SEC PROPOSES TO MODERNIZE THE PROXY SOLICITATION RULES

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INTRODUCTION

On 16 September 2026, in addition to proposing the complete rescission of Rule 14a-8 under the Securities Exchange Act of 1934 (Exchange Act), the US Securities and Exchange Commission (SEC) proposed amendments to other federal proxy rules in an effort to modernize the proxy solicitation process. The proposed amendments would impact public companies, business development companies (BDCs), and investment companies registered under the Investment Company Act of 1940 (funds).

If adopted, the proposed amendments would:

- Eliminate the requirement that public companies and BDCs deliver a separate annual report to security holders (ARS);
- Remove the 20-business-day delivery deadline for proxy statements that incorporate information by reference;
- Eliminate the requirement and ability to submit a Notice of Exempt Solicitation;
- Shorten the minimum broker search period from 20 business days to five business days; and
- Require contact information on the cover pages of proxy and information statements, together with various technical and conforming amendments.

The SEC's proposal seeks to reduce compliance burdens without sacrificing investor protections and reflects its view that many of these requirements have become redundant or outdated since filings and information incorporated by reference are readily accessible on EDGAR. From a practical perspective, the amendments are largely deregulatory and should, if adopted, simplify proxy season mechanics for public companies and other soliciting persons without fundamentally changing the substantive information available to investors. In addition, the proposed elimination of voluntary notices of exempt solicitation may have a material impact on shareholder advocacy campaigns, including environmental, social, and governance (ESG) related campaigns, which have used voluntary EDGAR filings to publicize their views and reach a broader investor audience.

PROPOSED AMENDMENTS

Elimination of the ARS Delivery Requirement

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Under current Exchange Act Rule 14a-3(b), a public company or BDC soliciting proxies for a meeting at which directors are to be elected (or delivering notice of a consent in lieu thereof) must deliver an ARS. Because the information required in the ARS largely overlaps with the Form 10-K and the Form 10-K is readily accessible on EDGAR, the SEC has proposed to eliminate the separate ARS delivery requirement for companies that already have a Form 10-K on file with the SEC for their most recent fiscal year. The proposal would also eliminate the stock performance graph requirement for companies other than BDCs. While certain BDCs currently voluntarily include the graph in their Form 10-K filings, the proposed amendments would make this a required disclosure for BDC Form 10-K filings.

Removal of the 20-Business-Day Delivery Deadline for Proxy Statements Incorporating Information by Reference

The proposal would eliminate the requirement in Schedule 14A, and in Forms S-4 and F-4, that a proxy statement or prospectus incorporating information by reference be sent to shareholders no later than 20 business days before the relevant shareholder meeting. This timing requirement predates electronic filing, and the SEC believes the requirement is no longer necessary given that documents incorporated by reference are readily and quickly accessible on EDGAR and that public companies, BDCs, and funds today have the ability to deliver documents electronically upon request. However, the proposal does not specifically address the similar incorporation by reference requirements under Form N-14 for BDC and fund mergers.[1]

Elimination of the Notice of Exempt Solicitation Requirement

The proposal would rescind Exchange Act Rule 14a-6(g), which currently requires a shareholder owning more than US$5 million of securities of a public company, BDC, or fund to submit a Notice of Exempt Solicitation on EDGAR in connection with certain written exempt solicitations. The SEC noted that, in recent years, the substantial majority of these notices have been submitted voluntarily by shareholders who do not meet the US$5 million ownership threshold, and that they had evolved into a means for shareholders below the US$5 million threshold to use EDGAR to publicize advocacy campaigns. Although many such filings have involved ESG issues, the SEC framed its concern more broadly as one of investor confusion and use of EDGAR for communications that the proxy rules do not require to be filed.

The proposal would eliminate Notices of Exempt Solicitation altogether, whether mandatory or voluntary, which the SEC notes would reduce compliance burdens for large shareholders, reduce potential investor confusion, and make required filings easier to locate on public company, BDC, and fund EDGAR pages.

Shortening the Minimum Broker Search Period

Exchange Act Rule 14a-13 currently requires public companies, BDCs, and funds to conduct a “broker search” no later than 20 business days before the applicable record date. The SEC has proposed to shorten this minimum broker search period from 20 business days to five business days. In proposing this amendment, the SEC cites technological advancements, including widespread adoption of the Internet and related digital communication tools, which have made coordination among intermediaries in the broker search process significantly more efficient than when the 20-business-day period was adopted in 1986.

Addition of Contact Information on Proxy Statement Cover Pages and Technical Amendments

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The proposal would revise the cover pages of Schedule 14A and Schedule 14C to require a public company, BDC, or fund to include the name, address (which may be an email address), and telephone number of a representative who can respond to questions or comments regarding the filing. The SEC noted that the change is intended to facilitate more timely communication between SEC staff and filers. The SEC also proposed various other technical amendments to remove obsolete references and correct typographical errors in the proxy rules.

IMPACT ON PUBLIC COMPANIES, BDCS AND FUNDS

Taken together, the proposed amendments would streamline several longstanding administrative aspects of the proxy solicitation process that no longer serve a meaningful investor protection purpose in light of EDGAR accessibility and modern communication technologies. Overall, public companies, BDCs, and funds should welcome the prospect of reduced printing, mailing, and administrative costs and increased flexibility that would result from the proposed amendments, as well as the removal of an outdated notice filing obligation for large shareholders conducting exempt solicitations.

IMPACT ON INVESTORS AND INVESTMENT MANAGERS

For investors and investment managers, the proposal would generally reduce procedural burdens associated with proxy-related communications but could also narrow certain channels for shareholder advocacy. Most notably, eliminating Exchange Act Rule 14a-6(g) would remove both the filing obligation for larger shareholders conducting certain exempt solicitations and the EDGAR filing mechanism historically used by some investors to publicize voting positions and advocacy campaigns.

CONCLUSION

The proposed amendments are intended to modernize the proxy solicitation rules to reflect the realities of electronic filing and modern shareholder communication, while preserving investor access to material information. Public companies and fund sponsors should monitor the rulemaking process and consider submitting comments on aspects of the proposal that may affect their proxy solicitation practices. Comments on the proposal are due 60 days after publication of the proposing release in the Federal Register.

Our Capital Markets and Asset Management and Investment Funds lawyers will be pleased to discuss how the proposed rules could impact our clients as they consider next steps.

FOOTNOTES

[1] The proposal does not suggest any reason why solicitations made pursuant to a Form N-14 registration statement should have different requirements. BDC and fund sponsors could use the comment process to seek greater clarity on the overlapping requirements of Form N-14, Schedule 14A, and Regulation 14A of the Exchange Act.

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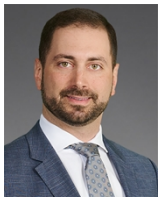

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