WINSTON & STRAWN LLP

PUBLIC COMPANIES

# Shareholder Proposals Guide

## And Case Study: Exxon 2024 Proxy Season

**MARCH 2025**

**EDITORS**

**David Sakowitz**
**Jeremy Chang**

© 2025 Winston & Strawn LLP

# Table of Contents

TABLE OF CONTENTS .... 2

I. INTRODUCTION .... 3

II. PROPOSAL SUBMISSION REQUIREMENTS .... 4

III. NO-ACTION REQUESTS .... 7

IV. COMPANY AND PROPONENT RESPONSES TO SEC'S DECISION OF NO-ACTION .... 17

V. EXXON CASE STUDY .... 19

VI. TAKEAWAYS .... 28

**PUBLIC COMPANY GATEWAY**

For more practical, business driven resources and thought leadership for Boards and Leaders of Public Companies, visit Winston & Strawn's Public Company Gateway. A one-stop portal for the latest legal and regulatory developments as well as key checklists, guides and other pragmatic desktop tools. To subscribe to the Gateway and ensure you receive timely updates, please click here.

© 2025 Winston & Strawn LLP

# I. Introduction

Rule 14a-8 under the Securities Exchange Act of 1934 governs the process by which a shareholder may include a proposal along with management's proposals in a company's proxy materials. Shareholders who submit shareholder proposals are known as "proponents".

Companies that receive shareholder proposals can seek to prevent them from being included in their proxy materials if they believe that the proponents did not meet the requirements specified in Rule 14a-8. Companies intending to omit a proposal pursuant to this provision must notify the Securities and Exchange Commission (the SEC) of their intention to do so and send a copy of that correspondence to the proponent. This process requires the filing of a "no-action" request with the Office of Chief Counsel of the Division of Corporation Finance (the Staff). The Staff then considers the request—along with any rebuttal provided by the proponents—and issues a response indicating its views with respect to the company's intention to omit the proposal. The proposal may or may not be included in the company's proxy depending on how the Staff responds to the no-action request, and either the company or the proponent can rebut or appeal the decision. We review the shareholder proposal process in more detail below and review the efforts of ExxonMobil Corporation (Exxon) during the 2024 proxy season to avoid inclusion of certain shareholder proposals and the outcome of those efforts.

## RECENT DEVELOPMENTS

On February 12, 2025, the Staff issued Staff Legal Bulletin No. 14M (SLB 14M), which provides updated guidance on shareholder proposals under Rule 14a-8, particularly regarding exclusion under Rule 14a-8(i)(5) ("Relevance") and Rule 14a-8(i)(7) ("Ordinary Business"). In addition, SLB 14M addresses procedural aspects of Rule 14a-8, including the use of images in shareholder proposals, proof of ownership letters and the use of email.

© 2025 Winston & Strawn LLP

# II. Proposal Submission Requirements

## A. WHAT IS A SHAREHOLDER PROPOSAL?

A shareholder proposal is a proponent's recommendation or requirement that the company and/or its board of directors take action, which the proponent intends to present at a meeting of the company's shareholders. A proposal should state as clearly as possible the course of action that a proponent believes the company should follow. The company is not responsible for the contents of a proponent's proposal or the supporting statements.

A shareholder proposal can take many forms. Below are details that companies can consider when determining whether certain communications from shareholders constitute proposals.

1. A communication that seeks no specific action, but merely purports to express shareholders' views is not a proposal.
2. Request for information may or may not qualify as a proposal. The key factor is whether there is any indication that the shareholder intends for other shareholders to act on the request for information.
3. A suggestion or complaint is not a proposal.

It may be difficult to determine whether a communication constitutes a shareholder proposal. Especially, electronic communications tend to be more informal, which makes the determination of whether a communication is intended to be a proposal challenging. Regardless of form, however, if a communication is a proposal—and the shareholder meets the timing, eligibility and procedural requirements of Rule 14a-8, a company must include the proposal in the proxy statement or seek a no-action relief.

## B. WHO IS ELIGIBLE TO SUBMIT A SHAREHOLDER PROPOSAL?

An eligible shareholder can submit a proposal to a company to be voted upon by shareholders at the next shareholders' meeting.

To be eligible to submit a proposal, a proponent must:

1. Demonstrate continuous ownership of at least:
   i. $2,000 of the company's securities for at least three years;
   ii. $15,000 of the company's securities for at least two years; or
   iii. $25,000 of the company's securities for at least one year.
2. Provide the company with a written statement that it intends to continue to hold the requisite amount of securities through the date of the shareholders' meeting for which its proposal was submitted.

© 2025 Winston & Strawn LLP

3. Provide the company with a written statement that it is able to meet with the company in person or via teleconference no less than 10 calendar days but no more than 30 calendar days after submission of the shareholder proposal.

If the proponent uses a representative to submit a proposal on its behalf, the proponent must provide the company with written documentation that:

1. Identifies the company to which the proposal is directed;
2. Identifies the annual or special meeting for which the proposal is submitted;
3. Identifies the proponent and the person acting on its behalf as the representative;
4. Authorizes the designated representative to submit the proposal and otherwise act on the proponent's behalf;
5. Identifies the specific topic of the proposal to be submitted;
6. Includes the proponent's statement supporting the proposal; and
7. Is signed and dated by the proponent.

Lastly, the proponent must prove its ownership of the required shares. No further action is needed to prove eligibility if the proponent is the registered holder of its securities, as the company can verify eligibility on its own. However, if it is not the registered holder, one of the following methods must be used to demonstrate a proponent's eligibility to submit a proposal:

1. Requesting the record holder of the proponent's securities (usually a broker or bank) to provide the company a written statement that verifies that the proponent satisfied the share ownership requirements specified above; or
2. Submitting the following if the proponent was required to file and filed a Schedule 13D, Schedule 13G, Form 3, Form 4, and/or Form 5 that demonstrates that it satisfied the share ownership requirements specified above:
    i. A copy of the schedules and/or forms and any subsequent amendments reporting a change in the proponent's ownership level;
    ii. A written statement from the proponent stating that it satisfied the required share ownership requirements specified above; and
    iii. A written statement that the proponent intends to hold the requisite amount of securities through the date of the company's annual or special meeting.

## C. WHAT ARE THE DEADLINES AND OTHER REQUIREMENTS FOR SUBMITTING A PROPOSAL?

Under Rule 14a-8(e), a proponent must ensure that its proposal is received at the company's principal executive offices not fewer than 120 calendar days before the anniversary of the date on which the company released its definitive proxy statement in the previous year. If the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials. In most cases, the deadline can be found in the previous year's proxy statement. If the company did not hold an annual meeting the previous year, the deadline can usually be found in one of the company's quarterly reports on Form 10-Q.

© 2025 Winston & Strawn LLP

Recently, both companies and proponents have increasingly relied on the use of emails to submit proposals and make other communications. Rule 14a-8(e)(1) provides that to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery. Unlike the use of third-party mail delivery that provides the sender with a proof of delivery, parties should keep in mind that methods for the confirmation of email delivery may differ. For instance, email delivery confirmations and company server logs may not be sufficient to prove receipt of emails, as they only serve to prove that emails were sent. To avoid misinterpretation, the Staff suggests in SLB 14M that to prove delivery of an email for purposes of Rule 14a-8, the sender should seek a reply email from the recipient in which the recipient acknowledges receipt of the email. The Staff also encourages both companies and proponents to acknowledge receipt of emails when requested.

Under Rule 14a-8(d), the shareholder should also ensure that its proposal, including any accompanying supporting statement, does not exceed 500 words. Additionally, according to Rule 14a-8(c), each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting.

# III. No-Action Requests

## A. WHAT ARE THE COMPANY'S OPTIONS?

When a proponent submits a proposal to a company for inclusion in its proxy materials, the company may broadly respond in the following ways:

1. Include the shareholder proposal: The company and the proponent may agree on how to treat a particular proposal, either by including it in its original form or by revising it before including it in the company's proxy statement.
2. Convince proponent to withdraw: A company may be able to convince a shareholder to withdraw the proposal, either by showing that the proposal is excludable or by compromising with the proponent by taking certain actions that the proponent requested.
3. Exclude: If the company and proponent disagree on what to do with the proposal, the company may request no-action relief from the Staff and go through the no-action response process.

## B. WHAT IS THE DEADLINE FOR A NO-ACTION REQUEST?

Under Rule 14a-8(j)(1), a company must submit its no-action request to the Office of Chief Counsel no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the SEC. Failure to comply with the 80-day deadline can result in the forfeiture of the right to exclude a proposal.

While the Staff tends to apply the 80-day deadline strictly, it will grant waivers of the deadline if "good cause" can be shown by a company for its failure to timely file its incoming request. This analysis of good cause is based on all of the facts and circumstances. The Staff generally interprets the "good cause" standard narrowly, making it difficult for companies to satisfy their burden of proof. Most commonly, a company's argument that the proponent's own tardiness in submitting the proposal adequately justifies a waiver of the deadline for seeking relief. However, if the delay is caused by the company's tardiness, the Staff is unlikely to waive the deadline and disallow a company from excluding the proposal.

## C. HOW DOES THE COMPANY PREPARE AND SUBMIT A NO-ACTION REQUEST?

A company that believes it has a basis to exclude a proposal from its proxy materials must proceed under the Staff's "no-action" process set forth in Rule 14a-8. Under Rule 14a-8(g), the burden is on the company to demonstrate that it is entitled to exclude a proposal. The Staff generally will consider only those exclusion grounds presented by the company. Companies often raise more than one procedural and/or substantive basis to exclude a proposal, and the Staff only has to agree with one of these arguments to allow exclusion.

© 2025 Winston & Strawn LLP

To commence the no-action process, the company must timely submit a letter to the Office of Chief Counsel of the SEC's Division of Corporation Finance requesting that the Division not recommend that the SEC's Division of Enforcement bring an enforcement action if the company excludes the proposal. If a company omits a shareholder proposal before receiving a Staff response, or despite a Staff response to the contrary, the company's proxy materials could be deemed misleading, and the company may be subject to an SEC enforcement action. Under Rule 14a-8(j)(2), as part of the no-action request, companies must submit the following to the Staff:

1. the company's arguments for excluding the proposal, citing the most recent applicable authority, such as prior no-action responses relating to similar fact patterns;
2. the proposal and supporting statement received from the proponent; and
3. if applicable, an opinion of counsel.

When submitting the no-action request to the Staff, under Rule 14a-8(j)(1), companies are required to also transmit their no-action requests to the proponents—including any exhibits and legal opinions. In addition, the Staff recommends that a company include any other correspondence that it has exchanged with the proponent. As a best practice, if a company decides to submit a no-action request letter, the board should be kept informed throughout the entire process.

## D. WHAT ARE THE GROUNDS FOR EXCLUSION THROUGH A NO-ACTION REQUEST?

The grounds for exclusion that are permitted under Rule 14a-8 are summarized below.

### 1. ELIGIBILITY REQUIREMENTS

Under Rule 14a-8(b)(1)(i) and (ii), a company must request proof of eligibility from proponents within 14 calendar days after receiving a proposal. Upon request from a company, a beneficial owner must provide documentary support that it has owned the requisite number of shares for at least the required amount of time on a continuous basis.

The SEC suggests that proponents and their brokers and banks use the format below when submitting proof of ownership in order to avoid common errors such as (i) failure to verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date a proposal is submitted and (ii) failure to confirm continuous ownership of securities.

1. "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least [one year] [two years] [three years], [number of securities] shares of [company name] [class of securities]."

SLB 14M clarifies that while using the suggested language is encouraged, its use is neither mandatory nor the exclusive means of demonstrating ownership requirements. Accordingly, companies should not seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter if the language used in such letter is clear and sufficiently evidences the requisite minimum ownership requirements.

Under Rule 14a-8(f), if a company adequately and timely requests proof and the proponent fails to respond in a proper and timely manner, the company can rely on the exclusion for failing to meet the eligibility requirements. Additionally, if a proponent fails in its promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of the proponent's proposals from its proxy materials for any meeting held in the following two calendar years.

## 2. ONE PROPOSAL RULE

According to Rule 14a-8(c), each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. The Staff generally finds that a proposal made up of subparts joined by a unifying concept is a single proposal. If the purported proposal lacks such a unifying concept, it is treated as multiple proposals.

Under Rule 14a-8(f), a company must provide notice that the proponent has exceeded the "one proposal" rule and give the proponent 14 calendar days from notification of the defect to reduce the number of proposals to one. If the proponent fails to correct the problem (or disagrees with management's belief that the proposal exceeds the "one proposal" rule), the company may submit a no-action request to the Staff to exclude all of the proposals submitted. Sometimes proponents attempt to avoid the "one proposal" rule by having other persons submit proposals on their behalf. If the circumstances indicate that the proponent is acting under the control of—or as the alter ego of—another person, a company may exclude all of the proposals.

## 3. WORD LIMIT

Under Rule 14a-8(d), a proponent should ensure that its proposal, including any accompanying supporting statement, does not exceed 500 words. According to SLB 14M, the 500-word limit does not prohibit the inclusion of graphs and/or images in proposals. However, the words included in the graphics count towards the 500-word limit. Under Rule 14a-8(f)(1), if a proposal and supporting statement exceed the word limit, the company must give the proponent written notice and 14 calendar days to reduce the length of the proposal. If the proponent fails to reduce the number of words, the Staff will allow the proposal to be excluded. However, companies are free to allow proponents to include proposals and related supporting statements containing more than 500 words.

## 4. DEADLINE FOR SUBMITTING PROPOSALS

The proponent must ensure that its proposal is received at the company's principal executive offices before the deadline specified under Rule 14a-8(e) (i.e., not fewer than 120 calendar days before the anniversary of the date on which the company released its definitive proxy statement in the previous year). Unlike other circumstances in which the Staff allows proponents to cure deficiencies, the Staff applies the deadline requirement strictly. In some instances, the Staff allowed exclusions of proposals received an hour late.

## 5. IMPROPER UNDER STATE LAW

Under Rule 14a-9(i)(1), a proposal may be excluded if the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization. The key issue under this exclusion is the evaluation of the appropriate division of corporate powers between management and shareholders under the corporate law in the company's jurisdiction of organization. Under Rule 14a-8(j)(2)(iii), a company must provide a supporting opinion of counsel to rely on the improper subject basis for exclusion.

## 6. VIOLATION OF LAW

Under Rule 14a-8(i)(2), a proposal may be excluded if the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject. Under Rule 14a-8(j)(2)(iii), a company must provide a supporting opinion of counsel that compliance with the proposal would violate state, federal or foreign law before the Staff can allow omission under this exclusion. If a company cites established precedent and provides a satisfactory legal opinion, the Staff normally allows the exclusion of the proposal on these grounds.

## 3. VIOLATION OF PROXY RULES

Under Rule 14a-8(i)(3), a proposal may be excluded if the proposal or supporting statement is contrary to any of the SEC's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.

The most common ground for exclusion is that the proposal or the supporting statement contains false or misleading statements under Rule 14a-9. Unlike most other exclusions, the Staff will apply this exclusion even if a company did not cite the provision in its request for no-action relief. If the Staff believes that a proposal would mislead shareholders, the Staff on its own initiative can require that the proposal be revised or excluded. In practice, the Staff does not employ this approach often.

Other proxy rules can be implicated by the proxy rule violation exclusion, including Rule 14a-4 (governing the form of proxy), Rule 14a-5 (regarding clear presentation in the proxy statement) and Rule 14a-12 (pertaining to election contests). In practice, however, the use of the proxy rule exclusion in cases that rely on proxy rules other than Rule 14a-9 has been limited.

## 8. PERSONAL CLAIM OR GRIEVANCE

Under Rule 14a-8(i)(4), a proposal may be excluded if the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to an individual, or to further a personal interest, that is not shared by the other shareholders at large.

## 9. RELEVANCE

Under Rule 14a-8(i)(5), a proposal may be excluded if the proposal relates to operations that account for less than 5% of the company's total assets at the end of its most recent fiscal year, and for less than 5% of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business. According to SLB 14M, under this framework, proposals that raise issues of social or ethical significance may be excludable, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal's relevance to the company's business.

Similar to other exclusions under Rule 14a-8, the burden of proof is on the company to show that the exclusion applies. However, where a proposal's significance to a company's business is not apparent on its face, the Staff has stated in SLB 14M that a proposal may be excludable unless the proponent demonstrates that it is "otherwise significantly related to the company's business." For example, a proponent can provide information demonstrating that the proposal may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities. The proponent could continue to raise social or ethical issues in its arguments, but according to SLB 14M, the proponent would need to tie those matters to a significant effect on the company's business. The mere possibility of reputational or economic harm alone will not demonstrate that a proposal is "otherwise significantly related to the company's business." In evaluating whether a proposal is "otherwise significantly related to the company's business," the Staff will consider the proposal on a case-by-case basis, in light of the "total mix" of information about the issuer. Additionally, SLB 14M confirms that the Staff does not expect the company to include a discussion of the board's analysis of whether a particular policy issue is significantly related to the Company's business when arguing for exclusions under Rule 14a-8(i)(5).

In addition, the Staff's analysis of whether a proposal is "otherwise significantly related" under Rule 14a-8(i)(5) has at times been informed by its analysis under the "ordinary business" exception, Rule 14a-8(i)(7). As a result, the availability or unavailability of Rule 14a-8(i)(7) has at times been largely determinative of the availability or unavailability of Rule 14a-8(i)(5). However, in SLB 14M, the SEC confirmed that the Staff will not look to its analysis under Rule 14a-8(i)(7) when evaluating arguments under Rule 14a-8(i)(5).

## 10. ABSENCE OF POWER OR AUTHORITY

Under Rule 14a-8(i)(6), a proposal may be excluded if the company would lack the power or authority to implement the proposal. The exclusion is designed to ensure that a company can exclude proposals that would require it to undertake actions that it could not carry out, because it lacks the legal authority or practical ability.

## 11. ORDINARY BUSINESS

Under Rule 14a-8(i)(7), a proposal may be excluded if the proposal deals with a matter relating to the company's ordinary business operations. The purpose of the exclusion is to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.

© 2025 Winston & Strawn LLP

Broadly speaking, the Division of Corporation Finance applies a two-pronged test to determine whether a proposal can be excluded on ordinary business grounds. First, the Staff looks at whether the subject of the proposal is one that should be solely subject to the board's discretion. Under the first prong, proposals may be excluded if they raise matters that are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. However, it is important to note that proposals focusing on significant policy issues generally are not excludable under the first prong because such proposals would transcend day-to-day business matters and raise policy issues significant enough to be voted by shareholders. SLB 14M emphasizes that the determination as to whether a proposal deals with a matter relating to a company's ordinary business operations is made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.

Under the second prong, the Staff analyzes whether the proposal attempts to "micromanage" the company. Unlike the first prong, which looks to a proposal's subject matter, the second prong looks only to the degree to which a proposal seeks to micromanage. Therefore, a proposal that may not be excludable under the first prong may be excludable under the second prong if it attempts to micromanage the company. According to SLB 14M, a proposal is considered to attempt to micromanage a company when it probes too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. The Staff has noted that the second prong may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific timeframes or methods for implementing complex policies. Recently, an increasing number of shareholders call for a study or report to be conducted by the company. Under Rule 14a-8(i)(7), a proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds. Similarly, a proposal calling for a report may be excludable if the substance of the report relates to the imposition or assumption of specific timeframes or methods for implementing complex policies.

Additionally, SLB 14M confirms that the Staff does not expect the company to include a discussion of the board's analysis of whether a particular policy issue is significant to the company when arguing for exclusion under Rule 14a-8(i)(7).

## 12. ELECTION TO OFFICE

Under Rule 14a-8(i)(8), a proposal may be excluded if the proposal relates to an election for membership on the company's board of directors or analogous governing body. A proposal may be excluded if it: (i) would disqualify a nominee who is standing for election; (ii) would remove a director from office before his/her term expired; (iii) questions the competence, business judgment, or character of one or more nominees or directors; (iv) seeks to include a specific individual in the company's proxy materials for election to the board of directors; or (v) otherwise could affect the outcome of the upcoming election of directors.

The purpose of this exclusion is to ensure that the shareholder proposal process is not used to circumvent the more elaborate rules governing election contests. It is the SEC's view that dissidents seeking election to the board should conduct their own solicitation for their nominees by delivering proxy materials under the procedures set forth in Schedule 14A and the related proxy rules.

© 2025 Winston & Strawn LLP

## 13. COUNTERPROPOSALS

Under Rule 14a-8(i)(9), a proposal may be excluded if the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting. This exclusion is intended to prevent shareholder confusion as well as reduce the likelihood of inconsistent vote results (i.e., approval and rejection of the same issue at a meeting) that would provide a conflicting mandate for management.

## 14. SUBSTANTIALLY IMPLEMENTED

Under Rule 14a-8(i)(10), a proposal may be excluded if company has already substantially implemented the proposal. A company may exclude a proposal if the company is already doing—or substantially doing—what the proposal seeks to achieve. In that case, there is no reason to confuse shareholders or waste corporate resources by having shareholders vote on a matter that is moot.

Companies often invoke this basis when requesting permission to omit proposals dealing with ESG or "social" issues. As such issues receive greater attention, companies are increasingly promulgating codes of conduct and policies, as well as reporting to shareholders on such matters. Such actions may, in turn, enable companies to rely more frequently on the substantial implementation exclusion.

## 15. SUBSTANTIALLY DUPLICATIVE

Under Rule 14a-8(i)(11), a proposal may be excluded if the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting.

If a company receives two or more "substantially duplicative" proposals, it must include the first one it received in the company's proxy statement. All other "substantively duplicative" proposals may be excluded. Thus, a company is forced to include the first qualifying proposal it receives. It cannot select the proposal that it prefers to include.

## 16. RESUBMISSIONS

Under Rule 14a-8(i)(12), a proposal may be excluded if the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote in favor of such proposal was: (i) less than 5% of the votes cast if previously voted on once; (ii) less than 15% of the votes cast if previously voted on twice; or (iii) less than 25% of the votes cast if previously voted on three or more times.

This exclusion permits a company to exclude an otherwise valid proposal from its proxy materials that has been considered but not supported by a significant number of shareholders. The exclusion is intended to prevent proponents from abusing the shareholder proposal rule by repeatedly submitting proposals that have generated little interest when previously presented to the securityholders.

In considering whether a proposal involves "substantially the same subject matter" as a previous proposal, it is generally irrelevant whether the same proponent or an affiliate submitted the prior or current proposal.

### 17. DIVIDENDS

Under Rule 14a-8(i)(12), a proposal may be excluded if the proposal relates to specific amounts of cash or stock dividends. The SEC created this exclusion for two primary reasons: (i) to avoid confusion that might be created by multiple proposals asking for different levels of dividends; and (ii) to ensure the ability of the board and management to make decisions regarding capital allocation.

## E. CAN PROPONENTS SUBMIT A REBUTTAL TO THE NO-ACTION REQUEST?

Although the Staff is not required to consider a proponent's response to a company's incoming request, the Staff does consider, and encourages, rebuttals. Under Rule 14a-8(k), a proponent should submit a rebuttal as soon as possible after the company submits a no-action request. Even though there is no deadline for rebuttals, proponents should not view this as an opportunity to take their time. The Staff can act without receiving a rebuttal, even if a proponent has communicated that one is forthcoming. Since companies bear the burden of proof, proponents are not required to rebut the company's arguments, and companies often fail to convince the Staff that a proposal is excludable even if the proponent does not respond.

## F. CAN PROPONENTS REVISE THEIR PROPOSALS?

Proponents do not have a right to revise their proposals and supporting statements once they have been submitted to companies, unless the revised proposal is received by the company's submission deadline. If not timely received, it is within the company's discretion whether to accept any revisions, both before and after a no-action request is filed, unless the revisions are requested specifically by the Staff. When the Staff provides a response that gives the proponent seven days to make a specific revision, it is effectively telling the company that (a) it may exclude the proposal unless the proponent makes the revision within that time frame and (b) it must include the proposal if the proponent makes the revision within that time frame.

## G. CAN PROPONENTS WITHDRAW THEIR PROPOSALS?

It is not uncommon for proposals to be withdrawn after a no-action request has been filed with the Staff. This can happen after the company and proponent negotiate and settle on a solution, such as the company agreeing to take an action that appeases the proponent or deciding to include the proposal as originally requested. Sometimes a proposal is withdrawn voluntarily by the proponent.

## H. HOW DOES THE STAFF RESPOND TO NO-ACTION REQUESTS?

Once the Staff is finished processing a request, it will issue a "no-action" response informally or by letter. The Staff's response normally includes the Staff's conclusions, but not its analysis. Unless special time considerations are present, the Staff attempts to respond to a request within 60 days of its receipt. No-action responses only reflect the Staff's informal views regarding the application of Rule 14a-8 to the specific facts in the letter. The Staff does not issue "rulings" or "decisions" on proposals that companies intend to exclude. Furthermore, no-action responses provide limited protection. Companies should recognize that receipt of a favorable no-action response does not preclude the proponent from bringing a private cause of action against the company for failure to include its proposal. No-action responses are not binding on a court, which may decide to effectively reverse the Staff's decision and issue an injunction requiring the company to include the proposal.

The Staff may respond to no-action requests in the following ways:

### 1. INCLUDE THE PROPOSAL

The Staff may reject each of the grounds that the company has raised as a basis for exclusion. In this case, the company will usually include the proposal in its proxy and provide reasons why it believes shareholders should vote against the proposal. However, a dissatisfied company may choose to ignore the Staff's denial of its no-action request and exclude a proposal, although such occurrences are rare. Rule 14a-8 makes clear that companies can exclude shareholder proposals only after submitting their reasons to the Staff and receiving relief in the form of a no-action response. A company that decides to exclude a proposal without asking for no-action relief—or filing a notice with the SEC stating it is going directly to court—faces a high probability of an investigation by the SEC's Division of Enforcement.

### 2. EXCLUDE THE PROPOSAL

The Staff accepts one or more of the arguments that the company has made and states that it will not recommend enforcement action to the SEC's Division of Enforcement if the company excludes the proposal. In this case, the company will almost always exclude the proposal.

### 3. NO VIEW

The Staff states that it is unable to accept or reject any of the bases that the company has raised for exclusion. Normally, these cases involve proposals that have been withdrawn by the proponent. Occasionally, the Staff expresses no view when it is too difficult for the Staff to make a decision on an unsettled legal issue, usually after both the company and proponent have made extensive arguments to the Staff. When the Staff issues a response declining to state a view, that does not mean the proposal must or should be included. The Staff is not taking a position on the arguments made and there may be a valid legal basis to exclude the proposal under Rule 14a-8. Because it has become more likely in recent years that the Staff will decline to state a view, in addition to the litigation risk, companies should consider whether excluding a proposal will impact shareholder support for other agenda items such as director elections.

## 4. OPPORTUNITY TO CURE THE DEFICIENCIES

Often, if the Staff finds a deficiency in a proposal, it permits the proponent to cure the problem if this can be accomplished without materially altering the proposal. Normally, a proponent is given seven calendar days from the date of the Staff's response to cure the deficiency; if the proponent does not timely cure, the company is allowed to exclude the proposal.

© 2025 Winston & Strawn LLP

# IV. Company and Proponent Responses to SEC's Decision of No-Action

## A. CAN THE STAFF'S DETERMINATION OF NO-ACTION BE APPEALED?

A company or a proponent that believes the Staff erred in ruling on a no-action request has three non-exclusive choices: (i) ask the Staff to reconsider its decision; (ii) ask the full SEC to review the Staff's decision; or (iii) sue in court to obtain a judicial determination of the question.

### 1. RECONSIDERATION OF STAFF DECISIONS

There are no formal procedures for companies or proponents to follow when they request reconsideration by the Staff of its no-action decision. Generally, the aggrieved party sends a letter to the Office of Chief Counsel requesting reconsideration and explaining why the Staff should overturn its decision.

In response to a reconsideration request, the Staff can take one of four possible actions. First, the Staff can deny reconsideration and let its prior decision stand. This is the most common response. Second, the Staff can reconsider but reaffirm its prior position. Third, the Staff may also reaffirm its position but ask the proponent to make changes to its proposal. Lastly, the Staff can grant a reconsideration request and reverse itself, which happens infrequently.

### 2. COMMISSION APPEAL OF STAFF DECISION

In lieu of or in addition to Staff reconsideration, an aggrieved party may challenge a Staff decision by asking the full Commission to rule on the no-action request. There are no formal procedures for companies or proponents to follow when they request review by the full Commission. A letter is usually sent to the Office of Chief Counsel and the Secretary of the Commission requesting an appeal and setting forth the reasons why the Commission should overturn the Staff's decision. It is rare for the SEC to overrule the Staff.

### 3. LITIGATING AGAINST THE COMPANY OR PROPONENT

Even if a company obtains no-action relief, it still faces the risk that a proponent may file a private lawsuit against it in federal district court seeking an order compelling inclusion of the proposal. The opposite can occur if a company sues a proponent. Several companies in recent years have decided to sue in court rather than rely on the Staff to exclude a proposal, such as Exxon during its 2024 proxy season.

## B. CAN THE COMPANY INCLUDE STATEMENTS IN OPPOSITION TO A PROPOSAL IN ITS PROXY STATEMENT?

If the SEC rejects a no-action request and the company determines to include the proposal in its proxy statement, the company may include a statement in opposition to a shareholder proposal in its proxy statement, although it is not required to do so. Most companies elect to provide some type of disclosure opposing a shareholder proposal, either describing why shareholders should vote against a proposal or clarifying its position on the proposal's subject matter. Before delivering its proxy statement to shareholders, a company must first send a copy of the disclosure it intends to make about the shareholder proposal to the proponent within a specified time.

If a proponent believes that the company's statement in opposition is materially false or misleading, it can complain to the Staff. Under Rule 14a-8(m)(2), such a complaint must be initiated by promptly sending a letter to the Staff containing specific facts demonstrating the inaccuracy of the company's statement, along with a copy of the company's proposed statement of opposition. The proponent is required to submit a copy of the company's statement of opposition because the Staff does not normally have it. In the alternative, a proponent can "go public" with how it feels about the company's opposition statement if it first files a Notice of Exempt Solicitation under Rule 14a-6(g). The information in this Notice can then serve as the proponent's formal rebuttal.

## C. IS THE COMPANY REQUIRED TO IDENTIFY THE PROPONENTS IN ITS PROXY STATEMENT?

Under Rule 14a-8(l), if a company includes a shareholder proposal in its proxy materials, the company's proxy statement must include the proponent's name and address, as well as the number of the company's voting securities held by the proponent. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request. Companies may make that determination without consultation with the Staff.

## D. ARE PROPONENTS REQUIRED TO ATTEND THE SHAREHOLDER MEETING?

Under Rule 14a-8(h)(1), a proponent or its representative must attend the meeting to present the proposal. If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits the proponent or its representative to present its proposal via such media, the proponent may appear through electronic media.

If the proponent or the representative fail to appear and present the proposal without good cause, the company will be permitted to exclude all of the proponent's or the representative's proposals from its proxy materials for any meetings held in the following two calendar years. In theory, a proponent is permitted to show "good cause" for its failure to attend a meeting. In practice, however, the Staff rarely finds that a proponent had good cause. The Staff interprets the "good cause" standard narrowly, requiring proponents to prepare for a wide range of unexpected occurrences.

# V. Exxon Case Study

## A. NO-ACTION REQUESTS OF EXXON AND SEC'S RESPONSES

For the 2024 proxy season, Exxon began receiving proposals from proponents in January 2024, and submitted seven no-action request letters. A summary of the proposals, corresponding no-action requests and SEC responses, and the company response is below.

| PROPONENT AND PROPOSAL | NO-ACTION GROUNDS AND SEC RESPONSE | COMPANY RESPONSE |
|---|---|---|
| Proponent: Kenneth Steiner<br><br>Proposal: The proposal requests that the board of directors amend the company's policy on recoupment of incentive pay to apply to each named executive officer and to state that conduct or negligence—not merely misconduct—shall trigger mandatory application of that policy, and to report to shareholders in each annual meeting proxy the results of any deliberations regarding the policy, including the board's reasons for not applying the policy after specific deliberations conclude about whether or not to cancel or seek recoupment of unearned compensation paid, granted or awarded to named executive officers. | The SEC confirms application of exclusion Rule 14a-8(i)(10) – "substantially implemented" and will not recommend enforcement action to the Commission if the company omits the proposal from its proxy materials.[1] | Exxon did not include the proposal in its 2024 proxy. |
| Proponent: Oxfam America<br><br>Proposal: The proposal requests that the board issue a tax transparency report to shareholders prepared in consideration of the indicators and guidelines set forth in the Global Reporting Initiative's Tax Standard. | The SEC confirms application of exclusion Rule 14a-8(i)(7) – "ordinary business" and will not recommend enforcement action to the Commission if the company omits the proposal from its proxy materials.[2] | Exxon did not include the proposal in its 2024 proxy. |

[1] https://www.sec.gov/files/cheveddenexon032024-14a8.pdf
[2] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.sec.gov/files/oxfamexxon032024-14a8.pdf

© 2025 Winston & Strawn LLP

| PROPONENT AND PROPOSAL | NO-ACTION GROUNDS AND SEC RESPONSE | COMPANY RESPONSE |
|---|---|---|
| Proponent: National Legal and Policy Center<br><br>Proposal: The proposal requests the compensation committee of the board of directors to revisit its incentive guidelines for executive pay, to emphasize legitimate fiduciary goals and consider eliminating greenhouse gas reduction targets and other scientifically dubious goals from compensation inducements. | The SEC did not concur with the application of exclusion Rule 14a-8(i)(3) – "violation of proxy rules", as it does not believe that the proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.[3] | Exxon included the proposal as Proposal 4 with statements in opposition and recommended that shareholders vote against it.<br><br>See below summary of the proposal and Exxon's response. |
| Proponent: William Hild<br><br>Proposal: The proposal requests that the company issue an annual report of the incurred costs and associated significant and actual benefits that have accrued to security holders from the company's activities related to its "ambition for net zero greenhouse gas emissions by 2050" that are voluntary, exceeding U.S. and foreign regulatory requirements. | The SEC believes that there appears to be some basis for the company's view that it may exclude the proposal under Rule 14a-8(i)(12)(ii) – "resubmissions" and will not recommend enforcement action to the Commission if the company omits the proposal from its proxy materials.[4] | Exxon did not include the proposal in its 2024 proxy. |
| Proponent: United Church Funds<br><br>Proposal: The proposal requests a report addressing whether and how a significant reduction in virgin plastic demand, as set forth in *Breaking the Plastic Wave*'s System Change Scenario, would affect the company's financial position and the assumptions underlying its financial statements. | The SEC did not concur with the application of exclusion Rule 14a-8(c) – "one proposal", as it does not believe that the proponent submitted more than one proposal, directly or indirectly, to the company.[5] | Exxon included the proposal as Proposal 6 and recommended that shareholders vote against it.<br><br>See below summary of the proposal and Exxon's response. |

[3] https://www.sec.gov/files/nlpcexxon032024-14a8.pdf
[4] https://www.sec.gov/files/hildexxon032024-14a8.pdf
[5] https://www.sec.gov/files/asyousowunitedexxon032024-14a8.pdf

| PROPONENT AND PROPOSAL | NO-ACTION GROUNDS AND SEC RESPONSE | COMPANY RESPONSE |
|---|---|---|
| Proponent: Suzanne B & Guy L Tr (Nat Resources)<br><br>Proposal: The proposal requests that the company annually report on divestitures of assets with material climate impact, including whether each asset purchaser discloses its GHG emissions and has 1.5°C-aligned or other greenhouse gas reduction targets. | The SEC believes that there appears to be some basis for the company's view that it may exclude the proposal under Rule 14a-8(i)(7) – "ordinary business" and will not recommend enforcement action to the Commission if the company omits the proposal from its proxy materials.[6] | The company did not include the proposal in its 2024 proxy. |
| Proponent: Broz Family Investments LLC<br><br>Proposal: The proposal requests a report on pay gaps across race and gender. | The SEC did not concur with the application of exclusion Rule 14a-8(c) – "one proposal", as it does not believe that the proponent submitted more than one proposal, directly or indirectly, to the company.[7] | The company included the proposal as Proposal 6 with statements in opposition and recommended that shareholders vote against it.<br><br>See below summary of the proposal and Exxon's response. |

## B. PROPOSALS AND COMPANY RESPONSES IN EXXON'S DEFINITIVE PROXY

On April 11, 2024, Exxon filed its definitive proxy for the 2024 annual meeting of shareholders, which included lengthy statements in opposition to the current shareholder proposal process and Exxon's perceived abuse of the process by certain shareholder activists.[8] According to Exxon, certain proponents and representatives of the shareholder proposals cooperate with each other to "hijack the shareholder process to advance their own agendas, which often conflicts with growing investors' value." For instance, Exxon notes that members of the Interfaith Center on Corporate Responsibility (ICCR) work in concert with each other to submit hundreds of shareholder proposals each year. In fact, ICCR's members were responsible for approximately 40% of all proposals Exxon received for the 10-year period from 2014 to 2023.

[6] https://www.sec.gov/files/asyousownatexxon032024-14a8.pdf
[7] https://www.sec.gov/files/brozexxon032024-14a8.pdf
[8] https://www.sec.gov/ix?doc=/Archives/edgar/data/34088/000119312524092545/d784249ddef14a.htm.

Exxon believes that such activist proponents capitalize on the new interpretations of the proxy exclusion rules in order to make similar proposals every year, even though such proposals were rejected by a majority of shareholders in previous years. The activist proposals, according to Exxon, selectively choose performance indicators to be alternately used or not used by the company, redefine risk based on the activist's narrower view of energy transition and tend to be driven more by ideology than shareholder value. Exxon criticized that such proposals are often an overreach in their demands and lack understanding of the industry and the company, which leads to significant losses of money, time and effort that could otherwise be used to maximize shareholder value. Exxon recommended that shareholders vote against proposals 4 through 7 to send a strong message to activist organizations to raise awareness that ideologically charged—mostly ESG-related—proposals may not maximize shareholder value.

The criticized proposals, Exxon's opposition and the proponent's opposition (to the extent applicable) are summarized below.

© 2025 Winston & Strawn LLP

| PROPOSAL 4 | COMPANY RESPONSE AND PROPONENT OPPOSITION |
|---|---|
| Proponent: National Legal Policy Center<br><br>Request: Exxon's Compensation Committee revisit its incentive guidelines for executive pay, to emphasize legitimate fiduciary goals and consider eliminating greenhouse gas reduction targets and other scientifically dubious goals from compensation inducements.<br><br>Reason: The proponent believes there is clear evidence that climate alarmism is overstated, and that Exxon's executive pay incentives are an inefficient use of company resources. | Company Response:<br><br>The Exxon board of directors recommends shareholders vote against the proposal.<br><br>1. Exxon's Compensation Committee and the board take their fiduciary duty seriously, and the executive compensation program is tied to a wide range of strategic objectives designed to drive sustainable growth in shareholder value.<br>2. Exxon's business strategy is multifaceted, which includes meeting an increased need for energy and efficient reduction of emissions, and already accounts for a wide spectrum of future scenarios, from maintaining the status quo to rapid decarbonization.<br>3. The proposal was submitted by serial proponents that are focused on advancing their own agenda over long-term shareholder value.<br><br>Proponent Opposition[9]:<br><br>National Legal and Policy Center used the notice of exempt solicitation process under Rule 14a-6(g) to refute Exxon and urge shareholders to vote in favor of the proposals, as incentivizing the company's executives to reduce greenhouse gas emissions will result in lower oil and gas production, or in misguided investments in speculative, subsidy-driven carbon capture and storage technology experiments. |

**VOTE RESULTS**

98.3% of shareholders voted against the proposal.

[9] https://www.sec.gov/Archives/edgar/data/34088/000109690624001016/nlpc_px14a6g.htm

| PROPOSAL 5 | COMPANY RESPONSE |
| --- | --- |
| Proponent: Broz Family Investments, LLC, represented by Proxy Impact<br><br>Request: A report on pay gaps across race and gender.<br><br>Reason: Actively managing pay equity is associated with improved representation that can lead to better stock performance and return on equity. The proponent argued that best practice pay equity reporting should consist of two parts, the unadjusted median pay gaps that assess equal opportunity to high-paying roles and the statistically adjusted gaps that assess equal pay across gender and race. Exxon does not report such pay gaps in the U.S., and the proponent requested that Exxon provide a report incorporating both metrics. | The Exxon board of directors recommends shareholders vote against the proposal.<br><br>1. Exxon's compensation and promotion structure is highly formulaic and avoids the racial and gender bias in compensation.<br>2. The metrics proposed by Broz do not reflect the difference in cultures, laws and economies in which Exxon operates.<br>3. Exxon already provides a report that goes beyond its EEO-1 data, and the report demonstrates that Exxon's compensation is at parity, making the requested report redundant. |
| **VOTE RESULTS**<br><br>80% of shareholders voted against the proposal. | |

| PROPOSAL 6 | COMPANY RESPONSE AND PROPONENT OPPOSITION |
| --- | --- |
| Proponent: United Church Funds, represented by As You Sow<br><br>Request: A report addressing whether and how a significant reduction in virgin plastic demand, as set forth in *Breaking the Plastic Wave*'s System Chage Scenario (SCS), would affect its financial position and the assumptions underlying its financial statements.<br><br>Reason: Several implications of the SCS, including a one-third absolute demand reduction of mostly virgin single-use plastics and immediate reductions in new investment in virgin production, are at odds with Exxon's continued investments in virgin plastic production infrastructures, posing growing risk to the company. | Company Response:<br><br>The Exxon board of directors recommends shareholders vote against the proposal.<br><br>1. Exxon invests in and advocates certified-circulate plastics and collection systems to enable circularity in plastic use, which improves plastic waste management.<br>2. Exxon's plastics allow customers to produce lighter packaging that reduce shipping weight and emissions. The proposal overlooks the fact that plastics enable greenhouse gas emissions reductions.<br>3. The proposal is represented by As You Sow, a member of ICCR, to pursue its anti-oil and gas agenda and diminishes the widely acknowledged societal value of plastics. As You Sow, according to Exxon, has filed 21 resolutions to Exxon in the past decade, all of which were rejected by shareholders, and accepting As You Sow's continued pursuit of narrower agendas would not be the most efficient use of the company's resources.<br><br>Proponent Opposition[10]:<br><br>As You Sow, on behalf of United Church Funds used the notice of exempt solicitation process under Rule 14a-6(g) to refute Exxon and urge shareholders to vote in favor of the proposal, as Exxon (i) is exposed to economic risk, including potential reduced demand, as global leaders and corporate brands call for reduction in plastic production and transition away from single-use plastics to combat plastic pollution, (ii) is the world's largest producer of single-use plastic resins and continues to expand its production of virgin plastics despite both the likelihood of single-use plastic demand reduction and recent analyst projections of global polyethylene and polypropylene overcapacity, and (iii) has not disclosed the safety and efficacy of the recycling technologies it uses to produce new plastic feedstocks from plastic waste. |
| **Vote Results**<br><br>79.2% of the shareholders voted against the proposal. | |

[10] https://www.sec.gov/Archives/edgar/data/34088/000121465924007864/o429249px14a6g.htm

| PROPOSAL 7 | COMPANY RESPONSE |
|---|---|
| Proponent: United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Services Workers International Union<br><br>Request: A report regarding the social impact on workers and communities from closure or energy transition of Exxon's facilities, and alternatives that can be developed to help mitigate the social impact of such closures or energy transitions.<br><br>Reason: The proponent believes that as the nation and Exxon prepare for and participate in a transitioning energy economy, Exxon should play a role in helping to provide security for impacted workers and communities where it operates. | The Exxon board of directors recommends shareholders vote against the proposal.<br><br>1. The proponent incorrectly assumes that Exxon's workforce will be displaced because Exxon's current workforce already possesses the skills and capabilities needed to lead a successful energy transition and will ultimately transition to new roles that require the same core capabilities.<br>2. The proposal pursues a narrow agenda of shareholder activists that may be detrimental to the company's other shareholders. The proposal was brought by a serial proponent, who has submitted 10 proposals in the past decade, all of which have been rejected by shareholders. The proponent also works in consortium with other proponents, one of which was responsible for approximately 40% of all proposals received by Exxon in the past decade. |

**NOTE**

Exxon was explicitly critical of how certain activist proponents may be misusing the shareholder proposal process, noting in its response to Proposal 5 that certain activist proponents act in concert with each other to pursue agendas that it believes is detrimental to maximizing long-term shareholder value. For instance, Exxon mentioned that Proxy Impact, the representative of Proposal 5's proponent, has formed a professional consortium with other organizations, including As You Sow, to push its agendas in Exxon's proxy statements, and that there were at least four filers or representatives of other proposals submitted to Exxon in 2024.

**VOTE RESULTS**

92.5% of shareholders voted against the proposal.

## C. CIRCUMVENTING THE NO-ACTION REQUEST

While the traditional path for excluding shareholder proposals involves submitting no-action requests with the Staff as noted above, it is possible for a company to take the matter directly to court by filing lawsuits against certain proponents. As a case in point, in January 2024, Exxon bypassed the traditional no-action request process and directly filed a lawsuit against Arjuna Capital LLC (Arjuna) and Follow This (Arjuna, along with Follow This, the defendants) seeking declaratory judgment to exclude the defendants' 2024 proposals. Exxon noted that it was bypassing the traditional no-action request process because the defendants had aggregated their shares in order to submit proposals designed to combat climate change and reduce greenhouse gas emissions and continued to submit similar proposals even though they had been roundly rejected by shareholders in previous years.

In response, the defendants withdrew their proposal and promised not to refile the proposal with Exxon at any point in the future. While the defendants thought withdrawing the proposal would immediately put an end to Exxon's lawsuit, Exxon moved forward with the case. The Texas federal judge only dismissed the case against Follow This on the grounds that the court does not have jurisdiction, and preserved the case against Arjuna, noting that Arjuna's promise not to refile was not an enforceable contract, and it is uncertain whether it will refile its proposal in the future.[11] The defendants have responded that Exxon is using the case to fight a proxy war against the SEC over the agency's interpretation of its proxy rules, and other activist shareholders have used the notice of exempt solicitation under Rule 14a-6(g) to criticize Exxon for having a chilling effect on the shareholder proposal process by circumventing the Rule 14a-8 process and urged shareholders to vote against the Exxon board of directors[12]. Ultimately, on June 17, 2024, the Texas federal judge dismissed the case against Arjuna without prejudice, as Exxon's claim was no longer valid after Arjuna "unconditionally and irrevocably" agreed not to submit a future proposal regarding Exxon's greenhouse gas emissions. Arjuna's pledge not to file a similar proposal in the future has eliminated any case or controversy.[13]

---

[11] https://assets.law360news.com/1840000/1840103/https-ecf-txnd-uscourts-gov-doc1-177116859691.pdf
https://www.law360.com/articles/1840103?utm_source=ios&utm_medium=ios&utm_campaign=ios-shared
[12] https://www.sec.gov/Archives/edgar/data/34088/000114036124026784/ef20029479_px14a6g.htm;
https://www.sec.gov/Archives/edgar/data/34088/000121465924009671/j521244px14a6g.htm
[13] https://www.reuters.com/legal/us-judge-dismisses-exxon-case-against-activist-investor-over-proxy-filing-2024-06-17/

© 2025 Winston & Strawn LLP

# VI. Takeaways

Exxon has taken drastic measures against shareholder activists in the 2024 proxy season, but how effective it will be in preventing similar proposals in the future is yet to be determined. As described above, to discourage politically charged proposals, Exxon circumvented the traditional no-action request process and sued certain proponents in federal court and also included lengthy and critical statements against certain activist proponents in its proxy statement. In response, a number of shareholders used the notice of exempt solicitation process under Rule 14a-6(g) to fight back. Notably, ICCR filed a notice of exempt solicitation on April 22, 2024, which clarified that ICCR and its members are not pursuing narrow agendas at the cost of shareholders and criticized Exxon for attempting to silence dissidents through intimidation.[14] ICCR believes setting meaningful decarbonization targets is beneficial to all shareholders and not just its own members, especially in light of the increasing urgency of the climate crisis and the systemic risks associated with climate change inherent in Exxon's fossil fuel business. ICCR stated that its members are interested in the long-term financial success of companies held in their portfolios, including Exxon, and climate-impacted communities and government officials continue to implore the oil and gas industry to meaningfully respond to the climate crisis by shifting its business model away from overreliance on fossil fuels. Obstructing shareholders from raising concerns regarding such issues through intimidation, according to ICCR, detracts shareholders from reaping the benefits of transitioning to lower-carbon energy alternatives. Similarly, As You Sow, which was mentioned in Exxon's proxy statement numerous times, filed a notice of exempt solicitation to criticize Exxon for jeopardizing the shareholder democracy process and correct what it believed to be untrue statements in Exxon's proxy.[15] Moreover, numerous other shareholders have filed notices of exempt solicitation that encouraged shareholders to vote against certain Exxon directors, such as executive chair and CEO Darren W. Woods and lead independent director and nominating and governance committee chair Joseph L. Hooley, for permitting the company to attack its own shareholders not only in the proxy statement but also in court.[16]

While the aggressive approach taken by Exxon is, in Exxon's view, a reasonable response to the burden of dealing with continued efforts by certain proponents to push their narrow agendas, the notices of exempt solicitation indicate that shareholder activists firmly believe that they are contributing to maximizing shareholder value and remain unintimidated by Exxon. While the vote results this year indicate that shareholders favored Exxon's position over those of activist proponents, whether Exxon's responses in 2024 will have a chilling effect on shareholder proposals or backfire in the next proxy season by encouraging activists to unite remains in question.

---

[14] https://www.sec.gov/Archives/edgar/data/34088/000121465924007247/z419246px14a6g.htm.
[15] https://www.sec.gov/Archives/edgar/data/34088/000121465924008587/o58240px14a6g.htm
[16] https://www.sec.gov/Archives/edgar/data/34088/000199937124005715/xom_px14a6g-050724.htm ;
https://www.sec.gov/Archives/edgar/data/34088/000121465924008868/d513244px14a6g.htm ;
https://www.sec.gov/Archives/edgar/data/34088/000121465924009671/j521244px14a6g.htm ;
https://www.sec.gov/Archives/edgar/data/34088/000114036124026784/ef20029479_px14a6g.htm

© 2025 Winston & Strawn LLP