

Insights: Alerts

SEC Will No Longer Referee Companies' Exclusion of Shareholder Proposals

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On November 17, 2025, the Securities and Exchange Commission's Division of Corporation Finance [announced](#) that they would no longer respond to no-action requests, and would no longer express views on, a public company's exclusion of Rule 14a-8 shareholder proposals from their proxy statement—other than an exclusion based on the company's view that the proposal is “improper under state law.”

Rule 14a-8 gives certain shareholders a way to require a public company to include a proposal for shareholder vote in the company's proxy statement (Rule 14a-8 is not for proposing board nominees). The rule also specifies nine bases for exclusion that a company can assert in refusing to include a shareholder proposal in its proxy materials (including that it is “improper under state law”—referring to the law of the company's jurisdiction of organization).

Historically, when a company sought to exclude a proposal on one of these bases, and the shareholder proponent disagreed that it was excludable, the SEC's staff provided a process for it to opine on the propriety of the exclusion. The company would submit a letter stating its position and laying out its arguments to the staff—called a ‘no-action’ request—and the proponent would have an opportunity to provide a rebuttal. A staff determination was not final—both the company and the shareholder could pursue the matter further if they lost—by asking the SEC staff to reconsider, by asking the actual SEC commissioners to review the staff decision, or by suing in court.

It would now appear that if a company decides it can exclude a proposal on a basis other than it being improper under state law, proponents may have to file a lawsuit to respond—a presumably more expensive and time-intensive undertaking than the Rule 14a-8 process. (Of course, aggrieved activist shareholders have other tools to respond to perceived unfair treatment by companies.)

The staff based its decision on “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.” This decision applies from October 1, 2025 to September 30, 2026 (as well as to currently pending no-action requests), so it is possible that the staff will resume Rule 14a-8 process, or some new variation of it, in the future.

As noted, the staff will continue to consider no-action requests related to a company's position that a proposal is excludable because it is improper under state law. Although this retained review authority sounds proponent-favorable, it should be viewed in conjunction with SEC Chair Paul Atkins' recent public remarks questioning whether non-binding, or 'precatory' proposals—a popular shareholder proposal format—are proper shareholder vote subjects under Delaware law.

A company must continue to notify the SEC of its intent to exclude a proposal. Although the staff won't opine on the propriety of the exclusion (other than with respect to an argument that it is improper under state law), a company or its counsel may include, as part of its 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 which case the staff will respond with a letter indicating that, based solely on the company's or counsel's representation, the staff will not object if the company omits the proposal from its proxy materials. A company need not obtain this letter as a condition to excluding a shareholder proposal, and it is unclear to what extent companies will seek them.

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