SEC Ends Rule 14a-8 No-Action Review Process

August 17, 2026

On August 14, 2026, the staff (the "Staff") of the Division of Corporation Finance (the "Division") of the U.S. Securities and Exchange Commission (the "SEC") announced that it will discontinue responding to all no-action requests under Exchange Act Rule 14a-8, effective immediately and unless and until the Division announces otherwise.

The announcement largely extends the Division's approach to the 2026 proxy season, but goes further in two respects: (1) the Division will no longer review requests based on Rule 14a-8(i)(1), which permits exclusion of proposals that are not a proper subject for action by shareholders under applicable state law, and (2) the Division will no longer issue "no objection" responses to notices submitted by companies under Rule 14a-8(j). Companies that intend to exclude Rule 14a-8 shareholder proposals from their proxy materials must still notify the SEC and proponents no later than 80 calendar days before filing a definitive proxy statement.

The Division's announcement follows remarks by SEC Chairman Paul Atkins in July describing the 2026 proxy season as a "proof of concept" for resolving shareholder proposal disputes without substantive staff involvement. Chairman Atkins noted that, despite concerns that the Division's limited no-action review would result in widespread exclusions or litigation, overall proposal omission rates remained broadly consistent with the prior year and that several investor groups reported increased engagement with companies.

Six shareholder proponents challenged companies' exclusion decisions through litigation during the 2026 proxy season. In one such case, the U.S. District Court for the District of Massachusetts granted a preliminary injunction requiring BJ's Wholesale Club Holdings to include a shareholder proposal in its proxy materials. As we have previously discussed, the willingness of some shareholder proponents to litigate exclusion decisions increases the importance of early planning, shareholder engagement and consideration of potential litigation and timing issues for companies evaluating whether to exclude a shareholder proposal.

The SEC is separately considering more fundamental changes to the shareholder proposal framework, with its most recent Regulatory Flexibility Agenda including "Shareholder Proposal Modernization." Chairman Atkins also stated in July that the SEC is "holistically evaluating" Rule 14a-8, including the relationship between the federal shareholder proposal regime and state corporate law and the appropriate federal role in regulating shareholder proposals.


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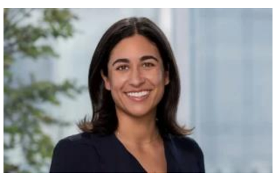
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