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The SEC Says It Will Not Review No Action Requests for Certain Shareholder Proposals and Approves Exxon Mobil's Retail Investor Voting Program

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On November 17, 2025, the SEC's Division of Corporation Finance (the "Division") announced how it will handle requests relating to shareholder proposals under Rule 14a-8. During the 2025-2026 proxy season (until September 30, 2026), the Division will not respond to requests for no action relief received from companies and will not express a view on a company's reliance on any basis for exclusion of a shareholder proposal under Rule 14a-8, other than no-action requests to exclude a shareholder proposal under Rule 14a-8(i)(1). The Division stated that the shift is due to resource limitations following the government shutdown and the high volume of registration statements and other filings that require prompt attention. The Division also noted that there is an extensive body of guidance from the SEC and its staff that remains available to both companies and proponents of shareholder proposals.

Notwithstanding the change, companies must still comply with Rule 14a-8(j), which requires companies to provide notice to the SEC (with a copy to the proponent) of any planned exclusion at least eighty days before the filing of the definitive proxy statement. As a result of the change in policy, the Division noted that the requirement under Rule 14a-8(j) is "informational only." For companies that desire to receive some indication of a response for a proposal sought to be excluded, the company may, as part of its notice, include an unqualified representation stating that the company has a reasonable basis to exclude the proposal. In this situation, the Division will issue a letter stating that "based solely on the company's or counsel's representation" it has no objection to the exclusion.

As part of the statement, the Division reaffirmed that prior responses to no-action requests do not bind the staff and reflect informal views, which can cut both ways. "The 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. Likewise, 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."

The announcement makes clear that the SEC will continue to consider no-action requests that rely on Rule 14a-8(i)(1), which permits a company to exclude a shareholder proposal "if the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." SEC Chairman Paul S. Atkins noted in a recent speech that Rule 14a-8 provides a mechanism for shareholders to bring forward proposals that could properly be brought before a shareholder meeting under state law, which is particularly relevant for precatory proposals. In his speech, Chairman Atkins also referred to note 1 to Rule 14a-8(i)(1) which provides that the SEC "will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise."

Following this announcement from the Division, SEC Commissioner Caroline A. Crenshaw released a statement expressing concern that the new approach will

shift influence toward issuers and away from shareholders, warning that companies may rely on unsupported claims of a reasonable basis for exclusion and receive a no-objection letter without staff review. She cautioned that this could reduce oversight of company decisions to exclude proposals and weaken the role of shareholders in the proxy process and cautioned that the statement was “an act of hostility toward shareholders.” Commissioner Crenshaw’s statement highlights the wider debate surrounding shareholder participation.

The SEC recently weighed in on another company proposal with the potential to have a major impact on shareholder participation. In September 2025, the SEC granted no-action relief for Exxon Mobil’s new voting program designed for retail investors.

Under Exxon’s program, retail investors may opt in to give a standing instruction to vote in line with the board’s recommendations. This can apply to (i) all items or (ii) all items other than contested director elections and major transactions that require shareholder approval. The program is open to all retail investors, including both registered owners and beneficial owners, at no cost. However, the program is not available to investment advisers under the Investment Advisers Act of 1940. Shareholders who enroll will receive an annual reminder of their selection, along with notice that they may cancel the instruction at any time. Participants will continue to receive all proxy materials for upcoming meetings and may override the standing instruction by voting directly. Exxon will also describe the program in its proxy materials and on its website.

Exxon sought assurance that the program would not lead to enforcement under Exchange Act Rules 14a-4(d)(2) and 14a-4(d)(3). These rules generally prevent a proxy from granting authority to vote at more than one meeting. Exxon argued that its program complies with the rules because each standing voting instruction is renewed when the shareholder receives the annual reminder or reviews the proxy materials.

Notwithstanding the SEC’s grant of no-action relief, the program has drawn significant opposition. Two shareholder advocacy groups argued in letters to the SEC that the standing instruction conflicts with the plain terms of Rule 14a-4(d)(2) and (d)(3), thus reducing informed voting and weakening investor engagement. Similarly, a shareholder class-action suit was filed arguing that the program violated several Exchange Act rules because the materials do not identify the matters to be voted on, do not allow contemporaneous choice on each item, seek authority for more than one meeting and are potentially misleading solicitation materials, and does not provide investors key information.

Taken together, the recent SEC announcement as to Rule 14a-8 proposals and the Exxon no-action letter, reflect an important moment in the proxy landscape. The distance the Division is taking from shareholder proposal review and the SEC’s decision to permit standing voting instructions may be indicative of a broader shift in how authority over the proxy process is being allocated among companies, shareholders and the SEC staff. Notably, the outcome of Exxon’s shareholder litigation could impact adoption of similar programs.