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November 20, 2026

Submitted by SEC Webform
Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File No. S7-2026-32: Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4

Dear Ms. Countryman:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I am writing in response to U.S. Securities and Exchange Commission ("SEC" or the "Commission") Release No. 34-106383, *Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4* (the "Proposal"). NASAA opposes the proposed rescission of Rule 14a-8 and the proposed amendments to Rule 14a-4 because the proposed changes would suppress the fundamental rights of shareholders and favor entrenched management. The Commission should withdraw the Proposal.

I. Rule 14a-8 is a valid exercise of the Commission's authority to regulate the proxy solicitation process.

Public companies are owned by their shareholders. As owners, shareholders generally have the right not only to vote on matters presented to them, but also to present their own proposals for a vote.[2] Congress included Section 14(a) in the Securities Exchange Act of 1934 (the "Exchange Act") to ensure that shareholders have the ability to exercise those rights.[3] Among the concerns that led Congress to enact Section 14(a) was the need for shareholders to have a meaningful way

1 Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

2 *See Security and Exchange Commission Proxy Rules: Hearings on H.R. 1493, H.R. 1821, and H.R. 2019 Before the House Comm. on Interstate and Foreign Commerce*, 78th Cong., 1st Sess. 172 (1943) (Statement of the Hon. Ganson Purcell, Chairman, Securities and Exchange Commission) ("Purcell Testimony"); J. Robert Brown, Jr., *The Proxy Rules and Restrictions on Shareholder Voting Rights*, 47 Seton Hall L. Rev. 45, 46 n.5 (2016).

3 *See Med. Comm. for Human Rights v. SEC*, 432 F.2d 659, 676, 680-81 (D.C. Cir. 1970), *vacated as moot*, 404 U.S. 403 (1972).

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to engage with each other and with management, and to exercise their rights, as corporations became larger and ownership became more widely dispersed.[4] Congress understood that proxy voting had largely displaced in-person attendance at shareholder meetings and had been misused by the management of some companies. Therefore, it entrusted the Commission with discretion to regulate the proxy process in a manner consistent with the protection of investors.[5]

For more than 80 years, Rule 14a-8 has facilitated shareholder rights by requiring the companies that avail themselves of the public capital markets to include qualifying shareholder proposals in the proxy solicitation materials that they already distribute to shareholders. That is the regulation of a federal communications channel.[6] The rule does not create new rights or alter the rights that shareholders otherwise have under state law. By its own terms, the rule permits exclusion of shareholder proposals that are improper under, or would violate, state law.[7] If the Commission determines that a company may exclude a shareholder proposal under Rule 14a-8, its determination does not affect the shareholder's legal right to conduct their own solicitation or make the proposal at the meeting. Even if a proposal is included in the company's solicitation materials, the proponent must appear and present the proposal at the meeting, subject to state law.[8] Nothing in the rule disturbs the meeting chair's authority under state law and the company's governing documents to determine whether the proposal is properly made.

Past Commissions and the courts have consistently viewed Rule 14a-8 and its predecessor as valid exercises of the Commission's authority.[9] That interpretation is entitled to significant

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4 *See* H.R. Rep. No. 73-1383, 1934 WL 1290, at **3-4, 5, 13 (1934) (discussing "the diffusion of corporate ownership" and the need for dispersed shareholders to have a meaningful way to protect their interests); S. Rep. No. 73-792, 1934 WL 1289, at *12 (1934) ("In order that the stockholder may have adequate knowledge as to the manner in which his interests are being served, it is essential that he be enlightened . . . as to the major questions of policy, which are decided at stockholders' meetings."); *Roosevelt v. E.I. Du Pont de Nemours & Co.*, 958 F.2d 416, 421-22 (D.C. Cir. 1992) (stating that "section 14(a) shelters use of the proxy solicitation process as a means by which stockholders may become informed about management policies and may communicate with each other").

5 *See*, *e.g.*, 78 Cong. Rec. 7700 (Apr. 30, 1934) (Rep. Sam Rayburn) ("If there has been a thing in the world that has been abused throughout this country, and if there is one way in which management perpetuates itself in office, it is by the use of proxies. We treat that situation here and say that the proxies shall be used under such rules and regulations as the administrative body may promulgate."); H.R. Rep. No. 73-1383, 1934 WL 1290, at **14; S. Rep. No. 73-792, 1934 WL 1289, at *12.

6 *See Bus. Roundtable v. SEC*, 905 F.2d 406, 410 (D.C. Cir. 1990) ("Proxy solicitations are, after all, only *communications* with potential absentee voters. The goal of federal proxy regulation was to improve those communications and thereby to enable proxy voters to control the corporation as effectively as they might have by attending a shareholder meeting.") (emphasis original); John Coates *et al.*, *Shadow SEC Statement No. 16: Retain Rule 14a-8*, CLS Blue Sky Blog (Oct. 13, 2026) ("Shadow SEC Statement").

7 17 C.F.R. § 240.14a-8(i)(1), (2).

8 17 C.F.R. § 240.14a-8(h)(1).

9 *See* Shadow SEC Statement, *supra* note 6 (colleting cases holding or presuming that Rule 14a-8 or its predecessor is authorized); Purcell Testimony, *supra* note 2, at 12-14.

weight.[10] The Commission has not adequately explained why, despite more than 80 years of regulatory enforcement and judicial interpretation, it now believes that "Rule 14a-8 exceeds the plain and best reading of [its] rulemaking authority under Section 14(a)."[11] In attempting to justify its decision to abandon the rule, the Commission briefly addresses only one of the cases upholding Rule 14a-8 cited in the Proposal, *SEC v. Transamerica Corp.*[12] In *Transamerica*, the court upheld the application of the predecessor to Rule 14a-8 as "a proper exercise of the authority conferred by Congress on the Commission under Section 14(a)."[13] Rather than engaging with the court's analysis, the Commission summarily dismisses the case before stating that it "disagrees" that the decision supports a different interpretation of Section 14(a).[14] A reasoned explanation requires more.

None of the few cases cited by the Commission cast serious doubt on the validity of the rule. *Virginia Bankshares, Inc. v. Sandberg* involved a private action under Rule 14a-9 and did not address the scope of the Commission's authority under Section 14(a) at all.[15] *Business Roundtable v. SEC* undermines the Commission's interpretation that its authority under Section 14(a) is limited to disclosure. In that case, the court explained that the focus on disclosure was a matter of circumstance, not design,[16] and it emphasized that the Commission's authority extends beyond disclosure to the "procedure" of soliciting votes.[17] Both *Santa Fe Indus., Inc. v. Green* and *Business Roundtable* addressed circumstances "where established State policies of corporate regulation would be overridden" by federal law,[18] but the Commission identifies no state laws or rules enacted

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[10] *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (explaining that "respect [for Executive Branch interpretations of federal statutes] was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time").

[11] Proposal at 34.

[12] 163 F.2d 511 (3d Cir. 1947).

[13] *Id*. at 518.

[14] Proposal at 33-34.

[15] 501 U.S. 1083 (1991) (cited in Proposal at 15 n.31).

[16] 905 F.2d at 410 (explaining, "[t]hat proxy regulation bears almost exclusively on disclosure stems as a matter of necessity from the nature of proxies" because "[p]roxy solicitations are, after all, only *communications* with potential absentee voters") (emphasis original).

[17] *Id*. at 411.

[18] *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 478-79 (1977) (declining to apply Rule 10b-5 to police the intrinsic fairness of corporate transactions where state law already supplied shareholders with a cause of action); *Bus. Roundtable*, 905 U.S. at 411 (invalidating SEC rule that "directly interfere[d] with the substance of what the shareholders may enact [by] prohibit[ing] certain reallocations of voting power and certain capital structures, even if approved by a shareholder vote subject to full disclosure and the most exacting procedural rules").

to govern when shareholder proposals may or must be included in a company's proxy solicitation materials.[19]

Instead, the Commission argues that Rule 14a-8 "effectively dictates the scope of shareholder voting rights[,] alters the corporate voting process . . . [and] operate[s] as a Federal standard governing when a matter is properly put before shareholders for a vote through the proxy" because the proxy is how shareholders vote.[20] However, the understanding that shareholders in large public companies do not attend annual shareholder meetings, and vote by proxy instead, was baked into Section 14(a) and Rule 14a-8 from the beginning.[21] As the Shadow SEC explains in a statement regarding the Proposal, "that fact was a logical result of and contemplated by the [Exchange Act] itself" and "[i]t is not a new fact that somehow justifies drastically re-interpreting the authority the statute gives the SEC."[22] The statute and the rule were meant to ensure that shareholders have the ability to exercise "those rights that [they] ha[ve] traditionally had under State law" such that those rights remain meaningful in a world in which proxy voting is the primary forum for corporate suffrage in many of the largest, most widely-held companies.[23] While the rule may require Commission staff to make judgments about which proposals are proper under state law, or would violate state law, a no-action letter is not a binding interpretation and does not override state law.[24] A company that has been told by the Commission that it may not exclude a proposal under Rule 14a-8 can seek a determination in court that the proposal is improper under state law. Similarly, a shareholder whose proposal the Commission has allowed to be excluded may seek a determination that the proposal is proper under state law, or that state law otherwise requires the company to include the proposal in its solicitation materials. If either were to prevail in such an action, we expect that the Commission's application of Rule 14a-8 "'undoubtedly would yield, as it should, to [the] contrary decision of the . . . state court.'"[25]

The Commission today might prefer to make different policy choices than the Commissions that adopted and amended Rule 14a-8 throughout the rule's history. The Proposal does not evidence the kind of thorough, reasoned analysis needed to justify the Commission's abrupt change of position regarding its authority under Section 14(a).

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[19] To the contrary, the Proposal states that, with one recent exception, "no State has adopted [any] legislation governing shareholder proposals in more than 80 years since Rule 14a-8 was first adopted." Proposal at 49.

[20] *Id*. at 27, 31.

[21] *See* note 4, *supra*; Purcell Testimony, *supra* note 2, at 174-75.

[22] Shadow SEC Statement, *supra* note 6. The Shadow SEC is an independent group of legal scholars, formed in 2024 "to provide, encourage, facilitate, and distribute policy discussions and debates relating to the federal securities laws and the Securities and Exchange Commission (SEC)." John Coates *et al.*, *Announcement of the Formation of The Shadow SEC*, CLS Blue Sky Blog (Dec. 16, 2024).

[23] *See* Purcell Testimony, *supra* note 2, at 172; *Med. Comm*., 432 F.2d at 680-81.

[24] *See Roosevelt*, 958 F.2d at 423 (noting that "any advice given in this process is nonbinding for all concerned").

[25] *Med. Comm*., 432 F.2d at 680 n.29 (quoting II L. Loss, *Securities Regulation* 906 (1961)).

II. Rescinding Rule 14a-8 would suppress the exercise of shareholder rights and disproportionately silence smaller shareholders.

Eliminating Rule 14a-8 would make it more difficult and more costly for shareholders to exercise their rights. The burden would inhibit the ability of all shareholders to bring proposals to a vote, but even the Commission admits that it would disproportionately affect individual retail investors and smaller institutional investors who rely on the rule to make their voices heard.[26] Without the rule, a proponent seeking a vote on their proposal would have to pay to conduct their own proxy solicitation in compliance with the SEC proxy rules. For a typical proposal, it is well understood that an independent proxy solicitation is often prohibitively expensive and complex.[27] The extent of the cost is illustrated by data in the Proposal showing that proponents spent approximately $275,000 in the median proxy contest between 2022-2025.[28] The Commission suggests that shareholders would still have the legal right to raise proposals from the floor of the meeting, but that right has little meaning without other shareholders there to hear and vote on the proposal.[29]

Without the uniform framework provided by Rule 14a-8, the only way for shareholders to enforce their rights would be to file a lawsuit. Given that state law "is often unclear or silent as to what matters may be presented to shareholders,"[30] prevailing in such a lawsuit would likely require a shareholder proponent to break new precedential ground. We expect that the legal uncertainty and cost, combined with state laws that may "effectively foreclose" the judicial remedy itself,[31] would cause many shareholders to simply give up and self-censor. The net result of rescinding Rule 14a-8 would therefore be to silence the shareholders who rely most on the rule for access, including retail investors, retirees, and smaller institutional investors, while consolidating control and influence in the hands of management and ultra-wealthy insiders.[32]

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[26] *See* Proposal at 156.

[27] *See*, *e.g.*, Elad L. Roisman, Commissioner, SEC, *Statement at the Open Meeting: Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8* (Nov. 5, 2019).

[28] *See* Proposal at 108.

[29] *See* Brown, *supra* note 2, at 46-47 (explaining that "the proxy rules all but guarantee that the effort will fail").

[30] Proposal at 39. *See also id*. at 32 n.100 and accompanying text (noting that "it remains uncertain whether the Delaware General Corporation Law [] permits precatory proposals [because] the statute does not speak to the question").

[31] *See* Michal Barzuza, *Nevada v. Delaware: The New Market for Corporate Law*, Harv. L. Sch. Forum on Corp. Governance (Feb. 26, 2026) (explaining that "Nevada has emerged as Delaware's principal competitor" and that "Nevada corporate law effectively forecloses shareholder litigation").

[32] The Commission offers little reason to believe that "alternative engagement mechanisms," such as social media, private meetings, and public advocacy campaigns, would be viable replacements for proxy access under Rule 14a-8. Indeed, the Proposal itself recognizes that these alternatives are unlikely to provide a complete replacement for Rule 14a-8. *See* Proposal at 136-38. As explained by other commenters in the comment file, none of these alternatives would give shareholders an opportunity to put an issue to a vote or give management the feedback that such a vote

The effect of silencing these shareholders would be to further immunize companies from their concerns and deprive all investors of the perspectives that such shareholders can contribute to the proper management of the companies they own. While the Commission briefly acknowledges that shareholder proposals can enhance shareholder value, it generally treats such proposals as little more than a cost to be minimized. Shareholder proponents have historically been instrumental in effecting significant improvements in corporate governance. These include majority vote rules for electing directors, staggered board terms, limits on poison pills that serve to entrench and protect management, and the increased adoption of proxy-access bylaws.[33] The voices of smaller and retail shareholders are valuable not only to fellow shareholders, but to all investors and the capital markets as a whole. The contributions and insights offered by smaller shareholders to highlight concerns with companies are just as meaningful and necessary as the contributions of larger shareholders. To the extent that rescinding Rule 14a-8 results in the loss of proposals due to prohibitive costs, all shareholders would lose the opportunity to consider and vote on those proposals and companies would lose the informational signals from those votes.

The same is true for proposals that do not initially capture the attention and appreciation of a majority of existing shareholders. Shareholders have proven adept at shining a light on emerging issues and the need for reforms that are later adopted. Indeed, the Proposal acknowledges that proposals submitted by individual shareholders tend to receive higher voting support and a higher likelihood of majority support than proposals submitted by institutional shareholders, indicating that such proposals are more likely to reflect broadly shared concerns among shareholders.[34] However, the Commission fails to provide meaningful analysis of the potential cost of losing these proposals.[35] For example, shareholder proposals frequently serve as early indicators of material risks, including cybersecurity vulnerabilities, labor practices, and supply chain fragilities and other physical risks. Without Rule 14a-8, management faces fewer incentives to address these risks proactively, which may increase the likelihood of sudden shocks that could harm shareholder value. Rescission could also undermine investor confidence and capital formation if individual investors perceive the public markets as being structurally tilted to favor insiders and entrenched company management while silencing minority voices.[36]

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would provide. *See*, *e.g.*, Letter from Jeffrey Mahoney, General Counsel, Council of Institutional Investors, to Vanessa A. Countryman, Secretary, SEC, *Re: File No. S7-2026-32, Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4*, at 2, 10-11 (Nov. 5, 2026).

[33] *See* Allison Herren Lee, Commissioner, SEC, *Statement on Shareholder Rights* (Nov. 5, 2019); Kosmas Papadopoulos, *The Long View: The Role of Shareholder Proposals in Shaping U.S. Corporate Governance (2000-2018)*, Harv. L. Sch. Forum on Corp. Governance (Feb. 6, 2019).

[34] Proposal at 135.

[35] *See id*. at 126-35.

[36] *See*, *e.g.*, FINRA Investor Education Foundation, *Investors in the United States: A Report of the National Financial Capability Study*, 17 (4th Ed., Dec. 2025) (citing data showing that 56% of investors either disagreed with or were neutral about the statement that "U.S. financial markets are fair to all investors," and only 37% of investors with portfolios under $50,000 agreed with the statement); Dion Rabouin, Axios, *Most investors now say the stock*

Management groups have often derided certain proposals as having little relevance to long-term shareholder value or imposing higher costs on other shareholders, but many such proposals have led to widely adopted changes that have helped to enhance long-term shareholder value. While NASAA takes no position on the merits of any particular shareholder proposal, shareholders are entitled to have their voices heard and NASAA opposes changes that would suppress shareholder rights.

III. The proposed amendments to Rule 14a-4 would favor entrenched management.

The proposed amendments to Rule 14a-4 cannot be evaluated in isolation. When considered alongside the proposed rescission of Rule 14a-8, the amendments would expand management's discretionary voting authority at the precise moment the Commission proposes to eliminate the primary mechanism through which shareholder proponents currently get proposals in front of their fellow shareholders. Taken together, these proposals would undermine shareholders' fundamental right to cast an informed vote and would unduly favor management, contrary to Congress' intent in enacting Section 14(a).

One of the concerns that motivated Congress to enact Section 14(a) was that the management at some companies had solicited proxies "without explanation to the stockholder of the real nature of the questions for which authority to cast his vote is sought."[37] The existing framework, including Rule 14a-8 and the limitations on the company's exercise of discretion under Rule 14a-4(c)(2)(i)-(iii), is calibrated to achieve Congress's objective. When a shareholder proposal is included in the company's proxy materials under Rule 14a-8, all shareholders receive a 500-word statement of the issue and, critically, an opportunity to vote for, against, or abstain. This framework provides shareholders with a baseline of information and a direct mechanism to express their views.

The proposed rescission of Rule 14a-8 would eliminate that baseline entirely. Shareholders who previously received both sides of a proposal in the company's proxy materials would now receive a one-line description written by the company and buried in the proxy statement.[38] The company would have no obligation to present the proponent's arguments, provide a mechanism to vote on the proposal, or direct shareholders to the proponent's materials for a meaningful description of the proposal. The proposed amendments would allow management to cast uninstructed votes on the shareholder's behalf based on this one-sided presentation, unless the

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market is "rigged" (Mar. 24, 2021) (citing data indicating that "[n]early 50% of Americans now say the stock market is 'rigged against individual investors'").

[37] S. Rep. 73-792, 1934 WL 1289, at *12. *See also* H.R. Rep. No. 73-1383, 1934 WL 1290, at *13 ("Insiders have at times solicited proxies without fairly informing the stockholders of the purposes for which the proxies are to be used and have used such proxies to take from the stockholders for their own selfish advantage valuable property rights.").

[38] *See* Proposal at 69 (providing an example of the required description, "a non-binding proposal from a pension fund that the company adopt a proxy access bylaw provision").

shareholder checks a box to opt out. The current structure of Rule 14a-4(c)(2) helps to mitigate this information deficit by preventing the company from exercising discretion if the proponent has demonstrated their commitment and solicited the requisite number of shareholders with its own materials. In that instance, shareholders have received both sides and had the opportunity to make a deliberate, informed voting choice, or at least been informed that they have a choice to make. Thus, NASAA opposes the proposed amendments to Rule 14a-4 in conjunction with the proposed rescission of Rule 14a-8.

If the Commission elects to move forward with amendments to Rule 14a-4, it should revise the Proposal to condition the exercise of discretion under Rule 14a-4(c)(2) on a shareholder's affirmative, informed consent. At minimum, this should have two elements. First, the check box on the company's proxy card should be changed from opt-out to opt-in. A shareholder's silence should never be interpreted as a grant of discretionary authority for any timely proposal that does not appear as a voting item on the proxy card.[39] That silence is not a decision not to engage; it is the absence of any opportunity to engage with the substance of the proposal. Converting that absence into a management-directed vote is a policy choice that systematically favors one side, and it is not justified by any reasonable inference of shareholder intent. The Proposal recognizes that retail shareholders are most likely to "have their votes cast [consistent with the default] regardless of their actual preferences."[40] An opt-in design would ensure that every grant of discretionary authority represents an affirmative decision by a shareholder who has, at minimum, noticed the question and actively responded.

Second, a company seeking to obtain discretionary authority should be required to include a cross-reference directing shareholders to the proponent's proxy materials if they are publicly available, such as a link to the proponent's filings in EDGAR. This requirement is modest and consistent with the core disclosure function of the SEC proxy rules. It does not ask the company to present the proponent's arguments, include the proposal as a voting item, surrender discretionary authority, or subsidize the proponent's solicitation. It asks only that shareholders be told where to find the other side of the story, in order to ensure that the proxy solicitation process produces informed shareholder decisions. To the extent that a proposal is proper under state law, there is no reasonable basis to deny them access to the information necessary to make those decisions.

The proposed amendments to Rule 14a-4, particularly when combined with the proposed rescission of Rule 14a-8, would deprive shareholders of important protections against the exercise of discretionary voting authority on matters about which they have received only one-sided information and no actionable voting choice. If the Commission moves forward with amendments to Rule 14a-4, the Proposal should be revised as described above.

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[39] We recognize that Rule 14a-4(b)(1) permits a company to exercise discretion when a shareholder has an opportunity to vote for, against, or abstain, but fails to specify a choice. We do not challenge that part of the rule here. In that context, the shareholder has been presented with a fulsome discussion of the matter in the proxy statement and a genuine choice on the proxy card, and silence is at least arguably a meaningful decision not to engage.

[40] *See* Proposal at 170-71.

IV. Conclusion

NASAA appreciates the opportunity to comment on the Proposal. Thank you for considering these views. Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,



Elizabeth H. Bowling
NASAA President