



DIVISION OF  
CORPORATION FINANCE

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

March 7, 2019

Marc S. Gerber  
Skadden, Arps, Slate, Meagher & Flom LLP  
marc.gerber@skadden.com

Re: Gilead Sciences, Inc.  
Incoming letter dated December 21, 2018

Dear Mr. Gerber:

This letter is in response to your correspondence dated December 21, 2018 and January 18, 2019 concerning the shareholder proposal (the "Proposal") submitted to Gilead Sciences, Inc. (the "Company") by the Portfolio 21 Global Equity Fund (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated January 11, 2019 and February 1, 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: Brianna Murphy  
Trillium Asset Management, LLC  
bmurphy@trilliuminvest.com

March 7, 2019

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Gilead Sciences, Inc.  
Incoming letter dated December 21, 2018

The Proposal requests that the board issue a report describing how the Company plans to allocate tax savings as a result of the Tax Cuts and Jobs Act.

We are unable to concur in your view that the Company may exclude the Proposal under rules 14a-8(b) and 14a-8(f). We note that the Proponent appears to have supplied, within 14 days of receipt of the Company's request, documentary support sufficiently evidencing that it satisfied the minimum ownership requirement for the one-year period as required by rule 14a-8(b). Accordingly, we do not believe that the Company may omit the Proposal in reliance on rules 14a-8(b) and 14a-8(f).

We are unable to conclude that the Company has met its burden of demonstrating that it may exclude the Proposal under rule 14a-8(i)(7) as a matter relating to the Company's ordinary business operations. Based on the information presented in your correspondence, it is not readily apparent whether or not the Proposal raises an issue that is significant to the Company. In particular, we note that your discussion does not include any analysis addressing the significance of the Proposal to the Company's business operations. Accordingly, we do not believe that the Company may omit 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.

February 1, 2019

VIA email - [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: Gilead Sciences – Reply to Company Supplement to Letter dated January 18, 2019 Regarding December 21, 2018 No-action Request for Shareholder Proposal Submitted by Portfolio 21 Global Equity Fund

Dear Sir/Madam:

This letter is submitted by Trillium Asset Management on behalf of the Portfolio 21 Global Equity Fund (hereinafter referred to as “Proponent”), who has submitted a shareholder proposal (hereinafter referred to as “the Proposal”) to Gilead Sciences (hereinafter referred to as “Gilead” or the “Company”). This letter is in response to the letter dated January 18, 2019 sent to the Office of Chief Counsel by Marc Gerber of Skadden, Arps, Slate, Meagher & Flom LLP, in which it contends that the Proposal may be excluded from the Company's 2019 proxy statement under Rule 14a-8(b)(1), 14a-8(f)(1), and 14a-8(i)(7), its second letter in this matter. I have reviewed the Proposal and the Company's letter, and based upon the foregoing, as well as upon a review of Rule 14a-8, it is my opinion that the Proposal must be included in Gilead's 2019 proxy statement because (1) the proof of ownership letter provided by the Proponent demonstrates that the Proponent held the shares on the day of submission and (2) the Proposal focuses on a significant policy issue—how the Company is allocating its tax savings under the Tax Cuts and Jobs Act—that transcends the day-to-day business of Gilead and does so without micromanaging the Company. Therefore, we respectfully request that the Staff not issue the no-action letter sought by the Company. In accordance with Rule 14a-8(j), a copy of this letter is also being sent to Gilead and Skadden, Arps, Slate, Meagher & Flom LLP at [marc.gerber@skadden.com](mailto:marc.gerber@skadden.com).

**I. The Portfolio 21 Global Equity Fund has demonstrated eligibility to file the Proposal**

As stated in our first letter the Proponents provided proof of ownership with a November 26, 2018 letter from US Bank, the custodian of the shares, which states that as of November 26, 2018 that “These 60,000 shares have been held in this account *continuously* for at least one year prior to November 21, 2018.” (emphasis added). This means that US Bank is confirming ownership from at least November 21, 2017 through the date of the letter November 26, **2018**. This is a span of time that includes November 21, 2018.

There is no legitimate question that the Proponent held the shares on November 21, 2018.

**II. The Proposal focuses on a significant social policy issue confronting Gilead and is therefore appropriate for shareholder consideration.**

We maintain that the allocation of tax savings as a result of the Tax Cuts and Jobs Act is a significant policy issue, facing the healthcare and pharmaceutical industries. The following articles have been published since our last letter dated January 11, 2019. Again, this reinforces the fact that this issue transcends the ordinary business of the Company because it is a significant policy issue and subject to widespread public interest.

- Did Trump's Tax Cuts boost hiring? Most Companies Say No  
<https://www.pbs.org/newshour/economy/making-sense/did-trumps-tax-cuts-boost-hiring-most-companies-say-no>  
"According to a survey by the National Association for Business Economics...Eighty-four percent of businesses said they didn't accelerate hiring because of the 2017 Tax Cuts and Jobs Act"
- One Year Later, the TCJA Fails to Live Up to Its Proponents' Promises  
<https://www.americanprogress.org/issues/economy/reports/2018/12/20/464534/one-year-later-tcja-fails-live-proponents-promises/>  
"The TCJA has not produced any economic miracles. Despite massive federal borrowing, job creation continues at the same rate as it did before Congress passed the tax law."
- Just 4% of companies boosted hiring because of tax cuts  
<https://www.cnn.com/2019/01/28/business/tax-cuts-jobs-business-spending-nabe/index.html>
- The tax cut investment 'boom' is already over. Some say it never really started  
<https://www.cnn.com/2019/01/23/business/investment-boom-tax-cuts-economy/index.html>  
"There hasn't been a huge surge in response to tax reform," said Eric Zwick, a professor at the University of Chicago Booth School of Business who studies the interaction between public policy and corporate behavior."

Again, it is important to emphasize that the Proposal does not – as the Company argues – focus excessively on employee wages. The resolved clause makes no mention of employee wages at all. The recommendation is simply for “a report describing how the company plans to allocate tax savings as a result of the TCJA”. There is no emphasis on employee wages whatsoever. As stated in our previous letter, the Company could issue the recommended report without any discussion of employee wages at all. While workers are also discussed, it is not by any means the only or predominant focus of the Proposal. As demonstrated above and in the previous letter the issue of corporate tax savings allocation transcends ordinary business because it is a significant policy issue and subject to widespread public interest.

Finally, *Petsmart, Inc. (March 2011)*, cited to by the Company, is distinguishable from the Proposal because its resolved clause addressed multiple and unspecified laws: “the Animal Welfare Act, the Lacey Act, or any state law equivalents.”<sup>1</sup> (emphasis added). As the Staff concluded, “the scope of the laws covered by the proposal is ‘fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.’” In short, the *Petsmart* proposal was overbroad. Conversely, the Proposal at hand is very specific and limited to the TCJA, which itself is the

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<sup>1</sup> <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2011/peta032411-14a8.pdf>

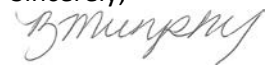
subject of widespread public debate. The dissimilarity of these cases should preclude the Staff from using the *Petsmart, Inc* no-action letter as a basis for excluding the Proposal.

### III. Conclusion

In conclusion, we respectfully request the Staff to inform the Company that Rule 14a-8 requires a denial of the Company's no-action request. As demonstrated above and in our first response letter, the Proposal is not excludable under Rule 14a-8. The issue of how Gilead is allocating the newly saved billions of dollars as a result of the Tax Cuts and Jobs Act transcends day-to-day business and does so without micromanaging the Company.

Please contact me at (617) 532-6662 or [bmurphy@trilliuminvest.com](mailto:bmurphy@trilliuminvest.com) with any questions related to this matter, or if the Staff wishes any further information.

Sincerely,



Brianna Murphy  
Vice President, Shareholder Advocate  
Trillium Asset Management

Cc: Marc Gerber at [marc.gerber@skadden.com](mailto:marc.gerber@skadden.com)  
Skadden, Arps, Slate, Meagher & Flom LLP

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**BY EMAIL** (shareholderproposals@sec.gov)

January 18, 2019

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

RE: Gilead Sciences, Inc. – 2019 Annual Meeting  
Supplement to Letter dated December 21, 2018  
Relating to Shareholder Proposal of the  
Portfolio 21 Global Equity Fund

Ladies and Gentlemen:

We refer to our letter dated December 21, 2018 (the “No-Action Request”), pursuant to which we requested that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with our view that Gilead Sciences, Inc., a Delaware corporation (“Gilead”), may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by the Portfolio 21 Global Equity fund (“Portfolio 21”), with Trillium Asset Management, LLC (“Trillium”) authorized to act on its behalf (Portfolio 21 and Trillium are referred to collectively as the “Proponent”), from the proxy materials to be distributed by Gilead in connection with its 2019 annual meeting of shareholders (the “2019 proxy materials”).

This letter is in response to the letter to the Staff, dated January 11, 2019, submitted by the Proponent (the “Proponent’s Letter”), and supplements the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter is also being sent to the Proponent.

**I. The Proponent Failed to Provide Proof of the Requisite Stock Ownership After Receiving Notice of Such Deficiency.**

As noted in the No-Action Request, the Staff has consistently permitted exclusion of proposals under Rule 14a-8(f)(1) when the proponent provided proof of ownership of the company’s securities as of a date prior to the date of submission of the proposal, without providing proof of ownership of the company’s securities through *and including* the date of submission as required by Rule 14a-8(b)(1).

In this instance, although the Proponent’s Letter points to the fact that the letter from US Bank purporting to verify Portfolio 21’s ownership of the requisite amount of Gilead common stock (the “Broker Letter”) was dated November 26, 2018, the Broker Letter explicitly speaks only to Portfolio 21’s ownership during a period of time that does not include the date the Proponent submitted the Proposal. Specifically, as described in the No-Action Request, the Broker Letter provided by the Proponent stated that Portfolio 21 owned the requisite amount of Gilead common stock “continuously for at least one year *prior to* November 21, 2018” (emphasis added). Thus, regardless of the date of the Broker Letter, the Broker Letter is silent about Portfolio 21’s ownership of Gilead common stock on November 21, 2018—the date the Proposal was submitted. Accordingly, as described in the No-Action Request, the Proposal is excludable under Rule 14a-8(b)(1) and Rule 14a-8(f)(1).

**II. The Proposal Deals with Matters Relating to Gilead’s Ordinary Business Operations.**

The Proponent’s Letter contends that the Proposal is not excludable under Rule 14a-8(i)(7) because it focuses on a significant policy issue, namely, how companies allocate tax savings that result from the passage of the Tax Cuts and Jobs Act. When the Staff recognizes a new significant policy issue, it determines whether such issue has been the subject of a consistent or sustained level of widespread public debate. *See, e.g., Verizon Communications Inc.* (Feb. 13, 2012); *Comcast Corp.* (Feb. 15, 2011). Despite the assertions in the Proponent’s Letter, the Staff has not determined that the issue of how companies allocate tax savings received due to the passage of the recent Tax Cuts and Jobs Act is a significant policy issue, and the Proponent’s Letter fails to demonstrate that such issue has been the subject of a sufficiently consistent or sustained level of widespread public debate so as to rise to the level of a significant policy issue.



Further, even if, for the sake of argument, the Proposal touches upon a non-ordinary business matter—whether a significant policy issue or otherwise—such fact would not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses on a non-ordinary business matter or also deals with matters related to the company’s ordinary business operations. In *PetSmart, Inc.* (Mar. 24, 2011), for example, the proposal called for the company’s suppliers to certify that they had not violated certain laws regarding the humane treatment of animals. Even though the Staff had determined that the humane treatment of animals was a non-ordinary business matter, the Staff granted relief to exclude the proposal given that the scope of the laws covered by the proposal were “fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping” and therefore determined that the proposal’s focus was not confined to the humane treatment of animals.

As in *PetSmart*, even though the Proposal may touch upon the Tax Cuts and Jobs Act, the Proposal is extremely broad and implicates myriad ordinary business matters. In particular, the Proposal’s request for a report describing how Gilead plans to allocate funds that may become available as a result of the Tax Cuts and Jobs Act implicates the management of Gilead’s workforce, the management of Gilead’s expenses, the manner in which Gilead develops its annual budget and operating plan, employee compensation and benefits and product research and development. As described in the No-Action Request, the Staff has consistently concluded that such matters constitute ordinary business matters and therefore, proposals dealing with such topics are excludable under Rule 14a-8(i)(7). Indeed, the Proponent’s Letter acknowledges the breadth of topics that are implicated by the Proposal, including, among others, actions Gilead could take to “strengthen [its] bottom line, invest in capital improvements, fund R&D, make acquisitions and pass savings onto shareholders.” Thus, the Proposal extends well beyond any discernable non-ordinary business matter and instead delves into a wide array of aspects concerning Gilead’s ordinary business operations. Therefore, as described in the No-Action Request, the Proposal is excludable under Rule 14a-8(i)(7).

### **III. Conclusion**

For the reasons stated above and in the No-Action Request, we respectfully request that the Staff concur that it will take no action if Gilead excludes the Proposal from its 2019 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in

Office of Chief Counsel  
January 18, 2019  
Page 4

support of Gilead's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

cc: Brett A. Pletcher  
Executive Vice President, General Counsel and Chief Compliance Officer  
Gilead Sciences, Inc.

Brianna Murphy  
Vice President, Shareholder Advocacy & Corporate Engagement  
Trillium Asset Management, LLC

January 11, 2019

VIA email - [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: Gilead Sciences – Shareholder proposal submitted by Portfolio 21 Global Equity Fund

Dear Sir/Madam:

This letter is submitted by Trillium Asset Management on behalf of the Portfolio 21 Global Equity Fund (hereinafter referred to as “Proponent”), who have submitted a shareholder proposal (hereinafter referred to as “the Proposal”) to Gilead Sciences (hereinafter referred to as “Gilead” or the “Company”). This letter is in response to the letter dated December 21, 2018 sent to the Office of Chief Counsel by Marc Gerber of Skadden, Arps, Slate, Meagher & Flom LLP, in which it contends that the Proposal may be excluded from the Company's 2019 proxy statement under Rule 14a-8(b)(1), 14a-8(f)(1), and 14a-8(i)(7). I have reviewed the Proposal and the Company's letter, and based upon the foregoing, as well as upon a review of Rule 14a-8, it is my opinion that the Proposal must be included in Gilead's 2019 proxy statement because (1) the proof of ownership letter provided by the Proponent demonstrates that the Proponent held the shares on the day of submission and (2) the Proposal focuses on a significant policy issue—how the Company is allocating its tax savings under the Tax Cuts and Jobs Act—that transcends the day-to-day business of Gilead and does so without micromanaging the Company. Therefore, we respectfully request that the Staff not issue the no-action letter sought by the Company.

Pursuant to Staff Legal Bulletin 14D (November 7, 2008) we are filing our response via e-mail in lieu of paper copies and are providing a copy to Brett Pletcher, Gilead Science's Executive Vice President, General Counsel and Chief Compliance Officer, at [brett.pletcher@gilead.com](mailto:brett.pletcher@gilead.com) and Marc Gerber of Skadden, Arps, Slate, Meagher & Flom LLP at [Marc.Gerber@Skadden.com](mailto:Marc.Gerber@Skadden.com).

### **The Proposal**

The Proposal, the full text of which is attached as Attachment A, requests:

Shareholders request the board of directors to issue a report describing how the company plans to allocate tax savings as a result of the TCJA. This report should be prepared at reasonable cost, in a reasonable time, and omit proprietary information.

### **Analysis**

#### **The Trillium P21 Global Equity Fund has demonstrated eligibility to file this proposal**

The Company argues that the proof of ownership is inadequate because it does not include November 21, 2018, the date of submission. But it arrives at this conclusion by misreading the proof of ownership letter. The Proponents provided proof of ownership with a November 26, 2018 letter from US Bank, the

custodian of the shares, which states that as of November 26, 2018 that “These 60,000 shares have been held in this account *continuously* for at least one year prior to November 21, 2018.” (emphasis added). This means that US Bank is confirming ownership from at least November 21, 2017 through the date of the letter November 26, **2018**. This is a span of time that includes November 21, 2018.

It is worth noting that in public meetings with investors and issuers in recent years, the Staff has frowned on excessive parsing and unreasonable demands made in issuer deficiency letters. They have urged issuers to approach these matters in a spirit of common sense that does not use a disproportionate amount of Staff time and resources. There is no legitimate question that the Proponent held the shares on November 21, 2018.

**The Proposal focuses on a significant social policy issue confronting Gilead and is therefore appropriate for shareholder consideration.**

The question that a 14a-8(i)(7) analysis must answer is whether the subject matter of the proposal is subject matter that transcends the ordinary business of the company because it is a significant policy issue. The answer to that question is clearly yes because how companies allocate tax savings as a result of the Tax Cuts and Jobs Act is subject to widespread public interest. The evidence to support this conclusion is voluminous:

- As declared by the White House, “the TCJA was the most significant Federal tax reform enacted in the United States in recent decades.” The TCJA reduced the corporate tax rate from 35% to 21% - putting billions of dollars back with corporations. The goal of this was for corporations to take the tax savings and use them invest in their businesses, to increase economic growth and output, and boost wages.<sup>1</sup>
- In an interview former House Speaker Paul Ryan stated “...businesses like the National Association of Business Manufacturers surveys which show the vast majority of businesses are going to do just what we say: reinvest in their workers, reinvest in their factories, pay people more money, higher wages. Workers benefit through this by higher wages. It’s not a question of if, it’s a question of how much they benefit.”<sup>2 3</sup>
- “One Year Later Benefits from Corporate Tax Cut Seem Muted” “Twelve months after Congress cut business tax rates and sped up deductions to set off a capital spending boom, the results are proving modest at best. ... ‘The tax package did not stimulate or spark a boom in business investment,’ said Gregory Daco, chief U.S. economist for consulting firm Oxford Economics.” <https://www.wsj.com/articles/one-year-later-benefits-from-corporate-tax-cut-seem-muted-11545494400>
- “Trump’s Tax Cut One Year Later: What Happened?” Some companies followed through on commitments to pass a portion of \$1.5 trillion tax cut onto employees through one-time

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<sup>1</sup> [https://www.whitehouse.gov/wp-content/uploads/2018/02/WH\\_CuttingTaxesForAmericanWorkers\\_Feb2018.pdf](https://www.whitehouse.gov/wp-content/uploads/2018/02/WH_CuttingTaxesForAmericanWorkers_Feb2018.pdf)

<sup>2</sup> <http://fortune.com/2017/12/20/savannah-guthrie-paul-ryan-gop-tax-bill/>

<sup>3</sup> [https://www.realclearpolitics.com/video/2017/12/20/paul\\_ryan\\_to\\_today\\_show\\_tax\\_bill\\_is\\_not\\_a\\_fantasy.html](https://www.realclearpolitics.com/video/2017/12/20/paul_ryan_to_today_show_tax_bill_is_not_a_fantasy.html)

bonuses and investments while others laid workers off. Of note, companies have continued to discuss the tax bill with shareholders: “An analysis of earnings calls by Hamilton Place Strategies found that in the third quarter of this year, large companies discussed tax reform more than any policy topic.”

<https://www.nytimes.com/2018/12/27/us/politics/trump-tax-cuts-jobs-act.html>

- “Who Benefits From The Tax Cut 10 Months Later” “So far the [tax] cuts have not been linked to an increase in labor share or more investments”  
<https://www.forbes.com/sites/teresaghilarducci/2018/09/28/who-benefits-from-the-tax-cut-10-months-later/#3b52781a26bb>
- “Beyond the Budget: How the Tax Cuts and Jobs Act Increases Inequality and Exacerbates Our High-Profit, Low-Wage Economy” “[TCJA] incentivizes powerful corporations and their executives to take home and keep the lion’s share of the winnings, at the expense of corporate investments in higher wages or in innovation and expansion that will lead to jobs.”  
<http://rooseveltinstitute.org/beyond-budget/>
- “Trump’s Tax Cut Was Supposed to Change Corporate Behavior. Here’s What Happened” “Nearly a year after the tax cut, economic growth has accelerated. Wage growth has not. Companies are buying back stock and business investment is a mixed bag”  
<https://www.nytimes.com/2018/11/12/business/economy/trumps-tax-cut-was-supposed-to-change-corporate-behavior-heres-what-happened.html>
- “Trump’s Tax Cut Hasn’t Done Anything for Workers” “Huge, immediate gains for wealthy shareholders combined with tepid increases in business investment and decreases in real wages don’t paint a flattering picture of the tax cut’s impact so far.”  
<https://www.bloomberg.com/opinion/articles/2018-07-18/trump-s-tax-cut-hasn-t-done-anything-for-workers>
- In a poll, when Americans were asked what percentage of corporate tax savings should be allocated to seven categories, responses indicated that fifty-two percent thought tax savings should go towards worker pay and/or benefits, creating new jobs, and giving back to communities. Passing savings onto shareholders was the lowest priority at just 10 percent.<sup>4</sup>
- “Competitive Distractions’ Cutting Corporate Tax Rates will Not Create Jobs or Boost Incomes for the Vast Majority of American Families” “cutting corporate tax rates ranks as the *least* effective form of fiscal support for employment generation”<sup>5</sup>  
<https://www.epi.org/publication/competitive-distractions-cutting-corporate-tax-rates-will-not-create-jobs-or-boost-incomes-for-the-vast-majority-of-american-families/>
- The Business Roundtable expected the Tax Cuts and Jobs act will support long-term economic growth “as companies increase their investments in U.S. projects, technologies, and workers in

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<sup>4</sup> <https://justcapital.com/reports/the-just-capital-rankings-on-corporate-tax-reform/>

<sup>5</sup> <https://www.epi.org/publication/competitive-distractions-cutting-corporate-tax-rates-will-not-create-jobs-or-boost-incomes-for-the-vast-majority-of-american-families/>

the months and years to come.” <https://www.businessroundtable.org/policy-perspectives/tax-fiscal-policy/economic-benefits-of-tax-reform>

- The Chamber of Commerce reported on how the tax reform has impacted businesses and consumers six months after its passage. <https://www.uschamber.com/series/above-the-fold/quick-take-your-update-tax-reform-six-months-later>
- “Data continues to show little evidence that tax cuts are trickling down to typical workers, and now House Republicans want a do-over” <https://www.epi.org/blog/data-continues-to-show-little-evidence-that-tax-cuts-are-trickling-down-to-typical-workers-and-now-house-republicans-want-a-do-over/>
- ThinkProgress found that out of the \$1 trillion dollars it costs to lower the corporate tax rate to 21 percent, corporations were only spending .13 percent of that amount on bonuses for their workers.<sup>6</sup> <https://thinkprogress.org/big-pharma-reap-rewards-from-gop-tax-bill-1c866984d78a/>
- “New Report: U.S. Corporations Are Splurging on Stock Buybacks while Worker Wages Stagnate” “Buybacks boost share prices and create a windfall for executives and speculators but leave little to invest in workers’ wages and future growth.” “Buybacks are only becoming more pervasive since the Trump GOP tax cuts were enacted in December 2017. In the first quarter of 2018, S&P 500 companies [completed a record \\$187.2 billion in buybacks](#), according to S&P Dow Jones indices” <http://rooseveltinstitute.org/new-report-us-corporations-are-splurging-stock-buybacks/>

Not only is the Proposal squarely focused on a significant policy issue, but it is clearly a significant policy issue facing the healthcare and pharmaceutical industries:

- The size of tax funds saved and the usage of these funds by drug makers has been significant enough to cause Congress to question the industry and pointing out that many companies have used the funds to buy back shares rather than allocate the funds to other areas such as lowering prices.<sup>7</sup> More than a dozen members of Congress wrote letters to five pharmaceutical companies calling into question the companies’ use of the tax savings. The letters went as far as to suggest in-depth hearings. Representative Jan Schakowsky: “It is unconscionable that these massive corporations are using their billion-dollar tax savings to benefit wealthy stockholders instead of to make their drugs more affordable.” <https://schakowsky.house.gov/press-releases/schakowsky-and-colleagues-press-pharma-execs-on-tax-dodging-drug-pricing-and-stock-buybacks/>
- “Congress to Drug Makers: Why Stock Buybacks Over Lowered Drug Prices?” <https://www.wsj.com/articles/drug-companies-draw-fire-for-not-using-tax-savings-to-lower-drug-prices-1544101200>
- “Senator Asks Drug Companies What They’ll Do With Extra Cash From Big Tax Cut” In questioning five drug companies US Senator Tina Smith “wants the pharmaceutical companies

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<sup>6</sup> <https://thinkprogress.org/big-pharma-reap-rewards-from-gop-tax-bill-1c866984d78a/>

<sup>7</sup> <https://www.wsj.com/articles/drug-companies-draw-fire-for-not-using-tax-savings-to-lower-drug-prices-1544101200>

to tell her what they plan to do with the cash the quintet will realize from the Tax Cuts and Jobs Act.” <https://www.thestreet.com/story/14510651/1/senator-asks-big-pharma-what-they-will-do-with-cash-from-tax-cuts.html>

- Tax cuts will save health care companies billions — but not patients” “The tax law is ‘unlikely to lead to significant, long-lasting savings for patients,’ said Erik Gordon, a health care business professor at the University of Michigan.” <https://www.axios.com/health-care-industry-tax-savings-1519943623-3eb9c0dd-a89b-496b-a6e4-96977ad6d969.html>
- There is widespread concern that the billions of dollars saved from this legislation are going towards buybacks, dividends, and acquisitions with only a very small fractions allocated to employees. For example, four of the largest pharmaceutical companies have collectively announced \$40 billion in share buybacks since the tax bill passage.

Multinational drug companies like Gilead were some of the largest beneficiaries of the TCJA. News outlet Axios found that just nine drug companies are spending a combined \$50 billion on share buy backs.<sup>8</sup> The repurchasing of shares exclusively benefits investors. <https://www.axios.com/pharma-share-buyback-tax-reform-40a30b93-6149-4c67-bd65-cd05ee814215.html>

Finally, it is important to emphasize that the Proposal does not – as the Company argues – focus excessively on employee wages. First, the resolved clause makes no mention of employee wages at all. The recommendation is simply for “a report describing how the company plans to allocate tax savings as a result of the TCJA”. There is no emphasis on employee wages whatsoever. In fact, the Company could issue the recommended report without any discussion of employee wages at all. Second, the whereas clauses cover a wide range of ways in which Gilead could allocate the tax savings including long-term investment in the American economy; creation of long-term value for shareholders; strengthen the bottom line; invest in communities; invest in capital improvements; fund R&D; make acquisitions; and pass savings onto shareholders. While workers are also discussed, it is not by any means the only or predominant focus of the Proposal. Finally, the title of the Proposal is not focused on employees and instead positions the Proposal at the generalized level of simply tax savings allocation.

For these reasons *Merck & Co* (Feb 16, 2016) and *The Goldman Sachs Group, Inc.* (March 12, 2010), cited by Gilead should be distinguished from the Proposal because those proposals were exclusively focused on employees. Also of note, in *BB&T Corporation* (January 17, 2017), the proposal requested that the compensation committee take into consideration the pay grades and/or salary ranges of all classifications of company employees when setting target amounts for CEO compensation. The Staff concluded that the proposal, which explicitly touched on employee pay, was permissible under rule 14a-8(i)(7).

### **The Proposal does not seek to micromanage Gilead.**

The Proposal does not request Gilead take any specific actions other than to simply “**describe** how the company plans to allocate tax savings as a results of the TCJA.” (emphasis added) Gilead argues that it

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<sup>8</sup> <https://www.axios.com/pharma-share-buyback-tax-reform-40a30b93-6149-4c67-bd65-cd05ee814215.html>

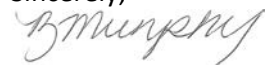
should be permitted to exclude the Proposal because the Proposal is “probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgement.” Contrary to the Company’s arguments, it is evident that the Proposal does not infringe on management’s ability to run the company on a day-to-day basis. Nor does the Proposal mandate or even suggest how the Company manages expenses, develops a budget, operating plan, employee compensation, benefits, or research and development. The Company is free to address these issues in whatever manner it chooses. The simple request of the Proposal of whether or not a company should issue a report on the allocation of tax savings is easily understood by shareholders and does not delve too deeply into the Company’s operations. In fact, a significant number of companies have already disclosing their intended used of the tax savings including Abbvie, Aetna, Aflac, Amgen, American Express, Anthem, Apple, AT&T, Bank of America, Boeing, Cisco, Comcast, CVS, Exxon, Home Depot, Pfizer, Lowe’s, PNC, Union Pacific, United Health, UPS, US Bancorp, Verizon, and Walt Disney.<sup>9</sup>

## Conclusion

In conclusion, we respectfully request the Staff to inform the Company that Rule 14a-8 requires a denial of the Company’s no-action request. As demonstrated above, the Proposal is not excludable under Rule 14a-8. The issue of how Gilead is allocating the newly saved billions of dollars as a result of the Tax Cuts and Jobs Act transcends day-to-day business and does so without micromanaging the Company.

Please contact me at (617) 532-6662 or [bmurphy@trilliuminvest.com](mailto:bmurphy@trilliuminvest.com) with any questions related to this matter, or if the Staff wishes any further information.

Sincerely,



Brianna Murphy  
Vice President, Shareholder Advocate  
Trillium Asset Management

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<sup>9</sup> <https://www.bloomberg.com/opinion/articles/2018-03-05/five-charts-that-show-where-those-corporate-tax-savings-are-going>



## Corporate Tax Savings Allocation Disclosure

**WHEREAS:** The passage of the Tax Cuts and Jobs Act (TCJA) permanently reduced the corporate tax rate from 35 percent to 21 percent and eliminated provisions requiring companies pay taxes on money earned abroad. With these changes it is estimated that America’s largest corporations by market capitalization will receive a windfall of \$150 billion.<sup>10</sup> One of the overarching goals of the legislation is to boost economic growth and companies’ long-term investment in the American economy, however without more detailed information it is unclear whether a company’s intended use of the assets aligns with this goal.

To date, Gilead has not provided adequate information indicating how the company plans to use tax savings gained as a result of the TCJA.

We believe investors should have ample information regarding how changes to the tax law will impact a company’s long-term strategy. Larry Fink, CEO of BlackRock recently stated:

“Companies have not been explicit enough about their long-term strategies. In the United States, for example, companies should explain to investors how the significant changes to tax law fit into their long-term strategy. What will you do with increased after-tax cash flow, and how will you use it to create long-term value? This is a particularly critical moment for companies to explain their long-term plans to investors.”

The tax cuts present Gilead with an opportunity to strengthen the bottom line, invest in workers, benefits, jobs, communities, capital investments, R&D, and make acquisitions. Without any specificity or discussion of these investments, investors cannot understand how the tax law will impact a company’s long-term strategy.

Motivated by the tax changes, industry peer Amgen announced plans to open a biologics plant adding 300 new jobs.<sup>11</sup> Dozens of companies have also shared how they will spend the tax savings. Boeing will use the funds on workforce development, infrastructure enhancement, and corporate giving.<sup>12</sup> Target plans to use 100 percent of its tax savings on workers.

The focus on what companies do with tax benefits is growing during a time when wage growth remains stagnant and income inequality has widened.

In a poll, when Americans were asked what percentage of corporate tax savings should be allocated to seven categories, responses indicated that fifty-two percent thought tax savings should go towards worker pay and/or benefits, creating new jobs, and giving back to communities. Passing savings onto shareholders was the lowest priority at just 10 percent.

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<sup>10</sup> [https://illinoistreasurer.gov/TWOCMS/media/doc/Report%20--%20Tax%20Savings%20Plans%20Among%20U.S.%20Companies%20\(October%202018\).pdf](https://illinoistreasurer.gov/TWOCMS/media/doc/Report%20--%20Tax%20Savings%20Plans%20Among%20U.S.%20Companies%20(October%202018).pdf)

<sup>11</sup> <https://www.amgen.com/media/news-releases/2018/04/amgen-announces-rhode-island-will-be-location-of-first-us-next-generation-biomanufacturing-plant/>

<sup>12</sup> <https://boeing.mediaroom.com/2017-12-20-Boeing-CEO-Muilenburg-Appraises-Tax-Law-Announces-300-Million-in-Employee-Related-and-Charitable-Investments-to-Spur-Innovation-and-Growth>

Earlier this year Illinois Treasurer Frerichs and JUST Capital issued a survey to S&P 100 companies with a series of questions regarding planned allocation of corporate tax savings. Gilead declined to complete the survey.

**RESOLVED:** Shareholders request the board of directors to issue a report describing how the company plans to allocate tax savings as a result of the TCJA. This report should be prepared at reasonable cost, in a reasonable time, and omit proprietary information.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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202-661-8280  
EMAIL ADDRESS  
MARC.GERBER@SKADDEN.COM

**BY EMAIL** (shareholderproposals@sec.gov)

December 21, 2018

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

RE: Gilead Sciences, Inc. – 2019 Annual Meeting  
Omission of Shareholder Proposal of the  
Portfolio 21 Global Equity Fund

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, Gilead Sciences, Inc., a Delaware corporation (“Gilead”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with Gilead’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by the Portfolio 21 Global Equity Fund (“Portfolio 21”), with Trillium Asset Management, LLC (“Trillium”) authorized to act on its behalf (Portfolio 21 and Trillium are referred to collectively as the “Proponent”), from the proxy materials to be distributed by Gilead in connection with its 2019 annual meeting of shareholders (the “2019 proxy materials”).

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously

sending a copy of this letter and its attachments to the Proponent as notice of Gilead's intent to omit the Proposal from the 2019 proxy materials.

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

## **I. The Proposal**

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

**RESOLVED:** Shareholders request the board of directors to issue a report describing how the company plans to allocate tax savings as a result of the TCJA. This report should be prepared at reasonable cost, in a reasonable time, and omit proprietary information.

## **II. Bases for Exclusion**

We hereby respectfully request that the Staff concur in Gilead's view that it may exclude the Proposal from the 2019 proxy materials pursuant to:

- Rule 14a-8(b)(1) and Rule 14a-8(f)(1) because the Proponent failed to provide proof of the requisite stock ownership after receiving notice of such deficiency; and
- Rule 14a-8(i)(7) because the Proposal deals with matters relating to Gilead's ordinary business operations.

## **III. Background**

On November 26, 2018, Gilead received the Proposal, accompanied by a cover letter from Trillium and an authorization letter from Portfolio 21 authorizing Trillium to act on its behalf with respect to the Proposal, each dated November 21, 2018. FedEx tracking reflected that the Proposal was submitted on November 21, 2018. After confirming that Portfolio 21 was not a shareholder of record, on December 3, 2018, Gilead sent a letter to Trillium (the "Deficiency Letter"), via email, requesting a written statement from the record owner of the Portfolio 21's shares that Portfolio 21 beneficially held the requisite number of shares of Gilead common stock continuously for at least one year preceding and including November 21, 2018, the date the Proposal was submitted to Gilead by the Proponent. On December 6, 2018, Gilead received a letter from Trillium, dated November 29, 2018, accompanied by a letter from US Bank, dated November 26, 2018, which stated that Portfolio 21 held the requisite number of shares "continuously for at least one year prior to November 21, 2018" (the "Broker Letter").

Copies of the Proposal, cover letter, authorization letter, FedEx tracking information reflecting the date of submission, Deficiency Letter, Broker Letter and related correspondence are attached hereto as Exhibit A.

**IV. The Proposal May Be Excluded Pursuant to Rule 14a-8(b)(1) and Rule 14a-8(f)(1) Because the Proponent Failed to Provide Proof of the Requisite Stock Ownership After Receiving Notice of Such Deficiency.**

Rule 14a-8(b)(1) provides that, in order to be eligible to submit a proposal, a shareholder must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal for at least one year by the date the proposal is submitted and must continue to hold those securities through the date of the meeting. If the proponent is not a registered holder, he or she must provide proof of beneficial ownership of the securities by either providing a "written statement from the 'record' holder of [its] securities" or, if applicable, by providing the company with copies of certain filings with the Commission showing adequate ownership. Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to provide evidence that it meets the eligibility requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the deficiency and the proponent fails to correct the deficiency within 14 days of receiving such notice.

In accordance with these principles, the Staff has consistently permitted exclusion of proposals under Rule 14a-8(f)(1) when the proponent provided proof of ownership of the company's securities as of a date prior to the date of submission of the proposal, without providing proof of ownership of the company's securities though and including the date of submission. *See, e.g., 3M Co.* (December 31, 2014) (permitting exclusion under Rule 14a-8(f)(1) where the proponent established requisite ownership of the company's securities as of one day prior to the date of submission of the proposal); *Verizon Communications Inc.* (Jan. 12, 2011) (same); *see also Deere & Co.* (Nov. 16, 2011) (permitting exclusion under Rule 14a-8(f)(1) where the proponent established requisite ownership of the company's securities as of three days prior to the date of submission of the proposal). Further, in Staff Legal Bulletin No. 14 (July 13, 2001), the Staff explained that "a statement from the record holder verifying that the shareholder owned the securities continuously for one year as of May 30" would not be sufficient evidence of continuous ownership for the requisite period for a proposal submitted on June 1 of the same year. In addition, in Staff Legal Bulletin No. 14G (Oct. 16, 2012), the Staff noted that "a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding *and including* the date the proposal was submitted, as required by Rule 14a-8(b)(1)" (emphasis added).

Consistent with the precedent described above, the Proposal may be excluded under Rule 14a-8(f)(1) because the Proponent submitted the Proposal on November 21, 2018, as verified by the FedEx tracking information, but failed to provide proof of ownership of Gilead stock for the one year period preceding and including that date. Rather, following Gilead's sending of the Deficiency Letter, the Broker Letter provided by the Proponent stated that the Proponent owned the requisite amount of Gilead stock "continuously for at least one year *prior to* November 21,

2018” (emphasis added). Based upon the plain language of the Broker Letter, the Proponent has not provided proof of ownership for the one year period preceding and including November 21, 2018, the date the Proposal was submitted.

Accordingly, consistent with the precedent described above, Gilead believes that the Proposal may be excluded from its 2019 proxy materials pursuant to Rule 14a-8(b)(1) and Rule 14a-8(f)(1) as the Proponent has failed to provide timely proof of the requisite stock ownership after receiving notice of such deficiency.

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

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company’s proxy materials if the proposal “deals with matters relating to the company’s ordinary business operations.” In Exchange Act Release No. 34-40018 (May 21, 1998), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to “micro-manage” the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

The Commission also has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal is within the ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983); *see also Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report “describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making,” noting that the proposal related to the ordinary business matter of the “nature, presentation and content of programming and film production”).

Decisions relating to how a company plans to allocate its funds for various expenditures are ordinary business decisions that are fundamental to management’s ability to run the company on a day-to-day basis and could not, as a practical matter, be subject to direct shareholder oversight. In this instance, the Proposal requests a report “describing how [Gilead] plans to allocate tax savings as a result of the [Tax Cuts and Jobs Act].” Such a report would necessarily require discussion of myriad ordinary business matters. The Proposal’s supporting statement makes clear that the Proponent seeks a wide-ranging discussion of Gilead’s proposed expenditures by suggesting that Gilead use tax savings to “invest in workers, benefits, jobs, communities, capital investments, R&D, and make acquisitions.” Further, the supporting statement notes that other companies will use their tax savings on projects such as “open[ing] a biologics plant adding 300 new jobs” and “workforce development, infrastructure enhancement,

and corporate giving.” The Proposal’s supporting statement suggests that worker compensation should be a central consideration of a company’s spending plans, noting that “wage growth remains stagnant and income inequality has widened” and asserting that a poll has found that respondents believe tax savings from the Tax Cuts and Jobs Act should go to “worker pay and/or benefits [and] creating new jobs.”

The Proposal’s request for a report describing how Gilead plans to spend money that may become available as a result of the Tax Cuts and Jobs Act implicates numerous decisions that Gilead’s management makes on a day-to-day basis, including various matters that the Staff has consistently concluded constitute ordinary business matters such as management of the company’s workforce, management of the company’s expenses, the manner in which the company develops its annual budget and operating plan, employee compensation and benefits and product research and development. *See, e.g., Merck & Co.* (Feb. 16, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that sought to impose limitations on the manner in which the company could hire and promote employees, noting that “[p]roposals concerning a company’s management of its workforce are generally excludable under rule 14a-8(i)(7)”); *FLIR Systems, Inc.* (Feb. 6, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that sought a report describing the company’s strategies on energy use management, noting that “[p]roposals that concern the manner in which a company manages its expenses are generally excludable under [R]ule 14a-8(i)(7)”; *CB Richard Ellis Group, Inc.* (Apr. 15, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that asked the company to initiate an external independent investigation regarding the sufficiency of the internal processes and rules of the company to ensure that its annual business plans are based on realistic and reliable assumptions and to inform shareholders of the outcome of the investigation, noting that “the proposal relates to the manner in which the company develops its annual budget and operating plan”); *The Goldman Sachs Group, Inc.* (Mar. 12, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that sought to introduce a policy limiting the amount available for payment of employee compensation and benefits each year, noting that “[p]roposals that concern general employee compensation matters are generally excludable under rule 14a-8(i)(7)”; *Pfizer Inc.* (Feb. 14, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that asked the company’s board to form a committee to explore certain research programs as relating to the company’s “ordinary business operations (i.e., product research, development and testing).”

The decisions Gilead makes as to how it allocates its funds for various expenditures are fundamental to management’s ability to run the company on a day-to-day basis and cannot, as a practical matter, be subject to shareholder oversight. Accordingly, consistent with the policy considerations underlying the ordinary business exclusion and the precedent described above, Gilead believes that the Proposal may be excluded from its 2019 proxy materials pursuant to Rule 14a-8(i)(7) as relating to its ordinary business operations.

## **VI. Conclusion**

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if Gilead excludes the Proposal from its 2019 proxy materials.

Office of Chief Counsel  
December 21, 2018  
Page 6

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Gilead's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

cc: Brett A. Pletcher  
Executive Vice President, General Counsel and Chief Compliance Officer  
Gilead Sciences, Inc.

Brianna Murphy  
Vice President, Shareholder Advocacy & Corporate Engagement  
Trillium Asset Management, LLC



EXHIBIT A

(see attached)



November 21, 2018

Corporate Secretary  
Gilead Sciences, Inc.  
333 Lakeside Drive  
Foster City, California 94404

Dear Corporate Secretary:

Trillium Asset Management LLC ("Trillium") is an investment firm based in Boston specializing in socially responsible asset management. We currently manage approximately \$2.8 billion for institutional and individual clients.

As requested and authorized by the Portfolio 21 Global Equity Fund, Trillium Asset Management hereby submits the enclosed shareholder proposal with Gilead Sciences for inclusion in the 2019 proxy statement and in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). Per Rule 14a-8, Portfolio 21 Global Equity Fund holds more than \$2,000 of the company's common stock, acquired more than one year prior to today's date and held continuously for that time. As evidenced in the attached letter, Portfolio 21 Global Equity Fund will remain invested in this position continuously through the date of the 2019 annual meeting. We will forward verification on Portfolio 21 Global Equity Fund's behalf of the position separately. Portfolio 21 Global Equity Fund will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

We would welcome discussion with Gilead Sciences about the contents of the proposal.

Please direct any communications to me at (617) 532-6662 or via email at [bmurphy@trilliuminvest.com](mailto:bmurphy@trilliuminvest.com).

We would appreciate receiving a confirmation of receipt of this letter via email.

Sincerely,

A handwritten signature in black ink, appearing to read 'B Murphy', written over a light blue horizontal line.

Brianna Murphy  
Vice President, Shareholder Advocacy & Corporate Engagement  
Trillium Asset Management, LLC

## Corporate Tax Savings Allocation Disclosure

**WHEREAS:** The passage of the Tax Cuts and Jobs Act (TCJA) permanently reduced the corporate tax rate from 35 percent to 21 percent and eliminated provisions requiring companies pay taxes on money earned abroad. With these changes it is estimated that America's largest corporations by market capitalization will receive a windfall of \$150 billion.<sup>1</sup> One of the overarching goals of the legislation is to boost economic growth and companies' long-term investment in the American economy, however without more detailed information it is unclear whether a company's intended use of the assets aligns with this goal.

To date, Gilead has not provided adequate information indicating how the company plans to use tax savings gained as a result of the TCJA.

We believe investors should have ample information regarding how changes to the tax law will impact a company's long-term strategy. Larry Fink, CEO of BlackRock recently stated:

“Companies have not been explicit enough about their long-term strategies. In the United States, for example, companies should explain to investors how the significant changes to tax law fit into their long-term strategy. What will you do with increased after-tax cash flow, and how will you use it to create long-term value? This is a particularly critical moment for companies to explain their long-term plans to investors.”

The tax cuts present Gilead with an opportunity to strengthen the bottom line, invest in workers, benefits, jobs, communities, capital investments, R&D, and make acquisitions. Without any specificity or discussion of these investments, investors cannot understand how the tax law will impact a company's long-term strategy.

Motivated by the tax changes, industry peer Amgen announced plans to open a biologics plant adding 300 new jobs.<sup>2</sup> Dozens of companies have also shared how they will spend the tax savings. Boeing will use the funds on workforce development, infrastructure enhancement, and corporate giving.<sup>3</sup> Target plans to use 100 percent of its tax savings on workers.

The focus on what companies do with tax benefits is growing during a time when wage growth remains stagnant and income inequality has widened.

In a poll, when Americans were asked what percentage of corporate tax savings should be allocated to seven categories, responses indicated that fifty-two percent thought tax savings should go towards worker pay and/or benefits, creating new jobs, and giving back to communities. Passing savings onto shareholders was the lowest priority at just 10 percent.

Earlier this year Illinois Treasurer Frerichs and JUST Capital issued a survey to S&P 100 companies with a series of questions regarding planned allocation of corporate tax savings. Gilead declined to complete the survey.

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<sup>1</sup> [https://illinoistreasurer.gov/TWOCMS/media/doc/Report%20--%20Tax%20Savings%20Plans%20Among%20U.S.%20Companies%20\(October%202018\).pdf](https://illinoistreasurer.gov/TWOCMS/media/doc/Report%20--%20Tax%20Savings%20Plans%20Among%20U.S.%20Companies%20(October%202018).pdf)

<sup>2</sup> <https://www.amgen.com/media/news-releases/2018/04/amgen-announces-rhode-island-will-be-location-of-first-us-next-generation-biomanufacturing-plant/>

<sup>3</sup> <https://boeing.mediaroom.com/2017-12-20-Boeing-CEO-Muilenburg-Approves-Tax-Law-Announces-300-Million-in-Employee-Related-and-Charitable-Investments-to-Spur-Innovation-and-Growth>

**RESOLVED:** Shareholders request the board of directors to issue a report describing how the company plans to allocate tax savings as a result of the TCJA. This report should be prepared at reasonable cost, in a reasonable time, and omit proprietary information.

Brianna Murphy  
Vice President, Shareholder Advocacy  
Trillium Asset Management, LLC  
Two Financial Center  
60 South Street, Suite 1100  
Boston, MA 02111

Fax: 617 482 6179

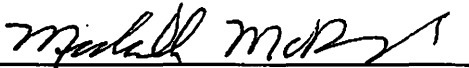
Dear Ms. Murphy:

I hereby authorize Trillium Asset Management LLC to file a shareholder proposal on behalf of Portfolio 21 Global Equity Fund at Gilead Sciences for inclusion in its 2019 proxy materials concerning corporate tax savings disclosure.

Portfolio 21 Global Equity Fund is the beneficial owner of more than \$2,000 worth of Gilead Sciences common stock that Portfolio 21 Global Equity Fund has held continuously for more than one year. Portfolio 21 Global Equity Fund intends to hold the aforementioned shares of stock through the date of the company's annual meeting in 2019.

Portfolio 21 Global Equity Fund specifically gives Trillium Asset Management, LLC full authority to deal, on our behalf, with any and all aspects of the aforementioned shareholder proposal. Portfolio 21 Global Equity Fund intends all communications from the company and its representatives to be directed to Trillium Asset Management, LLC. Portfolio 21 Global Equity Fund understands that its name may appear on the corporation's proxy statement as the filer of the aforementioned proposal

Sincerely,



Michelle McDonough  
Partner

Trillium Asset Management, LLC, Investment Advisor to The Portfolio 21 Global Equity Fund

11/21/18  
DATE

<https://shipping.shipoptima.com/shipment/shipmentCreate.jsf>

ORIGIN ID: LWMA (800) 872-4004

TRILLIUM ASSET MANAGEMENT  
TWO FINANCIAL ST  
80 SOUTH STREET  
BOSTON, MA 02111  
UNITED STATES US

SHIP DATE: 21 NOV 18  
ACTWGT: 1.001 LB  
\*\*\*

BILL SENDER

TO CORPORATE SECRETARY  
GILEAD SCIENCES INC  
333 LAKESIDE DRIVE

FOSTER CITY CA 94404

(650) 574-3000

REF:

INV:

PO:

DEPT:

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# Delivered

## Monday 11/26/2018 at 9:46 am

### DELIVERED

Signed for by: M.WILLIAMS

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**FROM**  
Boston, MA US

**TO**  
Foster City, CA US

### Shipment Facts

<b>TRACKING NUMBER</b> ***	<b>SERVICE</b> FedEx Standard Overnight	<b>WEIGHT</b> 1 lbs / 0.45 kgs
<b>DELIVERED TO</b> Shipping/Receiving	<b>TOTAL PIECES</b> 1	<b>TOTAL SHIPMENT WEIGHT</b> 1 lbs / 0.45 kgs
<b>TERMS</b> Shipper	<b>PACKAGING</b> Your Packaging	<b>SPECIAL HANDLING SECTION</b> Deliver Weekday
<b>STANDARD TRANSIT</b> 11/26/2018 by 3:00 pm	<b>SHIP DATE</b> Wed 11/21/2018	<b>ACTUAL DELIVERY</b> Mon 11/26/2018 9:46 am

### Travel History

[Local Scan Time](#)

Monday, 11/26/2018

9:46 am	Foster City, CA	Delivered
8:18 am	SOUTH SAN FRANCISCO, CA	On FedEx vehicle for delivery

Friday, 11/23/2018

9:43 am	SOUTH SAN FRANCISCO, CA	Delivery exception Business closed - No delivery attempt
9:43 am	SOUTH SAN FRANCISCO, CA	At local FedEx facility
7:42 am	SOUTH SAN FRANCISCO, CA	At local FedEx facility
3:43 am	SAN FRANCISCO, CA	At destination sort facility

# Track your package or shipment with FedEx Tracking

3:00 am	OAKLAND, CA	Departed FedEx location
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Wednesday, 11/21/2018		
10:47 pm	OAKLAND, CA	Arrived at FedEx location
7:14 pm	PORTLAND, OR	Left FedEx origin facility
3:18 pm	PORTLAND, OR	Picked up
2:53 pm	PORTLAND, OR	Picked up Tendered at FedEx Office
2:45 pm		Shipment information sent to FedEx
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December 3, 2018

**BY EMAIL**

Brianna Murphy  
Vice President, Shareholder Advocacy &  
Corporate Engagement  
Trillium Asset Management, LLC  
bmurphy@trilliuminvest.com

RE: Notice of Deficiency

Dear Ms. Murphy:

I am writing to acknowledge receipt of the shareholder proposal (the “Proposal”) submitted by Portfolio 21 Global Equity Fund (the “Proponent”) to Gilead Sciences, Inc. (“Gilead”) pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended, for inclusion in Gilead’s proxy materials for the 2019 Annual Meeting of Stockholders (the “Annual Meeting”). The Proponent requested that all communications regarding the Proposal be directed to you.

Under Rule 14a-8, in order to be eligible to submit a proposal for the Annual Meeting, a proponent must have continuously held at least \$2,000 in market value of Gilead common stock for at least one year, preceding and including the date that the proposal was submitted. For your reference, a copy of Rule 14a-8 is attached to this letter as Exhibit A.

Our records indicate that the Proponent is not a registered holder of Gilead common stock. Please provide a written statement from the record holder of the Proponent’s shares (usually a bank or broker) and a participant in the Depository Trust Company (DTC) verifying that, at the time the Proponent submitted the Proposal, which was November 21, 2018, the Proponent had beneficially held the requisite number of shares of Gilead common stock continuously for at least one year preceding and including November 21, 2018.

In order to determine if the bank or broker holding the Proponent’s shares is a DTC participant, you can check the DTC’s participant list, which is currently available on the Internet at <http://www.dtcc.com/client-center/dtc-directories>. If the

Brianna Murphy  
Trillium Asset Management, LLC  
December 3, 2018  
Page 2

bank or broker holding the Proponent's shares is not a DTC participant, you also will need to obtain proof of ownership from the DTC participant through which the shares are held. You should be able to find out who this DTC participant is by asking the Proponent's broker or bank. If the DTC participant knows the Proponent's broker or bank's holdings, but does not know the Proponent's holdings, the Proponent can satisfy Rule 14a-8 by obtaining and submitting two proof of ownership statements verifying that, at the time the Proposal was submitted, the required amount of shares were continuously held for at least one year – one from the Proponent's broker or bank confirming the Proponent's ownership, and the other from the DTC participant confirming the broker or bank's ownership. For additional information regarding the acceptable methods of proving the Proponent's ownership of the minimum number of shares of Gilead common stock, please see Rule 14a-8(b)(2) in Exhibit A.

Rule 14a-8 requires that the documentation be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Once we receive this documentation, we will be in a position to determine whether the Proposal is eligible for inclusion in the proxy materials for the Annual Meeting. Gilead reserves the right to seek relief from the Securities and Exchange Commission as appropriate.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Amy Kim", with a stylized flourish at the end.

Amy Kim  
Corporate Counsel

Enclosure



November 29, 2018

Via Fedex

Corporate Secretary  
Gilead Sciences, Inc.  
333 Lakeside Drive  
Foster City, California 94404

Dear Corporate Secretary,

In accordance with the SEC Rules, please find the attached custodial letter from Charles Schwab Advisor Services documenting that Portfolio 21 Global Equity Fund holds sufficient company shares to file a proposal under rule 14a-8. Rule 14a-8(f) requires notice of specific deficiencies in our proof of eligibility to submit a proposal. Therefore we request that you notify us if you see any deficiencies in the enclosed documentation.

Please direct any communications to me at (617) 532-6662 or via e-mail at [bmurphy@trilliuminvest.com](mailto:bmurphy@trilliuminvest.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Murphy'.

Brianna Murphy  
Vice President, Shareholder Advocacy & Corporate Engagement  
Trillium Asset Management, LLC



Fund Custody  
Trust Technology and Support  
Services  
1555 N. Rivercenter Drive,  
Suite 302  
Milwaukee, WI 53212  
usbank.com

11/26/2018

Re: Portfolio 21 Global Equity Fund/Acct #

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This letter is to confirm that US Bank holds as custodian for the above client 60,000 shares of common stock in Gilead Sciences Inc. These 60,000 shares have been held in this account continuously for at least one year prior to November 21, 2018

These shares are held at Depository Trust Company under the nominee name US Bank

This letter serves as confirmation that the shares are held by US Bank

Sincerely,

Gregg Miller, Officer



**U.S. BANK NATIONAL ASSOCIATION  
ASST. SECRETARY'S CERTIFICATE**

I, Linda E. Bidon, an Asst. Secretary of U.S. Bank National Association hereby certify that the following is a true and exact extract from the Bylaws of U.S. Bank National Association, a national banking association organized under the laws of the United States (the "Association").

**ARTICLE VI  
CONVEYANCES, CONTRACTS, ETC.**

All transfers and conveyances of real estate, mortgages, and transfers, endorsements or assignments of stock, bonds, notes, debentures or other negotiable instruments, securities or personal property shall be signed by any elected or appointed officer.

All checks, drafts, certificates of deposit and all funds of the Association held in its own or in a fiduciary capacity may be paid out by an order, draft or check bearing the manual or facsimile signature of any elected or appointed officer of the Association.

All mortgage satisfactions, releases, all types of loan agreements, all routine transactional documents of the Association, and all other instruments not specifically provided for, whether to be executed in a fiduciary capacity or otherwise, may be signed on behalf of the Association by any elected or appointed officer thereof.

The Secretary or any Asst. Secretary of the Association or other proper officer may execute and certify that required action or authority has been given or has taken place by resolution of the Board under this Bylaw without the necessity of further action by the Board.

I further certify that the following individuals are duly appointed and qualified officers of the Association authorized to act under Article VI of the Bylaws of the Association and that such authority is in full force and effect as of the date hereof and has not been modified, amended or revoked.

Dale R. Smith	Executive Vice President	Daniel S. Harding	Asst. Vice President	Broderick M. Kothe	Officer
Scott A. Joers	Senior Vice President	Stephanie L. Kaptan	Asst. Vice President	Paul Kuxhaus	Officer
Walter J. Barys	Vice President	Ryan C. Meissen	Asst. Vice President	Ivan Lazaro	Officer
Thomas M. Fuller	Vice President	Micah D. Milbans	Asst. Vice President	See Lor	Officer
Scott B. Habura	Vice President	Kimberly D. Reyes	Asst. Vice President	Yvonne M. Mehsikomer	Officer
Andrew M. Hanson	Vice President	Stephen J. Sorenson	Asst. Vice President	Gregg A. Miller	Officer
Alexander N. Haugen	Vice President	Nicholas G. Storch	Asst. Vice President	Bridget Morgan	Officer
Lindsey S. Kempen	Vice President	Jana Wodrich	Asst. Vice President	Jill L. Mueller	Officer
Scott T. Olson	Vice President	Kimberly A. Angst	Officer	David D. Neumann	Officer
Anne M. Potkay	Vice President	Lorrie A. Birnschein	Officer	Marc R. Nowak	Officer
Brent E. Robinson	Vice President	Rhonda M. Campbell	Officer	Michael J. O'Dwyer	Officer
Joseph A. Skeates	Vice President	Samantha J. Carlton	Officer	Shannon M. Parks	Officer
Eric J. Stefl	Vice President	Benjamin A. Drake	Officer	Randall G. Prideaux Jr.	Officer
Brooke L. Tabbert	Vice President	Brian M. Egner	Officer	Zach K. Potter	Officer
Nicholas D. Beadell	Asst. Vice President	Kristin M. Gelhaar	Officer	Megan M. Ropiak	Officer
Willy V. Bloom	Asst. Vice President	Susan M. Goodwin	Officer	Kelli A. Roth	Officer
Ryan Creegan	Asst. Vice President	Nathaniel L. Hayworth	Officer	Laura J. Schmidt	Officer
Matthew D. Faiman	Asst. Vice President	Bret A. Held	Officer	Christopher J. Schultz	Officer
Roland F. Geilfuss	Asst. Vice President	Alicia M. Hewitt	Officer	Sharon L. Venski	Officer
Jill A. Gilmore	Asst. Vice President	Valerie Jenrich	Officer	Riley W. Deilemann	Officer

IN WITNESS WHEREOF, I have set my hand this 6<sup>th</sup> day of August, 2018.

(No Corporate Seal)

Linda E. Bidon, Asst. Secretary