

*From the Public Company Advisory Group of Weil, Gotshal & Manges LLP*

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## **Heads up for the 2025 Proxy Season:**

### **A Checklist for Responding to Rule 14a-8 Shareholder Proposals**

Public companies with a December 31 fiscal year-end preparing their proxy statement for the 2025 annual meeting should be on high alert right now for incoming shareholder proposals. Below is a short checklist to guide an in-house legal team through the process of reviewing and responding to a shareholder proposal to ensure compliance with SEC Rule 14a-8. This checklist focuses only on Rule 14a-8 proposals and does not address other types of proposals received pursuant to a company's advance notice bylaws. Companies should take care to disclose clearly in their proxy statements how these deadlines differ.

#### **Develop and Ensure Process and Controls Around Receipt of Proposals**

- Designate a Point Person.** Designate a person in the company to be responsible for checking on whether shareholder proposals have been received (typically the corporate secretary or an assistant).
- Review Proxy Disclosure.** Confirm that the proxy statement accurately reflects the details for sending Rule 14a-8 proposals, including where and how such proposals should be directed.
- Monitor Daily.** Check company email and mailroom on a daily basis during the shareholder proposal submission window to ensure timeliness of receipt. Ensure that proposals delivered to the company are date and time stamped upon receipt.

#### **Identify Procedural Deficiencies**

- Review Timeliness of Proposal.** Verify that the proposal was submitted within the required timeframe by confirming timely submission pursuant to Rule 14a-8. Rule 14a-8 provides that a proposal is timely if it is received at the company's principal executive office by a date that is not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. If in doubt, refer to Question 3 from Staff Legal Bulletin 14 for guidance on calculating this date.
  - The SEC Staff takes the position that if the deadline for submission of a proposal falls on a weekend or holiday, the proposal must be received by that day on the weekend. The deadline does not move to the next business day.
  - If the annual meeting date has changed by more than 30 calendar days from the prior year's annual meeting, the proponent must ensure that the company received the proposal a "reasonable time" before the company begins to print and mail its proxy materials.

- Review Ownership Status for Record Holders.** If the proponent states that it is a record holder of the company's stock, check with the transfer agent, and if so, confirm whether the stockholder records reflect continuous record ownership of the requisite market value of company stock:
  - at least \$2,000 for at least three years;
  - at least \$15,000 for at least two years; or
  - at least \$25,000 for at least one year.
- Review Broker Letter for Beneficial Holders.** If the proponent is a beneficial or "street name" holder of the company's stock (*i.e.*, it holds stock through a broker), check whether the proponent has provided a written statement, most commonly a broker letter, confirming continuous ownership of the requisite value of company stock for the requisite periods.
- Confirm No Aggregation.** Confirm that the proponent has not aggregated its holdings of company stock with another proponent to meet the ownership threshold.
- Check for Written Statement of Intent to Hold Securities.** Ensure that the proponent has provided a written statement that it intends to hold securities through the date of the company's annual meeting.
- Check for Statement Indicating Availability to Meet.** Confirm whether the proponent has stated that it is able to meet with the company, either in person or via teleconference, no less than 10 days nor more than 30 days after submission of the proposal. Ensure that the proponent has included its contact information and identified business days and specific times to meet.
- Confirm Whether Proponent Identifies an Authorized Representative.** If a designated representative has submitted the proposal on the proponent's behalf, confirm that the documentation identifies the proponent and identifies the person acting on the proponent's behalf as the representative. The documentation must include a statement authorizing the representative to submit the proposal on the proponent's behalf and otherwise act on its behalf.
- Ensure Proposal's Compliance with 500-Word Limit.** Ensure that the proposal, including any supporting statements or words in graphics, is limited to 500 words or less.
- Check for Proponent's Prior Presentation of Proposals.** Confirm that the proponent has not failed to present a proposal included in the company's proxy statement during the last two years.
- Confirm Only One Proposal.** Ensure that the proponent has not submitted more than one proposal for the same meeting. Also consider whether other persons (or "alter egos") have submitted a proposal on behalf of a proponent or are acting in concert, which may result in exclusion.

#### **Send Notice of Deficiency to Proponent, if Appropriate**

- Send Notice of Deficiency "within" 14-days.** If the shareholder proposal submission contains any procedural defects, the company must send a notice of deficiency to the proponent informing it of the procedural or eligibility deficiencies in its proposal "within" 14 calendar days of the company's receipt of the proposal. The deficiency notice should be sent in a manner that allows it to be tracked, and it is good practice to request confirmation of receipt. Companies should also attach a copy of Rule 14a-8 and applicable SEC Staff Legal Bulletins.
- Review Response to Notice of Deficiency.** The proponent has 14 calendar days to respond after receiving the company's deficiency notice. Failure to cure the defect(s) or respond in a timely manner may result in a basis for the company seeking SEC no-action relief to exclude the proposal from the proxy statement.

**Consider Substantive Grounds for Exclusion**

- Consider whether there are substantive grounds for seeking a no-action letter from the SEC to exclude the proposal from the proxy statement. Rule 14a-8 provides 13 substantive grounds, and the most commonly used are Rule 14a-8(i)(7) (proposals dealing with ordinary business operations) and (i)(10) (proposals substantially implemented by the company).

**Meet Other Deadlines**

- Ensure Timely Submission of No-Action Request.** If a company intends to exclude a proposal from its proxy materials, it must submit its no-action request to the SEC no later than 80 calendar days before it files its definitive proxy statement and form of proxy. The no-action request must be simultaneously provided to the proponent.
- Provide Proponent with Statement of Opposition.** The company must provide the proponent with a copy of the statement of opposition to the proposal no later than 30 calendar days before filing the definitive proxy statement and form of proxy. The company should also build in time to share the statement of opposition with the board of directors.
- Consider Strategy for Preliminary Proxy Statement.** Companies filing a preliminary proxy statement will often determine to include the shareholder proposal and the draft statement of opposition in the preliminary proxy statement if they have not received a no-action determination from the SEC Staff.

**Engage with the Proponent**

- Even if seeking exclusion, consider engaging with proponent early on. Resolving issues through dialogue may be more efficient than the no-action process.

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If you have questions concerning the contents of this Alert, or would like more information, please speak to your regular contact at Weil or to any of the following authors:

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