Thomas S. Moffatt
Vice President, Asst. Secretary & Senior Legal Counsel - Corporate Services

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Woonsocket, RI 02895

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January 16, 2024

SUBMITTED VIA STAFF ONLINE FORM
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: CVS Health Corporation
Stockholder Proposal from Kenneth Steiner
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

CVS Health Corporation, a Delaware corporation (the "**Company**"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), submits this letter to inform the Staff of the Division of Corporation Finance (the "**Staff**") of the U.S. Securities and Exchange Commission (the "**Commission**") of the Company's intention to omit from its proxy statement and form of proxy (collectively, the "**2024 Proxy Materials**") the stockholder proposal (the "**Proposal**") and the statement in support thereof submitted by Kenneth Steiner (the "**Proponent**") with the assistance of John Chevedden, in a letter dated November 4, 2023. A copy of the Proposal and all relevant correspondence with the Proponent are attached to this letter as Exhibit A. The Company respectfully requests that the Staff concur with the Company's view that the Proposal may properly be excluded from the Company's 2024 Proxy Materials pursuant to Rule 14a-8.

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent.

We are submitting this request for no-action relief under Rule 14a-8 through the Commission's intake system for Rule 14a-8 submissions and related correspondence, https://www.sec.gov/forms/shareholder-proposal (in lieu of providing six additional copies of this letter pursuant to Rule 14a-8(j)), and the undersigned has included his name, telephone number and e-mail address in this letter.

Rule 14a-8(k) under the Exchange Act and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("**SLB 14D**") provide that shareholder proponents are required to send the company a copy of any correspondence that the proponents elect to submit to the Commission or Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> Resolved: Adopt a Corporate Governance Guideline, rule or bylaw provision to state that that a director who fails to obtain a majority vote in an uncontested election shall not be nominated by the Board at the next annual shareholder meeting.

BASIS FOR EXCLUSION

The Company believes that the Proposal may be properly excluded from the 2024 Proxy Materials under Rule 14a-8(i)(2) under the Exchange Act, because implementing the Proposal would cause the Company to violate state law.

ANALYSIS

A. *Rule 14a-8(i)(2) Overview*

Rule 14a-8(i)(2) allows the exclusion of a stockholder proposal if implementation of the proposal would "cause the company to violate any state, federal, or foreign law to which it is subject." As discussed below and for the reasons set forth in the legal opinion provided by Richards, Layton & Finger, P.A., the Company's Delaware counsel, attached hereto as Exhibit B (the "**RLF Opinion**"), we believe that the Proposal is excludable under Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate Delaware law.

On numerous occasions, the Staff has concurred with the exclusion of stockholder proposals where the proposal, if implemented, would cause a company to violate state law. For example, in *Johnson & Johnson* (avail. Feb. 16, 2012), the proposal sought to limit the ability of the board of directors to appoint directors to the compensation committee if such directors received a certain number of "no" or "withhold" votes in a director election. The Staff concurred that the proposal could be excluded because its implementation would violate New Jersey law by limiting the decision-making authority of the board to select such committee members in the exercise of its fiduciary duties. In *Oshkosh Corp.* (avail. Nov. 21, 2019), the proposal requested that the company amend its bylaws to require that a director who received less than a majority vote be removed from the board "immediately." The Staff concurred with the proposal's exclusion under

Rule 14a-8(i)(2) because its implementation would cause the company to violate Wisconsin law, which provided two methods for the removal of directors—by a stockholder vote or by a judicial proceeding—and neither was immediate or an action the company or its board could unilaterally take. *See also IDACORP, Inc.* (avail. Mar. 13, 2012) (concurring with the exclusion under Rule 14a-8(i)(2) of a stockholder proposal requesting that the company amend its bylaws to implement majority voting for director elections where Idaho law provided for plurality voting unless a company's certificate of incorporation provided otherwise); *Ball Corp.* (avail. Jan. 25, 2010, recon. denied Mar. 12, 2010) (concurring with the exclusion under Rule 14a-8(i)(2) of a stockholder proposal that would cause the company to violate Indiana law relating to board classification); and *Bank of America Corp.* (avail. Feb. 11, 2009) (concurring with the exclusion under Rule 14a-8(i)(2) of a stockholder proposal to amend the company's bylaws to establish a board committee and authorize the board chairman to appoint members of the committee that would cause the company to violate Delaware law).

B. The Proposal Would Cause the Company to Violate Delaware Law Because it Would Mandate a Substantive Decision By the Board Without Regard to the Proper Exercise of its Fiduciary Duties

The Company is incorporated in Delaware and is governed by Delaware corporate law. As discussed in detail in the RLF Opinion, in accordance with Section 141(a) of the Delaware General Corporation Law (the "**DGCL**"), the Board possesses the full power and authority to manage the business and affairs of the Company. In making business decisions consistent with this authority, directors owe fiduciary duties of care and loyalty to the corporation and all of its stockholders, which requires them to base their decisions on what they reasonably believe to be in the best interests of the company and its stockholders.

As outlined in the RLF Opinion, the Delaware courts have held that a bylaw, policy or other agreement that purports to mandate a substantive decision on the part of the board of directors without regard to the application of the directors' fiduciary duties violates Section 141(a) of the DGCL. The decision regarding a director nomination is one such decision for which a board is required to exercise its fiduciary duties. There are multiple factors a board must consider and balance when determining whether to nominate or renominate an individual for election, including, without limitation, background, experience, skills, character, reputation, personal integrity, judgment, independence, diversity, viewpoint and commitment to the Company and service on the board, both with respect to the specific individual being considered for nomination and the composition of the board as a whole. The Proposal requires the Board not to renominate any director who has failed to receive a majority of the votes cast for his or her election, even if the Board believes that it is in the best interests of the Company and its stockholders for the director to continue to serve and that proper application of its fiduciary duties would require it to do otherwise. This issue is particularly acute in the case of the Company because its By-laws (the "**By-laws**") require that, in order to be nominated by the Board for re-election, each incumbent director must submit a resignation that is conditioned upon the director failing to receive a

majority of the votes cast in an uncontested election and acceptance of the resignation by the Board. The By-laws further require that "[a]bsent a determination by the Board of Directors that a compelling reason exists for concluding that it is in the best interests of the [Company] for an unsuccessful incumbent to remain as a director, no such person shall be elected by the Board of Directors to serve as a director, and the Board of Directors shall accept that person's resignation." Thus, for a director to remain on the Board after failing to receive a majority vote in an uncontested election (and continue as a holdover director), the Board must determine that there is a compelling reason to conclude that the director remaining on the Board is in the best interests of the Company. Despite this prior affirmative determination by the Board, the bylaw, guideline or other rule contemplated by the Proposal would nevertheless prohibit the Board from nominating the holdover director for re-election at the next annual meeting of stockholders, even if it continues to believe that there is a compelling reason to conclude that it is in the best interests of the Company for the director to continue to serve on the Board. The Proposal would, therefore, mandate a substantive decision on the part of the Board without regard to the application of the directors' fiduciary duties. As such, the RLF Opinion concludes that, "[b]ecause any such bylaw, guideline or other rule contemplated by the Proposal prevents the Board from nominating holdover directors for re-election where proper application of its fiduciary duties would require it to do so, it violates Delaware law."

Accordingly, just as in *Johnson & Johnson*, *Oshkosh*, and the other precedents cited above, the Proposal may properly be excluded under Rule 14a-8(i)(2) because, as supported by the RLF Opinion, implementing the Proposal would cause the Company to violate state law.

CONCLUSION

The Board fully supports the accountability of our directors to our stockholders and neither this letter nor the Company's current governance practices are designed to enable the Board to disregard the voice of our stockholders. The Board has provided for a number of stockholder rights and implemented a number of corporate governance measures related to director elections, including requiring "compelling reasons" for the Board to conclude that it is in the best interests of the Company for an unsuccessful incumbent nominee to remain as a director. The Company believes that its current governance practices strike the right balance between implementing stockholder voting decisions and preserving the Board's obligation to consider the composition of the Board in light of the needs of the Board and the Company.

Based on the analysis above, the Company respectfully requests the Staff's concurrence with its decision to omit the Proposal from the 2024 Proxy Materials and further requests the confirmation that the Staff will not recommend any enforcement action in connection with such omission.

In the event the Staff disagrees with any conclusion expressed herein, or should any information in support or explanation of the Company's position be required, we would appreciate an opportunity to confer with the Staff before issuance of its response. If the Staff has any

questions regarding this request or requires additional information, please contact the undersigned at (401) 770-5409 or Thomas.Moffatt@CVSHealth.com.

We appreciate your attention to this request.

Respectfully yours,

Thomas S. Moffatt
Vice President, Assistant Secretary and Senior Legal Counsel - Corporate Services

cc: Kenneth Steiner

John Chevedden

Colleen M. McIntosh, Senior Vice President, Secretary and Chief Governance Officer, CVS Health Corporation

Lona Nallengara, Shearman & Sterling LLP

C. Stephen Bigler, Richards, Layton & Finger P.A.

EXHIBIT A

From: Kenneth Steiner
Sent: Wednesday, November 22, 2023 12:15 AM
To: McIntosh, Colleen ; Moffatt, Thomas S. <Thomas.Moffatt@CVSHealth.com>; Sullivanifkovic, Carol A
Cc: John Chevedden
Subject: [EXTERNAL] Rule 14a-8 shareholder proposal for CVS Health (CVS) 2024 annual meeting from Kenneth Steiner

****** External Email - Use Caution ******

Rule 14a-8 Proposal (CVS)

Dear Ms. McIntosh,
Please see the attached rule 14a-8 proposal.
Please confirm that this is the correct email address for rule 14a-8 proposals.
Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."
I so request.

Hard copies of any request related to this proposal are not needed as long as you request that I confirm receipt in the email cover message.

The proponent is available for a telephone meeting on the first Monday and Tuesday after 10-days of the proposal submittal date at noon PT.
Please arrange in advance in a separate email message regarding a meeting if needed.

Sincerely
Kenneth Steiner

Kenneth Steiner
PII

Ms. Colleen M. McIntosh
CVS Health Corporation (CVS)
One CVS Drive
Woonsocket RI 02895
PH: 401-765-1500

Dear Ms. McIntosh,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. The attached rule 14a-8 proposal is for the next annual shareholder meeting. I intend to continue to hold the required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders and beyond as is or will be documented in my ownership proof.

Please copy
John Chevedden
PII
on all communication regarding this proposal.
Mr. Chevedden is assisting me on my representing my proposal.

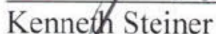
Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

Please confirm that this proposal was sent to the correct email address for rule 14a-8 proposals. Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."

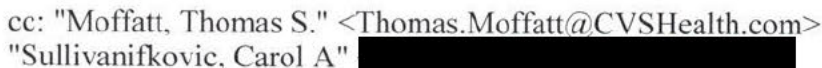
I expect to forward a broker letter soon so if you acknowledge this proposal promptly in an email message it may very well save you from requesting a broker letter from me.

Sincerely,

11/4/23


Kenneth Steiner

Date


cc: "Moffatt, Thomas S." <Thomas.Moffatt@CVSHealth.com>
"Sullivanifkovic, Carol A"

[CVS: Rule 14a-8 Proposal, November 6, 2023]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Directors to be Elected by Majority Vote Improvement

Resolved: Adopt a Corporate Governance Guideline, rule or bylaw provision to state that that a director who fails to obtain a majority vote in an uncontested election shall not be nominated by the Board at the next annual shareholder meeting.

When CVS shareholders give a director a no confidence vote it is important that the CVS Board respect the vote of CVS shareholders and not override such a shareholder no confidence vote. This proposal could improve director performance because a failed vote would have more of a consequence. Currently a director with a failed vote can remain on the Board for years into the future.

The Board of Directors would have plenty of time to prepare for a failed vote because the Board can see how the incoming votes trend. Plus the Board can take steps to turnaround failed incoming votes.

Please vote yes:

Directors to be Elected by Majority Vote Improvement – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

Notes:

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

"Proposal 4" stands in for the final proposal number that management will assign.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(I)(3) in the following circumstances:

• the company objects to factual assertions because they are not supported;
• the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
• the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
• the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. **I intend to continue holding the same required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders as is or will be documented in my ownership proof.**

Please acknowledge this proposal promptly by email PII.

It is not intend that dashes (–) in the proposal be replaced by hyphens (-).
Please alert the proxy editor.

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.
If there is objection to the title please negotiate or seek no action relief as a last resort.
Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.

<u>EXHIBIT B</u>

RICHARDS LAYTON & FINGER 125 YEARS

January 16, 2024

CVS Health Corporation
One CVS Drive
Woonsocket, Rhode Island 02895

Re: Stockholder Proposal on behalf of Kenneth Steiner

Ladies and Gentlemen:

We have acted as special Delaware counsel to CVS Health Corporation, a Delaware corporation (the "Company"), in connection with a stockholder proposal (the "Proposal") on behalf of Kenneth Steiner (the "Proponent"), dated November 4, 2023, for the 2024 annual meeting of stockholders of the Company (the "Annual Meeting"). In this connection, you have requested our opinion as to certain matters under the laws of the State of Delaware.

For the purpose of rendering our opinion as expressed herein, we have been furnished with and have reviewed the following documents: (i) the Restated Certificate of Incorporation of the Company as filed with the Secretary of State of the State of Delaware on June 4, 2018 (the "Certificate of Incorporation"); (ii) the By-laws of the Company, effective as of November 17, 2022 (the "By-laws"); and (iii) the Proposal.

With respect to the foregoing documents, we have assumed: (i) the authenticity of all documents submitted to us as originals; (ii) the conformity to authentic originals of all documents submitted to us as copies; (iii) the genuineness of all signatures and the legal capacity of natural persons; and (iv) that the foregoing documents, in the forms thereof submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein. We have not reviewed any document other than the documents listed above for purposes of rendering this opinion, and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed herein. In addition, we have conducted no independent factual investigation of our own but rather have relied solely on the foregoing documents, the statements and information set forth therein and the additional factual matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

One Rodney Square ■ 920 North King Street ■ Wilmington, DE 19801 ■ Phone: 302-651-7700 ■ Fax: 302-651-7701

www.rlf.com

THE PROPOSAL

The Proposal states the following:

> Resolved: Adopt a Corporate Governance Guideline, rule or bylaw provision to state that that [sic] a director who fails to obtain a majority vote in an uncontested election shall not be nominated by the Board at the next annual shareholder meeting.

We have been advised that the Company is considering excluding the Proposal from the Company's proxy statement for the Annual Meeting under, among other reasons, Rule 14a-8(i)(2) promulgated under the Securities Exchange Act of 1934, as amended. Rule 14a-8(i)(2) provides that a registrant may omit a proposal from its proxy statement when "the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." In this connection, you have requested our opinion as to whether, under Delaware law, the implementation of the Proposal, if adopted by the Company's stockholders, would violate Delaware law.

For the reasons set forth below, to the extent the Proposal, if implemented, would prohibit the board of directors of the Company (the "Board") from nominating a director for re-election in circumstances where the Board has determined a compelling reason exists for concluding that it is in the best interests of the Company for the director in question to remain as a director and continues to hold that belief, the Proposal, in our opinion, would prevent the Board from exercising its fiduciary duties and thus would violate Delaware law.

DISCUSSION

The Proposal would violate Delaware law if implemented.

The Proposal mandates that the Board adopt a bylaw, corporate governance guideline or other rule prohibiting the Board from nominating a director who does not obtain a majority vote in an uncontested election (i.e., a holdover director) for re-election at the next annual meeting of stockholders. The By-laws currently require that, in order to be nominated by the Board for re-election, each incumbent director must submit a resignation that is conditioned upon the director failing to receive a majority of the votes cast in an uncontested election and acceptance of the resignation by the Board. The By-laws further provide that, with respect to the Board's determination in connection with any such resignation, "[a]bsent a determination by the Board of Directors that a compelling reason exists for concluding that it is in the best interests of the [Company] for an unsuccessful incumbent to remain as a director, no such person shall be elected by the Board of Directors to serve as a director, and the Board of Directors shall accept that person's resignation." Thus, for a director to remain on the Board after failing to receive a majority vote in an uncontested election (and continue as a holdover director), the Board must determine that there is a compelling reason to conclude that the director remaining on the Board is in the best interests of the Company. Despite this prior affirmative determination by the Board, the bylaw, guideline

or other rule contemplated by the Proposal would nevertheless prohibit the Board from nominating such director for re-election at the next annual meeting of stockholders, even if it continues to believe that there is a compelling reason to conclude that it is in the best interests of the Company for such director to serve on the Board.

For the reasons set forth below, in our opinion, because the Proposal, if adopted, would prevent the Board from nominating a holdover director for re-election to the Board even in circumstances where proper application of the Board's fiduciary duties would require the Board to nominate the director for re-election, the Proposal violates Delaware law.

Section 141(a) of the General Corporation Law provides that the "business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation." 8 *Del. C.* § 141(a). Significantly, if there is to be any variation from the mandate of Section 141(a), it can only be as "otherwise provided in this chapter or in its certificate of incorporation." *See, e.g.*, *Lehrman v. Cohen*, 222 A.2d 800, 808 (Del. 1966). The Certificate of Incorporation does not provide for management of the Company by persons other than directors, and the phrase "except as otherwise provided in this chapter" does not include bylaws adopted pursuant to Section 109(b) of the General Corporation Law. Thus, the Board possesses the full power and authority to manage the business and affairs of the Company. *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984); *see also In re CNX Gas Corp. S'holders Litig.*, 2010 WL 2705147, at *10 (Del. Ch. July 5, 2010) ("the premise of board-centrism animates the General Corporation Law"); *McMullin v. Beran*, 765 A.2d 910, 916 (Del. 2000) ("One of the fundamental principles of the Delaware General Corporation Law statute is that the business affairs of a corporation are managed by or under the direction of its board of directors.") (citing 8 *Del. C.* § 141(a)); *Quickturn Design Sys., Inc. v. Shapiro*, 721 A.2d 1281, 1291 (Del. 1998) ("One of the most basic tenets of Delaware corporate law is that the board of directors has the ultimate responsibility for managing the business and affairs of a corporation.") (footnote omitted). In making business decisions, directors owe duties of care and loyalty to the corporation and all of its stockholders; these duties require them to base their decisions on what they believe in good faith, after consideration of information they deem to be material, to be in the best interests of the corporation and its stockholders. *Mills Acq. Co. v. Macmillan, Inc.*, 559 A.2d 1261,1280 (Del. 1989).

The Delaware courts have held that a bylaw, policy or other agreement that purports to mandate a substantive decision on the part of the board of directors without regard to the application of the directors' fiduciary duties violates Section 141(a). *CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d 227, 235-338 (Del. 2008). For example, in *CA, Inc.*, the Delaware Supreme Court held that a proposed stockholder adopted bylaw that mandated that the board of directors reimburse a stockholder for its expenses in running a proxy contest to elect a minority of the members of the board of directors would violate Delaware law because it mandated reimbursement of proxy expenses even in circumstances where a proper application of fiduciary principles would preclude doing so. *Id.* Thus, a corporation's board or its stockholders may not bind future directors on matters involving the management of the company. *Id.*; *see also Carmody v. Toll Bros., Inc.*, 723 A.2d 1180, 1191 (Del. Ch. 1998) (refusing to dismiss claims that the

"deadhand" provision in the company's rights plan which would limit a future board's ability to redeem the rights plan was invalid under Delaware law); *Quickturn Design Sys., Inc.*, 721 A.2d at 1281 (invalidating a provision that, under certain circumstances, would have prevented newly-elected directors from redeeming a rights plan for a six-month period); *Paramount Communications, Inc. v. QVC Network, Inc.*, 637 A.2d 34, 51 (Del. 1994) (invalidating a provision in a merger agreement that prevented the directors from communicating with competing bidders); *Abercrombie v. Davies,* 123 A.2d 893, 899 (Del. Ch. 1956) (invalidating a provision in an agreement that required the directors to act as directed by an arbitrator in certain circumstances where the board was deadlocked), *rev'd on other grounds*, 130 A.2d 338 (Del. 1957).

The decision whether to nominate a person for election or re-election to the Board is a business decision with respect to which the Board is required to exercise its fiduciary duties. There are multiple factors the Board must consider and balance when determining whether to nominate or renominate an individual for election, including, without limitation, background, experience, skills, character, reputation, personal integrity, judgment, independence, diversity, viewpoint and commitment to the Company and service on the Board with respect to the specific individual being considered for nomination and as it relates to the background, experience and skills of the Board as a whole. As described above, under the By-laws, the only way an incumbent director remains on the Board after failing to receive a majority of the votes cast in an uncontested election is if the Board has decided that a compelling reason exists for concluding that it is in the best interests of the Company for the director in question to remain as a director. The Proposal requires adoption of a bylaw, guideline or other rule that would mandate that, notwithstanding such a prior determination, the Board may not renominate the director, even if the Board continues to believe that it is in the best interests of the Company and its stockholders to continue as a director. The Proposal thus mandates a substantive decision on the part of the Board – i.e., to not renominate any director who has failed to receive a majority of the votes cast for his or her election – even where proper application of its fiduciary duties would require it to do otherwise. Because any such bylaw, guideline or other rule contemplated by the Proposal prevents the Board from nominating holdover directors for re-election where proper application of its fiduciary duties would require it to do so, it violates Delaware law.

CONCLUSION

Based upon and subject to the foregoing and subject to the limitations stated herein, it is our opinion that the Proposal, if implemented, would violate Delaware law.

The foregoing opinion is limited to the laws of the State of Delaware. We have not considered and express no opinion on the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission and to the Proponent in connection with the matters addressed

herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

Richards, Layton & Finger, P.A.

CSB/JJV