



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

DIVISION OF
CORPORATION FINANCE

March 18, 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 Trillium ESG Global Equity Fund and Portico Benefit Services for inclusion in the Company’s proxy materials for its upcoming annual meeting of security holders.

The Proposal asks the Company to adopt and publicly disclose a policy that all employees, part- and full-time, accrue some amount of paid sick leave that can be used after working at the Company for a reasonable probationary period, which policy should not expire after a set time or depend upon the existence of a global pandemic.

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 because it raises human capital management issues with a broad societal impact, *see* Staff Legal Bulletin No. 14L (Nov. 3, 2021), and does not seek to micromanage the Company.

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: Kate Monahan
Trillium Asset Management



Thomas S. Moffatt
Vice President, Asst. Secretary &
Sr. Legal Counsel

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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 from Trillium ESG Global Equity Fund
Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen:

CVS Health Corporation, a Delaware corporation (the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), submits this letter to inform the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) of the Company’s intention to omit from its proxy statement and form of proxy (collectively, the “2022 Proxy Materials”) the stockholder proposal (the “Proposal”) and the statement in support thereof submitted by Trillium ESG Global Equity Fund and co-filer Portico Benefit Services (collectively, the “Proponent”) in a letter dated December 1, 2021. A copy of the Proposal and all related correspondence with the Proponent are attached to this letter as Exhibit A. The Company respectfully requests that the Staff concur with the Company’s view that the Proposal may properly be excluded from the Company’s 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 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 of CVS ask the company to adopt and publicly disclose a policy that all employees, part- and full-time, accrue some amount of [paid sick leave] that can be used after working at CVS for a reasonable probationary period. This policy should not expire after a set time or depend upon the existence of a global pandemic.

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 be properly excluded from the 2022 Proxy Materials under Rule 14a-8(i)(7) because it 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)(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 stated that the underlying policy rationale for the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” See Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission further stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first consideration recognizes that certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct stockholder oversight. The second consideration relates to the degree to which the proposal seeks to “micro-manage” the company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment. Examples of the tasks cited by the Commission include “management of the workforce.” *Id.*

We respectfully advise the Staff that on February 19, 2021, it concurred with the exclusion of a substantially similar proposal submitted by the Proponent to the Company on the basis that Rule 14a-8(i)(7) provides a basis to exclude for ordinary business (See *CVS Health Corp.* (Feb. 19, 2021) (concurring in the exclusion of a proposal requesting the board of directors of the Company analyze and produce a report on the feasibility of adopting, as a standard policy, the paid sick leave policy adopted by the Company for part-time workers as a result of the COVID-19 pandemic) (hereinafter referred to as the "**CVS Health 2020 Paid Sick Leave Proposal**").

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

The Proposal is excludable as relating to the Company's ordinary business operations because it relates to the Company's management of its workplace practices, including general employee compensation and benefits matters, which is fundamental to management's ability to run the Company on a day-to-day basis. The Staff has long recognized that proposals that attempt to govern business conduct involving internal and employment-related policies and practices and the terms thereof (ranging from benefit plans to ethics, conflict of interest and other policies concerning employees) may be excluded pursuant to Rule 14a-8(i)(7) because they infringe on management's core functions. For example, a proposal to *Walmart, Inc.* (Apr. 4, 2019) requested that the board evaluate the risk of discrimination that may result from the company's policies and practices of hourly workers taking absences from work for personal or family illness. The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) because it dealt with "management of [the company's workforce]." In addition to the Staff's concurrence to the exclusion of the CVS Health 2020 Paid Sick Leave Proposal; see also *FedEx Corp.* (Jul. 7, 2016) (concurring in the exclusion of a proposal relating to the terms of the company's employee retirement plans); *Costco Wholesale Corp.* (Sept. 26, 2014) (concurring in the exclusion of a proposal relating to the company's policies concerning its employees, specifically, a revised Code of Conduct that includes an anti-discrimination policy); and *Willis Group Holdings Public Limited Co.* (Jan. 18, 2011) (concurring in the exclusion of a proposal relating to the terms of the company's ethics policy under Rule 14a-8(i)(7)).

In addition, as noted in the 1998 Release, "the management of the workforce, such as the hiring, promotion, and termination of employees" is a matter that is "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." The Staff has consistently concurred with the exclusion of proposals relating to workforce management, including those related to employee welfare, compensation and benefits and conditions and terms of employment. In addition to the Staff's concurrence to the exclusion of the CVS Health 2020 Paid Sick Leave Proposal; see also *Apple, Inc.* (Nov. 16, 2015) (allowing the exclusion of a proposal asking Apple's compensation committee to adopt new compensation principles responsive to the U.S.'s "general economy, such as unemployment, working hour[s] and wage inequality"); *Merck & Co. Inc.* (Mar. 6, 2015) (proposal to fill entry level positions only with outside candidates excludable under Rule 14a-8(i)(7) where the Staff noted that "the proposal relates to procedures for hiring and promoting employees. Proposals concerning a company's management of its workforce are generally excludable under rule 14a-8(i)(7)"); *Starwood Hotels & Resorts Worldwide, Inc.* (Feb. 14, 2012) (proposal that, by a certain date, management verify United States citizenship for certain workers excludable under Rule 14a-8(i)(7), noting that "[p]roposals concerning a company's management of its workforce are generally excludable under rule 14a-8(i)(7)"); *National Instruments Corp.* (Mar. 5, 2009)

(proposal to adopt detailed succession planning policy is excludable); *Consolidated Edison, Inc.* (Feb. 24, 2005) (concurring that a proposal requesting the termination of certain supervisors could be excluded as it related to “the termination, hiring, or promotion of employees”); *ConocoPhillips* (Feb. 2, 2005) (concurring with the exclusion of a proposal to eliminate pension plan offsets as ordinary business operations relating to employee benefits); and *International Business Machines Corp.* (Jan. 2, 2001) (concurring with the exclusion of a proposal requesting cost of living allowances to the company’s retiree pensions as ordinary business operations relating to employee benefits).

In *United Technologies* (Feb. 19, 1993), the Staff stated the following:

As a general rule the staff views proposals directed at a company’s employment policies and practices with respect to its non-executive workforce to be uniquely matters relating to the conduct of the company’s ordinary business operations. Examples of the categories of proposals that have been deemed to be excludable on this basis are: employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation.

Similar to the proposals described above in which the Staff concurred that the proposals could be excluded from proxy materials, the Proposal, which requests that the Company adopt and publicly disclose a policy that all employees accrue some amount of paid sick leave after working at the Company for a reasonable probationary period, unequivocally focuses on the Company’s policies relating to employee benefits and, more generally, the way the Company manages its workforce. Accordingly, the Proposal asks stockholders to vote on a matter relating to ordinary business matters—an outcome that the Staff has consistently not supported as within the scope of a matter proper for stockholder consideration. See the Staff’s concurrence to the exclusion of the CVS Health 2020 Paid Sick Leave Proposal.

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

B. The Proposal Does Not Transcend the Company’s Ordinary Business Operations.

The Commission indicated in the 1998 Release that proposals that relate to ordinary business matters, but that focus on “sufficiently significant social policy issues . . . generally would not be considered to be excludable [under Rule 14a-8(i)(7)] because the proposals would transcend the day-to-day business matters.” In Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”), 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”.

In a number of employment-related proposals that are substantially similar to this Proposal, the Staff has consistently found that such proposals are excludable as relating to ordinary business matters, and therefore not “transcend[ing] the day-to-day business matters” of the company. In

addition to the Staff's concurrence to the exclusion of the CVS Health 2020 Paid Sick Leave Proposal; see also *CVS Health Corp.* (Mar. 1, 2017) (concurring in the exclusion of a proposal to adopt and publish principles for minimum wage reform, "noting that the proposal relates to general compensation matters, and does not otherwise transcend day-to-day business matters"); *ConocoPhillips*, *supra* (concurring with the exclusion of a proposal to eliminate pension plan offsets as ordinary business operations relating to employee benefits); and *International Business Machines Corp.*, *supra* (concurring with the exclusion of a proposal requesting cost of living allowances to the company's retiree pensions as ordinary business operations relating to employee benefits). In each of these proposals, the Staff determined that a proposal seeking a change in the companies' employee compensation and benefit practices that did not transcend the company's ordinary business operations was excludable under Rule 14a-8(i)(7) because the relationship between the employee and the company was part of the day-to-day operations of the company.

The Company considers the training, development, compensation and overall treatment of all of its employees, who the Company refers to as colleagues, as key obligations of management and focuses of Board oversight. More specifically, the Company believes that supporting its colleagues during times of illness or medical uncertainty is an important part of management's obligation. The Company believes that management has considered the needs of colleagues and best practices in determining its paid sick leave policy. The extension of the Company's paid sick leave policy in March 2020 to part-time colleagues was an important response to the COVID-19 pandemic crisis that management announced as part of a number of new and expanded benefits implemented to support its colleagues that serve the Company's customers. The Company believes the decisions related to benefit programs and the modifications to those programs fall squarely within the responsibility of management, led by its Chief People Officer and her team. These are considerations that are wholly within that scope of the day-to-day business of the Company. The ongoing impact of the COVID-19 pandemic has reinforced for the Company how decisions related to health, safety and benefits provided to employees are part of the day-to-day, if not minute-to-minute, managing of an organization.

This Proposal clearly relates to the Company's ordinary business operations and covers matters that are within the scope of management responsibility, specifically the Company's management of its workforce, and does not "transcend the day to day business matters" of the Company. Therefore, we respectfully request that the Staff concur in our view that the Proposal is excludable under Rule 14a-8(i)(7).

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

The Proposal is excludable as relating to the Company's ordinary business operations because it attempts to micromanage the Company's business. The Proposal's intrusion into the Company's employment compensation and benefits policies is an inappropriate attempt to micro-manage the Company because decisions involving employment policies implicate a wide variety of different types of considerations and involve "matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." See the 1998 Release. In SLB 14L, when discussing concept of micromanagement, the Staff stated, "we will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management."

The Company is a diversified health services company united around a common purpose of helping people navigate the health care system through every meaningful moment of their health, and employing over 300,000 colleagues. The Company operates approximately 9,900 retail drugstore locations across the country, approximately 1,200 walk-in medical clinics and is a leading pharmacy benefits manager with approximately 110 million plan members. The relationship between the Company and its employees in multiple and varied jurisdictions constitutes a critical component of its day-to-day management. Decisions concerning employee relations and compensation and benefits matters are multi-faceted, complex and based on a range of factors, and are the subject of a myriad of different state laws. These are fundamental business matters for the Company's management and require a localized understanding of the state and local legal and regulatory considerations and business implications that could result from changes made to workforce policies, specifically as relevant here compensation and benefit policies. The Commission identified that a proposal could "probe too deeply" where "the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." See the 1998 Release.

Accordingly, as discussed above, it is clear that the Proposal involves technical matters of employee compensation within the scope of the Company's day-to-day business operations and we respectfully request that the Staff concur in our view that it is therefore 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 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.

We appreciate your attention to this request.

Respectfully yours,



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

cc: Kate Monahan, Director of Shareholder Advocacy, Trillium Asset Management, LLC
Colleen M. McIntosh, Senior Vice President, Chief Governance Officer, Corporate Secretary and Assistant General Counsel, CVS Health Corporation
Doreen E. Lilienfeld and Lona Nallengara, Shearman & Sterling LLP

EXHIBIT A

From: Kate Monahan <KMonahan@trilliuminvest.com>
Sent: Wednesday, December 1, 2021 4:40 PM
To: LaBreche, Kimberly A <Kimberly.LaBreche@CVSHealth.com>; McIntosh, Colleen <Colleen.Mcintosh@CVSHealth.com>
Subject: [EXTERNAL] Shareholder proposal

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

Hi Kim and Colleen,

I wanted to give you a heads up that we filed a proposal with the company today asking to adopt paid sick leave for all employees. As I note in the cover letter, we have a time already scheduled to talk, so the other times proposed are solely to fulfill the SEC requirements (but always happy to have more dialogue if you'd like to take us up on it). Looking forward to speaking with you on the 13th and please let me know if you have any questions or concerns.

Best,
Kate

Kate Monahan | Director of Shareholder Advocacy

P:617-532-6651 | E: KMonahan@trilliuminvest.com |



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December 1, 2021

Via Federal Express

CVS Health Corporation
Attn: Corporate Secretary
One CVS Drive
Woonsocket, RI 02895

Re: Shareholder Proposal for 2022 Annual Shareholder Meeting

Trillium ESG Global Equity Fund is submitting the attached shareholder proposal, for inclusion in the Company's 2022 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8).

Per Rule 14a-8, Trillium ESG Global Equity Fund holds more than \$25,000 of the Company's common stock, acquired more than one year prior to today's date and held continuously for that time. Trillium ESG Global Equity Fund intends to hold the required number of shares continuously through the date of the 2022 annual meeting. Verification of ownership will be sent separately.

Trillium is already scheduled to meet with the Company on December 13th from 1-1:30 pm ET. In accordance with SEC rules, however, we are also available to meet with the Company on December 13th and 14th from 1:30-2 pm ET. Please let us know within 10 days if the Company would like to meet at one of these times. After 10 days we may no longer be able to hold these dates and times.

Trillium will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

I can be contacted at (617) 532-6651 and kmonahan@trilliuminvest.com. I request a confirmation of receipt of this letter via email.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Monahan".

Kate Monahan
Director of Shareholder Advocacy

Enclosures

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Whereas: More than 26 million people working in the private sector have no access to earned sick time, or “paid sick leave” (PSL), for short-term health needs and preventive care.¹ Working people in the United States face an impossible choice when they are sick: stay home and risk their economic stability or go to work and risk their health and the public’s health.

The vast majority (77%) of the lowest earning 10% of American employees do not have access to PSL.² 48% of Latinx workers and 36% of Black workers report having no paid time away from work of any kind.³

As the COVID-19 pandemic has shown, PSL is a crucial contributor to public health, allowing workers who have been exposed to any illness to quarantine. State and local PSL mandates have been shown to reduce the rate at which employees report to work ill in low-wage industries where employers don’t tend to provide PSL, lowering disease and overall absence rates.⁴

A lack of PSL could pose reputational risk, especially for CVS, whose mission is to “take on many of the country’s most prevalent and pressing health care needs.”⁵ After more than 1,700 employees petitioned for PSL and other safety measures, CVS announced in March 2020 that full-time employees have access to PSL, and extended a meager 24 hours of PSL available to part-time employees for the duration of the COVID-19 pandemic. However, its policy for full-time employees is not publicly available and the benefit for part-time employees does not appear to be permanent.⁶

CVS could benefit from all of its employees having permanent access to PSL. The initial cost is relatively low—providing PSL is estimated to cost employers an average of 2.7 cents per hour of paid work⁷—and PSL both increases productivity⁸ and reduces turnover, which in turn reduces costs associated with hiring.⁹ This is particularly important for lower-wage industries like retail where turnover is highest. Additionally, proactively establishing PSL for all employees would help prepare CVS for potential regulation. 37 jurisdictions, including 14 states, have adopted PSL laws since 2006.¹⁰

We believe adopting a comprehensive, permanent, and public PSL policy would help make the future operating environment more equitable and mitigate reputational, financial, and regulatory risk to CVS.

Resolved: shareholders of CVS ask the company to adopt and publicly disclose a policy that all employees, part-and full-time, accrue some amount of PSL that can be used after working at CVS for a reasonable probationary period. This policy should not expire after a set time or depend upon the existence of a global pandemic.

¹ <https://www.bls.gov/ncs/ebs/benefits/2021/employee-benefits-in-the-united-states-march-2021.pdf>

² <https://www.wsj.com/articles/companies-expand-paid-sick-time-leave-11632413861>

³ <https://www.bls.gov/news.release/leave.t01.htm>

⁴ <https://voxeu.org/article/pros-and-cons-sick-pay>

⁵ <https://cvshealth.com/about-cvs-health/our-purpose>

⁶ <https://cvshealth.com/news-and-insights/press-releases/cvs-health-to-provide-bonuses-add-benefits-and-hire-50000-in;>
<https://www.businessinsider.com/coronavirus-cvs-updates-policies-after-workers-petition-for-sick-leave-2020-3>

⁷ https://www.nber.org/system/files/working_papers/w26832/w26832.pdf

⁸ <https://voxeu.org/article/pros-and-cons-sick-pay>

⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5649342/>

¹⁰ <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-sick-days/current-paid-sick-days-laws.pdf>



February 1, 2022

Via e-mail at shareholderproposals@sec.gov

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

Re: Request by CVS Health Corporation to omit proposal submitted by Trillium ESG Global Equity Fund, Portico Benefit Services, and the VCIM Canadian Equity Fund

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Trillium ESG Global Equity Fund, Portico Benefit Services, and the VCIM Canadian Equity Fund (together, the “Proponents”) submitted a shareholder proposal (the “Proposal”) to CVS Health Corporation (“CVS” or the “Company”). The Proposal asks CVS to adopt and publicly disclose a policy that all employees, part- and full-time, accrue some amount of paid sick leave that can be used after working at CVS for a reasonable probationary period.

In a letter to the Division dated January 7, 2022 (the “No-Action Request”), CVS stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company’s 2022 annual meeting of shareholders. CVS argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with CVS’s ordinary business operations. As discussed more fully below, the consistent and widespread public debate over the importance of paid sick leave to protect workers, customers, communities, and the economy establishes that it is a significant policy issue transcending ordinary business. Moreover, the Proposal gives CVS significant discretion in implementing its request and does not micromanage the Company. Accordingly, CVS has not met its burden of proving its entitlement to exclude the Proposal, and the Proponents respectfully request that CVS’s request for relief be denied.

The Proposal

The Proposal states:

Resolved: shareholders of CVS ask the company to adopt and publicly disclose a policy that all employees, part- and full-time, accrue some amount of paid sick leave that can be used after working at CVS for a reasonable probationary period. This policy should not expire after a set time or depend upon the existence of a global pandemic.

Ordinary Business

Rule 14a-8(i)(7) allows exclusion of proposals related to a company's ordinary business operations. CVS argues that the Proposal relates to the Company's ordinary business operations because it addresses "management of its workplace practices,"¹ without implicating a significant policy issue, and because it would micromanage the Company.

The Proponents acknowledge that proposals on workforce management, without more, are generally deemed to address ordinary business operations. However, companies are not allowed to rely on the ordinary business exclusion to omit such proposals if they "focus[] on sufficiently significant social policy issues."²

Over the past eight years, paid sick leave has been the consistent subject of widespread public debate, the Division's standard for qualifying as a significant policy issue.³ The COVID-19 pandemic has greatly amplified growing public concern and policy activity around the paid leave issue, injecting greater urgency into the debate. As a result, the pre-pandemic 2019 determination in Walmart, Inc. allowing exclusion of a proposal on the discrimination implications of the company's paid leave policy,⁴ on which CVS relies,⁵ should not control here.

The Division's New Approach to Ordinary Business Analysis Undermines CVS's Argument

As well, the Division's shift in interpretive approach to the ordinary business exclusion means that the CVS determination from last season, which allowed exclusion on ordinary business grounds of a differently formulated proposal on paid leave, lacks persuasive power. The CVS (2021)⁶ proposal asked the company to analyze and report on the feasibility of extending the paid sick leave policy adopted in response to the COVID-19 pandemic as a standard employee benefit. CVS argued, as it does here, that the proposal dealt with the company's ordinary business operations—"management of its workplace practices, including general employee compensation and benefit matters"—without transcending ordinary business. The proponent documented the numerous indicia that paid sick leave qualified as a significant policy issue, including abundant media attention, legislative and regulatory initiatives, and public health considerations. The Staff concurred with CVS that the proposal was excludable on ordinary business grounds.

Although the Staff did not issue a written determination, its reasoning can be gleaned from a determination issued to Kohl's⁷ that same day regarding a substantially identical proposal. The Kohl's determination provided an unusually detailed explanation, stating:

As stated in Staff Legal Bulletin No. 14K, the staff does not recognize particular issues or categories of issues as universally "significant." Indeed, proposals related to paid sick leave may raise a significant policy issue that transcends a company's ordinary business operations. However, in our view, the Proposal does not demonstrate how offering paid sick leave as a

¹ No-Action Request, at 3.

² Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

³ See, e.g., <https://www.sec.gov/interp/legal/cfslb14a.htm>.

⁴ Walmart, Inc. (avail. Apr. 4, 2019).

⁵ No-Action Request, at 3.

⁶ CVS Health Corporation (Feb. 19, 2021).

⁷ Kohl's Corporation (Feb. 19, 2021).

standard employee benefit is sufficiently significant to the Company, such that it transcends the Company's ordinary business operations and would be appropriate for a shareholder vote.

The Staff went out of its way, then, to acknowledge that paid leave, broadly speaking, "may raise a significant policy issue," but faulted the proponent for not making the connection to Kohl's sufficiently clear. In other words, the proponent failed to demonstrate the requisite nexus between the issue and the company. It is reasonable to assume that the Staff found similar fault with the proponents of paid leave proposals at CVS and other companies.

In a November 2021 Staff Legal Bulletin ("SLB"), 14L,⁸ the Division announced that it would no longer require proponents to demonstrate a nexus with the company to avoid exclusion on ordinary business grounds, as required and elaborated on in now-rescinded SLBs 14I, 14J and 14K. The Division explained:

Going forward, the staff will realign 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. This exception is essential for preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement, while also recognizing the board's authority over most day-to-day business matters. For these reasons, staff 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.⁹

SLB 14L commented specifically on workforce-related proposals, stating 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." Under the new approach, then, proponents' previous failures to show significance to individual companies, like those in the Kohl's and CVS determinations, are no longer relevant to the ordinary business analysis. Instead, the Division will focus on whether a proposal's subject has "broad societal impact," a standard that is clearly satisfied by paid sick leave.

Access to Paid Sick Leave is a Significant Social Policy Issue

Responses to the requests for no-action relief by Kohl's, CVS, and other companies last season contained extensive evidence that paid sick leave was a significant policy issue, as measured by press attention, legislative and regulatory initiatives, and statements by public health experts. A lack of paid sick leave has economic impacts, both on affected workers and on the economy more broadly. It also affects public health, as coming to work sick can spread the virus that causes COVID-19 to co-workers and others with whom a worker comes into contact. The Proponents do not repeat those arguments here, but respectfully refer the Staff to last year's Kohl's and CVS correspondence. This response will update the paid sick leave landscape to illustrate the issue's continuing vitality and urgency.

⁸ Staff Legal Bulletin 14L (Nov. 3, 2021).

⁹ Staff Legal Bulletin 14L (Nov. 3, 2021) (citations omitted).

States and localities have continued to recognize the importance of paid sick leave and have adopted measures to protect workers and the public:

- In July 2021, Pittsburgh extended emergency COVID-19 paid sick leave for workers employed there or working remotely for a Pittsburgh employer,¹⁰ following the March 2021 adoption of a paid sick leave ordinance in Allegheny County, in which Pittsburgh is located.¹¹
- Massachusetts legislation signed in May 2021 provided emergency paid sick leave for COVID-19 related reasons.¹²
- California passed a law in March 2021, retroactive to January 1, mandating paid sick leave for employers with over 25 workers.¹³ That law expired on September 2021,¹⁴ and the Los Angeles Times editorial board recently exhorted the governor and legislature to reach a deal to renew it, arguing that “it should be clear that paid sick leave is not just a worker protection -- it's public health protection too.”¹⁵
- The City of Los Angeles amended its Supplemental Paid Sick Leave Due to COVID-19 Order in June 2021.¹⁶
- Maryland provided “paid public health emergency leave” to “Essential Workers” starting on June 1, 2021.¹⁷
- A new Philadelphia emergency paid sick leave law applicable to employers with 50 or more workers was adopted on March 2021.¹⁸

Paid sick leave not only enables workers to care for themselves or a family member when sick; it can also be used to advance other public health objectives such as facilitating vaccination. President Biden called on employers to provide paid time off to be vaccinated and recover from any vaccine side effects.¹⁹ A June 2021 study by the Kaiser Family Foundation found that 75% of workers whose employers provided paid sick leave for vaccination were vaccinated, compared with 51% of workers whose employers did not do so. In December 2021 workers in New York City were given additional paid sick leave to take their children to get vaccinated or care for a child experiencing side effects from vaccination. The Massachusetts, Pittsburgh, California, Philadelphia, and Los Angeles measures

¹⁰ <https://pittsburghpa.gov/mayor/paidsickleave>

¹¹ <https://www.littler.com/publication-press/publication/allegheny-county-pennsylvania-joins-jurisdictions-requiring-paid-sick>

¹² <https://www.mass.gov/info-details/massachusetts-law-about-sick-leave>

¹³ <https://www.shrm.org/resourcesandtools/tools-and-samples/how-to-guides/pages/htg---how-to-comply-with-california%280%99s-paid-sick-leave-requirements.aspx>

¹⁴ <https://www.dir.ca.gov/dlse/COVID19resources/2021SPSLexpiration.html>

¹⁵ Editorial, “Workers need paid sick leave; COVID-19 cases are up, but California still has not restored this key pandemic protection,” Los Angeles Times, Jan. 25, 2022

¹⁶ <https://wagesla.lacity.org/sites/g/files/wph1941/files/2021-09/COVID19-SPSL-RR-20210628.pdf>

¹⁷ <https://www.dllr.state.md.us/labor/wages/essentialprofaqs.shtml>

¹⁸ Oona Goodin-Smith, “Council Oks COVID sick leave,” The Philadelphia Inquirer, Mar. 20, 2021.

¹⁹ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/21/fact-sheet-president-biden-to-call-on-all-employers-to-provide-paid-time-off-for-employees-to-get-vaccinated-after-meeting-goal-of-200-million-shots-in-the-first-100-days/>

discussed above included being vaccinated as a permissible use of leave. Cobb County, Georgia gave its vaccinated employees additional paid sick leave.²⁰

Workers have raised concerns about not having COVID-specific paid sick leave. For example, nurses in Waterville, Maine²¹; essential workers in Madera, California²²; and a Virginia coalition that includes workers²³ have pressed for paid sick leave. A survey of workers at the Red Lobster restaurant chain by the Harvard Shift Project found that only 12% receive sick pay, and 63% reported coming to work sick during the pandemic.²⁴ The Labor Occupational Health Program at UC Berkeley surveyed mainly Latinx and Asian low-wage workers and found that half were “concerned that they will be unable to financially support themselves or their families if they get sick” and three-fifths had received no information from their employers about whether they can use paid sick leave for COVID-19.²⁵

Demands for COVID-specific paid sick leave dovetail with broader efforts to achieve paid family and medical leave. In March 2021, 190 companies wrote to Congress, urging that “an equitable and comprehensive paid family and medical leave program” be included in the Build Back Better (“BBB”) plan then being formulated by the Biden Administration.²⁶ The BBB Act passed by the House in November included a federal paid leave program,²⁷ which Senate Majority Leader Chuck Schumer characterized as “[o]ne of the most important planks” of the plan.²⁸

The Senate Committee on Health, Education, Labor and Pensions held a hearing, “Paid Leave For Working Families: Examining Access, Options, and Impacts” in May 2021. At the hearing, paid leave expert Vicki Shabo situated the pandemic in the broader context of advocacy for paid sick leave, testifying that “[i]t’s a pleasure to be here with you in person to discuss how we must apply the lessons of the COVID-19 pandemic, assess the workers’ and business needs and economic trends that pre-date the pandemic and anticipate the trends and needs that we are likely to face in the future to evaluate access to paid sick time, paid family and medical leave and the Family and Medical Leave Act to ensure that – going forward – all working people can take care of themselves and their loved ones.”²⁹

Survey data indicate that Americans support federal investment in paid family and medical leave. An April 2021 survey of likely voters found that 75% strongly supported or somewhat supported

²⁰ Matt Bruce, “County’s vaccinated employees to get more paid sick leave to combat COVID-19.” [The Atlanta Journal-Constitution](#), Sept. 16, 2021.

²¹ Keith Edwards, “Some hospital workers raise alarms over lack of dedicated COVID-19 paid sick time,” [Morning Sentinel \(Waterville, Maine\)](#), Dec. 19, 2021.

²² “Essential workers urge extension of COVID-19 paid sick leave benefits; Commentary,” [Madera Tribune](#), Mar. 3, 2021

²³ <https://www.nbc12.com/2021/01/05/coalition-pushing-paid-sick-days-essential-workers/>

²⁴ <https://www.businessinsider.com/red-lobster-staff-work-when-ill-paid-sick-leave-restaurant-2022-1>

²⁵ https://archive.advancingjustice-alc.org/wp-content/uploads/2021/04/ALC-Workers-Rights-COVID-Report-202103-R8_digital.pdf, at 1-2.

²⁶ “Paid family leave pushed; In letter to Congress, more than 190 firms call for a program that’s ‘equitable and comprehensive,’ [Los Angeles Times](#), Mar. 24, 2021.

²⁷ <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/house-passes-build-back-better-act-with-paid-leave-and-aca-subsidy-provisions.aspx>

²⁸ <https://www.cnbc.com/2021/12/09/sen-chuck-schumer-says-paid-leave-is-so-vital-to-build-back-better.html>

²⁹ <https://www.help.senate.gov/imo/media/doc/Shabo1.pdf>

such investment, with only 18% opposed.³⁰ A survey of small business owners in October 2020 reported that 64% supported a federal paid family and medical leave policy; support rose to 69% after survey respondents were told about “studies that show that allowing workers who are ill to take paid time off is one of the most effective ways to stop the spread of COVID-19.”³¹ Data from early in the pandemic showed that over 90% of voters in critical voting districts favored “[p]roviding workers who become sick during the coronavirus pandemic with paid leave.”³²

The media continue to cover the paid sick leave issue intensively. In addition to the sources cited above, other examples include:

- Mark Williams and Patrick Cooley, “Calling out sick not an option for many; No paid sick leave means suffer at work or lose wages,” The Columbus Dispatch (Ohio), Sept. 27, 2021
- Michael Corkery, “Tyson Foods offers workers more paid time off—if they get vaccinated,” The New York Times, Sept. 3, 2021
- Derrick Bryson Taylor, “Kroger, the U.S. grocery giant, eliminates paid Covid-19 leave for unvaccinated workers,” The New York Times, Dec. 15, 2021
- Summer Lin, “25% of unvaccinated say they’d likely get COVID shot if given paid time off, poll says,” The Miami Herald, July 21, 2021
- Editorial, “Staying Home When Sick,” Pittsburgh Post-Gazette, May 24, 2021
- Taryn Luna and Melody Gutierrez, “COVID-19 sick pay in California would return under deal between Newsom, lawmakers,” Los Angeles Times, Jan. 25, 2022
- Walter Bragman, “Republicans Want to Strip Worker Protections, Fight Paid Sick Leave Despite Raging Pandemic,” Newsweek, Feb. 16, 2021
- Yana Kunichoff, “Many teachers must use their own sick days if they get COVID-19,” The Arizona Republic, Aug. 8, 2021
- Alicia Adamczyk, “There’s still no paid leave for U.S. workers—but advocates aren’t giving up,” CNBC.com, Nov. 3, 2021
- Lara Korte, “Need more sick leave due to COVID? New California plan would offer extra time amid omicron,” Sacramento Bee, Jan. 25, 2022
- Jaime Adame, “Universities revive Covid-19 leave UA offering 80 hours of paid time off related to virus,” Arkansas Democrat-Gazette, Aug. 29, 2021
- Ashley Murray, “COVID-19 Paid Sick Leave Could Remain Another Year,” Pittsburgh Post-Gazette, July 22, 2021
- Douglas Hanks, “Paid sick leave coming to security guards at MIA and Metrorail 18 months into pandemic,” The Miami Herald, Sept. 1, 2021
- Nathan Bomey, “Employers ponder vaccination incentives; Extra pay, paid time off is the ‘right thing to do,’ expert says,” USA Today, Feb. 10, 2021
- “Workplace virus outbreaks soar once again,” The Atlanta Journal-Constitution, Dec. 2, 2021
- Lila Seidman, “A push to give domestic workers sick leave; San Francisco is set to create a portable benefits system, the first of its kind in U.S.,” Los Angeles Times, Oct. 28, 2021

³⁰ <https://www.dataforprogress.org/blog/2021/4/7/voters-support-investing-in-the-care-economy?rq=paid%20family%20leave;>

³¹ <https://irp-cdn.multiscreensite.com/167e816a/files/uploaded/Paid%20Leave%20for%20All.small%20business.pdf?em>

³² <https://globalstrategygroup.com/wp-content/uploads/2020/05/PLFA-Battleground-Memo-F05.15.20.pdf>

- Sophie Nieto-Munoz, “Bill proposes retroactive paid sick leave for COVID-19; Workers who were out with the virus or vaccine side effects since Jan. 1, would benefit,” The Times of Trenton (New Jersey), June 12, 2021
- Sophie Nieto-Munoz, “N.J. workers could get retroactive paid sick leave for COVID-19, vaccine side effects,” Star-Ledger (Newark, NJ), June 10, 2021
- Scott Dust and Shannon Taylor, “Sick days amid COVID-19,” Daily News (New York), Dec. 5, 2021
- Johnny C. Taylor, “What incentives can attract and keep restaurant workers?” USA Today, Oct. 19, 2021
- Editorial, “Employers should incentivize vaccine for their workers,” The Boston Herald, July 1, 2021
- Rachel Schnalzer, “A boost for paid sick leave; Here’s what California workers are now entitled to under a new COVID-19 law,” Los Angeles Times, Mar. 31, 2021
- Matt Bruce, “County’s vaccinated employees to get more paid leave to combat COVID-19,” The Atlanta Journal-Constitution, Sept. 16, 2021
- Nathaniel Meyersohn, “Americans are showing up sick to work as omicron spreads,” CNN Wire, Jan. 20, 2022
- Eboni Taylor, “COVID-19 exposes growing necessity for paid sick leave” (op ed), Detroit Free Press, Mar. 12, 2021
- Ashley Murray and Boyce Buchanan, “Council puts change in COVID bill on hold; it would tie paid sick leave to vaccine rate,” Pittsburgh Post-Gazette, July 14, 2021
- Leila Miller, “Grocery chain is fined over sick leave; The \$447,000 state penalty relates to El Super staff affected by the coronavirus,” Los Angeles Times, July 29, 2021

The Proposal Would Not Micromanage CVS Because It Leaves Key Aspects of a Paid Sick Leave Policy to CVS’s Discretion

SLB 14L shifted the Division’s approach to analyzing whether a proposal can be excluded on ordinary business grounds due to micromanagement. SLB 14L explained that recent Staff application of the micromanagement doctrine “expanded the concept of micromanagement beyond the Commission’s policy directives” and “may have been taken to mean that any limit on company or board discretion constitutes micromanagement.” Going forward, SLB 14L stated, the Staff “will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.”

CVS contends that the Proposal would inappropriately limit management’s discretion because “decisions concerning employee relations and compensation and benefit matters” are complex and require “a localized understanding of the state and local legal and regulatory considerations and business implications” of policy changes.³³ But the Proposal operates at a high level, providing directional guidance without dictating the specifics of a new policy. The Proposal leaves to management the decision regarding how much paid sick leave an employee should accrue, as well as the duration of the probationary period required before an employee can use the leave. It is worth noting that adopting a uniform paid sick leave policy that complies with the most generous legal or regulatory requirement applicable to CVS would eliminate some of the complexity CVS references.

³³ No-Action Request, at 6.

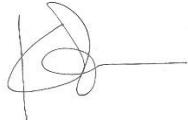
Quoting the Commission's 1998 release,³⁴ CVS also argues that paid sick leave is a matter "of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."³⁵ In assessing whether a matter is too complex for shareholders to understand, SLB 14L provides that the Staff "may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic." As discussed above, there has been extensive public discussion and analysis of the paid sick leave issue, and many resources are available to shareholders on the issue. The Proposal does not ask for disclosure, so concerns about shareholders' ability to parse technical information are not relevant. Finally, because shareholders vote on other kinds of compensation and benefit matters that involve significant complexity, including management "say on pay" proposals, there is no reason to believe they would lack the sophistication necessary to evaluate whether affording all employees some amount of paid sick leave would benefit CVS and its shareholders.

As shown by the widespread public debate, both in the press and in the legislative and regulatory arenas, paid sick leave transcends ordinary business and is an appropriate subject for shareholder input. The Proposal would not micromanage CVS, moreover, because it suggests a high-level change without dictating the details of implementation and does not deal with a topic that is too complex for shareholders to understand. CVS has thus failed to satisfy its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7), and the Proponents respectfully ask that its request for relief be denied.

* * *

The Proponents appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (617) 532-6651.

Sincerely,



Kate Monahan
Director of Shareholder Advocacy
Trillium Asset Management

cc: Thomas S. Moffatt
Vice President, Assistant Secretary and Senior Legal Counsel
Thomas.Moffatt@cvshealth.com

³⁴ Exchange Act Release No. 40018 (May 21, 1998).

³⁵ No-Action Request, at 5.



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February 14, 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 from Trillium ESG Global Equity Fund
Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen:

This letter relates to the response letter (the “Response Letter”) submitted by Trillium ESG Global Equity Fund and co-filers Portico Benefit Services and VCIM Canadian Equity Fund (collectively, the “Proponent”), dated February 1, 2022, 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 7, 2022. The No-Action Request pertains to the Proponent’s request to include a shareholder proposal in the Company’s 2022 proxy statement and form of proxy (collectively, the “2022 Proxy Materials”) that requests that the Company adopt and disclose a permanent paid sick leave policy pursuant to which all employees, whether part-time or full-time, accrue some amount of paid sick leave after working at the Company for a reasonable probationary period (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 2022 Proxy Materials.

DISCUSSION

The Company Maintains that the Proposal Relates to the Company’s Ordinary Business Operations and Therefore May be Excluded Pursuant to Rule 14a-8(i)(7).

CVS Health is a diversified health services company operating more than 9,900 retail drugstore locations across the country, nearly 1,200 walk-in medical clinics, a leading pharmacy benefit manager that operates several large mail facilities, expanding specialty pharmacy care solutions, and a dedicated senior pharmacy care business serving more than one million

patients per year; it employs approximately 300,000 colleagues in all 50 states, the District of Columbia and Puerto Rico, as well as a number of countries worldwide. The Proposal requests that the Company adopt (and disclose) a paid sick leave policy pursuant to which all 300,000 of its employees, whether part-time or full-time, accrue some amount of paid sick leave after a probationary period.

Decisions concerning employee relations and compensation and benefits matters are multi-faceted, complex and based on a range of factors, and are the subject of a myriad of different state laws, which the Proponent recognizes in its Response Letter.¹ By requiring the Company to adopt a permanent paid sick leave policy for all employees in the face of an evolving and complex legal and regulatory landscape, the Proposal is primarily focused on fundamental workforce management that relates to the day-to-day operation of the Company's business. Indeed, the Proponent does not contest that the Proposal involves the management of the Company's ordinary business.²

Rather, the Proponent claims that the Proposal should not be excluded under the ordinary business exception because the Proposal relates to a "significant policy issue." In making this claim, the Proponent cites articles on the importance of paid sick leave as an outgrowth of the COVID-19 pandemic.³ The policy concerns behind pandemic-related emergency health measures are different from those behind the Proposal that the Company adopt a paid sick leave policy for all part-time and full-time workers on a permanent basis, irrespective of whether there is a global health pandemic. Even the COVID-related measures taken by various states and municipalities that are cited in the sources referenced by the Proponent illustrate the wide variation among emergency sick leave requirements,⁴ which are nuanced and tailored to local circumstances.

As discussed in the No-Action Request, even if the Proposal touches on a significant policy issue, the Proposal is excludable as relating to the Company's ordinary business operations because it principally focuses on the Company's management of its workforce generally and its workplace practices. The Staff has long permitted exclusion of shareholder proposal that focuses on ordinary business matters notwithstanding that a proposal touches upon a potential significant social policy issue. This approach predates the rescinded Staff Legal Bulletin No. 14K (Oct. 16, 2019) ("**SLB 14K**") and relies on a different analysis than that addressed by Staff Legal Bulletin No. 14L (Nov. 3, 2021)—the pre-SLB 14K approach did not focus on whether a particular policy is broadly significant versus significant for a particular company, but rather on

¹ See Response Letter, pp. 4-6 (noting several state and federal legislative actions pressing paid sick leave policies for broadly different reasons including the COVID-19 pandemic, vaccination requirements and incentives, and economic impacts on family and medical leave).

² See Response Letter, p. 2 ("The Proponents acknowledge that proposals on workforce management, without more, are generally deemed to address ordinary business operations.").

³ See Response Letter, pp. 2-6 (citing several articles related to COVID-19 to support the significant policy issue argument and stating that "[t]he COVID-19 pandemic has greatly amplified growing public concern and policy activity around the paid leave issue, injecting greater urgency into the debate").

⁴ See Response Letter, pp. 4-5.

whether the proposal is fundamentally about day-to-day operations versus any significant policy issue that may be referenced in the proposal (see *McDonald's Corp.* (March 22, 2019) (concurring in the exclusion of a proposal that touched on concerns about animal cruelty because the proposal was “focuse[d] primarily on” the company’s ordinary business operations).

The Proponent also argues that the “high-level” operation of the Proposal mitigates its complexity.⁵ Adopting the policy would necessitate a localized understanding of legal and regulatory frameworks in all 50 states (as well as the differing rules in many cities) and the resulting business implications. The adoption of a uniform policy for all of the Company’s part-time and full-time employees would force the Company to either neglect the complexity of these considerations or to make a sweeping determination affecting the general workforce despite them. This would be the essence of micromanagement. Such a complex assessment should therefore be reserved for the Company’s management as a typical part of the Company’s ordinary business operations.

Accordingly, we continue to maintain that the Proposal is properly excludable under Rule 14a-8(i)(7).

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 2022 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 Senior Legal Counsel

cc: Kate Monahan, Director of Shareholder Advocacy, Trillium Asset Management, LLC
Colleen M. McIntosh, Senior Vice President, Chief Governance Officer, Corporate Secretary and Assistant General Counsel, CVS Health Corporation
Doreen E. Lilienfeld, Shearman & Sterling LLP
Lona Nallengara, Shearman & Sterling LLP

⁵ See Response Letter, p. 6 (“It is worth noting that adopting a uniform paid sick leave policy that complies with the most generous legal or regulatory requirement applicable to CVS would eliminate some of the complexity CVS references”).