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Investor Note: Background on Shareholder Proposals

For public companies in the United States, shareholder proposals are governed by Rule 14a-8 (codified at 17 CFR 240.14a-1 *et seq.*) which regulates proxy materials.^[1] This rule was first adopted in 1942 pursuant to Section 14(a) of the Securities Act of 1934, which authorizes the SEC to make proxy rules and regulations “necessary or appropriate in the public interest or for the protection of investors.”

Rule 14a-8



Rule 14a-8 requires companies to include a shareholder’s proposal in the company’s own proxy materials at the company’s expense, provided the shareholder meets specific eligibility requirements. A company can exclude proposals for a variety of reasons, such as ordinary business (the proposal relates to day-to-day management decisions rather than broad policy), economic irrelevance, or because the proposal would require the company to violate applicable law. When a company seeks to exclude a proposal, it may seek a “no action” letter from the SEC staff indicating they will not recommend an adverse action against the company for excluding the proposal.

Current Federal Landscape

In 2025, the SEC suspended review of company requests for no-action relief from shareholder proposals, except those seeking to exclude nonbinding shareholder proposals on the basis that they are not proper under applicable state law. The SEC cited as a reason for the suspension the “current resource and timing considerations following the lengthy government shutdown and the large volume of registration statements and other filings requiring prompt staff attention.” The suspension states that it is only for the current proxy season, October 1, 2025 – September 30, 2026.^[2] However, some expect that the suspension could continue after this.

The idea that nonbinding shareholder proposals may be inconsistent with Delaware was touted by SEC Chair Paul Atkins in his October 9, 2025, speech at the Weinberg Center where he also called for a review of Rule 14a-8.^[3]

In the absence of no-action letters, companies may decide to exclude proposals without reassurance from the SEC, which may increase litigation around the inclusion of proposals. On the other hand, companies may take a more conservative approach and include proposals they otherwise would have sought to exclude using the now-suspended no action process.

The SEC also recently changed its stance on exempt solicitations. Some investors use exempt solicitations to express their views and raise support among investors for shareholder proposals, beyond the 500-word limit imposed by Rule 14a-8. When the shareholder owns \$5 million or more of company stock, they are required to file a Notice of Exempt Solicitation in the SEC’s Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. The majority of the exempt solicitations filed in EDGAR are submissions of those who own \$5 million or less and who are not required to file with the SEC, but

choose to do so voluntarily. In January 2026, the SEC announced that it would start objecting to these voluntary filings.^[4]

Developments in State Law

While the number of companies reincorporating has been modest,^[5] some jurisdictions are changing their laws on shareholder proposals and the federal government has indicated that it intends to defer to state law rather than preempting it.

Most notably, Texas adopted a provision allowing companies to limit shareholder proposals to those filed by shareholders who own \$1 million in shares or hold 3% of voting shares (whichever is less), maintain ownership for at least six months, and solicit holders of at least 67% of the voting power entitled to vote on the proposal.

In comparison, Delaware law neither specifically provides for a right to nonbinding shareholder proposals, nor does it prohibit them. With Chairman Atkins raising questions about whether nonbinding shareholders proposals are proper under Delaware law, this is an area to watch for further developments.^[6]

Meanwhile, for the few companies that have reincorporated to the Cayman Islands, there is no statutory right to shareholder proposals or annual meetings, and those provisions would need to be provided by the company's articles of association.

Historical Timelines

- 1942 (Inception): The SEC first adopted Rule 14a-8 to prevent management from cherry-picking which shareholder concerns were brought to a vote.
- 1970 (Medical Committee Case): A landmark court ruling involving Dow Chemical established that shareholders have the right to raise "significant social policy issues" (such as the production of napalm), even if they touch on "ordinary business."
- 1998 (The Cracker Barrel Reversal): The SEC clarified that employment-related proposals involving social policy (like non-discrimination) should generally be included, reversing an earlier stance that had allowed their exclusion.
- 2020 (Modern Amendments): The SEC updated the rule to increase the dollar amount of stock a shareholder must hold and the length of time they must hold it before filing a proposal.

[1] Thanks to Mike McCauley, State Board of Administration of Florida, for contributions to this piece.

[2] <https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season>

[3] <https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governances-25th-anniversary-gala>

[4] See the update to Question 126.06, as redlined here: <https://www.sec.gov/files/corpfin/proxy-rules-schedules-14a14c-comparison-12606.pdf>

[5] See, for example, The U.S. Reincorporation Race: Who's in the Lead? (2025), <https://insights.issgovernance.com/posts/the-u-s-reincorporation-race-whos-in-the-lead/>

[6] See: <https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governances-25th-anniversary-gala> and Kyle A. Pinder, [The Non-Binding Bind: Reframing Precatory Stockholder Proposals Under Delaware Law](#), 15 MICH. BUS. & ENTREPRENEURIAL L. REV. 1 (2026).