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

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On September 16, 2026, the Securities and Exchange Commission (SEC) proposed to rescind Rule 14a-8 under the Securities Exchange Act of 1934 in its entirety. If adopted, the proposal (proposed amendments) would eliminate the federal mechanism that for more than 80 years has allowed qualifying shareholders to require public companies to include their proposals in company proxy materials. In the same release, the SEC also proposed amendments to Rule 14a-4(c) that would expand companies' ability to exercise discretionary voting authority on shareholder proposals submitted outside of the Rule 14a-8 process.

In a separate proposal issued the same day, the SEC proposed to modernize other aspects of the proxy rules, including to: eliminate the requirement that companies deliver an annual report to security holders, eliminate the delivery deadline when documents are incorporated by reference into a proxy statement, eliminate the requirement to include a stock performance graph in annual reports, eliminate the requirement and the ability to submit Notices of Exempt Solicitation (both required and voluntary filings), and shorten the minimum broker search governing the period by which record holders forward proxy materials to their customers (the beneficial owners of a company).

These are proposals, not immediate rule changes. The SEC must complete the public notice and comment process and, if it decides to proceed, adopt final rules. Any final rescission of Rule 14a-8 would likely face substantial litigation. We therefore expect that Rule 14a-8 will remain in effect through the 2027 proxy season. Even so, the proposed amendments could affect proponent behavior now. If proponents view 2027 as a possible last opportunity to use Rule 14a-8, they may use it more aggressively, including to seek company-specific proposal rights that would survive Rule 14a-8's rescission.

Comments on the proposed amendments are due 60 days after publication of the proposing release in the Federal Register.

Key takeaways

- **The proposed amendments would rescind the federal shareholder proposal framework of Rule 14a-8.** This would eliminate long-standing rules that allow qualifying proponents to include their proposals in a company's proxy materials.
- **Do not expect proposed rules to be effective for the upcoming proxy season.** The proposed amendments must move through the public notice and comment period and survive other hurdles, including likely litigation, before becoming effective. Companies should therefore plan for the 2027 season under the existing rules.
- **2027 could become a "last chance" season.** The prospect of rescission may drive a surge in shareholder proposal submissions under Rule 14a-8, including both traditional governance proposals and proposals designed to create a shareholder proposal proxy access right that would survive a rescission of Rule 14a-8. Some companies have already received such proposals for this upcoming proxy season. Cooley's June early proxy season alert previewed many of these themes.
- **Private ordering may become the central battleground.** The closest analogy may be proxy access for director nominations by shareholders. After the SEC's mandatory proxy access rule was vacated in 2011, shareholder proposals submitted under Rule 14a-8 drove company-by-company adoption of proxy access for director nominations by shareholders. Given the proposed rescission of Rule 14a-8, proponents may have only a limited window to use the Rule 14a-8 process to establish company-specific proxy access rights for shareholder proposals.
- **State law and governing documents would take on greater significance.** Texas has already enacted an opt-in statutory framework addressing shareholder proposal rights more broadly. In Delaware, whether shareholders have an inherent right to bring precatory proposals remains unsettled; the debate could move to the legislature and the courts.
- **Rescission of Rule 14a-8 would redirect activism, not eliminate it.** Activism efforts are likely to shift toward other

strategies, including director "vote no" campaigns, proxy contests, litigation, direct engagement and targeted publicity campaigns. If adopted, the proposed Rule 14a-4(c) amendments would provide companies with greater flexibility to exercise discretionary voting authority on shareholder proposals submitted outside of the Rule 14a-8 process, subject to disclosure and an affirmative shareholder opt-out election. Importantly, however, while the proposed amendments to Rule 14a-4(c) are intended to address the concern that "zero slate" campaigns can pressure companies to include in their proxy materials shareholder proposals that might otherwise be excludable under Rule 14a-8, effectively circumventing the Rule 14a-8 process, the amendments would not prohibit zero slate campaigns. Indeed, if adopted and Rule 14a-8 is rescinded, they could further elevate zero slate campaigns as a prominent activist tool, providing a means for bringing shareholder proposals to a vote.

Rule 14a-8 in brief: An 80-year federal shareholder proposal mechanism under pressure

The SEC first adopted the federal shareholder proposal mechanism in 1942. Rule 14a-8 generally requires a company subject to the federal proxy rules to include, at the company's expense, a qualifying shareholder proposal and any accompanying supporting statement in its proxy materials if the shareholder satisfies minimum ownership, holding period and other procedural requirements. The rule also provides procedural and substantive bases for exclusion, including ordinary business or micromanagement, substantial implementation, duplication of another proposal and resubmission of a substantially duplicative proposal.

The proposing release rests principally on the SEC's view that Rule 14a-8 exceeds the agency's statutory authority under Section 14(a) of the Exchange Act. The SEC takes the position that Section 14(a) authorizes regulation of the proxy solicitation process but does not authorize it to displace state law on the corporate governance question of which matters shareholders may present or require to be included in company proxy materials.

The SEC also cites independent policy reasons for rescission, including its view that some of Rule 14a-8's original justifications are unsubstantiated in practice or less compelling today, that the rule requires the SEC to make judgments about state law, and that a uniform federal regime has inhibited development of state law and private ordering.

The proposed amendments follow the dismantling of the SEC staff's long-standing Rule 14a-8 no-action process. For decades, companies seeking to exclude proposals routinely sought SEC staff concurrence, creating a substantial body of interpretive precedent. In November 2025, the SEC staff largely stepped back from substantive no-action responses, and on August 14, 2026, it announced that it would stop responding to shareholder proposal no-action requests altogether, while leaving companies' obligations to provide notice of exclusions pursuant to Rule 14a-8(j) in place. See the SEC staff's August 14, 2026, statement.

The proposed amendments also follow years of debate over the politicization of the shareholder proposal process. Proposal volume rose sharply over the past decade, with submissions approaching 1,000 at Russell 3000 companies in recent peak seasons. A relatively small group of serial individual proponents, policy-focused investment funds, labor and advocacy organizations, and, more recently, anti-ESG proponents have accounted for a significant share of submissions. Many proposals address contested social or political topics, including climate, diversity, equity and inclusion (DEI), and other environmental, social and governance (ESG) matters. SEC staff guidance has also shifted across administrations, particularly on environmental and social (E&S) proposals (see Cooley's February 2025 client alert).

More broadly, the proposed amendments reflect the SEC's current willingness to revisit long-standing rules it views as imposing unnecessary cost and complexity for public companies or making the public markets less attractive. Alongside other recent initiatives to reduce public company burdens and facilitate capital formation, rescinding Rule 14a-8 would be a significant step in that agenda.

What the proposed amendments would do

Rescind Rule 14a-8

The proposed amendments would rescind Rule 14a-8 in its entirety. Once effective, public companies would no longer have a federal obligation under Rule 14a-8 to include qualifying shareholder proposals in company proxy materials, and the rule's ownership thresholds, procedural requirements, substantive exclusions and Rule 14a-8(j) exclusion notice framework would fall away with it.

Rescission would not prevent shareholders from raising matters at meetings or conducting their own solicitations. It would instead shift the default away from a uniform federal inclusion right and toward state corporate law, company charters and bylaws, advance notice provisions, and the remaining federal proxy rules governing independent solicitations.

Expand discretionary voting authority under Rule 14a-4

The proposed amendments also would amend Rule 14a-4 to broaden companies' ability to exercise discretionary voting authority on timely received shareholder proposals submitted outside of the Rule 14a-8 process. Under current Rule 14a-4(c)(2), a proponent can prevent the company from exercising that authority by furnishing its own proxy materials to holders of at least the percentage of shares needed to approve the proposal. The proposed amendments would eliminate that solicitation threshold. Instead, a company could exercise discretionary voting authority if it satisfies the following three conditions:

i. Its proxy statement briefly describes the proposal and states how it intends to exercise that authority.
ii. Its proxy card cross-references that disclosure.
iii. It includes a check box on its proxy card allowing shareholders to prevent the company from exercising discretionary authority with respect to their individual shares. A company could use a single opt-out box for multiple proposals.

The proposed amendments to Rule 14a-4(c) are intended to address the concern that zero slate campaigns, first employed at Warrior Met Coal during the 2024 proxy season, can pressure companies to include in their proxy materials shareholder proposals that might otherwise be excludable under Rule 14a-8, effectively circumventing the Rule 14a-8 process. However, the amendments would not prohibit zero slate campaigns. Indeed, if adopted and Rule 14a-8 is rescinded, they could further elevate zero slate campaigns as a prominent activist tool, providing a means for bringing shareholder proposals to a vote. See Cooley's 2024 proxy season alert for additional background on zero slate campaigns.

Clarify application of advance notice deadlines and amend related disclosure requirements

Proposed amendments to Rule 14a-4(c)(1) would clarify that a company's advance notice provision, or an applicable state law provision, generally determines whether a proposal is timely received for purposes of exercising discretionary voting authority. The current 45-day federal default deadline would apply only if no such provision exists. Similarly, the proposed amendments to 14a-4(c)(1) provide that if a company did not hold an annual meeting during the prior year, or if the date of the meeting has changed more than 30 days from the prior year, any deadline established under the company's advance notice provision, or an applicable state law provision, would govern instead of the default deadline in the current rule (which is "a reasonable time before the registrant sends its proxy materials"). Proposed amendments to Rule 14a-5(e) would, if Rule 14a-8 is rescinded as proposed, align proxy statement deadline disclosures with governing documents or applicable state law for proposals seeking inclusion in a company's proxy materials and with amended Rule 14a-4(c)(1) for proposals not seeking inclusion. If the date of the next annual meeting changes by more than 30 days, proposed amendments to Rule 14a-5(f) would also require companies to disclose updated shareholder proposal and director-nomination deadlines, to the extent applicable.

Change preliminary proxy filing requirements

The proposed amendments also would amend Rule 14a-6 so that the submission of a shareholder proposal outside the 14a-8 process would not itself trigger a preliminary proxy filing. A preliminary filing instead would only be required when the company knows, or reasonably should know, that a nonexempt "solicitation in opposition" is being conducted by the shareholder proponent. A "solicitation in opposition" would be broadly defined to include any solicitation (other than a solicitation exempt under Rule 14a-2): subject to Rule 14a-19, to vote against or withhold votes from any of the company's director nominee(s), to vote against a proposal that the company expressly supports in its proxy materials, and to vote in support of a proposal that the company does not expressly support in its proxy materials.

Do not expect an overnight change

The proposed amendments do not change Rule 14a-8 today. The SEC must solicit public comment, review the resulting record, and, if it decides to proceed, adopt a final rule that addresses the significant issues raised by commenters. Companies should therefore continue planning for the 2027 proxy season under the existing rule.

Significant or controversial rulemakings can take time. The SEC's 2026 proposal to permit optional semiannual reporting, for example, reportedly generated roughly 200,000 comments and form letter submissions. A proposal to eliminate an 80-year-old federal shareholder proposal framework likewise is likely to attract substantial participation.

Any final rescission also would likely face substantial litigation. The now-stayed climate disclosure rules illustrate how rulemaking and litigation can extend the timeline: The SEC proposed the rules in March 2022, adopted them in March 2024 and stayed them after legal challenges were filed. The SEC later changed course after the 2024 election. Similar litigation here could delay effectiveness, and challengers could seek a judicial stay. With the 2028 presidential election approaching, the process could extend into another administration.

2027 could be the 'last chance' Rule 14a-8 season

While Rule 14a-8 is expected to remain in effect through the 2027 proxy season, the proposed amendments could have an immediate effect on proponent behavior. Many calendar-year companies begin receiving shareholder proposals in the fall, and a credible prospect of rescission could create a rush to use the federal process while it remains available, potentially reversing the recent decline in proposal volume.

That dynamic would arrive against an already unsettled backdrop. As discussed in our June 2026 shareholder proposal season review, the SEC staff's retreat from the no-action process altered company-proponent negotiations during the 2026 season and was accompanied by increased proponent litigation. The staff's August 2026 decision to stop responding to no-action requests entirely means companies should expect to enter the 2027 season without the substantive staff concurrence that historically provided greater predictability around exclusion decisions. As a result, exclusion decisions may require a more litigation-focused approach. Companies should identify potentially excludable proposals early, preserve the Rule 14a-8(j) notice deadline (generally 80 calendar days before filing definitive proxy materials), develop a robust legal analysis supporting any exclusion decision, and assess in advance their risk tolerance for excluding a proposal without SEC staff concurrence. Companies should also anticipate that exclusion decisions could prompt litigation, public campaigns or director-focused pressure, and consider whether early engagement with proponents may help mitigate those risks.

Under these circumstances, some companies may prefer to skip the exclusion or negotiation process and simply allow many proposals to go to a vote, particularly on less sensitive topics or where low support is expected. Conversely, the SEC's stated view in the proposing release that Rule 14a-8 exceeds its statutory authority may cause some companies to view both the litigation risk and the reputational consequences associated with exclusion as more manageable and, as a result, take more aggressive positions on whether particular proposals may be excluded.

The most consequential submissions may not be ordinary E&S or governance proposals, but proposals designed to preserve shareholder proposal rights in a post-Rule 14a-8 world. Proponents may pursue precatory proposals asking boards to adopt a shareholder proposal bylaw and, where permissible, binding bylaw amendments creating a company-specific right to submit proposals independent of Rule 14a-8. Those proposals could address ownership and holding thresholds, notice and procedural requirements, permissible subject matter, supporting statements, resubmission standards and bases for exclusion. Some companies have already received proposals on this topic for the upcoming proxy season, including proposals from a prominent conservative proponent, one of which is scheduled for a vote in October.

That makes timing particularly important. If Rule 14a-8 is rescinded and a company has no contractual or bylaw-based proposal right, shareholders may no longer have a comparable low-cost mechanism to force a proposal onto the company's proxy card. Moreover, if the proposed Rule 14a-4 amendments are adopted, companies would have broader discretion to vote proxies on shareholder proposals submitted outside of the Rule 14a-8 process, subject to disclosure and an affirmative shareholder opt-out election. Proponents may therefore place greater emphasis on securing company-specific proposal rights while Rule 14a-8 remains available.

Private ordering: Proxy access redux?

Proxy access provides a useful precedent for company-by-company governance change. In 2010, the SEC adopted Rule 14a-11, which would have created a mandatory federal proxy access regime for shareholder director nominees. The US Court of Appeals for the District of Columbia Circuit vacated that rule in 2011. But amendments to Rule 14a-8 permitting shareholders to submit company-specific proxy access proposals survived, and those proposals became a defining governance campaign of the 2015 proxy season and ultimately drove widespread adoption of proxy access bylaws through private ordering.

The dynamic here would differ in one important respect. Proxy access private ordering was enabled by Rule 14a-8 after the mandatory federal rule disappeared. Here, Rule 14a-8 itself is the federal mechanism that may disappear. That makes the coming proxy season potentially more consequential: Proponents may seek to use Rule 14a-8 one last time to create the company-specific proposal rights that will replace it. If those proposals gain broad institutional support, market-standard terms could develop quickly, just as they did with proxy access.

Companies receiving these proposals would face strategic choices beyond a simple include-or-exclude decision. Depending on the proposal and shareholder base, a company could oppose the proposal, negotiate more tailored terms or adopt its own framework. Boards should be prepared for proposal access rights to become a mainstream governance topic rather than a niche procedural issue.

Could alternative shareholder proposal rights attract investor support?

That possibility warrants attention. Overall support for shareholder proposals, particularly E&S proposals, has declined from prior peaks, and institutional investors and proxy advisory firms have become more selective. Governance proposals involving traditional shareholder rights have proved more resilient. Proposals addressing special meeting rights, written consent, board declassification and supermajority voting requirements continue to attract comparatively strong support, and several categories achieved majority support during the 2026 season.

Tesla’s November 2025 annual meeting provides a potentially relevant data point on investor sentiment. Shareholders considered a proposal requesting that the board seek shareholder approval before adopting any bylaw amendment, as permitted under Texas law, that would impose ownership thresholds or solicitation requirements for shareholder proposals above those specified in Rule 14a-8. The proposal received approximately 49% support overall and, assuming all insiders voted against it, approximately 67% support from non-insider shareholders. Although the proposal would not itself have created a new shareholder proposal right, the result suggests that a proposal framed around preserving shareholder access to the Rule 14a-8 process could attract significant – and potentially majority – support.

There is no established market model for a Rule 14a-8 replacement bylaw today, and investor and proxy advisor views would likely depend heavily on the terms. The combination of durable support for traditional shareholder rights proposals and a perceived “now or never” dynamic means companies should treat these proposals as a real voting risk, not a theoretical one.

A key variable will be how major institutional investors and proxy advisory firms respond. If influential investors or proxy advisors adopt policies favoring shareholder proposal access bylaws, or otherwise press companies to adopt them, private ordering could accelerate quickly. If they do not, proponents may need to build support company by company.

State law could become the next battleground

Rescission would immediately raise a state law question that Rule 14a-8 has largely allowed companies and proponents to avoid: What right does a shareholder have to require that a matter be presented for a shareholder vote? Rule 14a-8 is a federal proxy rule governing when a company must include a qualifying proposal in its own proxy materials. It does not resolve all questions regarding the underlying state law right to present a proposal at a meeting. That question received relatively little attention while a broadly available federal mechanism existed, but it could become central if that mechanism disappears.

Texas has already moved in this direction. Its corporate law permits certain public companies to impose materially higher ownership and solicitation requirements for submitting shareholder proposals than those under Rule 14a-8. Those provisions were directly implicated in the Tesla proposal discussed above and provide an early example of how state law can shape shareholder proposal access.

Other states could respond by creating their own shareholder proposal regimes. Those regimes need not mirror the federal rule: States could provide a proposal right while setting ownership, holding period, solicitation or other eligibility thresholds materially different from Rule 14a-8. That could make state of incorporation and governing documents even more important to shareholder proposal access, and differences between states could become another factor in reincorporation decisions.

Delaware presents a different and still unsettled question. Delaware courts have not squarely resolved whether shareholders have an inherent right to bring precatory proposals for a vote. Recent commentary has argued that no such right exists absent a right created by statute, the certificate of incorporation, bylaws or board action; other scholars have reached the opposite conclusion. If Rule 14a-8 is rescinded, pressure may build for Delaware to address that uncertainty legislatively. One possible approach would be to codify that shareholders have no inherent right to submit precatory proposals unless the corporation affirmatively provides one, leaving the issue principally to private ordering.

Rule 14a-8 may disappear – shareholder pressure won’t

Rescission of Rule 14a-8 would eliminate a widely used tool of shareholder activists, but companies should not expect the underlying pressure to disappear. Proponents and other activists are likely to redirect their efforts toward director “vote no” campaigns, proxy contests, opposition to say-on-pay and other management proposals, litigation, direct engagement and targeted publicity campaigns. Companies also could face pressure to adopt shareholder proposal rights voluntarily.

Publicity and board-focused campaigns may become especially important. Rule 14a-8 gives proponents a relatively low-cost way to place an issue in a company’s proxy statement, attract public attention and engage the board. If that channel disappears, proponents may try to recreate the same pressure through targeted media campaigns, dedicated websites, open letters and other public pressure tactics, as well as campaigns aimed directly at directors. Some of these tactics are already emerging: During the 2026 season, proponents litigated exclusions, threatened or pursued Rule 14a-4 zero slate campaigns, and used director elections and public campaigns as alternative pressure points.

Rescission of Rule 14a-8 therefore may change the channel for shareholder activism more than the level of activism itself. For now, companies should continue preparing for the 2027 proxy season under the existing Rule 14a-8 framework while considering whether their advance notice bylaws, shareholder engagement approach, state of incorporation and broader activism preparedness remain appropriate if the federal shareholder proposal framework ultimately disappears.

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