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From No More Rule 14a-8 No-Action Letters to No Rule 14a-8 and More? SEC Proposes Fundamental Overhaul of Shareholder Proposal and Proxy Solicitation Process

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By Ryan Roman, Christina C. Russo, and Tara A. Jackson

Just one month after the SEC's Division of Corporation Finance discontinued its longstanding practice of responding to no-action requests under Exchange Act Rule 14a-8, which we discussed here, the Securities and Exchange Commission (the SEC or Commission) has proposed a considerably more fundamental change to the shareholder proposal framework: rescinding Rule 14a-8 entirely. In addition, the SEC issued a second proposal intended to modernize various proxy solicitation mechanics to reduce compliance burdens. SEC Chairman Paul S. Atkins described these proposals as reflecting two of his "highest regulatory priorities": ensuring that the Commission does not improperly intrude into state corporate law when applying the federal securities laws and updating the rules to reflect developments in market practice and technology. Together, these proposals represent the most significant rethinking of the federal proxy rules in decades.

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Proposed Rescission of Rule 14a-8 and Amendments to Rule 14a-4(c)

Release No. 34-106383 proposes the complete rescission of Rule 14a-8, which, since 1942, has required public companies to include qualifying shareholder proposals in their proxy materials. The SEC concluded that the rule exceeds its statutory authority under Section 14(a) of the Exchange Act, which authorizes regulation of proxy solicitations but not the substantive scope of matters on which shareholders may vote. The Commission further argued that the rule's original policy justifications have not been substantiated, that it created implied federal preemption discouraging states from developing their own shareholder-proposal regimes, and that the mechanism has increasingly been used to advance political or special-interest causes rather than core economic concerns.

If adopted, shareholder proposal rights would be governed entirely by state corporate law and individual company bylaws rather than a uniform federal standard. Notably, state law generally permits — but does not require — companies to adopt bylaw provisions addressing shareholder proposals, and many companies' bylaws do not currently include such provisions.

The proposal also includes amendments to Rule 14a-4(c) that would expand companies' discretionary proxy voting authority on shareholder proposals not included in proxy materials, while allowing individual shareholders to opt out of that authority for their own shares.

Proxy Solicitation Modernization Proposals

Release No. 33-11439, issued the same day, proposes five principal amendments designed to modernize proxy solicitation procedures:

- **Eliminate separate annual report delivery** for companies with a Form 10-K on file with the SEC, and eliminate the stock performance graph requirement in annual reports for all companies other than investment companies.

- **Remove the 20-business-day delivery deadline** for proxy statements incorporating information by reference, reflecting the universal availability of filings on EDGAR.
- **Rescind the Notice of Exempt Solicitation requirement** (Rule 14a-6(g)), eliminating both mandatory and voluntary filings.
- **Shorten the minimum broker search period** from 20 to 5 business days.
- **Add filing representative contact information** and make related technical amendments.

The SEC framed these changes as reducing compliance costs without sacrificing meaningful investor protections, reflecting advances in electronic filing and communications.

Likely Timeline

Each proposal carries a 60-day public comment period following publication in the Federal Register. After the comment period closes, the SEC must review submissions and potentially revise the proposals before adopting final rules. Given the significance of the Rule 14a-8 rescission and the likelihood of vigorous public comment — and potential legal challenges — final rules are unlikely before mid-2027 at the earliest. Until final rules are adopted, all existing proxy solicitation requirements, including Rule 14a-8, remain fully in effect.

Practice Pointers for Officers and Directors

- **Review existing bylaw provisions** addressing shareholder proposals, advance notice requirements, and meeting procedures. Assess whether amendments are needed to address a post-Rule 14a-8 environment.

- **Continue full compliance** with all current proxy rules for the 2026–2027 proxy season. The proposed rules have no immediate legal effect.
- **Evaluate shareholder engagement strategies** independent of the Rule 14a-8 framework to maintain constructive dialogue with investors.
- **Assess investor relations practices** in light of the potential elimination of the separate annual report delivery requirement, including whether to continue producing such reports voluntarily.
- **Evaluate proxy filing workflows** for potential cost savings from the modernization amendments.
- **Consider submitting comment letters** during the comment period to inform the final rulemaking.
- **Monitor the rulemaking timeline closely**, including the possibility of legal challenges to any final rules.

Conclusion

These proposals signal a potentially transformative shift in the balance between federal and state regulation of shareholder participation. While the final outcome remains uncertain, the direction is clear: officers and directors should begin evaluating their governance frameworks now so they are prepared to act decisively when the regulatory landscape becomes settled.