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SEC Division of Corporation Finance Withdraws Indefinitely from the Shareholder Proposal Process

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Companies continue to be required under Rule 14a-8(j) to notify the SEC when they intend to exclude Rule 14a-8 shareholder proposals from their proxy materials. On August 14, 2026, the Division of Corporation Finance (the Division) of the U.S. Securities and Exchange Commission (the SEC) issued an Updated Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process[1] (the Updated Statement) announcing that the Division will continue and expand its practice of not responding to Rule 14a-8 no-action requests and not expressing any view in response to companies' notices of their intention to exclude shareholder proposals on any of the bases available under Rule 14a-8. Companies continue to be required under Rule 14a-8(j) to notify the SEC when they intend to exclude Rule 14a-8 shareholder proposals from their proxy materials. The Updated Statement follows on the Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season,[2] issued in November 2025 (the 2025 Statement), in which the Division initially stated that it would not substantively address or respond to most Rule 14a-8 no-action requests during the 2025-2026 proxy season (i.e., October 1, 2025 – September 30, 2026) due to limited staff resources and "the extensive body of guidance" available under Rule 14a-8. However, in the Updated Statement the Division states that it will not issue any form of response to Rule 14a-8(j) exclusion notices, ceasing the practice it had initiated under the 2025 Statement of issuing "No Objection" letters if a company's exclusion notice contained an unqualified representation that the company had a reasonable basis to exclude the proposal based on the provisions of Rule 14a-8, prior published guidance, and/or judicial decisions. In addition, the Division's new "no response" position will apply even to exclusion notices that assert Rule 14a-8(i)(1) as a basis for exclusion, "unless and until the Division announces otherwise."[3] The Updated Statement was previewed in remarks by Chairman Atkins on July 9, 2026 at the Society for Corporate Governance.[4] Addressing the 2025-2026 proxy season as "both a turning point and a proof of concept," Chairman Atkins stated that a central takeaway from the 2025-2026 proxy season is that the Division's "interposition between companies and shareholder proponents is unnecessary to effectively and efficiently resolve whether shareholder proposals should be included in proxy statements." Noting "the significant time and costs expended by the SEC in prior proxy seasons that have been avoided this season," he stated, "It is difficult for me to order our talented staff to return to a tedious, and evidently ineffectual, task in future years when so many other vital filings and issues lie unattended awaiting a delayed resolution." In the same speech, Chairman Atkins implored companies to prevent their annual meetings from becoming vehicles "for political or social debates that have little or no bearing on investors' financial returns," and he encouraged companies not to be "lackadaisical" and instead to pick up the "substantial tools" available to limit such proposals, reiterating that applying Rule 14a-8 is no different from the "difficult" securities law judgments that companies make all the time. Notably, in the 2025 Statement the Division stated, "Prior staff responses to Rule 14a-8 no-action requests are not binding and reflect only informal staff views… Likewise, a prior staff response indicating that the staff was unable to concur with a company's view that a proposal may be excluded does not mean that companies cannot form a reasonable basis to exclude the same or a similar proposal."[5] Consistent with those comments, Chairman Atkins stated with respect to Rule 14a-8(i)(7) that "companies do not need a no-

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action letter to reasonably conclude that what was once extraordinary – and perhaps constituted a significant social policy issue – may now be treated as ordinary." The Updated Statement is not likely to be the only action the SEC takes with respect to Rule 14a-8 this year. With "Shareholder Proposal Modernization" listed on the SEC's rulemaking agenda under Chairman Atkins's leadership,[6] even some shareholder proponents have acknowledged that the Rule 14a-8 shareholder proposal regime should be reformed.[7] Chairman Atkins has stated that "the SEC is also holistically evaluating the rule itself," with its focus being the fundamental question of "what is the federal government's appropriate role in regulating shareholder proposals." These and other statements suggest that the SEC may propose to cease regulating who is eligible to submit shareholder proposals and what subjects are proper for shareholder proposals, and instead focus its rules on its traditional mandate under Exchange Act Section 14(a) by addressing and enhancing transparency around vote solicitations that are conducted in connection with shareholder proposals. At least for the 2026-2027 proxy season, public companies will face a situation similar to the 2025-2026 proxy season. Companies can expect continued engagement with shareholder proponents as part of their overall shareholder engagement activities, and will need to carefully evaluate any shareholder proposals they receive. As noted above, if a company determines to exclude a proposal because the proposal or proponent has not satisfied Rule 14a-8, the company must still notify the Division and the proponent of its intention to exclude the proposal. However, as the Division will no longer issue a "No Objection" letter, the exclusion notice will not need to include an "unqualified representation" that the company has a "reasonable basis" to exclude the proposal, which is what the Division requested in exchange for the Division's issuing a "No Objection" letter in the 2025-2026 proxy season. Under Rule 14a-8(j), the exclusion notice nevertheless should include "an explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority," and a supporting opinion of counsel when such reasons are based on matters of state or foreign law. That explanation will continue to be closely scrutinized by other shareholders and by proxy advisory firms, as well as by shareholder proponents, and remains subject to potential legal challenge. As such, companies should continue to work closely with inside or outside counsel to assess the merits of their arguments before deciding to exclude a proposal. For additional guidance, see the Client Alert we issued when the Division issued its November 2025 statement that it would cease to issue Rule 14a-8 no-action responses.[8] [1] Available at https://www.sec.gov/newsroom/speeches-statements/corpfin-statement-rule-14a-8-process-081426?utm_medium=email&utm_source=govdelivery. [2] Available at https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season. [3] In the 2025 Statement, the Division stated that although it generally would not issue no-action responses to Rule 14a-8 exclusion notices, it would respond to no-action requests under Rule 14a-8(i)(1). This carveout for Rule 14a-8(i)(1) exclusion arguments was based on Chairman Atkins' speech questioning whether precatory proposals are proper subjects for shareholder action under Delaware law. The Updated Statement notes that the Division did not receive any no-action requests to exclude a proposal under Rule 14a-8(i)(1) during the 2025-2026 proxy season. *See* "SEC Chairman Atkins Comments on Rule 14a-8 Challenges to Non-Binding Shareholder Proposals, as well as Delaware and Texas Corporate Laws". [4] *See* Chairman Atkins, Remarks at the Society for Corporate Governance Conference (July 9, 2026), *available* at https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-society-corporate-governance-07-09-2026-remarks-society-corporate-governance-conference. [5] 2025 Statement, at note 3. [6] Gibson Dunn Client Alert, "A New Day at the SEC: The SEC's Spring 2025 Reg Flex Agenda" (Sept. 5, 2025), available at https://www.gibsondunn.com/the-pendulum-swings-again-the-sec-spring-2025-reg-flex-agenda/. The SEC's current Regulatory Flexibility Act Agenda is available here.

[7] *See* Rulemaking Petition of the "Shareholders Rights Group," https://www.sec.gov/files/rules/petitions/2026/petn4-918.pdf and an associated comment letter at https://www.sec.gov/files/rules/petitions/2026/petn4-917.pdf.

[8] *See,* "SEC Staff Issues Statement Revising Its Role in the Shareholder Proposal

Process for the 2026 Proxy Season" (Nov. 18, 2025), available at https://www.gibsondunn.com/sec-staff-issues-statement-revising-its-role-in-the-shareholder-proposal-process-for-2026-proxy-season/.

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