

Vital Briefing

Shareholder proposals the sequel: if there is one thing to know about the current proxy season, it is this...

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The last time the SEC's Division of Corporation Finance (CorpFin) issued guidance regarding shareholder proposals, it consisted of statements, staff legal bulletins, and CFIs, some of which were issued amidst the start of the '25-'26 proxy season, generating some generalized grumbling about how to proceed on short notice despite some accommodations from the Division. CorpFin is back this year with a sequel containing still more guidance, although this time somewhat ahead of the beginning in earnest of the '26-'27 proxy season.

The Division's [latest guidance](#) purports to give companies near total control over their handling of precatory shareholder proposals, including those for which exclusion would be based on state law issues. That degree of flexibility, albeit with a few minimal requirements still mandated by regulation that cannot be wiped away with mere guidance, could raise questions about just how aggressive companies might want to be in seeking to exclude proposals and whether taking maximum advantage of the Division's new guidance might spur costly litigation with shareholders.

I. State laws: the road ahead, the road behind

The new CorpFin guidance states that Division staff will no longer review any requests to exclude shareholder proposals. Embedded within this general guidance is a further statement that the new approach to shareholder proposals includes those that might be excluded on state law grounds.

Last year, SEC Chair Paul S. Atkins gave a speech at a well-known corporate law academic center and suggested that, at least for companies incorporated under Delaware law, nearly all shareholder proposals could be excluded as inconsistent with that state's laws. Atkins's observation was premised on an academic paper that made the same suggestion, although the paper arguably noted a few counter trends that might frustrate an effort to exclude a proposal on that theory.

Exchange Act Rule 14a-8(i)(1) provides that shareholder proposals that are unfit subject matter for shareholder action under the law of the company's state of organization

may be excluded. A note to Rule 14a-8(i)(1) provides that precatory proposals may not be excludable per se because, if they are merely "recommendations or requests," they are likely proper. Atkins's remarks and the academic paper focused on Delaware only, while the note to Rule 14a-8(i)(1) spoke more generally.

It remains to be seen if the Division's latest guidance will spur some companies to more aggressively seek exclusion on state law grounds. The Division itself noted that during the past year, when it was still planning to review such requests to exclude, the Division received no such requests.

II. The 2025 and 2026 guidance compared

As mentioned above, the biggest change for the [2026-2027 proxy season](#) is that the Division will not reply to requests to exclude shareholder proposals and this guidance also applies to requests based on grounds to exclude under state law. Below is a comparison of the guidance issued for the [2025-2026 proxy season](#) and for the upcoming proxy season.

Proxy guidance compared	
2026-2027	2025-2026
"[T]he Division has determined to discontinue responding to Rule 14a-8 no-action requests entirely, including those submitted under Rule 14a-8(i)(1)..."	"[T]he Division has determined to not respond to no-action requests for, and express no views on, companies' intended reliance on any basis for exclusion of shareholder proposals under Rule 14a-8, other than no-action requests to exclude a proposal under Rule 14a-8(i)(1)"
"Companies will continue to be required under Rule 14a-8(j) to submit notices to the Commission containing the information required by the rule when they intend to exclude shareholder proposals from their proxy materials."	"Pursuant to Rule 14a-8(j), companies that intend to exclude shareholder proposals from their proxy materials must still notify the Commission and proponents no later than 80 calendar days before filing a definitive proxy statement."
"It [the Division] also will no longer respond to notices filed under Rule 14a-8(j) with a letter indicating that it will not object if a company omits a proposal from its proxy materials. Although the staff 'has for many years engaged in the informal practice of expressing its enforcement position' in response to notices submitted under Rule 14a-8(j), the Commission has also long recognized that '[n]o response or other action by the Commission or its staff is required in regard to such communications.'"	"[I]f a company wishes to receive a response for any proposal that it intends to exclude pursuant to a basis other than Rule 14a-8(i)(1), the company or its counsel must include, as part of its notification pursuant to Rule 14a-8(j), 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. In those situations, the Division will respond with a letter indicating that, based solely on the company's or counsel's representation, the Division will not object if the company omits the proposal from its proxy materials."
The guidance is "effective immediately, unless and until the Division announces otherwise."	"This announcement applies to the current proxy season (October 1, 2025 – September 30, 2026) as well as no-action requests received before October 1, 2025, to which the Division has not yet responded. Companies that have already submitted a request relying on a basis for exclusion other than Rule 14a-8(i)(1) and that wish to receive a response from the Division should submit a notice that includes the representation described above. In those cases, the time of the initial submission will apply for purposes of the 80-day requirement in Rule 14a-8(j)."
"The Division of Investment Management is responsible for reviewing Rule 14a-8 requests related to investment companies. In order to focus the Division of Investment Management resources on the review of investment company filings for the protection of investors and facilitation of capital formation, the staff of the Division of Investment Management will take a substantially similar approach as set forth above."	"The Division of Investment Management is responsible for responding to Rule 14a-8 requests related to investment companies. The staff of the Division of Investment Management will follow a substantially similar process as set forth above."

Source: 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); Updated Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process (Aug. 14, 2026).

III. Mechanics of complying with new guidance

Tucked within the broader policy statements contained in the Division's new proxy season guidance are several practical steps companies and proponents must do or not do in order to comply with the guidance. These steps include:

- Do continue to submit notices to the Commission per Rule 14a-8(j) with any required information.
- Companies and proponents should use the SEC's Shareholder Proposal Form to submit notices and other related correspondence.
- Do not use CorpFin's old shareholder proposal email address because it has been rendered nonfunctional.
- Rule 14a-8(j) notices intended for the IM Division should be submitted via IM's shareholder proposal email address. Other company or shareholder proponent correspondence should be submitted to IM's Disclosure Review and Accounting Office via the same email address.

IV. Looking ahead

Given the timing of CorpFin's new proxy season guidance, companies may have sufficient time to make any further adjustments ahead of the start of when

the next proxy season begins in earnest. Perhaps the one lingering question will be, in the absence of staff review of state law matters, whether any companies could take that as a signal to more aggressively assert exclusion on that basis, but perhaps companies will remain as circumspect as they were under the last set of guidance.

A much larger open question, perhaps, is less about whether, and more about what, alterations the Commission may make to Exchange Act Rule 14a-8. More than a year ago, the Commission [withdrew](#) a Biden-era SEC proposal to amend the rule regarding the meaning of "substantial implementation, duplication, and resubmission." In its release formalizing the withdrawn notice of proposed rulemaking, the Commission indicated that it would not issue final rules under the earlier proposal but may move forward with a new notice of proposed rulemaking.

The Commission's most recent Unified Agenda indicates multiple possible proxy rule changes:

- **Shareholder Proposal Modernization**—The Commission said CorpFin may recommend "to modernize the requirements of Exchange Act Rule 14a-8 to reduce compliance burdens for registrants and account for developments since the rule was last

amended." The timing of a new notice of proposed rulemaking is expected to be October 2026.

- **Amendments to Certain Proxy Rules**—The Commission indicated that the Division may recommend "to modernize certain rules regarding the proxy solicitation process, including certain filing and procedural requirements relating to proxy solicitations and shareholder meetings, to reduce costs and compliance burdens." The anticipated timing of a new notice of proposed rulemaking is also October 2026.

Lastly, companies and proponents should not forget the totality of assorted, shareholder proposal-adjacent Staff Legal Bulletins, Corporation Finance Interpretations (CFIs), and other informal agency guidance that the SEC under the current Administration has issued, which also impacts the shareholder proposal milieu. Much of this guidance is directed at curbing shareholder activism around environmental, social and governance (ESG) matters but also can touch some of the more mundane corporate governance issues that arise in the business of a public company. This guidance includes topics such as when Schedule 13D is required (and the short-form Schedule 13G is unavailable) and when activist funds must disclose their investors.¹

1 See, Shareholder Proposals: Staff Legal Bulletin [No. 14M](#) (CF) (Feb. 12, 2025); Corporation Finance Interpretations, Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting (Questions [103.12](#), [110.09](#) and [110.10](#)) and Proxy Rules and Schedules 14A/14C (Question [155.02](#)).