

US Corporate Law News: SEC staff issues legal bulletin on shareholder proposals

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On November 1, 2017, the SEC Division of Corporation Finance issued Staff Legal Bulletin No. 14I. The Bulletin provides guidance on Exchange Act Rule 14a-8 in four areas. First, it addressed the “ordinary business” exception under Rule 14a-8(i)(7), stating that, in Rule 14a-8(i)(7) no-action requests, the Board of Directors is often in a better position to determine whether a proposal on ordinary business matters also addresses a significant policy issue (and thus would be appropriate for a shareholder vote). Thus, going forward, the SEC will expect a discussion of the Board’s analysis in a company’s no-action request. Second, the SLB stated that the SEC’s past application of the “economic relevance” exception in Rule 14a-8(i)(5) has unduly limited its availability. As a result, going forward, the SEC’s analysis of the exception will more strongly consider the relation of the matter to the company’s business. Third, when a proposal is submitted by a proxyholder, the SEC will look for certain documentation describing the shareholder’s delegation of authority to the proxyholder. Finally, the SEC advised that the inclusion of graphs and/or images in proposals is consistent with Rule 14a-8(d) and potential abuse of such inclusions may be tempered by other Rule 14a-8 provisions. For more information, see <https://www.sec.gov/interps/legal/cfslb14i.htm>.


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