

*Changes to Securities and
Exchange Commission (SEC) Rules
on Environmental and Social
Governance and Sustainability*

Sanford Lewis, Attorney

Director and General Counsel
Shareholder Rights Group

Oregon State Bar, Sustainable Future Section
CLE April 23, 2026

Areas of Current SEC Activity in Relevant to ESG and Sustainability

Areas of Anticipated Formal Rule-Making Activity

Shareholder Proposal Rule 17 CFR § 240.14a-8

Regulation SK - Disclosure of Risk Factors and Management

Discussion and Analysis 17 CFR § 229

Enforcement Stayed

Climate Rule SEC Release Nos. 33-11275; 34-99678

Informal agency actions

EDGAR database access for posting

Schedules 13D/13G 17 CFR § 240

Names Rule

Proxy advisors

White House Executive Order /December 11, 2025



Targets DEI and ESG factors in voting recommendations by proxy advisors.

Urges SEC to refine or eliminate rules requiring ESG and DEI shareholder proposals.

Shareholder proposals under SEC Rule 14a-8

GOVERNANCE

Smaller shareholders have had an outsized impact in proposing corporate governance reforms that were widely supported by fellow investors and then later adopted as standard practice in the market.

majority voting

separation of Chair and CEO

annual director voting

unequal voting rights

proxy access

CLIMATE CHANGE

Examples of requests

RESOLVED That **Suncor** disclose audited results assessing a range of **climate transition scenarios** on the assumptions, costs, estimates, and valuations **underlying its financial statements**, including those related to long-term commodity and carbon prices, remaining asset lives, future asset retirement obligations, capital expenditures, and impairments.

RESOLVED Shareholders of **NextEra Energy** request that the Board of Directors report to shareholders on its framework for identifying and addressing **misalignments** between NextEra's **lobbying and policy influence** activities and positions, both direct and indirect through trade associations, coalitions, alliances, and other organizations and its **Net Zero goal**.

Proposal Examples

SOCIAL

- whether a tech company is preventing **online abuse of children**
- reputational damage from **publicized consumer abuses**
- risks of producing products in **China**
- use of **slave labor** in supply chains
- failure of pharma, retail and distributional companies to oversee risks from manufacture and sale of **opioids**
- risks to financial institutions from **predatory lending**

How have shareholder proposals increased corporate accountability?

CHILD ONLINE SAFETY

Since 2016, a group of now [more than 60 investors from multiple countries](#) have engaged with tech companies concerning child online safety, collaborating with online safety experts, law enforcement, and policy makers such as the Senate Judiciary committee to prompt tech companies to remove harmful content and implement stronger protections. [Shareholder proposals during 2022 and 2023 at Apple, Alphabet and Meta](#) played a significant role in this investor engagement to improve child safety online.

March 2026 New Mexico Verdict (\$375M): A jury ordered Meta to pay \$375 million for failing to protect children from predators and exposing them to sexual content on Facebook and Instagram. Addiction Liability (California): A day after the New Mexico ruling, a California jury found Meta and YouTube negligent in a separate "bellwether" trial, ruling that their platforms' design features (like infinite scroll) are addictive and caused mental health distress to a young user.

How have shareholder proposals increased corporate accountability?

OPIOIDS

The Investors for Opioid and Pharmaceutical Accountability with **67 global members (over \$4.2T AUM)** engaged opioid manufacturers, distributors and retail pharmacies from 2017-2023, filing **100+ proposals** on **governance reforms** within major pharmaceutical companies to better manage societal and enterprise risks. Central to the strategy: involve the board in opioid risk management by asking independent directors to investigate and report on **how the board is assessing and managing legal, financial and reputational risks** related to its opioid business.

Investors of all perspectives can raise issues

Pro-DEI

RESOLVED that the Company report to shareholders on the effectiveness of the Company's diversity, equity, and inclusion efforts. The reporting should address outcomes, using quantitative metrics for recruitment, retention, and promotion of employees, including data by gender, race, and ethnicity (Pfizer 2022)

Anti DEI

RESOLVED Shareholders ask that the board commission and publish a report on (1) whether the Company participates in any practices that affects employees, suppliers, contractors, retained professionals or others that prioritize Company DEI initiatives in such a way as to create risks of discriminating on the basis of protected categories like race and sex, and (2) the potential costs of such discrimination to the business. (Boeing 2024)

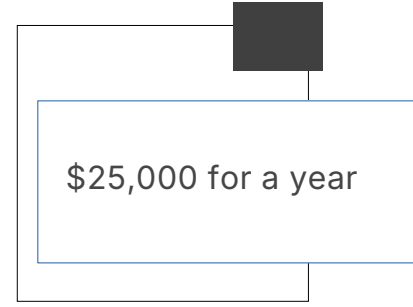
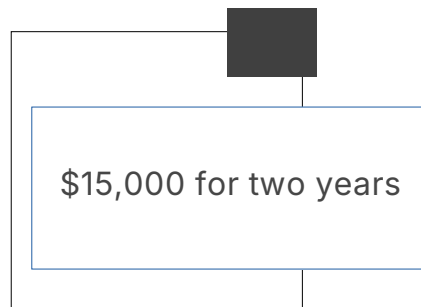
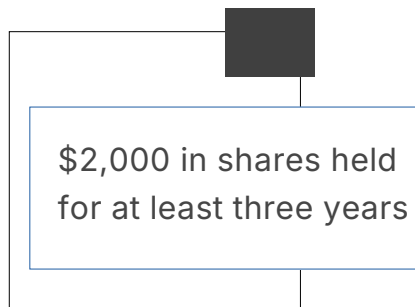
The questions addressed by the SEC's Rule 14a-8

1. What is a proposal?
2. Who can submit one?
3. How many proposals can they submit?
4. How many words can a proposal contain?
5. By when do I have to submit a proposal?
6. What if I fail to follow the rule's procedures?
7. Who has the burden of persuading the SEC a proposal is excludable?
8. Must I attend the meeting to present the proposal?
9. What are other grounds for excluding proposals?
10. How does a company submit a no action request?
11. Can the proponent respond to the no action request?
12. What information about the proponent must appear in the proxy?
13. What are the procedures and rights associated with company opposition statements?

Who can file?

Shareholder rights to have resolution appear on proxy statement under SEC Rule 14a-8

Shareholding Requirements:



How does Rule 14a-8 provide guardrails to screen out inappropriate proposals?

EXCLUDING PROPOSALS:

- Violation of Law
- Violation of Proxy Rules
- Personal Grievance or Special Interest
- Relevance
- Absence of Power/Authority
- Management Functions
- Director Elections
- Conflict
- Implemented
- Duplication
- Resubmission
- Dividends
- Holdings

Exclusion notices

Rule 14a-8(j) requires the company that intends to exclude a proposal to submit:

1. The proposal;
2. An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
3. A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

Rule invites response from proponents, places burden of proof on company

Longstanding SEC practice is to issue letters called no-action responses stating whether the SEC staff would recommend enforcement action if proposal is excluded.

November 17 Corporation Finance Announcement

Following the lengthy government shutdown ...the Commission and the staff ...determined to not respond to no-action requests for, and express no views on, companies' intended reliance on any basis for exclusion of shareholder proposals under Rule 14a-8, other than no-action requests to exclude a proposal under Rule 14a-8(i)(1). [Emphasis added]

November 17 Corporation Finance Announcement

If a company wishes to receive a response ..., the company or its counsel must include, as part of its notification pursuant to Rule 14a-8(j), an unqualified representation that the company has a reasonable basis to exclude the proposal ...

In those situations, the Division will respond with a letter indicating that, based solely on the company's or counsel's representation, the Division will not object if the company omits the proposal from its proxy materials .[4]

In providing its response, the Division will not evaluate the adequacy of the representation or express a view on the basis or bases the company intends to rely on in excluding the proposal.

November 17 Announcement Outcomes

- Companies assess risks and don't file as many exclusion notices
- Number of proponent ESG proposals drops 20%
- Proportional to proposals filed, exclusion outcomes are similar to 2025
- Proponents file six lawsuits. Three Settled; one Preliminary injunction; 2 PI denied

Detailed analysis by Shareholder Rights Group forthcoming at shareholderrightsgroup.com on Tuesday April 28

November 17 Announcement Outcomes

Preliminary injunction issued yesterday April 22, 2026 in Thomas P. DiNapoli v. BJ's Wholesale Club Holdings, Inc

RESOLVED: Shareholders request that BJ's Wholesale Club Holdings, Inc. ("BJ's" or "the Company") conduct an assessment of risks of deforestation associated with its private-label brands within one year and provide a report summarizing the results. The report may, at management's discretion, be updated annually and include an assessment of forest degradation within the supply chain; feasible, time-bound target setting; third-party monitoring and verification; and assessment of the financial and operational implications of the related risks.

USDC Massachusetts found that the proposal addressed a significant policy issue, Deforestation, and neither micromanaged nor was excludable under other asserted claims such as vagueness.

November 17 Announcement Outcomes

Interfaith Center on Corporate Responsibility v SEC
filed by Democracy Forward asserts:

- violation of the Administrative Procedure Act
- inconsistency with Rule 14a-8 rights and SEC responsibilities
 - to allow proponents to respond to corporate exclusion notices and
 - burden of proof on companies, not proponents, regarding the exclusion of proposals

Shareholder Proposals in US

98%

Non-binding

board diversity

say on pay

climate risk management

online child safety

proxy access

declassified board

opioids and pharmaceutical pricing


independent board chair

2%


Binding

bylaw amendments


Annual General Meeting (AGM) Alternatives



INJUNCTIONS



FLOOR PROPOSALS



VOTE NO ON DIRECTOR
POSITIONS & COMMITTEES



VOTE NO ON "SAY ON PAY"

Non-AGM Alternatives for Investor Engagement



Misleading statements or omissions — Greenwashing and related “washing”

- Consumer and securities anti-fraud laws
- Private and government investigative power

Fiduciary liability/ Books and Records/Derivative Suits

Financial statement and audit failures



QUESTIONS?

sanfordlewis@strategiccounsel.net