November 20, 2026

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4 (File No. S7-2026-32); Proxy Solicitation Modernization (File No. S7-2026-33)

Dear Ms. Countryman:

The American Securities Association (ASA)[1] appreciates the opportunity to comment on the Commission's proposal to rescind Rule 14a-8 and amend Rule 14a-4 (the Proposal).

I. Overview.

For years, ASA has urged Congress and the Commission to get the SEC out of the business of deciding which shareholder proposals contain proper subjects for investors' consideration, and to return that question to the states. In July 2023, ASA told the House Financial Services Committee that Congress faced a choice. It could tinker around the edges of Rule 14a-8 in the hope that the SEC would one day apply it consistently and in a manner that benefits all investors, or it could return the governance of shareholder proposals to the law of the state in which a company is incorporated.[2] This Proposal rightly does the latter.

The Proposal reflects a correct reading of Section 14(a). It articulates a candid assessment of how the shareholder proposal process actually functions and a respect for a constitutional structure that leaves corporate law to the states. It also faithfully implements the President's directive that the Commission consider revising or rescinding Rule 14a-8.[3]

[1] ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.
[2] https://www.americansecurities.org/post/asa-outlines-principles-for-proxy-process-reform-to-house-financial-services-committee
[3] Exec. Order No. 14,366, § 2(b), 90 Fed. Reg. 58,503, 58,503 (Dec. 16, 2025); *see* Rescission of Rule 14a-8, 91 Fed. Reg. at 59,906 n.26.

Below, ASA explains why the Commission should finalize the rescission of Rule 14a-8. We also provide recommended changes to the proposed Rule 14a-4 amendments so that political activists and well-funded special interest groups cannot continue to use that rule to force companies to include non-material political and cultural proposals in their proxy materials.

II. The Commission Correctly Concludes That Rule 14a-8 Exceeds Its Statutory Authority.

ASA agrees with the Commission that Rule 14a-8 exceeds the authority Congress granted in Section 14(a) of the Exchange Act. Section 14(a) authorizes the Commission to regulate the solicitation of proxies, how proxies are requested, and their disclosure. It does not authorize the Commission to decide the issues shareholders may place before one another for a vote. That threshold question belongs to the law of the state of incorporation and, where state law permits, to a company's governing documents.

Over eight decades, the Commission has expanded Rule 14a-8's deference to state law into a highly detailed federal regime of eligibility requirements, procedural conditions, and thirteen substantive grounds for exclusion. As the Proposal documents, most of those grounds have no basis in state law. The rule's presumption that precatory proposals are proper rests on the staff's "experience," not on any statute or controlling state court decision. The result is what ASA has described as the "federalization of corporate governance" or a federal common law of shareholder voting rights that Congress never authorized.

The Supreme Court and the D.C. Circuit have repeatedly made clear that the federal securities laws do not displace state corporate law absent a clear statement from Congress. *Santa Fe Industries v. Green* and *Business Roundtable v. SEC* both rejected readings of the Exchange Act that would intrude on matters traditionally governed by the states.[4] More recently, the Supreme Court has reaffirmed that agencies possess only the authority Congress gives them.[5] ASA agrees with the Commission that "agencies may not add to their powers by adverse possession."[6] The longevity of Rule 14a-8 does not cure its lack of duly authorized statutory footing.

This conclusion is consistent with recent ASA testimony that the public should not be subject to a "comply or sue" regime when an agency adopts a rule Congress never authorized.[7] Rules that stretch beyond the agency's statutory authority are unlikely to survive in court or across administrations. Rule 14a-8 is a prime example of this problem and the Commission is right to address it directly.

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[4] *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 479 (1977); *Bus. Roundtable v. SEC*, 905 F.2d 406, 411 (D.C. Cir. 1990).
[5] *See West Virginia v. EPA*, 597 U.S. 697, 723 (2022); *see also Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).
[6] Rescission of Rule 14a-8, 91 Fed. Reg. at 59,913.
[7] https://docs.house.gov/meetings/BA/BA16/20260204/118929/HHRG-119-BA16-Wstate-IacovellaC-20260204.pdf

III. The Current System Is Broken, and Investors Need a Permanent Fix.

ASA recognizes that moving from a federal regime to one governed by state law will involve a transition. That said, the current system is unsustainable because it swings from one administration to the next, and neither investors nor companies can plan around it.

The recent history of Rule 14a-8 illustrates the problem. In 2020, after a decade-long examination of the proxy process by the Commission and Congress, the Commission adopted carefully calibrated reforms to resubmission thresholds and proponent eligibility. Within a year, Staff Legal Bulletin 14L (SLB 14L) abandoned the longstanding requirement that a proposal's policy issue have a nexus to the company's business. SLB 14L stipulated that any proposal dealing with an issue of "*broad societal impact*" should go forward to a shareholder vote. The SEC never even attempted to define that term. But the message was clear, political activists could target companies over immaterial or politically charged topics, and the SEC would back their efforts. ASA objected to this change[8] and thankfully it was rescinded in 2025.

While rescission was a prudent move by the current administration, it also highlights the difficulty companies have in navigating pendulum swings between administrations.

This back-and-forth is a direct consequence of the mission creep in Rule 14a-8. The rule rests on the staff's interpretation of open-ended federal standards and its administration depends on the political party that chairs the Commission. No amount of incremental amendment can fix that. A rule that is retained in any form will be reinterpreted, expanded, or narrowed again when the political winds shift.

Rescission is the only durable solution. State legislatures and state courts can develop clear rules over time, and companies and shareholders can shape governance arrangements through bylaws and charters. Those rules will not change with each federal election. ASA urges the Commission to rescind Rule 14a-8 in its entirety, rather than adopting any of the narrower alternatives on which the Proposal requests comment.

IV. Rule 14a-8's Costs Fall on Main Street Investors.

Rule 14a-8's goal was to allow shareholders to offer recommendations to improve a company's long-term financial performance. In practice, the rule has become a vehicle for a small minority of well-funded agitators to promote political agendas that vast majority investors do not share. This cost is borne by every shareholder of the company.

[8] Christopher A. Iacovella, *SEC Unleashes Political Activists on the American Economy*, Wash. Times (Dec. 3, 2021), https://www.washingtontimes.com/news/2021/dec/3/sec-unleashes-political-activists-american-economy/.

The Proposal's data confirm the concentration that ASA has documented for years. In 2025, ten proponents submitted 58 percent of all shareholder proposals.[9] In 2022, ASA and other trade associations noted that ten proponents accounted for 60 percent.[10] Only about 7 percent of proposals submitted in 2025 received majority support.[11] Retail investors, in particular, have shown little appetite for these proposals; one 2021 analysis found retail support of only 18 percent for environmental and social proposals.[12]

The costs are real. The Commission's own 2020 estimate put the cost to a company at $20,000 to $150,000 per proposal, and recent surveys cited in the Proposal show many companies spending well over $500,000 on shareholder proposals across several years. Those figures do not capture the management and board time diverted from running the business. Shareholders ultimately pay for all of it. Evidence also suggests that excluding irrelevant proposals benefits shareholders: a study of nearly 4,000 proposals from 2007 to 2019 found that stock prices rose between 0.11 and 0.58 percent when the staff granted no-action relief.[13]

The Proposal also shows that many proposals never reach a vote. Proponents often use the threat of a proposal as leverage to conduct backroom negotiations that force change on a company that the shareholders would have never approved. Roughly 18 percent of proposals were withdrawn in 2025 using this workaround.[14] A process designed to promote "fair corporate suffrage"[15] has instead become a mechanism for side deals the broader shareholder base never has a say on. Rescission removes the federal leverage that makes this possible.

V. Federalism Must Protect Shareholders From State Pension Agendas From Federal Overreach.

ASA supports returning shareholder proposal rights to the states because the Constitution leaves corporate governance to state law. Specifically, the internal affairs doctrine assigns the governance of each corporation to the law of its state of incorporation.[16] That structure protects

[9] 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, 59,916 (proposed Sept. 21, 2026).
[10] Letter from Am. Sec. Ass'n, Nareit, Nat'l Ass'n of Mfrs., NIRI: The Ass'n for Inv. Rels. & U.S. Chamber of Com. to Vanessa Countryman, Sec'y, SEC, at 3 (Sept. 12, 2022), https://www.sec.gov/comments/s7-20-22/s72022-20138930-308627.pdf.
[11] Rescission of Rule 14a-8, 91 Fed. Reg.at 59,914, 59,916.
[12] https://www.americansecurities.org/post/asa-submits-letter-on-sec-s-shareholder-proposal-rule
[13] John G. Matsusaka, Oguzhan Ozbas & Irene Yi, *Can Shareholder Proposals Hurt Shareholders? Evidence from Securities and Exchange Commission No-Action-Letter Decisions*, 64 J.L. & Econ. 107, 109 (2021).
[14] Rescission of Rule 14a-8, 91 Fed. Reg. at 59,915–16.
[15] H.R. Rep. No. 73-1383, at 13 (1934); *see* Rescission of Rule 14a-8, 91 Fed. Reg. at 59,916
[16] *Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982) (plurality opinion) (describing the internal affairs doctrine as "a conflict of laws principle which recognizes that only one State should have the authority to regulate a corporation's internal affairs"); *see also CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89–90 (1987) ("No principle of corporation law and practice is more

investors because it allows states compete to offer the most suitable corporate law and lets shareholders to choose among them.

That said, federalism does not guarantee neutrality. A state may design its shareholder proposal regime to serve investors, or to serve the political priorities of its own public pension systems. Texas, for example, now permits certain corporations to adopt minimum ownership and holding-period requirements for shareholder proponents.[17] Several states manage pension systems that use their share ownership to advance cultural and political causes unrelated to the financial interests of their beneficiaries. If one of those states adopts a regime with no ownership threshold and no holding period, or requires the inclusion of environmental, social, and governance proposals, then the concentration problem described above returns in a different form.

The state's pension systems and allied institutions become the dominant proponents, proxy advisory firms gain decisive influence over the votes, and retail investors are again left without a meaningful voice.

This risk is not hypothetical. California's board composition statutes reached corporations headquartered in California regardless of their state of incorporation until a California court struck them down.[18] The default rules of most states also leave room for this activity. For example, many states allow any record holder to bring business before an annual meeting, subject only to advance notice provisions.

ASA does not ask the Commission to substitute its judgment for that of the states. Doing so would repeat the error the Commission seeks to correct. ASA asks the Commission to use the authority Section 14(a) explicitly grants it over solicitation and its accompanying disclosure so investors have transparency into who is driving a proposal and why. Specifically, ASA urges the Commission to:

1. Confirm in the adopting release that rescission leaves proposal rights to the law of the state of incorporation under the internal affairs doctrine, and that no state may compel the inclusion of proposals in the proxy materials of a corporation organized in another state.
2. Require any proponent that conducts a solicitation, including a state or municipal pension system, to disclose its identity, its sponsoring governmental entity, and any statutory, policy, or political mandate that directs its proposal activity.

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firmly established than a State's authority to regulate domestic corporations, including the authority to define the voting rights of shareholders."); Restatement (Second) of Conflict of Laws § 302 (Am. L. Inst. 1971).

[17] Tex. Bus. Orgs. Code Ann. § 21.373; *see* Rescission of Rule 14a-8, 91 Fed. Reg. at 59,914 n.129.

[18] *Crest v. Padilla*, No. 19STCV27561 (Cal. Super. Ct. L.A. Cnty. May 13, 2022) (holding unconstitutional Cal. Corp. Code § 301.3); *Crest v. Padilla*, No. 20STCV37513 (Cal. Super. Ct. L.A. Cnty. Apr. 1, 2022) (holding unconstitutional Cal. Corp. Code § 301.4).

3. Address in the economic analysis the scenario in which permissive state regimes, pension system proponents, and proxy advisor recommendations combine to produce the same concentration of influence the Commission seeks to avoid.

Federalism works when states compete to serve investors. It fails when states can use their stock holdings to push politics into the governance of companies its citizens do not control,"

VI. Proxy Advisors Must Not Become Shadow Regulators.

Two proxy advisory firms, Institutional Shareholder Services (ISS) and Glass Lewis, control an estimated 97 percent of the proxy advice market.[19] Let that sink in. This is an unconstrained oligopoly with foreign ownership that has decided to use its position in the market to drive political decisions in corporate board rooms.[20]

The federal government has also recognized this problem. In December 2025, the President directed the Commission to enforce the antifraud provisions against material misstatements in proxy advisors' recommendations, to consider requiring transparency on their methodology and conflicts of interest, and to analyze whether a proxy advisor serves as a vehicle for investment advisers to coordinate their voting decisions such that they form a "group" under Sections 13(d)(3) and 13(g)(3) of the Exchange Act.[21]

The same order directed the Federal Trade Commission to investigate whether proxy advisors conspire or collude to diminish the value of Americans' investments.[22] In August 2026, the Department of Justice withdrew the 1987 business review letter on which ISS had relied for nearly four decades, explaining that ISS's current business no longer matches the letter's premise and that the two firms' control of more than 90 percent of the industry raises significant competition concerns.[23] State attorneys general in Florida, Texas, Nebraska, Iowa, and West

[19] *Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets: Hearing Before the Subcomm. on Cap. Mkts. of the H. Comm. on Fin. Servs.*, 119th Cong. __ (2025) (statement of Rep. Ann Wagner, Chairwoman, Subcomm. on Cap. Mkts.) (Serial No. 119-17).
[20] *See* Exec. Order No. 14,366, § 1, 90 Fed. Reg. 58,503, 58,503 (Dec. 16, 2025); Press Release, S. Comm. on Banking, Hous., & Urb. Affs., Scott, Banking Republicans Raise Concerns Over Proxy Advisors' Influence of U.S. Public Companies (May 2025), https://www.banking.senate.gov/newsroom/majority/scott-banking-republicans-raise-concerns-over-proxy-advisors-influence-of-us-public-companies; *see also* Letter from Christopher A. Iacovella, Chief Exec. Officer, Am. Sec. Ass'n, to Vanessa Countryman, Acting Sec'y, SEC, at 1 (June 7, 2019) (File No. 4-725), https://www.sec.gov/comments/4-725/4725-5646621-185668.pdf; Letter from Am. Sec. Ass'n to the Leadership of the Subcomm. on Cap. Mkts., H. Comm. on Fin. Servs. (Apr. 29, 2025); Letter from Am. Sec. Ass'n to the H. Comm. on the Judiciary (June 25, 2025).
[21] Exec. Order No. 14,366, § 2(c)(i), (iii)–(iv).
[22] *Id.* § 3(b)(i).
[23] Press Release, U.S. Dep't of Just., Justice Department Withdraws Business Review Letter Issued to Proxy Advisory Firm (Aug. 5, 2026).

Virginia have also sued ISS, alleging that it promoted political objectives at the expense of investor returns. Those claims are pending.[24]

Proxy advisors cannot be permitted to act as their own regulator, substituting their preferred proposal regime for the one established by state law and a company's governing documents. For example, in reaction to the Commission's changes to the no-action process, ISS signaled that it could recommend votes against directors at companies that excluded proposals that relied on Commission staff guidance.[25] A company that acts lawfully, in reliance on the Commission's own guidance or on the law of its state of incorporation, should not face a coordinated campaign by foreign-owned oligopolists against its directors for doing so.

State efforts to discipline proxy advisors have faced constitutional challenge. A federal court has preliminarily enjoined Texas's proxy advisor disclosure law that applied to ISS and Glass Lewis.[26] That is all the more reason for the Commission to use the authority Congress gave it under Section 14(a).

ASA urges the Commission's adopting release to explicitly monitor proxy advisor voting policies and hold them accountable for using their market power following rescission. The Commission should examine whether proxy advisor recommendations to vote against directors solely because a company exercised its rights available under state law are consistent with the antifraud provisions of the federal securities laws, with the fiduciary obligations of investment advisers that rely on such recommendations, and with the disclosure owed to clients. If appropriate, the Commission should take action. The adopting release should also address whether, and under what circumstances, a proxy advisor serves as a vehicle for investment advisers to coordinate their voting decisions and thereby form a "group" under Sections 13(d)(3) and 13(g)(3), as the Executive Order directs.[27] Investors should know when anyone is acting in concert to influence corporate decision making.

VII. The Proposed Amendments to Rule 14a-4 Must Be Changed to Address Zero-Slate Campaigns.

Once Rule 14a-8 is rescinded, proponents who can no longer place proposals on the company's proxy card will look for other ways to pressure boards. The cheapest path for doing so is a "zero-

[24] *See Megan E. Gerking et al., DOJ Withdraws 1987 ISS Business Review Letter, Thereby Signaling Continued Proxy-Advisor Scrutiny, Harv. L. Sch. F. on Corp. Governance (Sept. 8, 2026),* https://corpgov.law.harvard.edu/2026/09/08/doj-withdraws-1987-iss-business-review-letter-thereby-signaling-continued-proxy-advisor-scrutiny/ *(describing antitrust and consumer protection suits filed against ISS by the attorneys general of Florida, Texas, Nebraska, Iowa, and West Virginia and noting that the allegations have not been adjudicated).*

[25] https://www.iss-stoxx.com/file/policy/current/americas/us-procedures-and-policies-faq.pdf

[26] *Inst. S'holder Servs. Inc. v. Paxton*, (W.D. Tex. Aug. 29, 2025) (order granting preliminary injunction); *Glass, Lewis & Co. v. Paxton*, (W.D. Tex. Aug. 29, 2025) (same); *see* S.B. 2337, 89th Leg., Reg. Sess. (Tex. 2025).

[27] Exec. Order No. 14,366, § 2(c)(iv).

slate" or "vote-no" campaign against incumbent directors. The Commission should close this gap in one of two ways: either rescind the 2021 universal proxy rule or amend the bona fide nominee rule so that proponents must nominate their own candidates alongside the company's board nominees. This would eliminate an end-run around Rule 14a-8 whereby proponents use the universal proxy rule to effectively force companies to include contentious proposals with their own proxy materials.

VIII. The ASA Supports the SEC's Proxy Solicitation Modernization Proposal.

The SEC's proxy solicitation modernization proposal should lead to significant cost savings for investors and a better functioning proxy voting system. Many current requirements were written for a paper-based system that no longer exists.

Since electronic records of company proxy materials are readily available through EDGAR and other online means today, mandates such as separate annual report delivery and fixed 20-business-day waiting periods add costs and delays to the proxy process. Removing these duplicative and outdated requirements will lower compliance burdens, particularly for the small and mid-sized public companies our members serve.

Additionally, a shorter minimum broker search period should also reduce unnecessary delays in time-sensitive transactions and shareholder meetings. As the Commission finalizes the rule, we encourage it to make sure intermediaries' response deadlines are coordinated with the new search period, so the process stays workable for the broker-dealers who carry it out.

IX. Conclusion.

The Proposal restores the proper division of authority between the federal government and the states. It ends a regime that has drifted far away from its original purpose, imposed substantial costs on Main Street investors, and made the Commission an arbiter of political and social disputes that belong on the ballot box and to Congress. ASA urges the Commission to finalize the rescission of Rule 14a-8 and the amendments to Rule 14a-4, subject to the recommendations above.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
President & Chief Executive Officer
American Securities Association