

Recent Developments on No-Action Letters Using the SLB 14I

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The SEC Staff decided that [a no-action letter](#) by Apple citing the recently issued SLB 14I was not excludable based on the information presented. The Staff noted that “We are unable to conclude, based on the information presented in your correspondence, including the discussion of the board’s analysis on this matter, that this particular proposal is not sufficiently significant to the Company’s business operations such that exclusion would be appropriate. As your letter states, ‘the Board and management firmly believe that human rights are an integral component of the Company’s business operations.’ Further, the board’s analysis does not explain why this particular proposal would not raise a significant issue for the Company.”

[In another letter](#) from Apple related to a proposal seeking a report on net-zero emission of greenhouse gases where the company had also supplemented their existing ordinary business arguments with a discussion of the board process, the Staff found that the proposal can be excluded based on traditional 14a-8(i)(7) arguments, determining that the proposal seeks to micromanage the company. The Staff did not address the board’s analysis presented under SLB 14I in that case.

Citigroup has submitted [a letter](#) arguing that a proposal seeking lobbying disclosure relates to operations which accounts for less than 5% of the company’s assets, net earnings and gross sales and also implicates the company’s ordinary business. The letter includes a discussion of the board analysis of the proposal. Since the company already provides most of the disclosures sought by the proposal, the company believes that the real focus is the company’s membership in and payments to trade associations, and concludes that those activities are not significant to the company’s business.

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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