

SHAREHOLDER PROPOSAL STRATEGIES DURING GOVERNMENT SHUTDOWN OR POST-SHUTDOWN BOTTLENECK

Nov 10, 2025

WHAT HAPPENED

Last month, Microsoft [announced it excluded a shareholder proposal](#) from frequent shareholder proponent John Chevedeen before receiving no-action relief from the SEC. The company had submitted a routine no-action letter request in August, based on the alleged untimely submission by Chevedeen. After the government shutdown and learning that the SEC would not issue no-action letter responses during the shutdown, Microsoft decided to exclude the proposal on its own initiative based on precedents and the plain text of Rule 14a-8.

In response, the proponent filed a [notice of exempt solicitation](#) appealing to shareholders to vote against the governance committee chair.

TAKEAWAYS

Although Microsoft's decision was unusual, it is not unprecedented. SEC rules only require that a company intending to omit a proposal notify the proponent, in the case of an eligibility or procedural deficiency and, in all cases, submit its statement of reasons for exclusion at least 80 days before filing definitive proxy materials, with a copy to the proponent. As a result, after properly notifying the proponent, the company is free to decide whether to exclude the proposal.

Pragmatism and established practice generally lead companies to wait for the SEC staff response. However, Microsoft explained that in this case:

"Given the factual circumstances of the late submission of the proposal, the SEC's consistent concurring responses with respect to no action letters regarding similar procedural defects, the informal nature of the no-action process and the SEC's limited operations during the government shutdown, Microsoft withdrew its no action request and subsequently excluded the proposal from its Proxy Statement."

During the current shutdown, or even afterwards if the backlog of requests results in delays, other companies may join Microsoft and make similar judgment calls.

DIRECT LITIGATION AGAINST PROPONENTS

In the past, even without a shutdown, companies have occasionally filed declaratory judgment actions in direct litigation against proponents – without waiting for SEC staff clearance. Possible reasons for that approach include:

- The SEC staff's unwillingness to take positions in some areas, such as false and misleading statements, including factual errors; ordinary business operations, such as climate change; or, in past years, purported evidence of stock ownership based on questionable documentation.
- The company's disagreement with the staff's past positions.
- The desire to establish binding legal precedent.
- The desire to "send a message" to potential future proponents.

Over the past decade or so, companies have brought a dozen or so cases, succeeding in many instances, but not those where the proponent agreed not to sue or withdrew the proposal and agreed not to submit similar proposals in the future.

The successful arguments asserted by the companies have included:

- Deficient evidence of stock ownership.
- Proponent's supporting statement included materially false and misleading statements that were uncorrected.
- Climate change proposals constituting excludable "ordinary business."

MEET THE TEAM



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