

SEC Proposes Rescission of the Shareholder Proposal Rule

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On September 16, 2026, the Securities and Exchange Commission (SEC) [issued](#) a proposal to rescind Rule 14a-8, which requires companies subject to the SEC’s proxy rules to include qualifying shareholder proposals in their proxy materials. The SEC also [proposed](#) amendments to its proxy rules that would expand companies’ ability to obtain discretionary voting authority for shareholder proposals submitted outside the Rule 14a-8 process. This Legal Sidebar discusses the SEC’s proposed rule and related issues that may be of interest to Congress. The Sidebar begins by providing background information on Rule 14a-8. Much of this background is derived from [CRS Report R48855, *The Shareholder Proposal Rule* \(Feb. 11, 2026\)](#), which offers a more detailed overview of Rule 14a-8’s history and current role in corporate governance.

Background

Shareholders of public companies vote on a variety of corporate matters at annual shareholder meetings, including [director elections](#), [charter amendments](#), [executive compensation plans](#), and (as relevant here) [proposals](#) from their fellow shareholders. The [vast majority](#) of shareholder proposals are nonbinding recommendations, which are often called “precatory” proposals; a much smaller percentage consists of binding amendments to corporate [bylaws](#). Generally, shareholder proposals [involve](#) either corporate governance or environmental and social (E&S) issues raised by a company’s operations. Common topics for [governance proposals](#) include the structure of a corporation’s board of directors, voting standards for director elections, and takeover defenses. [E&S proposals](#) often involve issues such as climate change, diversity, corporate lobbying and political expenditures, and human rights practices.

The SEC has [traditionally](#) taken the view that state law provides shareholders with the right to present proposals at annual meetings. In the case of bylaw amendments, this right is [explicit](#): Most state corporation statutes [empower](#) shareholders to amend a corporation’s bylaws without board approval. Precatory proposals exist in a murkier legal landscape. Most state corporation statutes are [silent](#) on the question of whether shareholders may offer precatory proposals, and there is [little case law](#) addressing that issue. Nevertheless, for much of Rule 14a-8’s history, the SEC has [assumed](#) that shareholders have a state law right to present precatory proposals.

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The majority of voting shareholders do not attend annual meetings in person; instead, they vote [by proxy](#). As part of this process, corporations [distribute](#) to shareholders a form of proxy (often called a proxy card or simply a proxy) by which shareholders can authorize a corporate official to vote their shares as instructed. In contested votes, shareholders may receive [proxy cards](#) from both incumbent management and a dissident shareholder running an alternative slate of director candidates or advocating for a proposal.

While shareholder voting rights are largely derived from state law, the SEC regulates the proxy solicitation process. [Section 14\(a\)](#) of the Securities Exchange Act of 1934 (the Exchange Act) makes it unlawful to solicit proxies in contravention of rules that the SEC may prescribe “as necessary or appropriate in the public interest or for the protection of investors.” Using this authority, the SEC has adopted [rules](#) governing proxy solicitation, which apply to companies with securities registered under [Section 12](#) of the Exchange Act—i.e., companies that are listed on a national securities exchange or that exceed certain asset and shareholder thresholds.

The proxy rules are principally [concerned](#) with ensuring that solicited shareholders receive adequate disclosures. To that end, the rules [prohibit](#) soliciting parties from transmitting a proxy card to shareholders unless the card is accompanied or preceded by a proxy statement containing specified disclosures. The proxy rules also include [Rule 14a-8](#), commonly called the shareholder proposal rule, which requires companies to include qualifying shareholder proposals in their proxy materials. In imposing this requirement, Rule 14a-8 allows eligible proposal proponents to avoid the expenses that would accompany independent solicitations on behalf of their proposals.

The SEC adopted the predecessor to Rule 14a-8 in 1942 after a [series of cases](#) in which the agency took the position that it was materially misleading for companies to omit from their proxy materials shareholder proposals of which they had notice. The rule has changed considerably since then. Today, it [includes](#) 13 substantive grounds on which companies may exclude proposals from their proxy materials, ownership thresholds and holding-period requirements for proposal proponents, and procedural requirements for proponents and companies.

The procedural elements of Rule 14a-8 include a [requirement](#) that companies intending to omit a shareholder proposal from their proxy materials notify the SEC and explain the basis for the omission. As a matter of practice, companies have generally filed these notifications along with requests for “[no-action](#)” letters stating that SEC staff will not recommend an enforcement action if a company omits a proposal. While no-action letters are [not legally binding](#) on any party, for much of Rule 14a-8’s history, the no-action process played a key practical [role](#) in determining which proposals proceeded to a shareholder vote.

The shareholder proposal rule has long been a source of debate. The rule’s supporters tout it as a key instrument of [corporate democracy](#) and credit shareholder proposals with spurring valuable corporate governance [reforms](#). Rule 14a-8’s detractors argue that many proposals seek to advance social and political agendas unrelated to shareholder value, creating costly [distractions](#) for corporate management. Other criticisms focus on the SEC’s role in the proposal process, with some commentators [arguing](#) that Rule 14a-8 makes the SEC the arbiter of matters that should be determined by state law and private ordering.

Speaking in his personal capacity, SEC Chairman Paul Atkins has [expressed](#) support for some of these critiques. During his tenure, the SEC has withdrawn from its traditional role in the proposal process. In November 2025, the SEC’s Division of Corporation Finance (Corp Fin) [announced](#) that it would not respond substantively to Rule 14a-8 no-action requests during the 2025-2026 proxy season, except for requests seeking to exclude proposals as improper subjects for shareholder action under governing state law (one of the 13 substantive exclusions mentioned earlier). In August 2026, Corp Fin [expanded](#) this policy and announced that it would discontinue responding to Rule 14a-8 no-action requests entirely.

The SEC's retreat from the Rule 14a-8 no-action process has coincided with discussion of whether states and companies can adopt restrictions on shareholder proposals beyond those in Rule 14a-8. In an [October 2025 speech](#), Chairman Atkins said that Rule 14a-8's "procedural bases for exclusion" are default rules that apply only if states and companies decline to establish their own standards. Relying on similar premises, some commentators have [argued](#) that federal law permits states and companies to adopt substantive limits on shareholder proposals that are stricter than those in Rule 14a-8.

There is little case law addressing these issues. Texas—which [allows](#) public companies to opt into procedural requirements for shareholder proposals that are stricter than those in Rule 14a-8—is the [only state](#) to have adopted legislation addressing shareholder proposals. While some companies have opted into these requirements, the SEC says that it is [unaware](#) of any companies that have adopted their own proposal frameworks in their governing documents.

The SEC's Proposed Rule

Proposed Rescission of Rule 14a-8

The SEC's proposed rule would [rescind](#) Rule 14a-8, leaving shareholder proposal issues to states and, if permitted by state law, companies. In its release, the SEC [argues](#) that Rule 14a-8 exceeds its statutory authority under Section 14(a) of the Exchange Act and that independent policy reasons justify rescission.

In arguing that Rule 14a-8 exceeds its statutory authority, the SEC [contends](#) that Section 14(a) of the Exchange Act authorizes regulations of the manner in which proxy solicitation is conducted and the information that soliciting parties must disclose to shareholders—not the scope of shareholder voting rights, which are determined by state law. Rule 14a-8, the SEC [says](#), has come to operate not as a procedural mechanism to facilitate shareholders' state law rights, but as "a substantive Federal overlay that improperly intrudes into matters of State law" by dictating when companies must include shareholder proposals in their proxy materials. In the SEC's view, this intrusion [results](#) in part from Rule 14a-8's substantive exclusions (some of which are not derived from state law) and the rule's presumption that precatory proposals are proper under state law despite an absence of explicit legal authority for that proposition. The SEC also [argues](#) that Rule 14a-8's "overall structure"—including its procedural and eligibility requirements, which are not grounded in state law—confirms the rule's function as "a de facto Federal standard for shareholder voting rights."

Setting aside the question of legal authority, the SEC adds that independent [policy reasons](#) justify rescinding Rule 14a-8. The SEC [maintains](#) that many of Rule 14a-8's original justifications have not been substantiated or are less compelling today. Those justifications [included](#) a belief that it was inexpensive for companies to include proposals in their proxy materials; that many proposals were already supported by management or had received meaningful shareholder support; that overall proposal volume was low; and that shareholders' state law proposal rights were reasonably clear. The SEC [contends](#) that reviewing and evaluating proposals imposes nontrivial costs on companies (which are ultimately borne by shareholders), that a small percentage of proposals receive majority support, that the volume of proposals has increased significantly, and that state law is often unclear or silent as to the scope of shareholders' proposal rights.

The SEC also [argues](#) that Rule 14a-8 has had negative unintended consequences. First, the SEC [says](#) that proponents sometimes submit proposals in an attempt to gain leverage in negotiations with company management or to secure private benefits from such negotiations—a practice that is inconsistent with Rule 14a-8's purpose. Second, the SEC [contends](#) that Rule 14a-8 places it in the position of making judgments about state law that are best left to state legislatures, state courts, and (where permissible) companies themselves. Third, the SEC [maintains](#) that Rule 14a-8 has inhibited the development of state

law and private ordering by encouraging companies and shareholders to look to the SEC to resolve proposal disputes.

The SEC [argues](#) that retaining Rule 14a-8 in any form would be unwarranted and unlikely to avoid unintended consequences. Even a version of the rule that attempted to defer entirely to state law, the SEC [reasons](#), would need to include a default rule addressing whether proposals must be included in company proxy materials and identify the necessary steps to opt out of that default. In the SEC's view, such a rule would necessarily [advantage](#) either proposal proponents or companies and continue to entangle the SEC in issues that should be resolved based on state law and private ordering.

While the SEC proposes rescission of Rule 14a-8, its notice of proposed rulemaking (NPRM) [invites](#) comments on reliance interests that may have developed around the rule and alternatives to complete rescission that would fall within the agency's authority.

Proposed Changes Involving Discretionary Voting Authority

As discussed, [Rule 14a-8](#) requires companies subject to the SEC's proxy rules to include qualifying shareholder proposals in company proxy materials, allowing the proponents of such proposals to avoid the expenses that would accompany dissemination of their own proxy materials. While independent solicitations on behalf of shareholder proposals are much [rarer](#) than Rule 14a-8 submissions, they remain an option for proposal proponents. If the SEC rescinds Rule 14a-8, independent solicitations on behalf of shareholder proposals may become more common.

If a shareholder makes an independent solicitation for a proposal, a company can obtain voting authority with respect to the proposal from shareholders in [two ways](#). One option is for the company to [include](#) the proposal in its proxy materials and receive instructions as to how to vote on the proposal from shareholders who return the company's proxy card. Alternatively, in limited circumstances, a company can [omit](#) the proposal from its proxy materials and seek discretionary voting authority if it includes a brief description of the nature of the proposal and how it intends to vote. Under [Rule 14a-4\(c\)\(2\)](#), however, a company cannot exercise discretionary voting authority for proposals submitted outside the Rule 14a-8 process if the proponent (1) timely provides the company with a statement that the proponent intends to deliver proxy materials to holders of at least the percentage of voting shares required to carry the proposal, (2) includes the same statement in its own proxy materials, and (3) provides evidence to the company that it has in fact solicited holders of at least the requisite percentage of voting shares.

In its NPRM, the SEC [says](#) that this framework may result in companies feeling compelled to include shareholder proposals in their proxy materials even when they are not required to do so. If a company cannot exercise discretionary voting authority because a proponent has complied with the conditions outlined above, the company would face a [choice](#) between (1) including the proposal in its proxy materials, and (2) not soliciting votes with respect to the proposal on its proxy card. If a company opts for the latter route, proponents may [obtain](#) sufficient votes to pass their proposals, particularly if the company employs a majority-of-votes-cast (as opposed to a majority-of-shares-outstanding) voting standard. Facing this possibility, companies may opt to [include](#) proposals in their proxy materials, allowing proponents to benefit from company solicitation efforts without relying on Rule 14a-8.

The SEC [contends](#) that the likelihood that companies will include such proposals in their proxy materials has increased following the agency's adoption of the [universal proxy rules](#) in 2021. The universal proxy rules [allow](#) shareholders conducting independent solicitations for proposals to include company director nominees on their proxy cards even if the shareholders do not present their own competing nominees. In these circumstances, if a company omits a proposal from its proxy materials, shareholders may be more [likely](#) to use the proponent's proxy card (which would allow them to vote on both the proposal and director nominees) than the company's card (which would not allow them to vote on the proposal). The company may thus include the proposal in its proxy materials to avoid this outcome. The SEC [observes](#)

that there have been “at least three” of these “zero-slate” proxy contests since the adoption of the universal proxy rules and that, in each of those cases, the company included the shareholder proposals in its proxy materials.

To address the pressure that companies may feel to include shareholder proposals submitted outside Rule 14a-8 in their proxy materials, the SEC [proposes](#) expanding the circumstances in which companies may obtain discretionary voting authority with respect to such proposals. Under the SEC’s proposed rule, a proponent’s solicitation of a sufficient number of shares to carry a proposal would no longer [preclude](#) the company from obtaining discretionary voting authority with respect to the proposal. Instead, a company could [exercise](#) such authority if it (1) included in its proxy statement a brief description of the proposal and how the company intends to vote, (2) included on its proxy card a cross-reference to the location of this disclosure in its proxy statement, and (3) included on the proxy card a check box that, if checked by a shareholder, would prevent the company from exercising its discretion.

The SEC [maintains](#) that this proposed change is “aligned with” the agency’s proposed rescission of Rule 14a-8 because retaining Rule 14a-4(c)(2) in its current form could effectively perpetuate the ability of proposal proponents to have their proposals included in company proxy materials even in the absence of Rule 14a-8. The NPRM also [says](#) that several of the considerations discussed above constitute independent justifications for the proposed amendments to Rule 14a-4(c) even if Rule 14a-8 is not rescinded.

Analysis and Considerations for Congress

The SEC’s conclusion that Rule 14a-8 exceeds its legal authority raises difficult questions about the distinction between substantive regulations of corporate governance and regulations of the proxy solicitation process. In its 1990 decision in *Business Roundtable v. SEC*, the U.S. Court of Appeals for the D.C. Circuit relied on this distinction to hold that Section 14(a) of the Exchange Act did not empower the SEC to prohibit national securities exchanges from listing the stock of companies that reduced the per-share voting rights of existing shareholders. The court [reasoned](#) that Congress’s “central concern” in enacting Section 14(a) was ensuring that solicited shareholders receive adequate disclosures. Based on this reading, the court [held](#) that Section 14(a) does not authorize the SEC to “step beyond control of voting procedure and into the distribution of voting power.”

While *Business Roundtable* emphasized that Section 14(a) is principally concerned with disclosure, it [cautioned](#) that disclosure is not “necessarily the sole subject” of that provision. In offering this caveat, the D.C. Circuit [acknowledged](#) a provision in the proxy rules requiring proxies listing director nominees to provide a mechanism for shareholders to withhold authority to vote for each nominee individually. This provision, the court [explained](#), “may lie in a murky area between substance and procedure” and “may be supportable as a control over management’s power to set the voting agenda, or, slightly more broadly, voting procedures.” Since *Business Roundtable*, the SEC has adopted other proxy regulations that may straddle the boundary between substance and procedure, including a rule prohibiting proxies from [bundling](#) separate matters and the [universal proxy rules](#), which (subject to various conditions) require companies to list the director nominees of dissident shareholders on their proxy cards.

Rule 14a-8 may likewise be difficult to classify as substantive or procedural. At times, the SEC has appeared to [characterize](#) Rule 14a-8 as a regulation of disclosure and the proxy solicitation process that requires companies to include shareholder proposals in their proxy materials only if proponents have an independent state law right to present the proposals. Chairman Atkins offered a similar interpretation in an October 2025 speech, [contending](#) that “the notion that Rule 14a-8 gives shareholders the right to present precatory proposals . . . when state law does not” is not supported by the rule’s text or history.

The SEC [anticipates](#) this objection in its NPRM. It responds by [arguing](#) that, with proxy voting replacing in-person voting as the “primary means of corporate suffrage,” rules regarding the types of proposals that must be included in company proxy materials effectively amount to regulations of substantive voting rights. The SEC attempts to [distinguish](#) Rule 14a-8 from the universal proxy rules based on the explicit state law right of shareholders to elect directors. In contrast, the SEC [contends](#), state law is far less clear on the issue of shareholder proposal rights, meaning Rule 14a-8 functions as a substantive regulation of voting rights in a way that the universal proxy rules do not. It is uncertain whether a court would agree that the relative clarity of state law on these issues is dispositive in applying the substance/procedure distinction.

Congress has the power to modify or clarify the SEC’s authority with respect to shareholder proposals. Several bills have aimed to [narrow](#) the scope of Rule 14a-8; others would [repeal](#) it altogether. Alternatively, Congress could codify the rule and direct the SEC to resume its practice of responding to no-action requests involving shareholder proposals. Congress could also await the outcome of the SEC’s rulemaking and, if Rule 14a-8 is rescinded, evaluate how states and companies respond.

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