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From No-Action to Court Action: Rule 14a-8 Exclusions Face Legal Scrutiny

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It is early yet in the 2026 proxy season, but it has already been an eventful one. The theme for this year might be that while shareholder proposals making it to ballots, particularly on environmental, social and governance ("ESG") topics are down, litigation is notably up. Litigation has been filed to date against both corporate issuers and even the U.S. Securities and Exchange Commission (the "SEC"), where on March, 19, 2026, the Interfaith Center on Corporate Responsibility (the "Interfaith Center") and As You Sow, two prominent shareholder activists, filed a lawsuit against the SEC. The proponents assert that the SEC violated the Administrative Procedure Act by allowing companies to exclude shareholder proposals from their annual proxy ballots through informal guidance, rather than a formal notice-and-comment rulemaking period.

This lawsuit follows an announcement by the SEC's Division of Corporate Finance (the "Division") on November 17, 2025, that, subject to certain exceptions, the Division would not respond to requests to exclude Rule 14a-8 shareholder proposals for the 2025–26 proxy season. Traditionally, a company seeking to exclude a Rule 14a-8 shareholder proposal would submit a no-action request to the Division, including the grounds and rationale for excluding the proposal. If the Division agreed, it issued a no-action letter stating that it would not recommend enforcement action if the company were to exclude the proposal. Under the new guidance, the Division will not substantively respond to no-action requests, but will issue a letter stating that the Division will not object to a company's exclusion of a shareholder proposal based solely on the company's representation that a reasonable basis exists to exclude the proposal based on the provisions of Rule 14a-8. In other words, with this new guidance from the Division, corporate issuers became empowered to unilaterally exclude shareholder proposals without following the no-action process that had been part of the 14a-8 landscape going back decades.

But this change may have had some unintended consequences, as corporate issuers have been sued in 2026 by several proponents for alleged wrongful proposal exclusions. Prior to the change in the Division's guidance, shareholder proposal lawsuits rarely occurred, with only a handful of cases brought over the last decade. Without the Division to act as an arbiter for Rule 14a-8,

however, several proponents have turned to the courts to voice their concerns. So far, we are aware of at least five lawsuits that have been filed by proponents whose proposals were excluded under the Division's revised guidance. Two of those proponents ultimately had their proposals included in the company's proxy materials as a result of settlements, while a third settlement resulted in the direct implementation of the proponent's proposal. The outcome of the remaining two cases has yet to be determined. Beyond the lawsuit filed against the SEC itself, below is a synopsis of lawsuits filed against corporate issuers to date.

1. ***New York City Employees' Retirement System v. AT&T Inc.***

On February 17, 2026, four New York City pension funds filed a lawsuit against AT&T Inc. ("AT&T") challenging the exclusion of their shareholder proposal to adopt workforce diversity disclosure. AT&T sought to exclude the proposal on the grounds the proposal related to ordinary business of the company, and submitted an abbreviated exclusion notice to shareholders citing the ordinary business exclusion and a single 2021 no-action letter involving a different company. The plaintiffs initiated the lawsuit contending that AT&T bore the burden of proving a valid basis for exclusion and failed to do so. Shortly after, on February 26, 2026, the case settled, with AT&T agreeing to include the proposal in its proxy materials.

2. ***Nathan Cummings Foundation, Inc. v. Axon Enterprise, Inc.***

On February 17, 2026, the Nathan Cummings Foundation challenged Axon Enterprise, Inc.'s ("Axon") exclusion of a political spending disclosure proposal, also on ordinary business grounds. Axon submitted a detailed exclusion notice with analysis asserting that the proposal amounted to micromanagement of the company. The proponent's complaint alleged that political spending is a significant policy issue transcending the ordinary business rule. The case settled on March 9, 2026, after the judge ordered the company and proponent to work together on a solution, with Axon agreeing to disclose its policies and governance framework for electoral spending and political contributions in exchange for the proponent agreeing to refrain from submitting similar proposals for the next five years.

3. ***Masters v. PepsiCo, Inc.***

On February 19, 2026, an individual shareholder represented by the People for the Ethical Treatment of Animals ("PETA") filed a lawsuit on behalf of a shareholder challenging PepsiCo, Inc.'s ("PepsiCo") attempts to exclude a shareholder proposal regarding compliance with animal welfare policies in PepsiCo's supply chain. PepsiCo asserted that the exclusion was reasonable because the shareholder failed to provide an adequate written statement regarding her ability to meet with PepsiCo. PETA alleged that PepsiCo violated Rule 14a-8 by failing to adequately notify the shareholder of the deficiencies in the proposal. One day after the lawsuit was filed, PepsiCo agreed to include the proposal in its 2026 proxy materials.

4. ***New York State Comptroller v. BJ's Wholesale Club Holdings, Inc.***

On March 2, 2026, the New York State Comptroller filed a lawsuit on behalf of the New York State and Local Retirement System and the New York State Common Retirement Fund against BJ's Wholesale Club Holdings, Inc. ("BJ Wholesale Club"). The two entities had submitted a shareholder proposal seeking a report on the risks of deforestation to BJ Wholesale Club's supply chain. BJ's excluded the proposal on ordinary business grounds. The case remains ongoing.

5. ***As You Sow v. Chubb Limited***

On March 3, 2026, As You Sow filed a complaint challenging Chubb Limited's decision to exclude a climate-related shareholder proposal from its 2026 proxy materials. Chubb had notified the SEC of its intent to exclude the proposal under ordinary business grounds. This complaint remains ongoing.

The Next Frontier: *Interfaith Center on Corporate Responsibility et al. v. Securities and Exchange Commission et al.*

As noted above, separate from these lawsuits against corporate issuers but related to the SEC's announcement to step away (for at least this year) from its historical role of policing shareholder proposal exclusions, the Interfaith Center and As You Sow filed a complaint against the SEC challenging the method by which the SEC has adopted this new posture regarding shareholder proposal exclusion notices. The complaint highlights that this approach has weakened shareholders' ability to participate in corporate governance. Although the notice was released as an SEC announcement, the plaintiffs assert that "the Policy is a legislative rule that alters proponents' legal rights and staff's obligations in the Rule 14a-8 process."

Specifically, the complaint raises three Administrative Procedure Act claims: (i) that the policy is contrary to law because it eliminates the company's burden of persuasion and the proposing shareholders' right to respond to exclusion notices; (ii) that the change is arbitrary and capricious because the SEC departed from decades of substantive staff review without adequate justification; and (iii) that it was adopted without the notice-and-comment rulemaking required for what the plaintiffs classify as a legislative rule.

When an agency adopts or effectively alters binding regulatory standards, the Administrative Procedure Act requires the agency to give affected stakeholders an opportunity to comment before altering existing regulations. This notice-and-comment period is designed to serve as a procedural safeguard by giving stakeholders a chance to provide input on changes in policy prior to its adoption. The plaintiffs allege that the SEC's announcement resulted in the improper exclusion of shareholder proposals, the loss of shareholders' voting rights and harm to their organizational missions as shareholder activists. The plaintiffs' complaint seeks to set aside, vacate or otherwise permanently enjoin the Division's informal guidance. This litigation remains ongoing.

Key Takeaways

The Interfaith Center lawsuit presents the first legal challenge directly to the SEC under the Division's new Rule 14a-8 guidance, rather than to a corporation excluding a shareholder proposal. For now, the SEC's new guidance on shareholder proposal exclusions remains in effect through September 30, 2026.

While the SEC has historically served as an arbiter in the Rule 14a-8 process, these shareholder proposal lawsuits illustrate both the function of the rule as a relief valve for shareholder concerns, and the shifting approaches that proponents may be willing to utilize to bring attention to the issues and causes important to them.

Heading into this proxy season, ESG-related proposals appeared to be facing significant hurdles, particularly in light of the SEC's revisions under SLB 14M, which suggested that the SEC would have issued no-action letters permitting companies to exclude them. Even if these types of proposals had ended up on proxies, they would have received very low shareholder support, with proxy advisors and large institutional investors walking back positions on ESG-related proposals generally. Yet, by effectively extracting itself from the exclusion process, the SEC has injected ambiguity into the process. Faced with this uncertainty, many companies instead elected to voluntarily include the proposal or, if sued after excluding the proposal, settling with the proponent to ultimately allow the proposal in the proxy. The ability of companies and proponents to reach settlements suggests a willingness to compromise, rather than engage in potentially distracting, costly and time consuming litigation or risking delaying the annual meeting. Paradoxically, the SEC's decision to get out of the no-action business may be leading to more low-value proposals ending up on ballots, even if they ultimately don't gather traction with significant portions of shareholder votes.

These lawsuits underscore the importance for companies to fully understand and map out the grounds on which they plan to exclude a shareholder proposal, regardless of whether the company ultimately includes those details in a non-inclusion letter under the current SEC guidance. Whether the justification is clearly stated in a lengthy submission to the SEC noting its intent to exclude, or simply keeping internal records of its decision making process should litigation arise, having a robust record as to why a company believes a proposal can be properly excluded has become even more important. 2026 is shaping up to be an interesting proxy season, and while the lawsuit volume is still largely anecdotal, it's becoming a statistically significant development that companies should take note of.