Columbia Law School | COLUMBIA CLIMATE SCHOOL
SABIN CENTER FOR CLIMATE CHANGE LAW

November 19, 2026

Ms. Vanessa A. Countryman
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Opposition to *Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4*, Release No. 34-106383; File No. S7-2026-32

Dear Secretary:

Columbia Law School's Sabin Center for Climate Change Law (the "Sabin Center") respectfully submits this comment in opposition to the Commission's proposal to rescind Rule 14a-8 (the "Proposal").[1] For reasons set out below, the Commission should withdraw the Proposal.

Introduction

The Sabin Center develops legal tools to address climate change, trains students and lawyers in their use, and provides the public with resources on key topics in climate law and regulation. Through its Climate and Business Law program, the Sabin Center has published research on climate-related financial risk, the disclosure of that risk to investors, and the obligations of fiduciaries who manage capital subject to that risk.[2] Earlier this year, we commented in opposition to the Commission's proposal to rescind its 2024 climate-related disclosure rules (the "Climate Rule Rescission Proposal").[3]

[1] Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4, Exchange Act Release No. 34-106383, 91 Fed. Reg. 59,904 (proposed Sept. 21, 2026).

[2] Andrew Bernstein, Cynthia Hanawalt, Lisa Sachs & Chloe Field, *Shedding Light on Climate Risk in 2025: Upcoming Debates About the SEC's Climate Disclosure Rule* (Columbia Ctr. on Sustainable Inv. & Sabin Ctr. for Climate Change Law, Nov. 2024), https://scholarship.law.columbia.edu/sabin_climate_change/236 ("Shedding Light"); Cynthia Hanawalt & Andy Fitch, *The Behavioral Effects of Corporate GHG Emissions Disclosures* (Sabin Ctr. for Climate Change Law, Sept. 2025), https://scholarship.law.columbia.edu/sabin_climate_change/256 ("Behavioral Effects"); Cynthia Hanawalt & Andy Fitch, *Varied Legal Parameters Shape Fiduciaries' Ability to Act on Climate Risk* (Sabin Ctr. for Climate Change Law, July 2025), https://scholarship.law.columbia.edu/sabin_climate_change/254 ("Varied Legal Parameters").

[3] Letter from Cynthia Hanawalt & Andy Fitch, Sabin Ctr. for Climate Change Law, to Vanessa A. Countryman, Sec'y, SEC, File No. S7-2026-19 (July 29, 2026), https://www.sec.gov/comments/S7-2026-19/s7202619-979779-

This letter is based on that broader research portfolio, and on strongly supported findings that climate change presents financial risks material to many public companies. Over the past two decades, Rule 14a-8 has provided one of the main channels through which investors obtain decision-useful information about these risks. The Commission's proposal to close that channel comes alongside the Commission's simultaneous proposal to rescind its mandatory climate-disclosure rule, which could otherwise function as an alternative source for the relevant risk analysis. The Proposal's release (the "Proposing Release") does not address this cumulative effect of the two contemplated recissions. More broadly, the Commission fails to acknowledge basic structural reasons why the alternative procedural mechanisms that it recommends (independent proxy solicitation, private engagement, and a patchwork of state rules) would not suffice to replace Rule 14a-8's proven mechanisms for surfacing climate risk.

I. Rule 14a-8 Operates Under the Commission's Section 14(a) Statutory Authority

The Proposing Release offers as a principal rescission rationale that Rule 14a-8 intrudes on state law by defining the scope of shareholder voting rights. But that conclusion does not follow from the Commission's own premises. The release itself construes Section 14(a) to authorize rules governing the manner of a solicitation and the information it must contain, including targeted requirements that adequately inform shareholders about proposals on which they vote.[4] Under this authority, Rule 14a-8 regulates the form and content of management's proxy solicitations. It does not create, expand, or extinguish any shareholder right covered by state law.

As early as 1934, Congress recognized management's capacity to abuse the proxy-solicitation process. Accordingly, the Commission's earliest proxy rules required that each matter to be acted upon must receive its own separate vote.[5] Under Rule 14a-8's current framework, for meetings that will present eligible shareholder proposals, management's proxy solicitations must describe each proposal and offer shareholders an actionable means to vote on it.

The Commission has traditionally presented its Rule 14a requirements, including these Rule 14a-8 requirements, as facilitating rather than displacing state law, by implementing voting processes rather than determining voting rights. For instance, for Rule 14a-19 (requiring management's proxy card to list all director candidates, including those nominated by shareholders), a 2021 proposing release explained in clear terms that state law confers the underlying voting right, whereas the rule regulates how ballot considerations are presented to shareholders.[6] Similarly, Rule 14a-8(i)(1) permits exclusion of any proposal that the relevant state's law deems improper, and shareholders whose proposals are excluded retain their rights as developed under this state's law. If the Commission now questions a particular presumption in the notes to Rule 14a-8(i)(1),

3067786.pdf ("Sabin Center Climate Rule Comment"); *see* Rescission of Climate-Related Disclosure Rules, Securities Act Release No. 33-11421, 91 Fed. Reg. 33,296 (proposed June 3, 2026).

[4] Proposing Release, *supra* note 1 at 14–15.

[5] *Id.* at 8 (quoting S. Rep. No. 73-792, at 12 (1934)); *id.* at 20 n.58 (describing 1938 rules requiring that each matter be subject to a separate yes-or-no vote).

[6] 17 C.F.R. § 240.14a-19(e); Proposing Release, *supra* note 1 at 31–32.

regarding the propriety of precatory proposals, then the appropriate remedy would be to revisit that note, not to rescind the entire rule on a sweeping premise of limited SEC authority.[7]

Since Rule 14a-8's issuance in the 1940s, subsequent Congressional actions have indicated Congress's acquiescence to the Commission's possession of the relevant authority. For example, the National Securities Markets Improvement Act of 1996 (NSMIA) directed the Commission to study "(A) whether shareholder access to proxy statements pursuant to section 14 of the Securities Exchange Act of 1934 has been impaired by recent statutory, judicial, or regulatory changes; and (B) the ability of shareholders to have proposals relating to corporate practices and social issues included as part of proxy statements."[8] Similarly, the Dodd-Frank Act stated that its say-on-pay provisions may not be construed "to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation." Shareholders' right to place eligible proposals' in companies' proxy materials only exists through Rule 14a-8.[9]

Courts likewise have long acknowledged Rule 14a-8's validity. The Third Circuit upheld this rule's predecessor in 1947, describing its Congressional purpose as to secure a fair opportunity for the operation of corporate suffrage.[10] Nor does the Proposing Release's reliance on *Business Roundtable v. SEC* displace that ruling. In *Business Roundtable*, the Federal Circuit invalidated a particular rule governing the distribution of voting power among shareholders. But the court expressly declined to characterize disclosure as the sole subject of Section 14.[11]

More broadly put, Rule 14a-8's longevity, amid wide-ranging considerations by every branch of government, offers strong evidence of its proper legal authority. The Proposing Release dismisses this eight-decade history on the grounds that agencies do not acquire authority by adverse possession, and that under the 2024 *Loper Bright* decision, courts no longer defer to an agency's interpretations of its own authority.[12] But eighty years of relevant applications by the Commission, Congress, and the courts, as well as numerous amendments to the rule under administrations of both parties, do not amount to a history of mere neglect or deference.[13] Rather, they provide persuasive evidence of the authorizing statute's meaning, and of Rule 14a-8's appropriate fit within that framework. They also foreground both the novelty of the Commission's current position, and the regulatory vacuum that rescinding Rule 14a-8 would now create in financial markets.[14]

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[7] *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (citing *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 51 (1983) for teaching that when an agency rescinds a prior policy, its reasoned analysis must consider alternatives "within the ambit" of the existing policy).

[8] Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-39093, 62 Fed. Reg. 50,683 n.22 (proposed Sept. 26, 1997).

[9] 15 U.S.C. § 78n-1(c)(4).

[10] *SEC v. Transamerica Corp.*, 163 F.2d 511, 518 (3d Cir. 1947), *cert. denied*, 332 U.S. 847 (1948).

[11] *Bus. Roundtable v. SEC*, 905 F.2d 406, 411 (D.C. Cir. 1990) ("We do not mean to be taken as saying that disclosure is necessarily the sole subject of § 14"); *see* Proposing Release, *supra* note 1 at 15 n.34, 18–19.

[12] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386, 394 (2024).

[13] *Id.* at 394 (noting "interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning"). Here none of the relevant federal actions, over roughly eight decades, contests the Commission's authority to regulate these proxy processes.

[14] Proposing Release, *supra* note 1 at 8 & n.14, 34; *see id.* at 20–26 (tracing the rule's amendments).

II. Climate Change Poses Significant Financial Risk, and Rule 14a-8 Provides a Critical Channel for Surfacing that Risk

As the Ninth Circuit Court of Appeals recently acknowledged, climate change poses imminent and predictable financial risks across the U.S. economy.[15] Physical risks arise from severe weather events such as drought-caused wildfires or storm-caused floods, and from systemic weather impacts such as rising heat or sea levels. Transition risks arise from abrupt shifts in technology, public policy, and private markets as the economy responds to climate change. Both risk categories already affect many companies' asset values, operating costs, insurance availability, and access to capital. In 2025, U.S. weather-related losses reached roughly $115 billion.[16] The Los Angeles wildfires alone caused approximately $53 billion in losses, making them the most expensive wildfire disaster on record.[17]

Yet the information that investors receive about these risks remains strikingly uneven and at times unreliable, comprising its utility for financial markets. The Commission's 2026 Climate Rule Rescission Proposal pointed to 2010 SEC interpretive guidance as continuing to require disclosure of material climate-related information.[18] But our 2025 survey of corporate climate disclosures found that substantive climate-risk information appears overwhelmingly outside of Commission filings, in bespoke sustainability reports lacking the accountability and comparability that would facilitate informed investor choices.[19] Within this broader market context, shareholder proposals have offered one of the few available means for an investor to request specific, decision-useful information from a particular company, and to learn through the voting process whether other investors share the desire for that information.

The academic literature further confirms shareholder proposals can and do serve these useful functions. For instance, one well-cited 2021 study of 265 U.S. companies found that climate-related shareholder proposals increased corporations' voluntary disclosure of climate risks, with this effect strongest when long-term institutional investors initiate the proposals, and with the market responding positively to the subsequent disclosures.[20] Additional empirical studies

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[15] *Chamber of Com. of the U.S. v. Sanchez*, No. 25-5327 (9th Cir. Nov. 9, 2026) (explaining that "carbon emissions expose firms to greater risk" and that greenhouse gas emissions data "bear directly on a business's ability to raise capital and its overall profitability").

[16] Climate Central, *U.S. Billion Dollar Climate Disasters in 2025 – An Annual Report of Impacts Across the Country* (Mar. 9, 2026), https://www.munichre.com/en/company/media-relations/media-information-and-corporate-news/media-information/2026/natural-disaster-figures-2025.html.

[17] Munich Re, *Climate Change Presses On: Devastating Wildfires and Intense Thunderstorms Exacerbate Losses for Insurers* (Jan. 13, 2026), https://www.munichre.com/en/company/media-relations/media-information-and-corporate-news/media-information/2026/natural-disaster-figures-2025.html; Brooke Lacey, *2025 Wildfires, Flooding and Severe Storms Lead to Insured Losses of $88B*, InsuranceNewsNet (Jan. 20, 2026), https://insurancenewsnet.com/innarticle/2025-wildfires-flooding-and-severe-storms-lead-to-insured-losses-of-88b (reporting Munich Re's U.S. figures).

[18] Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 33-9106, 75 Fed. Reg. 6290 (Feb. 8, 2010); *see* Sabin Center Climate Rule Comment, *supra* note 3 (discussing the Climate Rule Rescission Proposal's reliance on the 2010 guidance).

[19] *Shedding Light*, *supra* note 2, at 10–11.

[20] Caroline Flammer, Michael W. Toffel & Kala Viswanathan, *Shareholder Activism and Firms' Voluntary Disclosure of Climate Change Risks*, 42 Strategic Mgmt. J. 1850, 1850 (2021).

correlate actionable climate disclosure with a lower cost of capital, presumably because investors demand premiums for unpriced climate uncertainty.[21]

Shareholder engagement with ExxonMobil offers an instructive example of how the voting process can efficiently clarify the market's assessment of climate risk, and whether it values climate disclosures. In 2015, the New York State Common Retirement Fund and the Church Commissioners for England filed a proposal asking ExxonMobil to assess how scenarios consistent with limiting global warming to two degrees Celsius would affect its business, and to evaluate associated financial risks. ExxonMobil sought to exclude the proposal, but SEC staff declined to endorse that exclusion through issuance of a no-action letter. The resulting proposal received 38% support in 2016, yet when refiled in 2017 it received 62% support, again over the board's opposition, but with the support of the company's largest asset-manager shareholders. In December of that year, ExxonMobil announced it would expand its disclosures in response, by addressing energy-demand sensitivities, the implications of two-degree scenarios, and its positioning for a lower-carbon future. At that point, the proponents withdrew their refiled proposal.[22]

This Rule 14a-8 process productively served market-efficiency and information-access goals. SEC staff's review of ExxonMobil's intended exclusion helped to expedite the dispute's ultimate resolution at comparatively low cost. The resulting votes revealed investor preferences. ExxonMobil's subsequent disclosure commitment led directly to the proposal's withdrawal, once the proposal had fulfilled its purpose of eliciting material information pertaining to the resilience of core company assets.

The Proposing Release may treat the small percentage of shareholder initiatives wining majority support, or the frequency of negotiated proposal withdrawals, as evidence that Rule 14a-8's regulatory justifications have not borne out. But the available record belies that conclusion.[23] A proposal need not pass to have value, particularly in its initial filing. A 38% vote on the original ExxonMobil proposal, for example, signaled significant investor demand for the requested information, and propelled subsequent steps towards management's recognition of disclosure's material value just a year later. Moreover, this contested and iterative internal process itself can serve to uncover the most valuable proposals. Empirical research correlates governance and corporate-responsibility proposals that narrowly pass with positive abnormal returns, relative to those that narrowly fail.[24] Withdrawal of such a proposal, following management's disclosure commitments, only further fulfills Rule 14a-8's well-honed function of providing a meaningful

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[21] *Behavioral Effects*, *supra* note 2, at 6, 15, 20.

[22] Press Release, Office of the N.Y. State Comptroller, *NYS Comptroller DiNapoli: ExxonMobil Agrees to Assess Impacts of Climate Change* (Dec. 12, 2017), https://www.osc.ny.gov/press/releases/2017/12/nys-comptroller-dinapoli-exxonmobil-agrees-assess-impacts-climate-change (setting out the proposal's history, including the staff's March 2016 denial of the company's request to exclude it); Exxon Mobil Corp., Current Report (Form 8-K) (Dec. 11, 2017), https://www.sec.gov/Archives/edgar/data/34088/000003408817000057/r8k121117.htm; Ross Kerber & Gary McWilliams, *Exxon to Provide Details on Climate-Change Impact to Its Business*, Reuters (Dec. 11, 2017) (reporting that BlackRock and Vanguard backed the 2017 resolution).

[23] Proposing Release, *supra* note 1 at 35–39, 43–45.

[24] Caroline Flammer, *Does Corporate Social Responsibility Lead to Superior Financial Performance? A Regression Discontinuity Approach*, 61 Mgmt. Sci. 2549 (2015); Vicente Cuñat, Mireia Giné & Maria Guadalupe, *The Vote Is Cast: The Effect of Corporate Governance on Shareholder Value*, 67 J. Fin. 1943 (2012).

channel for timely shareholder engagement – not an opportunity for shareholders to impose interminable roadblocks on critical corporate decision-making.

III. Rescission of Rule 14a-8 Would Disrupt Reliance Interests, Potentially Exacerbated by the Commission's Proposed Withdrawal of its Climate-Disclosure Rule

The Commission acknowledges that shareholders and companies have shaped their engagement and governance practices around Rule 14a-8, and it invites comment on those reliance interests.[25] An agency that reverses a policy on which regulated parties have substantially relied must provide a more detailed justification than a new policy would require. It must assess the reliance interests' significance, and must weigh those interests against competing concerns (including by considering alternatives to rescission). Furthermore, in *Department of Homeland Security v. Regents*, the Supreme Court applied these reliance-assessment obligations even though the agency had determined its prior policy unlawful.[26] The Commission's view of its own authority therefore would not excuse it from this reliance inquiry, even if the Commission's seemingly dubious view proved correct.

The reliance interests here are manifold and substantial. To start, asset managers rely on adequate climate-risk information to meet clients' needs, and to fulfill their own fiduciary duties. As our research on fiduciary regimes explains, Modern Portfolio Theory presumes investment-portfolio benefits through a diversified pool of holdings, which removes idiosyncratic risk. Certain types of asset-manager fiduciaries (ERISA-plan fiduciaries by statute, and private trustees at least by default) thus face a duty to diversify "unless under the circumstances it is clearly prudent not to do so."[27] But systemic climate risk may eliminate the projected benefits of diversification, by making such an investment strategy distinctly susceptible to market-wide climate-driven downturns (unlike, say, a portfolio concentrated in assets that accurately price climate risks).[28] Overall, absent adequate disclosures, climate risk will impose a significantly greater analytic burden on asset managers to determine their most prudent path forward. Reliable risk-exposure information often remains prohibitively expensive for most investors to purchase or generate on their own,[29] and the Rule 14a-8 proposal process provides one of the few cost-effective means of requesting that information from a specific company.

Broader financial markets also rely on information produced through shareholder-proposal processes. When shareholders vote on such a proposal, the company must report these results through a Form 8-K filing within four business days.[30] These reported tallies give shareholders,

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[25] Proposing Release, *supra* note 1 at 34–35; *see id.* at 12.

[26] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016); *Regents*, 591 U.S. at 30–33 (requiring the agency to consider reliance interests and alternatives within the ambit of the existing policy notwithstanding the Attorney General's conclusion that the policy was unlawful).

[27] *Varied Legal Parameters*, *supra* note 2, at 8, 15 & n.65, 20–21; *see* 29 U.S.C. § 1104(a)(1)(C). Public pension funds, which fall outside ERISA, are typically organized under state law, with their own duties of prudence and/or diversification. See *Varied Legal Parameters*, *supra* note 2, at 14 n.58.

[28] *Varied Legal Parameters*, *supra* note 2, at 15–16, 22–23; Jeffrey N. Gordon, *Systematic Stewardship*, 47 J. Corp. L. 627, 630, 652–54 (2022).

[29] *Behavioral Effects*, *supra* note 2, at 3.

[30] SEC Form 8-K, Item 5.07 (Submission of Matters to a Vote of Security Holders) & General Instruction B.1; *see* 17 C.F.R. § 249.308.

corporate boards, market analysts, and the wider public a measure of investor concern about subjects like climate risk.

Companies likewise rely on the 14a-8 framework, which provides a familiar, predictable, well-calibrated means of expeditiously assessing whatever proposals may come their way. At least one large issuer has already committed to preserve these current eligibility thresholds through its 2027 annual meeting.[31]

The Commission itself arguably relies on disclosure-inducing mechanisms such as Rule 14a-8. Its Climate Rule Rescission proposing release stated that the Commission expects the "market-driven flow of information" about climate risk to continue.[32] But shareholder proposals provide the principal means by which attentive investors help to generate that information flow. Rescinding not only the Commission's climate-disclosure rules, but also Rule 14a-8, would remove both the mandatory public channel for climate-risk information, and the main private channel that has substituted for it. Just last year, in *National Association of Private Fund Managers v. SEC*, the Fifth Circuit remanded two Commission rules for further consideration of their cumulative economic impact.[33] An agency acts arbitrarily when failing to consider an important aspect of the problem that its proposed rule claims to address.[34] Any final rule here (or in fulfilment of the Climate Rule Rescission Proposal) must assess the combined effect of these contemplated recissions on investor information about climate risk and its financial consequences.

IV. The Commission's Proposed Substitutes for Rule 14a-8 Fail to Adequately Address Portfolio-Wide Risks Such as Climate Change

The Proposing Release claims that Rule 14a-8's current functions can instead be fulfilled by independent solicitation, alternative engagement channels, state law, and private ordering. But those expectations are particularly dubious with respect to climate-related risk.

Independent Solicitation

The Commission overplays prospects for independent solicitation by proponents, on whom the Commission simultaneously seeks to place greater burdens. Proposed amendments to Rule 14a-4(c) would allow companies to retain discretionary voting authority even when a proponent solicits sufficient shares to approve a matter.[35] This means that a proponent could bear all solicitation costs, and still see every unmarked company proxy card voted against its proposal.

The Proposing Release suggests that basic costs of independent solicitation have fallen, citing 2021 Commission estimates of roughly $14,000 for distribution and postage, and $5,300-$9,800 for a

[31] Mohsen Manesh, *Who Needs SEC Rule 14a-8?*, CLS Blue Sky Blog (Sept. 30, 2026), https://clsbluesky.law.columbia.edu/2026/09/30/who-needs-sec-rule-14a-8/ (noting that Microsoft has agreed to keep the current thresholds at least through its 2027 annual meeting).

[32] Climate Rule Rescission Proposal, *supra* note 3 (stating the Commission's expectation that this "market-driven flow of information will continue following a rescission" of the 2024 rules).

[33] *Nat'l Ass'n of Priv. Fund Managers v. Sec. & Exch. Comm'n*, 151 F.4th 252, 258 (5th Cir. 2025).

[34] *State Farm*, 463 U.S. at 43.

[35] Proposing Release, *supra* note 1 at 68–79; *see* A&O Shearman, *SEC Proposes Rescission of Rule 14a-8* (Sept. 28, 2026), https://www.aoshearman.com/en/insights/sec-proposes-rescission-of-rule-14a-8.

"nominal" solicitation relying on notice-and-access.[36] Yet those particular statistics can obscure findings from this same 2021 source that median total solicitation costs for a shareholder dissident approached $750,000, once incorporating legal, administrative, and communications expenses.[37] The Commission acknowledges that Rule 14a-8 rescission "would disproportionately affect less well-resourced proponents, including individual retail investors and smaller advocacy groups."[38] But that effect also extends to well-resourced institutional investors whose diversified stake in any one company remains small relative to portfolio-wide risks they manage.

More broadly put, alongside bearing the full costs of independent solicitation, would-be proponents face a collective-action problem, with the benefits of enhanced disclosure accruing equally to all shareholders. For climate-related financial risk, this mismatch becomes particularly severe, because both systemic climate risk, and any benefits from enhanced climate disclosures, are ultimately distributed across all diversified portfolios.[39] Any rational investor, holding a small fraction of company shares, would thus rarely have an incentive to fund a solicitation, even though the aggregate benefit to shareholders and to financial markets would exceed the cost. Rule 14a-8 efficiently resolves this collective-action problem by having the company (and thus all its shareholders) bear the marginal cost of including a proposal of no more than 500 words in materials that the company already intends to distribute.

Alternative Channels

The Proposing Release points to online platforms and social media as alternative venues for shareholders to communicate with company management and with one another.[40] But those channels have obvious limitations. They do not facilitate a decisive vote by the company's shareholders, nor generate a publicly reported result, nor do they compel management to respond under its Rule 14a-9 obligations.

At the same time, private engagement does not offer a realistic substitute, except perhaps for the largest holders, though still subject to management's cooperation. ExxonMobil did not provide two-degree scenario analysis in response to engagement alone, regardless of which high-profile market participants led the request. The firm only provided this data after a majority of shareholders asked for it.

Private Ordering

The Commission also expects companies and shareholders to advance additional engagement policies once it rescinds Rule 14a-8. But Rule 14a-8 itself operates as the key mechanism through which such private ordering happens. This became apparent when, in 2011, the D.C. Circuit vacated the Commission's proxy access rule.[41] Following this change, proxy access instead spread

[36] Proposing Release, *supra* note 1 at 41–42; *see also id.*, Request for Comment 28 (describing the current requirement that shareholder proponents file proxy materials in preliminary form).

[37] Universal Proxy, Exchange Act Release No. 34-93596, 86 Fed. Reg. 68,330, 6859 (Dec. 1, 2021).

[38] Proposing Release, *supra* note 1 at 156.

[39] Gordon, *supra* note 28, at 652–54; *Varied Legal Parameters*, *supra* note 2, at 20–22.

[40] Proposing Release, *supra* note 1 at 42–43.

[41] *Bus. Roundtable v. SEC*, 647 F.3d 1144 (D.C. Cir. 2011).

company-by-company through Rule 14a-8 proposals, reaching more than 85% of the S&P 500 by 2024.[42]

State Law

Recent state legislative activity on shareholder participation has trended toward restriction rather than facilitation.[43] More broadly, should the Commission rescind Rule 14a-8 at the federal level, an investor with holdings of thousands of companies incorporated in numerous states would face a patchwork of rules, many of which remain unsettled. That uncertainty would likely produce extensive litigation. In the 2025–2026 proxy season, after SEC staff withdrew from their no-action role, proponents reportedly filed six lawsuits challenging exclusions, compared with less than 30 suits total over the previous 50 years.[44] Replacing a low-cost administrative process with case-by-case litigation would thus further restrict recourse only to those investors that can afford to sue.[45]

The Rule 14a-8 proposal process has also served as a useful national forum to evaluate asset-manager fiduciary responsibilities, for which no single-state forum would compare. In 2022, BlackRock sought to exclude a shareholder proposal asking the firm to curtail investments that externalize social or environmental costs, and would likely reduce returns for diversified portfolios – for instance by contributing disproportionately to systemic climate change. Among other concerns, BlackRock argued that this proposal would require breaching the firm's fiduciary duties, by preventing the maximization of returns as measured through individual companies' economic performance. SEC staff declined to endorse BlackRock's exclusion request, indicating that registered advisers are not necessarily prohibited from seeking to maximize overall returns for diversified clients.[46] This combined process of shareholder proposal, no-action request, and SEC analysis provided an efficient means of addressing important fiduciary questions on a nationwide basis. By contrast, the prospect of 50 discrete state-level determinations would benefit neither BlackRock nor its investment clients.

V. The Proposing Release's Economic Analysis Omits Both Key Benefits of Rule 14a-8 and Significant Costs of Its Rescission

The Exchange Act requires the Commission to consider whether a proposed rule will promote efficiency and effective capital formation. The Commission may not adopt a rule that imposes an

[42] A&O Shearman, *supra* note 35 (reporting that investors pursued proxy access through Rule 14a-8 proposals, including the New York City Comptroller's Boardroom Accountability Project, and that more than 85 percent of the S&P 500 had adopted proxy access bylaws by 2024); *see also* Manesh, *supra* note 31 (observing that proxy access spread through "the very method that rescission of Rule 14a-8 would effectively close").

[43] Cynthia Hanawalt & Andy Fitch, *State Anti-ESG Movement Evolves to Target Investor Access*, Climate Law Blog (Aug. 21, 2025), https://blogs.law.columbia.edu/climatechange/2025/08/21/state-anti-esg-movement-evolves-to-target-investor-access/.

[44] Bronwyn Lloyd, *SEC Discontinues All Rule 14a-8 No-Action Responses: Key Considerations for Public Company Boards and Management*, Bevilacqua PLLC (Aug. 19, 2026), https://www.legal500.com/intelligence/united-states/corporate-commercial-law/sec-discontinues-all-rule-14a-8-no-action-responses-key-considerations-for-public-company-boards-and-management; *see also* Proposing Release, *supra* note 1 at 43 n.138 (citing *DiNapoli v. BJ's Wholesale Club Holdings, Inc.*, No. 26-cv-11075 (D. Mass. Apr. 22, 2026)).

[45] Cynthia Hanawalt, *What Does Securities Deregulation Mean for Climate Risk?*, Climate Law Blog (Oct. 6, 2026), https://blogs.law.columbia.edu/climatechange/2026/10/06/what-does-securities-deregulation-mean-for-climate-risk/.

[46] *BlackRock, Inc.*, SEC No-Action Letter, 2022 WL 225966 (Apr. 4, 2022); *Varied Legal Parameters*, *supra* note 2, at 21–22.

unnecessary or inappropriate burden on competition.[47] The D.C. Circuit vacated the 14a-11 proxy access rule because the Commission had inconsistently framed that rule's costs and benefits, and because the Commission did not respond to substantial problems raised by commenters.[48] The Fifth Circuit has since held another Commission rule arbitrary and capricious on similar grounds, and has remanded two Commission rules for consideration of their cumulative effects.[49] An agency that rescinds a rule must provide a reasoned analysis for the change, and the Fifth Circuit again has recently vacated a Commission rescission that failed to do so.[50] These regulatory obligations require even greater detail to justify the rescission of rules on which regulated parties have substantially relied.

Within this broader framework for valid agency proposals, the Commission must weigh whatever cost savings it projects for companies against projected negative impacts on financial market participants. For climate-related risk, Rule 14a-8's benefits include: an efficient means for investors to acquire material information that otherwise may only come at considerable and disproportionate expense; an efficient means for corporate management and broader financial markets to measure climate disclosure's operational value; and enhanced market-wide stability as voluntary corporate disclosures facilitate the mitigation of climate risk.

Additional costs associated with rescission include: transition burdens of establishing the new privately ordered regime that the Commission expects to replace Rule 14a-8's regulatory framework; as well as widespread litigation over exclusions, divergent state rules, and amendments to governance documents painstakingly negotiated one company at a time. An economic analysis that quantifies company savings on proposal expenditures, but that fails to quantify these corresponding burdens shifted onto other market participants, does not satisfy basic legal standards.

An agency rescinding a rule must also demonstrate that it has sufficiently considered alternative options for addressing its concerns.[51] The Commission has modified Rule 14a-8 many times, most recently in 2020, when it raised ownership thresholds for submitting proposals and vote thresholds for resubmitting them.[52] Through additional targeted amendments, the Commission now could address the various policy concerns identified in its Proposing Release, such as: company costs, shareholder-proposal volume, repeat proponents, and the presumption of precatory proposals' propriety. Indeed, several pending rulemaking petitions propose such amendments.[53] Yet the Commission has not explained why these amendments would fail to address its concerns.

Conclusion

Decades of noncontentious engagement from all federal government branches confirm the Commission's legal authority to maintain Rule 14a-8. Climate change presents significant

[47] 15 U.S.C. §§ 78c(f), 78w(a)(2).

[48] *Bus. Roundtable*, 647 F.3d at 1148–49.

[49] *Chamber of Com. of the U.S. v. SEC*, 85 F.4th 760 (5th Cir. 2023); *Priv. Fund Managers*, 151 F.4th at 258.

[50] *Nat'l Ass'n of Mfrs. v. SEC*, 105 F.4th 802, 811–15 (5th Cir. 2024).

[51] *Regents*, 591 U.S. at 30 (quoting *State Farm*, 463 U.S. at 51).

[52] Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8, Release No. 34-89964, 85 Fed. Reg. 70,240 (Nov. 4, 2020); *see* Proposing Release, *supra* note 1 at 26 & n.77.

[53] Proposing Release, *supra* note 1 at 12 n.27 (citing petitions submitted by Ceres et al. (July 23, 2026), the Shareholder Rights Group et al. (July 20, 2026), and others).

financial risks that investors must be able to identify and price. Rule 14a-8 has long operated as an effective and inexpensive tool helping shareholders to do so. The Proposing Release does not account for the significant reliance interests that recission would disrupt, nor does it accurately weigh the information benefits lost, nor adequately reflect on less drastic alternatives available. Moreover, the Commission has proposed not only to withdraw Rule 14a-8, but also to simultaneously withdraw the mandatory climate-disclosure rule that might otherwise substitute for it – without appropriately assessing the compounded effects from these joint actions. For each of these reasons, the Commission should withdraw its proposed rescission of Rule 14a-8.

Thank you for the opportunity to comment. Please do not hesitate to contact the Sabin Center with any questions.

Respectfully submitted,

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