



April 3, 2024

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8 (File No. S7-20-22)

Dear Ms. Countryman:

The U.S. Chamber of Commerce urges the Securities and Exchange Commission (SEC) to suspend action on the proposed rule to amend certain substantive bases for exclusion of shareholder proposals under Exchange Act Rule 14a-8 (Proposal) until the effects of the November 2021 Staff Legal Bulletin 14L (SLB 14L)¹ are fully analyzed and the SEC provides an opportunity for further public comment.

SLB 14L narrowed the grounds for exclusion of a shareholder proposal under the existing Rule 14a-8's ordinary business exception. Pursuant to this change, shareholder proposals that raise a social policy issue with a "broad societal impact" will generally be ineligible to receive no-action relief, reversing the staff's long-held position that the issues raised in shareholder proposals must have some type of nexus to the company. SLB 14L also narrowed the staff's views regarding whether a particular proposal seeks to "micromanage" a company and would therefore be excludable under Rule 14a-8. This policy shift makes it much more difficult for companies to obtain no-action relief, which is relevant for investors given that issuers often expend substantial resources to navigate the shareholder proposal process.

Not surprisingly, SLB 14L led to a substantial increase in the number of shareholder proposals received by companies during recent proxy seasons, especially proposals focused on social policy issues unrelated to a company's long-term performance. As Commissioner Mark Uyeda noted last year, the 2023 proxy season saw an 18% increase in the overall number of shareholder proposals compared to 2021, while the number of proposals voted on increased 40% during that same time frame. Environmental and social proposals increased by 52%, and 125% more proposals were voted on in 2023 as compared to 2021.² Commissioner Uyeda also noted that staff rejection of no-action requests based on the ordinary business

¹ Shareholder Proposals: Staff Legal Bulletin 14L (Division of Corporation Finance) November 3, 2021.

<https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals?>

² Remarks at the Society for Corporate Governance 2023 National Conference. Commissioner Mark Uyeda (citing data from Proxy Analytics LLC) June 21, 2023 https://www.sec.gov/news/speech/uyeda-remarks-society-corporate-governance-conference-062123#_ftn23

exception more than doubled from 2021 to 2022, after SLB 14L was issued.³ As one expert recently noted, “the decline in no-action relief suggests that the issuance of SLB 14L transformed the shareholder proposal process.”⁴

Despite this clear transformation of the shareholder proposal landscape instigated by SLB 14L, the Proposal documents make only one mere mention of it in a footnote. Increased costs to issuers and their shareholders resulting from the staff’s changing views of the no-action process are excluded from the Proposal’s analysis.

Moreover, the SEC should provide substantial time for the relationship between SLB 14L and the Proposal to be better understood, and for the Commission to receive public comment. Instead, however, the window for the SEC’s economic analysis of the Proposal ends *before* much of SBL 14L’s influence on the shareholder proposal landscape will be fully revealed. Given that the Proposal, if adopted, would make it even more difficult for companies to exclude immaterial proposals under Rule 14a-8, it is imperative that the SEC fully take into account the cumulative costs that have already been imposed on public company shareholders over the last two years due to SLB 14L.

We believe the SEC should suspend continued consideration of the Proposal. Instead, the SEC could re-propose, if necessary, any further changes to Rule 14a-8 after the Commission has properly considered SLB 14L’s impacts.

Sincerely,



Tom Quaadman
Executive Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

³ *Id.* “In the year before SLB 14L, the staff concurred with a company’s argument to exclude a proposal pursuant to paragraph (i)(7) 40% of the time and did not concur 25% of the time. These outcomes nearly reversed in the year after SLB 14L, when the staff concurred 23% of the time and did not concur 54% of the time.”

⁴ Testimony of Dr. Joshua White – “Reforming the Proxy Process to Safeguard Investor Interests” Subcommittee on Capital Markets, U.S. House of Representatives (July 13, 2023) <https://docs.house.gov/meetings/BA/BA16/20230713/116207/HHRG-118-BA16-Wstate-WhiteJ-20230713.pdf>