Thomas S. Moffatt
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January 16, 2024

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

Re: CVS Health Corporation
Stockholder Proposal from the North Atlantic States Carpenters Pension 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 "**2024 Proxy Materials**") the stockholder proposal (the "**Proposal**") and the statement in support thereof submitted by the North Atlantic States Carpenters Pension Fund (the "**Proponent**") in a letter dated November 7, 2023. A copy of the Proposal and all relevant correspondence with the Proponent are attached to this letter as Exhibit A. The Company respectfully requests that the Staff concur with the Company's view that the Proposal may properly be excluded from the Company's 2024 Proxy Materials pursuant to Rule 14a-8.

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

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

- concurrently sent copies of this correspondence to the Proponent.

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

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

THE PROPOSAL

The Proposal states:

> Resolved: That the shareholders of CVS Health Corporation ("Company") hereby request that the board of directors take the necessary action to amend its director election resignation bylaw that requires each director nominee to submit an irrevocable conditional resignation to the Company to be effective upon the director's failure to receive the required shareholder majority vote support in an uncontested election. The proposed amended resignation bylaw shall provide that if the Board does not accept a tendered resignation and the director remains as a "holdover" director, the resignation bylaw shall stipulate that should a "holdover" director fail to be re-elected at the next annual election of directors, that director's new tendered resignation will be automatically effective 30 days after the certification of the election vote. The Board shall report the reasons for its actions to accept or reject a tendered resignation in a Form 8-K filing with the U.S. Securities and Exchange Commission.

BASIS FOR EXCLUSION

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

ANALYSIS

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

Rule 14a-8(i)(2) allows the exclusion of a stockholder proposal if implementation of the proposal would "cause the company to violate any state, federal, or foreign law to which it is subject."

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

On numerous occasions, the Staff has concurred with the exclusion of stockholder proposals where the proposal, if implemented, would cause a company to violate state law. For example, in *Oshkosh Corp.* (avail. Nov. 21, 2019), the proposal requested that the company amend its bylaws to require that a director who received less than a majority vote be removed from the board "immediately." The Staff concurred with the proposal's exclusion under Rule 14a-8(i)(2) because its implementation would cause the company to violate Wisconsin law, which provided two methods for the removal of directors—by a stockholder vote or by a judicial proceeding—and neither was immediate or an action the company or its board could unilaterally take. *See also IDACORP, Inc.* (avail. Mar. 13, 2012) (concurring with the exclusion under Rule 14a-8(i)(2) of a stockholder proposal requesting that the company amend its bylaws to implement majority voting for director elections where Idaho law provided for plurality voting unless a company's certificate of incorporation provided otherwise); *Ball Corp.* (avail. Jan. 25, 2010, recon. denied Mar. 12, 2010) (concurring with the exclusion under Rule 14a-8(i)(2) of a stockholder proposal that would cause the company to violate Indiana law relating to board classification); and *Bank of America Corp.* (avail. Feb. 11, 2009) (concurring with the exclusion under Rule 14a-8(i)(2) of a stockholder proposal to amend the company's bylaws to establish a board committee and authorize the board chairman to appoint members of the committee that would cause the company to violate Delaware law).

B. Implementation of the Proposal Would Cause the Company to Violate Delaware Law Because it Would Permit Stockholders to Effect the Removal of a Director Without the Statutorily Required Vote

The implementation of the Proposal would violate Delaware law by imposing a voting standard for the removal of directors that is lower than that required by Delaware General Corporation Law (the "**DGCL**").

The By-laws of the Company (the "**By-laws**") require each director to submit an irrevocable resignation in order to become a nominee of the Board of Directors (the "**Board**") for further service on the Board, which resignation shall become effective upon (a) that person not receiving a majority of the votes cast in an uncontested election, and (b) acceptance of the resignation by the Board in accordance with its policies and procedures. The By-laws further provide that absent a determination by the Board that compelling reasons exist for concluding that it is in the best interests of the Company that the unsuccessful incumbent director continue to serve as a director, the Board shall accept the unsuccessful incumbent director's resignation. The Proposal requests that the Board amend this By-law provision to require that, if the Board does not accept a director's tendered resignation and the director thus continues as a "holdover" director, if such director fails to be re-elected at the next annual meeting of stockholders, such director's resignation "will be automatically effective 30 days after the certification of the election vote." The supporting statement to the Proposal provides that the foregoing provision is intended to

ensure that the stockholder vote is the "final word when a continuing 'holdover' director is not re-elected." Thus, the clear purpose and intent of such provision is to end the holdover term of the director and remove the holdover director from office if such director does not receive a majority of the votes cast at the second annual meeting. As set forth in the RLF Opinion, this violates the DGCL by imposing a lower voting standard for the removal of directors than the standard prescribed by the DGCL.

Section 141(k) of the DGCL provides that, other than with respect to certain exceptions that are not applicable to the Company, "any director or the entire board of directors may be removed, with or without cause, by the holders of *a majority of the shares then entitled to vote* at an election of directors" (emphasis added). As discussed in detail in the RLF Opinion, a bylaw provision may not override such statutory mandate. As the Proposal would require a director to be removed upon failure to receive the *majority of votes cast*, it impermissibly lowers the *majority of the shares entitled to vote at the meeting* standard required under Section 141(k) of the DGCL (emphasis added). Implementing the Proposal would therefore violate Delaware law.

We understand that in *Genzyme Corporation* (avail. Feb. 8, 2007), the Staff did not concur with the exclusion of a proposal under Rule 14a-8(i)(2) where the company asserted that implementing a proposal requesting a majority voting standard in uncontested elections would violate state law because the proposed requirement for directors to submit an irrevocable resignation would operate to remove directors in a manner inconsistent with Massachusetts state law requiring continued service of a director until a successor is qualified or a decrease in the number of directors. The Proposal is distinguishable because the resignation requirement in *Genzyme* was still conditioned on the board's acceptance of the resignation. In the Proposal, the amendments contemplated do not provide for any review or consideration by the Board as the director's resignation "will be automatically effective 30 days after" a holdover director fails to receive a majority of the votes cast at the next annual meeting. As discussed in detail above and in the RLF Opinion, the Proposal impermissibly seeks to permit stockholders to effect a director's removal with a vote that does not meet the standard required by the DGCL, which was not at issue in the proposal in *Genzyme*.

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

CONCLUSION

The Board fully supports the accountability of our directors to our stockholders and neither this letter nor the Company's current governance practices are designed to enable the Board to disregard the voice of our stockholders. The Board has provided for a number of stockholder rights and implemented a number of corporate governance measures related to director elections, including requiring "compelling reasons" for the Board to conclude that it is in the best interests

of the Company for an unsuccessful incumbent nominee to remain as a director. The Company believes that its current governance practices strike the right balance between implementing stockholder voting decisions and preserving the Board's obligation to consider the composition of the Board in light of the needs of the Board and the Company.

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

In the event the Staff disagrees with any conclusion expressed herein, or should any information in support or explanation of the Company's position be required, we would appreciate an opportunity to confer with the Staff before issuance of its response. If the Staff has any questions regarding this request or requires additional information, please contact the undersigned at (401) 770-5409 or Thomas.Moffatt@CVSHealth.com.

We appreciate your attention to this request.

Respectfully yours,

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

cc: David Minasian, North Atlantic States Carpenters Pension Fund

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

Lona Nallengara, Shearman & Sterling LLP

EXHIBIT A

NORTH ATLANTIC STATES REGIONAL COUNCIL OF CARPENTERS

United Brotherhood of Carpenters and Joiners of America

750 DORCHESTER AVENUE
BOSTON, MA 02125-1132

TELEPHONE (617) 268-3400
FAX (617) 268-0442

JOSEPH BYRNE
EXECUTIVE SECRETARY - TREASURER

SENT VIA OVERNIGHT UPS, Fedex or USPS

November 7, 2023

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

Dear Ms. McIntosh:

I hereby submit the enclosed shareholder proposal ("Proposal") on behalf of the North Atlantic States Carpenters Pension Fund ("Fund"), for inclusion in the CVS Health Corporation ("Company") proxy statement to be circulated in conjunction with the next annual meeting of shareholders. The Proposal relates to the issue of director resignations and is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission proxy regulations.

The Fund is the beneficial owner of shares of the Company's common stock, with a market value of at least $25,000, which shares have been held continuously for more than a year prior to and including the date of the submission of the Proposal. Verification of this ownership by the record holder of the shares, State Street Bank and Trust Company, will be sent under separate cover. The Fund intends to hold the shares through the date of the Company's next annual meeting of shareholders. Either the undersigned or a designated representative will present the Fund's Proposal for consideration at the annual meeting of shareholders.

If you would like to discuss the Proposal, please contact David Minasian at Dminasian@nasrcc.org. Mr. Minasian will be available to discuss the proposal on Monday, November 20 or Monday, December 4 from 1:00PM to 5:00PM (ET) each day or other mutually agreeable date and time. Please forward any correspondence related to the proposal to Mr. Minasian, North Atlantic States Regional Council, 29 Endicott Street, Worcester, MA 01610 or at the email address above.

Sincerely,

Joseph Bryne
Fund Trustee

cc. David Minasian
Edward J. Durkin

Enclosure

Director Election Resignation Bylaw Proposal:

Resolved: That the shareholders of CVS Health Corporation ("Company") hereby request that the board of directors take the necessary action to amend its director election resignation bylaw that requires each director nominee to submit an irrevocable conditional resignation to the Company to be effective upon the director's failure to receive the required shareholder majority vote support in an uncontested election. The proposed amended resignation bylaw shall provide that if the Board does not accept a tendered resignation and the director remains as a "holdover" director, the resignation bylaw shall stipulate that should a "holdover" director fail to be re-elected at the next annual election of directors, that director's new tendered resignation will be automatically effective 30 days after the certification of the election vote. The Board shall report the reasons for its actions to accept or reject a tendered resignation in a Form 8-K filing with the U.S. Securities and Exchange Commission.

Supporting Statement: The Proposal requests that the Board amend its director resignation bylaw to enhance director accountability. The Company has established in its bylaws a majority vote standard for use in an uncontested director election, an election in which the number of nominees equal the number of open board seats. Under applicable state corporate law, a director's term extends until his or her successor is elected and qualified, or until he or she resigns or is removed from office. Therefore, an incumbent director who fails to receive the required vote for election under a majority vote standard continues to serve as a "holdover" director until the next meeting of shareholders. A Company resignation bylaw currently addresses the continued status of an incumbent director who fails to be re-elected by requiring such director to tender his or her resignation for Board consideration.

The proposed director resignation bylaw will set a more demanding standard of review for addressing director resignations then that contained in the Company's current resignation bylaw. The current director resignation bylaw language requires the reviewing directors to articulate a compelling reason or reasons for not accepting a tendered resignation and allowing an un-elected director to continue to serve as a "holdover" director. Importantly, the proposed amended bylaw will establish that if a director's resignation is not accepted and he or she continues as a "holdover" director but again fails to be elected at the next annual meeting of shareholders, that director's new tendered resignation will be automatically effective 30 days following the election vote certification. While providing a Board latitude to accept or not accept the initial resignation of an incumbent director that fails to receive majority vote support, the amended bylaw will establish the shareholder vote as the final word when a continuing "holdover" director is not re-elected. The Proposal's enhancement of the director resignation process will establish shareholder voting in director elections as a more consequential governance right.

EXHIBIT B

RICHARDS LAYTON & FINGER
125 YEARS

January 16, 2024

CVS Health Corporation
One CVS Drive
Woonsocket, Rhode Island 02895

Re: Stockholder Proposal on behalf of North Atlantic States Carpenters Pension Fund

Ladies and Gentlemen:

We have acted as special Delaware counsel to CVS Health Corporation, a Delaware corporation (the "Company"), in connection with a stockholder proposal (the "Proposal") on behalf of North Atlantic States Carpenters Pension Fund (the "Proponent"), dated November 7, 2023, for the 2024 annual meeting of stockholders of the Company (the "Annual Meeting"). In this connection, you have requested our opinion as to certain matters under the laws of the State of Delaware.

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

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

THE PROPOSAL

The Proposal states the following:

> **Resolved:** That the shareholders of CVS Health Corporation ("Company") hereby request that the board of directors take the necessary action to amend its director election resignation bylaw that requires each director nominee to submit an irrevocable conditional resignation to the Company to be effective upon the director's failure to receive the required shareholder majority vote support in an uncontested election. The proposed resignation bylaw shall provide that if the Board does not accept a tendered resignation and the director remains as a "holdover" director, the resignation bylaw shall stipulate that should a "holdover" director fail to be re-elected at the next annual election of directors, that director's new tendered resignation will be automatically effective 30 days after the certification of the election vote. The Board shall report the reasons for its actions to accept or reject a tendered resignation in a Form 8-K filing with the U.S. Securities and Exchange Commission.

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

For the reasons set forth below, to the extent the Proposal, if implemented, effects the removal of a director without the statutorily required vote, the Proposal, in our opinion, would violate Delaware law.

DISCUSSION

The Proposal would violate Delaware law if implemented.

The Proposal requests that the board of directors of the Company (the "Board") amend the By-laws to require that, if the Board does not to accept the resignation of a director who did not receive a majority of the votes cast for such director's election (and thus continues as a holdover director) *and* such director fails to receive a majority of the votes cast for such director's election at the next annual meeting of stockholders, such director's resignation "will be automatically effective 30 days after the certification of the election vote." The supporting statement to the Proposal provides that the foregoing provision is intended to ensure that the stockholder vote

is the "final word when a continuing 'holdover' director is not re-elected." Thus, the clear purpose and intent of such provision is to end the holdover term of the director and remove the holdover director from office if such director does not receive a majority of the votes cast at the second annual meeting. The bylaw contemplated by the Proposal would thus establish, for the removal of any such holdover director, a voting standard based on the votes cast for such director's election at the second annual meeting. To the extent such bylaw purports to fix the stockholder vote required to end the term of a holdover director and remove the holdover director from office as less than a majority of the shares entitled to vote at an election of directors – which the Proposal, if adopted as proposed, would do because it would provide for automatic termination of the director's service based solely on whether the director fails to receive a majority of votes cast, a lower standard than the majority of the shares entitled to vote – it violates Delaware law.

Section 141(k) of the General Corporation Law provides that, other than with respect to two exceptions that are not applicable to the Company,[1] "any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors." 8 *Del. C.* § 141(k). A bylaw may not override a statutory mandate. *See* 8 *Del. C.* § 109(b); *Kerbs v. California Eastern Airways*, 90 A.2d 652, 658-59 (Del. 1952) (finding that a bylaw purporting to allow establishment of a quorum with fewer directors than the minimum required by statute to be void and stating that "a by-law which is repugnant to the statute must always give way to the statute's superior authority"). A bylaw that is contrary to statute is void. *Sinchareonkul v. Fahnemann*, 2015 WL 292314, at *8 (Del. Ch. Jan. 22, 2015) (observing, in finding that a bylaw that purported to provide a specified director additional votes qua director was invalid in light of statute, Section 141(d) of the General Corporation Law, requiring any such provision to appear in the certificate of incorporation, that "[u]nder Section 109(b), a bylaw that conflicts with the DGCL is void."). The Delaware courts have held that a bylaw provision that purports to permit the stockholders to remove directors by a lesser voting standard than required by Section 141(k) is invalid under Delaware law. *Frechter v. Zier*, 2017 WL 345142, at *4 (Del Ch. Jan. 24, 2017) (holding that a director removal provision in the bylaws that allowed a simple majority of stockholders to remove directors is "unambiguously[ ] inconsistent with the statute"). The Delaware courts have also held that a bylaw may not impose a requirement that disqualifies a director and terminates the director's service. *See, e.g. Kurz v. Holbrook*, 989 A.2d 140, 157 (Del. Ch. 2010) ("In light of the three procedural means for ending a director's term in Section 141(b), I do not believe a bylaw could impose a requirement that would disqualify a director and terminate his service."); *see also Rohe v. Reliance Training Network, Inc.*, 2000 WL 1038190, at *12 (Del.Ch. July 21, 2000). Thus, to the extent such bylaw purports to fix the stockholder vote required to end the term of a holdover director and remove the holdover director from office as less than a majority of the shares entitled to vote at an election of directors – which the Proposal, if adopted as proposed, would do because it would provide for automatic termination of the director's service based solely on whether the director fails to receive a majority of votes cast, a lower standard than the majority of the shares entitled to vote – it violates Section 141(k) of the General Corporation Law and is

[1] The two exceptions relate to the removal of directors from a classified board or where cumulative voting in the election of directors is permitted. 8 *Del. C.* § 141(k). The Company does not have a classified board and does not permit cumulative voting the election of directors.

therefore invalid.

CONCLUSION

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

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

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission and to the Proponent in connection with the matters addressed herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

Richards, Layton & Finger, P.A.

CSB/JJV