

Shareholder Proposals under Rule 14a-8: Proposed Rules



The Securities and Exchange Commission proposed amendments to Exchange Act Rule 14a-8, the shareholder proposal rule, which requires companies subject to the federal proxy rules to include shareholder proposals in their proxy statements, subject to certain procedural and substantive requirements. The proposed amendments would:

- Revise three of the substantive bases for exclusion of shareholder proposals under the rule: the substantial implementation exclusion; the duplication exclusion; and the resubmission exclusion;
- Provide greater certainty and transparency to shareholders and companies as they evaluate whether these bases for exclusion would apply to particular proposals; and
- Facilitate communication between shareholders and the companies they own, as well as among a company's shareholders, on important issues.

Why This Matters

The shareholder proposal process has become a cornerstone of engagement between shareholders and company management. It provides an important mechanism for investors to express their views, provide feedback to companies, exercise oversight of management, and raise issues for their fellow shareholders' consideration. The proposed amendments to Rule 14a-8 would improve the shareholder proposal process and promote consistency by revising three of the substantive bases for excluding a shareholder proposal under the rule.

What's Required

The proposed amendments would revise the substantial implementation, duplication, and resubmission bases for excluding shareholder proposals.

Substantial Implementation. Rule 14a-8(i)(10) currently allows companies to exclude a shareholder proposal that "the company has already substantially implemented." The proposed amendments would:

- Provide that a proposal may be excluded as substantially implemented if "the company has already implemented the essential elements of the proposal."

Duplication. Rule 14a-8(i)(11) currently allows companies to exclude a shareholder proposal that “substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company’s proxy materials for the same meeting.” The proposed amendments would:

- Specify that a proposal “substantially duplicates” another proposal if it “addresses the same subject matter and seeks the same objective by the same means.”

Resubmission. Rule 14a-8(i)(12) currently allows companies to exclude a shareholder proposal that “addresses substantially the same subject matter as a proposal, or proposals, previously included in the company’s proxy materials within the preceding five calendar years” if the matter was voted on at least once in the last three years and did not receive sufficient shareholder support. The proposed amendments would:

- Provide that a proposal constitutes a resubmission if it “substantially duplicates” a prior proposal; and
- Specify that, as with the duplication exclusion, a proposal “substantially duplicates” another proposal if it “addresses the same subject matter and seeks the same objective by the same means.” These changes would align the “resubmission” standard under Rule 14a-8(i)(12) with the “duplication” standard under Rule 14a-8(i)(11), in consideration of the similar objectives of these exclusions.

Additional Information:

The proposing release will be published on SEC.gov and in the Federal Register. The public comment period will remain open for 60 days following publication of the proposing release on the SEC’s website or 30 days following publication of the proposing release in the Federal Register, whichever period is longer.