

SEC Staff Announces Rule 14a-8 No-Action Request Process Changes

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On September 6, 2019, the staff of the Division of Corporation Finance announced changes to the process for no-action requests pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the rule governing inclusion of SEC's shareholder proposals in a company's proxy materials. Specifically, starting with the 2019–2020 shareholder proxy season, when informing a proponent and the company of the SEC staff's position—i.e., whether the staff concurs, disagrees or declines to state a view regarding the company's asserted basis for excluding the shareholder proposal—the staff may respond orally instead of in writing to some no-action requests. Written responses generally will be limited to circumstances in which the staff believes its response provides broader value regarding Rule 14a-8 guidance.

The announcement clarifies that if the staff declines to state a view on any particular Rule 14a-8 no-action request, interested parties should not interpret that position as indicating that the proposal must be included. Instead, it means the staff is declining to take a position on the argument's merits, and the company may have a valid legal basis to exclude the proposal under Rule 14a-8. The announcement reminds parties that binding adjudication on the merits of the issue may be sought in court.

The SEC's announcement can be found [here](#).

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