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

DIVISION OF
CORPORATION FINANCE

February 28, 2019

Jessica H. Paik
Abbott Laboratories
jessica.paik@abbott.com

Re: Abbott Laboratories
Incoming letter dated December 21, 2018

Dear Ms. Paik:

This letter is in response to your correspondence dated December 21, 2018 and February 8, 2019 concerning the shareholder proposal (the "Proposal") submitted to Abbott Laboratories (the "Company") by Oxfam America, Inc. (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated February 4, 2019. 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,

M. Hughes Bates
Special Counsel

Enclosure

cc: Nicholas J. Lusiani
Oxfam America, Inc.
nicholas.lusiani@oxfam.org

February 28, 2019

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

Re: Abbott Laboratories
Incoming letter dated December 21, 2018

The Proposal urges the board to adopt a policy that the compensation committee must approve each proposed sale of compensation shares by a senior executive during a buyback and, for each such approval granted, explain in writing, for inclusion in the Company's proxy statement for the relevant period, why the compensation committee concluded that approving the sale was in the Company's long-term best interest.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In our view, the Proposal micromanages the Company because, among other things, the Proposal would require the compensation committee to approve each sale by a senior executive during a buyback and for the Company to include explanatory disclosure in the proxy statement describing how the committee concluded that approving the sale was in the Company's long-term best interest. 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.

Sincerely,

Frank Pigott
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.

Abbott

Jessica H. Paik
Divisional Vice President
Associate General Counsel
and Assistant Secretary

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February 8, 2019

Via Email

Shareholderproposals@sec.gov
Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: Abbott Laboratories—Shareholder Proposals Submitted by Oxfam America

Ladies and Gentlemen:

By letter dated December 21, 2018 ("Abbott's No-Action Request"), Abbott Laboratories ("Abbott," the "Company," "we," or "our") requested confirmation that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission" or the "SEC") will not recommend enforcement action if, in reliance on Rule 14a-8, we exclude from the proxy materials for Abbott's 2019 annual shareholders' meeting a proposal entitled "Shareholder Proposal Regarding Executive Incentives and Stock Buybacks" (the "Proposal") submitted by Oxfam America (the "Proponent"). The Proponent subsequently submitted a response to Abbott's No-Action Request on February 4, 2019. This letter addresses several of the points made by the Proponent in such response.

The Proponent devoted a significant portion of its response to the citation of numerous studies, academic publications, proxy advisory firm documents, and financial press articles regarding share buybacks, executive compensation, and shareholder activism generally. Abbott is not addressing those items here because the relevant issue is whether the Proposal, in its submitted form, may be excluded on any of the grounds set forth in Rule 14a-8(i). As detailed in Abbott's No-Action Request and in this letter, the Proposal may be excluded from Abbott's 2019 proxy materials in accordance with Rule 14a-8.

I. The Proposal may be omitted from Abbott's proxy materials under Rule 14a-8(i)(3) and Rule 14a-9 because it is impermissibly vague and indefinite so as to be materially false and misleading.

The arguments raised in the Proponent's response do not change the fact that the Proposal contains the numerous ambiguities identified in Abbott's No-Action Request. In fact, the Proponent's response underscores those ambiguities. Neither Abbott's shareholders voting on the Proposal, nor Abbott in implementing the Proposal if adopted, would be able to determine with any reasonable certainty what actions or measures the Proposal requires.

The Proponent responded to the ambiguities that Abbott raised regarding the term "during a Buyback" (i.e., the period during which the Proposal's sale restrictions and proxy disclosure requirements would apply, and the types of announcements that would trigger them) by asserting that it intends for each ambiguity to be construed as broadly as possible and arguing that the Proposal is therefore not vague. However, supplemental explanations in a response letter to the SEC do not cure the Proposal's deficiencies. The Proponent's supplemental response is not part of the proxy materials that Abbott's shareholders receive in connection with voting on the Proposal. The Proposal states that its requirements apply during the time "when Abbott has announced it will be repurchasing shares of common stock." However, an announcement is one moment in time. As discussed in Abbott's No-Action Request, the Proposal does not specify how long the requirements should remain in place following such an announcement. Several possibilities include: for eight days following an announcement as referenced in the Proposal's supporting statement, indefinitely for so long as a buyback authorization is in place as suggested by the Proponent's response, or only when Abbott is conducting buybacks. The Proposal also does not specify whether executive sales of shares in connection with equity award vestings and stock options exercises are subject to the Proposal's requirements. All of those ambiguities would remain in the Proposal presented to shareholders, and shareholders would face multiple alternative interpretations of what the Proposal is requesting.

The Proponent also argues that the standard by which the Compensation Committee would need to review each executive sale – "in Abbott's long-term best interest" – is not vague because the phrase is used in other contexts. However, the other uses identified by the Proponent are in contexts of significant policies or actions that are directly related to shareholder interests (e.g., risk oversight, Board independence, use of company resources). As noted in Abbott's No-Action Request, an executive's sale of shares is irrelevant to, and has no impact on areas of shareholder interests such as Abbott's financial performance, shareholder return, or growth. The Compensation Committee would have no available criteria to use when deciding whether to approve or deny any proposed sale.

Further, the Proponent states that "the Proposal cannot reasonably be read to imply that Abbott's senior executives are selling stock after the Company announces a buyback," and that "nowhere does the Proposal state or even imply that *Abbott's* executives have engaged in such conduct." These statements make it all the more confusing as to when the Proposal's requirements should apply, what criteria the Compensation Committee should be considering when determining whether a sale is "in Abbott's long-term best interests," or why the Proponent is seeking to impose significant requirements and processes on Abbott's Board of Directors.

II. The Proposal may be omitted from Abbott's proxy materials under Rule 14a-8(i)(7) because it relates to Abbott's ordinary business operations.

The Proponent's characterization of the Proposal as "one straightforward limitation on senior executives' sale of compensation shares in certain circumstances" is a drastic oversimplification of the Proposal's requirements and implications. The Proposal clearly "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies," and "prob[es] too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgement," which Staff Legal Bulletin No. 14J ("SLB 14J") notes as grounds for exclusion due to micromanagement.

As the Proponent unequivocally states in its response, the Proposal would require the Compensation Committee to approve, and prepare corresponding proxy disclosure for, every executive's sale of shares at any time that a buyback authorization is in place, including sales for option exercises and tax withholdings upon award vestings, ***even when no buybacks are occurring and when executives are not selling into a buyback***. As noted in Abbott's No-Action Request, the Compensation Committee would have had to evaluate, and prepare proxy disclosure for, 121 sales since the last September 2014 buyback authorization, including more than 70 sales during a two and a half-year period during which buybacks were not even occurring. The number of sales would be even higher including option exercises and tax withholding sales. The Proponent's argument that the Compensation Committee could act by written consent rather than at a physical meeting is a difference of form rather than substance – the Compensation Committee would still need to conduct an evaluation, hold discussions, and unanimously approve the sale, and then prepare proxy disclosure with respect to each sale. A proposal requiring a Board Committee to meet or act by written consent more than 121 times on a single type of issue unmistakably involves a level of intricacy and imposes a method of implementing a complex policy that constitutes micromanagement. In addition, the Proposal requires engagement on day-to-day matters that is wholly inappropriate for Board or Committee-level oversight.

The Proponent also argues that shareholders can make an informed judgement on the Proposal because shareholders vote on Say-on-Pay proposals and because proxy advisory firms evaluate certain elements of executive compensation programs. However, an advisory Say-on-Pay vote on whether executive compensation aligns overall with company performance is a far cry from the Proposal, which would ask shareholders to vote on a specific restriction on equity awards that has broader implications on the overall design and balance of Abbott's executive compensation program and Abbott's ability to recruit and retain talent. We also fail to see how proxy advisory firms' analyses on discrete equity-related topics would arm individual shareholders with sufficient knowledge to understand the considerations and implications of the Proposal.

Finally, SLB 14J states, "the availability of certain forms of compensation to senior executives and/or directors that are also broadly available or applicable to the general workforce does not generally raise significant compensation issues that transcend ordinary business matters." As noted in Abbott's No-Action Request, the Proposal meets these elements:

- The primary aspect of the Proposal targets equity compensation that is broadly available or applicable to Abbott's workforce – Abbott's 2017 Incentive Stock Program benefits approximately 11,000 employees (or approximately 11% of Abbott's workforce) in 70 countries around the world.

- The Proposal does not implicate significant compensation matters. The Proposal has the practical effect of perpetually limiting the sale of compensation shares by employees when they are senior executives. When equity compensation plans are submitted to shareholders for approval, it is with the common understanding and expectation that all employees (some of whom are or could become senior executives while holding compensation shares) receiving compensation shares will be able to sell them at some point. The potential for monetization of these awards is what makes them compensatory. Because liquidity is an inherent component of equity compensation, the Proposal relates to ordinary business matters.

Conclusion

For the foregoing reasons and the reasons set forth in Abbott's No-Action Request, I request your confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from Abbott's 2019 proxy materials.

If the Staff has any questions, or if for any reason the Staff does not agree that Abbott may omit the Proposal from its 2019 proxy materials, please contact me at (224) 667-5550 or jessica.paik@abbott.com. We may also be reached by facsimile at (224) 668-9492. We would appreciate it if you would send your response by email or facsimile. Oxfam America may be reached by contacting Nicholas Lusiani at (202) 777-2912 or Nicholas.Lusiani@Oxfam.org.

Very truly yours,

Jessica Paik
Abbott Laboratories
Divisional Vice President and
Associate General Counsel,
Securities and Benefits

cc: Nicholas J. Lusiani
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NW Suite 1300
Washington, DC 20036
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OXFAM

February 4, 2019

BY EMAIL (shareholderproposals@sec.gov)

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

RE: Request by Abbott Laboratories to omit proposal submitted by Oxfam America

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Oxfam America (the "Proponent") submitted a shareholder proposal (the "Proposal") to Abbott Laboratories ("Abbott" or the "Company"). The Proposal asks Abbott's Board of Directors to adopt a policy that the Compensation Committee must approve a proposed sale of Compensation Shares, as that term is defined in the Proposal, by a senior executive during a share buyback and for each such approval granted, explain in writing, for inclusion in Abbott's proxy statement, why approving the sale was in Abbott's long-term best interest.

In a letter to the Division dated December 21, 2018 (the "No-Action Request"), Abbott stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2019 annual meeting of shareholders. Abbott argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(3), as impermissibly vague; and Rule 14a-8(i)(7), on the ground that the Proposal deals with Abbott's ordinary business operations. As discussed more fully below, Abbott has not met its burden of proving its entitlement to exclude the Proposal on either basis, and the Proponent respectfully requests that Abbott's request for relief be denied.

The Proposal

The Proposal states:

> RESOLVED, that shareholders of Abbott Laboratories ("Abbott") urge the Board of Directors to adopt a policy that the Compensation Committee (the "Committee") must approve a proposed sale of Compensation Shares by a senior executive during a Buyback and, for each such approval granted, explain in writing, for inclusion in Abbott's proxy statement for the relevant period, why the Committee concluded that approving the sale was in Abbott's long-term best interest.
>
> For purposes of this Proposal, "Compensation Shares" are shares of Abbott common stock obtained pursuant to a compensation award, grant or other similar arrangement, including shares obtained upon the exercise of stock options, vesting of restricted stock or settlement of a long-term incentive plan award. A Buyback occurs when Abbott has announced it will be repurchasing shares of common stock.

Excessive Vagueness

Abbott claims that the Proposal is impermissibly vague and indefinite, and therefore excludable pursuant to Rule 14a-8(i)(3). Abbott perceives ambiguities where none exist, and uses its own inaccurate conception of the Proposal's purpose to create the appearance of inconsistency.

Abbott argues that "the period during which the Proposal's sales restrictions would apply is vague and ambiguous." Those restrictions, Abbott notes, would kick in once Abbott authorizes and announces a buyback. That doesn't sound ambiguous, and it's exactly what the Proposal intends. Abbott tries to create confusion by insisting that the Proposal can't mean what it says because that would be inconsistent with the Proposal's narrower "stated intent"—to prevent executives from "profiting from purported increased share prices that may occur in the days following announcement of a buyback program."[1]

Abbott purports to divine that intent, which is at odds with the plain language of the resolved clause, from the supporting statement's discussion of a study by Commissioner Robert Jackson, Jr., which found that insider stock sales increased significantly in the eight days after a buyback announcement. The Proposal cited Commissioner Jackson's study to show that executives appear to be seizing the opportunity buybacks provide to sell shares at a profit. In no way should that study be read to imply that some unspecified time limit be placed on the period after a buyback announcement in which the process prescribed by the Proposal would operate. If Abbott chooses to have buyback programs in place for years on end, the Proposal would operate during that entire time.

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[1] No-Action Request, at 3.

The opportunistic selling Commissioner Jackson found in his study is one of a larger set of concerns around executives' incentives to engage in buybacks. Buybacks have reached record levels: "From 2003 through 2012, 449 S&P 500 companies dispensed 54% of earnings, equal to $2.4 trillion, buying back their own stock, almost all through open-market repurchases."[2] Although the 2017 tax cuts were promoted as likely to drive capital spending and investment by U.S. businesses, the first three quarters or 2018 saw direct business investment increase by only 8.2% while buybacks grew by 71% in 2018.[3] What's more, the overwhelming majority (84%) of respondents to a National Association of Business Economics survey indicate that the corporate tax reform has not changed their firms' hiring nor investment plans.[4]

Academics and the financial press have noted that top managers, who make capital allocation decisions, have incentives to favor buybacks.[5] Buybacks can improve earnings per share (EPS), a common executive compensation metric, by reducing the number of shares outstanding.[6] To the extent buybacks raise share prices, even transiently, they increase the wealth of corporate executives who received equity-based compensation. The Proposal aims to counterbalance these incentives executives have in favor of buybacks, by interposing a Committee analysis to ensure that sales are in Abbott's long-term best interest.

Abbott also claims that affirmances in its 10-K and 10-Q filings that a buyback program is ongoing, following the announcement of the program's initiation, could "trigger" the Proposal's sales restrictions. The Proposal clearly states, though, that it takes effect after the initial announcement, so no ambiguity exists.

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[2] William Lazonick, "Profits Without Prosperity: How Stock Buybacks Manipulate the Market, and Leave Most Americans Worse Off," at 2 (Apr. 2014)

[3] Matt Egan, "The Tax Cut Investment 'Boom' is Already Over. Some Say it Never Really Started" CNN.com, Jan. 23, 2019 (https://www.cnn.com/2019/01/23/business/investment-boom-tax-cuts-economy/index.html).

[4] NABE, Business Conditions Survey, 2019 (https://nabe.com/NABE/Surveys/Business_Conditions_Surveys/January_2019_Business_Conditions_Survey_Summary.aspx)

[5] See "Corporate Cocaine," The Economist, Sept. 13, 2014 "[B]oth short-term investors and managers have incentives that could lead them to overdo buy-backs and neglect long-term investment projects."); William Lazonick, "Profits Without Prosperity: How Stock Buybacks Manipulate the Market, and Leave Most Americans Worse Off," at 2 (Apr. 2014) ("Large-scale open-market repurchases can give a manipulative boost to a company's stock price. Prime beneficiaries of stock-price increases are the very executives who decide the timing and amount of buybacks to be done.").

[6] Steve Denning, "The Economist: Blue Chips Are Addicted to Corporate Cocaine," Forbes, Sept. 19, 2014 (https://www.forbes.com/sites/stevedenning/2014/09/19/the-economist-blue-chips-are-addicted-to-corporate-cocaine/#6dee9a96264f).

Abbott complains that the standard the Proposal asks the Committee to apply in evaluating senior executive sales during buybacks—"in Abbott's long-term best interest"—is too vague. The Proposal does not specify the factors the Committee should apply in deciding whether an executive stock sale during a buyback is in Abbott's best long-term interest. Instead, the Proposal relies on the Committee to use its discretion to select appropriate factors under the circumstances.

Both Abbott's board and the Committee have ample experience infusing a general "best interest" standard with context-specific meaning. In its proxy statements, Abbott describes the Board and Committee using standards much like the one in the Proposal to make determinations about corporate governance, executive compensation programs, and other matters on which its shareholders were asked to vote. Examples include (all emphases added):

- "The Board of Directors regularly monitors best practices in governance and adopts measures that it determines are *in the best interest of Abbott and its shareholders*."[7]
- The Board has determined that the current leadership structure . . . ensures the appropriate level of oversight, independence, and responsibility is applied to all Board decisions, including risk oversight, and is *in the best interests of Abbott and its shareholders*."[8]
- "The proposal is *not in the best interests of shareholders* because it would cause Abbott to expend resources to meet an undefined standard that has not been deemed necessary by regulatory bodies . . . ."[9]
- "Long-term incentive targets are driven by two primary factors: first, internal equity and the executive's relative contribution to the Company's long-term success; secondly, the Company's performance against both short- and long-term returns to shareholders, as well as relative performance against financial or operating measures that drive shareholder returns, and performance against strategic objectives, such as pipeline development or acquisitions (which may actually dilute returns in the short-term, but are, in the Committee's judgment, *in the best long-term interest of the Company and its shareholders)*."[10]
- "Preparation and maintenance of the report requested [on lobbying] would expend company funds and resources to produce a document that would not provide meaningful additional insight into Abbott's lobbying activities. Such a waste of resources is not *in the best interests of the Company or its shareholders*."[11]

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[7] 2018 Proxy Statement, at 7.
[8] 2018 Proxy Statement, at 18.
[9] 2014 Proxy Statement, at 69.
[10] 2013 Proxy Statement, at 16.
[11] 2013 Proxy Statement, at 50.

The "best interest" standard is not obscure. It is found in Delaware corporate law, which presumes that directors act "in the best interests of the Corporation."[12] The Commission proposed a rule last year requiring broker-dealers to act "in the best interest of the customer" when making certain kinds of recommendations.[13] In his study, Commissioner Jackson suggested compensation committees should evaluate whether executive sales during buybacks are in "the company's long-term interests."[14] We are therefore confident that the Committee could identify and apply relevant factors when reviewing executive stock sales under the Proposal.

Abbott argues that it is unclear whether the Proposal would require Committee approval of executive stock sales in connection with cashless stock option exercises and sales to cover taxes due upon award vesting. By its terms, the Proposal applies to all sales, so these transactions would be covered.

Finally, Abbott makes the confusing claim that the Proposal is materially false or misleading "because it mischaracterizes how Abbott's buyback program works."[15] Abbott's objection appears to revolve around the fact that it does not announce each separate repurchase transaction and that its executives thus cannot "cash out" after such announcements. Abbott has distorted the proposal in Oxfam's resolution in order to proffer an easier counter: nowhere does the Proposal state or even imply that *Abbott's* executives have engaged in such conduct. Rather, the supporting statement cites Commissioner Jackson's study as evidence that insiders, as a group, sell significantly more shares in the days after companies announce the initiation of a buyback program. Accordingly, the Proposal cannot reasonably be read to imply that Abbott's senior executives are selling stock after the Company announces a buyback. Furthermore, the resolution would not be excessively vague or misleading even if interpreted as Abbott has constructed: Abbott's own response letter reveals that some senior executives are, in fact, aware when repurchases will occur: in its response, the company writes, "The vast majority of senior executives are not aware of when repurchases will occur" (emphasis added). Such an admission confirms that Abbott does, in fact, have at least some executives who can take advantage of these announcements – therefore it would not be excessively vague or misleading even if Oxfam had made that assertion.

Ordinary Business

Rule 14a-8(i)(7) permits a company to omit a proposal that "deals with a matter relating to the company's ordinary business operations." Abbott urges that

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[12] See, e.g., In re Walt Disney Co. Derivative Litigation, 731 A.2d 342, 366 (Del. Ch. Court 2006).
[13] Exchange Act Release No. 83062, "Regulation Best Interest" (Apr. 18, 2018).
[14] Speech of Commissioner Robert Jackson Jr., "Stock Buybacks and Corporate Cashouts," June 11, 2018 (https://www.sec.gov/news/speech/speech-jackson-061118).
[15] No-Action Request, at 4.

the Proposal is excludable on ordinary business grounds because (a) the Proposal would micromanage Abbott and (b) the primary aspect of compensation targeted by the Proposal is available to the general workforce.

Abbott's arguments should be rejected for the following reasons, which are discussed more fully in the following sections:

1. The Proposal would not micromanage Abbott, as it only suggests one straightforward limitation on senior executives' sale of compensation shares in certain circumstances.
2. The primary aspect of pay targeted by the Proposal is not equity compensation *per se*, as Abbott urges, but rather the Committee's review and approval of senior executive sales of compensation shares during buybacks. By definition, that aspect would not apply to other employees.
3. The Proposal's focus on effective incentive design is consistent with the approach taken by shareholders, academics and other participants in the broader public debate, which emphasizes how incentive compensation can encourage long-term value creation. That question is not answered simply by reference to the form in which the pay is delivered.
4. Shareholder proposals on senior executive pay have made valuable contributions by allowing shareholder to express their views and engage with companies; allowing exclusion of a substantial majority of such proposals would thus be undesirable from a public policy standpoint.
5. Abbott has failed to show that senior executives' eligibility to receive the pay targeted by the Proposal—however that pay is characterized—does not implicate significant compensation matters.

<u>*The Proposal Would Not Micromanage Abbott*</u>

Abbott objects that the Proposal would micromanage the Company because it would "impos[e] the method by which Abbott fosters the long-term focus of executives—specifically, by directing the terms of Abbott's equity awards that the Compensation Committee may grant."[16] The micromanagement doctrine, however, is not as expansive as Abbott implies.

In its 1998 release,[17] the Commission described the contours of micromanagement:

> The second consideration [underlying the ordinary business exclusion] 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. This

[16] No-Action Request, at 5.
[17] Exchange Act Release No. 40018 (May 21, 1998).

consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies. (footnotes omitted)

During the rulemaking process, commenters expressed concern that the exclusion would be interpreted in the way Abbott now urges, as allowing exclusion of all proposals suggesting specific methods. Those commenters worried that the examples of micromanagement "seemed to imply that all proposals seeking detail, or seeking to promote time-frames or methods, necessarily amount to 'ordinary business.'" The release sought to allay those concerns, explaining that the Commission "did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations." Thus, the Proposal is not excludable simply because it suggests a particular method of accomplishing a compensation-related goal. As well, the Committee has significant discretion under the Proposal to identify the factors to use in deciding whether a sale is in Abbott's long-term best interest.

Abbott bolsters its claim that the Proposal would micromanage it by asserting that the Committee would need to call a special meeting each time it was asked to approve a senior executive stock sale during a buyback. That assertion is contradicted by Article III, section 8 of Abbott's bylaws, which allows any action that can be taken at a meeting of a board committee to be taken by written consent. In this regard, the impact of the Proposal differs from that of the proposal in Walgreens Boots Alliance,[18] cited by Abbott, where the Staff allowed exclusion on micromanagement grounds. The Walgreens proposal asked the board to adopt a policy that it would seek shareholder approval for every stock buyback and Walgreens argued that such approval would need to occur at an annual or special shareholder meeting, which would interfere with the timing of desired buybacks. That consideration is not present here, since a board or one of its committees can act by written consent without the substantial logistical challenges associated with shareholder action by written consent.

Abbott also claims that "the Proposal probes too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment."[19] Shareholders are accustomed to considering the terms of equity awards to senior executives when voting on "say on pay" proposals. For example, proxy advisor Institutional Shareholder Services takes into account clawback provisions, holding requirements and limitations on accelerated vesting triggers, all potential terms of executive equity awards, in analyzing whether incentives motivate excessive risk-taking, one factor in the say on pay voting

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[18] Walgreens Boots Alliance (Nov. 20, 2018).
[19] No-Action Request, at 5.

recommendation.[20] Similarly, in assessing the extent of long-term pay-for-performance alignment, ISS weighs the ratio of performance-based to time-based awards.[21] Most companies (including Abbott) submit a say on pay proposal for shareholder approval annually, so shareholders have ample experience on which to draw to make an informed judgment on the Proposal.

The Primary Aspect of the Compensation Targeted by the Proposal is Not Available or Applicable to Abbott's General Workforce

For over twenty years, the Division has viewed proposals dealing solely with senior executive compensation as addressing a significant policy issue and thus not excludable on ordinary business grounds. In October 2018, the Division clarified its views regarding certain shareholder proposals on senior executive compensation in Staff Legal Bulletin 14J ("SLB 14J").[22] SLB 14J states that "[t]he Division believes that a proposal that addresses senior executive and/or director compensation may be excludable under Rule 14a-8(i)(7) if a primary aspect of the targeted compensation is broadly available or applicable to a company's general workforce and the company demonstrates that the executives' or directors' eligibility to receive the compensation does not implicate significant compensation matters" (emphasis added).

Abbott invokes SLB 14J, urging that the Proposal addresses "aspects of compensation that are broadly available to a significant portion of Abbott's workforce." According to Abbott, the aspect of compensation—we note that Abbott does not use the "primary aspect" language of SLB 14J—is "equity incentive awards."[23] But SLB 14J should not be read to allow exclusion simply because a general form of compensation implicated by the Proposal is available to senior executives and other employees. Both Abbott-specific and broader policy considerations argue against that interpretation.

First, the Proposal focuses on sales by senior executives of shares obtained through equity compensation programs under certain circumstances. Nothing in the Proposal would affect how the amount or vesting of equity awards, whether to senior executives or lower-level employees, is determined. Put another way, both senior executives and other Abbott employees receive equity compensation awards. Once any vesting criteria are satisfied, the recipients have the power to dispose of the shares obtained. Only at this later point in time would the Proposal operate, and only as to senior executives. (We note that stock ownership and retention requirements similarly apply only to senior executives after they have received

[20] ISS, "United States Proxy Voting Guidelines," at 40 (Jan. 4, 2018).
[21] ISS, "United States Proxy Voting Guidelines," at 39 (Jan. 4, 2018).
[22] Staff Legal Bulletin 14J (Oct. 23, 2018).
[23] No-Action Request, at 7.

equity awards.[24]) The timeline makes clear that the original equity awards to non-senior executives cannot reasonably be deemed the primary aspect of compensation targeted by the Proposal.

Second, allowing the form of compensation implicated by a proposal to determine its excludability is out of step with the larger academic and public debate over senior executive compensation, the robustness of which led the Division to find that such compensation transcends ordinary business. That debate focuses not simply on the form in which pay is delivered, but on amount and design considerations. Public outrage has increased as the gap between top executive pay and average worker pay has widened,[25] and executive compensation has been the subject of voluminous media coverage. In the case of pharmaceutical company CEOs, criticism has linked high drug prices and lavish CEO pay.[26] Recasting one of the headlines--"Pfizer CEO Gets 61% Pay Raise—to $27.9 Million—as Drug Prices Continue to Climb"—as "Pfizer CEO Gets Bonus" or "Pfizer CEO Receives Stock Award" shows the irrelevance of compensation form in the current debate.

Senior executive compensation draws academic, investor and regulator interest because the way it is designed can significantly affect corporate performance and behavior. Top executives' control over the business makes it especially important to design their incentive compensation in a way that promotes value-maximizing and responsible behavior over the long term.[27] Managers may make decisions, including capital allocation decisions, or take actions that benefit themselves but are harmful to the long-term interests of shareholders. Some have noted that two aspects of top executive pay design—the use of EPS as a metric (which Abbott does) and the proportion of total pay made up of options and stock—may encourage executives to buy back stock.[28]

The negative effects of poorly-designed incentives for top executives do not stem from the use of a particular form of compensation but rather from specific design choices. The behavior of two senior executives receiving the same forms of

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[24] 2018 Proxy Statement, at 29.

[25] See "Americans and CEO Pay: 2016 Public Perception Survey on CEO Compensation," Stanford Graduate School of Business (available at https://www.gsb.stanford.edu/faculty-research/publications/americans-ceo-pay-2016-public-perception-survey-ceo-compensation) ("CEOs are vastly overpaid, according to most Americans," and "Most support drastic reductions.")

[26] See Matt Krantz, "Drug Prices Are High. So Are the CEOs' Pay," USA Today, Aug. 26, 2016; Beth Mole, "Pfizer CEO Gets 61% Pay Raise—to $27.9 Million—as Drug Prices Continue to Climb," Ars Technica, Mar. 16, 2018.

[27] See Alex Edmans et al., "Executive Compensation: A Survey of Theory and Evidence," at 6 (2017) ("CEOs can have a much larger impact on firm value than rank-and-file employees, which can fundamentally change the nature of the optimal contract.").

[28] E.g., Eleanor Bloxham, "Here's Why You Should Care About How CEOs Get Paid," Fortune, Oct. 20, 2015.

pay can be influenced very differently by these factors.[29] The most high-profile example comes from the 2008-2009 financial crisis, which led Congress, regulators and academics to scrutinize top executive incentive pay practices at financial institutions.[30] Certain practices, such as large cash bonuses driven by short-term operational results, were viewed as contributing to excessive risk-taking, which, in turn, led to the financial crisis.[31] The lesson from the crisis was not that executives shouldn't receive bonuses, but rather that the metrics and targets used for bonuses, and the timing of the payout, should be calibrated so that excessive risk-taking is discouraged. By empowering the Committee to review and approve sales of compensation shares during buybacks, the Proposal would fine tune the incentives applicable to Abbott's senior executives. In this way, the Proposal is consistent with the more tailored approach advocated in the academic literature and public debate.

Adopting Abbott's Broad Interpretation of SLB 14J Would Result in Exclusion of a Large Proportion of Proposals on Senior Executive Compensation

Allowing omission if a proposal addresses a form of compensation available beyond the senior executive ranks, even if the proposal itself is explicitly limited to senior executives, would result in exclusion of a substantial proportion of proposals on senior executive pay. Most types of executive pay proposals shareholders submit address or implicate forms of compensation that are not exclusive to senior executives. The ISS's U.S. Proxy Voting Guidelines describe 21 types of shareholder proposals on executive pay.[32] Ten of those proposal types involve annual bonuses, by themselves or in combination with equity-based compensation; four types request changes to equity-based compensation; and one type deals with supplemental executive retirement plans ('SERPs"), for a total of 15 of the 21 proposal types.

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[29] Michael Jensen and Kevin Murphy illustrate the impact of small design changes in "CEO Bonus Plans and How to Fix Them" Murphy and Jensen explain how a CEO bonus arrangement with a $100,000,000 profit hurdle--an amount below which no bonus is paid--can encourage gamesmanship and impair firm performance if profits consistently come in just below the hurdle. The same arrangement without the hurdle, though, would not spur destructive behavior. (Kevin J. Murphy & Michael C. Jensen, "CEO Bonus Plans and How to Fix Them," Harvard Business School NOM Unit Working Paper No. 12-022, at 8 (2011))

[30] E.g., Hearing Before the Subcommittee on Financial Institutions and Consumer Protection of the Senate Committee on Banking, Housing and Urban Affairs, "Pay for Performance: Incentive Compensation at Large Financial Institutions," Feb. 15, 2012; Speech of Chairman Ben. S. Bernanke, "Lessons of the Financial Crisis for Banking Supervision," Federal Reserve Bank of Chicago Conference on Bank Structure and Competition, May 7, 2009 ("Certainly, an important lesson of the [financial] crisis is that the structure of compensation and its effect on incentives for risk-taking is a safety-and-soundness issue.").

[31] See, e.g., Lucian Bebchuk & Jesse Fried, "Paying for Long-Term Performance," 158 U. Penn. L. Rev. 1915, 1917 (2010) ("The crisis of 2008–2009 has led to widespread recognition that pay arrangements that reward executives for short-term results can produce incentives to take excessive risks.").

[32] ISS 2018 United States Proxy Voting Guidelines, at 48-52 (Jan. 4, 2018) (available at https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf).

Those forms of compensation—bonuses, equity-based pay and SERPs—are often available to employees below the senior executive level:

- A 2013 survey by World at Work and Deloitte Consulting found that 97% of responding public companies included exempt salaried employees in their annual incentive or bonus plans. Over half of respondents included non-exempt salaried and non-exempt unionized employees. [33]
- Of respondents to the world at Work/Deloitte Consulting Survey whose long-term incentive (LTI) compensation programs awarded restricted stock, 61% extended eligibility to exempt salaried employees, and exempt salaried employees were eligible to receive stock options at 47% of companies whose LTI compensation programs awarded stock options.[34]
- A 2017 Prudential Retirement survey found that 38% of respondents offered non-qualified executive retirement benefits (a category that includes both defined contribution and defined benefit SERPs as well as voluntary non-qualified defined contribution plans) to employees making $115,000 to $124,999 annually, and 29% offered those benefits to employees making between $125,000 and $175,000 per year, far below the compensation of senior executives.[35]

Considering both the proportion of executive compensation proposals that deal explicitly or implicitly with common forms of pay, and the availability of those forms to employees below the senior executive level, it is clear that a large number of shareholder proposals on executive pay would be excludable under Abbott's suggested approach that focuses solely on the form in which compensation is delivered. That outcome would be inefficient and undesirable as a matter of public policy.

Shareholder proposals have led to better tailoring of senior executive pay to promote value maximization and responsible behavior, including adoption of indexed/performance vesting options, clawbacks and limits on severance benefits. Several executive pay reforms incorporated into legislation or regulation, such as compensation consultant independence disclosure and "say on pay," were originally suggested in shareholder proposals.[36]

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[33] World at Work and Deloitte Consulting LLP, "Incentive Pay Practices Survey: Publicly Traded Companies," at 15 (Feb. 2014) (available at https://www.worldatwork.org/docs/research-and-surveys/survey-brief-incentive-pay-practices-survey-publicly-traded-companies.pdf).
[34] World at Work and Deloitte Consulting LLP, "Incentive Pay Practices Survey: Publicly Traded Companies," at 31 (Feb. 2014) (available at https://www.worldatwork.org/docs/research-and-surveys/survey-brief-incentive-pay-practices-survey-publicly-traded-companies.pdf).
[35] Prudential/PLANSPONSOR, "2017 Executive Benefit Survey," at 5 (available at https://www.prudential.com/media/managed/documents/rp/Executive-Benefit-Survey-Results-Report.pdf).
[36] See Randall S. Thomas et al., "Dodd-Frank's Say on Pay: Will It Lead to a Greater Role for Shareholders in Corporate Governance?" Cornell Law Review, Vol. 97, 1213, 1217-18 (2013); see also

Research suggests that shareholder input on top executive pay can be value-enhancing. A 2016 study analyzed companies where shareholder proposals asking for shareholder say on pay passed from 2006-2010, before say on pay become mandatory via the 2010 Dodd-Frank law. They found that market value, profitability and productivity improved by 5% in companies where say on pay proposals passed.[37] In another study, companies that simply received a shareholder proposal on executive pay increased CEO pay by, on average, only 2% the following year, whereas similarly sized firms in the same industry raised total compensation by over 22% in that year.[38]

Abbott's interpretation of SLB 14J would impair shareholders' ability to communicate with each other and with companies about many senior executive incentive pay matters, due to the rarity of incentive programs in which only senior executives are eligible to participate. That outcome would be inconsistent with the Division's longstanding administration of the shareholder proposal rule and would be inefficient; shareholder pressure and voting have played an important role in reining in excessive senior executive pay that is structured in ways that can endanger shareholder returns and promoting more responsible practices that are geared toward sustaining the long-term growth that investors seek.

Abbott Does Not Address the Second Prong of SLB 14J's Test, Whether the Eligibility of Abbott's Senior Executives to Receive the Compensation Targeted by the Proposal "Implicate[s] Significant Compensation Matters"

SLB 14J permits exclusion only if the company meets its burden of showing that both:

- A primary aspect of the targeted compensation is broadly available or applicable to a company's general workforce, and
- The executives' or directors' eligibility to receive the compensation does not implicate significant compensation matters.

Abbott has made no argument on the second part of the test. SLB 14J does not define "significant compensation matters," and that phrase has not been used in

https://www.sec.gov/news/press-release/2012-2012-115htm (news release regarding Commission's adoption of rule directing exchanges to require disclosure regarding compensation consultant independence); https://www.ott.ct.gov/pressreleases/press2008/pr04162008.pdf (news release from Connecticut Treasurer announcing settlements of shareholder proposals seeking greater disclosure on compensation consultant independence).

[37] Vicente Cunat et al., "Say Pays! Shareholder Voice and Firm Performance," Review of Finance, Vol. 20, Issue 5, 1799-1834 (2016).

[38] Randall S. Thomas & Kenneth J. Martin, "The Effect of Shareholder Proposals on Executive Compensation," at 87 (1999) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=160188&download=yes).

previous Commission or Division guidance regarding the ordinary business exclusion. As discussed above, we believe the primary aspect of compensation targeted by the Proposal is the post-award limitation on senior executive stock sales, and given the controversies around share buybacks, those limitations should qualify as significant compensation matters.

Even using Abbott's suggested framing, in which the primary aspect is receipt of equity compensation, it is difficult to conclude that the eligibility of Abbott's senior executives to receive equity compensation does not implicate significant compensation matters. Equity compensation accounts for a substantial proportion of total pay: For example, 49% of CEO Miles White's 2017 total compensation (without change in pension value), as disclosed in the summary compensation table, consisted of stock awards and stock option awards.[39] His target pay mix for 2017 emphasized equity compensation even more, pegging it at 66% of total compensation.[40]

As well, equity compensation is significant to shareholders because it can significantly dilute shareholders' ownership stakes. The Division recognized that such dilution qualifies as a significant policy issue in Staff Legal Bulletin 14A,[41] which reversed an earlier position and stated that a proposal regarding shareholder approval of equity plans that may be used to compensate both senior executives and the general workforce and that could result in material to dilution to shareholders is not excludable on ordinary business grounds.

* * *

In sum, Abbott's claim that the Proposal is excludable on ordinary business grounds should be rejected. The Proposal would not micromanage Abbott, as it suggests one limitation on senior executives' sale of compensation shares in certain circumstances. The "primary aspect" of pay targeted by the Proposal is not equity compensation *per se*, but rather the suggested process by which the Committee should approve sales during buybacks. What's most important about senior executive incentive pay, both to shareholders and in the broader public debate, is how effectively it encourages behavior that creates the most long-term value. That question is not answered simply by reference to the form in which the pay is delivered; design considerations like the one suggested in the Proposal play a key role.

Shareholder proposals on senior executive pay have made valuable contributions by allowing shareholder to express their views, engage with companies and promote reforms; allowing exclusion of a substantial majority of

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[39] 2018 Proxy Statement, at 44.
[40] 2018 Proxy Statement, at 28.
[41] Staff Legal Bulletin 14A (July 12, 2002),

such proposals would thus be undesirable from a public policy standpoint. Finally, Abbott has failed to show that senior executives' eligibility to receive the pay targeted by the Proposal—however that pay is characterized—does not implicate significant compensation matters.

For the reasons set forth above, Abbott has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(3) or Rule 14a-8(i)(7). The Proponent thus respectfully requests that Abbott's request for relief be denied.

We appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (202) 777-2912.

Sincerely,

Nicholas J. Lusiani
Senior Advisor, Private Sector Department
Oxfam America, Inc.

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December 21, 2018

Via Email

Shareholderproposals@sec.gov
Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: Abbott Laboratories—Shareholder Proposal Submitted by Oxfam America

Ladies and Gentlemen:

On behalf of Abbott Laboratories ("Abbott," "we," or "our") and pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, I hereby request confirmation that the staff (the "Staff") of the Securities and Exchange Commission (the "Commission" or the "SEC") will not recommend enforcement action if, in reliance on Rule 14a-8, we exclude a proposal entitled "Shareholder Proposal Regarding Executive Incentives and Stock Buybacks" (together with the supporting statement, the "Proposal") submitted by Oxfam America (the "Proponent") from the proxy materials for Abbott's 2019 annual shareholders' meeting, which we expect to file in definitive form with the Commission on or about March 15, 2019.

On November 15, 2018, the Proponent submitted the following proposed resolution for consideration at Abbott's 2019 annual shareholders' meeting:

> RESOLVED that shareholders of Abbott Laboratories ("Abbott") urge the Board of Directors to adopt a policy that the Compensation Committee (the "Committee") must approve a proposed sale of Compensation Shares by a senior executive during a Buyback and, for each such approval granted, explain in writing, for inclusion in Abbott's proxy statement for the relevant period, why the Committee concluded that approving the sale was in Abbott's long-term best interest.
>
> For purposes of this Proposal, "Compensation Shares" are shares of Abbott common stock obtained pursuant to a compensation award, grant or other similar arrangement, including shares obtained upon the exercise of stock options, vesting of restricted stock or settlement of a long-term incentive plan award. A Buyback occurs when Abbott has announced it will be repurchasing shares of common stock.

Pursuant to Rule 14a-8(j),

(a) a copy of the Proposal is attached hereto as Exhibit A;

(b) a copy of all relevant correspondence exchanged with the Proponent with respect to the Proposal is attached hereto as Exhibit B; and

(c) a copy of this letter is being sent to notify the Proponent of our intention to omit the Proposal from our 2019 proxy materials.

We believe that the Proposal may be properly omitted from Abbott's 2019 proxy materials pursuant to Rule 14a-8 for the reasons set forth below.

I. The Proposal may be properly omitted from Abbott's proxy materials under Rule 14a-8(i)(3) and Rule 14a-9 because it is impermissibly vague and indefinite so as to be materially false and misleading.

Rule 14a-8(i)(3) permits a registrant to omit a proposal from its proxy statement and form of proxy if "the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." This basis for exclusion applies where the proposal is "so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. . . ." Staff Legal Bulletin No. 14B (Sept. 15, 2004).

The Staff has repeatedly permitted exclusion of proposals that were sufficiently vague and indefinite that the company and its shareholders would be unable to determine what the proposal entails or might interpret the proposal differently. For example, in *Fuqua Industries, Inc.* (avail. Mar. 12, 1991), the Staff concluded that a shareholder proposal may be excluded where the company and the shareholders could interpret the proposal differently such that "any action ultimately taken by the Company upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal." See also *Walgreens Boots Alliance, Inc.* (avail. Oct. 7, 2016) (permitting exclusion of a proposal restricting the ability of the board of directors to "[take] any action whose primary purpose is to prevent the effectiveness of shareholder vote"); *Alaska Air Group, Inc.* (avail. Mar. 10, 2016) (permitting exclusion of a proposal to amend bylaws and any other appropriate governing documents to require that the management of the company "shall strictly honor shareholders rights to disclosure identification and contact information to the fullest extent possible by technology"); *Motorola, Inc.* (avail. Jan. 12, 2011) (allowing exclusion of a proposal requesting that the board negotiate "with senior executives to request that they relinquish . . . preexisting executive pay rights" as vague and indefinite because "the proposal [did] not sufficiently explain the meaning of 'executive pay rights'"); *Prudential Financial, Inc.* (avail. Feb. 16, 2007) (allowing exclusion of a proposal urging the board to seek shareholder approval for certain senior management incentive compensation programs because the proposal failed to define key terms and was subject to differing interpretations); and *Puget Energy, Inc.* (avail. Mar. 7, 2002) (allowing exclusion of a proposal requesting that the company's board of directors "take the necessary steps to implement a policy of improved corporate governance" where the proposal did not specify what was meant by "improved corporate governance").

The Proposal may be omitted from Abbott's proxy materials because it is so inherently vague and indefinite that neither Abbott's shareholders voting on the proposal, nor Abbott and the Compensation Committee in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the Proposal require.

First, the period during which the Proposal's sale restrictions would apply is vague and ambiguous. The Proposal requires the Compensation Committee to "approve a proposed sale of Compensation Shares by a senior executive *during a Buyback*…" (emphasis added). The Proposal defines "Buyback" as "when Abbott has announced it *will be* repurchasing shares of common stock" (emphasis added). However, the Proposal gives no guidance as to how long its sale restrictions should remain in place following such an announcement.

The Proposal's stated intent is to limit executive officers from profiting from purported increased share prices that may occur in the days following a company's buyback announcement. If "during a Buyback" is interpreted to mean a limited time following announcement of a buyback program, the Proposal gives no indication as to how long the sale restrictions should apply. The supporting statement references a finding from a 2018 study that insider sales of company stock increased eight days after a buyback announcement, but this seems to be a supporting fact for the proponent's position, rather than a guideline by which to structure the policy requested by the Proposal.

Alternatively, if "during a Buyback" is interpreted to mean the entire duration of a buyback program, then the Proposal's sale restrictions could apply over the course of many years – starting when the buyback program is announced and ending when the buyback program has been completed or terminated. Like many companies, Abbott keeps a buyback program in place for significant periods of time. As disclosed in Abbott's annual and quarterly reports, Abbott has continually had a series of share buyback programs in place since at least June 2000. In compliance with SEC rules, Abbott announces each buyback program promptly after approval by its Board of Directors. Share repurchases are then completed from time to time, over the course of several years, depending on market conditions and Abbott's capital needs. As drafted, the Proposal could be interpreted to have applied for the entire 18-year period during which Abbott had a buyback program in place. This outcome would be inconsistent with the stated intent of the Proposal.

Second, the type of announcement that would trigger the Proposal's sale restrictions is vague and ambiguous. In addition to announcing each buyback program immediately after it is authorized, Abbott also discloses in its subsequent Forms 10-K and Forms 10-Q that Abbott has a buyback program in place and the remaining balance available for future buybacks. While this would not be a new announcement, this disclosure could constitute an announcement that would require implementation of the Proposal's sale restrictions. Similarly, when obtaining shareholder approval for its employee stock purchase plan, Abbott disclosed in its proxy statement that shares issued under the plan will include shares that Abbott purchased on the open market, which could also be interpreted as triggering the Proposal's sale restrictions.

Third, the standard by which the Compensation Committee must assess executives' proposed share sales is vague and ambiguous. The Proposal requires the Compensation Committee to evaluate whether approval of an executive's sale would be in "Abbott's long-term best interest," but gives no guidance as to what constitutes "Abbott's long-term best interest." For example, a single executive's sale of shares is irrelevant to, and has no impact on, Abbott's financial performance, shareholder return, and growth. Abbott has also established an executive pay program and share ownership and retention guidelines that are designed to ensure the focus on long-term objectives and the "pay-performance link" discussed in the proposal. In the absence of guidance, the Compensation Committee would not know the criteria it should use the decide whether the approve or deny any give proposed sale.

Fourth, the Proposal is vague and indefinite with respect to whether the sale of shares in connection with an equity award vesting or option exercise would also be subject to the Proposal's restrictions. Executives often sell shares to cover the cost of taxes associated with an equity award vesting or the cost of the underlying shares in connection with the exercise of an option. The Proposal could be interpreted to reach these types of sales as well, which would effectively halt this practice unless pre-approved by the Compensation Committee.

Finally, the Proposal is materially false and misleading because it mischaracterizes how Abbott's buyback program works. The Proponent asserts in its supporting statement that executives often "cash-out" in the days following a company buyback announcement. However, as noted above, Abbott repurchases its shares from time to time, over the course of several years. Like many companies, Abbott does not make announcements prior to any given repurchase transaction. The vast majority of senior executives are not aware of when repurchases will occur. Additionally, because Abbott repurchases shares through third-party institutions on the open market, Abbott does not know, and cannot select, from whom it buys shares and the sellers do not know that they are selling into a repurchase program.

Based on the above, the Proposal is so inherently vague and indefinite as to be materially misleading and may be properly omitted from Abbott's proxy materials under Rule 14a-8(i)(3) and Rule 14a-9.

II. The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to Abbott's ordinary business operations.

A. The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it seeks to micromanage Abbott.

Rule 14a-8(i)(7) permits a proposal to be excluded if it deals with a matter relating to the company's ordinary business operations. In *Shareholder Proposals: Staff Legal Bulletin No. 14J* ("SLB 14J"), the Staff observed that "one of the central considerations underlying the 'ordinary business' exception 'relates to the degree to which the proposal seeks to 'micro-manage' the company." Release No. 34-40018 (May 21, 1998), quoted in SLB 14J, explained micromanagement as "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" and indicated it "may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies."

Acknowledging that the Staff historically had not agreed to the exclusion of proposals addressing senior executive compensation on the basis of micromanagement, SLB 14J concluded that after further consideration, the Staff does not "believe there is a basis for treating executive compensation proposals differently than other types of proposals." SLB 14J stated that the Staff "may agree that proposals addressing senior executive and/or director compensation that seek intricate detail, or seek to impose specific timeframes or methods for implementing complex policies can be excluded under Rule 14a-8(i)(7) on the basis of micromanagement."

The Proposal seeks to micromanage Abbott by imposing the method by which Abbott fosters the long-term focus of executives – specifically, by directing the terms of Abbott's equity awards that the Compensation Committee may grant. The Proposal would impose additional restrictions – the absence of an announced "Buyback" or the obtainment of Compensation Committee approval – on all "Compensation Shares," which is defined as Abbott shares "obtained pursuant to a compensation award, grant or other similar arrangement, including shares obtained upon the exercise of stock options, vesting of restricted stock or settlement of a long-term incentive plan award."

The Compensation Committee reviews the design of the executive compensation program regularly, including working with an independent compensation consultant, to ensure that Abbott's compensation policies and practices properly align executives' interests and shareholder interests while also allowing Abbott to remain competitive in recruiting and retaining talent that will support and advance the growth of Abbott and shareholder value. Such policies and practices include performance-based vesting restrictions on equity awards and share ownership and retention guidelines requiring each executive officer to hold a significant amount of Abbott shares. By seeking to impose additional restrictions on the structure of Abbott's equity awards, which are a significant element of Abbott's overall compensation program, the Proposal "prob[es] too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment," and may therefore be omitted from Abbott's proxy materials.

The Proposal may also be omitted because it seeks to impose specific, detailed and complex processes and requirements on the Compensation Committee. As discussed in Section I above, the Proposal's definition of "Buyback" could be interpreted to cover the entire duration of a buyback program. The practical effect of the Proposal would then be the imposition of burdensome and potentially perpetual requirements on the Compensation Committee to review all executive officer sales of Compensation Shares and prepare written explanations for each approval granted.

As noted above, Abbott has had a series of buyback programs in place since at least June 2000. Taking the most recent buyback authorization as an example, Abbott's Board of Directors approved a buyback authorization in September 2014, which remains in place as of the date hereof. Since that date, Abbott executive officers have completed 121 sales, the vast majority of which were sales of Compensation Shares. Unless the timing of each sale coincided with regularly scheduled Compensation Committee meetings (which typically occur three to four times per year), the Compensation Committee would have had to call special meetings to evaluate each sale – the smallest of which was for 53 shares, or 0.000003% of Abbott's outstanding shares – to determine whether each sale was in "Abbott's long-term best interest." Alternatively, the proposed sales would have had to be delayed for several weeks or months until the next regularly scheduled Compensation

Committee meeting, during which time market and other conditions may change. The Compensation Committee would then have had to write evaluations to be included in Abbott's proxy statement for any approvals granted.

Additionally, as reported in Abbott's periodic reports filed with the SEC, Abbott did not repurchase shares from the second quarter of 2016 through the third quarter of 2018. Because the Proposal may be interpreted to impose its restrictions for the entire duration of a buyback program as discussed above, regardless of whether actual buybacks are occurring, the Compensation Committee would have had to hold special meetings (or delay approval until the next regular meeting) and prepare disclosure for more than 70 sales during a two and a half-year period when the Proposal's concern would not have been at issue.

By requiring that the Compensation Committee dramatically increase its meeting frequency (or requiring executives to conform their personal investment options to the Compensation Committee's meeting schedule) and prepare public disclosure regarding its deliberations, the Proposal constitutes micromanagement and may be omitted.

Recent situations where the Staff has concurred with the exclusion of shareholder proposals on the basis of micromanagement include *Walgreens Boots Alliance* (avail. Nov. 20, 2018), involving shareholder proposal for any new open market share repurchase program or stock buyback adopted by the board; *PayPal Holding, Inc.* (avail. Mar. 6, 2018) and *EOG Resources, Inc.* (avail. Feb. 26, 2018), involving proposals to reduce greenhouse gas emissions; *Amazon.com, Inc.* (avail. Mar. 6, 2018), *Verizon Communications Inc.* (avail. Mar. 6, 2018), *Deere & Company* (avail. Dec. 27, 2017), and *Apple Inc.* (avail. Dec. 20, 2017), involving net zero omissions proposals; and *Amazon.com, Inc.* (avail. Jan. 18, 2018), involving the listing of a particular type of showerhead before other showerheads.

For the reasons stated above, the Proposal seeks to micromanage Abbott by (1) addressing detailed elements of Abbott's executive compensation practices and policies on which shareholders as a group are not in a position to make an informed judgment, and (2) seeking to impose complex policies and requirements on the Compensation Committee. The Proposal can therefore be excluded from Abbott's proxy statement under Rule 14a-8(a)(7).

B. The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to workforce compensation, which is a matter of ordinary business operations.

The Proposal may be excluded under Rule 14a-8(i)(7) because its focus is on equity awards that are available to a significant portion of its general workforce, making it "a matter relating to the company's ordinary business operations."

SLB 14J states that

> The Division believes that a proposal that addresses senior executive and/or director compensation may be excludable under Rule 14a-8(i)(7) if a primary aspect of the targeted compensation is broadly available or applicable to a company's general workforce and the company demonstrates that the executives' or directors' eligibility to receive the compensation does not implicate significant compensation matters.

> For example, a proposal that seeks to limit when senior executive officers will receive golden parachutes may be excludable under Rule14a-8(i)(7) if the company's golden parachute provision broadly applies to a significant portion of its general workforce. This is because the availability of certain forms of compensation to senior executives and/or directors that are also broadly available or applicable to the general workforce does not generally raise significant compensation issues that transcend ordinary business matters. In this regard, it is difficult to conclude that a proposal does not relate to a company's ordinary business when it addresses aspects of compensation that are broadly available or applicable to a company's general workforce, even when the proposal is framed in terms of the senior executives and/or directors.

In line with SLB 14J, Abbott's equity incentive awards are available to a broad portion of Abbott's employee population. As disclosed in Abbott's 2017 Proxy Statement when Abbott's 2017 Incentive Stock Program was submitted to shareholders for approval, the Program benefits approximately 11,000 employees (or approximately 11% of Abbott's workforce) in 70 countries around the world. Only 19 of those employees are executive officers to whom the Proposal would apply. Even though the Proposal is framed in terms of "senior executives," it addresses aspects of compensation that are broadly available to a significant portion of Abbott's workforce. The Proposal therefore relates to Abbott's ordinary business and is excludable under Rule 14a-8(i)(7).

III. Conclusion

For the foregoing reasons, I request your confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from Abbott's 2019 proxy materials for any of the reasons described in Sections I and II of this letter.

If the Staff has any questions, or if for any reason the Staff does not agree that Abbott may omit the Proposal from its 2019 proxy materials, please contact me at (224) 667-5550 or jessica.paik@abbott.com. We may also be reached by facsimile at (224) 668-9492. We would appreciate it if you would send your response by email or facsimile. Oxfam America may be reached by contacting Nicholas Lusiani at (202) 777-2912 or Nicholas.Lusiani@Oxfam.org.

Very truly yours,

Jessica Paik
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Securities and Benefits

Enclosures

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Exhibit A

Proposal

SHAREHOLDER PROPOSAL REGARDING EXECUTIVE INCENTIVES AND STOCK BUYBACKS

RESOLVED that shareholders of Abbott Laboratories ("Abbott") urge the Board of Directors to adopt a policy that the Compensation Committee (the "Committee") must approve a proposed sale of Compensation Shares by a senior executive during a Buyback and, for each such approval granted, explain in writing, for inclusion in Abbott's proxy statement for the relevant period, why the Committee concluded that approving the sale was in Abbott's long-term best interest.

For purposes of this Proposal, "Compensation Shares" are shares of Abbott common stock obtained pursuant to a compensation award, grant or other similar arrangement, including shares obtained upon the exercise of stock options, vesting of restricted stock or settlement of a long-term incentive plan award. A Buyback occurs when Abbott has announced it will be repurchasing shares of common stock.

SUPPORTING STATEMENT

We support senior executive compensation arrangements that promote ethical behavior, encourage investment in innovation and the workforce, and align the interests of senior executives and long-term shareholders. We believe that equity compensation, appropriately managed, can be consistent with those objectives.

We are concerned, however, that allowing senior executives to cash out during a Buyback defeats the long-term orientation which equity compensation is meant to foster. Buybacks have reached record levels in 2018 as a result of the 2017 Tax Cuts and Jobs Act. This runs counter to the claims that the savings provided to corporations by the tax cut would be reinvested.[1] Even before the recent surge, research found that Abbott's spending on research and development - at 9% of

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[1] E.g., https://www.nbcnews.com/politics/politics-news/trump-signs-tax-cut-bill-first-big-legislative-win-n832141; http://nymag.com/daily/intelligencer/2018/07/corporations-are-investing-in-stock-buybacks-that-dont-pay.html

revenues - lagged behind the 12% of revenues the company spent on share buybacks and dividends from 2006 through 2015.[2]

A 2018 study by Commissioner Robert Jackson's staff found that sales of company stock by insiders increased significantly following buyback announcements: The number of companies with at least one insider selling in the eight days after an announcement was double the number absent a buyback, and the average daily trade size was five times larger. Insiders benefited from a stock price bump following the announcement, which averaged over 2.5%. Commissioner Jackson concluded that Buybacks "give executives an opportunity to take significant cash off the table, breaking the pay-performance link." [3]

We agree with Commissioner Jackson that "corporate boards and their counsel should pay closer attention to the implications of a buyback for the link between pay and performance." To that end, he urged that compensation committees should be required to approve sales of shares acquired through equity compensation programs and, if approval is granted, disclose to shareholders why the sale is in the company's long-term best interests. Our proposal urges Abbott to adopt that suggestion for sales by senior executives of Compensation Shares during Buybacks.[4] In our view, limiting incentives to cash out will help keep senior executives' focus on the long term, where it belongs.

We urge shareholders to vote for this Proposal.

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[2] See https://www.oxfamamerica.org/explore/research-publications/prescription-for-poverty/
[3] See https://www.sec.gov/news/speech/speech-jackson-061118
[4] See https://www.sec.gov/news/speech/speech-jackson-061118

Exhibit B

Relevant Correspondence Regarding Proposal

From: Nicholas Lusiani [mailto:Nicholas.Lusiani@Oxfam.org]
Sent: Thursday, November 15, 2018 12:44 PM
To: Allen, Hubert L <hubert.allen@abbott.com>
Cc: Robert Silverman <Robert.Silverman@Oxfam.org>
Subject: Shareholder proposal for 2019 Annual Meeting

Dear Mr. Allen,

Attached please find a proposal to be included in the proxy statement for Abbott Laboratories' 2019 annual meeting of shareholders. A hard copy was sent to you via overnight mail today.

Best wishes,
Niko

Nicholas J. Lusiani | Senior Advisor, Corporate Advocacy
Oxfam America | Washington, DC | Office: +1 (202) 777 2912 | Mobile: +1 (917) 703 4963

OXFAM

November 15th, 2018

BY EMAIL AND OVERNIGHT DELIVERY

Hubert L. Allen
Executive Vice President, General Counsel and Secretary
Abbott Laboratories
Dept. 364, Bldg. AP6D
100 Abbott Park Road
Abbott Park, Illinois 60064-6400, USA
Email: hubert.allen@abbott.com

Re: Shareholder proposal for 2019 Annual Shareholder Meeting

Dear Mr. Allen,

Enclosed please find a proposal of Oxfam America, Inc. ("Oxfam America") to be included in the proxy statement of Abbott Laboratories (the "Company") for its 2019 annual meeting of shareholders.

Oxfam America is the lead filer for this proposal and expects to be joined by other shareholders as co-filers. Oxfam America as lead filer is authorized to negotiate on behalf of each co-filer any potential withdrawal of this proposal.

Oxfam America has continuously held, for at least one year as of the date hereof, sufficient shares of the Company's common stock to meet the requirements of Rule 14a-8 of the general rules and regulations of the Securities and Exchange Act of 1934, as amended. Verification of this ownership will be forthcoming. Oxfam America intends to continue to hold such shares through the date of the Company's 2019 annual meeting of shareholders.

Oxfam America welcomes the opportunity to discuss this proposal with representatives of the Company. Please feel free to contact me with any questions.

Sincerely,

Nicholas J. Lusiani
Senior Advisor, Private Sector Department
Oxfam America

[Enclosure]

SHAREHOLDER PROPOSAL REGARDING
EXECUTIVE INCENTIVES AND STOCK BUYBACKS

RESOLVED that shareholders of Abbott Laboratories ("Abbott") urge the Board of Directors to adopt a policy that the Compensation Committee (the "Committee") must approve a proposed sale of Compensation Shares by a senior executive during a Buyback and, for each such approval granted, explain in writing, for inclusion in Abbott's proxy statement for the relevant period, why the Committee concluded that approving the sale was in Abbott's long-term best interest.

For purposes of this Proposal, "Compensation Shares" are shares of Abbott common stock obtained pursuant to a compensation award, grant or other similar arrangement, including shares obtained upon the exercise of stock options, vesting of restricted stock or settlement of a long-term incentive plan award. A Buyback occurs when Abbott has announced it will be repurchasing shares of common stock.

SUPPORTING STATEMENT

We support senior executive compensation arrangements that promote ethical behavior, encourage investment in innovation and the workforce, and align the interests of senior executives and long-term shareholders. We believe that equity compensation, appropriately managed, can be consistent with those objectives.

We are concerned, however, that allowing senior executives to cash out during a Buyback defeats the long-term orientation which equity compensation is meant to foster. Buybacks have reached record levels in 2018 as a result of the 2017 Tax Cuts and Jobs Act. This runs counter to the claims that the savings provided to corporations by the tax cut would be reinvested.[1] Even before the recent surge, research found that Abbott's spending on research and development - at 9% of

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[1] E.g., https://www.nbcnews.com/politics/politics-news/trump-signs-tax-cut-bill-first-big-legislative-win-n832141; http://nymag.com/daily/intelligencer/2018/07/corporations-are-investing-in-stock-buybacks-that-dont-pay.html

revenues - lagged behind the 12% of revenues the company spent on share buybacks and dividends from 2006 through 2015.[2]

A 2018 study by Commissioner Robert Jackson's staff found that sales of company stock by insiders increased significantly following buyback announcements: The number of companies with at least one insider selling in the eight days after an announcement was double the number absent a buyback, and the average daily trade size was five times larger. Insiders benefited from a stock price bump following the announcement, which averaged over 2.5%. Commissioner Jackson concluded that Buybacks "give executives an opportunity to take significant cash off the table, breaking the pay-performance link." [3]

We agree with Commissioner Jackson that "corporate boards and their counsel should pay closer attention to the implications of a buyback for the link between pay and performance." To that end, he urged that compensation committees should be required to approve sales of shares acquired through equity compensation programs and, if approval is granted, disclose to shareholders why the sale is in the company's long-term best interests. Our proposal urges Abbott to adopt that suggestion for sales by senior executives of Compensation Shares during Buybacks.[4] In our view, limiting incentives to cash out will help keep senior executives' focus on the long term, where it belongs.

We urge shareholders to vote for this Proposal.

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[2] See https://www.oxfamamerica.org/explore/research-publications/prescription-for-poverty/
[3] See https://www.sec.gov/news/speech/speech-jackson-061118
[4] See https://www.sec.gov/news/speech/speech-jackson-061118

From: Paik, Jessica [mailto:jessica.paik@abbott.com]
Sent: Tuesday, November 20, 2018 11:47 AM
To: Nicholas Lusiani <Nicholas.Lusiani@Oxfam.org>
Subject: Abbott Shareholder Proposal

Dear Mr. Lusiani,

Please find attached a letter acknowledging Abbott's receipt of Oxfam's shareholder proposal. The original letter is being sent to your attention via Federal Express.

Kind regards,
Jessica Paik

Abbott

Jessica Paik
Divisional Vice President and
Associate General Counsel
Securities and Benefits

Abbott
100 Abbott Park Road
Dept. 32L/Bldg. AP6A-1
Abbott Park, IL 60064-6092

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F: +1 224-668-9492
M:+1 224-330-7923
jessica.paik@abbott.com

Abbott

Abbott Laboratories
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100 Abbott Park Road
Abbott Park, IL 60064-6092

Tel: (224) 667-5550
Fax: (224) 668-9492
jessica.paik@abbott.com

November 20, 2018

Via Federal Express and Email

Mr. Nicholas J. Lusiani
c/o Oxfam America
1101 17th Street, NW Suite 1300
Washington, D.C. 20036
Nicholas.Lusiani@Oxfam.org

Dear Mr. Lusiani:

This letter acknowledges receipt of the shareholder proposal submitted by Oxfam America, Inc. ("Oxfam"). Our 2019 Annual Meeting of Shareholders is currently scheduled to be held on Friday, April 26, 2019.

Rule 14a-8 under the Securities Exchange Act of 1934 requires that the proponent submit verification of stock ownership. We await a proof of ownership letter verifying that Oxfam has continuously owned at least $2,000 in market value, or 1%, of Abbott's securities entitled to be voted on the proposal at Abbott's annual meeting for at least one year preceding and including November 15, 2018 (the date that you submitted your proposal). Please submit this information to Abbott no later than 14 calendar days from the day you receive this letter. You may send your response to my attention.

Abbott has not yet reviewed the Proposal to determine if it complies with the other requirements for shareholder proposals found in Rules 14a-8 and 14a-9 under the Securities Exchange Act of 1934, as amended. Abbott reserves the right to take appropriate action to the extent that the Proposal does not comply with such rules.

Please let me know if you have any questions. Thank you.

Very truly yours,

Jessica H. Paik HQ7

Jessica H. Paik
Divisional Vice President,
Assistant General Counsel and
Assistant Secretary

From: Nicholas Lusiani [mailto:Nicholas.Lusiani@Oxfam.org]
Sent: Tuesday, November 20, 2018 10:59 AM
To: Allen, Hubert L <hubert.allen@abbott.com>; Paik, Jessica <jessica.paik@abbott.com>
Cc: Stoffel, Scott E <scott.stoffel@abbott.com>; Robert Silverman <Robert.Silverman@Oxfam.org>; Irit Tamir <irit.tamir@Oxfam.org>
Subject: RE: Oxfam Verification of Ownership for Abbott Shareholder Proposal

Dear Mr. Allen and Ms. Paik,

Pursuant to your request, attached please find verification of continuous ownership by Oxfam America, Inc. of the requisite shares in Abbott Laboratories since November 3, 2016, along with a cover letter.

Please let me know if you have any questions or require any additional information. We sent a hard copy to you via overnight mail, as well.

Oxfam America looks very much forward to discussing this proposal and other issues of concern. Please feel free to contact me with any questions.

Best,
Niko

Nicholas J. Lusiani | Senior Advisor, Private Sector
Oxfam America | Washington, DC | Office: +1 (202) 777 2912 | Mobile: +1 (917) 703 4963

OXFAM

November 20th, 2018

<u>BY EMAIL AND OVERNIGHT DELIVERY</u>

Hubert L. Allen
Executive Vice President, General Counsel and Secretary
Abbott Laboratories
Dept. 364, Bldg. AP6D
100 Abbott Park Road
Abbott Park, Illinois 60064-6400, USA
Email: hubert.allen@abbott.com

Re: <u>Ownership verification for shareholder proposal for 2019 Annual Shareholder Meeting</u>

Dear Mr. Allen,

Pursuant to our letter regarding our shareholder proposal submitted on November 15, 2018, attached please find verification of continuous ownership by Oxfam America, Inc. of the requisite shares in Abbott Laboratories since November 3, 2016.

Please let me know if you have any questions or require any additional information. We sent a hard copy to you via overnight mail, as well.

Oxfam America welcomes the opportunity to discuss this proposal with representatives of the Company. Please feel free to contact me with any questions.

Sincerely,

Nicholas J. Lusiani
Senior Advisor, Private Sector Department
Oxfam America

CC: Jessica Paik

Fidelity Clearing & Custody Solutions
100 Crosby Parkway KC1J
Covington, KY 41015

Fidelity INVESTMENTS

November 15, 2018

Oxfam America Inc.
Activist Fund
226 Causeway St, Fl 5
Boston, MA 02114-2155

RE: 90 shares of Abbott Laboratories - Account ending in ***

To Whom It May Concern:

Please accept this letter as confirmation that National Financial Services (NFS) holds 90 shares of Abbott Laboratories (ABT) for the benefit of Oxfam America, Inc. Per our records, the account received 75 shares on November 17, 2009. There was a sell of 10 shares on October 20, 2011 leaving the account with 65 shares. There was a purchase of 25 shares on November 3, 2016 increasing the balance to 90 shares.

Certification of Beneficial Ownership

This Certification relates to the 90 shares of common stock (the "Shares") of Abbott Laboratories. (The "Issuer") owned beneficially by Oxfam America, Inc. (the "Proponent".)

This Certification is given in connection with the submission on November 15, 2018 (the "Proposal Submission Date") by the Proponent of the Issuer of a shareholder proposal under Rule 14a-8 under the Securities Exchange Act of 1934, as amended. The undersigned herby certifies, as of the date set forth above, as follow.

I. The undersigned is and has been the record holder of the shares from and including the Proposal Submission Date and through and including the date hereof.

II. The proponent is the beneficial owner of the Shares and has owned 90 shares continuously since November 3, 2016.

The undersigned acknowledges and agrees that this Certification may be delivered to the Issuer as proof of the Proponent's beneficial ownership of the Shares pursuant to Rule 14a-8.

Sincerely,

Linda M. Gilman

Linda Gilman
Client Services Manager
Our file: W697658-16NOV18