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SEC's New Proposed Rules Impacts Shareholder Proposals and Proxy Solicitations

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On September 16, 2026, the Securities and Exchange Commission (SEC) proposed several changes aimed at shareholder proposals and proxy solicitation modernization. These proposals are the continuation of the SEC's stated goals of reducing regulations for public companies.

Changes to Shareholder Proposals

The first proposal is to rescind Rule14a-8 to revert control of shareholder proposals to the state of incorporation because this rule "exceeds the scope of the Commission's statutory authority." The rule has been in place since the 1940s and was established to give shareholders, that met minimum requirements, the ability to submit proposals to be included in the proxy statement at the company's expense. The SEC's view is that it has not been granted authority by Congress to determine which shareholder proposals should be on a company's proxy ballot and that this decision should be left to the state in which the company is incorporated and a company's governing documents.

The proposed recission would transfer these decisions from a federal institution in the SEC to state control which may create a fragmented state-by-state landscape for ballot access rules. A company's state of incorporation will have increased importance for both the company and shareholders.

Additionally, many companies' bylaws might not currently provide for shareholder proposal inclusion. Companies will need to revisit their governing documents and consider provisions addressing procedural or other standards.

In addition to the recission of Rule 14a-8, the SEC proposed amendments to Rule 14a-4c that would give companies discretionary proxy authority to vote on matters presented at shareholder meetings but not included on the company's proxy card. Currently, the discretionary proxy authority can be used by companies when proposals are submitted in a timely fashion, provided the company offers a summary of the proposal and how it intends to vote in the proxy statement *OR* the company makes it known in its proxy that the proposal was not submitted in a timely fashion. A company cannot exercise discretionary proxy authority if the shareholder:

- Notifies the company in a timely fashion that it will send its own proxy materials to the threshold percentage of voting shares required to have the proposal in the proxy,
- Includes the same statement in its proxy statement, and
- Has evidence that it has solicited the required percentage of shares to carry the proposal.

The SEC is seeking to provide companies with more flexibility to exercise their discretionary voting authority and give shareholders "greater agency" by allowing shareholders to prevent companies from using this authority for shares individually owned (which would require shareholders to check a box on the proxy card stating that they do not give the company this authority).

Changes to Modernize Proxy Solicitation

The SEC also proposed changes to modernize proxy solicitation to reflect the advancement in technology since these rules were initially adopted, including:

- Eliminate the separate annual report if a company already filed a Form 10-K (although companies can still voluntarily deliver an annual report to shareholders as long as it is also submitted on EDGAR).
- Eliminate the stock performance chart for all companies (other than investment, business development and face-amount certificate companies).
- Eliminate the waiting period of at least 20 business days before the meeting date to deliver documents to shareholders incorporated by reference in the proxy statement (Schedule 14A) or prospectus (Forms S-4 and F-4).
- Eliminate the requirement and ability for shareholders who own more than $5 million in shares to submit Notices of Exempt Solicitation.
- Reduce the timeframe for initiating a broker search in connection with a shareholder meeting from 20 business days to 5 business days.

Implications:

The proposals will have to go through a comment period, and it is not anticipated that they will be in effect for the 2027 season. Given the proposed recission of 14a-8, we may see an increase in shareholder proposals this coming proxy season as some shareholders may view this as a "last chance" to get their proposals included for a vote. Additionally, state laws and companies' bylaws will need to adapt to this new guidance.

The move by the SEC to rescind 14a-8 has drawn criticism from activists from both sides of the political aisle, and it is expected that there will be litigation over this rule change. Additionally, it is anticipated that if the proposed recission to rule 14a-8 is implemented, it will change, but not eliminate, shareholder activism.

The proposed elimination of the stock performance graph could also impact the pay-vs-performance disclosure in the proxy statement. The pay-vs-performance disclosure requires companies to compare their total shareholder return (TSR) to that of a peer group. Currently, companies are allowed to use either a peer group disclosed in the proxy statement (either the compensation or TSR peer group) or an industry index or line-of-business index used in the stock performance graph. If the stock performance graph is eliminated, those that currently use an index may have to switch to a peer group disclosed in the proxy statement.

Stay tuned.