

Flying Solo: SEC Grounds Most 14a-8 No-Action Reviews for Current Proxy Season

November 25, 2025

The SEC's Division of Corporation Finance (the Division) announced that it will not respond to (or express views on) companies' no-action requests to exclude shareholder proposals during the current proxy season (October 1, 2025 – September 30, 2026).¹ The sole exception is that the Division will continue to review requests to exclude shareholder proposals based on whether the proposals constitute a proper subject for shareholder action under state law under Rule 14a-8(i)(1) under the Securities Exchange Act of 1934, as amended (the Exchange Act).² The SEC also confirmed that the Division of Investment Management will follow a similar process with respect to shareholder proposals submitted to investment companies.

This guidance follows Chairman Paul Atkins's October public remarks that he believes a "fundamental reassessment of Rule 14a-8 is in order" and a lengthy government shutdown. During a webinar on November 24, 2025, Division staff members provided additional detail regarding the new process for the current proxy season.³

SEC Affirms and Clarifies Reasonable Basis Standard for Exclusion of a Proposal

The Division's statement affirms that companies must have a reasonable basis if they intend to exclude a shareholder proposal under Rule 14a-8. The Division points to the extensive body of guidance from the SEC and the staff as well as judicial decisions, all of which are available to both companies and proponents as they analyze what constitutes a reasonable basis. The Division also notes that under the historical regime, the staff's non-

¹ See Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season, available at <https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finance-role-exchange-act-rule-14a-8-process-current-proxy-season>.

² See Chairman Atkins' *Keynote Address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala*, October 9, 2025, available at <https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governance-25th-anniversary-gala>.

³ The Society for Corporate Governance hosted a webinar entitled "Discussion with SEC Staff on Rule 14a-8 Process for Current Proxy Season."

concurrence with a no-action request does not mean that the company (or a different company) could not establish a reasonable basis for exclusion of a shareholder proposal.

SEC Retains Traditional Review of Exclusion of Proposals Under Rule 14a-8(i)(1)

The sole exception to the new guidance for this proxy season is that the Division will continue to review requests to determine whether proposals constitute a proper subject for shareholder action under state law under Rule 14a-8(i)(1), due to the lack of a sufficient body of applicable guidance for companies and proponents to rely on in making their determinations. Chairman Atkins's comments around precatory proposals in his October address may provide relevant context on how this SEC and the Division view precatory proposals under state law going forward. Specifically, Chairman Atkins suggested that a company that has obtained an opinion of counsel that a proposal "is not a proper subject for shareholder action" under state law, could seek to rely on Rule 14a-8(i)(1) to exclude a proposal, and he expressed "high confidence" that the SEC staff would honor this position.⁴ In connection with such a no-action request for Delaware companies, the SEC could ask the Delaware Supreme Court to certify this question, particularly if the request and a proponent's response contain conflicting opinions.

SEC Guidance Details Procedures for 2025 – 2026 Proxy Season

The Division's statement was clear that companies must still comply with Rule 14a-8(j), which requires that a company notify the SEC and the proponent that it intends to exclude the proposal from its proxy materials, and the basis for exclusion, at least 80 calendar days before filing its definitive proxy statement. A company may, but is not required to, request a "no objection" response from the Division by specifically including in the Rule 14a-8(j) notice an unqualified representation that it has a reasonable basis to exclude the proposal based on the text of Rule 14a-8, prior published SEC guidance and/or judicial decisions. With respect to the content of the "no objection" request, (i) an "unqualified" representation means that the representation should not include assumptions and (ii) the notice may include the company's analysis of, and support for, its reasonable basis to exclude the proposal.

For the Division, the Rule 14a-8(j) notice is mainly a procedural step since the SEC will not evaluate the adequacy of the company's representation or express any view on the company's exclusionary basis or bases, other than Rule 14a-8(i)(1). For a company, the Rule 14a-8(j) notice may also provide a method to communicate with its stakeholders, since the notice will be publicly available on the SEC's website.

All notices to the SEC pursuant to Rule 14a-8(j) must be submitted to the Division using the online [Shareholder Proposal Form](#) or to the Division of Investment Management by email to IMshareholderproposals@sec.gov.⁵

⁴ *Supra* note 2.

⁵ Companies that have already submitted a no-action request relying on an exclusion other than Rule 14a-8(i)(1) who wish to receive a response from the SEC should submit a notice that includes the representation described above. The time of the initial no-action submission will apply for purposes of satisfying the 80-day requirement under Rule 14a-8(j).

Suggested Governance Process

To balance the possible negative impact of the terminated SEC no-action process, companies that decide to exclude a shareholder proposal under the new SEC guidance should consider the following governance review and approval processes, many of which should already be part of their historic governance process on shareholder proposals:

- Analyzing the extensive body of guidance from the SEC and the staff and judicial decisions as noted by Chairman Atkins as well as any other considerations suggested by Chairman Atkins in his October or later speeches.
- To the extent applicable, analyzing past practice and experience by the company on similar proposals.
- Determining whether to request a “no objection” response from the Division and whether (and how) to communicate the company’s reasonable basis for exclusion to stakeholders.
- Escalating final approval to the board or refreshing the board’s delegation process to address specific 2025 – 2026 issues.
- Considering advice from management or third-party experts on these issues.

Overall, a Board’s deliberative process should be both informed and well documented in the company’s books and records, including the specific analysis for exclusion and guidance that was reviewed and relied upon.

While some companies in the past have filed lawsuits seeking declaratory judgments to exclude shareholder proposals, this process can be both lengthy and expensive with no guarantee that a decision will be reached prior to the date the proxy statement needs to be mailed. Moreover, it is unlikely that a judicial process can efficiently take the place of the 370 or so no-action requests submitted during the 2025 proxy season. For this proxy season, a company’s reasonable reliance on prior published SEC guidance, judicial decisions and Chairman Atkins’ October statement will likely be persuasive in supporting the company’s position in the event of a court challenge.

What’s Next

Looking ahead, while the Division characterizes this change in practice as a resource-driven temporary measure, it is possible that this is an initial step in a more permanent restructuring of Rule 14a-8, particularly in light of Chairman Atkins’s October statements, where he indicated that “Shareholder Proposal Modernization” is on the SEC’s policy agenda for 2026. As part of that process, the Division will be engaging in an evaluation of Rule 14a-8 (originally adopted in 1942) to determine, among other things, whether the original intent and rationale behind the

adoption of Rule 14a-8 still applies more than 80 years later,⁶ and will likely use the current proxy season's results from this change in practice to help inform their evaluation.

If you have any questions regarding this client alert or if you would like advice regarding a shareholder proposal you have received, please contact the Willkie attorney with whom you regularly work.



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⁶ *Supra* note 2.