

Chamber Tells SEC that Its Decision Regarding Conflicting Proposals Places Companies in a Bind

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The Chamber of Commerce has sent a [letter](#) to SEC Chair White to “express significant concern” regarding the announcement that the SEC staff will express no views on the application of Rule 14a-8(i)(9) during the season, which we previously discussed [here](#).

According to the letter, the no-action letter process at least provides assurance that exclusion will not lead to an SEC enforcement action. The recent SEC decision adds an additional layer of uncertainty into an already complex rule and benefits neither issuers nor investors. Issuers must now face “an untenable position” with respect to whether they risk litigation if they present their own proposal, or shareholder confusion if they include both management and shareholder proposals.

They request that the Commission and staff undertake a “top-to-bottom” review of Rule 14a-8, since “it is well-known that the shareholder proposal process has been dominated by a small group of special interest activists.”

The letter refers to the prior Chamber request to lower the resubmission threshold, which we discussed [here](#). In addition, they ask the SEC to also consider Rule 14a-8(i)(3), in terms of excluding proposals that include false information. The staff has been reluctant to wade into fact-specific findings, even when companies can show that the proposals contain untrue statements.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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