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

DIVISION OF
CORPORATION FINANCE

February 15, 2018

Brett A. Pletcher
Gilead Sciences, Inc.
brett.pletcher@gilead.com

Re: Gilead Sciences, Inc.
Incoming letter dated December 13, 2017

Dear Mr. Pletcher:

This letter is in response to your correspondence dated December 13, 2017 and January 24, 2018 concerning the shareholder proposal (the "Proposal") submitted to Gilead Sciences, Inc. (the "Company") by Boston Common Asset Management, LLC (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received letters on the Proponent's behalf dated January 17, 2018 and January 25, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Sanford Lewis
sanfordlewis@strategiccounsel.net

February 15, 2018

Response of the Office of Chief Counsel
<u>Division of Corporation Finance</u>

Re: Gilead Sciences, Inc.
Incoming letter dated December 13, 2017

The Proposal requests that the Company issue a report assessing the feasibility of adopting time-bound, quantitative, company-wide goals for increasing energy efficiency and use of renewable energy.

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 focuses primarily on matters relating to the Company's ordinary business operations. 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).

Sincerely,

Lisa Krestynick
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

SANFORD J. LEWIS, ATTORNEY

January 25, 2018
Via electronic mail

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

Re: Shareholder Proposal to Gilead Sciences Regarding Clean Energy and Climate Change on Behalf of Boston Common Asset Management

Ladies and Gentlemen:

Boston Common Asset Management (the "Proponent") is beneficial owner of common stock of Gilead Sciences (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the supplemental letter dated January 24, 2018 ("Company Letter") sent to the Securities and Exchange Commission by Brett A. Pletcher. In that letter, the Company further discusses its assertions that the Proposal may be excluded from the Company's 2018 proxy statement. A copy of this response letter is being emailed concurrently to Brett A. Pletcher.

The Supplemental Letter hinges its argument entirely on how to understand the "focus" of the Proposal. The plain syntax of the supporting statement indicates, however, that the filer's "focus" is on climate change when it states,

> "According to the International Energy Agency (IEA), improved energy efficiency must provide 49 percent and renewables must provide 17 percent of energy-related GHG reductions to stabilize global temperatures. Fortuitously, energy efficiency and renewables often make business sense irrespective of their climate benefits."

According to Webster's online dictionary, "fortuitous" means "occurring by chance." Use of the term "fortuitously" demonstrates that the filer considers the business benefits of clean energy to be a "chance", secondary effect of clean energy's climate protection benefits.

The supporting statement then goes on to offer evidence that clean energy adoption can make business sense in order to allay any concern that management might have that adopting goals to reduce GHG emissions is necessarily contrary to good business practice.

Were the primary focus on the business case for clean energy, the supporting statement might have read, "clean energy makes good business sense and fortuitously will reduce global warming emissions." In this case, Staff would have rightly read the supporting statement to indicate a primary focus on clean energy, with climate protection as a "chance", ancillary and,

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therefore, secondary benefit.

Since the supporting statement does the opposite, and clearly states that business benefits can be a chance consequence of action to curb emissions, we believe it is appropriate for Staff to conclude that climate protection is the primary focus of the proposal, and therefore the Proposal is not excludable under Rule 14a-8(i)(7).

In this and all other regards we stand by our initial reply letter, and urge the Staff to inform the Company that it cannot exclude the proposal from the 2018 proxy statement.

Sincerely,

Sanford Lewis

Cc:
Brett A. Pletcher
Lauren Compere

GILEAD
Advancing Therapeutics.
Improving Lives.

<u>BY EMAIL</u> (shareholderproposals@sec.gov)

January 24, 2018

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

RE: Gilead Sciences, Inc. – 2018 Annual Meeting
Supplement to Letter dated December 13, 2017
Relating to Shareholder Proposal of
<u>Boston Common Asset Management</u>

Ladies and Gentlemen:

We refer to our letter dated December 13, 2017 (the "No-Action Request"), pursuant to which we requested that the Staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") concur with our view that Gilead Sciences, Inc., a Delaware corporation ("Gilead"), may exclude the shareholder proposal and supporting statement (the "Proposal") submitted by Boston Common Asset Management (the "Proponent") from the proxy materials to be distributed by Gilead in connection with its 2018 annual meeting of shareholders (the "2018 proxy materials").

This letter is in response to the letter to the Staff, dated January 17, 2018, submitted on behalf of the Proponent (the "Proponent's Letter"), and supplements the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter is also being sent to the Proponent.

The Proponent's Letter attempts to overcome the ordinary business exclusion by characterizing the Proposal's focus as "using clean energy to benefit society." In this respect, the Proponent's Letter refers to the "benefits to society" phrase in the Proposal's resolution and to the supporting statement's mention of various benefits from improved energy management. The Staff takes a more holistic view of proposals, however, when assessing potential exclusion under Rule 14a-8(i)(7) by considering the resolution and supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) ("In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole."). In this instance, consideration of the

Gilead Sciences, Inc. 333 Lakeside Drive Foster City, CA 94404 USA
Phone 650 574 3000 *facsimile* 650 578 9264 www.gilead.com

Proposal's resolution and supporting statement as a whole demonstrates that the Proposal's focus is not on using clean energy to benefit society, but rather on Gilead's management of its energy expenses and its choice of technologies for use in its operations, both of which are ordinary business matters.

The Proponent's Letter attempts to support its characterization of the Proposal's focus by citing the Staff's decision in *Lowe's Companies, Inc.* (March 10, 2017). In *Lowe's*, the proposal's resolution requested a report "assessing the climate benefits and feasibility of adopting enterprise-wide, quantitative, time-bound targets for increasing [the company's] renewable energy sourcing and/or production" "[t]o limit the average global temperature increase" and, when read along with the preamble and supporting statement, focused on the need to report on renewable energy goals "as a means to help reduce GHG emissions." Given that the proposal focused on controlling global temperatures and reducing GHG emissions, the Staff denied relief to exclude the proposal under Rule 14a-8(i)(7), noting that the proposal "transcend[ed] ordinary business matters."

In contrast, as described in the No-Action Request, the Proposal's resolution and supporting statement as a whole focus on Gilead's management of its energy expenses and its choice of technologies for use in its operations — both of which are ordinary business matters — as a means "[t]o increase the benefits to society *and* to our company associated with usage of clean energy resources." (Emphasis added.) In this fundamental respect, the Proposal is analogous to the proposals in *The TJX Companies, Inc.* (Mar. 8, 2016) and *CVS Health Corp.* (Mar. 8, 2016), which we cited in the No-Action Request. Specifically, the resolutions and supporting statements in *TJX and CVS* focused on setting "quantitative targets . . . to increase renewable energy sourcing and/or production" as a means to achieve certain financial benefits in addition to potential benefits to society. Given the focus of the proposals in *TJX* and *CVS* and their attempt to influence companies' approach to ordinary business matters, the Staff granted relief under Rule 14a-8(i)(7). The same result is warranted here, given the Proposal's focus and its attempt to influence Gilead's approach to specific ordinary business matters.

We are aware of the letters to which the Proponent's Letter cites for the proposition that proposals pertaining to "climate change" and "greenhouse gas emissions" transcend ordinary business. However, in each of those instances the proposal focused on those specific issues. In this instance, consideration of the Proposal's resolution and supporting statement as a whole demonstrates that its focus is on Gilead's ordinary business matters, despite any possibility that the Proposal relates to a potential significant policy issue. In this respect, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) where the proposal focused on matters relating to a company's ordinary business operations, even though the proposal also related to a potential significant policy issue. In *Exxon Mobil Corp.* (Mar. 6, 2012), for example, the Staff permitted exclusion of a proposal requesting that the company prepare a report "discussing possible short and long term risks to the company's finances and operations posed by the environmental, social and economic challenges associated with the oil sands." In granting relief under Rule 14a-8(i)(7), the Staff noted that the proposal "addresse[d] the 'economic challenges' associated with the oil sands and [did] not . . . focus on a significant policy issue." In addition, in *PetSmart, Inc.* (Mar. 24, 2011), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal calling for suppliers to certify that they have not violated certain laws regarding the humane treatment of animals, even though the Staff had determined that the humane treatment of animals was a significant policy issue. In its no-action letter, the Staff specifically noted the company's view that the scope of the laws covered by the proposal were "fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping," and therefore the proposal's focus was not confined to the humane treatment of animals. *See also, e.g.*, *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

As demonstrated in the No-Action Request and as discussed above, the Proposal is focused on Gilead's ordinary business matters (*i.e.*, Gilead's management of its energy expenses and its choice of technologies for use in its operations) and not on a significant policy issue recognized by the Staff as transcending ordinary business matters. Accordingly, Gilead believes that the Proposal is excludable under Rule 14a-8(i)(7) as relating to Gilead's ordinary business operations.

For the reasons stated above and in the No-Action Request, we respectfully request that the Staff concur that it will take no action if Gilead excludes the Proposal from its 2018 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Gilead's position, we would appreciate the opportunity to confer with the

Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact me at (650) 574-3000 or Marc S. Gerber of Skadden, Arps, Slate, Meagher & Flom LLP at (202) 371-7233.

Very truly yours,

Brett A. Pletcher

Brett A. Pletcher
Executive Vice President, General
Counsel and Chief Compliance Officer

cc: Lauren Compere
Managing Director
Boston Common Asset Management

Steven Heim
Managing Director
Boston Common Asset Management

SANFORD J. LEWIS, ATTORNEY

January 17, 2018
Via electronic mail

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

Re: Shareholder Proposal to Gilead Sciences, Inc. Regarding Clean Energy Targets on Behalf of Boston Common Asset Management LLC

Ladies and Gentlemen:

Boston Common Asset Management LLC (the "Proponent") is beneficial owner of common stock of Gilead Sciences, Inc. (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the letter dated December 13, 2017 ("Company Letter") sent to the Securities and Exchange Commission by Brett A. Pletcher. In that letter, the Company contends that the Proposal may be excluded from the Company's 2017 proxy statement by virtue of Rule 14a-8(i)(7).

I have reviewed the Proposal, as well as the Company Letter, and based upon the foregoing, as well as the relevant rules, it is my opinion that the Proposal must be included in the Company's 2017 proxy materials and that it is not excludable by virtue of those rules. A copy of this letter is being emailed concurrently to Brett A. Pletcher.

SUMMARY

The Proposal requests that the Company issue a report assessing the feasibility of adopting time bound, quantitative and companywide goals for increasing energy efficiency and use of renewable energy to increase the benefits to society and the Company associated with usage of clean energy resources.

The Company Letter asserts that the Proposal is excludable pursuant to Rule 14a-8(i)(7) as only addressing ordinary business matters, and not focusing on a transcendent policy issue. A closely analogous proposal was considered in *Lowe's Inc.* (January 21, 2017) and found to be not excludable because it addressed a transcendent social policy issue. The Company Letter cites Staff precedents seeking increased energy efficiency or renewable energy at companies; however, none of the previously excluded proposals were focused on the subject matter of the current Proposal, which is focused on using clean energy to benefit society.

The subject matter of "clean energy resources" is well understood by the Company and investors as being solely and principally an activity geared toward reducing the environmental impacts associated with energy production and consumption. Therefore, the subject matter of the

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Proposal addresses a transcendent policy issue and is not excludable pursuant to Rule 14a-8(i)(7).

THE PROPOSAL

Gilead Sciences, Inc.
Shareholder Proposal

Resolved: To increase the benefits to society and to our company associated with usage of clean energy resources, shareholders request that Gilead Sciences senior management, with oversight from the Board of Directors, issue a report assessing the feasibility of adopting time-bound, quantitative, company-wide goals for increasing energy efficiency and use of renewable energy. The report should be issued within one year of this filing at reasonable cost, and omitting proprietary information.

Supporting Statement:
Clean energy management involves using energy more efficiently and shifting from fossil-based to renewable energy sources. By assessing adoption of clean energy goals, our company could lay the ground to reduce energy costs, hedge against risks of volatile energy prices, enhance U.S. energy security, and reduce greenhouse gas (GHG) emissions.

According to the International Energy Agency (IEA), improved energy efficiency must provide 49 percent and renewables must provide 17 percent of energy-related GHG reductions to stabilize global temperatures. Fortuitously, energy efficiency and renewables often make business sense irrespective of their climate benefits. CDP reports that the efficiency investments of hundreds of global companies paid for themselves from reduced energy bills in just 4.2 years on average. According to a 2016 report from the US Department of Energy "[P]rices from [wind] contracts executed in the past 3+ years are consistently below the low end of the projected natural gas fuel cost", which is typically the next cheapest electricity fuel. A combination of improved efficiency and increased use of low-cost renewable energy could help the pharmaceutical industry reduce the $1 billion per year it spends each year on energy required to keep its facilities running.

To capture the environmental and financial benefits of improved energy management, leading pharmaceutical companies have implemented aggressive clean energy goals. For instance, Abbvie, Bristol-Myers Squibb, and Johnson & Johnson have all joined the US Department of Energy's "Better Plants Initiative" in which partners voluntarily set a goal to reduce energy intensity by 25% over a 10-year period across all of their US operations. Likewise, AstraZeneca, Biogen, DSM, Johnson & Johnson and Novo Nordisk have joined the RE100 initiative, committing to shift toward 100 percent renewable electricity usage.

By contrast, Gilead Sciences lags behind.

The company's most recent sustainability report provides anecdotal information about a range , of discrete initiatives to improve energy efficiency at facilities in five countries. Yet the report is silent on energy management in two dozen other countries where the company operates. The report highlights how much energy is used and how much greenhouse gas is emitted at large facilities in the five countries, yet its disclosures are silent on specific, time-bound, companywide goals to improve efficiency, increase renewables, or curb greenhouse gas emissions.

To maintain parity with its competitors, Gilead Sciences shareholders should vote to assess the adoption of company-wide efficiency and renewable energy goals.

ANALYSIS

The Proposal's subject matter addresses a transcendent social policy issue and therefore is not excludable under Rule 14a-8(i)(7).

The Company letter asserts that the current Proposal does not address a transcendent policy issue but only ordinary business in seeking to address energy efficiency and renewable energy.

In terms of a challenge to the approach of the proposal as relating to ordinary business and not to a transcendent policy issue, the closest analogue to the current proposal in prior decisions is the proposal found by the Staff in *Lowe's Inc.* (January 30, 2017) to be non-excludable.[1] That proposal in its resolved clause stated:

> Shareholders request that Lowe's produce a report assessing the climate benefits and feasibility of adopting enterprise-wide, quantitative, time-bound targets for increasing Lowe's renewable energy sourcing and/or production. The report should be produced at reasonable cost, in a reasonable timeframe, and omitting proprietary and confidential information. This proposal does not prescribe matters of operational or financial management.[2]

[1] See also *Duke Energy Corporation* (February 22, 2016), *Great Plains Energy Corporation* (February 22, 2016).

[2] The full text of the proposal was:

> THE NEED FOR LOWE'S TO ASSESS THE FEASIBILITY OF SETTING RENEWABLE ENERGY SOURCING TARGETS
>
> WHEREAS: To limit the average global temperature increase to below 2 degrees Centigrade, (3.6 degrees Fahrenheit) a goal shared by nearly every nation, the Intergovernmental Panel on Climate Change estimates that the United States needs to reduce annual greenhouse gas ("GHG") emissions approximately 80 percent. This will involve a significant shift to renewable energy.
>
> THE costs of generating electricity from sources like wind and solar have been declining rapidly and are influencing companies' response to climate change. The EPA currently lists 78 Fortune 500 companies as purchasing renewable energy (or certificates.)
>
> LOWE'S has not taken any visible some steps in this direction. Lowe's has not reported any environmental or sustainability goals or accomplishments to address renewable energy as a means to help reduce GHG emissions. The only identified actions taken by Lowe's has been to investigate more efficient lighting, which is a laudable step, but it misses an opportunity to help reduce the environmental footprint created by its 1857 energy consuming big box locations, its warehousing and offices, that all add to Lowe's enormous carbon footprint.

There are two particular features of the current Proposal which are distinct from the Lowe's proposal, but neither of these elements would seem to cause the proposal to be excludable.

First, the present Proposal seeks "the benefits to society" from "clean energy resources" rather than specifically naming in the resolve clause "climate benefits." Nevertheless, there are ample references in the supporting statement to clarify that climate benefits and any other environmental harm reduction benefits are central to the current Proposal.

Secondly, the present Proposal includes "benefits to the Company" associated with clean energy resources. Finding ways of addressing a company's environmental impact that also benefit the company is certainly not anathema to a proposal addressing a significant policy issue. Quite to the contrary, it is what makes the business case for a proposal compelling to investors. Witness the increasing focus by investors large and small on ESG data that is sought because such data is understood to affect a business's long-term sustainability and financial prospects.

It would be inappropriate from the standpoint of advancing share owners' interests to deny proponents the opportunity to ensure that their companies consider not only the environmental impacts but also the strong business case for adopting clean energy technologies.

> BIG BOX stores have large expanses of flat roofs that are ideal for solar panel retrofits generating electricity right where it is needed. Many other large retailers have accomplished these retrofits and have significantly reduced their GHG emissions.
>
> LOWE'S Still lacks a quantitative target for renewable energy sourcing and/or production. Ironically, Lowe's has been promoting the sale and installation of solar panels for homeowners and commercial installations. Lowe's has failed to embrace these same technologies for its own operations. Now is the time for Lowe's to act to reduce its GHG emissions and to aggressively act to play its corporate part by investing in and generating renewable energy.
>
> INVESTORS are concerned that Lowe's may be behind other large corporations which are developing quantitative renewable energy goals in response to climate change. The RE100, a coalition pushing companies to switch to 100 percent renewable energy, now includes Apple, General Motors, Johnson & Johnson, Nestle, Procter & Gamble, Unilever, and Walmart. The Home Depot is also now investigating and committing to renewable energy goals.
>
> BY SETTING quantitative goals on renewable energy, Lowe's can address climate change, respond ably to energy market changes, move closer to achieving GHG reductions, and help meet the global need for cleaner energy.
>
> RESOLVED: Shareholders request that Lowe's produce a report assessing the climate benefits and feasibility of adopting enterprise-wide, quantitative, time-bound targets for increasing Lowe's renewable energy sourcing and/or production. The report should be produced at reasonable cost, in a reasonable timeframe, and omitting proprietary and confidential information. This proposal does not prescribe matters of operational or financial management.
>
> SUPPORTING STATEMENT: Shareholders request that the report consider all of Lowes's facilities and analyze options and scenarios for achieving renewable energy targets, for example by using on-site distributed energy, off-site generation, power purchases, and renewable energy credits, or other opportunities management would like to consider, at its discretion.

B. The proposal is distinct from precedents cited by the Company.

The Company Letter cites various precedents in which the Staff allowed exclusion of proposals seeking increased usage (or evaluation of the prospects for increasing) energy efficiency and/or renewable energy by companies. However, all of those proposals failed to connect these issues to the societal impact sought to be prevented by the current proposal.

Each of the prior proposals cited by the Company failed to address a significant policy issue, in *FLIR Systems, Inc.* (Feb. 6, 2013) the focus of the proposal was simply on "energy use management" with only passing mention of environmental concerns. In *TJX Companies, Inc.* (Mar. 8, 2016) the focus was on companywide quantitative targets to increase renewable energy sourcing and or production, but the proposal made only passing mention of climate change, and not in the resolved clause. The same was the case in a concurrent Staff decision on *CVS Health Corp.* (Mar. 8, 2016). The decision in *Apple Inc.* (Dec. 5, 2014) sought quantification of the use of renewable energy sources without any focus on the impact on society. In *TXU Corp.* (Apr. 2, 2007) there was no focus on reducing environmental impacts in the proposal seeking study of energy efficiency. In *FirstEnergy Corp.* (Mar. 8, 2013) seeking a report on actions to reduce risk throughout the energy portfolio by diversifying the company's energy resources to include energy efficiency and renewable energy resources there was only a passing mention in the whereas clauses to the issue of climate change. In *Dominion Resources, Inc.* (Feb. 14, 2014) there was a focus on solar energy, but again, a lack of stated intention or purpose to produce environmental benefits. <u>For convenience of the Staff, the resolutions in each of these prior decisions are included as APPENDIX A to the current letter.</u>

In each of the cited instances, the proposal addressed the issues of renewable energy or energy efficiency without specifically defining the purpose as, "To increase the benefits to society and to our company associated with usage of clean energy resources." This language makes all the difference, because in combination with the language in the supporting statement, it makes it clear that the rationale for increasing energy efficiency and renewable energy in this instance is in order to bring the reduced environmental impacts (greenhouse gases, local pollution) associated with dirty energy.[3]

[3] It is worth noting that the use of renewable energy and energy efficiency are the top recommended climate strategies under *The 21st Century Corporation: The Ceres Roadmap for Sustainability*, which is a guide to companies on their journey to comprehensive sustainability – from the boardroom to the copy room–and throughout the supply chain. Under the category of GHG reduction the report recommends energy efficiency and renewable energy as the main components of a company meeting GHG reduction targets:

> P1.1: GREENHOUSE GAS EMISSIONS AND ENERGY EFFICIENCY
>
> Companies will reduce GHG emissions by 25% from their 2005 baseline* by 2020, by:
>
> Improving energy efficiency of operations by at least 50%
> Reducing electricity demand by at least 15%
> Obtaining at least 30% of energy from renewable sources

Furthermore, viewing the language of the current Proposal in its entirety shows that the proposal contains quite a bit more context than the excluded proposals to demonstrate a focus on environmental harm reduction, as indicated by the underlined and bolded portions of text:

Gilead Sciences, Inc.
Shareholder Proposal

Resolved: **To increase the benefits to society** and to our company associated with usage of clean energy resources, shareholders request that Gilead Sciences senior management, with oversight from the Board of Directors, issue a report assessing the feasibility of adopting time-bound, quantitative, company-wide goals for increasing energy efficiency and use of renewable energy. The report should be issued within one year of this filing at reasonable cost, and omitting proprietary information.

Supporting Statement:
Clean energy management involves using energy more efficiently and shifting from fossil-based to renewable energy sources. By assessing adoption of clean energy goals, our company could lay the ground to reduce energy costs, hedge against risks of volatile energy prices, enhance U.S. energy security, and **reduce greenhouse gas (GHG) emissions.**

According to the International Energy Agency (IEA), improved energy efficiency must provide 49 percent and renewables must provide 17 percent of energy-related GHG reductions to stabilize global temperatures. Fortuitously, energy efficiency and renewables **often make business sense irrespective of their climate benefits.** CDP reports that the efficiency investments of hundreds of global companies paid for themselves from reduced energy bills in just 4.2 years on average. According to a 2016 report from the US Department of Energy "[P]rices from [wind] contracts executed in the past 3+ years are consistently below the low end of the projected natural gas fuel cost", which is typically the next cheapest electricity fuel. A combination of improved efficiency and increased use of low-cost renewable energy could help the pharmaceutical industry reduce the $1 billion per year it spends each year on energy required to keep its facilities running.

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* Ceres’ position is aligned with scientific targets that call for the U.S. to achieve GHG emission reductions of 80% below 1990 baseline levels by 2050 and at least 25% reduction below 1990 by 2020. This expectation uses 2005 as the baseline, as this is consistent with pending U.S. climate policy legislation.

In addition, the EPA Center for Corporate Climate Leadership page lists GHG Reduction Strategies for corporations; the very first two they list are Energy Efficiency and Renewable Energy.

> **<u>To capture the environmental and financial benefits of improved energy management</u>**, leading pharmaceutical companies have implemented aggressive clean energy goals. For instance, AbbVie, Bristol-Myers Squibb, and Johnson & Johnson have all joined the US Department of Energy's "Better Plants Initiative" in which partners voluntarily set a goal to reduce energy intensity by 25% over a 10-year period across all of their US operations. Likewise, AstraZeneca, Biogen, DSM, Johnson & Johnson and Novo Nordisk have joined the RE100 initiative, committing to shift toward 100 percent renewable electricity usage.
>
> By contrast, Gilead Sciences lags behind.
>
> **The company's most recent sustainability report** provides anecdotal information about a range of discrete initiatives to improve energy efficiency at facilities in five countries. Yet the report is silent on energy management in two dozen other countries where the company operates. The report **highlights how much energy is used and how much greenhouse gas is emitted at large facilities in the five countries, yet its disclosures are silent on specific, time-bound, companywide goals to improve efficiency, increase renewables, <u>or curb greenhouse gas emissions.</u>**
>
> To maintain parity with its competitors, Gilead Sciences shareholders should vote to assess the adoption of company-wide efficiency and renewable energy goals.
>
> [Emphasis added]

Prior Staff determinations have settled the question of whether matters pertaining to climate change and greenhouse gas emissions transcend ordinary business. See, e.g., *DTE Energy Company* (January 26, 2015), *J.B. Hunt Transport Services, Inc.* (January 12, 2015), *FirstEnergy Corp.* (March 4, 2015) (proposals not excludable as ordinary business because they focused on reducing greenhouse gas emissions and did not seek to micromanage the company); *Dominion Resources* (February 27, 2014), *Devon Energy Corp.* (March 19, 2014), *PNC Financial Services Group, Inc.* (February 13, 2013), *Goldman Sachs Group, Inc.* (February 7, 2011) (proposals not excludable as ordinary business because they focused on significant policy issue of climate change)*; NRG Inc*. (March 12, 2009) (proposal seeking carbon principles report not excludable as ordinary business); *Exxon Mobil Corp.* (March 23, 2007) (proposal asking board to adopt quantitative goals to reduce GHG emissions from the company's products and operations not excludable as ordinary business); *Exxon Mobil Corp.* (March 12, 2007) (proposal asking board to adopt policy significantly increasing renewable energy sourcing globally not excludable as ordinary business); *General Electric Co.* (January 31, 2007) (proposal asking board to prepare a global warming report not excludable as ordinary business).

Further, in the SEC's February 8, 2010 Climate Change release (Release Nos. 33-9106; 34-61469; FR-82), "Guidance to Public Companies Regarding the Commission's Existing Disclosure Requirements as they Apply to Climate Change Matters," the SEC explained that climate change had become a topic of intense public discussion as well as significant national and international regulatory activity. The guidance cites numerous state and federal regulatory activities, including the California

Global Warming Solutions Act, the Regional Greenhouse Gas Initiative, the Western Climate Initiative, the Clean Energy Jobs and American Power Act of 2009, and EPA's greenhouse gas reporting program.

This new disclosure guidance was needed, according to the SEC because "the regulatory, legislative and other developments described could have a significant effect on operating and financial decisions." This guidance demonstrated that the SEC recognizes climate change as a significant public policy issue affecting many businesses.

To the extent that the SEC's Climate Guidance and other initiatives do not produce the needed levels of disclosure at particular companies, the shareholder resolution process provides one of the most important mechanisms for encouraging companies to enhance their disclosure. Given the significance of this issue, and increasing focus of NGOs and others on the financial sector as pivotal to the needed solutions, this is an essential area for shareholder initiatives.

The Staff has also long made it clear that proposals addressed to a company's environmental impact transcend ordinary business. See, for instance, Staff Legal Bulletin 14 E which summarized long-standing Staff practice as follows:

> To the extent that a proposal and supporting statement have focused on a company minimizing or eliminating operations that may adversely affect the environment or the public's health, we have not permitted companies to exclude these proposals under Rule 14a-8(i)(7).

C. As a member of the Pharmaceutical Manufacturing Sector, the use of clean energy is a material issue with a clear nexus to the Company

Independent authorities have established that energy use by Pharmaceutical Manufacturers pose material environmental and financial risks. To cite one form of evidence, the Sustainability Accounting Standards Board (SASB) has prepared guidance for industrial sectors to disclose information likely to be financially material to companies within a given sector. For the pharmaceutical manufacturing sector of which the Company is a part, issues regarding energy efficiency and renewable energy as well as greenhouse gas outputs are considered material issues by the SASB.[4]

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[4] The SASB Pharmaceutical Sector guideline states:

The manufacturing of pharmaceutical products requires the use of energy, water, and material inputs, in addition to the creation of waste. As concerns over climate change and dwindling natural resources continue to impact pricing, pharmaceutical companies will be exposed to fluctuations in costs of these key inputs. Firms that are able to improve manufacturing efficiencies and limit dependence on finite resources are likely to enhance shareholder value. Accounting Metrics HC0102-23. Total annual energy consumed (gigajoules) and percentage renewable (e.g., wind, biomass, solar). .87 The registrant shall convert the amount of electricity it consumed from kilowatt hours (kWh) to gigajoules (GJ). .88 The registrant shall disclose fossil fuel consumption in terms of its energy content, using higher heating values (HHV), also known as gross calorific values (GCV), and which are directly measured or taken from the Intergovernmental Panel on Climate Change (IPCC), the U.S. Department of Energy (DOE), or the U.S. Energy Information Administration (EIA). .89 The registrant shall disclose renewable energy consumption as a percentage

Accordingly, the Pharmaceutical Manufacturing Association reports that the pharmaceutical industry is increasingly focused on sustainability, including "adopting new manufacturing processes to reduce emissions and energy use" and "expanding focus on setting and achieving environmental goals to reduce environmental impact at the company level." https://chartpack.phrma.org/index.cfm?furl=/2016-perspective/chapter-7/the-biopharmaceutical-industry-is-increasingly-focused-on-sustainability&

The Company has raised no assertion in its "no action" request that there is a lack of nexus of the significant policy issue to the Company, and therefore it seems clear that the nexus exists for purposes of Rule 14a-8(i)(7). Indeed, Gilead itself states in its most recent sustainability report that its own energy use has environmental impacts. Accordingly, the Company has adopted what it calls a "worldwide sustainability strategy"[5] aimed at protection the "overall health of our employees, the patients we serve and the communities in which we live and work." Among other features, the Report indicates that the strategy "targets environmental impacts including energy...consumption…" [6]

As the Company itself recognizes that its own energy consumption has community health and environmental impacts that must be managed through a "worldwide" sustainability strategy, the nexus is clear.

The relevance and importance of the Proposal to the Company is driven home by the fact that Gilead Sciences is only publicly traded pharma company in top 20 companies to NOT report its greenhouse gas emissions and energy use to CDP. Among the companies, Gilead ranks #7 by 2016 sales. (Boehringer Ingelheim, a private pharma company ranked #18 by 2016 sales, also does not report to CDP.)[7]

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of its overall energy consumption, in terms of its energy content. For biofuels, the registrant shall use HHVs from the sources mentioned above. For solar or wind energy consumption, the registrant shall convert from electricity production (kWh) to gigajoules (GJ). .90 The registrant shall disclose renewable energy data for renewable energy it directly produces, or which it purchases through renewable energy certificates (RECs) that are certified (i.e., through Green-e), or renewable power purchase agreements (PPAs). It shall not disclose the renewable portion of the energy drawn from electricity grids https://www.sasb.org/wp-content/uploads/2013/07/SASB_Standard_Pharmaceuticals.pdf

[5] In its report, the company claims to have a "worldwide" strategy to manage energy use with the goal of reducing emissions that harm the environment and community health. By "worldwide", the company would seem to imply that the strategy would apply to Gilead facilities in all or at least most of the 30 countries where the company operates. However, in its sustainability report, the company discloses energy use and related greenhouse emissions from just one facility, located in Foster City, California. The limited disclosure of quantitative information on energy use and emissions trends makes it impossible for investors to gauge how effective Gilead's energy management strategy might be.

[6] See http://www.gilead.com/-/media/files/pdfs/yir%202016%20pdfs/environment_gilead_yir2016.pdf?la=en

[7] Source - Boston Common Asset Management review of CDP submissions for the top 20 pharma companies. Top 20 pharma according to PharmExec magazine.

CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2018 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no action letter request. If you have any questions, please contact me at (413) 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,

Sanford Lewis

Cc: Lauren Compere
Steven Heim
Brett A. Pletcher

APPENDIX A
TEXT OF PRIOR PROPOSALS

<u>Lowe's Inc., January 30, 2017 (NOT EXCLUDABLE)</u>

THE NEED FOR LOWE'S TO ASSESS THE FEASIBILITY OF SETTING RENEWABLE ENERGY SOURCING TARGETS

WHEREAS: To limit the average global temperature increase to below 2 degrees Centigrade, (3.6 degrees Fahrenheit) a goal shared by nearly every nation, the Intergovernmental Panel on Climate Change estimates that the United States needs to reduce annual greenhouse gas ("GHG") emissions approximately 80 percent. This will involve a significant shift to renewable energy.

THE costs of generating electricity from sources like wind and solar have been declining rapidly and are influencing companies' response to climate change. The EPA currently lists 78 Fortune 500 companies as purchasing renewable energy (or certificates.)

LOWE'S has not taken any visible some steps in this direction. Lowe's has not reported any environmental or sustainability goals or accomplishments to address renewable energy as a means to help reduce GHG emissions. The only identified actions taken by Lowe's has been to investigate more efficient lighting, which is a laudable step, but it misses an opportunity to help reduce the environmental footprint created by its 1857 energy consuming big box locations, its warehousing and offices, that all add to Lowe's enormous carbon footprint.

BIG BOX stores have large expanses of flat roofs that are ideal for solar panel retrofits generating electricity right where it is needed. Many other large retailers have accomplished these retrofits and have significantly reduced their GHG emissions.

LOWE'S Still lacks a quantitative target for renewable energy sourcing and/or production. Ironically, Lowe's has been promoting the sale and installation of solar panels for homeowners and commercial installations. Lowe's has failed to embrace these same technologies for its own operations. Now is the time for Lowe's to act to reduce its GHG emissions and to aggressively act to play its corporate part by investing in and generating renewable energy.

INVESTORS are concerned that Lowe's may be behind other large corporations which are developing quantitative renewable energy goals in response to climate change. The RE100, a coalition pushing companies to switch to 100 percent renewable energy, now includes Apple, General Motors, Johnson & Johnson, Nestle, Procter & Gamble, Unilever, and Walmart. The Home Depot is also now investigating and committing to renewable energy goals.

BY SETTING quantitative goals on renewable energy, Lowe's can address climate change, respond ably to energy market changes, move closer to achieving GHG reductions, and help meet the global need for cleaner energy.

RESOLVED: Shareholders request that Lowe's produce a report assessing the climate benefits and feasibility of adopting enterprise-wide, quantitative, time-bound targets for increasing Lowe's renewable energy sourcing and/or production. The report should be produced at reasonable cost, in a reasonable timeframe, and omitting proprietary and confidential information. This proposal does not prescribe matters of operational or financial management.

SUPPORTING STATEMENT: Shareholders request that the report consider all of Lowes's facilities and analyze options and scenarios for achieving renewable energy targets, for example by using on-site distributed energy, off-site generation, power purchases, and renewable energy credits, or other opportunities management would like to consider, at its discretion.

Proposals cited by Company as excludable under Rule 14a-8(i)(7)

FLIR Systems, Inc. (Feb. 6, 2013)

WHEREAS:

Investments in energy efficiency are an attractive way to manage rising energy costs, can enhance a company's role as a corporate citizen, and are usually quite profitable and low-risk. A 2008 McKinsey report (How the World Should Invest in Energy Efficiency) estimated that $170 billion could be invested in energy efficiency with an average internal rate of return of 17%. The report estimated that by 2020, these energy efficiency investments could produce over five times their cost in annual energy savings.

Companies are increasingly committing to energy efficiency initiatives. According to the Center for Climate & Energy Solutions: Johnson & Johnson achieved an internal rate of return 19% from recent energy efficiency investments; Alcoa's Energy Efficiency Network has captured sustainable annual savings exceeding $20 million; between 1990 and 2006, IBM's energy conservation measures saved $290 million; and between 1990 and 2008, DuPont estimates that its energy efficiency initiatives saved the company about $4 billion.

Evidence linking environmental considerations such as energy efficiency and value creation is increasingly being seen. An October, 2010 report from Thomson Reuters (ESG and Earnings Performance) concluded that, "U.S. companies with stronger ESG [environmental, social and governance] scores consistently beat earnings estimates more frequently than those with lower scores." And according to an October 4, 2011 report from Goldman Sachs (Why ESG Matters), "Firms with leading ESG scores tend to generate higher and more durable returns on capital than sector peers."

According to FLIR. System's 2011 Form 10-K, the Company acknowledges that part of its growth strategy is predicated on cost efficiency. On page 5 of this report, the Company states that their "ability to continue penetrating and expanding on our leading market position...is predicated on our success at reducing internal costs to manufacture systems." On page 36 of this report, total operating expenses were identified as approximately $515. million. According to Honeywell's Energy Management Solutions, energy expenses can account for more than 25 percent of a company's total operating costs. For FLIR Systems, 25 percent of its 2011 operating costs is approximately $130. million.

***7** FLIR Systems has not provided adequate disclosure in public filings, on its website, or through a report, that discusses the Company's energy management strategy. An effective energy management strategy can yield a high return on. investment while proactively responding to reputational risk.

RESOLVED

Shareholders request that the Board of Directors issue a report describing the company's short- and long-term strategies on energy use management. The requested report should include a company-wide review of the policies, practices, and metrics related to FLIR System's energy management strategy. The report should be prepared at reasonable cost, omitting proprietary information, and made available to shareholders by December 31, 2013.

TJX Companies, Inc. (Mar. 8, 2016)

Resolved: Shareholders request The TJX Companies, inc. (TJX) senior management, with oversight from the Board of Directors, set company-wide quantitative targets by November 2016 to increase renewable energy sourcing and/or production.

Whereas:

By setting goals to source renewable energy, our company would demonstrate a proactive approach to: reducing exposure to volatile energy prices; enhancing U.S. energy security; creating jobs in the United States; enhancing TJX's reputation; and meeting the global need for cleaner energy.

In order to limit the average global temperature increase to 2 degrees Centigrade, a goal shared by nearly every nation, the Intergovernmental Panel on Climate Change (IPCC) estimates that the United States needs to reduce annual GHG emissions approximately 80 percent. This will involve a significant shift to renewable energy.

Fortunately, the costs of generating electricity from sources such as wind and solar have been declining rapidly and are now cheaper in some regions than fossil fuel-based energy.

In 2015, Berkshire Hathaway's NV Energy secured a power purchase agreement (PPA) price of 3.87 cents per kWh for electricity generated by a 100 Megawatt First Solar project.

The average price paid by all types of end users of electricity nationwide in 2014 was 10.45 cents per kWh according to the U.S. Energy Information Administration (EIA).

The average price of wind energy installed in 2014 was 2.5 cents per kWh according to Lawrence Berkeley National Laboratory. In 2013 David Sparby, President of Xcel Energy's Northern States Power stated: "Wind prices are extremely competitive right now, offering lower costs than other possible resources, like natural gas plants. These projects offer a great hedge against rising and often volatile fuel prices."

The New York Times reported in September 2015 that new members of coalition called RE100 that encourages companies to switch to 100% renewable energy include Johnson & Johnson, Procter & Gamble, Starbucks, Walmart and Goldman Sachs.

Eric Schmidt of Alphabet, Inc. stated: "Much of corporate America is buying renewable energy in some form or another, not just to be sustainable, because it makes business sense, helping companies diversify their power supply, hedge against fuel risks, and support innovation in an increasingly cost-competitive way."

A report by CDP found that four out of five companies earn a higher return on carbon reduction investments than on their overall corporate capital expenditures. We are concerned TJX may be lagging behind peers with renewable energy goals like Kohl's Department stores that currently has a target to outfit 200 of its stores with rooftop solar by 2015 and that bought solar credits and installed solar projects that together add up to 105% of the electricity ijt uses annually.

Companies are increasingly turning to renewable energy to power their operations. According to EPA, 78 Fortune 500 companies are purchasing renewable energy. By setting renewable energy commitments, the company can strengthen its current climate change strategy, reduce the company's exposure to fluctuating energy prices and move it closer to achieving GHG reductions.

CVS Health Corp. (Mar. 8, 2016)
Resolved: Shareholders request CVS Health Corporation (CVS) senior management, with oversight from the Board of Directors, set company-wide quantitative targets by November 2016 to increase renewable energy sourcing and/or production.

Whereas:

By setting goals lo source renewable energy, our company would demonstrate a proactive approach to: reducing exposure lo volatile energy prices; enhancing U.S. energy security; creating jobs in the United States; enhancing CVS's reputation; and meeting the global need for cleaner enegy.

In order to limit the average global temperature increase to 2 degrees Centigrade, a goal shared by nearly every nation, the Intergovernmental Panel on Climate Change (IPCC) estimates that the United States needs to reduce annual GHG emissions approximately 80 percent. This will involve a significant shift to renewable energy.

Fortunately, the costs of generating electricity from sources such as wind and solar have been declining rapidly and are now cheaper in some regions than fossil fuel-based energy.

In 2015, Berkshire Hathaway's NV Energy secured a power purchase agreement (PPA) price of 3.87 cents per kWh for electricity generated by a 100 Megawatt First Solar project.

The average price paid by all types of end users of electricity nationwide in 2014 was 10.45 cents per kWh according to the U.S. Energy Information Administration (EIA).

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Trie New York Times reported in September 2015 that new members of coalition called RE100 that encourages companies to switch to 100% renewable energy include Johnson & Johnson, Procter & Gamble, Starbucks, Walmart and Goldman Sachs.

Eric Schmidt of Alphabet stated: "Much of corporate America is buying renewable energy in some form or another, not just to be sustainable, because it makes business sense, helping companies diversify their power supply, hedge against fuel risks, and support innovation in an increasingly cost-competitive way."

A report by CDP found that four out of five companies earn a higher return on carbon reduction investments than on their overall corporate capital expenditures. We are concerned CVS may be lagging behind peers that are experiencing substantial cost savings by pursuing quantitative energy efficiency and renewable energy targets. WalMart alone expects to save $1 billion each year from its energy efficiency and renewable energy initiatives.

Companies are increasingly turning to renewable energy to power their operations. According to EPA, 73 Fortune 500 companies are purchasing renewable energy. By setting renewable energy commitments, CVS can strengthen its current climate change strategy, reduce the company's exposure to fluctuating energy prices and move it closer to achieving GHG reductions.

Apple Inc. (Dec. 5, 2014)

WHEREAS, our company has chosen to obtain some or most of the electricity that powers its operations via renewable sources it would be useful for shareholders to know more about the costs of this choice.

RESOLVED, that the shareholders request the Company prepare a report at reasonable expense and omitting proprietary information estimating the total investment in these renewable sources of electricity in $/kW and the average cost per kilowatt-hour through 2013 and the projected costs over the life of the renewable sources. If the company chooses, the report may be limited to facilities in the United States. The report should also estimate the subsidies obtained from governments at all levels in reduced investment dollars and/or as a percent reduction in the cost of electricity per kilowatt-hour. If available the report should also compare the cost of power from the renewable electricity sources with the cost of electricity from the power companies serving the communities in which our facilities are located. If it chooses the Company may also include statements of the non-financial benefits of using renewable electricity. The report should be published by December 2015.

SUPPORTING STATEMENT

In response to a shareholder question during the February, 2014 shareholder meeting Tim Cook, CEO of our company, implied that cost was a secondary consideration in generating or purchasing electricity for our facilities. This report would help shareholders judge whether this is a prudent decision.

TXU Corp. (Apr. 2, 2007)

RESOLVED, that the Board of Directors of TXU undertake a study of energy efficiency with respect to TXU's existing and proposed power plants and report back to shareholders describing the impact that significant improvements in energy efficiency would have on TXU, and what role TXU can play to can increase revenue by helping customers reduce demand for electricity. That study and report should include:

• An analysis of the potential energy savings that could be generated if energy efficiency actions similar to those recommended in recent national studies were implemented.

• An analysis of costs to the company of implementing such energy efficiency actions with respect to TXU's operations, and what barriers exist to such implementation.

• An analysis of the reduction in demand that would occur if energy efficiency actions were implemented by TXU's customers, and what impact this would have on the plan to build new generating capacity.

• A summary of the role that TXU has played and intends to play to advance policies to reward TXU and its shareholders financially for efforts to reduce demand and increase energy efficiency.

SUPPORTING STATEMENT

The July 2006 "National Action Plan for Energy Efficiency"[1] "presents policy recommendations for creating a sustainable, aggressive national commitment to energy efficiency through gas and electric utilities, utility regulators, and partner organizations."

A November 2006 report by Environmental Defense "shows that investing in energy efficiency measures offers Texas the best, fastest, cleanest and cheapest route to solving the state's short-term energy needs. Further, it illustrates how Texas can use such measures to reduce our long-term energy consumption and the proposed need for new power plants."

According to a November 2006 report by the McKinsey Global Institute (MGI). "the best way to meet the challenge of growing energy demand is to focus on energy productivity." "MGI"s in depth case studies indicate that there are substantial and economically viable opportunities to boost energy productivity that have not been captured … which would represent a 15 to 25 percent cut in the end-use energy demand by 2020."

TXU's most recent 10-K points out "…electricity demand could be reduced by increased conservation efforts and advances in technology, which could likewise significantly reduce the value of TXU Corp.'s power plants and electric delivery facilities".

We believe that improved energy efficiency could reduce demand for new power generation, which could potentially decrease the value of new power plants.

TXU and its shareholders need to evaluate how energy efficiency measures could effect the electricity usage of TXU's customers, and how this would impact the economic viability of these proposed power plants. We urge TXU to do this study and report to shareholders, and we urge shareholders to support this resolution.

FirstEnergy Corp. (Mar. 8, 2013)

WHEREAS:

Navigant Consulting recently observed that, "changes underway in the 21st century electric power sector create a level and complexity of risks that is perhaps unprecedented in the industry's history."

In 2008, Brattle Group projected that the U.S. electric utility industry would need to invest capital at historic levels between 2010 and 2030 to replace aging infrastructure, deploy new technologies, and meet consumer needs and government policy requirements. Brattle predicted that total industry-wide capital expenditures from 2010 to 2030 would amount to between $1.5 and $2.0 trillion.

In May 2011, a National Academy of Sciences report warned that the risk of dangerous climate change impacts grows with every ton of greenhouse gases emitted, and reiterated the pressing need for substantial action to limit the magnitude of climate change and to prepare to adapt to its impacts. The report also emphasized that, "the sooner that serious efforts to reduce greenhouse gas emissions proceed, the lower the risks posed by climate change, and the less pressure there will be to make larger, more rapid, and potentially more expensive reductions later."

The Tennessee Valley Authority's recent integrated resource plan, which employed a sophisticated approach to risk management determined that the lowest-cost, lowest-risk strategies involve diversifying the company's resource portfolio by increasing investments in energy efficiency and renewable energy.

Twenty-nine states have renewable portfolio standards or goals and over 35% of new power generation capacity in the past five years has come from renewable generating resources.

In October 2011, analysis by Bank of America stated, "Rapidly declining costs are bringing solar much closer to parity with average power prices, especially in sunny regions. By 2015, the economics of utility-scale photovoltaic energy in sunny areas and residential rooftop in high-cost regions should no longer require government subsidies."

A 2009 study by McKinsey & Company found that investments in energy efficiency could realistically cut U.S. energy consumption by 23 percent by 2020. These efficiency gains could save consumers nearly $700 billion.

In July 2012, the Institute for Electric Efficiency indicated that budgets for electric efficiency programs increased to $6.8 billion in 2011, up from $3.2 billion in 2008.

Many electric utilities have helped their customers achieve significant energy savings of at least 1% of the utility's annual electricity sales including Idaho Power, Nevada Power, PG&E, MidAmerican Energy, Salt River Project, Interstate Power and Light, and Massachusetts Electric.

FirstEnergy has argued that Ohio's energy efficiency targets are expensive and unnecessary and has proposed that the targets be revisited.

RESOLVED:

Shareholders request a report [reviewed by a board committee of independent directors] on actions the Company is taking or could take to reduce risk throughout its energy portfolio by diversifying the Company's energy resources to include increased energy efficiency and renewable energy resources. The report should be provided by September 1, 2013 at a reasonable cost and omit proprietary information.

Dominion Resources, Inc. (Feb. 14, 2014)

Whereas: By not aggressively pursuing distributed solar generation, Dominion is underperforming compared to its peers and missing the opportunity for essential experience in this type of generation. More than 6 GW of solar photovoltaic are installed in the US (1 GW in NJ). Virginia has no utility-owned solar.

New research[i] shows that solar, wind, and storage can power the grid 99.9% of the time. Renewables avoid the risks of variable fuel costs and new carbon regulation, lessening long-term risk for the grid and investors.

Dominion's study valuing solar[ii] showed it as a net burden to the grid. Many other studies (California, Texas, New York, Vermont,[iii] and NREE[iv]) show solar as a net benefit to the grid. Dominion's 2013 IRP shows plans with more renewable energy development, but does not recommend them. Dominion risks making insufficient investment in (his valuable future energy source by not using the more realistic IREC method for valuing solar.[v]

Dominion's base 15-year plan includes 3 MW customer solar and 30 MW utility-owned distributed solar (with dispute over limited pricing and term[vi]). A Virginia total of 33 MW proposed solar over 15 years (none currently) is meager compared to other programs, e.g., Maryland (106 MW solar installed), Duke Energy (50 MW solar), Tucson Electric (15 MW), Colorado Springs Utilities (2 MW single community pilot in 2010, expanding), Austin Energy (11 MW, expanding to 50 MW), Georgia Power (69 MW installed, adding 210 MW), burgeoning DC community solar, and the Indianapolis Airport 25 MW array. Every airport in Virginia receives more solar isolation than Indianapolis, but none has any arrays.

Failing to adapt quickly to the new opportunities of distributed solar is a financial risk that could be calamitous, as discussed in many recent articles.[vii] Recently proposed federal standards requiring 6% renewable by 2015 would be disastrous for Dominion. Bloomberg New Energy Finance said the ""tipping point" has been reached; while renewable energy produced only 12% of the world's electricity in 2012, renewables are projected to produce more than 50% by 2020, just six years away. To remain viable and minimize investor risk, Dominion must plan now for installing fixed cost generators. Otherwise, virtually nearly every nearby state will have a low, relatively fixed cost for electricity while Virginia's will continue to rise.

Despite Dominion's capability to plan for distributed solar, its failure to do so will adversely affect investor confidence and support.

Resolved: Dominion shareholders request the Dominion board appoint a team to review the risks Dominion faces under its current plan for developing solar generation, including a renew of other US programs, and to develop a report on those risks as well as benefits of increased solar generation. The analysis, prepared at reasonable cost and omitting proprietary information, shall be available to shareholders by the 2015 shareholder meeting.

Footnotes	
i	http://www.scjencedirect.com/sciencearticle.pii S037877531201.1759
ii	Virginia SCC case PUE-2011-00088; PUE-2012-00064 8/1/13 filing
iii	http://www.renewableenergyworld.comerea.blog.po/2013/01/new-state-study-demonstrates-benefit-to-
iv	http://www.cenews.net/slories/1059987792

v	http://www.irecusa.org/wp-content/uploads/2013/10/IREC_Rabago_Regulators-Guidebook-to-Assessi
vi	PUE-2012-00061 comments 9/14/12, http://docket.scc.virginia.gov
vii	http://www.cej.org/ourissues/finance/Documents/disruptivechallenges.pdf, http://www.businessweek.com/articles/2013-08-22/homegrown-green-energy-is-making-power-utilitie investments-now-or-risk-mi

BY EMAIL (shareholderproposals@sec.gov)

December 13, 2017

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

RE: Gilead Sciences, Inc. – 2018 Annual Meeting
Omission of Shareholder Proposal of
Boston Common Asset Management

Ladies and Gentlemen:

We are writing pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended, to request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with our view that, for the reasons stated below, Gilead Sciences, Inc., a Delaware corporation ("Gilead"), may exclude the shareholder proposal and supporting statement (the "Proposal") submitted by Boston Common Asset Management (the "Proponent") from the proxy materials to be distributed by Gilead in connection with its 2018 annual meeting of shareholders (the "2018 proxy materials").

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of Gilead's intent to omit the Proposal from the 2018 proxy materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned.

I. The Proposal

The text of the resolution contained in the Proposal is set forth below:

> **Resolved:** To increase the benefits to society and to our company associated with usage of clean energy resources, shareholders request that Gilead Sciences senior management, with oversight from the Board of Directors, issue a report assessing the feasibility of adopting time-bound, quantitative, company-wide goals for increasing energy efficiency and use of renewable energy. The report should be issued within one year of this filing at reasonable cost, and omitting proprietary information.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur in Gilead's view that it may exclude the Proposal from the 2018 proxy materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to Gilead's ordinary business operations.

III. Background

Gilead received the Proposal, accompanied by a cover letter from the Proponent dated November 21, 2017, and a letter from U.S. Bancorp Fund Services, LLC dated November 22, 2017, verifying the Proponent's stock ownership as of November 21, 2017 (the "Broker Letter"). Copies of the Proposal, cover letter and Broker Letter are attached hereto as Exhibit A.

IV. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to Gilead's Ordinary Business Operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to 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 Commission also has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal is within the ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983); *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 risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making," noting that the proposal related to the ordinary business matter of the "nature, presentation and content of programming and film production").

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff has consistently permitted exclusion of proposals under Rule 14a-8(i)(7) requesting that a company increase its energy efficiency or its use of renewable energy where the proposal and the supporting statement, when read together, focus primarily on a company's management of its energy expenses. In *FLIR Systems, Inc.* (Feb. 6, 2013), for example, the proposal sought a report "describing the company's short- and long-term strategies on energy use management." In granting relief to exclude the proposal under Rule 14a-8(i)(7), the Staff concluded that "the proposal and supporting statement, when read together, focus primarily on FLIR's strategies for managing its energy expenses." *See, e.g.*, *The TJX Companies, Inc.* (Mar. 8, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company set "quantitative targets . . . to increase renewable energy sourcing and/or production"); *CVS Health Corp.* (Mar. 8, 2016) ("*CVS I*") (same); *Apple Inc.* (Dec. 5, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested an estimate of "the total investment in . . . renewable sources of electricity . . . and the projected costs over the life of the renewable sources," noting that "the proposal relates to the manner in which the company manages its expenses"); *TXU Corp.* (Apr. 2, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested, among other things, an analysis of potential energy savings that could be generated by energy efficiency actions and an analysis of costs to the company of implementing energy efficiency actions).

The Staff also has permitted the exclusion of proposals under Rule 14a-8(i)(7) asking a company to increase its energy efficiency or its use of renewable energy where the proposal and the supporting statement, when read together, relate to the company's choice of technologies for use in its operations. In *First Energy Corp.* (Mar. 8, 2013), for example, the proposal sought a report on actions the company could take to reduce risk "by diversifying [its] energy resources to include increased energy efficiency and renewable energy resources." In granting relief to exclude the proposal, the Staff noted that "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable under [R]ule 14a-8(i)(7)." *See, e.g., Dominion Resources, Inc.* (Feb. 14, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that sought, among other things, "a report on . . . benefits of increased solar generation," noting that "the proposal concern[ed] the company's choice of technologies for use in its operations"); *AT&T Inc.* (Feb. 13, 2012) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that sought, among other things, a report on the company's "efforts to accelerate the development and deployment of new energy efficient set-top boxes" noting that "the proposal relates to the technology used in AT&T's set-top boxes[,]" and "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable under [R]ule 14a-8(i)(7)"); *CSX Corp.* (Jan. 24, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that asked the company to develop a kit to allow it to convert the majority of its locomotive fleet to "a far more efficient power conversion system," noting that "the proposal relates to the power conversion system used by CSX's locomotive fleet" and "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable under [R]ule 14a-8(i)(7)").

In this instance, the Proposal's request that Gilead assess the feasibility of adopting goals for increasing energy efficiency and use of renewable energy, when read together with the supporting statement, focuses primarily on Gilead's management of its energy expenses and also concerns Gilead's choice of technologies for use in its operations, both of which are ordinary business matters. The supporting statement emphasizes the Proposal's primary focus on Gilead's management of its energy expenses by stating that Gilead, by implementing the Proposal's request, "could lay the ground to reduce energy costs [and] hedge against risks of volatile energy prices." The supporting statement further states that "energy efficiency and renewables often make business sense" and details the perceived financial benefits of adopting goals for increasing energy efficiency and use of renewable energy by indicating that "efficiency investments of hundreds of global companies paid for themselves from reduced energy bills in just 4.2 years on average" and "a combination of improved efficiency and increased use of low-cost renewable energy could help the pharmaceutical industry reduce the $1 billion per year it spends each year on energy." In addition, the Proposal compares the potential relative costs of certain sources of energy, stating that "prices from [wind] contracts executed in the past 3+ years are consistently below the low end of the projected natural gas fuel cost." In this way, the supporting statement makes clear that the primary focus of the Proposal is on Gilead's management of its energy expenses.

In addition, the supporting statement emphasizes that the Proposal concerns Gilead's choice of technologies for use in its operations by stating that Gilead, by implementing the Proposal's request, could "shift[] from fossil-based to renewable energy sources." Further, the supporting statement advocates for the use of specific sources of energy, stating that wind energy can cost less than "natural gas . . . , which is typically the next cheapest electricity fuel." By dictating a type of technology that Gilead must use in its operations going forward, the supporting statement makes clear that the Proposal concerns Gilead's choice of technologies for use in its operations.

Decisions as to how Gilead manages its energy expenses and chooses technologies for use in its operations are fundamental to Gilead's day-to-day operations and cannot, as a practical matter, be subject to shareholder oversight. Thus, consistent with the precedent described above, the Proposal is excludable under Rule 14a-8(i)(7).

Finally, Gilead recognizes that the Staff has found that some proposals requesting a report on the feasibility of adopting certain goals for increasing the company's renewable energy sourcing and production focus on a significant policy issue and therefore are not excludable under Rule 14a-8(i)(7). In those instances, however, the proposal specifically requested that the report assess the climate benefits of increasing the company's renewable energy sourcing and production. In *Lowe's Companies, Inc.* (Mar. 10, 2017), for example, the Staff did not permit the company to exclude a proposal seeking a report "*assessing the climate benefits* and feasibility of adopting enterprise-wide, quantitative, time-bound targets for increasing [the company's] renewable energy sourcing and/or production" on the basis that the proposal "transcends ordinary business matters and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate" (emphasis added). *See also CVS Health Corp.* (Feb. 22, 2017) ("*CVS II*") (same).

Unlike the proposals in *Lowe's* and *CVS II*, the Proposal does not call for an assessment of climate benefits. In contrast, the Proposal's request that Gilead assess the feasibility of adopting goals for increasing energy efficiency and use of renewable energy, when read together with the supporting statement, focuses primarily on Gilead's management of its energy expenses and also concerns Gilead's choice of technologies for use in its operations, matters that, as described above, are part of Gilead's ordinary business operations.

Accordingly, Gilead believes that the Proposal may be excluded from its 2018 proxy materials pursuant to Rule 14a-8(i)(7) as relating to its ordinary business operations.

V. Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if Gilead excludes the Proposal from its 2018 proxy materials.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Gilead's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact me at (650) 574-3000 or Marc S. Gerber of Skadden, Arps, Slate, Meagher & Flom LLP at (202) 371-7233.

Very truly yours,

Brett A. Pletcher

Brett A. Pletcher
Executive Vice President, General
Counsel and Chief Compliance Officer

Enclosures

cc: Lauren Compere
Managing Director
Boston Common Asset Management

Steven Heim
Managing Director
Boston Common Asset Management

EXHIBIT A

(see attached)

BOSTON COMMON
ASSET MANAGEMENT

84 State Street, Suite 940 | Boston, MA 02109

November 21, 2017

Mr. Brett A. Pletcher
Executive Vice President, General Counsel & Chief Compliance Officer
Gilead Sciences Inc.
333 Lakeside Drive
Foster City, CA 94404

Re: Shareholder Proposal on Energy Productivity & Renewable Energy Targets

Dear Mr. Pletcher:

Boston Common Asset Management, LLC is a global investment manager that specializes in sustainable and responsible global equity strategies. We seek long-term capital appreciation by investing in diversified portfolios of high quality stocks. Boston Common currently manages over $2.6 billion as of September 30, 2017, with clients that are shareholders in Gilead Sciences. We currently hold 6,090 shares of Gilead Sciences common stock in the Boston Common U.S. Equity Fund (BCAMX).

According to the International Energy Agency (IEA), improved energy efficiency must provide 49 percent and renewables must provide 17 percent of energy-related GHG reductions to stabilize global temperatures. Energy efficiency and renewables often make business sense irrespective of their climate benefits. CDP reports that the efficiency investments of hundreds of global companies paid for themselves from reduced energy bills in just 4.2 years on average.

To capture the environmental and financial benefits of improved energy management, leading pharmaceutical companies have implemented aggressive clean energy goals. For instance, Abbvie, Bristol-Myers Squibb, and Johnson & Johnson have all joined the US Department of Energy's "Better Plants Initiative" in which partners voluntarily set a goal to reduce energy intensity by 25% over a 10-year period across all of their US operations. Likewise, AstraZeneca, Biogen, DSM, Johnson & Johnson and Novo Nordisk have joined the RE100 initiative, committing to shift toward 100 percent renewable electricity usage. By contrast, Gilead Sciences lags behind.

Therefore, Boston Common Asset Management, LLC (Boston Common) hereby submits the enclosed shareholder proposal (Proposal) with Gilead Sciences for inclusion in the 2018 proxy statement and in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). Per Rule 14a-8, the Boston Common U.S. Equity Fund holds more than $2,000 of Gilead Sciences common stock, acquired

Tel (617) 720-5557 Fax (617) 720-5665 Email invest@bostoncommonasset.com Web www.bostoncommonasset.com

more than one year prior to today's date and held continuously for that time. Verification of ownership will follow. Boston Common Asset Management will continue to hold the required shares through the date of the 2018 annual meeting. We will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

We are the primary filer for this proposal. We would welcome a dialogue with Gilead Sciences especially given how rapidly its peers are adopting energy productivity and renewable energy targets.

We would appreciate receiving a confirmation of receipt of this letter via email to lcompere@bostoncommonasset.com.

Sincerely,

Lauren Compere

Lauren Compere, Managing Director

Steven Heim

Steven Heim, Managing Director

Gilead Sciences, Inc.
Shareholder Proposal

Resolved: To increase the benefits to society and to our company associated with usage of clean energy resources, shareholders request that Gilead Sciences senior management, with oversight from the Board of Directors, issue a report assessing the feasibility of adopting time-bound, quantitative, company-wide goals for increasing energy efficiency and use of renewable energy. The report should be issued within one year of this filing at reasonable cost, and omitting proprietary information.

Supporting Statement:

Clean energy management involves using energy more efficiently and shifting from fossil-based to renewable energy sources. By assessing adoption of clean energy goals, our company could lay the ground to reduce energy costs, hedge against risks of volatile energy prices, enhance U.S. energy security, and reduce greenhouse gas (GHG) emissions.

According to the International Energy Agency (IEA), improved energy efficiency must provide 49 percent and renewables must provide 17 percent of energy-related GHG reductions to stabilize global temperatures. Fortuitously, energy efficiency and renewables often make business sense irrespective of their climate benefits. CDP reports that the efficiency investments of hundreds of global companies paid for themselves from reduced energy bills in just 4.2 years on average. According to a 2016 report from the US Department of Energy "[P]rices from [wind] contracts executed in the past 3+ years are consistently below the low end of the projected natural gas fuel cost", which is typically the next cheapest electricity fuel. A combination of improved efficiency and increased use of low-cost renewable energy could help the pharmaceutical industry reduce the $1 billion per year it spends each year on energy required to keep its facilities running.

To capture the environmental and financial benefits of improved energy management, leading pharmaceutical companies have implemented aggressive clean energy goals. For instance, Abbvie, Bristol-Myers Squibb, and Johnson & Johnson have all joined the US Department of Energy's "Better Plants Initiative" in which partners voluntarily set a goal to reduce energy intensity by 25% over a 10-year period across all of their US operations. Likewise, AstraZeneca, Biogen, DSM, Johnson & Johnson and Novo Nordisk have joined the RE100 initiative, committing to shift toward 100 percent renewable electricity usage.

By contrast, Gilead Sciences lags behind.

The company's most recent sustainability report provides anecdotal information about a range of discrete initiatives to improve energy efficiency at facilities in five countries. Yet the report is silent on energy management in two dozen other countries where the company operates. The report highlights how much energy is used and how much greenhouse gas is emitted at large facilities in the five countries, yet its disclosures are silent on specific, time-bound, company-wide goals to improve efficiency, increase renewables, or curb greenhouse gas emissions.

To maintain parity with its competitors, Gilead Sciences shareholders should vote to assess the adoption of company-wide efficiency and renewable energy goals.

usbancorp.
Fund Services, LLC

777 East Wisconsin Avenue
Milwaukee, WI 53202

usbfs.com

November 22, 2017

Mr. Brett A. Pletcher
Executive Vice President, General Counsel and Chief Compliance Officer
Gilead Sciences Inc.
333 Lakeside Drive
Foster City, CA 94404

Re: Gilead Sciences Inc. Stockholder Proposal

Dear Mr. Pletcher,

U.S. Bancorp is the custodian and record holder for the Boston Common U.S. Equity Fund (BCAMX).

We are writing to affirm that the Boston Common U.S. Equity Fund (BCAMX) currently holds 6,090.00 shares of Gilead Sciences Inc. common stock and has held at least $2,000 in market value of Gilead Sciences Inc. shares continuously for at least the one-year period prior to and including the date of the submission of the Stockholder Proposal, November 21, 2017.

Sincerely,

Melissa Breitzman

Melissa Breitzman
Mutual Funds Administrator