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

DIVISION OF
CORPORATION FINANCE

March 22, 2024

Thomas S. Moffatt
CVS Health Corporation

Re: CVS Health Corporation (the "Company")
Incoming letter dated March 21, 2024

Dear Thomas S. Moffatt:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the North Atlantic States Carpenters Pension Fund (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its January 16, 2024 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Edward J. Durkin
United Brotherhood of Carpenters and Joiners of America

Thomas S. Moffatt
Vice President, Asst. Secretary & Senior Legal Counsel - Corporate Services

One CVS Drive
MC 1160
Woonsocket, RI 02895

p 401-770-5409
f 401-216-3758

thomas.moffatt@cvshealth.com

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

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

VIA ELECTRONIC SUBMISSION

February 26, 2024

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

Re: *CVS Health Corporation*
Response of the North Atlantic States Carpenters Pension Fund to the CVS Health Corporation No-Action Request

Ladies and Gentlemen:

On November 7, 2023, the North Atlantic States Carpenters Pension Fund ("Fund") submitted to CVS Health Corporation ("Company") a Director Election Resignation Bylaw shareholder proposal ("Proposal") pursuant to Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission ("Commission") proxy regulations. On January 16, 2024, the Company filed with the Commission a request for the Staff's concurrence in their view that the Proposal may be excluded from the Company's 2024 Proxy Materials. A copy of this response to the Company's request is being sent to the Company. For the reasons outlined below, we believe that the Company has failed to state any proper bases for omitting the Proposal from its Proxy Materials to be circulated in conjunction with its 2024 annual meeting of shareholders. Rather than limiting the Company's board of directors' rights to manage the operations of the Company, the Proposal simply fortifies the fundamental right of shareholders, as the owners of the Company, to exercise their most important right of ownership, the right to vote in the election of Company directors.

THE PROPOSAL

The text of the Fund's Proposal submitted for inclusion in the Company's 2024 Proxy Materials is set forth below.

> **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.

OPPOSITION TO THE COMPANY'S REQUEST FOR NO-ACTION RELIEF

The Fund believes that the arguments against the Proposal by the Company and its Delaware counsel are unpersuasive and do not establish grounds for the omission of the Proposal from the Company's Proxy Materials to be distributed in conjunction with its 2024 annual meeting of shareholders. Specifically, Company arguments on the following basis for relief are not persuasive:

The Proposal May be Excluded Under Rule 14a-8(i)(2) Because implementing the Proposal Would Cause the Company to Violate State Law

PROPOSAL BACKGROUND AND CONTEXT

It is instructive to review the voting rights that corporate shareholders in Delaware incorporated corporations possess in evaluating the Company's no-action letter arguments. Section 211(b) of the Delaware General Corporation Law ("DGCL") establishes that an annual meeting of stockholders shall be held for the election of directors on a date and time designated by or in the manner provided in a corporation's bylaws. In addition to the shareholders' right to elect directors at the annual meeting, "any other proper business" may be transacted. The election of directors by shareholders is a foundational right in the corporate governance system established in the DGCL. "The shareholder franchise is the ideological underpinning upon which the legitimacy of directorial power rests." *Blasius Indus., Inc. v. Atlas Corp*., 564 A.2d 651, 659 (Del.Ch. 1988).

A plurality vote standard[1] in the election of directors was set as the default vote standard in 1987 when the DGCL was amended to replace the majority vote standard that was in place for all matters voted upon at an annual meeting of shareholders. The DGCL election vote standard change was prompted by the growing number of contested elections in an era of hostile takeover activity and the incompatibility of a majority vote standard with contested elections.[2] The new plurality default standard applied to both contested and uncontested director elections. While a plurality vote

[1] A plurality vote standard in a director election holds that the director nominees that receive the highest number of "For" votes corresponding to the number of open board seats are elected. Further, "Against" votes are not permitted; the option is to "Withhold." Thus, a single "For" vote assures election.

[2] The use of a majority vote standard in a contested election can result in a "failed election". A "failed election" occurs when a non-management board nominee receives more votes than an incumbent director but short of a majority resulting in the incumbent directors continuing in office as a "holdover" director.

standard is the appropriate vote standard in a contested director election,[3] the use of the plurality standard in an uncontested director election virtually ensures that board-sponsored nominees are elected. To address this issue, a shareholder private-ordering campaign[4] using precatory shareholder proposals began in 2003 to advance the adoption of a majority vote standard in uncontested director elections. This decades-long governance activism resulted in the broad market adoption of a majority vote standard by most large and mid-cap publicly traded companies.[5] The majority vote standard in an uncontested election provides shareholders the opportunity to vote "for" or "against" board nominees, raising the possibility that director nominees, both new nominees and incumbent directors running for reelection, might fail to be elected, or in the case of incumbent directors reelected.

For the first time, uncontested director elections could result in director nominees, both new nominees and incumbents, failing to be elected. DGCL Section 141(b) states in part that an elected director shall hold office until "such director's successor is elected and qualified or until such director's earlier resignation or removal." Thus, under DGCL an incumbent director nominee that is not re-elected in an uncontested director election with a majority vote standard continues to serve as a director, a "holdover" director, absent his or her resignation. With increasing corporate adoption of a majority vote standard for uncontested elections and the possibility of an incumbent director losing a reelection vote, it was necessary to construct a post-election process to address the continued status of an unelected "holdover" director. Director election resignation policies and bylaws developed as a necessary and important complementary component to the majority vote standard in uncontested director elections.

Pfizer Inc. advanced the first director election resignation policy, proposing it as an alternative to the adoption of a majority vote bylaw. The Pfizer model became known as the "plurality plus" model as it combined the plurality vote standard with a conditional director resignation. Under the "plurality plus" model, an incumbent board nominee who received more so-called "withhold" votes than "for" votes was required to submit a resignation letter even though the director had been reelected.[6] The market ultimately rejected the "plurality plus" model as an alternative to majority voting, but the conditional resignation was embraced as a complementary component of the majority vote regime.

In 2006, DGCL Section 141(b) was amended to add a new provision that a director resignation may be made effective upon the happening of a future event or events, coupled with authority granted in the same section to make certain resignations irrevocable. By permitting a corporation to enforce a director resignation conditioned upon the director's failure to achieve a specified vote

[3] In a contested election with more board nominees than available board seats, the nominees receiving the highest number of votes corresponding to the number of available board seats are elected.

[4] A private-ordering campaign by the United Brotherhood of Carpenter Pension Funds and other Trades Fund that used precatory shareholder proposals to urge the adoption of a majority vote standard bylaw spanned multiple years beginning in 2003 and transformed the vote standard in the common uncontested director election (an election in which the number of board-sponsored nominees equals the number of open board seats).

[5] The plurality vote standard remains the default standard under the DGCL.

[6] A Commission rulemaking in 1979 instituted the use of so-called "withhold" votes in director elections under the plurality vote standard. The "withhold" vote is an abstention and has no legal effect on an election outcome. Securities Exchange Act Release 34-16356 (November 21, 1979) 44FR68764 (November 29, 1979).

for reelection, e.g., more votes "For" than "Against", coupled with board acceptance of the resignation, these provisions permit corporations and individual directors to agree voluntarily, and give effect in a manner subsequently enforceable by the corporation, to voting standards for the election of directors which differ from the plurality default standard in Section 216. A director resignation could now be conditioned upon the happening of a future event (failure to be reelected) and could be made irrevocable. The legislature took the additional step in 2006 to amend DGCL Section 216 to support the majority vote standard by providing that a bylaw adopted by a vote of stockholders that prescribes the required vote for the election of directors may not be unilaterally altered or repealed by the board of directors.

Following the 2006 DGCL amendments, majority vote corporations adopted "director resignation" governance policies or bylaw provisions to address the status of an unelected "holdover" director. The typical resignation policy or bylaw sets a process for board review of the tendered resignation, with the board deciding whether the resignation is accepted or rejected. The resignation provisions outline a timeline and process for review of a tendered resignation by the board, or some subset thereof, such as a board's governance committee. Typically included is a statement that the board's decision will be made in the best interests of the company. Most companies commit to inform shareholders of the board's decision by means of a Commission Form 8-K filing. In the event a tendered resignation is not accepted, the disclosure will usually include the rationale for the board's decision and possible alternative action to be taken.

THE COMPANY'S RESIGNATION BYLAW AND THE PROPOSAL

The Company has in place a director resignation bylaw. The bylaw reads as follows:

> Section 2.05. RESIGNATION AND REPLACEMENT OF UNSUCCESSFUL INCUMBENT DIRECTOR.
>
> (i) In order for any incumbent director to become a nominee of the Board of Directors for further service on the Board of Directors, such person must submit an irrevocable resignation, which resignation shall become effective upon (a) that person not receiving a majority of the votes cast in an election that is not a Contested Election, and (b) acceptance by the Board of Directors of that resignation in accordance with the policies and procedures adopted by the Board of Directors for such purpose..
>
> (ii) The Board of Directors, acting on the recommendation of the Nominating and Corporate Governance Committee, shall no later than at its first regularly scheduled meeting following certification of the shareholder vote, determine whether to accept the resignation of the unsuccessful incumbent. Absent a determination by the Board of Directors that a compelling reason exists for concluding that it is in the best interests of the corporation for an unsuccessful incumbent to remain as a director, no such person shall be elected by the Board of Directors to serve as a director, and the Board of Directors shall accept that person's resignation.

(iii) The Board of Directors shall promptly consider and act upon the Nominating and Corporate Governance Committee's recommendation. The Nominating and Corporate Governance Committee, in making this recommendation and the Board of Directors, in acting on such recommendation, may consider any factors or other information that they determine appropriate and relevant.

The Fund's precatory Proposal requests that the Board revise the Company's unilaterally adopted resignation bylaw that empowers the Board to address the legal status of an unelected "holdover" director. Importantly, the Proposal advances a bylaw amendment that calls on the Board in the exercise of its fiduciary duties to articulate a "compelling reason or reasons" should it not accept the tendered resignation of a director opposed by a majority vote of shareholders. Further, the Proposal urges that the Company's new bylaw crafted by the Board hold that the conditional and irrevocable resignation of a "holdover" director not elected at a second consecutive meeting be effective 30 days after the certification of election results. As used in the Proposal, we define a "compelling reason or reasons" consistent with the ordinary meaning of the words, that is a reason that convinces someone that something should be done, in this case not to accept a resignation despite the director failing to receive majority shareholder support. The reason or reasons to reject a resignation must be "compelling," as determined by the Board in its business judgment, which requires the directors to make all decisions with due care and in good faith under Delaware corporation law. The requirement that a "holdover" director's second consecutive election defeat result in the acceptance of his or her tendered resignation comports with the importance of shareholder voting rights in director elections. Board action to amend the bylaw as requested would simply bind it to give effect to shareholders' director election voting rights. A board's failure to adequately address the individual director or company performance issue or issues that prompted a director's initial election loss justifies the proposed heightened accountability. Limiting Board discretion in this context is appropriate and a measured toughening of the consequences of a repeated election loss for a "holdover" director.

RESPONSE TO RULE 14a-8(i)(2) ARGUMENT

The Company and its Delaware counsel argue that the Proposal may be excluded under Rule 14a-8(i)(2) because implementing it would cause the Company to violate Delaware law. The Company argues that the required acceptance of a "holdover" director's resignation following a second consecutive election loss would cause the Board to violate its fiduciary duty to act in the best interest of the Company and its stockholders in contravention of Delaware law for the following reason:

1. The Proposal Would Permit Stockholders to Affect the Removal of a Director Without the Statutorily Required Vote.

The Fund believes that the Company fails to present persuasive arguments for omission based on Rule 14a--8(i)(2).

The Proposal is Not a Removal Provision or Bylaw that Contravenes Delaware Law

Rule 14a-8(i)(2) permits a company to exclude a proposal if its implementation would cause the company to violate state, federal or foreign law applicable to the company. The Company is incorporated under the laws of the state of Delaware.

The Company argues that the Proposal represents a director "removal" contravening DGCL Section 141(k) by requesting that a "holdover" director's resignation be automatically effective following a second consecutive annual election defeat. The Company's argument, if correct, would eviscerate the director election voting rights of shareholders in Delaware corporations. The Company has established a majority of the votes cast standard for the annual election of directors and Section 141(k) has a more demanding "majority of the shares then entitled to vote" standard. The Company conflates a removal action against one or more directors with the director election process that may result in an incumbent director or directors failing to be reelected and leaving the board through resignation. The logical conclusion of the Company's removal argument is that a company with the common "majority of votes cast" director election standard, rather than Section 141(k)'s more demanding "majority of the shares then entitled to vote" standard, could not require an unelected incumbent director to resign or otherwise leave the board. A clear reading of the DGCL sections 141(k) and Section 216 addressing the vote requirement for director elections at an annual meeting of shareholders indicate the Section 141(k) vote standard does not pertain to director election votes that may result in directors leaving a corporate board.

In MM Companies v. Liquid Audio, Inc., 813 A.2d 1118, 1128 (Del. 2003), the Delaware Supreme Court stated:

> The most fundamental principles of corporate governance are a function of the allocation of power within a corporation between its stockholders and its board of directors. [] The stockholders' power is the right to vote on specific matters, in particular, in an election of directors. The power of managing the corporate enterprise is vested in the shareholders' duly elected board representatives. [] Accordingly, while these "fundamental tenets of Delaware corporate law provide for a separation of control and ownership,"[] the stockholder franchise has been characterized as the "ideological underpinning" upon which the legitimacy of the directors' managerial power rests. [*Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651, 659 (Del.Ch. 1988).] (footnotes omitted)
>
> Maintaining a proper balance in the allocation of power between the stockholders' right to elect directors and the board of directors' right to manage the corporation is dependent upon the stockholders' unimpeded right to vote effectively in an election of directors. This Court has repeatedly stated that, if the stockholders are not satisfied with the management or actions of their elected representatives on the board of directors, the power of corporate democracy is available to the stockholders to replace the incumbent directors when they stand for re-election. []
>
> In *Blasius*, Chancellor Allen set forth a cogent explanation of why judicial review under the deferential traditional business judgment rule standard is inappropriate when a board of directors acts for the primary purpose of impeding or interfering with the effectiveness of a shareholder vote, especially in the specific context presented in *Blasius* of a contested election for directors:

> [T]he ordinary considerations to which the business judgment rule originally responded are simply not present in the shareholder voting context. That is, a decision by the board to act for the primary purpose of preventing the effectiveness of a shareholder vote inevitably involves the question who, as between the principal and the agent, has authority with respect to a matter of internal corporate governance. That, of course, is true in a very specific way in this case which deals with the question who should constitute the board of directors of the corporation, but it will be true in every instance in which an incumbent board seeks to thwart a shareholder majority. A board's decision to act to prevent the shareholders from creating a majority of new board positions and filling them does not involve the exercise of the corporation's power over its property, or with respect to its rights or obligations; rather, it involves allocation, between shareholders as a class and the board, of effective power with respect to governance of the corporation . . .. Action designed principally to interfere with the effectiveness of a vote inevitably involves a conflict between the board and shareholder majority.

Contrast the Company's argument with the Delaware Supreme Court's ruling. The Company's removal argument holds that it would be a violation of Delaware law for an incumbent director nominee who twice failed to receive the requisite level of shareholder support for election to be required to tender his or her resignation for board acceptance. On the other hand, the Delaware Supreme Court holds that shareholders must have the "unimpeded right to vote effectively." The Company's removal argument fails.

CONCLUSION

For the reasons stated above, the Fund requests that the Staff not concur with the Company's position that the Fund's Proposal may be excluded under Rule 14a-8(i)(2), as to do so would severely undermine the director election voting rights of shareholders under DGCL. We would gladly provide any additional information regarding this matter.

Sincerely,

Edward J. Durkin

cc. Thomas S. Moffatt, CVS Health Corporation Thomas.moffatt@cvshealth.com

Thomas S. Moffatt
Vice President, Asst. Secretary &
Senior Legal Counsel - Corporate Services

One CVS Drive
MC 1160
Woonsocket, RI 02895

p 401-770-5409
f 401-216-3758

thomas.moffatt@cvshealth.com

March 21, 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 of North Atlantic States Carpenters Pension Fund
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

Reference is made to the letter dated January 16, 2024 (the "**No-Action Request**") submitted by CVS Health Corporation, a Delaware corporation (the "**Company**"), regarding the stockholder proposal and supporting statement (the "**Proposal**") submitted by the North Atlantic States Carpenters Pension Fund (the "**Proponent**").

Enclosed as Exhibit A is a confirmation letter, received via e-mail from the Proponent, dated March 21, 2024, withdrawing the Proposal. In reliance thereon, the Company hereby withdraws the No-Action Request relating to the Company's ability to exclude the Proposal pursuant to Rule 14a-8 under the Securities Exchange Act of 1934.

Please call the undersigned at (401) 770-5409 if you should have any questions or need additional information.

Respectfully yours,

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

Attachments

cc w/att: David Minasian, North Atlantic States Carpenters Pension Fund
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

March 21, 2024

Thomas S. Moffatt
Vice President, Asst. Secretary & Senior Legal Counsel
CVS Health Corporation
One CVS Drive
Woonsocket, RI 02895 **SENT VIA EMAIL** (Thomas.Moffatt@cvshealth.com)

RE: North Atlantic States Carpenter Fund Shareholder Proposal Withdrawal Letter

Dear Mr. Moffatt:

On behalf of the North Atlantic States Carpenters Pension Fund ("Fund"), I hereby withdraw the Director Election Resignation Bylaw shareholder proposal submitted by the Fund on November 7, 2023, to CVS Health Corporation. The Fund appreciates the positive and constructive engagement on the director resignation issue with Fund representative David Minasian. While we have not reached agreement with the Company on the best formulation for a director resignation bylaw, continued dialogue on the issue outside of the Rule 14a-8 shareholder proposal process would be a productive way to move forward.

In conjunction with the Fund's withdrawal, I would like to invite you to participate in a work group to examine the director resignation bylaw issue. Various leading companies that have received the director resignation proposal have expressed an interest and willingness to participate in this approach. The work group will entail several virtual meetings designed to explore legal and practical aspects of the post-election director resignation process. Attached is a brief overview of the work group. We look forward to constructive dialogue on the director resignation issue and other important governance issues.

Sincerely,

Joseph Bryne
Fund Trustee

CC: David Minasian
Edward J. Durkin - Enclosure