Rule 14a-8 in Practice

A Descriptive Account from Twenty Interviews

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Descriptive working paper.

Introduction

Rule 14a-8 under the Securities Exchange Act of 1934 governs the circumstances under which a shareholder may include a proposal in a public company's proxy statement for a vote of fellow shareholders.[1] For decades the rule has served as the principal federal channel through which investors raise governance, social, and environmental questions with the companies they own, and as a recurring flashpoint in the larger debate over the proper role of shareholders in corporate governance. That debate has lately grown sharper. Critics question whether the federal government, rather than the states, should administer the proposal process at all, whether the lines the rule draws between proper and improper subjects are coherent, and whether the burdens it imposes are justified by what it produces; defenders see in it a low-cost, broadly available mechanism for which no obvious substitute exists.

This paper reports what a cross-section of participants in that system say about it, and how the rule actually operates in their hands. It draws on a set of twenty confidential interviews conducted across four sectors: the issuers that receive proposals, the law firms and consultants that advise issuers and investors, the asset managers that vote on proposals, and the academics who study them. The interviews were conducted on a non-attributable basis. Consistent with that undertaking, the paper attributes views at the level of sector and role only, never to a named individual or firm, and renders testimony in paraphrase rather than quotation. Its aim is descriptive. It sets out what participants observe and believe about how the rule operates, what it costs, where its lines fall, and where it may be heading, and it reports disagreement faithfully, including disagreement within sectors, rather than resolving it. A feature of the record itself is worth stating at the outset. The participants were a deliberately diverse cross-section, and their views did not converge on a center of gravity; heterogeneity persisted across the interviews, and later conversations continued to surface substantive angles that no earlier participant had raised. That dispersion, and the resulting long tail of observations made by a single participant, is itself part of what the record shows, and the account below reports it as such rather than smoothing it into consensus. paper's contribution is descriptive in a particular sense: alongside what participants believe about the rule, it reports how the process actually runs, from the practitioners who operate it, the procedural pipeline, the points of escalation, and the dynamics of engagement, exclusion, and litigation. In that respect it complements existing survey work on shareholder proposals

[1] Securities Exchange Act of 1934 § 14(a), 15 U.S.C. § 78n(a) (2024) (authorizing the Securities and Exchange Commission to adopt proxy rules, including Rule 14a-8, which governs when public companies must include qualifying shareholder proposals in their proxy materials).

rather than duplicating it.[2] The paper advances no recommendations; any assessment or proposal is reserved for subsequent work.

The paper is organized thematically, with each theme cross-cut by the four sectors. It proceeds in five parts. The first, How the System Operates, traces the proposal pipeline from a company's receipt of a proposal through the procedural screen, the exclusion analysis, and the eventual vote, and describes how a proposal that reaches the ballot is evaluated. The second, Engagement, Withdrawal, and No-Action, treats engagement, withdrawal, and the no-action process together and examines how the recent suspension of substantive staff review reshaped it. The third, Costs and Tradeoffs, takes up the most contested empirical question in the record, separating the direct administrative cost of handling a proposal from the cost of management attention and implementation. The fourth, Legitimacy and Line-Drawing, turns to the doctrinal and conceptual questions underneath the process: whether shareholders possess a default ability under state law to submit non-binding proposals, and where the lines of proper subject matter should fall. The fifth, Looking Ahead, reports participants' expectations for the regime, including the prospect of federal rescission and the channels through which proposals would persist if it occurred.

These interviews were conducted against a backdrop of unusual regulatory movement, which lends the questions they put to participants their present urgency. In the autumn of 2025, Securities and Exchange Commission's (SEC) Division of Corporation Finance announced that, for the current proxy season, it would step back from its long-standing practice of issuing substantive views on whether a company may exclude a proposal, responding only on the state-law basis for exclusion. In a keynote address weeks earlier, the Chairman of the SEC set out a reading of the rule under which a proposal that is not a proper subject for shareholder action under the relevant state's corporate law may be excluded, placed a broader reconsideration of the rule on the Commission's agenda, and directed the staff to revisit the rule's original rationale. At the state level, recently enacted Texas legislation raised the holdings a shareholder must have to submit a proposal at companies that opt into it, well above the federal thresholds. In December 2025, an executive order[3] directed the Commission to consider revising or rescinding rules relating to shareholder proposals, including Rule 14a-8.[4] Each of these developments is taken up in the sections that follow, and together they explain why these questions carry real urgency.

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[2] *See* Lawrence A. Cunningham, *Shareholder Proposal Survey Report and Analysis of Results* (John L. Weinberg Ctr. for Corp. Governance, Univ. of Del., Jan. 7, 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6045474 (a large-scale survey of 519 participants recording their self-reported positions on the shareholder-proposal process). This paper differs in method, drawing on a small number of in-depth interviews to surface how the process operates in practice rather than measuring the distribution of opinion across a large sample.

[3] Exec. Order No. 14,366, Protecting American Investors From Foreign-Owned and Politically-Motivated Proxy Advisors, 90 Fed. Reg. 58,503 (Dec. 16, 2025), https://www.federalregister.gov/documents/2025/12/16/2025-23093/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors (directing that the SEC Chairman shall consider revising or rescinding all rules, regulations, guidance, bulletins, and memoranda relating to shareholder proposals, including Rule 14a-8, where inconsistent with the order's purpose).

[4] 17 C.F.R. § 240.14a-8 (2025), https://www.law.cornell.edu/cfr/text/17/240.14a-8.

How the System Operates

The shape of the mechanism

Before turning to how a proposal is handled, it helps to fix the scale of the mechanism within the broader voting system. A large asset manager observed that shareholder proposals are a small fraction of the matters investors vote on, under two percent of ballot items year over year and, on his own count for a recent season, closer to one percent. The same manager, and no other participant, also noted a recent wrinkle in the proponent mix: proponents associated with anti-ESG positions have in some cases submitted conventional governance proposals, such as a proposal to separate the roles of chair and chief executive, a step he read as a way to lift their average level of support given the minimal support their core proposals have drawn. For all that, they draw attention out of proportion to their number. The proponent landscape is concentrated. Another large asset manager reported that the most prolific filer is not the single high-volume individual that observers often assume but a faith-based investor coalition, the Interfaith Center on Corporate Responsibility, whose proposal book ran to roughly 400 efforts in the most recent season, up from 217 the year before, with other organizations filing in far smaller numbers.

From receipt to resolution

The fullest procedural account in the record comes from a large issuer's in-house counsel, who described the handling of a proposal from arrival through the proxy vote. The first step on receipt is a review for procedural and substantive defects, conducted by internal specialists together with outside counsel. Counsel also builds a timeline working backward from the proxy filing date, fixing the dates by which the company must respond to the proponent and, historically, by which any request for no-action relief would be due. In parallel, the company assesses the substance of the proposal against the risks and costs of implementing it, drawing on internal subject-matter experts and on research, often through a proxy solicitation firm, into how the proxy advisors are likely to come out and how comparable proposals have fared elsewhere. The company then deliberates internally on whether to engage the proponent, whether to seek exclusion, and what to say in the board's statement in opposition, which is drafted in parallel and reviewed up through senior management and the board. Before filing, the company's internal accounting and finance staff reconcile every quantitative claim in that statement against its supporting sources. Once the proxy is filed with the proposal in it, the company turns to a shareholder-engagement strategy for the season. The depth of this process reflects a posture of contesting proposals the company regards as misaligned rather than settling them for convenience. Issuers vary in how far they take each step, and that variation is itself a source of the cost differences taken up below. The engagement and no-action dimensions of this sequence are taken up in the next section. What matters here is the shape of the pipeline itself. Another issuer's in-house counsel described how far a proposal escalates within the company, which on her account turns less on how prominent or politically charged it is than on its operational stakes. A proposal that bears on day-to-day operations or threatens real disruption moves quickly to senior leadership, while one expected to draw little support and to touch nothing operational may not.

Advisory practitioners corroborated the front end and added detail on its first move. A corporate and activism-defense practitioner described the proposal arriving with the legal team, typically the corporate secretary or the corporate securities lawyer, and being screened first for technical deficiencies: whether it arrived within the filing window, whether the proponent has shown the required ownership, and the rule's other procedural requirements.[5] A deficiency triggers a notice giving the proponent a short, defined period to cure. By her estimate, deficiencies of this kind arise in something like ten to twenty percent of proposals. What happens next, she said, forks by company type: confident companies that are untroubled by a proposal on the ballot simply include it and write a statement in opposition, while companies that prize a clean proxy statement, in her experience close to a majority of her clients, press to engage the proponent and, where possible, to keep the proposal off the ballot.

An issuer-side corporate practitioner placed the same procedural screen first and explained why. Even a proposal expected to draw only minimal support is worth checking for a procedural defect, because a proposal on the ballot always carries some chance of passing; the rule's word limit is one such lever, alongside its filing and ownership requirements. She reaches a matter only as outside counsel, after internal counsel escalates it. The corporate secretary owns the process and serves as the liaison between management and the board, and it is precisely because the mechanism commands the attention of senior management and the board that proponents find it worth using.

The exclusion analysis

A proposal that survives the procedural screen is measured against the substantive bases for exclusion the rule provides.[6] A leading no-action practitioner traced the interpretive architecture of the two exclusions that generate the most argument. The economic-relevance and ordinary-business grounds, he recounted, were once a single exclusion aimed at religious, social, and political subject matter, and divided into two when a de-minimis bright-line threshold was added.[7] The boundary between what counts as a company's ordinary business and what transcends it has shifted over time as the significant-policy gloss, which he acknowledged appears nowhere in the rule's text and is purely interpretive, has expanded. The same practitioner, and no other, identified a related mechanism since pared back: the staff once also required a nexus between a significant-policy issue and the particular company, so that a proposal on rapid-fire firearms could be directed at a manufacturer but not at a retailer that merely sold

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[5] Rule 14a-8 sets the eligibility and procedural requirements for shareholder proposals, including the ownership and timeliness conditions, the limit on the length of a proposal and its supporting statement, and the company's obligation to notify a proponent of procedural or eligibility defects, with a defined period to cure. *See* 17 C.F.R. § 240.14a-8(b), (d), (f) (2025), https://www.law.cornell.edu/cfr/text/17/240.14a-8. The requirements are paraphrased here.

[6] The rule sets out the bases on which a company may exclude a proposal after notifying the Commission. *See* 17 C.F.R. § 240.14a-8(i), (j) (2025), https://www.law.cornell.edu/cfr/text/17/240.14a-8.

[7] The economic-relevance and ordinary-business exclusions appear at 17 C.F.R. § 240.14a-8(i)(5), (7) (2025), https://www.law.cornell.edu/cfr/text/17/240.14a-8.

them, and the later abandonment of that nexus requirement widened the range of companies a given proposal could reach. He noted that a firm handling many no-action letters keeps an internal list of the issues the staff has treated as significant policy, and that the staff historically signaled changes roughly a year ahead, which lent the system a measure of predictability. He also described, as no other participant did, a directional change in how the staff treats emerging social-policy topics: where the staff once lagged public concern, treating a subject such as smoking as significant policy only after legislation and litigation had developed, it more recently moved ahead of that curve, resting on the presence of widespread public debate. He identified this shift as the point at which the process became political, and dated its onset to the Obama era.

A Delaware corporate practitioner described the ordinary-business exclusion as the principal moving target of recent seasons, its application turning, since the rescission of the 2021 staff bulletin and its replacement, on a more company-specific inquiry into significance.[8] A former SEC official characterized the 2021 bulletin as having moved matters only at the margins, and objected to a later bulletin chiefly on procedural grounds, that it issued in the middle of a proxy season, while saying he had not studied its substance closely.

Who decides now

Where that decision gets made has shifted this season. After the Division of Corporation Finance announced that, for the current proxy season, it would not respond substantively to no-action requests except on the state-law prong, companies lost the staff view they had long relied on to decide whether a proposal could be excluded.[9] A large issuer described the practical effect on its own screen: where the substantive exclusion review had once asked whether a proposal would survive SEC scrutiny, this season it asked whether the company's basis for exclusion would withstand public scrutiny instead, the staff no longer being in the picture. The strategy of the no-action process and the consequences of its suspension belong to the next section. The operational point here is narrower, that with the staff no longer issuing routine views, the interviewees who spoke to this described the practical governor on exclusion as shifting toward litigation. A policy-focused practitioner who advises investors put it that the SEC should not be deciding which proposals move forward at all, framing inclusion as an investor-relations matter for management, and identified the threat of litigation, including shareholder suits framed as corporate waste, as the real check, with a body of case law likely to develop over time. A corporate and activism-defense practitioner advised that, with the staff's substantive responses no

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[8] *Compare* Div. of Corp. Fin., U.S. Sec. & Exch. Comm'n, Shareholder Proposals: Staff Legal Bulletin No. 14L (Nov. 3, 2021), https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins/shareholder-proposals-staff-legal-bulletin-no-14l-cf (rescinding SLBs 14I, 14J, and 14K and adopting a broad social-policy-significance approach to the ordinary-business and economic-relevance exclusions), *with* Div. of Corp. Fin., U.S. Sec. & Exch. Comm'n, Shareholder Proposals: Staff Legal Bulletin No. 14M (Feb. 12, 2025), https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf (rescinding SLB 14L and restoring a company-specific approach to the ordinary-business and economic-relevance exclusions).

[9] Div. of Corp. Fin., U.S. Sec. & Exch. Comm'n, 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), https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season.

longer operating as a safe harbor, litigating an exclusion is the worst available course, because courts, and Delaware courts in particular, favor shareholders' right to vote.

A Delaware corporate practitioner added a further wrinkle: with Chevron deference gone, staff guidance may carry little weight with a reviewing court.[10] He pointed to recent litigation in which a court reached its own determination on the ordinary-business question rather than treating staff guidance as controlling. In one such case, a federal court in Massachusetts, declining to follow the SEC's more recent staff bulletin, conducted an independent analysis of the ordinary-business exclusion and ordered a company to include a proposal it had sought to exclude.[11] An issuer's in-house counsel described the dynamic from the company side. Faced with a proponent's suit to compel inclusion, a company will often settle quickly to preserve certainty ahead of its annual meeting, which she identified as the real reason companies include rather than fight. That same incentive, she noted, is why so few of these disputes ever produce a ruling: once a company settles, the case resolves before any court decides it.

How investors evaluate a proposal

How a proposal that reaches the ballot is then evaluated was described most concretely by an active asset manager, whose firm applies a four-part framework. It asks, first, whether the proposal addresses a topic the firm has already determined to be financially material through its annual materiality analysis; second, whether the proposal seeks disclosure or instead reaches into the company's ordinary business, the firm being more supportive of the former; third, whether the information sought would be useful to investors; and fourth, whether producing it is practical for the company and not unduly burdensome or competitively harmful. The firm's related observation tying the no-action suspension to the agency's beneficial-ownership guidance is taken up in the next section. A large asset manager, alone among participants, connected evaluation to a broader change in proposal quality: the ratio of signal to noise among proposals has fallen as filings have grown more prescriptive and directive, which makes the genuinely useful proposals harder to find. He pointed, as a counter-example, to a homebuilder whose shareholders received an open-ended, non-prescriptive climate-disclosure proposal that still drew roughly 46 percent support.

Engagement / Withdrawal / No-Action

Having traced the pipeline from receipt to resolution, the paper now turns to the stage at which most proposals are actually settled.

Across all four sectors, interviewees treated engagement, withdrawal, and the no-action process together, more as connected stages than as wholly separate ones, though not every participant treated

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[10] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (overruling *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)).

[11] *DiNapoli v. BJ's Wholesale Club Holdings, Inc.*, No. 1:26-cv-11075 (D. Mass. Apr. 22, 2026) (granting preliminary injunction), https://www.courtlistener.com/docket/72352294/dinapoli-v-bjs-wholesale-club-holdings-inc/.

them as a single system: one socially-responsible manager regarded the no-action change as largely beside the point for his own model, and one issuer's in-house counsel did not reach the mechanics at all, and the suspension of substantive staff no-action review reshaped how that system operated during the most recent proxy season. The line-drawing discussion that follows draws on this section rather than restating it.

For practitioners who advise issuers, the standing approach has long been to run two tracks at once. A corporate and activism-defense practitioner described advising clients for many years to pursue engagement with a proponent in parallel with preparing a no-action letter to be held in reserve, the aim being to resolve the matter through engagement where possible while remaining ready to seek exclusion if engagement failed. On this account engagement and the decision to seek exclusion proceed in parallel rather than in sequence, the no-action letter held in reserve while engagement is pursued.

The no-action process

The suspension of substantive staff review changed the audience and the stakes of that reserve letter. The same practitioner observed that a substantive exclusion letter this season was effectively addressed to the investor community rather than to the staff. As a result, the letter had to be more fulsome and had to persuade shareholders directly that a proposal did not warrant their vote. She noted that several companies that excluded on a substantive basis were then sued, and that a view had taken hold among some shareholders that, absent a functioning no-action process, proposals should not be excluded on substantive grounds at all. An active asset manager described the same shift from an investor's vantage: a wider range of proposals, including matters that previously would have been excluded and a number of anti-ESG proposals, reached ballots earlier in the season, and some companies, facing the wave of shareholder suits, chose to include procedurally valid proposals rather than contest them. The practitioner also reported that vote-no campaigns, the usual fallback when no withdrawal is reached, were mostly ineffectual, signaling frustration without offering an alternative. The same large issuer noted earlier, speaking through its engagement team, added an observation no other participant made: proponents have been clearing a higher share of proposals under the suspended no-action regime, on the order of seventy percent against a prior figure closer to fifty, even as they have fought hardest to preserve the prior regime; and vote-no campaigns now need a specific hook to land, as in one campaign tied to a particular company event, rather than general dissatisfaction.

On the underlying question of whether the staff should serve as arbiter at all, the record runs from defense to skepticism. A leading no-action practitioner defended no-action as an appropriate function for the agency, tracing it to the Transamerica litigation and the shareholder-notice obligation that followed,[12] while conceding the fair criticism that the staff may not be the best arbiter of what counts as

[12] The corporate-suffrage rationale underlying what is now Rule 14a-8 is conventionally associated with *SEC v. Transamerica Corp.*, 163 F.2d 511 (3d Cir. 1947). The modern no-action letter process, through which issuers seek staff assurance before omitting proposals, developed later as an administrative practice of the Commission's staff rather than as a direct product of that decision.

ordinary business and that the significant-policy standard is an interpretive overlay rather than anything in the rule's text. A former SEC official characterized the prior no-action system as reasonable when measured against the alternatives and inexpensive relative to litigation, and as compatible with his view that precatory proposals have value. An investor-side governance advisor was more skeptical of the official account of the change: removing the agency as arbiter created confusion rather than the smooth private ordering that current agency leadership describes, particularly for companies that were sued for excluding, and the all-or-nothing character of the shift simply transferred the burden of judgment to companies without supplying any added clarity. On the academic side, one corporate-law scholar saw nothing in the no-action process that had been seriously broken, while a corporate-law and securities scholar situated no-action within a structural critique in which it is one of several discretionary levers the agency exercises, and on that framing is lawless as a matter of administrative law.

Influencing the process

A distinct line of testimony, raised independently from the issuer-counsel side and the asset-manager side, identified the interaction between the no-action change and the federal beneficial-ownership rules as a constraint on engagement itself. An issuer-side corporate practitioner drew a line between ordinary investor engagement and an issuer's own outreach to a proponent to seek a withdrawal, and observed that engagement on environmental, social, and governance topics can risk being characterized as an effort to influence control, which can move an investor from the lighter Schedule 13G reporting regime to the more demanding Schedule 13D regime.[13] On her account, the agency's decision to stop issuing letters, taken together with this dynamic, amounted to a self-inflicted setback, with large-cap companies letting proposals go to a vote as an unintended consequence. These are two faces of one mechanism: whether the outreach originates with an issuer seeking a withdrawal or with a manager engaging on environmental, social, and governance topics, the same risk of recharacterization from Schedule 13G to Schedule 13D attaches, and the suspension of the no-action process sharpened it. An active asset manager described the mirror image from an investor's vantage: as an active manager that values long-term issuer relationships, the firm had historically given a company advance notice and a rationale before voting against management, but under current guidance on what counts as activism for beneficial-ownership purposes that practice now risks being read as an attempt to influence, so companies increasingly receive an unexplained vote against management, a problem she found especially acute for votes against individual directors. She tied this to a size-manager problem: because of the firm's scale it sits above the roughly five-percent ownership threshold on nearly everything it holds, so it must behave at all times as though it is above the threshold, a constraint that smaller managers sitting well below five percent do not face. A related legal-risk note came from the academic

[13] A shareholder who engages a company purely as an investor may report its holdings on the short-form Schedule 13G. If the shareholder acts with the purpose or effect of changing or influencing control of the issuer, it must instead file the longer Schedule 13D, which requires fuller disclosure and quicker amendment. *See* 17 C.F.R. § 240.13d-1 (2025), https://www.law.cornell.edu/cfr/text/17/240.13d-1.

side: one corporate-law scholar was reluctant even to use the word coordination in describing investor cooperation, given antitrust exposure and the sensitivity surrounding state enforcement attention to collective activity on these issues.

Who submits the proposal matters

Interviewees in two sectors observed that the identity of the proponent shapes how engagement and withdrawal play out. A practitioner focused on private-market and mission-driven clients distinguished proponent types by effectiveness: an activist hedge fund building quiet support was treated as effective, a prominent environmental proponent was read as driven more by fundraising and viewed as less effective, and a coalition of institutional religious investors was described as more principled and somewhat more successful. From the academic side, another corporate-law scholar drew a parallel distinction within the proponent ecosystem between a dialogue-oriented model associated with the religious-investor coalition and a more transactional model associated with the environmental proponent. Both accounts, from different sectors, tie engagement and withdrawal outcomes to who is bringing the proposal and how that proponent operates, though they differ in tenor: the law-firm account reads the environmental proponent as fundraising-driven, while the academic account draws the dialogue-versus-transactional contrast descriptively rather than pejoratively.

Two further observations on engagement were each made by a single participant. A large issuer's in-house counsel, and no other, pointed to a disconnect within asset managers between stewardship teams and portfolio managers, noting an instance in which a manager's stewardship team voted for a proposal that the manager's own board opposed on its own ballot. Separately, an issuer-side corporate practitioner, alone among participants, described a proposal-by-proxy practice, in which a proponent who does not itself meet the ownership threshold affiliates with a qualifying small holder to clear it.

Two participants questioned the premise that the proposal mechanism is what drives engagement in the first place. A socially-responsible investment manager dissented from the view that the recent changes are consequential, at least so far, on the ground that the firm's engagement is grounded in companies' own material-risk disclosures rather than in asks imposed by activists, so its engagement agenda does not depend on the proposal process. The same large issuer offered a complementary reframing: the catalyst for serious corporate engagement on environmental and social issues was the 2015 Paris Agreement and the global decarbonization commitments that followed, not shareholder proposals, which on this account came later and sought to capitalize on a shift already underway. The same interviewee noted that most major companies now maintain engagement teams that a proponent can simply email, so the rationale that proposals are needed to bring companies to the table is, in her view, largely outdated, and that increased company disclosure has not slowed proposals because, in her telling, the proposals are not ultimately about disclosure.

Costs and Tradeoffs

If engagement and the no-action process describe how the system runs, a second question the interviews pressed concerns what running it costs.

Cost surfaced in nearly every interview, and it is the clearest cross-cutting point of disagreement in the record. Read closely, however, the disagreement is less about whether the process is expensive in the abstract than about which costs are being counted. Three distinct cost questions run through the interviews and are worth separating. The first is the direct administrative cost of receiving, screening, and processing a proposal: outside-counsel fees, any no-action work, and the drafting of an opposition statement. The second is the cost of management and board attention. The third, distinct from both and the one the record captures least well, is the cost of implementing a proposal that ultimately succeeds, which several participants placed above the other two. On the first question there is broad agreement; on the second and third the record divides. A corporate-law and securities scholar offered a frame for reading all three: she declined to assign a magnitude at all, observing that participants on each side have a selfish incentive to make the number look larger or smaller depending on where they sit.

The direct administrative cost

On direct administrative cost, the advisory bar, the asset managers, and most of the academics described the burden as trivial to modest. Among the law-firm and consulting interviewees, a corporate and activism-defense practitioner placed the figure lowest, describing it as a matter of thousands of dollars rather than millions and saying she would be surprised if any company spent millions in a year. An issuer-side corporate practitioner could speak only to outside-counsel cost and made a structural point: large-cap issuers often pay their proxy advisor a flat annual governance fee, so the Rule 14a-8 component cannot be isolated, and she did not regard it as material. A policy-focused practitioner who advises investors said he hears the cost objection frequently from witnesses before Congress and from trade-association advocates, but not from his own clients, whose objection is sentimental, a frustration at having to engage with proposals rather than a complaint about expense. A former SEC official called direct costs a rounding error for large companies. An investor-side governance advisor declined a dollar figure but estimated the work in hours, roughly twenty to thirty to decide on a response, around fifty to draft, and sixty to seventy on engagement, and characterized none of it as material to a company's financial statements. A practitioner focused on private-market and mission-driven clients likewise declined to name a number, noting that cost varies widely with who brings the proposal and what is at stake. A Delaware corporate practitioner, alone among participants, named a further category of direct cost: a legal opinion on whether a governance ask is even capable of being carried out under the relevant state's corporate law, which on his account can run from roughly ten thousand to fifty thousand dollars or more depending on the complexity of the question. The same participant observed that even the largest companies are highly cost-sensitive, contesting fractional-hour billing entries and retaining outside auditors to review their legal bills.

The asset managers concurred. An active asset manager called the substantial-cost claim a red herring, observing that some companies do not even draft responses and that the marginal cost of adding a proposal to an electronic proxy is de minimis. A socially-responsible investment manager agreed that on a relative basis the cost is meaningless against a corporate legal department's budget, while adding that the process probably occupies more of management's mind share than its dollar cost would suggest. Most of the academic interviewees placed the direct cost in the same range. One corporate-law scholar observed that roughly one hundred thousand dollars at a company among the most frequently targeted is trivial. Another corporate-law scholar said the claim that proposal costs deter companies from going public draws laughter in a room of issuers, and noted that the average Russell 3000 company receives a proposal only about once every eight or nine years, with the burden concentrated at the largest and most public-facing firms, where economies of scale apply. A financial-economics scholar went further, treating the cost objection as essentially unfalsifiable. The one academic who departed from this assessment declined to assess magnitude rather than calling it large.

Managerial, board, and implementation costs

The disagreement sharpens on the second cost. The issuer interviewees placed the larger burden there, and gave the highest figures. A large issuer's in-house counsel said her company's cost had reached seven figures, a figure she tied to the company's practice of contesting proposals it does not regard as aligned rather than settling them, while noting that it varies year to year with the number and intensity of proposals. A large issuer described the burden as a tax on the success of a high-profile company and said that, while unable to quantify it, the cost had to run into the millions, attributing most of that not to administrative handling but to the diversion of the company's own subject-matter teams, who are pulled from substantive work to respond to proposals on issues the company is in many cases already addressing. An issuer's in-house counsel put her company's outside-counsel cost at roughly two hundred fifty thousand dollars a year, but said the real cost lies in implementation rather than in handling the proposal. She broke the burden into layers. Beyond outside-counsel fees and the senior management, executive, and board time the process consumes, she estimated that any company of real size needs at least one additional full-time employee dedicated to managing shareholder proposals, with the largest cost of all falling on implementing those that pass. The strongest support for taking the management-time cost seriously came from outside the issuer ranks. A leading no-action practitioner agreed that the direct legal spend is not significant, to a large company overall, though he noted it is among the most they pay for any single piece of their securities work, but said that calling the process costless is dishonest: the real burden is the management and board time needed to understand a proposal, trace its consequences across the business, and educate senior leadership, a burden that has grown as proposals have become more prescriptive. A further distinction separates the cost of the proposal from the largely uncaptured cost of implementing one that passes. A large asset manager put a number on the fuller process: a complete run for an S&P 500 company, from receipt through a vote, counting executive and board time alongside outside costs, runs easily north of half a million dollars, with six figures the floor and the total potentially well in excess. Another large asset manager reframed the question, asking whether the relevant cost is the cost of the proposal process itself or the cost of the substance the proposal requests, a distinction that tracks the implementation point.

Other interviewees regarded the management-time figure as precisely the part that cannot be tested. Beyond that, a corporate and activism-defense practitioner and an active asset manager each observed that a high proposal count need not mean high cost: an issuer can let proposals go to a vote with little engagement and without seeking no-action relief, so the number of proposals a company receives is a poor proxy for what it spends.

A publicly reported survey of shareholder-proposal participants, conducted independently of these interviews, likewise treated cost as the clearest dividing line and located the disagreement in role and position rather than in bad faith.[14] It recorded a wide spread of self-reported issuer compliance figures weighted toward outside legal spending, against more modest proponent budgets. Across the four sectors the direct administrative cost was widely, though not unanimously, described as trivial to modest; the issuer interviewees did not concede even that point as cleanly as the other sectors, and one academic declined to join the assessment at all. The genuine disagreement, not reducible to a simple issuer-against-everyone divide, is over the size and even the measurability of the management-time and implementation cost.

Legitimacy and Line-Drawing

Underneath the disputes over process and cost lies a more basic question, one the interviews returned to repeatedly: on what terms, if any, the mechanism is legitimate.

The legitimacy questions raised across the interviews cluster around two doctrinal threads. The first is whether shareholders possess a default ability, under state corporate law, to submit non-binding, or precatory, proposals at all. The second concerns where the lines of proper subject matter fall once a proposal reaches the ballot: what counts as material, what counts as ordinary business or micromanagement, and how to treat proposals motivated by values as distinct from those framed around economic value. The no-action mechanism through which these line-drawing judgments were historically administered is addressed in the Engagement, Withdrawal, and No-Action discussion; the treatment here concerns the underlying legitimacy and proper-subject questions rather than the no-action process itself.

The precatory-proposals question

In the published debate, the dispute turns on a single merits question: whether Delaware law confers, as a default matter, the ability to submit advisory proposals, or whether that ability must instead be affirmatively granted. In an October 2025 keynote, the SEC Chairman endorsed the view that shareholders lack a fundamental right under Delaware law to vote on precatory proposals, reasoning that, if that is so, issuers would be free to exclude such proposals under the federal proxy rules.[15] He

[14] Cunningham, *supra* note 2.

[15] Paul S. Atkins, Chairman, U.S. Sec. & Exch. Comm'n, *Keynote Address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala* (Oct. 9, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governances-25th-anniversary-gala.

drew on a law review article that reframes the precatory proposal as a privilege that must be granted rather than a right that exists by default.[16] Four corporate law scholars answered in the published literature, contending that the characterization has the law backwards: because the statute vests managerial authority in the board, most proposals are necessarily advisory, and the incidental-powers doctrine, read together with the provisions governing the conduct of stockholder meetings, preserves shareholders' ability to advise the board.[17] The literature divides on a deeper question: whether the right exists unless restricted, or is a privilege unless granted. The first reading is associated with commentators such as Balotti and Loss. The second is developed in the recent article and aligns with the long-standing position of former Chief Justice Strine that state corporate law does not itself contemplate non-binding votes.[18] The same article separately canvasses a reading under which the federal rule could operate as a substantive grant displacing contrary state law.[19] The article also notes that a board may itself determine to submit, or allow the submission of, a matter for a stockholder vote, so that even where the statute, the governing documents, and federal law do not otherwise contemplate stockholder action on it, the matter is proper business rather than improper, a board-conferred route that requires no bylaw.[20]

Academic voices engaged the same question from several directions. A corporate-law and securities scholar predicted that Delaware would not hold precatory proposals prohibited, but would treat their availability as a default rule that a company could opt out of through its own charter or bylaws, what she described as the quintessential private-ordering answer. Two corporate-law scholars approached the issue from the pro-proposal side. One drew a sharp distinction between precatory proposals and the federal Rule 14a-8 apparatus. The other characterized proposals as a low-cost early-warning mechanism whose removal would eliminate a useful signal. The corporate-law and securities scholar's prediction tracks the published debate, where the board-permission reading similarly leaves room for company-level restriction of precatory proposals. None of these accounts forecasts how the question would ultimately be resolved.

Proper subject and the line-drawing frame

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[16] Kyle A. Pinder, *The Non-Binding Bind: Reframing Precatory Stockholder Proposals Under Delaware Law*, 15 Mich. Bus. & Entrepreneurial L. Rev. 1 (2026), https://repository.law.umich.edu/mbelr/vol15/iss1/2/

[17] Jill Fisch, Sarah Haan, Ann M. Lipton & Amelia Miazad, *Stockholder Proposals: Law and Policy Considerations*, Harv. L. Sch. F. on Corp. Governance (Dec. 9, 2025), https://corpgov.law.harvard.edu/2025/12/09/stockholder-proposals-law-and-policy-considerations/ The statutory framework is paraphrased, not quoted; *see* Del. Code Ann. tit. 8, §§ 121, 141(a), 211, 212.

[18] *See* Leo E. Strine, Jr., *Breaking the Corporate Governance Logjam in Washington: Some Constructive Thoughts on a Responsible Path Forward*, 63 Bus. Law. 1079 (2008); Mohsen Manesh, *The Corporate Contract and Private Ordering of Shareholder Proposals*, 50 J. Corp. L. 2 (2024). For the contrary, right-unless-restricted reading, which traces the precatory proposal to Louis Loss and invokes Frank Balotti's view that Section 211 authorizes such resolutions, *see* Fisch et al., *supra* note 17.

[19] Pinder, *supra* note 16 (separately canvassing a reading under which the federal rule could operate as a substantive grant displacing contrary state law).

[20] Pinder, *supra* note 16, at 13-16.

Setting aside the threshold question of whether a proposal may be submitted, interviewees divided over where the substantive lines should fall once it is on the ballot. On materiality, a policy-focused practitioner who advises investors favored clearer guidelines, potentially drawn industry by industry, and offered the example of the SEC declaring climate risk material for oil and gas companies, where it bears directly on the value of reserves and on future drilling. He invoked a distinction, associated with former Chair Mary Jo White, between what investors need to have and what they would like to have, and contrasted the comparatively bounded approach of the Clayton era with the more open-ended posture that followed. The same practitioner, and no other participant, marked off a further category of proposal alongside the routine and the initiative-based: an event-driven proposal, prompted by a specific headline event at a company.

A related line separates proposals that raise governance questions from those that direct the details of business operations. A Delaware corporate practitioner approached this divide from the doctrinal side, observing that a board's discretion to refuse a proposal is not uniform across subject matter. A court applying equitable principles, on this view, could demand a stronger justification for refusing a genuine governance proposal, such as one to declassify the board or to lower the threshold for calling a special meeting, than for refusing a proposal that merely micromanages. From the opposite flank, a financial-economics scholar argued that the existing lines, if anything, cut against economic value: in his view, performance-based proposals are themselves screened out as micromanagement, so the current exclusions do not consistently privilege economically focused proposals over others.

The hardest line to draw, in the view of one corporate-law scholar, is between proposals motivated by economic value and those motivated by values. She argued that the distinction is frequently indeterminate and can shift over time. Her illustration involved an animal-welfare proponent's request that a coffee retailer drop its surcharge on non-dairy milk: framed as a values proposal, it nonetheless intersected with pending litigation and with customer-retention concerns, and was ultimately adopted, leaving its character as value or values genuinely ambiguous. The analytic move she pressed was to separate the shareholder's role from the board's. Shareholders may flag an issue for the board's attention; the board, constrained by its fiduciary focus on economic value, decides whether to act, so that a values-laden motive on the proponent's side does not by itself compel the board to do anything.

On materiality itself, an issuer's in-house counsel pressed a flatter view than any other participant, doubting that much of what is submitted, governance proposals included, is financially material, and adding that additional disclosure can itself destroy value by creating litigation exposure.

Other interviewees voiced legitimacy concerns about how the process operates in practice rather than about doctrine. A large issuer's in-house counsel described the proxy process as having been hijacked by proponents pursuing public-policy goals not aligned with the company's value-creation strategy or widely shared among shareholders. She raised a related concern about the position this puts the agency in. Requiring the Commission to adjudicate what counts as a significant social-policy issue has, on her account, drawn an apolitical financial regulator into contested political terrain, a development she acknowledged might be an unavoidable consequence of the kinds of proposals now being submitted. A similar concern came from the same large issuer, who described proposals as having become detached from their economic purpose and increasingly a vehicle for special-interest agendas and proponent publicity, from the left and the right alike. A practitioner focused on private-market and mission-driven clients questioned the mechanism's efficacy from the other direction, observing that watered-down precatory proposals cannot themselves be transformative and noting that even a high-profile board victory at one large energy company did not change the company's strategy. The same large issuer pressed a broader version of the same doubt, questioning whether the proposal mechanism is the best way to achieve its stated objectives at all: other major markets secure corporate engagement and disclosure without an equivalent right, and other channels exist to obtain the same disclosure, so the case for this particular mechanism, in her view, is not self-evident. A corporate and activism-defense practitioner described how accountability campaigns tend to converge on the chair of the nominating and governance committee, for reasons of cross-portfolio consistency rather than the merits of any single company, a pattern she tied to the bluntness of voting against directors as a tool.

Asset managers contributed a distinct concern centered on eligibility rather than subject matter. One large asset manager pointed to filings by proponents holding little or no economic interest, including a proposal submitted with a negligible share position, as a flaw in where the eligibility line is currently drawn. The same participant, and no other, described the underlying mechanism as filing on borrowed shares with no economic stake at risk, and pointed to an episode in which a natural-gas company received a proposal filed in the name of a hotel company that, on his account, had no knowledge its name was being used. Another large asset manager approached legitimacy through the value of the mechanism itself, describing the proposal process as a safety valve that has driven real governance change.

One academic frame stood apart from the others. A corporate-law and securities scholar, more than any other participant, situated the entire dispute in administrative law and federalism, treating the federal proposal right as a subsidy justifiable only to the extent federal law itself creates the impediments it offsets, and casting a challenge to the Commission's role in structural terms.

Looking Ahead (SEC and the States)

These contested questions of operation, cost, and legitimacy set the terms for the last subject the interviews took up, the regime's likely direction.

Across all four sectors, interviewees were asked where Rule 14a-8 and the surrounding proxy regime are likely to go. Three broad categories of reform recur across the interviews[21] and organize what follows:

[21] *See* 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/ (reaching a middle-path assessment that retains the rule, refines its

keeping the federal rule and broadening access; rescinding the federal rule and returning the question to state corporate law;[22] and retaining the rule while modernizing its thresholds and exclusions. Interviewees did not sort neatly among these categories, and several moved between them depending on the dimension under discussion.

The regulatory backdrop

The forward-looking testimony was offered against a defined regulatory backdrop. The SEC Chairman's keynote set out a reading of the rule under which a proposal that is not a proper subject for shareholder action under the relevant state's corporate law should be excludable under the state-law prong, and expressed confidence that the staff would honor that position.[23] He connected this reading to recently effective Texas legislation that, for companies that opt into it, raises the threshold to submit a proposal to one million dollars in market value or three percent of voting shares, well above the federal thresholds, and endorsed the view that the federal rule's procedural bases for exclusion operate as default standards that a company's governing documents, or a chartering state's law, may displace.[24] The same address placed a broader shareholder-proposal modernization initiative on the Commission's policy agenda and directed the staff to assess whether the rule's original 1942 rationale still holds, while noting that any change would proceed through notice-and-comment rulemaking rather than immediate action.[25] The address announced this state-law exclusion posture and the modernization review; as of this writing, the Commission had not announced rescission of the rule. A subsequent executive order, issued in December 2025, directed the Commission to consider revising or rescinding its rules relating to shareholder proposals, including Rule 14a-8. Coming weeks after the Chairman's keynote, it reflected a broader pattern of federal scrutiny of the proxy process during this period.[26]

Expectations of rescission

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exclusions, and declines repeal). Consistent with this paper's descriptive method, the interview record is reported as it stands, and reconciliation with the authors' prior position is reserved for a subsequent paper.

[22] The repeal-and-return-to-the-states position has a prior published articulation. *See* Daniel M. Gallagher & John C. Cook, *Shareholder Proposals: An Exit Strategy for the SEC*, Wash. Legal Found. Critical Legal Issues Working Paper Series No. 193 (Sept. 2015).

[23] *See* Atkins, *supra* note 15. The pertinent basis for exclusion is the state-law prong of the rule. *See* 17 C.F.R. § 240.14a-8(i)(1) (2025), https://www.law.cornell.edu/cfr/text/17/240.14a-8.

[24] Tex. Bus. Orgs. Code Ann. § 21.373(e) (West 2025), added by S.B. 1057, 89th Leg., R.S. (Tex. 2025), https://legiscan.com/TX/text/SB1057/id/3230729?__cf_chl_f_tk=JaMX.t9Cq1rT91_mEW3ynjvFVgKnOklydB_nZbW5tn0-1783341128-1.0.1.1-5ptiaoe2KMr36Oikpq6Yi7CheLvtJdXe0wYxIncG8zE For a corporation that opts into the provision, *see id.* § 21.373(b); a proponent must (1) hold at least one million dollars in market value or three percent of the corporation's voting shares as of the date the proposal is submitted, *id.* § 21.373(e)(1); (2) have held those shares continuously for at least six months before and through the meeting, *id.* § 21.373(e)(2); and (3) solicit holders representing at least 67% of the voting power entitled to vote on the proposal, *id.* § 21.373(e)(3), thresholds well above those in Rule 14a-8. *See* 17 C.F.R. § 240.14a-8(b) (2025); Atkins, *supra* note 15.

[25] Shareholder-proposal modernization appears on the Commission's policy agenda, and the staff has been directed to evaluate whether the rule's original 1942 rationale still applies; any amendment would proceed through notice-and-comment rulemaking. *See* Atkins, *supra* note 15.

[26] Exec. Order No. 14,366, 90 Fed. Reg. at 58,503, https://www.federalregister.gov/documents/2025/12/16/2025-23093/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors.

Set against that stated posture, a recurring expectation across the law firm and asset manager sectors, reported here as an expectation rather than as announced action, is that the Commission will move to rescind Rule 14a-8 in full through rulemaking, with several interviewees anticipating a proposal in the fall. One advisor, drawing on his firm's securities lawyers, placed the likely effective date around 2028. A leading no-action practitioner sketched the likely path as rescission, followed by litigation, followed by contests over timing and preliminary injunctions, and regarded the statutory arguments for the Commission's authority to repeal as strong, a view others were skeptical of. A Delaware corporate practitioner likewise expected repeal, and thought eventual legislation hardwiring federal proxy access possible, though whether that further step would be desirable he considered too soon to tell. One large asset manager anticipated full repeal in the fall by rulemaking. These forward-looking accounts are predictions about the Commission's likely course rather than endorsements of it, and they are reported as such. Where affirmative support for the Commission exiting the area did appear, it was most direct in the academic sector: a financial-economics scholar supported the Commission exiting altogether, grounding that view in a general objection to a regulator involving itself in this kind of line-drawing, while remaining explicitly unsure whether the Commission's exit would prove socially better, given the litigation it would invite, and adding that he regarded the broader dispute as a distraction from capital-allocation problems he considered more fundamental. A corporate-law and securities scholar saw the more straightforward course not in outright repeal but in reading the state-law exclusion robustly and letting the question be settled through private ordering, predicting that Delaware would treat precatory proposals as permissible by default while leaving companies free to restrict them through their own governing documents. A former SEC official put the probability of reinstatement under a future administration as high, and stressed that a later Commission could not simply decline to defend a rescission but would have to re-propose through rulemaking; that same participant regarded the initiative as inconsistent with an administration professing deference to state law.

How consequential rescission would be

Running beneath these expectations is a distinct question on which participants divided: how consequential rescission would actually be. Their positions are mapped here without adjudication, and they cut across sector.

A first group treated rescission as survivable, on the view that proposals would persist through other channels or that the rule is not what drives engagement. A socially-responsible investment manager would not object to the rule going away, his engagement resting on companies' own disclosures rather than on proposals; an issuer's in-house counsel was comfortable with full rescission, placing herself in a minority issuer position; a large issuer's in-house counsel judged issuers likely no worse off and possibly better, worth treating as an experiment; a large asset manager regarded it as manageable after a transition; another large asset manager emphasized that the mechanism is grounded in state law and would survive; an issuer-side corporate practitioner treated the change as a sideshow; and a practitioner focused on private-market and mission-driven clients regarded the process as flawed regardless.

A second group treated rescission as more consequential, the recurring cost being instability rather than a clean settlement. An active asset manager stressed that without a mechanism to influence governance, shareholders at the bottom of the capital structure are left with little, and described director votes as a weak substitute; the same large issuer noted earlier expected any rescission to prove temporary and to be reinstated, with the cost of repeated cycling falling on companies, and favored reform over rescission; a large asset manager, holding both poles at once, also flagged a tail risk of a race to the bottom and governance backsliding; a former SEC official put the probability of reinstatement high and saw no durable equilibrium; one corporate-law scholar expected institutions not to return to their prior posture and the Commission to like the substitutes less than what it had controlled; and another corporate-law scholar characterized proposals as a low-cost early-warning signal whose removal would delete that signal.

A third group treated rescission as mechanically consequential without rating it good or bad. A leading no-action practitioner described a sequence of rescission, litigation, and injunction-timing contests, and stressed that any repeal would have to be packaged with the related proxy-solicitation rules; a Delaware corporate practitioner expected repeal to filter out proponents unwilling to self-fund while leaving a route open for the funded; and a policy-focused practitioner who advises investors preferred the board-and-bylaw locus while worrying about state fragmentation. Two participants declined to size the question, reframing it instead: a corporate-law and securities scholar treated the matter as one of administrative law and federalism and anticipated a private-ordering settlement, and a financial-economics scholar treated the magnitude of rescission as secondary to capital-allocation problems he considered more fundamental.

These positions do not line up cleanly with political alignment. A socially-responsible manager was comfortable with rescission, while a large active manager was among the most wary; a process-critic issuer favored the Commission's exit while a reform-preferring issuer did not; and the academics did not divide by political valence. What the positions track more closely is role and business model, and in particular each participant's view of the no-action regime and whether their own engagement depends on the federal proposal channel. The map is reported here as it stands, without resolving it.

What would persist

The strongest cross-sector pattern in the forward-looking record is that rescission of the federal rule would not, by itself, end shareholder proposals. A large asset manager characterized Rule 14a-8 as not, on its own, the source of authority for proposals; the proposal mechanism, this participant emphasized, is grounded in state corporate law, so different chartering states could supply different thresholds and inclusion or exclusion criteria, and proposals would continue to move through those channels. The same point arose on the law firm side, where practitioners observed that state law, company bylaws, binding resolutions, and the proxy rules outside Rule 14a-8 would all remain available. One asset manager added a distributional observation: removing a low-cost, broadly available federal channel could concentrate the capacity to press for change in a smaller set of well-resourced actors, a possibility the manager raised in the course of considering how activist investors might regard repeal.

A second strong pattern, raised independently across sectors, is that any serious rescission would have to address the universal proxy rules in the same package, or proponents would simply shift to them.[27] The fullest issuer-side account came from a large issuer's in-house counsel, who worked through the consequences of rescission and identified the universal proxy route as the principal residual channel. Under what this participant described as a zero-slate approach, a proponent solicits its own proxy card listing the company's own director nominees together with the proponent's proposal, without nominating any rival directors. The route runs through the company's own advance-notice provisions, under which the proponent makes a timely submission and solicits its own card. Because a state cannot compel a company to include a proposal in its federal proxy statement, the proponent's own solicitation is the operative friction: once the proponent solicits for the requisite majority, the company is barred from exercising the discretionary authority it would otherwise hold over the matter, which in effect compels it to carry the proposals in its own proxy materials so that it can state its opposition and solicit against them. The route is also uncapped. A proponent could bring unlimited proposals, free of the rule's procedural and substantive limits. The participant pointed to the 2024 Warrior Met Coal matter, involving the AFL-CIO and the United Mine Workers, an instance of the tactic already in use, and observed that the Commission is aware of the gap. The same participant added that even if the gap were left open, issuers would be no worse off than they are today, since the route is already available. The mechanics were corroborated in detail by a Delaware corporate practitioner, who described the same zero-slate solicitation, placed the cost of the Warrior Met Coal effort in the range of fifteen to twenty thousand dollars, and noted that the proxy advisory firms tend to favor the more complete card, which in practice can force proxy access even where it is not formally required. An investor-side governance advisor independently flagged the universal proxy route as the first lever proponents would reach for, citing the same Warrior Met Coal example as an inexpensive contest, and a leading no-action practitioner likewise treated a complete repeal as one that would necessarily reach the universal proxy rules together with the related proxy-solicitation rules, handled as a single package. The same large issuer agreed that universal proxy is an issue any serious rescission would have to resolve, since proponents would otherwise shift to it.

Three further forward-looking observations were each made by a single participant. A large issuer's in-house counsel raised a consequence no other participant developed: in the absence of the federal channel, proxy advisory firms could fill part of the void, as occurred after the Dodd-Frank say-on-pay vote and, on her account, an earlier episode in which a proposal was withdrawn. A leading no-action practitioner observed, alone among participants, that repeal could strengthen the best-resourced

[27] The universal proxy framework is set out at 17 C.F.R. § 240.14a-19 (2025), https://www.law.cornell.edu/cfr/text/17/240.14a-19, which operates in conjunction with the form-of-proxy requirements of 17 C.F.R. § 240.14a-4 (2025), https://www.law.cornell.edu/cfr/text/17/240.14a-4; the interplay on which the zero-slate approach turns appears at § 240.14a-19(e).

proponents, such as a prominent shareholder-advocacy organization, since catching management's attention without the federal channel would take greater firepower. And a corporate-law scholar pressed a distinction no other participant drew in these terms: the operative line is between Rule 14a-8 and independent solicitation, not between precatory and binding proposals, since shareholders can already bring binding resolutions under state law and generally do not, because the federal route is cheaper and less confrontational.

Some interviewees connected this to a broader expectation that, if the federal proposal channel narrowed, proponents would redirect effort into other levers. A large issuer's in-house counsel noted vote-no campaigns against directors as one such avenue, while observing that such campaigns have not historically moved director support in a material way, and an investor-side governance advisor anticipated a shift toward campaigns aimed at employees and customers rather than at the proxy statement.

The issuer view

The issuer forward-looking testimony on the Commission's exit was mixed. The most developed issuer account moved from the universal proxy analysis above to a bottom-line judgment. Having worked through the consequences she could identify, this participant concluded that issuers would likely be no worse off than under the current regime, and might be better off. On that basis, she regarded rescission as worth testing as an experiment, while continuing to prefer targeted reform. An issuer's in-house counsel was comfortable with the Commission stepping out of the 14a-8 process altogether, while indicating that she would have been very content with a fix that raised the submission thresholds. Her comfort with rescission rested on a critique of the no-action regime itself. She regarded it as unprincipled: a non-binding staff interpretation whose results shifted with each change of administration, leaving no settled body of case law. That, on her account, was not good for companies. She placed her own willingness to accept full rescission as a minority position within the issuer community. Asked what a fix should contain, she named two levers rather than one. The first was raising the initial submission thresholds to remove de-minimis holders. The second was eliminating or narrowing the significant-social-policy exception, which she identified as what draws companies into political controversy in the first place.

A more skeptical issuer account came from the same large issuer. Its participants viewed the Commission itself as the principal beneficiary of full rescission, since rescission would shed the role of arbiter. They expected any rescission to prove temporary and to be reinstated under a later administration, with the cost of repeated cycling falling on companies. They also regarded the residual alternatives, including vote-no campaigns and proponent-run solicitations, as comparably costly. While they expected rescission and regarded the current rule as burdensome, they ultimately favored significant reform over rescission.

State competition for incorporations

The forward-looking interviews also touched on state competition for incorporations. One large asset manager reported a rise in reincorporations, on the order of fifty against a prior figure near twenty-eight, and an active asset manager noted having voted against every Delaware reincorporation over a three-year period. A policy-focused practitioner who advises investors said that, while he favored pushing more of these decisions to boards and bylaws, the prospect of state-by-state competition made him uneasy. An issuer-side corporate practitioner supplied the cautionary note that the migration to Texas and Nevada is driven by control-company and conflict-of-interest concerns, and by litigation-reform considerations, rather than by Rule 14a-8.

Where the issue might settle

On where the ultimate issue might come to rest, the interviews record a range of views rather than a consensus, and they are reported here without endorsement. The single most common considered position was not rescission but reform. Several interviewees who expected or could accept rescission nonetheless preferred that the rule be retained and modernized. An investor-side governance advisor favored raising the submission thresholds over full rescission, reasoning that a cycle of rescission and reinstatement would be more disruptive for companies than a higher threshold. The same large issuer reached a similar preference for reform over rescission from the issuer side, favoring a single federal set of rules, on the same concern that repeated cycling between rescission and reinstatement would impose the greater burden. A large issuer's in-house counsel, in the same vein, favored two specific reforms. The first was raising the original ownership threshold so that a proponent must hold a meaningful stake, on the view that the current eligibility floor asks too little. The second was excluding environmental, social, and political subject matter, so that the Commission is not placed in the position of deciding which social-policy questions are significant enough to reach the ballot. One large asset manager favored modernizing the thresholds while cautioning against discarding the rule's useful features in the process. A practitioner focused on private-market and mission-driven clients preferred that the Commission set guidelines paired with a private cause of action. Framing the design question in terms no other participant used, drawn from a restatement redraft, this practitioner asked how rights, obligations, liability, and enforcement would each be specified. The same practitioner cautioned that a poorly designed regime could impose a substantial compliance burden, offering a figure on the order of twenty million dollars as a projection under that scenario rather than a measured cost. A policy-focused practitioner who advises investors suggested that a durable resolution might ultimately require bipartisan legislation reached after the current administration. A Delaware corporate practitioner anticipated that rescission could eventually be followed by legislation amending the Exchange Act. Running through several of these accounts, and voiced most directly by a former SEC official, was doubt that any settlement would prove durable: with state law and reincorporation in play, and with the federal posture liable to swing between administrations, a stable federal equilibrium may be difficult to reach.

Within the academic sector, the forward-looking testimony runs into the precatory and proper-subject questions treated in the preceding section. One corporate-law scholar characterized the agency-authority dimension of the debate as in substantial part a political argument, tied to the narrowing of judicial deference to agencies and to the major-questions doctrine, and another corporate-law scholar engaged the question whether Delaware confers a default ability to submit precatory proposals principally through a published response, addressed where that doctrine is treated.

A note on this paper

This paper has aimed to do one thing: to set down, as faithfully as the non-attributable format allows, how a cross-section of participants in the shareholder-proposal system understand Rule 14a-8 at a moment of unusual regulatory movement. It has reported their observations and disagreements without resolving them, and without advancing the authors' own assessment. That restraint is deliberate. Among the things the record shows is that a deliberately diverse set of participants did not converge on a single account, and that later interviews kept adding observations no earlier participant had raised; the paper has tried to preserve that dispersion rather than resolve it. As a working paper, it is offered to invite correction, elaboration, and comment from those who took part and from others who study or live with the rule. The authors' evaluation of the questions the interviews raise, and the reconciliation of that evaluation with their prior published work, is reserved for a subsequent paper.