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SEC Staff Narrows Review of Rule 14a-8 Shareholder Proposal No-Action Requests: Every Silver Lining Has a Touch of Grey

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On November 17, 2025, the staff of the Division of Corporation Finance of the US Securities and Exchange Commission (SEC) announced a significant procedural shift in its administration of the no-action request process for shareholder proposals under Rule 14a-8 under the Securities Exchange Act of 1934 (Exchange Act). Except as discussed below, for the proxy season that runs from October 1, 2025, through September 30, 2026, the staff will not provide a substantive response to no-action requests from companies seeking to exclude shareholder proposals from their definitive proxy materials, pursuant to Rule 14a-8, during the current proxy season. A company planning to exclude a shareholder proposal from its definitive proxy materials still must provide the "informational only" notice of its intent to exclude the proposal required by the rule. In addition, if the company includes in its notice an unqualified representation that the company has a reasonable basis to exclude the proposal based on the provisions of Rule 14a-8, prior published guidance and/ or judicial decisions, the staff will provide a written "no objection" response.

How will the staff's new guidance impact the 2026 proxy season?

Although the staff's new approach ostensibly makes it easier for companies to exclude shareholder proposals under Rule 14a-8, it may ironically result in more proposals in proxy statements this year. Outside of clear procedural or substantive exclusion bases (e.g., failure to prove ownership or unquestionable substantial implementation arguments), some companies may feel they are now left with no "safe" predictable options. If they exclude proposals from their definitive proxy materials absent a substantive staff no-action letter, they risk that the proponent (especially if it is a well-funded institutional proponent) sues and throws a wrench into their annual meeting process. Even if they believe they have a basis to exclude a proposal under the new Rule 14a-8(i)(1) state law opinion strategy (discussed herein) and seek a substantive response from the staff, there is risk that the proponent submits a competing opinion and forces the matter to state court. In both scenarios, companies face uncertainty and litigation risks. Given the declining support for most proposals in recent years, particularly social and environmental proposals, some companies may conclude that it is more prudent to allow proposals to go to a shareholder vote in 2026 and revisit their approach next year once market practice and the regulatory landscape are more settled.

Staff to review only Rule 14a-8(i)(1) no-action requests, limiting oversight of other shareholder proposals

The only category of requests that remains subject to the traditional staff no-action request process are those submitted under Rule 14a-8(i)(1), which permits companies to exclude a shareholder proposal if the proposal is not a proper subject for action by shareholders under state law. Whether a shareholder proposal involves a "proper subject" is a complex question, and no-action requests submitted to the staff under Rule 14a-8(i)(1) require an opinion of local counsel to address the legal basis for exclusion.

The staff explained that it is reducing its involvement in the no-action process due to "current resource and timing considerations," citing the recent federal government shutdown, the backlog of registration statements and other filings requiring prompt staff attention, along with the staff's view that a substantial body of guidance is already available (other than for no-action requests pursuant to Rule 14a-8(i)(1)). Monday's announcement is consistent with broader signals from the staff and the SEC, including recent remarks by Chairman Paul Atkins questioning whether nonbinding ("precatory") proposals should be included in definitive proxy materials at all and suggesting that such proposals may be excludable under Rule 14a-8(i)(1) where not authorized under state law. For further discussion of Atkins' remarks and their potential implications, please refer to our alert, "SEC Chairman Suggests Path to Eliminating Most Shareholder Proposals."

Navigating the new Rule 14a-8 process this proxy season

The following summarizes the practical and procedural implications of the staff's announcement, including how notifications under Rule 14a-8(j) should be submitted, when a company may receive a written response from the staff and the content required for such a response:

- **New process for exclusions (except Rule 14a-8(i)(1))**. Companies must still comply with Rule 14a-8(j) by notifying the SEC and the proponent of an intention to exclude a shareholder proposal, including an explanation of why the company believes it may exclude the proposal, no later than 80 calendar days before filing definitive proxy materials with the SEC. The Rule 14a-8(j) notification requirement is informational only, there is no requirement that companies seek the staff's views regarding an intended exclusion of a shareholder proposal, and no response from the staff is required to exclude a proposal.

- **New process to obtain a staff response (except Rule 14a-8(i)(1))**. Although staff concurrence is not required to exclude a shareholder proposal, a company or its counsel may request a written response from the staff to its Rule 14a-8(j) notification described above by including an unqualified representation in the notification that the company has a reasonable basis to exclude the proposal based "on the provisions of Rule 14a-8, prior published guidance, and/or judicial decisions." Importantly, the announcement states that companies are not bound by prior unfavorable no-action responses or the absence of a prior favorable response in forming their reasonable basis for excluding a shareholder proposal. The staff will respond with a letter indicating that, based solely on the company's representation, the staff will not object if the company omits the shareholder proposal from its definitive proxy materials. In providing this response, the staff will not evaluate the adequacy of the representation or express a view on the basis or bases asserted by the company for exclusion.

- **Pending no-action requests (except Rule 14a-8(i)(1))**. For any no-action request submitted before the announcement, the original no-action request should suffice as required notice of exclusion under Rule 14a-8(j). However, if a company wants to receive a written staff response, it will need to submit a supplemental notice containing the required unqualified representation. This supplemental notice will be treated as timely under Rule 14a-8(j) as long as the original no-action request was timely.

- **No changes for no-action requests under Rule 14a-8(i)(1)**. Requests to exclude shareholder proposals under Rule 14a-8(i)(1) are not subject to the staff's new process. Companies seeking to rely on Rule 14a-8(i)(1) must continue to follow the traditional no-action process this proxy season. According to the announcement, the staff will continue to review and express its views on no-action requests under Rule 14a-8(i)(1) until it determines that sufficient guidance exists for companies and proponents to evaluate such matters independently.

Practical steps for managing shareholder proposals this proxy season

We will be monitoring implementation of the staff's approach in the coming weeks and months. In the meantime, we recommend companies take the following steps with respect to Rule 14a-8 shareholder proposals:

- **Assess litigation and reputational risk**. Companies should consider that the facts and circumstances of a particular shareholder proposal could heighten litigation and reputational risks if the proposal is omitted without substantive staff concurrence. It remains uncertain whether the staff's nonresponse process will meaningfully increase legal exposure beyond historical norms since proponents always had the ability to challenge exclusions in federal court. In evaluating whether to omit a shareholder proposal, companies should also consider potential shareholder reactions, proxy advisory firm responses and broader stakeholder sentiment, which may result in "vote no" campaigns against directors or other unintended consequences.

- **Analyze strength of basis or bases for exclusion before submission**. Companies should rigorously analyze the strength of any argument for exclusion with a view toward a potential litigation challenge, regardless of whether they intend to seek a written response from the staff. While not required, companies should also consider documenting their analysis internally, either in a memo to files or in the style of a more fulsome traditional no-action letter.

- **Consider proxy statement disclosure**. Without a formal no-action letter process where proponents get an opportunity to respond to a company's exclusion request, there is no guarantee that a stockholder proponent will withdraw their shareholder proposal in response to the company's notification of its intent to exclude it from the company's definitive proxy materials. As

a result, there is a possibility that proponents may seek to present their proposals at the annual meeting, notwithstanding that the proposal has not been included in the company's definitive proxy materials. In order to have discretionary authority to vote proxies against a floor proposal, companies should consider availing themselves of Rule 14a-4(c)(2) under the Exchange Act by including information about the proposal in the company's proxy statement and stating that the company intends to exercise its discretion to vote against the proposal.

In addition, companies may want to consider adding disclosure in their proxy statements explaining the process used to review and evaluate shareholder proposals. This could help address potential concerns from proxy advisors and mitigate the risk of "vote no" campaigns targeting directors for excluding proposals.

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