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December 26, 2022

**VIA EMAIL**

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

Email: shareholderproposals@sec.gov

Re: Shareholder Proposal of John Chevedden

Ladies and Gentlemen:

This letter is submitted by Eli Lilly and Company (the "*Company*") to notify the Securities and Exchange Commission (the "*Commission*") that the Company intends to omit from its proxy statement and form of proxy for its 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 John Chevedden (the "*Proponent*"). We also request confirmation that the staff of the Division of Corporation Finance (the "*Staff*") will not recommend enforcement action to the Commission if the Company omits the Proposal from the 2023 Proxy Materials for the reasons discussed below.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are emailing this letter to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended, we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company's intent to omit the Proposal from the 2023 Proxy Materials. Likewise, we take this opportunity to inform the Proponent that if the Proponent elects to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company.

## THE PROPOSAL

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

> Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against such proposals, or a simple majority in compliance with applicable laws.
>
> This 2023 proposal includes that the Board take all the steps necessary at its discretion to help ensure that the topic of this proposal is approved by the requirement of 80% of all outstanding shares including a commitment to hire a proxy solicitor to conduct an intensive campaign, a commitment to adjourn the annual meeting to obtain the votes required if necessary and to take a 2-year process to adopt this proposal topic if applicable. This proposal does not restrict the Board from using a means to obtain the necessary vote that is not mentioned in this proposal.
>
> This proposal includes that the Board make an EDGAR filing approximately 10-days before the annual meeting urging shareholder to vote in favor and explaining all the efforts the board has taken or will take to obtain the necessary vote and all the available efforts that the Board has not taken with an explanation for each available effort not taken. This EDGAR filing would also describe any group of Eli Lilly shareholders who are opposed to this topic and Board efforts to reach out to such groups.[1]

## 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), which provides that a shareholder proposal may be omitted from a company's proxy materials if "the company has already substantially implemented the proposal."

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[1] The Proposal in full is attached hereto as Exhibit A.

## ANALYSIS

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

As described in greater detail below, the Company's Board of Directors (the "*Board*") approved amendments to the Company's Amended Articles of Incorporation (the "*Articles of Incorporation*") to eliminate all operational supermajority voting provisions and directed that such amendments be submitted to shareholders for adoption at the 2023 Annual Meeting. The Board also recommended that shareholders vote to adopt such amendments and the Company has hired a proxy solicitation firm to solicit votes in favor of the Board's recommendations. If shareholders approve these amendments, the Board has approved certain conforming changes to the Company's Bylaws (the "*Bylaws*") that would become effective upon the effectiveness of the Company's Amended and Restated Articles of Incorporation. As a result, the Company has substantially implemented the Proposal and believes the Proposal is excludable under Rule 14a-8(i)(10).

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

Rule 14a-8(i)(10) allows a company to exclude a shareholder proposal from its proxy statement 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).

Based on this revised approach, the Staff has historically 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 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.

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 stockholder 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 Company's executive compensation information with their actual compensation," 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 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 nonemployee 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 nonemployee 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); and *Johnson & Johnson* (Feb. 17, 2006) (permitting exclusion under Rule 14a-8(i)(10) of a proposal that requested the company to confirm the legitimacy of *all* current and future U.S. employees because the company had verified the legitimacy of 91% of its domestic workforce).

Under comparable circumstances, the Staff has historically concurred with the exclusion of shareholder proposals similar to the Proposal, that seek to eliminate the supermajority voting provisions from a company's governing documents and replace them with majority voting standards. For example, in both 2018 and 2020, the Staff granted the Company no-action relief under Rule 14a-8(i)(10) with respect to substantially similar shareholder proposals submitted by the Proponent. *See Eli Lilly and Company* (Jan. 8, 2018) ("*Eli Lilly 2018*") and *Eli Lilly and Company* (Jan. 31, 2020) ("*Eli Lilly 2020*"). In *Eli Lilly 2018* and *Eli Lilly 2020*, the Company demonstrated that it had taken actions to address the essential objective of the proposal because the Board (i) already approved amendments to the Articles of Incorporation to replace the supermajority voting requirements in Articles 9(c), 9(d) and 13 with a majority of outstanding shares voting requirement, (ii) directed that such amendments be submitted to shareholders for approval at the Company's annual meeting of shareholders and (iii) recommended that shareholders vote to adopt such amendments. The Staff agreed with the Company and granted exclusion of the proposals under Rule 14a-8(i)(10). *See also AbbVie Inc.* (Mar. 2, 2021); *Fortive Corp. (Feb. 12, 2020)*; *The Southern Company* (Mar. 13, 2019); *KeyCorp* (Mar. 22, 2019); *Abbvie Inc.* (Feb. 27, 2019); *Korn/Ferry International* (Jul. 6, 2017)("*Korn/Ferry*"); *The Southern Company* (Feb. 24, 2017); *The Brink's Co.* (Feb. 5, 2015); *Visa Inc.* (Nov. 14, 2014); *Medtronic, Inc.* (Jun. 13, 2013); and *McKesson Corp.* (Apr. 8, 2011) (each permitting exclusion of a shareholder proposal seeking to remove the supermajority provisions from the company's governing documents where (1) the board had approved amendments to the company's certificate of incorporation to replace the supermajority voting requirement with a majority of outstanding shares voting standard, and (2) the company planned to provide shareholders at the next annual meeting an opportunity to approve amendments to the company's certificate of incorporation to replace the supermajority voting provisions with a majority of outstanding shares voting standard); and *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).

Here, the essential objective of the Proposal is to eliminate supermajority voting requirements in the Company's governing documents. The Board has approved amendments to the Articles of Incorporation to eliminate the supermajority voting provisions contained therein and directed that such amendments be submitted to shareholders for approval at the 2023 Annual Meeting. The Board's approved amendments to the Articles of Incorporation replace all of the operational supermajority voting requirements with a majority of the votes cast standard except for one, which is replaced with a majority of the votes outstanding standard. These actions come even closer to fully implementing the request in the Proposal than Company actions that were deemed by the Staff to substantially implement the same proposal in *Eli Lilly 2018* and *Eli Lilly 2020*. The Board also has recommended that shareholders vote to adopt such amendments and

the Company has hired a proxy solicitation firm to solicit votes in favor of the Board's recommendations. If shareholders approve these amendments, the Board has approved certain conforming changes to the Bylaws that would become effective upon the effectiveness of the Amended and Restated Articles of Incorporation. Accordingly, the Company has substantially implemented the Proposal, and it is excludable under Rule 14a-8(i)(10).

We note that the Commission has proposed to amend Rule 14a-8(i)(10) to require that a company show that it has implemented the "essential elements" of a proposal in order to exclude it pursuant to the rule. The proposed amendments, if adopted, would result in a higher standard for establishing the availability of Rule 14a-8(i)(10). We also note that the Staff recently changed its approach to evaluating proposals such as the Proposal. Specifically, earlier this year, the Staff denied no-action relief in *Fortive Corporation* (Apr. 11, 2022) and *Rite Aid Corporation* (May 3, 2022) for essentially the same proposal that in prior years the Staff deemed excludable when the companies stated their intentions to replace supermajority voting provisions with a majority of the votes outstanding standard. However, as no final rule has been adopted by the Commission, the Company expects that the Staff will apply the currently effective rule and historical precedent, which have provided for exclusion of substantially similar proposals in the past. The Company's actions here of seeking to lower most supermajority voting provisions to a majority of the votes cast standard come even closer to fully implementing the Proposal than the actions of the companies in *Fortive Corporation* and *Rite Aid Corporation*, and accordingly go well beyond substantial implementation. This should lead to the conclusion that the Company may exclude the Proposal as substantially implemented under Rule 14a-8(i)(10).

**B. The Company's Proposal to Amend the Articles of Incorporation to Eliminate All Operational Supermajority Voting Provisions Substantially Implements the Proposal**

The Company has substantially implemented the Proposal because the Board-approved amendments to the Articles of Incorporation and Bylaws address the essential objective of the Proposal. The Company's Articles of Incorporation and Bylaws currently require certain fundamental corporate actions to be approved by the holders of 80% of the outstanding shares of the Company's common stock:

- Article 9(c) of the Articles of Incorporation: requiring 80% shareholder approval to remove directors prior to the end of their elected terms;
- Article 13(b) of the Articles of Incorporation: requiring 80% shareholder approval to enter into significant corporate transactions, such as mergers, consolidations, recapitalizations, or certain other business combinations with a related person, without the prior approval of the Board;

- Articles 9(d) and 13(j) of the Articles of Incorporation: requiring 80% shareholder approval to modify or eliminate any of the supermajority voting requirements contained in Articles 9 and 13; and
- Section 2.7 of the Bylaws: requiring 80% shareholder approval to remove directors prior to the end of their elected terms.

On December 12, 2022, the Board approved, and unanimously recommended the Company's shareholders approve, amendments to the Articles of Incorporation to eliminate the supermajority voting provisions included in Articles 9(c), 9(d) and 13(j) and replace them with a majority of the votes cast voting requirement, as well as an amendment to Article 13(b) to eliminate the supermajority voting provision and replace it with a majority of outstanding shares requirement (the "*Charter Amendments*"). If approved by the Company's shareholders at the 2023 Annual Meeting, the Charter Amendments would eliminate all supermajority voting requirements in the Articles of Incorporation that are applicable to holders of the Company's common stock. If approved, the Charter Amendments would become effective upon filing the Amended and Restated Articles of Incorporation with the Secretary of State of Indiana, which the Company would do promptly after shareholder approval of the Charter Amendments is obtained. The text of the Charter Amendments, in which deletions are indicated by strikethroughs and additions are indicated by underlining, is attached hereto as Exhibit B. Also, on December 12, 2022, the Board approved certain conforming changes to the Bylaws, including an amendment to reduce the voting standard set forth in Section 2.7 of the Bylaws to require a majority of the votes cast voting standard, that would become effective upon the effectiveness of the Amended and Restated Articles of Incorporation.

The only supermajority voting provision in the Articles of Incorporation not approved for elimination by the Board is in Article 14(i) of the Articles of Incorporation. This provision requires the approval of two-thirds of the holders of the outstanding shares of the Company's series B preferred stock, none of which is currently authorized or outstanding. However, the Staff has permitted exclusion of shareholder proposals similar to the Proposal as substantially implemented under Rule 14a-8(i)(10) when companies have proposed amendments to eliminate all supermajority provisions applicable to common stock from their governing documents, yet retained supermajority voting provisions related to holders of a company's preferred stock. This includes the proposals that were deemed excludable by the Staff under Rule 14a-8(i)(10) in *Eli Lilly 2020* and *Eli Lilly 2018*. *See also Korn/Ferry*; *MetLife, Inc.* (Feb. 4, 2015); and *Exxon Mobil* (Mar. 21, 2011) (concurring in the exclusion of a similar shareholder proposal under Rule 14a-8(i)(10) where the company retained a provision in its certificate of incorporation requiring approval by a supermajority of preferred stockholders for certain actions that would adversely affect the interests of such holders).

The facts in the present instance are analogous to the letters cited above in which the Staff granted relief under Rule 14a-8(i)(10). Specifically, the Board approved the Charter Amendments that would eliminate all supermajority voting provisions therein applicable to common stock and directed that such amendments be submitted to shareholders for adoption at the 2023 Annual Meeting. The Board also recommended that shareholders vote to adopt such amendments and the Company has hired a proxy solicitation firm to solicit votes in favor of the Board's recommendations. If the Charter Amendments are approved by shareholders, certain conforming changes to the Bylaws would be effective upon the effectiveness of the Amended and Restated Articles of Incorporation. With these actions, the Board has taken the necessary steps to eliminate all provisions in the Company's governing documents referencing supermajority voting provisions that are applicable to holders of the Company's common stock. Accordingly, the Company has satisfied the essential objective of the Proposal, and it is therefore appropriate to exclude the Proposal under Rule 14a-8(i)(10).

**CONCLUSION**

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 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*

John Chevedden

**Exhibit A**

[Copy of Proposal]

[LLY: Rule 14a-8 Proposal, October 14, 2022 | Revised November 16, 2022]
[This line and any line above it – *Not* for publication.]

**Proposal 4 – Simple Majority Vote**

Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against such proposals, or a simple majority in compliance with applicable laws.

This means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This includes any existing supermajority vote requirement that results from default to state law and can be subject to replacement. This proposal topic is important because it was approved by 84% of Eli Lilly shares that voted in 2021.

This 2023 proposal includes that the Board take all the steps necessary at its discretion to help ensure that the topic of this proposal is approved by the requirement of 80% of all outstanding shares including a commitment to hire a proxy solicitor to conduct an intensive campaign, a commitment to adjourn the annual meeting to obtain the votes required if necessary and to take a 2-year process to adopt this proposal topic if applicable. This proposal does not restrict the Board from using a means to obtain the necessary vote that is not mentioned in this proposal.

For instance PPG Industries, Inc. (PPG) adjourned its annual meeting for weeks to obtain the necessary votes on this proposal topic in 2022 and Raytheon Technologies Corporation (RTX) announced a 2-year process to obtain shareholder approval of this proposal topic in its 2022 proxy.

This proposal includes that the Board make an EDGAR filing approximately 10-days before the annual meeting urging shareholder to vote in favor and explaining all the efforts the board has taken or will take to obtain the necessary vote and all the available efforts that the Board has not taken with an explanation for each available effort not taken. This EDGAR filing would also describe any group of Eli Lilly shareholders who are opposed to this topic and Board efforts to reach out to such groups.

It is important to make an all-out effort now to obtain shareholder approval of this proposal topic in preference to the expense of conducting failed votes on this proposal topic every year into the foreseeable future.

Extraordinary measures need to be taken to adopt this proposal topic due to the dead hand of our undemocratic governance provisions that require an 80% approval from all Eli Lilly shares outstanding to improve the corporate governance of Eli Lilly – given the reality that only 70% of Eli Lilly shares typically vote at the annual meeting.

Please vote yes:
**Simple Majority Vote – Proposal 4**
[The line above – *Is* for publication. Please assign the correct proposal number in 2 places.]

**Exhibit B**

[Copy of Charter Amendments]

# Appendix B - Proposed Amendments to the Company's Articles of Incorporation

Proposed changes to the company's articles of incorporation are shown below related to Items 4 and 5, "Items of Business." The changes shown to Article 9(b) will be effective if Item 4, "Proposal to Amend the Company's Articles of Incorporation to Eliminate the Classified Board Structure," receives the vote of at least 80 percent of the outstanding shares. The changes to Articles 9(c), 9(d), and 13 will be effective if Item 5, "Proposal to Amend the Company's Articles of Incorporation to Eliminate Supermajority Voting Provisions," receives the vote of at least 80 percent of the outstanding shares. Additions are indicated by underlining and deletions are indicated by strike-outs. The full text of the company's Articles of Incorporation can be found on our website at lilly.com/leadership/governance.

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

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

(b) Prior to the 2023 annual meeting of directors, Tthe Board of Directors (exclusive of Preferred Stock Directors) shall be divided into three classes, with the term of office of one class expiring each year. ~~At the annual meeting of shareholders in 1985, five directors of the first class shall be elected to hold office for a term expiring at the 1986 annual meeting, five directors of the second class shall be elected to hold office for a term expiring at the 1987 annual meeting, and six directors of the third class shall be elected to hold office for a term expiring at the 1988 annual meeting.~~ Commencing with the annual meeting of shareholders in ~~1986~~2023, each class of directors whose term shall then expire shall be elected to hold office for a ~~three~~one-year term expiring at the next annual meeting of shareholders. In the case of any vacancy on the Board ~~of Directors, including a vacancy created by an increase in the number~~ of Ddirectors, the vacancy shall be filled by election of the Board of Directors with the director so elected to serve for the remainder of the term of the director being replaced or, in the case of an additional director, ~~for the remainder of the term of the class to which the director has been assigned~~ until the next annual meeting of shareholders. All directors shall continue in office until the election and qualification of their respective successors in office. ~~When the number of directors is changed, any newly created directorships or any decrease in directorships shall be so assigned among the classes by a majority of the directors then in office, though less than a quorum, as to make all classes as nearly equal in number as possible.~~ No decrease in the number of directors shall have the effect of shortening the term of any incumbent director. Election of directors need not be by written ballot unless the By-laws so provide.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) A proxy statement responsive to the requirements of the Securities Exchange Act of 1934, as amended, whether or not the Corporation is then subject to such requirements, shall be mailed

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

(f) For the purpose of this Article 13:

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

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

a. which it has the right to acquire pursuant to any agreement, or upon exercise of conversion rights, warrants, or options, or otherwise; or

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

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

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

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

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

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

(i) The fact that any action or transaction complies with the provisions of this Article 13 shall

not be construed to waive or satisfy any other requirement of law or these Amended Articles of Incorporation or to impose any fiduciary duty, obligation, or responsibility on the Board of Directors or any member thereof, to approve such action or transaction or recommend its adoption or approval to the shareholders of the Corporation, nor shall such compliance limit, prohibit, or otherwise restrict in any manner the Board of Directors, or any member thereof, with respect to evaluations of or actions and responses taken with respect to such action or transaction. The Board of Directors of the Corporation, when evaluating any actions or transactions described in paragraph (a) of this Article 13, shall, in connection with the exercise of its judgment in determining what is in the best interests of the Corporation and its shareholders, give due consideration to all relevant factors, including, without limitation, the social and economic effects on the employees, customers, suppliers, and other constituents of the Corporation and its subsidiaries and on the communities in which the Corporation and its subsidiaries operate or are located.

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