

**MEMO# 31952**

September 10, 2019

## **SEC Staff Announces Changes to Its Rule 14a-8 No-Action Request Process**

[31952]

September 10, 2019 TO: ICI Members SUBJECTS: Closed-End Funds

Compliance

Disclosure

Fund Governance

Investment Advisers RE: SEC Staff Announces Changes to Its Rule 14a-8 No-Action Request Process

On September 6, the SEC's Division of Corporation Finance announced changes to its process for responding to exclusion requests under Exchange Act Rule 14a-8.[\[1\]](#)

Generally speaking, Rule 14a-8 conditionally permits a company's shareholders to include proposals (*i.e.*, recommendations or requirements that a company and/or its board take action) on the company's proxy statement. But the Rule also provides several bases upon which a company may exclude a shareholder proposal. Companies wishing to exclude a proposal must explain why in a written submission to the SEC staff, and shareholder proponents may submit a response. The staff then responds, typically via a no-action letter.

Most significantly, the announcement states:

The staff will continue to actively monitor correspondence and provide informal guidance to companies and proponents as appropriate. In cases where a company seeks to exclude a proposal, the staff will inform the proponent and the company of its position, which may be that the staff concurs, disagrees or declines to state a view, with respect to the company's asserted basis for exclusion. Starting with the 2019-2020 shareholder proposal season, however, the staff may respond orally instead of in writing to some no-action requests. The staff intends to issue a response letter where it believes doing so would provide value, such as more broadly applicable guidance about complying with Rule 14a-8."

Furthermore:

If the staff declines to state a view on any particular request, the interested parties should not interpret that position as indicating that the proposal must be

included. In such circumstances, the staff is not taking a position on the merits of the arguments made, and the company may have a valid legal basis to exclude the proposal under Rule 14a-8. And, as has always been the case, the parties may seek formal, binding adjudication on the merits of the issue in court.

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#### **endnotes**

[1] *Announcement Regarding Rule 14a-8 No-Action Requests*, available at [www.sec.gov/corpfin/announcement/announcement-rule-14a-8-no-action-requests](http://www.sec.gov/corpfin/announcement/announcement-rule-14a-8-no-action-requests). The announcement follows from the Division's recent consideration of "how it could most efficiently and effectively provide guidance [when administering Rule 14a-8] where appropriate."

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