

Deciphering Rule 14a-8 and SEC Chairman Atkins' Recent Remarks: What is 'Precatory,' and How Might It Affect Your Compensation-Related Shareholder Proposals?

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If you follow legal news, you've no doubt seen the many alerts, blogs and articles with splashy headlines about Rule 14a-8 of the Securities Exchange Act of 1934. Although corporate governance counsel will generally take the lead in evaluating shareholder proposals (including the company's proper response), individuals involved in executive compensation-related matters should understand the implications of what's unfolding around Rule 14a-8, as there may be collateral consequences for executive compensation matters, including the potential that executive compensation-related proposals could become more prevalent.

What is Rule 14a-8, and what's happened?

Directors and executive compensation practitioners should be aware of a recent securities law development regarding proxy statement proposals that has captured the attention of – and indeed excited – corporate governance experts. As explained in [this October 10 Cooley alert](#), recent comments from Securities and Exchange Commission (SEC) Chairman Paul Atkins suggest that, pursuant to Rule 14a-8(i)(1) under the Securities Exchange Act of 1934, "precatory" (think nonbinding) shareholder proposals may be disregarded by companies in a potentially broad ranging set of circumstances.

What is a shareholder proposal?

In very simple terms, shareholder proposals are voting action items submitted by shareholders in addition to (and sometimes in contravention of) the management-approved proxy proposals already on the agenda for the annual meeting. Shareholder proposals often command a tremendous amount of issuer resources and typically require the engagement of external counsel and other advisors.

Do shareholder proposals relate to compensation?

Sometimes. While most shareholder proposals do not relate to compensation items, and instead usually involve corporate governance or social/environmental (ESG) issues, compensation proposals are made with some regularity – notably recently, for example, relating to director compensation levels or requesting that shareholders be asked to approve executive severance over a certain threshold value. For the 2025 proxy season (July 1, 2024 – June 30, 2025), there were approximately 54 compensation-related shareholder proposals submitted to S&P 1500 companies, though approximately 80% of them were submitted by one particular well-known and longtime shareholder proponent.

What effect might Atkins' remarks have on compensation-related shareholder proposals?

The new avenue for relief suggested by Atkins for precatory proposals (requesting a no-action letter from the SEC staff under Rule 14a-8a(i)(1)) will likewise consume considerable resources, but a successful outcome will enable the issuer to exclude the proposal from its annual proxy materials altogether. It seems fair to assume that, if successful outcomes become the norm, the number of nonbinding proposals that are submitted will decline significantly.

The strategies Atkins discussed were primarily focused on precatory proposals, leaving open the possibility that some binding bylaw amendment proposals would remain viable. For example, during the 2024 proxy season, a shareholder (the longtime shareholder proponent mentioned above) submitted binding compensation-related proposals to several companies that sought to directly amend company bylaws to require an annual shareholder vote to approve director compensation. Although these proposals performed very poorly when put to a vote, it is possible shareholders would be more supportive of binding bylaw amendments requiring shareholder approval of compensation practices (e.g., golden parachutes) in an environment where precatory proposals are no longer possible. In addition, in a landscape without precatory proposals, compensation-related proposals may gain greater prominence, as they are potentially more readily adaptable into binding proposals compared to other currently more prevalent ESG-focused proposals.

Bottom line

Individuals involved in executive compensation matters at most companies will not need to be steeped in SEC rules and state laws implicated by Atkins' comments. But they should be aware of the shareholder proposal dynamics at play so they can best serve company management and directors as this issue evolves ahead of and during the upcoming proxy season. Cooley's compensation and benefits and corporate governance and securities regulation teams collaborate to advise clients on a broad spectrum of compensation-related proxy matters – including shareholder proposals, say-on-pay votes and shareholder engagement strategies.

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