POLICY BRIEFING

US SECURITIES AND EXCHANGE COMMISSION: STAFF LEGAL BULLETIN 14M

To inform this paper, US securities lawyers have been consulted.

While the policy recommendations herein have been developed to be globally applicable, the PRI recognizes that the way in which policy reforms are implemented may vary by jurisdiction and according to local circumstances. Similarly, the PRI recognizes that there may be circumstances where there are merits to allowing market-led initiatives to precede regulatory requirements.

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RESOURCES

1. Shareholder Proposals: Staff Legal Bulletin No. 14M (February 12, 2025)
2. Shareholder Proposals: Staff Legal Bulletin No. 14L (November 3, 2021)
3. No-Action Responses Issued Under Exchange Act Rule 14a-8 (2024 – 2025)

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ABOUT THE PRI

The Principles for Responsible Investment (PRI) works with its international network of signatories to put the six Principles for Responsible Investment into practice. Its goals are to understand the investment implications of environmental, social and governance (ESG) issues and to support signatories in integrating these issues into investment and ownership decisions. The PRI acts in the long-term interests of its signatories, of the financial markets and economies in which they operate, and ultimately of the environment and society as a whole.

The six Principles for Responsible Investment are a voluntary and aspirational set of investment principles that offer a menu of possible actions for incorporating ESG issues into investment practice. The Principles were developed by investors, for investors. In implementing them, signatories contribute to developing a more sustainable global financial system. More information: www.unpri.org

ABOUT THIS BRIEFING

The purpose of this briefing is to provide a high-level overview of a specific regulatory provision of the US Securities and Exchange Commission ("SEC" or "the Commission") governing the shareholder proposal process, and particularly the "no-action" process.

On 12 February 2025, the Division of Corporation Finance ("the Division") of the SEC issued Staff Legal Bulletin 14M ("SLB 14M") updating staff views on Rule 14a-8, the rule governing the shareholder proposal process. Staff Legal Bulletins are guidance documents stating how staff plan to interpret existing rules. SLBs do not change the underlying rule, which would require the approval of the Commission[1].

The intended audience for this document is PRI signatories who are unfamiliar with the SEC's no-action process, and specifically those who have an interest in filing shareholder proposals with the companies in which they have an ownership stake.

The statements in this briefing should be understood as generalized summaries, where particular situations are not considered, and should not be relied upon by readers for decision-making of any kind. Further, the contents in this briefing do not represent legal advice. For any questions regarding the application of this interpretation change to your practices, readers should consult their legal counsel.

[1] The Commission is comprised of up to five individuals. As many as three may be members of the President's political party. Each Commissioner is appointed by the President and confirmed by the Senate.

THE NO-ACTION PROCESS

The SEC's Division of Corporation Finance assists companies through what is called the "no-action process." This is a process by which staff provide informal views on whether the SEC would recommend enforcement action or not if a company excludes a particular shareholder proposal from consideration by shareholders during its annual meeting. In other words, prior to rejecting a shareholder proposal, a company can ask for informal views from Division staff on whether an omission of a shareholder proposal would likely not result in enforcement action, or "no action", by the Commission.

A company initiates the no-action process by submitting a letter to the Division setting forth the basis or bases on which it believes it is entitled to exclude a proposal. Rule 14a-8 includes thirteen substantive bases upon which proposals can be excluded, such as if the proposal would cause the company to violate the law, is too similar to past unsuccessful proposals, or has already been addressed by the company.

The staff at the SEC review the company's argument and may, but are not required to, respond with a determination or "no-action letter" stating whether they agree with the company's argument for exclusion. If the staff indicate that no enforcement action would likely be recommended, the company may proceed with omitting the proposal from their proxy materials with more confidence.

The Division will likely review the results of this year's no-action determinations and identify topics on which additional staff guidance or explanation of the staff's application of SLB 14M would be useful. Between 2017 and 2019, the Division released three SLBs related to the "no-action process". This guidance both explained how companies could more effectively use previous guidance and extended the guidance to additional types of proposals.

STAFF LEGAL BULLETIN 14M

A SLB reflects the views of the SEC staff and is intended to clarify how staff are interpreting federal securities laws and existing SEC regulations. SLBs are not legally binding, do not reflect a change to SEC rules, nor do they go through a formal approval process by the Commissioners.

On 12 February 2025, the Division of Corporation Finance staff published SLB 14M, rescinding the interpretation included in Staff Legal Bulletin 14L ("SLB 14L"), the guidance that was issued by Commission staff in November 2021 under former SEC Chair Gary Gensler. SLB 14M focuses on how staff will determine no-action requests that cite the "economic relevance" or "ordinary business" exclusions bases.

- **Economic relevance exclusion**: allows a company to exclude a proposal that relates to operations which account for less than 5% of the company's total assets, net earnings, or gross sales, **and** is not "otherwise significantly related to the company's business."
- **Ordinary business exclusion**: allows a company to exclude a proposal that "deals with a matter relating to the company's ordinary business operations." In other words, a proposal may be excludable if it addresses day-to-day management functions or could be viewed as micromanagement.

ECONOMIC RELEVANCE

Under previous guidance provided in SLB 14L, proposals that raised issues of social or ethical concern could not be excluded under the economic relevance basis even if the proposal subject related to

operations that account for less than 5% of the company's assets or sales. The SEC staff viewed these issues as "otherwise significantly related" to the company's overall business.

However, SLB 14M now makes it easier for companies to exclude proposals under this basis. If a proposal raises a social or ethical concern but does not clearly demonstrate how it could affect the company's assets or sales, the company may be allowed to exclude it from consideration by shareholders. In other words, proposals must now show a clear connection between the issue and the impact on the company's business if the concern is not addressed – simply pointing to possible harm to reputation or general concerns is no longer enough.

ORDINARY BUSINESS

There is an exception to the ordinary business exclusion basis that exists for proposals that focus on "significant social policy issues." Examples could include proposals on employment discrimination or pharmaceutical pricing, which deal with the day-to-day matters of workforce management and the sale of products, respectively, but also focus on subjects of widespread public debate. The appropriate scope of this exception has been debated for decades.

SLB 14M narrows this exception. Under the new interpretation, SEC staff will no longer consider a proposal's topic as a significant social policy issue based solely on broader societal interest or impact – the proposal must include a clear connection to the company's business.

In addition, SLB 14M makes it easier for companies to successfully bring ordinary business challenges based on micromanagement. In 1998, the SEC stated that a proposal may micromanage if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies."[2] SLB 14M provides relatively little concrete guidance on how micromanagement would be analyzed, in contrast to the detailed factors in SLB 14L, but earlier guidance reinstated by SLB 14M indicated that the Division had previously not agreed often enough with companies' micromanagement arguments.

DETERMINATIONS UNDER SLB 14M

SLB 14M was published shortly before the 2025 proxy season, when many proposals and no-action requests had already been filed. As of the date of publication, many no-action determinations have been issued by the Commission staff, some of which are difficult to harmonize. This may reflect that companies are still working out how to make successful arguments under these exclusion bases and/or that the SEC staff has been required to make a large number of determinations in a short time frame due to the timing of SLB 14M's release.

The below section presents examples of no-action determinations by Division staff following the February 2025 release of SLB 14M and provides a snapshot of how staff are utilizing the new interpretive guidance.

ECONOMIC RELEVANCE

Some shareholder proposals related to human rights have not been allowed to be excluded from company materials under the economic relevance basis, even when companies argued that the issues raised were not closely tied to their business. For example, a proposal seeking disclosure on the

[2] US Securities and Exchange Commission, "Amendments to Rules on Shareholder Proposals" (May 21, 1998), available at https://www.sec.gov/rules-regulations/1998/05/amendments-rules-shareholder-proposals

effectiveness of a company's policies in respecting human rights of Indigenous peoples was not excludable, despite an assertion that a very small proportion of the company's operations implicated Indigenous peoples. However, in a different request using a similar argument, a proposal seeking a report on the effectiveness of a company's human rights policies in upholding working standards in its India-based sugar supply chain was excludable on economic relevance grounds.

ORDINARY BUSINESS

Under the previous guidance (SLB 14L), proposals related to human capital management issues with a broad societal impact were not allowed to be excluded because they fell under the exception for significant social policy issues. However, a recent determination made under SLB 14M allowed a worker health and safety proposal to be excluded. The SEC staff's reasoning suggested that the determination was not based on a finding of insufficient significance to the particular company but instead that the issue of worker health and safety was not a significant social policy issue.

MICROMANAGEMENT

Many proposals requesting companies to take an action or change a policy, such as setting GHG emissions reduction targets, conducting a human rights impact assessment, or adopting an anti-deforestation policy, have been allowed to be excluded on micromanagement grounds.

However, the results are mixed for proposals that only request disclosure. For example, in a significant change from previous interpretation, SEC staff agreed with companies that standard lobbying disclosure proposals could be excluded under micromanagement. Yet, a proposal asking an insurance company to disclose how climate-related pricing and coverage decisions might affect its customer base was not viewed as micromanaging, even though it requested near-, medium-, and long-term impacts. Determinations using the micromanagement argument are made based on the prescriptiveness of a proposal, not the impact on a company's business or day-to-day functions, which has led to uncertainty about how the micromanagement argument is applied.