



DIVISION OF
CORPORATION FINANCE

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

March 30, 2021

Frederick Alexander
The Shareholder Commons
rick@theshareholdercommons.com

Re: CVS Health Corporation
Incoming letter dated March 22, 2021

Dear Mr. Alexander:

This letter is in response to your correspondence dated March 22, 2021 concerning the shareholder proposal (the "Proposal") submitted to CVS Health Corporation (the "Company") by Myra K. Young (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. On March 22, 2021, we issued a no-action response expressing our informal view that the Company could exclude the Proposal from its proxy materials for its upcoming annual meeting. You have asked us to reconsider our position. After reviewing the information contained in your correspondence, we find no basis to reconsider our position.

The Proposal relates to the "retail food business of" the Company. Generally, the categories of products sold at retail pharmacy stores is a matter of their ordinary business (*see, e.g., CVS Corporation* (Mar. 2, 1998) (stop selling cigarettes unless stores effectively restrict sales to minors)). However, proposals relating to particular products, services or practices of retail pharmacy stores could raise a policy issue that is so significant to the company such that it would transcend day-to-day business matters (*see, e.g., Walgreens Boots Alliance, Inc.* (Nov. 20, 2018) (Mercy Investment Services, Inc. et al.)) (corporate governance changes to more effectively monitor and manage financial and reputational risk related to the opioid crisis).

As explained in Staff Legal Bulletin No. 14K, the staff considers whether a proposal relates to a company's ordinary business operations or if it raises a policy issue that transcends the particular company's ordinary business operations, and in evaluating significance, "[t]he staff takes a company-specific approach. . . , rather than recognizing particular issues or categories of issues as universally 'significant.'" Indeed, a proposal related to the external public health costs created by the food and beverage business of a company may raise a significant policy issue that transcends a company's ordinary business operations (*see, e.g., PepsiCo, Inc.* (March 12, 2021)). However, in our view, the Proposal does not demonstrate how external public health costs created by the Company's retail food business are sufficiently significant to the Company, such that

they transcend the Company's ordinary business operations and would be appropriate for a shareholder vote.

Sincerely,

David Fredrickson
Chief Counsel
Office of Chief Counsel

Enclosure

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



Frederick H. Alexander
rick@theshareholdercommons.com
302-593-0917

March 22, 2021
Via electronic mail

John Coates
Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

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

Dear Mr. Coates:

I am writing to you on behalf of Myra Young (the “Proponent”), beneficial owner of common stock of CVS Health Corporation (the “Company”), who has submitted a shareholder proposal (the “Proposal”) to the Company. On January 12, 2020, the Company submitted to the Securities and Exchange Commission (“SEC”) a request for no-action relief on the ground, *inter alia*, that it was excludable under Rule 14a-8(i)(7) (the “No-Action Request”), to which Proponent responded on February 8, 2021, followed by a reply from the Company on February 10, 2021 to which Proponent replied on February 17, 2021. Earlier today, March 22, 2021, the Staff announced that it concurred with the Company’s request on 14a-8(i)(7) grounds.

We hereby request reconsideration of the Staff’s grant of relief. We make this request because on March 12, 2021, the Staff announced that it was unable to concur with an assertion that a substantially identical proposal could be exclude from the proxy statement for the annual meeting of PepsiCo, Inc. (“PepsiCo”).

The PepsiCo proposal reads as follows:

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

The Proposal reads as follows:

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

Except for the underlined words, these proposals are identical. Indeed, in some cases the proposal addresses the very products that are manufactured by PepsiCo and sold in Company stores, as demonstrated by the photograph in the January 12 letter showing a shelf full of Tostitos, Doritos and Fritos, all PepsiCo products.

In light of the recent Staff position in PepsiCo, we request that the Staff reverse its position regarding the Proposal. In the alternative, we request a fuller explanation of the Staff’s concurrence, so that the Proponent can reform the Proposal and so that future proponents might understand the distinction between the two cases.

We would appreciate your contacting the undersigned at 302-593-0917 or rick@theshareholdercommons.com with respect to any questions in connection with this matter or if the Staff wishes any further information.

Sincerely,

Frederick Alexander

Frederick Alexander

cc: Thomas S. Moffat
Myra K. Young