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SEC PROPOSES TO RESCIND RULE 14A-8 AND STREAMLINE PROXY SOLICITATION PROCEDURAL REQUIREMENTS

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What Happened

On September 16, 2026, the SEC announced two proposals:

- Completely changing the treatment of shareholder proposals by public companies, including:
  - Rescinding Rule 14a-8, which (along with a predecessor rule) has regulated shareholder proposals since 1942 — relegating treatment of proposals to State law and company governing documents.
  - Amending Rule 14a-4(c) to provide more flexibility for companies to exercise discretionary proxy voting authority on independent solicitations by proponents, thereby allowing their exclusion from proxy materials.
- Modernizing proxy solicitations by:
  - Eliminating the requirement to deliver an annual report to security holders.
  - Eliminating the delivery deadline (20 business days) when documents are incorporated by reference into a proxy statement.
  - Eliminating the requirement and the ability to submit Notices of Exempt Solicitation.
  - Shortening the minimum broker search period from 20 business days to five business days.

The public comment period ends on November 20, 2026.

Takeaways

With the SEC now composed entirely of GOP-appointed Commissioners, it would seem likely that the rule proposals will be approved – possibly with a few adjustments through the public comment process. However, rescission of Rule 14a-8 will likely be strongly opposed by a variety of activists and institutional shareholders and may trigger litigation challenges.

Without Rule 14a-8, and the proposed changes to discretionary voting, shareholder proponents would likely need to rely more on their own independent solicitations. The SEC acknowledged that, without Rule 14a-8, reliance on company governing documents and State law may result in a "bumpy" transition period as State laws and company practice develop. In particular, activists may view independent solicitations as a key tool for advancing proposals previously submitted through Rule 14a-8. This will require compliance with advance notice bylaws and result in additional expense and complexity for proponents.

Should rescission take effect, public companies should anticipate institutional shareholders or activists will advocate alternative "best practices" to amend governing documents. Companies and activists are also likely to advocate for changes to State law, with activists fearing a "race to the bottom" to impede the ability of shareholders to present proposals.

As public companies evaluate the changing landscape, they should review applicable State law and their governing documents – particularly advance notice bylaws – and consider whether any changes may be needed in the event Rule 14a-8 is rescinded. For example, some provisions may currently reference the rule itself, potentially creating ambiguity in the interpretation of the provisions following its rescission.

Key Details

Proposed Rescission of Rule 14a-8

In its proposing release, the SEC stated its belief that Rule 14a-8 exceeds its statutory authority by "by improperly intruding into State law without express authorization from Congress." In its view, the rule was only intended to facilitate the ability of shareholders to consider such proposals and not supplant State law. However, through amendments the rule "effectively has evolved to function as a Federal common law as to what constitutes a proper subject for shareholder action."

In particular, according to the SEC, the rule has evolved to prescribe the "few specific circumstances" under which a company is "permitted to exclude" a shareholder proposal, including a presumption that precatory proposals are "proper unless the company demonstrates otherwise." As a result, the rule "effectively dictates the scope of shareholder voting rights."

Additionally, the SEC identified several policy reasons for the proposal, including:

- Many of the original justifications for Rule 14a-8 have not been substantiated in practice or are less compelling today.
  - The cost to companies of addressing and including shareholder proposals in proxy materials is no longer small.

    - Most shareholder proposals today don't receive majority shareholder support.
    - The volume of shareholder proposals has increased significantly compared to the increase in the number of companies filing proxy statements.
    - Solicitation by proponents is less burdensome due to technological and regulatory advancements, including e-proxy rules (i.e., notice and access).
- Rule 14a-8 evolved to influence interactions between companies and shareholders in ways inconsistent with its purpose, implicating matters more appropriately addressed by State law.
    - Proponents may exploit litigation or other risks for companies that exclude a proposal to gain leverage in negotiations or to secure private benefits or advance interests not shared by shareholders at large.
    - The frequent resolution of shareholder proposals today without a vote suggests that the process has deviated from its original purpose.
    - The bases for exclusion in Rule 14a-8 extends to proposals that otherwise may be permitted under State law, thereby inappropriately involving the SEC in the allocation of power between shareholders and management.
- The existence of Rule 14a-8 places the SEC in the position of making judgments about the application of State law that are best left to others.
    - For example, State corporate codes are silent as to whether precatory proposals are proper to present for a shareholder vote. Historically, the SEC assumed precatory proposals are presumptively proper.
    - Removing the SEC from the process would ensure that the appropriate bodies — State legislatures, courts, and, when permitted, companies — determine when proposals should be included in proxy materials.
- The rule has inhibited the development of State law and private ordering.
    - Companies and States (except for Texas, recently) generally failed to exercise authority over shareholder proposals. That may stem from concerns that adopting standards that differ from Rule 14a-8 could bring unwanted public attention and criticism.
    - Rescinding Rule 14a-8 would eliminate possible concerns that the Rule might have pre-empted the ability of States to develop their own laws.

Proposed Amendment to Rule 14a-4(c)

Current Rule 14a-4 addresses when a company may exercise discretionary voting authority on shareholder proposals omitted from proxy statements. The proposed amendments would provide companies with greater flexibility to obtain discretionary voting authority on proposals submitted outside of Rule 14a-8, i.e., by proponents conducting independent solicitations -- which the SEC believes may become more common if the rule is rescinded.

The current rule allows companies to have discretionary authority with respect to timely received proposals only if, among other things, the shareholder proponent for the matter does not solicit a requisite percentage of shares. Other shareholders cannot opt out of companies using such authority, if available.

The SEC believes some companies are currently including proposals even if not required in order to ensure they preserve discretionary voting authority. In its view, the emergence of universal proxy cards has exacerbated this concern by pressuring companies to include proposals from activists engaging in proxy contests in order to deter shareholders from using the activist's proxy card.

The proposed amendments would no longer prohibit a company from exercising discretionary voting authority on proposals submitted outside the Rule 14a-8 process, regardless of whether the proponent solicits proxies. Instead, the company would only need to include:

- In the proxy statement, a brief description of the matter and how the company intends to vote through its exercise of discretionary authority.
  - An example of such description: "a non-binding proposal from a pension fund that the company adopt a proxy access bylaw provision."
- On the proxy card, a cross-reference to the location of this disclosure in the proxy statement.
- A check box on the proxy card that, if checked by a shareholder, would prevent the company from exercising its discretion.

As a result, a proponent's independent solicitation would no longer stop a company from using discretionary voting authority, and shareholders would have more agency.

As discussed above, the SEC's goal in proposing to rescind Rule 14a-8 is to leave decisions about the appropriate role of shareholder proposals in corporate governance to the States and companies. It believes current Rule 14a-4 could interfere with that goal if it induced companies to include shareholder proposals when not required under State law or the company's governing documents.

Modernization of Proxy Solicitation Rules

In its proposing release, the SEC detailed its proposed changes:

Elimination of Delivery of Annual Reports to Security Holders

For companies that have a Form 10-K already on file for their most recent fiscal year, the proposal would eliminate the need to comply with separate annual report to security holders (ARS) disclosure requirements. Since information required in the ARS, such as MD&A and financial statements, largely overlaps with the Form 10-K, and the 10-K is readily available on EDGAR, the proposed amendments would eliminate this redundancy.

The proposal would also eliminate the stock performance graph in ARS filings for all companies other than investment companies. Given easy access to stock performance information today, the SEC believes that requirement is outdated and unnecessary.

Elimination of Delivery Deadline When Documents Are Incorporated by Reference Into the Proxy Statement

The proposal would eliminate the requirement that a company send its proxy statement to shareholders no later than 20 business days before the shareholder meeting date, if information is incorporated by reference. The SEC believes the current requirement is no longer necessary because the filings are easily accessible via EDGAR.

Corresponding changes to Forms S-4 and F-4 would also be made.

To the extent that investors request copies of incorporated filings, the SEC notes that companies can send them electronically, which many investors prefer.

The change would provide companies with more flexibility in planning shareholder meetings and timing M&A closings.

Elimination of Requirement to Submit Notice of Exempt Solicitation

The proposal would rescind Rule 14a-6(g), which requires large shareholders to submit a Notice of Exempt Solicitation on EDGAR if they conduct certain written exempt solicitations.

The proposed amendments would eliminate the Notice altogether, whether required or voluntary.

The original purpose was to provide companies and market participants with visibility into otherwise non-public exempt solicitations by large shareholders. The SEC believes the rule is no longer useful because:

- The “vast majority” of submissions are voluntary – either by shareholders below the $5 million threshold or concerning information that is already publicly available, such as press releases – subverting the rule into an inexpensive means to prominently disseminate views of individual holders on EDGAR.
- Large shareholders have alternative means to communicate with other holders.
- Companies often are alerted to these solicitations through other means.

The proposal is intended to reduce potential investor confusion caused by the substantial number of voluntary filings not contemplated by the rule. In particular, those filings show up on EDGAR alongside required company filings -- but aren't submitted by the company. Some shareholders even make multiple submissions for a single annual meeting, making it harder to locate the company's filings or those by third parties.

The proposed amendments would also reduce compliance burdens for large shareholders because they would no longer be required to submit their exempt written soliciting material on EDGAR or need to determine whether they hold over $5 million in securities or whether their exempt solicitations are already public.

Further, in response to January SEC guidance objecting to voluntary submissions, market participants have established websites tracking exempt solicitations. Together with announcements by some shareholders, the SEC believes the rule is less important as a means for companies to learn about exempt solicitations.

Shortening the Minimum Broker Search Period

Currently, companies must conduct broker searches at least 20 business days before the record date of annual meetings. The proposal would shorten the minimum broker search period from 20 business days to five business days.

The SEC believes technological advancements, such as internet and digital tools, have significantly eased coordination among intermediaries – with broker searches often completed in as few as three days.

The shorter period would reduce unnecessary delays, costs and uncertainties, such as those resulting from market volatility or regulatory changes. The SEC recognizes that shorter notice of record dates may have some negative effects on dissidents seeking to acquire shares or financial institutions seeking to recall shares on loan. However, it believes the benefits outweigh such effects and that some companies may elect to voluntarily disclose record dates.

Technical Changes

The proposal would revise the cover pages of Schedule 14A and Schedule 14C to require contact information for a representative who can respond to questions or comments regarding the filing. The proposal would also make various technical amendments to remove obsolete references and correct typographical errors in the proxy rules.

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