SEC Ends Shareholder Proposal No-Action Reviews: What Public Companies Need to Know

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The Securities and Exchange Commission's ("SEC") Division of Corporation Finance (the "Division") announced on Aug. 14, 2026, that it will no longer respond to public companies' no-action requests to exclude shareholder proposals under Rule 14a-8. Effective immediately, the Division has ended its longstanding role in the shareholder-proposal exclusion process and expanded its November 2025 policy limiting substantive responses to exclusion requests.

Background

Historically, a public company seeking to omit a shareholder proposal on substantive or procedural grounds under Rule 14a-8(i) could submit a no-action request to the Division. In response, the Division would issue a no-action letter indicating whether the proposal was excludable under Rule 14a-8, such that the Division would not recommend enforcement action if the company excluded the proposal from its proxy materials.

In November 2025, the Division announced that it would respond only to no-action requests addressing the excludability of proposals under state law pursuant to Rule 14a-8(i)(1) for the 2025-26 proxy season. Notwithstanding this change, companies seeking to exclude proposals on other substantive or procedural grounds could still obtain a Division response by representing, without qualification, that the company had a reasonable basis for exclusion under Rule 14a-8, prior published guidance and/or judicial decisions. The Division would not evaluate the merits of that determination but would confirm that it did not object to the company's decision to omit the proposal.

Implications for Public Companies

Following the August 2026 announcement, the Division will no longer issue any no-action or no-objection responses. The SEC explained that the change will allow the Division to focus "resources on the review of Securities Act and Exchange Act filings, including those reviews that are statutorily required, for the protection of investors and facilitation of capital formation, and in light of the extensive body of guidance from the Commission and the staff available to both companies and proponents on Rule 14a-8."

Without Division review, public companies must independently determine whether they have a valid basis to exclude a shareholder proposal under Rule 14a-8. Although public companies may still consult existing Division guidance, including prior no-action letters, published staff interpretations and judicial decisions, companies will face an enhanced risk of shareholder litigation in the absence of specific guidance from the Division. During the 2025-26 proxy season, six proponents filed lawsuits challenging the exclusion of their proposals. Of the six lawsuits, three settled without judicial resolution on the merits, with the companies either including the proposal or agreeing to the shareholder's disclosure request. Of the three cases that were resolved, courts denied motions for injunctive relief in two cases and granted injunctive relief in one, enjoining the company from

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excluding the shareholder proposal. Public companies should expect shareholder litigation to continue into the 2026-27 proxy season.

In addition, public companies must still satisfy the procedural requirements of Rule 14a-8(j) when seeking to exclude a shareholder proposal from their proxy materials, including filing a notice of exclusion with the SEC through the online Shareholder Proposal Form. Because the Division's shareholder-proposal email address is no longer operational, companies and shareholders must submit any questions and other correspondence regarding shareholder proposals to the SEC staff through the online form.

Thinking Ahead

During an October 2025 speech, SEC Chair Paul Atkins stated that he believes that "a fundamental reassessment of Rule 14a-8 was in order" and that modernizing the requirements of Rule 14a-8 to reduce compliance burdens for registrants was on the SEC's rulemaking agenda. As of Aug. 28, 2026, the website for the Office of Information and Regulatory Affairs lists SEC proposal "Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4" as currently under review. It is worth noting that any amendment to or rescission of Rule 14a-8 will be subject to the SEC's rulemaking procedures, including notice and comment rulemaking. Further, any such changes will likely face litigation, seeking to bar the amendment or rescission of the rule as well. Therefore, public companies should not expect any permanent changes to Rule 14a-8 in the immediate future.

Key Considerations

- **Internal Corporate Governance:** Public companies should develop protocols to evaluate shareholder proposals against the exclusion bases in Rule 14a-8(i) and maintain detailed records of the legal analysis supporting each exclusion decision in anticipation of litigation or negotiations with shareholder proponents.
- **Proactive Investor Engagement:** Frequent and transparent investor communications can help public companies understand shareholder concerns and potentially prevent proposals before submission. Companies should coordinate with their investor relations team and legal counsel to identify recurring concerns and engage with significant shareholders and likely proponents before the proposal-submission window. Where appropriate, targeted disclosure, governance changes or measurable milestones may address concerns through dialogue rather than the proxy process.
- **State Law Considerations:** Public companies should assess whether state corporate law provides an additional shareholder proposal gatekeeping mechanism. Section 21.373 of the Texas Business Organizations Code ("TBOC") permits "nationally listed corporations," as defined under the TBOC, to impose heightened requirements on shareholder proposals. Under Section 21.373, a nationally listed corporation that makes an affirmative election to be governed by this section may require that shareholders meet the following requirements to submit a proposal on a matter requiring shareholder approval: (i) hold at least $1 million in market value or three percent of the corporation's voting shares, (ii) have held such shares continuously for at least six months before the meeting date and throughout the meeting and (iii) solicit the holders of shares representing at least 67 percent of the voting power entitled to vote on the proposal. Public companies incorporated in Texas or considering reincorporating in Texas should consult with local counsel regarding the mechanics and enforceability of an affirmative election under Section 21.373 as added protection against shareholder proposals.

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For more information about Rule 14a-8, please contact a member of the Haynes Boone Capital Markets and Securities Practice Group.

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