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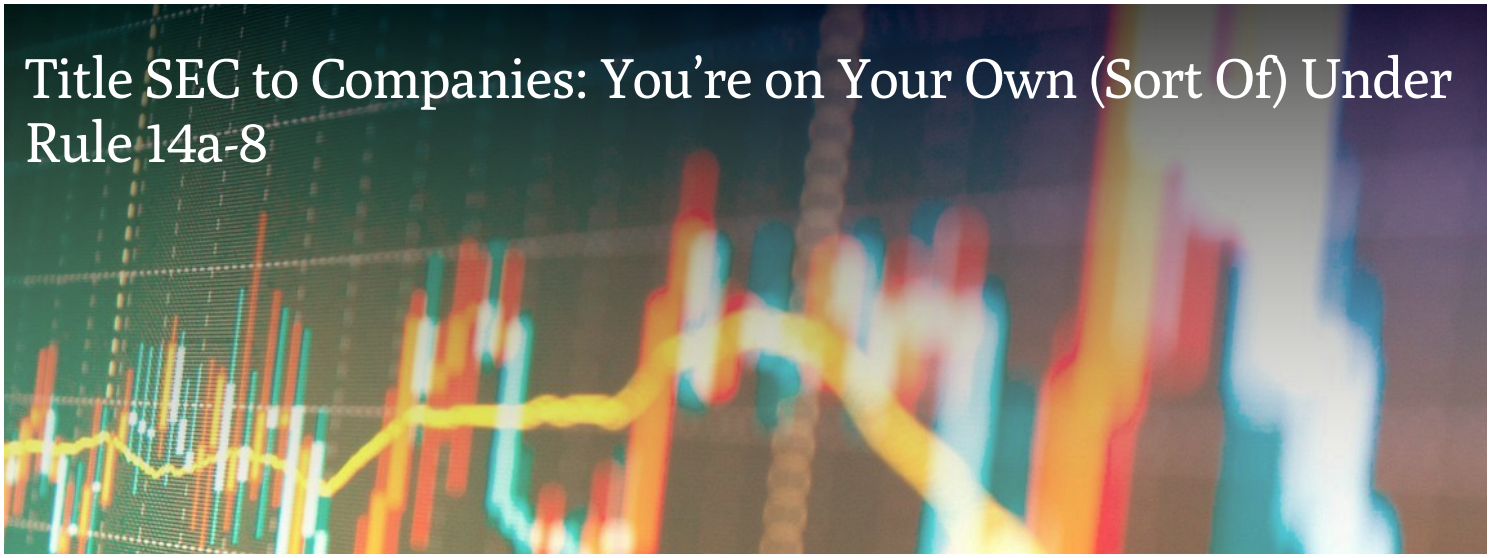
BLOG

# Title SEC to Companies: You're on Your Own (Sort Of) Under Rule 14a-8



NOVEMBER 24, 2025

On November 17, 2025, the staff (the Staff) of the Securities and Exchange Commission's (SEC) Division of Corporation Finance (the Division) announced a significant shift in its approach to the shareholder proposal process for the upcoming 2025-2026 proxy season. The Staff will no longer respond to most no-action requests under Exchange Act Rule 14a-8, which permits qualifying shareholders to place proposals in a public company's proxy materials, while allowing issuers to omit proposals that fall within the rule's procedural or substantive exclusions. Rule 14a-8 is a longstanding point of contention between issuers and proponents of socially and operationally significant shareholder proposals. This guidance fundamentally alters how the Division will address exclusion requests and increases uncertainty for issuers preparing proxy materials.

## THE STAFF'S REVISED ROLE

The Staff's announcement effectively eliminates the longstanding informal "no-action safety net" that issuers have traditionally relied on to obtain the Staff's views on excluding proposals under Rule 14a-8. Citing resource and timing constraints stemming from the longest federal government shutdown in U.S. history, the Staff has adopted the following changes:

- **Limited SEC Review**. The Staff will continue to respond to no-action requests under Rule 14a-8(i)(1) (proposals improper under state law), due to a lack of existing guidance. Requests based on other grounds, such as relevance, absence of power, or substantial implementation, will not receive a response.
- **Notification Still Required**. Companies must still comply with Rule 14a-8(j) by notifying both the SEC and the proponent of the proposal of their intent to exclude a proposal 80 days before filing definitive proxy materials.
- **Seeking a Staff Response is Optional**. Companies seeking a response to an exclusion notification must include an unqualified justification demonstrating a reasonable basis for exclusion, citing the rule, prior guidance, or judicial precedent. This is optional, and the Staff will not pre-evaluate the adequacy of the justification before responding.

These changes are effective for the current proxy season (October 1, 2025–September 30, 2026) and apply retroactively to any no-action requests received before October 1, 2025 that have not yet received a Staff response.

**Practical Implications for Issuers**

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Issuers accustomed to detailed Staff guidance under the previous policy should prioritize robust internal processes and seek input from external counsel when appropriate. With fewer written responses from the Staff expected for close questions, companies should consider the following to prepare for the proxy season:

- **Reassess Internal Protocols**: Issuers should front-load the preparation of their proxy materials. Management should assess proposals earlier, identify exclusion bases consistent with Staff precedent, and prepare high-quality submissions linking the proposal to the issuer's business and asserted exclusion grounds. A robust review process is critical, as advice of counsel and prior SEC communications now play a larger role in issuers' analysis without the security provided by no-action letters.
- **Document Thoroughly**. Issuers should create a clear evidentiary record for excluding proposals.
- **Engage Early with Proponents**. With reduced protection from no-action letters, unilateral exclusions of proposals may increase reputational and litigation risks to the company. As an alternative, early negotiation with proponents can offer a more cost-effective solution, fostering constructive dialogue that often leads to mutually acceptable revisions or withdrawals, balancing issuer flexibility with investor needs. The Staff's statement highlights the value of this proactive engagement.
- **Monitor ESG and Activism**. Issuers should anticipate more aggressive challenges from activists and institutional investors, particularly concerning complex environmental, social, and governance proposals.

## CONCLUSION

The SEC's decision to scale back its involvement in the Rule 14a-8 process fundamentally alters proxy season dynamics, eliminating traditional no-action requests for most shareholder proposals as a "safe harbor." This shift underscores two crucial realities: First, the Division is not a tribunal; its informal, non-binding no-action responses guide market practice but do not preempt litigation or shareholder pressure (or SEC enforcement action). Second, Staff capacity and priorities dictate which requests receive written responses, the depth of their analysis, and how quickly they can be resolved. Companies must swiftly adapt to this new regulatory landscape to mitigate potential litigation, reputational harm, and activist campaigns.

Navigating this new environment requires experience and foresight. Winston & Strawn LLP is at the forefront of advising clients on shareholder engagement, proxy season strategy, and regulatory compliance. Winston's Capital Markets and Securities Law Watch will continue to monitor developments and will provide our readers with additional updates as they become available. For more information, or if you have any questions, please reach out to the authors of this blog post or your regular Winston contacts.

3 Min Read

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