



## California Corporate & Securities Law

# Staff Assents To Exclusion Of Shareholder Proposal Requiring California Company To Hire Investment Banker

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I've been highlighting some Rule 14a-8 no action letters concerning California Corporate law. This March 14 [post](#) discussed an unsuccessful request to exclude a proposal relating to cumulative voting and this March 18 [post](#) covered a successful request to exclude a proposal from John Chevedden. (In this [post](#) last Tuesday, Broc Romanek wrote about KBR's recent litigation win against Mr. Chevedden.)

More recently, National Technical Systems, Inc. requested no-action advice concerning the following shareholder proposal:

*The company (NTSC) shall immediately hire an investment banking firm to initiate a search for a buyer of the company in order to maximize shareholder value.*

The company argued that it could exclude the proposal on two grounds. Invoking Corporations Code Section 300(a), the company argued that it could exclude the proposal under Rule 14a-8(i)(1) as not being a proper subject for shareholder action. The company also argued for exclusion pursuant to Rule 14a-8(i)(7) which permits exclusion of proposals dealing with a matter relating to a company's ordinary business operations.

The SEC staff concluded that there may be a basis for exclusion under Rule 14a-8(i)(1) but noted that "it appears that this defect could be cured, however, if the proposal were recast as a recommendation or request to the board of directors". Accordingly, the staff granted no action relief unless the proponent recasts the proposal within seven days of receipt of the staff's letter.

Last week, a group of shareholders, which apparently does not include the proponent of the shareholder proposal, filed [preliminary proxy materials](#) stating that the group intends to nominate three candidates for election at the company's upcoming annual meeting.

Please contact [Keith Paul Bishop](#) at Allen Matkins for more information [kbishop@allenmatkins.com](mailto:kbishop@allenmatkins.com)

<http://www.calcorporatelaw.com/>