Articles + Publications | September 21, 2026

SEC Proposes Rescission of Shareholder Proposal Rule and Modernization of Proxy Solicitation Process

WRITTEN BY

David I. Meyers | Rakesh Gopalan | Alexander T. Yarbrough

KEY POINTS

- The Securities and Exchange Commission (SEC) proposed to rescind Rule 14a-8, which requires public companies to include qualifying shareholder proposals in their proxy materials, on the basis that the rule exceeds the SEC's statutory authority under Section 14(a) and improperly intrudes into state corporate law.
- The SEC also proposed amendments to Rule 14a-4(c) that would eliminate a shareholder proponent's ability to unilaterally prevent a company from exercising discretionary voting authority over proposals omitted from the company's proxy card, while requiring a check box allowing individual shareholders to withhold that authority as to their own shares.
- In a separate release, the SEC proposed to modernize the proxy solicitation process, including (i) eliminating the annual report delivery requirement for all registrants, with registrants that have a Form 10-K on file for their most recent fiscal year also relieved from complying with the separate annual report disclosure requirements in Rule 14a-3, (ii) eliminating the stock performance graph requirement for non-investment companies, (iii) rescinding Notices of Exempt Solicitation, (iv) shortening the minimum broker search period from 20 to five business days and (v) requiring the inclusion of contact information for a representative who can respond to questions on proxy statement and information statement cover pages.
- Both proposals are not final rules and are open for public comment for 60 days following publication in the *Federal Register*.

On September 16, 2026, the Securities and Exchange Commission (SEC) proposed to rescind Rule 14a-8, the federal framework requiring public companies to include qualifying shareholder proposals in their proxy materials, and to modernize several aspects of the proxy solicitation process. The proposals, if adopted, would represent the most significant overhaul of the federal proxy regime in decades. Both proposals are open for public comment for 60 days following publication in the *Federal Register*.

PROPOSED RESCISSION OF RULE 14A-8

Since 1942, the federal proxy rules have provided the federal mechanism that allows shareholders of public companies to require those companies to include their proposals in the company's proxy materials (*i.e.*, the documents sent to shareholders in connection with a shareholder vote). The SEC's proposing release (Release No. 34-106383, File No. S7-2026-32, with accompanying fact sheet) takes the position that this rule goes beyond what the SEC is statutorily authorized to do under the Securities Exchange Act of 1934, as amended (the Exchange Act). In the SEC's view, Congress provided the SEC with the power to regulate *how* companies ask shareholders for their votes (the solicitation process and related disclosures), but not to dictate the matters on which shareholders are entitled to vote. Those matters are traditionally a matter of state corporate law. Rule 14a-8(i) currently sets out 13 substantive bases for exclusion, which the SEC characterizes as functioning collectively as a federal standard for what shareholders can put to a vote through the proxy, a role it says Section 14(a) does not authorize. Acknowledging the rule's long history, the release states that "agencies may not add to their powers by adverse possession; longevity is not a substitute for legal authority."

The SEC also offered policy reasons for the change: the rule's original justifications are less compelling today, it has discouraged states from developing their own laws on shareholder proposals, and it has put the SEC in the position of interpreting state law questions that are better left to state courts. The SEC also posits that Rule 14a-8 can serve as a mechanism for shareholder proponents to advance interests that in many cases may not be shared by a company's shareholders at large. For example, the SEC noted that only about 7% of the 786 proposals submitted in 2025 received majority support (approximately 11% of those actually put to a vote), and that 10 proponents accounted for 58% of all 2025 submissions. The release also observes that, apart from a recent Texas statute, no state has legislated on shareholder proposals in the more than 80 years since the rule was adopted. If rescinded, decisions about shareholder proposals would return to requirements under state law and a company's governing documents.

Separately, and independent of the proposed rescission, the process for excluding shareholder proposals has already shifted. Companies historically relied on "no-action" relief from the Division of Corporation Finance (where the division would state in a formal letter that they will not recommend enforcement on the matter) before leaving a proposal out of their proxy materials. That practice narrowed in November 2025, when the SEC staff said it would decline to take a substantive position on most no-action requests, addressing only those asserting that a proposal is not a proper subject for shareholder action under state law and otherwise issuing a letter that simply declined to object based on the company's own unqualified representation of a reasonable basis for exclusion under Rule 14a-8. The SEC staff then withdrew from the process entirely on August 14, 2026, stating that it would no longer respond to Rule 14a-8 no-action requests of any kind or issue letters declining to object. A company must still file the notice of intent to exclude required by Rule 14a-8(j), but it now does so without the SEC staff input that has long shaped these decisions.

The release also addresses a related disclosure question. In the SEC's view, omitting a shareholder proposal from a company's proxy materials generally is not, without more, materially false or misleading. The SEC cautions, however, that the statement commonly included in proxy statements that management is unaware of any other business to come before the meeting could be materially misleading if the company has in fact been notified that a shareholder intends to present a shareholder proposal. Companies operating without Rule 14a-8 should account for this in their proxy drafting and their advance notice tracking.

The proposed rescission would apply to all companies subject to the federal proxy rules, including registered investment companies and business development companies (BDCs). The SEC reasons that Section 20(a) of the Investment Company Act, like Section 14(a) of the Exchange Act, authorizes regulation of the proxy solicitation process but does not enlarge its authority over the scope of shareholder voting rights. The rescission would not affect the separate voting rights that the Investment Company Act itself confers on fund shareholders, such as the right to approve advisory contracts or to terminate them. The SEC has requested comments on whether it should take a different approach for regulated funds.

PROPOSED AMENDMENTS TO RULE 14A-4(C)

The same release proposes changes to Rule 14a-4(c), which governs when a company may exercise discretionary voting authority over matters that are not included on its proxy card, including shareholder proposals raised at a meeting but not included in the company's proxy materials. Importantly, the SEC states that there are independent justifications for the proposed amendments to Rule 14a-4 even if the proposed rescission of Rule 14a-8 is not adopted, meaning the two proposals could move on different tracks and timelines.

Under the current rule, a company generally may exercise discretionary authority over a timely received proposal submitted outside Rule 14a-8, but it loses that ability entirely if the proponent satisfies the solicitation threshold by (i) notifying the company on a timely basis that it intends to deliver its own proxy materials to holders of at least the percentage of the company's voting shares required under applicable law to carry the proposal, (ii) including the same statement in its own proxy materials, and (iii) providing evidence that it in fact solicited holders of at least the requisite percentage. The practical result is that a single proponent can switch off the company's discretionary authority as to every proxy card the company receives. This dynamic has intensified since the 2021 universal proxy rules: in a "zero slate" campaign, a proponent can place the company's own director nominees alongside its proposal on the proponent's card, giving shareholders reason to use that card rather than the company's, and prompting the company to add the proposal to its own card to retain voting authority. SEC staff highlighted at least three zero slate campaigns since the universal proxy rules went into effect in 2022, and in each case the company included the proponent's proposals on its own proxy card, highlighting the practical utility of the proposed amendments.

The proposed amendments would eliminate the solicitation threshold. A company could exercise discretionary authority over a timely received non-Rule 14a-8 proposal regardless of the proponent's solicitation efforts, provided it includes:

- In the proxy statement, a brief description of the matter and how the company intends to exercise its discretion (full text of the proposal would not be required);
- On the proxy card, a cross-reference to that disclosure; and
- On the proxy card, a check box that, if checked, prevents the company from exercising discretionary authority as to that shareholder's shares.

A single check box would satisfy the requirement regardless of how many proposals are involved, though companies could voluntarily provide one per proposal. Importantly, checking the box would prevent the company from exercising discretionary authority as to that shareholder's shares, producing a non-vote rather than a vote against. A shareholder wanting to affirmatively vote against management's stated position on an omitted proposal would still need to obtain the proponent's card or vote at the meeting. The SEC declined to adopt a check box in 1998 over confusion concerns but now points to the prevalence of electronic voting (over 97% of voted shares) as mitigating that risk.

PROXY SOLICITATION MODERNIZATION PROPOSAL

In a separate proposing release (Release Nos. 33-11439 and 34-106385, File No. S7-2026-33, with accompanying fact sheet), the SEC proposed to update the procedural rules that govern how companies communicate with shareholders and distribute proxy materials in connection with shareholder meetings, many of which were written for a paper-based world and have not kept pace with electronic communications. Key proposed changes include:

- **Annual Report Delivery.** Registrants would no longer be required to deliver an annual report directly to security holders. Under proposed Rule 14a-3(b), a proxy statement for a meeting at which directors are elected would need to be preceded only by (i) the filing of the registrant's Annual Report on Form 10-K for its most recent fiscal year or (ii) the furnishing of an annual report to security holders on EDGAR. In addition, registrants that have an Annual Report on Form 10-K on file for their most recent fiscal year would be relieved from complying with the separate annual report disclosure requirements in Rule 14a-3, including the stock performance graph. Parallel changes are proposed to Rule 14c-3 for information statements on Schedule 14C.

- **Stock Performance Graph.** Non-investment companies would no longer be required to include a stock performance graph (Item 201(e) of Regulation S-K), given that this information is now widely available through online financial platforms. BDCs and face-amount certificate companies would still be required to include the graph, but in their Form 10-K.

- **Incorporated Documents.** The rule requiring companies to send proxy statements at least 20 business days before a meeting when documents are incorporated by reference would be dropped, since those filings are now freely accessible on EDGAR.[1]

- **Notices of Exempt Solicitation.** Rule 14a-6(g) (requiring the filing of certain exempt proxy solicitations) would be rescinded, eliminating both mandatory and voluntary filings. From 1997 to 2025, 311 unique filers submitted 3,376 notices concerning 751 unique registrants, and the vast majority in recent years were voluntary. In January 2026, SEC staff issued guidance objecting to voluntary submissions, and market participants have since created third-party websites for exempt solicitations.

- **Broker Search Period.** The minimum "broker search" period (the time companies must give brokers and banks to report how many sets of proxy materials they need for their clients) would be shortened from 20 business days to five, reflecting that this process can now typically be completed in as few as three days.

- **Contact Information.** Proxy and information statement cover pages would need to include contact information for a representative who can respond to questions.

PRACTICAL IMPLICATIONS

If adopted, these proposals would meaningfully reshape the proxy landscape. But the near-term planning question is different from the long-term one. A few practical items for public companies to consider prior to any adoption of these rules:

- **Review and assess state law and governing documents now.** If Rule 14a-8 falls away, shareholder proposal rights will default to state corporate law and a company's charter and bylaws. Now is a good time to review and assess state law requirements and whether governing documents need to be updated. Bylaw amendments take lead time and internal management and board socialization, so scoping the options before the rule is final is better than reacting afterward.

- **Advance notice provisions become critical.** Without Rule 14a-8, advance notice bylaws are the primary procedural control over proposals presented at a shareholder meeting, and the proposed Rule 14a-4(c) changes would make such bylaw provisions control timeliness for discretionary voting purposes.

- **2027 will likely run under current rules; plan for 2028.** If the SEC adopts these rules in 2027, 2028 would be the first proxy season materially affected by the new rules. The 2027 season therefore is likely to proceed largely under the current rules, but, unlike prior seasons, without any SEC staff no-action or "no objection" responses on shareholder proposal exclusions, as described above. Neither release specifies a transition period, which we think is worth watching. Both proposals could affect how a company prepares its proxy statement for the 2028 season, engages with its shareholders, and navigates any proxy contests. The Rule 14a-8 rescission in particular rests on a contested statutory-authority theory, that Section 14(a) of the Exchange Act does not authorize the SEC to regulate the scope of matters presented to shareholders for a vote, and could draw litigation, which may affect timing. The SEC itself acknowledges that “Rule 14a-8 has been in existence for many years” and that “both shareholders and companies are likely to have shaped certain governance and engagement practices around the rule’s provisions,” a recognition of the reliance interests that challengers would likely emphasize in any legal challenge.

- **Don’t assume the shorter broker search period is usable right away.** The response deadlines for brokers, dealers, and banks are not being shortened and would exceed a five-business-day search, which the SEC acknowledges could limit the practical utility of the shortened period. Under existing rules, brokers and dealers have seven business days to respond with beneficial owner counts, and banks have one business day to identify respondent banks and seven business days to report customer totals, meaning a five-business-day search could close before responses are due. Companies planning accelerated meeting timelines should build in buffer time accordingly.

- **Expect engagement to become less predictable, not simply less frequent.** Rule 14a-8 has functioned as a structured, low-friction mechanism, and over the 2022–2025 period, roughly one in eight proposals (12%) was withdrawn by proponents prior to the applicable meeting, often after engagement on terms companies can generally accept. Without Rule 14a-8, proponents may shift toward independent solicitations, “vote-no” campaigns, and public pressure, which are harder for companies to anticipate and manage. Companies that treat proposal season as an early signal of investor concern may want to strengthen direct engagement channels in its place.

- **Consider submitting comments and engage with the SEC’s economic analysis.** Comments on both proposals are due 60 days after publication in the *Federal Register* (File No. S7-2026-32 for the Rule 14a-8 proposal and File No. S7-2026-33 for the modernization proposal). Given the stakes, industry input could meaningfully shape the final rules. Both proposing releases include extensive economic analyses. The SEC’s own analysis of the Rule 14a-8 rescission acknowledges significant uncertainty, including the possibility that a higher cost threshold for presenting proposals “may filter out proponents with fewer resources, regardless of the value of their proposals.” Commenters, whether supporting or opposing rescission, should engage with the economic analysis, as any final rule would be subject to judicial review under the Administrative Procedure Act, which requires the SEC to have adequately considered costs, benefits, and alternatives.

CONCLUSION

These proposals are part of a broader Commission deregulatory agenda. On May 5, 2026, the SEC separately proposed amendments that would give all Exchange Act reporting companies that currently file quarterly reports the option of filing semiannual reports on a new Form 10-S in lieu of quarterly reports on Form 10-Q[2]. Together, the proxy modernization and semiannual reporting proposals reflect the SEC’s stated priority of updating its rules to reduce compliance burdens and to reflect developments in market practice and technology since the rules’ adoption. Companies should evaluate the potential impact on their proxy season planning, shareholder engagement practices, and governing documents, and should consider whether to submit comments on either proposal.

That said, these are proposals, not final rules. The SEC will review comments before deciding whether and how to adopt them, and any final rules could differ materially from what was proposed.

For more information about the SEC’s proposed rescission of Rule 14a-8 or the proxy solicitation modernization proposal, or for guidance on reviewing your company’s advance notice bylaws and shareholder engagement practices, please contact the attorneys listed above or visit Troutman Pepper Locke's Capital Markets and Corporate Governance practice pages.

---

[1] The parallel 20-business-day minimums in General Instruction A.2 to Form S-4 and Form F-4 would be eliminated as well, removing a fixed floor on the period between mailing the prospectus and the shareholder vote in a registered business combination.

[2] See the Troutman alert of the SEC's semiannual reporting proposal.

**Riley J. Nicholson, a 2026 associate with Troutman Pepper Locke who is not admitted to practice law in any jurisdiction, also contributed to this article.*

RELATED INDUSTRIES + PRACTICES

- Capital Markets
- Corporate

