

**MEMO# 32779**

September 25, 2020

## **SEC Adopts Amendments to Shareholder Proposal Rule (Rule 14a-8)**

[32779]

September 25, 2020 TO: ICI Members

Investment Company Directors SUBJECTS: Closed-End Funds

Compliance

Disclosure

Fund Governance

Investment Advisers

Operations

Portfolio Oversight

Transfer Agency RE: SEC Adopts Amendments to Shareholder Proposal Rule (Rule 14a-8)

This week, the SEC adopted amendments to the shareholder proposal rule (Rule 14a-8), modifying certain requirements for including shareholder proposals in company proxies.[\[1\]](#)

Generally speaking, the amendments will raise the eligibility requirements for shareholders wishing to submit and resubmit proxy proposals. Adopted substantially as proposed,[\[2\]](#) the SEC states that the final amendments are

“intended to modernize and enhance the efficiency and integrity of the shareholder-proposal process for the benefit of all shareholders, including to help ensure that a shareholder-proponent has demonstrated a meaningful ‘economic stake or investment interest’ in a company before the shareholder may draw on company resources to require the inclusion of a proposal in the company’s proxy statement, and before the shareholder may use the company’s proxy statement to command the attention of other shareholders to consider and vote on the proposal.”[\[3\]](#)

The amendments passed by a 3-2 vote, with Chairman Clayton and Commissioners Roisman and Peirce voting in favor, and Commissioners Lee and Crenshaw voting against. The Commissioners voting for the amendments emphasized the need to consider the rights of *all* shareholders—not just proposal proponents—and the costs that the current requirements impose on all. By contrast, the Commissioners opposing the amendments expressed concerns that rights for smaller shareholders in particular would be negatively affected.[\[4\]](#)

## Summary of the Rule 14a-8 Amendments

Rule 14a-8 under the Exchange Act conditionally permits a company's shareholders to include proposals (*i.e.*, recommendations or requirements that a company and/or its board take action) on a company's proxy statement. The SEC amended:

- Rule 14a-8(b)'s eligibility requirements, most notably by replacing the current ownership requirements with a three-tiered approach to demonstrating a sufficient ownership stake through a combination of amount of securities owned and length of time held;
- Rule 14a-8(c)'s "one-proposal" rule by applying it to "each person" rather than "each shareholder" who submits a proposal; and
- Rule 14a-8(i)(12) by increasing the levels of shareholder support a proposal must receive to be eligible for resubmission.

We describe each below.

### ***Amendments to the Eligibility Requirements***

Currently, to submit a proxy proposal, a shareholder must continuously hold at least \$2,000 in market value (or one percent) of a company's stock and be entitled to vote for at least one year.

Adopted as proposed, the final amendments update these ownership requirements by:

- eliminating the 1 percent threshold,
- providing three alternative continuous ownership thresholds to establish eligibility to submit a proposal:
  - at least \$2,000 of the company's securities for at least three years;
  - at least \$15,000 for at least two years; or
  - at least \$25,000 for at least one year.[\[5\]](#)

In a change from the proposal, the SEC added to the rule a temporary transition period for proposals submitted for an annual or special meeting to be held prior to January 1, 2023, so that shareholders eligible at the current \$2,000/1-year threshold as of the amendments' effective date will remain eligible to submit proposals so long as they continue to maintain a minimum \$2,000 investment through the date of the relevant meeting.

In addition to these changes to ownership requirements, other eligibility-related amendments will:

- Prohibit the aggregation of holdings for purposes of satisfying the amended ownership thresholds;[\[6\]](#)
- Require that a shareholder-proponent who uses a representative to submit a shareholder proposal document that the representative is authorized to act on the shareholder-proponent's behalf and to provide a meaningful degree of assurance as to the shareholder-proponent's identity, role, and interest in the proposal;[\[7\]](#) and
- Require that each shareholder-proponent state that he or she is able to meet with the company and provide contact information (along with information on availability).[\[8\]](#)

## ***Amendment to the “One-Proposal” Limitation***

The final amendment modifies the current “one-proposal” limitation to apply to “each person” (rather than “each shareholder”) who submits a proposal.[\[9\]](#) The SEC states that the change is meant to keep the existing one-proposal limitation from being undermined.

## ***Amendments to the “Resubmission” Exclusion***

Rule 14a-8(i) provides bases upon which a company may exclude a shareholder proposal, including a “resubmission” exclusion. Currently, for a shareholder to be eligible to resubmit the same (or a similar) proposal, the proposal must have received at least 3, 6, and 10 percent shareholder approval for the first, second, and third submissions, respectively, each within the preceding 5 calendar years.

The final amendments raise the resubmission thresholds to 5, 15, and 25 percent, respectively, as proposed. The increases are meant to better distinguish between proposals that have a realistic prospect of obtaining broader or majority support in the near term and those that do not.

The final amendments do not include the proposal’s “momentum” exclusion for resubmissions (which would have permitted companies to exclude resubmitted proposals that experienced a specified loss of shareholder support). The Adopting Release states that, upon further review, the momentum exclusion could lead to anomalous results[\[10\]](#) and add complexity to the resubmission exclusion.

## **Other Matters Addressed in the Adopting Release**

Despite soliciting comment in the proposing release, the final amendments do not include a new requirement that shareholder-proponents reaffirm their interest in a proposal submitted to an open-end investment company after the passage of a specified amount of time.[\[11\]](#) The Adopting Release notes that open-end investment companies currently may seek to obtain a shareholder-proponent’s reaffirmation in such situations before including a proposal in their proxy statements, and that where they are unable to confirm a continuing ownership interest, the staff may agree that such proposals may be excluded from the proxy statement.[\[12\]](#)

The Adopting Release also addresses the SEC and staff role in the Rule 14a-8 process generally (particularly in responding to exclusion requests). The SEC declined to implement procedural changes, but the Adopting Release acknowledges commenters’ concerns regarding the need for consistent application of Rule 14a-8; states that changes in staff views may be necessary on occasion; and notes that the staff may seek the SEC’s views on certain matters related to Rule 14a-8, including certain changes in staff positions.

## **Effective Date**

The amendments will be effective 60 days after publication in the *Federal Register*, and will apply to any proposal submitted for an annual or special meeting to be held on or after January 1, 2022.

Dorothy M. Donohue  
Deputy General Counsel - Securities Regulation

**endnotes**

[1] *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, SEC Release No. No. 34-89964 (Sept. 23, 2020) (“Adopting Release”), available at [www.sec.gov/rules/final/2020/34-89964.pdf](http://www.sec.gov/rules/final/2020/34-89964.pdf).

[2] ICI’s comment letter (available at [www.sec.gov/comments/s7-22-19/s72219-6743669-207831.pdf](http://www.sec.gov/comments/s7-22-19/s72219-6743669-207831.pdf)) generally supported the proposal. ICI regarded the proposed changes to the submission and resubmission thresholds as reasonable regulatory line drawing, which would preserve access to the company proxy for smaller shareholders while also seeking to align the interests of shareholder proponents with those of long-term shareholders generally. We recommended revising the proposed “momentum” exclusion—which would permit companies to exclude resubmitted proposals that experience a specified loss of shareholder support—to strike a more appropriate balance between the interests of shareholders and companies.

[3] Adopting Release at 7-8.

[4] The Commissioners’ statements are available at [www.sec.gov/news/statements](http://www.sec.gov/news/statements).

[5] The SEC believes that a shareholder-proponent meeting one of these thresholds “will have demonstrated a sufficient ‘economic stake or investment interest’ in a company before being able to draw on company and other shareholder resources for the purpose of including a proposal in the company’s proxy statement.” Adopting Release at 24.

[6] Although shareholders will not be able to aggregate their holdings, they will continue to be permitted to co-file proposals as a group if each shareholder-proponent in the group is individually eligible.

[7] The SEC adopted the final amendment substantially as proposed, although the final amendment clarifies that (i) the shareholder-proponent must identify the specific *topic* of the proposal, rather than the specific language, to be submitted; and (ii) where a shareholder-proponent is an entity, and thus can act only through an agent, compliance with the amendment will not be necessary if the agent’s authority to act is apparent and self-evident such that a reasonable person would understand that the agent has authority to act.

[8] The SEC adopted the final amendment substantially as proposed, although it is also requiring that (i) the times specified be during the regular business hours of the company’s principal executive offices; and (ii) co-filers of a proposal take certain additional steps.

[9] Under this amended provision, “a shareholder-proponent will not be permitted to submit one proposal in his or her own name and simultaneously serve as a representative to submit a different proposal on another shareholder’s behalf for consideration at the same meeting. Likewise, a representative will not be permitted to submit more than one proposal to be considered at the same meeting, even if the representative were to submit each proposal on behalf of different shareholders.” Adopting Release at 58.

[\[10\]](#) For example, under this proposed provision a proposal with higher overall support (e.g., 44 percent) could have been excluded if it experienced a decline in support of 10 percent or more, whereas another proposal receiving lower support (e.g., 27 percent) that did not experience such a decline would not be excludable.

[\[11\]](#) ICI supported this in its comment letter.

[\[12\]](#) See, e.g., *Fidelity Management & Research Co.*, SEC No-Action Letter 2015 WL 4911599 (Aug. 12, 2015).

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.