

SEC ANNOUNCES IT WILL NOT REVIEW MOST 14A-8 SHAREHOLDER PROPOSAL NO-ACTION LETTERS FOR NEXT PROXY SEASON

COMPANIES MAY STILL SEEK "NO OBJECTION" LETTERS

Nov 19, 2025

WHAT HAPPENED

On November 17, 2025, the Division of Corporation Finance staff of the SEC ("Division") announced that, due to resource constraints:

- The Division will not respond to most no-action letter requests to exclude shareholder proposals for the upcoming proxy season, other than requests under 14a-8(i)(1).
- Companies will still need to make an informational notification of exclusion, including the reasons therefor, at least 80 days before filing definitive proxy materials.
- Staff will still provide a non-objection letter to the exclusion, even without substantive review, if a Company makes an unqualified representation that it has a reasonable basis to exclude a proposal under SEC rules, prior guidance or case law.

TAKEAWAYS

The SEC will not substantively respond to most 14a-8 shareholder proposal no-action letters.

Citing resource and timing considerations following the government shutdown, the Division will not respond substantively to no-action letter requests for, and express no views on, a company's determination to exclude shareholder proposals. The policy does not apply to requests under 14a-8(i)(1)(improper under state law). It applies to the current proxy season (October 1, 2025 to September 30, 2026) and pending requests that have not been answered yet.

Companies should still file reasons for exclusion 80 days before filing proxy statements.

The announcement noted that SEC rules (14a-8(j)(1)) still require companies to make a notification of exclusion, including the reasons therefor, at least 80 days before filing definitive proxy materials.

The company must simultaneously provide a copy to the proponent. This requirement is informational only and companies do not need to seek the staff's views regarding their intention to exclude a proposal and that a response from the SEC is not required.

Companies may still request “no objection” letters from the SEC.

The announcement provides that companies still desiring a response from the staff to a request for exclusion must include as part of its Rule 14a-8(j) 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 those situations, the announcement indicates that the staff 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.” The announcement also reminds companies that the Division will not be evaluating the representation or the company’s basis or bases for exclusion and that staff responses to no-action requests are not binding on the Commission.^[1]

The Division will respond to 14a-8(i)(1)(improper under state law) requests.

The announcement noted that the Division will continue to review and express its views on no-action requests under Rule 14a-8(i)(1). The Division cited recent developments regarding the application of state law and Rule 14a-8(i)(1) precatory proposals and determined that there is not a sufficient body of applicable guidance in this area.

Companies should carefully consider exclusions without substantive SEC review and the likely response from the proponent or others.

The government shutdown created uncertainty for companies with pending or planned no-action requests. With the announcement, companies will need to carefully consider whether to exclude such proposals without the typical substantive review from the Division and whether to seek a short-form “no objections” letter based on company representations. Companies should consider the likely response from the proponent and the potential for litigation or criticism from various constituencies, such as activists, media or others.

Although the announcement provides additional flexibility, companies should still consider the strength of the arguments for exclusion and the relevant precedents. The Division’s willingness to provide “no objections” letters, based on company representations, even without substantive review, may provide some additional comfort to companies as a “fig leaf” of at least staff acquiescence on the issue and as tangible support of its position to exclude. Importantly, companies considering such an approach should confirm that they in good faith can make the required representation regarding “a reasonable basis” for exclusion. For example, that representation may not be appropriate for cases conflicting with precedent or involving aggressive interpretations or novel arguments. Even with a no objections letter, the SEC is not precluded from taking enforcement action and proponents or others may still react negatively.

Companies should consider the likely response from the proponent and others. As we noted in a recent [blog post](#), pragmatism and established practice generally have led companies to wait for an SEC staff response to a no-action letter request. Last month, Microsoft [announced it excluded a shareholder proposal](#) from frequent shareholder proponent John Chevedeen before receiving no-action relief from the SEC. In response, the proponent filed a [notice of exempt solicitation](#) appealing to shareholders to vote against the governance committee chair. As the “no objections” procedure is new, companies should carefully consider the potential for adverse reactions of proponents, shareholders and other constituencies.

Companies should also consider the risks of litigation. Although expensive and infrequent in the past, it is possible that, without the SEC’s substantive review process, a proponent may be more likely to pursue litigation – at least in select cases. Similarly, companies may also consider direct litigation against proponents. That may make sense where a company does not believe it can make the required representation and where, as we discussed [here](#), there is little precedent, such as false and misleading statements, ordinary business operations, purported evidence of stock ownership based on questionable documentation, or in other cases where a company disagrees with the staff’s past positions, to establish precedent or to “send a message” to potential future proponents.

[1] For companies seeking a no objections letter that have already submitted a no-action letter request prior to the announcement or prior to October 1, 2025, but have not received an SEC response, the announcement notes that such companies should submit a notice that includes the required representation. In those cases, the initial submission date will apply for purposes of the 80-day rule deadline.

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