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SEC Moves Toward Rescinding Rule 14a-8 Shareholder Proposal Process

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Executive Overview

The U.S. Securities and Exchange Commission (SEC) has taken its most significant step yet toward rescinding Rule 14a-8, the decades-old rule that governs shareholder proposals at U.S. public companies. On September 16, 2026, the SEC published a proposed rule that would rescind Rule 14a-8 of the Securities Exchange Act of 1934—which governs how and when public company shareholders may include proxy proposals in a company's proxy materials—and amend Rule 14a-4(c) to expand a company's discretionary voting authority over shareholder proposals submitted outside Rule 14a-8. The SEC concurrently proposed a companion rulemaking to modernize other aspects of the federal proxy rules. This step follows the SEC staff's November 2025 announcement that it would generally stop issuing substantive no-action responses to companies seeking to exclude shareholder proposals, and the SEC's subsequent confirmation that it does not intend to resume issuing no-action letters on shareholder proposals going forward. Together, these developments mark the most consequential attempt in decades to remake the shareholder proposal process, and signal that companies should prepare for a materially different landscape heading into the 2027 proxy season.

Background: Rule 14a-8 and the No-Action Process

Rule 14a-8 permits an eligible shareholder to require a public company to include the shareholder's proposal, together with a supporting statement, in the company's proxy statement for its annual or special meeting, subject to procedural eligibility requirements and thirteen enumerated substantive bases on which a company may exclude a proposal. Historically, a company wishing to exclude a shareholder proposal would submit a no-action request to the SEC staff, which would review the proposal and the company's stated exclusion basis and issue a response indicating whether the staff would recommend enforcement action if the company excluded the proposal without further changes. This no-action process functioned for decades as the de facto arbiter of disputes between companies and shareholder proponents over what could and could not be excluded from a company's proxy materials.

The SEC's Retreat from the No-Action Process

Since taking office, SEC Chairman Paul Atkins has repeatedly criticized Rule 14a-8, asserting that it exceeds the SEC's statutory authority and intrudes on matters properly governed by state corporate law. In a September 2025 speech, Atkins suggested that the SEC staff might look favorably on companies that sought to exclude precatory shareholder proposals on the basis of Delaware law opinions that such proposals were not a proper subject for action by shareholders under state corporate law, or those companies that adopted bylaw provisions imposing additional submission requirements beyond those in Rule 14a-8. He signaled that the SEC was considering a broader reassessment of the rule's role and purpose.

In November 2025, the SEC staff announced that, for the 2026 proxy season, it would no longer provide substantive responses to Rule 14a-8 no-action requests, except for requests based on state-law violation arguments under Rule 14a-8(i)(1). Companies seeking to exclude a shareholder proposal have remained required to submit a notice of intent to exclude under Rule 14a-8(j), but without the benefit of SEC staff guidance on whether their stated exclusion basis would withstand scrutiny. To date, no company has pursued the state-law exclusion route the SEC staff had appeared to invite. More recently, the SEC has confirmed that it does not intend to resume issuing no-action letters relating to shareholder proposals, effectively stepping away from its historical role as referee of the shareholder proposal process for the foreseeable future.

Early Effects: The 2026 Proxy Season

An early review of the 2026 proxy season shows how companies and shareholder proponents have adapted to the absence of SEC staff guidance. Overall shareholder proposal volume declined, driven primarily by fewer environmental and social proposals, continuing a multi-year trend, while governance and anti-ESG proposal activity and support levels remained broadly consistent with the prior year.

The numbers illustrate the shift. According to a 2026 proxy season review published by The Conference Board and ESGAUGE on the Harvard Law School Forum on Corporate Governance, Rule 14a-8 exclusion request volume in the Russell 3000 fell by nearly 50% in the first half of 2026, while overall shareholder proposal filings declined by approximately 20% over the same period. Exclusion requests decreased both in absolute terms and as a share of proposals filed, dropping from an unusually high 42% in 2025 to 26% in 2026 (a rate broadly consistent with the 27% recorded in 2024 and suggesting that the decline also reflected a return to more typical use of the exclusion process).

Once the SEC staff moved to its no-objection posture for most requests, roughly 90% of exclusion requests received a no-objection response. In a July 2026 public address, the SEC chair reported that only six lawsuits had been filed over excluded proposals (representing less than 4% of proposals for which companies submitted exclusion notices) and that adverse proxy advisor recommendations were "virtually nonexistent."

That caution has proven warranted. Beginning in late February 2026, shareholder proponents brought a wave of lawsuits contesting companies' exclusion decisions on their own, without an SEC staff determination to point to. Several of those cases settled on terms favorable to the proponents (either the proposal was implemented or added back into the proxy), others were dropped or resolved in the company's favor, and litigation remains ongoing in the balance. Meanwhile, the proxy-advisor pushback some had predicted largely did not materialize, as adverse voting recommendations tied to an exclusion decision were rare where a company explained its reasoning—though that could change if advisors take a harder line in future seasons, particularly against the backdrop of the SEC's September 2026 subpoena-enforcement action against Institutional Shareholder Services and broader federal scrutiny of proxy advisers under a December 2025 executive order. The public numbers likely undercount the full picture, since the same uncertainty appears to have pushed more companies toward quiet, negotiated withdrawals that never surface in a filing.

What the SEC Is Now Proposing

On September 16, 2026, the SEC issued two proposing releases. The first would rescind Rule 14a-8 in its entirety and amend Rule 14a-4(c) to expand a company's discretionary voting authority over shareholder proposals submitted outside of Rule 14a-8. The second, issued concurrently, would modernize other aspects of the federal proxy solicitation rules. The public comment period for both proposals will remain open for 60 days following publication in the Federal Register, after which the SEC may adopt final rules, republish revised proposals, or take no further action.

Rescission of Rule 14a-8. The proposal would rescind Rule 14a-8 in its entirety, leaving determinations about whether a company must include a shareholder proposal in its proxy materials to state corporate law and the company's governing documents. In the proposing release, the SEC explains that it views Rule 14a-8 as exceeding the agency's authority under Section 14(a) of the Exchange Act, and it identifies additional independent policy reasons for rescission—including that many of the original justifications for the rule have not been substantiated in practice, that Rule 14a-8 has become a mechanism for influencing company-shareholder interactions in ways inconsistent with its original purpose, that the rule places the SEC in the position of making state-law determinations better left to other actors, and that Rule 14a-8 has effectively evolved into a federal common law governing shareholder proposals that has both displaced and inhibited the further development of state law and private ordering in this area.

Amendments to Rule 14a-4(c). The same release proposes amendments to Rule 14a-4(c) that would give companies greater flexibility to seek and obtain discretionary voting authority over shareholder proposals presented at a meeting but not included in the company's proxy materials, including proposals submitted outside Rule 14a-8, which the SEC anticipates may become more common if Rule 14a-8 is rescinded. The amendments would also give shareholders the ability to elect to prevent a company from exercising discretionary voting authority with respect to their own shares.

Companion Proxy Solicitation Modernization Proposal. Concurrent with the Rule 14a-8 proposal, the SEC issued a separate rulemaking, Release Nos. 33-11439, 34-106385 and 39-2566 (File No. S7-2026-33) to modernize other aspects of the federal proxy rules. Its principal elements would (i) eliminate the separate annual report to security holders delivery requirement for companies that have a Form 10-K on file for their most recent fiscal year, (ii) eliminate the requirement that a proxy statement be delivered at least 20 business days before the relevant meeting where information is incorporated by reference, (iii) rescind Rule 14a-6(g) and eliminate Notices of Exempt Solicitation (both required and voluntary), (iv) shorten the minimum broker search period from 20 to five business days, and (v) require the cover pages of Schedules 14A and 14C to include contact information for a representative who can respond to questions or comments regarding the filing. The release also includes various technical amendments to the proxy rules.

Basis for the Proposed Rescission

An SEC spokesperson confirmed that the agency intends to "return the role of regulating shareholder proposals to the States," consistent with Chairman Atkins' long-standing view that Rule 14a-8 exceeds the SEC's authority and improperly displaces state corporate law. Atkins has also criticized the existing framework for enabling what he has termed "the tyranny of the minority," particularly with respect to shareholder proposals seeking changes to corporate environmental or social practices; one industry analysis of the 2025 proxy season found that social-issue proposals made up 43% of proposals reviewed. In a July 2026 speech, Atkins separately urged states competing for corporate charters to revise their own corporate laws to prohibit the "politicization of shareholder meetings."

Getting there will not be quick or simple. Any rescission or narrowing of Rule 14a-8 has to go through full notice-and-comment rulemaking, and a rule this central to the shareholder proposal system is bound to draw heavy public input. Investor groups are already organizing to defend the rule. SEC rulemakings of this scale have typically taken well over a year to move from proposal to final action, and any final rule will be a natural target for a court challenge, potentially resulting in an injunction or the SEC voluntarily pausing implementation, much as happened with its 2024 climate disclosure rules. Ultimately, the fight over Rule 14a-8's future could easily stretch across more than one proxy season, and possibly past the 2028 presidential election.

What This Means to You

Companies should not assume the shareholder proposal process is going away in the near term. Rule 14a-8 remains in effect, and any rescission or narrowing of the rule will take time to work through notice-and-comment rulemaking and likely litigation. In the meantime, companies should expect the current environment—no SEC staff no-action review, heightened litigation risk, and an evolving proxy advisor posture—to continue into the 2027 proxy season and potentially beyond. Boards and management teams should consider the following:

Continue planning for the 2027 proxy season on the assumption that Rule 14a-8 remains in effect and that the SEC staff will not provide no-action relief, other than potentially for state-law-based arguments under Rule 14a-8(i)(1).

Reassess the company's risk tolerance for unilateral exclusion decisions in light of the increase in proponent litigation during the 2026 season and build in additional lead time for legal review of exclusion positions.

Evaluate, with counsel, whether a Delaware- or other state-law-based exclusion argument under Rule 14a-8(i)(1) may be available and advisable for particular proposals, an avenue the SEC has invited but that companies have not yet tested.

Monitor proxy advisory firm policies on unilateral exclusions, which could shift for the 2027 season even though adverse recommendations were rare in 2026, and track the evolving federal regulatory posture toward proxy advisers, including the SEC's pending enforcement action against ISS and any related rulemaking or guidance.

Watch for evolving proponent tactics that may become more prevalent if Rule 14a-8 is narrowed or repealed, including "zero slate" campaigns under Rule 14a-4, withhold campaigns against directors, public pressure campaigns, and binding bylaw amendment proposals.

Continue to track the SEC's rulemaking process on Rule 14a-8, including the treatment of existing eligibility and exclusion criteria, the effective date, and the comment period, and be prepared to engage in the comment process if appropriate.

Assess the implications of the proposed Rule 14a-4(c) amendments for the company's proxy card design and its disclosure regarding discretionary voting authority over non-Rule 14a-8 shareholder proposals, and evaluate the operational effects of the companion proxy solicitation modernization proposal—particularly the elimination of the separate annual report delivery requirement, the elimination of Notices of Exempt Solicitation, and the shortening of the broker search period from 20 to five business days.

We will continue to monitor this rulemaking closely and will issue a follow-up alert if there are significant developments, including with respect to the comment period and any final rule.

Contact Us

If you have any questions regarding the SEC’s proposed rescission of Rule 14a-8 and related proxy solicitation reforms, and their implications for your company’s shareholder proposal process, proxy statement preparation, or governance practices, please do not hesitate to contact Steve Barrett, Robert Joseph, Andrew Spector, Ashley Inbau, or your Husch Blackwell LLP attorney.