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SEC Proposes to Rescind Rule 14a-8 and Rebalance Rule 14a-4(c) Discretionary Voting Authority

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On September 16, 2026, the Securities and Exchange Commission (the "SEC" or the "Commission") issued a proposal that would rescind Rule 14a-8 under the Securities Exchange Act of 1934 (the "Exchange Act") in its entirety. If adopted, this would end nearly 85 years of federal regulation of the shareholder proposal process and leave determinations about the role of shareholder proposals in corporate governance to state law and company governing documents.[1]

This proposal follows the Commission's August announcement that it was discontinuing responding to Rule 14a-8 no-action requests entirely, and its earlier November 2025 announcement that the SEC would not respond substantively to most Rule 14a-8 no-action requests, but companies could still a request a "no objection" response from the SEC.

The Commission also proposed amendments to Rule 14a-4(c) to give companies greater flexibility to exercise discretionary voting authority over shareholder proposals submitted outside a Rule 14a-8 process, while giving individual shareholders the option to utilize a proposed new check-box on the proxy card that, if checked by a shareholder, would prevent a company from exercising that authority with respect to their shares.

These proposed changes both align and work in tandem, with Chairman Paul S. Atkins noting that the proposals "reflect two of my highest regulatory priorities. First, ensuring that the Commission does not improperly intrude into state corporate law when applying the federal securities laws. Second, updating the Commission's rules to reflect developments in market practice and technology, and other innovations, since the rules' adoption or last amendment."[2]

I. Overview of the Proposal

Key aspects of the SEC's proposal include the following:

- **Rescission of Rule 14a-8 in its entirety**. Currently, Rule 14a-8 requires a company to include a proper shareholder's proposal in the company's proxy statement for a vote at the annual (or other) meeting, subject to procedural eligibility requirements and thirteen substantive bases for exclusion. If the rescission is adopted as proposed, companies would no longer be required by federal rule to include shareholder proposals in their proxy materials based on satisfying Rule 14a-8's requirements. Instead, whether a shareholder proposal must

[1] The press release is available here, the fact sheet is available here and the proposing release is available here.

[2] Chairman Atkins's statement is available here.

be included in a company's proxy materials would be governed by State law or, where permitted by State law, the company's own governing documents.[3]

- **Expanded discretionary voting authority under amended Rule 14a-4(c)(2)**. Under the proposed rule change, companies would be able to exercise discretionary voting authority over shareholder proposals timely submitted under applicable State law or the company's governing documents, so long as the company makes certain disclosures in its proxy statement and proxy card, and includes a check box on the proxy card that allows a shareholder to opt out of granting the company discretionary voting authority. This removes a limitation from the current approach under 14a-4(c)(2), which prohibits the company from exercising discretionary voting authority over timely submitted shareholder proposals if the shareholder proponent has separately solicited proxies from the requisite percentage of shares needed to carry the proposal. The proposed change is intended to provide companies with greater flexibility to obtain discretionary voting authority regarding shareholder proposals. At the same time, the proposed amendments would provide shareholders with the ability to elect to prevent the company from exercising such authority with respect to the shareholders' individual shares.

The Commission also proposed conforming amendments across the proxy rules.[4]

II. Policy Rationale for Rescission of Rule 14a-8

The Commission's rationale for the proposal is that Rule 14a-8 exceeds the Commission's statutory authority under Section 14(a) of the Exchange Act because it dictates the substantive scope of shareholder voting rights, a matter that the release states is reserved to State law and, where State law permits, to company governing documents. Chairman Paul S. Atkins noted that "[a]bsent authorization from Congress—which it has not granted for shareholder proposals—the Commission has no authority to determine which matters are a proper subject for a shareholder vote." He added that "[t]his issue of corporate governance must be resolved by the state in which a company domiciles," with companies and shareholders looking to state legislatures, permitted governing documents, and state courts for the governing framework.

The Commission also points out that many of the justifications that were originally provided in support of Rule 14a-8 either have not been substantiated or are less compelling today.[5] The release notes that Rule 14a-8 has had unintended consequences that weigh in favor of rescission, including that it is often used as leverage in private settlement negotiations, that it draws the Commission into interpreting ambiguous or silent state corporate law and that the federal rule has crowded out state and private ordering.[6]

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3 The Commission also proposed rescinding Rule 14a-8 as applied to regulated funds as well as operating companies, relying on its parallel authority under Section 20(a) of the Investment Company Act of 1940. Regulated funds' statutory voting rights under the Investment Company Act (such as shareholder approval requirements for changes to fundamental investment policies) are unaffected by the proposed rescission, since those rights arise independently of state corporate law and of Rule 14a-8. The release requests comment on whether regulated funds' distinct proxy dynamics, including generally lower proposal volume and higher average shareholder support, warrant a different approach.

4 The Commission proposed related amendments to Rule 14a-4(c)(1) (advance notice deadlines), deletion of Rule 14a-4(c)(6), amendments to Rule 14a-5(e) and (f) (proxy statement deadline disclosures), amendments to Rule 14a-6(a) and Rule 14c-5(a) (preliminary filing triggers tied to a genuine "solicitation in opposition" rather than the mere presence of a shareholder proposal), and removal of Item 4 of Schedule 14C, together with the removal of Rule 14a-8 references throughout the federal securities rules.

5 The release notes that the volume of shareholder proposals has grown substantially faster than the number of reporting companies and points out that the rise of low-cost electronic proxy solicitation and voting infrastructure have reduced the original burden-shifting rationale for mandating inclusion. The release also cites high withdrawal rates for proposals and notes that only a very small fraction of proposals that do reach a vote receive majority support, suggesting the rule is frequently used as a negotiating tactic rather than to secure a shareholder decision. Further, ten shareholder proponents submitted 58 percent of all shareholder proposals in 2025, which the Commission views as inconsistent with the rule's original purpose of facilitating broad-based shareholder participation.

6 The release observes that, apart from a recent Texas statute permitting companies to opt into heightened submission thresholds, no state has legislated in this area in the more than 80 years since the rule's adoption, and no company is known to have adopted its own shareholder-proposal framework. The Commission expects that rescission will remove any disincentive created by uncertainty over whether Rule 14a-8 preempts state law and private ordering.

III. Proposed Amendments to Rule 14a-4(C): Discretionary Voting Authority

Under the current regime, in addition to using Rule 14a-8, shareholders can also submit director nominations and other proposals for consideration at annual meetings, subject to state corporate law and advance notice requirements in a company's governing documents. Under current Rule 14a-4(c), if a shareholder timely notifies the company of its intention to bring a proposal to a shareholder meeting, files its own proxy statement and form of proxy and solicits holders of at least the percentage of the company's voting shares required to carry the proposal, then the company will be prohibited from exercising discretionary voting authority on the proposal. Consequently, under the current framework, the release notes that a company may feel compelled to include the proponent's proposal in its proxy materials simply to preserve its ability to solicit votes on the matter, effectively perpetuating federally-driven inclusion of shareholder proposals in company proxy materials even where state law would not otherwise require it.

The SEC therefore proposed to amend Rule 14a-4 to expand the circumstances under which a company may exercise discretionary voting authority on proposals presented at a shareholder meeting but not included in the company's proxy materials. Under the proposed amendments, a company could exercise discretionary voting authority over a timely submitted non-Rule 14a-8 shareholder proposal omitted from its proxy materials so long as it:

(i) provides a brief description of the proposal and how the company intends to vote in its proxy statement,

(ii) cross-references that description on the proxy card, and

(iii) includes a single check box on the proxy card allowing a shareholder to prevent the company from exercising that discretion with respect to the shareholder's own shares.

The stated aim, in Chairman Atkins's words, is that "the amendments, therefore, would provide companies with more flexibility and shareholders with more agency."

Notably, the Rule 14a-4 amendments do not depend on the 14a-8 rescission taking effect; however, as Chairman Atkins notes, "it is possible that if the Commission ultimately rescinds Rule 14a-8, shareholders may be more likely to file their own proxy materials to solicit votes for their proposals. Considering this possibility, the Commission proposed amendments to Rule 14a-4 to recalibrate the use of discretionary proxy authority in a new environment for shareholder proposals."

IV. Practical Considerations and Potential Implications

Although the proposal, if adopted, would represent one of the most significant changes to the shareholder engagement landscape in decades, it remains only a proposal at this stage, subject to comment and final rulemaking. For now, companies should continue complying with Rule 14a-8 as currently written. Until and unless the rule is rescinded, existing eligibility thresholds, procedural requirements, substantive exclusion grounds, and the Rule 14a-8(j) notice obligation remain fully applicable, and any rule changes will not go into effect for the 2027 proxy season. Companies should continue following current practice for the 2027 proxy season, including the Division of Corporation Finance's current no-action posture.

In addition, the proposal, if adopted, is likely to face litigation from shareholder rights groups, and therefore any potential implementation could be significantly delayed. Given the likelihood of litigation challenging any rescission and the extended transition period before state law frameworks develop, companies should be prepared for a prolonged period of regulatory uncertainty and should not assume a clean break from the current regime on any specific date.

Companies could also consider the following in the interim:

- **Monitor state legislative and judicial developments.** If Rule 14a-8 is rescinded, this will create a vacuum that state law will need to fill. White & Case has learned of ongoing discussions regarding potential proposals to update Delaware law in response to the rule changes, including proposals that would clarify what rights, if any, shareholders have with respect to access to a company's proxy materials and what is a proper subject matter for a shareholder proposal.

In addition, a few states, notably Texas and Nevada, have been working to position themselves as company-friendly, in order to attract companies to incorporate or re-incorporate there. Companies should watch for state legislative activity as well as judicial decisions interpreting the scope of shareholder proposal rights under state law.

If states develop materially different shareholder proposal frameworks, companies may choose to evaluate their state of incorporation as part of broader governance planning.

- **Review of governing documents and internal policies and procedures**. Because the proposed rescission would shift the governing standard for shareholder proposals to state law and company governing documents, companies should eventually plan to review their advance notice bylaws based on state law frameworks that ultimately develop.

  For now, companies may want to begin identifying internal policies and procedures as well as investor engagement protocols that cross-reference Rule 14a-8's timing, eligibility, or exclusion framework, since those references would need to be revised to reflect a State-law or governing-document standard.

- **Anticipate more independently solicited proposals and plan for the mechanics of exercising discretionary authority.** Anticipate more independently solicited proposals and plan for the mechanics of exercising discretionary authority. If Rule 14a-8 is rescinded, companies may face an increase in shareholder proposals under their governing documents in accordance with Rule 14a-4(c)(2), a mechanism which has already been used by shareholders to bypass the one-proposal limit under Rule 14a-8.[7] Currently, cost operates as a limiting force on such solicitations, which may be prohibitively expensive to individual shareholder proponents, who are required to file and deliver their own proxy materials. However, if the SEC's e-delivery proposal is adopted, this would significantly decrease the potential costs of a Rule 14a-4 campaign, thus removing a significant barrier to entry.

  Overall, there is emerging uncertainty about the new check box proposal, in part given that it may result in confusion among shareholders and require companies to engage with the shareholders to educate them about the new proxy card check box and why it should be left blank. Moreover, when a company already has discretionary voting authority under Rule 14a-4(c)(2), the utility of requiring the new check box could be questionable. In any event, companies could consider potential disclosure and proxy card design changes (brief description, cross-reference, and checkbox) that the proposed check box would require.

- **Coordinate with investor relations and the board on engagement strategy**. Even without a federal inclusion mandate, institutional investors and proxy advisory firms will likely continue to expect engagement on topics they view as important, and companies should consider whether voluntary engagement practices should be formalized in light of the proposed changes.

- **Engage in the comment process**. The release includes numerous specific requests for comment on both the proposed rescission and the Rule 14a-4(c) amendments, including on the scope of any reliance interests in the current rule, the appropriate mechanics of the proposed check box, and whether a different approach is warranted for regulated funds. Companies, investors, and other market participants should consider submitting comments addressing the aspects of the proposal most relevant to their circumstances.

7 For example, in the 2026 proxy season, the Communications Workers of America independently solicited votes on five shareholder proposals under Rule 14a-4(c)(2), seeking governance reforms at Nexstar Media Group. This approach was also taken in 2024 by the AFL-CIO and United Mine Workers of America at Warrior Met Coal to bypass the one-proposal limit of Rule 14a-8.

The following White & Case attorneys authored this alert:

Maia Gez
Scott Levi
Erica Hogan
Michelle Rutta
Melinda Anderson
Danielle Herrick
Quentin Wiest

White & Case team members:

Maia Gez: 212-819-8217, maia.gez@whitecase.com
Scott Levi: 212-819-8320, scott.levi@whitecase.com
Erica Hogan: 212-819-8200, erica.hogan@whitecase.com
Michelle Rutta: 212-819-7864, mrutta@whitecase.com
Melinda Anderson: 212-819-7002, melinda.anderson@whitecase.com
Danielle Herrick: 212-819-8232, danielle.herrrick@whitecase.com
Quentin Wiest: 212-819-2541, quentin.wiest@whitecase.com
Jessica Chen: 212-819-8503; jessica.chen@whitecase.com
A.J. Ericksen: 713-496-9688, aj.ericksen@whitecase.com
Elodie Gal: 212-819-8242, egal@whitecase.com
Adam Johnson: 212-819-2534, adam.johnson@whitecase.com
David Johansen: 212-819-8509, djohansen@whitecase.co
Laura Katherine Mann: 713-496-9695, laurakatherine.mann@whitecase.com
Daniel Nussen: 213-620-7796, daniel.nussen@whitecase.com
Kimberly Petillo-Decossard: 212-819-8398, kimberly.petillo-decossard@whitecase.com
Jason Rocha: 713-496-9732, jason.rocha@whitecase.com
Jonathan Rochwarger: 212-819-7643, jrochwarger@whitecase.com
Joel Rubinstein: 212-819-7642, joel.rubinstein@whitecase.com
Drew Valentine: 212-819-8370, drew.valentine@whitecase.com
Patti Marks: 212-819-7019, pmarks@whitecase.com

White & Case LLP
1221 Avenue of the Americas,
Floor 49 Reception
New York, NY 10020

T + 1 212 819 8200