2026 Annual Report and Proxy Season: Proxy Voting Matters

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During the 2025 proxy season, the volume of shareholder proposals fell in the United States and rose modestly in Europe and the UK. From a substantive perspective, the season underscored an investor preference for targeted governance reforms, and in particular, the removal of supermajority provisions, board declassification, and enhanced special meeting rights.

SHAREHOLDER PROPOSALS

As noted, in 2025, shareholder proposal activity decreased in the United States and shifted toward traditional governance priorities. According to The Conference Board, of the companies listed on the Russell 3000, total shareholder proposals dropped by around 150 proposals to 781 proposals in the 2025 proxy season (January 1 through June 30).37 Corporate governance related proposals were the most dominant at 261 proposals, followed by social proposals and environmental proposals. Despite the decline in the total number of shareholder proposals, the number of proposals omitted increased to 179 proposals, likely due in part to SLB 14M (discussed below) making it easier for companies to exclude proposals from their proxy ballots.

Although proposal volume support for corporate governance proposals rebounded, support for environmental and social proposals fell for the third consecutive year (corporate governance proposals accounted for 43 of the 55 total successful proposals in 2025). Specifically, proposals aligned with longstanding governance norms tended to be most successful; proposals calling for removal of supermajority thresholds and for board declassification produced high pass rates and strong average support, while proposals to enhance special meeting rights, which was the most common corporate governance topic filed in 2025, also performed well. In regard to specific categories of proposals during the 2025 proxy season:

- **ESG and anti-ESG proposal trends.** Anti-ESG proposals became more common, a trend mirroring that seen in recent years. In addition, proponents that, in past proxy seasons, submitted proposals on clearly anti-ESG topics submitted proposals on a broader array of topics in 2025. For more information, see our Legal Update, "Anti-ESG Shareholder Proposals in 2025." 38

- **Climate-related shareholder proposal trends.** Shareholder support for climate-related proposals declined noticeably, possibly due, at least in part, to political and legal developments. The Trump administration has emphasized opposition to certain climate-related initiatives, and several Republican-led states have pursued litigation against major asset managers over their net-zero commitments. According to Jasper Street data, ISS did not support any environmental proposals this year. In addition, political scrutiny may have created reluctance among investors to publicly support ESG measures, while expanded disclosure on climate-related metrics may have reduced the perceived need for shareholder action. For more information, see our post, "No Environmental Shareholder Resolutions Passed During 2025 Proxy Season." 39
- **Say-On-Pay proposals.** As usual, say-on-pay proposals at most companies received overwhelming majority approval. According to Semler Brossy, only 1.2% of Russell 3000 companies and S&P 500 companies had a failed say-on-pay vote in the 2025 proxy season. Misalignment between pay and performance, problematic pay practices, rigor of performance goals, shareholder outreach and disclosures, non-performance based equity awards and special awards and particularly large grants were among the factors likely contributing to a failed say-onpay vote.40 While an "against" recommendation from a proxy advisory firm does not always result in a failed say-on-pay vote, it will likely cause shareholder support to decline, which may influence the ongoing level and tone of shareholder engagement, as well as future votes on say-on-pay and director elections. If a company prepares additional material in support of its executive compensation program following an "against" recommendation, it must file the materials with the SEC as definitive additional soliciting material not later than the date first distributed or used to solicit shareholders.

NO-ACTION LETTER TRENDS

RULE 14A-8 AND STAFF LEGAL BULLETIN 14M IN 2025

On February 12, 2025, the Staff of the SEC's Division of Corporation Finance published SLB 14M. Among other things, SLB 14M rescinded previous Staff guidance on no-action requests and clarified the Staff's views on the scope and application of the "economic relevance exclusion" pursuant to Exchange Act Rule 14a-8(i)(5) and the "ordinary business exclusion" pursuant to Exchange Act Rule 14a-8(i)(7).

During the period beginning on February 13, the day after the publication of SLB 14M, and ending on May 2, 2025, the Staff responded to almost 280 no-action requests.41 Approximately 40% of these letters requested no-action relief under Rule 14a-8(i)(5) and/or Rule 14a-8(i)(7).

RULE 14A-8(I)(5): THE ECONOMIC RELEVANCE EXCLUSION

Pursuant to Exchange Act Rule 14a-8(i)(5), a company can exclude a shareholder proposal if it "relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business." Under SLB 14M, a proponent must tie social or ethical issues raised in support of its proposal directly to matters that have a "significant effect" on the company's business. Between February 13 and May 2, the Staff agreed that the company could exclude a proposal in around four of the 12 no-action requests submitted pursuant to Rule 14a-8(i)(5).42 Overall, the proposals the Staff agreed could be omitted seemingly referred only to broad societal risks, or potential legal and reputational risks to the company.43 In contrast, the subject of the proposals the Staff declined to exclude likely was implicated by the companies' specific actions, showing that the Staff continues to require the inclusion of proposals where there is a direct link between a social policy issue and the company's business.

RULE 14A-8(I)(7): THE ORDINARY BUSINESS EXCLUSION

Exchange Act Rule 14a-8(i)(7), the "ordinary business exclusion," allows a company to exclude a proposal that "deals with a matter relating to the company's ordinary business operations" that should be the jurisdiction of the board and management, rather than the shareholders. The central considerations underlying this exclusion are (a) the subject matter of the proposal and (b) the degree to which the proposal "micromanages" the behavior of the company. While the SEC has long recognized an exception to this exclusion for proposals that focus on significant policy issues with a broad societal impact, the Staff evaluates both "significance" and micro-management on a company-specific basis, based on factors such as the nature and detail of the proposal, the specific circumstances of the company, and the manner in which a proposal is raised.

Since the publication of SLB 14M through mid-May, the Staff addressed more than 110 no-action requests under Rule 14a-8(i)(7). In more than 60% of these, the Staff determined that the proposal was properly excludable under Rule 14a-8(i)(7). While the excludable proposals address a cross-section of issues, they generally share several common traits. First, almost all address a social policy issue, such as climate-related risk or ESG or anti-ESG policy, and each proposal can be directly tied to the company's business and operations in a manner that is specific to that company, rather than a general, broad-based risk that could be applicable to many companies. None of the proposals includes intricate detail; for example, none require the company to act within a specific time frame or give specific instructions for how the company should act in response to the proposal. Lastly, the Staff did not view any of the proposals as being "too complex" for shareholders to consider or, in other words, none of the proposals were characterized as being too prescriptive to the company. That said, it is not always possible to determine the specific factors that form the bases of the Staff's decisions.

NEW SECTION 13G GUIDANCE AND EFFECT ON SHAREHOLDER ENGAGEMENT

In February 2025, the SEC's Division of Corporation Finance revised two C&DIs relating to beneficial ownership disclosures on Schedules 13D and 13G. Schedule 13D is required to be filed to report 5% or greater ownership of a class of equity securities of a public company, while short-form Schedule 13G is available to certain beneficial owners who meet the eligibility requirements, including certifying that the subject securities were not acquired and are not held "for the purpose of or with the effect of changing or influencing the control of the issuer." The C&DIs caused asset managers and other investors to carefully weigh, and, in many cases, change, their approach to engagement with SEC-reporting companies.

As revised, C&DI 103.11 states that The Hart-Scott-Rodino Act (the "HSR Act") provides an exemption from certain HSR Act provisions for an acquisition of securities made "solely for the purpose of investment," where the acquiror has "no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer." The C&DI clarifies that an acquiror who is unable to rely on this HSR Act exemption is not necessarily required to file a Schedule 13D, but should determine its eligibility to file a Schedule 13G based on a facts-and-circumstances analysis.

Revised C&DI 103.12 addresses the circumstances under which a shareholder's engagement with an issuer's management could disqualify a shareholder from certifying that the subject securities are not held "for the purpose of or with the effect of changing or influencing the control of the issuer," such that the shareholder would be required to report on Schedule 13D. Similar to C&DI 103.11, the C&DI states that this determination must be made via a facts-and circumstances analysis. However, it goes on to draw a line between a shareholder who discusses their views on an issue with management and one who "exerts pressure on management to implement specific measures or changes to a policy," which is more likely to result in an obligation to file a Schedule 13D.

Following the posting of these new C&DIs, many passive institutional investors paused their communications with companies in order to evaluate the guidance. Subsequently, Commissioner Mark Uyeda addressed the C&DIs, sharing his belief that the guidance was not intended to change the way in which such investors engaged with issuers; "[b]y requiring that a shareholder needs to 'exert pressure on management,' the C&DI indicates that there needs to be something more than the mere planting of an idea with management in order to lose Schedule 13G eligibility."45 After evaluating the guidance, passive institutional investors are now generally willing to engage with companies, although some engagement practices have changed, such as:

- Investors may wait for companies to reach out to them, rather than affirmatively scheduling meetings or setting agendas. They may also be cautious about discussing contentious or controversial topics.
- Investors may ask more open-ended, rather than targeted, questions. Companies should affirmatively set an agenda to address topics on which they would like investors' views, and affirmatively ensure that investors have enough information on which to make informed voting decisions.
- Investors may provide disclaimers at the beginning of meetings to ensure that all parties are aware that the they do not intend to influence or control the company. While this does not guarantee that investors will not be required to file a Schedule 13D, it does clarify the intentions and goals of the parties. For more information, see our post, "SEC Provides New Guidance on the Use of Schedules 13D and 13G." 46

SEC REVIEW OF SHAREHOLDER PROPOSALS IN 2026

CHAIRMAN ATKINS' OCTOBER 2025 KEYNOTE ON RULE 14A-8

In the keynote address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala, SEC Chairman Paul Atkins addressed both precatory shareholder proposals under Rule 14a-8(i) of the Act and securities litigation reform. Notably, his statements with regard to precatory shareholder proposals and Rule 14a-8 marks a potentially significant departure from the historic approach to such proposals.

A central focus of Chairman Atkins' remarks was the increasing "politicization" of shareholder meetings through precatory, or non-binding, shareholder proposals. He questioned whether Exchange Act Rule 14a8(i)(1) actually permits companies to exclude such proposals, concluding that this is likely the case, at least with regard to companies incorporated in Delaware.

Specifically, Rule 14a-8(1)(i) permits a company to exclude a proposal that is not a "proper subject" for shareholder action under state law, which raises a question as to whether precatory proposals are, indeed, "proper subjects." In the notes to Rule 14a-8(1)(i), the SEC Staff states that it "will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise," creating a presumption that a precatory proposal is a "proper subject." Taking the opposite view, Chairman Atkins argues that, under Delaware law, precatory proposals might not be "proper subjects" because Delaware law does not explicitly provide shareholders the right to vote on non-binding matters. Chairman Atkins suggested that a company could, with counsel's opinion that a proposal is not a "proper subject" under state law, seek to rely on Rule 14a-8(i)(1) to exclude such proposal, expressing his "high confidence" that the SEC Staff would "honor" this position, at least with regard to that specific company. However, this would not prohibit a proposal proponent from submitting an opposite opinion. As such, Chairman Atkins raised an open question as to whether the SEC would take the issue to the Delaware Supreme Court, should the SEC have to reconcile this argument between a company and a proponent.

Chairman Atkins then turned to the operation of Rule 14a-8(1)(i) under other state law, noting that where a company has opted for higher state-level thresholds, "or has otherwise properly established conditions in its governing documents," and subsequently receives a proposal from a proponent that does not satisfy the requirements of state law or its own governing documents, then the proposal should be excludable under are preempted by Rule 14a-8.

Chairman Atkins concluded his remarks on Rule 14a-8 by calling for a "fundamental reassessment" of the rule's premise, especially given that the Exchange Act itself is intended to govern disclosure.

For more information, read our post, "SEC Chair Calls for Reassessment of Exchange Act Rule 14a-8; Reform of Securities Litigation." 47

NOVEMBER 2025 STAFF GUIDANCE ON RULE 14A-8

On November 17, 2025, the Staff of the Division of Corporation Finance published a regarding the review of requests to exclude shareholder proposals by both the Division of Corporation Finance and the Division of Investment Management (together, the "Divisions") during the 2026 proxy season. Specifically, due to a shortage of resources after the 43-day government shutdown that ended on November 12, in combination with the "extensive volume" of Staff guidance regarding shareholder proposals, the Divisions will only respond to or express views on no-action requests to exclude shareholder proposals pursuant to Exchange Act Rule 14a-8(i)(1), a dramatic departure from past proxy seasons.

Further, the Divisions' decision to continue to review requests to exclude proposals under Rule 14a-8(i)(1) appears to be temporary, based on "uncertainty in the application of state law and Rule

14a-8(i)(1) to precatory proposals," such that these reviews may stop when "there is sufficient guidance available to assist companies and proponents in their decision-making process," (likely a reference to Chairman Atkins' October remarks on Rule 14-8, which included the potential of bringing the question about whether precatory shareholder proposals can be omitted under Rule 14a-8(1)(i) to the Delaware Supreme Court).

In addition, the Staff reminded companies of the notice requirement in Rule 14a-8(j), under which companies that intend to exclude shareholder proposals from their proxy materials must provide timely notice (no later than 80 calendar days before filing a definitive proxy statement) to both the SEC and proponents. While this notice is still required, the Staff noted that it is informational only, and that there is no requirement that companies seek the Staff's views regarding their intended exclusion of a proposal, and no response from the Staff is required. However, if a company that provides notice wishes to receive a response from the Divisions for any proposal that it intends to exclude pursuant to a basis other than Rule 14a-8(i)(1), the company or its counsel must include, "an unqualified representation that the company has a reasonable basis to exclude the proposal based on the provisions of Rule 14a-8, prior published guidance, and/or judicial decisions." The relevant Division will respond with a statement that, based solely on the aforementioned opinion, it will not object if the company omits the proposal from its proxy materials. No substantive views or opinions will be expressed.

In sum, the potential magnitude of this change to the shareholder proposal process cannot be understated, and practitioners and companies will need to carefully consider how the new guidance impacts their actions in the 2026 proxy season. For more information, see our post, "SEC Staff Reviews of Requests to Exclude Shareholder Proposals during 2026 Proxy Season." 48

NEW RETAIL SHAREHOLDER VOTING PROGRAMS

The 2025 proxy season saw a significant development in retail shareholder engagement mechanics with Exxon Mobil Corporation's introduction of a standing voting instruction program for retail investors. On September 15, 2025, the Division of Corporation Finance issued no action relief indicating it would not recommend enforcement under Exchange Act Rules 14a-4(d)(2) and 14a-4(d)(3) if Exxon Mobil proceeds with the program as described. The Staff's position turned on several investor-protection features: the program is limited to retail shareholders and is voluntary and cost-free; participants receive annual off-season reminders; and shareholders retain at all times the ability to opt out for future meetings and to override standing instructions for any upcoming meeting after receiving meeting-specific proxy materials. The Staff emphasized that different facts could warrant a different conclusion and expressly declined to opine on compliance with other provisions of the proxy rules or the federal securities laws.

At a high level, the program allows retail shareholders to opt in to an instruction directing that their shares be voted in accordance with the board's recommendations at each annual or special meeting on an ongoing basis. Shareholders may elect to apply the standing instruction to all matters, or to all matters other than contested director elections and extraordinary transactions (e.g., mergers, acquisitions or divestitures requiring shareholder approval under applicable law or listing rules). Votes pursuant to standing instructions are submitted by the company's vote-processing agent after the definitive proxy statement is filed but before distribution to shareholders, and participants continue to receive full proxy materials for each meeting. State-law compatibility was a predicate to Exxon Mobil's request: Exxon Mobil noted that New Jersey (its state of incorporation) permits non-expiring standing instructions, and that Delaware law similarly permits proxies that remain valid beyond one year if specified. The SEC Staff's no-action response did not independently resolve state-law questions.

The program is intended to target a persistent participation gap among individual investors. Exxon has reported that approximately 40% of its outstanding shares are held by retail shareholders, but only about one quarter of those shares are typically voted. By offering a streamlined, opt-in framework with opt-out and override rights, Exxon Mobil is aiming to increase turnout, help meet quorum requirements and, as a practical matter, increase votes cast in line with board recommendations.

The initiative, however, has drawn criticism and legal challenge. On September 30, 2025, shareholder advocacy groups As You Sow and the Interfaith Center on Corporate Responsibility petitioned the SEC to reconsider and rescind the no-action relief. They argued that the program contravenes the plain language of Rule 14a-4 by effectively conferring voting authority for more than one meeting and without contemporaneous delivery of meeting-specific proxy materials, and that it entrenches management by institutionalizing a "vote with the board" default without an equivalent standing instruction against management. The groups also contend that Exxon Mobil's reliance on a distinction between a "standing voting instruction" and a "proxy" is a functional end-run around the rule's one-meeting limitation and form-of-proxy requirements. In addition, on October 14, 2025, the City of Hollywood Police Officers' Retirement System filed a putative class action in the U.S. District Court for the District of New Jersey alleging that adoption of the program breaches fiduciary duties. These challenges introduce litigation risk and underscore that, notwithstanding the SEC Staff's no-action posture, state-law and private-litigation scrutiny remain material considerations.

For companies, the Exxon Mobil no-action letter may offer a path, but not a safe harbor, for companies with meaningful and stable retail ownership to explore opt-in standing voting instruction programs. However, adopting a shareholder voting program requires a rigorous, company-specific assessment of benefits and burdens and implementation entails coordination with transfer agents and vote-processing intermediaries, development of enrollment and reminder infrastructure, and enhanced recordkeeping. Further, participation among retail shareholders is yet unproven, and companies must carefully weigh investor dynamics and potential litigation risks.

Link to the full report can be found here.