SEC Proposes Sweeping Changes to Proxy Solicitation Rules and Shareholder Proposal Framework

September 22, 2026

On September 16, 2026, the Securities and Exchange Commission (the “SEC” or “Commission”) proposed two significant rule changes affecting the proxy solicitation process under the Securities Exchange Act of 1934 (the “Exchange Act”). The first set of proposals (Release No. 33-11439) seek to modernize several longstanding proxy solicitation requirements, reflecting technological advances that have rendered certain procedural requirements obsolete. The second proposal (Release No. 34-106383) would rescind Rule 14a-8 under the Exchange Act, which requires companies to include qualifying shareholder proposals in their proxy materials, and would amend Rule 14a-4 to expand the circumstances under which companies may exercise discretionary voting authority. Taken together, these proposals represent a fundamental reexamination of the federal proxy framework and would have significant implications for public companies, registered investment companies (“investment companies”) under the Investment Company Act of 1940 (the “Investment Company Act”), and their shareholders. Comments on both proposals are due 60 days after Federal Register publication.

Proxy Solicitation Modernization

The SEC proposed amendments to modernize several rules governing proxy solicitations with the aims of updating them for technological and/or market developments since adoption or last amendment of the respective rule, simplifying compliance for registrants and reducing investor confusion. In particular, the proposal would make the following changes:

Elimination of the annual report delivery requirement. Under current Rule 14a-3(b), if a proxy solicitation relates to an annual meeting, or special meeting in lieu of an annual meeting, at which directors are to be elected, the proxy statement must be accompanied with or preceded by an annual report to security holders. The Commission proposed to amend Rule 14a-3 to eliminate the current delivery requirement for annual reports to security holders. Rather, the proposed amendments would require only that the registrant’s Form 10-K be filed on the Commission’s Electronic Data Gathering, Analysis, and Retrieval system (“EDGAR”), or that the annual report be furnished on EDGAR, prior to the proxy statement’s distribution. Further, the Commission also proposed to remove certain requirements of the rule to eliminate annual report disclosure that exceeds the requirements of Form 10-K, which it believes will reduce costs for registrants and investor confusion by eliminating redundancies.

Elimination of the twenty business day delivery deadline for incorporated documents. Currently, Note D.3 to Schedule 14A requires registrants to send proxy statements at least twenty business days before the meeting date, if such proxy statement incorporates a document or a portion of a document (other than an annual report to security holders) by reference. Additionally, Forms S-4 and F-4 contain a similar twenty business day period requirement for delivery of a prospectus prior to a meeting of security holders. These requirements were originally designed to allow for delivery of the documents incorporated by reference to be delivered to security holders on a timely basis. The SEC now is proposing to remove these requirements, reasoning that incorporated documents are now publicly available on EDGAR and can be accessed through hyperlinks, thereby mitigating the original delivery concern.

Rescission of the Notice of Exempt Solicitation requirement. Certain types of solicitations are exempt from most of the federal proxy rules, such as solicitations by persons who do not directly or indirectly seek authority to act as proxy. Rule 14a-6(g) currently requires shareholders beneficially owning more than $5 million of a registrant’s securities to file a Notice of Exempt Solicitation on EDGAR for written, non-public exempt solicitations, which includes as an exhibit all written soliciting material sent to any security holder. The SEC now proposes to eliminate this obligation by rescinding Rule 14a-6(g), reasoning that it believes that Rule 14a-6(g) no longer plays a meaningful role in alerting shareholders and registrants to relevant exempt solicitations conducted by large shareholders.

Shortened minimum broker search period. Rule 14a-13 currently requires registrants to initiate broker searches at least twenty business days before the record date of a meeting. The proposed amendments would reduce this period to five business days, reflecting technological advancements that allow searches to be completed in as few as three days. The Commission noted that oftentimes, the current broker search period may result in increased costs for registrants and their counterparties, and introduces additional uncertainty regarding certain transactions, and the proposed amendments are intended to mitigate these issues and reflect the current capabilities of technology.

Other amendments. The proposal would also require contact information for a representative who can respond to questions or comments be included on the cover page of a proxy statement or information statement and would eliminate the stock performance graph required by Item 201(e) of Regulation S-K for all registrants other than investment companies.

Investment company considerations. Certain aspects of the modernization proposal are especially noteworthy for investment companies. First, the elimination of the stock performance graph required by Item 201(e) of Regulation S-K would not extend to investment companies (including business development companies), so such companies would maintain parity with other investment companies subject to similar performance graph requirements. Second, the SEC has specifically requested comment on whether the proposed changes to the minimum broker search period would have a particularized impact on investment company solicitations, given that investment companies often have large, dispersed, retail-oriented shareholder bases and are frequently organized in multiple classes and series. Additionally, many investment companies do not hold shareholder meetings annually, and their beneficial-owner records may be more complex than those of operating companies. These characteristics could make it more challenging for brokers and banks to compile accurate beneficial owner information within a shortened response period. The SEC has indicated it could consider retaining longer response periods, or a different minimum broker search period, for investment company solicitations.

Rescission of Rule 14a-8 and Amendments to Rule 14a-4

Currently, federal proxy rules provide two methods for shareholders to present proposals for consideration at a shareholder meeting: (i) a shareholder may seek inclusion of its proposal in the company's proxy materials under Rule 14a-8 under the Exchange Act if it meets the procedural and substantive requirements thereof; or (ii) a shareholder may submit its proposal to the company pursuant to the requirements of a company's governing documents and conduct its own proxy solicitation for its proposal, at the shareholder's expense, using its own proxy materials. The proposed rules would rescind Rule 14a-8, leaving determinations of inclusion of a shareholder proposal on a company's proxy materials to relevant state law and company governing documents, and amend Rule 14a-4(c) under the Exchange Act to expand the circumstances under which a company may exercise discretionary voting authority on proposals presented at a shareholder meeting, but not included in the company's proxy materials, for any proxies it receives. Each of these is discussed in further detail below.

Basis for rescission of Rule 14a-8. When Rule 14a-8 was adopted, then-Chairman Purcell explained that its purpose was to facilitate shareholders' ability under state law to present certain proposals for consideration at an annual or special meeting and facilitate the ability of all shareholders to consider and vote by proxy on such proposals. However, in the proposing release, the Commission noted that it has amended Rule 14a-8 multiple times in ways that incrementally increased the Commission's role in defining and interpreting standards that implicate core state law corporate governance matters. As a result, many commentators have expressed the view that Rule 14a-8 effectively has evolved to function as a federal common law as to what constitutes a proper subject for shareholder action. The SEC reasoned that Rule 14a-8 exceeds the Commission's statutory authority under Section 14(a) of the Exchange Act because it intrudes into matters properly governed by state law, which was not authorized by Congress' grant of authority to the Commission by Section 14 of the Exchange Act. The Commission now takes the position that Section 14(a) authorizes the regulation of the proxy solicitation process (*i.e.*, the manner in which proxies are solicited and the information that must be disclosed) but does not extend to the substantive scope of matters presented for a shareholder vote. The Commission also cited independent policy reasons, including that many of the original justifications for the rule have not been substantiated in practice and the rule has had unintended consequences, including being a vehicle by which interactions between companies and their shareholders are disparately influenced. In light of these considerations, the Commission has proposed to rescind Rule 14a-8.

Proposed amendments to Rule 14a-4(c). The Commission also has proposed to amend Rule 14a-4(c) to expand the circumstances under which a company may exercise discretionary voting authority on shareholder proposals presented at a meeting but not included in the company's proxy materials. 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. Currently, a company may exercise discretionary voting authority at an annual meeting if: (i) timely notice to the company was not given, subject to certain other conditions; or (ii) if timely notice was given, if the company includes in its proxy statement "advice" on the nature of the matter and how the company intends to exercise its discretion to vote on each matter. However, under current Rule 14a-4(c)(2), if a shareholder proponent delivers its own proxy materials to a requisite percentage of holders and meets certain other conditions, a company may not exercise discretionary voting authority.

The proposed amendments seek to provide companies with greater flexibility to seek and obtain discretionary voting authority regarding certain proposals, while simultaneously providing shareholders the means to elect to prevent the company from exercising such authority. The Commission has proposed to amend Rule 14a-4(c)(2) to no longer prohibit a company from exercising discretionary voting authority for timely received shareholder proposals. Under the proposed amendments, a company may exercise discretionary authority on timely received proposals, provided it includes in its proxy statement: (i) a brief description of the matter and the company's intended vote, (ii) a cross-reference on the proxy card to the location of such disclosure in the proxy statement, and (iii) a check box on the proxy card that, if selected by a shareholder, would prevent the company from exercising discretionary authority over that shareholder's shares. This "check box" mechanism is intended to balance expanded company flexibility with individual shareholder control.

Investment company considerations. The proposed rescission of Rule 14a-8 would apply equally to registered investment companies. The proposing release noted that the Investment Company Act provides investment company shareholders with voting rights that are independent of state law, including rights related to changes in fundamental investment policies (Section 13), approval and termination of advisory contracts (Section 15), and certain director elections (Section 16), among others. The proposed rescission would not affect the status or applicability of these statutory voting rights. However, the SEC recognizes that the experiences of investment companies with shareholder proposals differ in some respects from those of operating companies. In particular, investment companies generally receive fewer shareholder proposals than other types of companies and, on average, such proposals receive higher levels of shareholder support. In addition, certain types of investment companies generally do not hold shareholder meetings annually, reducing the likelihood of shareholder proposals in any given year. At the same time, the SEC notes that general costs associated with proxy solicitations may be higher for investment companies because these funds often have diffused, retail-oriented shareholder bases, and obtaining sufficient votes on proxy matters can present challenges in this context. Accordingly, the Commission is also soliciting comment on whether a different approach to shareholder proposals should be taken for investment companies.

The SEC has also noted that the proposed rescission of Rule 14a-8 and amendments to Rule 14a-4(c) could have distinct effects on capital formation by closed-end funds. Proxy contests involving shareholder proposals are more frequent among closed-end funds, with proposals often seeking tender offers, conversion to an open-end structure, liquidation, or other actions intended to address or capture the difference between a fund's market price and its net asset value. The Commission noted that how specifically the proposed rescission and amendments will impact capital formation is uncertain; however, it did note that such actions could reduce the contraction or elimination of existing closed-end funds.

Conclusion

These two proposals, if adopted, would mark a significant shift in the federal proxy regulatory landscape. Investment company boards and advisers should closely monitor both proceedings, including evaluating how the rescission of Rule 14a-8 and amendments to Rule 14a-4 may affect their proxy processes, governance frameworks, and engagement with shareholders, and monitoring developments regarding the proxy solicitation modernization efforts to stay apprised of potential changes in compliance requirements. Comments on both proposals are due 60 days after Federal Register publication, and we expect significant public engagement on these issues.

For More Information

We are available at any time to answer questions, discuss scenarios, and provide guidance. If you would like further information concerning the matters discussed in this article, please contact the following attorneys or the Chapman attorney with whom you regularly work:

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