

How Drastic Changes to the Shareholder Proposal Process Could Harm Companies

Overview

The U.S. Securities and Exchange Commission (SEC) is looking to overhaul or eliminate the rules governing shareholder proposals. This would not only be harmful to investors but also to companies, as both have long relied on this process to meaningfully engage with each other and reach agreement on a range of financial issues, including overall strategy, risk management, and board oversight. If the SEC dismantles the existing process through formal rulemaking, companies can expect a range of negative outcomes, including:

- A chaotic company-by-company, state-by-state approach to shareholder proposals.
- More lawsuits related to omitted shareholder proposals or in place of proposals.
- A dramatic increase in votes against directors and/or attempts to replace directors
- New types of proposals with investors sending proxy ballots directly to other shareholders of the company.
- More contentious, time-consuming, and expensive engagements with shareholders.
- Burdensome new forms of engagement as investors seek alternative ways to be heard by corporate managers.
- Increased market instability with potential new rule changes (or reversals).
- An increase in investors selling shares if their concerns go unaddressed.

The Value of Proposals

Proposals ensure an avenue for investors to engage with corporate managers without resorting to litigation, proxy contests, and other adversarial tactics.

- Companies and shareholders create value when they work together, and the existing process facilitates this productive engagement.
- Non-binding proposals offer a clear low-cost off-ramp between private engagement and litigation or proxy contests.
- Companies benefit from a system where shareholders can formally surface issues, create a public record, and test substantive support for their proposals through voting, without escalating to costly and adversarial tactics.
- Proposals give companies a concrete idea of the relevant issues important to their shareholders and allow management to demonstrate their responsiveness.

Shareholder Lawsuits

The SEC already took steps to begin dismantling Rule 14a-8, the governing rule of the shareholder engagement process. It stopped issuing “no action” letters for companies’ requests to exclude proposals from their proxy materials and signaled that it will not hold companies accountable. These letters provide an informal regulatory precedent that guides companies and investors through the shareholder proposal process and gives companies legal comfort to exclude proposals. The absence of these letters created a regulatory vacuum, leading to an increase in shareholder lawsuits against companies.

New York City Employees' Retirement System v. AT&T, Inc.

A [lawsuit](#) against AT&T due to the company's exclusion of a shareholder proposal seeking to have the company disclose its workforce statistics on race, ethnicity, and gender. In February 2026, AT&T and the pension fund [settled](#) the case, and the proposal will be placed on the company's proxy ballot this year.

Kerry Masters v. PepsiCo, Inc.

A [lawsuit](#) against PepsiCo for excluding a proposal requesting that the company investigate and issue a report evaluating whether its supply chain is complying with the company's Global Animal Welfare Policy, Supplier Code of Conduct, and animal welfare laws. PepsiCo settled the lawsuit in February 2026, and the proposal will be included on the company's proxy ballot this year.

Nathan Cummings Foundation, Inc. v. Axon Enterprise, Inc.

A [lawsuit](#) against Axon Enterprise after the company excluded a proposal requesting greater transparency on political spending. The case was settled in March 2026 with Axon Enterprise, according to Jones Day, agreeing to publicly disclose its policies and governance framework for political spending, as well as certain contributions, over the next five years. The Foundation also agreed not to submit any political spending proposals during the same five-year period.

New York State Comptroller v. BJ's Wholesale Club Holdings, Inc.

A [lawsuit](#) against BJ's Wholesale Club Holdings after the company excluded a shareholder proposal on examining deforestation in its supply chain. Comptroller Thomas DiNapoli was successful in having the proposal included in the company's proxy statement.

As You Sow v. Chubb Limited

A [lawsuit](#) against Chubb Limited to include a shareholder proposal requesting a report concerning ways Chubb can recover climate-related payouts. The court ruled that the lawsuit can continue, but failed to issue a preliminary injunction requiring Chubb to include the proposal on its proxy. As a result, Chubb's shareholders will not be able to express their opinions via a vote on the matter.

The SEC has announced that it will propose new rules for shareholder proposals, and many fear that Rule 14a-8 will be repealed. This would dramatically deepen the regulatory vacuum already created by the SEC's retreat from issuing "no action" letters and could lead to a further increase in shareholder lawsuits against companies.

How Companies Can Get Involved

Companies are in a unique position to push back against the impending proposed rule changes to the shareholder process and to call for re-issuing "no action" letters to avoid more lawsuits and regulatory chaos. They can:

- ✓ Write to or request a meeting with the SEC
- ✓ Submit public comments on changes
- ✓ Encourage trade associations to speak up
- ✓ Engage the media on the issue
- ✓ Post a blog or social media post

Learn more: freedomtoinvest.org/shareholder-rights