FAQs – Rescission of Rule 14a-8 and Proxy Solicitation Reforms

Q: How should public companies plan for the upcoming 2027 proxy season in light of these proposals?

A: The current proxy rules remain in effect unless and until the proposals become effective. In the interim, companies should continue to comply with existing proxy rules, including Rule 14a-8, but also conduct contingency planning in the event the proposals are adopted and effective for the 2027 proxy season.

Q: Didn't the SEC staff already stop issuing Rule 14a-8 no-action letters?

A: Yes. The Division of Corporation Finance announced on August 14, 2026, that it would discontinue responding to Rule 14a-8 no-action requests. While the announcement affects the staff process for evaluating exclusions, it did not itself rescind Rule 14a-8 or eliminate companies' obligations under the rule.

Q: If Rule 14a-8 is rescinded, will shareholders lose the ability to make proposals?

A: Not necessarily. The Rule 14a-8 Proposal would eliminate the federal mechanism requiring inclusion of qualifying proposals in company proxy materials. Shareholders could retain proposal rights under applicable state law and company governing documents and could conduct separate proxy solicitations in support of proposals they are entitled to present.

Q: Would companies be able to decide for themselves which shareholder proposals to include?

A: This will depend on applicable state law and the company's governing documents. The Rule 14a-8 Proposal is designed to remove the substantive question of shareholder proposal rights from federal regulation to state regulation.

Q: Should companies amend their bylaws now?

A: Generally, there is no immediate need to amend bylaws solely because of the Rule 14a-8 Proposal. Companies should, however, be prepared to amend bylaws and other applicable governing documents and otherwise be in a position to react promptly in the event the proposals are adopted and/or in response to changes in applicable law. In that regard, companies should review existing provisions concerning shareholder proposals, advance notice provisions, and meeting procedures and consider changes to ensure these provisions are sufficiently robust and compliant with applicable law, taking into account governance considerations.

Q: What is changing under Rule 14a-4?

A: The Rule 14a-8 Proposal would allow companies greater discretion to vote proxies they receive on shareholder proposals that will be presented at the meeting but are omitted from the company proxy card. To rely on that authority, the company generally would disclose the proposal and its intended voting position, cross-reference that disclosure on the proxy card, and provide a check box allowing shareholders to prohibit the company from exercising discretionary authority over omitted proposals.

Q: Could a shareholder still solicit proxies for its own proposal?

A: Yes. A shareholder proponent could conduct a separate solicitation and use its own proxy card for a proposal that it is entitled to present. The proposed Rule 14a-4 amendments are intended to address how the company may vote proxies it receives when the proposal is not included on the company's proxy card.

Q: What happens to the current Rule 14a-8 deadline in proxy statements?

A: If Rule 14a-8 is rescinded, the proxy statement disclosure would instead focus on any applicable deadline under state or foreign law or the company's governing documents for proposals sought to be included in company proxy materials. The separate Rule 14a-4 deadline for proposals not included on the company's card also would be revised so that an applicable advance notice provision or state or foreign law deadline generally controls.

Q: Would companies still be required to send shareholders an annual report with proxy materials?

A: No, if the Proxy Solicitation Proposal is adopted as proposed. A filed Form 10-K generally would satisfy the relevant Rule 14a-3 requirement. Companies could nevertheless continue to distribute glossy annual reports or other shareholder communications voluntarily.

Q: Would eliminating the annual report requirement change Form 10-K filing or disclosure obligations?

A: No. Companies would continue to file Form 10-K as required. The Proxy Solicitation Proposal addresses the separate requirement to deliver an annual report to security holders and related annual report disclosure requirements.

Q: What is the practical impact of eliminating the 20-business-day incorporation by reference period?

A: Eliminating this requirement could provide more flexibility in scheduling shareholder meetings and transaction votes where proxy materials incorporate information by reference. The Proxy Solicitation Proposal would eliminate a federal timing constraint that can currently require materials to be sent at least 20 business days before the meeting.

Q: What is changing with the broker search period?

A: The minimum period for commencing the broker search before the record date would decrease from 20 business days to five business days. If adopted, companies could potentially set record dates and move through proxy or transaction timelines more quickly, although they would still need to account for other legal, exchange, governing document, and operational requirements.

Q: Would shareholders still file Notices of Exempt Solicitation?

A: The Proxy Solicitation Proposal would rescind Rule 14a-6(g) and eliminate the federal Notice of Exempt Solicitation filing requirement. Shareholders could still make communications that qualify for the underlying exemption and could publicize those communications through other channels.

Q: What should public companies do now?

A: Companies should continue to comply with the existing rules while beginning a targeted review of governing documents, shareholder proposal procedures, advance notice provisions, proxy card and voting-platform capabilities, annual report practices, and annual meeting timelines. Companies also should monitor state law developments.

Q: If Rule 14a-8 is rescinded, how could the shift to state law and company governing documents change the way public companies manage shareholder proposals and engagement?

A: If Rule 14a-8 is rescinded, companies would need to examine state law and their governing documents more closely to determine how shareholder proposals are handled. This could lead to greater variation among companies and jurisdictions and could make advance notice provisions and other procedural requirements more significant. It may also put a premium on early engagement with shareholders, particularly as the state law framework develops.

Q: For shareholder proposal proponents, would the new framework make it easier or harder to get issues before shareholders?

A: The impact could vary. Rule 14a-8 currently provides a relatively standardized federal pathway for seeking inclusion of a proposal in a company's proxy materials. Without it, shareholders would need to navigate differing state law, judicial interpretations, and company-specific requirements, which could make the process more complex in some cases. We may also see further development at the state level—including legislative or judicial—regarding permissible company procedures, including advance notice and other bylaw provisions.

Q: How would a shareholder's vote be treated if the shareholder votes on both the company's and the proponent's proxy card?

A: Under the proposed framework, a shareholder could vote on the company's proxy card and separately vote on the proponent's proxy card, assuming the applicable state law generally is capable of honoring non-conflicting instructions across multiple cards. The Rule 14a-8 Proposal notes that proxy service providers' electronic voting platforms should be able to accommodate the submission of multiple proxy cards by the same shareholder. Where a later-dated proxy card conflicts with an earlier-dated card, the later card generally would control under state law.

Q: Could the shorter broker search period affect pending or planned M&A transactions?

A: Potentially. Under the current rules, the 20-business-day broker search period can extend the time needed to consummate a transaction requiring shareholder approval because the record date may not be set earlier than 20 business days after the broker search begins. Reducing that period to five business days, together with elimination of the 20-business-day incorporation by reference timing requirement, could compress the timeline between proxy filing and shareholder vote. Companies with pending transactions should monitor the rulemaking but should not adjust current timelines until any final rule becomes effective.

Q: Are legal challenges to the rescission of Rule 14a-8 expected?

A: Yes. Legal challenges to the adoption of any rule changes are not uncommon and should be expected given the significant reliance interests that have developed around the existing process. Litigation could delay the effective date of any final rule, potentially extending the current framework beyond the timeline contemplated by the SEC. Companies should factor the possibility of legal challenges into their planning and should not assume that the timeline for rescission is certain.

Q: Has there been any activity at the state law level in response to the Rule 14a-8 Proposal?

A: Yes. Shortly after the issuance of the SEC's proposals, the Council of the Corporation Law Section of the Delaware State Bar Association announced that it is considering the potential rescission of Rule 14a-8 as part of its annual review of Delaware's corporate statutes. The Council indicated that the review could result in proposed amendments to the Delaware General Corporation Law, though any such amendments would need to follow the Council's consensus-based process and the Delaware General Assembly's legislative calendar. If the DGCL is amended, the changes may address a number of questions that Rule 14a-8 has historically addressed at the federal level, such as the scope of permissible shareholder proposals, applicable ownership or procedural requirements for proponents, and the circumstances under which a company may or must include a proposal in its proxy materials. Other states may take different approaches. For example, Texas has already enacted legislation permitting qualifying corporations to adopt governing document provisions imposing conditions on shareholder proposal submissions.

Q: If a shareholder checks the opt-out box on the company's proxy card, how are that shareholder's shares treated on omitted proposals?

A: Checking the opt-out box prevents the company from exercising discretionary voting authority on omitted proposals with respect to that shareholder's shares only—it does not constitute a vote on those proposals and does not affect other shareholders' proxies. Under the proposed framework, shares for which a shareholder has opted out of discretionary authority would not be voted on omitted proposals, and the Rule 14a-8 Proposal suggests those shares could be treated in a manner analogous to broker non-votes for purposes of determining the outcome. The practical effect would depend on the voting standard applicable to the proposal under the company's governing documents and state law (and potentially under stock exchange rules). Companies should consult with their proxy solicitors and legal advisors to assess how the opt-out mechanism would interact with their specific voting requirements.