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January 14, 2020

Office of Chief Counsel
Division of Corporate Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
(Via e-mail: shareholderproposals@sec.gov)

Re: CVS Health Corporation
Shareholder Proposal of Comptroller of the City of New York on Behalf of Certain New York City Public Retirement Systems

Ladies and Gentlemen:

CVS Health Corporation, a Delaware corporation (the "**Company**"), in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), is filing this letter with respect to the shareholder proposal and supporting statement (the "**Proposal**") submitted by the Comptroller of the City of New York on behalf of the New York City Employees' Retirement System, the New York City Teachers' Retirement System, the New York City Police Pension Fund and the New York City Fire Pension Fund (the "**Proponent**") in a letter dated November 13, 2019. The Proponent seeks inclusion of the Proposal in the proxy materials that the Company intends to distribute in connection with its 2020 Annual Meeting of Shareholders (the "**2020 Proxy Materials**"). A copy of the Proposal and all related correspondence with the Proponent are attached hereto as Exhibit A. The Company hereby requests confirmation that the staff of the Office of Chief Counsel (the "**Staff**") of the Division of Corporation Finance of the Securities and Exchange Commission (the "**Commission**") will not recommend enforcement action if, in reliance on Rule 14a-8 of the Exchange Act, the Company omits the Proposal from its 2020 Proxy Materials.

Pursuant to Rule 14a-8(j), this letter is being filed with the Commission no later than 80 calendar days before the Company files its definitive 2020 Proxy Materials. Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("**SLB 14D**"), this letter is being submitted to the Commission via e-mail to shareholderproposals@sec.gov.

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

Pursuant to Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company's intention to omit the Proposal from its 2020 Proxy Materials. This letter constitutes the Company's statement of the reasons that it deems the omission of the Proposal to be proper.

I. The Proposal

The Proposal states: "RESOLVED that shareholders of CVS Health Corporation [sic] ('CVS') urge the Board of Directors to report to shareholders, at reasonable cost and omitting confidential and proprietary information, on the use of contractual provisions requiring employees of CVS to arbitrate employment-related claims. The report should specify the proportion of the workforce subject to such provisions; the number of employment-related arbitration claims initiated and decided in favor of the employee, in each case in the previous calendar year; and any changes in policy or practice CVS has made, or intends to make, as a result of California's ban on agreeing to arbitration as a condition of employment."

II. Statement of Reasons to Exclude

The Company believes that the Proposal may be properly excluded from the 2020 Proxy Materials under both Rule 14a-8(i)(7) and Rule 14a-8(i)(3) because (1) it deals with a matter relating to the Company's ordinary business operations and (2) is inherently vague and indefinite and thus contrary to Rule 14a-9.

III. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to the Company's Ordinary Business Operations

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business operations." The Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *See* Exchange Act Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"). In the 1998 Release, the Commission further 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 stockholder 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 stockholders, as a group, would not be in a position to make an informed judgment. As the Commission has explained, a proposal may probe too deeply into matters of a complex nature if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *Id.*

The Commission 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 involves a matter of ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the "**1983 Release**") ("[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7)."). *See also, e.g., Rite Aid Corp.* (Apr. 17, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the feasibility of adopting company-wide goals for increasing energy efficiency and use of renewable energy, in which the Staff determined that the proposal focused "primarily on matters relating to the Company's ordinary business operations"); and *Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report relating to the company's assessment and screening of "inaccurate portrayals of Native Americans, American Indians and other indigenous peoples," in which the Staff determined that the proposal

related to the ordinary business matter of the "nature, presentation and content of programming and film production").

A. The Proposal Is Excludable Because It Relates to the Management of the Company's Workforce.

The Proposal is excludable as relating to the Company's ordinary business operations because it relates to the Company's management of its workplace practices, including general employee compensation matters, which is fundamental to management's ability to run the Company on a day-to-day basis. The Staff has long recognized that proposals that attempt to govern business conduct involving internal and employment-related policies and practices and the terms thereof (ranging from benefit plans to ethics, conflict of interest and other policies concerning employees) may be excluded pursuant to Rule 14a-8(i)(7) because they infringe on management's core functions. For example, a proposal to *Walmart, Inc.* (Apr. 4, 2019) requested that the board evaluate the risk of discrimination that may result from the company's policies and practices of hourly workers taking absences from work for personal or family illness. The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) because it dealt with "management of [the company's workforce]." *See also FedEx Corp.* (Jul. 7, 2016) (concurring in the exclusion of a proposal relating to the terms of the company's employee retirement plans); *Costco Wholesale Corp.* (Sept. 26, 2014) (concurring in the exclusion of a proposal relating to the company's policies concerning its employees, specifically, a revised Code of Conduct that includes an anti-discrimination policy); *Willis Group Holdings Public Limited Co.* (Jan. 18, 2011) (concurring in the exclusion of a proposal relating to the terms of the company's ethics policy under Rule 14a-8(i)(7)); and *Honeywell International Inc.* (Feb. 1, 2008) (concurring in the exclusion of a proposal relating to the company's terms of its conflicts of interest policy).

In addition, as noted in the 1998 Release, "the management of the workforce, such as the hiring, promotion, and termination of employees" is a matter that is "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." The Staff has consistently concurred with the exclusion of proposals relating to workforce management, including those related to hiring and terminating employees. *See, e.g., Apple, Inc.* (Nov. 16, 2015) (allowing the exclusion of a proposal asking Apple's compensation committee to adopt new compensation principles responsive to the U.S.'s "general economy, such as unemployment, working hour[s] and wage inequality"); *Merck & Co. Inc.* (Mar. 6, 2015) (proposal to fill entry level positions only with outside candidates excludable under Rule 14a-8(i)(7) where the Staff noted that "the proposal relates to procedures for hiring and promoting employees. Proposals concerning a company's management of its workforce are generally excludable under rule 14a-8(i)(7)"); *Starwood Hotels & Resorts Worldwide, Inc.* (Feb. 14, 2012) (proposal that, by a certain date, management verify United States citizenship for certain workers excludable under Rule 14a-8(i)(7), noting that "[p]roposals concerning a company's management of its workforce are generally excludable under rule 14a-8(i)(7)"); *National Instruments Corp.* (Mar. 5, 2009) (proposal to adopt detailed succession planning policy is excludable); and *Consolidated Edison, Inc.* (Feb. 24, 2005) (concurring that a proposal requesting the termination of certain supervisors could be excluded as it related to "the termination, hiring, or promotion of employees"). In *United Technologies* (Feb. 19, 1993), the Staff stated the following:

> As a general rule the staff views proposals directed at a company's employment policies and practices with respect to its non-executive workforce to be uniquely matters relating to the conduct of the company's ordinary business operations. Examples of the categories of proposals that have been deemed to

> be excludable on this basis are: employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation.

The Company is the nation's premier health innovation company, employing approximately 290,000 individuals and operating in all 50 states. The Proposal, which requests a report on the use of contractual provisions requiring arbitration of employment-related claims, focuses on the Company's management of its workforce by eliciting information regarding the Company's practices and outcomes related to the way the Company contracts with and manages disputes with and among its entire workforce. The Company's decisions with respect to the management of its workforce, including whether and under what circumstances to enter into contractual arrangements with employees, are fundamental and inextricably linked to the way the Company manages its workforce. *See Chevron Corp.* (Mar. 19, 2013) (excluding a proposal as relating to the company's ordinary business operations (*i.e.*, litigation strategy) where the proposal requested that the company review and provide a report regarding its "legal initiatives against investors"). Moreover, these contractual provisions and policies have long been utilized by many businesses, including the Company, to manage the costs and risks associated with employing an extensive workforce. This is especially the case for the Company given that it has an extensive workforce spread across the entire country.

The Proposal may also be excluded because it deals with compensation of non-executive employees. The Staff has consistently permitted the exclusion of proposals addressing the compensation of non-executive employees, as relating to the company's ordinary business operations. *See* SLB No. 14J (stating that "[c]onsistent with this guidance, proposals that relate to general employee compensation and benefits are excludable under Rule 14a-8(i)(7)"). *See also, e.g., CVS Health Corp.* (Mar. 1, 2017) (concurring in the exclusion of a proposal to adopt and publish principles for minimum wage reform, "noting that the proposal relates to general compensation matters, and does not otherwise transcend day-to-day business matters); *Microsoft Corp.* (Sept. 17, 2013) (concurring in the exclusion of a proposal asking the board to limit the average individual total compensation for senior management, executives and "all other employees the board is charged with determining compensation for" to one hundred times the average individual total compensation paid to the remaining full-time, non-contract employees of the company); *ENGlobal Corp.* (Mar. 28, 2012) (concurring in the exclusion of a proposal that sought to amend the company's equity incentive plan, noting that "the proposal relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors"); and *Amazon.com, Inc.* (Mar. 7, 2005) (concurring in the exclusion of a proposal requesting that the board adopt and disclose a new policy on equity compensation, and cancel a certain equity compensation plan potentially affecting all employees).

Additionally, in determining whether a compensation-related proposal may be excluded as relating to ordinary business, the Staff has applied a bright-line test: a proposal may be excluded if it "relate[s] to general employee compensation matters" but not if it "concern[s] only senior executive and director compensation." Staff Legal Bulletin No. 14A (Jul. 12, 2002) (emphasis in original). A number of Staff letters state that a proposal that relates to a compensation matter will be excludable as relating to ordinary business if the proposal applies to any person who is not a senior executive officer or a director. *See The Goldman Sachs Group* (Mar. 8, 2010) (proposal applied to named executive officers and the 100 most highly-compensated employees); *3M Company* (Mar. 6, 2008) (proposal related to compensation of "high-level 3M employees"); and *Comshare, Inc.* (Sept. 5,

2001) (proposal requested that the "Board improve disclosure of its strategy for awarding stock options to top executives and directors," but also implicated the stock option plan available to general employees).

In this case, the Proposal urges the Board to produce a report detailing the Company's use of contractual provisions requiring all 290,000 employees of the Company, not just executive level employees, to arbitrate employment-related claims. Such provisions can be a matter of broad corporate employment policy or can be part of the individually negotiated terms of employment, or may arise in the context of an individually negotiated separation agreement in connection with a termination of employment in return for negotiated consideration. For example, in connection with negotiating the terms of an employee's resignation or termination, a company may agree to provide specific consideration that is conditioned on the employee agreeing to arbitrate employment-related claims. In these cases, the contractual provisions requiring employees of the Company to arbitrate employment-related claims are directly related to and conditioned upon compensation decisions. Accordingly, the Proposal asks shareholders to vote on a matter relating to general employee compensation matters—an outcome that the Staff has consistently not supported as within the scope of a matter proper for stockholder consideration.

In accordance with the 1983 Release, because the Proposal requests a report, the relevant inquiry is whether the subject matter of the report involves a matter of the Company's ordinary business. *See* 1983 Release. The Proposal requests a report detailing the "use of contractual provisions requiring employees of CVS to arbitrate employment-related claims." As discussed above, contractual provisions requiring employees of the Company to arbitrate employment-related disputes are inextricably linked and fundamental to the Company's policies regarding the resolution of matters relating to the ongoing employment and termination of employees, and, more generally, the way the Company manages its workforce.

For the reasons set forth above, we respectfully request that the Staff concur in our view that the Proposal may be excluded under Rule 14a-8(i)(7) as it implicates the Company's ordinary business operations.

B. The Proposal Is Excludable Because It Relates to the Company's Ordinary Business Operations and Does Not Identify or Relate to a "Sufficiently Significant Social Policy Issue"

The Commission indicated in the 1998 Release that proposals that relate to ordinary business matters, but that focus on "sufficiently significant social policy issues . . . generally would not be considered to be excludable [under Rule 14a-8(i)(7)] because the proposals would transcend the day-to-day business matters." *See, e.g., CBRE Group, Inc.* (Mar. 6, 2019) ("**CBRE Group**") (not allowing exclusion of a proposal requesting a report on the impact of "*mandatory arbitration policies* on the Company's employees" on the grounds that the proposal transcends ordinary business matters (emphasis added)).

As an initial matter, unlike the proposal in *CBRE Group*, the Proposal here could be read to request a report on any and every contractual provision requiring employees of the Company to arbitrate employment-related claims, which would include arbitration provisions that are specifically negotiated terms of employment or termination of employment (*see* Section IV below (arguing for exclusion on the basis that the Proposal is vague and indefinite since it is unclear whether the Proposal relates to mandatory arbitration policies or all policies and contractual provisions requiring

arbitration)), as opposed to traditional mandatory arbitration policies that require arbitration without the ability to negotiate or opt out.[1] Further, the proponent in *CBRE Group* connected the subject matter of the proposal (*i.e.*, sexual harassment in the workplace) as an unlawful form of employment discrimination based on sex, which is a federally-protected class. *Id.* By contrast, the Proposal fails to focus on any significant policy issue at all, and instead raises wide-ranging issues such as "wage theft," "toxic cultures," employee morale and the effects of confidentiality provisions, in addition to sexual harassment, all in support of obtaining a report that the Proponent asserts "would allow shareholders to assess the proportion of the workforce subject to mandatory arbitration . . . together with the risks posed by the use of such provisions." (For a discussion of similar proposals found excludable by the Staff, see *Amazon.com, Inc.* (Mar. 6, 2019) and other letters cited below). The Proposal's main focus is related to the management of the Company's entire workforce regardless of context or category of claim, which is clearly a matter of ordinary business. The fact that the Proponent has attempted to tie recent high-profile social issues to the Proposal, including one that the Staff has found to be significant for a different company, is not a basis to disqualify the Proposal from exclusion under Rule 14a-8(i)(7).

As further support that the Proposal does not touch upon a significant policy issue, we note that the Company's stockholders, other than the Proponent, have not requested the type of assessment requested by the Proposal nor have they raised issues related to the use of contractual provisions requiring employees to arbitrate employment-related claims. The Company maintains proactive and on-going engagement with its investors. As part of the Company's stockholder engagement efforts over the last few years, investors have not raised issues related to the use of arbitration provisions as an issue and it has not formed part of the discussions that the Company has had with investors. *See Comcast Corp.* (Feb. 15, 2011) (concurring in the exclusion of the proposal under Rule 14a-8(i)(7), noting that it is not sufficient that the topic of the proposal may have "recently attracted increasing levels of public attention," but instead it must have "emerged as a consistent topic of widespread public debate"). Moreover, employees of the Company have not raised concerns about the Company's use of arbitration provisions and policies in connection with the Company's onboarding processes, exit procedures or employee feedback processes or surveys. Similarly, the use of arbitration provisions in severance and other similar arrangements has also not raised concerns for employees.

Even assuming that the Proposal does touch upon a significant policy issue, that alone is not sufficient to avoid the application of Rule 14a-8(i)(7) when a proposal implicates ordinary business matters. Even where a proposal references or addresses a significant policy issue within the meaning of the Staff's interpretations of Rule 14a-8(i)(7), the Staff has expressed the view that proposals relating to both ordinary business matters and significant social policy issues may be excluded in their entirety in reliance on Rule 14a-8(i)(7) when it also involves ordinary business issues. *See* 1998 Release. *See also Walmart Inc.* (Apr. 13, 2018) (concurring with the exclusion of a proposal requesting a report on the risks associated with public policies on the gender pay gap and risks related to recruiting and retaining female talent); *Lowes Companies, Inc.* (Jan. 30, 2017) (concurring in exclusion of proposal that requesting a report on risks and costs caused by pressure campaigns to

[1] Additionally, the Proponent falsely states that the Company maintains a mandatory arbitration policy. In fact, as the Proponent's supporting statement goes on to acknowledge, the Company's policy is voluntary and employees are permitted to opt out. The Proponent claims, without support, that the policy is not voluntary because it imposes onerous opt out requirements on employees. In fact, thousands of employees have opted out of the arbitration policy—including unionized personnel.

oppose religious freedom laws and strategies to defend the company's against related discrimination and harassment); *JPMorgan Chase & Co.* (Mar. 9, 2015) (concurring in the exclusion of a proposal that requested that the company amend its human rights-related policies "to address the right to take part in one's own government free from retribution," and also included examples of companies that had adopted non-retaliation policies to protect employees' expressed political views and contributions in its supporting statement, because the proposal related to "[the company's] policies concerning its employees"); *CVS Health Corp.* (Feb. 27, 2015) (concurring in the exclusion of a proposal requesting the company "to amend its policies to explicitly prohibit discrimination based on political ideology, affiliation or activity," finding that it did not focus on a significant social policy issue, as it related to the company's policies "concerning its employees"); and *Deere & Co.* (Nov. 14, 2014, *recon. denied* Jan. 5, 2015) (concurring in the exclusion of a proposal requesting the implementation and enforcement of a company-wide employee code of conduct that included an antidiscrimination policy as the proposal related to the company's "policies concerning its employees," an ordinary business matter).

Notwithstanding the Staff's view in *CBRE Group*, which as noted above involved a proposal that is distinguishable from the Proposal here, the Staff has recently not recognized mandatory arbitration with employees as a practice that raises significant policy issues. *See Amazon.com, Inc.* (Mar. 6, 2019) (concurring in the exclusion of a proposal requesting that the board adopt a policy that the Company will not engage in any "Inequitable Employment Practice," including mandatory arbitration of employment-related claims. The Staff noted that the proposal "does not focus on an issue that transcends ordinary business matters"); *Yum! Brands, Inc.* (Mar. 6, 2019) (exclusion of a proposal the same as that in Amazon.com, *supra*, on the same basis); and *XPO Logistics, Inc.* (Mar. 6, 2019) (exclusion of a proposal the same as that in Amazon.com, *supra*, on the same basis). The underlying consideration of the Proposal is on the Company's ordinary business operations because the Proposal's focus is on provisions in the Company's employment arrangements and policies as they relate to employee dispute resolution. The Proponent describes the Proposal as focused on a variety of recently high-profile employment-related issues and concludes by stating that "[t]he information sought in this Proposal would allow shareholders to assess the proportion of the workforce subject to mandatory arbitration of employment-related claims together with the risks posed by the use of such provisions." However, by doing so, the Proposal shows that its intent and scope directly relates to the management of the Company's workforce and not a particular significant policy issue. Therefore, we respectfully request that the Staff concur in our view that it is excludable under Rule 14a-8(i)(7).

C. The Proposal Is Excludable Because It Attempts to Micromanage the Company's Business

The Proposal is excludable as relating to the Company's ordinary business operations because it attempts to micromanage the Company's business. The Proposal's intrusion into the contractual provisions governing the relationship between the Company and its employees is an inappropriate veiled attempt to micro-manage the Company because decisions and policies involving employment arrangements and policies and intra-personnel matters implicate a wide variety of different types of considerations and involve "matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *See* 1998 Release. As noted above, the Company is the nation's premier health innovation company, employing approximately 290,000 individuals and operating in all 50 states, each of which has its own employment law regime. The relationship between the Company and its employees in multiple and varied jurisdictions constitutes a critical component of its day-to-day management. Decisions concerning employee relations and

workplace conditions, such as decisions regarding the strategies the Company may deploy with respect to terms of employment and addressing employment-related claims are multi-faceted, complex and based on a range of factors. *See, e.g., Chevron Corp.* (Mar. 19, 2013) (excluding a proposal as relating to the company's ordinary business operations (*i.e.*, litigation strategy) where the proposal requested that the company review and provide a report regarding its "legal initiatives against investors"); and *CMS Energy Corp.* (Feb. 23, 2004) (excluding a proposal requiring the company to void any agreements with two former members of management and initiate action to recover all amounts paid to them, where the Staff noted that the proposal related to the "conduct of litigation"). These are fundamental business matters for the Company's management and require an understanding of the business implications that could result from changes made to workforce policies. The Commission identified that a proposal could "probe too deeply" where "the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *See* 1998 Release. The Staff recently reiterated its view and application of this standard of assessing whether a proposal micro-manages in Staff Legal Bulletin No. 14J (Oct. 23, 2018) ("**SLB No. 14J**"). The complexity of the type of assessment the Proposal request is simply beyond the knowledge and expertise of the stockholders of the Company and therefore seeks to micro-manage the Company.

Accordingly, it is clear that the Proposal involves the Company's day-to-day business operations and we respectfully request that the Staff concur in our view that the it is therefore excludable under Rule 14a-8(i)(7).

IV. The Proposal May Be Excluded Because the Proposal and Supporting Statement Are Inherently Vague and Indefinite and Thus Contrary to Rule 14a-9

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff has interpreted Rule 14a-8(i)(3) to mean that vague and indefinite stockholder proposals may be excluded because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("**SLB No. 14B**").

A proposal is sufficiently vague and indefinite to justify exclusion where a company and its stockholders might interpret the proposal differently, such that "any action ultimately taken by the company upon implementation of the proposal could be significantly different from the actions envisioned by the shareholders voting on the proposal." *Fuqua Industries, Inc.* (Mar. 12, 1991). In the case of *NYC Employees' Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992) ("**NYCERS**"), the court stated "the Proposal as drafted lacks the clarity required of a proper shareholder proposal. Shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote." Further, the Staff consistently has permitted the exclusion of stockholder proposals when such proposals have failed to define certain terms necessary to implement them or where the meaning and application of key terms or standards under the proposal could be subject to differing interpretations. *See The Boeing Company* (Mar. 2, 2011) (allowing exclusion of a proposal requesting, among other things, that senior executives relinquish certain "executive pay rights" without explaining the meaning of the phrase); *General Motors Corp.* (Mar. 26, 2009) (concurring with the exclusion of a proposal to "eliminate all incentives for the CEO and the Board of Directors" that did not define "incentives"); and *Verizon Communications Inc.* (Feb. 21,

2008) (proposal prohibiting certain compensation unless Verizon's returns to stockholders exceeded those of its undefined "Industry Peer Group" was excludable).

As noted above, the Proposal urges the Board to produce a report on the use of contractual provisions requiring employees of the Company to arbitrate employment-related claims. The Proposal does not, however, specify whether this is limited to "mandatory arbitration provisions," as referenced throughout the supporting statement, which such provisions are distinguishable from specifically negotiated and agreed upon arbitration provisions in employment and other similar arrangements and voluntary arbitration programs, such as the program implemented by the Company. Without further explanation, it is unclear whether the Proponent is requesting a report on all arbitration provisions and policies or only mandatory policies pursuant to which the employee has no ability to negotiate or opt out of. *See NYCERS* ("Shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote."); and *Occidental Petroleum Corp.* (Feb. 11, 1991) ("The staff, therefore, believes that the proposal may be misleading because any action(s) ultimately taken by the [c]ompany upon implementation of this proposal could be significantly different from the action(s) envisioned by shareholders voting on the proposal."). Even more confusing is that fact that the Proponent acknowledges that the Company's policy is voluntary and that employees are permitted to opt out, but claims, without any support, that it imposes onerous requirements on employees.

For these reasons, "any action ultimately taken by the Company upon implementation [of the Proposal] could be significantly different from the actions envisioned by the shareholders voting on the Proposal." *Fuqua Industries, Inc.* (Mar. 12, 1991)). Accordingly, the Company believes the Proposal is properly excludable under Rule 14a-8(i)(3).

V. Conclusion

For the reasons discussed above, the Company respectfully requests the Staff's concurrence with its decision to omit the Proposal from the 2020 Proxy Materials and further requests the confirmation that the Staff will not recommend any enforcement action in connection with such omission. Please call the undersigned at (401) 770-5177 if you should have any questions or need additional information or as soon as a Staff response is available.

Respectfully yours,

Colleen M. McIntosh
Senior Vice President, Chief Governance Officer, Corporate Secretary
and Assistant General Counsel

Attachments

cc w/ att: Michael Garland, Assistant Comptroller, The Comptroller of the City of New York
Doreen E. Lilienfeld, Shearman & Sterling LLP

Exhibit A

Copy of the Proposal and Accompanying Correspondence

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

MUNICIPAL BUILDING
ONE CENTRE STREET, 8TH FLOOR NORTH
NEW YORK, N.Y. 10007-2341
TEL: (212) 669-2517
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MGARLAN@COMPTROLLER.NYC.GOV

Michael Garland
ASSISTANT COMPTROLLER
CORPORATE GOVERNANCE AND
RESPONSIBLE INVESTMENT

November 13, 2019

Colleen M. McIntosh
Senior Vice President, Corporate Secretary and Chief Governance Officer
CVS Health Corporation
One CVS Drive
Woonsocket, Rhode Island 02895

Dear Ms. McIntosh:

I write to you on behalf of the Comptroller of the City of New York, Scott M. Stringer. The Comptroller is the custodian and a trustee of the New York City Employees' Retirement System, the New York City Teachers' Retirement System, the New York City Police Pension Fund and the New York City Fire Pension Fund (the "Systems"). The Systems' boards of trustees have authorized the Comptroller to file this resolution and to inform you of their intention to present the enclosed proposal for the consideration and vote of stockholders at the Company's next annual meeting.

Therefore, we offer the enclosed proposal for the consideration and vote of shareholders at the Company's next annual meeting. It is submitted to you in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, and I ask that it be included in the Company's proxy statement.

Letters from State Street Bank and Trust Company certifying the Systems' ownership, for over a year, of shares of CVS Health Corporation common stock are enclosed. Each System intends to continue to hold at least $2,000 worth of these securities through the date of the Company's next annual meeting.

We would welcome the opportunity to discuss the proposal with you. Should the Board of Directors decide to endorse its provision as corporate policy, we will withdraw the proposal from consideration at the annual meeting.

Please feel free to contact me at (212) 669-2517 if you would like to discuss this matter.

Sincerely,

Michael Garland
Enclosures

RESOLVED that shareholders of CVS Health Corporation. ("CVS") urge the Board of Directors to report to shareholders, at reasonable cost and omitting confidential and proprietary information, on the use of contractual provisions requiring employees of CVS to arbitrate employment-related claims. The report should specify the proportion of the workforce subject to such provisions; the number of employment-related arbitration claims initiated and decided in favor of the employee, in each case in the previous calendar year; and any changes in policy or practice CVS has made, or intends to make, as a result of California's ban on agreeing to arbitration as a condition of employment.

SUPPORTING STATEMENT

In recent years, public attention has focused on the use by companies of agreements requiring employees to pursue employment-related claims, including sexual harassment claims, through arbitration. High-profile sexual harassment cases involving Fox News, Google and Uber highlighted the impact of these agreements. A robust public debate has ensued, including responses by legislators, regulators and state attorneys general.

Mandatory arbitration precludes employees from suing in court for wrongs like wage theft, discrimination and harassment, and requires them to submit to private arbitration, which has been found to favor companies and discourage claims.

CVS has forced its employees to arbitrate claims regarding alleged wage and hour violations (see https://scholar.google.com/scholar_case?case=17879381085277442407&q=Aaron+Elmore+v.+CVS+Pharmacy,+Inc.&hl=en&as_sdt=2006). Wage theft from low-wage employees is widespread; a study estimated that wage theft costs low-wage workers in three large U.S. cities $3 billion per year.[1]

Sexual harassment is an urgent concern across industries. A bill to end mandatory arbitration of sexual harassment claims bill passed in the U.S. House of Representatives in September 2019, and 56 state and territorial attorneys general voiced support for it. A 2019 article characterized the "movement to end forced arbitration" as having "swept Silicon Valley," with employee walk-outs and company policy changes.[2] California recently banned the practice of requiring arbitration agreements as a condition of employment and Washington State enacted a law in 2018 invalidating contracts requiring arbitration of sexual harassment or assault claims.

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[1] See https://www.supremecourt.gov/opinions/17pdf/16-285_q8l1.pdf#page=32, Dissent, at 26-27.

[2] https://www.sfchronicle.com/business/article/California-has-a-new-law-against-mandatory-14511832.php

Finally, because arbitration is private and contractual, arbitrating employment-related claims can allow a toxic culture to flourish, increasing the severity of eventual consequences and harming employee morale. Confidentiality provisions can prevent an employee's lawyer from using knowledge of wrongdoing to identify other victims.

CVS describes its mandatory arbitration policy as voluntary and employees are permitted to opt only by complying with onerous requirements that we believe are designed to deter such voluntary action

The information sought in this Proposal would allow shareholders to assess the proportion of the workforce subject to mandatory arbitration of employment-related claims together with the risks posed by the use of such provisions

We urge shareholders to vote for this Proposal.

STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
c/o NYC Office of the Comptroller
Municipal Building
One Centre Street
New York, NY 10007
Telephone: 347 749-2420
dfarrell@statestreet.com

November 13, 2019

Re: New York City Teachers' Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Teachers' Retirement System, the below position from October 31, 2018 through today as noted below:

Security:	CVS HEALTH CORP
Cusip:	126650100
Shares:	711,579

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President

STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
c/o NYC Office of the Comptroller
Municipal Building
One Centre Street
New York, NY 10007
Telephone: 347 749-2420
dfarrell@statestreet.com

November 13, 2019

Re: New York City Police Pension Fund

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Police Pension Fund, the below position from October 31, 2018 through today as noted below:

Security:	CVS HEALTH CORP
Cusip:	126650100
Shares:	540,059

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President

STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
c/o NYC Office of the Comptroller
Municipal Building
One Centre Street
New York, NY 10007
Telephone: 347 749-2420
dfarrell@statestreet.com

November 13, 2019

Re: New York City Fire Pension Fund

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Fire Pension Fund, the below position from October 31, 2018 through today as noted below:

Security:	CVS HEALTH CORP
Cusip:	126650100
Shares:	169,328

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President

STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
c/o NYC Office of the Comptroller
Municipal Building
One Centre Street
New York, NY 10007
Telephone: 347 749-2420
dfarrell@statestreet.com

November 13, 2019

Re: New York City Employee's Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Employee's Retirement System, the below position from October 31, 2018 through today as noted below:

Security:	CVS HEALTH CORP
Cusip:	126650100
Shares:	805,366

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President