Governance & Securities
Alert

Weil

From the Governance, Securities & Reporting Group of Weil, Gotshal & Manges LLP

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The New Normal: SEC Staff Discontinues All Responses to Rule 14a-8 Stockholder Proposal No-Action Requests

On August 14, 2026, the Division of Corporation Finance of the Securities and Exchange Commission issued an updated statement announcing that, effective immediately and until further notice, it will no longer respond to no-action requests under Exchange Act Rule 14a-8 on any basis, and will no longer issue the representation-based "no objection" letters introduced for the 2025–2026 proxy season.

This Alert summarizes what has changed since the Division's November 17, 2025 statement, what remains the same, and the practical implications for public companies. We offer guidance on "what to do now" for companies and their boards as they prepare for the 2027 proxy season.

1. BACKGROUND: THE NOVEMBER 2025 STATEMENT

On November 17, 2025, the Division of Corporation Finance (the "Division") of the Securities and Exchange Commission (the "SEC" or the "Commission") announced that, for the 2025–2026 proxy season (October 1, 2025 through September 30, 2026), it would not respond to no-action requests, and would express no views, regarding companies' intended reliance on any basis for excluding shareholder proposals under Exchange Act Rule 14a-8, other than requests to exclude a proposal under Rule 14a-8(i)(1) (proposals that are not a proper subject for shareholder action under the laws of the jurisdiction of the company's organization). The Division cited resource and timing constraints following the lengthy federal government shutdown, the volume of registration statements and other filings requiring prompt staff attention, and the extensive body of existing Commission and staff guidance available to companies and proponents. The Division preserved substantive review under Rule 14a-8(i)(1) because, in light of recent developments regarding the application of state law to precatory proposals, it determined that there was not a sufficient body of applicable guidance for companies and proponents to rely on.

The November 2025 statement also introduced an interim accommodation. A company that wished to receive a response for a proposal it intended to exclude on a basis other than Rule 14a-8(i)(1) could include, as part of its notice under Rule 14a-8(j), an unqualified representation that it had a reasonable basis to exclude the proposal based on the provisions of Rule 14a-8, prior published guidance, and/or judicial decisions. The Division would then respond with a letter stating that, based solely on that representation, it would not object if the company omitted the proposal from its proxy materials. The Division did not evaluate the adequacy of the representation and expressed no view on the asserted basis for exclusion. For our discussion of the November 2025 statement, see our prior Alert here.

2. WHAT THE 2026 UPDATED STATEMENT CHANGES

The updated statement converts what was framed as a one-season accommodation into an indefinite withdrawal of the staff from the shareholder proposal review process. Key changes are:

- **No Responses to No-Action Requests on Any Basis.** Effective August 14, 2026, and unless and until the Division announces otherwise, the Division will not respond to Rule 14a-8 no-action requests on any basis, including Rule 14a-8(i)(1). Notably, the updated statement discloses that the Division did not receive a single

Rule 14a-8(i)(1) no-action request during the last proxy season, notwithstanding the carve-out preserved for that basis.

- **No Further Representation-Based "No Objection" Letters.** The Division will no longer respond to Rule 14a-8(j) notices with a letter indicating that it will not object if a company omits a proposal from its proxy materials. A company that excludes a proposal will therefore receive no staff response of any kind. The updated statement grounds this change in the Commission's longstanding recognition, dating to its 1976 statement of informal procedures, that no response or other action by the Commission or its staff is required with respect to Rule 14a-8(j) notices.
- **Applied Indefinitely.** The November 2025 statement was framed around the government shutdown and a temporary filing backlog, and it was expressly limited to a single proxy season. The updated statement instead rests on the Division's determination to focus its resources on the review of Securities Act and Exchange Act filings, including statutorily required reviews, for the protection of investors and the facilitation of capital formation, and it applies indefinitely.
- **Submission Logistics.** The Division's shareholder proposal email address is no longer functional, and questions and other correspondence must be submitted through the Shareholder Proposal Form. The Division of Investment Management will take a substantially similar approach for investment companies; notices relating to investment companies must be submitted by email to IMshareholderproposals@sec.gov.

What remains unchanged is equally important:

- **Rule 14a-8 Itself.** The rule has not been amended. The eligibility and procedural requirements, and the thirteen substantive bases for exclusion, remain in effect and continue to govern whether a company must include a proposal in its proxy materials.
- **The Rule 14a-8(j) Notice.** A company intending to exclude a proposal must still file its notice with the Commission no later than 80 calendar days before it files its definitive proxy statement, stating its reasons why it believes it may exclude the proposal and, where appropriate, including a supporting opinion of counsel. Notices must be submitted through the SEC's online Shareholder Proposal Form. The notice remains informational only; companies will not be required to include an unqualified representation that they have a reasonable basis to exclude the proposal, and no staff response will follow. As to transparency, we expect that Rule 14a-8(j) notices submitted through the online form will continue to be published on the SEC's website as done previously.

3. IMPLICATIONS FOR PUBLIC COMPANIES; EXPECT MORE OF THE SAME IN 2027

Not so different than last proxy season, the exclusion decision now rests entirely with the company, informed by the advice of counsel. For decades, a staff response, even an informal, non-binding one, served as the practical clearance mechanism for exclusions and as a deterrent to litigation. With that mechanism gone completely, the operative constraint on exclusion is no longer the prospect of staff disagreement; it is the prospect of a lawsuit by the proponent seeking to compel inclusion, reputational risk, and residual exposure under Section 14(a) and the Commission's reservation of enforcement discretion. Experience during the 2026 proxy season bears out that companies submitted approximately half as many no-action requests year over year, opting for negotiated withdrawals or for including proposals that were expected to gain little support. Further, shareholder proposal litigation (historically rare) increased, including six federal lawsuits filed against issuers challenging exclusions. Three settled with companies agreeing to either implement the proposal or include it in the proxy statement; one resulted in compelled inclusion; one winning on a motion to dismiss; and one remained pending. From the proponent's perspective this regime might favor institutional proponents and advocacy organizations with budgets for litigation; for smaller proponents, the cost of a lawsuit may be prohibitive relative to the stakes. Proponents can be expected to draft proposals more defensively to avoid the clearest exclusion grounds, and to make greater use of alternative channels to pressure companies, including rights arising under state law and exempt solicitations (as limited by SEC Staff CFI 126.06). Another possible proponent strategy, but seldom used or threatened, is where the proponent files its own proxy statement and solicits its own proxies outside of Rule 14a-8.

What to Do Now:

- **Calendar the 80-Day Deadline and Build in Decision Time; Notice of Exclusion Still Required.** The Rule 14a-8(j) deadline is unchanged. Companies should establish an internal timeline that allows for a considered exclusion analysis, review by senior management and, where appropriate, the board or a committee, well in advance of the notice deadline and the proxy printing schedule.
- **Prioritize Engagement and Negotiated Withdrawals.** With no Staff involvement, early, substantive engagement with proponents remains the most reliable path to resolving a proposal without either inclusion or litigation. Companies should evaluate whether responsive actions, enhanced disclosure, or other commitments could support a negotiated withdrawal before the exclusion decision must be made.
- **Treat Exclusion as a Litigation Decision.** Before excluding, companies should assess the likelihood of litigation, reputational impact, the timeline for expedited injunctive relief measured against proxy printing and mailing dates, the likely forum, and the cost and visibility of defending. For close calls, companies should weigh whether including the proposal, accompanied by a statement in opposition, better serves the company than an exclusion that invites litigation.
- **Document the Basis for Exclusion Contemporaneously.** Companies should prepare a contemporaneous writing applying the text of the rule, Commission releases, Staff Legal Bulletins, prior staff determinations, and judicial decisions. Prior staff no-action responses are informal and non-binding, and the body of staff precedent will no longer grow, but it remains the most developed source of interpretive guidance and can be expected to inform how courts approach the exclusions.
- **Keep in Mind Proxy Advisory Firm and Investor Voting Policies.** Companies that exclude a proposal may wish to consider disclosing their reasons for doing so in the proxy statement, especially if the reason is on Rule 14a-8 substantive grounds such as ordinary business or substantial implementation. During the 2026 proxy season many companies did not include such disclosure. We are only aware of one instance where ISS recommended votes against a governance committee chair after a company excluded an advisory independent chair proposal on "micromanagement" grounds but subsequently changed its recommendation to "cautionary support" after the company filed supplemental materials detailing its reasons for exclusion.
- **Approach the State Law Exclusion (Rule 14a-8(i)(1)) with Care.** Companies considering the exclusion of precatory proposals as improper subjects for shareholder action under state law must now proceed without any prospect of staff review. The analysis will turn on the law of the state of incorporation, which continues to develop, and companies should consider whether declaratory relief or other judicial validation is warranted before relying on this basis.

4. LOOKING AHEAD: RULE 14A-8 RULEMAKING

The updated statement should be read against the broader reconsideration of Rule 14a-8 underway at the Commission. In an October 2025 keynote address, Chairman Atkins questioned foundational premises of the rule, including the application of state law to precatory proposals. The Commission's Unified Agenda of Regulatory and Deregulatory Actions also includes a "Shareholder Proposal Modernization" initiative contemplating amendments to the rule. The indefinite framing of the updated statement (effective "unless and until the Division announces otherwise") suggests that the staff's intermediating role may not return in its historical form. Companies should plan for the 2027 proxy season on the assumption that the no-action process will not be revived and should monitor the anticipated rulemaking, which may reshape the substantive bases for exclusion themselves.

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If you have questions concerning the contents of this Alert, or would like more information, please speak to your regular contact at Weil or to any of the following members of the Governance, Securities & Reporting Group:

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