review of our human capital management initiatives, resources, and progress. In this proxy statement, you will find enhanced disclosure about our approach to human capital management, including diversity and inclusion (D&I), and our governance oversight of these topics. See "Governance—Highlights of the Company's Corporate Governance—Human Capital Management."

Effective January 25, 2021, Gabrielle Sulzberger was elected to the board as a member of the director class of 2021. Ms. Sulzberger was appointed to the Audit Committee and the Ethics and Compliance Committee. Effective February 16, 2021, Kimberly H. Johnson was elected to the board as a member of the director class of 2022. Ms. Johnson was appointed to the Compensation Committee and the Ethics and Compliance Committee. Kathi Seifert, who joined the board in 1995, will retire from the board following the Annual Meeting.

Effective January 1, 2021, our board disbanded the Finance Committee and reorganized the Public Policy and Compliance Committee as the Ethics and Compliance Committee. The former duties of the Finance Committee have been reallocated to the full board, the Audit Committee, and the Compensation Committee. This restructuring reduced the number of board committees to allow more time for meetings of the remaining committees, encouraging longer, more in-depth committee discussions, and allowing the board to have more in-depth discussions on capital allocation matters.

Further, as in past years, our board has approved, and recommends that our shareholders approve, two important management proposals at the Annual Meeting. The board recommends approval of amendments to the company's articles of incorporation to eliminate the classified board structure (see Item 4 herein) and to eliminate supermajority voting provisions (see Item 5 herein). The board believes these two proposals balance shareholder interests and demonstrate its accountability and willingness to take steps that address concerns expressed by shareholders.

Highlights of 2020 Performance

The following provides a brief overview of our 2020 performance in four dimensions: operating performance, progress in our innovation pipeline, business development, and shareholder return, both absolute and relative. See our Annual Report on Form 10-K for the fiscal year ended December 31, 2020 for more details.

We continued to progress our company's purpose and strategy in 2020 as we remained focused on:

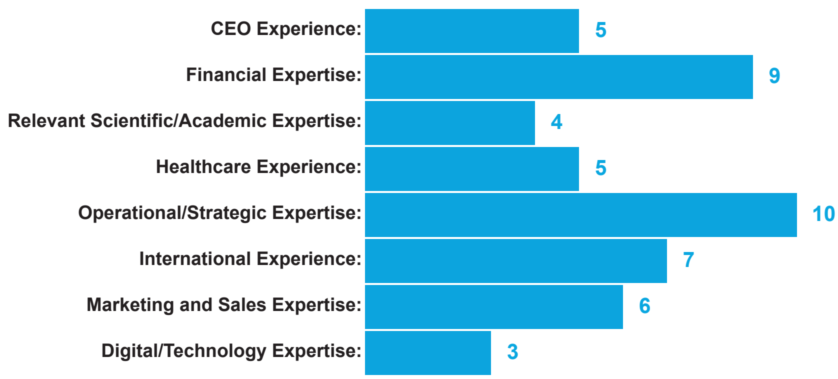
- Discovering, acquiring, and developing first- or best-in-class medicines to address significant unmet needs in our core therapeutic areas—diabetes, oncology, immunology, neurodegeneration, and pain;
- Reaching patients who can benefit from our innovative medicines around the world, directly and through partnership with healthcare systems and collaborators, providing broad access to safe, life-changing medicines;
- Focusing our time and resources on new medicines that our customers value most, delivering volume-driven sustainable growth; and
- Reinvesting in our business and our people to discover new medicines to address unmet medical needs, improve cost productivity, reduce environmental impact and reliably supply quality medicines, while returning capital to shareholders.

We believe our strategic choices, coupled with robust execution, delivered significant value for shareholders and patients in 2020. We reached over 45 million patients globally with our medicines, expanded our patient support programs, achieved significant pipeline advancements and key data readouts across our core therapeutic areas, leveraged external innovation to expand our pipeline, and delivered high total shareholder returns relative to our peers and the S&P 500 index. The discussion below expands on our considerable success in 2020.

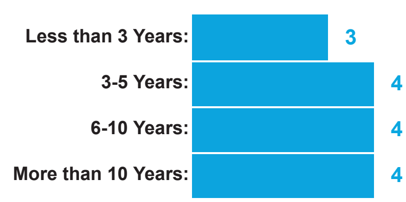
Director Qualifications and Nomination Process

Director Qualifications

Experience: Our directors are responsible for overseeing the company's business consistent with their fiduciary duties. This significant responsibility requires highly skilled individuals with various qualities, attributes, and professional experience. We believe the board is well-rounded, with a balance of relevant perspectives and experience, as illustrated in the following chart. Categories referencing "expertise" indicate that the director is an expert in the field, while "experience" indicates direct experience, including management and oversight of significant operations:



Board Tenure: As the following chart demonstrates, our director composition reflects a mix of tenure on the board, which provides an effective balance of historical perspective and an understanding of the evolution of our business with fresh perspectives and insights. Kathi Seifert, who joined the board in 1995, will retire from the board following the Annual Meeting. Effective January 25, 2021, Gabrielle Sulzberger was elected to the board as a member of the director class of 2021. Ms. Sulzberger was appointed to the Audit Committee and the Ethics and Compliance Committee. Effective February 16, 2021, Kimberly H. Johnson was elected to the board as a member of the director class of 2022. Ms. Johnson was appointed to the Compensation Committee and the Ethics and Compliance Committee. The following graphic highlights the tenure of our current board members:



Diversity: The board strives to achieve diversity in the broadest sense, including persons diverse in geography, gender, ethnicity, age, and experiences. Although the board does not establish specific diversity goals or have a standalone diversity policy, the board's overall diversity is an important consideration in the director selection and nomination process. The Directors and Corporate Governance Committee assesses the effectiveness of board diversity efforts in connection with the annual nomination process as well as in new director searches. The company's 15 directors range in age from 48 to 71 and include six women and seven members of underrepresented groups (including minority group members (MGM) as well as lesbian, gay, bisexual, transgender, or queer (LGBTQ) individuals).

Character: Board members should possess the personal attributes necessary to be an effective director, including unquestioned integrity, sound judgment, a collaborative spirit, and commitment to the company, our shareholders, and other constituencies.

Director Refreshment

Together with our lead independent director, the Directors and Corporate Governance Committee performs periodic assessments of the overall composition and skills of the board to ensure that the board is actively engaged in succession planning for directors, and that our board reflects the viewpoints, diversity, and expertise necessary to support our complex and evolving business. The Directors and Corporate Governance Committee, with input from all board members, also considers the contributions of the individual directors.

The results of these assessments inform the board's recommendations on nominations for directors at the annual meeting of shareholders each year and help provide us with insight on the types of experiences, skills, perspectives, and other characteristics we should be seeking for future director candidates. Based on this assessment, the Directors and

- **Director access to management and independent advisors:** Independent directors have direct access to members of management whenever they deem it necessary, and the company's executive officers attend part of each regularly scheduled board meeting.

CEO Succession Planning

The Compensation Committee, board, and CEO annually review the company's succession plans for the CEO and other key senior leadership positions. The independent directors also meet without the CEO to discuss CEO succession planning.

During these reviews, the CEO and directors discuss:

- future candidates for the CEO and other senior leadership positions
- succession timing
- development plans for the strongest candidates.

The independent directors and the CEO maintain a confidential plan for the timely and efficient transfer of the CEO's responsibilities in the event of an emergency or his sudden departure, incapacitation, or death.

The company ensures that the directors have multiple opportunities to interact with the company's top leadership talent in both formal and informal settings to allow them to most effectively assess the candidates' qualifications and capabilities.

Human Capital Management

Overview and Oversight

At Lilly, dedication to human capital management is a core component of our corporate governance and culture. Our comprehensive approach to human capital management is grounded in our core values of integrity, excellence, and respect for people, which reflect our commitment to creating a safe, supportive, ethical, and rewarding work environment.

The board exercises active oversight over our overall talent management process, including human capital management strategies, corporate culture, and D&I programs. The board also oversees the work of its committees in developing corporate policies and frameworks designed to attract, retain, engage, and develop a workforce that aligns with our values and mission. The Compensation Committee advises the board on human capital management and employee compensation and benefit matters, and annually reviews our leadership development, succession planning practices, and diversity efforts. The Directors and Corporate Governance Committee in turn identifies and brings to the attention of the board, as appropriate, current and emerging social, environmental, political, and governance trends and public policy issues that may affect our business operations, performance, or reputation.

The board also oversees human capital management by regularly engaging with management and facilitating a system of reporting that highlights the importance of D&I to Lilly. For example, as part of our commitment to D&I, our board considers the contributions related to D&I of our CEO and other executive committee members when determining their compensation. Our board also oversees the activities of our CEO and executive committee in setting expectations for inclusive leadership and holding leaders accountable for building diverse and inclusive teams. Our CEO receives regular reports from Lilly’s senior vice president for human resources and diversity. In addition, our chief D&I officer is a vice president who reports to the senior vice president for human resources and diversity, who is a member of our executive committee. We believe this system of oversight and reporting by the board and our key executives is critical to our success in fostering an inclusive, supportive, and rewarding workplace.

Measuring Progress on Diversity and Inclusion

We are committed to fairness and nondiscrimination in our employment practices, and we deeply value diverse backgrounds, skills, and global perspectives. To fulfill our purpose, we believe we must look at challenges from multiple viewpoints and understand the diverse experiences of the patients who depend on us. In short, our differences make a difference—to patients and to our business.

We believe that fostering D&I begins with understanding, and we have approached D&I with the same rigor as our other business-critical priorities. Our *Employee Journeys* research has yielded important insights about the experiences of women, Black/African American, Latinx, Asian, and LGBTQ employees at Lilly. In response to insights from our *Employee Journeys* research, we developed, among others, an education and awareness program to help build cultural literacy and understanding about conditions needed for employees to feel psychologically safe at work. More than 3,000 leaders and 13,000 employees have participated in required training to gain greater awareness of how unconscious bias and microaggressions can harm team cohesiveness and hurt employee engagement. Our *Employee Journeys* research has also resulted in growing energy around D&I, with a company-wide network of D&I champions, initiatives, and teams across business areas—and an expanding appreciation of the value of different perspectives. The results of this research

Role of the Board

Directors are elected by the shareholders to oversee the actions and results of the company's management. The board exercises oversight over a broad range of areas, but the board's key responsibilities include the following (certain of which are carried out through the board's committees):

- providing general oversight of the business
- approving corporate strategy
- approving major management initiatives
- selecting, compensating, evaluating, and, when necessary, replacing the CEO, and compensating other senior executives
- ensuring that an effective succession plan is in place for all key senior leadership positions and reviewing our broader talent management process, including human capital management strategies, overall corporate culture, and D&I programs
- overseeing the company's ethics and compliance program and management of significant business risks
- selecting, compensating, and evaluating directors
- overseeing the company's enterprise risk management program
- overseeing the company's approach to current and emerging political, social, environmental, and governance trends and public policy issues that may affect the company.

The board takes an active role in its oversight of our corporate strategy. Each year, the board and executive management closely examine the company's strategy, including key risks and decisions facing the company. Decisions reached in this session are updated throughout the year, including as the board discusses the company's financial performance, the performance of our business units, and progress in our product pipeline.

Board Composition and Requirements

Mix of Independent Directors and Officer-Directors

We believe there should always be a substantial majority (75 percent or more) of independent directors. The CEO should be a member of the board.

Voting for Directors

In an uncontested election, directors are elected by a majority of votes cast. An incumbent nominee who fails to receive a greater number of votes "for" than "against" his or her election will tender his or her resignation from the board (following the certification of the shareholder vote). The board, on recommendation of the Directors and Corporate Governance Committee, will decide whether to accept the resignation. The company will promptly disclose the board's decision, including, if applicable, the reasons the board rejected the resignation.

Director Tenure and Retirement Policy

Non-employee directors must retire from the board no later than the date of the annual meeting that follows their seventy-second birthday, although the Directors and Corporate Governance Committee may recommend exceptions to this policy. The Directors and Corporate Governance Committee, with input from all board members, also considers the contributions of the individual directors annually, with a more robust assessment at least every three years when considering whether to nominate directors to new three-year terms. The company has not adopted term limits because the board believes that the company benefits from having a mix of longer- and shorter-tenured members of the board.

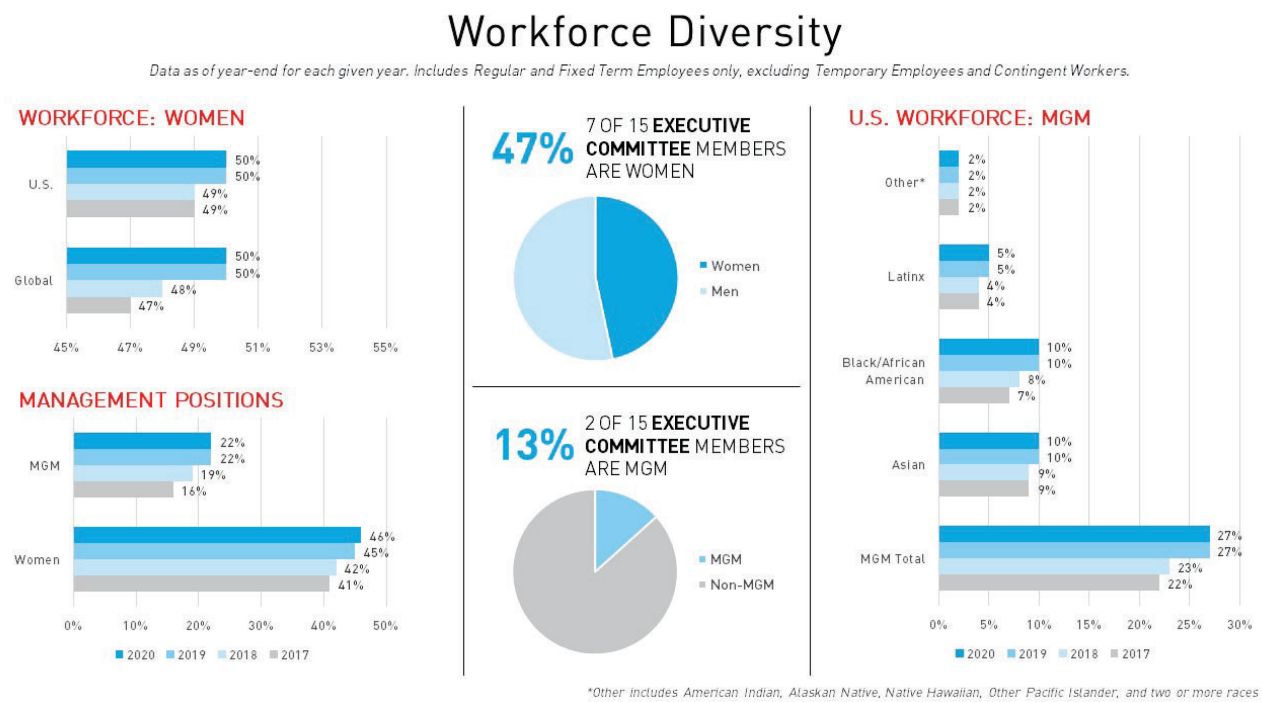
Other Board Service

To ensure proper engagement from our directors and effective functioning of our board, we have instituted certain limitations on service on the boards of other companies. In general, no director may serve on more than three other public company boards. The Directors and Corporate Governance Committee may approve exceptions if it determines that the additional service will not impair the director's effectiveness on the Lilly board.

Board Confidentiality Policy

The board has adopted a Confidentiality Policy, applicable to all current and future members of the board. The policy prohibits a director from sharing confidential information obtained in his or her role as a director with any third party except under limited circumstances where the director is seeking legal advice or is required by law to disclose information. The Confidentiality Policy can be viewed on the company's website: lilly.com/leadership/governance.

are reviewed by our senior leadership, and we deploy actions and activities in response to these insights to improve our workplace and corporate culture.



Since 2017, we have committed to increasing the number of women, Black/African American, Latinx, and Asian populations in leadership roles, and we actively monitor our progress. From the end of 2017 through the end of 2020, we increased the number of women in management globally from 41 percent to 46 percent. For MGM in the U.S. over the same period, we increased management representation from 16 percent to 22 percent. Across all levels of our workforce, from the end of 2017 through the end of 2020, we have seen increased representation for MGMs in the U.S. and women globally.

Our focus on D&I is also a critical component of our broader corporate governance. Seven of 15 members (approximately 47 percent) of our executive committee (which includes our CEO) are women and two are MGM, including one MGM woman. In addition, the company's 15 directors range in age from 48 to 71 and include six women and seven members of underrepresented groups (including MGM as well as LGBTQ individuals).

Recognition

At Lilly, we strive to be leaders in D&I and workplace benefits, and we are honored when we receive recognition for our dedicated efforts to improve the lives of our employees. Below are some of our accolades for 2020 and early 2021:

Ethisphere: World's Most Ethical Companies	**DiversityInc:** Top 50 Companies for Diversity: #3	**Forbes:** America's Best Employers for Diversity
Forbes and JUST Capital: Forbes JUST 100, America's Most JUST Companies	**Human Rights Campaign Foundation (2020 and 2021):** Corporate Equality Index – Perfect Score	**Newsweek** America's Most Responsible Companies
National Organization on Disability: 2020 Leading Disability Employer	**Science Magazine:** Top Employers: #16	**Working Mother Magazine:** 100 Best Companies, Top 75 Companies for Executive Women, Best Companies for Dads, and Best Companies for Multicultural Women

Employee Development

We believe talent begins with the hiring process. We therefore require hiring managers to consider a diverse pool of candidates and we strive to provide a diverse panel of interviewers for open positions. We believe that hiring in this way helps ensure that people from all backgrounds have equal opportunity to advance their careers.

We offer training to enable our employees to perform their duties in our highly regulated industry. We also strive to cultivate a culture that promotes ongoing learning by encouraging employees to seek further education and growth experiences, helping them build rewarding careers. We have introduced online programming to facilitate access to our learning and development offerings. Many training courses are designed to improve accessibility for people with disabilities and other unique needs. Across Lilly, we are working to design learning experiences to be more inclusive and effective.

To further improve our talent programs and processes, in 2019, we introduced *Explore Your Career*, a global framework of tools and resources for our employees. We believe *Explore Your Career* provides broader access and transparency about career development and advancement at Lilly. In 2018, we introduced *Emerge*, a three-day program led by our CEO that is designed to develop MGM talent at Lilly, and three cohorts comprising Black/African American women, Latinx and Asian women, and MGM men have participated in this enterprise-level program since its inception. Lilly also offers established leadership development programs for women and earlier career multi-cultural talent, as well as leaders at all levels.

Employee resource groups (ERGs) are another important component of developing talent at Lilly. We currently have 10 ERGs representing groups including women, MGMs, LGBTQ individuals, and people with disabilities. ERGs offer our diverse workforce opportunities to build relationships, engage with senior leaders, advance our caring community, and offer unique insights and perspectives to improve our business. Membership in our ERGs continues to grow, with an estimated 11,430 people participating worldwide at the end of 2020.

In furtherance of our efforts to create an inclusive workplace, in 2020 we expanded *Make it Safe to Thrive*, an education and awareness program to help employees and leaders understand how individual psychological safety can be created and enhanced, with the goal of ensuring that all employees feel safe to speak up and to share their ideas at work. The program includes live and online training and a monthly video series.

Compensation, Benefits, and Pay Equity

While our rewards programs vary around the world, we take a holistic approach to employee benefits. These may include flexible work arrangements, on-site conveniences, such as cafes, fitness centers, child development centers, competitive time-off programs, retirement benefits, and health and disability programs that are available to eligible employees when they need support. We are committed to rewarding, supporting, and developing our employees who make it possible to fulfill our mission to unite caring with discovery to create medicines that make life better for people around the world.

We are also committed to ensuring pay is administered equitably across our workforce. For more than 20 years, we have regularly conducted pay equity studies of our workforce in the U.S. and have more recently started conducting studies of our workforce outside of the U.S. While infrequent, we have made pay adjustments as warranted based on these analyses. We believe that pay equity is critical to our success in supporting a global, diverse, and inclusive workforce.

Employee Health and Safety

Due to concerns regarding the ongoing COVID-19 pandemic, we have taken various measures to protect the health and safety of our employees, including instituting travel restrictions and work-from-home arrangements. For further information on the measures we have taken in response to COVID-19, see "Proxy Statement Summary—Our Response to COVID-19—Keeping Our Employees Safe and Healthy."

Board Education and Annual Performance Assessment

The company engages in a comprehensive orientation process for incoming new directors. Directors also attend ongoing continuing education sessions on areas of particular relevance or importance to our company, and we hold periodic mandatory training sessions for the Audit Committee.

Every year, the Directors and Corporate Governance Committee, together with the chair and the lead independent director, conducts a robust assessment of the board's performance, board committee performance, and all board processes, based on input from all directors. We also conduct an annual assessment of each individual director's performance, and every three years we conduct a detailed review of individual director performance when considering whether to nominate the director to a new three-year term.

Conflicts of Interest and Transactions with Related Persons

Conflicts of Interest

Occasionally a director's business or personal relationships may give rise to an interest that conflicts, or appears to conflict, with the interests of the company. As outlined in the company's corporate governance guidelines, directors must disclose to the company all relationships that could create a conflict or an appearance of a conflict. The board, after consultation with counsel, takes appropriate steps to identify actual or apparent conflicts and ensure that all directors voting on an issue are disinterested with respect to that issue. A director may be excused from board discussions and decisions on an issue related to an actual or apparent conflict, as appropriate.

In addition, a director’s relationship with Lilly may give rise to an interest that conflicts, or appears to conflict, with the interests of another company, institution, or other stakeholder. A director must disclose his or her relationship with Lilly in connection with any scientific publication, using the International Committee of Medical Journal Editors (ICMJE) conflict of interest form for this purpose when possible. Each director must disclose his or her service on the board to his or her employer and any other organization with which the director has a relationship of trust and where the relationship with the company is relevant. In addition, directors must follow the internal conflict of interest policies and procedures of each such organization.

Review and Approval of Transactions with Related Persons

The board has adopted a policy and procedures for review, approval, and monitoring of transactions involving the company and related persons (directors and executive officers, their immediate family members, or shareholders of more than five percent of the company’s outstanding stock). The policy covers any related person transaction that meets the minimum threshold for disclosure in this proxy statement under relevant SEC rules (generally, transactions involving amounts exceeding $120,000 in which a related person has a direct or indirect material interest).

Policy:

Related person transactions must be approved by the board or by a committee of the board consisting solely of independent directors, who will approve the transaction only if the board or committee determines that it is in the best interests of the company. In considering the transaction, the board or committee will consider all relevant factors, including:

- the company’s business rationale for entering into the transaction
- the alternatives to entering into a related person transaction
- whether the transaction is on terms comparable to those available to third parties, or in the case of employment relationships, to employees generally
- the potential for the transaction to lead to an actual or apparent conflict of interest and any safeguards imposed to prevent such actual or apparent conflicts
- the overall fairness of the transaction to the company.

- delivered on the company's financial commitments despite the withdrawal of Lartruvo® (olaratumab) globally in the first quarter of 2019
- launched BAQSIMI® (glucagon), a new form of glucagon for diabetes, and received approval for Reyvow® in the United States. Additionally, 15 new medicines were launched to patients in Europe, Japan, and the rest of world, including three launches in China: Trulicity, Olumiant, and Taltz
- progressed 16 potential new medicines into Phase I clinical development from both internal research efforts and external sources
- continued to drive a cross-company productivity agenda resulting in savings that funded increased investment in research and development and achieved planned capital return to shareholders
- completed the divestiture of Elanco
- completed the acquisition of Loxo Oncology, Inc. (Loxo), the largest acquisition in the company's history and submitted selpercatinib (also known as Loxo 292) to the FDA for the treatment of metastatic rearranged during transfection (RET) fusion-positive non-small cell lung cancer and thyroid cancer
- implemented a strategy that improved D&I across the company, increased the representation of women and minorities in management, and conducted pay equity studies to ensure equality in pay. The company was recognized for its efforts by receiving the Catalyst award recognizing our initiatives for workplace gender equity and was ranked #3 on the Diversity Inc. top 50 companies list
- improved certain environmental performance areas, such as greenhouse gas emissions, energy efficiency, waste efficiency, and wastewater
- initiated work to refresh our long-term goals for environmental, safety, and governance to ensure the company is fulfilling its objectives in these areas.

In addition, the company was named one of the world's most ethical companies by the Ethisphere Institute.

Daniel Skovronsky, M.D., Ph.D., Senior Vice President, Chief Scientific Officer, and President, Lilly Research Laboratories: Dr. Skovronsky advanced innovation for patients during his first full year as the company's chief scientific officer. His contributions in 2019 include:

- advanced innovative medicines through the product pipeline including the first approval Baqsimi, a new form of glucagon for diabetes, and Reyvow for treatment of acute migraine in the United States. The company also achieved approval for 15 new medicines for patients in Europe, Japan and the rest of world including three launches in China: Trulicity, Olumiant, and Taltz
- co-led the acquisition of Loxo, the largest acquisition in the company's history
- sped research resulting in 16 potential new medicines advancing to Phase I clinical development including both internally discovered molecules and molecules sourced externally via business development, the most the company has achieved in more than a decade
- enhanced strategies to further reduce the time drug candidates spend in development, leading to earlier product launch
- led Lilly's external research efforts, including expansion of key research hubs in New York, Boston and San Francisco
- led D&I strategies in research and development to improve innovation and productivity; acted as executive sponsor of Lilly's Japanese Network, an employee resource group focused on supporting and advancing people of Japanese heritage in the company.

Anat Hakim, Senior Vice President, General Counsel and Secretary: Ms. Hakim joined Lilly as senior vice president and general counsel in February 2020. In October 2020, Ms. Hakim was elected secretary by the board, thereby changing her title to senior vice president, general counsel and secretary. Prior to joining Lilly, Ms. Hakim served as executive vice president, general counsel and secretary of WellCare Health Plans. Ms. Hakim began her career at Latham & Watkins LLP after earning her law degree from Harvard University. She later moved to Foley & Lardner LLP. In 2010 she joined Abbott Laboratories (Abbott) as divisional vice president and associate general counsel for intellectual property litigation supporting Abbott's pharmaceutical business; in 2013, she was named associate general counsel for litigation. Ms. Hakim was recognized as general counsel of the year in 2019 by Corporate Counsel for her work at WellCare Health Plans.

Alfonso Zulueta, Senior Vice President and President, Lilly International: Mr. Zulueta demonstrated strong leadership of Lilly International and across the company. In 2019, he:

- delivered strong financial results from volume driven growth across multiple therapeutic areas including diabetes, immunology, and oncology
- successfully launched numerous products in multiple countries and therapeutic areas, resulting in strong product market shares
- built new capabilities with digital technologies to meet customer needs
- drove a productivity agenda across Lilly International

in value based on the closing price per share of Lilly common stock on the date of settlement), and all other outstanding and previously approved but not yet granted equity incentive awards, totaling over $20 million at target value (calculated based on the closing price of the company's common stock on the day before Mr. Smiley's resignation). Mr. Smiley will be available to the company's chief executive officer and his successor as chief financial officer through July 2021 to facilitate the transition of his responsibilities, at reduced cash compensation of $9,000 every two weeks. The Separation Agreement includes customary provisions regarding confidentiality and a release of claims against the company, as well as a 24-month non-solicitation agreement and an 18-month non-competition agreement.

The table below reflects the compensation forfeited by Mr. Smiley in connection with the Separation Agreement. The value of the forgone equity awards were calculated using a price of $205.77, the closing price of the company's common stock on the day before Mr. Smiley's resignation, and assuming a payout at target (except for (i) the 2018-2020 SVA, which reflects the 25% reduction in the earned payout implemented by the Compensation Committee and (ii) the 2019-2021 PA, which reflects actual company performance through the performance period). The 2021 target bonus and equity award levels had been approved but the awards had not yet been granted as of Mr. Smiley's resignation.

Name	Compensation Element	Forfeited or Reduced Shares	Forfeited or Reduced Value
Mr. Smiley	2020 Bonus	N/A	$1,102,317[1]
	2018-2020 SVA	15,070	$3,100,954[1]
	2019-2021 SVA	17,584	$3,618,260[2]
	2019-2021 PA	14,453	$2,973,994[3]
	2020-2022 SVA	8,910	$1,833,411[2]
	2020-2022 RVA	6,420	$1,321,043[2]
	2020-2022 PA	7,209	$1,483,396[2]
	2021-2023 Equity Awards	N/A	$3,700,000[2]
	2021 Bonus	N/A	$1,000,000[4]
	Total		$20,133,375

[1] Reflects the actual amount forfeited by Mr. Smiley in connection with the Separation Agreement.

[2] Represents the target amount forfeited by Mr. Smiley in connection with the Separation Agreement and the corresponding number of shares based on the closing price of the company's common stock on the day before Mr. Smiley's resignation. The actual amount and number of shares that will be awarded to participants who remain eligible for payout under these award programs may be above or below target based on company performance. With respect to Mr. Smiley's 2021-2023 equity awards, the value listed represents the target value approved by Compensation Committee in December 2020; this amount was cancelled by the Compensation Committee prior to any target shares being granted.

[3] Reflects the number of restricted stock units earned by Mr. Smiley after adjusting for company performance during the 2019-2020 performance period. The value forfeited is based on the closing price of the company's common stock on the day before Mr. Smiley's resignation. The Compensation Committee cancelled this award prior to its conversion to a 13-month service vesting restricted stock unit.

[4] Represents the 2021 target bonus amount forfeited by Mr. Smiley in connection with the Separation Agreement. The actual amount that will be awarded to participants who remain eligible for payout under the 2021 Bonus may be above or below target based on participant and company performance.

CEO Pay Ratio

Lilly's compensation and benefits philosophy across the organization is to encourage and reward all employees who contribute to our success. We strive to ensure the pay of every Lilly employee reflects the level of their job impact and responsibilities and is competitive within our peer group. Lilly's ongoing commitment to pay equity is critical to our success in supporting a diverse workforce with opportunities for all employees to grow, develop, and contribute.

Below is the 2020 annual total compensation of our CEO and our median employee and the ratio of the annual total compensation of our CEO to that of our median employee.

CEO Pay Ratio:	
CEO Annual Total Compensation*	$23,708,629
Median Employee Annual Total Compensation	$101,752
CEO to Median Employee Pay Ratio	233:1

*This annual total compensation is the "Summary Compensation Table" amount.

Exhibit E

[Empowering a Diverse Workforce]

Empower A Diverse Workforce

At Lilly, we believe in the power of diversity, equity and inclusion (DEI) to fulfill our purpose of creating medicines that make life better for people around the world. At our core, we believe that by leveraging the varied backgrounds of our more than 35,000 employees – and by driving actionable and measurable strategies to improve DEI, including diversity within our clinical trials – we can better deliver scientific breakthroughs.

We take a data-driven approach to DEI so that our business and employee base better reflect the world around us. We recognize that the wide array of races, ethnicities, abilities, ages, religions, sexual orientations, genders and political views in our communities serve as a catalyst for innovation and creativity that contribute to the health and prosperity of society.

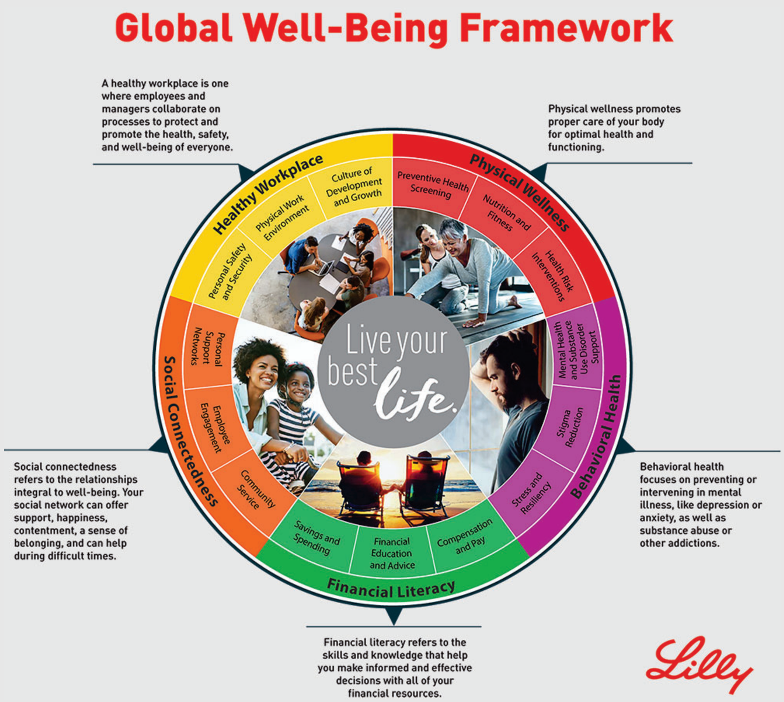
Lilly's values of integrity, excellence and respect for people foster an environment where employees are encouraged to speak up, share ideas and be fully engaged, while bringing their authentic selves to work every day. We strive to create a culture where each person feels welcomed, respected, valued and heard. Our strategic DEI priorities are designed to empower our organization with inclusion capabilities, embed equity in our processes and elevate our business outcomes. We believe that with an inclusive culture, Lilly can innovate, accelerate and deliver life-changing medicines that make a difference.

Employee Well-being

We strive to make Lilly a place where our employees enjoy meaningful work, build successful careers and make important contributions to society. Our approach to employee well-being means fostering a healthy, vibrant work environment while also enriching our employees' lives with their families and in their communities. We believe this holistic approach helps Team Lilly be our best – more collaborative, more creative and more engaged – as we deliver on our company purpose.

The pandemic has forced all of us to work in new ways and we supported one another as we all adapted. From enhancing local benefits related to health care, childcare and time off, to expanding access to home office ergonomic support equipment — Lilly supported employees in a variety of ways. Learn more about our approach to employee well-being.

Lilly's Global Well-Being Framework



Employee Safety

Nothing is more important than the safety of our people. That's why in 2013 we created aggressive goals to reduce injuries and vehicle collision rates. Through focused efforts to improve our safety culture, empower our employees, reduce workplace risks and continuously improve our safety programs, we have made considerable progress and report this out annually.

Looking to the future, we will continue efforts to improve our safety culture and increase our focus on the reduction of our most significant employee-safety risks. Learn more about our approach to employee safety.

Keeping our Employees Safe During a Global Pandemic

As COVID-19 spread around the world, Lilly moved quickly to protect our employees by restricting travel, practicing social distancing and moving to a work-from-home policy for everyone but those with jobs that are essential to ensuring supply of medicines. See our global COVID-19 response page for more information.

Learning and Development

Our learning and development programs are designed to keep employees engaged as they make meaningful contributions toward our company's purpose. We offer the training our employees need to do their jobs in the highly regulated pharmaceutical platform contains tools and guidance for employees and their managers to discuss career aspirations, skills and interests; map career scenarios; and develop necessary skills. In addition to live programs, there is an online portal with thousands of courses that cover business, technical and creative fields. Resources are personalized based on employee profile and are accessible anytime and from anywhere. Learn more about our approach to learning and development..

View Our ESG Report

> To solve some of the toughest challenges in medicine, we need the best people with the best, most creative ideas. We embrace our differences, and it's driving business success.

David A. Ricks
Chair and CEO

Our Racial Justice Commitment

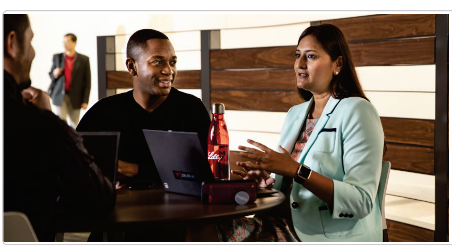
Learn More

Celebrating Our Differences

Find Your Place at Lilly

Our Approach to DEI

Visit Our ESG Site



Position Statements

Positions on Key Issues

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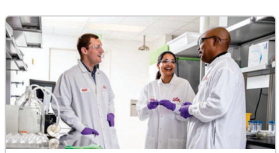


DiversityInc No. 3

Juan Granados-

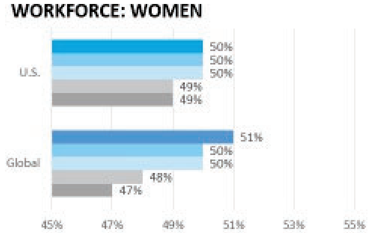
Exhibit F

[Workforce Diversity Infographic]

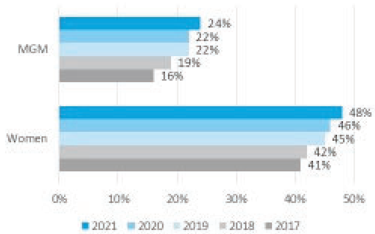
Workforce Diversity

Data as of year-end for each given year. Includes Regular and Fixed Term Employees only, excluding Temporary Employees and Contingent Workers.

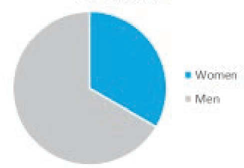
WORKFORCE: WOMEN



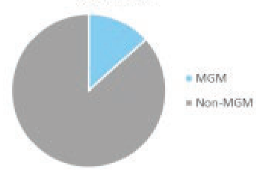
MANAGEMENT POSITIONS



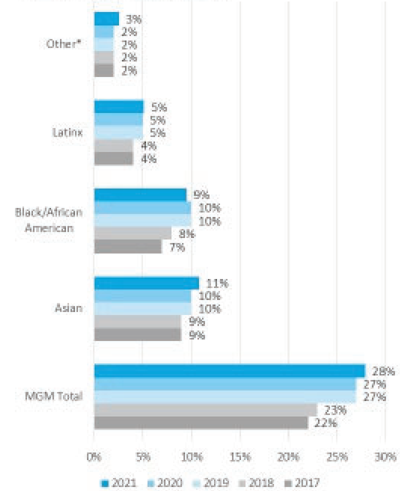
33% 5 OF 15 **EXECUTIVE COMMITTEE** MEMBERS ARE WOMEN



13% 2 OF 15 **EXECUTIVE COMMITTEE** MEMBERS ARE MGM



U.S. WORKFORCE: MGM



**Other includes American Indian, Alaskan Native, Native Hawaiian, Other Pacific Islander, and two or more races.*

Exhibit G

[Diversity & Inclusion Progress Report]

Lilly

Our Diversity & Inclusion Progress Report

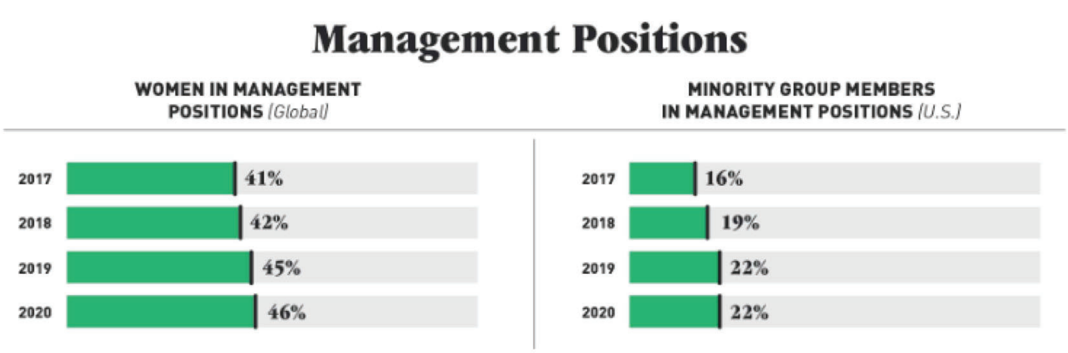
March 19, 2021 Posted by: Eli Lilly and Company

Employee Experience | Diversity & Inclusion | Leadership | LGBTQ | Caring

Lilly has been working for decades to build a stronger, more diverse workforce. And although there is much more to do, we have made progress in the past four years by treating diversity and inclusion (D&I) with the same rigor and focus as other business priorities.

We've set aspirational goals to increase the number of women and minorities in management. We therefore require hiring managers to consider a diverse pool of candidates, and we strive to provide a diverse panel of interviewers for open positions. Every hiring manager is instructed to hire only the best-qualified candidate for each job. We believe that hiring in this way helps ensure that people from all backgrounds have equal opportunity to advance their careers.

From the end of 2017 through the end of 2020, we increased the percentage of women in management globally from 41% to 46%. For racial and ethnic minorities and other non-majority members in the United States over that same period, we increased management representation from 16% to 22%. Across all levels of our workforce last year, we saw increased representation for minorities in the United States and women globally.

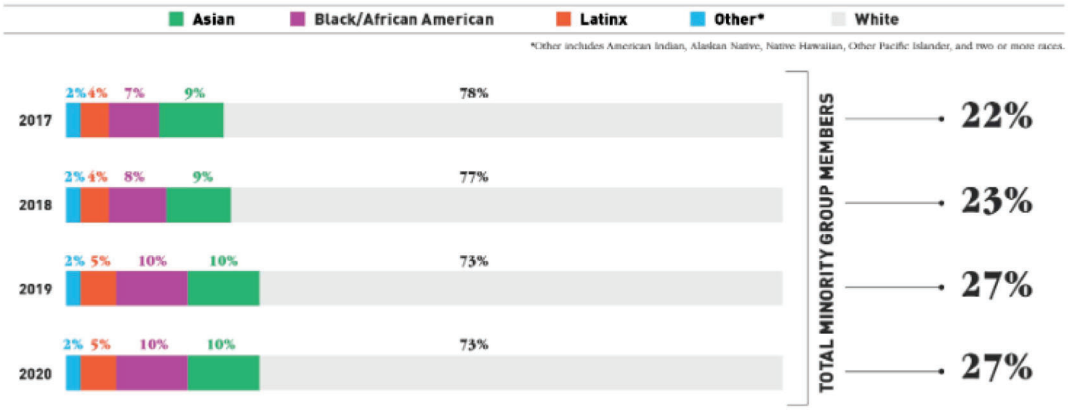


We're also making the top leadership of our company diverse. On our executive committee, which reports directly to the CEO, seven of 15 members are women (approximately 47%), including one who is a minority group member. Our 15-member board of directors includes six women (40%) and seven members of underrepresented groups, including minority group members and lesbian, gay, bisexual, transgender and queer (LGBTQ) individuals.

We're not stopping at managers and executives. Across our entire global workforce, 50% of Lilly's employees are women. In the

United States, the percentage of our employees who are minority group members has risen from 22% in 2017 to 27% last year.

U.S. Workforce



We want all our employees, no matter their backgrounds, to feel welcome and included at Lilly. We've taken several steps to achieve even greater inclusion across our company:

1. **Employee Journeys:** a series of research projects to understand the experience of women and minorities in our company. These Journeys have led to several initiatives to build in greater equality and cultural understanding across our company.
2. **Make It Safe to Thrive:** an education and awareness program to help employees and leaders understand how individual psychological safety can be created and enhanced, with the goal of ensuring that all employees feel safe to speak up and to share their ideas at work.
3. **Employee Engagement:** Lilly's employee resource groups (ERGs) continue to grow, with more than 11,000 people participating worldwide. We have several corporate international ERGs representing women, minority group members, LGBTQ individuals, early career professionals and people with disabilities. Many geographies also have local organizations.

From the [2020 Integrated Summary Report](). Learn more about how Lilly [empowers a diverse workforce]().

AS YOU SOW
30 YEARS 1992 – 2022
2020 Milvia St. Suite 500
Berkeley, CA 94704
www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

January 23, 2023

VIA EMAIL

Office of Chief Counsel
Division of Corporate Finance
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Email: shareholderproposals@sec.gov

Re: Shareholder Proposal to Eli Lilly & Company Regarding Effectiveness of Company's DEI Initiatives on Behalf of Curtis Overway and Marcelina Cravat-Overway

Ladies and Gentlemen:

Curtis Overway and Marcelina Cravat-Overway (the "Proponent") is the beneficial owner of common stock of Eli Lilly & Co. (the "Company" or "Eli Lilly") and has submitted a shareholder proposal (the "Proposal") to the Company. The Proponent has designated *As You Sow* to act as its representative with respect to the Proposal, and it is in that capacity that I write in response to the letter dated December 23, 2022 (the "Company Letter") sent to the Securities and Exchange Commission by Sarkis Jebejian of Kirkland & Ellis LLP on the Company's behalf. In the Company Letter, the Company contends that the Proposal may be excluded from the Company's 2023 proxy statement. Proponent's response follows. A copy of this letter is being emailed concurrently to the Company and its counsel.

SUMMARY

The Proposal requests that the Board of Directors (the "Board") issue a report to shareholders on the effectiveness of its diversity, equity, and inclusion ("DEI") efforts and asks that the report provide transparency on outcomes, using quantitative metrics for hiring, retention, and promotion of employees, including data by gender, race, and ethnicity. The Company Letter, citing to certain limited disclosures in the Company's EEO-1 data and its ESG report, asserts that the Proposal is excludable under Rule 14a-8(i)(10) because it has been substantially implemented. However, the Company's current disclosures do not provide information necessary to demonstrate the effectiveness of its DEI efforts, specifically "quantitative metrics for hiring, retention, and promotion of employees, including data by gender, race, and ethnicity." Because the Company has not provided the disclosure requested, it has not fulfilled the Proposal's specific request. Nor do its existing disclosures fulfill the Proposal's essential purpose, which is to provide sufficient information to evaluate the effectiveness of the Company's programs through the provision of comprehensive hiring, retention, and promotion data.

The Company Letter also asserts that the Proposal is excludable under Rule 14a-8(i)(7) because it relates to the Company's ordinary business. However, the Proposal requests a report addressing a significant policy issue that transcends ordinary business and does not seek to micromanage or otherwise inappropriately interfere with the Company's ordinary business.

The materials attached demonstrate that the Company has no basis under Rule 14a-8 for exclusion of the Proposal. As such, the Proponent respectfully requests that the Staff inform the Company that it is denying the no action request.

THE PROPOSAL

BE IT RESOLVED: Shareholders request that Eli Lilly and Co. ("Eli Lilly") report to shareholders on the effectiveness of the Company's diversity, equity, and inclusion efforts. The report should be done at reasonable expense, exclude proprietary information, and provide transparency on outcomes, using quantitative metrics for hiring, retention, and promotion of employees, including data by gender, race, and ethnicity.

SUPPORTING STATEMENT: Quantitative data is sought so investors can assess and compare the effectiveness of the Company's diversity, equity, and inclusion programs.

WHEREAS: Eli Lilly has not shared sufficient quantitative hiring, retention, and promotion data to allow investors to determine the effectiveness of its human capital management programs.

Between September 2020 and September 2022, S&P 100 companies increased by 298 percent their release of hiring rate data by gender, race, and ethnicity; retention rate data by 481 percent; and promotion data by 300 percent.[1] Companies that release, or have committed to release, more inclusion data than Eli Lilly include CVS Health, Gilead Sciences, Illumina, Pfizer, and UnitedHealth Group.

Numerous studies have pointed to the benefits of a diverse workforce. Their findings include:

- There is a positive association between diversity in management and cash flow, net profit, revenue, and return on equity.[2]
- Companies in the top quartile for gender diversity are 21 percent more likely to outperform on profitability.[3]
- The 20 most diverse companies had an average annual five year-stock return that was 5.8 percentage points higher than the 20 least diverse companies.[4]

Similar to how an income statement pairs with a balance sheet, hiring, promotion, and retention rate data show how well a company manages its workforce diversity. Without this data, investors are unable to assess the effectiveness of a company's human capital management program.

Companies should look to hire the best talent. However, Black, and Latino applicants face hiring challenges. Results of a meta-analysis of 24 field experiments found that, with identical resumes, White applicants received an average of 36 percent more callbacks than Black applicants and 24 percent more callbacks than Latino applicants.[5]

Promotion rates show how well diverse talent is nurtured at a company. Unfortunately, women and employees of color experience "a broken rung" in their careers; for every 100 men who are promoted, only 86 women are. Women of color are particularly impacted, comprising 17 percent of the entry-level workforce and only four percent of executives.[6]

Retention rates show whether employees choose to remain at a company. Morgan Stanley has found that employee retention above industry average can indicate a competitive advantage and higher levels

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[1] https://www.asyousow.org/our-work/social-justice/workplace-equity
[2] https://www.asyousow.org/report-page/workplace-diversity-and-financial-performance
[3] Ibid
[4] https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200
[5] https://hbr.org/2017/10/hiring-discrimination-against-black-americans-hasnt-declined-in-25-years
[6] https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2021.pdf

of future profitability.[7] Companies with high employee satisfaction have also been linked to annualized outperformance of over two percent.[8]

Investors have reason to be concerned as Eli Lilly has faced allegations of age, sex, and race discrimination.

ANALYSIS

I. The Company has not substantially implemented the Proposal.

The Proposal has not been substantially implemented under Rule 14a-8(i)(10). The Proposal requests that the Board report to shareholders on the *effectiveness* of the Company's DEI efforts, using quantitative metrics, with transparency on hiring, retention, and promotion outcomes of employees by gender, race, and ethnicity. Investors seek this quantitative data to assess, understand, and compare the effectiveness of companies' DEI efforts, which is correlated with value and performance.

The Company Letter asserts that the Proposal may be excluded from the 2023 Proxy materials as substantially implemented pursuant to Rule 14a-8(i)(10). In order for the Company to meet its burden of proving substantial implementation, it must demonstrate that its "particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991). It must also show that it has addressed the proposal's underlying concerns and essential objectives. *See Exelon Corp.* (Feb. 26, 2010) (concurring in company's exclusion where company acknowledged that "Rule 14a-8(i)(10) requires a company's actions to have addressed both the proposal's underlying concerns and its essential objective"); *accord. Best Buy Co., Inc.* (Apr. 22, 2022). With respect to resolutions seeking disclosure of data, a proposal is not substantially implemented by the company's disclosure of data inadequate to meet the essential purpose of the proposal. *See Pfizer Inc.* (Feb. 10, 2022) (evaluating substantially similar proposal to one at issue here, concluding it had not been substantially implemented where company's existing disclosures fell short of those sought by proposal). Here, the Company has fulfilled neither the guidelines nor the essential purpose of the Proposal.

A. The guidelines and essential purpose of the Proposal

The Proposal's <u>guidelines</u> ask that the requested report provide quantitative data on outcomes for the hiring, retention, and promotion of employees by gender, race, and ethnicity.

The <u>essential purpose</u> of the Proposal is to make publicly available to investors data necessary to allow investors to assess whether the Company's DEI practices and culture support effective hiring, retention, and promotion, given the correlation between the effectiveness of these practices and company performance. This purpose is apparent in the "Resolved" clause, which seeks "transparency on outcomes;" the "Supporting Statement" which states that investors need this data to "assess and compare the effectiveness of the Company's [DEI] programs;" and the "Whereas" clauses, which explain the importance of investor access to this data and make clear that the Company's current disclosures are insufficient, both objectively and when compared to peers, to permit investors to make these relevant comparisons.

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[7] https://www.morganstanley.com/im/publication/insights/articles/article_culturequantframework_us.pdf
[8] https://www.institutionalinvestor.com/article/b1tx0zzdhhnf5x/Want-to-Pick-the-Best-Stocks-Pick-the-Happiest-Companies?utm_medium=email&utm_campaign=The%20Essential%20II%20100721&utm_content=The%20Essential%20II%20100721%20CID_eb103a9e15359075f72a85f7ff534c79&utm_source=CampaignMonitorEmail&utm_term=Want%20to%20Pick%20the%20Best%20Stocks%20Pick%20the%20Happiest%20Companies

B. Contrasting the Company Letter and actions with the Proposal

The Company Letter argues that the Proposal has been substantially implemented "because the Company already publicly reports information about its DEI efforts." Company Letter, at 6. In particular, the Company points to: (1) descriptions of its commitment to DEI and descriptions of its DEI programs, and (2) certain disclosures on gender, race, and ethnicity in its ESG Report, proxy materials, and website. Qualitative descriptions of the Company's DEI programs, however, do not substantially implement the Proposal, which seeks quantitative data on the effectiveness of those programs. Further, the Company's existing disclosures fall far short of the information requested in the Proposal which is sought to allow investors to evaluate the effectiveness of the Company's programs and make effective comparisons with peers.

1. *Qualitative descriptions of the Company's DEI programs, by definition, do not constitute substantial implementation of a proposal seeking data on the effectiveness of those programs.*

On pages 7-14 of the Company Letter, the Company provides a table of the disclosures it argues substantially implement the Proposal. However, a substantial proportion of the excerpts contained in this table constitute vague, *qualitative* descriptions of: (a) the Company's belief in the importance of diversity, equity, and inclusion, and/or (b) the Company's DEI efforts or programs. The Proposal does not ask the Company to publicly reaffirm its belief in the value of DEI efforts, to qualitatively describe its existing DEI programs, or to implement DEI programs. As such, these qualitative descriptions, which constitute *all* of the disclosures on pages 7-10 of the table and many of those thereafter, cannot be understood to substantially implement the Proposal. This is dictated both by basic logic — a resolution seeking a report on the effectiveness of X cannot be substantially implemented by merely reaffirming that X exists — and by Staff precedent. *See Pfizer Inc.* (no substantial implementation where proponent argued "the proposal does not ask for affirmation that DEI programs exist at Pfizer, nor for additional reporting on what those programs are"); *EOG Resources, Inc.* (Jan. 30, 2015) (no substantial implementation based on company's actual reduction of methane emissions where proposal sought *review* of methane reduction programs).

None of the Staff precedent cited by the Company, discussed in greater depth *infra*, supports the position that qualitative descriptions of DEI programs substantially implement a proposal seeking data demonstrating the effectiveness of DEI programs.

2. *Disclosures concerning effectiveness of Company's DEI efforts with respect to race and ethnicity in hiring, retention, and promotion.*

On pages 11-14 of its Letter, the Company also points to the existence of certain quantitative disclosures. These disclosures fall far short of the information identified in the Proposal's <u>guidelines</u> and likewise fail to fulfill its <u>essential purpose</u> of allowing investors to make relevant judgments and comparisons about the effectiveness of the Company's DEI programs. While the Company provides a snapshot of diversity numbers at certain points in time, the Company's data does not include the following requested diversity data necessary to understand whether the Company's DEI programs are effective:

- Recruitment or hiring rate data by gender or race/ethnicity
- Promotion rate data by gender or race/ethnicity
- Retention or turnover rate data by gender or race/ethnicity.

Instead of providing the recruitment, promotion, and retention information requested, the Company Letter discloses static information at specific points in time, including the percentage of women in management positions at the end of 2021, the representation of women across its workforce globally, and the composition of the Company's Board as of May 15, 2022 (pp. 10-11); the percentage of women and racial/ethnic minority group members ("MGMs") in management positions at the end of 2020 and 2021 (pp. 11-12); and same or similar data in addition to qualitative descriptions of DEI programs (pp. 12-14). The Company also provides data demonstrating: (a) that there were more women and racial/ethnic MGMs in management positions at the end of 2020 or 2021 than there were at the end of 2016 or 2017, and (b) the current composition of the Board with respect to gender and race/ethnicity. In essence, a "snapshot" of diversity data at specific dates.

This information fails to allow investors to understand the success of the Company's recruitment, promotion, and retention policies, which is the request of the Proposal. It fails because, to reach its current diversity profile, the Company may have followed two very different paths. First, it may have strong retention and promotion practices, such that the diverse employees it hires remain and thrive at the Company. Investors would view this information favorably. Alternatively, though, the Company might have high turnover and poor retention of diverse candidates and may simply replace lost diversity through ongoing recruitment and hiring. Investors would be concerned about this scenario due to a variety of risks it creates, including reputational risk and lawsuits. Thus, snapshot data does not fulfill the guidelines or essential purpose of the Proposal. *See also Pfizer Inc.* (no substantial implementation of similar proposal where Company pointed to snapshot data disclosures in its EEO and ESG reports of women and racial/ethnic MGMs in management positions).

As was the case in *Pfizer Inc.,* data demonstrating that, at one snapshot in time, there were more women or racial/ethnic MGMs in management positions than at a previous snapshot in time does not provide sufficient data to allow investors to evaluate the *effectiveness* of the Company's DEI programs with respect to hiring, promotion, and retention. (*Compare* the Company's disclosures to best practice examples that demonstrate turnover and retention rates.[1])

Finally, the Company's disclosures fall well short of those provided by or committed to by peers and competitors, underscoring that they do little to help investors analyze the effectiveness of the Company's DEI programs compared to the market. Companies in the healthcare sector that release or have committed to release at least 2/3 of the inclusion factors requested by this resolution include Gilead Sciences, CVS Health, UnitedHealth Group, and Pfizer.

[1] *See, e.g.*, Eversource Energy, *2021 DEI Report*, at 12-13, available at: https://www.eversource.com/content/docs/default-source/community/eversource-2021-diversity-equity-inclusion-report.pdf (providing quantitative data on new hires, internal promotions, and turnover rate); Carter's Inc., 2020 Corporate Social Responsibility Report, available at: https://mydigimag.rrd.com/publication/?m=67160&i=731428&p=21&ver=html5 (providing hiring and retention data); Tyler Technologies, 2021 Corporate Social Responsibility Report, at 40, available at: https://www.tylertech.com/Portals/0/Tyler-2021-CSR-Report.pdf (providing hiring and turnover data); Dow Inc., 2021 Environmental, Social & Governance Report, at 153-55, available at: https://corporate.dow.com/content/dam/corp/documents/about/066-00397-01-2021-esg-report.pdf (providing new hire and turnover data).

The precedents cited in the Company Letter are inapposite:

- In *Advance Auto Parts, Inc.* (Apr. 9, 2019), the proposal sought a sustainability report prepared "in consideration of" a specific external set of accounting standards. The company successfully argued that because the proposal's language contemplated some variance in conformity with the external standards, and because its existing disclosures tracked the topics covered by the external standards, the proposal had been substantially implemented. Here, by contrast, the Company's existing disclosures exclude the quantitative data at the very core of the Proposal's essential purpose: particularly, retention and promotion data.
- In *Applied Materials, Inc.* (Jan. 17, 2018), the proposal sought improved disclosure of the company's "executive compensation information," with a particular focus on stock awards. The company successfully argued that the data, the exclusion of which the proponent faulted, was already publicly disclosed in another location, and that its disclosures were market-standard. Here, as explained above, the Company did not provide the requested information, nor is the information disclosed generous relative to that of other companies.
- Next, in *Kewaunee Scientific Corporation* (May 31, 2017), the proposal sought to end health- and life-insurance coverage for non-employee members of the company's board of directors. The company's no action letter was successful because the company had already adopted such a policy, which is wholly inapposite to the circumstances here. *Accord. Walgreen Co.* (Sept. 26, 2013) (proposal sought elimination of supermajority voting requirements in company's governing documents and company had eliminated all but one such requirement); *Johnson & Johnson* (Feb. 17, 2006) (proposal requested employment verification confirmation of all employees and company had completed such verifications for 91% of its domestic workforce). Unlike in these cases, the data at the core of the Proposal's request has not been disclosed.
- Finally, in *Exxon Mobil Corporation* (Mar. 23, 2009), the proposal sought increased disclosures of political contributions, particularly contributions to tax-exempt organizations. *Inter alia*, the proposal sought an itemized list of payments and the identification of individual decisionmakers for each payment. But the company successfully argued that it had substantially implemented the proposal because it disclosed payments to trade associations spent on lobbying (the industry standard even today) and that all contributions were attributable to the oversight of the chairman and the board. In other words: the proponent sought significant detail on a specific subject matter and the company was found to have produced the vast majority of the specifically requested information. In contrast, here, the Company has not disclosed *any* information on retention and promotion rates by gender and race/ethnicity. Its existing "snapshot" disclosures are different in kind from those sought by the Proposal, not merely different in degree of compliance as in *Exxon Mobil Corporation*.

For the foregoing reasons, we respectfully request the Staff rejects the Company's argument under Rule 14a-8(i)(10).

II. The Proposal transcends the Company's ordinary business.

The Company Letter also argues that the Proposal is excludable under Rule 14a-8(i)(7) because it relates to the Company's ordinary business. The Company argues: (a) that the Proposal "relates to . . . the Company's Management of Its Workforce"; (b) that the Proposal does not address a significant social policy issue; and (c) that the Proposal seeks to micromanage the Company. Each point will be addressed in turn, with the first two combined as per Staff guidance.

Two central tenets underline the "ordinary business" rule. First, "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they c[an] not, as a practical matter, be subject to direct shareholder oversight." SEC, Exchange Act Release No. 40018 (May 21, 1998) ("1998 Release"). Proposals related to these tasks are not excludable, however, if they address a significant social policy issue. Second, the rule regulates "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* More recently, Staff Legal Bulletin 14L (Nov. 3, 2021) offered two basic tests to determine whether a proposal micromanages: (1) whether the proposal "frame[s] the investor deliberation in a manner consistent with market discussions, available guidelines and the state of familiarity/expertise on the issues in the investing marketplace"; and (2) whether the proposal "leave[s] sufficient flexibility for board and management discretion."

A. The Proposal addresses a significant policy issue and does not interfere or seek to impose shareholder oversight over the day-to-day management of the Company's workforce

The Company Letter argues that the Proposal addresses the "management of [the Company's] workforce," and claims that this is a "prime example of an excludable ordinary business matter." This argument runs afoul of the well-settled rule that proposals concerning significant issues of social policy are not excludable on the basis of "ordinary business" merely because they touch upon some aspect of a company's business, including human capital management.

By their nature, virtually all shareholder proposals will inevitably relate to some aspect of a company's business or operations. But the Commission has made clear since 1976 that proposals addressing business strategy matters with major implications for society transcend ordinary business and are appropriate subjects for shareholder proposals. *See* SEC, Exchange Act Release No. 34-12999 (Nov. 22, 1976) (stating, for example, that "a proposal that a utility company not construct a proposed nuclear power plant" touches upon "economic and safety considerations attendant to nuclear power plants . . . of such magnitude that a determination of whether to construct one is not an 'ordinary' business matter"). Subsequent Staff decisions have repeatedly reaffirmed that proposals implicating a company's business are not excludable where they relate to significant issues of social policy. "Thus, a proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the 'nitty-gritty' of its core business." Staff Legal Bulletin 14H (Oct. 22, 2015).

This is a core principle in the shareholder proposal process and was demonstrated numerous times last season alone. For example, in *Chubb Limited* (Mar. 26, 2022), the proposal sought a report "addressing whether and how [the company] intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities." The Staff concluded that the proposal—despite involving a question at the very core of the company's business—transcended ordinary business. *See also, e.g.*, *The Travelers Companies, Inc.* (Apr. 1, 2022) (proposal sought report on relationship between company's insurance offerings and racial injustice, including assessment of competitive, operational, and financial risks); *Levi Strauss & Co.* (Feb. 8, 2022) (proposal requested report on whether animal slaughter methods used to procure leather for company's products were compatible with its animal welfare policy or otherwise created risks, and sought disclosure of plans to mitigate any such risks).

The Proposal "raises issues with a broad societal impact, such that they transcend the ordinary business of the company." Staff Legal Bulletin No. 14L (Nov. 3, 2021). As the Proposal explains, intentional and unintentional discrimination in hiring and promotion constitute serious and significant social issues: "Black[] and Latino applicants face hiring challenges" and "women and employees of color experience 'a broken rung' in their careers" by being passed over for promotions. These obstacles echo throughout society and the economy as they place financial stress on families and communities, calcify social and economic hierarchies, and lead to vicious cycles of non-hiring and non-promotion, perpetuating social and economic inequality. The Company itself acknowledges the transcendent importance of DEI. *See* Company Letter at 8, 10 (quoting Company website: "At Lilly, we believe in the power of diversity, equity and inclusion (DEI) to fulfill our purpose of <u>creating medicines that make life better for people around the world</u>" (emphasis added)), 9 (quoting ESG report: "Lilly is actively developing programs to <u>enable more jobs that sustain families for Black Americans and individuals from other marginalized communities</u> . . ." (emphasis added)). Staff precedent, too, has recognized DEI issues as transcendent. *See* 1998 Release (identifying "significant discrimination matters" as particularly obvious examples of "significant social policy issues" that "transcend the day-to-day business matters"); *see also The Travelers Companies, Inc.* (Apr. 1, 2022) (report on relationship between company's insurance offerings and racial equity transcended ordinary business); *Amazon.com, Inc.* (Apr. 7, 2021) (proposal seeking racial equity audit of company's "policies, practices, products, and services" transcended ordinary business).

Next the Company claims the Proposal must be excluded because it relates to "management of [the Company's] workforce." *See* Company Letter at 15. The "significant social policy" exception clearly includes "proposals squarely raising human capital management issues with a broad societal impact." *See* Staff Legal Bulletin 14L (Nov. 3, 2021). For example, last season, the Staff declined to concur in excluding a proposal relating to the management of the company's retirement plans. In *Amazon.com, Inc.* (Apr. 8, 2022), the Staff concluded that the proposal, which sought a report on how the company managed climate risk in its retirement plan investments "transcend[ed] ordinary business matters."

The Company does not contest that DEI issues are transcendent, instead arguing that the Proposal only "references" DEI while actually being about workforce management. *See* Company Letter at 17-18. It is unclear what, if any, proposal would satisfy the standards the Company seeks to impose. After all, the Proposal seeks only the data necessary to evaluate the effectiveness of the Company's DEI programs, not a broader examination of the Company's "workforce management" policies. The Company's argument for exclusion further relies on a series of inapposite Staff precedents involving proposals seeking specific substantive action from the company with respect to hiring, retention, and promotion. *See Delhaize America, Inc.* (Mar. 9, 2000) (proposal requested company "be more aggressive in employee retention when the issue of compensation is considered"); *Consolidated Edison, Inc.* (Feb. 24, 2005) (proposal requested termination of certain employees); *Merck & Co., Inc.* (Mar. 6, 2015) (proposal requested company make significant changes to its procedures for hiring and promoting employees). In contrast, this Proposal seeks data *disclosure* on employee hiring, retention, and promotion rates by gender and race/ethnicity, not specific action from the Company.

The Company also argues, at page 16 of the Company Letter, that the Proposal is "comparable" to the proposals in *Deere & Company* (Nov. 14, 2014, *recon. denied* Jan. 5, 2015) and *The Walt Disney Company* (Nov. 24, 2014, *recon. denied* Jan. 5, 2015). This argument indicates a misunderstanding either of those precedents or of the Proposal. As the Company Letter itself details, those resolutions sought *substantive action*: the adoption of a company-wide code of conduct that included a non-discrimination policy that protects employees' human right to engage in the political process, civic activities and public policy of his or her country without retaliation. Here, by contrast, the Proposal seeks a *report* on the effectiveness of the Company's DEI programs, with an emphasis on the disclosure of certain data.[2]

The Proposal is also in stark contrast to the final precedents upon which the Company relies. In both *Amazon.com, Inc.* (Apr. 8, 2022) (James McRitchie) and *Repligen Corporation* (Apr. 1, 2022), the proposals sought an annual report "assessing the distribution of stock-based incentives throughout the workforce." While the proposals were framed as addressing "wealth inequality," the companies successfully argued that the proposals "merely reference[d] topics that raise significant policy issues, but . . . have only tangential implications for the issues." In other words, the proposals were both overinclusive (much of the disclosure requested had little to do with wealth inequality) and underinclusive (the requested data, by itself, revealed little about employees' relative wealth or the effect of stock grants thereupon). Here, the Proposal squarely addresses the significant social issue upon which it relies: it seeks data providing "transparency on outcomes" of hiring, retention, and promotion of employees with respect to gender, race, and ethnicity, and describes why retention and promotion of diverse employees matters. By seeking a report providing quantitative data solely on the *effectiveness* of those policies — *i.e.*, the bottom-line impact of the Company's policies on the significant social policy issues implicated by workplace discrimination and implicit bias — it narrowly and effectively addresses a transcendent policy issue.

B. The Proposal does not micromanage

The second component of Rule 14a-8(i)(7) is whether a proposal micromanages; that is, whether it: (1) "prob[es] too deeply into matters of a complex nature" in "intricate detail[]" and (2) whether it "leave[s] sufficient flexibility for board and management discretion." The Proposal complies with each of these standards.

The Proposal does not seek to "prob[e] too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the Company's employment and training practices." *Deere & Company* (Jan. 3, 2022). Indeed, the comparison to *Deere & Company* and the other Staff precedents relied upon by the Company is self-refuting. In *Deere & Company*, *Verizon Communications Inc.* (Mar. 17, 2022), and *American Express* (Mar. 11, 2022), the proposals sought "the annual publication of the written and oral content of any employee-training materials offered to any subset of the Company's employees by the Company or with its consent." The *Deere & Company*-style proposals presumably would have resulted in the publication of mountains of pamphlets, handouts, books, binders, videos, and more, from the C-suite to the factory line. The companies successfully argued that this level of disclosure and intricacy amounted to micromanaging. By contrast, as demonstrated by the examples above (*see supra* note 1), transparency on hiring, retention, and promotion outcomes by gender, race, and ethnicity frequently requires nothing more than a few simple charts or graphs on a single PDF page. Moreover, investors do not ordinarily seek, and could hardly be expected to form a coherent picture from, the mountains of specific documents sought in the *Deere & Company* proposals. By contrast, concepts like "turnover rate" and "internal promotion rate" are both widely disclosed and hardly complicated.

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[2] The Proposal is also meaningfully different than the other Staff precedents from last proxy season cited on page 17 of the Company Letter. Each of those precedents requested a report asking the company to explain or justify certain business practices. *See Amazon.com, Inc.* (Apr. 7, 2022); *Dollar Tree, Inc.* (May 2, 2022); *BlackRock, Inc.* (Apr. 4, 2022); *Intel Corporation* (Mar. 18, 2022). The Proposal, by contrast, seeks quantitative data so that investors may evaluate the effectiveness of the Company's DEI programs.

Second, despite the claims in the Company's Letter, nothing in the Proposal seeks to "limit the discretion of the Company in implementing its workforce management policies and practices." Company Letter at 19. Unlike many of the precedents relied upon in the Company Letter, the Proposal does not seek to alter the content of the Company's DEI programs or seek detailed explanation or justification of those Programs. *See supra* (discussing Company's reliance on precedents involving proposals seeking substantive action rather than mere disclosure). Moreover, the data sought is actually significantly *less* granular than the Company's existing disclosures, which include, as the Company details, pledges to increase the representation of Black American employees from 10 to 13 percent, descriptions of the composition of the Board, and descriptions of specific talent-development programs, *see* Company Letter at 9-11. The Proposal simply seeks a report assessing the success of those policies through the disclosure of basic quantitative data.

CONCLUSION

Based on the foregoing analysis, we believe that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 proxy statement pursuant to Rule 14a-8. We respectfully request that the Staff deny the no action request.

Sincerely,

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CC:

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