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SHAREHOLDER PROPOSALS IN THE WAKE OF STAFF LEGAL BULLETIN 14M

As we previously addressed [here](#), on February 12, 2025, the Staff of the U.S. Securities and Exchange Commission's Division of Corporation Finance published Staff Legal Bulletin 14M ("SLB 14M"). Among other things, SLB 14M rescinded previous Staff guidance on no-action requests, pursuant to which a company can attempt to exclude a shareholder proposal from consideration in its definitive proxy statement. SLB 14M also clarified the Staff's views on the scope and application of the "economic relevance exclusion" pursuant to Rule 14a-8(i)(5) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the "ordinary business exclusion" pursuant to Exchange Act Rule 14a-8(i)(7). We previously stated our belief that the Staff's updated guidance would make it more challenging for proponents of shareholder proposals to overcome no-action requests based on broad social policy concerns, a prediction which only somewhat seems to have come to fruition during the 2025 proxy season to date.

OVERVIEW OF STAFF RESPONSES TO SHAREHOLDER PROPOSALS

During the period beginning on February 13, the day after the publication of SLB 14M, and ending on May 2, 2025, the Staff responded to almost 280 no-action requests.¹ Around 18% of these proposals were withdrawn by the proponent before the Staff issued a substantive response, while approximately 17% were decided on procedural grounds.² Slightly less than 10% of companies requested no-action relief either because the proposal (i) related to personal grievances against the company (Rule 14a-8(i)(4)) or (ii)

¹ As reflected on the [SEC's website](#) on the afternoon of May 6, 2025. Responses to approximately seventy no-action requests were posted before the publication of SLB 14M; more than 80% of these were withdrawn by the proponent or decided on procedural grounds.

² Procedural grounds include failing to timely submit the proposal under Rule 14a-8(e)(2), a proponent's failure to provide proof of share ownership in accordance with Rule 14a-8(b)(1) and Rule 14a-8(f), if the company would lack the power or authority to implement the proposal pursuant to Rule 14a-8(i)(6), a proponent's failure to appear at prior shareholders' meeting under Rule 14a-8(h)(3), or resubmitting a proposal on substantially the same subject matter as a recent past proposal under Rule 14a-8(i)(12), for example.

included violations of the Commission’s proxy rules (Rule 14a-8(a)(3)).³ Approximately 15% of companies requested relief pursuant to Exchange Act Rules 14a-8(i)(10) or 14a-8(i)(11), which permit a company to exclude a shareholder proposal if the company has already substantially implemented the proposal or if the proposal is duplicative of another proposal, respectively. In all of these cases, there is little to learn about the Staff’s substantive view of proposals under new SLB 14M, either because the Staff did not provide a substantive response or because SLB 14M did not materially address the prongs of Rule 14a-8 under which such requests were submitted.⁴ The remaining approximately 40% of requests, however, requested no-action relief under Rule 14a-8(i)(5) and/or Rule 14a-8(i)(7), providing valuable insight into the Staff’s approach to shareholder proposals under SLB 14M.

RULE 14A-8(I)(5): THE ECONOMIC RELEVANCE EXCLUSION

Pursuant to Exchange Act Rule 14a-8(i)(5), a company can exclude a shareholder proposal if it “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.” Under SLB 14M, a proponent must tie social or ethical issues raised in support of its proposal directly to matters that have a “significant effect” on the company’s business. Following the publication of SLB 14M until May 2, the Staff has responded to approximately 12 no-action requests submitted pursuant to Rule 14a-8(i)(5), determining in about a third of those cases that the company could omit the proposal and reaching the opposite conclusion in the other proposals.⁵

The proposals the Staff declined to omit included:

- One proposal requested that the company’s board of directors provide a “report outlining the effectiveness of the Company’s policies, practices, and performance indicators in respecting internationally recognized human rights standards for Indigenous Peoples’ rights in its existing and proposed general corporate and project financing.”⁶ The proponent provided the company’s “history of financing projects that violate indigenous people’s rights” as a supporting statement.
- One proposal requested that the board provide a “report a congruency analysis between corporate values as defined by the Company’s stated policies and Company contributions on electioneering and to any organizations dedicated to affecting public policy.”⁷ The proponent used the company’s publicly stated belief in the dangers of climate change, made while donating

³ Some companies requested relief under multiple prongs of Rule 14a-8 and are counted more than once in this data.

⁴ SLB 14M includes a reminder that proposed 2022 amendments to Rules 14a-8(i)(10) and 14a-8(i)(11) have not been adopted, and, as such, no-action requests will be considered under currently-operative guidance.

⁵ The Staff did not respond to any no-action requests pursuant to Rule 14a-8(i)(5) in 2025 prior to the publication of SLB 14M.

⁶ See [americanwells3525-14a8.pdf](#).

⁷ See [harringtonwells3525-14a8.pdf](#).

money to a political organization that “advanced model legislation in at least five states directing state lawmakers and treasurers to cancel state contracts with companies that address climate risk” as evidence to support the proposal.

- One proposal asking for an annual report “describing whether and how the Company aligns its lobbying and policy influence activities [...] with its net zero by 2050 goal,”⁸ referring to the fact that the Company did not disclose whether its lobbying activities were indeed consistent with this stated goal.
- One proposal asking for a report “assessing the effectiveness of the company’s implementation of its Human Rights Policy for operations in conflict-affected and high-risk areas, including Russia/Ukraine.”⁹ A similar human rights focused proposal asked a company to report on how it addresses transition of workers and fairness to communities in its transition finance strategy; the proponent stated that “part of the work of transition finance is to support finance, public policy or other provisions for worker transition such as job retraining and skill development, income support in job transitions, creating new green jobs, and actively planning for economic diversification in affected communities.”¹⁰
- One proposal requested that the company’s board evaluate and report on how it “oversees risks related to discrimination against ad buyers and sellers based on their political or religious status or views.”¹¹ The company, a fast food chain, pointed out that buying advertising was not a “primary component” of its business, with “economically insignificant” costs, while the proponent argued that the company’s advertising should “support its competitive interests and build its reputation for serving its diverse customers.”
- More than one proposal requested an analysis of how charitable partnerships impact each company’s “risks related to discrimination against individuals based on their speech or religious exercise.” As a rationale, a proponent cited the company’s need to “increase transparency around charitable giving.”¹²

All of these proposals address environmental, social or governance (“ESG”) related policy issues, showing that the under SLB 14M, the Staff continues to require the inclusion of proposals where there is a direct link between a social policy issue and the company’s business. In all of these cases, it appears the Staff was persuaded that that the subject of the proposal likely was implicated by the companies’ specific actions, rather than any hypothetical or general societal risk. In contrast, the proposals the Staff agreed

⁸ See [cheveddenmondelez32525-14a8.pdf](#).

⁹ See [wespathmondelez32525-14a8.pdf](#).

¹⁰ See [rissmanstate32825-14a8.pdf](#). Note that the company also requested relief under Rule 14a8-(i)(7), which was denied.

¹¹ See [bahnsenmcdonalds32825-14a8.pdf](#). Note that McDonald’s also requested relief under Rule 14a8-(i)(7), which was denied, as discussed below.

¹² See [ncpprpaypal41525-14a8.pdf](#). Additional requests for relief under Rules 14a-8(i)(3) and 14a-8(i)(7) were also denied.

could be omitted seemingly referred only to broad societal risks, or potential legal and reputational risks to the company.¹³

RULE 14A-8(I)(7): THE ORDINARY BUSINESS EXCLUSION

Exchange Act Rule 14a-8(i)(7), the “ordinary business exclusion,” allows a company to exclude a proposal that “deals with a matter relating to the company’s ordinary business operations” that should be the jurisdiction of the board and management, rather than the shareholders. The central considerations underlying this exclusion are (a) the subject matter of the proposal and (b) the degree to which the proposal “micromanages” the behavior of the company. While the Commission has long recognized an exception to this exclusion for proposals that focus on significant policy issues with a broad societal impact, the Staff now evaluates “significance” on a company-specific basis, “taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.” Micro-management is also now considered on a case-by-case basis, based on factors such as the nature and detail of the proposal, the specific circumstances of the company, and the manner in which a proposal is raised.

RULE 14A-8(I)(7) NO-ACTION REQUESTS BEFORE SLB 14M

In the beginning of the 2025 proxy season, the Staff responded to approximately 10 companies requesting no-action relief pursuant to Rule 14a-8(i)(7) (sometimes in addition to other prongs of Rule 14a-8). In approximately two-thirds of those cases, the Staff was unable to concur that the proposal could be excluded. The majority of these proposals either (i) related to ESG or anti-ESG issues¹⁴ or (ii) related to a publicly announced goal or commitment from the target company.

RULE 14A-8(I)(7) NO-ACTION REQUESTS AFTER SLB 14M

Since the publication of SLB 14M, the Staff has addressed approximately 110 no-action requests under Rule 14a-8(i)(7). In more than 60% of these, the Staff determined that the proposal was properly excludable under Rule 14a-8(i)(7), roughly the inverse of the proportional breakdown before SLB 14M was published. Based on our analysis, the proposals the Staff declined to exclude appear to address issues that, even if they are of broad societal importance, also directly tie to a company’s business and finances. The Staff declined to exclude the following proposals because the companies did not show that the proposal related to ordinary business operations, the proposals transcend ordinary business matters, and/or did not micromanage the relevant companies:

- One proposal asked the board of a tire company to adopt policies that result in setting tire-wear shedding reductions goals and timelines.¹⁵ The proponent pointed out the risks of pollution from

¹³ See [hoysaabbvie31825-14a8.pdf](#), [martincvs32525-14a8.pdf](#) and [heritagecvs32525-14a8.pdf](#). Note that this is somewhat subjective, and it is not possible to track the Staff’s thinking in its entirety.

¹⁴ For example, more than one proposal requested a report to shareholders annually how the company’s “contributions impact its risks related to discrimination against individuals based on their speech or religious exercise.” See [Deere & Company](#).

¹⁵ See [The Goodyear Tire & Rubber Company](#).

plastic particles from tire-shedding to the environment and human health, as well as the financial and reputational risks to the company of not setting goals related to tire-shredding. A related proposal asked the company to commit to making its packaging recyclable, reusable or compostable, where competitors have publicly adopted similar goals.¹⁶

- Several proposals requested that the companies' boards evaluate and report on how they "oversee risks related to discrimination against ad buyers and sellers based on their political or religious status or views."¹⁷ The proponents argued that the companies censored certain political or religious views in advertising for "brand safety," rather than protecting "free speech and religious freedom," such that the issue is one of social policy and "collusive and anti-competitive business behavior," rather than of controlling the company's advertising decisions.¹⁸ The Staff reached the same outcome on an identical proposal to a different company prior to SLB 14M.¹⁹
- Several proposals requested that the companies, all banks, disclose annually their Energy Supply Ratio ("ESR"), or, in other words, how their "financing of fossil fuel energy supply compares to its financing of low-carbon energy supply."²⁰ The proponent argued that the ESR metric helps investors evaluate companies' responses to climate change, which is aligned with financial, legal and reputational risk management, as well as being best able to take advantage of "opportunities associated with the global energy transition."
- Similar proposals to insurance companies requested disclosure about climate-based risks directly related to their insurance offerings, so that investors could better understand exposure to climate-related risks and any mitigation activities. One proposal asked a company to disclose the GHG emissions from its underwriting, insuring, and investment activities.²¹ Another proposal requested that the company disclose "the expected impact of climate-related pricing and coverage decisions on the sustainability of its homeowners' insurance customer base under a range of climate scenarios."²²
- Two proposals requested that the companies evaluate and disclose "the alignment of short- and medium-term greenhouse gas emissions reduction targets with the Paris Agreement's goals of limiting global temperature rise."²³ Both companies had publicly disclosed net zero greenhouse gas emissions targets, and the proponent argued that independent verification that such goals actually align with the goals in the Paris Agreement is necessary. A similar proposal asked a

¹⁶ See [asyousowhome32825-14a8.pdf](#).

¹⁷ See [Johnson & Johnson_ afaverizon32525-14a8.pdf](#), [bahnsenmerck4425-14a8.pdf](#) and [bahnsenmcdonalds32825-14a8.pdf](#).

¹⁸ In some response letters, the Staff also stated that the companies had "not explained whether the policy issue raised by the Proposal [was] significant to the company," as required under SLB 14M.

¹⁹ See [The Walt Disney Company](#).

²⁰ See [nyctrsbao3325-14a8.pdf](#), [nyctrswells3525-14a8.pdf](#) and [Morgan Stanley](#).

²¹ See [greenchubb32725-14a8.pdf](#).

²² See [bellfreitastravelers32525-14a8.pdf](#).

²³ See [nyctrsalliant32725-14a8.pdf](#) and [nyctrsameren32125-14a8.pdf](#).

company to assess whether its current climate transition plans and commitments can reasonably achieve its publicly stated emissions reduction targets.²⁴ Additional climate-risk-based proposals requested that a company adopt targets for measurably reducing its GHG emissions and provide annual progress reports where the company previously reported on publicly announced goals but stopped doing so,²⁵ and asked about the alignment of the company's lobbying activities with its climate-neutral-by-2050 goal.²⁶

- More than one proposal asked that a company prepare a report "describing and quantifying the effectiveness and outcomes of the Company's efforts to prevent harassment and discrimination against its protected classes of employees," including a request to consider specifics related to harassment or discrimination complaints or disputes.²⁷ The same proponent stated that the companies faced lawsuits related to discrimination in hiring, linking challenges in workforce management to negative repercussions in employee recruiting and retention and customer relationships.
- One proposal requested a report on the measures previously implemented by the company to more effectively "monitor and manage human rights risks related to workplace health and safety."²⁸ The proponent argued that worker health and safety can impact productivity as well as a company's reputation, and noted the company's public history of challenges in this area.
- Proposals to more than one company asked that each company consider abolishing its DEI programs, policies, department and goals.²⁹ The proponent supported the proposal by stating that a number of companies recently abolished their own DEI programs, arguing that such policies are not essential to workplace management, and highlighted the risks of lawsuits by employees for discrimination, arguing that risks to a company are tantamount to risks to shareholders' investments.
- In most of the compensation-related proposals, the Staff declined to exclude under Rule 14a-8(i)(7) proponents requested that each company's board seek shareholder approval of certain "golden parachute" severance packages for management, on the grounds that they could influence managers to look for mergers rather than focus on running and improving the current business.³⁰ The Staff also declined to exclude a similar proposal requesting the adoption of a "policy requiring the five named executive officers to retain a significant percentage of stock acquired through equity pay programs until reaching retirement," where the proponent argued that the company's stock price had fallen substantially despite overall market conditions.³¹ Lastly,

²⁴ See [greenmcdonalds32825-14a8.pdf](#).

²⁵ See [gcefcolumnbia41525-14a8.pdf](#).

²⁶ See [cheveddenlinde42225-14a8.pdf](#).

²⁷ See, e.g., [nyscrfwells3525-14a8.pdf](#).

²⁸ See [oxfamwalmart41625-14a8.pdf](#).

²⁹ See [ncpprlevi22125-14a8.pdf](#).

³⁰ See [Citigroup Inc., cheveddentravelers32525-14a8.pdf](#) and [harangozoge4225-14a8.pdf](#).

³¹ See [cheveddennewell32425-14a8.pdf](#).

the Staff declined to exclude an anti-DEI proposal asking the company to “revisit its incentive guidelines for executive pay to identify and consider eliminating discriminatory DEI milestones from compensation inducements,” citing the increase in lawsuits related to corporate DEI initiatives as support.³²

- One proposal requested that the company publish a report describing the “healthcare consequences of its acquisition strategy and the impact its hospital acquisitions within the last 10 years have had on impacted communities” (namely rural areas with low incomes and higher poverty rates).³³ The proponent reviewed a recent acquisition by the company, following which prices increased, staff shortages (including doctors and nurses) occurred, and patient-satisfaction ratings decreased to demonstrate shareholders’ need for this investment-related information. A similar healthcare-related proposal asked the company, a hospital, to provide a data-based report on its programs for improving maternal health outcomes which, the proponent argued, if improved, could be a “business advantage” for the hospital.³⁴
- More than one proposal requested that the board of directors of the company, a casino operator, publish a report on “potential cost savings through the adoption of a smokefree policy for Company properties.”³⁵ The proponent highlighted not only the health risks to employees but also the effect on finances due to decreased visitors (and revenue) and higher employee health insurance premiums, as compared to smoke-free casinos.
- One proposal requested that the board “engage an investment banker to study options to maximize the value of its shares,” pointing out that the company’s share value had dropped and that, by its very nature, the decision to hire an investment banker necessarily relates to an extraordinary financial transaction so should not be excludable under the “ordinary business” exemption.³⁶

While these proposals address a cross-section of issues, they generally share several common traits. First, almost all address a social policy issue, such as climate-related risk or ESG or anti-ESG policy, and each proposal can be directly tied to the company’s business and operations in a manner that is specific to that company, rather than a general, broad-based risk that could be applicable to many companies. None of the proposals includes intricate detail; for example, none require the company to act within a specific time frame or give specific instructions for how the company should act in response to the proposal. Lastly, the Staff did not view any of the proposals as being “too complex” for shareholders to consider or, in other words, none of the proposals were characterized as being too prescriptive to the company. That said, it is not always possible to determine the specific factors that form the bases of the Staff’s decisions.

³² See [nlpcmerck4425-14a8.pdf](#).

³³ See [HCA Healthcare, Inc.](#)

³⁴ See [nyscrfstenet4225-14a8.pdf](#).

³⁵ See [trinitycaesars42125-14a8.pdf](#).

³⁶ See [Cannae Holdings, Inc.](#)

Overall, the subject matter of no-action requests pursuant to Rule 14a-8(i)(7) does not seem to have changed materially post-SLB 14M. However, our current data shows that companies are now more likely to be able to omit proposals than before the guidance was effective, although it is not always clear what is driving the Staff's decision-making process. This data can be an important decision-making tool as companies approach the 2026 proxy season, although shifting priorities and evolving financial markets mean that companies need to remain vigilant in watching for current developments.



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