SLB 14M: Insights from the 2025 Proxy Season

May 27, 2025

On February 12, 2025, the Staff of the SEC's Division of Corporation Finance issued Staff Legal Bulletin No. 14M, which rescinded Staff Legal Bulletin No. 14L and reinstated earlier guidance on the exclusion of shareholder proposals under Rule 14a-8 of the Securities Exchange Act of 1934, as amended. Under former SEC Chair Gary Gensler, the SEC had narrowed the substantive bases on which a Rule 14a-8 proposal could be excluded from a proxy statement under Rule 14a-8(i)(5)—the "economic relevance" exclusion—and Rule 14a-8(i)(7)—the "ordinary business" exclusion. SLB 14M reversed these changes.

The SEC issued SLB 14M in the middle of this year's Rule 14a-8 proposal process, introducing uncertainty for issuers and stockholder proponents. In a departure from typical protocol, issuers that had submitted no-action requests prior to the publication of SLB 14M were permitted to raise new legal arguments by submitting supplemental correspondence to the SEC, and issuers that had not submitted no-action requests could do so notwithstanding that their respective deadlines for submitting a no-action request had passed.

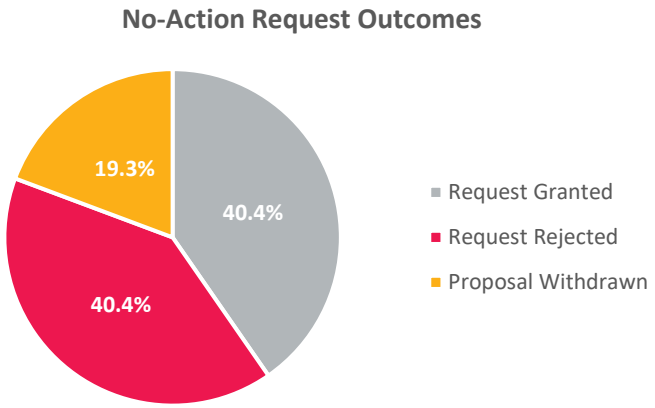
As of May 1, 2025, the Staff had issued responses to 57 no-action requests that included legal arguments relying on SLB 14M. Just over half of those responses were to no-action requests that had initially been submitted prior to the publication of SLB 14M and later supplemented to consider the new guidance.

The Staff stated in SLB 14M that it would endeavor to meet proxy print deadlines when responding to no-action requests considering the new guidance, noting that its ability to do so would depend on the volume and timing of new requests and supplemental correspondence received. Each of the 57 responses we reviewed were responded to by the Staff prior to the print deadline provided in the no-action request, although in some cases, the Staff responded only days prior to such deadline.

SLB 14M was expected to be particularly useful for issuers seeking to exclude ESG-related Rule 14a-8 proposals from their proxy statements—all of the responses we

reviewed pertained to ESG-related proposals, including on matters of human rights, diversity, equality, climate change and governance practices.

Although SLB 14M has been undoubtedly useful to issuers, it does not guarantee exclusion—of the no-action requests that were submitted, equal numbers were granted and rejected.



Most no-action requests (88%) included legal arguments based on the ordinary business exclusion, which permits a company to exclude a shareholder proposal that relates to "a matter relating to the company's ordinary business operations." Of those, and excluding proposals that were withdrawn, 43% of the no-action requests were granted.

Notably, the Staff cited directly to SLB 14M when rejecting several no-action requests in which the issuer failed to explain why the policy issue raised by the proposal is not significant to the issuer. The Staff noted that such explanation is required under SLB 14M even though issuers are no longer required to present the board's analysis of the particular policy issue raised and its significance to the company. Going forward, issuers should carefully consider whether their no-action requests sufficiently address this topic.

No-action requests that relied upon the economic relevance exclusion were less successful. The economic relevance exclusion permits a company to exclude a shareholder proposal that relates to operations that account for less than 5% of the company's total assets at the end of its most recent fiscal year and less than 5% of its net earnings and gross sales for its most recent fiscal year and that is not otherwise significantly related to the company's business. Two of the 11 no-action requests that relied upon this exclusion and where the proposal was not withdrawn were granted.

In a significant shift, the Staff clarified in SLB 14M that its analysis of whether a proposal is "otherwise significantly related" under the economic relevance exclusion will

no longer be informed by its analysis under the ordinary business exclusion, as has been practice in recent years. As a result, proposals may be excluded on the grounds of economic relevance even when the ordinary business exclusion is not available, which may lead to more issuers considering it to be a viable basis for exclusion going forward.

For a detailed discussion of SLB 14M, see our Debevoise Update "SEC Staff Reverses Certain Limitations on Issuers' Ability to Exclude Shareholder Proposals."

We plan to publish a full review of the 2025 proxy season later this year.

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