

SEC Announces It Will Not Weigh In on Most Company Decisions to Exclude Shareholder Proposals

Posted in: SEC

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Highlights

- For the 2025-2026 proxy season, companies intending to exclude shareholder proposals from their proxy materials must still notify the SEC and proponents, but there is no requirement that they seek the staff's views and no staff response is required.
- Companies that nonetheless wish to obtain some form of staff response must include in their notification "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." In such cases, the staff will issue a "no objection" letter but will not assess the merits of the exclusion.
- The SEC will respond substantively only to no-action requests seeking to exclude proposals on the basis of Rule 14a-8(i)(1)—"improper under state law."

The Division of Corporation Finance (CorpFin or the Division) of the U.S. Securities and Exchange Commission (SEC or Commission) today issued a **statement** delineating the very limited role it intends to play in the Rule 14a-8 shareholder proposal process during the current proxy season. According to the statement (emphasis added):

“Due to current resource and timing considerations following the lengthy government shutdown and the large volume of registration statements and other filings requiring prompt staff attention, as well as the extensive body of guidance from the Commission and the staff available to both companies and proponents, **the Division has determined to not respond to no-action requests for, and express no views on, companies’ intended reliance on any basis for exclusion of shareholder proposals under Rule 14a-8, other than no-action requests to exclude a proposal under Rule 14a-8(i)(1).**”

Rule 14a-8(i)(1) explicitly provides that a company may exclude a shareholder proposal from its proxy statement if it “is not a proper subject for action by shareholders under the laws of the jurisdiction of the company’s organization.” State law governs whether a proposal is a “proper subject.”

Today’s announcement is part of a broader regulatory and legislative effort to curb activist investor influence and rebalance the shareholder proposal system in favor of corporate management. For example, in February 2025, the SEC published [Staff Legal Bulletin No. 14M](#), which significantly expanded companies’ ability to exclude shareholder proposals (including environmental and social proposals) by broadening the “ordinary business” and “economic relevance” exclusion grounds. In September, the SEC approved ExxonMobil’s plan to automate voting by retail shareholders in accordance with board recommendations, a move that further tilts the proxy process toward management.

The SEC’s rulemaking agenda signals potential reforms through a “shareholder proposal modernization” initiative expected to include amendments to Rule 14a-8’s eligibility requirements alongside other rule changes to ease companies’ compliance burdens. SEC Chair Paul Atkins has called for “a fundamental reassessment” of the rule, questioning whether the agency’s original 1942 rationale remains applicable. Meanwhile, Congress is actively pursuing complementary reforms through legislative proposals designed to restrict proposal subject matter, raise submission thresholds and increase proxy advisory firm oversight.

Key Points

Non-Rule 14a-8(i)(1) Exclusions

- **Company Notification Requirement.** Pursuant to Rule 14a-8(j), companies that intend to exclude shareholder proposals from their proxy materials (other than under Rule 14a-8(i)(1)) must still notify the SEC and proponents no later than 80 calendar days before filing a definitive proxy statement. All Rule 14a-8(j) notifications must be submitted to CorpFin using its online [Shareholder Proposal](#)

Form. CorpFin emphasizes that **this requirement is informational only; there is no requirement that companies seek the staff's views regarding their intended exclusion of a proposal; and no response from the staff is required.**

- ***Request for Staff Response to Company Notification.*** Although the Division will not respond substantively to submissions regarding companies' intent to exclude shareholder proposals pursuant to bases other than Rule 14a-8(i)(1), it recognizes that a company may nonetheless wish to obtain some form of a response (short of a substantive review) to its notification that it intends to exclude a proposal from its proxy materials. Accordingly, **if a company wishes to receive a response for any proposal that it intends to exclude in reliance on a basis other than Rule 14a-8(i)(1), the company or its counsel must include, as part of its Rule 14a-8(j) notification, an unqualified representation stating 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 statement specifically notes that prior staff responses to Rule 14a-8 no-action requests are not binding and reflect only informal staff reviews, and the absence of a prior staff response indicating that the staff agreed that there was some basis to exclude a particular type of proposal does not mean that companies cannot form a reasonable basis to exclude the proposal. Likewise, a prior staff response indicating that the staff was unable to concur with a company's view that a proposal may be excluded does not mean that companies cannot form a reasonable basis to exclude the same or a similar proposal.

In these situations, **the Division will respond with a letter indicating that, based solely on the company's or counsel's representation, the Division will not object if the company omits the proposal from its proxy materials.** In providing its response, **the Division will not evaluate the adequacy of the representation or express a view on the basis or bases the company intends to rely on in excluding the proposal. Accordingly, a company's Rule 14a-8(j) notification should be limited to the information required by the rule as well as an unqualified representation that the company has a reasonable basis to exclude the proposal.** The statement reiterates that CorpFin's responses to no-action requests and Rule 14a-8(j) notifications are not binding on the SEC or its other Divisions and Offices and do not preclude the SEC from taking enforcement action in appropriate circumstances.

Rule 14a-8(i)(1) Exclusions

- In contrast to bases for exclusion other than Rule 14a-8(i)(1) for which the Division believes there is sufficient relevant guidance for companies and proponents to rely on, **CorpFin will follow the traditional no-action process this proxy season and continue to review and express its views on no-action requests related to Rule 14a-8(i)(1)—“improper under state law”—“until such time as it determines there is sufficient guidance available to assist companies and proponents in their decision-making process.”**

The statement references Chair Atkins’s recent speech casting doubt on whether non-binding or “precatory” shareholder proposals (typically framed as recommendations or suggestions) are proper subjects for shareholder action under Delaware law, and asserting that Delaware law may not confer on stockholders a fundamental right to submit or vote on such proposals. In his remarks, Atkins invited companies to seek to exclude such proposals under Rule 14a-8(i)(1) and obtain a supporting opinion of counsel, expressing “high confidence” that the staff would defer to the Delaware counsel’s opinion. He also held out the possibility that the SEC could seek to certify the legal question directly to the Delaware Supreme Court for judicial resolution (see our earlier discussion of Atkins’s remarks [here](#).)

Applicability

This statement applies to the 2025-2026 proxy season (defined as the period from October 1, 2025 to September 30, 2026) as well as to no-action requests received prior to the federal government shutdown on October 1, 2025 to which the Division has not yet responded. Companies that have already submitted a request relying on a basis for exclusion other than Rule 14a-8(i)(1) and that wish to receive a response from the Division should submit a notification that includes the unqualified representation described above. In those cases, the time of the initial submission will apply for purposes of the 80-day requirement in Rule 14a-8(j).

Questions

Questions about this statement should be directed to CorpFin’s Office of Chief Counsel at shareholderproposals@sec.gov or 202-551-3500.

Dissent

Caroline Crenshaw, the sole Democratic-appointed SEC Commissioner, issued a sharp [dissent](#), criticizing the policy shift announced today as “a giveaway to issuers”

and “an act of hostility toward shareholders.” The statement is “a Trojan horse,” she wrote, that:

“cloaks itself in neutrality by expressing that the Division will not weigh in on any company’s exclusion of shareholder proposals, but then it hands companies a hall pass to do whatever they want. It effectively creates unqualified permission for companies to silence investor voices (with ‘no objection’ from the Commission). This is the latest in a parade of actions by this Commission that will ring the death knell for corporate governance and shareholder democracy, deny voice to the equity owners of corporations, and elevate management to untouchable status.”

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