The Evolution of the ?Ordinary Business? Exclusion

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We were quoted in a recent Compliance Week story (subscription required) on the evolution of the ordinary business exclusion in getting the SEC staff to agree on companies' no-action requests for Rule 14a-8 shareholder proposal. The exclusion becomes more elusive over time, but requests that continue to be granted include proposals that the Staff agrees relate to the sale of a company's products and services, terms of code of conducts and policies, managing marketing and other expenditures and income tax risks. There are sometimes tough lines to draw, for example, proposals implicating board oversight of risk is not excludable, but if the proposal reaches into how management reviews risk, then it's excludable.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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