



DIVISION OF
CORPORATION FINANCE

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

March 17, 2025

Sarkis Jebejian
Kirkland & Ellis LLP

Re: Eli Lilly and Company (the "Company")
Incoming letter dated December 30, 2024

Dear Sarkis Jebejian:

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

The Proposal asks the board of directors to oversee conduct of human rights due diligence to produce a human rights impact assessment covering the Company's operations, activities, business relationships, and products, including access to medicines.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal seeks to micromanage the Company. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

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/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Catherine Rowan
Trinity Health

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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December 30, 2024

VIA ELECTRONIC SUBMISSION

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

Re: Shareholder Proposal of Trinity Health

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 2025 Annual Meeting of Shareholders (the “*2025 Annual Meeting*” and such materials, the “*2025 Proxy Materials*”) a shareholder proposal and supporting statement (the “*Proposal*”) submitted by Trinity Health and co-filed by certain other parties¹ (collectively, the “*Proponents*”). We also request confirmation that the staff of the Division of Corporation Finance (the “*Staff*”) will not recommend enforcement action to the Commission if the Company omits the Proposal from the 2025 Proxy Materials for the reasons discussed below.

In accordance with the Staff announcement published on November 7, 2023, we are submitting this letter electronically to the Staff through the online shareholder proposal form. 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 2025 Proxy Materials. Likewise, we take this opportunity to inform the Proponent that if the Proponent elects to submit any correspondence to

¹ The following shareholders have co-filed the Proposal: CommonSpirit Health, Friends Fiduciary Corporation, Sisters of Charity of Saint Elizabeth, Mercy Investment Services, Inc., Boston Common Asset Management, School Sisters of Notre Dame Central Pacific Province, Dana Investment Advisors, Sisters of St. Francis, Sisters of St. Joseph of Peace, Missionary Oblates of Mary Immaculate, Sisters of the Humility of Mary, Providence St. Joseph Health, Daughters of Charity Province of St. Louise, Adrian Dominican Sisters, Bon Secours Mercy.

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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 2025 Annual Meeting:

RESOLVED, that shareholders of Eli Lilly & Company (“Lilly”) urge the board of directors to oversee conduct of human rights due diligence (“HRDD”) to produce a human rights impact assessment (“HRIA”) covering Lilly’s operations, activities, business relationships, and products, including access to medicines. The HRIA should be prepared at reasonable cost and omitting confidential and proprietary information and made available on Lilly’s website. The HRIA should describe actual and potential adverse human rights impacts identified; identify rightsholders that were consulted; and discuss whether and how the results of the HRDD will be integrated into Lilly’s operations and decision making.²

BASES FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the 2025 Proxy Materials pursuant to:

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

ANALYSIS

1. 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.”

² The Proposal in full is attached hereto as Exhibit A.

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Exchange Act Release No. 40018 (May 21, 1998) (the “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.*

According to the 1998 Release, the policy underlying the ordinary business exclusion rests on satisfying one of 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; or (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 in the no-action letter 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 Ordinary Business Matters and Does Not Raise Significant Social Policy Considerations That Transcend Ordinary Business

(i) The Proposal Relates to Ordinary Business Matters

The Proposal requests that the Company conduct human rights due diligence to produce a human rights impact assessment covering matters that are core to the Company’s ordinary business—Lilly’s operations, activities, business relationships, and products. In particular, the Proposal relates to the Company’s decision-making regarding its products and services (including citing insulin specifically and questioning the Company’s allocation of its resources towards other products and medicines) as well as its relationships with vendors and suppliers.

The Staff has routinely acknowledged that exclusion of a shareholder proposal is permissible under Rule 14a-8(i)(7) when the actions sought by the proposal implicate tasks that are so fundamental to management’s ability to run a company on a day-to-day basis that they

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could not be subject to direct shareholder oversight. As an example of a proposal that dealt with ordinary business matters fundamental to management's ability to run the company, in *Equity LifeStyle Properties, Inc.* (Feb. 6, 2013), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on "the reputational risks associated with the setting of unfair, inequitable and excessive rent increases that cause undue hardship to older homeowners on fixed incomes" and "potential negative feedback stated directly to potential customers from current residents." The Staff noted in its response that the "setting of prices for products and services is fundamental to management's ability to run a company on a day-to-day basis."

In this case, the action requested by the Proposal, for the Company's board of directors (the "*Board*") to implement and oversee the conduct of human rights due diligence to produce a human rights impact assessment covering Lilly's operations, activities, business relationships, and products, including access to medicines (and to make such assessment available publicly), directly relates to virtually every aspect of the Company's business and operations, which necessarily includes tasks that are fundamental to management's ability to run the Company. Furthermore, the Staff has consistently acknowledged that shareholder proposals that relate to the products and services offered by a company are excludable under Rule 14a-8(i)(7). For example, in *DENTSPLY Int'l Inc.* (Mar. 21, 2013), the Staff permitted exclusion of a proposal under Rule 14a-8(i)(7) requesting a report summarizing the company's policies and plans for phasing out mercury from its products, noting that the proposal related to the company's product development and that "[p]roposals concerning product development are generally excludable under rule 14a-8(i)(7)." In *Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied* Mar. 4, 2013), the Staff granted no-action relief under Rule 14a-8(i)(7) where the proposal requested a report discussing the adequacy of the company's policies in addressing the social and financial impacts of the company's direct deposit advance lending service, explaining that "the proposal relates to the products and services offered for sale by the [company]" and that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)." Similarly, in *The TJX Companies, Inc.* (Apr. 16, 2018) the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company's board develop and disclose a new universal and comprehensive animal welfare policy applying to the company's sale of products, with the majority of the proposal focusing on the company's sale of products containing fur.

Additionally, in the 1998 Release, the Commission specifically included supplier relationships as a type of ordinary business matter excludable under Rule 14a-8(i)(7). The Staff has concurred with the exclusion of proposals under Rule 14a-8(i)(7) in numerous instances on the basis that they concerned decisions relating to supplier or vendor relationships. *See, e.g., Walmart, Inc.* (Mar. 8, 2018) (permitting exclusion of a proposal seeking a report outlining the requirements suppliers must follow regarding engineering ownership and liability); *Foot Locker, Inc.* (Mar. 3, 2017) (permitting exclusion of a proposal seeking a report on steps taken by the company to monitor overseas apparel suppliers' use of subcontractors as relating "broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors");

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Kraft Foods Inc. (Feb. 23, 2012) (permitting exclusion of a proposal that sought a report detailing the ways the company “is assessing water risk to its agricultural supply chain and action it intends to take to mitigate the impact on long-term shareholder value,” noting that the “proposal relates to decisions relating to supplier relationships”).

As explained further in Section 2 below, the Company publicly discloses its commitments and efforts on human rights topics. However, the company’s decision-making on any given ordinary business matter must take into account myriad other factors. Decisions regarding how to apply the Company’s human rights policies to ordinary business matters such as the Company’s products and supply chain standards, as well as how to communicate publicly regarding those matters, naturally involve nuanced decisions that are intricately intertwined with the day-to-day conduct of Lilly’s supply chain and go-to-market strategies. The Company offers for sale a broad and diverse range of medicines, and it is fundamental to management’s ability to run the Company on a day-to-day basis to decide which products to sell, from which suppliers to source the products, how to select and vet such suppliers and how to communicate about the Company’s supplier standards, as well as which medicines to allocate resources towards developing and further researching. Accordingly, consistent with the precedent cited above, the Proposal implicates core operations of the Company’s ordinary business and therefore should be excluded on the basis of Rule 14a-8(i)(7).

(ii) 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 with respect to significant social policy issues does not create a new significant social policy exception that swallows the rule that proposals dealing with ordinary business matters are excludable. Since the publication of *SLB 14L*, the Staff has continued to permit exclusion of proposals that touch on a significant social policy issue but are actually directed at a company’s ordinary business matters such that the significant social policy issue does not transcend ordinary business. *See, e.g., Universal Health Services, Inc.* (Mar. 22, 2024) (permitting exclusion of a proposal requesting that the company adopt a policy for healthful foods for healthcare facilities and implement a program for healthful hospital food);

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The Kroger Co. (Apr. 25, 2023) (“*Kroger*”) (permitting exclusion of a proposal requesting the board participate in the Fair Food Program in order to mitigate severe risks of forced labor and other human rights violations in the company’s produce supply chain); *Dollar Tree, Inc.* (May 2, 2022) (permitting exclusion of a proposal requesting a report on risks to the company’s business strategy in the face of increasing labor market pressure despite references in the proposal to employee safety, labor-force participation, and low wages); *Amazon, Inc.* (Apr. 7, 2022) (*UAW Retiree Medical Benefits Trust*) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on risks to the company related to staffing of its business and operations despite the suggestion by the proponent that the focus was on human capital management); *Amazon.com, Inc.* (Apr. 8, 2022) (*James McRitchie*) and *Repligen Corporation* (Apr. 1, 2022) (both permitting exclusion under Rule 14a-8(i)(7) of proposals requesting reports on information about the distribution of stock-based incentives to employees, including data about EEO-1 employee classification, despite declarations in the supporting statements that the intention was for the proposals to address a significant social policy issue).

In this case, while the Proposal requests a human rights impact assessment, the resolved clause makes clear that the focus of the Proposal is squarely on the Company’s “operations, activities, business relationships, and products.” As explained above, these matters are unquestionably the Company’s ordinary business. The Proposal’s focus, therefore, is not on a significant social policy issue and thus does not transcend ordinary business.

C. The Proposal May Be Excluded Because It Seeks to Micromanage the Company

In addition to focusing on core ordinary business matters 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 analogous to several proposals that the Staff recently permitted to be excluded under Rule 14a-8(i)(7) for seeking to micromanage companies. For example, the Staff recently permitted exclusion of several proposals seeking living wage reports needed to assess compliance with international human rights standards on the grounds that such proposals sought to micromanage the companies at issue. *See Amazon.com, Inc.* (Apr. 1, 2024); *Home Depot, Inc.* (Mar. 21, 2024); *Kohl’s Corporation* (Mar. 6, 2024). The Staff also permitted exclusion in *Kroger* where, as noted above, the proposal requested that the board participate in the Fair Food Program in order to mitigate severe risks of forced labor and other human rights violations in the company’s produce supply chain. *Kroger* successfully argued that the proposal was seeking to micromanage the company “by substituting the shareholder’s decisions regarding the

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[c]ompany's supply chain for management's practices, a decision upon which the shareholders, as a group, are not in a position to make an informed judgment." Notably, in *Amazon.com, Inc.* (Apr. 3, 2019) ("*Amazon 2019*"), like in the present case, the proposal requested that a human rights impact assessment be made available to shareholders. In particular, the proposal in *Amazon 2019* requested that human rights impact assessments be conducted "for at least three food products" sold by the company. In concurring that the proposal was excludable under Rule 14a-8(i)(7), the Staff stated its view that "the Proposal would micromanage the [c]ompany by seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors."

The Proposal in this case requests a human rights impact assessment be conducted not merely for three products, but for all of the Company's "operations, activities, business relationships, and products." The Proposal also states that the assessment "should describe actual and potential adverse human rights impacts identified; identify rightsholders that were consulted; and discuss whether and how the results of the human rights due diligence will be integrated into Lilly's operations and decision making." As such, the Proposal is far more prescriptive and intrusive than the proposal permitted to be excluded in *Amazon 2019*. In addition, like the proposal permitted to be excluded in *Kroger*, the Proposal here seeks to oversee and manage the Company's supply chain decision-making.

The Proposal also seeks to dictate how the Company manages compliance with local-jurisdictional regulatory requirements, which already mandate multiple Lilly subsidiaries to produce reports concerning human rights topics. For example, modern slavery disclosure is already provided pursuant to regulations in each of the United Kingdom, Australia and Canada, which require the applicable subsidiary to assess and address the risks of modern slavery in their operations and supply chain. Regulatory compliance is an ordinary corporate function that impacts day-to-day operations and inappropriately limits the discretion of the Board and management.

Implementing the request in the Proposal would be extremely complicated, involving every facet of the Company's business and operations, which employ approximately 46,000 employees worldwide, manufacture and distribute products through facilities in the United States (including Puerto Rico), Europe and Asia, as well as sell Lilly's products in approximately 105 countries. The Company's decision-making process with respect to its day-to-day operations as well as its enterprise-wide strategy involves detailed and complex considerations that are the responsibility of the Board and management. As discussed in more detail in Section 1(B) above, the Proposal relates to matters that are core to the Company's ordinary business—Lilly's operations, activities, business relationships, and products. In its decision-making on these matters, the Company must take into account a number of factors in addition to human rights concerns. The Proposal's request is also incredibly prescriptive, stating that the human rights impact assessment must cover "Lilly's operations, activities, business relationships, and

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products, including access to medicines” and that the assessment “should describe actual and potential adverse human rights impacts identified; identify rightsholders that were consulted; and discuss whether and how the results of the [human rights due diligence] will be integrated into Lilly’s operations and decision making.” Producing a compliant report with the level of requested detail would be an enormous undertaking for the Company, inappropriately limiting the discretion of the Board and management.

As just one example of how implementing the Proposal would probe 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, many of the rights outlined in human rights frameworks around the world are highly regulated by local governments in jurisdictions where Lilly operates, including by imposing standards with respect to non-discrimination, right to work, right to assemble, right to rest and holiday, and freedom from slavery. Such laws vary widely by jurisdiction, and therefore Lilly must navigate a variety of complex compliance programs and reporting obligations while taking actions consistent with Lilly’s values that also meet the Company’s operational needs.

The Proposal seeks to limit the discretion of the Board and management by delving too deeply into these complex determinations. Asking shareholders to vote and provide oversight on all aspects of the Company’s business and operations is clearly outside the knowledge and expertise of shareholders, and therefore shareholders, as a group, would not be in a position to make an informed judgment on these matters. The Proposal is therefore excludable pursuant to Rule 14a-8(i)(7) for seeking to micromanage the Company.

Because the Proposal deals with the Company’s ordinary business matters, 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).

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

A. Background

Lilly already discloses its human rights commitments and efforts, including a commitment to global access and health. Moreover, Lilly is a signatory to the United Nations Global Compact (“*UNGC*”) and its ten principles on respecting internationally proclaimed human rights, labor, environment and anti-corruption. Lilly provides an index in the Company’s Sustainability Report (the “*Sustainability Report*”)³ that maps each of the UNGC principles to the location of Lilly’s

³ Available at <https://sustainability.lilly.com/>.

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existing disclosure about the Company's efforts related to that principle, which enables shareholders to assess the Company's progress and oversight with regard to its human rights goals and impacts.

Lilly expects its suppliers to uphold the values and standards outlined in the Lilly Supplier Code of Business Conduct (the "*Code of Conduct*")⁴, which contains specific standards related to human rights. It sets out the expectation that each of the Company's vendors abide by the Code of Conduct's standards and it provides world-wide reporting mechanisms for reporting experiences or observations that are not aligned with the Code of Conduct standards. Lilly also discloses its supply chain management approach, supply chain governance approach, and its third-party risk management approach in its Sustainability Report.

Lilly's Sustainability Report outlines the Company's commitments and efforts on human rights topics, including that:

- Lilly has solicited input and prioritization from internal and external people and organizations to better determine the sustainability issues that matter most to our Company and stakeholders;
- Lilly discloses efforts and progress to both minimize environmental impact and create lasting social impact (including increasing access to medicines and quality healthcare, improving lives and communities and empowering a diverse workforce);
- Lilly adheres to human rights and labor laws, complies with anti-corruption practices and endeavors for a diverse supplier base;
- Lilly has adopted a supplier code of business conduct, which applies to all suppliers, and includes such topics as ethical business practices, upholding human and employment rights of workers, treating workers with dignity and respect, prohibition against forced labor, rejection of child labor, freedom from exposure to improper conduct (discrimination, retaliation, harassment), responsible sourcing of raw

⁴ Available at https://assets.ctfassets.net/srys4ukjcerm/gVAGEcUTLBkaVdSHHyrd6/b4fb276dc3b73984e6b4af96f58545f2/Lilly_SCoBC_2024_EN.pdf and attached hereto as Exhibit B.

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materials, maintaining safe and healthful working conditions, and compliance with wage laws;

- Lilly integrates quality and health, safety, and environmental (“HSE”) considerations into its process for evaluating potential new contract manufacturers and formal assessments are conducted routinely for existing contract manufacturers;
- Lilly has taken steps to educate and engage its suppliers directly on HSE issues and to help them build expertise around these topics;
- Lilly’s third-party risk management program includes a focus on anti-corruption, information security, privacy, information systems quality, animal welfare and business continuity;
- Lilly supports human rights in its own operations by (i) offering fair and competitive employment practices, including wages and benefits; (ii) promoting a safe and healthy workplace; (iii) fostering a more diverse, equitable and inclusive work environment; (iv) cultivating diverse talent through the recruitment process, learning and development, and the advancement and retention of people with wide-ranging backgrounds and experiences; (v) complying with local minimum age laws and requirements and not employing child labor, or forced or compulsory labor; and (vi) respecting freedom of association in the workplace;
- Lilly develops and administers the Company’s research and development efforts and clinical trials in ways that support the Company’s commitment to human rights, such as bioethics and clinical trial diversity;
- Lilly has adopted a code of business conduct, policies, compliance management systems, HR performance and promotion systems, training programs and

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communications initiatives designed to work together to reinforce a culture of integrity and ethical behavior; and

- Lilly encourages employees and suppliers to share concerns openly and honestly – including on issues of human rights – and provides a reporting mechanism for doing so.

Discussions of specific environmental and social impacts and progress are also reported in Lilly’s Sustainability Report and in the Impact section of Lilly.com.⁵ For example, the Sustainability Report describes the Company’s commitment to equitable and affordable access to the Company’s medicines and to expanding Lilly’s impact on society by addressing complex global health challenges, with a focus on people living in communities with limited resources. Lilly contributes to the global drive for universal health coverage as part of the UN Sustainable Development Goals through the Company’s continued investment in developing medicines to address unmet medical needs around the world, Lilly’s efforts to extend the reach of the Company’s existing medicines to more people who need them, and Lilly’s efforts to strengthen health systems and policies.

Lilly discusses its approach to the impact on patients of affordable access to insulin therapies in its Sustainability Report. Lilly has taken many actions over the years to increase insulin access and affordability around the world. In addition, Lilly has entered into collaborations around the world to increase access to affordable insulin. The Sustainability Report also discusses Lilly’s approach to a long-term affordability policy, medicine donations, and certain historical insulin price information.

Lilly continues to review and assess human rights issues that are relevant to the Company’s operations around the globe and, when appropriate, has made and will continue to make changes to its commitments, policies and practices, as appropriate. Lilly’s human rights commitments, efforts and impacts are already publicly disclosed in Lilly’s Sustainability Report as well as on Lilly’s website and in other disclosures, and the Company does not believe a separate human rights impact assessment report is necessary.

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

⁵ Available at <https://www.lilly.com/impact/overview>. The Impact section of Lilly.com also discusses the activities of the Lilly Foundation, the Lilly Grant Office, and Impact Area disclosures.

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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. In fact, SEC Release No. 34-20091 (Aug. 16, 1983) reversed the Commission’s prior position of permitting exclusion of a proposal only where a company’s implementation efforts had “fully” effectuated the proposal. The 1998 amendments to Rule 14a-8 codified this position. *See 1998 Release*, at n.30 and accompanying text.

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 [p]roposal and that the [c]ompany has, therefore, substantially implemented the [p]roposal,” 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 Proposal,” where the company argued that its current disclosures follow requirements under applicable securities laws for disclosing executive compensation); *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 Proposal, which calls for the Board to oversee the conduct of human rights due diligence to produce a human rights impact assessment

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covering Lilly's operations, activities, business relationships, and products, including access to medicines (and to make such assessment available on Lilly's website), because the Company already publicly discloses Lilly's ongoing supplier due diligence activities, monitoring programs, policies and impact assessments with respect to the Company's business.

Lilly has already established and reported on the role that human rights play in the Company's operations, activities, business relationships and products, including access to medicines. Please refer to Section 2(A) above, on the human rights activities Lilly undertakes and discloses to shareholders through the Company's website and in the Company's on-line Sustainability Report.

Lilly participates in the UNGC, which serves as a framework for guiding the Company's commitment to human rights while creating medicines to make life better for people around the world. The UNGC framework includes the following principles, and the Company makes available on its website an index (reproduced below) that maps each of the UNGC principles to the location in Lilly's Sustainability Report and linked disclosure about the Company's efforts related to that principle. Each year, Lilly reviews and reaffirms the Company's commitment to the 10 principles outlined by the UNGC, which functionally serves as an annual human rights impact assessment that guides the Company's decisions related to human rights⁶:

Lilly's UNGC Index		
Principle	Description	Lilly's Related Public Disclosures
Human Rights		
UNGC Principle 1	Businesses should support and respect the protection of internationally proclaimed human rights; and	Human Rights U.S. Access & Affordability Patient Safety Community Engagement
UNGC Principle 2	make sure that they are not complicit in human rights abuses.	Human Rights Lilly Code of Business Conduct Lilly Supplier Code of Business Conduct
Labor		
UNGC Principle 3	Businesses should uphold the freedom of association and the effective recognition of	Human Rights Employee Experience Business Ethics

⁶ Lilly's UNGC Index and links to related public disclosures are available at <https://sustainability.lilly.com/transparency/ungc-index> and the UNGC Index is attached hereto as Exhibit C.

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	the right to collective bargaining;	Corporate Governance
UNGC Principle 4	the elimination of all forms of forced and compulsory labor;	Human Rights Corporate Governance Lilly Supplier Code of Business Conduct
UNGC Principle 5	the effective abolition of child labor; and	Human Rights Corporate Governance Lilly Supplier Code of Business Conduct
UNGC Principle 6	the elimination of discrimination in respect of employment and occupation.	Employee Experience Diversity, Equity & Inclusion
Environment		
UNGC Principle 7	Businesses should support a precautionary approach to environmental challenges;	Corporate Governance Climate Product Stewardship Supply Chain Management Waste Water CDP Climate Change Response CDP Water Security Response
UNGC Principle 8	undertake initiatives to promote greater environmental responsibility; and	Corporate Governance Climate Product Stewardship Supply Chain Management Waste Water CDP Climate Change Response CDP Water Security Response
UNGC Principle 9	encourage the development and diffusion of environmentally friendly technologies.	Product Stewardship
Anti-Corruption		

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UNGC Principle 10	Businesses should work against corruption in all its forms, including extortion and bribery.	Corporate Governance Business Ethics Supply Chain Management Lilly Code of Business Conduct Lilly Supplier Code of Business Conduct
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The Company's Sustainability Report also directly implements the Proposal by disclosing Lilly's human rights commitments, diligence, and assessments:

- Human Rights in Business Conduct – Lilly's code of business conduct and Lilly's policies, compliance management systems, HR performance and promotion systems, training programs and communications initiatives are designed to work together to reinforce a culture of integrity and ethical behavior in all aspects of Lilly's operations and activities.
- Human Rights Affecting the Workplace – Across Lilly's operations, the Company supports human rights by (i) offering fair and competitive employment practices, including wages and benefits, (ii) promoting a safe and healthy workspace, (iii) fostering an inclusive work environment, where discrimination, harassment and retaliation are not tolerated, (iv) cultivating a diverse workforce of people with wide-ranging backgrounds and experiences through recruitment, learning and development, advancement and retention process and programs.⁷
- Human Rights Due Diligence: Regulatory Compliance – Many topics that are classified as "human rights" are already the subject of regulation in countries around the world. These topics include, among others, fair wages, freedom from compulsory or coerced labor, child labor, freedom of association and collective bargaining, non-discrimination, right to privacy, etc. On its website, Lilly reports its committed to acting legally and ethically, following both the letter and the spirit of the laws, regulations, policies and procedures that govern its business.⁸ In certain jurisdictions, regulatory

⁷ Available at

https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.ctfassets.net%2F1078rkhl3da6%2F2T5wbnZKayS7gShdl3YFJX%2F38128f4fd051e2a809322f8703bb8c5e%2F2023_Lilly_EEO1_Table_Final_10-3-24.xlsx&wdOrigin=BROWSELINK.

⁸ Available at <https://www.lilly.com/impact/operating-ethically-and-responsibly> (see "Written Standards" drop down).

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reports including human rights topics are required by Lilly subsidiaries. For example, modern slavery disclosure is provided pursuant to regulation in each of the United Kingdom, Australia and Canada, which require the subsidiary to assess and address the risks of modern slavery in its operations and supply chain.⁹

Human Rights in Lilly's Supply Chain and Business Relationships – A portion of Lilly's environmental and social impact is embedded in its supply chain. Lilly supports the UNGC principles, adheres to human rights and labor laws, complies with anti-corruption practices, endeavors for a diverse supplier base, promotes sustainability efforts designed to minimize the Company's environmental footprint and strives to instill its operating principles within its supplier network. Lilly expects its suppliers and partners to uphold Lilly's values and standards, which are outlined and disclosed in the Code of Conduct. Lilly has also continued to strengthen efforts to monitor the Company's supply chain for quality, and HSE risks. For example, Lilly has taken steps to educate and engage the Company's suppliers directly on HSE issues and to help them build expertise around HSE topics. This includes Lilly's ongoing work as part of the Pharmaceutical Supply Chain Initiative ("*PSCI*"), which outlines what the pharmaceutical industry expects from its supply chain. Lilly was an inaugural member of PSCI, which created and maintains the Pharmaceutical Industry Principles for Responsible Supply Chain Management. These principles address five areas of supplier performance standards: (i) ethics, (ii) labor, (iii) health and safety, (iv) environment and (v) management systems to ensure compliance. Lilly's own Code of Conduct reflects these PSCI principles.

- Human Rights and Access to Medicines and Intellectual Property ("*IP*") – Lilly has participated in the IP Principles for Advancing Cures and Therapies ("*IP PACT*"), a multi-company initiative affirming the biopharmaceutical industry's commitment to innovation and keeping patients at the center of the Company's work. The IP PACT includes ten principles guiding the way the Company's industry uses IP, including to facilitate collaboration and partnerships, to act responsibly in patent proceedings, to support vibrant generic and biosimilar markets, and to approach IP in the world's poorest countries in ways that take into account their unique socio-economic challenges. The principles are intended to balance the needs of patients, society and our business.
- Human Rights in Clinical Trials – One of the primary responsibilities of Lilly and the medical professionals who conduct the Company's clinical trials is the safety of study

⁹ Available (i) for the United Kingdom, at <https://www.lilly.com/uk/modern-slavery-act>, (ii) for Canada, at <https://www.publicsafety.gc.ca/cnt/rsrscs/lbrr/ctlg/dtls-en.aspx?d=PS&i=99150115>, and (iii) for Australia, at <https://modernslaveryregister.gov.au/statements/18219/>.

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participants. Participant safety and well-being is monitored throughout each clinical trial. In addition, Ethics Review Boards, a team of people independent from the research, review every clinical trial to ensure appropriate steps are taken to protect the rights and welfare of participants before enrollment, and they maintain independent oversight over each clinical trial throughout its duration.

- Reporting Non-Compliant Behavior – Lilly’s policies encourage all employees and the Company’s suppliers to report known or unknown suspected issues, concerns or behavior that could harm Lilly or those the Company serves. Lilly fosters a culture where all individuals are empowered to speak up and engage with management to identify and implement appropriate continuous improvement as part of routine assessments. Furthermore, Lilly encourages employees and suppliers to share concerns openly and honestly – including on issues of human rights – knowing that Lilly will not tolerate acts of retaliation for reporting inappropriate conduct, preventing unlawful practices or participating in an investigation.
- Anti-Corruption Monitoring and Diligence - Lilly’s commitment to operating with high ethical standards includes complying with applicable Anti-Bribery and Anti-Corruption (“ABAC”) laws and regulations, and it extends to business relationships, dealings and activities all over the world. Lilly’s global policies prohibit bribery, fraud and other acts of dishonesty, including that the Company does not offer, provide, authorize or accept anything of value – or give the appearance that Lilly does – to inappropriately influence a decision or gain an unfair advantage. This also extends to Lilly’s work with third parties. Lilly uses a risk-based anti-corruption due diligence process to evaluate certain third parties, as appropriate, before engaging them. When appropriate, as determined through the Company’s risk evaluation process, third parties are required to follow anti-corruption policy and procedure requirements and participate in anti-corruption training. As part of Lilly’s ongoing monitoring and diligence efforts, Lilly conducts independent ABAC assessments of certain third parties, which often includes site visits and transaction testing. Lilly also conducts an annual global anti-corruption risk assessment to identify potential risks and develop appropriate risk mitigation plans.

The situation here is analogous to the situation in *Amazon.com, Inc.* (Mar. 27, 2020), where the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company, among other things, publicly disclose a comprehensive policy applicable to the company’s operations and subsidiaries that commits the company to respect human rights, as well as disclose the process the company “will use to identify, assess, prevent, mitigate and, where appropriate, address adverse human rights impact.” In arguing that the proposal had been substantially implemented, the company pointed to (i) the company’s codes of conduct that incorporated human rights principles, including the UNGP principles that, as discussed above, Lilly has also committed

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to, (ii) a website where the company described its human rights policies, guidelines and supplier codes of conduct, and (iii) a website where the company described its processes for integrating its human rights principles into the company's operations, including employee training and continuous review of its human rights policies in the context of the company's annual risk assessments. Although the proposal appeared to contemplate disclosure of each and every step of the company's process to diligence and assess its human rights impact, the Staff concluded that the company had substantially implemented the proposal. Here, Lilly's current human rights policies, disclosures, assessments and risk monitoring procedures substantially implement the Proposal by providing fulsome disclosure regarding Lilly's human rights due diligence and impacts that allows shareholders to understand the extent to which human rights due diligence is conducted and considerations are incorporated into Lilly's operations and decision-making.

The facts here can be distinguished from the facts in *Pfizer* (Feb. 20, 2024), where the Staff was unable to concur that the company could exclude under Rule 14a-8(i)(10) a proposal requesting that the company, among other things, produce a human rights impact assessment covering Pfizer's operations, activities, business relationships and products. In this case, Lilly publicly discloses more information regarding its human rights assessments and activities, including how Lilly integrates each of the UNGP principles into its human rights framework in its UNGC Index, enhanced disclosures regarding supply chain management and Lilly's Supplier Code of Business Conduct, as well as the enhanced disclosures in Lilly's Sustainability Report regarding human rights commitments, practices and impacts and enhanced reporting in specified jurisdictions regarding modern slavery laws.

The Company has already taken actions to address the Proposal's request by reporting to shareholders the process by which the Company oversees various aspects of human rights activities in its supply chain and in its own operations and impact assessments in various aspects of the Company's operations, activities, business relationships, products and access to medicines, which enables shareholders to effectively assess Lilly's human rights impact and the strength of its diligence programs.

These disclosures collectively detail the process by which the Company assesses and reports the human rights impact of the Company's operations, activities, business relationships, products and access to medicine. Therefore, consistent with the no-action precedent discussed above, the Company has substantially implemented the Proposal and, accordingly, the Proposal is excludable from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(10).

* * *

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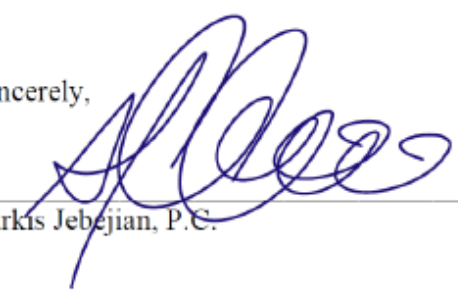
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CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2025 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

Christopher Anderson
Associate Vice President – Leader of Corporate Securities and Assistant Secretary, Eli Lilly and Company

Catherine M. Rowan
Director, Socially Responsible Investments, Trinity Health

Exhibit A

[Copy of Proposal]

RESOLVED, that shareholders of Eli Lilly and Company (“Lilly”) urge the board of directors to oversee conduct of human rights due diligence (“HRDD”) to produce a human rights impact assessment (“HRIA”) covering Lilly’s operations, activities, business relationships, and products, including access to medicines. The HRIA should be prepared at reasonable cost and omitting confidential and proprietary information and made available on Lilly’s web site. The HRIA should describe actual and potential adverse human rights impacts identified; identify rightsholders that were consulted; and discuss whether and how the results of the HRDD will be integrated into Lilly’s operations and decision making.

SUPPORTING STATEMENT

Lilly currently has a Code of Business Conduct (the “Code”), applicable to its suppliers, which contains provisions addressing various issues including protecting worker rights.¹ The Pharmaceutical Supply Chain Initiative (“PSCI”) Principles,² a link to which appears on Lilly’s web site, includes an expectation that suppliers respect workplace human rights.

Article 12.1 of the International Covenant on Economic, Social, and Cultural Rights “recognize[s] the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”³ Target 3.8 of Sustainable Development Goal 3 assesses progress toward “access to safe, effective, quality and affordable essential medicines and vaccines for all.”⁴ The section of Lilly’s Sustainability Report on human rights states that Lilly is “deeply committed to equitable and affordable access to our

¹

https://assets.ctfassets.net/srys4ukjcerm/gVAGecUTLBkaVdSHHyrd6/b4fb276dc3b73984e6b4af96f58545f2/Lilly_SCoBC_2024_EN.pdf

² <https://pscinitiative.org/principles>

³ www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7605313/>

⁴

www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf

medicines” and to monitoring the “safety and well-being” of clinical trial participants.⁵

Insulin has been on the World Health Organization’s essential medicines list since 1977.⁶ Recently, an “increasing lack of supply of critical insulin products [has] severely affect[ed] diabetes patients and healthcare providers.”⁷ There is concern that insulin makers like Lilly are “turning their focus and resources away from insulin and toward the GLP-1s,” like Ozempic, that are more profitable but cannot substitute for the insulin required by some diabetics.⁸

Lilly appears not to have adopted an HRDD process. According to Deloitte, it is not possible for a company to “really commit to respecting and promoting human rights without having full transparency of its human rights impacts.”⁹ The Code makes no mention of how Lilly evaluates and enforces suppliers’ compliance, aside from a reporting hotline. That is worrisome given a recent letter from members of Congress indicating that U.S. pharmaceutical companies have conducted clinical trials in China’s Xinjiang Uyghur Autonomous Region, where forced labor is common.¹⁰ The PSCI Principles contemplate supplier audits,¹¹ which are not HRDD.

As well, Lilly does not indicate whether and how it identifies actual and potential adverse human rights impacts resulting from its own operations. The Sustainability Report section on human rights in health is silent on HRDD. Conducting comprehensive HRDD across Lilly’s operations and value chain would enable Lilly to identify actual and potential impacts, including those related to the human right to health, and publicly releasing the resulting HRIA would allow shareholders to assess Lilly’s human rights performance.

⁵ <https://sustainability.lilly.com/social/human-rights#human-rights-health>

⁶ [https://www.thelancet.com/journals/landia/article/PIIS2213-8587\(21\)00322-3/fulltext](https://www.thelancet.com/journals/landia/article/PIIS2213-8587(21)00322-3/fulltext)

⁷ <https://medpak.com/insulin-shortage/>

⁸ <https://www.statnews.com/2024/07/17/insulin-novo-nordisk-eli-lilly-weight-loss-drugs/>

⁹ <https://www.deloitte.com/global/en/services/risk-advisory/blogs/human-rights-due-diligence-in-the-modern-era.html>

¹⁰ <https://www.dol.gov/agencies/ilab/against-their-will-the-situation-in-xinjiang>

¹¹ <https://pscinitiative.org/sharedAudits>

Exhibit B

[Copy of Supplier Code of Business Conduct]

Lilly Supplier Code of Business Conduct

At Lilly, we unite caring with discovery to create medicines that make life better for people around the world. In the nearly 150 years we've been in business, we've developed and delivered trusted medicines that help people get better, feel better, and live better.

We are committed to upholding high standards of corporate conduct in our business dealings around the world. This commitment to operating ethically and responsibly helps us earn and maintain the trust of customers, regulators, and society as a whole.

We expect our suppliers and employees to conduct Lilly business consistent with these standards and the Lilly values of Integrity, Excellence, and Respect for People as reflected in the statements below.

Interactions

- » We behave ethically in business relationships, dealings, and activities. We practice the highest standards of business conduct.
- » We comply with all laws, regulations, industry codes of practice, and Lilly policies, standards, and procedures that apply to our business activities.
- » We don't offer, provide, authorize, or accept anything of value—or give the appearance that we do—in order to inappropriately influence a decision or gain an unfair advantage.
- » We compete ethically. We do not engage in unethical or other unfair competitive practices, but rather we rely on the merits of our products and people.
- » We do not allow our business dealings to be influenced by personal or family conflicts of interest.
- » We select suppliers based on the merit and value of their products and services. We do not accept gifts, entertainment, or favors from them that could affect or appear to affect our business judgment. We do not allow our suppliers to offer gifts or donations on Lilly's behalf without prior written approval.
- » We communicate honestly in all areas in which we engage externally about Lilly business, products, policies, and activities. Only authorized representatives of Lilly communicate on Lilly's behalf.
- » We provide information about Lilly products that is approved by Lilly, consistent with the approved label, and that presents benefits and risks in an accurate, fair, and balanced manner. We manage the production and dissemination of this information carefully so that it is current.
- » We are committed to uphold the human and employment rights of workers and to treat them with dignity and respect. For example, we do not use forced, bonded or indentured labor or involuntary prison labor and no worker should pay for a job or be denied freedom of movement. We do not use child labor (except as consistent with applicable law, such as cooperative learning programs). In addition, we pay employees consistent with applicable wage laws, including minimum wages, overtime hours and any mandated benefits, and communicate with employees in a timely manner regarding the basis on which they are being compensated. We also encourage open communication and direct engagement with workers to resolve workplace and compensation issues.
- » We protect the workplace, including Lilly's physical assets and electronic resources, from loss, theft, or damage. Theft, security emergencies, and personal injuries must be reported to Lilly sponsors and to local Lilly security, if available in that location.
- » We work to assure a reliable supply of quality products, and accurate and complete product, safety, and efficacy information. We take precautions to protect the quality and integrity of our products in the supply chain.
- » We expect that our suppliers will source their materials responsibly and abstain from procuring materials from all conflict areas or sources including the Democratic Republic of Congo. We expect that our suppliers conduct their own due diligence regarding the source of any materials they provide to us in order to ensure those materials are obtained from areas that are conflict-free.
- » We create and maintain safe and healthful working conditions, and we respect and protect the environment, conducting our operations to minimize adverse environmental effects.
- » We follow all approved standards, procedures, and processes and complete all required training before performing an activity or task.
- » We bring our full selves to work each day. To that end, we ensure that we are not impaired with drugs or alcohol while at work so that we can be fully engaged and help make life better for people around the world.
- » We respect and protect the welfare of animals used in research, complying with all legal and Lilly requirements that govern the care and use of animals in research.

Workplace

- » We conduct our business activities with respect for people and a commitment to affirm and support human rights, diversity, equal opportunity, and freedom from exposure to improper conduct, including acts of discrimination, retaliation, or harassment. We resolve concerns and issues in an appropriate manner, without retaliation.



Information

- » We safeguard and make proper use of confidential information as a valuable company asset. Confidential information is any information not in the public domain. Lilly owns and retains the right to access Lilly's information regardless of how, why, where, or by whom it is produced.
- » We obtain appropriate Lilly approval before communicating or disclosing externally in a public forum or any forum accessible by the public, any information related to Lilly.
- » We do not improperly disclose or take advantage of nonpublic Lilly, alliance, or third-party information.
- » We protect, respect, and do not knowingly violate the information rights of others.
- » We use electronic services and tools with due consideration for the sensitivity of the information being stored, communicated, or transferred and the potential risks of the information being lost or exposed.
- » We keep our promises and are respectful of an individual's privacy, and we demonstrate, in every business operation, in every location around the world, that people can trust us with their personal information, whether it is obtained from an employee, a customer, or another individual. We take reasonable precautions to safeguard personal information against loss, misuse, theft, unauthorized access, disclosure, modification, or destruction.
- » We conduct Lilly clinical research and development activities consistent with bioethics principles and sound scientific methodologies, focusing on the safety and well-being of research participants.
- » We follow Lilly processes for the handling and publication of Lilly scientific information (whether written, oral, or electronic). We only publish scientific information that is accurate, objective, balanced, and timely.

*Lilly unites caring with
discovery to make life better
for people around the world.*

Transactions

- » We create and maintain, in reasonable detail, accurate Lilly books, records, and accounts. We provide reliable and trustworthy financial statements that reflect Lilly transactions.
- » We do not make, arrange to have made, or fail to correct or report any false, misleading, or artificial entries in Lilly records or those of others with whom we do business.
- » We have appropriate authority and secure the required Lilly approvals before acquiring or committing Lilly resources, entering into agreements with external parties, disbursing Lilly funds, and/or entering into special transactions noted in Lilly policies, standards, and procedures. We require authorization from procurement, assessment by third party risk management, and appropriate supporting contractual documentation before purchasing goods or services.
- » When involved in contracting, we verify that the contract accurately reflects the nature, value, risk and content of the proposed Lilly transactions and relationships. Any instances of observed conduct or circumstances that are inconsistent with applicable contractual requirements should be discussed with Procurement, the Third Party Management Office, or a Lilly sponsor.
- » We publicly disclose financial interactions with and transfers of value to health care providers, health care organizations, and patient organizations—not only as required by law but also in accordance with regional and/or local voluntary disclosure codes.
- » We properly classify and value goods and technology and meet all applicable import and export requirements and restrictions before transferring them either electronically or physically (whether by sending or personally carrying them) between countries.
- » We do not take any action that would support or respond to a request relating to a boycott of a country that is friendly to the United States. We follow applicable internal reporting and approval requirements for all requests received, even if Lilly does not intend to respond to or comply with the request.
- » We do not engage in or commit to any Lilly transaction with countries subject to trade or economic sanctions or with individuals, groups, or entities that we are aware or have reason to believe appear on any government list of restricted, sanctioned, denied, or debarred parties without first verifying that the transaction is permissible.



Reporting

- » If you experience or observe actions that are not aligned with these commitments, Lilly wants to know so that we can learn and improve. Report all known or suspected violations and immediately report any concerns or potential breaches of personal information to Lilly sponsors or the Lilly Ethics & Compliance Hotline (www.lillyethics.ethicspoint.com), or call 1-800-815-2481
- » Report to Lilly within five (5) calendar days if one of your employees is excluded or restricted in any way from doing business with any government.
- » We take appropriate measures to prevent retaliation against persons who make these reports. Lilly does not tolerate retaliation for reporting inappropriate conduct, preventing unlawful practices, or participating in an investigation.
- » Report any known or suspected death or suspect product immediately (within 24 hours of receipt). Report any other adverse event or product complaint within one business day.

In the US:

- Call The Lilly Answers Center (TLAC), 1.800.LillyRx (1.800.545.5979) or use an alternative reporting method as determined by the Lilly component.

Outside the US:

- Select your location from the globe link in the upper right corner of Lilly.com then click on "Contact" or "Contact Us" in top menu bar to access the appropriate local reporting method.

Lilly appreciates your shared commitment to acting with integrity. Contact your employer or Lilly sponsor for details to support these commitments and other elements of Lilly's Ethics and Compliance program.

Together, we act with transparency, honesty, and integrity, knowing that every interaction is an opportunity to improve patient care and build trust with those we serve.



Exhibit C

[Copy of UNGC Index]

UN Global Compact Index

1. Statement of continued support by the Chief Executive Officer

[CEO Letter](#)

2. Description of actions: Human Rights

Principle 1:	Businesses should support and respect the protection of internationally proclaimed human rights; and	Human Rights U.S. Access & Affordability Global Access & Health Patient Safety Community Engagement
Principle 2:	make sure that they are not complicit in human rights abuses.	Human Rights Lilly Code of Business Conduct Lilly Supplier Code of Business Conduct
Labor		
Principle 3:	Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;	Human Rights Employee Experience Business Ethics Corporate Governance
Principle 4:	the elimination of all forms of forced and compulsory labor;	Human Rights Corporate Governance Lilly Supplier Code of Business Conduct
Principle 5:	the effective abolition of child labor; and	Human Rights Corporate Governance Lilly Supplier Code of Business Conduct
Principle 6:	the elimination of discrimination in respect of employment and occupation.	Employee Experience Diversity, Equity & Inclusion

<hr/>		
Principle 7:	Businesses should support a precautionary approach to environmental challenges;	Corporate Governance Climate Product Stewardship Supply Chain Management Waste Water CDP Climate Change Response CDP Water Security Response
Principle 8:	undertake initiatives to promote greater environmental responsibility; and	Corporate Governance Climate Product Stewardship Supply Chain Management Waste Water CDP Climate Change Response CDP Water Security Response
Principle 9:	encourage the development and diffusion of environmentally friendly technologies.	Product Stewardship

Anti-corruption

<hr/>		
Principle 10:	Businesses should work against corruption in all its forms, including extortion and bribery.	Corporate Governance Business Ethics Supply Chain Management Lilly Code of Business Conduct Lilly Supplier Code of Business Conduct

3. Measurement of outcomes

<hr/>		
		Environmental Social Governance ESG Metrics SASB Index TCFD Index CDP Climate Change Response CDP Water Security Response

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Lilly



Catherine M. Rowan
Director, Socially Responsible Investments
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Phone: (718) 822-0820
Fax: (718) 504-4787
E-Mail Address: rowancm@trinity-health.org

January 23, 2025

Via Shareholder Proposal Form

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

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

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Trinity Health and co-filers (together, the “Proponents”) submitted a shareholder proposal (the “Proposal”) to Eli Lilly and Company (“Lilly” or the “Company”). The Proposal asks Lilly to engage in human rights due diligence (“HRDD”) and make public the resulting human rights impact assessment (“HRIA”) covering Lilly’s operations, activities, business relationships, and products.

In a letter to the Division dated December 30, 2024 (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 2025 annual meeting of shareholders. Lilly argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), as dealing with the company’s ordinary business operations, and Rule 14a-8(i)(10), on the ground that the Company has substantially implemented the Proposal. As discussed more fully below, Lilly has not met its burden of proving its entitlement to exclude the Proposal on either of these bases, and the Proponents ask that its request for relief be denied.

The Proposal

The Proposal states:

RESOLVED, that shareholders of Eli Lilly & Company (“Lilly”) urge the board of directors to oversee conduct of human rights due diligence (“HRDD”) to produce a human rights impact assessment (“HRIA”) covering Lilly’s operations, activities, business relationships, and products, including access to medicines. The HRIA should be prepared at reasonable cost and omitting confidential and proprietary information and made available on Lilly’s website. The HRIA should describe actual and potential adverse human rights impacts identified; identify rightsholders that were consulted; and discuss whether and how the results of the HRDD will be integrated into Lilly’s operations and decision making.

Background

The United Nations Guiding Principles on Business and Human Rights (“UNGPs”) were developed to implement the United Nations’ “protect, respect and remedy” framework for human rights and was endorsed by the UN’s Human Rights Council in 2011. The goal of the UNGPs is “enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.”¹

The UNGPs state that businesses “should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.” The UNGPs make clear that companies not only should “[a]void causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur,” but also “[s]eek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”² Three elements enable businesses to meet those responsibilities: a policy commitment to respect human rights; a “human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights”; and a process for remedying adverse human rights impacts.³

The Proposal addresses the second element, HRDD. According to the UNGPs, HRDD “should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”⁴ The Proposal asks Lilly to conduct HRDD, including regarding access to its medicines, and make available the resulting HRIA. The HRIA will allow shareholders to assess the nature and extent of human rights risks and evaluate Lilly’s oversight of those risks.

¹ United Nations Human Rights Office of the High Commissioner, *United Nations Guiding Principles on Business and Human Rights*, at 1 (2011) (hereinafter, “UNGPs”) (available at https://www.ohchr.org/documents/publications/GuidingprinciplesBusinessshr_eN.pdf).

² UNGPs, at 14.

³ UNGPs, at 16.

⁴ UNGPs, at 17.

Ordinary Business

Rule 14a-8(i)(7) allows a company to omit a proposal that deals with its ordinary business operations. Lilly claims it is entitled to omit the Proposal in reliance on this exclusion for two reasons: 1) Despite the Proposal's focus on human rights, its subject matter does not transcend ordinary business; and 2) The Proposal would micromanage the Company. Both arguments are at odds with long lines of Staff determinations recognizing that policies, due diligence, and reports on human rights transcend ordinary business and that human rights proposals that are not too prescriptive do not micromanage.

The Subject Matter of the Proposal is Human Rights, Not Lilly's Products and Services or its Supplier Relationships

Lilly urges that the Proposal's subject is the Company's products or its relationships with suppliers, not human rights. It is true, as Lilly contends,⁵ that proposals focused on products or services, or on relationships with suppliers, absent a significant social policy issue, have been deemed excludable on ordinary business grounds. None of the proposals in the determinations Lilly cites, however, involved human rights or another subject recognized as a significant policy issue:

- DENTSPLY⁶: phasing out mercury from the company's products
- Wells Fargo⁷: social and financial impacts of the company's direct deposit advance lending service
- TJX⁸: animal welfare policy with focus on products containing fur
- Walmart⁹: engineering ownership
- Foot Locker¹⁰: subcontractor monitoring
- Kraft Foods¹¹: company successfully distinguished proposal, which sought reporting on water risk in the company's agricultural supply chain, from proposals addressing the significant policy issue of the human right to water.

But proposals like the Proposal that focus solely on human rights stand on a different footing. The Staff has consistently declined to concur with companies that they could exclude human rights proposals on ordinary business grounds. Proposals dealing with human rights policies have long been deemed not excludable.¹² Indeed, one such proposal asked Abbott Laboratories¹³ to amend its human rights policy to address the right of access to medicines.

Proposals focused on companies' implementation of their human rights policies have been found to address a significant social policy issue. A request that Northrop Grumman (2019)¹⁴ report

⁵ No-Action Request, at 4

⁶ DENTSPLY Int'l Inc. (Mar. 21, 2013)

⁷ Wells Fargo & Co. (Jan. 28, 2013, *recon. denied*, Mar. 4, 2013)

⁸ The TJX Companies, Inc. (Apr. 16, 2018)

⁹ Walmart Inc. (Mar. 8, 2018)

¹⁰ Foot Locker Inc. (Mar. 3, 2017)

¹¹ Kraft Foods Inc. (Feb. 23, 2012)

¹² See, e.g., Yahoo, Inc. (Apr. 5, 2011); Halliburton Co. (Mar. 9, 2009); Citigroup, Inc. (Feb. 21, 2008); Citigroup Inc. (Feb. 9, 2001)

¹³ Abbott Laboratories (Feb. 28, 2008) (proposal asking Abbott to "amend the company's human rights policy to address the right to access to medicines" not excludable)

¹⁴ Northrop Grumman Corp. (Mar. 19, 2019)

on the management systems and processes used to implement its human rights policy survived challenge on ordinary business grounds, as did one seeking a report on the efficacy of Alphabet's¹⁵ policies and practices to address human rights impacts of its content management policies. The Staff found unpersuasive Wendy's¹⁶ argument that a proposal requesting a report on the extent to which Wendy's policies and practices effectively protect workers in its food supply chain from human rights violations related to the ordinary business matter of "supplier relationships." GEO Group¹⁷ unsuccessfully tried to exclude a proposal seeking a report on how the company implements the portion of its human rights policy addressing "Respect for Our Inmates and Detainees," arguing that the proposal's subject was not human rights disclosure but rather the terms of GEO's government contracts, its legal compliance, or employee training.

The specific argument Lilly makes here, that the Proposal's subject is actually the sale of the company's products or its supplier relationships, rather than human rights, has failed on many occasions to persuade the Staff to allow exclusion of proposals asking companies to disclose their HRDD processes or conduct HRDD:

- Northrop Grumman (2020)¹⁸ claimed that the subject of a proposal asking for a report on "the results of human rights risk assessments examining the actual and potential human rights impacts associated with high-risk products and services, including those in conflict-affected areas" was how the company sells its products and services, as well as relationships with customers. The proponent countered that the proposal's primary focus was human rights, explaining that "Northrop Grumman's distinction between human rights, on the one hand, and business relationships and products and services, on the other, is artificial. It is precisely those products, services and business relationships that can give rise to supply chain human rights risks." The Staff did not grant relief.
- In Amazon (2015),¹⁹ the proposal requested that the company report on its "process for comprehensively identifying and analyzing potential and actual human rights risks of Amazon's entire operations and supply chain." Amazon argued that the proposal was excludable on ordinary business grounds, claiming that it "relates to the products and services offered for sale by the Company because it requests a report assessing the 'potential and actual human rights risks' related to the Company's 'entire operations and supply chain.'" The proponents responded that the proposal addressed the sale of products only in the context of human rights, a significant policy issue. The Staff declined to grant relief, explaining, "In our view, the proposal focuses on the significant policy issue of human rights."²⁰
- Amazon (2020)²¹ also challenged a proposal asking the company to publish an HRIA analyzing the actual and potential human rights impacts of at least one high-risk product

¹⁵ Alphabet Inc. (Apr. 12, 2022)

¹⁶ The Wendy's Company (Mar. 12, 2021)

¹⁷ GEO Group Inc. (Mar. 15, 2019) (USA West Society of Jesus)

¹⁸ Northrop Grumman (Mar. 13, 2020)

¹⁹ Amazon.com, Inc. (Mar. 25, 2015).

²⁰ Amazon.com, Inc. (Mar. 25, 2015).

²¹ Amazon.com, Inc. (Apr. 1, 2020)

Amazon sells. Amazon argued that the proposal's primary focus was the ordinary business matter of the "sale and sourcing of specific products." The Staff declined to grant relief.

- A proposal asked Disney²² to "report on the process of due diligence, if any, that the Company undertakes in evaluating the human rights impacts of its business and associations with foreign entities, including foreign governments, their agencies, and private sector intermediaries." The Staff was unconvinced by Disney's argument that the proposal's subject was not human rights, but rather "the production of the film *Mulan* and film location selection generally, both of which constitute ordinary business matters"; although Disney did not explain its reasoning, that assertion followed a string of citations of determinations, some of which allowed exclusion due to a proposal focusing on the company's products or services.
- Meta²³ claimed that the subject of a proposal asking it to produce an HRIA "examining the actual and potential human rights impacts of Facebook's targeted advertising policies and practices throughout its business operations" was the company's products and services. The proponents urged that the subject was human rights, and the Staff denied Meta's request for relief.

Here, as the proponent in Northrop Grumman (2019) explained, it would not make sense for the Proposal to remain silent about Lilly's products, as they are an important potential source of human rights risk. The Proposal does not request non-human rights disclosures about the Company's products, nor does it ask Lilly to affirmatively change anything about its pricing, access programs, or any other aspect of its business. The subject of the Proposal is clearly human rights, a longstanding significant social policy issue.

The Proposal Does Not Micromanage Because it Requests Reasonable Detail, Gives Lilly's Board and Management Sufficient Discretion, and Does Not Probe Into Matters too Complex for Shareholders to Make an Informed Judgment

Lilly also claims that the Proposal would micromanage it. The Commission's 1998 release on employment-related proposals²⁴ (the "1998 Release") described the considerations in the Division's application of the ordinary business exclusion. The second consideration was 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." The 1998 Release emphasized that not all proposals "seeking detail, or seeking to promote time-frames or methods, necessarily amount to 'ordinary business'"; rather, a proposal "may seek a reasonable level of detail" without micromanaging the company.

The Division clarified its approach to micromanagement three years ago. In Staff Legal Bulletin 14L ("SLB 14L"), the Division explained that recent Staff application of the micromanagement doctrine had "expanded the concept of micromanagement beyond the Commission's policy directives" and "may have been taken to mean that any limit on company or board discretion constitutes micromanagement." Going forward, SLB 14L stated, the Staff would

²² The Walt Disney Company (Jan. 19, 2022) (NLPC)

²³ Meta Platforms, Inc. (Mar. 30, 2022)

²⁴ Exch. Act Rel. No. 40018 (May 21, 1998)

consider “the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.”

SLB 14L also provided guidance on assessing whether a proposal probes matters “too complex” for shareholders, as a group, to make an informed judgment, stating that the Staff could consider “the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic.” The Staff may also consider references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.

First, Lilly argues that the Proposal requests too much detail. But the only items specified in the Proposal are that the HRIA should describe actual and potential adverse human rights impacts identified; identify rightsholders that were consulted; and discuss whether and how the results of the HRDD will be integrated into Lilly’s operations and decision making. These are all open-ended elements, so the amount of detail provided on them is up to Lilly. The identification of rightsholders can be satisfied with a list of persons and organizations consulted, which could hardly be considered intricate detail.

The amount of detail requested by the Proposal is reasonable. In the language of SLB 14L, it is “consistent with that needed to enable investors to assess an issuer’s impacts, . . . risks or other strategic matters appropriate for shareholder input.” The actual and potential risks identified in the course of HRDD allow shareholders to evaluate the nature and extent of Lilly’s human rights risks. Disclosure of rightsholders consulted sheds light on the robustness of the HRDD process, and discussion of the impact of the HRIA findings on Lilly’s operations and decision making going forward is relevant to how Lilly manages human rights risks.

The proposals in the determinations Lilly cites requested much more specific and detailed information than the Proposal and did not give the companies discretion, as the Proposal does, over the amount of detail provided. The Kohl’s,²⁵ Home Depot,²⁶ and Amazon (2024)²⁷ proposals asked the companies to report on (1) the number of workers paid less than a living wage, broken down by full-time, part-time and contingent workers; (2) the amount by which the aggregate compensation paid to workers in each category falls short of the aggregate amount they would be paid if they received a living wage; and (3) the living wage benchmark used for the calculations. The report would have needed to be updated annually. The companies argued that they operate in many geographic areas, making the living wage calculations required in the requested report extremely complex. They also pointed to the short timeframe for the first report imposed in the proposals. None of those factors—numerous and complicated calculations, annual reporting, or a short timeframe—is present here.

Second, Lilly urges that the Proposal seeks to “impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of

²⁵ Kohl’s Corporation (Mar. 6, 2024)

²⁶ Home Depot Inc. (Mar. 21, 2024)

²⁷ Amazon.com, Inc. (Apr. 1, 2024)

directors.”²⁸ Lilly relies on the 2019 Amazon²⁹ determination allowing exclusion of a proposal asking the company to conduct HRDD on three or more food products the company sold with a high risk of adverse human rights impacts. What Lilly fails to mention, though, is that the following season, the proponent revised the proposal to change “three or more” high-risk food products to “one or more” high-risk products, which was enough to defeat Amazon’s micromanagement challenge. The 2020 proposal continued to ask for one or more HRIAs, but the Staff did not concur with Amazon’s argument that the revised request sought “to dictate specific product areas and processes” for the company to use in addressing human rights considerations.

Under the UNGPs, HRDD is flexible. The UNGPs recognize that it is infeasible for large companies to perform HRDD on all of its operations and business relationships. In that case, the UNGPs recommend companies prioritize areas with the highest risk for adverse human rights impacts due to geography, suppliers’ operating context, the particular products involved, or other factors.³⁰ Lilly’s HRIA would be expected to focus on such priority areas, which Lilly’s management would have discretion to identify. Thus, the Proposal does not inappropriately limit the discretion of the board and management.

Lilly’s claims that the Proposal “seeks to oversee and manage the Company’s supply chain decision-making” and “dictate how the Company manages compliance with local-jurisdictional regulatory requirements”³¹ rest on a mischaracterization of the Proposal. The Proposal asks Lilly to conduct HRDD and disclose its findings. Nothing in the Proposal aims to dictate anything about how Lilly’s business should be managed, how Lilly should comply with legal requirements, or which suppliers should be engaged or retained. Micromanagement arguments like Lilly’s that mischaracterize disclosure proposals as mandating action have been rejected by the Staff many times.³²

Equally unpersuasive is Lilly’s assertion that human rights impacts are a complex matter on which shareholders are unable to make an informed judgment. The example Lilly provides, that “many of the rights outlined in human rights frameworks around the world are highly regulated by local governments in jurisdictions where Lilly operates,”³³ is unconvincing. Local law does not override human rights principles, and the Proposal focuses solely on adverse human rights impacts. A choice to comply with a less demanding local law is irrelevant to whether an adverse human rights impact exists. The Proposal does not affect Lilly’s ability to “navigate a variety of complex compliance programs and reporting obligations while taking actions consistent with Lilly’s values that also meet the Company’s operational needs,”³⁴ then, as Lilly urges.

Lilly does not address SLB 14L’s factors for analyzing whether a matter is too complex for shareholders to understand, which weigh against exclusion. Investors have a high level of sophistication regarding HRDD. They have been voting on HRDD proposals for at least a decade, and many investor organizations address HRDD in publications, webinars, and conference panels.

²⁸ No-Action Request, at 7

²⁹ Amazon.com, Inc. (Apr. 3, 2019) (Oxfam)

³⁰ UNGPs, at 18

³¹ No-Action Request, at 7

³² *E.g.*, The Walt Disney Company (Jan. 19, 2022) (NLPC); GEO Group Inc. (Mar. 15, 2019) (USA West Society of Jesus); Chubb Limited (Mar. 27, 2023) (Domini Impact Equity Fund)

³³ No-Action Request, at 8

³⁴ No-Action Request, at 8

For example, the Principles for Responsible Investment has published “Why and How Investors Should Act on Human Rights”³⁵ and “How to Identify Human Rights Risks: a Practical Guide in Due Diligence,”³⁶ both of which discuss HRDD, and its “What Data Do Investors Need to Manage Human Rights Risks?”³⁷ describes how investors can use different kinds of human rights data. The Investor Alliance for Human Rights explains HRDD and its uses for investors in “Investor Toolkit on Human Rights.”³⁸ As well, the existence of the UNGPs—a well-established international framework—the grounding of the Proposal’s requests in the UNGPs, and investors’ knowledge about them, support a conclusion that shareholders can make an informed judgment about the Proposal.

The Proposal seeks a reasonable level of detail and affords discretion to Lilly’s board and management to define the scope of HRDD. What’s more, investor sophistication about human rights and HRDD and the widespread knowledge about the UNGPs mean that shareholders are well-equipped to make decisions about the Proposal. Lilly’s argument that the Proposal would micromanage is therefore unavailing, and it has failed to meet its burden of establishing that it is entitled to omit the Proposal on ordinary business grounds.

Substantial Implementation

Lilly received a rating of 0/10 on the World Benchmarking Alliance’s most recent Social Benchmark for “Respect human rights,”³⁹ the lowest of any pharmaceutical firm and well below the scores earned by peers Pfizer (5.5/10), Johnson & Johnson (5/10) and AbbVie (3/10). Nonetheless, the Company claims to be entitled to exclude the Proposal pursuant to Rule 14a-8(i)(10) as substantially implemented. Although a proposal need not be implemented exactly as it asks in order to justify exclusion, the company’s actions must “compare favorably with the guidelines of the proposal,”⁴⁰ address the proposal’s “underlying concerns,”⁴¹ and satisfy the proposal’s “essential objective.”⁴² Lilly has not satisfied any of those standards.

Lilly claims that its existing disclosures about human rights policies and practices, access programs, risk management, and commitment to the U.N. Global Compact (“UNGC”) substantially implement the Proposal. Examination of those disclosures shows that they do not in fact accomplish the Proposal’s “essential objective,” which is for Lilly to produce and make available an HRIA that describes actual and potential adverse human rights impacts. Lilly’s disclosures are designed to enhance the Company’s reputation, not to reflect a process of research and analysis aimed at identifying adverse human rights impacts.

³⁵ <https://www.unpri.org/download?ac=11953>

³⁶ <https://www.unpri.org/human-rights/how-to-identify-human-rights-risks-a-practical-guide-in-due-diligence/11457.article>

³⁷ <https://www.unpri.org/human-rights/what-data-do-investors-need-to-manage-human-rights-risks/10856.article>

³⁸ https://investorsforhumanrights.org/sites/default/files/attachments/2022-03/Full%20Report-%20Investor%20Toolkit%20on%20Human%20Rights%20May%202020_updated_0.pdf

³⁹ <https://www.worldbenchmarkingalliance.org/publication/social/rankings/respect-human-rights/>

⁴⁰ Texaco Inc. (Mar. 28, 1991)

⁴¹ Exchange Act Release No. 95267, at 11 (July 13, 2022) (“The staff also has considered whether the company has addressed a proposal’s underlying concerns and whether the essential objectives of a proposal have been met.”)

⁴² E.g., Huntington Ingalls Industries Inc. (Feb. 12, 2016)

The most fundamental difference between the HRIA the Proposal requests and the disclosures Lilly provides is that HRDD takes the perspective of rights holders, while Lilly's activities and disclosures promote the Company's own interests. Rights holders are not the same as stakeholders: Stakeholders are people and entities that have an interest in a company's activities, and they can include investors and governments. Rights holders, on the other hand, are "individuals or groups who have specific rights in relation to a specific dutybearer."⁴³ They are "individuals or groups whose human rights are or may be affected by business activities."⁴⁴

Lilly's objection that the local laws to which Lilly adheres may not be congruent with human rights obligations illustrates this conflict: Lilly's value-maximization orientation could be viewed as justifying compliance with a weaker local law, but a human rights orientation requires companies to adhere to human rights standards regardless of other legally compliant options. According to the UNGPs, "The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights."⁴⁵

Lilly characterizes its annual review and reaffirmation of the Company's commitment to the UNGC principles as "functionally serv[ing] as an annual human rights impact assessment."⁴⁶ Those disclosures fall far short of what the Proposal requests, for two main reasons.

First, the only UNGC Principles that impose specific human rights obligations are those addressing the workplace, stating that businesses should respect "the freedom of association and the effective recognition of the right to collective bargaining; . . . the elimination of all forms of forced and compulsory labour; . . . the effective abolition of child labour; and . . . the elimination of discrimination in respect of employment and occupation."⁴⁷ Other UNGC principles are too vague and aspirational to create human rights obligations—"Businesses should support and respect the protection of internationally proclaimed human rights; and . . . make sure that they are not complicit in human rights abuses"—or vague and unrelated to human rights altogether—"Businesses should support a precautionary approach to environmental challenges . . . [and] encourage the development and diffusion of environmentally friendly technologies."⁴⁸ Notably, the UNGCs are silent on the right to health, which is a salient human rights issue for a health care company like Lilly and a right specifically referenced in the Proposal.

Second, an HRIA must use human rights principles as the underlying benchmark and must identify adverse human rights impacts. Lilly's disclosures do neither of those things. Lilly's putative "impact assessment"—the "measurement of outcomes--social" section linked to the index Lilly references on page 13 of the No-Action Request—consists solely of aspirations, goals, and highlights, untethered to human rights. For example, the section on "U.S. Access and

⁴³ https://webassets.oxfamamerica.org/media/documents/HRDD_Rights_Holder_Engagement.pdf, at 2

⁴⁴ <https://twentyfifty.co.uk/meaningful-rightsholder-engagement-the-key-to-effective-human-rights-due-diligence-486/>

⁴⁵ UNGPs, at 13

⁴⁶ No-Action Request, at 13

⁴⁷ <https://unglobalcompact.org/what-is-gc/mission/principles>

⁴⁸ <https://unglobalcompact.org/what-is-gc/mission/principles>

Affordability”⁴⁹ is silent on human rights and identifies no adverse human rights impacts, focusing instead on the benefits of value-based pricing, pricing trends, and “affordability solutions.” There is no mention of the human right to health.

A true impact assessment would ask and try to answer questions relevant to the human right to health. Are particular populations more vulnerable to deprivations of the human right to health and what is their interface with Lilly’s business? Have Lilly’s touted drug price reductions led to improvement in patients’ overall health status? What about the impact of price increases? What challenges remain and how does Lilly intend to address them? Nor does Lilly address whether it has analyzed or identified any risks related to forced or child labor or on workers’ freedom of association, although it does use coded union avoidance language in its Supplier Code of Business Conduct that the Company “encourage[s] open communication and direct engagement with workers to resolve workplace and compensation issues.”⁵⁰ Puffery aimed at promoting a positive image for Lilly cannot qualify as an HRIA.

A separate section of Lilly’s website does mention the human right to health in the drug development context, but that disclosure is limited to platitudes such as “From early discovery through drug development, as well as while a product is on the market, Lilly works to ensure the safety and effectiveness of our medicines. Our R&D efforts and clinical trials are developed and administered in ways that support our commitment to human rights.” At no point does Lilly identify any adverse human rights impacts related to drug development, even though 2024 news reports indicate that some participants in a Lilly Alzheimer’s drug trial were not informed that their genetic makeup made them more likely to develop side effects from the drug and dozens experienced “severe” brain bleeds.⁵¹

Even disclosure around Lilly’s respect for workplace human rights does not constitute an HRIA. It describes the ways in which Lilly “supports” workplace human rights,⁵² which are aspirational goals such as “Promoting a safe and healthy workplace” and “Fostering a more diverse, equitable and inclusive work environment.”⁵³ The website section describing “Lilly’s Support of Worker Rights” emphasizes Lilly’s compliance with local laws—which are not coextensive with human rights—and its practice of not using forced or child labor.

In contrast to these bromides, an HRIA would aim to identify areas at high risk for human rights abuses, including forced or child labor. For example, Lilly reportedly conducted a clinical trial in the Xinjiang Uyghur Autonomous Region of China, where members of the Uyghur Muslim population are reportedly forced to “surrender their bodily autonomy” and may well be victims of forced labor.⁵⁴ Rather than simply saying, as Lilly does, that its practice is not to use forced or child labor, an HRIA would identify any geographies, products or settings presenting a higher risk of

⁴⁹ <https://sustainability.lilly.com/social/us-access-affordability>

⁵⁰

https://assets.ctfassets.net/srys4ukjcerm/gVAGEcUTLBkaVdSHHyrd6/b4fb276dc3b73984e6b4af96f58545f2/Lilly_SCoBC_2024_EN.pdf

⁵¹ <https://www.fiercebiotech.com/cro/eisai-and-eli-lilly-didnt-disclose-genetic-results-indicating-high-risk-alzheimers-trial>

⁵² <https://sustainability.lilly.com/social/human-rights>

⁵³ <https://sustainability.lilly.com/social/human-rights>

⁵⁴ <https://www.biospace.com/policy/house-lawmakers-raise-alarm-about-us-biopharma-companies-working-with-chinese-military-on-trials>

forced or child labor, as well as any instances where forced or child labor has actually occurred. Likewise, Lilly's Supplier Code of Business Conduct "expects" suppliers to "affirm and support human rights,"⁵⁵ but lists only child and forced labor as specific concerns. Aside from a reporting hotline, the Supplier Code lacks an enforcement mechanism.

Contrary to Lilly's assertion, its disclosures are similar to those made by Pfizer, whose request last season to exclude a proposal much like the Proposal on substantial implementation grounds was denied.⁵⁶ The Pfizer proponents argued that Pfizer's disclosures focused on process and did not identify any actual or potential human rights impacts, as is the case with Lilly's disclosures.

On the right to health, Pfizer highlighted language regarding access and affordability of medicines as evidencing "significant efforts by Pfizer to prevent, mitigate and remedy adverse human rights impacts" related to the right to health. The Proponents pointed out that the language fell far short of substantially implementing the proposal; it asserted generically that "health equity is only achieved when breakthroughs are made accessible to all" and that Pfizer "seek[s] to price [its] medicines in a way that balances patients'/payers' ability to pay with the value that these innovations bring to patients and society, as well as [its] ability to continue to innovate and invest in the medicines and vaccines of the future," without analyzing whether the way in which Pfizer had chosen to balance these interests had resulted or could result in adverse human rights impacts. Like Lilly's, Pfizer's disclosures did not mention consultation with rights holders.

The Pfizer proponents urged that the company's generic ESG Report language on the right to health, which listed policy and healthcare advocacy, patient assistance programs, "[i]nnovative financing mechanisms," and "[n]ew technologies" as Pfizer's "core methods" for promoting access and affordability, did not identify any actual or potential adverse human rights impacts relating to unaffordability or analyze the extent to which the Company's strategies are successful in addressing those impacts. The same deficiencies exist in Lilly's disclosures.

Lilly analogizes the Proposal to one in Amazon,⁵⁷ but that determination is inapposite. The Amazon proposal asked the company to adopt a comprehensive policy applicable to its operations and subsidiaries that commits the company to respect human rights, including ensuring safe and healthy workplaces; prohibiting discrimination and retaliation; affirming the right of workers to form and join trade unions and bargain collectively; and describing the process Amazon will use to identify, assess, prevent, mitigate and, where appropriate, address adverse human rights impacts. That ask, which focuses exclusively on policy and establishing a process for HRDD, differs substantially from a proposal like the Proposal asking a company to conduct HRDD and disclose the resulting HRIA. For that reason, the Staff's concurrence with Amazon's argument that its existing policies, which included language about identifying, assessing, and addressing salient human rights risks, as well as understanding the impact of each part of its business on human rights, is not relevant to Lilly's request here, where the Proposal cannot be substantially implemented by language describing processes.

⁵⁵

https://assets.ctfassets.net/srys4ukjcerm/gVAGEcUTLBkaVdSHHyrd6/b4fb27dc3b73984e6b4af96f58545f2/Lilly_SCoBC_2024_EN.pdf

⁵⁶ Pfizer Inc. (Feb. 20, 2024)

⁵⁷ Amazon.com, Inc. (Mar. 27, 2020) (Ohman Fonder)

The Staff has recognized the difference between a proposal seeking disclosure about human rights-related processes and a proposal seeking the preparation and disclosure of an HRIA, declining to allow exclusion of the latter when the company offered up only disclosures regarding its existing processes. In Northrop Grumman (2020),⁵⁸ the proposal asked the company to publish the “results of human rights impact assessments examining the actual and potential human rights impacts associated with high-risk products and services, including those in conflict-affected areas.” Northrop Grumman pointed to the description in its human rights policy regarding implementation, the “expectation” set forth in its standards of business conduct that suppliers would respect human rights, and proxy statement language about board oversight of human rights risk. The Staff did not grant relief. The Staff did not grant the company’s request, advancing similar arguments, to exclude a substantially identical proposal in Northrop Grumman (2021).⁵⁹

Likewise, in Lear Corporation,⁶⁰ the proposal asked the company to “publish a report, with the results of a Human Rights Impact Assessment examining the actual and potential human rights impacts of the company’s high-risk business activities in its operations and value chain.” The company sought relief on substantial implementation grounds, arguing that its existing disclosures on enterprise risk management, supplier human rights standards, monitoring for workplace human rights policies, commitment to “recognizing [certain] human rights and labor principles throughout its global organization,” and complaint and supplier due diligence processes satisfied the proposal’s essential objective. The proponent successfully argued that disclosures of Lear’s existing practices, even those pertaining to human rights, did not substantially implement the proposal, given that Lear had not produced an HRIA.

Lilly’s existing disclosures do not compare favorably to the Proposal’s request or satisfy the Proposal’s essential objective of providing shareholders with an HRIA. The generic discussions of the right to health and access and affordability of medicines do not identify any adverse human rights impacts resulting from Lilly’s business activities or state whether Lilly has consulted with rights holders at any point regarding such impacts. Even with respect to forced and child labor, which the UNGC and Lilly elevate, Lilly has not publicly identified areas of high risk for violations of these rights, despite conducting at least one clinical trial in China. Lilly’s existing disclosures thus do not substantially implement the Proposal.

* * *

⁵⁸ Northrop Grumman Corporation (Mar. 13, 2020)

⁵⁹ Northrop Grumman Corporation (Mar. 26, 2021)

⁶⁰ Lear Corporation (Mar. 6, 2020)

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 14a-8(i)(7) or (i)(10). The Proponents thus respectfully request that Lilly's request for relief be denied.

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

Sincerely,

A handwritten signature in cursive script that reads "Catherine Rowan".

cc: Sarkis Jebejian
sarkis.jebejian@kirkland.com