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Securities Regulation & Corporate Governance Update

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SEC Proposes to Eliminate Federal Shareholder Proposal Rule and Modernize Proxy Solicitation Process

The SEC seeks to eliminate the Rule 14a-8 shareholder proposal framework, reform the voting framework applicable to shareholder proposals submitted under state law and modernize several aspects of the proxy solicitation process.

On September 16, 2026, the Securities and Exchange Commission (SEC) issued two rule proposals[1] — one addressing the shareholder proposal rules (the Rule 14a-8 Proposing Release) and one addressing the proxy solicitation process (the Proxy Solicitation Modernization Proposing Release) that collectively would:

- Rescind Rule 14a-8 under the Securities Exchange Act of 1934, as amended (Exchange Act), which has prescribed a federal law framework for submission of shareholder proposals to be included in a public company's proxy materials since 1942;
- Amend Exchange Act Rule 14a-4(c) to expand the ability of companies to exercise discretionary voting authority over shareholder proposals submitted under state corporate law and in accordance with the company's advance notice bylaws (Floor Proposals) subject to, among other things, including a check box on their proxy cards to allow shareholders to opt out of discretionary voting on Floor Proposals; and
- Modernize and streamline various aspects of the proxy solicitation process, including eliminating the requirement to deliver an annual report to shareholders and notices of

exempt solicitation as well as shortening the minimum broker search period for proxy solicitations.

The public comment period will remain open for 60 days following publication of the applicable proposing release in the Federal Register. Any final rules would likely not take effect until after the 2026-2027 proxy season. Therefore, public companies should expect to continue to operate under the current Rule 14a-8 shareholder proposal process[2] and proxy rules until after their next annual meeting. Public companies are encouraged to submit comments on the rule proposals and to consider other potential implications as discussed under Key Takeaways and Action Items below.

Rescission of Rule 14a-8

Background

There are two ways that shareholders can submit a proposal (not including nominations) for consideration by shareholders:

- submit a proposal under the federal framework set forth in Rule 14a-8, which means the proposal is also included in a company's proxy materials; and
- submit a proposal pursuant to procedures established under state corporate laws and the company's corporate governing documents, which typically do not address inclusion in the proxy statement.

Today, virtually all shareholder proposals are submitted under Rule 14a-8, with an average of 833 proposals submitted each year over the past 10 years. However, SEC officials and political leaders have questioned the foundations of Rule 14a-8 in the last several years,[3] and law professors have been posing these questions for at least the last 30 years.[4]

The proposed rescission of Rule 14a-8 follows the SEC's recent actions to limit staff involvement in a shareholder proposal no-action review process it has toiled with for decades. During the 2025-2026 proxy season, the SEC's Division of Corporation Finance (the Division) ceased[5] to serve as the informal referee under Rule 14a-8, stating that it would not review or express a view on the vast majority of company no-action requests to exclude shareholder proposals under Rule 14a-8.[6] In August 2026, the Division announced that it would not express any view in response to companies' notices of their intention to exclude shareholder proposals on any of the bases available under Rule 14a-8.[7]

The SEC's Rationale for Rescission

The SEC raises both legal authority and policy considerations for its proposed repeal of Rule 14a-8. As detailed in the Rule 14a-8 Proposing Release, the SEC believes that it lacks the statutory authority to regulate the matters on which shareholders may vote. When the SEC adopted Rule 14a-8's predecessor in 1942, the rule did little more than require companies to include in their proxy materials shareholder proposals that were proper subjects for action under state law. However, given the absence of clarity on the proper scope of shareholder proposals under state corporate law and abusive practices that emerged, the rule has been repeatedly amended so that Rule 14a-8 today exceeds 3,000 words and sets out detailed eligibility and procedural requirements as well as 13 substantive bases on which a company may exclude a proposal. In the SEC's view, Section 14(a) of the Exchange Act gives the SEC authority to regulate the proxy solicitation process, not the process of deciding when and how matters may be properly voted on by shareholders, the latter of which the Rule 14a-8 Proposing Release posits is traditionally reserved to state corporate law.

In addition, the SEC views the federal rule governing what shareholder proposals must be included in company proxy materials as hindering the development of state law and private ordering, while enabling a small number of frequent proponents to use the process to advance their own agendas (which may not be aligned with the interests of a company's shareholders at large).

The proposed amendments also would address a few collateral aspects of repealing Rule 14a-8, such as providing that the filing of a preliminary proxy is required only when the company knows or reasonably should know there is a non-exempt solicitation in opposition to its proxy.

Shareholder Proposals if Rule 14a-8 is Rescinded

A repeal of Rule 14a-8 does not mean that shareholder proposals will go away. Instead, companies should expect proponents to shift to submitting Floor Proposals that will be similar to the proposals historically submitted under Rule 14a-8. However, existing state laws and company governing documents generally do not include procedural or substantive limitations on shareholder proposals outside of the advance notice bylaws and do not address whether such proposals must be included in a company's proxy materials. Thus, as we address at the end of this client alert, states will need to act in anticipation of repeal to provide clarity and companies will then need to revisit their governing documents and consider provisions addressing procedural or other standards.

Proposed Amendments to Rule 14a-4(c)

In the Rule 14a-8 Proposing Release, the SEC also proposed amendments to Rule 14a-4, which governs a company's discretionary voting authority to vote returned proxies on Floor Proposals that are not included on the company's proxy card. The SEC states that this proposed amendment has independent justifications apart from those underlying its proposal to rescind Rule 14a-8. The proposed rules would make it easier for a company to decide whether to rely on discretionary voting authority on Floor Proposals, subject to shareholders having the option to opt out.

How Rule 14a-4 Works Today

Currently under Rule 14a-4(c), a company cannot exercise discretionary voting authority with respect to a Floor Proposal if a shareholder satisfies certain requirements, including filing its own proxy statement and form of proxy and sending those materials to shareholders owning the percentage of the company's voting shares required to carry the proposal (*i.e.,* generally holders of 50% of a company's shares).

However, if the shareholder does not file and distribute its own proxy materials, the company may use its discretionary voting authority to vote against the Floor Proposal, provided the company's proxy statement describes the nature of the proposal and the company's intended vote.

As a result, a single proponent filing and mailing proxy materials to a relatively small number of shareholders can effectively force a company to include the shareholder's proposal in its proxy statement and as a separate voting matter on its proxy card and thereby prevent the company from exercising discretionary voting authority across every proxy card it receives. This rule can therefore encourage "nominal contests," in which shareholders solicit only to get their proposal into the company's proxy materials. At the time that the SEC updated the universal proxy rules, it acknowledged that this potential nominal contest scenario is particularly relevant in the context of Floor Proposals.

Proposed Changes

The SEC's proposed amendments to Rule 14a-4(c) would end a proponent's ability to curtail a company's discretionary voting authority. Under the proposed amendments, a company that elects not to include a Floor Proposal as a separate item on its proxy card could exercise its discretionary voting authority (*e.g.*, to vote those shares against the Floor Proposal) so long as it:

1. provides in the proxy statement a brief description of the proposal and how it intends to vote;
2. adds a cross-reference to the description on the proxy card; and
3. includes a check box a shareholder can mark to withhold discretionary authority.[8]

That box would work card-by-card rather than as a blanket veto, which the SEC describes as moving the choice from the proponent to each individual holder. One check box would cover every Floor Proposal the company omits from the card, so a shareholder could not withhold discretionary voting authority for one Floor Proposal while providing it for another.

Modernization of the Proxy Solicitation Rules

The Proxy Solicitation Modernization Proposing Release would make several changes to the proxy solicitation process that the SEC views as overtaken by EDGAR and electronic communication.

- ***Eliminate Annual Report Requirement.*** The proposed rules would eliminate the requirement that companies send an annual "glossy" report to security holders with or in advance of sending their proxy statement for a meeting at which directors are elected. In addition, the proposed amendments would also eliminate the requirement to include the Item 201(e) stock performance graph, which compares shareholder returns against market and peer indices, for all companies other than investment companies. A proxy statement would need only to follow filing of the company's Form 10-K on EDGAR, and a company with a Form 10-K on file would have no separate annual report obligation. Companies could continue to send an annual report voluntarily; a report sent under Rule 14a-3 would still be required to be furnished on EDGAR.
- ***Eliminate Delivery Deadline When Documents are Incorporated by Reference into the Proxy.*** The proposed rules would eliminate the requirement that a proxy statement that incorporates other filings by reference be sent at least 20 business days before the meeting. The proposed rules also would remove parallel deadlines in Forms S-4 and F-4.
- ***Eliminate Notice of Exempt Solicitation.*** The proposed rules would rescind Rule 14a-6(g), which requires shareholders who own more than $5 million of the company's stock

and who communicate with other shareholders in an exempt solicitation, to file a Notice of Exempt Solicitation (Form PX14A6G) on EDGAR. In the last decade, shareholder proponents who did not meet the requisite share ownership requirement increasingly submitted voluntary filings on Form PX14A6G to publicize their proposals, with voluntary filings rising from 40% of such submissions in 2018 to 80% in 2025. The Division previously announced in January 2026 that it would object to voluntary filings on Form PX14A6G, which the Division viewed as "primarily a means to generate publicity,"[9] but some proponents circumvented the requirement by enlisting larger shareholders to make their Form PX14A6G filings. However, if the rule is completely eliminated, companies will need to more closely monitor third-party publications and platforms to identify and monitor shareholder campaigns.

- ***Shorten Broker Search to Five Business Days.*** The proposed rules would reduce the deadline for performing a broker search from 20 to five business days before the record date. The Division previously announced in January 2026 that it would not object to a "broker search" performed less than 20 business days before the record date, as long as a company reasonably believes the proxy materials will be timely disseminated to beneficial owners and otherwise complies with Rule 14a-13.[10]
- ***Contact Information.*** The proposed rules would require the cover pages of Schedule 14A and Schedule 14C to include a representative's contact information, similar to what is required on the cover pages of registration statements.

Key Takeaways and Action Items for Public Companies

Proponents and their representatives, representing interests and views across the political spectrum, are expected to voice significant opposition to the rescission of Rule 14a-8, given the low-cost, high-profile forum and resulting publicity that the current Rule 14a-8 process affords them. There may also be litigation, which may further delay the effectiveness of any final rule. As this situation evolves, public companies should keep in mind the following points:

Shareholder Activism Will Continue. Even if Rule 14a-8 is rescinded, shareholders will voice their concerns and continue to express their views to management and boards in other ways, including through director elections, Say-on-Pay executive compensation votes and Floor Proposals. In addition, companies will continue to engage with their shareholders and will need to seek input on key issues. The rescission of Rule 14a-8 may actually bolster the effectiveness of these other means of engagement, further enhancing the ability of shareholders to influence meaningful and rational change.

Rule 14a-8 Remains In Effect For 2027 Proxy Season. Even if Rule 14a-8 is rescinded in full, it is likely that the rescission would not become effective until after the 2027 proxy season. Therefore, public companies should continue to prepare for the upcoming proxy season under their typical Rule 14a-8 shareholder proposal process, mindful of the Division's changes to the shareholder proposal exclusion process discussed above.

Planning for a World Without Rule 14a-8. A repeal of Rule 14a-8 does not mean that shareholder proposals will go away. Instead, companies should expect that proponents will shift to submitting Floor Proposals like the types of proposals historically submitted pursuant to Rule 14a-8. In this regard, further development and clarification of state corporate laws will be important. Key questions for state lawmakers and the American Bar Association's Committee on Corporate Laws (which drafts the Model Business Corporation Act) include whether precatory proposals are proper subjects for shareholder action, and what eligibility criteria should apply to shareholder proponents (especially in the absence of the 13 substantive bases for exclusion, such as the "substantially implemented" and "ordinary business" exceptions that the Division previously administered). Companies should expect that different states could take different approaches on these issues.

Now is the Time to Brush Up on Applicable State Law and Review Your Governing Documents. In advance of the rescission of Rule 14a-8, companies should review how their governing documents currently address Floor Proposals. While it will be important to understand the mechanics of advance notice bylaw provisions and the framework for submission and consideration of Floor Proposals and consider whether any changes may be appropriate, companies should recognize that uncertainty over the terms of any final SEC rulemaking and developments in state corporate laws may influence what changes are appropriate. As such, companies may also want to assess how a potential increase in the number and subject matter of Floor Proposals is addressed under current state corporate law in their state of incorporation.

Public companies may be asked to address how they will respond to shareholder proposals in a post-Rule 14a-8 world, including whether to amend their governing documents to implement "proposal access" provisions under which companies allow shareholder proposals to be included in their proxies.[11] Any such proposal access provisions first and foremost must be consistent with and guided by any developments in applicable state corporate law. Thus, companies would be prudent to wait for further state law developments before adopting any proposal access provisions. Moreover, simply mirroring Rule 14a-8 in any proposal access provisions is problematic given that Rule 14a-8 does not set ownership standards that appropriately reflect the costs and burdens of addressing shareholder proposals and the significant issue of who would determine whether a proponent has satisfied the provision's procedural and substantive requirements. As such, it is likely premature for companies to commit to standards for whether and how they will address proposal access if Rule 14a-8 is repealed.[12]

Prepare for Other Proposed Proxy Changes. Companies should consider whether to continue preparing and furnishing a "glossy" annual report once any final rules are effective. Companies also should discuss with their proxy solicitor and other intermediaries the proposed rules' effect on their proxy materials, particularly the inclusion of the opt-out box for discretionary voting authority on the company's proxy card. In addition, companies should evaluate the impact of the changes in timing for the broker search and incorporation by reference deadlines. These changes will meaningfully shorten the minimum amount of time to hold a special meeting for a business combination or other transaction requiring shareholder approval. This will also prove useful for shareholder meetings where timing uncertainty has previously required companies to anticipate key milestones or conduct multiple broker searches to comply with the rule.

Consider Commenting. The SEC is seeking comments on a variety of aspects of the proposed rules. Topics that public companies may wish to comment on include:

- the rescission of Rule 14a-8, and whether there are alternative approaches that should be considered;
- the expansion of discretionary voting authority, including the addition of a check box on the proxy card for shareholders to withhold such authority where a company elects not to include the proposal as a separate item on its proxy card;

- whether eliminating the Notice of Exempt Solicitation submission requirement unreasonably reduces a company's visibility into activist communications; and
- the impact of a condensed broker search deadline on companies and their agents' ability to perform timely searches.

[1] The Rule 14a-8 Proposing Release is available here, and a related Fact Sheet is available here. The Proxy Solicitation Modernization Proposing Release is available here, and a related Fact Sheet is available here.

[2] For information regarding Rule 14a-8 shareholder proposals during the 2025-2026 proxy season, see our client alert *available at* https://www.gibsondunn.com/shareholder-proposal-developments-during-the-2026-proxy-season/.

[3] For example, in October 2025, Chairman Paul Atkins said that a fundamental reassessment of Rule 14a-8 was in order, questioning the premise that shareholders should be able to require companies to solicit proxies for their proposals at little or no cost to the proponent, and said that he had asked the staff to evaluate whether the rationale for adopting the rule in 1942 still applies today. Chairman Paul S. Atkins, Keynote Address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala (Oct. 9, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governances-25th-anniversary-gala. In December 2025, President Trump issued an executive order directing Chairman Atkins to consider revising or rescinding rules, regulations and guidance relating to shareholder proposals, including Rule 14a-8. Exec. Order No. 14366, *Protecting American Investors from Foreign-Owned and Politically-Motivated Proxy Advisors*, 90 Fed. Reg. 58,503, *available at* https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/; *see also* Commissioner Mark Uyeda, Remarks at the Society for Corporate Governance 2023 National Conference (June 21, 2023), *available at* https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-society-corporate-governance-conference-062123; and Commissioner Hester M. Peirce and Commissioner Elad L. Roisman, Statement on Shareholder Proposals: Staff Legal Bulletin No. 14L (Nov. 3, 2021), *available at* https://www.sec.gov/newsroom/speeches-statements/peirce-roisman-statement-shareholder-proposals-staff-legal-bulletin-14l.

[4] *See, e.g.*, Jill E. Fisch, *From Legitimacy to Logic: Reconstructing Proxy Regulation*, 46 VAND. L. REV. 1129 (1993) (cited in the Rule 14a-8 Proposing Release).

[5] Division of Corporation Finance, Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season (Nov. 17, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season.

[6] Chairman Atkins later called this a "proof of concept" for the idea that engaging the Division in the "tedious, and evidently ineffectual, task" of reviewing no-action requests was "unnecessary to effectively and efficiently resolve whether shareholder proposals should be included in proxy statements." *See* Chairman Paul S. Atkins, Remarks at the Society for Corporate Governance Conference (July 9, 2026), *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-society-corporate-governance-07-09-2026-remarks-society-corporate-

governance-conference.

[7] Division of Corporation Finance, Updated Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process (Aug. 14, 2026), *available at* https://www.sec.gov/newsroom/speeches-statements/corpfin-statement-rule-14a-8-process-081426.

[8] If a shareholder opts out of discretionary voting authority, its shares may be treated the same way as broker non-votes with respect to any proposals not included in the company's proxy materials. As a result, the effect of opting out of discretionary voting authority will vary by company, depending on applicable state corporate law and the applicable voting standard.

[9] Proxy Rules and Schedules 14A/14C, Corporation Finance Interpretation Question 126.06 (Jan. 23, 2026), *available at* https://www.sec.gov/rules-regulations/staff-guidance/corporation-finance-interpretations/proxy-rules-schedules-14a14c. *See also* Gibson Dunn Client Alert, *Clarifications, Reversals and Expansions: Corp Fin Delivers Helpful Updates to Guidance* (Jan. 26, 2026), *available at* https://www.gibsondunn.com/clarifications-reversals-and-expansions-corp-fin-delivers-helpful-updates-to-guidance/.

[10] *See* Proxy Rules and Schedules 14A/14C, *supra* note 9, at Question 133.02.

[11] One company has already included a Rule 14a-8 proposal in its proxy materials that requests that the company implement a "private ordering" Rule 14a-8-like regime regardless of any amendment to or repeal of Rule 14a-8.

[12] Elizabeth Ising, Ronald Mueller, Julia Lapitskaya & Michael Svedman, *Considerations for Shareholder Proposals in a Post-Rule 14a-8 World*, Harv. L. Sch. F. on Corp. Governance (June 15, 2026), *available at* https://corpgov.law.harvard.edu/2026/06/15/considerations-for-shareholder-proposals-in-a-post-rule-14a-8-world/.

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Gibson Dunn's lawyers are available to assist with any questions you may have regarding the SEC's proposed rules, or federal securities laws and regulations more generally. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any of the following leaders of the firm's Securities Regulation & Corporate Governance practice group:

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