



DIVISION OF
CORPORATION FINANCE

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

March 28, 2023

Thomas S. Moffatt
CVS Health Corporation

Re: CVS Health Corporation (the "Company")
Incoming letter dated January 13, 2023

Dear Thomas S. Moffatt:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Mark E. Baker (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(f) because the Proponent did not comply with Rule 14a-8(b)(1)(i). As required by Rule 14a-8(f), the Company notified the Proponent of the problem, and the Proponent failed to correct it. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rules 14a-8(b)(1)(i) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

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/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Mark E. Baker



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

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Woonsocket, RI 02895

p 401-770-5409
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thomas.moffatt@cvshealth.com

January 13, 2023

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 Mark E. Baker
Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen:

CVS Health Corporation, a Delaware corporation (“**CVS Health**” or 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 “**2023 Proxy Materials**”) the stockholder proposal (the “**Proposal**”) and the statement in support thereof submitted by Mr. Mark E. Baker (the “**Proponent**”) in an email sent to the Company on November 28, 2022. A copy of the Proposal, including the supporting statement, is attached to this letter as Exhibit A. The Company respectfully requests that the Staff concur with the Company’s view that the Proposal may properly be excluded from the Company’s 2023 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 2023 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“**SLB 14D**”), we are submitting this request for no-action relief under Rule 14a-8 through the Commission’s email address, shareholderproposals@sec.gov (in lieu of providing six additional copies of this letter pursuant to Rule 14a-8(j)), and the undersigned has included his name, telephone number and e-mail address both in this letter and the cover email accompanying this letter.

Rule 14a-8(k) under the Exchange Act and SLB 14D provide that shareholder proponents are required to send the company a copy of any correspondence that the proponents elect to submit to the Commission or Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent 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.

BASIS FOR EXCLUSION

The Company believes that the Proposal may properly be excluded from the 2023 Proxy Materials pursuant to (i) Rule 14a-8(b)(1) and Rule 14a-8(f)(1) under the Exchange Act, because the Proponent failed to adequately provide evidence of continuous share ownership for the requisite period; and (ii) Rule 14a-8(d) and Rule 14a-8(f)(1) under the Exchange Act, because the Proposal exceeds 500 words.

BACKGROUND

The Company received the Proposal on November 28, 2022 from the Proponent via e-mail. The Company's stock records do not reflect the Proponent as a registered holder of the Company's common stock, nor has the Proponent made any filings with the SEC demonstrating ownership of the Company's common stock. The email submitting the Proposal does not include any evidence of ownership of the Company's common stock. In addition, the Proposal exceeds 500 words.

On December 2, 2022, which was within the 14 calendar days of the Company's receipt of the Proposal, the Company emailed the Proponent a letter (the "**Deficiency Letter**"), attached hereto as Exhibit B, notifying the Proponent that (i) the Proponent had failed to establish continuous ownership of the requisite number of shares of the Company's common stock for the requisite time period (the "**Ownership Deficiency**"), and (ii) that the Proposal exceeded 500 words (the "**500-Word Limit Deficiency**"). The Deficiency Letter provided detailed information regarding the Ownership Deficiency and 500-Word Limit Deficiency, including:

- the proof of ownership requirements as set forth under Rule 14a-8(b)(1);
- an explanation as to how the Proponent could cure the Ownership Deficiency, and attachment of copies of Rule 14a-8, Staff Legal Bulletin 14F (October 18, 2011) and Staff Legal Bulletin 14G (October 26, 2012);
- the 500-word limit set forth under Rule 14a-8(d);
- an explanation regarding how the Company calculated the word count; and
- that any response had to be postmarked or transmitted electronically to the Company no later than 14 calendar days from the date the Proponent received the Deficiency Letter.

On December 5, 2022, the Company received a hard copy of the Proposal from the Proponent by mail, along with a cover letter requesting that the Proposal be included in the

Company's 2023 Proxy Materials (the "**Cover Letter**"), attached hereto as Exhibit C. In the Cover Letter, the Proponent also provided a P.O. Box address for correspondence. The copy of the Proposal received by mail is identical with the email copy submitted on November 28, 2022 and did not include any evidence of ownership of the Company's common stock. On or about December 5, 2022, the Company sent a hard copy of the Deficiency Letter to the P.O. Box address identified in the Cover Letter, but it was returned to the Company as undeliverable on or about December 15, 2022.

Having received no response from the Proponent, on December 19, 2022 and January 2, 2023, the Company sent the Proponent an email asking if the Proponent intended to address the Ownership Deficiency and the 500-Word Limit Deficiency identified in the Deficiency Letter, requesting that the Proponent formally withdraw the Proposal if the Proponent did not intend to revise the Proposal to cure the deficiencies, and offering to discuss the facts and circumstances regarding the Proposal with the Proponent. On January 6, 2023, the undersigned received an email and telephone call from the Proponent. During the call, the Proponent expressed an inability to address the deficiencies (i.e., he admitted that he cannot meet the share ownership requirement) and an unwillingness to withdraw the Proposal, at least until he spoke with CVS Health personnel that could address the concerns set forth in the Proposal. CVS Health personnel contacted the Proponent on January 6, 2023 and discussed the Proponent's concerns and how the Company was addressing them. The undersigned then contacted the Proponent via email on January 9, 2023 requesting that the Proponent withdraw the Proposal, but the Proponent again refused to do so. The Company's complete correspondence with the Proponent is attached as Exhibit D.

ANALYSIS

I. The Proposal May Be Properly Excluded Under Rule 14a-8(b)(1) and Rule 14a-8(f)(1) Because the Proponent Failed to Provide Proof of Ownership of the Company's Common Stock and Failed to Correct this Deficiency After Receiving Proper Notice from the Company.

Rule 14a-8(b)(1) requires that, in order to be eligible to submit a shareholder proposal, a proponent must, among other things, provide documentary evidence of the proponent's continuous holding of (a) at least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years, (b) at least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years, or (c) at least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year (each, an "**Ownership Requirement**," and collectively, the "**Ownership Requirements**").

A proponent who is not a registered shareholder of a company and has not made a filing with the SEC on Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 detailing the proponent's beneficial ownership of shares in the company (as described in Rule 14a-8(b)(2)(ii)(B)) has the burden of proving that it meets the beneficial ownership requirements of Rule 14a-8(b)(1) by submitting to the company (i) a written statement from the "record"

holder of the securities verifying that, at the time the proponent submitted the proposal, the proponent had continuously held the requisite amount of securities to satisfy at least one of the Ownership Requirements and (ii) a written statement that the proponent intends to continue to hold such requisite amount of shares through the date of the shareholder meeting for which the proposal is submitted.

As discussed above, the Company's stock records do not reflect that the Proponent is a registered holder of the Company's common stock. The Proponent has not made any filings with the SEC indicating that the Proponent is a beneficial owner of the Company's common stock. Neither the email submitting the Proposal nor the copy of the Proposal received by mail included any evidence of the Proponent's ownership of the Company's common stock¹.

In accordance with Rule 14a-8(f)(1), the Company notified the Proponent of the Proposal's deficiencies, including the Ownership Deficiency, within 14 calendar days of receipt of the Proposal. As discussed above, the Deficiency Letter informed the Proponent that the Proponent had not satisfied any of the Ownership Requirements, provided information on how the Proponent could satisfy such requirements and notified the Proponent that the Proponent had 14 calendar days to provide the requisite proof of continuous stock ownership in accordance with Rule 14a-8(f)(1). The Company contacted the Proponent regarding the Deficiency Letter several times, including well after the 14-day period for the Proponent's response had elapsed, and spoke with the Proponent to discuss, among other things, the Ownership Deficiency. As of the date of this letter, the Proponent has not provided any proof of ownership of any of the Company's common stock.

In the absence of any documentary evidence of stock ownership, the Proponent is ineligible to submit this Proposal for inclusion in the Company's 2023 Proxy Materials under Rule 14a-8(b)(1) and Rule 14a-8(f)(1), and the Proposal should therefore be properly excluded.

II. The Proposal May Be Properly Excluded Under Rule 14a-8(d) and Rule 14a-8(f)(1) Because it Exceeds 500 Words and the Proponent Failed to Correct this Deficiency After Receiving Proper Notice from the Company.

Rule 14a-8(d) provides that a proposal, including any supporting statement, may not exceed 500 words. The Staff has explained that "[a]ny statements that are, in effect, arguments in support of the proposal constitute part of the supporting statement." See Staff Legal Bulletin No. 14 (July 13, 2001). Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal that exceeds 500 words if the proponent fails to submit a revised proposal that does not exceed 500 words, provided the company notifies the proponent of the deficiency within 14 calendar days of receiving the proposal and the proponent fails to correct the deficiency within 14 days of receiving such notice.

¹ The lead-in to the Proposal contains a statement that the Proponent "...is a shareholder of at least \$500 of CVS common stock and plans to retain his long-term holdings at least through the annual meeting in 2023." The Proponent has not provided any documentary support of this statement and, in fact, admitted via telephone that he cannot currently rectify the Ownership Deficiency and intends to seek other CVS Health stockholders to join in submitting a proposal to the Company for a future annual meeting of stockholders.

The Staff has previously concurred that a company may exclude a proposal under Rule 14a-8(d) and Rule 14a-8(f)(1) because the proposal exceeds 500 words. See, e.g., *Anthem, Inc.* (avail. Feb. 5, 2021); *Duke Energy Corp.* (avail. March 6, 2019); *General Electric Co.* (avail. Dec. 30, 2014); *Danaher Corp.* (avail. Jan. 19, 2010); *Procter & Gamble Co.* (avail. July 29, 2008); *Amgen, Inc.* (avail. Jan. 12, 2004) (in each instance concurring in exclusion of a proposal that contained more than 500 words).

The Proposal contains 1,150 words based on counting each word in the correspondence beginning with the sentence starting with “The CVS way will...” until the end of the correspondence, well above the 500-word limit set forth under Rule 14a-8(d). As discussed above, the Company notified the Proponent of the Proposal’s deficiencies, including the 500-Word Limit Deficiency, within 14 calendar days of receipt of the Proposal. The Deficiency Letter also informed the Proponent that the Proponent had 14 calendar days to submit a revised proposal that contains less than 500 words. The Company even discussed the 500-Word Limit Deficiency during a telephone call with the Proponent. The Proponent, however, has not submitted a revised Proposal as of the date of this letter. Accordingly, the Proposal should be properly excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(d) and Rule 14a-8(f)(1).

CONCLUSION

Based on the analysis above, the Company respectfully requests the Staff’s concurrence with its decision to omit the Proposal from the 2023 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: Mark E. Baker, MBA
Colleen M. McIntosh, SVP, Secretary and Chief Governance Officer, CVS Health
Lona Nallengara, Shearman & Sterling LLP

EXHIBIT A – The Proposal

The CVS Way and gender or racial discrimination.

By: Mark E. Baker, MBA,

Address of record – [REDACTED], Washington, DC 20019

Emailed to: Colleen M. McIntosh, Senior Vice President, Corporate Secretary and Chief Governance Officer, CVS Health Corporation, One CVS Drive, Woonsocket, Rhode Island 02895

investorinfo@cvshealth.com

Shareholder Proposal - **The CVS Way and gender or racial discrimination.**

Mark E. Baker, MBA, Lives in Washington, DC and is a shareholder of at least \$500 of CVS common stock and plans to retain his long-term holdings at least through the annual meeting in 2023.

The **CVS Way** will destroy our corporate image, goodwill, and community relations.

I was born in an era when it was an acceptable social practice to exclude non-white people from stores. Signs were prominently posted indicating – “No dogs, No Jews, No coloreds”. Coloreds included any one with brown or black complexion and even some of my Irish ancestors were amongst those excluded. We no longer see those signs, but CVS, its suppliers and managers are still implementing race and gender based discriminatory practices. It's the CVS Way.

During a shopping experience at CVS drugstore, I became all too aware of the modern recapitulation of the discriminatory practices of the past. At least one CVS drugstore in the nation's capital has implemented a policy preventing store access by certain populations unless you adhere to the CVS policy of relinquishing your personal property, liberty and pursuit of happiness.

The CVS way employs a cadre of minority middle managers. This could be a white female or a person of color. The law clearly indicates that when a dispute arises or discrimination is alleged, there must be a clear difference between the parties. You must prove that you are in a protected class and that there was discrimination based upon that protected status. If you want to keep black males out of your business hire a black security officer and challenge them at the door. Put a black as store manager, just in case there's a complaint. It's the example set by CVS.

Have the police on speed dial. If you are safe in your secure management office and you see on remote video camera a suspicious person, call the police first, then call the token manager to find out what's going on.

My personal experience at CVS drug store (it's been more than four months since the discrimination described here) was exemplary of all these tactics. I had visited the store a couple of weeks prior, and I got to see the White managers interacting with the workers in the retail area and in the pharmacy. There was no challenge at the door. Shelves were being restocked, staff were smiling at the manager longing for approval and validation.

But upon my entry, lately, the security guard stopped me. He was an African man, short in stature but forceful and direct in demeanor, 'You have to leave your bag up front', he exclaimed. I protested. I refused. 'You will not be served by the pharmacist if you have that bag'. This is my shopping bag, I'm a customer. I want to see the manager, bring him here. 'No, he's up front! You can't have that bag in the store, or you'll have to leave the store.' The guard refused to give me his name.

I made enough noise to get the manager to come to where I and my detainer were standing in the pharmacy line. Repeating the CVS policy line, the manager said I would not get served at the pharmacy if I kept the bag. The guard put on his black Teflon gloves and flexed his fists menacingly.

Yep, I agree, this is really intense for a shopping bag.

Give me your name and this security guard's name I demanded. Our group went to the front of the store and the manager, himself a young black man, wrote down his name. Write down this guard's name I demanded forcefully. "I don't know his name said the manager".

I was struck dumb.

When I called the store a couple of days later the manager was busy in the back of the store, I was told. I waited and eventually spoke to a "store manager" who clarified that the person proclaiming himself as store manager was just the shift supervisor, not a manager. This disembodied store manager went on to explain that it was not store policy to make patrons leave their bags, nor to refuse service to someone because they have their own bag. He gave me the national toll-free number to call. He promised to discuss the situation with his boss and the shift supervisor. The national customer service representative was speechless at my mistreatment but assured me that someone will investigate and get back to me within 24 – 48 hours. When I called the national customer service phone line 2 weeks later, the representative said she'd re-open my file and someone will reach out in 24 – 48 hours. As of this writing I have not received any follow up from CVS management.

I called the offices of Colorado Security, the employer for the security guard. Their HR manager said that we require you to send your complaint via email. It's the only way they will respond. She did not ask for my contact information or phone number, nor for the name of the guard. The CVS-way has penetrated deeply into its supply chain.

I wanted the Colorado Security firm entirely removed from the store. They are psychologically damaging to me and I'm sure other community members. At least a telephone call from "higher-ups" would have been reassuring.

Eventually, they won! I left my unguarded bag near the door, where it could easily be grabbed. No other patrons had left their bags in the designated location. I got back in the pharmacy line. While standing there I noticed the police car that had parked across the street in the gas station. Were they there when I entered? And I watched a playful little dog panting on its human's shoulder and licking her face. I noticed that the dog's owner had a bag only slightly smaller than mine. The lady in front of her had a huge bag on her wrist larger than the bag I had brought. I mused that we've made progress! At least the dogs can come in. The CVS-way, it works!

The 2021 ESG summary indicated that CVS spent more than \$150 billion dollars on Healthy People and Healthy Business initiatives. Protect our corporation's social image and reputation. Vote yes to approve this resolution!

Resolved:

CVS shall produce and publish an annual report that summarizes complaints received by the corporation in which documented transgressions of the ESG policies and procedures shall be documented. The report shall list at a minimum the type of transgression, the offending firm or name of the stakeholder, actions taken by CVS to address or correct the transgression, and the length of time in hours or days between customer complaint and the initial managerial response. The satisfactory outcome shall also be listed in order to prevent future repetition of such transgressions. This report will be published annually with printed and website copies available as well as via the annual ESG report. It is further resolved that CVS will provide a timely response to any complaints of discrimination or mistreatment by customers within a timely period - not to exceed 48 hours for an initial response.

EXHIBIT B – The Deficiency Letter



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

December 2, 2022

Mr. Mark E. Baker

Washington, DC 20019

Via e-mail: [REDACTED]@gmail.com and U.S. Mail

Re: CVS Health Corporation
Stockholder Proposal – The CVS Way and gender or racial discrimination

Dear Mr. Baker:

We received the stockholder proposal (the "Proposal") that you submitted to CVS Health Corporation ("CVS Health" or the "Company") on November 28, 2022 (the "Submission Date") for inclusion in the proxy statement for the Company's 2023 annual meeting of stockholders (the "2023 Annual Meeting").

The Proposal contains certain procedural deficiencies, which U.S. Securities and Exchange Commission ("SEC") regulations require us to bring to your attention. Unless these deficiencies can be remedied in the appropriate timeframe required under the applicable SEC rules, the Company will be entitled to exclude the Proposal from its proxy materials for the 2023 Annual Meeting.

Proof of Ownership

Rule 14a-8(b)(1) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), requires that in order to be eligible to submit a proposal for inclusion in CVS Health's proxy statement for its 2023 Annual Meeting, each stockholder proponent must, among other things, have continuously held such common stock of CVS Health in the amount that satisfies at least one of the following Ownership Requirements (defined below):

- at least \$2,000 in market value of CVS Health's common stock entitled to vote on the proposal for at least three years preceding and including the Submission Date;
- at least \$15,000 in market value of CVS Health's common stock entitled to vote on the proposal for at least two years preceding and including the Submission Date; or
- at least \$25,000 in market value of CVS Health's common stock entitled to vote on the proposal for at least one year preceding and including the Submission Date (each, an "Ownership Requirement," and collectively, the "Ownership Requirements").

Each stockholder submitting a proposal must also continue to hold such common stock meeting such Ownership Requirement through the date of the 2023 Annual Meeting. Our stock records indicate that you are not currently the registered holder of any shares of CVS Health's common stock and you have not provided proof of ownership of CVS Health's common stock.

Accordingly, Rule 14a-8(b) requires that a proponent of a proposal prove eligibility as a beneficial stockholder of the company that is the subject of the proposal, which is typically accomplished by submitting a written statement from the “record” holder of the shares (usually a bank or broker) verifying that, at the time you submitted the proposal, you had continuously held the requisite amount of shares to satisfy at least one of the Ownership Requirements above.

By this letter, I am requesting that you provide to us acceptable documentation that you have held the requisite amount of shares to satisfy at least one of the Ownership Requirements, along with a representation that you intend to continue to hold such shares at least through the date of the 2023 Annual Meeting.

To help stockholders comply with the requirements when submitting proof of ownership to companies, the SEC’s Division of Corporation Finance (the “Division”) published Staff Legal Bulletin No. 14F (“SLB 14F”), dated October 18, 2011, and Staff Legal Bulletin No. 14G (“SLB 14G”), dated October 16, 2012, and copies both are attached for your reference. SLB 14F and SLB 14G provide that for securities held through The Depository Trust Company (“DTC”), only DTC participants should be viewed as “record” holders of securities that are deposited at DTC. You can confirm whether your bank or broker is a DTC participant by checking DTC’s participant list, which is currently available on the Internet at: <https://www.dtcc.com/client-center/dtc-directories>.

If you hold shares through a bank or broker that is not a DTC participant, you will need to obtain proof of ownership from the DTC participant through which the bank or broker holds the shares, or an affiliate of such DTC participant. You should be able to find the name of the DTC participant by asking your bank or broker. If the DTC participant that holds your shares knows the holdings of your bank or broker, but does not know your holdings, you may satisfy the proof of ownership requirements by submitting two proof of ownership statements – one from your bank or broker confirming your ownership and the other from the DTC participant confirming the bank’s or broker’s ownership. Please review SLB 14F carefully before submitting proof of ownership to ensure that it is compliant.

A copy of Rule 14a-8 of the Exchange Act, which applies to stockholder proposals submitted for inclusion in proxy statements, is also enclosed for your reference.

Length of Proposal

Separately, Rule 14a-8(d) of the Exchange Act requires that in order to be eligible to submit a proposal for inclusion in the Company’s proxy statement for its 2023 Annual Meeting, the proposal, including any accompanying supporting statement, may not exceed 500 words. The Proposal, including the supporting statement, exceeds the word limit set forth in Rule 14a-8(d) at 1,150 words based on counting each word in the correspondence beginning with the sentence the “The CVS way will...” until the end of the correspondence. To remedy this defect, you must submit a revised proposal to the Company that complies with this word limit.

In order to meet the eligibility requirements for submitting a stockholder proposal, the SEC rules require that any response to this letter be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. If we do not receive acceptable documentation regarding proof of ownership and a revised proposal that remedies the deficiencies noted in this letter within such time, we intend to request that the Proposal be

excluded for failure to demonstrate eligibility under Rule 14a-8(b) and Rule 14a-8(d) to submit the Proposal for inclusion in the Company's proxy statement for its 2023 Annual Meeting.

Please address any response to me at Thomas.Moffatt@CVSHealth.com. Once you have submitted appropriate proof of ownership and a revised proposal, I would welcome opportunity to discuss the subject matter of the proposal with you.

Sincerely,



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

Attachments

cc w/ att: Colleen M. McIntosh, Senior Vice President, Secretary and
Chief Governance Officer, CVS Health Corporation

Lona Nallengara, Shearman & Sterling LLP

The CVS Way and gender or racial discrimination.

By: Mark E. Baker, MBA,
Address of record – [REDACTED] Washington, DC 20019

Emailed to: Colleen M. McIntosh, Senior Vice President, Corporate Secretary and Chief Governance Officer, CVS Health Corporation, One CVS Drive, Woonsocket, Rhode Island 02895

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But upon my entry, lately, the security guard stopped me. He was an African man, short in stature but forceful and direct in demeanor, 'You have to leave your bag up front', he exclaimed. I protested. I refused. 'You will not be served by the pharmacist if you have that bag'. This is my shopping bag, I'm a customer. I want to see the manager, bring him here. 'No, he's up front! You can't have that bag in the store, or you'll have to leave the store.' The guard refused to give me his name.

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I called the offices of Colorado Security, the employer for the security guard. Their HR manager said that we require you to send your complaint via email. It's the only way they will respond. She did not ask for my contact information or phone number, nor for the name of the guard. The CVS-way has penetrated deeply into its supply chain.

I wanted the Colorado Security firm entirely removed from the store. They are psychologically damaging to me and I'm sure other community members. At least a telephone call from "higher-ups" would have been reassuring.

Eventually, they won! I left my unguarded bag near the door, where it could easily be grabbed. No other patrons had left their bags in the designated location. I got back in the pharmacy line. While standing there I noticed the police car that had parked across the street in the gas station. Were they there when I entered? And I watched a playful little dog panting on its human's shoulder and licking her face. I noticed that the dog's owner had a bag only slightly smaller than mine. The lady in front of her had a huge bag on her wrist larger than the bag I had brought. I mused that we've made progress! At least the dogs can come in. The CVS-way, it works!

The 2021 ESG summary indicated that CVS spent more than \$150 billion dollars on Healthy People and Healthy Business initiatives. Protect our corporation's social image and reputation. Vote yes to approve this resolution!

Resolved:

CVS shall produce and publish an annual report that summarizes complaints received by the corporation in which documented transgressions of the ESG policies and procedures shall be documented. The report shall list at a minimum the type of transgression, the offending firm or name of the stakeholder, actions taken by CVS to address or correct the transgression, and the length of time in hours or days between customer complaint and the initial managerial response. The satisfactory outcome shall also be listed in order to prevent future repetition of such transgressions. This report will be published annually with printed and website copies available as well as via the annual ESG report. It is further resolved that CVS will provide a timely response to any complaints of discrimination or mistreatment by customers within a timely period - not to exceed 48 hours for an initial response.

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.

B. The types of brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.¹

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.² Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.³

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.⁴ The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.⁵

3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.⁶ Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8⁷ and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with

Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,⁸ under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.⁹

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).¹⁰ We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after*

the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

"As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."¹¹

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c).¹² If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.¹³

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,¹⁴ it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder “fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder’s] proposals from its proxy materials for any meeting held in the following two calendar years.” With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.¹⁵

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company’s no-action request.¹⁶

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission’s website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission’s website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission’s website copies of this correspondence at the same time that we post our staff no-action response.

¹ See Rule 14a-8(b).

² For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] (“Proxy Mechanics Concept Release”), at Section II.A. The term “beneficial owner” does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to “beneficial owner” and “beneficial ownership” in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. See Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 (“The term ‘beneficial owner’ when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.”).

³ If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

⁴ DTC holds the deposited securities in “fungible bulk,” meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. See Proxy Mechanics Concept Release, at Section II.B.2.a.

⁵ See Exchange Act Rule 17Ad-8.

⁶ See Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] (“Net Capital Rule Release”), at Section II.C.

⁷ See *KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden*, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company’s non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

⁸ *Techne Corp.* (Sept. 20, 1988).

⁹ In addition, if the shareholder’s broker is an introducing broker, the shareholder’s account statements should include the clearing broker’s identity and telephone number. See Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

¹⁰ For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company’s receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

¹¹ This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

¹² As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

¹³ This position will apply to all proposals submitted after an initial proposal but before the company’s deadline for receiving proposals, regardless of whether they are explicitly labeled as “revisions” to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company’s proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f) (1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company’s deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a

company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

¹⁴ See, e.g., Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

¹⁵ Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

¹⁶ Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

Modified: Oct. 18, 2011

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D, SLB No. 14E and SLB No. 14F.

B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of

the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)..."

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.¹ By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.² If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

C. Manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters. For example, some companies' notices of defect make no mention of the gap in the period of ownership covered by the proponent's proof of ownership letter or other specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f).

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposals. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.³

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.⁴

1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company's proxy materials. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company files its definitive proxy materials.

3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute "good cause" for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company's request that the 80-day requirement be waived.

¹ An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

² Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

³ Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

⁴ A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

LII > Electronic Code of Federal Regulations (e-CFR)

> Title 17 - Commodity and Securities Exchanges

> CHAPTER II - SECURITIES AND EXCHANGE COMMISSION

> PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

> **§ 240.14a-8 Shareholder proposals.**

17 CFR § 240.14a-8 - Shareholder proposals.

CFR Table of Popular Names

§ 240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) Question 1: What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also

provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the

company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) Question 3: How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) Question 4: How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) Question 5: What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has

been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) Question 8: Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) **Question 9:** If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (1)(1):

Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) **Violation of law:** If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (1)(2):

We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) **Violation of proxy rules:** If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) **Personal grievance; special interest:** If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) **Relevance:** If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) **Absence of power/authority:** If the company would lack the power or authority to implement the proposal;

(7) Management functions: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) Director elections: If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) Conflicts with company's proposal: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (I)(9):

A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) Substantially implemented: If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (I)(10):

A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

(11) Duplication: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) Resubmissions. If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

- (i) Less than 5 percent of the votes cast if previously voted on once;
- (ii) Less than 15 percent of the votes cast if previously voted on twice; or
- (iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) Specific amount of dividends: If the proposal relates to specific amounts of cash or stock dividends.

(j) Question 10: What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

- (i) The proposal;
- (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
- (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) Question 11: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) Question 12: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:


(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

[[63 FR 29119](#), May 28, 1998; [63 FR 50622](#), 50623, Sept. 22, 1998, as amended at [72 FR 4168](#), Jan. 29, 2007; [72 FR 70456](#), Dec. 11, 2007; [73 FR 977](#), Jan. 4, 2008; [76 FR 6045](#), Feb. 2, 2011; [75 FR 56782](#), Sept. 16, 2010; [85 FR 70294](#), Nov. 4, 2020]

EFFECTIVE DATE NOTE:

At [85 FR 70294](#), Nov. 4, 2020, § 240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.

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EXHIBIT C – Cover Letter from Proponent

Mark E. Baker, MBA,
[REDACTED]

Washington, DC 20019
November 30, 2022

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

Via: Email November 28, 2022 to - investorinfo@cvshealth.com

Dear Vice President McIntosh:

Please include the enclosed shareholder proposal in the proxy for the 2023 annual meeting of shareholders. Please do not list my personal address (address of record) in public documents. My corresponding address can be listed as: Mark E. Baker, MBA, P.O. Box [REDACTED], Washington, DC 20018.

Sincerely,



Mark E. Baker, MBA

EXHIBIT D – Correspondence with the Proponent

Moffatt, Thomas S.

From: Baker Enterprises [REDACTED]@gmail.com>
Sent: Monday, January 9, 2023 6:01 PM
To: Moffatt, Thomas S.
Subject: Re: FW: [EXTERNAL] Shareholder proposal for 2023 meeting
Attachments: image001.png

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

I indeed have heard from your local management office. However I am not at all convinced that the type of egregious discrimination that I suffered is not more widespread within CVS stores. There are no apparent mechanisms available to consumers to report discrimination or denial of access to the services of CVS. I will allow my letter and the recorded discrimination as reported to remain active. I'm sure this means that the SEC will be contacted. I on the other hand will continue to seek support from other shareholders and present the proposal in a future shareholder meeting.

On Mon, Jan 9, 2023, 1:39 PM Moffatt, Thomas S. <Thomas.Moffatt@cvshealth.com> wrote:

Dear Mr. Baker:

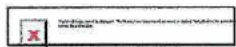
I understand that you have now heard from CVS field management regarding the concerns raised in your stockholder proposal. I am hopeful that you are satisfied with their response, and also that you might be amenable to withdrawing your proposal at this time. It would be great if we could avoid the time and expense involved in submitting a "no-action letter" with the SEC.

Kindly let me know at your earliest convenience. I am also happy to discuss this further with you if that would help.

Thank you.

Tom

Tom Moffatt | Vice President, Asst. Secretary & Senior Legal Counsel - Corporate Services | **direct** 401-770-5409 | **cell** 401-499-4102 | **fax** 401-216-3758 | CVS Health | One CVS Drive | MC1160 | Woonsocket, RI 02895 | thomas.moffatt@cvshealth.com



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From: Baker Enterprises <[REDACTED]>
Sent: Friday, January 6, 2023 10:17 AM
To: Moffatt, Thomas S. <Thomas.Moffatt@CVSHealth.com>
Subject: Re: FW: [EXTERNAL] Shareholder proposal for 2023 meeting

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

I've been traveling for the last several weeks. But I would appreciate talking with you about this issue. I'll call you or you may call me at 202-[REDACTED]

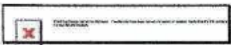
On Mon, Jan 2, 2023 at 10:20 AM Moffatt, Thomas S. <Thomas.Moffatt@cvshealth.com> wrote:

Dear Mr. Baker:

Again, I ask that you address the deficiencies in your shareholder proposal. I would also be happy to discuss this situation with you at your convenience. Please contact me if you would like to talk.

Tom Moffatt

Tom Moffatt | Vice President, Asst. Secretary & Senior Legal Counsel - Corporate Services | direct 401-770-5409 | cell 401-499-4102 | fax 401-216-3758 | CVS Health | One CVS Drive | MC1160 | Woonsocket, RI 02895 | thomas.moffatt@cvshealth.com



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From: Moffatt, Thomas S.
Sent: Monday, December 19, 2022 5:53 PM
To: [REDACTED]@gmail.com
Subject: FW: [EXTERNAL] Shareholder proposal for 2023 meeting

Dear Mr. Baker:

On December 2, 2022, I sent the attached letter to you via email regarding your shareholder proposal. To date I have not received any response to the letter. Please advise whether you plan to address either of the issues cited in my letter to you (i.e., proof of ownership of a sufficient amount of CVS Health stock for the required period and the length of your proposal). If not, I ask that you formally withdraw your proposal, which would save the company the time involved in submitting a "no action letter" to the SEC. I would also welcome the opportunity to discuss the facts and circumstances regarding the proposal with you, if you could provide a time when we might have a call.

I look forward to hearing from you.

Tom Moffatt

Tom Moffatt | Vice President, Asst. Secretary & Senior Legal Counsel - Corporate Services | **direct** 401-770-5409 | **cell** 401-499-4102 | **fax** 401-216-3758 | CVS Health | One CVS Drive | MC1160 | Woonsocket, RI 02895 | thomas.moffatt@cvshhealth.com



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From: Investorinfo <Investorinfo.Investorinfo@CVSHealth.com>
Sent: Tuesday, November 29, 2022 8:35 AM
To: [REDACTED] (Corp_Services) [REDACTED]@CVSHealth.com>
Subject: FW: [EXTERNAL] Shareholder proposal for 2023 meeting

[REDACTED] | Corporate Events Manager, Investor Relations
p 401-[REDACTED] | e [REDACTED]@cvshhealth.com
CVS Health | P.O. Box 113, Clintondale, NY 12515

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CONFIDENTIALITY NOTICE: This communication and any attachments may contain confidential and/or privileged information for the use of the designated recipients named above. If you are not the intended recipient, you are hereby notified that you have received this communication in error and that any review, disclosure, dissemination, distribution or copying of it or its contents is prohibited. If you have received this communication in error, please notify the sender immediately by email or telephone and destroy all copies of this communication and any attachments.

From: Baker Enterprises [REDACTED] PII
Sent: Monday, November 28, 2022 1:48 PM
To: Investorinfo <Investorinfo.Investorinfo@CVSHealth.com>
Subject: [EXTERNAL] Shareholder proposal for 2023 meeting

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

From: Mark E. Baker, MBA,
Address of record – [REDACTED], Washington, DC 20019
Emailed to: Colleen M. McIntosh, Senior Vice President, Corporate Secretary and Chief Governance Officer, CVS Health Corporation, One CVS Drive, Woonsocket, Rhode Island 02895

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Mark E. Baker, MBA
Investments and Wealth Management
Specialist in International Business Management

Mark E. Baker, MBA

Investments and Wealth Management

Specialist in International Business Management

Mark E. Baker, MBA

PII

February 1, 2023

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 Mark E. Baker
Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen:

The No Action request from Mr. Thomas S. Moffatt of CVS Health Corporation (the Corporation) are replete with misrepresentations and deliberate deception. It was clear from my first interactions with the corporation that it had no intention of allowing me to present a timely filed shareholder proposal. The corporation erected significant barriers to communication and has weaponized the use of the SEC suggested regulations (Rule 14a-8(j) under the Exchange Act) to muzzle or stifle legitimate complaints and interactions arising from the shareholders. The outcome of the policies enforced by Mr. Moffatt, on behalf the Corporation, have directly resulted in the misappropriation of corporate revenue and fraudulent use of more than \$150 billion supposedly directed towards Healthy Business and Healthy People initiatives, ESG and community health and wellness.

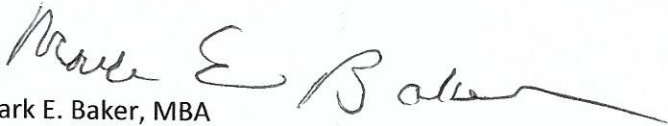
Prior to submitting my proposal, I attempted to ascertain the requirements and regulations for such submissions and found not only that the company did not publish these requirements but even after calling the corporate headquarters it was not explicitly delineated. The company has erected a *de facto* wall between shareholders and corporate management that is un-bridgeable. As in my case, only after submitting material for consideration is a proponent retroactively confronted with what he should have done. Since the company's requirements for brevity and time and amount of ownership are not publicly and prominently known, my proposal should be presented to shareholders. The company should not be permitted to use subterfuge to violate its nationwide covenant with the community (**Nondiscrimination and Accessibility Notice, ACA section 1557**), state and federal laws.

Since my initial correspondence was addressed to Colleen M. McIntosh, Secretary and Chief Governance Officer of CVS Health, I have had no direct response from that person. While speaking with Moffatt it became clear that there would be no attempt to respond to my shareholder proposal but rather only to employ a legalistic miasma to quash the documented discrimination based on gender, race, or color that I experienced at the store.

While I specifically asked for assistance on locating other shareholders to support my proposal Moffatt claimed not to know who the shareholders are other than, very large institutional holders. Yet Moffatt was with definite certainty able to assert that I was not a holder of record. It is a customary requirement that corporations make a list of shareholders available for public inspection. Such a list was not provided for me.

While my experience in the store was a clear violation of United States constitutional protections, the corporation has shown no response to these violations. It was only after 5 months that the local representatives called me, (after I reminded Mr. Moffatt of their omission) and only then to indicate that one of the persons involved in my confrontation had been terminated due to credit card fraud, and the security company was no longer a vendor (although I have recently seen the same firm employed at the location). While Moffatt alleges that he sent mail to me that was undeliverable there is no proof that this occurred (no other mail has been returned from my PO Box in more than 30 years and all mail to my personal address was held in the post office during the holidays). The Corporation has made no attempt to ameliorate its discriminatory practices weaponized against this largely minority and impoverished section of the nation's capital.

Sincerely,

A handwritten signature in cursive script that reads "Mark E. Baker". The signature is written in dark ink and includes a long horizontal flourish at the end.

Mark E. Baker, MBA