Cooley

SEC Proposes Rescission of Rule 14a-8: What Comes Next?

KEY TAKEAWAYS AND PRACTICAL GUIDANCE FOR US PUBLIC COMPANIES

On September 16, the SEC proposed to rescind Rule 14a-8 in its entirety, ending the federal shareholder proposal regime that has allowed qualifying shareholders to require public companies to include shareholder proposals in company proxy materials.

What the proposal would do:

- **Rule 14a-8:** Rescind in its entirety
- **Rule 14a-4:** Amend to expand companies' ability to exercise discretionary voting authority on shareholder proposals submitted outside Rule 14a-8

Comments on the proposal are due 60 days after publication in the Federal Register.

Key takeaways

Potential end of long-standing framework

The proposal would unwind an 80-year-old federal shareholder proposal mechanism.

No overnight change

The proposal must go through notice and comment and other hurdles. Plan for 2027 under the existing rule.

2027 could be a 'last chance' season

Proposal volume may increase, including proposals seeking to preserve shareholders' ability to include proposals in company proxy materials.

Private ordering may become central

Like proxy access before it, the fight over shareholder proposal rights may move company by company.

State law could become the next battlefield

Texas has enacted a framework addressing shareholder proposal submissions; Delaware law remains unsettled.

Activism redirected, not eliminated

Expect more director "vote no" campaigns, proxy contests, litigation, engagement and other pressure tactics.

Rule 14a-8 in brief

Adopted in 1942, Rule 14a-8 generally requires companies to include qualifying shareholder proposals in their proxy materials and provides a detailed set of procedural and substantive exclusion standards.

Why the rule is under pressure

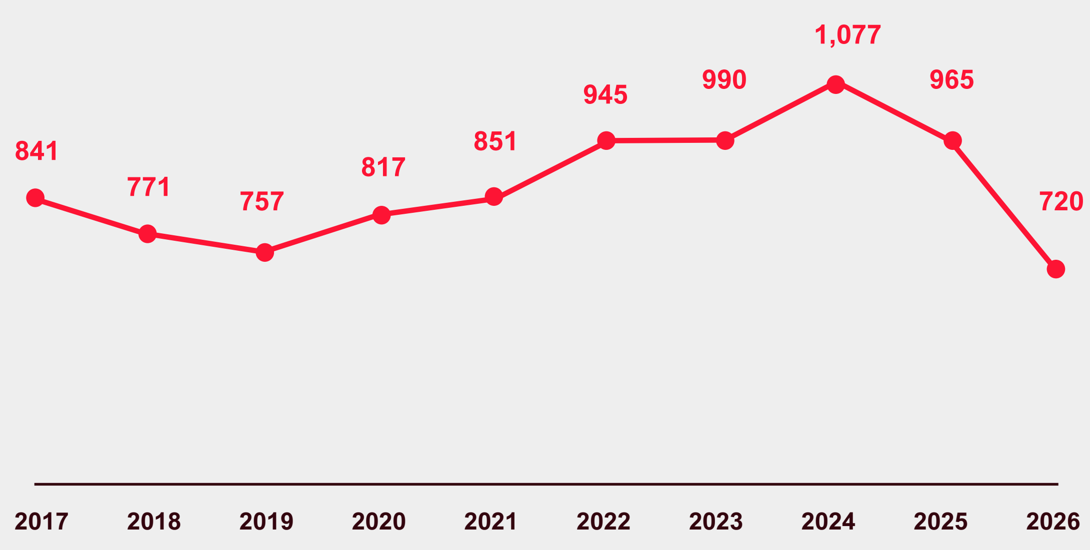
Procedural and resource burden: Rule 14a-8 no action requests historically imposed a significant seasonal burden on SEC staff. On August 14, 2026, the staff discontinued the process.

Political critique: Proposal volume surged over the past decade, including on highly politicized topics, increasing burdens on companies, their boards and investors.

Statutory authority concerns: The SEC argues that Rule 14a-8 exceeds its Section 14(a) authority by displacing state law with respect to shareholder governance rights.

Proposal submissions since 2017

(number of publicized submissions)



Source: Deal Point Data (as of August 31, 2026)

What companies should do now

Stay informed

- Track rulemaking.
- Consider commenting.
- Watch the market response.

Plan for 2027

- Prepare for a busier season.
- Recalibrate the exclusion playbook.
- Assess company-specific risks.
- Develop an engagement strategy.

Bottom line

The rescission of Rule 14a-8 would fundamentally change the landscape for shareholder proposals. Companies can best position themselves for a post-Rule 14a-8 world by preparing today.