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SEC Proposes Rescinding Rule 14a-8 Governing Shareholder Proposals

September 2026



If the proposal is adopted, the SEC would no longer oversee whether shareholder proposals must be included in company proxy statements

On September 16, 2026, the U.S. Securities and Exchange Commission (the "SEC") proposed two related rule changes under the Securities Exchange Act of 1934 that could fundamentally alter how shareholders bring proposals before U.S. public company shareholder meetings, by rescinding Rule 14a-8 in its entirety and amending Rule 14a-4(c) to give companies greater latitude to exercise discretionary voting authority over proposals submitted outside Rule 14a-8. Together, the proposals would end the federal mechanism that has for decades governed whether a company must include a shareholder proposal in its proxy statement.

The SEC has also proposed a separate set of amendments intended to modernize several proxy solicitation mechanics that the SEC views as outdated relative to current disclosure and market practice, with the stated aims of reducing compliance burdens and investor confusion.

Although these proposals would not directly apply to foreign private issuers, which are exempt from the SEC's proxy rules, they mark a further step in the SEC's broader deregulatory approach and may inform how U.S.-listed foreign private issuers benchmark their own governance practices.

The public comment period on both proposals will remain open for 60 days after their publication in the Federal Register.

Proposed rescission of Rule 14a-8

The SEC has proposed to rescind Rule 14a-8 in its entirety and leave determinations about the role of shareholder proposals to state law and company governing documents.

Currently, Rule 14a-8 requires a company to include in its proxy statement a shareholder's proposal and supporting statement, subject to the shareholder meeting minimum ownership and procedural requirements and unless the company demonstrates the proposal falls within one of thirteen substantive bases for exclusion. Until last year, when the SEC's Division of Corporation Finance announced it would not be responding to most "no action" requests, a company seeking to exclude a shareholder proposal would submit a letter to the SEC staff explaining the legal basis for exclusion under Rule 14a-8. The SEC staff would respond informally as to whether it concurred or not with the company's reasoning, and usually the company and shareholders followed that determination.

The proposing release identifies several reasons for the proposed rescission, including that Rule 14a-8 exceeds the SEC's statutory authority and that many of the justifications that were originally provided to support adoption of Rule 14a-8 either have not been substantiated in practice or are less compelling today.

If the rescission proposal is adopted, the SEC's proxy rules would no longer require companies to include in their proxy materials shareholder proposals on the basis that they satisfy procedural and substantive requirements established under federal law. Instead, state law or, if permitted by state law, a company's governing documents would determine whether a shareholder proposal would be required to be included in a company's proxy materials.

Proposed amendments to Rule 14a-4(c)

Currently, Rule 14a-4(c) restricts when a company may exercise discretionary voting authority (i.e., vote uninstructed proxies as it sees fit) over a shareholder proposal that is properly presented outside the Rule 14a-8 process but is not included on the company's proxy card. A company is generally barred from exercising that discretion where the proponent has itself solicited proxies from a sufficient percentage of shareholders to carry the proposal.

The SEC proposes to remove that bar, which would allow a company to exercise discretionary voting authority over a timely submitted, non-14a-8 shareholder proposal regardless of the proponent's own solicitation efforts, provided the company: (i) includes in its proxy statement a brief description of the matter and how it intends to vote under its discretionary authority; (ii) cross-references that disclosure on the proxy card; and (iii) includes a check box on the proxy card that a shareholder can tick to prevent the company from exercising discretion over that shareholder's own shares. Notably, the shareholder must tick a box to opt out, meaning the default would be passively granting discretionary authority to the company.

The SEC frames these amendments as a companion to the Rule 14a-8 rescission, anticipating that companies will receive more proposals outside the Rule 14a-8 process once Rule 14a-8 is rescinded, but the release also asks whether the Rule 14a-4(c) changes should proceed independently of the rescission.

The proposal would also amend Rule 14a-4(c)(1)'s timely-notice deadline so that a company's advance notice bylaw, or applicable state or foreign law provision, generally governs timing, with the current 45-day default applying only where no such provision exists.

Proposed proxy solicitation changes

The SEC has also proposed a separate set of amendments intended to modernize several proxy solicitation mechanics, including:

- Eliminating the standalone requirement to deliver an annual report to security holders under Rule 14a-3(b). Because most U.S. domestic registrants already satisfy this obligation by sending shareholders their Form 10-K (a practice long recognized by the SEC), the proposal would let a proxy statement simply be preceded by the Form 10-K filing itself

and would drop the stock performance graph requirement for most registrants, since it is largely duplicative of Form 10-K content.

- Removing the current requirement that a proxy statement incorporating information by reference be distributed at least 20 business days before the meeting, which could meaningfully compress deal timelines for mergers and other transactions requiring a shareholder vote.
- Eliminating Rule 14a-6(g)'s Notice of Exempt Solicitation filing requirement altogether, reflecting the SEC staff's recent view that such notices, especially voluntary ones from smaller holders, function primarily as a publicity tool rather than a disclosure safeguard.
- Codifying a shortened minimum broker search period under Rule 14a-13, from the current 20-business-day minimum to five business days, consistent with recent SEC staff guidance and intended to give companies more flexibility in setting record dates for time-sensitive votes, including M&A transactions and contested meetings.
- Requiring proxy and information statement cover pages to list a contact person's name, address, and telephone number, mirroring the cover-page contact requirements already used for registration statements.

Practical impact

The proposed rescission of Rule 14a-8, if adopted, would formalize a shift that is already under way in practice. In November 2025, the SEC's Division of Corporation Finance (the "Division") issued a statement limiting its responses to no-action requests based on the exclusion of shareholder proposals under Rule 14a-8, and in August 2026, the Division announced that it would not respond to any Rule 14a-8 no-action requests. Outright rescission, however, is a materially larger step, and it raises many questions that the SEC staff's 2025-2026 changes in practice did not.

The first is durability. The scope of permissible exclusions under Rule 14a-8 has historically shifted with the political composition of the SEC, as successive Staff Legal Bulletins expanded or narrowed the "ordinary business" and "significant social policy" exclusions depending on the party in power. Rescinding the rule outright is a different order of change, as undoing a rescission would require a fresh notice-and-comment rulemaking, not merely a new bulletin. A future Democratic-led SEC seeking to restore Rule 14a-8 would face a materially higher procedural bar than it would to revise staff guidance and practice alone.

The second is whether the states will fill the gap. The SEC's own proposing release argues that Rule 14a-8's continued existence, even as a rule that facially defers to state law, has itself discouraged states from legislating. Because companies and shareholders could always turn to the SEC to resolve ambiguities, state legislatures and courts have had little occasion to do so, and the proposing release notes that, apart from Texas, no state has adopted legislation governing shareholder proposals in the more than 80 years since Rule 14a-8 was first adopted. Delaware law remains unsettled on the point, with the Delaware General Corporation Law not clear as to whether precatory proposals (the most common type of Rule 14a-8

proposal) are a proper subject for a shareholder vote at all, and no Delaware court has resolved the question. Texas has adopted a regulation allowing an eligible public company to opt in to a framework requiring a proposing shareholder to meet minimum ownership, holding-period, and solicitation thresholds before a proposal can be put to a vote, and a small number of companies have already opted in. If Rule 14a-8 is rescinded, more states, and more companies through their own governing documents, may follow either path, though the proposing release itself concedes this is uncharted territory.

The third, and most immediate, is litigation. For decades, the SEC's no-action process built an informal body of precedent that both companies and proponents relied on and let most disputes resolve through dialogue rather than the courts, so litigation over exclusions was relatively rare. In 2026, however, lawsuits have been filed against six companies, challenging exclusions of shareholder proposals, against a historical baseline of fewer than 30 such suits over the preceding 50 years. In at least three of the cases, the company ultimately agreed to include the shareholder proposal at issue in its proxy materials. If Rule 14a-8 is rescinded outright, we expect shareholders will continue to resort to litigation.

We will continue to monitor developments in this area and welcome any queries you may have.

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