

Title: SEC Proposes Rescission of Rule 14a-8 and Amendments to Rule 14a-4

Brief Overview:

Authors:

Full Article: In September 16, 2026, the U.S. Securities and Exchange Commission (“SEC” or the “Commission”) issued a proposed rule (Release No. 34-106383; File No. S7-2026-32; RIN 3235-AN47) titled “Rescission of Rule 14a-8’s Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4.” If adopted, the proposal would fundamentally reshape the regulatory framework governing shareholder proposals at U.S. public companies.

Executive Summary — At a Glance

The SEC has proposed to rescind in its entirety Rule 14a-8 — the long-standing federal rule that requires public companies to include eligible shareholder proposals in their proxy materials. The SEC contends that Rule 14a-8 exceeds the Commission’s statutory authority and that the rescission of the rule would leave determinations about the role of shareholder proposals to state law and company governing documents.

In addition, the SEC proposes to amend Rule 14a-4(c), which would expand companies’ discretionary voting authority over shareholder proposals submitted outside the Rule 14a-8 process, subject to certain disclosure and opt-out requirements. Comments are due 60 days after publication in the Federal Register.

Overview of the Proposed Rule

The proposed rule contains two principal changes: 1) a rescission of Rule 14a-8, known as the “Shareholder Proposal Rule”, and 2) amendments to Rule 14a-4(c) regarding discretionary voting authority.

Rescission of Rule 14a-8 (the “Shareholder Proposal Rule”)

The Commission proposes to rescind Rule 14a-8 under the Securities Exchange Act of 1934 (the “Exchange Act”) in its entirety. Rule 14a-8 currently allows eligible shareholders to submit proposals for inclusion in a company’s proxy statement, as long as the proposal does not fall within one of the rule’s thirteen substantive bases for exclusion. Under the current rule, a shareholder must meet ownership thresholds (based on both amount and duration of share ownership), must attend the meeting (or send a qualified representative) to present the proposal, and is limited in the number and length of proposals that may be submitted.

If the rescission is adopted, the federal proxy rules would no longer require companies to include shareholder proposals on the basis of federal procedural and substantive criteria. Instead, state law and a company's charter and bylaws would be the sole determinants of whether a shareholder proposal must be included in the company's proxy materials.

Amendments to Rule 14a-4(c) ("Discretionary Voting Authority")

Under the current Rule 14a-4(c)(2), a company generally may not exercise discretionary proxy voting authority on shareholder proposals submitted by way of a proponent's own solicitation outside Rule 14a-8. A proponent conducting a solicitation outside of the Rule 14a-8 process must deliver separate proxy materials to holders of at least the percentage of voting shares needed to carry the proposal (the solicitation threshold).

The proposed amendments to Rule 14a-4(c)(2) would remove the solicitation-threshold restriction and broaden the circumstances in which a company may exercise discretionary voting authority over timely received proposals submitted outside Rule 14a-8, regardless of whether the proponent delivers its own proxy materials. To exercise this authority, the company would be required to:

Include in the proxy statement a brief description of the matter and how the company intends to vote via its discretionary authority;

Include on the proxy card a cross-reference to that proxy statement disclosure; and

Include on the proxy card a check box that, if checked by a shareholder, would prevent the company from exercising discretion over that particular shareholder's shares (an individual, per-shareholder opt-out mechanism) with respect to shareholder proposals.

Under the proposal, a company may use a single check box rather than a separate box for each proposal. The default would be that discretionary authority is granted unless the shareholder affirmatively opts out by checking the box. The Commission has noted that these Rule 14a-4(c) amendments have independent justifications and could be adopted even if the proposed rescission of Rule 14a-8 is not.

Conforming and Technical Amendments

The proposed rule includes a number of conforming amendments, including:

Clarifying that discretionary voting authority under Rule 14a-4(c) relates only to matters not included on the proxy card;

Amending Rule 14a-4(c)(1) to clarify that a company's advance-notice bylaw provision (or applicable state or foreign law) generally determines whether a company received timely notice of a proposal, and that the default 45-day deadline applies only in the absence of such a provision;

Amending Rules 14a-6(a) and 14c-5(a) so that the mere submission of a shareholder proposal does not trigger the requirement to file a preliminary proxy or information statement; a preliminary filing would be required only where there is a "solicitation in opposition" (a term that includes solicitations subject to Rule 14a-19, solicitations to vote against or withhold from the company's director nominees, and certain other adversarial solicitations).

The SEC's Rationale

Statutory Authority

The Commission's position is that Rule 14a-8 exceeds its statutory authority under Section 14(a) of the Exchange Act. The Commission contends that Section 14(a) authorizes it to regulate the proxy solicitation process, or the manner in which proxies are solicited and the information disclosed to shareholders, but does not authorize the Commission to regulate the substantive scope of matters shareholders may present for a vote. The threshold question of whether shareholders have a right to present a particular matter for a vote is, the Commission argues, a question of state law or, where permitted by state law, a company's governing documents.

Rationale for the Rule 14a-4(c) Amendments

The Commission explains that under the current rules, a company can face a coercive "binary choice" to include a proponent's proposal in the company's proxy materials (bearing inclusion and solicitation costs) or omit the proposal and forgo the ability to collect and cast votes on it.

The proposed individual opt-out check box is intended to give companies greater flexibility and shareholders greater individual control, and to address the externality and cost imposed by the current solicitation-threshold mechanism. The Commission notes that it previously declined to adopt a check-box approach in 1998 (over shareholder-confusion concerns) but now believes those concerns are less likely to materialize.

Practical Implications for Public Companies

Rule 14a-8 Rescission: Rule 14a-8's rescission will likely require further evolution of state-law-based mechanisms to provide for shareholder access to propose precatory matters. Alternatively, proponents and registrants alike may be funneled into the procedural requirements set forth in the advance notice procedures contained in company charters and bylaws in the absence of statutory clarity. Further, proponents could opt for other forms of shareholder engagement and outreach to registrants.

Rule 14a-4 Amendment: The proposed amendments to Rule 14a-4(c) would eliminate a registrant's choice under the current rules to either (a) incur the costs and possible adverse voting outcomes of including a proponent's proposal submitted outside of the Rule 14a-8 process in its proxy materials to allow for exercise of discretionary voting authority or to (b) exclude the proposal and lose the ability for such authority. The proposal shifts the burden of a choice to allowing registrants to exercise discretionary voting authority back to shareholders. In the absence of Rule 14a-8, a proliferation of other engagement strategies and proposal types may emerge, including pursuant to the new Rule 14a-4 process, if adopted.

The public comment period will run for 60 days after publication of the proposed rule in the Federal Register. After the comment period closes, the Commission will review all comments together with the pending rulemaking petitions from various stakeholder groups in deciding whether and how to finalize the proposed rescission and amendments. The Commission may adopt, modify, or decline to adopt the proposals. No specific timeline for a final rule has been announced. The proposed rule does not set a specific effective date.

Buchanan's Securities & SEC team continues to monitor developments with respect to the proposed rules and is available to discuss and advise public companies and other relevant stakeholders on how best to prepare themselves for these potential modifications to the shareholder proposal and proxy solicitation process.