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Securities Alert

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US Securities and Exchange Commission proposes to rescind Rule 14a-8, and modernize the proxy solicitation regime

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The US Securities and Exchange Commission has proposed eliminating Rule 14a-8, broadening company discretionary voting authority and modernizing certain proxy solicitation and preparation processes.



What's the impact?

- If the Commission rescinds Rule 14a-8, the question of whether shareholder proposals may be included in a company's proxy materials would be left to state law and company governing documents.
- Under proposed amendments to Rule 14a-4(c), companies would gain more discretion to vote on proposals raised at meetings but omitted from proxy materials.
- Proposed proxy solicitation modernization amendments would update certain proxy preparation and solicitation mechanics and eliminate certain document delivery and filing requirements.

On September 16, 2026, the United States Securities and Exchange Commission (Commission) issued two rule proposals that, if adopted, would fundamentally change how shareholder proposals and proxy solicitations are handled.

Most significantly, one proposal would rescind Rule 14a-8, which for decades has provided the federal framework for how qualifying shareholders can require companies to include shareholder proposals in their proxy materials, instead leaving that up to state law and company governing documents.

This proposal follows the Division of Corporation Finance's August 2026 announcement that it would no longer respond to Rule 14a-8 no-action requests effective immediately, and represents a potential change to the federal framework governing the shareholder proposal process.

Proposal to rescind Rule 14a-8

Rule 14a-8, the shareholder proposal rule, addresses when companies must include shareholder proposals in their proxy materials. Rescinding the rule would leave those determinations to state law and company governing documents (if permitted by state law).

In the proposing release, the Commission grounds its proposal in both statutory authority and policy rationales, stating that Rule 14a-8 exceeds the statutory authority provided under Section 14(a) of the Securities Exchange Act of 1934. In its view, the rule has evolved beyond regulating the proxy solicitation process and instead operates as a federal standard governing shareholder voting rights that supplants state law. In addition, the Commission notes that many of the justifications originally provided to support adoption of Rule 14a-8 either have not been substantiated in practice or are less compelling today.

The proposal also identifies several unintended consequences of the current regime, including what the Commission views as Rule 14a-8's influence on interactions between companies and shareholders beyond the rule's original purpose; the Commission and its staff being placed in the position of interpreting questions of state law; and the possibility that the federal framework has inhibited the development of state law and private ordering concerning shareholder proposals.

If adopted, the rescission of Rule 14a-8 would have a significant effect on both companies and shareholders. Rule 14a-8 currently provides shareholders with a relatively low-cost means of placing qualifying proposals—including many nonbinding, or "precatory," proposals—before other shareholders using the company's proxy materials. Rescission would eliminate that federal mechanism, leaving shareholders to rely instead on state law and a company's governing documents to determine whether an item can properly be presented at a shareholder meeting. Absent an applicable state law or governing document mechanism requiring inclusion in company proxy materials, shareholders may need to solicit proxies themselves.

Proposed amendments to Rule 14a-4(c)

The Commission also proposed amendments to Rule 14a-4(c), which governs when a company may exercise discretionary authority to vote proxies it receives on matters that are not specifically identified on the company's proxy card. Under the existing rule, a company may exercise discretionary voting authority with respect to certain shareholder proposals that are presented at a meeting but are not included in the company's proxy materials if the company did not receive timely notice of the proposal. If the company receives timely notice, it may exercise discretionary voting authority only if certain conditions are satisfied, including that the shareholder proponent has not solicited holders of at least the percentage of voting shares necessary to approve the proposal.

The Commission's proposed amendments to Rule 14a-4(c) would provide companies with greater flexibility to seek and obtain discretionary voting authority regarding shareholder proposals submitted outside of Rule 14a-8, which the Commission anticipates could become more common if Rule 14a-8 is rescinded. Specifically, the proposed amendments would eliminate the solicitation threshold described above, allowing a company to exercise discretionary voting authority with respect to a timely received shareholder proposal regardless of whether the proponent conducts its own solicitation and delivers proxy materials to holders of the percentage of shares necessary to approve the proposal.

At the same time, the proposed amendments would allow shareholders to elect to prevent the company from exercising such authority with respect to their individual shares. To exercise discretionary voting authority, a company would need to include a brief description of the shareholder proposal and disclose how it intends to exercise that authority in its proxy statement. The company's proxy card would also be required to cross-reference that disclosure and would need to include a check box giving shareholders the option to prevent the company from exercising discretionary authority with respect to their shares. The proposed rules would require at least one such check box, regardless of the number of shareholder proposals subject to discretionary voting authority, although companies could voluntarily provide a separate check box for each proposal.

The proposed amendments would therefore shift the operation of Rule 14a-4(c) from a proponent-based limitation to a shareholder-by-shareholder election. Under the current rule, a proponent that satisfies the applicable solicitation threshold can prevent the company from exercising discretionary voting authority with respect to all proxies received by the company. Under the proposed rule, the proponent's solicitation would no longer have that effect; instead, each shareholder receiving the company's proxy card could determine whether to permit the company to exercise discretionary authority with respect to that shareholder's shares.

Modernizing proxy solicitation

The second proposal would introduce several amendments designed to modernize the proxy solicitation rules. Among other changes, the proposal would:

- / eliminate the requirement to deliver an annual report to security holders in connection with certain shareholder meetings, generally permitting companies with a Form 10-K already on file for their most recent fiscal year to rely on that filing;
- / eliminate the requirement to send a proxy statement at least 20 business days before a meeting when information is incorporated by reference, together with corresponding requirements under Forms S-4 and F-4;
- / eliminate the requirement and ability to submit Notices of Exempt Solicitation;
- / shorten the minimum broker search period from 20 business days to five business days; and
- / require contact information on proxy statement and information statement cover pages.

Reducing the minimum broker search period could provide companies with additional flexibility in setting record dates and commencing proxy solicitations. Separately, eliminating the Notice of Exempt Solicitation would remove the EDGAR filing mechanism currently used by certain shareholders—and others conducting exempt solicitations—to make their soliciting materials publicly available.

What's next

The public comment period for both proposals closes on November 20, 2026, and the timing and content of any final rules remain uncertain. Companies preparing for the 2027 proxy season should therefore continue to plan under the existing rules while monitoring the rulemaking process.

In the interim, companies should continue to comply with existing requirements. Until a final rule is effective, companies should continue to comply with Rule 14a-8, including filing a Rule 14a-8(j) notice with the SEC when they intend to omit a proposal. Because the Division of Corporation Finance will no longer issue no-action responses, companies and their counsel must independently assess whether a proposal may be excluded, relying on the existing body of prior staff letters, SEC releases, and court decisions. Companies should also monitor state law developments and review their annual meeting calendars.

Nixon Peabody's Business and Finance team helps issuers, investors, and market participants navigate SEC regulatory developments. We are ready to help clients assess how these developments may affect their proxy, governance, and disclosure strategies.

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