

Court Order Signals New Era for Shareholder Proposals Under Rule 14a-8

April 28, 2026

A recent federal court decision compelling a public company to include a shareholder proposal in its proxy materials illustrates the importance of shareholder engagement following changes to the Securities and Exchange Commission's administration of Rule 14a-8.

Pension Fund Obtains Preliminary Injunction. In [*Thomas P. DiNapoli v. BJ's Wholesale Club Holdings, Inc.*](#), a New York public pension fund obtained a preliminary injunction requiring BJ's Wholesale Club Holdings, Inc., a regional membership-only warehouse club chain, to include the fund's shareholder proposal in its proxy statement. The proposal requests that the company conduct and disclose an assessment of deforestation risks associated with its private label brands.

In February 2026, BJ's notified the SEC's Division of Corporation Finance that it intended to exclude the fund's proposal from its proxy materials for the 2026 meeting, asserting that the proposal was excludable under the "ordinary business exclusion" of Rule 14a-8(i)(7). In response, the Division confirmed that it would "not object if the Company excludes the Proposal from its proxy materials."

In an order issued just days prior to the company's deadline for finalizing its proxy materials, the U.S. District Court for the District of Massachusetts held that the fund would (1) be likely to succeed on its claim that the proposal was improperly excluded under Rule 14a-8(i)(7); and (2) suffer irreparable harm absent a preliminary injunction because it would have no meaningful way to remedy the exclusion of the proposal.

Court Rejects "Ordinary Business" Exclusion. Rule 14a-8(i)(7) allows a company to exclude a shareholder proposal if it "deals with a matter relating to the company's ordinary business operations." The rationale underlying the exclusion rests on two considerations: (1) the subject matter should not infringe on matters "so fundamental to management's ability to run the company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight"; and (2) the proposal should not "micromanage" the company.

BJ's asserted that the proposal's subject matter was BJ's supply chain, which relates to day-to-day business matters and could therefore be excluded from the company's proxy materials. The court disagreed, noting that the proposal focuses on "a potential generalized risk—deforestation—posed by one aspect of BJ's business" and that any impacts of the requested assessment of deforestation risks on BJ's decisions in the future are an "incidental byproduct—rather than a focus—of the [p]roposal."

The court also rejected BJ's argument that the proposal micromanaged the company, stating: "[t]he Proposal broadly asks that BJ's produce an assessment into the deforestation risks associated with its private-label brands. It does not require BJ's to analyze the deforestation risks of particular business decisions or to follow a specific method of analysis."

Shift from SEC "No-Action" Process to Litigation. This case is one of a number of federal lawsuits brought by investors following the SEC's changes to the shareholder proposal process in 2025. Historically, companies seeking to exclude shareholder proposals requested "no-action" relief from the SEC, which served as an informal screening mechanism. In November 2025, the SEC announced it would not respond substantively to such no-action requests for the 2026 proxy season, although, as was the case with BJ's, it will confirm, based solely on a company's representation that it has a reasonable basis to exclude a proposal, that it will not object if the company omits such proposal from its proxy materials. As a result, companies now exercise unilateral judgment over which proposals to exclude—and shareholders have increasingly turned to the courts to challenge those decisions.

Following the SEC's policy change, shareholders have filed several lawsuits under Rule 14a-8. While only a handful have reached decisions on preliminary injunction motions, this case appears to be the first in which a court has ordered a company to include a shareholder proposal in its proxy materials. More generally, these suits demonstrate that shareholder proponents are testing companies' determinations about the boundaries of Rule 14a-8 in federal court and courts are being asked to act as substitutes for the SEC's historical role in adjudicating these disputes.

Implications for Public Companies and Investors. For boards of directors, management teams, and investors, the decision has several practical implications:

- **Increased Litigation Risk:** Excluding shareholder proposals without SEC no-action guidance now carries a higher risk of expedited federal litigation, including the possibility of injunctive relief, at least where the proponent has the means to pursue litigation.

- **Scope of “Ordinary Business” Shield for ESG Topics:** Courts may be inclined to view proposals addressing broad environmental or social risks as within the proper scope of shareholder oversight, even when they implicate supply chain or other operational matters.
- **Timing and Process Pressure:** Injunctions issued close to proxy printing deadlines can disrupt proxy planning and investor communications. Companies should prepare contingency plans for late-stage inclusion of contested proposals.
- **Strategic Engagement:** Both companies and proponents may benefit from earlier engagement and negotiated outcomes, rather than the uncertainties associated with litigation.

Conclusion. Shareholder proponents are increasingly willing to use federal courts to advance their proposals, particularly in the absence of SEC no-action guidance. This development has shifted the battleground from the SEC to the judiciary, with Rule 14a-8’s “ordinary business” exception under renewed scrutiny. Public companies should reassess their internal processes for evaluating and potentially excluding shareholder proposals, particularly those framed as addressing environmental or social risk rather than strictly operational matters.



Eric T. Juergens
Partner, New York
+1 212 909 6301
etjuergens@debevoise.com



Matthew E. Kaplan
Partner, New York
+1 212 909 7334
mekaplan@debevoise.com



Maeve O'Connor
Partner, New York
+1 212 909 6315
mloconnor@debevoise.com



William D. Regner
Partner, New York
+1 212 909 6698
wregner@debevoise.com



Amy Pereira
Associate, New York
+1 212 909 6413
apereira@debevoise.com