

January 10, 2008

BY REGULAR & ELECTRONIC MAIL: cfletters@sec.gov

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

Re: **WYETH: Shareholder Proposal of People for the Ethical Treatment of Animals regarding Outsourcing Animal Testing to Foreign Countries**

Ladies and Gentlemen:

This letter is filed in response to a no action letter dated December 21, 2007, submitted to the SEC by Wyeth ("Wyeth" or "the Company"). The Company seeks to exclude a shareholder proposal submitted by PETA relating to Wyeth's outsourcing animal testing to countries such as China, which have no animal welfare laws or protections (hereinafter referred to as the "Outsourcing" resolution).

Wyeth claims that the Outsourcing resolution is substantially the same as resolutions filed in 2004, 2006 and 2007, and should be omitted pursuant to Rule 14a-8(i)(12). Wyeth also argues that the Outsourcing resolution has been substantially implemented and can therefore be excluded under Rule 14a-8(i)(10). It should be noted that the Company's no action letter involving its Rule 14a-8(i)(12) position is practically identical to Pfizer's no action letter, and therefore this challenge will likewise repeat certain of the positions taken in opposition to Pfizer's no action petition.

I. All Previous Resolutions Filed at Wyeth by PETA Over the Past Five Years Are Materially Different from the Outsourcing Resolution.

The Outsourcing resolution reads as follows:

RESOLVED, that the Board report to shareholders on the rationale for increasingly exporting the Company's animal experimentation to countries which have either nonexistent or substandard animal welfare regulations and little or no enforcement. Further shareholders request that the report include information on the extent to which Wyeth requires adherence to U.S. animal welfare standards at facilities in foreign countries.



PETA

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS

501 FRONT ST.
NORFOLK, VA 23510
Tel. 757-622-PETA
Fax 757-622-0457

PETA.org
info@peta.org

In language nearly word-for-word the same as that in Pfizer's no action letter, Wyeth contends that three previously filed shareholder proposals are substantially the same as the Outsourcing resolution. However, the Outsourcing resolution is not remotely, much less substantially, similar to any previously filed resolutions included in the Company's 2004, 2006, or 2007 proxy statements.

The following shareholder resolutions have been filed at Wyeth, starting with the most current:

1. Resolutions filed in 2007 and 2006 requested that Wyeth adopt and post a laboratory animal care and welfare policy online consistent with those enacted by other large pharmaceutical companies. These resolutions are substantially the same. The proposals received 25.4% of the vote in 2006 and 6.0% in 2007. These two proposals as known informally as the "Enactment of an Animal Care Policy Resolutions."
2. A resolution filed in 2005, which is not mentioned by Wyeth in its no action letter, sought discontinuation of the sale of Premarin, and adoption of a policy for the protection of the mares used to produce Premarin including placement in caring homes, buy-outs of Premarin mare farmers, or surrender of the horses to rescue organizations.¹ This resolution received 0.07% of the vote and was never refiled.
3. A resolution filed in 2004, encouraged the Company to adopt five non-animal tests to replace their animal counterparts for assessing various human health effects, and asked the Company to petition the regulators to accept validated non-animal tests. This resolution received 2.52% of the vote and was never refiled. This resolution was informally referred to as the "Give the Animals Five" or "GTA5" resolution.

It is evident from the votes that the Enactment of an Animal Care Policy Resolutions described above were of significant concern to shareholders, since they each received 25.4% and 6.0% favorable votes.

It is likewise clear that the Premarin resolution and the GTA5 proposal were not favorably received by shareholders, each one involving very different issues and concerns (i.e. Premarin was one of Wyeth's most profitable products and the GTA5 resolution raised some technical and complex scientific issues). The votes alone show that shareholders were able to discern the differences in these resolutions, and that stockholders of a significant percentage of the Company's shares care deeply about animal related issues.

The fact that each of these resolutions touches on animals in the most general sense possible, does not make them substantially similar any more than resolutions relating generally to humans would. No one would seriously dispute that a resolution relating to human rights violations is

¹ The hormone replacement for estrogen produced and marketed by Wyeth under the Premarin brand name is produced from the urine of pregnant mares. These pregnant mares are confined in stalls purposely designed to restrict movement since the animals have urine collection bags strapped to their bodies. The goal is to ensure that the containers which collect the mare's urine do not become detached. Some mares suffer this existence for up to six months a year.

the same as one relating to child labor simply because both address the human condition or human beings generally.

Specifically on point, the Staff has previously stated that two proposals dealing with the use of animals in product testing do not necessarily implicate substantially the same subject matter. In *Bristol-Myers Squibb Company* (March 7, 1991), the Staff stated that Bristol-Myers Squibb could not omit a shareholder proposal dealing with animal testing under the “substantially similar” rule. The proposal under review in *Bristol-Myers Squibb* requested that the company cease all animal tests not required by law and stop selling certain products that required animal testing. The Staff held that the proposal was not substantially similar to a prior proposal which had requested a report detailing the scope of the company’s use of animal tests in product testing. The Staff stated:

In arriving at this position the staff takes particular note of the fact that, while the four proposals concern the **same broad issue** (i.e., use of live animals in product development and testing), the present proposal recommends that the Company take a very active and defined course of action as to the broad issue (i.e., cease all animal tests not required by law and drop certain products). The previous proposals asked only that the Company take a passive course of action (i.e., supply information). Accordingly, the staff does not believe the Company may rely on Rule 14a-8(i)(12) as a basis for omitting the proposal from its proxy materials. (Emphasis supplied.)

The resolutions under review in the *Bristol-Myers* no action challenge were vastly more alike than those under review here, and yet the Staff correctly issued a non-concurrence.

Perhaps most telling is the fact that Wyeth has *never challenged* any of the resolutions detailed above based on their being substantially similar. If Wyeth believed that any or all of these resolutions were the same as the GTA5 proposal, it would have challenged every resolution filed after 2005 arguing that each could be omitted because the GTA5 resolution only received 2.52% of the vote. Wyeth knew that these resolutions *were not substantially similar* and that is why it did not seek to exclude them based on Rule 14a-8(i)(12).²

II. Even the Most Liberal Scrutiny Demonstrates That the Outsourcing Proposal Has Not Been Substantially Implemented

Wyeth contends that its newly enacted Animal Welfare Policy and its Code of Conduct constitute substantial compliance with the Outsourcing resolution. We need not belabor the point since it is apparent on the face of both the Code of Conduct and the Animal Welfare Policy

² To the extent that Wyeth relies upon *Abbott Laboratories* (March 22, 2006), PETA respectfully urges that the Staff’s concurrence was ill-advised and contrary to the controlling authority of *Bristol-Myers Squibb Company* (March 7, 1991). Moreover, the Staff’s non-concurrence in *Bristol Myers Squibb* actually addressed the language of the resolutions, analyzed them, and provided a rationale for the non-concurrence. In contrast, the *Abbott Laboratories* concurrence merely concludes that there is “some basis” for the view that the two resolutions under review were similar. There is no legal analysis, discussion of the facts, or anything except that conclusory statement.

that neither addresses outsourcing animal testing to countries like China, India and former Soviet bloc countries.

Wyeth's Code of Conduct commits that the Company will comply "with the law wherever we operate ..." This merely highlights the basic concern of the Outsourcing resolution since countries like China have virtually no laws or protections for animals subjected to experimentation.³

Similarly, Wyeth's Animal Welfare Policy states that Wyeth will meet or exceed applicable regulations and guidelines, will comply with the Animal Welfare Act, the European Union Directive, and other professional and humanitarian guidelines, and may fire employees who mistreat animals. Again, as with its Code of Conduct, these lofty pronouncements are useless in countries that *don't* have statutes, regulations, and rules for the protection of animals in laboratories, much less enforcement actions.

The Outsourcing resolution asks Wyeth for two things. First, the Company should provide its rationale for exporting animal experimentation to countries with either nonexistent or substandard animal welfare regulations and little or no enforcement. Second, a report should issue on the extent to which Wyeth requires adherence to U.S. animal welfare standards at facilities in foreign countries. Neither Wyeth's current Code of Conduct nor its Animal Welfare Policy addresses either concern.

Perhaps the best way to close is to cite to a leading financial journal which reported on the issue of outsourcing animal testing. *Forbes* reported that the rationale for moving animal testing to China, the leading location for such outsourcing, is that "scientist are cheap, lab animals plentiful and pesky protesters held at bay."⁴ It is for those reasons that shareholders are entitled to ask Wyeth to explain why it is outsourcing animal testing.

Very truly yours,



Susan L. Hall
Counsel

cc: Amy L. Goodman (via regular mail)

³ The average shareholder is certainly aware of the product recalls that have emanated from dangerous, toxic, and substandard goods imported from China, and would welcome information on why the Company has elected to outsource animal testing of pharmaceutical products to that country.

⁴ "*Comparative Advantage*"; *Forbes*, p. 76 Vol. 178 No. 10 (Nov. 23, 2006)