



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 17, 2022

Thomas S. Moffatt
CVS Health Corporation

Re: CVS Health Corporation (the "Company")
Incoming letter dated January 7, 2022

Dear Mr. Moffatt:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the National Center for Public Policy Research for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board commission an audit analyzing the Company's impacts on civil rights and non-discrimination, and the impacts of those issues on the Company's business.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We are unable to conclude that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard
National Center for Public Policy Research

January 7, 2022

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 the National Center for Public Policy Research
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 “**2022 Proxy Materials**”) the stockholder proposal (the “**Proposal**”) and the statement in support thereof (the “**Supporting Statement**”) submitted by the National Center for Public Policy Research (the “**Proponent**”). A copy of the Proposal and the Supporting Statement received on November 23, 2021 is attached to this letter as Exhibit A. The Company respectfully requests that the Staff concur with the Company’s view that the Proposal may properly be excluded from the Company’s 2022 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 2022 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to 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 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 of CVS Health Corporation ("the Company") request that the Board of Directors commission an audit analyzing the Company's impacts on civil rights and non-discrimination, and the impacts of those issues on the Company's business. The audit may, in the Board's discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees, communities in which the Company operates and other stakeholders, of all viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company's website.

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 2022 Proxy Materials under both Rule 14a-8(i)(3) and Rule 14a-8(i)(7) because (I) the Proposal is impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules; and (II) 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 2022 Proxy Materials pursuant to Rule 14a-8(i)(3) because it is impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules.

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

Under this standard, the Staff has routinely permitted exclusion of proposals that failed to define key terms used in the proposal or otherwise fail to provide sufficient clarity or guidance such that

stockholders and the company would be uncertain about the core purpose of the proposal or reach different conclusions regarding the implementation thereof. Ambiguities in the proposal may render the proposal materially misleading since “any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal.” *Fuqua Industries, Inc.* (Mar. 12, 1991) (permitting exclusion of a proposal under Rule 14a-8(i)(3) that sought to prohibit “any major shareholder...which currently owns 25% of the Company and has three board seats from compromising the ownership of the other stockholders,” where the meaning and application of such terms as “any major shareholder,” “assets/interest” and “obtaining control” would be subject to differing interpretations). See also *International Paper Co.* (Feb. 3, 2011) (permitting exclusion of a proposal under Rule 14a-8(i)(3) that requested the adoption of a particular executive stock ownership policy because it did not sufficiently define “executive pay rights”); *General Electric Company* (Jan. 21, 2011) (permitting exclusion of a proposal under Rule 14a-8(i)(3) that requested implementation of more long-term incentives because it was impermissibly vague in explaining how the program would work in practice, including the financial metrics that would be used in implementing the proposal); and *Verizon Communications Inc.* (Feb. 21, 2008) (permitting exclusion of a proposal under Rule 14a-8(i)(3) because it failed to define certain critical terms, such as “Industry Peer Group” and “relevant time period”).

The Proposal requests that the Board “commission an audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business.” There is no attempt by the Proponent to define the terms “civil rights” or “non-discrimination” to provide sufficient guidance as to what aspects of the company’s policies and practices the audit should focus on or to limit the scope of the requested audit.

The terms “civil rights” and “non-discrimination” are inherently broad, vague and indefinite terms that are subject to ideological debate regarding what they actually encompass and their interpretation varies widely based on the specific context in which they are used. Even the Proponent’s Supporting Statement acknowledges the inherent vagueness and indefinite meaning of the terms “civil rights” and “non-discrimination” when it plainly states that “there is much disagreement about what non-discrimination means” and that there are a “spectrum of viewpoints.” As the Proposal does not provide any explanation or context for the meaning of these critical terms, which define the very basis of the requested audit, stockholders will have no ability to make a reasonable assessment of the Proposal and the Company would not be able to reasonably determine how to implement this audit if stockholders approve the Proposal.

The scope of the audit the Company’s stockholders are being asked to consider is similarly uncertain. The Proposal seeks to ask stockholders to direct the Board to commission a report with no parameters as to what parts of the Company’s business on which the report should focus. The Company has a unique position as one of the nation’s largest diversified health services companies. The Company has a vast retail and consumer footprint with more than 9,900 retail locations, approximately 1,200 walk-in medical clinics, a leading pharmacy benefits manager with approximately 110 million plan members, a dedicated senior pharmacy care business serving more than one million patients per year. The Company also serves an estimated 38 million people through traditional, voluntary and consumer-directed health insurance products and related services, including expanding Medicare Advantage offerings and a standalone Medicare Part D prescription drug plan. The Company also has operations across the country

with retail pharmacy locations in every state. The Proposal does not identify what part of the Company's vast operations should be subject to the "audit" to be conducted "at a reasonable cost." The Proposal could be directed at the "civil rights" and "non-discrimination" related to one or more of a number of different businesses, policies or practices of the Company. The Proposal could be addressing the Company's policies and practices with respect to how it invests in the communities in which it operates, where the Company chooses to open or close its retail pharmacy, MinuteClinic® or HealthHUB® locations and the types of products and services it offers in each of those locations, as it could impact access to health care in the areas where it operates. The Proposal could be focused on how it provides its health insurance products and related service offerings. These are just a few of the innumerable parts of the Company's business that could be the subject of the audit requested by the Proposal. Although the subject matter of the Supporting Statement associated with the Proposal is on workforce employment practices, it is not clear from the resolution presented to stockholders that the focus of the Supporting Statement is the entire focus of the Proposal. Stockholders reading the specific words of the Proposal will not be able to identify the scope of the audit and report for which they are voting. Similarly, if stockholders vote in favor of the Proposal, the Company will be unable to ascertain the scope of the audit and report that stockholders requested.

Even if the Company attempts to narrow the scope of the Proposal to an audit of the civil rights and non-discrimination impacts of the Company's employment practices, the Proposal still remains too vague and indefinite. The applicable scope of the audit could include all or any of the following: hiring and recruitment practices; talent management and promotion opportunities; workforce development and training programs; employee compensation and benefits; labor practices and working conditions; policies against harassment, ethical non-compliance and misconduct; privacy and confidentiality of personal information; and participation in advocacy, ideological or political activities and expression of individual viewpoints. The Supporting Statement does not provide any clarity as to what if any of these practices are within the scope of the Proposal. Stockholders would not be able to determine the scope and the Company will be unable to effectively respond to stockholder support of the Proposal because it is likely that each stockholder reads the Proposal differently.

The Proposal also requests that a report on the audit be "prepared at reasonable cost." Given the wide scope of the Proposal without clear and definitive guidelines, it would be impossible for the Company to comply with the Proposal. In particular, it will be difficult for stockholders to reconcile the wide scope of the Proposal against its call to the Company to conduct the audit and prepare a report at reasonable cost, and, as a result, to ascertain exactly what measures the Proposal requires.

Without any specificity as to what the Proposal is asking the stockholders to vote on and the audit the Company would be required to implement, stockholders will have difficulty determining whether to vote "for" or "against" the Proposal, and neither the stockholders nor the Company will be able to determine with reasonable certainty what further actions or measures should be taken with regard to this Proposal were it to be approved by stockholders. If stockholders approved the Proposal pursuant to their individual interpretations, the Company would have no consistent direction or guidelines with respect to how the Proposal should be implemented. The Board would then have to choose among multiple options for implementing the Proposal, any one of which could look very different from what the stockholders approving the Proposal

envisioned. Accordingly, the Proposal is inherently vague and indefinite and may be excluded under Rule 14a-8(i)(3).

II. The Proposal may be properly excluded from the Company's 2022 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.*

We note that the Staff has issued updated guidance regarding its application of Rule 14a-8(i)(7) in November 2021. In Staff Legal Bulletin No. 14L (Nov. 3, 2021), the Staff stated that it will “focus on the social policy significance of the issue that is the subject of the shareholder proposal” and that “in making this determination, the [S]taff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.” While the Proposal refers to an important issue of broad social concern, namely the impact of civil rights and non-discrimination, the Proposal seeks to have the stockholders dictate the management of the Company’s workforce and its employment practices, which is inherently in the realm of ordinary business operations. Thus, the Proposal does not meet the standard that it must otherwise be significantly related to the Company’s business.

A. The Proposal Relates to the Company’s Management of its Workforce and Employment Practices.

Although the Proposal is vague and unclear as to the scope and focus of the requested “civil rights” and “non-discrimination” audit of the Company, the Supporting Statement included as part of the Proposal is directed at employment practices. If the Staff does not concur with the Company’s view, as described above, that the Proposal is excludable because it impermissibly vague and indefinite and that the Proposal is seeking an audit of the Company’s employment practices, the Company believes the Proposal is excludable under Rule 14a-8(i)(7) because it relates to the Company’s management of its workforce and employment practices. The Staff has consistently concurred with the exclusion of shareholder proposals pursuant to Rule 14a-8(i)(7) as matters that deal with the company’s ordinary business when the proposals relate to managing the Company’s workforce and employment practices. For example, in *United Technologies Corp.* (Feb. 19, 1993), the Staff provided the following examples of excludable ordinary business categories: “employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation.” Subsequently, the Commission recognized in the 1998 Release that

“management of the workforce” is “fundamental to management’s ability to run a company on a day-to-day basis.” See also *CVS Health Corp.* (Feb. 19, 2021) (permitting exclusion of a proposal under Rule 14a-8(i)(7) that requested the board of directors of the Company to analyze and produce a report on the feasibility of adopting, as a standard employee benefit, the paid sick leave policy adopted by the Company for part-time workers as a result of the COVID-19 pandemic); *FedEx Corp.* (Jul. 7, 2016) (permitting exclusion of a proposal under Rule 14a-8(i)(7) that requested changes to the terms of the company’s employee retirement plans); *Merck & Co., Inc.* (Feb. 16, 2016) (permitting exclusion of a proposal under Rule 14a-8(i)(7) that requested the company to adopt certain procedures for hiring and promoting employees); and *Pilgrim’s Pride Corp.* (Feb. 25, 2016) (permitting exclusion of a proposal under Rule 14a-8(i)(7) that requested a report describing the company’s policies, practices, performance and improvement targets related to occupational health and safety). In particular, see also the following where the Staff concurred with the exclusion of a shareholder proposal that sought a review or change of an employment or workforce policy or practice on grounds of possible discriminatory elements: *Walmart, Inc.* (Apr. 8, 2019) (permitting exclusion of a proposal under Rule 14a-8(i)(7) that requested the board to “prepare a report to evaluate the risk of discrimination that may result from the [c]ompany’s policies and practices for hourly workers taking absences from work for personal or family illness”); *PG&E Corp.* (Mar. 7, 2016) (permitting exclusion of a proposal under Rule 14a-8(i)(7) that requested the board to institute a policy banning discrimination based on race, religion, donations, gender or sexual orientation in hiring vendor contracts or customer relations); *CVS Health Corp.* (Feb. 27, 2015) (permitting exclusion of a proposal under Rule 14a-8(i)(7) that requested the company “to amend its equal employment opportunity policy...to explicitly prohibit discrimination based on political ideology, affiliation or activity”); and *Bristol-Myers Squibb Co.* (Jan. 7, 2015) (permitting exclusion of a proposal under Rule 14a-8(i)(7) that requested adoption of antidiscrimination principles that protect employees’ human right to engage, on their personal time, in legal activities relating to the political process without retaliation in the workplace).

If the Staff finds that the Proposal is seeking an audit of the Company’s workforce and employment practices, the Proposal would be seeking an audit consistent with those contained in shareholder proposals that the Staff has regularly agreed with the determination to exclude under Rule 14a-8(i)(7). While the Proposal broadly refers to the impact of “civil rights” and “non-discrimination” on the Company’s business, the Supporting Statement emphasizes the day-to-day business operations that implicate decisions by management, including the type of “anti-racism” programs to be implemented, policies and practices to establish “racial equity,” the content of “employee-training programs” and “distribution of pay and authority,” or the method of determining employee compensation and standards for promotion. The Proposal potentially seeks to dictate a wide range of workforce management and employee practices, including the Company’s decisions with respect to its hiring and recruitment practices, talent management and promotion opportunities, workforce development and training programs, labor practices and working conditions and the method of determining employee compensation and benefits. As of December 31, 2021, the Company employed approximately 300,000 people across the United States, and these employees are part of a wide range of job categories, including approximately 40,000 physicians, pharmacists, pharmacy technicians, physician assistants, nurses and nurse practitioners to identify just a few categories, all of whom perform complex job functions and require different job-related qualifications and skills. Tailored training programs, employee compensation and standards for promotion are fundamental for the Company’s employees to

perform their work and the Company to operate its business. Accordingly, the Company's policies and practices for its diverse employee population address a wide variety of topics, including, but not limited to, compliance with the Company's Code of Conduct, relationships with patients and customers; diversity and inclusion; talent management and development; company culture; community impact; health, safety and wellness; labor practices; record retention and management; compliance with anti-bribery and anti-corruption laws; compliance with healthcare laws; conflicts of interest and ethical standards; and management of harassment and non-retaliation policies. Such employment practices and their purpose are fundamental to run the Company's on a day-to-day basis and inherently within the realm of the Company's ordinary business operations that they could not, as a practical matter, be subject to direct shareholder oversight.

B. The Proposal does not raise a significant social policy issue that transcends the Company's ordinary business operations.

As noted above, if the Proposal is construed as being focused on workforce employment policies, it squarely addresses ordinary business matters and specifically seeks to have the stockholders dictate the Company's management of its workforce and employment practices, and, therefore, is excludable under Rule 14a-8(i)(7). When assessing whether the focus of the proposal is a significant social policy issue under Rule 14a-8(i)(7), the Staff considers "the proposal and the supporting statement as a whole." See Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). In the 1998 Release, the Staff clearly stated that while "proposals . . . focusing on sufficiently significant social policy issues . . . generally would not be considered to be excludable," proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. While the Proposal refers to the impact of civil rights and non-discrimination in the workforce, the mere reference to a significant policy issue does not alter the fundamentally ordinary business focus of the Proposal. Here, the Proposal seeks to dictate the content of the Company's employee training program, the method of determining employee compensation and standards for promotion and requests the Company to conduct an audit and produce a report on discrimination in the workplace as it relates to workforce management. Such issues are clearly related to day-to-day business matters of the Company. Accordingly, the Proposal may be excluded 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 2022 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 7, 2022
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We appreciate your attention to this request.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Tom Moffatt', with a long horizontal flourish extending to the right.

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

cc: National Center for Public Policy Research
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



November 23, 2021

Via FedEx to

Colleen McIntosh
Corporate Secretary
CVS Health Corporation
One CVS Drive
Woonsocket, Rhode Island 02895

Dear Ms. McIntosh,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the CVS Health Corporation (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as the Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2022 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal December 8, 2021 from 2-5 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at sshepard@nationalcenter.org so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a "no-action" letter should be sent to me at the National Center for Public Policy Research, 20 F Street, NW, Suite 700, Washington, DC 20001 and emailed to sshepard@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard", with a long, sweeping horizontal stroke extending to the right.

Scott Shepard

Enclosure: Shareholder Proposal

Civil Rights and Non-Discrimination Audit Proposal

Resolved: Shareholders of CVS Health Corporation (“the Company”) request that the Board of Directors commission an audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees, communities in which the Company operates and other stakeholders, of all viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

Supporting Statement: Tremendous public attention has focused recently on workplace and employment practices. All agree that employee success should be fostered and that no employees should face discrimination, but there is much disagreement about what non-discrimination means.

Concern stretches across the ideological spectrum. Some have pressured companies to adopt “anti-racism” programs that seek to establish “racial equity,” which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than by merit.¹ Where adopted, however, such programs raise significant objection, including concern that the “anti-racist” programs are themselves deeply racist and otherwise discriminatory.²

Many companies have been found to be sponsoring and promoting overtly and implicitly discriminatory employee-training programs, including Bank of America, American Express, Verizon, Pfizer and, sadly, CVS itself.³

This disagreement and controversy create massive reputational, legal and financial risk. If the Company is, in the name of equity, diversity and inclusion, committing illegal or unconscionable discrimination against employees deemed “non-diverse,” then the Company will suffer in myriad ways – all of them both unforgivable and avoidable.

¹ <https://www.sec.gov/Archives/edgar/data/1048911/000120677421002182/ndx3894361-def14a.htm#StockholderProposals88>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/asyourownike051421-14a8-incoming.pdf>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/nyscrfamazon012521-14a8-incoming.pdf>; https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom108785_58

² <https://www.americanexperiment.org/survey-says-americans-oppose-critical-race-theory/>; <https://www.newsweek.com/majority-americans-hold-negative-view-critical-race-theory-amid-controversy-1601337>; <https://www.newsweek.com/coca-cola-facing-backlash-says-less-white-learning-plan-was-about-workplace-inclusion-1570875>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.city-journal.org/verizon-critical-race-theory-training>

³ <https://www.city-journal.org/bank-of-america-racial-reeducation-program>; <https://www.city-journal.org/verizon-critical-race-theory-training>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.foxbusiness.com/politics/cvs-inclusion-training-critical-race-theory>; <https://www.msn.com/en-us/money/other/pfizer-sets-race-based-hiring-goals-in-the-name-of-fighting-systemic-racism-gender-equity-challenges/ar-AAOiSwJ>

In developing the audit and report, the Company should consult civil-rights and public-interest law groups – but it must not compound error with bias by relying only on left-leaning organizations. Rather, it must consult groups across the spectrum of viewpoints. This includes right-leaning civil-rights groups representing people of color, such as the Woodson Center⁴ and Project 21,⁵ and groups that defend the rights and liberties of *all* Americans, not merely the ones that many companies label “diverse.” All Americans have civil rights; to behave otherwise is to invite disaster.

Similarly, when including employees in its audit, the Company must allow employees to speak freely without fear of reprisal or disfavor, and in confidential ways. Too many employers have established company stances that themselves chill contributions from employees who disagree with the company’s asserted positions, and then have pretended that the employees who have been empowered by the companies’ partisan positioning represent the true and only voice of all employees. This by itself creates a deeply hostile workplace for some groups of employees, and is both immoral and likely illegal.

⁴ <https://woodsoncenter.org/>

⁵ <https://nationalcenter.org/project-21/>



February 1, 2022

Via email: shareholderproposals@sec.gov

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen,

This correspondence is in response to the letter of Thomas C. Moffatt on behalf of CVS Health Corporation (the “Company”) dated January 7, 2022, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our Shareholder Proposal (the “Proposal”) from its 2022 proxy materials for its 2022 annual shareholder meeting.

RESPONSE TO CVS HEALTH CORPORATION’S CLAIMS

Our Proposal asks the Board of Directors to:

commission an audit analyzing the Company’s impacts on civil rights and nondiscrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees, communities in which the Company operates and other stakeholders, of all viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

The Company seeks to exclude this Proposal pursuant to Rule 14a-8(i)(3), claiming the Proposal is impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules; and Rule 14a-8(i)(7), claiming that the Proposal deals with matters relating to the ordinary business operations of the Company.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

Analysis

Part I. The non-omissibility of our Proposal is established by the Staff's decision in Amazon.com, Inc. (avail. April 7, 2021) and The Walt Disney Co. (avail. January 19, 2022).

Our Proposal is essentially the same, for Staff-review purposes, as the proposals that were found non-omissible in *Amazon.com, Inc.* (Apr. 7, 2021) and *The Walt Disney Co.* (Jan. 19, 2022). The resolution of our Proposal was modeled on and is materially indistinguishable from the proposal in *Amazon.com*, and constitutes only a minor reworking of the proposal that we successfully submitted in *Disney Co.* The supporting statements of each proposal cover, again, materially indistinguishable territory in explaining the very similar concerns that animated submission of the proposals: issues of racial equity, civil rights, and non-discrimination.

A. Amazon.com, Inc. (Apr. 7, 2021)

Our Proposal would commission a workplace non-discrimination audit looking into concerns about discrimination against groups that the relevant company has not honored with the label “diverse,” while the *Amazon.com* proposal sought the same products looking into concerns about discrimination against groups that the proponent had honored with that label. But the Staff may not permit or deny omission of proposals on the grounds of the Staff’s personal attitude toward the focus of otherwise identical proposals. As a result, *Amazon.com* is determinative in this case.

The resolution of our Proposal asks the Company’s Board of Directors to:

commission an audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees, communities in which the Company operates and other stakeholders, of all viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the company’s website.

The proposal in *Amazon.com* asked that Amazon.com:

commission a racial equity audit analyzing the Company's impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the Company's business. The audit may, in the board's discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which the Company operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company's website.

When it comes to that audit the proposals are otherwise effectively identical in both language and spirit. Each raises issues of workplace discrimination on protected grounds. Each implicates *the very same* issues of substantial social policy that transcend ordinary business. The *Amazon.com* proposal having been found non-omissible, so must our Proposal be.

Additionally, each supporting statement explains the concerns that motivate the proposal in materially equivalent ways. Like our Proposal, the *Amazon.com* proposal cited potential illegalities arising from company conduct. Like our Proposal, the *Amazon.com* proposal cited specific problematic company behaviors and activities. And like our Proposal, the *Amazon.com* proposal provided guidance about how a proper audit and report should be conducted. Yet none of this content was deemed in that proceeding to have intruded into ordinary business operations in a way that rendered the proposal inadmissible. And nor can it in this proceeding.

B. The Walt Disney Co. (Jan. 19, 2022)

The proposal we introduced in *Disney Co.* is likewise effectively identical in language and spirit to our Proposal here, and is similarly controlling in this proceeding. The proposal in *Disney Co.* asked the company to:

commission a workplace non-discrimination audit analyzing Disney's impacts, including the impacts arising from Disney-sponsored or -promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on Disney's business. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on Disney's website.

Just like with the *Amazon.com* proposal, our Proposal in this proceeding is nearly identical to the proposal we introduced in *Disney Co.* Each raises issues of workplace discrimination on protected grounds, and each implicates the very same issues of substantial social policy that transcend ordinary business. The only material difference between the two proposals is, necessarily, the company-specific evidence of discriminatory behavior. The *Disney Co.* proposal having been found non-omissible, so must our Proposal be.

Part II. The Proposal is not impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading.

A. Rule 14a-8(i)(3).

Under Rule 14a-8(i)(3), a company may exclude a shareholder proposal in its entirety “if the language of the proposal or the supporting statement render the proposal so vague and indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.”¹ When only portions of a proposal merit exclusion for causing vagueness or other difficulties, companies are only permitted “to exclude portions of the supporting statement, even if the balance of the proposal and the supporting statement may not be excluded.”²

B. The Proposal is not vague and indefinite such that neither the stockholders voting on the Proposal nor the Company in implementing it would be unable to determine with any reasonable certainty exactly what actions or measures it requires.

The Company alleges that our Proposal violates Rule 14a-8(i)(3) for failing to define certain terms. Specifically, the Company claims the terms “civil rights” and “non-discrimination” are inherently broad, vague and indefinite terms that are subject to debate and whose definition varies based on context. However, neither of these terms as used in the Proposal are difficult to understand such that, pursuant to Rule 14a-8(i)(3), stockholders or the Company are unable to determine with reasonable certainty exactly what actions or measures our Proposal requires.

As an initial matter, the terms civil rights and non-discrimination are not complicated or arcane terms of art that require expert knowledge to understand. In pretending otherwise, the Company notes that in our supporting statement we state “there is much disagreement about what non-discrimination means.” But the Company fails to acknowledge that the following paragraphs in our supporting statement describe the disagreement in easily digestible terms that obviate any possibility of confusion. We explained that

[c]oncern stretches across the ideological spectrum. Some have pressured companies to adopt “anti-racism” programs that seek to establish “racial equity,” which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than by merit.³ Where adopted,

¹ See Staff Legal Bulletin No. 14B (September 15, 2004) (“SLB 14B”) (emphasis added).

² *Id.*

³ See No-Action Request Letter from Amazon.com, Inc. to SEC Staff (January 25, 2021), available at <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/nyscrfamazon012521-14a8-incoming.pdf>. (last accessed Feb. 1, 2022); see also No-Action Request Letter from Nike to SEC Staff (May 14, 2021),

however, such programs raise significant objection, including concern that the “anti-racist” programs are themselves deeply racist and otherwise discriminatory.⁴

...

This disagreement and controversy create massive reputational, legal and financial risk. If the Company is, in the name of equity, diversity and inclusion, committing illegal or unconscionable discrimination against employees deemed “non-diverse,” then the Company will suffer in myriad ways – all of them both unforgivable and avoidable.

It would have been hard to make our meaning much clearer. We want a report that studies whether programs and policies – such as diversity, equity and inclusion programs and policies – undertaken by the Company are, in their zeal to support the programs’ beneficiaries, also discriminating against parties who are not the intended beneficiaries of the programs.

We suspect, though, that the Company’s claim not to understand terms such as civil rights and non-discrimination is pretextual. We note, for instance, that in a Company memo linked in a source cited in our Proposal the Company declared that

CVS Health’s investment will focus on improving the employee experience, supporting communities the company serves, and influencing public policy. Collectively the company will invest nearly \$600 million in the following areas to build on its longstanding commitment to diversity [including] [p]artnerships with civil rights and social justice organizations to support shared goals.⁵

This and other uses of the term “civil rights” rather undermines the Company’s claim not to know what the term means. Similarly, its pride in its “[p]artnership with civil rights and social justice organizations” undermines its related claim to be baffled by our urgings that in putting together the audit and report we seek, the Company consult not just with civil rights and social justice organizations that support diversity, equity and inclusion programs that focus on the advancement of groups honored with the label “diverse,” but also with civil rights and other

available at <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/asyousownike051421-14a8-incoming.pdf>. (last accessed Feb. 1, 2022).

⁴ See, e.g., <https://www.americanexperiment.org/survey-says-americans-oppose-critical-race-theory/>; <https://www.newsweek.com/majority-americans-hold-negative-view-critical-race-theory-amid-controversy-1601337>; <https://www.newsweek.com/coca-cola-facing-backlash-says-less-white-learning-plan-was-about-workplace-inclusion-1570875>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.city-journal.org/verizon-critical-race-theory-training>.

⁵ Press Release, CVS Health Corp., “CVS Health commits nearly \$600 million to address racial inequality” (Jul. 8, 2020), available at <https://cvshealth.com/news-and-insights/press-releases/cvs-health-commits-nearly-600-million-to-address-racial-inequality> (last accessed Feb. 1, 2022).

justice organizations that focus on the rights and non-discrimination interests of *all* employees, even those not honored by with appellations such as “diverse.”

In that same communication, the Company touts its significant investment in “[m]entoring, sponsorship, development and advancement of diverse employees,” without any reference to or consideration of the participation, employment futures, or non-discrimination interests of employees whom it does not honor with that label.

This single memo all by itself demonstrates that the Company knows perfectly well what our Proposal means, what it seeks, and why we are justifiably concerned. And its argument to the contrary in this proceeding effectively reveals how much the Company seeks to avoid an audit and report that would require it to come to grips with the very civil-rights and non-discrimination concerns that our Proposal raises.

Shareholders present the Staff constantly with proposals that seek company audits and reports on matters of civil rights and non-discrimination, and in fact on much more esoteric matters of human-capital management such as racial and other varieties of “equity.” These proposals regularly seek companywide audits and reports, under the reasonable, and never-before-rejected, assumption that large companies have or should have, at minimum, enough resources to be able at reasonable cost to ensure that the company is not undertaking systemic discrimination. A conclusion now that the terms non-discrimination and civil rights are impermissibly vague, or that companywide non-discrimination audits are just too cumbersome, would commit the Staff to permitting omission of all such proposals in the future.

Our Proposal is straightforward and easily understood. It includes an explanation of its background and purpose, examples of the reason for its submission, and suggestions about how the audit and report might best proceed. It is certainly not impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of Rule 14a-8(i)(3).

Part III. The Proposal does not deal with matters relating to the Company’s ordinary business operations.

A. Rule 14a-8(i)(7).

The Company also seeks permission to omit our Proposal on the ground of Rule 14a-8(i)(7), the ordinary business exception. The exception, in its entirety, permits exclusion of a proposal “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.”⁶

⁶ 17 C.F.R. § 240.14a-8(i)(7).

The initial rule does not flesh out this provision at all. It has, though, been amended. One of those amendments, made in 1998, was restated and explained in a Staff Legal Bulletin (SLB) in 2002. There the Staff explained that:

[t]he fact that a proposal relates to ordinary business matters does not conclusively establish that a company may exclude the proposal from its proxy materials. ...[P]roposals that relate to ordinary business matters but that focus on ‘sufficiently significant social policy issues ... would not be considered to be excludable because the proposals would transcend the day-to-day business matters.’⁷

As the amendment itself explained, in detail particularly relevant to our considerations here:

The policy underlying the ordinary business exclusion rests on two central considerations. The first relates to the subject matter of the proposal. 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 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.**⁸

There matters stood until 2017. That fall, Staff issued a bulletin (“SLB 14I”) recognizing that corporate boards would likely have some insight into whether issues raised in shareholder proposals were of sufficiently substantial importance to transcend the category of ordinary business operations.⁹ It therefore invited corporations, in arguing for an ordinary business exception, to include in support of their claims details of their boards’ analyses of the

⁷ *Staff Legal Bulletin* No. 14A (July 12, 2002) (quoting *Amendments to Rules on Shareholder Proposals, Exchange Act Release* No. 40018 (May 21, 1998), available at <https://www.sec.gov/rules/final/34-40018.htm>) (last accessed Jan. 3, 2022).

⁸ *Amendments to Rules on Shareholder Proposals, Exchange Act Release* No. 40018 (May 21, 1998) (emphasis added), available at <https://www.sec.gov/rules/final/34-40018.htm> (last accessed Jan. 3, 2022).

⁹ See *Staff Legal Bulletin* No. 14I (Nov. 17, 2017), available at <https://www.sec.gov/interps/legal/cfslb14i.htm> (Feb. 20, 2020) (“A board acting in this capacity and with the knowledge of the company’s business and the implications for a particular proposal on that company’s business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.”).

shareholder proposals and the underlying policy significance of those proposals.¹⁰ Staff expanded this guidance further in 2018 (“SLB 14J”) and suggested that in demonstrating its board’s analysis of the substantiality of an issue, a company should be expansive in its communications with the Staff.¹¹ In doing so, Staff welcomed details about particulars such whether the company had already addressed the issue in some manner, including the difference – or the delta – between the proposal’s specific request and the actions the company has already taken, and an analysis of whether the delta presented a significant policy issue for the company.¹² Additional Staff guidance appeared again in the fall of 2019 (“SLB 14K”), wherein Staff underscored the value of the 2018 “delta analysis.”¹³

Then most recently, on November 3, 2021, Staff reverted to the aforementioned 1998 guidance by rescinding SLB 14I, SLB 14J, and SLB 14K following “a review of staff experience applying the guidance in them.”¹⁴ Relevantly, of the rescinded bulletins, Staff said an “undue emphasis was placed on evaluating the significance of a policy issue to a particular company at the expense of whether the proposal focuses on a significant social policy....” Staff went on to explain that it was prospectively realigning its “approach for determining whether a proposal relates to ‘ordinary business’ with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release.”¹⁵ The Staff explained that it:

will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.¹⁶

¹⁰ See *id.* (“Accordingly, going forward, we would expect a company’s no-action request to include a discussion that reflects the board’s analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.”).

¹¹ See *Staff Legal Bulletin* No. 14J (Oct. 23, 2018), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14j-shareholder-proposals> (last accessed Jan. 3, 2022).

¹² *Id.*

¹³ See *Staff Legal Bulletin* No. 14K (Oct. 16, 2019), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14k-shareholder-proposals> (last accessed Jan. 3, 2022).

¹⁴ See *Staff Legal Bulletin* No. 14L (Nov. 3, 2021), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals> (last accessed Jan. 3, 2022).

¹⁵ *Id.*

¹⁶ See *Staff Legal Bulletin* No. 14L (Nov. 3, 2021), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals> (last accessed Jan. 3, 2022).

The staff in particular emphasized that “proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company.”¹⁷ Our proposal raises exactly such an issue: whether current employee training raises risks as a result of racially or otherwise discriminatory content.

B. The Proposal does not relate to the management of the Company’s workforce.

Our Proposal requests the Board of Directors “commission an audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business.” Nowhere, despite the Company’s claims to the contrary, does the Proposal seek to manage the Company’s workforce by instructing how it must conduct its employee training (or anything else). If following the commission of an audit the Company elects to change certain practices, that is a wholly separate matter left up to the Company. The mere practice of ascertaining information on the impact of the Company’s actions on civil rights and non-discrimination does not seek to direct business operations themselves, but rather seeks a review of the impacts or effects thereof. Our Proposal simply asks the company to publish or report on what it is already doing, and the potential risks and effects associated with that behavior.

In arguing that our Proposal implicates the day-to-day management of the Company’s workforce, the Company relies on *United Technologies Corp.* (avail. Feb. 19, 1993), but that proceeding is irrelevant. The proposal in *United* contained a laundry list of “nine MacBride Principles” that the Board would have had to either implement or increase activity on. These “principles” included very specific management dictates such as “[i]ncreasing the representation of individuals from underrepresented religious groups in the workforce...banning of provocative religious or political emblems from the workplace...[and] the development of training programs that will prepare substantial numbers of current minority employees for skilled jobs....” Upon reviewing the proposal and arguments presented in *United*, Staff set forth the view that “proposals directed at a company’s employment policies and practices with respect to its non-executive workforce [are] uniquely matters related to the conduct of the company’s ordinary business operations.” Then Staff proceeded to list several examples of such ordinary business categories (e.g., employee health benefits, management of the workplace, and employee training and motivation, to name a few). Our Proposal, however, does not seek to interfere with nor institute any employment policy or practice; it merely seeks, in the Board’s discretion, publication of the Company’s already established employee-training materials *or* an audit of the impact of actions already taken by the Company.

Moreover, the Staff decision in *United Technologies Corp.* is contravened by SLB 14L when it comes to the question of social policy significance. Staff in that case took the now-defunct position that social policy concerns cannot override the ordinary business exception and instead determined that the employment-based nature of the proposal is alone controlling. The Staff decision in that case reads:

¹⁷ *Id.*

[T]he Division has determined that the fact that a shareholder proposal concerning a company's employment policies and practices for the general workforce is tied to a social issue will no longer be viewed as removing the proposal from the realm of ordinary business operations of the registrant. Rather, determinations with respect to any such proposals are properly governed by the employment based nature of the proposal.

The conclusion reached in *United Technologies Corp.*, therefore, is inapplicable to the Proposal at hand, as it has been abrogated by the plain language of SLB 14L – as well as the 1998 Amendments that SLB 14L is premised upon. Similarly, additional precedent cited by the Company — *CVS Health Corp.* (avail. Feb. 19, 2021); *FedEx Corp.* (avail. July 7, 2016); *Merck & Co., Inc.* (avail. Feb. 16, 2016); *Pilgrim's Pride Corp.* (avail. Feb. 25, 2016); *Walmart, Inc.* (avail. Apr. 8, 2019); *PG&E Corp.* (avail. Mar. 7, 2016); *CVS Health Corp.* (avail. Feb. 27, 2015) and *Bristol-Myers Squibb Co.* (Jan. 7, 2015) — were likewise issued before the substantial changes instituted by SLB 14L, changes which significantly privilege proposals that seek to address concerns of workforce management and potential discrimination such as those raised in our Proposal.

Moreover, several of these additional proceedings cited by the Company would have required very specific training or employment-related dictates, further making them wholly distinguishable from – and inapplicable to – our Proposal. For instance, the proposal in *Merck & Co.* (Feb. 16, 2016), would have assigned only new employees to entry-level positions and only long-time employees to higher-level research and management positions. The proposal in *PG&E Corp.* (Mar. 7, 2016) would have required the company adopt a new policy stating “[t]here shall be no discrimination against or for persons based on race, religion, donations, gender, or sexual orientation in hiring vendor contracts or customer relations, except where required by law.” And the proposal in *CVS Health Corp.* (Feb. 27, 2015) would have required the company to “amend its equal employment opportunity policy (or equivalent policy) to explicitly prohibit discrimination based on political ideology, affiliation or activity, and to substantially implement the policy.” The proposals in these proceedings are therefore nothing like our Proposal. Nothing in our Proposal requires implementation of a particular policy, such as dictating to the Company who it can hire, neither does it instruct it on a particular training program; it merely seeks disclosures on how it is already doing these things in the context of preexisting employment practices.

The decisions relied upon by the Company are therefore irrelevant to this proceeding. Our Proposal merely seeks to ascertain the impacts of – and therefore the potential risks and effects associated with – the Company's actions. Despite the Company's claims that our Proposal “potentially seeks to dictate a wide range of workforce management and employee practices,” our Proposal does not dictate, request, nor otherwise seek any policy change whatsoever. While an audit stemming from the Proposal may provide insight into potential risks and liabilities that may prompt the Company to subsequently alter its policies, unlike the precedent cited by the Company, our Proposal seeks no changes at all.

C. The Proposal Transcends Ordinary Business Operations.

Despite the Company's claims to the contrary, our Proposal transcends ordinary business operations and therefore may not be found omissible under Rule 14a-8(i)(7). As previously discussed, our Proposal is essentially the same, for Staff-review purposes, as the proposals that were found non-omissible in *Amazon.com* and *Disney Co.* Indeed, when it comes to *Disney Co.*, the language in our Proposal and that proposal is virtually identical, both seeking audits on the Company's impacts on "civil rights and non-discrimination." And in the *Disney Co.* proceeding, Staff expressly stated that "the Proposal transcends ordinary business matters...." Accordingly, under the precedent in *Amazon.com* – and *Disney Co.* in particular – our Proposal must be found to transcend ordinary business operations.

Conclusion

Our Proposal is not impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of proxy rules as alleged by the Company. None of the terms as used in the Proposal are vague, indefinite, or so difficult to understand such that, pursuant to Rule 14a-8(i)(3), stockholders or the Company are unable to determine with reasonable certainty exactly what actions or measures our Proposal requires and any claims by the Company to the contrary only serve to underscore the concerns regarding civil rights and non-discrimination set forth in our Proposal.

Moreover, given the precedent in *Amazon.com* and *Disney Co.*, as well as the new guidance offered by SLB 14L, the Company's proposed grounds for exclusion on the basis of the ordinary business exception fall short. Our Proposal seeks only an examination of current practice, not in any way the implementation of new policies nor the management of the Company, and it does so about matters that the Staff has already declared of significant social policy interest.

As such, the Company has failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company's request for a no-action letter concerning our Proposal.

Office of the Chief Counsel
Division of Corporation Finance
February 1, 2022
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A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call me at (202) 507-6398 or email me at srehberg@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Rehberg". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sarah Rehberg
National Center for Public Policy Research

cc: Scott Shepard (sshepard@nationalcenter.org)
Thomas Moffatt (Thomas.Moffatt@CVSHealth.com)



February 16, 2022

Via email: shareholderproposals@sec.gov

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen,

This letter is in supplement to our no-action reply of February 1, 2022. That no-action reply was in response to the letter of Thomas C. Moffatt on behalf of CVS Health Corporation (the “Company”) dated January 7, 2022, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our Shareholder Proposal (the “Proposal”) from its 2022 proxy materials for its 2022 annual shareholder meeting.

SUPPLEMENTAL RESPONSE TO CVS HEALTH CORPORATION’S CLAIMS

In addition to the *Amazon.com, Inc.* (avail. Apr. 7, 2021) and *The Walt Disney Co.* (avail. Jan. 19, 2022) precedent cited in our initial no-action reply of February 1, 2022, the recent Staff decision in *Levi Strauss & Co.* (avail. Feb. 10, 2022) further establishes the non-omissibility of our Proposal.

Our Proposal here is virtually identical to the proposal in that proceeding. The resolution of our Proposal is materially indistinguishable from the *Levi Strauss* proposal. And the supporting statements of each proposal cover similar territory in explaining the very similar concerns that animated submission of the proposals. Indeed, both of the supporting statements frame the issues of concern to us – discrimination, particularly against groups that the companies do not honor with the label “diverse.”

In each proposal we set up the background concern about such discrimination, and provided evidence that it is occurring throughout corporate America. Then we made reference to the Company's own facially discriminatory behavior. As such, the decision in *Levi Strauss* further establishes the non-omissibility of our Proposal.

Our Proposal's resolution is materially identical to the resolution we introduced in *Levi Strauss*. The *Levi Strauss* proposal requested that the Board:

commission a racial-equity audit analyzing the Company's impacts on civil rights and non-discrimination, and the impacts of those issues on the Company's business. The audit may, in the Board's discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees, communities in which the Company operates and other stakeholders, of all viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company's website.

Our Proposal asks the Board to:

commission an audit analyzing the Company's impacts on civil rights and non-discrimination, and the impacts of those issues on the Company's business. The audit may, in the Board's discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees, communities in which the Company operates and other stakeholders, of all viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the company's website.

The proposal in *Levi Strauss* is therefore indistinguishable in both language and spirit from our Proposal. On February 10, 2022, Staff determined that when it comes to *Levi Strauss* "[w]e are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters." Therefore, just as Staff found our proposal in *Levi Strauss* to be non-omissible, it must similarly find our Proposal to be non-omissible.

Accordingly, the Proposal may not be omitted under Rule 14a-8(i)(7) as it does not relate to the ordinary business operations of the Company and otherwise deals with an issue of social policy significance that the Staff has previously found non-omissible in the three prior proceedings cited herein: *Amazon.com*, *Disney Co.*, and *Levi Strauss*.

Office of the Chief Counsel
Division of Corporation Finance
February 16, 2022
Page 3

A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call me at (202) 507-6398 or email me at srehberg@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Rehberg". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sarah Rehberg
National Center for Public Policy Research

cc: Scott Shepard (sshepard@nationalcenter.org)
Thomas C. Moffatt (Thomas.Moffatt@CVSHealth.com)