November 19, 2026

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549

Re: Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4
File Number: S7-2026-32
Rel. No: 34-106383

Dear Ms. Countryman,

The Responsible Business Initiative (RBI) submits the attached comment on the Commission's proposal to rescind Rule 14a-8 and amend Rule 14a-4. Our letter of September 17, 2026, which placed our history of the rule in the record, said we expected to submit a separate comment addressing the questions put forth in the release. This is that comment. An appendix keys its answers to the Commission's requests for comment. We also attach our July 2026 paper, *Rule 14a-8 in Practice: A Descriptive Account from Twenty Interviews*, which the release cites and on which the comment relies, so that it is part of the record.

The comment does not ask the Commission to withdraw its proposal. It assumes the rescission will be adopted and addresses what should follow. Our history set out two routes by which Congress could settle the question of authority, and this comment chooses the first. RBI recommends that Congress enact a statute setting the terms on which shareholders may use the company's proxy, so that those terms no longer change with each Commission.

The statute we recommend would raise the ownership and resubmission thresholds above those adopted in 2020 and index the dollar amounts to inflation. It would require that a proposal concern the company's own business, with operational proposals measured against the company's own risk disclosures, and it would close the list of exclusions. It would also drop the exceptions that turn on the importance of an issue rather than its connection to the company. Disputes would go to a binding staff decision, subject to Commission and court review, and the statute would close the route the universal proxy rules opened. For the period before Congress acts, the comment asks the Commission to honor proposals already submitted and to resume answering requests to exclude them. It also recommends an effective date at the later of one full meeting cycle after adoption or July 1, 2028. The comment proposes a compromise on the Rule 14a-4(c) check box, under which each omitted proposal would carry its own boxes allowing or barring management's vote, and management would vote an unmarked card only where the proponent has not undertaken to solicit widely.

The comment also responds, respectfully, to commenters who regard the Commission's authority as settled. It draws on our interviews and on the docket to show that each of these terms comes from, or falls between, positions issuers and investors have already taken.

We would be glad to answer any questions or to provide any of the underlying sources.

Respectfully submitted,

/s/ Timothy M. Doyle
Timothy M. Doyle
Co-Founder and CEO
Responsible Business Initiative

/s/ Robert G. Eccles
Robert G. Eccles
Co-Founder
Responsible Business Initiative
Visiting Professor of Management Studies at the University of Oxford's Saïd Business School

Attachments: Comment of the Responsible Business Initiative, with Appendix; *Rule 14a-8 in Practice* (July 2026)

Comment of the Responsible Business Initiative

Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4

File No. S7-2026-32; Release No. 34-106383

November 19, 2026

I. Introduction

RBI filed its first comment on September 17, 2026. It placed in the record our paper on the history of Rule 14a-8, which asks on what authority the obligation to carry a shareholder's proposal has rested.[1] The paper set out two routes by which Congress could settle that question. Congress could authorize a mechanism expressly and set its limits, or it could decline and leave the subject to state corporate law. The paper did not choose between them, and our letter said we expected "to submit a separate comment addressing the questions put forth in the release."[2] This is that comment, and it chooses the first route.

This comment does not ask the Commission to withdraw its proposal. It assumes that the rescission will be adopted and addresses what should follow. RBI recommends that Congress enact a statute setting the terms on which shareholders may use the company's proxy, so that those terms no longer change with each new Commission.

The release would leave the question to the states and to each company's governing documents.[3] RBI accepts the rescission but does not believe that is the best way forward. Texas has set, and a Delaware discussion draft would set, ownership thresholds far higher than any the Commission has used. Leaving the question to the states would produce a patchwork, in which the terms on which a shareholder reaches the ballot differ from one state and one company to the next. RBI recommends instead a single federal standard for access to the company's proxy, set by Congress so that a new Commission could not rewrite it, while state law continues to govern what shareholders may decide. Sections IV and V explain why.

That recommendation follows from RBI's earlier work. In 2025 we argued for a middle path that would keep a federal baseline while refining the exclusions. We also wrote that "Congress may have to step in to codify the proxy process if the most recent swings are any indication of what future Commissions might do."[4] Our 2026 paper explained why that step is needed, because the authority for the obligation has been assumed rather than conferred. Our interview study, published in July 2026, described how

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[1] Timothy M. Doyle & Robert G. Eccles, *Rule 14a-8 and the Governance Architecture of the Exchange Act* (Responsible Business Initiative, Sept. 2026) [*hereinafter Architecture Paper*].

[2] Letter from Timothy M. Doyle & Robert G. Eccles, Responsible Business Initiative, to Vanessa A. Countryman, Sec'y, SEC, at 2 (Sept. 17, 2026).

[3] Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4, Exchange Act Release No. 106,383, 91 Fed. Reg. 59,904, 59,904 (proposed Sept. 21, 2026) [*hereinafter* Proposing Release].

[4] Timothy M. Doyle & Robert G. Eccles, *Fair Corporate Suffrage or Federal Overreach? The 1943 Hearings and Rule 14a-8*, Harv. L. Sch. F. on Corp. Governance (Sept. 23, 2025), https://corpgov.law.harvard.edu/2025/09/23/fair-corporate-suffrage-or-federal-overreach-the-1943-hearings-and-rule-14a-8/, pts. V.C, VI.

the rule works in practice and stated that "the authors' own evaluation is reserved for the work that follows."[5] This comment supplies that evaluation.

Section II explains why RBI does not regard the authority question as settled. Section III addresses what the phrase "public interest" permits. Section IV sets out the statute RBI recommends, and Section V presents the evidence behind it. Section VI addresses the period before Congress acts. An appendix keys the comment's answers to the release's requests for comment. Throughout, RBI has looked for terms that issuers and investors can both accept, because a settlement that only one side supports is unlikely to last.

II. The Authority Question Has Been Assumed, Not Decided

Several commenters, among them scholars whose work has shaped this field, urge the Commission to treat its authority under Section 14(a) as settled.[6] They rest that view on eight decades of practice, on judicial statements approving the rule, and on Congress's repeated amendment of Section 14 without disturbing it. RBI agrees that courts have spoken of the rule in approving and sometimes emphatic terms. RBI's point is narrower. A question can be assumed for eighty years without ever being decided, and this one has been.

One comment states that more than a dozen decisions "have held or presumed" the rule authorized.[7] RBI read each decision on that list, and none of them resolved a contest over the Commission's authority to require a company to carry a proposal, because no party in any of them raised one.[8] In the Third Circuit's decision in *Transamerica*, the court rested on Delaware law and reached the Commission's power only in a paragraph that begins "But assuming arguendo that this was not so."[9] The D.C. Circuit in *Roosevelt* decided whether a shareholder could sue privately to enforce the rule, and it described that right as one "widely assumed, but scarcely addressed."[10] *Medical Committee* called the proxy procedures "of unquestioned validity for present purposes," and the purposes were reviewability.[11] Most recently, the court in *Interfaith Center* sustained the 2020 amendments while treating the underlying rule's authority as uncontested.[12] These are statements of confidence, and RBI does not dismiss them, but none is a holding on the question the release now presents.

A second argument draws on the 2010 amendment to Section 14(a). It holds that because Congress said rules "prescribed by the Commission under paragraph (1)" may require a company to include a

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[5] Timothy M. Doyle & Robert G. Eccles, *Rule 14a-8 in Practice: A Descriptive Account from Twenty Interviews* 4 (Responsible Business Initiative, July 2026) (attached) [*hereinafter In Practice*].

[6] Comment Letter of John Coates, John C. Coffee, Jr., James D. Cox, Merritt B. Fox & Joel Seligman (Shadow SEC Statement No. 16), File No. S7-2026-32 (Oct. 13, 2026) [*hereinafter* Shadow SEC Statement]; Letter from James McRitchie, Shareholder Advocate, CorpGov.net, to Vanessa A. Countryman, Sec'y, SEC, at 2 (posted Sept. 16, 2026) (third supplemental comment); Letter from Paul Chesser, Dir., Corp. Integrity Project, Nat'l Legal & Pol'y Ctr., to Vanessa A. Countryman, Sec'y, SEC, at 11–12 (Oct. 20, 2026) [*hereinafter* NLPC Letter].

[7] Shadow SEC Statement, *supra*, at 3 & 5 n.8.

[8] The decisions are those cited in note 8 of the Shadow SEC Statement.

[9] *SEC v. Transamerica Corp.*, 163 F.2d 511, 518 (3d Cir. 1947).

[10] *Roosevelt v. E.I. Du Pont de Nemours & Co.*, 958 F.2d 416, 419 (D.C. Cir. 1992).

[11] *Med. Comm. for Hum. Rts. v. SEC*, 432 F.2d 659, 671 (D.C. Cir. 1970).

[12] *Interfaith Ctr. on Corp. Resp. v. SEC*, No. 21-cv-1620, slip op. at 49–53 (D.D.C. June 5, 2025).

shareholder's board nominee, Congress understood paragraph (1) to reach shareholder submissions generally.[13] The companion provision points the other way when read whole. Section 971(b) authorizes rules permitting a shareholder to use an issuer's proxy materials "for the purpose of nominating individuals to membership on the board of directors of the issuer."[14] When Congress chose to require inclusion of something a shareholder submits, it said so expressly and confined the grant to nominees. It did not extend that language to proposals.

The acquiescence argument deserves the most respect, because Congress has amended Section 14 many times while the rule stood.[15] However, the record also shows that the question was put to Congress directly. At the 1943 hearings, a member who doubted the Commission's authority asked whether Section 14 should be clarified so that there could be no doubt, and the Commission's Director of Corporation Finance answered, "Undoubtedly it should be." Congress did not act.[16] Silence after a request for clarification can be read as approval or as indifference, and the release, which does not take up the 1943 request, answers the acquiescence argument only by saying that "agencies may not add to their powers by adverse possession; longevity is not a substitute for legal authority."[17]

Congress returned to the subject in 1996, when it directed the Commission to study "whether shareholder access to proxy statements pursuant to section 14 of the Securities Exchange Act of 1934 has been impaired."[18] That direction shows Congress knew the mechanism existed and wanted to know whether it was working. The Commission's proposing release the next year cited the study and asked whether it should withdraw entirely from the area and leave each state to adopt its own rule.[19] Congress's direction did not authorize the mechanism, and it did not say where the Commission's power over it began or ended. Like the 1943 exchange, it was an occasion on which Congress looked at the question and left it open.

RBI does not suggest that the Commission's long-held view was unreasonable, only that it has never been tested, and that a question assumed for so long by both sides is best settled by the body that can settle it. That is the premise of the recommendation that follows.

III. What "Public Interest" Permits

Section 14(a) authorizes rules the Commission prescribes "as necessary or appropriate in the public interest or for the protection of investors."[20] Much of the disagreement on the authority question turns

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[13] NLPC Letter, *supra*, at 11–12; 15 U.S.C. § 78n(a)(2).

[14] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 971(b), 124 Stat. 1376, 1915 (2010).

[15] *Architecture Paper*, *supra*, at 99–101.

[16] *SEC Proxy Rules: Hearings on H.R. 1493, H.R. 1821, and H.R. 2019 Before the H. Comm. on Interstate & Foreign Commerce*, 78th Cong. 237–38 (1943).

[17] Proposing Release, 91 Fed. Reg. at 59,913; *Architecture Paper*, *supra*, at 107.

[18] National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, § 510(b), 110 Stat. 3416, 3450–51.

[19] Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 39,093, 62 Fed. Reg. 50,682, 50,683 (proposed Sept. 26, 1997).

[20] 15 U.S.C. § 78n(a)(1).

on how far those words reach. The release treats them as limited.[21] The Supreme Court has said how such words are to be read. The phrase "public interest" in a regulatory statute "is not a broad license to promote the general public welfare," and instead takes meaning "from the purposes of the regulatory legislation."[22]

The D.C. Circuit applied that rule to the Exchange Act in *Business Roundtable*, holding that "'public interest' is never an unbounded term."[23] The court construed other sections of the Act, not Section 14(a), but its reasoning reaches the same words wherever they appear. It also read Section 14 itself and found that Congress's central concern there was disclosure.[24] However, the court declined to say that disclosure is necessarily the sole subject of Section 14, and it allowed that the section may reach control over the voting agenda and voting procedures.[25] Rule 14a-8 sits closer to agenda-setting than the rule the court struck down, so the decision does not resolve this question either way.

The purposes that give the phrase its content leave the same question open. The Act's own statement of the need for regulation speaks of securities transactions, reports, markets, credit, and manipulation, and it says nothing about proxies, voting, or the governance of companies.[26] The proxy purpose comes instead from the committee report that called "[f]air corporate suffrage" an important right and would have given the Federal Trade Commission, the regulator under the House bill, power to control the conditions of solicitation "with a view to preventing the recurrence of abuses which have frustrated the free exercise of the voting rights of stockholders."[27] Read together, these sources support federal rules that keep solicitation honest and voting fair. They do not clearly answer whether the Commission may require a company to carry a shareholder's proposal in its own materials.

Congress added a further instruction in 1996. When the Commission decides whether an action is necessary or appropriate in the public interest, it must also consider whether the action will promote efficiency, competition, and capital formation.[28] That instruction adds factors to the inquiry without narrowing the phrase, and it applies to a rescission as fully as to an adoption.[29]

The phrase therefore bounds the Commission's authority without settling where the bound falls on this question. One commenter reads the phrase through the Act's statement of purposes and concludes that, for proxy solicitations, it reaches no further than ensuring that shareholder proposals provide "the accurate, adequate information voting security holders need to make informed decisions."[30] If that reading prevails, only Congress can supply the authority the statute RBI recommends would confer.

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[21] Proposing Release, 91 Fed. Reg. at 59,908.

[22] *NAACP v. FPC*, 425 U.S. 662, 669 (1976).

[23] *Bus. Roundtable v. SEC*, 905 F.2d 406, 413 (D.C. Cir. 1990).

[24] *Id.* at 410.

[25] *Id.* at 411.

[26] 15 U.S.C. § 78b.

[27] H.R. Rep. No. 73-1383, at 13–14 (1934).

[28] National Securities Markets Improvement Act of 1996 § 106(b), 110 Stat. at 3424–25 (codified at 15 U.S.C. § 78c(f)).

[29] Proposing Release, 91 Fed. Reg. at 59,927 (applying section 3(f) to this rulemaking); *cf. Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148 (D.C. Cir. 2011).

[30] Letter from Bernard S. Sharfman to Vanessa A. Countryman, Sec'y, SEC, at 5, 20 (Nov. 5, 2026).

Either way, the uncertainty about how far the phrase reaches matters for what Congress should do. A statute that grants the authority should also state its purpose, so that the Commission's flexibility to address new issues has a limit a court can apply. A requirement that a proposal relate to the company's business is that kind of limit. It ties the shareholder's access to the company's proxy to the reason the company's proxy is regulated at all.

IV. What Congress Should Enact

Rescinding the rule will not settle the questions it answered. Shareholders will still submit proposals under state law and company bylaws, and companies will still need to know which ones they must carry.[31] RBI recommends that Congress answer those questions by statute. The Commission has written and rewritten the answers for eighty years, and the record shows why one more rule would not hold.

The Division of Corporation Finance issued fourteen staff legal bulletins on the rule between 2001 and 2025.[32] Three times the Division reversed a position and said its earlier position had been wrong.[33] Four of the bulletins that changed course were issued within the first year of a new chairmanship.[34] The three that moved the economic relevance line, Nos. 14I, 14L, and 14M, were issued while the text of both grounds stayed the same.[35] The proposed rescission is the latest turn. Any rule adopted to replace it could be undone by the next Commission in the same way.

Congress can set terms that outlast a Commission majority. RBI recommends that the statute fix six things itself. They are the ownership thresholds and their indexing, the resubmission thresholds, the subject matter a proposal must address, the grounds for exclusion, the path for resolving disputes, and the treatment of solicitations that would route around the statute. The Commission would keep forms, filing mechanics, and timing. The Commission could issue guidance applying the statutory grounds to new kinds of proposals, but it could not add a ground or remove one. The statute would govern only what a company must carry in its proxy materials. Whether a proposal is a proper subject for shareholder action, and what a vote on it means, would remain questions of state law, and a company could still exclude a proposal that is improper under the law of its state of incorporation.[36]

A. Ownership Thresholds

RBI supports three tiers, raising the lowest of those the Commission adopted in 2020. A shareholder would qualify by holding $10,000 of the company's securities for three years, $15,000 for two years, or $25,000 for one year.[37] The $2,000 figure dates from 1998, when the Commission raised it from $1,000 and chose to limit the increase "in light of rule 14a-8's goal of providing an avenue of communication for small investors."[38] A $10,000 tier keeps that avenue open, since it remains a modest holding for an investor who has held for three years. The higher floor also roughly tracks the growth of a $2,000

[31] *In Practice*, *supra*, at 23–24.

[32] *Architecture Paper*, *supra*, at 59 n.230.

[33] *Id.* at 5, 60–61 nn.240–247.

[34] *Id.* at 68 n.291.

[35] *Id.* at 68 & n.290; *id.* at 60 n.237.

[36] *See* 17 C.F.R. § 240.14a-8(i)(1).

[37] *Cf.* Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8, Exchange Act Release No. 89,964, 85 Fed. Reg. 70,240, 70,244 (Nov. 4, 2020).

investment in the broad market since 1998.[39] The Commission calibrated each tier so that a proponent has a meaningful "economic stake or investment interest" in the company.[40] It found a longer holding period "particularly important if the dollar value of the ownership interest is minimal."[41]

The tiers also protect shareholders who never file a proposal. A company pays to carry each proposal from corporate funds, so all of its shareholders bear the cost, including index funds and other passive holders who took no part. The Commission rested the $25,000 tier on "the costs incurred by other shareholders and companies and the availability of alternative communication channels."[42] Commissioner Uyeda made the same point when the rescission was proposed, writing that investors "ultimately pay for the costs associated with these frequent niche topics."[43] United Church Funds, which files proposals itself, agrees that "Issuers incur real costs related to shareholder proposals, ultimately borne by shareholders."[44] RBI does not put a dollar figure on these costs, because the release says opportunity costs "cannot be estimated."[45]

The statute should also keep the tiers from eroding. The $1,000 threshold set in 1983 would be about $3,380 today, and the $2,000 threshold set in 1998 would be about $4,130.[46] Fixed dollar amounts lose value every year, and each correction so far has taken a new rulemaking. The Commission declined indexing in 2020, reasoning that compliance "could be more cumbersome" because companies and proponents "would have to monitor periodically adjusted ownership thresholds."[47] A fixed schedule answers that concern. It also answers the Commission's view that the tiers made indexing "unnecessary at this time," because tiers erode just as the single threshold of 1998 did.[48] RBI recommends that the statute adjust each dollar amount every five years by the change in the Consumer Price Index, rounded to the nearest $1,000, with the Commission publishing the new figures in advance.[49]

The U.S. tiers remain modest by comparison abroad and in the states. The European Union lets each Member State condition the right to place items on the agenda on a minimum stake, provided that stake

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[38] Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40,018, 63 Fed. Reg. 29,106, 29,111–12 (May 28, 1998).

[39] A $2,000 investment in the Russell 3000 in 1998 would be worth about $12,700 today with dividends reinvested, on the National Association of Manufacturers' estimate, which it offered in proposing a floor of at least $10,000. Letter from Charles Crain, Managing Vice President, Policy, Nat'l Ass'n of Mfrs., to Paul S. Atkins, Chairman, SEC, at 10 & n.31 (Sept. 29, 2025) [*hereinafter* NAM 2025 Letter].

[40] 85 Fed. Reg. at 70,244.

[41] *Id.* at 70,245.

[42] *Id.* at 70,246.

[43] Mark T. Uyeda, Comm'r, SEC, *Statement on the Proposed Rescission of Rule 14a-8 and Proposed Proxy Solicitation Modernization* (Sept. 16, 2026).

[44] Letter from Charles Buck, President & CEO, United Church Funds, to Vanessa A. Countryman, Sec'y, SEC, at 2 (Oct. 15, 2026) [*hereinafter* UCF Letter].

[45] Proposing Release, 91 Fed. Reg. at 59,937–38.

[46] U.S. Bureau of Labor Statistics, *Consumer Price Index for All Urban Consumers, U.S. City Average, All Items* (Series CUUR0000SA0), https://data.bls.gov/timeseries/CUUR0000SA0 (comparing 1983 and 1998 annual averages with September 2026).

[47] 85 Fed. Reg. at 70,287; *see also id.* at 70,248.

[48] *Id.* at 70,248.

[49] NAM has proposed the same five-year adjustment. NAM 2025 Letter, *supra*, at 10 n.31.

does "not exceed 5 % of the share capital."[50] The Directive sets a ceiling rather than a requirement, and Member States choose their own levels within it. Even so, a 5 percent stake in a company worth $10 billion would be worth $500 million, against a top U.S. tier of $25,000. Texas has gone further for companies that choose it. A listed company with its principal office in Texas may now opt into a regime requiring a proponent to hold $1 million in market value or 3 percent of the voting shares for six months. The proponent must also solicit holders of at least 67 percent of the voting power.[51] Delaware's Corporation Law Council has gone further still in a discussion draft. It would require $250,000 held for a year, or $1 million with up to nine co-filers, and would limit proposals to companies valued at $30 billion or more, with a cap of one to three proposals per meeting.[52] RBI's tiers are lower because the statute it proposes has no cap and covers every company. They sit between the current $2,000 tier, on which small proponents rely, and these far higher bars.[53]

B. Resubmission Thresholds

The statute should set the resubmission thresholds above the levels adopted in 2020. A company could exclude a proposal addressing substantially the same subject matter as a proposal included in its proxy materials within the preceding five calendar years, if the most recent vote occurred within three years and fell below a set level of support. The levels would be 10 percent after one vote, 20 percent after two, and 30 percent after three or more.[54] These levels fall within the range that investors and issuers have proposed.[55]

Under a momentum test, a proposal would also be excludable once it had been voted on three or more times in five years, if its most recent vote fell short of a majority and was at least 10 percentage points below the vote before.[56] The Commission declined a similar test in 2020, concerned that it could "lead to anomalous results" and make the resubmission ground "unnecessarily complex."[57] A test with three fixed conditions, written into a statute, answers the concern about complexity. The majority condition guards against the most anomalous result, which would be excluding a proposal shareholders had just approved. The test could still exclude a declining proposal with more support than a steady one, the

[50] Directive 2007/36/EC, of the European Parliament and of the Council of 11 July 2007 on the Exercise of Certain Rights of Shareholders in Listed Companies, art. 6(2), 2007 O.J. (L 184) 17, 21; *see also id.* recital 7, at 18.

[51] Tex. Bus. Orgs. Code Ann. § 21.373(a)–(b), (e) (added by S.B. 1057, 89th Leg., R.S. (2025)).

[52] Corp. L. Council, Del. State Bar Ass'n, *White Paper and Discussion Draft for Revisions to the Delaware Law on Stockholder Proposals* 1–2, 8–9 & annex A, § 214(b)–(c) (Nov. 9, 2026) [*hereinafter White Paper*].

[53] NLPC Letter, *supra*, at 14; Letter from Walker Wildmon, Vice President, Am. Family Ass'n, to Vanessa A. Countryman, Sec'y, SEC, at 1 (Oct. 27, 2026) [*hereinafter* AFA Letter].

[54] *Cf.* 85 Fed. Reg. at 70,258; 17 C.F.R. § 240.14a-8(i)(12).

[55] In 2020 the Business Roundtable, FedEx, General Motors, Nasdaq, and the Society for Corporate Governance asked for thresholds of 6, 15, and 30 percent, and Exxon asked for 10, 25, and 50 percent. Many investors, including a number of faith-based institutions, warned that higher thresholds would "stifle or delay adoption of shareholder-initiated reforms," and two proposed smaller increases, to 3, 10, and 15 percent or 5, 10, and 15 percent. 85 Fed. Reg. at 70,257 nn.193, 195, 197. NAM has since proposed 10, 20, and 40 percent. NAM 2025 Letter, *supra*, at 11.

[56] The Business Roundtable and NAM have each proposed a test of this kind. Bus. Roundtable, *The Need for Bold Proxy Process Reforms* 21 (Apr. 2025) [*hereinafter BRT Paper*]; NAM 2025 Letter, *supra*, at 11.

[57] 85 Fed. Reg. at 70,261.

example the Commission gave, and RBI accepts that result because a proposal losing ten points is losing ground whatever its level.[58]

Some commenters argue that proposals need more than one season to build a majority. As CalPERS puts it, "Many governance practices now widely accepted in the market began as shareholder proposals that gained support over time."[59] RBI agrees that support can grow over time, and these thresholds still leave room for it. Proposals drew average and median support of 34 and 30 percent on first submission, well above the first two thresholds.[60] A proposal that is gaining ground will clear them, and the momentum test reaches only a proposal that is losing ground.

Late success is uncommon. Only about 6.5 percent of proposals that fail to win a majority the first time pass on a later try.[61] Of 139 proposals resubmitted after their support fell by 10 percent or more, two later carried.[62] The bar is also temporary, so a proposal that falls short may return once the period runs. The argument for time supports a temporary bar and a test aimed at declining support, both of which these thresholds provide.

C. A Business Nexus and a Closed List of Exclusions

Section III concluded that a statute granting this authority should state its purpose, and that a requirement tying a proposal to the company's business is that kind of limit. The statute should make that limit a condition of eligibility, a business nexus test applied before any ground for exclusion, so that a proposal that fails it never reaches the list.

A proposal concerning the company's governance, its securities, or the voting rights of its shareholders would qualify on its subject alone. A proposal that asks the board to oversee, assess, or report on a subject of the company's operations would be treated as concerning operations. Proposals such as those on cumulative voting or the ratification of auditors often have no measurable economic effect, and the Commission declined in 1976 to make relevance turn on economics for that reason.[63]

A proposal concerning the company's operations would qualify only if it met all four of the following conditions:

1. The company has identified the subject as a risk in the risk-factor disclosure Regulation S-K requires, in its most recent annual report on Form 10-K filed after the statute takes effect. A specific risk the company identifies by reference to a standardized list, rather than describing it in full, would count. A risk placed under the general risk factors caption, which applies to issuers generally, would not count.[64]

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[58] *Id.*

[59] Letter from Marcie Frost, Chief Exec. Officer, Cal. Pub. Emps.' Ret. Sys., to Vanessa A. Countryman, Sec'y, SEC, at 2 (Oct. 23, 2026) [*hereinafter* CalPERS Letter].

[60] 85 Fed. Reg. at 70,259.

[61] *Id.* at 70,258.

[62] *Id.* at 70,289 & n.468.

[63] Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Release No. 12,999, 41 Fed. Reg. 52,994, 52,997 (Dec. 3, 1976).

[64] 17 C.F.R. § 229.105(a).

2. The operations the proposal addresses account for at least 5 percent of any one of the company's total assets, net earnings, or gross sales, or carry a potential liability, disclosed in the company's filings, equal to at least 5 percent of its total assets.[65]
3. The proposal concerns the risk as the company describes it, or as the referenced list describes it, not the issue in general.
4. The proposal asks for a report, a policy, or an assessment, and does not prescribe specific targets, deadlines, or methods.[66]

These conditions let the company's own required disclosures decide which operational subjects are open, so no staff judgment about which issues matter is needed. A company that leaves a material risk out of its filings answers for that under the disclosure rules, not under this one. A smaller reporting company need not disclose risk factors in its annual report, and one that omits them would receive only governance, securities, and voting-rights proposals under this test.[67]

Two clauses in the current rule should not carry forward. The first is the alternative test in the relevance ground, Rule 14a-8(i)(5), which keeps a proposal eligible if it is "otherwise significantly related to the company's business."[68] In *Lovenheim v. Iroquois Brands, Ltd.*, the district court accepted a shareholder's argument that the rule did not permit omission of a proposal with "ethical or social significance" merely because it was not economically significant.[69] The Division then narrowed and restored the exclusion through successive bulletins without any change to its text.[70] The second is the significant social policy exception to the ordinary business ground, Rule 14a-8(i)(7), which the Commission announced in 1976 in the same release that concluded it could not write the line as a rule.[71] Both clauses measure a proposal by the importance of its issue rather than by its connection to the company, and the statute should contain no test of that kind. Dropping the two clauses meets a request issuers have made, while qualifying governance proposals on their subject alone keeps open the proposals that, as the Commission found in 1998, "tend to receive the most substantial shareholder support."[72]

The thirteen grounds in the current rule would carry forward as a closed list, with the relevance ground stated as its economic test alone.[73] The text of the ordinary business ground contains no social policy exception, and the statute should carry that text forward as it stands.[74] Commission guidance could apply these grounds to new kinds of proposals but could not create an exception to them.

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[65] *Cf.* 17 C.F.R. § 240.14a-8(i)(5) (the potential-liability measure has no counterpart in the current rule).

[66] *See* 63 Fed. Reg. at 29,108.

[67] SEC, Form 10-K, pt. I, item 1A ("Smaller reporting companies are not required to provide the information required by this item.").

[68] 17 C.F.R. § 240.14a-8(i)(5).

[69] 618 F. Supp. 554, 559–61 (D.D.C. 1985).

[70] *Architecture Paper*, *supra*, at 66 n.277, 68 nn.287–288.

[71] 41 Fed. Reg. at 52,997–98.

[72] *BRT Paper*, *supra*, at 20; 63 Fed. Reg. at 29,117.

[73] 17 C.F.R. § 240.14a-8(i)(1)–(13).

[74] *Id.* § 240.14a-8(i)(7).

The state-law ground would carry forward with the note the Commission attached to it, under which a proposal drafted as a recommendation is treated as proper "unless the company demonstrates otherwise."[75] The statute should allow two ways to make that showing. The first would be a statute of the company's state of incorporation, or a decision of that state's highest court, that clearly provides otherwise. The second would be an opinion of counsel, as the rule now requires, tested through the process in Section IV.D, with the company bearing the burden.[76] Where the opinion rests on a question the state's courts have not settled, the Commission could certify that question to the state's highest court, as it did in *CA, Inc. v. AFSCME Employees Pension Plan*.[77] Each state remains free to decide what its shareholders may propose, and the federal standard applies until it does.

D. Resolving Disputes

A company that intends to exclude a proposal must now file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement.[78] The staff's response, known as a no-action letter, is informal and binds no one, and every staff legal bulletin states that the bulletin is not a rule of the Commission.[79] The statute should move that filing to 90 days and replace that informal response with a binding decision.[80] The Commission could delegate the decision to its staff, as the Exchange Act already permits for its other functions. The staff's decision would then bind the company and the proponent as the Commission's own action, unless either asked the Commission to review it within a short period.[81] After that, only the company or the proponent could seek review of the Commission's final decision in federal court, again within a short period, and the company would bear the burden of showing that the proposal may be excluded.[82] Because the Commission decides first, a court would review a decision on a record rather than decide the dispute itself on a proxy-season schedule.[83] The whole sequence must finish before the company files its definitive proxy statement. Under a 90-day schedule, for example, a staff decision within 30 days, 5 days to seek Commission review, a Commission decision within 15 more, and 10 days to sue would leave a court about 30 days to rule. The statute should state this right of review expressly, because the private right under the current rule was implied by a court rather than written into the statute.[84]

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[75] *Id.* § 240.14a-8(i)(1) & note.

[76] *Id.* § 240.14a-8(j)(2)(iii).

[77] 953 A.2d 227 (Del. 2008); *see Architecture Paper*, *supra*, at 88 & n.393.

[78] 17 C.F.R. § 240.14a-8(j)(1).

[79] *Architecture Paper*, *supra*, at 59 nn.230, 232–234.

[80] NAM has proposed the same change, paired with a deadline for proposals 10 days earlier. NAM 2025 Letter, *supra*, at 11–12.

[81] 15 U.S.C. § 78d-1(a)–(c).

[82] Delaware's discussion draft takes a similar approach, allowing only the proponent to sue, within 30 days, with the burden on the corporation. *White Paper*, *supra*, annex A, § 214(j).

[83] Business groups have noted that federal courts are poorly placed to decide these disputes in the time before a company prints its proxy materials. *See* Letter from C. Edward Allen & Jake Kuhns, Nat'l Ass'n of Mfrs., to Vanessa A. Countryman, Sec'y, SEC, at 4 n.11 (Oct. 29, 2026) [*hereinafter* NAM 2026 Letter].

[84] *Roosevelt*, 958 F.2d at 429; *cf. As You Sow v. Chubb Ltd.*, No. 26-cv-734 (SLS), mem. op. at 9 n.3 (D.D.C. Mar. 31, 2026) (reserving whether the plaintiff had a private right of action).

Under this process, the staff would again decide disputes over proposals, which it stopped doing in 2025 and 2026. The Division stopped answering most requests citing "resource and timing considerations," and ended responses entirely "to focus Division resources on the review of Securities Act and Exchange Act filings."[85] The strain is not new, since the Commission described in 1982 how "reductions in the Commission staff available to process contested security holder proposals" had delayed its responses.[86] Congress should appropriate funds for the staff who would decide these disputes. The statute should also authorize a modest fee, set to recover the cost of the process rather than to deter its use. The fee would be paid by whichever side invokes the process: the company when it files its reasons for excluding a proposal, and the proponent when it asks the Commission to review a staff decision.[87] A fee on one side alone would tilt the process against that side.

E. Closing the Route Around the Statute

The statute should also close a route that the universal proxy rules opened, the zero-slate campaign. In 2021 the Commission amended the bona fide nominee rule, which governs whose nominees may appear on a proxy card, and it said the change would "permit a dissident soliciting in favor of a proposal (but not its own director nominees) to include some or all of the registrant's nominees on its proxy card."[88] A proponent can then offer shareholders one card that both elects directors and votes on its proposals. This is called a zero-slate campaign because the proponent runs no nominees of its own. Shareholders who want to vote on everything in one place may use the proponent's card instead of the company's, so a company may conclude it has little choice but to carry the proposals on its own card. The release says that through such a campaign a single proponent "may be able to compel the company to place its proposals on the company's proxy card at the company's expense."[89] Staff observed at least three of these campaigns after 2022, and in each the company included the proponent's proposal.[90] Participants in RBI's interviews raised the same route independently across sectors, and RBI agrees that any rescission must address it.[91]

The 2021 Commission saw the route and judged it a gain. It said the change would "further shareholder enfranchisement."[92] It predicted that the change "may result in somewhat increased support for proponents in solicitations without a competing slate," which "may increase proponents' incentives to

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[85] Div. of Corp. Fin., SEC, *Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season* (Nov. 17, 2025); Div. of Corp. Fin., SEC, *Updated Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process* (Aug. 14, 2026).

[86] Proposed Amendments to Rule 14a-8, Exchange Act Release No. 19,135, 47 Fed. Reg. 47,420, 47,425 (Oct. 26, 1982).

[87] The Commission sought comment in 1982 on a processing fee paid by the proponent, "like any other person filing soliciting material with the Commission," and refunded if the proposal never came before the Commission for review. *Id.* at 47,426. NAM has proposed a fee on companies that seek relief and on proponents that challenge it. NAM 2026 Letter, *supra*, at 4.

[88] Universal Proxy, Exchange Act Release No. 93,596, 86 Fed. Reg. 68,330, 68,345 (Dec. 1, 2021).

[89] Proposing Release, 91 Fed. Reg. at 59,951.

[90] *Id.* at 59,923 & nn.222–224, 59,928 & n.269.

[91] *In Practice*, *supra*, at 23.

[92] 86 Fed. Reg. at 68,345.

initiate such campaigns."[93] It found it "unclear" whether that would help or hurt boards.[94] Several commenters asked the Commission to confine the change to contests in which the other side runs its own nominees, and the Commission adopted it as proposed.[95] It also assumed that the company "does not need to include the proponent's proposals on its own card."[96]

That judgment made sense while Rule 14a-8 stood. A zero-slate campaign was then a costly alternative to Rule 14a-8, which cost a proponent almost nothing. After rescission, it becomes a principal way to put a proposal on the company's card. The 2021 Commission had no reason to weigh that, because rescission was not before it.

The statute should close the route by allowing a person to include company nominees on its own card only if it also nominates at least one candidate of its own. A proponent soliciting for proposals alone could then neither borrow the company's slate to draw votes nor use it to press the company to carry its proposals. Writing this term into the statute would keep a later Commission from reopening the route by rule.

F. Keeping the Numbers Current

If the thresholds are fixed in statute, Congress needs a way to know when to change them. Every five years, alongside the indexing adjustment, the Commission would publish a study for public comment. It would cover who files proposals and at what ownership levels, the costs to companies and to the shareholders who bear them, and how proposals fare in the vote. The Commission would then report to Congress with a recommendation on whether the thresholds should change. The decision would stay with Congress, and it would rest on a public record that each side could test.

V. What the Record Shows

This section draws on RBI's interviews, described in the attached paper, and on the comment letters filed on the proposal. It shows that reform, not rescission, was the most common position among those who work with the rule, that the dispute over cost turns on which costs are counted, and that rescission will not by itself end shareholder proposals.

A. Reform Was the Most Common Position

The interviews pointed to reform rather than rescission. In the paper's words, "The single most common considered position, however, was not rescission but reform: retaining the rule while raising thresholds and narrowing or clarifying the significant social policy exception."[97] Several participants who expected rescission, or could accept it, still preferred that the rule be retained and modernized, often because a cycle of rescission and reinstatement would do more harm.[98] One participant suggested that a durable

[93] *Id.* at 68,367–68.

[94] *Id.* at 68,368.

[95] *Id.* at 68,345 & n.163.

[96] *Id.* at 68,367.

[97] *In Practice*, *supra*, at 4; *see also id.* at 26.

[98] *Id.* at 26.

resolution might require bipartisan legislation, and another expected rescission to be followed by legislation amending the Exchange Act.[99]

Investors who oppose the rescission have pointed toward the same ground. CalPERS, the largest public pension fund in the country, wrote that if the rule should be updated, it would "welcome the opportunity to engage on targeted improvements that would preserve a unified federal standard."[100] The Council of Institutional Investors, whose members manage about $5.6 trillion, would support revisiting the ownership requirements, the limit on proposals per meeting, and the resubmission thresholds.[101] United Church Funds asked, "If congressional clarification is necessary, what specific clarification does the Commission believe is required?"[102] Section IV is RBI's answer to that question.

B. The Cost Dispute Turns on What Is Counted

Cost was the clearest point of disagreement in the interviews, but the dispute was "less about whether the process is expensive than about which costs are counted."[103] On direct administrative cost there was "broad agreement that the figure is trivial to modest."[104] Issuers placed the larger burden on management and board time and on implementing proposals that pass, and they offered the highest figures.[105] One scholar declined to assign any magnitude, observing that participants on each side have an incentive to make the number look larger or smaller.[106] A 2026 survey found the same divide, with most respondents placing companies' costs at the low end and company representatives more likely to call them substantial.[107]

The Commission cites the paper for the point that costs vary by type of proposal.[108] Its own estimate, about $49,000 per proposal and $39.6 million a year in total, assumes that every proposal disappears.[109]

The record supports the cost point in Section IV without supporting any single number. The costs it shows to be largest, management time and implementation, are also the ones it measures least well. That is a reason to fix the thresholds in statute and gather the missing data through the five-year study, rather than let each Commission recompute the cost and move the line.

C. Rescission Will Not End Proposals

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[99] *Id.*

[100] CalPERS Letter, *supra*, at 2.

[101] Letter from Jeffrey Mahoney, Gen. Counsel, Council of Institutional Investors, to Vanessa A. Countryman, Sec'y, SEC, at 1–2 (Nov. 5, 2026).

[102] UCF Letter, *supra*, at 4.

[103] *In Practice*, *supra*, at 4.

[104] *Id.*

[105] *Id.* at 4, 16.

[106] *Id.* at 15.

[107] Lawrence A. Cunningham, *Shareholder Proposal Survey: Report and Analysis of Results* 4, 28 (Univ. of Del., John L. Weinberg Ctr. for Corp. Governance, Jan. 2026).

[108] Proposing Release, 91 Fed. Reg. at 59,938 n.356.

[109] *Id.* at 59,938 & n.353, 59,952, 59,960.

"What nearly everyone agreed on is that rescission would not by itself end shareholder proposals, because the underlying mechanism is grounded in state corporate law."[110] Participants in several sectors also raised, independently, that proponents would shift to the universal proxy rules unless a rescission addressed them, which Section IV.E does.[111]

Private ordering has already begun to diverge. NLPC asked companies to commit to today's eligibility thresholds for 2027. Microsoft agreed, while Procter & Gamble's board opposed the proposal and committed to the rule only "while the rule remains in effect."[112] The proposal drew 26.9 percent of the votes cast for and against.[113] Texas now lets companies that opt in set far higher bars.[114] The release itself concedes that the availability of alternatives "is not uniform."[115] Without a statute, the terms on which a shareholder reaches the ballot will differ from company to company and from one administration to the next. A statute would give companies and investors one set of rules that both can plan around.

VI. Until Congress Acts

Legislation will take time, and the Commission's final rule will govern in the meantime. RBI offers four recommendations for that period. The first three concern the period before and just after the rule ends, and the fourth concerns the amendments to Rule 14a-4(c).

A. Proposals Already Submitted

The release says nothing about how it would treat proposals submitted before the rescission takes effect.[116] Proponents on both sides have already filed for 2027 under the current rule. The American Family Association asks the Commission to honor previously submitted proposals, writing that "Proposals properly submitted under the current rule for 2027 meetings should be handled in accordance with that rule."[117] NLPC asks the Commission to "at minimum apply the current rule to every proposal submitted before the effective date."[118] United Church Funds asks for "an adequate transition that protects existing submissions."[119] RBI agrees. The current rule should govern every proposal submitted before the effective date, including any request to exclude it. Because the current rule would govern those proposals, the staff should resume answering requests to exclude them until the effective date. Without answers, disputes in the 2027 and 2028 seasons would have only the courts to go to, and companies expect proponents to file heavily in those seasons before the rule ends.[120]

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[110] *In Practice*, *supra*, at 4.

[111] *Id.*

[112] NLPC Letter, *supra*, at 14.

[113] *Id.*

[114] Tex. Bus. Orgs. Code Ann. § 21.373(b), (e).

[115] Proposing Release, 91 Fed. Reg. at 59,941.

[116] *See id. passim*. The release's discussion of transition addresses costs rather than pending submissions. *Id.* at 59,944.

[117] AFA Letter, *supra*, at 3.

[118] NLPC Letter, *supra*, at 14.

[119] UCF Letter, *supra*, at 2.

B. The Effective Date

The release concedes that the transition "could extend for several years."[121] Yet its economic analysis assumes the rule takes effect in "the present year."[122] Companies and proponents plan their proxy calendars a year ahead, so a rule that takes effect mid-cycle would change the terms after both sides have acted on them. RBI recommends an effective date at the later of one full annual-meeting cycle after adoption or July 1, 2028. The fixed date gives states time to act. Delaware's Corporation Law Council has released a draft statute on stockholder proposals for the General Assembly's 2027 session, aimed at the 2028 proxy season.[123] A supporter of rescission has likewise proposed deferring it to 2028.[124] A rescission that took effect sooner could leave companies in Delaware and other states without any rule for a season.

C. Telling Shareholders the Rules

After rescission, the terms on which a shareholder may submit a proposal will depend on state law and each company's governing documents. The release would have companies disclose the deadline for such proposals where one exists.[125] RBI recommends that the disclosure cover the procedure as well as the deadline. That means stating the eligibility terms and the process, or that the company has none. Texas already requires companies that opt into its regime to include "specific information about the process by which a shareholder or group of shareholders may submit a proposal" in the proxy statement.[126] A shareholder should not have to search bylaws and state statutes to learn whether a path exists.

D. Rule 14a-4(c) as a Compromise

Once Rule 14a-8 is gone, Rule 14a-4(c) decides a further question. Where a shareholder raises a proposal through its own proxy materials and the company leaves it off the company's card, may the company vote the proxies it holds on that proposal? Today it usually may, unless the proponent has solicited enough shareholders. The release would remove that exception and add a single box, so that management would vote every unmarked card on every omitted proposal. The Commission proposed a similar box in 1997 and adopted the solicitation threshold instead in 1998.[127]

The release acknowledges what its approach costs. Shareholders who do not act "will have their votes cast by management regardless of their actual preferences," and the release expects the effect to fall mostly on retail shareholders.[128]

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[120] NAM expects a "last chance" surge in 2027 and perhaps 2028, and asks the staff to resume no-action responses until rescission takes effect. NAM 2026 Letter, *supra*, at 2–4.

[121] Proposing Release, 91 Fed. Reg. at 59,944.

[122] *Id.* at 59,953 n.426.

[123] *White Paper*, *supra*, at 2. NAM has proposed the same date where the staff continues to answer requests. NAM 2026 Letter, *supra*, at 4–5.

[124] Stephen M. Bainbridge, Comments on Securities Exchange Act Release No. 106,383, File No. S7-2026-32, at 21 (Nov. 2, 2026).

[125] Proposing Release, 91 Fed. Reg. at 59,925; *see* proposed 17 C.F.R. § 240.14a-5(e)(1)–(2).

[126] Tex. Bus. Orgs. Code Ann. § 21.373(d).

[127] Proposing Release, 91 Fed. Reg. at 59,921–22.

[128] *Id.* at 59,950.

RBI recommends keeping the threshold and giving each omitted proposal two boxes on the company's card. One box would authorize management to vote the shares on the proposal, and the other would withhold that authority. Where the proponent has not undertaken to solicit enough shares to carry the proposal, management would vote an unmarked card, as it may today. Where the proponent has, an unmarked card would cast no vote on the proposal.[129] The proxy statement would state the default for each proposal and briefly describe every omitted proposal.[130] It would also tell shareholders that returning the company's card after voting the proponent's card may revoke the earlier vote.[131] The Commission should also keep Item 4 of Schedule 14C, because it is the only notice that shareholders of a company that does not solicit proxies receive.[132]

The release objected that a box for each proposal would lengthen the card, but a short description is a modest price for a choice that reflects the shareholder's wishes.[133] Commenters on both sides of the rescission asked for that choice, including Prospr Aligned and Bowyer Research, which support it, and United Church Funds.[134]

The compromise works like this. Where a proponent solicits little, companies keep the authority they have today. Where a proponent solicits widely, they keep that authority from every shareholder who grants it, instead of losing it on every card. Shareholders gain a choice on each omitted proposal, which they lack today. A proponent that pays to solicit widely on its own card still defeats default voting, which is the contested solicitation that state law has always allowed. Section IV.E closes the zero-slate route separately. The recommendation holds whether Rule 14a-8 stays rescinded, returns, or is replaced by statute. The release itself says the amendments are justified "even if the proposed rescission of Rule 14a-8 is not adopted."[135]

VII. Conclusion

The Commission has proposed to end a rule it has administered for more than eighty years, and RBI has taken that proposal as its starting point. The question that remains is what should take the rule's place. RBI recommends that Congress answer that question by statute, so that shareholder access to the company's proxy rests on a single federal standard, rather than a patchwork of state and company rules, that a new Commission cannot rewrite.

The statute RBI proposes would raise the ownership and resubmission thresholds above those adopted in 2020, add a test for proposals whose support is falling, and index the dollar amounts to inflation. It would require that a proposal concern the company's own business, measure operational proposals against the company's own risk disclosures, drop the exceptions that turn on the importance of an issue,

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[129] *Cf.* 17 C.F.R. § 240.14a-4(c)(2).

[130] *See* Proposing Release, 91 Fed. Reg. at 59,925 (Request 25).

[131] *See id.* (Request 24).

[132] *See id.* at 59,927 (Request 31).

[133] *Id.* at 59,958.

[134] Letter from Derek Kreifels, Chief Exec. Officer, Prospr Aligned, to Vanessa A. Countryman, Sec'y, SEC, at 3 (Oct. 30, 2026); Letter from Jerry Bowyer, CEO & Co-Founder, Bowyer Research, to Vanessa A. Countryman, Sec'y, SEC, at 6 (Nov. 9, 2026); UCF Letter, *supra*, at 2.

[135] Proposing Release, 91 Fed. Reg. at 59,907.

and close the list of exclusions. State law would continue to govern what shareholders may decide. Disputes would go to a binding staff decision subject to Commission and court review, the statute would close the route the universal proxy rules opened, and a study every five years would tell Congress whether the thresholds should change. Until Congress acts, the Commission should honor proposals already submitted, resume answering requests to exclude them, and set an effective date no earlier than one full meeting cycle after adoption or July 1, 2028, whichever is later. It should also tell shareholders which rules apply and adopt the Rule 14a-4(c) compromise, under which each omitted proposal would carry its own boxes and management would vote an unmarked card only where the proponent has not undertaken to solicit widely.

Each of these terms comes from, or falls between, positions that issuers and investors have already taken. Together they would give both sides rules that do not change with each Commission. RBI would welcome the opportunity to discuss them with the Commission and its staff.

Appendix. Responses to the Commission's Requests for Comment

The comment answers the requests listed below, and the third column gives the section of the comment, or the page of RBI's earlier work, where each answer is developed. The final row lists the requests on which RBI takes no position.

Request (summarized)	**RBI's response**	**Where**
1 (59,919). Should Rule 14a-8 be rescinded, and are there alternatives within the Commission's authority that would address its concerns?	RBI does not ask the Commission to withdraw the proposal. It recommends that Congress set the terms by statute, because any alternative the Commission adopts could be undone by the next Commission.	I; IV
2 (59,919). Do companies and proponents have reliance interests, and how should they be balanced against the Commission's authority concerns?	Companies and proponents have relied on the current rule for 2027. RBI recommends that the current rule govern every proposal submitted before the effective date, that the staff resume answering requests to exclude those proposals, and that the effective date be the later of one full meeting cycle or July 1, 2028.	VI.A; VI.B
3 (59,919). Have the original justifications for the rule held up in practice?	The rule was adopted on a disclosure theory that the Commission conceded in 1943 did not reach a requirement to provide a ballot space, and its substance has since been rewritten by staff guidance without changes to its text.	Architecture paper at 4–5; IV
4 (59,919). How have costs, the volume of proposals, and shareholder support changed since the rule was adopted?	The interviews found broad agreement that direct administrative costs are trivial to modest, while issuers placed the larger burden on management time and on implementing proposals that pass. RBI gives no single figure, because the record measures the largest costs least well.	V.B; *In Practice* at 14–17
5 (59,919). Is state law unclear or silent on whether proposals, including precatory proposals, are proper subjects for shareholder action?	Whether Delaware law permits precatory proposals is unsettled, and the interviewees divided on how it would be resolved. RBI recommends that the statute keep the presumption that such a proposal is proper unless the state's statute or highest court clearly provides otherwise, or the company shows otherwise through an opinion of counsel tested under Section IV.D.	IV.C; Architecture paper at 82–93; *In Practice* at 17–18
6 (59,920). Have cheaper independent solicitations and new engagement channels weakened the case for a federal rule?	The universal proxy rules opened a lower-cost route, a solicitation that lists the company's own nominees alongside the proponent's proposals, which one interviewee put at $15,000 to $20,000 for a recent campaign. RBI recommends that the statute close that route.	IV.E; *In Practice* at 24
7 (59,920). Are there alternatives to full rescission, within the Commission's authority, that would avoid the rule's unintended consequences?	An alternative within the Commission's authority would last only until the next Commission. RBI's alternative is a statute that ties each proposal to the company's own business and closes the list of exclusions.	IV; IV.C

Request (summarized)	RBI's response	Where
8 (59,920). Would states and companies set their own standards, and with what advantages and disadvantages?	States and companies have already begun to set their own terms, and those terms differ. Without a statute, access will vary from company to company and from one administration to the next.	IV.A; V.C
9 (59,920). What forms of state and private ordering are most likely to develop?	The forms emerging so far are an opt-in regime with high thresholds in Texas, a discussion draft in Delaware, and company-by-company commitments to keep the current thresholds.	IV.A; V.C
10 (59,920). How would rescission, together with the Rule 14a-4 amendments, affect shareholders' voting rights under state law?	The proposed single box would let management vote the shares of shareholders who never chose to grant that authority. RBI recommends two boxes for each omitted proposal, allowing or barring management's vote, and where the proponent solicits widely an unmarked card would cast no vote.	VI.D
11 (59,920). Should the Commission give guidance on other rules adopted under Section 14?	RBI recommends that companies disclose the eligibility terms and procedure that apply, and that the statute address the bona fide nominee rule so that the universal proxy route cannot be used around it.	VI.C; IV.E
14 (59,924). Should the Commission adopt the proposed amendments to Rule 14a-4(c)?	RBI recommends keeping the solicitation threshold but changing what it does, and replacing the single box with two boxes for each omitted proposal, one allowing and one barring management's vote.	VI.D
15 (59,924). Do the amendments balance protection against abuse of discretionary authority with the concern that proponents gain inclusion without bearing solicitation costs?	RBI offers its approach as a compromise between companies and proponents. Companies keep today's authority where a proponent solicits little and keep it from consenting shareholders where a proponent solicits widely, shareholders gain a choice on every omitted proposal, and a proponent that pays to solicit widely still defeats default voting.	VI.D
16 (59,924). Would companies still voluntarily include independently solicited proposals on their own card?	Companies have carried these proposals on their own cards when the solicitation exception left them little practical choice, and the staff observed at least three such campaigns after 2022 in which the company did so. Because the company would keep authority from consenting shareholders even when a proponent solicits widely, it would face less pressure to carry the proposal.	IV.E; VI.D; *In Practice* at 24
17 (59,924). Should the brief description of an omitted proposal be kept, and is it enough for shareholders to decide?	Each omitted proposal should carry a short description. The same description should appear for an omitted proposal on which the company seeks no authority.	VI.D
18 (59,924). Should the check box be adopted as proposed, or tied to a solicitation threshold?	The single box should not be adopted. Each omitted proposal should have two boxes, and the solicitation threshold should decide only the default for an unmarked card.	VI.D
19 (59,924). Should the default be	Yes, where the proponent has undertaken to solicit	VI.D

Request (summarized)	RBI's response	Where
that the company has no discretionary authority unless the shareholder grants it?	enough shares to carry the proposal. Where it has not, management should vote an unmarked card, as today, unless the shareholder checks the box barring it.	
20 (59,924). Should there be a box for each proposal instead of a single box?	Yes. Each omitted proposal should have two boxes, one allowing and one barring management's vote, so that a checked box means the same thing in every case.	VI.D
21 (59,924). Could the check box confuse shareholders, and how could that be mitigated?	Two boxes for each proposal, each stating what it does, give a checked box the same effect in every case, and the proxy statement would state the default for an unmarked card.	VI.D
24 (59,925). Should the rules help reconcile a shareholder's instructions across more than one proxy card?	Because state law generally gives effect to the later-dated card, the proxy statement should tell shareholders that returning the company's card after voting the proponent's card may revoke the earlier vote.	VI.D
25 (59,925). Should Schedule 14A require a brief description of omitted proposals on which the company seeks no discretionary authority?	Yes. The proxy statement should describe those proposals, so that shareholders learn of every proposal that will come before the meeting.	VI.D
26 (59,927). Should the other proposed amendments be adopted?	RBI supports requiring companies to disclose the deadline for proposals, and recommends that the disclosure also cover eligibility and procedure. The Commission should keep Item 4 of Schedule 14C.	VI.C; VI.D
31 (59,927). Should Item 4 of Schedule 14C be removed?	No. The information statement is the only notice shareholders of a company that does not solicit proxies receive, and without Item 4 they would not learn of a proposal to be raised at their meeting.	VI.D
32 (59,927). Should any other proxy rules be amended or clarified?	Companies should disclose the eligibility terms and procedure that apply, and the statute should keep the universal proxy rules from being used to route around it.	VI.C; IV.E
34 (59,959). Has the release correctly described the benefits and costs?	The release's aggregate cost estimate assumes that every proposal disappears. The interviews show that the largest costs, management time and implementation, are the ones measured least well, which is why RBI recommends a five-year study rather than a single figure.	V.B; IV.F
35 (59,959). Has the release correctly described the effects on efficiency, competition, and capital formation?	Those factors apply to a rescission as fully as to an adoption. RBI's thresholds weigh the cost of carrying proposals, which every shareholder bears, against keeping the process open to small, long-term holders.	III; IV.A
36 (59,959). Would proponents switch to other forms of engagement, and which ones?	The interviewees agreed that rescission would not end proposals, because the mechanism rests on state law. Participants across sectors expected proponents to shift	V.C; *In Practice* at 4, 23–24

Request (summarized)	RBI's response	Where
	to the universal proxy route.	
38 (59,959), with 37. What does an independent solicitation cost, and how do alternative methods compare?	One interviewee placed the cost of a recent campaign that listed the company's nominees alongside the proponent's proposals at $15,000 to $20,000. RBI has no broader estimate.	*In Practice* at 24
39 (59,959). How would the 14a-4(c) amendments affect independent solicitations?	A proponent that solicits widely would no longer strip the company of authority on every card, because the company keeps it from consenting shareholders, which removes most of the leverage to force a proposal onto the company's card.	VI.D; IV.E
40 (59,959). Would the amendments affect whether companies include independently solicited proposals?	Yes. Because the company keeps authority from consenting shareholders even when a proponent solicits widely, it would face less pressure to carry such a proposal on its own card.	VI.D; IV.E
41 (59,959). What does it cost a company to include such a proposal rather than omit it?	One asset manager told RBI that the marginal cost of adding a proposal to an electronic proxy is de minimis, while issuers placed the larger burden on management attention and implementation.	*In Practice* at 15–17
43 (59,959). How would the amendments affect shareholders' ability to express their views on such proposals?	Under the proposed single box, shareholders who do not act would have management vote their shares. Two boxes for each proposal let each shareholder decide, and where the proponent solicits widely an unmarked card casts no vote.	VI.D
44 (59,959). Would the changes affect decisions to go public or stay public?	One scholar told RBI that the claim that proposal costs deter companies from going public draws laughter in a room of issuers, noting that the average Russell 3000 company receives a proposal about once every eight or nine years.	*In Practice* at 15
45 (59,959). Would management become less aware of shareholder views?	One corporate-law scholar described proposals as a low-cost early-warning signal whose removal would delete that signal.	*In Practice* at 18, 23
46 (59,959). What state laws or private ordering are likely to emerge?	The forms emerging so far are an opt-in regime with high thresholds in Texas, a discussion draft in Delaware, and company-by-company commitments to keep the current thresholds.	IV.A; V.C
47 (59,959). How significant would transition costs be?	Proponents on both sides have already filed for 2027 under the current rule, and without staff answers disputes in the 2027 and 2028 seasons would have only the courts to go to. RBI recommends that the current rule govern those proposals and that the effective date allow a full meeting cycle.	VI.A; VI.B
48 (59,959). Are there reasonable alternatives to rescinding the whole rule?	RBI's alternative is a statute, because any rule the Commission adopts in place of Rule 14a-8 could be undone by the next Commission.	IV
49 (59,959). Are there reasonable	Yes. Keep the solicitation threshold, but give each	VI.D

Request (summarized)	RBI's response	Where
alternatives to the 14a-4(c) amendments?	omitted proposal two boxes allowing or barring management's vote, with the threshold deciding only the default for an unmarked card.	
IRFA (59,965). How would the changes affect small entities, including small proponents?	A smaller reporting company that omits risk factors would receive only governance, securities, and voting-rights proposals under RBI's test. The dispute-resolution fee would be set to recover cost, not to deter use by proponents of any size.	IV.C; IV.D
12, 13, 22, 23, 27–30, 33, 42; PRA (59,920–59,963)	RBI takes no position on these requests.	—