

Exxon Proxy Statement Lawsuit May Chill Investor ESG Proposals

By: Domenico Minerva and James Fee, Labaton Keller Sucharow LLP



In November 2021, the U.S. Securities and Exchange Commission published Staff Legal Bulletin No. 14L (“SLB 14L”), unveiling its restrictive position towards issuing no-action letters for excluding shareholder proposals from proxy statements. Following SLB 14L’s implementation, companies obtained fewer shareholder proposal exclusions and the number of proposals, especially regarding ESG, rose from 186 in 2021 to 340 in 2023.¹ Notably, however, the number of ESG proposals adopted by shareholder votes declined from 2021 through 2023.²

In December 2023, Exxon Mobil investors Arjuna Capital, LLC and Follow This submitted an ESG proposal for inclusion in Exxon’s 2024 proxy statement that, in part, directed Exxon to “accelerat[e] the pace of emission reductions in the medium-term for its greenhouse gas (GHG) emissions across Scope 1, 2, and 3.”³ The investors’ similar proposals in Exxon’s 2022 and 2023 proxy statements garnered 27.1% and 10.5% of shareholders’ votes, respectively.⁴

On January 21, 2024, to exclude the investors’ third proposal from its 2024 proxy statement, Exxon filed a federal lawsuit in the Northern District of Texas.⁵ In its complaint, Exxon highlighted the investors’ prior failed proposals and the 2024 proposal’s nexus to Exxon’s core business as grounds for exclusion. Indeed, SEC Rule 14a-8(i)(7) permits exclusion of proposals relating to ordinary business operations. Additionally, SEC Rule 14a-8(i)(12) permits exclusion if a proposal addresses substantially the same subject matter as prior proposals included in a company’s proxy materials within the past 5 years, received a vote within the last 3 years, and, if voted on twice, garnered less than 15% in the second vote. ☺

Shortly after filing a motion for an expedited summary judgment briefing schedule,⁶ on February 1, 2024, Exxon notified the court that the investors had withdrawn the 2024 proposal but did not dismiss the case.⁷ When the Court asked what issues remained in the case, Exxon stated “there is no good reason to believe [the investors] will not stop”⁸ and blamed the SEC for “permit[ing] this type of conduct under its current application of the rules.”⁹

As of March 6, 2024, briefing on a motion to dismiss the complaint is complete. The investors have argued that the case is moot following their withdrawal of the ESG proposal, while Exxon insists that the court must rule to prevent the investors from submitting similar proposals again.

Exxon’s action against its own shareholders has captured investors’ attention, causing many to ponder its impact on shareholder proposals, especially for ESG. Indeed, the lawsuit highlights companies’ growing willingness to intimidate shareholders from advancing ESG proposals; yet, Exxon’s resolve to continue the lawsuit after the investors withdrew their proposal raises serious concerns for participation in the corporate governance process.

Exxon’s lawsuit against Arjuna and Follow This serves as a harbinger of the challenges for shareholders who submit ESG proposals companies oppose, especially if the SEC continues its restrictive approach to granting waivers under SLB 14L. Actions like Exxon’s raise the costs – financial and reputational – for investors submitting a proposal, as litigation costs must be considered alongside proposal preparation and submission costs. In a perversion of the fundamental principles underpinning the shareholder-corporation relationship, these costs and the risks inherent in litigation may have a chilling effect on shareholders’ willingness to advance ESG proposals in the first place.

Even so, companies may not litigate most shareholder proposals because they will weigh litigation costs and risks too. Yet, given Exxon’s success in driving the investors to withdraw their proposal, other companies may adopt these litigious tactics when a shareholder submits a proposal they would prefer to exclude from their proxy statements. ♦

Domenico Minerva is a Partner at Labaton Keller Sucharow LLP. **James Fee** is an Associate at Labaton Keller Sucharow LLP. With more than 60 years of experience, Labaton Keller Sucharow stands as a tenacious advocate for investors having secured billions of dollars in landmark recoveries. Renowned as a global leader in complex litigation, the Firm specializes in representing clients in securities and corporate governance and shareholder rights litigation. Labaton Keller Sucharow’s successful reputation is built not only on its team of more than 70 attorneys, but also on its industry-leading in-house investigators, financial analysts, and forensic accountants. Recognized for excellence by both the courts and peers, the Firm is consistently ranked in leading industry publications. Labaton Keller Sucharow’s offices are strategically located in New York, NY, Wilmington, DE, and Washington, D.C.

Endnotes:

¹ [In Focus: Shareholder Proposals in the 2023 U.S. Proxy Season \(issgovernance.com\)](#)

² SEC Commission Mark T. Uyeda Remarks (June 21, 2023), [SEC.gov | Remarks at the Society for Corporate Governance 2023 National Conference](#).

³ *Id.* at ¶¶8-9.

⁴ Complaint, ECF No. 1, at ¶¶100-104.

⁵ Complaint, *Exxon Mobil Corp. v. Arjuna Cap., LLC et al.* No. 4:24-cv-00069-P (N.D. Tex. Jan. 21, 2024) ECF No. 1 at 1.

⁶ Pl.’s Mot. to Set Expedited Summ. J. Briefing Schedule, *Exxon Mobil Corp. v. Arjuna Capital, LLC et al.* No. 4:24-cv-00069-P (N.D. Tex. Jan. 25, 2024), ECF No. 11; Mem. in Supp. of Pl.’s Mot. to Set Expedited Summ. J. Briefing Schedule, *Exxon Mobil Corp. v. Arjuna Cap., LLC et al.* No. 4:24-cv-00069-P (N.D. Tex. Jan. 25, 2024), ECF No. 12.

⁷ Notice of Withdrawal of Pl.’s Mot. to Set Expedited Summ. J. Briefing Schedule, *Exxon Mobil Corp. v. Arjuna Cap., LLC et al.* No. 4:24-cv-00069-P (N.D. Tex. Feb. 1, 2024), ECF No. 16.

⁸ *Id.* at 1.

⁹ *Id.* at 1-2.