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Practice Update

SEC Eliminates No-Action Letter Process for Shareholder Proposals Under Rule 14a-8

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On August 14, 2026, the SEC's Division of Corporation Finance (the "Division") announced that it will entirely discontinue responding to no-action requests under Exchange Act Rule 14a-8, effective immediately. The Division will also no longer issue letters indicating it would not object to a company's exclusion of a shareholder proposal based on a company's or counsel's representation. It was also announced that the Division of Investment Management will take a substantially similar approach with respect to investment companies. The stated rationale is to focus Division resources on the review of Securities Act and Exchange Act filings, including statutorily required reviews, and the SEC's view that there is an "extensive body of guidance" already available to both companies and proponents.

This means that companies seeking to exclude proposals are now on their own. If a company believes a shareholder proposal is excludable under Rule 14a-8, it must make that determination based on the rule's text, prior staff guidance (including the existing body of no-action letters), and judicial precedent without any staff confirmation. As indicated in the announcement, companies are still required to submit a notice to the SEC using the online Shareholder Proposal Form when they intend to exclude a proposal. For shareholder proponents,

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the referee role the SEC has played for decades is gone. Proponents concerned about improper exclusions will need to consider litigation as the primary enforcement mechanism.

Key Takeaways

1. **Litigation risk is elevated.** Without the SEC providing cover through no-action letters, companies that exclude proposals face a materially higher risk of lawsuits by proponents. Almost all of the lawsuits filed over exclusions since the November 2025 policy change resulted in favorable outcomes for proponents.
2. **The prior no-action letter library still matters.** The SEC's statement references the "extensive body of guidance" already on the books. Companies should continue to analyze excludability questions using the decades of staff positions in prior no-action letters, but should recognize those letters no longer represent a forward-looking enforcement commitment.
3. **Boards should revisit their proxy season playbook.** Companies should update their shareholder proposal response procedures to account for the absence of staff guidance and should involve securities counsel and litigation counsel earlier in evaluating any proposal they intend to exclude.
4. **Proponents may file more proposals.** The absence of a staff vetting process may embolden proponents to submit proposals that might previously have been deterred by the no-action process, though companies may also feel freer to exclude.
5. **The Division's shareholder proposal email address has been shut down.** All notices and correspondence must now be submitted via the online Shareholder Proposal Form

Practical Steps for Public Companies

Companies should promptly review their shareholder proposal analysis and exclusion procedures with outside counsel to ensure they are prepared to make excludability determinations without staff input. For the upcoming proxy season, this means potentially building additional lead time into the shareholder engagement calendar to allow for more robust internal legal analysis before deciding whether to exclude a proposal. Given the litigation cost-benefit calculus, particularly the proponent-favorable track record in recent court challenges, companies should carefully evaluate whether proposals they might previously have excluded now warrant inclusion. Finally, corporate governance teams should monitor judicial developments closely, as court decisions will serve as the primary source of new interpretive guidance going forward. We are available to assist with any questions regarding potential implications of excluding certain shareholder proposals and will continue to monitor developments in this area.
