
SEC Severely Curtails its Review of 14a-8 Shareholder Proposal Exclusions

The Securities and Exchange Commission (“SEC”) Division of Corporation Finance (“Division”) issued a statement on November 17, 2025 (the “Statement”)¹ that could have a profound effect on the next proxy season. The Statement announces that the Division will no longer respond substantively to any no-action requests under Rule 14a-8, with one exception. The Division will continue to respond substantively to requests for no-action related to precatory proposals under Rule 14a-8(i)(1), until such time that it determines there is a sufficient body of applicable guidance. Rule 14a-8(1)(i) allows a company to exclude a shareholder proposal on the basis that it is not a proper subject for action under state law. Precatory proposals are non-binding proposals that allow shareholders to express their views to management but do not bind management to take any action. Foreshadowing the Division’s likely approach to these Rule 14a-8(i)(1) no-action requests, the Statement refers to the remarks² of SEC Chair Paul Atkins made in his October keynote address at the Weinberg Center for Justice gala, where he expressed the view that, since Delaware law provides no right for shareholders to vote on precatory proposals, such proposals would be properly excludable under Rule 14a-8(i)(1). After providing historical context, Chair Atkins laid out the road map for exclusion—“if there is no fundamental right under Delaware law for a company’s shareholders to vote on precatory proposals—and the company has not created that right through its governing documents—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. If a company makes this argument and seeks the SEC staff’s views and the company obtains an opinion of counsel that the proposal is not a ‘proper subject’ for shareholder action under Delaware law, this argument should prevail, at least for that company.”

The overwhelming majority of pro- and anti-environmental, social and governance proposals in recent years have been precatory proposals. This includes, for example, both shareholder proposals to report on environmental matters and diversity, and those seeking to eliminate any such reporting.

The Statement reminds companies that, regardless of the Division’s position regarding no-action requests, a company must still notify the Commission and the sponsoring shareholder 80 calendar days prior to the filing of a definitive proxy of its decision to exclude a shareholder proposal. Recognizing that companies may seek to have some closure in regard to other bases for exclusion of shareholder proposals, the Statement identifies a process whereby a no-action request may be submitted with 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” upon which the Division will provide a formulaic response that, based solely on the representation, it will not object to the exclusion.

¹ www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finance-role-exchange-act-rule-14a-8-process-current-proxy-season?utm_medium=email&utm_source=govdelivery

² www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governances-25th-anniversary-gala



The announcement applies to pending no-action requests and to the proxy season from October 1, 2025 to September 30, 2026. Based on Chair Atkins' comment that "a fundamental reassessment of Rule 14a-8 is in order", we may see a rule change that will embody this new approach for future seasons.

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If you have any questions about the issues addressed in this alert, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email the author Helene Banks (partner) at 212.701.3439 or hbanks@cahill.com.