

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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October 24, 2018

## BY ELECTRONIC MAIL

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

Dear Mr. Coco:

We are writing on behalf of Teva Pharmaceutical Industries Limited, an Israeli company (“Teva” or the “Company”). As more fully discussed below, Teva is required to submit certain ordinary and routine matters to shareholders at general meetings of shareholders under the laws of Israel. The purpose of this letter is to confirm that, on behalf of Teva and based upon the facts, views and representations set forth below, the Staff of the Division of Corporation Finance (the “Staff”) of the United States Securities and Exchange Commission (the “Commission”) will not object if Teva does not file a preliminary proxy statement under Rule 14a-6(a) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) for general meetings of shareholders of Teva at which only the routine matters discussed below and other matters already excluded from such filing requirements are to be acted upon.

### I. Background

#### A. *Teva*

Teva is a global pharmaceutical company, committed to increasing access to high-quality healthcare to patients around the world. Teva operates worldwide, with a significant presence in the United States, Europe and many other markets around the world. Teva’s key strengths include its world-leading generics expertise and portfolio, focused specialty portfolio and global infrastructure and scale. Teva’s ordinary shares are listed on the Tel Aviv Stock Exchange (the “TASE”) and its American Depositary Shares, each of which represents one ordinary share, are listed on the New York Stock Exchange (the “NYSE”). As of October 23, 2018, the worldwide equity market capitalization of Teva was approximately \$22 billion.

#### B. *Israeli Law*

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The following discussion of Israeli law was provided by Teva's Israeli counsel, Tulchinsky Stern Marciano Cohen Levitski & Co. Teva is an Israeli company and is subject to certain legal requirements applicable to all public companies incorporated under the laws of Israel that are listed on the TASE and on certain regulated stock exchanges outside of Israel, including the NYSE. In addition to routine matters applicable to U.S. issuers, Teva is required by the laws of Israel to submit proposals to shareholders, at general meetings of shareholders, to approve (or re-approve, as the case may be) the Company's compensation policy regarding the terms of office and employment of its directors and executive officers (the "Compensation Policy") at least once every three years, and any amendment thereto.

Under the Israeli Companies Law, 1999 (the "Israeli Companies Law"), the Compensation Policy must be approved by the Company's Board of Directors, after considering the recommendations of the Company's Human Resources and Compensation Committee (the "Compensation Committee"), followed by the submission of the Compensation Policy to the Company's shareholders for approval. To the extent the Compensation Policy is not approved by shareholders, the Compensation Committee and the Board of Directors may nonetheless approve the Compensation Policy based on detailed reasoning set forth by the Compensation Committee and the Board of Directors following re-discussion of the matter, provided such approval is in the best interests of the Company.

In addition, under the laws of Israel, Teva is required to include on the agenda of a shareholder meeting any request made by one or more shareholders holding 1% or more of the voting rights of Teva (including, with respect to an annual meeting of shareholders, the nomination of a candidate for the Board of Directors) determined by Teva's Board of Directors as suitable for discussion at the applicable general meeting. Under Israeli law, such shareholder proposal must be submitted within seven days of publicizing the convening of a shareholder meeting (*e.g.*, the filing of a proxy statement), and if found suitable as aforesaid, Teva has seven days from the last day of such proposal window to publish an amended agenda that includes the shareholder proposal. Alternatively, if the company publishes a preliminary notice of its intention to convene such meeting at least 21 days prior to publicizing the convening of such meeting, including the agenda for such meeting, such shareholder proposal must be submitted within 14 days of such preliminary notice.

For the reasons set forth below, Teva believes that the inclusion of such proposals, which are required by Israeli law to be submitted for shareholder approval and which can be expected to be presented for shareholder action on a recurring basis in the future at its general meetings, should not result in the need to file a preliminary proxy statement under Rule 14a-6.

### *C. Rule 14a-6*

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The Exchange Act requires an issuer subject to Regulation 14A to send a proxy statement and form of proxy to all shareholders prior to any solicitation of a proxy. Under Rule 14a-6 of the Exchange Act, an issuer is further required to file preliminary copies of each annual proxy statement and form of proxy with the Commission at least 10 calendar days prior to the date definitive copies of such materials are first sent or given to shareholders, unless the solicitation relates to any meeting of shareholders at which the only matters to be acted upon are those expressly provided for in the rule, including:

- (1) the election of directors;
- (2) the election, approval or ratification of accountant(s);
- (3) a security holder proposal included pursuant to Rule 14a-8;
- (4) the approval or ratification of a plan (as defined in paragraph (a)(6)(ii) of Item 402 of Regulation S-K) or amendments of such a plan; and
- (5) a vote to approve the compensation of executives as required pursuant to Rule 14a-21(a), a vote to determine the frequency of shareholder votes to approve the compensation of executives as required pursuant to Rule 14a-21(b), or any other shareholder advisory vote on executive compensation.

The Commission has increased the scope of the enumerated exclusions over time: the first three exclusions were adopted in 1987,<sup>1</sup> the fourth exclusion was adopted in 1993<sup>2</sup> and the fifth exclusion was adopted in 2010<sup>3</sup> and 2011.<sup>4</sup> In each case, the Commission explained that the purpose of the exclusions is to relieve registrants and the Commission of unnecessary administrative burdens and processing costs associated with the filing and processing of proxy materials that deal with routine matters.

However, the foregoing list of exceptions was clearly established with a view towards the identification of “routine” matters from the perspective of a U.S. domestic registrant incorporated in the United States. In recognition of this, the Staff has, on several occasions, provided no-action relief for issuers situated similarly to Teva, namely entities incorporated under

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<sup>1</sup> Exchange Act Release No. 34-25217 (Dec. 21, 1987).

<sup>2</sup> Exchange Act Release No. 34-33371 (Dec. 23, 1993).

<sup>3</sup> Exchange Act Release No. 34-61335 (Jan. 12, 2010).

<sup>4</sup> Exchange Act Release No. 34-63768 (Jan. 25, 2011).

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the laws of foreign jurisdictions, but ineligible for treatment as a “foreign private issuer” under Exchange Act Rule 3b-4(c), and therefore subject to the Commission’s proxy rules.<sup>5</sup>

## II. Discussion and Analysis

### A. General

On behalf of Teva, we hereby request that the Staff confirm that it will not object if Teva does not file a preliminary proxy statement under Rule 14a-6(a) for general meetings of shareholders of Teva at which the only items to be acted upon by shareholders include (1) those already excluded from such filing requirements under Rule 14a-6 and (2) the consideration by shareholders of other routine matters as more fully discussed below.

While additional analysis is provided below, we would like to emphasize that it is our belief that if Teva were incorporated in the United States, the Compensation Policy would generally not require shareholder approval at all, and shareholder proposals would fall within the rules established by Rule 14a-8. Therefore, the absence of an express exemption from pre-filing under Rule 14a-6 in respect of these actions is irrelevant to a registrant that is domiciled domestically. Conversely, if Teva met the jurisdictional requirements to be categorized as a foreign private issuer as defined in Rule 3b-4(c), it would be wholly exempt from Regulation 14A. Thus,

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<sup>5</sup> See: Rowan Companies PLC, SEC Interpretive Letter, (avail. March 2, 2017) (affirming that Rowan Companies plc, a company organized under the laws of England and Wales and listed on the New York Stock Exchange, would not need to pre-file proxy statements with the SEC pursuant to Rule 14a-6 for certain routine matters required under the laws of England and Wales); Aon PLC, SEC Interpretive Letter, (avail. March 31, 2014) (affirming that Aon plc, a public limited company organized under the laws of England and Wales and listed on the New York Stock Exchange, would not need to pre-file proxy statements with the SEC pursuant to Rule 14a-6 for certain routine matters required under the laws of England and Wales, including with respect to certain matters relating to director remuneration); Ensco plc, SEC Interpretive Letter, (avail. December 3, 2015) (affirming that Ensco plc, a public limited company organized under the laws of England and Wales and listed on the New York Stock Exchange, would not need to pre-file proxy statements with the SEC pursuant to Rule 14a-6 for certain routine matters required under the laws of England and Wales); Avago Technologies, SEC Interpretive Letter (avail. November 7, 2014) (affirming that Avago Technologies, a company organized under the laws of the Republic of Singapore and listed on the NASDAQ Stock Market, would not need to pre-file proxy statements with the SEC pursuant to Rule 14a-6 for certain routine matters required under the laws of the Republic of Singapore, including with respect to certain matters relating to director remuneration); Schlumberger Limited, SEC Interpretive Letter (avail. January 31, 2014) (affirming that Schlumberger Limited, a company organized under the laws of Curaçao and listed on the New York Stock Exchange, would not need to pre-file proxy statements with the SEC pursuant to Rule 14a-6 for certain routine matters required under Curacao law); and Garmin Ltd., SEC Interpretive Letter, (avail. September 30, 2014) (affirming that Garmin Ltd, a company organized under the laws of Switzerland and listed on the NASDAQ Global Select Market, would not need to pre-file proxy statements with the SEC pursuant to Rule 14a-6 for certain routine matters under Swiss law, including with respect to certain matters relating to director and executive management compensation).

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Teva finds itself in the predicament (absent the relief sought hereby) of perpetually having to file a preliminary proxy statement because it must seek shareholder approval for matters under the Israeli Companies Law for which a corresponding shareholder approval is generally not required under corporation laws in the United States.

### *B. General Exclusion for Legally Mandated Resolutions*

The Commission has noted that exclusions to preliminary filing requirements are designed to relieve issuers and the Commission of unnecessary administrative burdens and processing costs associated with the filing and processing of proxy materials that deal with ordinary matters that are not generally selected for review.<sup>6</sup> The Commission has stated, “The matters that do not require filing of preliminary materials are various items that regularly arise at annual meetings.”<sup>7</sup> If the purpose of preliminary filings is to allow greater review of irregular or unique resolutions, then the requirement to file preliminary proxy statements should not apply to the routine matters required under non-U.S. laws described herein. Further, this purpose is frustrated when an ordinary, recurring resolution nonetheless requires a preliminary filing. In the adopting release extending preliminary filing exclusion to votes on executive compensation, the Commission stated, “Because the shareholder vote on executive compensation and the shareholder vote on the frequency of such shareholder votes *are required for all issuers*, we view them as similar to the other items specified in Rule 14a-6(a) that do not require a preliminary filing.”<sup>8</sup> Such required resolutions will regularly appear in an issuer’s annual proxy materials, which preclude much of the necessity for preliminary Commission review.

The shareholder votes discussed below are required by Israeli law to be included in proxy statements and all Israeli issuers similarly situated to Teva must comply. As with electing directors or ratifying auditors, these matters are routine, ordinary and mandated by Israeli law for Israeli issuers similarly situated to Teva. Since one purpose of preliminary proxy exclusions is to relieve the Staff of unnecessary review of proxy materials that deal exclusively with ordinary matters, excluding resolutions that will recur in proxy materials will allow the Staff greater time to review the preliminary proxy statements of other issuers containing more complex or novel issues.

### *C. Additional Burdens Imposed under Rule 14a-16*

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<sup>6</sup> Exchange Act Release No. 34-25217 (Dec. 21, 1987).

<sup>7</sup> Exchange Act Release No. 34-61335 (Jan. 12, 2010).

<sup>8</sup> Exchange Act Release No. 34-63768 (Jan. 25, 2011) (emphasis added).

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In addition, we respectfully request that the Staff also consider the significantly increased burden that a pre-filing under Rule 14a-6 imposes on a registrant like Teva due to the advent of “notice and access.” Rule 14a-16 now permits a registrant to satisfy its proxy disclosure obligations by sending a Notice of Internet Availability of Proxy Materials in lieu of bearing the cost, expense and inefficiency of sending full printed sets to all holders on the record date. However, Rule 14a-16 requires that the Notice of Internet Availability of Proxy Materials be posted 40 calendar days or more prior to the shareholder meeting or vote date, provided that the online materials meet the statutory guidelines. While there are sound policy reasons behind the Commission’s 40-day requirement in order to allow full printed sets to reach shareholders who desire them, this requirement also further tightens the timeline for registrants’ preparation for “proxy season.” In our experience, absent compliance with notice and access, public companies would generally file and mail their proxy statements around 30 to 35 days prior to the meeting date.

An early filing requirement placed upon Teva by Rule 14a-6 undermines Teva’s ability to benefit from the Rule 14a-16 notice scheme, as it imposes an additional minimum 10-day preliminary filing period with the Commission on top of the minimum 40-day notice requirement. In practice, however, this pre-filing period is longer than 10 days because additional time would be built into Teva’s proxy calendar to allow time for Teva to respond to any comments the Staff may have should it elect to review the preliminary proxy statement. The combination of these early filing provisions creates a substantial administrative burden on Teva, as the filing of a preliminary proxy statement requires Teva to include significant additional lead time in its proxy season calendar in the event of a possible Commission review or comment on otherwise routine and ordinary matters.

### *D. Support for Exclusion of Specific Legally Mandated Resolutions*

Teva is required under Israeli law to present to its shareholders a proposal to approve (or re-approve, as the case may be) the Compensation Policy at least once every three years, and any amendment thereto. This approval should be considered a routine matter and should receive exclusion from preliminary filing requirements as it is mandated by Israeli law. The Compensation Policy is analogous to, and may constitute, a “plan” as defined in paragraph (a)(6)(ii) of Item 402 of Regulation S-K, the approval of which does not require a preliminary proxy statement under Rule 14a-6(a)(5). The Compensation Policy provides for an overall framework with respect to both executive officer and director compensation and benefits. In addition, the requirement for a shareholder vote with respect to the Compensation Policy under Israeli law is analogous to the requirement for an advisory vote on executive compensation under U.S. law. The vote of the shareholders is similarly advisory in nature, since the compensation committee and the board of directors of an Israeli company may approve such policy despite a negative vote from the shareholders based on detailed reasoning set forth by the compensation committee and the board of directors following re-discussion of the matter, provided such approval

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is in the best interests of the company. Advisory votes with respect to executive compensation do not require the filing of a preliminary proxy statement under Rule 14a-6(a)(8). Since Teva's resolution on this matter is routinely approved by a substantial majority of shareholders, we believe that the only effect of filing a preliminary proxy statement due to this proposal would be to increase the administrative burden and processing cost imposed on the Commission and Teva.<sup>9</sup>

Pursuant to Israeli law, Teva is required to include on the agenda of a shareholder meeting any request made by one or more shareholders holding 1% or more of the voting rights of Teva determined by Teva's Board of Directors as suitable for discussion at the applicable general meeting. Israeli law permits such shareholders to submit proposals following publication of the agenda and proxy statement for a shareholder meeting. Such shareholder proposals may propose a director nominee (with respect to an annual meeting) or other matter to be considered for approval at a general meeting of shareholders. A shareholder proposal with respect to a director nominee would not require a preliminary proxy statement pursuant to Rule 14a-6(a)(4). Shareholder proposals with respect to matters other than a director nomination submitted in accordance with Israeli law should also be considered routine matters and should receive exclusion from the requirement to file a preliminary proxy statement under Rule 14a-6(a) as such proposals are mandated by Israeli law. The Israeli statute that requires the inclusion of such shareholder proposals in Teva's proxy statement is analogous to Rule 14a-8 by providing shareholders with a statutory mechanism to include items in a company's proxy statement in addition to rights that shareholders have to submit proposals in accordance with the procedural requirements of the company's governing charter documents. The inclusion of shareholder proposals submitted pursuant to Rule 14a-8 in a proxy statement does not require filing a preliminary proxy statement under Rule 14a-6(a)(3), and we request that proposals submitted pursuant to the analogous Israeli statute similarly be exempt from the requirement to file a preliminary proxy statement.

### **III. Conclusion**

The Israeli Companies Law requirement that the Compensation Policy be approved by shareholders further enfranchises the Company's shareholders compared to shareholders of U.S. domestic registrants. However, Teva is effectively penalized under the U.S. proxy rules for this voting enfranchisement because of the additional administrative burden and expense involved in filing a preliminary proxy statement in respect of what is in fact a routine matter under Israeli law. The Israeli law pursuant to which shareholder proposals be submitted for approval by shareholders at a general meeting is analogous to Rule 14a-8 of the U.S. proxy rules, and proposals

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<sup>9</sup> At Teva's 2016 annual general meeting of shareholders, which was the most recent annual general meeting of shareholders at which such proposal was on the agenda, the resolution to approve an amended Compensation Policy was approved by 81% of votes cast; at Teva's 2015 annual general meeting of shareholders, the resolution to approve an amendment to the then-existing Compensation Policy was approved by 81% of votes cast.

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submitted under such Israeli law should be treated similarly to proposals submitted under Rule 14a-8 for purposes of Rule 14a-6. Allowing an exclusion from preliminary proxy statement filing requirements for a vote on such proposals would place the Company on the same footing as other similarly situated U.S. domestic registrants subject to Regulation 14A but not subject to the Israeli Companies Law, while still providing the shareholder enfranchisement and protections required by the Exchange Act and the Commission's proxy rules.

Based on the foregoing analysis, we respectfully request your confirmation that the Staff will not object if Teva does not file a preliminary proxy statement under Rule 14a-6(a) for general meetings of shareholders of Teva at which the only items to be acted upon by shareholders include (1) those already excluded from such filing requirements under Rule 14a-6 and (2) the other routine matter discussed above.

If the Staff has any questions regarding this request or requires additional information, please contact Joshua N. Korff (212-446-4943 or jkorff@kirkland.com) or Ross M. Leff (212-446-4947 or ross.leff@kirkland.com).

Very truly yours,

By:   
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Ross M. Leff  
Kirkland & Ellis LLP

cc: Dov Bergwerk, Teva Pharmaceutical Industries Limited, Company Secretary  
Joshua N. Korff, Kirkland & Ellis LLP