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ARTIFICIAL INTELLIGENCE

AI Note-Taking: Many Things to Ponder

By Broc Romanek

Artificial Intelligence (AI) note-taking is the topic du jour. The first thing to know about this topic is that you need to experience it for yourself to see why it's so attractive. It's truly amazing. No more "spacing out" while attending a long, drawn-out panel. No more daydreaming while "listening" to a significant other. You can now rely on your AI companion to step in and make you look like a hero.

But there are risks with AI note-taking, and you need to understand how AI works in order to manage your own use of these tools—and be able to explain them to your senior managers and directors. You don't want them to get into hot water because they didn't understand the technology.

Suggestions for Using AI Note-Taking

As the voice of reason, you should be aware of a few things.

- **Be selective.** The meeting host, or an attendee with permission, should decide for each meeting whether AI note-taking is appropriate. Don't default to "always on"—you might end up with a written record that you don't want. Think about the level of confidentiality that's required, whether the topic or type of meeting is one that could be subject to litigation discovery in the future, and how your company's document retention policy will apply if the meeting is summarized in writing.
- **Bake AI into your board meeting compliance warnings.** As note-taking should be banned from board, and board committee, meetings (as you'll learn below), you're going to need to periodically remind directors, senior managers, independent auditors and anyone else attending these meetings that they can't take notes using AI (or otherwise, of course) from their phones or laptops.

  This warning goes neatly with your insider trading, confidentiality and Section 16 compliance reminders.
- **AI compliance and etiquette when taking notes.** There will be times that note-taking using AI can be useful outside of the board meeting context, and this is where guidelines and etiquette play a role. Whether it's an internal or external meeting, you should ask permission of those in the meeting if it's okay for you to use AI to take notes. Especially if the meeting is contentious in any way, various call recording laws may give a disgruntled participant a way to raise issues.

  There are exceptions to this, such as taking notes at a conference that you're attending that isn't using Chatham House rules. It's a little bit of a fine line when asking permission is appropriate (for example, small Zoom group meetings and in an interview with a candidate to work in your department if sensitive material isn't being discussed) and when it's unnecessary. Often, you can just announce that AI note-taking is being used or that the meeting is being recorded. Use your intuition to guide you here.

Note that if the people you are talking to know that AI is listening and transcribing, they may self-censor or avoid candid discussions. So, AI note-taking can have a chilling effect that human note-taking likely won't induce.

Broc Romanek *is editor of* Insights *and* TheGovernanceBeat.com.

Using a third-party AI tool—not an enterprise version that is "closed" within your company only—greatly increases the risk that whatever is said during the note-taking is now in the public domain. Even with a "closed" AI system, someone within your company will need to vet the AI vendor thoroughly to ensure that their product is aligned with your company's compliance, retention and data governance practices.

You should know that many companies are updating their policies to ensure AI records are addressed and people are trained in the best use cases as technology advances. Some are even implementing AI note-taking policies. You may need to be the one to raise this and consider whether it's needed, if it's not something that your company is already working on.

Reasons to Not Use AI Note-Taking

Here are the principal reasons why AI **should not** be used to take notes during board meetings:

1. **Confidentiality and data security.** Board meetings involve highly sensitive information. If the AI tool is cloud-based or relies on third-party providers, there's a risk of data breaches, unauthorized access or compliance issues under cybersecurity regulations and company policies. It's important to use enterprise versions of tools rather than consumer-facing versions, which tend to have fewer protections.
2. **Accuracy and context sensitivity.** AI might not fully understand nuance, tone or context, particularly in complex, high-stakes board discussions. It could misinterpret sarcasm, strategic ambiguity or off-the-cuff remarks and record them literally, creating a misleading or overly formalized version of the conversation.
3. **Attorney-client privilege risks.** Parts of board discussions may be protected by attorney-client privilege. It's unclear at this point whether privilege is waived if an AI tool captures and stores these conversations without appropriate safeguards. Don't take the risk of turning a protected conversation into discoverable evidence.
4. **Lack of discretion in editing.** Human note-takers know what not to include. AI might record verbatim or too much detail, which can create a more extensive record than intended. This can backfire if board minutes are ever scrutinized in litigation or regulatory inquiries.
5. **Regulatory and litigation exposure.** Anything recorded could become discoverable. Overly detailed or inaccurate AI notes could create risk in securities litigation, shareholder derivative suits or SEC enforcement inquiries. Think of it like your boardroom has its own court stenographer—with no filter.

How to (Appropriately) Use AI to Take Notes

I have offered the reasons why it's never appropriate to use AI to take notes at board and board committee meetings. I also noted that corporate secretaries should bake AI into their board meeting compliance warnings.

But there are plenty of situations where AI can truly be invaluable to help you take notes, such as internal meetings with fellow employees where the AI is "sandboxed," meaning that the content you input into the AI doesn't leave your employer's network (and thus is not used to train the large language model that is being used).

Here are a couple of examples of how you might use AI with someone that you manage.

Example 1: It can help you draft summary notes after personnel meetings to upload into your employee's Workday records. It also produces a list of follow-up action items for your team member. That allows you to focus on the conversation. The AI remembers your prior discussions and can suggest topics for periodic "touch base" meetings. You can ask the team member for permission before inviting the AI into the meeting. You then explain in advance how you will be using the output. Of course, you shouldn't rely entirely on the AI. It produces a draft.

The AI version that you use probably can be integrated with OneDrive, SharePoint, Outlook, or

Teams, so you can have the AI correlate a meeting summary with other information on the same project or related to the same employee.

Before the meeting, it can look at your email and chat conversations with the employee and identify topics for weekly one-on-one meetings or topics where you've provided performance coaching for follow-up. For example, how well did the recent project status report align with project plan commitments?

Example 2: You can ask the AI how well the team member's Workday objectives are aligned with your leadership's priorities and whether they meet SMART goal guidelines, then suggest an outline of coaching topics for your upcoming goals alignment conversation. AI then attends the meeting and produces the summary.

SEC Launches AI Task Force

By Jay A. Dubow and Ghillaine A. Reid

On August 1, the Securities and Exchange Commission (SEC) announced the formation of a new task force dedicated to harnessing artificial intelligence (AI) to enhance innovation and efficiency across the agency. This initiative, led by Valerie Szczepanik, SEC's newly appointed Chief AI Officer, marks a significant step in the agency's commitment to integrating this technology into its operations.

Purpose

The AI Task Force is designed to accelerate the integration of AI within the SEC, centralizing efforts to foster cross-agency and cross-disciplinary collaboration. The task force aims to navigate the AI lifecycle effectively, remove barriers to progress, and focus on AI applications that maximize benefits while maintaining governance. By supporting innovation from the SEC's various divisions and offices, the task force will facilitate responsible AI integration across the agency. This task force should allow the SEC to optimize the use of AI for internal use as well as to more quickly identify issues for potential rulemaking and enforcement investigations.

Leadership

Valerie Szczepanik will lead this initiative. Her previous roles include Director of the SEC's Strategic Hub for Innovation and Financial Technology and Senior Advisor for Digital Assets and Innovation.

SEC Chairman Paul Atkins emphasized the importance of this initiative, stating, "The AI Task Force will empower Staff across the SEC with AI-enabled tools and systems to responsibly augment the Staff's capacity, accelerate innovation, and enhance efficiency and accuracy." He highlighted the agency's mission to protect investors, maintain fair markets, and facilitate capital formation, all of which will be furthered by ingraining innovation agency wide.

Our Take

The establishment of the AI Task Force is indeed a forward-thinking step that aligns with the broader trends of digital transformation across various industries. By leveraging AI, the SEC aims to enhance its operational efficiency and accuracy, potentially leading to more timely and effective enforcement actions. This initiative could significantly benefit investors and contribute to maintaining fair markets.

However, several questions arise regarding the implementation of AI within the SEC. What measures will be in place to ensure the ethical use of AI? Addressing potential biases and ensuring transparency in AI-driven decisions are crucial for maintaining trust and integrity. The task force will need to establish robust frameworks to tackle these issues.

Facilitating cross-agency and cross-disciplinary collaboration is another key aspect of this initiative. The task force must navigate the challenges of integrating AI across different divisions and offices, ensuring seamless cooperation and communication.

The success of the AI Task Force could set a precedent for other regulatory bodies, potentially reshaping the landscape of financial regulation and oversight. As the SEC embarks on this journey, it will be interesting to observe how these challenges are addressed and what impact this initiative will have on the agency's ability to respond to emerging challenges in financial markets.

Jay A. Dubow *and* **Ghillaine A. Reid** *are partners of Troutman Pepper Locke LLP.*

PROXY SEASON

Shareholder Proposal Developments During the 2025 Proxy Season

By Geoffrey Walter, Natalie Abshez, Meghan Sherley, and Sherri Starr

This article provides an overview of shareholder proposals submitted to public companies during the 2025 proxy season, including statistics and notable decisions from the Staff of the Securities and Exchange Commission (SEC) on no-action requests. As discussed below, based on the results of the 2025 proxy season, there are several key takeaways to consider for the coming year:

- Shareholder proposal submissions fell for the first time since 2020.
- The number of proposals decreased across all categories (social, governance, environmental, civic engagement and executive compensation).
- No-action request volumes continued to rise and outcomes continued to revert to pre-2022 norms, with the number of no-action requests increasing significantly and success rates holding steady with 2024.
- Anti-ESG (environmental, social, and governance) proposals continued to proliferate in 2025, but shareholder support remained low.
- Data from the 2025 season suggests that the Staff's responses to arguments challenging politicized proposals—those proposals that express either critical or supportive views on ESG, Diversity, Equity, and Inclusion (DEI) and other topics—were driven by the specific terms of the proposals and not by political perspectives.
- New Staff guidance marked a more traditional application of Rule 14a-8, but the results of the 2025 season indicate that Staff Legal Bulletin 14M (SLB 14M) did not provide companies with a blank check to exclude proposals under the economic relevance, ordinary business or micromanagement exceptions.

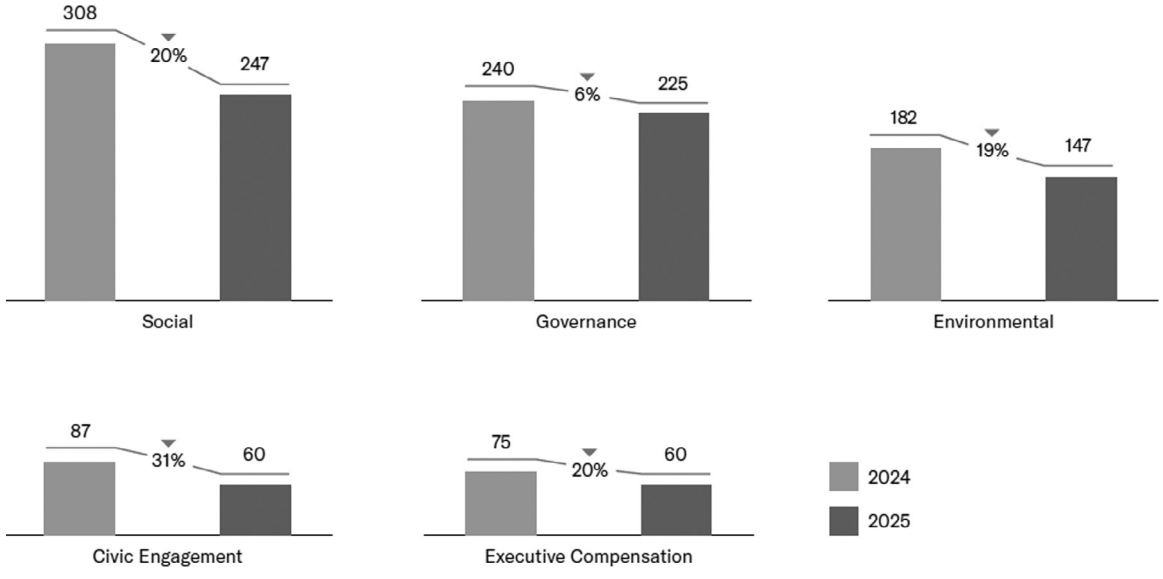
Geoffrey Walter, Natalie Abshez, Meghan Sherley, *and* **Sherri Starr** *are attorneys of Gibson, Dunn & Crutcher LLP.*

Shareholder Proposal Data

Shareholders submitted 802 proposals during the 2025 proxy season, down 14 percent from 929 in 2024. Social and environmental proposals combined represented 49 percent of all proposals submitted, down from 53 percent in 2024. The following and Exhibit 1 show the breakdown of the categories of shareholder proposals.

- *Social Proposals*: The largest subcategory of social proposals was nondiscrimination and diversity-related proposals, representing 45 percent of all social proposals, with 112 submitted in 2025, as compared to 97 in 2024. Of note, anti-ESG proposals made up 58 percent of nondiscrimination and diversity-related proposals, compared to 44 percent in 2024.
- *Governance Proposals*: Special meeting rights proposals replaced simple majority vote proposals as the most common governance proposal, representing 34 percent of these proposals, with 76 submitted, up from 29 proposals in 2024.
- *Environmental Proposals*: The largest subcategory of environmental proposals, representing 54 percent of these proposals, continued to be climate change proposals, with 80 submitted in 2025 (down substantially from 126 in 2024 and 150 in 2023).

Exhibit 1



- *Civic Engagement Proposals*: Lobbying spending proposals were up slightly, with 37 in 2025 and 35 in 2024. Political contributions proposals were down to 21 in 2025, as compared to 30 proposals in 2024. The number of political spending congruence proposals fell to 2 from 13 in 2024.
- *Executive Compensation Proposals*: The largest subcategory of executive compensation proposals continued to be those requesting that boards seek shareholder approval of certain severance agreements, representing 50 percent of these proposals, up from 44 percent in 2024.

As is shown in Exhibit 2, three of the five most popular proposal topics during the 2025 proxy season were the same as those in the 2024 proxy season—namely, nondiscrimination and diversity, climate change, and simple majority voting. The concentration of the top five most popular topics rose slightly from 39 percent of proposals submitted in 2024 to 43 percent of proposals submitted in 2025. This level of concentration is still below that of the 2022 and 2023 proxy seasons, (the concentration of the top five most popular topics was 49 percent in 2022 and 45 percent in 2023) as proponents continue to submit proposals across a broad spectrum of topics.

Shareholder Proposal Outcomes

The 2025 proxy season saw both new and continued trends in proposal outcomes that emerged in the 2024 proxy season (*see* Exhibit 3):

- the percentage of proposals voted on decreased (55 percent in 2025 compared to 63 percent in 2024);
- overall support increased slightly (23.1 percent in 2025 compared to 22.9 percent in 2024);
- the percentage of proposals excluded through a no-action request increased substantially (25 percent in 2025 compared to 15 percent in 2024); and
- the percentage of proposals withdrawn decreased slightly (13 percent in 2025 compared to 15 percent in 2024).

Social proposals saw higher withdrawal rates, with 19 percent of social proposals withdrawn in 2025 (compared to 12 percent in 2024), while environmental proposals saw a slight decrease in withdrawal rates, with 24 percent of environmental proposals

Exhibit 2

2025	2024
Nondiscrimination & diversity (14%)	Climate change (14%)
Climate change (10%)	Nondiscrimination & diversity (10%)
Special meeting (9%)	Simple majority vote (5%)
Simple majority vote (5%)	Director resignation bylaws (5%)
Lobbying payments and policy (5%)	Independent board chair (5%)

Exhibit 3

	2025	2024
Total number of proposals submitted	802	929
Excluded pursuant to a no-action request	25% (201)	15% (142)
Withdrawn by the proponent	13% (106)	15% (136)
Voted on	55% (439)	63% (587)

withdrawn in 2025 (compared to 29 percent in 2024). Shareholder proponents appear to have been more willing to withdraw their proposals after the publication of SLB 14M in February 2025, which signaled that the Staff would be applying a more traditional approach to evaluating Rule 14a-8 no-action requests.

Statistics on proposal outcomes exclude proposals that the ISS database reported as having been submitted but that were not in the proxy or were not voted on for other reasons (for example, due to a proposal being withdrawn but not publicized as such or the failure of the proponent to present the proposal at the meeting). Outcomes also exclude proposals that were to be voted on after July 1. As a result, in each year, percentages may not add up to 100 percent. ISS reported that 21 proposals (representing 3 percent of the proposals submitted during the 2025 proxy season) remained pending as of July 1, 2025, and 16 proposals (representing 2 percent of the proposals submitted during the 2024 proxy season) remained pending as of July 1, 2024.

Voting Results

- Shareholder proposals voted on during the 2025 proxy season averaged support of 23.1 percent, slightly higher than the average support of 22.9 percent in 2024.
- Notably, consistent with 2024, average support was depressed in part due to the voting results for anti-ESG proposals, which received average support of 1.4 percent.
- Excluding the 60 anti-ESG proposals that were voted on, average support for shareholder proposals during the 2025 proxy season was 26.6 percent.

Environmental Proposals. Average support decreased for the second year in a row to 10.8 percent, down from 19.0 percent in 2024. This was driven in part by the voting results for nine environmental anti-ESG proposals that were voted on in 2025, which averaged 1.9 percent support. Excluding those proposals results in average support for environmental proposals of 12.0 percent.

Social Proposals. Average support decreased to 7.6 percent in 2025, down from 13.2 percent in 2024. This decrease appears to be largely driven by the voting results on the 51 social anti-ESG proposals that were voted on, which garnered average support of 1.4 percent. Excluding those proposals, average support for social proposals was 11.7 percent on 79 proposals.

Governance Proposals. Corporate governance proposals received relatively high levels of support, averaging 40.9 percent support in 2025 and 42.5 percent support in 2024.

Top Five Shareholder Proposals by Voting Results

Exhibit 4 shows the five shareholder proposal topics voted on at least three times that received the highest average support in 2025. Compared to 2024, proposals requesting a report on political

Exhibit 4—Top Five Shareholder Proposals by Voting Results*

Proposal	2025	2024
Declassify board of directors	78.9% (13)	61.7% (7)
Simple majority vote (that is, eliminate supermajority voting)	73.3% (29)	70.5% (43)
Report on political contributions	41.8% (13)	23.9% (23)
Share retention policy for senior executives	33.8% (3)	28.9% (5)
Shareholder special meeting rights	32.7% (62)	43.4% (24)
*The numbers in the parentheticals indicate the number of times these proposals were voted on.		

contributions and a share retention policy for senior executives were new to the top five list for 2025.

Majority-Supported Proposals

As of July 1, 2025, 50 proposals (6 percent of the proposals submitted and 11 percent of the proposals voted on) received majority support, as compared with 48 proposals (5 percent of the proposals submitted and 8 percent of the proposals voted on) that had received majority support as of July 1, 2024.

Governance proposals have consistently ranked among the highest number of majority-supported proposals, and in 2025 they accounted for 88 percent of these proposals (compared to 92 percent in 2024).

No environmental, social or executive compensation proposals received majority support in 2025, compared to two environmental proposals receiving majority support and zero social or executive compensation proposals receiving majority support in 2024. This is a significant change from 2023 when environmental and social proposals together represented 24 percent of majority-supported proposals and 8 percent related to executive compensation (as of June 1, 2023). (*See* Exhibit 5.)

Exhibit 5—Proposals that Received Majority Support

Proposal	2025	2024
Simple majority vote (that is, eliminate supermajority voting)	23	31
Shareholder special meeting rights	9	5
Declassify board of directors	11	6
Report on political contributions	5	1
Repeal any bylaw provision adopted by the board without shareholder approval	1	1
Right to act by written consent	1	0

No-Action Requests

There were 378 no-action requests submitted during the 2025 proxy season, up 41 percent from the 269 requests submitted in 2024.[1] The 69 percent success rate, was relatively steady with the 68 percent success rate in 2024. The 2025 success rate was driven in part by the successful exclusion of 37 proposals submitted by the same proponent, an individual shareholder named Chris Mueller, representing over 18 percent of all successful no-action requests during the 2025 season. The proposals generally requested that the company (1) allow shareholders to hold shares in certificated form through Computershare's QuickCert service, (2) disclose how shareholders can use a direct registration system (DRS) to protect against short selling, or (3) provide additional disclosure regarding treatment of shares in direct stock purchase plans.

No-Action Request Statistics

Continuing the trend from the 2024 proxy season, the number of no-action requests rose significantly again during the 2025 proxy season, up 41 percent compared to 2024. The Staff granted approximately 69 percent of decided no-action requests in 2025, signaling a continued trend of

Exhibit 6—No-Action Request Statistics

	2025	2024	2023
No-action requests submitted	378	269	176
Submission rate*	47%	29%	20%
No-action requests withdrawn	75 (20%)	57 (21%)	34 (19%)
Pending no-action requests (as of July 1)	13	4	0
Staff Responses†	290	208	142
Exclusions granted	201 (69%)	142 (68%)	82 (58%)
Exclusions denied	89 (31%)	66 (32%)	60 (42%)

*Submission rates are calculated by dividing the number of no-action requests submitted to the Staff by the total number of proposals reported to have been submitted to companies.

†Percentages of exclusions granted and denied are calculated, respectively, by dividing the number of exclusions granted and the number denied, each by the number of Staff responses.

Exhibit 7—Success Rates by Exclusion Ground

	2025	2024	2023
Procedural	94%*	68%	80%
Ordinary business	60%	68%	50%
Duplicate proposals	57%	50%	100%
Substantial implementation	52%	33%	26%
Resubmission	43%	88%	43%
Economic relevance	29%	0%	0%
False/misleading	28%	0%	0%
Violation of law	0%	79%	33%

*Excluding the no-action requests submitted by Chris Mueller, the procedural success rate in 2025 was 91 percent.

returning to the higher success rates in 2021 and 2020 (71 percent and 70 percent, respectively). Withdrawal rates remained relatively steady with 2024 despite the higher submission rate in 2025. (*See* Exhibit 6.)

Common Arguments for Exclusion

Consistent with 2024, ordinary business and substantial implementation were the most argued substantive grounds for exclusion in the 2025 proxy season. In fact, the top four most common arguments for exclusion were the same in 2024 and 2025. (*See* Exhibit 7.)

- **Ordinary Business—Rule 14a-8(i)(7):** Proposals relating to the company's ordinary business and that micromanage the company were 40 percent in 2024 and 56 percent in 2025.
- **Procedural:** Procedural arguments include defects related to share ownership, number of proposals, proposal word limit, missed deadlines, statements regarding availability to meet, written documentation for proposal by proxy, procedural and eligibility deficiencies and attendance at meetings. In 2024 these were 33 percent and down to 30 percent in 2025.
- **Substantial Implementation—Rule 14a-8(i)(10):** This relates to if the company has already substantially implemented the proposal. This was relatively steady with 22 percent in 2024 and 20 percent in 2025.
- **False/Misleading—Rule 14a-8(i)(3):** Proposals or supporting statements that are contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials were 16 percent in 2024 and 12 percent in 2025.
- **Economic Relevance—Rule 14a-8(i)(5):** Proposals relating to operations that account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business. These were 1 percent in 2024 and 7 percent in 2025.

Top Proposals Challenged

- **Lobbying Payments and Policy:** Twenty-six proposals relating to reports on lobbying activities were challenged by no-action request, with 17 successful requests granted on ordinary business grounds, each under the "micromanagement" exception under the second consideration of Rule 14a-8(i)(7) and the one remaining successful request granted on procedural grounds.
- **Hold Certificated Shares Using QuickCert:** Twenty-two proposals relating to allowing shareholders to hold certificated shares using QuickCert were challenged by no-action request, with 18 successful requests granted on procedural grounds, and the two remaining successful requests granted based on the first consideration of Rule 14a-8(i)(7), the "ordinary business" exception.
- **Simple Majority Vote (elimination of supermajority voting provisions):** Fifteen proposals relating to simple majority vote were challenged by no-action request, with eight successful requests granted on substantial implementation grounds, and the two remaining successful requests granted on procedural grounds.
- **Special Meeting Threshold:** Thirteen proposals relating to special meeting thresholds were challenged by no-action request, with seven successful requests granted on procedural grounds, two granted on duplication grounds and one granted on substantial implementation grounds.

SLB 14M

On February 12, 2025, the Staff issued guidance in SLB 14M, reinstating standards based on Commission statements that preceded Staff Legal Bulletin 14L (SLB 14L) (issued in November 2021). SLB 14M marked a return to a more traditional administration of the shareholder proposal rule. Among its top impacts were:

- Reinvigorating the Rule 14a-8(i)(5) "economic relevance" exclusion.
- Realigning the Staff's approach to the Rule 14a-8(i)(7) "ordinary business" exclusion.
- Reaffirming the application of the Rule 14a-8(i)(7) "micromanagement" exclusion.

In SLB 14M, the Staff stated that companies could submit new no-action requests or supplement existing no-action requests after their deadlines to address the SLB 14M guidance. As a result:

- Twenty-seven substantive no-action requests were submitted under SLB 14M after the company's original no-action request deadline with "good cause."
- Twenty-nine supplemental letters advancing SLB 14M arguments were submitted following the publication of SLB 14M in connection with pending no-action requests.

Although SLB 14M was viewed by some as more company-friendly, it did not provide companies with a "blank check" to exclude proposals under the economic relevance or ordinary business and micromanagement exclusions. No-action requests decided following SLB 14M had the following success rates:

- Ordinary business: 57 percent.
- Micromanagement: 52 percent.
- Economic relevance: 31 percent.

Resurgence of Successful Micromanagement Arguments

Micromanagement Arguments

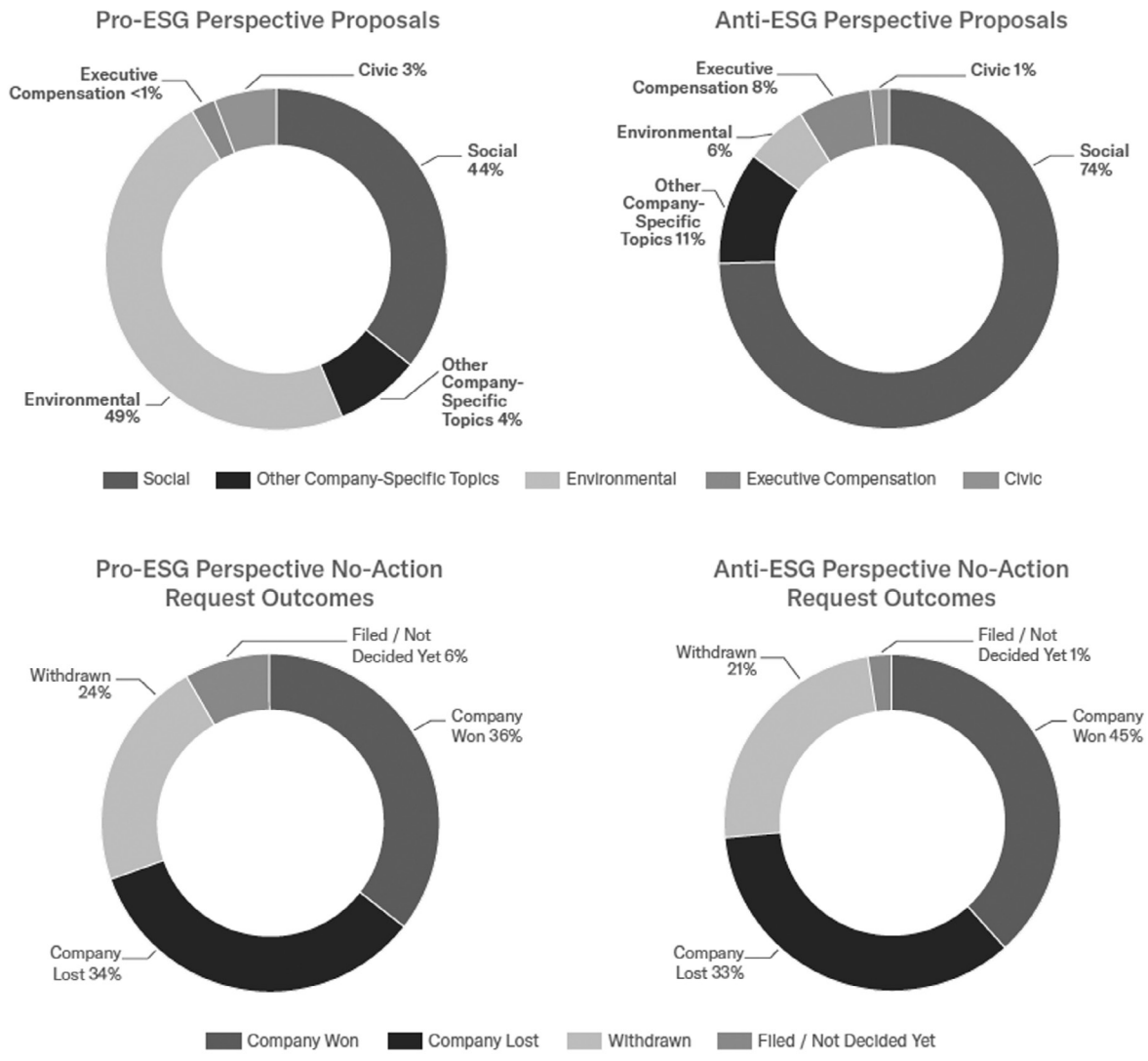
In the wake of SLB 14L, the submission rate and success rate for micromanagement no-action requests declined significantly. In 2024, the submission rate and success rate for micromanagement arguments recovered significantly, with companies submitting 64 no-action requests that argued micromanagement (up from 41 in 2023) with a success rate of 66 percent, more than double the 31 percent success rate in 2023, driven in part by increasingly prescriptive proposals.

Companies increasingly argued micromanagement in the 2025 proxy season, with companies submitting 158 no-action requests arguing micromanagement, up 147 percent from 2024, and up 285 percent from 2023. Notably, success rates for micromanagement arguments declined to 51 percent in 2025, likely due in part to companies advancing more micromanagement arguments in response to the high success rate in 2024.

Lobbying Shareholder Proposals

This success is best reflected in the *Air Products and Chemicals, Inc.* letter, where the company successfully excluded on micromanagement grounds a proposal requesting an extensive and detailed report on the company's lobbying practices. Notably, prior to the *Air Products* decision, lobbying proposals, (one of the most common civic engagement shareholder proposals of the last decade), had not been successfully excluded on micromanagement grounds.

Exhibit 8



Following the *Air Products* decision, 25 companies sought the exclusion of similar traditional lobbying proposals on micromanagement grounds, with 17 of these proposals successfully excluded on micromanagement grounds and the remaining eight proposals withdrawn.

No-Action Requests Challenging Politicized Proposals

In 2025, 105 pro-ESG proposals were challenged via no-action requests, and 73 anti-ESG proposals were challenged via no-action requests. Exhibit 8 reflects the most common topics of these politicized proposals and their no-action request outcomes. Consistent with overall results, ordinary business (including both matters relating to the company's ordinary business and micromanagement arguments) and substantial implementation arguments were the most successful substantive grounds for excluding both proposals reflecting pro- and anti-ESG perspectives.

Overall, 58 percent of the no-action requests challenging proposals reflecting anti-ESG perspectives were successful in the 2025 proxy season, as compared to a success rate of 51 percent for proposals reflecting pro-ESG perspectives.

Note

1. Gibson Dunn remains a market leader for handling shareholder proposals and related no-action requests, having filed over 20 percent of all shareholder proposal no-action requests each proxy season in recent years.

Shareholder Engagement Considerations in Light of *Texas v. Blackrock*

By Helena K. Grannis, Joseph M. Kay, and Shuangjun Wang

In August, the Court in *Texas v. Blackrock* issued an opinion largely denying defendants' motion to dismiss. This allows a coalition of States to proceed with claims that BlackRock, State Street, and Vanguard conspired to violate the antitrust laws by pressuring publicly traded coal companies to reduce output in connection with the investment firms' ESG commitments.[1]

The Court found that the States plausibly alleged that defendants coordinated with one another, relying on allegations that they joined climate initiatives, made parallel public commitments, engaged with management of the public coal companies, and aligned proxy voting on disclosure issues. It is worth noting that, while the court viewed BlackRock's, State Street's, and Vanguard's participation in Climate Action 100+ and the Net Zero Asset Managers initiative (NZAM) as increasing the plausibility of the claim in favor of denying the motion to dismiss, the Court clarified that it was not opining that the parties conspired at Climate Action 100+ or NZAM.

The decision is novel in the sense that it allows claims to proceed against minority shareholders for agreeing with one another on how to manage competing companies in the same industry. While the States chose not to bring claims against the coal companies themselves, publicly traded companies that knowingly work with one or more shareholders to decrease production output, raise prices, or change production inputs across competing firms are at risk of being held liable for joining a conspiracy. The reasoning of the opinion suggests that a conspiracy joined by the publicly traded firms would potentially be a per se unlawful antitrust conspiracy even if motivated by a desire to meet emissions targets or environmental goals.

Beyond the specific facts of this case, we expect there may be increased focus by plaintiffs on analogous scenarios going forward, including companies with shared ownership (including through multiple unaffiliated institutional investors) making parallel changes or companies changing practices to follow other companies and/or industry trends in response to pressure from the same shareholders.

The decision also relies on public Scope 3 emissions disclosures that the companies made in response to shareholder pressure both to support the output reduction conspiracy claim and a separate claim for unlawful exchange of competitively sensitive information. The States argued that the Scope 3 emission disclosures allowed competitors to easily derive future coal production plans and that companies were able to use that information to ensure that output decreased.

As noted above, this is just an initial decision denying the defendants' motion to dismiss, and a decision on the facts will not be made until summary judgment at the earliest. However, companies should consider the implications of this initial decision when shareholders that may own minority stakes across publicly traded competitors ask companies to commit to changes that would reduce output or to disclosures that would allow competitors to reverse engineer competitively sensitive information such as future output.

While companies can consider what others in the industry have publicly announced, each company should always make its own independent decisions about pricing, output, and business strategy based on what is in its own interest. Companies can consider

Helena K. Grannis, Joseph M. Kay, *and* **Shuangjun Wang** *are attorneys of Cleary Gottlieb Steen & Hamilton LLP.*

input from shareholders and other stakeholders but may be taking on greater risk when they take an action advocated by one or more shareholders (or other climate change advocates) that are also lobbying for actions at competing firms.

Companies should avoid engaging with their competitors and overlapping shareholders in a group setting, or taking action because shareholders promise that they will also pressure competing firms to act similarly. The *Texas* case provides new contours to risk of a finding of collective action through industry or other groups, by including shareholders as a nexus to potential coordination.

Similarly, we expect shareholders also may refresh their engagement effort strategies in light of this case and take a more conservative, thoughtful and tailored approach to outreach with each company to avoid any optics of coordination among themselves or among their portfolio companies. Coupled with the recent 13D/13G rule changes, the potential for conspiracy liability stemming from this decision may have a cooling effect on engagement frequency and soften the pressure that shareholders place on companies to make changes in line with their policies.

Note

1. *https://texasattorneygeneral.gov/sites/default/files/images/press/Order on MTD - Blackrock.pdf.*

EXECUTIVE PAY

Granting Stock Options: How Do Accounting Values Compare Against "In-the-Money" Values?

By Ira T. Kay, Ed Sim, and Michael Bentley

Our research shows that the grant date *accounting value* (for example, Black-Scholes value) is significantly lower than the future *in-the-money value* of most stock options. This is a unique topic of research in the executive compensation field.

Stock option accounting rules require companies to determine the fair value of stock-based compensation awards at the date of grant, which are significant and irreversible. This requires an option-pricing model, such as the Black-Scholes-Merton (Black-Scholes) model or a lattice (Binomial) model, that factors the exercise price, stock price volatility, expected term, dividend yield, and risk-free interest rate at the time of grant to estimate an economic value of the award.

However, this accounting value differs significantly from the in-the-money value of options, which is zero at the time of grant. This can be confusing to Compensation Committees, HR leaders, and recipients, as the grants are set and disclosed in the proxy's Summary Compensation Table at their accounting value. In some cases, option awards expire without ever being in-the-money. However, in most cases, option grants are exercised after vesting at a higher stock price, which can yield greater in-the-money value than the accounting value. This article takes a deeper dive into this differential of accounting versus in-the-money values.

Ira T. Kay *is a managing partner, and* **Ed Sim** *and* **Michael Bentley** *are consultants, of Pay Governance LLP.*

Analysis

To quantify the potential differential between the accounting versus in-the-money value, we compared:

- The grant date accounting value *to*
- The future in-the-money value assuming an option is exercised at the expected term date, discounted to present value.

This consistent time frame was used across all option grants analyzed to ensure comparability among companies, although actual timing and stock prices chosen by the executive differ from the expected term used for our study. A sample calculation is show below for illustrative purposes:

- Company A granted an option in 2010 with a current stock price of $10, with an accounting value of $4.50 (45 percent) and expected term of five years.
- The stock price five years later (the expected term used in the grant date fair value), in 2015, is $25; the in-the-money value of the option is $15 ($25–$10), with a present value of $10.21 (8 percent cost of equity rate of return discounted for five years).
- In this case, the accounting value is significantly below the in-the-money value by $5.71 ($10.21–$4.50), that is, the in-the-money value is 227 percent of the accounting value ($10.21/$4.50).

Our data set includes all option grants for S&P 500 index constituents as of January 1, 2010, and covers 10 years' worth of grants (2010 to 2019)[1] that meet the following disclosure conditions: The accounting value and assumptions used in the valuation were disclosed, for a total of 2,159 data points. Exhibit 1 summarizes the ratio of the in-the-money present value to the accounting value:

Exhibit 1—Ratio of In-the-Money Present Value as a Percentage of Accounting Value (n = 2,159 stock option grants)

	In-the-money Present Value as a % of Accounting Value										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	10-yr Total
N Count	266	256	241	234	217	210	198	192	174	171	2,159
P25	93%	66%	67%	51%	0%	0%	62%	0%	15%	11%	42%
P50	223%	195%	232%	183%	155%	179%	249%	166%	181%	189%	195%
P75	412%	398%	438%	468%	368%	401%	530%	346%	374%	381%	407%
Average	296%	260%	287%	299%	241%	264%	330%	246%	232%	248%	272%
# of Awards Underwater	29	39	33	41	55	58	39	51	41	41	427
% Underwater	*11%*	*15%*	*14%*	*18%*	*25%*	*28%*	*20%*	*27%*	*24%*	*24%*	*20%*

- A ratio of 200 percent indicates that the in-the-money present value of the option award was double that of the accounting value.
- A ratio of 100 percent indicates the in-the-money present value of the option award was equal to the accounting value.
- A ratio of 0 percent indicates the in-the-money present value was $0, as it was underwater.

Exhibit 1 contains robust data that shows:

- Our primary finding: Around 65 percent of the options (1,409) end up with an in-the-money present value that is above the accounting value.
- These statistics indicate that the present value of the in-the-money amounts are consistently and materially above the accounting values as of the expected term date.
- The median ratio of in-the-money present value to accounting value for each of the 10 years ranges from 155 percent to 249 percent, with a total sample median for all 10 years of 195 percent.
- Across the total sample, 20 percent (427) of option awards are underwater as of the expected term date.
- An additional 15 percent (323) are in-the-money but below the accounting value.

When companies grant stock options, they typically utilize the accounting value to calculate a number of options that would be equivalent to a grant of a full-value award, such as a time-based restricted stock unit (RSU). For example, if the accounting value of an option was $5 versus the stock price of $20, the company would grant four options compared to one full value award. This creates more leverage in potential values, which has yielded significant value for many organizations as the S&P 500 has grown ~600%, a compound annual growth rate of ~14 percent over the 2010-to-2024 time period covered in the analysis. However, there is still a population of companies where such leverage has not paid off with the option being underwater and having zero value while an RSU would have kept some value.

In addition, our analysis yielded several other interesting observations:

- Healthcare and Information Technology companies had the highest ratios of in-the-money present value to accounting value, with a median of 265 percent and 247 percent, respectively, over the 10-year time period. This indicates a strong and sustained appreciation in equity values post-grant.
- For Information Technology companies, these high ratios are in spite of the highest accounting valuations in the group — median accounting value is 30 percent as a percentage of market

value at the time of grant over the 10-year time period compared to a median of 24 percent for the total sample.

- Consumer Discretionary and Materials companies had the lowest ratios of in-the-money present value to accounting value, with a median of 133 percent and 158 percent, respectively, over the 10-year time period. This suggests slower equity growth and sector-specific headwinds.
- Approximately half of companies have had all of their option grants over the 10-year period be in-the-money at the time of the expected term; conversely, approximately 20 percent of companies have had more than half their option grants be out-of-the-money.

Conclusion

Our analysis shows that the in-the-money present value is higher than the accounting value for the majority of option awards. It is important for Compensation Committee members, HR leaders, and award recipients to understand the difference and purpose of the two values. It also highlights the need for appropriate communications and education around various incentive vehicles, as options have a unique reward profile that our data shows have potentially significant value over longer periods of time and comes with unique financial planning flexibility. Further studies will investigate stock option values granted during down years, for example, COVID.

Note

1. The analysis stops at 2019 grants to ensure there is an actual stock price to value at the time of the expected term date (~six years).

AUDIT COMMITTEES

PCAOB Suggests What Auditors Should Ask Before Accepting an Engagement

By Dan Goelzer

The Public Company Accounting Oversight Board (PCAOB) has issued "Engagement Acceptance," a publication in the PCAOB's Audit Focus series.[1] Engagement Acceptance highlights reminders and considerations related to engagement acceptance and suggests questions that an auditor should ask before accepting an engagement.

Although the PCAOB prepared Engagement Acceptance as guidance for auditors, particularly those who audit smaller public companies or brokers and dealers, audit committees also may want to review the paper. Audit firms may ask the audit committee to respond to the questions the PCAOB suggests when the company is seeking to engage a new auditor, and the committee should be prepared to respond.

The PCAOB's auditing and quality control standards contain various requirements related to engagement acceptance. The new quality control standard, QC 1000, which will take effect on December 15, 2025, requires the auditor to consider the nature and circumstances of the potential engagement and to make appropriate judgments about the associated risks and the audit firm's ability to perform the engagement under applicable professional and legal requirements.

In addition, AS 2610 requires a successor auditor to make certain inquiries of the predecessor auditor. AS 1301, the standard governing communications with audit committees, states that the auditor should discuss with the audit committee any significant issues that the auditor discussed with management in connection with the auditor's appointment. The PCAOB's suggested auditor questions and considerations reflect the requirements of these standards.

Some of the questions that Engagement Acceptance suggests that auditors explore before accepting an engagement involve the potential client's audit committee or might be posed to the audit committee. These include:

- Were there any recent changes in ownership, company management, the board of directors, or the composition of the audit committee related to the prospective engagement? What were the reasons for the changes?
- What are the qualifications of the company's current management team and the audit committee associated with the prospective engagement, and do these qualifications enable them to execute their roles and responsibilities effectively?
- Were there any risk factors that indicate that company management and those charged with governance lack integrity?
- Was the company's management or audit committee aware of any improper activities conducted by the former auditor during interim reviews or annual audits, including activities related to the supervision of the audit or to the engagement quality review?

Dan Goelzer *is a retired partner of Baker McKenzie, a major international law firm. He advises a Big Four accounting firm on audit quality issues. From 2017 to July 2022, Dan was a member of the Sustainability Accounting Standards Board. The SEC appointed him to the Public Company Accounting Oversight Board as one of the founding members, and he served on the PCAOB from 2002 to 2012, including as Acting Chair from 2009 to 2011. From 1983 to 1990, he was General Counsel of the Securities and Exchange Commission.*

- Was the company's management or audit committee aware of any illegal acts identified by the predecessor auditor and not reported to the US Securities and Exchange Commission (SEC or Commission) or any other relevant regulators?

Audit committees also should be aware of the questions that the PCAOB suggests a successor auditor ask of the predecessor auditor. Questions that may bear on the audit committee's role include:

- Is there information that might bear on the integrity of management?
- Did the predecessor auditor have any disagreements with management as to accounting principles, auditing procedures, or other similarly significant matters?
- What communications were made between the predecessor auditor and the audit committee (or others with equivalent authority and responsibility), regarding fraud, illegal acts by clients, and internal-control-related matters?
- What is the predecessor auditor's understanding as to the reason for the change of auditors?
- What is the predecessor auditor's understanding of the nature of the company's relationships and transactions with related parties and significant unusual transactions?

Audit Committee Takeaways

As noted above, the "Engagement Acceptance" publication is a useful resource for audit committees when selecting a new auditor. Committees naturally tend to focus on the questions that they plan to ask prospective audit firms. It is, however, useful to also reflect on what the auditor candidates may ask the committee and to be prepared with cogent and informative answers.

Audit committees also might find these questions helpful from another perspective. Any sophisticated auditor would likely seek to explore the issues raised in the PCAOB's suggested questions before accepting an engagement. Moreover, the PCAOB's standards require some of the inquiries. If candidates do not ask these or comparable questions, the audit committee may view that as a red flag concerning the auditor's competence.

Note

1. *https://pcaobus.org/resources/staff-publications/audit-focus–engagement-acceptance.*

STATE LAW

Nevada Court Finds Business Judgment Rule Applies to Nevada LLCs

By Sean Donahue, Tim Reynolds, and Meg Dennard

The Nevada District Court recently clarified that the business judgment rule—a fundamental corporate law protection—applies to limited liability companies when their operating agreements specify fiduciary duties. The presumption that business leaders act in good faith and in the company's best interest in pursuing decisions of the company is a cornerstone principle of corporate law. Without it, companies would take less calculated business risks and as a result, grow more slowly for fear that every judgment call would be second-guessed in litigation.

While that principle, the business judgment rule, is sacrosanct in corporations, it was until recently less clear that the same principle applied to Nevada limited liability companies absent express language in the limited liability company's (LLC) governing documents.

In a recent opinion of the Nevada District Court, Judge Maria Gall, a member of the Eighth Judicial District's Business Court, confirmed that the business judgment rule presumption *does apply* to Nevada limited liability companies that specify the fiduciary duties of their members in the LLC operating agreement while also reiterating the core concept of limited liability companies: Those entities are creatures of contract and thus exculpation from liability must be strictly construed in the governing agreements.

The court's well-reasoned opinion underscores Nevada's growing strength in business law matters and shows its judges are capable of handling complex matters as it looks to create a dedicated appointed business court in the future. (Nevada business court judges are currently elected and hear cases in multiple areas of law.)

Sean Donahue, **Tim Reynolds**, *and* **Meg Dennard** *are attorneys of Paul Hastings LLP.*

The Business Judgment Rule in Nevada

Nevada law codifies the business judgment rule as the standard of judicial review for fiduciaries of a corporation in NRS 78.138(3). However, the statutory provisions governing Nevada LLCs do not contain an equivalent statutory business judgment rule for LLC fiduciaries. Similarly, Nevada law codifies corporate exculpation in NRS 78.138(7) but does not have a statutory exculpation provision for LLCs.

The reason is straight forward: LLCs are creatures of contract law and parties are presumed to have included the specific provisions necessary to run the business within the context of the statutory code. Nevada permits parties wide latitude in drafting agreements that fit with the parties' preferences for running the business.

The *Silva v. Clay, et al.* Decision

The *Silva* case[1] arose from a dispute between Francisco Silva, the chief science officer of CPI Management Group LLC (CPI), a Nevada limited liability company providing stem cell therapy treatment, and CPI's other LLC members (the Members). In 2021, Silva and the Members signed an LLC operating agreement, which governed the operation of CPI and expressly provided that each LLC member owed fiduciary duties to the company.

The complaint alleges that in 2024, Silva discovered an alleged series of personal cash transfers from

CPI to the Members that Silva alleged diverted millions away from CPI to the Members for their own personal gain. Silva brought claims for breach of fiduciary duties, including fiduciary duties of loyalty and care. The Members filed a motion to dismiss, which the court granted in part and denied in part.

The critical issue that the court analyzed was the application of the Nevada business judgment rule to the decisions of the entity's fiduciaries when the operating agreement did not expressly state that the business judgment rule applied to decisions of the entity's members or its managers.

Applying general corporate business principles in Nevada and in reference to legal treatises, law review articles, and precedent from other jurisdictions, including Delaware, the court held that the business judgment rule did apply. The court reasoned that because the operating agreement expressly incorporated fiduciary duties, it is *implied* that "the members incorporated the business judgment rule to assess whether they breached those duties."

The court concluded that the business judgment rule is meant to be applied to any breach of fiduciary duties, even absent express language setting forth the rule or a similar presumption in an LLC operating agreement, because without that business judgment rule presumption, courts would be forced to second-guess the decisions of business fiduciaries—the exact situation that the presumption in the business judgment rule is meant to prevent.

Notably, however, the court declined to extend NRS 78.138(7) (the exculpation provisions) to the operating agreement at issue. The court reasoned that, while the inclusion of fiduciary duties in an LLC operating agreement implies the existence of the business judgment rule to examine whether they have been breached, it does not imply that the LLC members intended to contract for member exculpation absent an express provision in the agreement. The court referenced the operating agreement's express exculpation provision, which provided certain protections (but not as robust as the statutory provisions) and reasoned that the parties specifically contracted for those limited exculpation provisions.

Applying its reasoning to the case at hand, the court found that Silva's allegations against the Members, which included misappropriation of company assets and opportunities for the Members' personal enrichment and diversion of company funds, were sufficient to rebut the presumption of the business judgment rule with respect to the breach of the duty of loyalty claim.

Accordingly, the Members' motion to dismiss was denied. With regards to the duty of care claim, the court dismissed the claim because (1) Silva's allegation that the Members improperly enriched themselves was a breach of the duty of *loyalty*, not the duty of care, and (2) Silva failed to allege any other particularized facts showing that the decisions the Members made, including the decision to terminate him from his position and terminate his membership interest, were grossly negligent or uninformed.

The court's reasoning tracks statutory and common law principles in cases involving complex questions of fiduciary duties. The decision provides clarity for litigants that the business judgment rule does apply to LLCs while also reinforcing the core tenants of limited liability companies—the contract will govern.

Key Takeaways and Nevada's Future Appointed Business Court

First, Nevada businesses, particularly LLCs, should be comforted by the well-reasoned and practical approach to the application of the business judgment rule in Nevada. This decision reinforces the presumption and applies it to those entities that include references to the fiduciary duties of members, managers, officers, and directors.

Second, Nevada LLCs and their managers, members, officers, and directors should be very mindful of the exculpation provisions in the operating agreement. This decision underscores the importance of clear contracts that include fulsome protections for those business decisions, including indemnification and exculpation, to the fullest extent provided by law and strengthens the strong presumption that LLC

governing agreements are matters of contract law and the plain language shall govern with respect to the conduct of its members, managers, officers, or directors.

To the extent any Nevada entity believes its governing agreements should be clarified, updated, or reinforced, those entities should promptly contact counsel to ensure adequate protections are put in place.

Third, the decision provides insight into how Nevada's business courts analyze legal issues. Nevada courts generally take a statutory approach to analyzing corporate law matters, but this case shows that in the absence of clear statutory language, they will take a more mixed approach, combining the well-established jurisprudence of other jurisdictions, including Delaware, with legal scholarship and common law principles.

As more corporations incorporate in or reincorporate to Nevada, and as more Nevada LLCs are formed, likely leading to an increase in business disputes, the Nevada business courts may develop more of their own legal tests to analyze key issues and begin to further distinguish Nevada from other jurisdictions.

Finally, Nevada eyes a dedicated appointed business court capable of handling large numbers of complex business disputes similar to the Delaware Court of Chancery. Complex business courts require practical and business-minded jurists to manage a considerable number of disputes. Judge Gall's decision is precisely that well-reasoned decision that will provide comfort to business leaders weighing challenging decisions, including whether to reincorporate, reestablish or open new ventures under Nevada law and subject to Nevada courts.

Note

1. Silva v. Clay, et al., A-25-909767-B, Nev. Dept. No. IX, July 3, 2025.

IN-HOUSE PRACTICE

10 Shifts That Turn Law Firm Lawyers into Indispensable Partners

By David Hamm

During my tenure as a senior in-house lawyer, I've worked with outside counsel who've become indispensable strategic partners—and others who, despite being technically excellent, never earned a seat at the table.

The difference almost never came down to raw legal skill. It came down to how they engaged, communicated, and added value in the real-world context of my role—often under the pressure of board meetings, urgent C-suite requests, and complex, high-stakes decisions.

If you're a firm lawyer who wants to consistently be the one in-house counsel calls first, here are 10 practical shifts to make.

1. From Understanding Law to Understanding Law and Business

Knowing the law is table stakes. Knowing the business—how it makes money, the pressures it faces, the competitive landscape—turns legal advice into strategic counsel. The best outside lawyers invest the time to understand industry drivers, market trends, and the company's unique priorities so they can frame legal advice in a way that's both relevant and actionable.

2. From Risk-Averse to Risk-Calibrated

In-house lawyers live in a world where risk is constant. The question isn't "avoid risk at all costs" but "what's an acceptable level of risk for this situation?" Outside counsel who understand the client's risk tolerance—and calibrate their advice accordingly—become trusted advisors. Illegal is illegal, but everything else lives on a spectrum. Learn where your client sits on that spectrum.

3. From Delivering Work Product to Delivering Solutions

A three-page memo is rarely the goal; solving the underlying problem is. The best outside counsel cut to the chase: here's the issue, here's the answer, here's what you should do next. That clarity and decisiveness builds trust quickly.

4. From Verbosity to Brevity and Clarity

In boardrooms and C-suite conversations, brevity is currency. The best outside lawyers can distill complex issues into a few clear bullet points, free of jargon. If you can't explain it simply and quickly, you risk losing the room—and the relationship.

5. From CYA to ITTWY ("In the Trenches with You")

Cover-yourself memos that shift responsibility from the firm to the client are relationship killers. They send a message that you're protecting yourself, not partnering with us. If you want to build long-term trust, be shoulder-to-shoulder with your client in solving the problem, not drafting distance.

6. From "I'll Slot You In" to Availability and Priority

The best outside counsel makes clients feel like they're the most important on the roster. It's not just about answering the phone—it's about making the client feel prioritized. When that's genuine, it's felt, and it's rewarded with loyalty and more work.

David Hamm *is a former Senior Vice President and Deputy General Counsel at Summit Materials.*

7. From Reactivity to Proactivity

Don't wait for the phone to ring. Anticipate your client's needs. Send timely, relevant updates. Flag changes in the industry or policy that could affect the business. Share something your client can forward to the board that makes them look good. Proactivity signals that you're thinking about the client even when the meter isn't running.

8. From Viewing Clients as Revenue to Being a Value-Add

We all know the difference between being treated as a source of income and being treated as a relationship worth investing in. The best outside lawyers approach the work with a "here to serve" mindset. Revenue follows value—it doesn't create it.

9. From Filling Chairs to Providing Top Talent

Clients know when you've staffed their matters with your best people versus whoever had capacity. Always choose the former. Your credibility—and the client's trust—rides on the talent you put on their matters.

10. From Business as Usual to Creative Thought Partnership

This is where Blue Ocean Strategy comes in—finding ways to serve your client that your competitors haven't even thought of. If you haven't read the book, it is definitely worth the read! Don't just ask about the matter in front of you. Ask:

- What are the legal pain points your team faces that we can help remove?
- Can we bring legal tech tools you don't have funding for?
- What trainings could we deliver that make your business teams sharper—and make you look good to them?
- Are there talent gaps we can help fill temporarily or recruit for?

Entire service lines can emerge from these questions. By creating value that no other firm is offering, you open new "blue oceans" where you're not competing for the same limited pie—you're expanding it.

Bringing It All Together

Technical excellence is assumed. What sets truly indispensable outside counsel apart is how they engage, communicate, anticipate, and serve. These 10 shifts move you from vendor to trusted strategic partner—the kind who gets the call before the board meeting, not after.

I've seen firsthand how these principles change the trajectory of firm–client relationships. I'm happy to come speak with your team about how to put these principles into practice and build the kind of client relationships that last for decades.

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