SEC Proposes Major Changes to Federal Proxy Rules, Including Rescinding the Shareholder Proposal Rule

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September 18, 2026

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Executive Summary

- **What's new:** On September 16, 2026, the SEC proposed amendments to the federal proxy rules, including rescinding Rule 14a-8 governing shareholder proposals in company proxy materials, expanding company discretionary voting authority over floor proposals and modernizing various other proxy rules.
- **Why it matters:** These changes affect all public companies, including registered investment companies and business development companies, and may introduce a period of greater uncertainty as companies and investors adjust to the new framework.
- **What to do next:** Companies should be prepared for these topics to be raised by investors in the course of company-investor engagement over the coming months and into 2027.

On September 16, 2026, the U.S. Securities and Exchange Commission (SEC) issued two sets of proposed amendments to the federal proxy rules under the Securities Exchange Act of 1934:

1. To rescind Rule 14a-8, the rule governing the inclusion of shareholder proposals in company proxy materials, and expand the circumstances under which companies have discretionary voting authority to vote on shareholder proposals submitted under advance notice bylaws and not included in company proxy materials.
2. To modernize various proxy rules, as further described below.

The public comment periods for both proposals will remain open for 60 days following publication of the proposals in the Federal Register.

Proposed Rescission of Rule 14a-8

Rule 14a-8 requires companies to include in their proxy materials shareholder proposals where the shareholder proponent satisfies certain eligibility and procedural requirements, unless the proposal falls within one of 13 grounds for exclusion.

In a widely anticipated action based on prior public statements from SEC Chair Paul Atkins, the SEC is proposing to **rescind Rule 14a-8 in its entirety**. The SEC's proposing release expresses the view that the rule exceeds the SEC's authority by improperly intruding into state law without authorization from Congress and that, even if aspects of the rule are within the SEC's authority, there are additional policy reasons to rescind the rule.

As described in the proposing release, the SEC expects that, if Rule 14a-8 is rescinded:

- states may adopt their own standards governing the topic of shareholder proposals as a matter of state corporate law, or
- if permitted by state law, companies — on a company-by-company basis in light of a company's particular circumstances — would amend their governing documents to delineate the requirements for inclusion of shareholder proposals in company proxy materials.

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Although the proposed rescission of Rule 14a-8 is not likely to be finalized and adopted in time to impact the 2027 proxy season, there may be an indirect impact. Early indications suggest that some companies may receive shareholder proposals for consideration at their 2027 annual meetings requesting that boards amend governing documents to provide for the inclusion of shareholder proposals in company proxy materials.

The range of such proposals and how variations impact shareholder voting support remain to be seen. Voting results in the 2027 proxy season will be watched closely and will likely inform developments in this area.

The proposed rescission of Rule 14a-8 would apply to all companies, including registered investment companies and business development companies. In the proposing release, the SEC acknowledged the unique considerations that apply with respect to the proxy process for such companies, including the shareholder voting rights provided by the Investment Company Act of 1940 and the challenges associated with soliciting proxies from diffuse, retail-oriented shareholders. The SEC requested comments regarding potential alternative approaches to shareholder proposals for investment companies.

Proposed Expansion of Company Discretionary Voting Authority

Rule 14a-4 addresses when a proxy card submitted by a shareholder may confer discretionary voting authority on the proxy holder with respect to matters not included on the proxy card. In the context of shareholder proposals submitted under a company's advance notice bylaws rather than under Rule 14a-8 (sometimes referred to as "floor proposals"), under the current rules, a company may not exercise discretionary voting authority if the shareholder proponent:

- timely notifies the company that it intends to send its own proxy materials to holders of at least the percentage of shares required to carry the proposal,
- includes the same statement in its own proxy materials, and
- provides evidence that it has solicited holders of at least the percentage of shares required to carry the proposal.

Absent discretionary authority to vote against the floor proposal, a company would likely feel compelled to include the floor proposal in its proxy materials in order to solicit votes against the proposal.

The proposed amendments would expand the ability of companies to exercise discretionary voting authority on timely received floor proposals, regardless of the proponent's disclosures or solicitation efforts, so long as the company includes:

- a brief description of the matter in the company's proxy statement, along with how the company intends to exercise its discretionary authority,
- a cross-reference on the proxy card to the location of the proxy statement disclosure, and
- a check box on the proxy card that would allow the shareholder to prevent the company from exercising discretionary authority with respect to the shareholder's shares.

As a practical matter, under the proposed amendments, if a company had a floor proposal and a shareholder is voting on a company's proxy card, the choices would be to allow the company to vote against the proposal (the typical scenario) or to not vote on the proposal. On the other hand, the only way for a shareholder to vote in favor of the floor proposal would be to vote on the proponent's proxy card.

Thus, the proposed amendments could introduce greater uncertainty for companies in circumstances where shareholder proponents are soliciting proxies.

Other Proposed Changes to the Proxy Rules

In addition to assorted technical amendments, the proposed amendments would:

- Eliminate the requirement to deliver a separate annual report to security holders for companies that already have a Form 10-K on file for their most recent fiscal year.
  - Where the company's Form 10-K has been filed, there would no longer be any need to produce an annual report to security holders, although companies could do so voluntarily, in which case the annual report would need to be furnished on EDGAR.
- Eliminate the stock performance graph in annual reports for all companies other than investment companies.
- Eliminate the 20-business-day delivery deadline for proxy statements that incorporate information by reference.

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- Rescind Rule 14a-6(g) and eliminate the Notice of Exempt Solicitation altogether, including both required and voluntary filings.
  - The SEC observed that in response to January 2026 SEC staff guidance objecting to voluntary filings of Notices of Exempt Solicitations, market participants created third-party websites to access exempt solicitations, and shareholders often issue press releases or other forms of media to announce exempt solicitations. The absence of an EDGAR filing to announce such an exempt solicitation — including, for example, a "vote no" or "withhold the vote" campaign — may increase the effort required by a shareholder to engage in an exempt solicitation. However, it may also increase the need for companies to remain diligent in monitoring press releases and other forms of media in order to be alerted to the fact that the company has become the subject of such a solicitation.
- Shorten the minimum broker search period from 20 business days to five business days.
- Require contact information on the cover pages of Schedule 14A and Schedule 14C for a representative who can respond to questions or comments regarding the filing.

Final Thoughts

As described above, although many of these changes may be welcomed by companies, they may introduce a period of greater uncertainty as companies, boards of directors and shareholders adjust. Companies should be prepared for these topics to be raised by investors in the course of company-investor engagement over the coming months and into 2027.

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