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Shareholder Proposals: A Rare Foray into Court



Most readers of this blog are familiar with the usual process to seek to keep a Rule 14a-8 shareholder proposal out of a company's proxy statement. Write a letter to the Corp Fin Staff arguing that the proposal does not comply with Rule 14a-8's requirements and hope the Staff agrees that they will not seek enforcement action if the company leaves the proposal out.

ExxonMobil recently took the less common path to exclude a shareholder proposal, as reflected in [this complaint](#) filed in the US District Court for the Northern District of Texas. The company argues in the complaint that the proposal is excludable on ordinary business and resubmission grounds, but also observes that the SEC Staff positions on the interpretation of these rules shift over time. The complaint also includes an argument that the proponents have abused the shareholder proposal process, and their underlying interests are contrary to those of the company and its shareholders.

Given the cost of taking a shareholder proposal dispute to court rather than handling it through the usual no action request process, this is unlikely to be the start of a trend. But it will be interesting to see how this plays out, and whether it has any effect on the SEC Staff's approach to the arguments involved in this case.

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