

SEC Update for Upcoming Proxy Season - Changes to Rule 14a-8 No-Action Request Response Process

SEPTEMBER 13, 2019

On September 6, 2019, the Securities and Exchange Commission's Division of Corporation Finance (the "Division") announced changes to how the Division provides responses under the Rule 14a-8 no-action request process.

As part of the Division's efforts to more efficiently and effectively provide guidance in connection with Rule 14a-8 shareholder proposals under the Securities Exchange Act of 1934, as amended, the Division announced that it may respond orally instead of in writing to some no-action letters. The staff intends to issue written response letters where "it believes doing so would provide value, such as more broadly applicable guidance about complying with Rule 14a-8."

The announcement also included a statement from the Division that, where the staff declines to state a view on a request to exclude a shareholder proposal pursuant to Rule 14a-8, it should not be interpreted as indicating that a proposal must be included in the company's proxy statement and noted that, in such cases, the company may have a valid legal basis to exclude the proposal. Companies may seek a formal, binding decision on such exclusion in court.

Companies are still required to notify the Division of their intent to exclude proposals from shareholders under Rule 14a-8 and provide their reasons for such exclusion. Shareholder proposals for regularly scheduled annual meetings must be received at a company's principal executive offices by a date not less than 120 calendar days before the date the company's proxy statement was released to shareholders in connection with the prior year's annual meeting.

The full announcement can be found [here](#).

If you have any questions regarding the Division's announcement or shareholder proposals under Rule 14a-8, please contact a member of Benesch's [Corporate & Securities Practice Group](#).

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