PRI PRINCIPLES FOR RESPONSIBLE INVESTMENT

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US Securities & Exchange Commission Rule 14a-8 Process Update

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An investor initiative in partnership with
UNEP Finance Initiative and UN Global Compact

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About this briefing

This briefing provides a high-level overview of the US Securities and Exchange Commission ("SEC" or "the Commission") "no-action" review process which supports the shareholder proposal process.

On November 17, 2025, the SEC Division of Corporation Finance ("the Division") announced a temporary change to its role in the no-action review process for shareholder proposals submitted under Rule 14a-8 under the Securities Exchange Act of 1934 ("Exchange Act").

The intended audience for this document is PRI signatories who are unfamiliar with the SEC's no-action process, and specifically those who have an interest in filing shareholder proposals with the companies in which they have an ownership stake.

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Overview

On November 17, 2025, the US Securities and Exchange Commission Division of Corporation Finance ("the Division") announced a temporary change to its role in the review process for shareholder proposals submitted under Rule 14a-8 under the Securities Exchange Act of 1934 ("Exchange Act").

For the current proxy season, running October 1, 2025, through September 30, 2026, the Division will not respond to no-action requests for companies seeking to exclude a shareholder proposal unless the reason for exclusion relates to state law.

The SEC's no-action process allows regulated entities to ask staff for informal views on whether the SEC staff would recommend enforcement for a specific action, such as how to classify a new product. The phrase "no-action" comes from the staff opinion that the SEC would likely take no enforcement action against the entity for the proposed activity. Though staff no-action opinions are non-binding.

This change will affect the ability of SEC staff to assist both investors and issuers in avoiding the possibility of unnecessary litigation, which is stated as the "sole purpose of staff review and comment" in the Commission-cited "Statement of Informal Procedures for the Rendering of Staff Advice."

Key takeaways for responsible investors

The change is temporary:

- The November 17 statement cites temporary pressures caused by the government shutdown and the need to review pending registration statements as influencing the change in practice through the 2026 proxy season.

The no-action process is non-binding:

- As detailed in the Commission's 1976 "Statement of Informal Procedures", cited by the Division in its November 17 release, "…the Commission and its staff do not purport in any way to issue 'rulings' or 'decisions' on shareholder proposals management indicates it intends to omit, and they do not adjudicate the merits of a management's posture concerning such a proposal. As a result, the informal advice and suggestions emanating from the staff in this area are not binding on either managements or proponents."
- The 1976 Statement further reads, "And, nothing the Commission or its staff does or omits to do in connection with such proposals affects the right of the proponent, or any shareholder for that matter, to institute a private action with respect to the management's intention to omit that proposal from its proxy materials."

The underlying rules governing the shareholder proposal process remain unchanged:

- The bases for exclusion of a proposal, as outlined in Rule 14a-8, remain unchanged, as does any historic guidance or interpretation of these rules from the SEC or staff.
- The change, however, will affect the ability of SEC staff "to assist both management and the Commission in avoiding the possibility of unnecessary litigation between them," which is stated as the "sole purpose of staff review and comment" in the 1976 "Statement of Informal Procedures."

SEC no-action process

The SEC's no-action process allows regulated entities to ask staff for informal views on whether the SEC staff would recommend enforcement for a specific action, such as how to classify a new product. This inquiry process exists throughout the Commission and is available to regulated entities on all kinds of policies including, but not limited to, 14a-8. For the shareholder proposal process under Rule 14a-8, companies can ask staff views on potentially excluding a particular shareholder proposal from consideration by its shareholders during its annual meeting.

A company initiates the no-action process by submitting a letter to the Division setting forth the basis or bases on which it believes it is entitled to exclude a proposal. Rule 14a-8 includes thirteen substantive bases upon which proposals can be excluded, such as if the proposal is too similar to past proposals, or has already been addressed by the company.

The staff at the SEC review the company's argument and may, but are not required to, respond with a determination or "no-action letter" stating whether they agree with the company's argument for exclusion. If the staff indicate that no enforcement action would likely be recommended, the company may proceed with omitting the proposal with more confidence, however, no-action letters are non-binding.

Update for 2025 – 2026 proxy season

For the current proxy season, running October 1, 2025, through September 30, 2026, the Division will not provide substantive responses to companies' intended exclusion of shareholder proposals other than those relating to state law.

Companies that intend to exclude a shareholder proposal from proxy materials must still notify the Commission and proponents no later than the 80 calendar days before filing a definitive proxy statement, as currently required by Rule 14a-8(j).

The Division states that existing guidance and prior interpretations should be sufficient for company decisions utilizing the bases of exclusion other than Rule 14a-8(i)(1), which allows for exclusion under state law.

Companies still wishing to receive some form of response to its notification seeking to exclude a proposal can request a response which would state: "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."

Additional background

The announcement from the SEC follows a speech by Chairman Atkins on October 9, 2025 in which he stated that "a fundamental reassessment of Rule 14a-8 is in order."

Chairman Atkins cited prior statements from SEC Commissioners that the SEC, including via Rule 14a-8, is meant to support the rights of stockholders provided under state law, rather than any rights originating from the SEC.

He went on to discuss two examples in different states:

- In Delaware, the Chairman cited an interpretation that precatory (non-binding) proposals are not a "proper subject" under Delaware state law and therefore excludable by companies from proxy materials under Rule 14a-8(i)(1).
- In Texas, the Chairman cited a recent change to Texas state law allowing for a significantly higher ownership threshold for shareholders to offer proposals than currently exist in SEC rules. While the SEC requires shareholders to hold $2,000 in shares for three years, $15,000 for two years, or $25,000 for one year, Texas incorporated companies can now require shareholders to hold $1,000,000 or 3% of total voting shares in order to offer a proposal.

In both cases, Chairman Atkins stated that the SEC would defer to what rights are established under state law. In these cases, the Chairman stated the SEC should defer to the representation of corporate counsel that the proposal is impermissible under state law.

Looking ahead

- The Division of Corporation Finance publishes its responses to no-action requests, which can be viewed in chronological order, and may be informative in assessing the announced changes. As of November 19, the Commission has begun to implement the newly stated policy.
- The SEC's Regulatory Flexibility Agenda includes the SEC Chairman's agenda of rulemakings for the coming period. The Spring 2025 Agenda includes a future proposal "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."