

GIBSON DUNN



Securities Regulation & Corporate Governance
Update

November 18, 2025

SEC Staff Issues Statement Revising Its Role in the Shareholder Proposal Process for the 2026 Proxy Season

The Statement applies during the current proxy season (i.e., October 1, 2025, through September 30, 2026) to all grounds of exclusion under Rule 14a-8 other than Rule 14a-8(i)(1).

On November 17, 2025, the Division of Corporation Finance (the Staff) of the U.S. Securities and Exchange Commission (the Commission) announced that the Staff will not respond to most Rule 14a-8 no-action requests or express any views on companies' intended reliance on any basis for excluding shareholder proposals under Rule 14a-8. The [Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season](#) (the Statement) reflects the Staff's resource constraints and backlog of registration statements and other filings following the lengthy federal government shutdown, and "the extensive body of guidance" available under Rule 14a-8. It applies during the current proxy season (i.e., October 1, 2025, through September 30, 2026) to all grounds of exclusion under Rule 14a-8 other than Rule 14a-8(i)(1).

However, the Statement does not give companies carte blanche to exclude shareholder proposals. Companies intending to exclude a shareholder proposal from their proxy statement pursuant to Rule 14a-8 remain obligated to notify the Commission and the proponent of that fact, setting forth an explanation of why the company believes that it may exclude the proposal and citing any applicable authority. If the notice also includes 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,” the Staff will respond with a letter stating that, based on the representation, it will not object to the exclusion of the shareholder proposal from the company’s proxy materials.

Below, we address key aspects of, and considerations in light of, this development.

Key Takeaways from the Statement

1. ***The Staff will not respond to most no-action requests or otherwise express a view on whether proposals are excludable under Rule 14a-8.*** As detailed in the Statement, the Staff will not respond to most no-action requests or express any views on companies’ intended reliance on any basis for excluding shareholder proposals under Rule 14a-8, except for no-action requests under Rule 14a-8(i)(1). This carveout for Rule 14a-8(i)(1) exclusion arguments follows SEC Chairman Atkins’ recent remarks questioning whether precatory proposals are proper subjects for shareholder action under Delaware law.^[1] If the determination is that they are not proper subjects under Delaware corporate law, precatory proposals would be excludable from Delaware companies’ proxy statements under Rule 14a-8(i)(1). Given this open question, the Staff will continue to review no-action requests under Rule 14a-8(i)(1) until it determines that there is sufficient guidance available to assist companies and proponents in their decision-making process related to the exclusion of shareholder proposals on that basis.^[2]
2. ***Companies are still required to notify the Commission and proponents before they exclude shareholder proposals from their proxy materials.*** Consistent with the requirements of Rule 14a-8(j), the Statement reminds companies that they must still notify the Commission and shareholder proponents of their intent to exclude a shareholder proposal no later than 80 calendar days before filing a definitive proxy statement. Rule 14a-8(j) requires the notice to include the company’s reason(s) for excluding the proposal, together with a copy of the proposal, “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. However, the Statement indicates that the notice requirement is informational only. Although the Staff, as a convenience to both companies and proponents, has for many years engaged in the informal practice of expressing its enforcement position on such submissions, the Statement emphasizes there is no requirement to do so. Accordingly, companies are not required to obtain a letter from the Staff in order to exclude a shareholder proposal, and should not request a no-action response when notifying the Commission of their intention to exclude proposals.
3. ***The Staff will issue a “no objection” response to non-Rule 14a-8(i)(1) exclusions in some instances.*** If a company’s exclusion notice includes 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,” the Staff will issue a letter indicating that, based solely on the company’s or counsel’s representation, the Staff will not object if the company omits the proposal from its proxy materials. The “no objection” response is similar to the statement the Staff issues in other contexts, such as when responding to certain legal or accounting inquiries.

4. ***Companies can form a reasonable basis to exclude a proposal even without a prior Staff response concurring with exclusion of the same or similar proposal.*** The Statement reiterates that prior Staff responses to Rule 14a-8 no-action requests are not binding and reflect only informal Staff views. As such, the Statement notes that a company may form a reasonable basis to exclude a proposal (a) in the absence of a prior Staff response concurring that there was some basis to exclude the proposal, and (b) if the Staff in the past declined to concur with a company's view that the same or a similar proposal could be excluded.
5. ***The Statement applies to the current proxy season.*** The Statement applies to no-action requests submitted through September 30, 2026, including to no-action requests received by the Staff before October 1, 2025, to which the Staff has not yet responded. The Statement also indicates that if a company has already submitted a request relying on a basis for exclusion other than Rule 14a-8(i)(1) and wishes to receive a "no objection" response from the Staff, it should supplement its no-action request with a notice that includes an unqualified representation that the company has a reasonable basis to exclude the proposal. Helpfully, the Statement makes clear that for those companies the time of the initial submission of the no-action request will apply for purposes of complying with the 80-day requirement in Rule 14a-8(j). Notably, more change is likely ahead for Rule 14a-8 in future proxy seasons, as the Commission turns to the "Shareholder Proposal Modernization" proposed rulemaking included on the Commission's Spring 2025 Unified Agenda of Regulatory and Deregulatory Actions, which is intended to "modernize the requirements of Exchange Act Rule 14a-8 to reduce compliance burdens for registrants and account for developments since the rule was last amended."^[3]

Key Considerations Following the Statement

The Statement puts all participants in the shareholder proposal process – companies, proponents, proxy advisory firms, and shareholders – in uncharted territory. Shareholder proponents will, for example, need to carefully consider whether they can achieve more through negotiating a withdrawal of their proposal in contrast to having their proposal excluded and having to pursue other means to advocate for their views. Institutional investors, despite growing frustration with the proliferation of shareholder proposals, will need to consider whether companies' decisions to exclude shareholder proposals given the Statement raise governance concerns, and if so under what circumstances. With the Staff's limited involvement in the coming year's Rule 14a-8 process, the burdens of Rule 14a-8 may be greater this year than in the past. Public companies will need to bear in mind a number of competing considerations, including the following.

1. ***Rule 14a-8(j) Notifications Should Be Mindful of Other Audiences.*** Companies will need to send Rule 14a-8(j) notifications to the shareholder proponent and may wish to make their analysis available to proxy advisory firms or other shareholders. Accordingly, we expect many Rule 14a-8(j) notifications will elaborate on the bases for exclusion, similar to no-action requests. That reasoning will be closely scrutinized by shareholder proponents and subject to potential legal challenge, so companies should work closely with inside or outside counsel to assess the merits of their arguments before deciding to exclude the proposal under the Statement's new process.

2. **Potential for Litigation.** While litigation has always been a potential avenue for addressing proposals under Rule 14a-8, companies and proponents generally have deferred to the more efficient and predictable process of Staff review. However, given the Staff's determination not to issue most no-action responses during the current proxy season, litigation may be pursued by companies seeking greater certainty or by proponents that view a company's exclusion notice as being unjustified. Unfortunately, the playing field is not level in this context, as some courts have declined to entertain company lawsuits under Rule 14a-8.
3. **Proponents May Look for Other Options to Raise Their Concerns.** In recent years, shareholder proponents and other interested parties have increasingly issued public statements and filed Notices of Exempt Solicitation with the Commission to publicize their views on various proposals and, in some cases, have engaged in "vote no" campaigns against certain directors. Proponents may resort to using exempt solicitation filings and other public relations strategies to raise their concerns or criticize companies for excluding their shareholder proposal. Accordingly, companies should continue to actively monitor for PX14A6G submissions on EDGAR, review them carefully, and inform the Staff to the extent they believe a filing contains materially false or misleading information or otherwise fails to satisfy the requirements of Rule 14a-6(g).
4. **Proxy Advisors Have Yet to Respond.** ISS's current Procedures & Policies Frequently Asked Questions state that it will generally recommend votes against the chair of the nominating and governance committee if a company excludes a properly submitted proposal without obtaining a voluntary withdrawal by the proponent, no-action relief from the Staff, or a U.S. District Court ruling that the proposal can be excluded. This FAQ was issued in response to the Staff's announcement in 2015 that it would not issue no-action request responses under Rule 14a-8(i)(9), while the Staff reconsidered its approach to that provision. Similarly, Glass Lewis will consider recommending votes against all members of the nominating and governance committee if a proposal is excluded but the Staff has declined to state a view on whether the proposal should be excluded. The proxy advisory firms' voting positions were adopted in a very different context, and they reflect the type of "one-size-fits-all" approach to corporate governance that has drawn scrutiny from regulators and legislatures. Given the reasons underlying and broad applicability of the Staff's Statement and ongoing scrutiny of the proxy advisory firms' practices, companies will want to monitor the approach ISS and Glass Lewis will take this proxy season.
5. **Stay Tuned.** Several details on how the Statement will implicate Staff processes have not yet been announced, such as whether the Staff's "no objection" correspondence will be publicly posted on the Commission's website. As well, since it is early in the proxy season, and the role of proxy advisory firms and shareholder proposals remain in the political limelight, further developments are possible.

[1] See Chairman Paul S. Atkins, *Keynote Address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala* (Oct. 9, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governances-25th-anniversary-gala>.

[2] For further information on Chairman Atkins' recent comments related to asserting Rule 14a-8(i)(1), please see our client alert "[SEC Chairman Atkins Comments on Rule 14a-8 Challenges to Non-Binding Shareholder Proposals, as well as Delaware and Texas Corporate Laws](#)."

[3] For further information regarding the Commission's rulemaking priorities, please see our client alert "[A New Day at the SEC: The SEC's Spring 2025 Reg Flex Agenda.](#)"

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