

What the SEC Staff Said When They Denied Exclusion of Shareholder Proposals Under SLB 14I

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1. **Not enough detail** to support an argument that the proposal was not significant to the company

In December, [the first letter](#) was denied for failure to explain the board's reasoning.

- **The Staff indicated 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.” The company's letter stated that the matter was “integral” to the company.
- **Significance was referenced twice** in the same explanation, as the Staff concluded with the following: “[T]he board's analysis does not explain why this particular proposal would not raise a significant issue for the [c]ompany.”

2. **Quantitative or other factors** could help.

[Another letter was denied](#) a month later with the Staff including a reference that “the information presented does not include quantitative or other analysis that may be helpful in determining whether this particular proposal is significant to the Company's business operations.”

- **Note significance** comes up again.
- **Why it mattered:** Companies understood a more detailed explanation of the board's considerations would help.

3. **Back to details**, even when companies discussed factors and [concluded insignificance in the letter](#)

According to the Staff, “[a]lthough your discussion of the board's analysis sets forth several factors the board considered in evaluating the Proposal, it does not provide a sufficient level of detail to reach a determination that exclusion of the Proposal is appropriate”

4. **Significance and details take a back seat** to shareholder votes on prior similar proposals

In March, the Staff denied several letters that argued that the company already provided much of the information asked for by the proposal, and that the portion not covered is, in the board's view, not significant to the company. Among the factors that the letters stated were considered by the boards was the lack of interest in the topic during shareholder engagement.

- **Proponents argued otherwise** in response, focusing largely on significance and citing to multiple outside sources.
- **Both sides spent time:** Some of the full correspondence, with back-and-forth letters and supporting documents, reached over 100 pages.
- **The Staff acknowledged** the companies provided appropriate detail, noting that “your discussion of the board's analysis sets forth a number of factors, including an apparent lack of investor interest”

- **But, but, but:** The Staff then said, “the [p]roponent accurately notes that the [c]ompany’s shareholders have voted on similar proposals in recent years and that those proposals have received at least 25% of the vote,” and “your discussion of the board’s analysis does not adequately address these voting results.”
- **Why it matters:** If prior vote results are the deciding factor, then the proxy advisory firms’ recommendations on those proposals have a big influence.

5. Trying to discuss the prior votes fails to work

At least one company addressed the issue of [last year’s vote results](#) in its letter and tried to explain that, in light of the Staff’s other decisions, the Board considered those results in the context of the company’s shareholder engagement efforts.

- **The company explained** that it talked to its largest shareholders about its shareholder proposals and no one mentioned this proposal as being particularly significant to the company, and no shareholders other than the proponent had contacted the company about the topic in the proposal.
- **The outcome was the same:** denial.

6. Companies generally did not depend on SLB 14I in arguing ordinary business

The Staff made clear that companies could still succeed on arguing ordinary business without board involvement, and many did. [But in one case](#), the Staff called out the company for failure to include a board discussion.

- **The Staff said, “[w]e note that the no-action request does not include** a discussion of the board’s analysis and, as a result, we do not have the benefit of the board’s views on these matters.”

7. What happens next

If the outcome of the no-action letters depends largely on prior vote results receiving below a quarter of total shareholder support, entire categories of proposal topics are likely off the table for SLB 14I arguments regardless of boards’ views on significance to the company.

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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