

MEMO# 36024

February 18, 2025

SEC Staff Rescinds, Reinstates, and Issues New Guidance on Shareholder Proposal Rule

[36024]February 18, 2025TO:ICI Members
Investment Company DirectorsSUBJECTS:Compliance
Disclosure
Fund Governance
Investment Advisers
Operations
Portfolio Oversight
Transfer AgencyRE:SEC Staff Rescinds, Reinstates, and Issues New Guidance on
Shareholder Proposal Rule

On February 12, 2025, the SEC staff rescinded prior guidance, reinstated previously rescinded guidance, and issued new guidance on the shareholder proposal rule (Rule 14a-8).[\[1\]](#) Rule 14a-8 under the Exchange Act conditionally permits a company's shareholders to include proposals (i.e., recommendations or requirements that a company and/or its board take specific actions) on a company's proxy statement.

SLB 14M seeks to provide clarity to companies on their ability to exclude proposals on certain grounds and will likely lead to more shareholder proposals being excluded from companies' proxies. Notably, SLB 14M rescinds SEC staff guidance[\[2\]](#) issued under former SEC Chair Gensler and expressly reinstates staff guidance that had been issued under Chairman Clayton. Commissioner Crenshaw expressed concerns regarding the timing of SLB 14M, stating that "SLB 14M moves the goalposts smack dab in the middle of this year's shareholder proposal process. Doing so at this hour creates undue costs and uncertainty for investors and corporations alike."[\[3\]](#)

Summary of the Staff Guidance

Rule 14a-8(i) provides several bases upon which a company may exclude a shareholder proposal. SLB 14M rescinds SLB 14L, which the staff issued in 2021, and reinstates parts of SLB Nos. 14J[\[4\]](#) and 14K,[\[5\]](#) which the staff issued in 2018 and 2019, respectively. These actions, in combination with new guidance in SLB 14M, primarily focus on the scope and application of the "economic relevance"[\[6\]](#) and "ordinary business"[\[7\]](#) exclusions included in Rule 14a-8. SLB 14M also addresses several additional procedural matters related to shareholder proposals and includes FAQs addressing the timing of implementation of the

guidance.

Guidance on the "Economic Relevance" Exclusion

SLB 14M rescinds guidance included in SLB 14L that "proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded, even if the relevant business falls below the [exclusion's] economic thresholds" The staff's analysis will instead "focus on a proposal's significance to the company's business" taking a case-by-case approach and considering the "total mix" of information available. The staff views the analysis as "dependent upon the particular circumstances of the company to which the proposal is submitted" and further states that "proposals that raise issues of social or ethical significance may be excludable, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5)" The staff also clarified that they "will not look to ... analysis under Rule 14a-8(i)(7) when evaluating arguments under Rule 14a-8(i)(5)" and instead will apply separate analytical frameworks to each potential exclusion.

The guidance also puts the burden on a shareholder to demonstrate a proposal's significance to a company's business: "Where ... significance ... is not apparent on its face, ... a proposal may be excludable unless the proponent demonstrates that it is 'otherwise significantly related to the company's business.'" A shareholder may "continue to raise social or ethical issues in its arguments, but ... would need to tie those matters to a significant effect on the company's business."

Guidance on the "Ordinary Business" Exclusion

The guidance addresses the two central considerations of the "ordinary business" exclusion: a proposal's subject matter and the degree to which a proposal "micromanages" the company.

In addressing the first consideration, while proposals related to matters that are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" could be excluded by the company, proposals "relating to such matters but focusing on a significant policy issue generally are not excludable." Determining whether the significant policy exception applies "depends on the particular policy issue raised by the proposal and its significance in relation to the company." Accordingly, "the staff will take a company-specific approach in evaluating significance, rather than focusing solely on whether a proposal raises a policy issue with broad societal impact or whether particular issues or categories of issues are universally 'significant.'"[\[8\]](#)

In addressing the micromanagement prong of the "ordinary business" exclusion, the staff similarly reversed its position taken in SLB 14L.[\[9\]](#) To address this prong, the staff reinstates parts of prior staff bulletins. The reinstated guidance states that a proposal involving "intricate detail, or seek[ing] to impose specific time-frames or methods for implementing complex policies" would constitute micromanagement and such proposal could be excluded by the company.[\[10\]](#)

The reinstated guidance also addresses proposals related to senior executive and/or director compensation. Specifically, "[i]ncluding an aspect of senior executive or director compensation in a proposal that otherwise focuses on an ordinary business matter will not insulate a proposal from exclusion under Rule 14a-8(i)(7)." Additionally, "a proposal that addresses senior executive and/or director compensation may be excludable under Rule 14a-8(i)(7) if a primary aspect of the targeted compensation is broadly available or

applicable to a company's general workforce... ."

Additional Guidance

SLB 14M also addresses the following aspects of Rule 14a-8:

- **Board analysis.** The staff had previously "encouraged companies to include with their no-action requests under Rules 14a-8(i)(5) and 14a-8(i)(7) a discussion reflecting the board's analysis of the particular policy issue raised and its significance to the company." But because the staff has found that "in most instances the information needed for the staff's analysis was not included in the board analysis" the staff will no longer expect a company's no-action request to include such information. A company may, however, include board analysis if it feels it would be helpful to the staff's analysis.
- **Amendments proposed but not adopted.** The staff noted that 2022 proposed amendments to Rule 14a-8(i)(10), Rule 14a-8(i)(11), and Rule 14a-8(i)(12)[\[11\]](#) have not been adopted and therefore "the staff considers no-action requests and supplemental correspondence in accordance with operative Commission rules and applicable staff guidance."
- **Images in shareholder proposals.** Rule 14a-8(d) provides that a "proposal, including any accompanying supporting statement, may not exceed 500 words." SLB 14M confirms that the rule "does not preclude shareholders from using graphics to convey information about their proposals" while also including examples of when graphs and/or images might be excludable under Rule 14a-8(i)(3) (e.g., if they would make the proposal materially false or misleading).
- **Proof of ownership letters.** Rule 14a-8(b) provides that a proponent must prove eligibility to submit a proposal by offering proof that it "continuously held" the required amount of securities for the required amount of time. SLB 14M confirms that the suggested language included in SLB 14L that brokers and banks may (but need not) use to meet this requirement[\[12\]](#) is not required, stating that, "[w]hile we encourage shareholders and their brokers or banks to use the sample language provided above to avoid errors, such formulation is neither mandatory nor the exclusive means of demonstrating the ownership requirements of Rule 14a-8(b)."
- **Use of email.** SLB 14M notes that both proponents and companies have increasingly relied on emails to submit proposals and make other communications. The staff provides the following related guidance, which is largely consistent with that provided in SLB 14L:
 - To prove delivery of an email, the sender should seek a reply e-mail from the recipient acknowledging receipt; both companies and shareholder proponents should acknowledge receipt of emails when requested;
 - When submitting proposals, shareholder proponents should use means that permit them to prove the date of delivery;
 - Where the company does not disclose in its proxy statement an email address for submitting proposals, shareholder proponents should contact the company to obtain the correct email address, and companies should provide such email addresses upon request;
 - If companies use email to deliver deficiency notices to proponents, they should seek a confirmation of receipt from the proponent; and
 - If a shareholder uses email to respond to a company's deficiency notice, the burden is on the shareholder to use an appropriate email address, and the shareholder should seek confirmation of receipt.

Frequently Asked Questions

SLB 14M also includes several FAQs that address the implementation of the guidance in the bulletin and the timing of new submissions and resubmissions to staff.

- For no-action requests submitted prior to the publication of SLB 14M, the staff will consider the guidance in place "at the time it issues a response. ...If, after considering the views expressed in this bulletin, a company believes that it is entitled to exclude a proposal, it must make a legal argument that clearly lays out the basis for the exclusion in either the initial no-action request or a supplemental correspondence."
- With respect to resubmissions, the staff states that "[p]reviously submitted requests do not need to be resubmitted. However, if a company wishes to raise new legal arguments in light of this bulletin, such arguments should be submitted as supplemental correspondence via the online portal. Companies and proponents should provide any supplemental correspondence in as timely a manner as possible."
- Companies may submit new requests even if the deadline prescribed in Rule 14a-8(j) has passed. Late submission may be made if the company demonstrates "good cause" for missing the deadline, and "the publication of this bulletin [will be considered] 'good cause' if it relates to legal arguments made by the new request."
- On the timing of responses from staff, "[t]he staff will endeavor to meet print deadlines for definitive proxy statements. Depending on the volume and timing of new requests and supplemental correspondence being received, the staff may not be able to respond before the relevant print deadline."

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Notes

[1] *Shareholder Proposals: Staff Legal Bulletin No. 14M (CF)*, SEC Division of Corporation Finance (Feb. 12, 2025)("SLB 14M"), available at <https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf>.

[2] *Shareholder Proposals: Staff Legal Bulletin No. 14L (CF)*, SEC Division of Corporation Finance (Nov. 3, 2021)("SLB 14L"), available at www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals.

[3] *Statement on Staff Legal Bulletin 14M*, SEC Commissioner Caroline A. Crenshaw (Feb. 12, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-staff-legal-bulletin-14m-021225>.

[4] *Shareholder Proposals: Staff Legal Bulletin No. 14J (CF)*, SEC Division of Corporation Finance (Oct. 23, 2018)("SLB 14J"), available at www.sec.gov/corpfin/staff-legal-bulletin-14j-shareholder-proposals.

[5] *Shareholder Proposals: Staff Legal Bulletin No. 14K (CF)*, SEC Division of Corporation Finance (Oct. 16, 2019)("SLB 14K"), available at www.sec.gov/corpfin/staff-legal-bulletin-14k-shareholder-proposals.

[6] This exclusion permits a company to exclude a proposal that "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."

[7] This exclusion permits a company to exclude a proposal that "deals with a matter relating to the company's ordinary business operations."

[8] By contrast, SLB 14L stated that the staff would "no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal."

[9] SLB 14L stated that "proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement."

[10] By way of example, "a proposal to generate a plan to reach net-zero greenhouse gas emissions by the year 2030, which [seeks] to impose specific timeframes or methods for implementing complex policies, [would be] excludable on the basis of micromanagement." Similarly, "a proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds."

[11] For a summary of this proposal, see ICI Memo No. [34227](#), dated July 18, 2022. ICI opposed this proposal. See ICI Memo No. [34285](#), dated 34285, for a summary of and link to our comment letter.

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