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

DIVISION OF
CORPORATION FINANCE

March 1, 2019

Kerry S. Burke
Covington & Burling LLP
kburke@cov.com

Re: Eli Lilly and Company
Incoming letter dated December 21, 2018

Dear Ms. Burke:

This letter is in response to your correspondence dated December 21, 2018 concerning the shareholder proposal (the "Proposal") submitted to Eli Lilly and Company (the "Company") by People for the Ethical Treatment of Animals (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 January 3, 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: Jared Goodman
PETA Foundation
jaredg@petaf.org

March 1, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Eli Lilly and Company
Incoming letter dated December 21, 2018

The Proposal asks the board to implement a policy that it will not fund, conduct or commission use of the "Forced Swim Test."

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 by seeking to impose specific methods for implementing complex policies. 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,

Courtney Haseley
Special Counsel

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.

AN INTERNATIONAL ORGANIZATION DEDICATED TO PROTECTING THE RIGHTS OF ALL ANIMALS

PETA FOUNDATION

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS FOUNDATION

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January 3, 2019

Via e-mail

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
shareholderproposals@sec.gov

Re: Eli Lilly 2019 Annual Meeting Shareholder Proposal Submitted by PETA

Dear Sir or Madam:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) and pursuant to Rule 14a-8(k) in response to Eli Lilly and Company's ("Eli Lilly" or "Company") request that the Staff of the Division of Corporation Finance ("Staff") of the Securities and Exchange Commission ("Commission") concur with its view that it may properly exclude PETA's shareholder resolution and supporting statement ("Proposal") from the proxy materials to be distributed by Eli Lilly in connection with its 2019 annual meeting of shareholders ("No-Action Request").

The Company seeks to exclude the Proposal on the basis of Rule 14a-8(i)(7). As the Proposal significantly relates to Eli Lilly's business, focuses on the significant social policy issue of the humane treatment of animals, and is not too complex for shareholders to make an informed judgment, PETA urges the Staff to deny Eli Lilly's request for a no-action letter.

I. The Proposal

PETA's resolution, titled "REDUCE ANIMAL SUFFERING IN ELI LILLY EXPERIMENTS," provides:

> RESOLVED, given the animal suffering inherent in the "Forced Swim Test" (FST), its questionable scientific validity, and the fact that the majority of Americans object to the use of animals in experiments, our Board should implement a policy that it will not fund, conduct, or commission use of this test.

The supporting statement then describes the FST, the company's use of and reference to the test, and expert acknowledgment of its ineffectiveness and impediment to legitimate medical progress.

II. The Proposal Focuses on a Significant Social Policy Issue and May Not Be Excluded Pursuant to Rule 14a-8(i)(7).

Rule 14a-8(i)(7) provides that a company may exclude a proposal "[i]f the proposal deals with a matter relating to the company's ordinary business operations." Only "business matters that are mundane in nature and do not involve any substantial policy" considerations may be omitted under this exemption. Adoption of Amendments Relating to Proposals by Security

Holders, 41 Fed. Reg. 52,994, 52,998 (1976). As the Company notes, the policy underlying this rule rests on two central considerations. The first 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 stockholders, as a group, would not be in a position to make an informed judgment." Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40018 (May 21, 1998) ("Rule 14a-8 Release").

Second, "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." *Id.* The Commission has stated and repeatedly found since that "proposals relating to such matters but focusing on sufficiently significant social policy issues ... generally would not be considered to be excludable, because *the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote*." *Id.* (emphasis added).

PETA's Proposal does not implicate a day-to-day operation that is "mundane in nature," but rather involves an important "substantial policy" consideration, and does not seek to "'micro-manage' the company by probing too deeply into matters of a complex nature," as it does not involve "intricate detail" or seek "to impose specific time-frames or methods for implementing complex policies." *Id.* Indeed, the Staff has found on several occasions that proposals for pharmaceutical companies to end particular tests could not be excluded on this basis.

A. The Proposal focuses on the significant social policy issue of animal welfare.

A company may rely on Rule 14a-8(i)(7) to exclude a proposal only where that proposal relates to the company's ordinary business operations—those matters that are "mundane in nature and do not involve any substantial policy" considerations. Release No. 34-12999 (Dec. 3, 1976). Proposals that relate to ordinary business matters but that focus on "sufficiently significant social policy issues ... would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." Release No. 34-40018 (May 21, 1998).

Eli Lilly does not dispute that the Staff has previously determined that the humane treatment of animals, including the use of animals in scientific research, is a significant policy issue that is appropriate for a shareholder vote. *See, e.g., Revlon, Inc.* (Mar. 18, 2014); *Coach, Inc.*, 2010 WL 3374169 (Aug. 19, 2010) ("although the proposal relates to the acquisition and sale of fur products, it focuses on the significant policy issue of the humane treatment of animals, and it does not seek to micromanage the company to such a degree that we believe exclusion of the proposal would be appropriate"); *Bob Evans Farms, Inc*. (June 6, 2011) (a proposal to encourage the board to phase-in the use of "cage-free" eggs so that they represent at least five percent of the company's total egg usage "focuses on the significant policy issue of the humane treatment of animals and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate"); *Denny's* (March 17, 2009) (a proposal requesting the board to commit to selling at least 10% cage-free eggs by volume could not be excluded in reliance on Rule 14a-8(i)(7)); *Wendy's Int'l Inc.* (Feb. 19, 2008) (a proposal requesting that the board issue a report on the feasibility of committing to purchase a percentage of its eggs from cage-free hens could not be excluded in reliance on Rule 14a-8(i)(7)).

Moreover, "the presence of widespread public debate regarding an issue is among the factors to be considered in determining whether proposals concerning that issue 'transcend the day-to-day business matters.'" SLB No. 14A (July 12, 2002). The use and welfare of animals used in research specifically is subject to widespread debate, exemplified by Eli Lilly's own purported oversight of the Company's animal use. *See No-Action Request*, at 3-4. Additionally, polling by the Pew Research Center found that 52 percent of U.S. adults oppose the use of animals in scientific research altogether—regardless of the level of care they receive, Mark Strauss, *Americans Are Divided Over the Use of Animals in Scientific Research*, Pew Research Center (Aug. 16, 2018), up from just *eight* percent in 1948, Harold A. Herzog & Lorna B. Dorr, *Electronically Available Surveys of Attitudes Toward Animals*, 8(2) Society & Animals 1 (2000). Other surveys suggest that the shrinking group that does accept animal experimentation does so only because it believes it to be necessary for medical progress. *See* Peter Aldhous and Andy Coghlan, *Let the People Speak*, New Scientist (May 22, 1999). As one United Kingdom court has recognized, the public interest in the welfare of animals in laboratories "is almost so obvious as not to require much by way of spelling it out." *See* Judgment, Covance Laboratories Ltd. v. The Covance Campaign et al., Claim No 5C – 00295 (June 16, 2005).

Accordingly, as the Company apparently concedes, the Proposal focuses on a significant social policy issue that transcends day-to-day business matters, and it is therefore appropriate for a shareholder vote.

B. The Proposal does not seek to micromanage the company.

Eli Lilly argues that it may exclude the Proposal pursuant to Rule 14a-8(i)(7) because "[b]y attempting to impose upon the Company a prohibition with respect to a specific animal testing procedure that the Company may use as part of its drug development program, the Proposal seeks to micromanage the Company's operations by interfering with management's essential function of making day-to-day business and operational decisions on behalf of the Company." *No-Action Request*, at 5. The Proposal urges the board to make a single decision regarding Eli Lilly's use of a single test, which, the Proposal describes, is cruel and distressing, results in poor animal welfare, and does not produce human-relevant results. The Company does not dispute any of the Proposal's assertions regarding the FST.

The Staff has already rejected the position that a proposal addressing pharmaceutical research methods and techniques is necessarily too complex for a shareholder vote. The Staff refused to issue no-action letters where, like here, a proposal requested the end of particular animal experiments. In a series of proposals, PETA requested that the boards of various companies:

1. Commit specifically to using only non-animal methods for assessing skin corrosion, irritation, absorption, phototoxicity and pyrogenicity.
2. Confirm that it is in the Company's best interest to commit to replacing animal-based tests with non-animal methods.
3. Petition the relevant regulatory agencies requiring safety testing for the Company's products to accept as total replacements for animal-based methods, those approved non-animal methods described above, along with any others currently used and accepted by the Organization for Economic Cooperation and Development (OECD) and other developed countries.

In every instance, although the proposals called on the companies to abandon all animal-based "methods for assessing skin corrosion, irritation, absorption, phototoxicity and pyrogenicity," and instead commit to using only non-animal methods for each of those assessments, the Staff was "unable to concur in [the company's] view that [it] may exclude the proposal under rule 14a-8(i)(7)." *3M Co.*, 2005 WL 433468 (Feb. 22, 2005); *Schering-Plough Corp.*, 2005 WL 329675 (Feb. 10, 2005); *The Dow Chemical Co.*, 2005 WL 180977 (Jan. 21, 2005); *Johnson & Johnson*, 2005 WL 291551 (Jan. 13, 2005); *General Electric Co.*, 2005 WL 130007 (Jan. 11, 2005); *see also Wyeth* (February 4, 2004) (finding that a proposal requesting that the board issue a policy statement publicly committing to use *in vitro* tests and generally committing to the elimination of product testing on animals could not be excluded in reliance on Rule 14a-8(i)(7)).

Eli Lilly does not attempt to distinguish these previous decisions. Instead, the Company relies on the Staff's inapplicable decision in *SeaWorld Entertainment Inc.* (Apr. 23, 2018), which involved a proposal that the animal theme park ban all captive breeding at its facilities. The company argued that banning the captive breeding of "over 1,700 species," both through natural breeding and artificial insemination, would need to be tailored to each species and would ultimately "require replacement of *all* of the company's live animal exhibits." The Staff agreed that the proposal was therefore too complex for a shareholder vote. Unlike *SeaWorld*, the Proposal here involves ending one particular test that would not require Eli Lilly to fundamentally alter its business.

The Company's no-action request is littered with irrelevant policy statements regarding animal use and oversight. *No-Action Request*, at 3-4. Whether Eli Lilly experiment protocols have been approved or Eli Lilly pays a third-party certification body for accreditation, for example, are entirely irrelevant as to whether the Proposal seeks to micromanage the Company by ending a specific test that is inherently cruel, has been recognized as ineffective, and has not led to the marketing of new drugs for our Company in more than twenty-five years. An end to the FST would have no bearing on any of those existing policies or processes, and the Company does not assert that the Proposal has been substantially implemented by them.

Additionally, the Company misleads the Staff regarding legal "mandate[s] that certain research be performed on animals." *Id.* at 4. The Company makes the undisputed assertion that it "is unable to bring any promising new pharmaceutical products to market if it does not comply with applicable regulatory requirements around pre-clinical testing," but conspicuously fails to tie the FST to any such requirements. The Proposal does not seek an end to all animal-based research, and the Company does not, and cannot truthfully, assert that the FST is or may be required by law to ensure the safety or efficacy of its products. Indeed, a Company spokesperson recently informed a reporter that it "is not actively using this protocol at this time." Ed Silverman, *Animal Rights Group Urges Drug Makers to Discontinue a Test That 'Traumatizes' Rodents*, Stat (Nov. 8, 2018).

Finally, the Company makes broad pronouncements of its need to "maintain discretion in determining which research and development activities it deems appropriate" and be free from interference "with intricate business and operational decisions." *Id.* at 3. Per Rule 14a-8, shareholder proposals must be significantly related to a company's business. Any billion-dollar public company *should* have experienced and knowledgeable management that will be impacted by a Proposal that relates to a significant, non-mundane, business decision. Indeed, addressing a company's action or inaction on a particular matter is the very purpose of the shareholder proposal process. To allow companies to exclude a

proposal because it would "turn on a variety of factors with which management ... has substantial knowledge, experience, and familiarity" would virtually gut Rule 14a-8.

Accordingly, as with the proposals cited above that sought to eliminate certain (or all) animal tests by pharmaceutical and other companies, and to require certain animal raising standards by suppliers of food service companies, this is not a complex matter into which shareholders seek to "prob[e] too deeply," and is one for which they can make an informed judgment. Indeed, the elimination of the FST is far less complex than those matters in which the Staff declined to issue no-action relief.

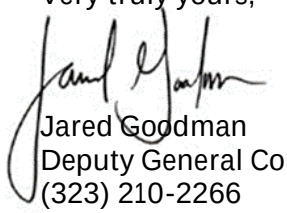
III. Conclusion

We respectfully request that the Staff decline to issue a no-action response to Eli Lilly and inform the company that it may not omit the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

Should you need any additional information in reaching your decision, please contact me at your earliest convenience. If you intend to issue a no-action response to Eli Lilly, we would welcome the opportunity to discuss this matter further before that response is issued.

Thank you.

Very truly yours,



Jared Goodman
Deputy General Counsel for Animal Law
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cc: Kerry Burke, kburke@cov.com

Eli Lilly and Company

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December 21, 2018

VIA E-MAIL: shareholderproposals@sec.gov

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

Re: Shareholder Proposal of People for the Ethical Treatment of Animals

Dear Ladies and Gentlemen:

This letter is submitted by Eli Lilly and Company (the "*Company*") to notify the Securities and Exchange Commission (the "*Commission*") that the Company intends to omit from its proxy statement and form of proxy for its 2019 Annual Meeting of Stockholders (the "*2019 Proxy Materials*") a shareholder proposal and supporting statement (the "*Proposal*") submitted by People for the Ethical Treatment of Animals (the "*Proponent*"). We also request confirmation that the staff of the Division of Corporation Finance (the "*Staff*") will not recommend enforcement action to the Commission if the Company omits the Proposal from the 2019 Proxy Materials for the reasons discussed below.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are emailing this letter to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended, we are simultaneously sending a copy of this letter to the Proponent as notice of the Company's intent to omit the Proposal from the 2019 Proxy Materials. Likewise, we take this opportunity to inform the Proponent that if the Proponent elects to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company.

THE PROPOSAL

The Proposal (attached hereto with related correspondence as Exhibit A) provides in pertinent part:

> **"REDUCE ANIMAL SUFFERING IN ELI LILLY EXPERIMENTS**
>
> **RESOLVED**, given the animal suffering inherent in the "Forced Swim Test" (FST), its questionable scientific validity, and the fact that the majority of Americans object to the use of animals in experiments,[1] our Board should implement a policy that it will not fund, conduct, or commission use of this test."

BASIS FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(7) because it micromanages the Company.

ANALYSIS

Rule 14a-8(i)(7) permits the exclusion of shareholder proposals dealing with matters relating to a company's "ordinary business operations." The Commission has stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Exchange Act Release No. 40018 (May 21, 1998). The term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.*

The ordinary business exclusion rests on two central considerations: (1) the subject matter of the proposal (i.e., whether the subject matter involves a matter of ordinary business), provided the proposal does not raise significant social policy considerations that transcend ordinary business; and (2) the degree to which the proposal attempts to micromanage a company by "probing too deeply into matters of a complex nature upon which shareholders as a group, would not be in a position to make an informed judgment." Exchange Act Release No. 40018 (May 21, 1998). A proposal may involve micromanagement if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *Id.* Determinations as to the excludability of proposals on the basis of micromanagement "will be made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed." *Id.* As recently explained by the

[1] Strauss (2018) https://tinyurl.com/ydbgts8z

Staff, the consideration of the excludability of a proposal based on micromanagement "looks only to the degree to which a proposal seeks to micromanage" and does not focus on the subject matter of the proposal. Staff Legal Bulletin No. 14J (Oct. 23, 2018) ("*SLB 14J*"). The Staff further explained in SLB 14J that "Unlike the first consideration [of the ordinary business exclusion], which looks to a proposal's subject matter, the second consideration looks only to the degree to which a proposal seeks to micromanage. Thus, a proposal that may not be excludable under the first consideration may be excludable under the second if it micromanages the company."

The Company is a worldwide and industry leader in the discovery, development, manufacturing and marketing of human pharmaceutical products. The Company's continued success depends to a great extent on its ability to continue to discover, develop and bring to market innovative new medicines. This process of development requires a deep commitment to research and development activities to establish the safety and effectiveness of the Company's human pharmaceutical products.

There are many difficulties and uncertainties inherent in human pharmaceutical research and development and the introduction of new products. For example, there is a high rate of failure inherent in new drug discovery and development, with such failure potentially to occur at any point in the process. To bring a drug from the discovery phase to market can sometimes take over a decade and often costs billions of dollars. Accordingly, to fulfill its mission of helping people live longer, healthier and more active lives, it is essential for the Company to maintain a consistent pipeline of innovative research and development activity to bring new products and indications to market.

As a pharmaceutical development company, advancement of the Company's drug research and development programs is an essential element of the Company's management functions. The ability of the Company to maintain discretion in determining which research and development activities it deems appropriate in helping to bring new drug products to the market is fundamental to the operations of its business. Here, the Proposal seeks to micromanage the Company's operations by endeavoring to impose a specific prohibition with respect to pre-clinical animal research, thereby interfering with intricate business and operational decisions upon which shareholders as a group are not in a position to make an informed judgment. The Company's Institutional Animal Care and Use Committee is chartered to manage the operational detail of assessing the validity, value and approval of the appropriate use of animal models based on contemporary scientific understanding. In addition, all of the sites at which animal research is conducted by the Company have oversight committees that approve and oversee animal research activities and care programs, review animal use protocols to ensure adherence to the most up-to-date practices, conduct program or facility reviews, as appropriate, and ensure that personnel working with animals are appropriately qualified. Notably, all animal research is conducted under approved protocols, and initial submission of a protocol includes a thorough review of the underlying science using the most up-to-date practices available. Further, the Animal Welfare

Board has a broader oversight of internal and external practices that serves to inform overall corporate policy.

Ultimately, Company decisions regarding appropriate animal research turn on a variety of factors with which management, including the Company's oversight committees, has substantial knowledge and familiarity, such as the nature of the relevant pharmaceutical product candidate, the indication under investigation, compliance with applicable laws and Company policies and procedures, including animal use protocols, and considerations informed by contemporary scientific understanding. The Staff has consistently permitted exclusion of shareholder proposals that attempt to micromanage a company by substituting shareholder judgment for that of management with respect to such complex day-to-day business operations. *E.g.*, *SeaWorld Entertainment, Inc.* (Apr. 23, 2018) (proposal requesting a ban of all captive breeding excludable on the basis of micromanagement for "seeking to impose specific methods of implementing complex policies") ("*SeaWorld II*"); *SeaWorld Entertainment, Inc.* (Mar. 30, 2017, reconsideration denied Apr. 17, 2017) (proposal requesting the replacement of live orca exhibits with virtual reality experiences excludable for "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").

For safe and effective medicines to be available to patients, U.S. and foreign regulatory agencies mandate that certain research be performed on animals. The Company is unable to bring any promising new pharmaceutical products to market if it does not comply with applicable regulatory requirements around pre-clinical testing. *See, e.g.*, 21 CFR § 314.50 (requiring a New Drug Application to include a description of relevant animal and in vitro studies and, for each nonclinical laboratory study subject to the good laboratory practice regulations, a statement of compliance, or explanation of non-compliance, with such regulations). The Company is best positioned to make decisions regarding the necessary pre-clinical tests to employ to ensure that its pharmaceutical products are safe and effective for human use.

Recognizing its fundamental ethical and scientific obligation to ensure the appropriate treatment of animals used in research, the Company has processes and procedures in place to ensure humane treatment of animals, as described above, including programs for oversight by an internal corporate Animal Welfare Board, Institutional Animal Care and Use Committees, or an equivalent ethical review board, as well as veterinary oversight at every site. For instance, Company employees and contractors may conduct animal research only after considering the "3Rs" − replacement of animals with alternative non-animal methods, reduction in the number of animals used by the application of good experimental design and proper statistical methods, and refinement to eliminate or minimize pain or distress − and, even then, only in accordance with the Company's Animal Care and Use Principles. The Company is committed to the responsible use of animals in medical research and the use of alternative methods whenever possible and appropriate. In addition, the Company endeavors to adhere to standards set forth in the U.S. Animal Welfare Act and has been accredited for more than 35 years by the AAALAC

International, formerly known as the Association for Assessment and Accreditation of Laboratory Animal Care. The AAALAC accreditation process includes a detailed, comprehensive review of the Company's animal research program, including animal care and use policies and procedures.

Like the husbandry and breeding practices at issue in SeaWorld II, decisions regarding necessary animal testing for pre-clinical trials require "detailed knowledge of [the Company's] business and operations − information to which the Company's shareholders may not have access." The Supporting Statement makes clear that the Proponent merely intends to substitute its view on these issues for the reasoned analysis and judgment of management, including the Company's oversight committees, citing reasons to purportedly refute the utility of the forced swim test. "Allowing shareholders to dictate which tests the Company [may use as part of required animal testing], however, would inappropriately delegate to shareholders management's role in directing the day-to-day business of the Company." *SeaWorld II.* By attempting to impose upon the Company a prohibition with respect to a specific animal testing procedure that the Company may use as part of its drug development program, the Proposal seeks to micromanage the Company's operations by interfering with management's essential function of making day-to-day business and operational decisions on behalf of the Company. Such decisions are not properly delegated to, and should not be micromanaged, by the Company's shareholders. As a result, the Proposal is excludable under Rule 14a-8(i)(7) as a matter relating to the Company's ordinary business operations.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2019 Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should you require any additional information in support of our position, we would welcome the opportunity to discuss these matters with you as you prepare your response. Any such correspondence regarding this letter should be sent to Kerry Burke at kburke@cov.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (317) 277-9011 or Kerry at (202) 662-5297.

Sincerely,

Crystal T. Williams
Assistant Corporate Secretary
Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285

cc: People for the Ethical Treatment of Animals

Exhibit A

Proposal and Related Correspondence

See attached

November 12, 2018

Bronwen L. Mantlo
Corporate Secretary
Eli Lilly and Company
Lilly Corporate Center
Indianapolis, Indiana 46285

Via UPS Next Day Air Saver

Dear Mr. Mantlo:

Attached to this letter is a shareholder proposal (also known as a "resolution") submitted for inclusion in the proxy statement for the 2019 annual meeting. Also enclosed is a letter from People for the Ethical Treatment of Animals' (PETA) brokerage firm, RBC Wealth Management, confirming ownership of 56 shares of Eli Lilly and Company common stock, which were acquired at least one year ago. PETA has held at least $2,000 worth of common stock continuously and intends to hold at least this amount through and including the date of the 2019 shareholders meeting.

If there are any issues with this proposal being included in the proxy statement or if you need any further information, please contact PETA's authorized representative Jared S. Goodman at 2154 W. Sunset Blvd., Los Angeles, CA 90026, (323) 210-2266, or JaredG@PetaF.org.

Sincerely,

Carrie Edwards, Executive Assistant
PETA Corporate Affairs

Enclosures: 2019 Shareholder Resolution
RBC Wealth Management letter

PEOPLE FOR
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- PETA Australia
- PETA Germany
- PETA Asia-Pacific
- PETA Netherlands
- PETA Foundation (U.K.)

REDUCE ANIMAL SUFFERING IN ELI LILLY AND COMPANY EXPERIMENTS

RESOLVED, given the animal suffering inherent in the "Forced Swim Test" (FST), its questionable scientific validity, and the fact that the majority of Americans object to the use of animals in experiments,[1] our Board should implement a policy that it will not fund, conduct, or commission use of this test.

BACKGROUND

In the FST, animals are dropped into a container of water. Terrified that they will drown, they swim frantically trying to find an escape. Eventually they become exhausted and stop struggling. It causes substantial distress and is not required by the government to be conducted.

Eli Lilly-affiliated authors have described the FST as a model or test of behavioral despair.[2] Our Company uses the FST to purportedly test the antidepressant qualities of compounds[3] on the assumption that the sooner the animal stops swimming, the more depressed the animal is. However, there is evidence that floating is an adaptive behavior that saves energy and benefits survival,[4] not a sign of depression.

The FST's ability to accurately predict human antidepressants is further undermined by the fact that it yields positive results for compounds that are not prescribed as human antidepressants, like caffeine,[5] and negative results for compounds that are.[6] Therefore, useful antidepressant compounds may be abandoned if they do not produce desired results in the FST. Indeed, the applicability of the FST to human depression has been substantially refuted by experts.[7]

According to our Company's records none of the compounds tested by Eli Lilly since 1993 using the FST are currently approved to treat human depression, which means that the test did not lead to marketing these compounds as medications.

We need to develop new therapeutics to treat human depression, but experts cite the use of such animal experiments as a major reason for lack of progress in generating effective treatments.[8]

Our Company should include an assurance in its animal welfare policy[9] that it will not fund, conduct, or commission use of the FST.

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[1] Strauss (2018) Americans are divided over the use of animals in scientific research. https://tinyurl.com/ydbgts8z

[2] Benvenga (1993) https://doi.org/10.1016/0014-2999(93)91005-8; O'Neill (2001) https://doi.org/10.1177/026988110101500104; Li (2001) https://doi.org/10.1016/S0028-3908(00)00194-5; Skolnick (2003) https://patents.google.com/patent/US7973043B2/ko; Li (2003) https://link.springer.com/article/10.1023/A:1023648923447; Li (2006) https://doi.org/10.1124/jpet.106.103143; Benito Collado (2010) https://patents.google.com/patent/WO2011060035A1

[3] Bai (2001) https://doi.org/10.1016/S0091-3057(01)00599-8; Li (2003); Witkin (2014) https://doi.org/10.1124/jpet.114.216804; Chappell (2016) https://pubs.acs.org/doi/10.1021/acs.jmedchem.6b01119; Dressman (2016) https://doi.org/10.1016/j.bmcl.2016.10.067; Bruns (2018) https://doi.org/10.1016/j.neuropharm.2017.10.032; Witkin (2018) https://doi.org/10.1016/j.bcp.2018.06.022

[4] Molendijk (2015) Immobility in the forced swim test is adaptive and does not reflect depression. https://doi.org/10.1016/j.psyneuen.2015.08.028

[5] Schechter (1979) Non-specificity of "behavioral despair" as an animal model of depression. https://doi.org/10.1016/0014-2999(79)90212-7

[6] Suman (2018) Failure to detect the action of antidepressants in the forced swim test in Swiss mice. https://doi.org/10.1017/neu.2017.33; Cryan (2002) https://doi.org/10.1016/S0165-6147(02)02017-5

[7] Hendrie (2013) The failure of the antidepressant drug discovery process is systemic. https://doi.org/10.1177%2F0269881112466185; Garner (2014) The significance of meaning: Why do over 90% of behavioral neuroscience results fail to translate to humans, and what can we do to fix it? https://doi.org/10.1093/ilar/ilu047; Molendijk (2015); Commons (2017) The rodent forced swim test measures stress-coping strategy, not depression-like behavior. https://pubs.acs.org/doi/10.1021/acschemneuro.7b00042

[8] Hendrie (2013); Garner (2014)

[9] https://www.lilly.com/animal-care-and-use

November 14, 2018

Eli Lilly and Company

Lilly Corporate Center
Indianapolis, Indiana 46285
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+1.317.276.2000
www.lilly.com

BY FEDERAL EXPRESS AND ELECTRONIC MAIL

Jared Goodman
2154 West Sunset Boulevard
Los Angeles, CA 90026

Re: Notification of Deficiency under Rule 14a-8

Dear Mr. Goodman:

On November 12, 2018, we received via e-mail, a letter from you, dated November 12, 2018, requesting that Eli Lilly and Company ("Lilly") include your shareholder proposal (the "Proposal") in the our proxy materials for its 2019 annual meeting of stockholders (the "Annual Meeting").

We have reviewed the Proposal and bring to your attention the Proposal, including the supporting statement, exceeds the 500 word limit, which constitutes an eligibility deficiency in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 (the "Exchange Act").

Rule 14a-8(d) of the Exchange Act states: "The proposal, including any accompanying supporting statement, may not exceed 500 words." In reaching the conclusion that the Proposal exceeds 500 words, we have counted symbols and each numeric entry as words and have counted hyphenated terms as multiple words. To remedy this defect, you must revise the Proposal so that it does not exceed 500 words. We have included a copy of Rule 14a-8 for your convenience.

Rule 14a-8(f) of the Exchange Act requires you to correct the deficiencies noted above in order to have the Proposal included in our proxy materials for the Annual Meeting. The response to this letter must be postmarked or transmitted electronically no later than fourteen (14) calendar days from the date you receive this letter. Please send any correspondence to Crystal Williams, Assistant Corporate Secretary at williams_crystal_tamera@lilly.com.

We may exclude the Proposal if you do not meet the procedural requirements set forth in the enclosed rules. However, if you adequately correct the deficiency within the required time frame, we will then address the substance of your Proposal. Even if you remedy the defect noted above in a timely manner, we reserve the right to raise any substantive objections it has to your Proposal at a later date.

Sincerely,

Crystal T. Williams
Enclosures

November 20, 2018

Via email

Crystal T. Williams
Assistant General Counsel and Assistant Corporate Secretary
Eli Lilly and Company
williams_crystal_tamera@lilly.com

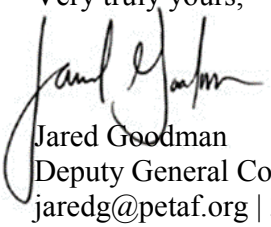
Re: Revised PETA Shareholder Proposal

Dear Ms. Williams:

I am in receipt of your letter of November 14, received on November 16, regarding People for the Ethical Treatment of Animals' shareholder proposal, in which you assert Eli Lilly and Company's belief that the proposal, as submitted, contained more than 500 words.

Pursuant to Rule 14a-8(f)(1), enclosed please find a revised version of the proposal that addresses the perceived deficiency.

Very truly yours,



Jared Goodman
Deputy General Counsel for Animal Law
jaredg@petaf.org | 323-210-2266

Enclosure

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS FOUNDATION

Washington, D.C.
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Berkeley
2855 Telegraph Ave.
Ste. 301
Berkeley, CA 94705
510-763-PETA

REDUCE ANIMAL SUFFERING IN ELI LILLY EXPERIMENTS

RESOLVED, given the animal suffering inherent in the "Forced Swim Test" (FST), its questionable scientific validity, and the fact that the majority of Americans object to the use of animals in experiments,[1] our Board should implement a policy that it will not fund, conduct, or commission use of this test.

BACKGROUND

In the FST, animals are dropped into a container of water. Terrified that they will drown, they swim frantically trying to find an escape. Eventually they become exhausted and stop struggling. It causes substantial distress and is not required by the government to be conducted.

Eli Lilly-affiliated authors have described the FST as a model or test of behavioral despair.[2] Our Company uses the FST to purportedly test the antidepressant qualities of compounds[3] on the assumption that the sooner the animal stops swimming, the more depressed the animal is. However, there is evidence that floating is an adaptive behavior that saves energy and benefits survival, not a sign of depression.[4]

The FST's ability to accurately predict human antidepressants is further undermined by the fact that it yields positive results for compounds that are not prescribed as human antidepressants, like caffeine,[5] and negative results for compounds that are.[6] Therefore, useful antidepressant compounds may be abandoned if they do not produce desired results in the FST. Indeed, the applicability of the FST to human depression has been substantially refuted by experts.[7]

According to our Company's records none of the compounds tested by Eli Lilly since 1993 using the FST are currently approved to treat human depression, which means that the test did not lead to marketing these compounds as medications.

We need to develop new therapeutics to treat human depression, but experts cite the use of such animal experiments as a major reason for lack of progress.[8]

Our Company should include an assurance in its animal welfare policy[9] that it will not fund, conduct, or commission use of the FST.

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[1] Strauss (2018) https://tinyurl.com/ydbgts8z

[2] Benvenga (1993) https://doi.org/10.1016/0014-2999(93)91005-8; O'Neill (2001) https://doi.org/10.1177/026988110101500104; Li (2001) https://doi.org/10.1016/S0028-3908(00)00194-5; Skolnick (2003) https://patents.google.com/patent/US7973043B2/ko; Li (2003) https://link.springer.com/article/10.1023/A:1023648923447; Li (2006) https://doi.org/10.1124/jpet.106.103143; Benito Collado (2010) https://patents.google.com/patent/WO2011060035A1

[3] Bai (2001) https://doi.org/10.1016/S0091-3057(01)00599-8; Li (2003); Witkin (2014) https://doi.org/10.1124/jpet.114.216804; Chappell (2016) https://pubs.acs.org/doi/10.1021/acs.jmedchem.6b01119; Dressman (2016) https://doi.org/10.1016/j.bmcl.2016.10.067; Bruns (2018) https://doi.org/10.1016/j.neuropharm.2017.10.032; Witkin (2018) https://doi.org/10.1016/j.bcp.2018.06.022

[4] Molendijk (2015) https://doi.org/10.1016/j.psyneuen.2015.08.028

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[6] Suman (2018) Failure to detect the action of antidepressants in the forced swim test in Swiss mice. https://doi.org/10.1017/neu.2017.33; Cryan (2002) https://doi.org/10.1016/S0165-6147(02)02017-5

[7] Hendrie (2013) The failure of the antidepressant drug discovery process is systemic. https://doi.org/10.1177%2F0269881112466185; Garner (2014) The significance of meaning: Why do over 90% of behavioral neuroscience results fail to translate to humans, and what can we do to fix it? https://doi.org/10.1093/ilar/ilu047; Molendijk (2015); Commons (2017) The rodent forced swim test measures stress-coping strategy, not depression-like behavior. https://pubs.acs.org/doi/10.1021/acschemneuro.7b00042

[8] Hendrie (2013); Garner (2014)

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