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SEC COMPLETES ITS EXIT FROM 14A-8 SHAREHOLDER PROPOSAL DEBATES

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WHAT HAPPENED

On August 14, 2026, the SEC Division of Corporation Finance released a statement announcing that it will no longer respond to any no-action letter requests to exclude Rule 14a-8 shareholder proposals, without exception. Although it reserved the ability to change its mind, the policy takes effect immediately, unless and until the staff announces otherwise.

This modifies the Division's November 17, 2025 announcement. At that time, the staff announced:

- It would 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), regarding the application of state law.
- Companies would still need to make an informational notification of exclusion, including the reasons, at least 80 days before filing definitive proxy materials.
- The staff offered to provide a non-objection letter to the exclusion, even without substantive review, if a company made an unqualified representation that it had a reasonable basis for exclusion.

The new announcement modifies the SEC staff's practice:

- The staff will no longer review requests under Rule 14a-8(a)(i) regarding the application of state law.
- The staff will no longer provide non-objection letters.

TAKEAWAYS

The SEC will not respond to any Rule 14a-8 shareholder proposal no-action letter requests, with no exception for 14a-8(a)(i)(1) proposals relating to state law.

According to the announcement, the decision reflects:

- The need to focus resources on the review of filings, including those reviews that are statutorily required, for the protection of investors and facilitation of capital formation.
- The extensive body of guidance from the SEC and the staff available to both companies and proponents on Rule 14a-8.

The Division acknowledged it "has for many years engaged in the informal practice of expressing its enforcement position" in response to notices submitted under Rule 14a-8(j). However, it believes that "[n]o response or other action by the Commission or its staff is required in regard to such communications."

The SEC will no longer provide "no objection letters."

The SEC staff will no longer respond to notices filed under Rule 14a-8(j) with a letter indicating that it will not object if a company omits a proposal from its proxy materials.

Companies must report reasons for exclusion 80 days before filing proxy statements.

SEC Rule 14a-8(j)(1) still requires companies to provide a short-form notice to the SEC and the proponent when shareholder proposals are omitted from proxy statements. The notice, which must include the reasons for the omission under Rule 14a-8, must be provided at least 80 days before filing definitive proxy materials. The company must simultaneously provide a copy to the proponent. This notice is informational only.

Companies should submit those notices using the SEC's online Shareholder Proposal Form. The announcement explained that the SEC's shareholder proposal email address is no longer functional. Companies and shareholder proponents should submit any questions or other correspondence using the Shareholder Proposal Form.

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

As discussed in our post on the 2025 announcement, companies will need to carefully consider whether to exclude proposals without substantive Division review. 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. Last year, there were a number of proposals that involved litigation and that uncertainty appears likely to continue. Moreover, the SEC has indicated that it is reviewing Rule 14a-8 and the possibility exists that the rule itself will be significantly revised or even revoked.

Although companies will not be required to make detailed arguments supporting exclusion in their Rule 14a-8(j) notice, they should still consider the strength of the arguments for exclusion and the relevant precedents, including the level of detail about their reasoning to include in the notice, given the risk of such litigation or criticism.

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