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SEC PROPOSES TO RESCIND RULE 14A-8: ANOTHER NAIL IN THE COFFIN FOR SHAREHOLDER PROPOSALS?

In an awaited but not surprising proposing release, on September 16, 2026, the Securities and Exchange Commission (the "SEC" or the "Commission") proposed rescinding Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which governs the processes under which a shareholder may include a proposal in a public company's proxy materials. The SEC also proposed to amend Rule 14a-4(c) to expand the circumstances under which a company may exercise, with respect to proxies it receives, discretionary voting authority on proposals that will be presented at a shareholder meeting but not included in the company's proxy materials. This proposal (the "Rule 14a-8 Rescission Release") marks a significant change in the Commission's view of the federal government's role in interactions between companies and their shareholders.

BACKGROUND

On October 9, 2025, SEC Chairman Paul S. Atkins publicly put the wheels in motion for the Rule 14a-8 Rescission Release. In a keynote address at a gala celebrating the John L. Weinberg Center for Corporate Governance, Chairman Atkins noted his view that the "Commission should re-evaluate the rule's fundamental premise that shareholders should be able to force companies to solicit for their proposals—to the extent that a shareholder proposal is a proper subject for shareholder action under state law—at little or no expense to the shareholder." In that address, he also called for an evaluation of "whether the Commission's original rationale for adopting Rule 14a-8 in 1942 still applies today."

Although not held out as being related to the evaluation of potential rule amendments, in November 2025, the Commission's Division of Corporation Finance (the "Division") announced that, for the 2025–2026 proxy season, it would not respond substantively to no-action requests to exclude shareholder proposals under Rule 14a-8, except for those under Rule 14a-8(i)(1), which deals with exclusion of shareholder proposals that are improper under state law. This decision Chairman Atkins later analogized to "removing the training wheels from the shareholder proposal bicycle" and noting that "[a]s it turns out, [companies and proposal proponents] can pedal just fine on their own." In August 2026, the Division extended this position indefinitely and added requests under Rule 14a-8(i)(1) to those on which it will not opine. The Commission's proposal to rescind Rule 14a-8, then, is the next step in its attempts to extract itself from the shareholder proposal process, leaving this process to the states and, where permitted by state law, company governing documents.

PROPOSED RESCISSION OF RULE 14A-8

The Rule 14a-8 Rescission Release cites the following grounds for the proposed rescission of Rule 14a-8:

- Rule 14a-8 exceeds the Commission's statutory authority under Section 14(a) of the Exchange Act by "improperly intruding into state law without express Congressional authorization." Specifically, Section 14(a) authorizes the SEC to regulate proxy solicitations, such as the timing, form and disclosure requirements of such solicitations. It does not, however, give the SEC the ability to regulate the scope of voting or other shareholders rights under state law, such as the right to propose a matter for a shareholder vote. Rule 14a-8, then, by prescribing the standards by which a shareholder proposal will or will not be included in a company's proxy materials, exceeds the SEC's authority and impinges on a duty that should be reserved for the states. In addition to a detailed discussion of the scope of Section 14(a) and the limitations on the SEC's authority, the Rule 14a-8 Rescission Release walks through the evolution of Rule 14a-8 over the years, arguing that successive amendments to the rule progressively expanded the Commission's role in determining matters traditionally governed by state law. The Commission contrasts the approach taken under Rule 14a-8 with its approach in the context of director elections, noting with approval that, in that context, the SEC has facilitated the ability of shareholders to exercise their voting rights under state law, rather than making determinations with respect to the scope of matters able to be voted upon. Given all of this, and despite Rule 14a-8's lengthy history, the SEC believes that the rule should be rescinded in its entirety.
- Separate from the arguments based on the SEC's statutory authority, the Commission also details independent policy reasons for rescinding Rule 14a-8:
  - Many of the reasons that supported Rule 14a-8's adoption "either have not been substantiated in practice or are less compelling today." Original justifications for the adoption of Rule 14a-8 included that "(i) the cost to companies to include shareholder proposals in their proxy materials was "small"; (ii) many proposals were either already supported by management or received meaningful shareholder support; (iii) the overall volume of proposals was low; and (iv) the rights of shareholders to present certain matters for a vote to their fellow shareholders under State law was reasonably clear, such that the Commission's rules could operate to facilitate those rights." Today, companies spend both financial and opportunity capital in responding to proposals, and the volume of such proposals, many of which are opposed by management and receive very low support, has ballooned. Technological advancements have made it easier and more cost effective for shareholders to share their view outside of the proposal process; for example, by posting on social media or other online platforms.
  - Rule 14a-8 has led to "certain unintended consequences," including the following:
    - Rule 14a-8 is being used in ways that are inconsistent with the rule's original purpose—for example, by permitting a small number of proponents to submit the

same proposal to a large number of companies, attempting to advance causes that may not be supported by the majority of shareholders. Companies may rely on the rule to omit proposals that would otherwise be permitted under state law, allowing them to pick and choose which proposals are presented to shareholders for a vote.

    - Rule 14a-8 requires the SEC to make judgments about the application, gaps, and ambiguities in state law that are best left to state legislatures, courts, or, in some cases, companies themselves, in accordance with state law. In the Commission's words, "[t]he continued existence of a Federal rule governing shareholder proposals—even one that purports facially to defer to State law—encourages companies and shareholders to look to the Commission to resolve ambiguities in the application of such rule," a task which should be left to the states.

    - Rule 14a-8 was intended to work hand-in-hand with state law; however, the states have not, in large majority, adopted laws governing the shareholder proposal process, such that the existence of the rule has "inhibited the development of state law and private ordering."

  - Retaining Rule 14a-8 is "unwarranted," and, even if the rule were modified, the unintended consequences discussed above would likely continue. The presence of any federal rule will undoubtedly lead the states to defer to it. Instead, "State courts are the proper venue to resolve any disputes that may arise directly based on State law and the terms of corporate governance documents, without need for a Federal rule that would itself necessarily incorporate State law (and risk overriding it)."

As proposed, Rule 14a-8 would be rescinded for all companies, including registered investment companies and business development companies, despite the fact that these "regulated funds" have a different regulatory framework. The Commission also noted some practical differences between regulated funds and operating companies, including that they usually receive fewer shareholder proposals and, on average, those proposals receive higher levels of shareholder support than those at operating companies, and that some regulated funds do not hold shareholder meetings annually, such that they are less likely to include shareholder proposals in proxy materials in any given year, and queried whether, given these differences, rescinding Rule 14a-8 as proposed is appropriate for these funds. At the same time, the Commission requested comment on aspects of the proposed rescission and the potential consequences to all stakeholders, including companies, shareholders and the states.

PROPOSED AMENDMENTS TO RULE 14A-4(C)

By way of background, most shareholders vote through the use of a proxy held by a representative, rather than in person at a shareholders' meeting. Companies may seek (1) direct voting authority for a proposal included in the company's proxy statement or (2) discretionary voting authority with respect to a proposal omitted from the company's proxy statement in certain circumstances. Rule 14a-4 addresses when a proxy card submitted by a shareholder may confer discretionary voting authority on the proxy holder. Specifically, discretionary voting authority under Rule 14a-4(c) is the proxy holder's power to vote on behalf of a shareholder regarding a matter that is not included on the proxy card. A company may rely on means other than Rule 14a-8 to omit a shareholder proposal from its proxy card, and may vote the shares represented by proxies against the proposal if, under Rule 14a-4(c), the proposal is a matter on which a proxy may confer discretionary voting authority (for example, a proposal that is not timely received by the company). However, for proposals that are timely received, a single shareholder proponent may prevent the company from exercising discretionary voting authority with respect to proxy cards from all shareholders by, among other things, soliciting the holders of at least the percentage of voting shares required to carry the proposal.

Under the proposed amendments, companies would have greater flexibility to exercise discretionary voting for timely-received proposals submitted outside the Rule 14a-8 process. To do so, a company must: (i) describe the matter and how it intends to vote via discretionary authority in its proxy statement; (ii) reference this disclosure on its proxy card; and (iii) include a check box on the proxy card that, if checked by a shareholder, would prevent the company from exercising its discretionary voting authority with respect to that shareholder's shares. This check box would act as a balance to company's increased power under the proposed rule change by making it easy for shareholders to prevent the company from exercising discretionary voting authority for *only* their shares.

The Commission cited several reasons for the proposed amendments, including that, in the proposed absence of Rule 14a-8, the use of Rule 14a-4(c) is likely to increase, and thus the rule should be modified accordingly. In addition, currently, when a company is unable to exercise discretionary voting authority for a timely received shareholder proposal submitted outside the Rule 14a-8 process, it may choose to include the proposal in its proxy materials even though it is not required to do so under either federal proxy rules or existing state law in order to exercise direct proxy voting authority. If the company were to omit the proposal from its proxy card, it would be unable to solicit votes with respect to the proposal, and, the proponent's solicitation could obtain the votes needed to pass the proposal on its proxy card. Under the proposed rules, the company would be able to exercise discretionary voting with regard to the proposal, addressing this issue.

OTHER CONFORMING CHANGES

In addition to the changes described above, the Rule 14a-8 Rescission Release includes certain other conforming changes to several Exchange Act rules. For example, Rule 14a-5(e) provides certain deadlines that must be disclosed in all proxy statements, including the deadline for submitting shareholder proposals for inclusion in a proxy statement, calculated in accordance with Rule 14a-8(e). The Commission proposed revising the rule such that, if Rule 14a-8 is rescinded, the deadline, if any, for such submissions would be calculated pursuant to applicable state or foreign law or the company's governing documents.

In another example, Rule 14a-6(a) provides that companies are not required to file a preliminary proxy statement due to the inclusion of a shareholder proposal under Rule 14a-8. In its proposed changes, the Commission suggests that solely including in or excluding a shareholder proposal from a company's proxy materials, without a corresponding non-exempt solicitation made by the shareholder proponent, would not require the company to file a preliminary proxy statement. If, however, (i) the company includes a shareholder proposal in (or excludes from) its proxy materials and (ii) the proponent distributes its own proxy materials to shareholders, the company would be required to file a preliminary proxy statement.

STRONG COMMISSIONER SUPPORT

In a statement accompanying the Rule 14a-8 Rescission Release, Chairman Atkins stated that "the proposals reflect two of my highest regulatory priorities," and continuing that "[w]e are duty bound to question whether a rule is a proper exercise of the Commission's statutory authority and whether it continues to reflect sound policy. As the Rule 14a-8 Rescission Release explains, Rule 14a-8 fails this review in both respects and thus should be rescinded." His support was echoed by Commissioners Hester Peirce and Mark Uyeda, with Commissioner Peirce noting that "[d]isrupting this mechanism by which small shareholders gain disproportionate leverage over companies would mark a fresh start" and Commissioner Uyeda stating that "[t]oday's proposal would return the question of what matters may be properly brought before a shareholder meeting to the states, companies, and boards of directors to determine whether a proposal should be included in the proxy statement." Despite this unequivocal backing, as Commissioner Peirce noted, this is an area that "sparks lively debate," and there is no doubt that the proposal will be the subject to much such debate, including the potential for legal challenge.

Comments are due 60 days after publication of the Rule 14a-8 Rescission Release in the Federal Register and can be submitted (i) via the comment form on the SEC's website, (ii) via e-mail to rule-comments@sec.gov, including File Number S7-2026-32 on the subject line, or (iii) on paper to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

Read the Rule 14a-8 Rescission Release here, Chairman Atkins' statement here, Commissioner Peirce's statement here and Commissioner Uyeda's statement here.

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