

SEC's Division of Corporation Finance Significantly Reduces Staff's Role in the Rule 14a-8 Process for the 2025-2026 Proxy Season

On November 17, 2025, the Division of Corporation Finance (“CorpFin”) of the Securities and Exchange Commission (the “SEC” or the “Commission”) announced changes to the Rule 14a-8 process for the 2025–2026 proxy season¹ that greatly reduce the staff's role in the process, citing the recent government shutdown and significant volume of registration statements and other filings requiring staff attention (the “Statement”).² For the 2025–2026 proxy season, CorpFin staff will not respond to no-action requests for, and will not express views on, companies' intended reliance on any basis for exclusion of shareholder proposals under Rule 14a-8, other than requests to exclude a proposal under Rule 14a-8(i)(1) (improper under state law). At this point, it is premature to make firm predictions on how this development will affect the current proxy season and whether companies facing shareholder proposals or shareholder proponents will alter strategies. We expect some companies to make use of the abbreviated process outlined by CorpFin, but we also expect some companies to avoid potential controversy and allow proposals into their proxy they previously might have attempted to exclude, particularly proposals with a low likelihood of significant support. A company that receives a shareholder proposal should continue to analyze the company's ability to exclude the proposal under Rule 14a-8 and prior guidance and interpretations and consult with counsel about how to proceed in light of the Statement.

Companies planning to exclude a shareholder proposal from their proxy materials must notify the Commission and the proponent no later than 80 calendar days prior to filing a definitive proxy statement, as required by Rule 14a-8(j).³ A company that wants to receive a response to its Rule 14a-8(j) notice for any proposal that it intends to exclude pursuant to a basis other than Rule 14a-8(i)(1) must include in such notice an unqualified representation

from the company or its counsel 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.⁴ If a company includes such a representation, CorpFin will not substantively respond or review the company's 14a-8(j) notice, but CorpFin will respond with a letter indicating that it will not object if the company

omits the proposal from their proxy materials, solely based on the company's representation.

As noted above, CorpFin will continue to evaluate and express its views on no-action requests for shareholder proposals that companies seek to exclude under Rule 14a-8(i)(1) in light of "recent developments in the application of state law and Rule 14a-8(i)(1) to precatory proposals", citing an October 2025 speech in which Chairman Atkins indicated his willingness to defer to Delaware practitioners and courts as to whether precatory proposals are a "proper subject" for shareholder action under Delaware law.⁵ CorpFin will continue to review Rule 14a-8(i)(1) requests until "such time as it determines there is sufficient guidance available to assist companies and proponents in their decision-making process".

QUESTIONS

We submitted a Rule 14a-8 no-action request prior to the publication of the Statement but have not received a response. What do we do?

If CorpFin has not yet responded to your no-action request, and you plan to exclude a shareholder proposal under a basis other than Rule 14a-8(i)(1), the staff will not be responding to your no-action request as it has in the past. If you would like to receive a response from CorpFin, you should submit a Rule 14a-8(j) notice including the representation

noted above. Note that the Statement provides that the date of a company's initial submission will apply for purposes of the 80-day requirement in Rule 14a-8(j).

How should we submit our Rule 14a-8(j) notice to the SEC?

Companies should submit Rule 14a-8(j) notices to CorpFin using the online Shareholder Proposal Form.⁶

What is the value in requesting a response from CorpFin staff?

We believe the response from CorpFin will be of limited utility because it is clear from the Statement that CorpFin's response is based solely on the required representation and not based on a substantive review by CorpFin staff. However, such response may nonetheless serve a signaling function to courts and proponents that some companies may find worthwhile to obtain.

What should the "unqualified representation" look like? How much detail should we include in our Rule 14a-8(j) notice?

We expect CorpFin staff will share additional guidance regarding implementation of the Statement in the coming days, and companies should stay closely coordinated with counsel on implementation matters such as these.

1 The Statement applies to the "current proxy season (October 1, 2025 – September 30, 2026)" and no-action requests received prior to October 1, 2025, to which CorpFin staff has not yet responded.

2 SEC Division of Corporation Finance, *Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season*, Nov. 17, 2025, available at: https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finance-role-exchange-act-rule-14a-8-process-current-proxy-season#_ftn1

3 Rule 14a-8(j)(2) also requires "an explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule".

4 With respect to this representation, the Statement notes that "absence of a prior staff response indicating that the staff agreed that there was some basis to exclude a particular type of proposal does not mean that companies cannot form a reasonable basis to exclude the proposal" and that "a prior staff response indicating that the staff was unable to concur with a company's view that a proposal may be excluded does not mean that companies cannot form a reasonable basis to exclude the same or a similar proposal".

5 Paul S. Atkins, Chairman of the Securities and Exchange Commission, *Keynote Address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala*, Oct. 9, 2025, available at: <https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governance-25th-anniversary-gala>.

6 The form is available here: <https://www.sec.gov/forms/shareholder-proposal#no-back>.

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