Preparing for the Upcoming Form 10-K and Proxy Statement Season

By Bruce Newsome, Walt Cory | January 26, 2026

RELATED PRACTICES Capital Markets and Securities, Corporate

This alert highlights recent updates to Securities and Exchange Commission (SEC) disclosure obligations effective for the upcoming Form 10-K and proxy statement season as well as other regulatory updates companies should consider. Note that the topics listed below include key SEC updates and do not cover other updates that companies should take into consideration, such as voting guidelines of proxy advisory firms and institutional investors.

Effects of the Government Shutdown

Companies whose business operations and/or financial conditions were materially affected by the government shutdown in late 2025 may be obligated to discuss such material effects in their Management's Discussion and Analysis of Financial Condition and Results of Operations sections of their Form 10-Ks pursuant to Item 303 of Regulation S-K. Companies that were affected by an inability to interact with federal government agencies during the shutdown, for example, should disclose any material impacts on their businesses, financial conditions and results of operations. Similarly, companies whose businesses were or expect to be affected by delays in permitting, licensing or other federal regulatory approval due to the government shutdown should disclose any material effects to their past or upcoming results of operations and/or financial conditions in their Form 10-Ks.

Limited Issuance of "No-Action" Letters Under Rule 14a-8

On Nov. 17, 2025, the SEC's Division of Corporation Finance issued a statement announcing that, with limited exceptions, the SEC will not respond to requests for "no-action" letters that relate to the exclusion of shareholder proposals pursuant to Rule 14a-8 promulgated pursuant to the Securities Exchange Act of 1934 (the Exchange Act) during the 2026 proxy season. The SEC has determined that it will only respond to, or otherwise express views on, "no-action" requests that relate to the exclusion of shareholder proposals pursuant to Rule 14a-8(i)(1). According to the statement, this departure from the SEC's conventional practice of issuing "no-action" letters at the request of a company intending to rely on Rule 14a-8 to exclude a certain shareholder proposal from its proxy statement is due to timing constraints and the considerable backlog of registration statements and other filings following the government shutdown.

Companies should recognize that the SEC's decision to review only "no-action" requests that relate to exclusion under Rule 14a-8(i)(1) came following statements from Chairman Atkins on Oct. 9, 2025 in which he contemplated an interpretation of Rule 14a-8(i)(1) that allows companies to exclude from proxy statements precatory (non-binding) shareholder proposals if such proposals are not permitted by or are otherwise improper under applicable state law. Speaking on Delaware law specifically, Chairman Atkins stated that "if there is no fundamental right under Delaware law for a company's shareholders to vote on precatory proposals . . . then one could make an argument that a precatory shareholder proposal submitted to a Delaware company is excludable under paragraph (i)(1) of Rule 14a-8." For Texas-organized companies, Chairman Atkins stated that companies that

© 2026 Haynes and Boone, LLP

have elected to be governed by the new Section 21.373 of the Texas Business Organizations Code, which bars shareholders below a certain ownership threshold or minimum holding duration from submitting shareholder proposals, would likewise be able to exclude proposals from such shareholders from proxy statements under Rule 14a-8(i)(1).

Read the full article here.

© 2026 Haynes and Boone, LLP