



The Shareholder Commons
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February 17, 2021
Via electronic mail

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

Re: CVS Health Corporation; shareholder proposal submitted by John Chevedden on behalf of Myra Young under Securities Exchange Act of 1934 (“Exchange Act”)—Rule 14a-8

Ladies and Gentlemen:

Myra Young (the “Proponent”) is beneficial owner of common stock of CVS Health Corporation (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the letter dated February 10, 2020 (“Company Response”) and sent to the Securities and Exchange Commission (the “SEC”) by Thomas Moffat (“Company Counsel”) in response to my letter dated February 8 and sent to the SEC (“Proponent Answer”) in reply to the letter dated January 12, 2020, sent to the SEC by Company Counsel (“Company Letter”) seeking no-action relief with respect to the Proposal.

In the Company Response, the Company contends that the Proposal may be excluded under Rule 14a-8(i)(5) because the subject matter of the Proposal composes less than 5% of the Company’s business and is not otherwise significantly related to the Company’s business. In particular, the Company Letter specifically affirms that candy is included in the Consumables

category for which the Company Letter provided information regarding the 5% threshold.

However, even if the subject matter of the proposal composes less than 5% of the Company's business, the Proposal is "significantly related to the company's business" as contemplated by Staff Legal Bulletin 14I, because selling food that creates significant public health costs threatens the Company's purpose as a health company.

As noted in the Proponent Answer, the Company (1) positions itself as a health-oriented business yet (2) showcases and promotes unhealthful products within its stores, limiting its ability to capitalize on its purpose of "Helping people on their path to better health."

In addition to the materials provided in the Proponent Answer, we note that the Company's own materials make clear that a product mix that promotes health is central to the Company's strategy to promote its purpose as a health company. The CEO of the Company explains on the Company's website why the Company's decision to end the sale of tobacco products was essential:

Ending the sale of cigarettes and tobacco products at CVS Pharmacy is simply the right thing to do for the good of our customers and our company. The sale of tobacco products is inconsistent with our purpose – helping people on their path to better health.

As the delivery of health care evolves with an emphasis on better health outcomes, reducing chronic disease and controlling costs, CVS Caremark is playing an expanded role through our 26,000 pharmacists and nurse practitioners. By removing tobacco products from our retail shelves, we will better serve our patients, clients and health care providers while positioning CVS Caremark for future growth as a health care company. Cigarettes and tobacco products have no place in a setting where health care is delivered. This is the right thing to do. (Emphasis added.)¹

More recently, in an op-ed, the CEO explained:

Our own actions to exit tobacco came out of a realization that not only was the sale of tobacco a barrier to the future growth of the company as a trusted health care provider, but also smoking — which remains the leading preventable cause of death and disease in the United States and costs the economy \$300 billion annually — had no place in a setting where health care was delivered.

¹ <https://cvshealth.com/thought-leadership/message-from-larry-merlo-president-and-ceo>.

Moreover, our exit from tobacco helped validate CVS's evolving role in the health care marketplace and disrupted access to cigarettes.²

The Company's website declares that tobacco is just the beginning of ensuring that its product mix reflected its purpose:

But our decision to eliminate tobacco was just the start. As a health care company now combined with Aetna, we're taking even bolder steps to transform the consumer health care experience and help lead our customers, patients and the communities we serve on a path to better health.

On our shelves, customers now have access to more health-focused products and services than ever before. And we recently became the first and only national retailer to require that all vitamins and supplements undergo third-party testing to confirm they meet our high standards.³

But the candy and chips that dominate the front and checkout areas of the Company's 9,900 stores encourage shoppers to buy products that are just the opposite of "the consumer health care experience" at the center of the Company's purpose. Health experts believe that candy can be as poisonous and addictive as tobacco.⁴ Obesity and diabetes each kill more people in the U.S. annually than does the tobacco that the Company has banned from its stores.⁵ Even business publications report that studies have shown a link between infant and childhood obesity and higher consumption of sugars at the earliest ages — even while in gestation.⁶

Finally, we quote at length the abstract of a review of the scientific literature linking sugar and health issues:

Two-thirds of the US population is either overweight or obese. Obesity is one of the major drivers of preventable diseases and health care costs. In the US, current estimates for these costs range

² Merlo, Larry. "CVS chief: Getting rid of tobacco taught us an important lesson. We hope our journey inspires other businesses." *CNN Business Perspectives*. (November 5, 2019) available at <https://www.cnn.com/2019/09/09/perspectives/cvs-tobacco-purpose/index.html>.

³ <https://cvshealth.com/news-and-insights/articles/tobacco-free-for-five-years#:~:text=Five%20years%20ago%2C%20we%20made,national%20pharmacy%20to%20do%20so.&text=In%202014%2C%20we%20quit%20tobacco>.

⁴ McLallen, Lyda. "Sugar or Cigarettes: Which is Worse For You?" *Diabetes Daily*. (March 2, 2016) available at <https://www.diabetesdaily.com/blog/sugar-or-cigarettes-which-is-worse-for-you-248317/>.

⁵ *Cleveland Clinic Newsroom*. "Cleveland Clinic Study Finds Obesity as Top Cause of Preventable Life-Years Lost." (April 22, 2017) available at <https://newsroom.clevelandclinic.org/2017/04/22/cleveland-clinic-study-finds-obesity-top-cause-preventable-life-years-lost/>.

⁶ Arends, Brett. "Why Halloween candy is now scarier than the clowns." *MarketWatch*. (October 31, 2019) available at <https://www.marketwatch.com/story/why-halloween-candy-is-now-scarier-than-the-clowns-2019-10-30>.

from \$147 to \$210 billion per year. Obesity is a multifactorial disease: genetics, lifestyle choices, metabolism, and diet. Low-fat diets have been suggested as the key to weight management. However, over the past 30 years, the calories from fat in people's diets have gone down, but obesity rates keep climbing. Evidence suggests that diets high in added sugar promote the development of obesity. However, the impact of sugar consumption on weight gain and body fat accumulation remains a controversial topic. Therefore, the aim of this review is to provide basic framework information about the prevalence of obesity and sugar consumption in the US over the last five decades. We also review the process by which sugar is converted to fat and stored in the human body. The relationship between sugar consumption and obesity was analyzed using United States Department of Agriculture (USDA) Sugar and Sweetener Outlook data, and obesity prevalence was analyzed using data from the Centers for Disease Control and Prevention (CDC). The analysis revealed a reduction in sugar consumption concurrent with a slowing down of the annual rate of increase of obesity. However, although the data show that the sugar consumption trend is going in the right direction (declining), the US population still consumes more than 300% of the recommended daily amount of added sugar.⁷

If the U.S. population is consuming more than 300% of the recommended daily amount of sugar, if diets high in sugar promote obesity, and if obesity kills more people than tobacco, then the Proposal must be as significant to the Company's business as was the decision to ban tobacco from its stores. The reasons for removing tobacco—consumer experience, 12-figure cost to the U.S. economy, the place of unhealthful products in a health care setting, growth as a trusted healthcare provider, and accomplishment of corporate purpose—are all present with respect to the external health costs of the Company's food business, including the candy, soda, and chips featured so prominently in its stores.

In view of recent Staff Legal Bulletins, it is clear that the proposal is relevant for purposes of Rule 14a-8(i)(5). SLB 14I described the evolution of the process for considering Rule 14a-8(i)(5) claims, noting:

Where a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is "otherwise significantly related to the company's business." For example, the proponent can provide information demonstrating that the proposal "may have a

⁷ Faruque, Samir et al. "The Dose Makes the Poison: Sugar and Obesity in the United States – a Review." *Polish journal of food and nutrition sciences*. (March 2019) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6959843/>.

significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities." The proponent could continue to raise social or ethical issues in its arguments, but it would need to tie those to a significant effect on the company's business. The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the "total mix" of information about the issuer.

Here, because the subject matter of the proposal is an issue that the Company has treated as core to brand value, i.e., the health effects of its product mix, it is clear the question will have a significant effect on the Company's business and is inextricably linked to the core of its business as a health company.

The Proposal is significantly related to the Company's business and should not be excluded under Rule 14a-8(i)(5). We therefore respectfully request that the Staff inform the Company that it is denying the no-action letter request. If you have any questions, please contact me at rick@theshareholdercommons.com or 302-593-0917.

Sincerely,

Frederick Alexander

Frederick Alexander

cc: Thomas S. Moffat
Myra K. Young

February 10, 2021

VIA E-MAIL (shareholderproposals@sec.gov)

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 by John Chevedden on behalf of Myra K. Young
Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen:

This letter relates to the response letter (the "**Response Letter**") submitted by The Shareholder Commons on behalf of Myra K. Young (the "**Proponent**"), dated February 8, 2021, in response to the no-action request (the "**No-Action Request**") submitted by CVS Health Corporation, a Delaware corporation (the "**Company**"), to the Staff of the Division of Corporation Finance (the "**Staff**") of the U.S. Securities and Exchange Commission (the "**Commission**") on January 12, 2021. The No-Action Request pertains to the Proponent's request to include a stockholder proposal in the Company's 2021 proxy materials (the "**Proxy Materials**") that the Board of Directors (the "**Board**") of the Company commission and disclose a report on the external public health costs created by the retail food business of the Company and the manner in which such costs affect the vast majority of its shareholders who rely on overall market returns (the proposal and the supporting statement together, the "**Proposal**").

For the reasons set forth below and in the No-Action Request, the Company respectfully requests confirmation that the Staff will not recommend enforcement action if, in reliance on Rule 14a-8 of the Securities Exchange Act of 1934, as amended, the Company omits the Proposal from its Proxy Materials.

DISCUSSION

An analysis of the Proposal's exclusion under Rule 14a-8(i)(5) and economic significance of the portion of the Company's business that relates to the Proposal, namely whether "retail food business" accounts for less than 5% of the Company's total assets at the end of its most recent fiscal year and for less than 5% of its net earnings and gross sales for its most recent fiscal year, requires a clear and precise definition of the term "retail food business," which the Proposal does not provide.

For the benefit of the Staff's analysis and the Proponent's understanding, the Company had listed, in its No-Action Request, the categories of products that the Company considers as part of what

the Proponent refers to as “retail food business” – food and beverages in the Company’s consumables/general merchandise category within its Retail segment (referred to as “Consumables”). As discussed in the No-Action Request, this list includes a wide variety of products and product lines, including the following:

- beverages (including water, teas, juices, etc.);
- dairy (including milk and milk alternatives, creamers, cheese, eggs, etc.);
- grocery (including breakfast, cereals, coffee, soup, baking supplies, condiments, etc.);
- snacks (including nuts, salty snacks, nutrition bars, etc.);
- soda;
- flowers and fresh produce;
- beer, wine and spirits;
- baked goods (including bread, pastry, etc.); and
- frozen foods.

Contrary to the Proponent’s Response Letter, the Company confirms that “candy” is included in the “snacks” sub-category listed above. For clarity, potato chips, pretzels and related products are “salty snacks” and are also included in the snacks sub-category, and ice cream and other frozen desserts/snacks are included in the frozen foods sub-category. In short, all “edible items,” other than those products that are consumed for a medicinal, therapeutic or other health-related reason, such as vitamins and cough or cold medicines or treatments, are included as part of Consumables. These products were also included in the calculation of the percentage of Consumables to total assets, net earnings and gross sales, respectively, for its most recent fiscal year that was presented in the No-Action Request, all of which were far below the 5% threshold. The Company expects the relative percentage of Consumables to total assets, net earnings and gross sales, respectively, will continue to be significantly below the 5% thresholds in 2021. In addition, the Company also included a number of products in a variety of subcategories, such as bottled water, milk, cheese, eggs, ice, baking supplies and a variety of grocery items within the calculation of Consumables that are not products that the Proponent has identified as contributing to public health costs, nor are these products generally considered to be inherently unhealthy. The products included as part of Consumables for purposes of these calculations also include a number of products that, on any objective measure, are considered healthy, such as fresh fruit and vegetables. As a result, the percentage of Consumables that the Proponent would consider contributing to public health costs is even lower.

Further, the Proponent’s Response Letter indicates that there is no evidence as to the percentages claimed other than reference to the Company’s internal reporting. As the Company has emphasized in the No-Action Request, it considers the specific percentages associated with food and beverages in its Consumables category to be highly competitive and sensitive information. If the Staff requires such information in making its decision whether the Proposal can be excluded, the Company will provide any necessary information on a confidential basis.

CONCLUSION

Based upon the foregoing analysis, and our arguments set forth in the No-Action Request, we reiterate our request that the Staff take no action if the Company excludes the Proposal from its

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Proxy Materials. If the Staff has any questions regarding this request or requires additional information, please contact me at (401) 770-5409 or Thomas.Moffatt@CVSHealth.com.

Respectfully yours,



Thomas S. Moffatt
Vice President, Assistant Secretary and Assistant General Counsel

cc: John Chevedden (on behalf of Myra K. Young)
Frederick Alexander, The Shareholder Commons
Colleen M. McIntosh, Senior Vice President, Chief Governance Officer, Corporate Secretary and Assistant General Counsel, CVS Health Corporation
Lona Nallengara, Shearman & Sterling LLP



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Frederick H. Alexander
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February 8, 2021
Via electronic mail

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

Re: CVS Health Corporation; shareholder proposal submitted by John Chevedden on behalf of Myra Young under Securities Exchange Act of 1934 (“Exchange Act”)—Rule 14a-8

Ladies and Gentlemen:

Myra Young (the “Proponent”) is beneficial owner of common stock of CVS Health Corporation (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the letter dated January 12, 2020 (“Company Letter”) sent to the Securities and Exchange Commission (the “SEC”) by Thomas Moffat (“Company Counsel”). In that letter, the Company contends that the Proposal may be excluded from the Company’s 2021 proxy statement. A copy of the Proposal is attached to this letter.

Based on the Proposal, as well as the letter sent by the Company, we respectfully submit that the Proposal must be included in the Company’s 2021 proxy materials and that it is not excludable under Rule 14a-8. A copy of this letter is being emailed concurrently to Company Counsel.

SUMMARY

The Proposal requests a study of the external public health costs associated with the Company's retail food business, and the manner in which such costs affect the vast majority of its shareholders who rely on overall market returns. The Company asserts that the Proposal is excludable either because it is not economically or otherwise significant to the Company (Rule 14a-8(i)(5)) or because it relates to ordinary business (Rule 14a-8(i)(7)).

The Company has not shown that its retail food business does not compose 5% of its business because it has failed to indicate what products it has excluded from the category of food that are included in the common meaning of "food." Even if the food business did compose less than 5% of the business, it is nevertheless economically significant to the Company's overall business due to the conflict between Company's focus on health and the promotion of unhealthful food within the Company's stores. Thus, the Proposal is not excludable pursuant to Rule 14a-8(i)(5).

Nor is the Proposal excludable under Rule 14a-8(i)(7), because it is solely directed to a significant policy issue posed by the Company's ongoing business, namely the question of how a corporation accounts for the costs it imposes on stakeholders when it prioritizes the interests of its shareholders. The Company itself has recognized the importance of the question, recently signing on to the Business Roundtable Statement of the Purpose of a Corporation (the "Statement"), which purports to make significant commitments to stakeholders.¹ This issue has been the focus of legislative action, policy debate, and the Company's own public commitments. The Proposal relates solely to this critical policy issue and contains no specific direction with respect to particular products and services or any other ordinary business of the Company.

ANALYSIS

1. The Proposal Is Not Excludable Under Rule 14a-8(i)(5)

A. Background

Rule 14a-8(i)(5) allows exclusion of proposals that are not relevant to a company's business. To show irrelevance, a Company must show both that a proposal relates to less than 5% of the company's business and that it is qualitatively irrelevant. The Company Letter does neither. The text of the Rule provides:

If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings

¹ <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>

and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business [it may be excluded].

The Staff provided a thorough explanation of the exception in 2017:

Where a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is "otherwise significantly related to the company's business." For example, the proponent can provide information demonstrating that the proposal "may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities." The proponent could continue to raise social or ethical issues in its arguments, but it would need to tie those to a significant effect on the company's business. The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the "total mix" of information about the issuer.²

B. The Quantitative Test

The Proposal is centered around the public health effects of the Company's "retail food business." The Company appears to be uncertain what these ordinary English words mean:

Although the Proposal does not define what the "retail food business" is, nor does it provide any explanation as to what within the Company's business the Proponent considers to be included within the scope of the retail food business, we believe that the food and beverages in the Company's Consumables category within its Retail segment, which include many items that it believes promote good health, best covers the focus of the Proposal.

Since all its product sales compose its retail business, we can only assume that the Company was unsure what the Proposal means by "food," but we submit the meaning of that word is fixed and clear. By food, the Proposal means "material consisting essentially of protein, carbohydrate, and fat used in the body of an organism to sustain growth, repair, and vital processes and to furnish energy;"³ we will refer to products that come under this definition as "edible items" for clarity in the rest of this letter.

Despite this clear meaning, the Company Letter is oddly precise in listing out the items

² *Staff Legal Bulletin No. 141 (CF)* (November 1, 2017) (footnotes omitted).

³ *Food*, Merriam-Webster Dictionary (definition 1.a) available at <https://www.merriam-webster.com/dictionary/food>.

that it is treating as food for the purposes of its 5% calculation:

Within the Retail segment, the Company tracks certain sales under a broad “consumables/general merchandise” (“Consumables”) category, which includes, among other products and product lines, the following: beverages (including water, teas, juices, etc.); dairy (including milk and milk alternatives, creamers, cheese, eggs, etc.); grocery (including breakfast, cereals, coffee, soup, baking supplies, condiments, etc.); snacks (including nuts, salty snacks, nutrition bars, etc.); soda; flowers and fresh produce; beer, wine and spirits; baked goods (including bread, pastry, etc.); and frozen foods. . . . we believe that the food and beverages in the Company’s Consumables category within its Retail segment, which include many items that it believes promote good health, best covers the focus of the Proposal.

It is unclear whether the Company included all of its edible items in its calculation. One item notably absent from its list is candy, which according to one source accounted for 5% of overall drugstore revenue as recently as 2017.⁴ Nor is any evidence provided as to the percentages claimed, other than the bald assertion of “according to internal reporting.” Prior to granting relief under the relevance exception, the Company must provide evidence that the edible items it sells meet the quantitative test.

C. The Qualitative Test.

Even if edible items (and thus the Company’s retail food business) compose less than 5% of the Company’s business on each metric set forth in the Rule, the contribution of that business to external health costs is economically significant to the Company because (1) the Company positions itself as a health-oriented business and (2) the Company showcases and promotes unhealthful products within its stores, limiting its ability to capitalize on its strategy to communicate its health orientation. The Company’s website emphasizes the importance of health to its purpose, mission, and values:

Our purpose

Helping people on their path to better health

Our strategy

Creating unmatched human connections to transform the health care experience

⁴ *Why Your Local CVS Is Hiding the Candy and Tanning Oil*, WALL STREET JOURNAL (June 28, 2017) available at <https://www.wsj.com/articles/why-your-local-cvs-is-hiding-the-candy-and-tanning-oil-1498647600>.

Our values

Innovation, Collaboration, Caring, Integrity, Accountability

The path to better health

Every one of us at CVS Health shares a single, clear purpose: helping people on their path to better health.

Whether in our pharmacies or through our health services and plans, we are pioneering a bold new approach to total health. Making quality care more affordable, accessible, simple and seamless. Creating innovations that not only help people get well, but help them stay well in body, mind and spirit.

By unlocking the power of data and opening our hearts to the needs of each person, we're creating unmatched human connections to transform the health care experience: welcoming moments of 1-on-1 care, millions of times each day.

We bring expertise and care to communities around the corner and across the country, deliver essential products and prescriptions right to people's doorsteps, provide vital services in their homes, and put a wealth of resources at their fingertips.

Working together across our disciplines, we surround those we serve with personal support that matches their unique circumstances.

This is health with heart: our promise that no matter where someone is on their path to better health, we'll be with them all the way.

The description of the business of the Company is also centered around health:

CVS Health Corporation ("CVS Health"), together with its subsidiaries (collectively, the "Company," "we," "our" or "us"), is the nation's premier health innovation company helping people on their path to better health. Whether in one of its pharmacies or through its health services and plans, CVS Health is pioneering a bold new approach to total health by making quality care more affordable, accessible, simple and seamless. CVS Health is community-based and locally focused, engaging consumers with

the care they need when and where they need it. The Company has approximately 9,900 retail locations, approximately 1,100 walk-in medical clinics, a leading pharmacy benefits manager with approximately 105 million plan members, a dedicated senior pharmacy care business serving more than one million patients per year and expanding specialty pharmacy services. CVS Health also serves an estimated 37 million people through traditional, voluntary and consumer-directed health insurance products and related services, including expanding Medicare Advantage offerings and a leading standalone Medicare Part D prescription drug plan (“PDP”). The Company believes its innovative health care model increases access to quality care, delivers better health outcomes and lowers overall health care costs.⁵

While the business of the Company has many aspects, the importance of its 9,900 retail outlets to public perceptions of the Company’s commitment to health cannot be denied. Indeed, in 2014, the Company took the bold and admirable move of removing tobacco from its stores and the CEO issued the following statement:

Ending the sale of cigarettes and tobacco products at CVS Pharmacy is simply the right thing to do for the good of our customers and our company. The sale of tobacco products is inconsistent with our purpose – helping people on their path to better health.⁶

As a peer-reviewed study showed, this commitment to the health of stakeholders did not simply shift tobacco sales to other retailers—it actually led to less purchasing of tobacco.⁷ This decision led to the Company’s credibility as a leader in the health industry by reducing public health costs. This is more than a matter of reputation: the Company’s entire identity is wrapped up in the promotion of health, and that identity is at odds with the Company’s promotion of products that have a negative effect on health.

A recent visit to a typical Company store reveals a pattern of retailing that is entirely at odds with the Company’s public profile promoting health.⁸ The front of the store is devoted to decidedly unhealthy food: soda, candy, chips, ice cream, and “energy drinks,” with “buy one,

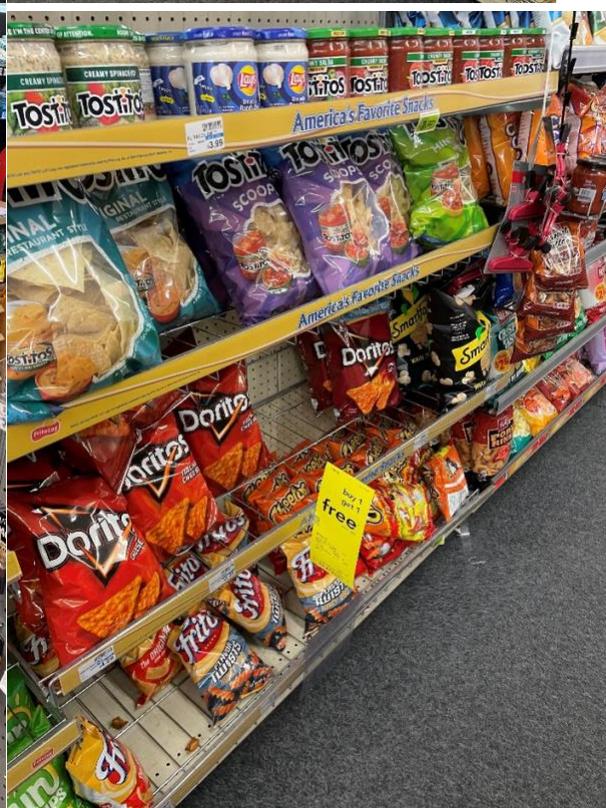
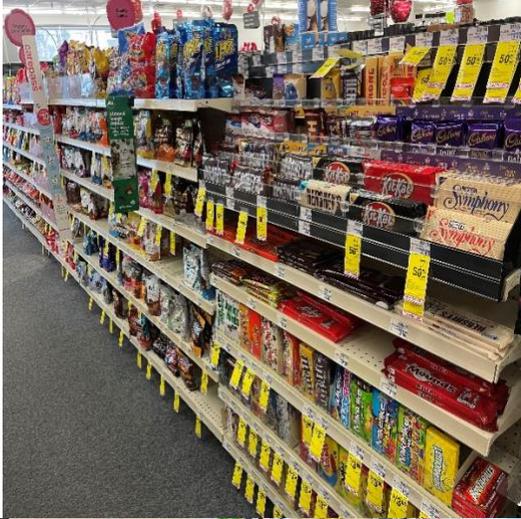
⁵ Company Report on Form 10-K for 2019, available at https://s2.q4cdn.com/447711729/files/doc_financials/2019/q4/Q4-2019-10-K.pdf

⁶ Company website, available at <https://cvshhealth.com/thought-leadership/message-from-larry-merlo-president-and-ceo>

⁷ *After CVS Stopped Cigarette Sales, Smokers Stopped Buying Elsewhere, Too*, Forbes (February 2017) available at <https://www.forbes.com/sites/brucejapsen/2017/02/20/after-cvs-stopped-cigarette-sales-smokers-stopped-buying-elsewhere-too/?sh=6a8c5cd1c8f5>

⁸ This description is based on a visit to the store located at 4020 Concord Pike, Wilmington, DE 19803 on February 6, 2020.

get one free” and similar promotions. Single-serving candy items dominated the front counter:





The high visibility and promotion of items that have negative health implications could have an extremely detrimental effect on the Company's core strategy of delivering health. This effect is not necessarily simply a product of volume, as the 9900 CVS outlets deliver a "BUY ME ON IMPULSE" message with single-serving, price-promoted brands all around. Why should a customer with type-two diabetes or hypertension be forced to run a gauntlet of sugar and salt to obtain her prescriptions, to say nothing of wine and beer? Understanding the external public health costs that come from pushing high-sugar and high-fat products in a retail environment designed to improve the health of the people most at risk from those products is critical to the business model of the Company, even if food sales compose less than five percent of its business.

Not only does the presentation and encouragement of unhealthful food products threaten the Company's health-based business model, it also creates contingent liability: at some point, a health-based company may bear responsibility to its customers for the health consequences of its marketing decisions.⁹ Some have predicted waves of litigation like those against the tobacco companies will come against sugar manufacturers,¹⁰ and it is easy to see how that litigation threat would extend to the purveyors who sold those products to the most vulnerable while promising to improve their health.

Thus, even if the Proposal does not meet the 5% test, it is clearly of critical significance to the Company, as the public health costs of its food business could threaten the Company's entire business plan as a company centered around customer health; it also addresses contingent liabilities to the extent it uncovers the negligent imposition of health costs on customers while claiming to deliver them health.

2. The Proposal Is Not Excludable Under Rule 14a-8(i)(7)

A. Background

The Staff has indicated that a shareholder proposal that might otherwise be excludable as relating to ordinary business under Rule 14a-8(i)(7) may not be excludable if it raises significant social policy issues. Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-40018, (May 21, 1998). In explaining ordinary business, the Release noted:

Certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Examples

⁹ *Is Sugar the New Tobacco?*, FOOD UNFOLDED, (October 29, 2020) ("Despite what the industry wants us to believe, the short answer is yes: excess sugar is bad for you. The World Health Organisation strongly recommends to reduce intake of free sugars down to less than 10% of total energy intake, and even states that it would be better (if possible) to reduce it to below 5% of our total energy intake. The US Dietary Guidelines Advisory Committee gives similar indications, suggesting that in an ideal diet, added sugars would take only 6% or less") (footnotes omitted) available at <https://www.foodunfolded.com/article/is-sugar-the-new-tobacco>.

¹⁰ *Targeted by Historians, Sugar Industry May Face Litigation Risk*, Hughes, Hubbard & Reed Client Advisory, available at <https://files.hugheshubbard.com/pdfs/targeted-by-historians-sugar-industry-may-face-litigation-risk.pdf>.

include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.

The determination as to whether a proposal deals with a matter relating to a company's ordinary business operations is made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.

Shareholder proposals involve significant social policies if they involve issues that engender widespread debate, media attention, and legislative and regulatory initiatives.¹¹ The reporting on risks and costs requested by the Proposal does relate to an underlying significant policy issue, i.e., the appropriate manner of accounting for the divergent interests of shareholders and stakeholders when profitable activity creates external social costs.

B. Significant policy issue: externalizing costs to stakeholders

The Proposal presents a highly contentious and contemporary public policy issue that transcends the Company's ordinary business and is therefore not excludable under Rule 14a-8(i)(7). That issue is the urgent need to address the business practices that provide corporate financial returns to shareholders but harm other stakeholders. The Proposal refers to the Statement and the shareholder primacy model established in Delaware law, each of which directly raise this issue. Yet the Company Letter fails even to acknowledge this critical issue raised by the Proposal. Below, we explain how this issue has become a central feature of the policy debate in the U.S. and beyond.

i. Corporate Law and Shareholder Primacy

The directors of U.S. corporations have long focused their efforts on improving the financial return of their corporations to their shareholders. While there has been a fierce, ongoing debate as to whether corporations should in fact be managed for the benefit of only shareholders

¹¹ JD Supra, *SEC Staff's Latest Guidance Presents Dilemma for Companies Seeking to Exclude Shareholder Proposals on Environmental and Social Issues* (January 4, 2018) ("In a June 30, 2016 stakeholder meeting, the Staff indicated that significant policy issues are matters of widespread public debate, which include legislative and executive attention and press attention.")

or for a broader group of stakeholders,¹² the concept of shareholder primacy has dominated corporate law. This doctrine eschews consideration of the external costs of a business unless those costs affect the corporation's own financial return to its shareholders. A series of decisions by the Delaware courts cemented the place of shareholder primacy in the United States.¹³

The most important of these was the famous *Revlon* case decided by the Delaware Supreme Court in 1985.¹⁴ Other Delaware authority has established that corporations exist primarily to generate shareholder value.¹⁵ *eBay Domestic Holdings, Inc. v. Newmark*¹⁶ is a more recent example of the focus on shareholder wealth maximization, even outside the sale context. The court embraced shareholder primacy, finding that it was a violation of the directors' fiduciary duties to make decisions primarily for the benefit of users of the corporation's platform:

*Having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form. Those standards include acting to promote the value of the corporation for the benefit of its stockholders. The "Inc." after the company name has to mean at least that. Thus, I cannot accept as valid . . . a corporate policy that specifically, clearly, and admittedly seeks not to maximize the economic value of a for-profit Delaware corporation for the benefit of its stockholders.*¹⁷

The former Chief Justice of the Delaware Supreme Court has explained that the law clearly favors shareholders, stating that "a clear-eyed look at the law of corporations in Delaware reveals that, within the limits of their discretion, directors must make stockholder welfare their sole end, and that other interests may be taken into consideration only as a means of promoting stockholder welfare."¹⁸ Toward the end of the twentieth century, many jurisdictions in the United States adopted "constituency statutes," fully or partially opting out of shareholder primacy.¹⁹

¹² Frederick Alexander, *BENEFIT CORPORATION LAW AND GOVERNANCE: PURSUING PROFIT WITH PURPOSE* (2018) at 21-26.

¹³ Joan MacLeod Heminway, *Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations*, 40 *Seattle Univ. L. Rev.* 611, 613 (2017) ("Delaware decisional law is arguably particularly unfriendly to for-profit corporate boards that fail to place shareholder financial wealth maximization first in every decision they make.")

¹⁴ *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986) (holding that when a corporation is to be sold in a cash-out merger, the directors' duty is to maximize the cash value to shareholders, regardless of the interests of other constituencies, because there is no long term for the shareholders).

¹⁵ See *Katz v. Oak Indus. Inc.*, 508 A.2d 873, 879 (Del. Ch. 1986) ("It is the obligation of directors to attempt, within the law, to maximize the long-run interests of the corporation's stockholders; that they may sometimes do so 'at the expense' of others [e.g., debtholders] . . . does not . . . constitute a breach of duty."); Leo E. Strine, Jr., *The Social Responsibility of Boards of Directors and Stockholders in Change of Control Transactions: Is There Any "There" There?*, 75 *S. Cal. L. Rev.* 1169, 1170 (2002) ("The predominant academic answer is that corporations exist primarily to generate stockholder wealth, and that the interests of other constituencies are incidental and subordinate to that primary concern.")

¹⁶ 16 A.3d 1 (Del. Ch. 2010).

¹⁷ *Id.* at 34-35 (referring to corporate justification for a shareholder rights plan meant to forestall a change in control that might threaten platform users' interests).

¹⁸ Leo Strine, *The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law* 50 *WAKE FOREST LAW REVIEW* 761 (2015).

¹⁹ Alexander, *supra* n.12, at 135-148.

None of those states mandates consideration of stakeholder interests, however.²⁰

Shareholder primacy has caused great consternation regarding the harm that it poses to stakeholders and the public.²¹ In response, the benefit corporation option was created to provide a corporate form where directors could prioritize interests other than those of shareholders. Beginning in 2010, U.S. jurisdictions began to adopt benefit corporation provisions, which created a corporate form that required directors to consider other stakeholder interests.

As the Chief Justice of the Supreme Court of Delaware has said:

*[T]he benefit corporation movement represents a refreshing and substantial step forward for those who believe that corporations—and all business entities—not only can, but should both do well by their investors, but also their workers and the societies in which they operate.*²²

The clearest signal of the significance of the policy issue is legislative action to address the issue around the nation and the world. Legislatures have acted in 39 U.S. jurisdictions, the Canadian province of British Columbia, and the countries of Italy, Colombia, and Ecuador over the last decade to make this new form available. In addition, legislation was introduced in the last U.S. Congress in both houses that would have imposed benefit corporation duties on the directors of all billion-dollar companies.²³ The issue even surfaced in the most recent U.S. presidential election, as one candidate decried “the era of shareholder capitalism.”²⁴ In response, critics argued that favoring shareholders was the best recipe for a successful economy:

*In reality, corporations do enormous social good precisely by seeking to generate returns for shareholders.*²⁵

ii. Trust Law

This policy issue has also appeared in recent regulatory and legislative activity relating to trustees for retirement plans and other investment advisors. The Department of Labor recently proposed a Rule that would have made it more difficult for trustees to account for environmental

²⁰ *Id.*

²¹ See generally, Lynn Stout, THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS AND THE PUBLIC (2012).

²² Leo Strine, *Forward*, in Alexander, *supra*, n.12.

²³ Copies of the legislation are available here: <https://www.congress.gov/bill/116th-congress/senate-bill/3215?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=1&r=1> (Senate) and here: <https://www.congress.gov/bill/116th-congress/house-bill/6056?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=2&r=2> (House)

²⁴ *Biden says investors ‘don’t need me,’ calls for end of ‘era of shareholder capitalism,’* (CNBC) (July 9, 2020), available at <https://www.cnbc.com/2020/07/09/biden-says-investors-dont-need-me-calls-for-end-of-era-of-shareholder-capitalism.html>.

²⁵ Andy Pudzer, *Biden’s Assault on ‘Shareholder Capitalism,’* (Wall Street Journal) (August 17, 2020), available at <https://www.wsj.com/articles/bidens-assault-on-shareholder-capitalism-11597705153>.

and social costs, but, after receiving public comments, revised the final rule in a manner that gives trustees the ability to address corporate activity that imposes the type of social costs described in the Proposal when the trustees believed that those costs would affect their diversified portfolios—exactly the type of costs on which the Proposal seeks a report:

In addition, Final Rules should also permit stewardship that discourages portfolio companies from engaging in behaviour that harms society and the environment, and consequently the value of shareholders' diversified portfolios (For example, plan fiduciaries might vote to encourage all companies to lower their carbon footprint, not because it will necessarily increase return at each and every company, but because it will promote a strong economy and thus increase the return of their diversified portfolio).²⁶

Moreover, in 2020, a bill was introduced in the U.S. House of Representatives that included an express finding that plan fiduciaries should consider the costs that corporations in their portfolios impose on the financial system:

The Congress finds the following:

(1) Fiduciaries for retirement plans should

. . . .

(D) consider the impact of plan investments on the stability and resilience of the financial system; . . .²⁷

While the bill related to costs to the financial system, rather than public health, it was clearly focused on the same policy concern: costs that a company's profit-seeking activities impose on stakeholders.²⁸

iii. The Statement

In addition to the activity noted in the prior section regarding political and legislative activity around the issue of external costs to stakeholders, the business community, including the Company itself, has noted the importance of the consideration of stakeholder interests other than shareholders. Here we quote the Statement, as its eloquence is perhaps the best evidence for the critical nature of the policy issue raised by the Proposal:

Americans deserve an economy that allows each person to succeed

²⁶ Frederick Alexander, *The Final DOL Rules Confirm That Fiduciary Duty Includes 'Beta Activism,'* RESPONSIBLE INVESTOR (December 15, 2020) available at <https://www.responsible-investor.com/articles/the-final-dol-rules-confirm-that-fiduciary-duty-includes-beta-activism>.

²⁷ H.R. 8959 (116th): Retirees Sustainable Investment Policies Act of 2020

²⁸ See also Frederick Alexander, Holly Ensign-Barstow, Lenore Palladino, and Andrew Kassoy, *From Shareholder Primacy to Stakeholder Capitalism: A Policy Agenda for Systems Change* (arguing that fiduciary duties of trustees should incorporate external costs of individual companies that harm portfolios).

through hard work and creativity and to lead a life of meaning and dignity. We believe the free-market system is the best means of generating good jobs, a strong and sustainable economy, innovation, a healthy environment and economic opportunity for all. . . .

While each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders. We commit to:

- *Delivering value to our customers. We will further the tradition of American companies leading the way in meeting or exceeding customer expectations. . . .*
- *Supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses. . . .*
- *Each of our stakeholders is essential. We commit to deliver value to all of them, for the future success of our companies, our communities and our country.*²⁹

Thus, the Statement, *onto which the Company itself signed*, explains exactly why the Proposal is a critical policy question: it asks the Company to report on public health costs of its business, which fall upon “Americans,” “customers,” “people in our community,” and “our country,” the very stakeholders to whom the Company publicly committed less than two years ago.

The reaction to the Statement’s issuance (as well as the number of companies signing on) in August 2019 demonstrated the policy significance of addressing external costs. One dubious commentator noted that “For many of the BRT signatories, truly internalizing the meaning of their words would require rethinking their whole business.”³⁰ Others noted the importance of the change, but also that it was meaningless without ending shareholder primacy:

*Ensuring that our capitalist system is designed to create a shared and durable prosperity for all requires this culture shift. But it also requires corporations, and the investors who own them, to go beyond words and take action to upend the self-defeating doctrine of shareholder primacy.*³¹

²⁹ *Supra*, n.1 (emphasis added).

³⁰ Andrew Winston, *Is the Business Roundtable Statement Just Empty Rhetoric?* HARVARD BUSINESS REVIEW (August 30, 2019).

³¹ Jay Coen-Gilbert, Andrew Kassooy and Bart Houlihan, *Don’t Believe the Business Roundtable Until It’s CEO’s Actions Match Their Words*, FAST COMPANY (August 22, 2019).

Other commentators were worried not that the Statement did not go far enough, but rather that it went too far:

Asking corporate managers to focus more on improving society and less on making profits may sound like a good strategy. But it's a blueprint for ineffective and counterproductive public policy on the one hand, and blame-shifting and lack of accountability on the other. This is a truth Milton Friedman recognized nearly five decades ago — and one that all corporate stakeholders ignore today at their peril.³²

Another writer agreed, linking the issue to the same essay by Milton Friedman:

The issue of which constituency – or “stakeholder” – has the highest priority has long been a classic corporate governance conundrum. Still, the prevailing consensus, as espoused by Milton Friedman in his September 13, 1970 New York Times Magazine article, has been corporate executives work for their owners (i.e., shareholders) and have a responsibility to do what those owners desire, which is to make as much money as (legally) possible. That all changed on August 19, 2019.³³

While exploring the commitments to corporate social responsibility, the authors of the latter two articles each returned to Friedman’s famous article, which stated that:

*[T]he doctrine of ‘social responsibility’ taken seriously would extend the scope of the political mechanism to every human activity. It does not differ in philosophy from the most explicitly collectivist doctrine. It differs only by professing to believe that collectivist ends can be attained without collectivist means. That is why, in my book *Capitalism and Freedom*, I have called it a ‘fundamentally subversive doctrine’ in a free society, and have said that in such a society, ‘there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.’³⁴*

Showing that the controversy is long-lived, the 50th anniversary of the essay in 2020 set off another round of commentary.³⁵

³² Karl Smith *Corporations Can Shun Shareholders, But Not Profits*, BLOOMBERG OPINION (August 27, 2019).

³³ Christopher Carosa *Did Business Roundtable Just Break A Fiduciary Oath?*, [FiduciaryNews.com](http://fiduciarynews.com/2019/08/did-business-roundtable-just-break-a-fiduciary-oath/), August 27, 2019 available at <http://fiduciarynews.com/2019/08/did-business-roundtable-just-break-a-fiduciary-oath/>.

³⁴ Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits* N.Y. TIMES, Sept. 13, 1970 (magazine).

³⁵ See, e.g., *Friedman 50 Years later*, PROMARKET (collecting 27 essays about Friedman’s article and its legacy) (Stigler Center for the Study of the Economy and the State).

C. The Proposal Addresses the Policy Issue of Stakeholder Interests

The outpouring of legislative activity around benefit corporations, regulatory and legislative activity around trustee obligations to consider external corporate costs, and commentary around the Statement raise two related but distinct significant policy issues: first, should corporations focus more on stakeholders' interests and if so, how? The Proposal addresses these issues. As a conventional corporation, the Company must subordinate stakeholders to the interests of shareholders—the board of directors or management can consider stakeholder interests only to the degree that they serve shareholder interests. As shown above, however, many commentators believe the Statement is necessary but insufficient on its own because attaining a fair and durable prosperity will sometimes demand that companies put the interests of stakeholders above those of shareholders.

Shareholder primacy is clearly an issue of great policy significance being addressed in legislatures around the country and the world, and even in the latest race for the U.S. presidency. Moreover, Company actions that prioritize shareholders matter deeply to all of us. In a recent study (the “Schroders Report”), a leading asset manager determined that publicly listed companies imposed social and environmental costs on the economy with a value of \$2.2 trillion annually—more than 2.5% of global GDP and more than half of the profits those companies earned.³⁶ These costs have many sources, including pollution, water withdrawal, climate change, and employee stress. The study shows exactly the areas where corporations are likely to ignore stakeholder interests, to the detriment of the global economy. The public health costs that a retail food business creates falls clearly within this problematic paradigm: as the Supporting Statement of the Proposal notes, the Schroders Report assesses the cost of obesity at 3% of GDP globally.

By participating in this common corporate practice of prioritizing the financial return to its shareholders above all stakeholder concerns, corporations harm those very shareholders, the vast majority of whom are diversified.³⁷ Such shareholders and beneficial owners suffer when companies follow the shareholder primacy model and impose costs on the economy that lower GDP, which reduces overall equity value.³⁸ Thus, while corporations may increase their isolated return to shareholders under the rule of shareholder primacy by ignoring the costs they externalize to stakeholders, their diversified shareholders will ultimately pay these costs. Such shareholders (along with the world's population and economy) would benefit from corporate governance that prioritized the stakeholders to whom the Statement refers.

The Proposal will address this issue by asking the Company to describe the external costs that it imposes on stakeholders, providing context to its shareholders and permitting them to understand whether the value proposition of the Company is truly sustainable, or whether its profits rely on the exploitation of common resources and vulnerable populations. The Company

³⁶ <https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf>

³⁷ Indeed, the top three holders of Company shares are mutual fund companies Vanguard, State Street, and BlackRock, whose clients are generally indexed or otherwise broadly diversified investors.

³⁸ See, e.g., <https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator> (total market capitalization to GDP “is probably the best single measure of where valuations stand at any given moment”) (quoting Warren Buffet).

itself has recognized the critical nature of the relationship between corporations and stakeholders, including by executing the Statement along with another 180 large corporations. But while the Company recognized the issue, it also sidestepped it, because under the doctrine of shareholder primacy, the commitment expressed in the Statement is an empty promise.³⁹

Thus, the Proposal's request for a report on how the Company externalizes public health costs addresses the significant policy issue of whether corporations should account for stakeholder interests and is therefore not excludable for purposes of Rule 14a-8(i)(7).

D. The Proposal concerns a significant policy issue and should not be excluded because it touches on products

The Company Letter argues for an exclusion under Rule 14a-8(i)(7) because the Proposal relates to particular products offered to customers. Where the focus of a proposal is clearly on a significant policy issue, the fact that it may touch on issues related to products and services does not cause it to be excludable. This was made clear in the Staff Legal Bulletin 14H, October 22, 2015:

[T]he Commission has stated that proposals focusing on a significant policy issue are not excludable under the ordinary business exception "because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." [Release No. 34-40018] Thus, a proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the "nitty-gritty of its core business." (emphasis added)

This is not an instance in which the proposal focuses on attempting to limit or prescribe

³⁹ Indeed, the Company has been explicitly criticized for putting its financial interests above the interests of its customer stakeholders in other areas:

The American Psychiatric Association is particularly concerned about CVS, America's eighth-largest company, which it says routinely ignores doctors' explicit instructions to dispense limited amounts of medication to mental health patients. The pharmacy's practice of providing three-month supplies may inadvertently lead more patients to attempt suicide by overdosing, the association said.

"Clearly it is financially in their best interest to dispense as many pills as they can get paid for," said Dr. Bruce Schwartz, a psychiatrist in New York and the group's president.

the sale of particular products or services. Instead, it asks the company to study the impacts that it has already acknowledged in a manner that will allow its investors to understand the true costs of its entire business more clearly.

In this instance, the distinction comes down to two key factors: first, the focus of the Proposal is on a significant policy issue rather than merely on particular modes of business, and second, it does not actually require any changes to products or services sold, but only an assessment relative to the significant policy issue. This distinction is illustrated by *Merrill Lynch & Co.* (February 25, 2000), where the proposal requested that the board issue a report reviewing the underwriting, investing, and lending criteria of Merrill Lynch with a view to incorporating criteria related to a transaction's impact on the environment, human rights, and risk to the company's reputation. The proposal was found not excludable under Rule 14a-8(i)(7).

Similarly, proposals addressing climate change have been found not excludable under Rule 14a-8(i)(7) despite addressing a financial company's lending and investment portfolio, i.e., its products and services. The Staff has long determined that proposals addressing climate risk are appropriate for financial services companies so long as such proposals do not delve into the individual application of such policies to customers. For instance, in *PNC Financial Services Group, Inc.* (February 13, 2013) the Proposal requested that the Board report to shareholders PNC's assessment of the greenhouse gas emissions resulting from its lending portfolio and its exposure to climate change risk in lending, investing, and financing activities. The Staff determined that the Proposal was not excludable because it addressed the significant policy issue of climate change. PNC had argued, as the Company does here, that the Proposal micromanaged the business. The Staff rejected the claim. The present proposal is analogous, because it looks to specific impacts on the economy and investors of the retail food business, much as the PNC Financial Services proposal looked to quantify the greenhouse gas impact.

In short, there is no basis for an assertion that a proposal is excludable simply because it touches upon the Company's products. The key question demonstrated by prior Staff decisions is whether the subject matter requiring a focus on the business is limited to a significant policy issue and whether the proposal is written in a manner that does not micromanage. The Proposal is compliant and not excludable under Rule 14a-8(i)(7).

As the Staff has explained, "The purpose of the exception is 'to confine the resolution of ordinary business problems to the management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.'"⁴⁰ Here, the Proposal clearly transcends ordinary business by going to the heart of a public policy issue: how does the retail food business account for the harms it passes on to stakeholders through public health costs?

Effecting the Proposal will leave problem-solving firmly in the hands of the board and management—it does not address any particular product, service, or decision. Instead, it asks the

⁴⁰ Staff Legal Bulletin No. 14I (2017) (citing Release No. 34-40018(May 21, 1998)).

Company, through disclosure, to address a significant policy issue by providing its shareholders with sufficient context to understand how the Company's business fits into the policy debate around corporate responsibility to stakeholders. The Company's business sits squarely in the center of that debate, as the media covers matters such as its pill-dispensing practices,⁴¹ overcharging for generic prescription drugs,⁴² and its purveying of "junk food."⁴³ The public health costs of such business activities surely transcends the Company's ordinary business and is not excludable under Rule 14a-8(i)(7).

E. The Proposal's Scope is limited to the significant policy issue

Exceptions to the general rule allowing a proposal that transcends ordinary business to be excludable have been made where the proposal addresses both ordinary business and transcendent social policy issues. Examples of proposals that have crossed the line to address both ordinary and transcendent issues include *Bank of America Corporation* (February 26, 2019) where the proposal requested that the company begin an orderly process of retaining advisors to study strategic alternatives and empower a committee of its independent directors to evaluate those alternatives with advisors in exercise of their fiduciary responsibilities to maximize shareholder value. The staff noted that "the Proposal appears to relate to both extraordinary transactions and non-extraordinary transactions," and therefore allowed exclusion. To the same effect are *Donegal Group Inc.* (February 15, 2013), *Analysts International Corp* (March 11, 2013), and *Anchor Bancorp, Inc.* (July 11, 2013). Another example of this phenomenon occurred in *Exxon Mobil Corporation* (March 6, 2012) where the proposal requested that the Board prepare a report discussing possible short- and long-term risks to the company's finances and operations posed by the environmental, social, and economic challenges associated with oil sands. Because the proposal included reporting on "economic challenges associated with oil sands" that was not limited in scope to environmental and social issues, it included reporting on both ordinary business and transcendent policy issues and therefore exclusion was allowed under Rule 14a-8(i)(7).

In contrast, the scope of the Proposal is narrowly and correctly drawn only to address the significant policy issues—the subject of widespread debate—associated with the subordination of the interests of stakeholders to shareholders. It does not extend beyond the relevant social policy issue.

The focus on economic impact of the company's business does not make it an excludable ordinary business matter when the reason for the issue involved is a significant policy issue: its economic impact on investors and the economy. For example, *JPMorgan Chase & Co.* (March 19, 2010) denied an ordinary business exclusion for a proposal that requested a report to shareholders on the firm's policy concerning the use of initial and variance margin (collateral) on

⁴¹ *Supra*, n.39.

⁴² *BCBS Plans Sue CVS Alleging Overcharging Generic Prescriptions*, HEALTHCARE DIVE, (May 28, 2020) available at <https://www.healthcaredive.com/news/bcbs-plans-sue-cvs-alleging-overcharging-generic-prescriptions/578794/>.

⁴³ *CVS Should Stop Selling Junk Food*, NEW YORK TIMES (February 7, 2014) available at <https://www.nytimes.com/roomfordebate/2014/02/07/what-unhealthy-products-should-cvs-stop-selling/cvs-should-stop-selling-junk-food>.

all over-the-counter derivatives trades and its procedures to ensure that the collateral is maintained in segregated accounts and is not rehypothecated. The proponents had noted in the supporting statement that “For many years, the proponents have been concerned about the long-term consequences of irresponsible risk in investment products and have expressed these concerns to the company We believe that the report requested in this proposal will offer information needed to adequately assess our company’s sustainability and overall risk, in order to avoid future financial crises.” In denying the request for no-action, the Staff specifically noted that “the proposal raises concerns regarding the relationship between JPMorgan Chase’s policies regarding collateralization of derivatives transactions and systemic financial risk. In our view, the proposal focuses on a significant policy issue for JPMorgan Chase.”

Here, the Proposal directly addresses the economic impact caused by the significant policy issue of the unaddressed issue of stakeholder interests in Company activity that clash with financial returns.

CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2021 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no-action letter request. If you have any questions, please contact me at rick@theshareholdercommons.com or 302-593-0917.

Sincerely,

Frederick Alexander

Frederick Alexander

cc: Thomas S. Moffat
Myra K. Young

PROPOSAL

RESOLVED, shareholders ask that the board commission and disclose a report on the external public health costs created by the retail food business of our company (the “Company”) and the manner in which such costs affect the vast majority of its shareholders who rely on overall market returns.

Our company recently signed the Business Roundtable Statement of the Purpose of a Corporation (the “Statement”), which reads, “we share a fundamental commitment to all of our stakeholders. . . . We commit to deliver value to all of them, for the future success of our companies, our communities and our country.”

However, the Company is a conventional Delaware corporation, so that directors’ fiduciary duties emphasize the company and its shareholders, but not stakeholders (except to the extent they create value for shareholders over time). Accordingly, when the interests of shareholders and stakeholders such as workers or customers clash, the Company’s primary duty excludes all but shareholders.

The World Health Organization assesses the unpriced social burdens of obesity as equaling almost 3% of global GDP annually.¹ This cost, year after year, is devastating to economic growth. Yet the Company does not disclose any methodology to address the public health costs of its food retailing business. Thus, shareholders have no guidance as to costs the Company is externalizing and consequent economic harm. This information is essential to shareholders, the majority of whom are beneficial owners with broadly diversified interests. As of the 2020 proxy statement, the Company’s top three holders were Vanguard, State Street and BlackRock, which are generally indexed or otherwise broadly diversified.

Such shareholders and beneficial owners are unalterably harmed when companies follow Delaware’s “shareholder primacy” model and impose costs on the economy that lower GDP, which reduces equity value.² While the Company may profit by ignoring costs it externalizes, diversified shareholders will ultimately pay these costs, and they have a right to ask what they are.

The company’s prior disclosures and prior shareholder proposals do not address this issue, because they do not address the *costs the public health costs that the business imposes on shareholders as diversified investors who must fund retirement, education, public goods, and other critical social needs*. This is a separate social issue of great importance. A study would help shareholders determine whether to seek a change in corporate direction, structure, or form in order to better serve their interests and to match the commitment made in the Statement.

¹ <https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf>

² See, e.g., <https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator> (total market capitalization to GDP “is probably the best single measure of where valuations stand at any given moment”) (quoting Warren Buffet)

January 12, 2021

VIA E-MAIL (shareholderproposals@sec.gov)

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 by John Chevedden on behalf of Myra K. Young
Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen:

CVS Health Corporation, a Delaware corporation (the “**Company**” or “**CVS Health**”), 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 “**2021 Proxy Materials**”) the stockholder proposal (the “**Proposal**”) and the statement in support thereof submitted by John Chevedden (the “**Representative**”) on behalf of Myra K. Young (the “**Proponent**”). A copy of the Proposal and the statement in support thereof is attached to this letter as Exhibit A and all related correspondence with the Proponent are attached to this letter as Exhibit B. The Company respectfully requests that the Staff concur with the Company’s view that the Proposal may properly be excluded from the Company’s 2021 Proxy Materials pursuant to Rule 14a-8.

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2021 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Representative on behalf of the Proponent.

Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“**SLB 14D**”), we are submitting this request for no-action relief under Rule 14a-8 through the Commission’s email address, shareholderproposals@sec.gov (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 both in this letter and the cover email accompanying this letter.

Rule 14a-8(k) under the Exchange Act and 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 or the Representative on the Proponent's behalf elect 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 requests that the Company's stockholders approve the following resolution:

RESOLVED, shareholders ask that the board commission and disclose a report on the external public health costs created by the retail food business of our company (the "Company") and the manner in which such costs affect the vast majority of its shareholders who rely on overall market returns.

A complete copy of the Proposal and supporting statement is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

The Company believes that the Proposal may properly be excluded from the 2021 Proxy Materials under both Rule 14a-8(i)(5) and Rule 14a-8(i)(7) because (1) the Proposal relates to operations which account for less than 5 percent of the Company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the Company's business; and (2) the Proposal deals with a matter relating to the Company's ordinary business operations.

ANALYSIS

I. The Proposal May Be Properly Excluded from the Company's 2021 Proxy Materials Pursuant to Rule 14a-8(i)(5) Because it is Not Economically or Otherwise Significant to the Company's Business.

Rule 14a-8(i)(5) provides that a shareholder proposal may be omitted from a proxy statement "[i]f the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business."

The Staff has previously concurred with the exclusion of shareholder proposals pursuant to Rule 14a-8(i)(5) when the proposals concerned insignificant portions of a company's business. For example, a proposal to *Dunkin' Brands Inc.* requested that its board issue a report assessing the environmental impacts of continuing to use K-Cup Pods brand packaging. The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(5) because (1) it related to operations that account for less than 5% of Dunkin Brands' total assets at the end of its most recent fiscal year, and for less than 5% of its net earnings and gross sales for its most recent fiscal year, (2) "the [p]roposal's significance to [Dunkin' Brands'] business was not apparent on its face," and (3) the "[p]roponent did not demonstrate that it is otherwise significantly related to [Dunkin Brands'] business" *Dunkin' Brands Inc.* (Feb. 22, 2018). See also *Reliance Steel & Aluminum Co.* (Apr. 2,

2019) (concurring in the exclusion of a proposal that the company issue a report on political contributions and expenditures because the proposal related to operations that account for less than 5% of the Company's total assets, net earnings and gross sales for its most recent fiscal year).

A. Food Sales Account for Less than 5% of the Company's Business.

The Proposal is excludable under Rule 14a-8(i)(5) because it relates to a portion of business that is not economically significant to the Company. The Company reported total revenues of approximately \$256.8 billion for the fiscal year ended December 31, 2019 and total assets of approximately \$222.5 billion as of December 31, 2019. See page 57 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2019 (the "**Annual Report**"). The Company has four reportable segments: Pharmacy Services, Retail/Long Term Care ("**Retail**"), Health Care Benefits and Corporate/Other.

The Proposal relates to the Company's "retail food business" within the Company's Retail segment.

Within the Retail segment, the Company tracks certain sales under a broad "consumables/general merchandise" ("**Consumables**") category, which includes, among other products and product lines, the following: beverages (including water, teas, juices, etc.); dairy (including milk and milk alternatives, creamers, cheese, eggs, etc.); grocery (including breakfast, cereals, coffee, soup, baking supplies, condiments, etc.); snacks (including nuts, salty snacks, nutrition bars, etc.); soda; flowers and fresh produce; beer, wine and spirits; baked goods (including bread, pastry, etc.); and frozen foods. Although the Proposal does not define what the "retail food business" is, nor does it provide any explanation as to what within the Company's business the Proponent considers to be included within the scope of the retail food business, we believe that the food and beverages in the Company's Consumables category within its Retail segment, which include many items that it believes promote good health, best covers the focus of the Proposal. According to the Company's internal reporting, food and beverages in the Consumables category generated significantly less than 5% of the Company's total revenue in 2019. Inventory associated with food and beverages in the Consumables category, which is a reasonable approximation of total assets, represented significantly less than 5% of the Company's total assets in 2019. As a component of gross profit (revenue less cost of products sold), food and beverages in the Consumables category generated significantly less than 5% of the Company's \$45.4 billion gross profit in 2019. The Company expects that these percentages will remain significantly below 5% for the fiscal year ended December 31, 2020.¹

Therefore, as none of the reported quantifiable results exceed any of the 5% thresholds set forth in 14a-8(i)(5) for 2019 and because the Company expects the results to continue to be significantly below the 5% thresholds in 2020, the Proposal is excludable from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(5).

¹ The Company considers the specific percentages associated with food and beverages in its Consumables category to be highly competitively sensitive information.

B. The Company Has Reviewed the Proposal and Determined That the Proposal is Not Otherwise Significantly Related to the Company's Business.

In 2017, the Staff issued announced updated guidance regarding its application of Rule 14a-8(i)(5). In Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("**SLB 14I**"), the Staff stated that its analysis of requests to exclude shareholder proposals under Rule 14a-8(i)(5) "will focus, as the rule directs, on a proposal's significance to the company's business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales. Under this framework, proposals that raise issues of social or ethical significance may be included or excluded, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal's relevance to the company's business." See SLB 14I. While historically such issues were once determined to be "otherwise significantly related to the company's business" regardless of the economic relevance of such matter to a company, in SLB 14I the Staff stated its view that "the Division's application of Rule 14a-8(i)(5) has unduly limited the exclusion's availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal 'deals with a matter that is not significantly related to the issuer's business' and is therefore excludable."

The Staff noted in SLB 14I that, "[w]here a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is 'otherwise significantly related to the company's business.' ... *The mere possibility of reputational or economic harm will not preclude no-action relief.* In evaluating significance, the staff will consider the proposal in light of the 'total mix' of information about the issuer" (emphasis added). The Staff also noted in Staff Legal Bulletin No. 14J (Oct. 13, 2018) ("**SLB 14J**") that while a well-developed discussion of the board's analysis of whether the particular policy issue raised by the proposal is otherwise significantly related to the company's business can assist the Staff in evaluating a company's no-action request, "the submission of a board analysis is voluntary and the inclusion or absence of an analysis will not be dispositive in the Staff's evaluation of a company's request."

Accordingly, the Company considered whether the Proposal is otherwise significantly related to the Company's business.

The Company is the nation's premier health innovation company helping people on their path to better health. The Company operates approximately 9,900 retail drugstore locations across the country, which is where the Company offers and sells products that form its Consumables category. The primary purpose of the Company's retail drugstore locations, however, is to serve the health needs of the Company's customers. Approximately 70% of the U.S. population lives within three miles of a Company retail drugstore location and the Company takes that responsibility seriously. Although the Company does offer a range of products that are unrelated to the health needs of its customers, including many in the Consumables category, the non-healthcare products are not the focus of the Company's engagement with the communities in which it operates. The Company believes its prescription services, as well as its MinuteClinic® and HealthHUB® offerings, which leverage certain of its retail pharmacies, are the focus of the

Company's business in the retail space.² In fact, the Company has been at the forefront of providing safe, accessible and effective COVID-19 testing solutions as a critical component of its broader response to the pandemic, and announced on November 12, 2020 that its retail pharmacies will be ready to administer the COVID-19 vaccines when they become available to the general public. The Company views the food and beverages it offers to its customers as a necessary and natural component of its retail drugstore business to address a complementary need of a customer and to encourage members of the community to consider using the Company's retail locations. Food and beverage sales simply do not form a significant part of the Company's long-term business plan.

The Company appreciates and values the Proponent's overall objective of drawing attention to the public health costs of the retail food business. As a company that provides diversified health services to its customers and the communities in which it operates, CVS Health seriously considers the need to address obesity as a public health crisis in the United States, and its effects on rising rates of severe chronic diseases, including Type 2 diabetes, cardiovascular disease, high blood pressure and cancer. The Company does not believe that its food and beverage sales at its retail drugstore locations are a meaningful contributor to the rise in obesity rates in the United States, due to the limited amount of its food and beverage sales, and the fact that the Company has taken meaningful efforts to increase the healthy alternatives available as part of its food and beverage offerings. The Company's Gold Emblem[®] and Gold Emblem Abound[®] brands are part of a broader initiative to offer wider and more varied selections of healthy food alternatives that contain carefully sourced, nutritious ingredients. Gold Emblem[®] and Gold Emblem Abound[®] brands include products that are organic, gluten-free, contain low/no sodium, no added sugar or are a good source of fiber or protein, with relevant nutritional benefits typically shown in bold lettering and often circled in yellow. The Company considered and implemented consumer feedback when making such labeling choices, which allow consumers to quickly and easily identify the nutritional and health benefits of the products. Although the Company offers products that are available at traditional retail convenience stores, it increasingly offers fresh fruit and healthy food alternatives. The Company estimates that at least one-third of all its food and beverage sales could be products characterized as healthy.

The Company also considered the feedback it has received from its stockholders in evaluating the Proposal's significance to the Company's business. The Company has a strong stockholder engagement program and values stockholder input. The Company regularly communicates with stockholders throughout the year through quarterly earnings calls, investment community conferences and other communications channels, in an effort to address stockholder questions and concerns. The Company took notice of the fact that during this stockholder engagement, the issue of the Company's assessment of the external public health costs created by the Company's retail food business was not raised by any other stockholder.

The Company also considered the Staff's guidance in SLB 14I that the mere possibility of reputational or economic harm is insufficient on its own to support a conclusion that a matter is significantly related to the Company's business. Based on all of the foregoing information, and in

² As disclosed in the Company's Annual Report, approximately 76.7% of the Company's revenues in the Retail segment are from its pharmacies, and 23.3% are from the entirety of the "front store".

light of the lack of economic relevance of the subject matter of the Proposal, the Company has determined that the Proposal is not otherwise significantly related to the Company's business. Accordingly, the Proposal may be excluded under Rule 14a-8(i)(5).

II. The Proposal May be Properly Excluded from the Company's 2021 Proxy Materials Pursuant to Rule 14a-8(i)(7) Because it Deals with Matters Relating to the Company's Ordinary Business Operations.

Rule 14a-8(i)(7) provides that a shareholder proposal may be omitted from a proxy statement "[i]f the proposal deals with a matter relating to the company's ordinary business operations."

The Commission's Release No. 34-40018 (May 21, 1998) (the "**1998 Release**") described two "central considerations" for the exclusion of a proposal under the ordinary business exception. First, certain tasks are "so fundamental to management's ability to run a company on a day-to-day basis" that they could not be subject to direct shareholder oversight may be excluded. See 1998 Release. The second consideration "relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.*

The Staff updated its guidance regarding Rule 14a-8(i)(7) in SLB 14I and SLB 14J in 2017 and 2018, respectively. Similar to the analysis now expected under Rule 14a-8(i)(5), a proposal that raises ordinary business operations matters may be excluded, unless such a proposal "focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote." See SLB 14I. The Staff confirmed in SLB 14I that "[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations." The Staff also noted in SLB 14J that, while a well-developed discussion of the board's analysis of whether the particular policy issue raised by the proposal is otherwise significantly related to the company's business can assist the Staff in evaluating a company's no-action request, "the submission of a board analysis is voluntary and the inclusion or absence of an analysis will not be dispositive in the Staff's evaluation of a company's request."

The Staff has consistently concurred with the exclusion of shareholder proposals pursuant to Rule 14a-8(i)(7) when the proposals requested reports concerning the sale of particular products by a company. For example, in *Wal-Mart Stores, Inc.* (Mar. 24, 2006), *recon. denied* (Apr. 13, 2006), a shareholder proposal requested a report evaluating the company's policies and procedures for minimizing customers' exposure to toxic substances in the products that it stocks. The company argued that the proposal was excludable because "[t]he handling of inventory involves complex business decisions and falls within the Company's ordinary business operations," and the Staff concurred. See also *Family Dollar* (Nov. 6, 2007), *recon. denied* (Nov. 20, 2007) (concurring in the exclusion of a similar proposal because it related to the company's product sales); *FLIR Systems, Inc.* (Feb. 6, 2013) ("Proposals that concern the manner in which a company manages its expenses are generally excludable under rule 14a-8(i)(7)."). Like the proposals in *Wal-Mart* and *Family Dollar*, the Proposal here touches upon social concerns and interferes with the Company's management of a routine part of its business: identifying which products to sell in stores.

In 2015, a proposal to *Viacom Inc.* requested that the board issue a report assessing the company's policy responses to public concerns regarding linkages of food and beverage advertising to childhood obesity, diet-related diseases and other impacts on children's health. The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) because it related to Viacom's "ordinary business operations" and "the nature, presentation and content of advertising." Similarly, the Proposal at issue here relates to the Company's ordinary business operations and seeks to affect the items that the Company sells as part of a non-significant portion of its business. See also *McDonald's Corp.* (Mar. 12, 2019) (concurring in the exclusion of a proposal under Rule 14a-8(i)(7) that sought to create a special board committee on food integrity because it related to the company's ordinary business operations).

The Company Has Reviewed the Proposal and Determined That It Does Not Transcend Ordinary Business Operations and Would be Inappropriate for a Stockholder Vote.

As discussed in Item I above, the Company considered whether the Proposal on its face is significant to the Company and, in addition, whether the policy issue raised by the Proposal transcends ordinary business and would be appropriate for a stockholder vote. The Company noted that it already sells a significant percentage of healthy food alternatives among its food and beverage offerings and will continue to increase the number and variety of healthy options it offers in its retail drugstore locations, and weighed this against the stated social policy issue reflected in the Proposal. The Company also considered that the revenue generated by food and beverage sales in the Consumables category was significantly less than 5% of its revenue and gross profit in 2019 and that assets related to food and beverages represented significantly less than 5% of the Company's total assets as of December 31, 2019, and the Company expects the same to be true for fiscal 2020, with approximately one-third of these sales represented by what it considers to be healthy food and beverage offerings. The Company also considered the fact that during its extensive stockholder engagement, the issue of assessing the external public health costs created by the Company's retail food business was not raised by any other stockholder. Following its review, the Company determined that the policy issue raised by the Proposal is not sufficiently connected to its business operations to make it appropriate for a stockholder vote. Accordingly, the Proposal is excludable under Rule 14a-8(i)(7).

CONCLUSION

For the reasons discussed above, the Company respectfully requests the Staff's concurrence with its decision to omit the Proposal from the 2021 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.

Office of Chief Counsel
Division of Corporation Finance
January 12, 2021
Page 8

We appreciate your attention to this request.

Respectfully yours,

Thomas S. Moffatt
Vice President, Assistant Secretary and Assistant General Counsel

cc: John Chevedden (on behalf of Myra K. Young)
Colleen M. McIntosh, Senior Vice President, Chief Governance Officer, Corporate
Secretary and Assistant General Counsel, CVS Health Corporation
Lona Nallengara, Shearman & Sterling LLP

EXHIBIT A

From: John Chevedden
Sent: Wednesday, November 25, 2020 9:51 PM
To: McIntosh, Colleen
Cc: Moffatt, Thomas S.
Subject: [EXTERNAL] Rule 14a-8 Proposal (CVS)``
Attachments: CVS - EX submission.pdf

Importance: High

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

Dear Ms. McIntosh,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

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

Sincerely,
John Chevedden

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

Myra K. Young & James McRitchie

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

Via: <Colleen.McIntosh@CVSHealth.com>

Dear Corporate Secretary,

I am pleased to be a CVS Health Corp (CVS) shareholder and appreciate the leadership our company has shown on numerous issues. However, our company has unrealized potential that can be unlocked through low or no cost measures by making our corporate governance more competitive.

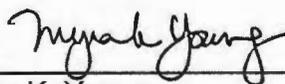
I am submitting the attached shareholder proposal, **External Public Health Cost Disclosure**, for a vote at the next annual shareholder meeting. The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year, and I pledge to continue to hold stock *through* the date of the next shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. My husband, James McRitchie is hereby authorized as Mr. Chevedden's backup. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden (PH: ***

to
facilitate prompt communication. Please identify Myra K. Young as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. We expect to forward a broker letter soon, so if you simply acknowledge our proposal in an email message to *** it may not be necessary for you to request such evidence of ownership.

Sincerely,



Myra K. Young

11/25/2020

Date

cc: Thomas Moffatt <TSMoffatt@cvs.com>
FX: 401-216-3758
FX: 401-765-7887

[CVS Health Corporation: Rule 14a-8 Proposal, November 25, 2020]
[This line and any line above it – *Not* for publication.]

ITEM 4* – External Public Health Cost Disclosure

RESOLVED, shareholders ask that the board commission and disclose a report on the external public health costs created by the retail food business of our company (the “Company”) and the manner in which such costs affect the vast majority of its shareholders who rely on overall market returns.

Our company recently signed the Business Roundtable Statement of the Purpose of a Corporation (the “Statement”), which reads, “we share a fundamental commitment to all of our stakeholders. . . . We commit to deliver value to all of them, for the future success of our companies, our communities and our country.”

However, the Company is a conventional Delaware corporation, so that directors’ fiduciary duties emphasize the company and its shareholders, but not stakeholders (except to the extent they create value for shareholders over time). Accordingly, when the interests of shareholders and stakeholders such as workers or customers clash, the Company’s primary duty excludes all but shareholders.

The World Health Organization assesses the unpriced social burdens of obesity as equaling almost 3% of global GDP annually.¹ This cost, year after year, is devastating to economic growth. Yet the Company does not disclose any methodology to address the public health costs of its food retailing business. Thus, shareholders have no guidance as to costs the Company is externalizing and consequent economic harm. This information is essential to shareholders, the majority of whom are beneficial owners with broadly diversified interests. As of the 2020 proxy statement, the Company’s top three holders were Vanguard, State Street and BlackRock, which are generally indexed or otherwise broadly diversified.

Such shareholders and beneficial owners are unalterably harmed when companies follow Delaware’s “shareholder primacy” model and impose costs on the economy that lower GDP, which reduces equity value.² While the Company may profit by ignoring costs it externalizes, diversified shareholders will ultimately pay these costs, and they have a right to ask what they are.

The company’s prior disclosures and prior shareholder proposals do not address this issue, because they do not address *public health costs our business imposes on shareholders as diversified investors who must fund retirement, education, public goods and other critical social needs*. This is a separate social issue of great importance. A study would help shareholders determine whether to seek a change in corporate direction, structure, or form in order to better serve their interests and to match the commitment made in the Statement.

Please vote for: External Public Health Cost Disclosure – Proposal [4*]

¹ <https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf>

² See, e.g., <https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator> (total market capitalization to GDP “is probably the best single measure of where valuations stand at any given moment”) (quoting Warren Buffet)



[This line and any below are *not* for publication]
Number 4* to be assigned by the Company

The graphic above is intended to be published with the rule 14a-8 proposal.

The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

Reference SEC Staff Legal Bulletin No. 14I (CF)

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

Notes: 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. Please acknowledge this proposal promptly by email

EXHIBIT B

From: John Chevedden [mailto:***]
Sent: Friday, December 11, 2020 10:56 PM
To: Moffatt, Thomas S. <Thomas.Moffatt@CVSHealth.com>
Subject: [EXTERNAL] (CVS)

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



11/30/2020

Myra K Young

Re: Your TD Ameritrade Account Ending in ***

Dear Myra Young,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra K. Young held, and had held continuously for at least 13 months, 40 shares of CVS Health Corp (CVS) common stock in her account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in cursive script that reads 'Jennifer Hickman'.

Jennifer Hickman
Resource Specialist
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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