



DIVISION OF
CORPORATION FINANCE

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

March 6, 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 by Change Finance, P.B.C. for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal asks the Company to adopt a policy requiring that, prior to making a donation or expenditure that supports the political activities of any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities, the Company will require that organization report, at least annually, the organization's expenditures for political activities, including the amount spent and the recipient, and that each such report be posted on the Company's website.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(6). In our view, the Company would not lack the power and authority to implement the proposal.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Dorrit Lowsen
Change Finance, P.B.C.

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 Change Finance

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 Change Finance (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.

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 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 Proponent as notice of the Company’s intent to omit the Proposal from the 2023 Proxy Materials. Likewise, we

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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:

Resolved: The shareholders of Eli Lilly & Company (“Lilly” or “Company”) ask the Company to adopt a policy requiring that, prior to making a donation or expenditure that supports the political activities of any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities, Lilly will require that the organization report, at least annually, the organization’s expenditures for political activities, including the amount spent and the recipient, and that each such report be posted on Lilly’s website.

For purposes of this proposal, “political activities” are (i) influencing or attempting to influence the selection, nomination, election, or appointment of any individual to a public office; or (ii) supporting a party, committee, association, fund, or other organization organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures to engage in the activities described in (i). This proposal does not encompass lobbying spending.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)(6) because the Company lacks the power or authority to implement the Proposal.

ANALYSIS

1. The Proposal May be Excluded Under Rule 14a-8(i)(6) Because the Company Lacks the Power or Authority to Implement the Proposal

A. Rule 14a-8(i)(6) Background

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

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Pursuant to Rule 14a-8(i)(6), exclusion of a shareholder proposal is permitted “[i]f the company would lack the power or authority to implement the proposal.” The Commission has addressed the applicability of Rule 14a-8(i)(6), stating that exclusion “may be justified where implementing the proposal would require intervening actions by independent third parties.” Exchange Act Release No. 40018 at n.20 (May 21, 1998).

B. The Company Lacks the Power or Authority to Implement the Proposal

The Proposal requests that “Lilly...require that the organization [that receives a donation from the Company] report, at least annually, the organization’s expenditures for political activities, including the amount spent and the recipient,” as well as post the organization’s reports on the Company’s website. Notably, the Proposal’s request not only seeks information from independent third parties about their interactions with the Company, but also would require the independent third parties to provide reports that include detailed information about *all* of their political expenditures, including potentially confidential information about other unrelated third parties besides the Company, who presumably would have to consent to being named in such a report. This is clearly the type of activity that the Commission intended to be captured by Rule 14a-8(i)(6) when it said that exclusion “may be justified where implementing the proposal would require intervening actions by independent third parties.” Implementation of the Proposal would require intervening actions by a multitude of independent third parties over which the Company has no control.

In addition, permitting exclusion of the Proposal would be consistent with the Staff’s decisions in prior no-action letters when proposals requested that companies require action by third parties not under the companies’ control. For example, in *eBay Inc.* (Mar. 26, 2008), the Staff permitted exclusion under Rule 14a-8(i)(6) of a proposal that encouraged the company’s board of directors to adopt a policy prohibiting the sale of dogs and cats on eBay’s affiliated Chinese website. There, the company explained that the website at issue was owned by a joint venture in which the company owned 49% of the outstanding shares, which would not allow for the majority vote required to carry out the proposal’s request absent support from the joint venture’s majority shareholder. As another example, in *Ford Motor Company* (Mar. 9, 1990) the Staff permitted exclusion under the predecessor to Rule 14a-8(i)(6) of a proposal requesting that the employers of any member of the board of directors not engage in index stock arbitrage transactions for their own accounts or the accounts of their customers. The proposal further provided that if any such employer did not comply, the related director must immediately terminate his relationship with the Ford Motor Company. In granting relief, the Staff noted that “the proposal relates to the activities of companies other than the [c]ompany and over whom the [c]ompany has no control.”

Here, the relationship at issue is far more tenuous than the joint venture in *eBay Inc.* or the relationship between the company and its directors and their employers in *Ford Motor*

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Company. The Proposal asks the Company to require independent third parties, with which it has no contractual relationship and who owe no fiduciary duty to the Company, to provide a report, at least annually, containing the detailed information outlined in the Proposal. The Company does not exercise control over any trade associations, social welfare organizations, or other organizations organized and operated primarily to engage in political activities. Although like the companies in *eBay Inc.* and *Ford Motor Company*, the Company would have the ability to unilaterally adopt a company policy, it would not be able to enforce such policy by requiring the third parties at issue to comply. For this reason, the Company lacks the power or authority to direct any such organization to publish the requested detailed annual report.

The Proposal is also analogous to several proposals that the Staff has permitted to be excluded under Rule 14a-8(i)(6) when the companies would not have been able to guarantee compliance with the terms of the proposals. For instance, in *The Goldman Sachs Group, Inc.* (Jan. 28, 2015), the proposal recommended that the company adopt a policy that the chairman of the board of directors shall be an independent director. The Staff permitted exclusion under Rule 14a-8(i)(6) of the proposal, agreeing with the company that the board of directors does not have the power “to ensure that its chairman retains his or her independence at all times.” *See also The Goldman Sachs Group, Inc.* (Mar. 25, 2010) (permitting exclusion under Rule 14a-8(i)(6) of a proposal requesting that the board of directors adopt a policy prohibiting current or former chief executive officers from serving on the compensation committee, explaining that “[as] it does not appear to be within the power of the board of directors to ensure that each member of the compensation committee meets the requested criteria at all times...it appears that the proposal is beyond the power of the board to implement”); *Allegheny Technologies Incorporated* (Mar. 1, 2010) (same); *Time Warner, Inc.* (Feb. 22, 2010) (same); *Honeywell International Inc.* (Feb. 18, 2010) (same); *Verizon Communications Inc.* (Feb. 18, 2010) (same).

Similarly, it is not within the power of the Company to ensure that the third parties listed in the Proposal provide the requested information. Even if an organization committed to the Company that the organization would provide the information requested by the Proposal, the Company would have no way to guarantee compliance—let alone the accuracy or completeness of the information if actually provided.

Because the Company is not able to control the independent third parties whose intervening actions are required to implement the Proposal or ensure compliance with the terms of the Proposal, the Company lacks the power and the authority to implement the Proposal. The Proposal is therefore excludable pursuant to Rule 14a-8(i)(6).

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December 23, 2022

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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.jebajian@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

Dorrit Lowsen
Co-CEO, Change Finance, P.B.C.

Exhibit A
[Copy of Proposal]

Eli Lilly & Company Model Code Proposal

Resolved: The shareholders of Eli Lilly & Company (“Lilly” or “Company”) ask the Company to adopt a policy requiring that, prior to making a donation or expenditure that supports the political activities of any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities, Lilly will require that the organization report, at least annually, the organization’s expenditures for political activities, including the amount spent and the recipient, and that each such report be posted on Lilly’s website.

For purposes of this proposal, “political activities” are (i) influencing or attempting to influence the selection, nomination, election, or appointment of any individual to a public office; or (ii) supporting a party, committee, association, fund, or other organization organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures to engage in the activities described in (i). This proposal does not encompass lobbying spending.

Supporting Statement

As long-term Lilly shareholders we support transparency and accountability in corporate electoral spending, including indirect political spending that is the subject of this proposal. Misaligned or non-transparent funding creates reputational risk that can harm shareholder value and place a company in legal jeopardy. Without knowing which candidates and political causes its funds ultimately support, our Company cannot assure shareholders, employees, or other stakeholders that its spending aligns with core values, business objectives, and policy positions. Without this information, none of the board, senior management, or shareowners can assess the risks associated with political spending.

The risks are especially serious when giving to trade associations, Super PACs, 527 committees, and “social welfare” organizations – groups that routinely pass money to or spend on behalf of candidates and political causes that a company might not otherwise wish to support. The Conference Board’s 2021 [“Under a Microscope” report](#) details these risks, discusses how to effectively manage them, and recommends the process suggested in this proposal.

Media coverage amplifies the risk a company’s spending can pose and contributions to third-party groups can also embroil companies in scandal. Public records show Lilly has contributed at least \$8.4 million in corporate funds to third-party groups dating to the 2010 election cycle. Beneficiaries of this spending have been tied to attacks on voting rights, efforts to deny climate change, and efforts to impose extreme restrictions on abortion – associations many companies wish to avoid.

It is unclear whether Lilly and its board received sufficient information from these groups to assess (a) the potential risks for the Company and stockholders, and (b) whether the groups’ expenditures aligned with our Company’s core values, business objectives, and policy positions.

Mandating reports from third-party groups receiving Lilly political money would demonstrate our Company’s commitment to robust risk management and responsible civic engagement.

We urge a vote FOR the commonsense risk management measures contained in this proposal.

January 26, 2023

[Via e-mail at shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: Request by Eli Lilly and Company to omit proposal submitted by Change Finance P.B.C.

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Change Finance P.B.C. (the “Proponent”) submitted a shareholder proposal (the “Proposal”) to Eli Lilly and Company (“Lilly” or the “Company”). The Proposal asks Lilly to adopt a policy (the “Policy”) that any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities that seeks financial support from Lilly agree to report to Lilly, at least annually, the organization’s expenditures for political activities, including the amount spent and the recipient, and that each such report be posted on Lilly’s website.

In a letter to the Division dated December 23, 2023 (the “No-Action Request”), Lilly stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company’s 2023 annual meeting of shareholders. Lilly argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(6), on the ground that the Company lacks the power or authority to implement the Proposal. Because Lilly’s argument rests on a misreading of the Proposal, the Company has not met its burden of proving its entitlement to exclude the Proposal on that basis, and the Proponent respectfully requests that Lilly’s request for relief be denied.

The Proposal

The Proposal states:

Resolved: The shareholders of Eli Lilly & Company (“Lilly” or “Company”) ask the Company to adopt a policy requiring that, prior to making a donation or expenditure that supports the political activities of any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities, Lilly will require that the organization report, at least annually, the organization’s expenditures for political activities, including the amount spent and the recipient, and that each such report be posted on Lilly’s website.

For purposes of this proposal, “political activities” are (i) influencing or attempting to influence the selection, nomination, election, or appointment of any individual to a public

office; or (ii) supporting a party, committee, association, fund, or other organization organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures to engage in the activities described in (i). This proposal does not encompass lobbying spending.

The Proposal is Not Beyond Lilly’s Power or Authority to Implement

Rule 14a-8(i)(6) allows exclusion of a proposal that the company lacks the power or authority to implement. According to Lilly, it lacks the power or authority to implement the Proposal because doing so would require organizations not under Lilly’s control to take action or consent to disclosure of their confidential information. That argument reflects a misconception regarding how the Proposal would work and the organizations to which it would apply.

Background

For the past decade and a half, shareholders have submitted proposals addressing corporate political spending, motivated by concern about the risks such spending can create for companies. In the main, these proposals have sought additional disclosure regarding companies’ contributions—both direct and indirect through trade associations and other intermediaries—decision making processes, and board oversight, to help shareholders evaluate risk as well as alignment between contributions and company values and public positions. Proposals on political spending have spurred beneficial changes in disclosure practices.

Risks are heightened when political spending occurs through intermediaries, because organizations may use corporate contributions in ways that generate controversy or are contrary to companies’ public positions and expressed values. For example, in 2016 North Carolina prohibited local governments from adopting LGBTQ protections, after the City of Charlotte expanded its antidiscrimination law to cover gender identity.¹ Companies that had donated to the Republican State Leadership Committee (“RSLC”), which helped Republicans take control of North Carolina’s legislature, or to trade associations and other organizations that in turn donated to the RSLC, came under scrutiny. More than 30 companies whose funds ended up in the RSLC signed a letter to North Carolina’s governor opposing the law, with several publicly stating that the law conflicted with their own corporate policies and values.² The North Carolina example illustrates the additional risks and complexity associated with involvement of multiple intermediaries.

When asked to disclose spending through intermediaries or when challenged about an intermediary’s funding choices, some companies respond that they are unaware of the ultimate recipient(s) because the intermediaries do not provide that information. The Proposal is intended to rectify that situation, by imposing a condition for trade associations and other politically-oriented organizations (collectively, “Political Entities”) seeking funding from Lilly. Under the Proposal, Political Entities would need to agree to report to Lilly, at least annually, on the Political Entities’

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<https://www.npr.org/sections/thetwo-way/2016/03/24/471700323/north-carolina-passes-law-blocking-measures-to-protect-lgbt-people>

² https://www.huffpost.com/entry/corporations-lgbt-north-carolina_n_5720f5f4e4b0b49df6a9d76d; for additional examples, see <https://www.politicalaccountability.net/wp-content/uploads/2021/08/Conflicted-Consequences.pdf>, at 5.

political activities, including amounts donated and recipients. If a Political Entity declines to do so, Lilly may not approve its funding request.

The Proposal is not Beyond Lilly's Power or Authority to Implement

Lilly depicts the Proposal as mandating that Lilly extract information about political expenditures from Political Entities the Company is currently funding and providing that Lilly would be out of compliance with the Policy if an organization refused. But that account overlooks the fact that the information request would function as a screen for Political Entities seeking new funding; by its terms, the Proposal would only apply to new or renewed requests for funding. If a Political Entity declined to provide the requested data, Lilly could simply elect not to fund them and no further action would be required.

The Proponent intentionally drafted the Proposal in a way that avoids requiring information from a Political Entity to which Lilly has already provided funding—in other words, applying retroactively—for exactly the reason Lilly describes in the No-Action Request. Instead, the Policy suggested in the Proposal would require action only on Lilly's part—requesting information from a Political Entity when it asks for funds—whether for the first time or as a renewal of an existing arrangement. If a Political Entity decided against agreeing to furnish the information, the Policy would not be violated. Thus, it is not true that “the Company would have no way to guarantee compliance” with the Policy, as Lilly asserts.³ Rather, the Policy would be complied with when Lilly made the request, regardless of outcome. No other person or entity's action would be necessary to implement the Proposal.

That only Lilly would need to take action pursuant to the Policy sets the Proposal apart from the proposals in the determinations the Company cites. Several of those determinations involved proposals urging boards to adopt policies requiring that the board chair or members of the board's compensation committee be independent. In each case, the company argued that because shareholders elect directors, not the board, the board was not capable of ensuring compliance with an independence policy and the Staff concurred.

The Staff remarked when granting relief on the Goldman Sachs 2015 independent chair proposal, “As it does not appear to be within the power of the board of directors to ensure that its chairman retains his or her independence at all times and the proposal does not provide the board with an opportunity or mechanism to cure such a violation of the standard requested in the proposal, it appears that the proposal is beyond the power of the board to implement.” A similar comment accompanied the 2010 Goldman Sachs proposal on compensation committee independence. There, compliance with the proposed policy depended on shareholders electing directors satisfying the policy criteria. That is not the case here. It is worth noting that proposals providing a carveout in situations where compliance was impossible have survived challenges urging exclusion pursuant to Rule 14a-8(i)(6),⁴ so there is no absolute bar on proposals requiring action by third parties.

The proposal in eBay,⁵ on which Lilly also relies, asked the company to stop selling dogs and cats on an internet-based marketplace website owned by a joint venture between a subsidiary of the company and a Chinese firm. eBay argued that the proposal was excludable as beyond its power or

³ No-Action Request, at 4.

⁴ See, e.g., General Electric Company (Jan. 10, 2006); The Gap, Inc. (Mar. 18, 2002).

⁵ eBay Inc. (Mar. 26, 2008).

authority to implement because the Chinese firm had control of the joint venture, owning 51%, while the eBay subsidiary owned 49%. Accordingly, the Chinese firm's cooperation would have been required in order to adopt the requested policy. Lack of control or ownership also supported exclusion pursuant to Rule 14a-8(i)(6) in the Ford⁶ determination cited by Lilly. Because the Policy would require action only by Lilly, those determinations are inapposite.

Lilly also makes a confusing argument that "the Proposal's request not only seeks information from independent third parties about their interactions with the Company, but also would require the independent third parties to provide reports that include detailed information about *all* of their political expenditures, including potentially confidential information about other unrelated third parties besides the Company, who presumably would have to consent to being named in such a report." The Proponent assumes that these "other unrelated third parties" are the recipients of a Political Entity's expenditures ("Recipients"), some of which in turn make political expenditures to other groups or candidates. The Policy, however, would not require Lilly to ask Political Entities to require disclosure of any expenditures made by Recipients, only those made by Political Entities themselves. Thus, the notion that Recipients would need to provide consent to disclosure of payments to them, which is unsupported, is irrelevant to the excludability of the Proposal.

Rule 14a-8(i)(6) allows exclusion of proposals that are beyond a company's power to implement, which is not the case here. The only entity over which Lilly need exercise control in order to implement the Policy is itself. The Policy would apply only to new or renewed funding requests, and if a Political Entity chose not to provide the requested information, Lilly could decide not to fund it. The determinations on which Lilly relies all involved proposals where implementation could be blocked by a third party, making them inapposite.

* * *

For the reasons set forth above, Lilly has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8 (i)(6). The Proponent thus respectfully requests that Lilly's request for relief be denied.

We appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (703) 994-4168.

Sincerely,



Dorrit Lowsen
Co-CEO
Change Finance, PBC

⁶ Ford Motor Company (Mar. 9, 1990).

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cc: Sarkis Jebejian
sarkis.jebejian@kirkland.com