Simpson Thacher

Memorandum

SEC Proposes Landmark Rescission of Shareholder Proposal Rule and Reforms to Proxy Solicitation Process

September 17, 2026

On September 16, 2026, the Securities and Exchange Commission proposed to (1) rescind Rule 14a-8, the federal shareholder proposal rule, and amend Rule 14a-4(c) to expand issuers' discretionary voting authority with respect to certain shareholder proposals[1] and (2) modernize various aspects of the proxy solicitation framework to reflect developments in market practice and technology.[2] If adopted, the proposals would represent the most significant overhaul of the federal proxy regime in decades.

Proposed Rescission of Rule 14a-8

The SEC has proposed to rescind in its entirety Rule 14a-8, which governs when a company must include a shareholder proposal in its proxy statement. Rule 14a-8, which was first adopted in 1942,[3] has evolved from a roughly 200-word provision into a complex, over 3,000-word framework which includes 13 substantive exclusion grounds and has resulted in "function[ing] as a Federal common law as to what constitutes a proper subject for shareholder action."[4] Under the proposed rescission, determinations regarding shareholder proposals would instead be governed by state law and company governing documents.

The SEC has concluded that Rule 14a-8 exceeds its statutory authority under Section 14(a) of the Securities Exchange Act of 1934, as amended, indicating that Section 14(a) authorizes regulation of the proxy solicitation process, not the substantive question of whether shareholders have a right to present a matter for a vote, which is fundamentally a matter of state corporate law. By prescribing when companies must include shareholder proposals in their proxy materials, the SEC contends that Rule 14a-8 has created a de facto federal standard governing shareholder voting rights that was never within the SEC's delegated authority.[5] Further, in the proposed rule, the SEC articulates numerous independent policy reasons for the rescission of Rule 14a-8, pointing to the unintended consequences of the rule, including use of the rule as a vehicle for driving political agendas and the inhibition of the development of state law.

---

[1] *Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4*, Release No. 34-106383 (Sept. 16, 2026), available here (the "Rule 14a-8 Proposing Release").

[2] *Proxy Solicitation Modernization*, Release No. 33-11439; 34-106385 (Sept. 16, 2026), available here (the "Proxy Solicitation Modernization Proposing Release").

[3] The predecessor of Rule 14a-8 was first adopted in 1942. *See* Release No. 34-3347 (Dec. 18, 1942).

[4] Rule 14a-8 Proposing Release, page 11.

[5] *See* Rule 14a-8 Proposing Release, page 30.

Proposed Amendments to Rule 14a-4(c)

Alongside the proposed rescission of Rule 14a-8, the SEC proposed amendments to Rule 14a-4(c), which governs discretionary proxy voting authority. The proposal would broaden the circumstances in which a company may exercise discretionary voting authority with respect to shareholder proposals that are presented at a shareholder meeting but are not included in the company's proxy materials.

In its present form, Rule 14a-4(c)(2) has an unintended consequence whereby companies may feel compelled to include proposals submitted outside of Rule 14a-8 on their proxy cards in order to retain discretionary voting authority over those proposals, even though neither federal proxy rules nor state law requires that inclusion.[6] The proposed amendments would make two key changes:

- ***Broader discretionary voting authority for companies.*** The amended rule would permit companies to exercise discretionary voting authority on proposals that are submitted outside the Rule 14a-8 process that are timely received, regardless of whether the proponent distributes its own proxy materials. To exercise such authority, the company must include certain disclosure in its proxy statement and on its proxy card.[7]
- ***Shareholder opt-out mechanism.*** Individual shareholders would be able to elect to prevent the company from exercising discretionary voting authority with respect to their shares by checking a box on the proxy card.[8]

The SEC stated that the proposal is intended to provide companies with greater flexibility while simultaneously giving shareholders greater ability to prevent the company from exercising discretionary authority with respect to their individual shares.[9] The SEC noted that these amendments may become particularly important if Rule 14a-8 is rescinded and shareholders increasingly pursue proposals through independent solicitation efforts rather than company proxy materials.[10]

Proposed Proxy Solicitation Modernization

In a separate proposing release, the SEC also proposed a number of amendments designed to modernize the proxy solicitation process and reduce compliance burdens associated with requirements that the SEC believes have become outdated due to technological developments and changes in market practice.[11] The key proposed changes are:

---

[6] *See* Rule 14a-8 Proposing Release, pages 70-71.

[7] *See* Rule 14a-8 Proposing Release, pages 70-71.

[8] *See* Rule 14a-8 Proposing Release, page 71.

[9] *See* Statement of Commissioner Mark T. Uyeda on the Proposed Rescission of Rule 14a-8 and Proposed Proxy Solicitation Modernization (Sept. 16, 2026), available here.

[10] *See* Statement of Paul S. Atkins, Chairman on Proposals to Rescind Rule 14a-8, Amend Rule 14a-4, and Modernize Proxy Solicitation (Sept. 16, 2026), available here.

[11] *See* Proxy Solicitation Modernization Proposing Release.

- **Elimination of Annual Report to Security Holders**. For companies with a Form 10-K on file, the proposal would eliminate the separate annual report to security holders ("ARS") delivery requirement, as the ARS largely overlaps with the Form 10-K (though companies could still voluntarily send annual reports). The stock performance graph would be eliminated for all companies except investment companies.[12]
- **Elimination of Incorporation by Reference Delivery Deadline**. The proposal would eliminate the 20-business-day advance delivery requirement for proxy statements that incorporate information by reference, as all incorporated documents are now readily accessible on EDGAR. Similar requirements in Forms S-4 and F-4 would also be eliminated.[13]
- **Elimination of Notice of Exempt Solicitation**. The proposal would rescind Rule 14a-6(g) and eliminate Notices of Exempt Solicitation entirely. The SEC noted that the vast majority of such filings in recent years have been voluntary rather than required, rising from 40% voluntary in 2018 to 80% in 2025, and have created investor confusion on EDGAR pages.[14]
- **Shortening of Broker Search Period.** The proposal would shorten the minimum broker search period from 20 business days to five business days, reflecting that broker searches can now often be completed in as few as three days due to technological advancements.[15]

The SEC's comment periods for both proposals will remain open for 60 days following publication in the Federal Register.

[12] *See* Proxy Solicitation Modernization Proposing Release, pages 8-15.

[13] *See* Proxy Solicitation Modernization Proposing Release, pages 15-17.

[14] *See* Proxy Solicitation Modernization Proposing Release, pages 18-23.

[15] *See* Proxy Solicitation Modernization Proposing Release, pages 23-27.

For further information regarding this memorandum, please contact one of the following authors:

NEW YORK CITY

John C. Ericson
+1-212-455-3520
jericson@stblaw.com

Richard A. Fenyes
+1-212-455-2812
rfenyes@stblaw.com

Karen Hsu Kelley
+1-212-455-2408
kkelley@stblaw.com

Hui Lin
+1-212-455-7862
hui.lin@stblaw.com

Charles Mathes
+1-212-455-2258
charles.mathes@stblaw.com

Lesley Peng
+1-212-455-2202
lpeng@stblaw.com

BOSTON/WASHINGTON, D.C.

Joshua Ford Bonnie
+1-617-778-9032
+1-202-636-5804
jbonnie@stblaw.com

PALO ALTO/SAN FRANCISCO

William B. Brentani
+1-650-251-5110
+1-415-426-7220
wbrentani@stblaw.com