



SEC 14a-8 No-Action Letter Trends



June 15, 2018

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Introduction

Public companies may ask the Securities and Exchange Commission (SEC) for permission to omit shareholder proposals from their proxy votes through a no-action letter request under Rule 14a-8. This report analyzes the SEC's responses to these requests from January 1, 2018 through June 15, 2018.

Executive Summary

Our analysis of the 222 no-action letters issued the SEC from January 1, 2018 through June 15, 2018 found that:

- Half were approved
- A third were denied
- Proxy access made up a significant portion of no-action requests
- The ordinary business operation justification under 14a(8)(i)(7) was hugely successful
- Drug pricing is considered a significant ESG policy issue by SEC staff.

Methodology

Our CompanyIQ™ platform surveyed no-action requests on shareholder proposals filed by US publicly traded companies with the SEC under SEC Rule 14a-8 and the responses from SEC staff from January 1, 2018 through June 15, 2018. This report identifies trends in shareholder proposals, company arguments, and SEC staff responses.

General Findings

- 222 no-action letters on shareholder proposals were issued by SEC staff from January 1, 2018 through June 15, 2018
- 50% were approved
- 31% were withdrawn
- 83% of reconsiderations requests were denied
- 3% were provisionally approved
- 30% were sponsored or co-sponsored by John Chevedden
- 30% cited Rule 14a8(i)(7), ordinary business operations, as a principal basis for the no-action request
- 75% of ordinary business operations no-action requests were approved.

Proxy Access A Major Concern

Almost a third of the companies faced shareholder proposals on proxy access meaning that 15% of this year's shareholder proposals to date relate to this item.

Half of the proxy access no-action requests were approved. Another 35% were disapproved meaning that the affected companies could not omit the proposals from their proxies. 9% were withdrawn with another 6% provisionally excluded.

Half proposed a 10% shareholder threshold while another 38% proposed a 3% threshold. The last 12% proposed a 15% threshold.

Ordinary Business Operations Exclusion Was Hugely Successful

The expanded ordinary business operations exception under Rule 14a-8(i)(7) effective December 2017 has served companies well so far in 2018.

Specifically, 53 requests relied solely on 14a-8(i)(7) as the basis for their no-action request. Most significantly, nearly three-quarters of those ordinary business operations no-action requests were approved. 20% were denied, and the remaining 5% were withdrawn.

Significantly, the SEC staff did not approve no-action requests on shareholder cybersecurity proposals.

Pharma Hit By Concerns Over Drug Pricing

Prescription drug pricing was the number one shareholder proposal affecting the pharmaceutical industry.

Six of the largest pharmaceutical companies faced these proposals:

- Abbvie
- Amgen
- Biogen
- Bristol-Myers Squibb
- Eli Lilly
- Pfizer.

All six of these proposals were filed by a group comprised mainly of Trinity Health, Mercy Investment Services, and the UAW Retiree Medical Benefits Trust. And all six companies cited the ordinary business operations exclusion as the basis for their no-action request. Interestingly, only one of the six, Pfizer, was successful in receiving permission to exclude the shareholder proposal from their proxy.

Conclusion

At the midpoint of 2018, Rule 14a-8 no-action requests on shareholder proposals have an approximately 50-50 chance of being accepted by SEC staff. The ordinary business operations exception appears to be highly successful. Proxy access proposals continue to be a significant policy issue. Lastly, company no-action requests on ESG shareholder proposals on drug pricing were not successful.

For More

For more, detailed 14a-8 no-action requests reports on proxy access and ordinary business operations exception under 14a-8(i)(7) are available. Contact us at reprots@mylogiq.com or 888.564.4910.

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- 1) Risk Factors and Leading concerns
- 2) How Efficient Are Company Disclosures in Their Ks and Qs, and What Has the Season Taught Us?
- 3) Benchmarking Financial Footnotes in Annual and Quarterly Filings
- 4) Changes in MD&A Discussion
- 5) Non-GAAP Disclosures and Compliance
- 6) What Has Been the SEC's Focus on Comments?
- 7) ASC 842 Lease Commitments, Early Adopters Trend

Corporate Governance:

- 1) Director Gender and Diversity
- 2) Are You an Independent Board Member If You Serve More Than 10-15 Years?
- 3) How Much Does a Board of Director Earn Per Meeting?
- 4) Analysis of Shareholder Proposals and Leading Trends
- 5) Risk Oversight and Cyber-Security and Company Boards - Who Is Responsible?

Executive Compensation:

- 1) CEO Pay Ratio - S&P 500 and Russell 3000 - How Long Does a CEO Work to Earn a Median Employee's Annual Pay?
- 2) What Is the CFO Pay-Ratio and How Does It Compare with the CEO Pay-Ratio?
- 3) Pay Elements of CEO and CFO Compensation Across Large Cap, Mid-Cap and Small-Cap Companies