SEC Proposes to Rescind Shareholder Proposal Rule and Modernize Proxy Solicitation Rules

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The Securities and Exchange Commission ("SEC") issued two proposing releases on Sept. 16, 2026, that, if adopted, would significantly alter the federal rules governing shareholder proposals and proxy solicitation. The first, "Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4," would eliminate the longstanding federal requirement for companies to include qualifying shareholder proposals in their proxy materials. The second, "Proxy Solicitation Modernization," would streamline the delivery, filing and timing requirements in the proxy solicitation process.

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

Rule 14a-8 requires public companies to include eligible shareholder proposals in their proxy materials for annual and special meetings, subject to specified procedural and substantive requirements.

The SEC has proposed to rescind the rule in its entirety. In a press release announcing the proposal, the SEC explained that Rule 14a-8 "exceeds the scope of the [SEC's] statutory authority" and that rescinding Rule 14a-8 "would leave determinations about the role of shareholder proposals to state law and company governing documents."

Further, the SEC's press release noted that "many of the justifications for adopting the rule either have not been substantiated in practice or are less compelling today, and the rule has had unintended consequences, including the implication of federal preemption that may have discouraged states from developing their own laws governing shareholder proposals."

In addition to the rescission of Rule 14a-8, the SEC proposed amendments to Rule 14a-4(c), which establishes when companies may vote proxies they receive on shareholder proposals that are not included in the company's proxy materials. Currently, a company cannot exercise discretionary voting authority over a timely submitted shareholder proposal if the proponent files separate proxy materials and satisfies the solicitation requirements. The proposed amendment would permit a company to exercise discretionary voting authority over such a proposal despite the proponent's separate solicitation, if the company includes: (i) a brief description of the proposal in its proxy statement and explains how it intends to exercise its discretionary voting authority; (ii) a cross-reference on its proxy card directing shareholders to that disclosure; and (iii) a checkbox on its proxy card that, if selected, would prevent the company from exercising discretionary voting with respect to that shareholder's shares.

Modernization of the Proxy Solicitation Process

In a separate proposal, the SEC proposed amendments to modernize several federal proxy solicitation rules in response to advances in electronic filing and shareholder communication. These amendments are intended to remove outdated and burdensome compliance requirements and would:

- **Eliminate Proxy Annual Report Delivery Requirements:** Rule 14a-3 currently requires companies to deliver a separate annual report to security holders along with proxy materials for meetings where directors are elected, even where companies have already filed their Form 10-K for the applicable calendar year. Under the SEC proposal, a company would satisfy this requirement by having its most recent Form 10-K available on EDGAR. In addition, the stock performance graph requirement under Item 201(e) of Regulation S-K would also be eliminated for all companies except investment companies.
- **Eliminate the 20-Business-Day Advance Delivery Requirement for Proxy Materials That Incorporate Information by Reference:** Under the current proxy solicitation rules, proxy statements filed on Schedule 14A and prospectuses filed on Forms S-4 or F-4 that incorporate certain information by reference must be sent to shareholders at least 20 business days before the meeting. The SEC proposed eliminating this requirement, noting that the incorporated information is generally available electronically through EDGAR.
- **Eliminate Voluntary Notices of Exempt Solicitation and the Requirement to File Notices of Exempt Solicitation:** Rule 14a-6(g), which requires shareholders holding more than $5 million in a company's securities to file a Notice of Exempt Solicitation with the SEC when conducting certain written solicitations, would be rescinded, and voluntary notices would be eliminated.
- **Shorten the Broker Search Period from 20 Business Days to Five Business Days Before the Record Date:** The SEC proposal would reduce the minimum lead time for companies to conduct a broker search used to identify beneficial owners and coordinate proxy-material distribution from 20 business days to five business days before the record date of annual and special meetings.
- **Require Proxy Statement Cover Pages to Include Contact Information for Company Representatives:** The SEC proposal would require that the cover pages of Schedules 14A proxy statements and Schedule 14C information statements include the contact information (name, address, email and telephone number) for a company representative designated to answer questions about the filing.

Key Considerations

The SEC's proposed rescission of Rule 14a-8 would leave the regulation of shareholder proposals to state law and company governing documents. Accordingly, if Rule 14a-8 is ultimately rescinded, it will be critical for companies to understand the shareholder proposal framework applicable in their state of incorporation and under their governing documents. As we previously discussed, Texas has adopted a statutory framework to address shareholder proposals. Section 21.373 of the Texas Business Organizations Code permits nationally listed corporations that affirmatively elect to be governed by that provision to impose heightened eligibility and solicitation requirements on shareholder proponents.

For states that have not yet developed comprehensive shareholder proposal statutes, the proposed rescission of Rule 14a-8 may accelerate legislative activity, as state legislatures move to fill the regulatory gap. In addition, courts may play an increasingly prominent role in resolving disputes over the scope and enforceability of shareholder proposal rights under state corporate law and company governing documents, particularly in states where the existing statutory and common-law frameworks have not been tested in this context.

Looking Ahead

Both proposals are subject to a 60-day public comment period, after which time, the proposals may be further revised. Given the significance of the proposed rescission of Rule 14a-8 and the scope of the proposed proxy solicitation modernization amendments, it is likely that these proposals will draw substantial public comment. Companies should be mindful that, despite the proposals, Rule 14a-8 and the current proxy solicitation rules currently remain in effect for the upcoming proxy season. Moreover, as discussed in our client alert published earlier this month, the SEC will not issue no-action or no-objection responses to shareholder proposal exclusion requests. Companies must therefore continue to comply with the existing requirements and must independently determine whether a proposal may be properly excluded, in the absence of SEC staff guidance.

For more information about the SEC's proposed rule changes and their implications for your company, please contact a member of the Haynes Boone Capital Markets and Securities Practice Group.