



Labrador Transparency

When the Umpire Leaves the Field

Navigating Shareholder Proposal Exclusions Without SEC No-Action Letters

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Introduction

The 2025–2026 proxy season has introduced a significant shift in the governance landscape for U.S. public companies. In November 2025, the [U.S. Securities and Exchange Commission \(SEC\) announced that it would no longer issue no-action letters related to most shareholder proposal exclusions](#) under Exchange Act Rule 14a-8 for the current proxy season.

This thought piece examines the evolving landscape following the SEC's announcement, highlights early litigations, and provides recommendations to mitigate risks.

How We Used to Play

Under Rule 14a-8 of the Securities Exchange Act of 1934, companies may exclude shareholder proposals if they meet certain criteria: for example, if they concern ordinary business operations, seek to micromanage the company, or are procedurally defective.

Historically, when a company intended to exclude a shareholder proposal, it would submit a **no-action request** to SEC staff. These requests asked the SEC's Division of Corporation Finance to confirm that it would **not recommend enforcement action if the proposal were excluded** from proxy materials.

Although non-binding, these letters played a critical role in the shareholder proposal ecosystem by:

- Providing **independent regulatory analysis** of the company's arguments.
- Creating **public precedents** for interpreting Rule 14a-8.
- Offering companies a **measure of legal protection, sort of a "stamp of approval," before excluding proposals.**

Companies rarely excluded proposals without receiving no-action relief. The SEC staff's review effectively served as a **deterrent to litigation.**

New Settings, Higher Stakes: What Changed Last November

On November 17, 2025, the SEC announced that for the 2025–2026 proxy season (October 1, 2025 – September 30, 2026) staff will:

- **Stop responding to no-action letter requests** except those based on Rule 14a-8(i)(1) (improper under state law).
- **Stop expressing substantive views** on companies' decisions to exclude proposals.

This decision was driven by resource constraints following a prolonged government shutdown and has changed how companies approach shareholder proposal exclusions.

Companies must still notify the SEC and the shareholder proponent at least **80 days before filing their definitive proxy statement** if they intend to exclude a proposal. Instead of the traditional no-action letter, the SEC will respond with a "no-objection" letter based on limited analysis.

The absence of SEC staff analysis has removed a long-standing procedural safeguard that **historically guided companies' decisions and discouraged litigation.**

The First Games of the Season

Early developments in the 2025–2026 proxy season suggest that the absence of no-action relief may **open an opportunity for shareholder proponents to litigate exclusions**. As of April 2026, at least six lawsuits have emerged involving disputes over excluded shareholder proposals:

- [AT&T vs. New York Pension Fund](#) over a [proposal](#) requesting disclosure of workforce demographic data through the Consolidated EEO-1 report.
- [Axon Enterprise vs. Nathan Cummings Foundation](#) over a [proposal](#) requesting enhanced disclosure regarding political spending.
- [PepsiCo vs. People for the Ethical Treatment of Animals \(PETA\)](#) over a [proposal](#) requesting that PepsiCo issue a report evaluating whether the treatment of animals within its supply chain complied with the company's Global Animal Welfare Policy, its Supplier Code of Conduct, and local animal welfare laws.
- [BJ's Wholesale Club vs. Comptroller of the State of New York](#) over a [proposal](#) requesting an assessment of risks of deforestation associated with its private-label brands and a report summarizing the results.
- [Chubb vs. As you Sow](#) over a [proposal](#) requesting a third-party report assessing whether pursuing subrogation claims related to climate-driven losses would benefit the company and its insured parties.
- [UnitedHealth Group vs. the Congregation des Sœurs des Saints Noms de Jésus et de Marie \(Quebec-based\)](#) over a [proposal](#) requesting a report on the healthcare consequences of the company's acquisitions over the past 10 years.

Sustainability Is, Still and Again, the Touchy Subject

Perhaps the most obvious thing to note is that **all proposals are ESG-related**. The recent context regarding sustainability topics has been getting tenser, and some companies have chosen to scale back on reporting on those issues. However, **investors remain focused on sustainability** and, as it seems, activists are ready to go to court over such proposals.

All six companies sought to exclude the proposals based on Rule 14a-8(i)(7), claiming the proposals related to **ordinary business and sought to micromanage** the company. Five of the proponents contested this by arguing that the **proposals addressed long-term corporate strategy and risk management**, rather than operational decisions, reflecting a broader **shift in how investors view sustainability-related matters**. It is worth noting that the other proponent alleged that the company failed to properly notify them of deficiencies in the submission, as required under Rule 14a-8.

AT&T, the first case of this season, posted a rather short notice to the SEC, naming one precedent only and without in-depth analysis, all other companies sent a detailed notice, demonstrating that even a notice with in-depth analysis is not full-proof security against a possible lawsuit.

Settlement

The AT&T and PepsiCo cases were **settled by the companies agreeing to include the proposals in their 2026 proxy statements**. Axon Enterprise settled by committing to disclose its policies and governance framework for political spending, along with amounts and recipients. We are still waiting for more development in the remaining cases. Chubb and BJ's Wholesale Club have chosen to pushback in court rather than a quick settlement.

Our Recommendations for a Winning Season

It appears that this season, perhaps more than in previous ones, companies must take a **proactive approach to shareholder-proponent engagement and demonstrate genuine transparency**. Based on the lawsuits previously described, several practices can help companies reduce the risk of litigation.

1. Engage Early and Meaningfully with Proponents

Direct engagement with shareholder proponents may reduce the likelihood of litigation. Four of the companies involved in lawsuits did not disclose any process for engaging with proponents in their proxy statement and did not disclose specific prior engagement with those proponents in the notice letter. Dialogue may allow companies to:

- Clarify the intent of the proposal.
- Negotiate modifications or withdrawals.
- Identify potential compromises before disputes escalate.

2. Provide Detailed Notices of Exclusion

When companies decide to exclude a proposal, they should ensure that their notification to the SEC and the proponent includes **clear and comprehensive reasoning**.

That recommendation is not ours alone: [ISS stated in its December 2025 FAQ](#) that they expect “a clear and compelling argument for the exclusion of a proposal”.

Best practices include:

- **Detailed legal analysis** of the relevant Rule 14a-8 exclusion.
- Citations to prior SEC **precedents**.
- Explanation of how the proposal affects company operations.
- Documentation of relevant company policies or disclosures.

Companies providing detailed reasoning may still face challenges, but thorough analysis **strengthens the company's position if litigation occurs**.

3. Evaluate Company-Specific Context

Investor relations and governance teams should assess exclusion decisions considering the **broader context**, including:

- Industry-wide developments and trends.
- Recent shareholder proposals on similar topics and shareholder support.
- Changes in the company's disclosure practices.
- Track record of the proponent.

Proposals submitted by **repeat proponents or activist organizations** may warrant additional engagement and scrutiny. Similarly, companies that have previously disclosed information related to the proposal topic may face **greater scrutiny when reversing course**, as illustrated in the AT&T case. The AT&T litigation occurred after the company faced a similar proposal in 2020 and agreed to disclose its EEO-1 report, a disclosure that was discontinued in 2024.

4. Prioritize Transparency with Investors

In an environment without SEC validation, transparency can help mitigate reputational and litigation risk and encourage shareholder proponents to choose dialogue over litigation.

1. Companies can consider describing their engagement process with shareholder proponents.

Lockheed Martin and Wells Fargo describe engagement with shareholders proponent in a dedicated sub-section of the shareholder engagement section, outlining the practice as a part of their overall engagement process.

[Lockheed Martin 2025 Proxy Statement](#)

Board Accountability to Stockholders

The Board and management of the Company view accountability to our stockholders as a key element of our success. Management engages regularly with stockholders representing a majority of our outstanding shares both from a financial performance perspective (led by our Investor Relations team) and from a governance perspective (led by our Corporate Secretary's Office and including representatives from Ethics and Enterprise Assurance, Sustainability, Human Resources and Executive Compensation and, in certain cases, our Lead Director). Similarly, we engage with proponents of stockholder proposals to understand their perspectives. These engagements provide an opportunity for management to both learn from stockholders and share insights into the Company's strategy, performance, compensation and governance model. Management regularly shares feedback from these sessions with the Board, and both the Board and management use this feedback to further develop our governance, compensation and sustainability policies and inform our business strategy.

We actively engage with and respond to our stockholders

Stockholder Outreach. In seeking stockholder perspectives, our governance-focused engagement team offered during 2024 to meet with a cross section of stockholders representing approximately half of our outstanding shares calculated as of December 31, 2024, and met with institutions representing half of our institutional shares outstanding. Our consistent, active and year-round dialogue with stockholders and other stakeholders enables our Board to consider a broad range of viewpoints in boardroom discussions.

Responsiveness to Stockholders. We take accountability seriously and seek feedback through stockholder engagement to understand investor views and preferences, including feedback relating to stockholder proposals. Our investor discussions and the 2024 stockholder votes yielded valuable feedback that informed the Board’s deliberations. The table below highlights key topics discussed with, and our response to the feedback that we received from, stockholders during our 2024 outreach and the 2024 stockholder votes. We look forward to continued engagement with our stockholders to understand, learn from and respond to the expectations of our wide range of investors.

Year-Round Engagement

- Solicit feedback on governance best practices and trends, executive compensation, human capital management, sustainability matters and other topics of interest to stockholders
- Discuss stockholder proposals with proponents
- Respond to investor inquiries and requests for information or engagement

[Wells Fargo 2025 Proxy Statement](#)

Our Board’s Responsiveness to Shareholders

Feedback from our shareholders informs the Board’s perspective. Our Board also takes the submission of shareholder proposals seriously. Our Board is involved in reviewing and responding to shareholder proposals and the underlying topics of interest with Board committees reviewing shareholder proposals related to the matters they oversee. We seek to engage with all proponents and other shareholders on matters of interest to them.

2. Some companies have also begun disclosing excluded proposals or proposals they included but believe could have been excluded within their proxy statement.

Several companies have proactively acknowledged the change in dealing with shareholder proposals and included language in their 2026 proxy statements informing either of excluded proposals or proposals that they included due to the absence of SEC no-action letters but thought should have been excluded. Those statements were included either in the shareholder proposals section, often in the introduction, or as a comment of the related proposal (see The Walt Disney Company).

[Starbucks 2026 Proxy Statement](#)



[The Walt Disney Company 2026 Proxy Statement](#)

X

Proposal — Report on How the Employee Gift-Matching Program May Impact Risks Related to Religious Discrimination Against Employees

The Board recommends that you vote **“AGAINST”** this proposal, and if the proposal is presented, your proxy will be voted against this proposal unless you specify otherwise.

Dana Tuggle, represented by Bowyer Research, has notified the Company that they intend to present the following proposal for consideration at the Annual Meeting.

Given recent regulatory changes, we are including this proposal in the proxy statement, notwithstanding that we believe that it does not meet the requirements of Rule 14a-8, including on grounds that the proposal, read together with its supporting statement, is materially false and misleading, relates to matters that are not economically significant to the Company's business and relates to the Company's ordinary business operations. These bases for exclusion are detailed in the Company's no-action request submitted to the SEC on November 4, 2025.

[BD 2026 Proxy Statement](#)

Shareholder proposal not included due to procedural defect

BD is providing this information to ensure that it is communicating proactively and maintaining transparency with its shareholders, about its determination that it is not required to include a shareholder proposal in this proxy statement due to violation of the procedural requirements under Rule 14a-8, namely for failure to meet the ownership thresholds. BD submitted a letter to the SEC seeking exclusion of the proposal on September 4, 2025 explaining its basis (www.sec.gov/files/corpfm/no-action/14a-8/cheveddenbecton942025-14a8inc.pdf). On November 17, 2025, the SEC changed its longstanding practice, and issued a statement that it will not express views on the reasons companies intend to exclude proposals cited in no-action letter requests, and will not object if companies omit proposals if the company represents to the SEC that has a reasonable basis to exclude the shareholder proposal based on Rule 14a-8 (the "SEC Statement").

[Apple 2026 Proxy Statement](#)

In October 2025, the Company submitted no-action requests to the Staff of the SEC's Division of Corporation Finance asking the Staff to concur with the Company's view that certain proposals submitted to the Company for inclusion in the Proxy Statement could be properly excluded under SEC Rule 14a-8. The Staff subsequently announced that they would not respond to most requests for exclusion of shareholder proposals under SEC Rule 14a-8.

Following that announcement, and based on the Company's review of the provisions of Rule 14a-8, prior Staff guidance on the application of Rule 14a-8, and judicial decisions, we determined that it was appropriate to exclude a shareholder proposal because the proponent failed to provide required documentation to show that they had continuously owned the requisite amount of Company securities consistent with SEC Rule 14a-8 and related Staff interpretations. Prior to submitting our notice of exclusion to the Staff and the proponent, we reached out again to the shareholder to explain our reason for exclusion and to offer to discuss their proposal.

Such disclosures can demonstrate a **commitment to transparency and good governance, potentially reducing investor skepticism.**

Looking Ahead

The SEC's temporary withdrawal from the no-action process represents a significant shift in the typical U.S. shareholder proposal process. Companies must now make exclusion decisions with greater **legal uncertainty**, and it appears that shareholder proponents might be increasingly willing to challenge exclusions in court.

For investor relations and governance professionals, the implications are:

- **Engagement, documentation, and transparency** are more important than ever.
- Companies must carefully evaluate not only the legal basis for exclusion but also the **strategic and reputational risks** associated with that decision.

In this evolving environment, organizations that adopt **proactive engagement strategies and robust disclosure practices** will be best positioned to navigate the possible risks.

Citations

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Labrador Transparency

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