SEC Looks to Reform the Proxy Process: A Welcome Development for Listed Closed-End Funds and BDCs

September 24, 2026

Background

On September 16, 2026, the U.S. Securities and Exchange Commission (the "SEC") proposed to rescind Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and separately to modernize certain other rules, including rules governing broker searches (the "Proposals"). Our September 17, 2026, Debevoise In Depth summarized both Proposals in the context of public companies.[1] For sponsors and boards of listed registered closed-end funds ("CEFs") and business development companies ("BDCs" and, collectively with CEFs, "Funds" or "Fund," as applicable), however, the Proposals are more than technical proxy reforms. If adopted, they could meaningfully change the dynamics of activist campaigns at listed Funds.

The Proposals matter most when considered in the context of another recent development. The Supreme Court's June decision in *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd*. foreclosed a broad implied private right of action under Section 47(b) of the Investment Company Act of 1940, as amended (the "1940 Act"), that activists had invoked to challenge Fund governance measures, including control share acquisition statutes and defensive bylaws.[2] As we discussed in our Section 47(b) Alert, that decision already shifted meaningful leverage back to Fund boards. The Proposals would narrow a second set of tools: low-cost access to Funds' proxy materials 20-business-day broker search, ability to prevent management from voting any returned company cards on an omitted proposal, advance notice of a record date through the 20-

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1 *See Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a*-4, Release No. 34-106383 (Sept. 16, 2026) (the "Rule 14a-8 Proposal"); *Proxy Solicitation Modernization*, Release Nos. 33-11439; 34-106385; 39-2566 (Sept. 16, 2026) (the "Modernization Proposal"). For a detailed summary, *see* Debevoise & Plimpton LLP, "SEC Proposes to Rescind Rule 14a-8, Returning Focus to State Law," *In Depth* (Sept. 17, 2026) (the "Debevoise Article").

2 *See FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd*., No. 24-345 (U.S. June 11, 2026); Debevoise & Plimpton LLP, "The Supreme Court Clarifies the Scope of Section 47(b): What's Next for Listed Funds," *In Depth* (June 24, 2026) (the "Section 47(b) Alert").

business-day broker search and the ability to publicize exempt solicitations through notices on the Fund's EDGAR page.

Notwithstanding the foregoing, activist investors would still be able to nominate directors, solicit proxies and invoke state law or rights expressly provided for in the 1940 Act. But they would have to spend more, mobilize more shareholders and obtain more affirmative voting instructions to succeed. In a retail-heavy Fund, that shift can be outcome determinative. For a market in which the number of listed CEFs has fallen 42% since 2007, with only four new CEF IPOs since 2023,[3] this could meaningfully improve the calculus for sponsors considering a listed Fund.

What Is Being Proposed

Rule 14a-8 Rescission

The SEC proposes to eliminate the rule that has required companies, including CEFs and BDCs, to include qualifying shareholder proposals in their proxy statements. The SEC's principal rationale is that Rule 14a-8 exceeds the SEC's Section 14(a) authority (and for registered CEFs, the parallel authority in Section 20(a) of the 1940 Act), which extends to regulating the proxy solicitation process but not the substantive scope of shareholder voting rights.[4] If adopted as proposed, state law and Fund governing documents would control whether a proposal must be included. With the recent exception of Texas, no state has legislated on shareholder proposals since Rule 14a-8 was first adopted, and no state currently requires inclusion.[5]

Critically, express voting rights under the 1940 Act, including votes on advisory contracts, fundamental policies, below-net-asset-value ("NAV") issuances and certain director matters, would remain intact. The proposed rescission of Rule 14a-8 would change the ability of a shareholder to have their proposals included in a Fund's proxy and does not affect the underlying statutory right to vote.[6]

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3 *See* Investment Company Institute, "Confronting the Growing Burden of Fund Proxy Campaigns" (Mar. 2026) (the "ICI Study"), at 11. For purposes of our discussion, we have relied on information included in the ICI Study, which is provided as of the dates specified therein. More recently, in 2026, we have seen additional CEF IPOs, including Pershing Square USA, Ltd. and RoboStrategy, Inc., which we see as evidence of continued interest in the listed Fund wrapper.

4 *See Rule 14a-8 Proposal* at 13.

5 *See Debevoise Article* at 2.

6 *See Rule 14a-8 Proposal* at 58.

Discretionary Voting

Separately, in the same release, the SEC proposes to amend Rule 14a-4(c) to close what would otherwise be a route around the recission. Today, if a proponent that has timely submitted a proposal outside Rule 14a-8 solicits holders of enough shares to carry it, a Fund loses discretionary authority to vote proxy cards it receives on that proposal. The Fund must then either include the proposal on its own card or forgo voting those cards on it. Under the SEC's proposed amendment to Rule 14a-4(c), the Fund could omit the shareholder's proposal and still vote returned cards as disclosed in its proxy statement. Only a shareholder that checks an opt-out box on the Fund's card could prevent that result and only as to its own shares. The change matters most for proposals decided by a majority of the votes cast, where shares not voted on the proposal are disregarded.[7]

Broker Searches, Annual Reports and Other Procedural Changes

The companion Modernization Proposal would shorten the minimum broker search period from 20 business days to five, eliminate the Notice of Exempt Solicitation (whether required or voluntary) filing, remove the 20-business day delivery minimum for materials incorporated by reference and eliminate the requirement to deliver a Rule 14a-3 annual report (a registrant with a Form 10-K on file would satisfy the rule through that filing). BDCs would retain the stock performance graph, moved into Form 10-K.[8] The performance graph could be relevant in a proxy context because Rule 14a-3(b) ties the annual report to the proxy statement for any meeting at which directors are elected, and the SEC adopted the graph to help shareholders evaluate directors standing for re-election. Under the Modernization Proposal, BDCs would present the graph in Form 10-K rather than in a delivered annual report. Registered CEFs, which are outside Rule 14a-3(b), would continue to report performance under Form N-2 and in their shareholder reports.

How the Activist Playbook Would Change

Between 2022 and 2025, more than 43% of proxy contests in which proponents solicited votes on their own proposals targeted CEFs, a concentration that is hard to overstate for a relatively small segment of the public company universe.[9] These were independent solicitations, not Rule 14a-8 proposals, and they were effective: 67% of the 24 contest proposals voted on passed. That is why the Rule 14a-4 amendments may matter more to contested listed CEF proxies than the rescission itself. The typical activist investor strategy is: acquire CEF shares at a discount to NAV, use the proxy process to force a

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7 *See Rule 14a-8 Proposal* at 70–71.

8 *See Modernization Proposal* at 12–13.

9 *See Rule 14a-8 Proposal* at 108–110, Table 4.

tender offer or open ending, exit near NAV and move on. The Investment Company Institute ("ICI") documented that 72% of activists exit within a year of forcing a tender offer and 48% within three months.[10]

These Proposals would change those Fund activist economics in three important respects.

First, the activist would be responsible for its own proxy costs. Today, Rule 14a-8 places a qualifying proposal of up to 500 words, including any supporting statement, in a Fund's proxy at the Fund's expense. After rescission, absent a state law or governing document right, the activist would need to finance and distribute its own solicitation to the Fund's shareholder base. Independent solicitations are not cheap: in proxy contests involving shareholder proponent proposals at meetings held in 2022–2025, median reported solicitation costs were approximately $275,000 for proponents and $825,000 for companies. The ICI separately estimates that the 39 contested listed CEF campaigns reported in its survey since 2020 cost between $24 million and $36 million.[11]

Second, returning the Fund's proxy card would no longer be neutral. Under current Rule 14a-4(c), if an activist satisfies the applicable solicitation threshold, and the Fund omits the proposal, the Fund generally cannot vote company cards on that proposal; those cards are non-votes. Under the Rule 14a-8 Proposal, management could vote those cards, typically against the activist proposal, except as to shares of holders who check the opt-out box. That additional step is especially consequential for listed Funds with broad retail ownership and chronically low voting participation: retail proxy voting participation has historically run around 30%, compared with around 80% for institutional investors. In contested listed CEF proxies, non-discretionary retail holders owned 59% of outstanding shares but accounted for only 37% of shares voted, and 84% of those that voted sided with management.[12]

Third, the time available for activist campaigns would shrink. The five-business-day minimum broker search period, where a Fund elects to use it, could reduce the time available to build a position, coordinate with other holders or recall loaned shares before the record date. The SEC expressly acknowledges that the shorter window, combined with the Rule 14a-4 amendments, could increase campaign costs and, at the margin, reduce the frequency or likelihood of success.[13]

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10 *See ICI Study* at 10.

11 *See* Rule 14a-8 Proposal at 107-08, Table 4; ICI Study at 1, 22.

12 *See ICI Study* at 6, 10.

13 *See Modernization Proposal* at 29.

It is worth noting what the Proposals do not do. Director nominations, independent solicitations and proposals exercising express 1940 Act rights remain available. What changes is who pays, which card carries the proposal, and how silence is counted.

Will These Proposals Reduce Costs for Funds?

The larger cost savings are concentrated in contested campaigns. Rescinding Rule 14a-8 eliminates the direct expense of processing, responding to and including activist proposals, costs that fall on a Fund and its shareholders and that Funds cannot recoup through new share issuance because Section 23(b) of the 1940 Act (and, for BDCs, Section 63(2)) generally prohibits sales below NAV absent shareholder approval or another exception, and Fund shares typically trade at a discount to NAV. The Rule 14a-4 default could reduce the need for expensive counter solicitation campaigns, since the voting default would already favor management.

The cost savings from the procedural changes are less consistent. BDCs receive direct annual report relief; registered CEFs generally remain within their separate 1940 Act reporting framework. A shorter broker search period may reduce timing and transaction costs, but the benefit depends on whether intermediaries can accurately complete Fund searches within five days. Current Rules 14b-1 and 14b-2 under the Exchange Act can permit seven business days for intermediary responses, which is longer than the proposed search period itself.

The SEC Wants Fund Industry Input

The SEC expressly asked whether registered funds and BDCs should be treated differently.

Should Funds Get Their Own Rule?

The SEC asked whether, instead of simply rescinding Rule 14a-8 for registered funds, it should adopt a new rule under the 1940 Act preserving proxy access for proposals relating to matters on which the 1940 Act provides voting rights. This is arguably the most important question for the industry. The SEC's authority argument for rescission is that it should not regulate state law voting rights. But registered fund shareholders' core voting rights are mandated by Congress under the 1940 Act, not state law. The SEC anticipated this point, reasoning that Congress's creation of 1940 Act voting rights does not expand its authority over the solicitation process under Section 20(a) or Section 14(a). Notably, however, the SEC expressly left open whether "other authorities" available under those statutes could support a different approach. Commenters should address that question directly.[14]

Is the Five-Day Broker Search Workable for Registered Funds?

The SEC specifically asks whether registered funds, with their retail-heavy ownership, intermediary chains and complex beneficial owner records, need a longer period. Fund sponsors should submit actual search-completion data.

What Else Can Be Done to Support Capital Formation?

These Proposals address campaign leverage and operating cost, but they will not by themselves revive the listed Fund IPO market. Sponsors and boards should be advocating for more.

Eliminate the Annual Meeting Requirement

The 1940 Act does not require annual shareholder meetings for listed Funds. That obligation comes from exchange listing standards. The NYSE and Cboe BZX have each proposed to eliminate the requirement for registered CEFs (in 2024 for all listed CEFs and in 2025 for newly listed CEFs), and the ICI has supported those proposals, arguing that the annual meeting has become a "back door" for predatory activists.[15] The SEC has not approved any of those proposals, and none would extend to listed BDCs.[16] Since 2015, nearly 40% of all listed CEFs have been targeted by at least one of the three most committed activists.[17]

Reform the 1940 Act Majority Vote Standard

Even after rescission, Funds will face the significant cost of obtaining majority shareholder approval under the 1940 Act standard for non-routine matters (e.g., approval of investment advisory agreements under Section 15(a) of the 1940 Act), which approval requires (i) 67% or more of shares present if more than 50% of outstanding shares are represented or (ii) more than 50% of all outstanding shares, whichever is less. The ICI's recommendation to pair a lower quorum (more than 33 ⅓%) with a higher affirmative vote (at least 75%) deserves regulatory attention, whether through SEC rulemaking or exemptive relief. The ICI Study found that 73 registered funds sought shareholder approval to change from "diversified" to "non-diversified"

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14 *See* Rule 14a-8 Proposal at 57 & nn.183–184, 60 (Request for Comment 13).

15 *See ICI Study* at 11.

16 *See* ICI Study at 12–13.

17 *See* ICI Study at 11.

status under Section 13(a) at a total cost of approximately $66 million or more than $900,000 per fund.[18]

Address Delivery and Processing Costs

Much of what listed Funds spend on proxy campaigns comes from delivery mechanics rather than the proxy rules themselves. The SEC's July 2026 Regulation E-Delivery proposal[19] would permit Funds to deliver proxy materials electronically by default, but it would also eliminate the paper notice-only option under Rule 14a-16. The ICI has urged the SEC to retain that option as a tool for reaching retail shareholders and to reform the NYSE processing fee framework, a concern the SEC's Investment Advisory Committee also raised in its June 2026 fund proxy recommendations.[20] For listed Funds with low retail participation, these changes bear directly on the cost and outcome of proxy campaigns.

Pair Proxy Reform with Offering Reform

A coherent reform agenda would pair these proxy changes with the SEC's May 2026 registered offering reform proposals, including expanded short-form Form N-2 and automatic shelf access, and with renewed attention to exchange listing standards and the Section 23(b) constraint on issuing below NAV. Offering reform reduces the friction of raising capital; proxy and governance reform reduces the continuing cost and vulnerability of remaining public. Addressing only one side is unlikely to produce a durable recovery in listed Fund formation.

Next Steps

Comments on the Proposals should be received on or before November 20, 2026. Rule 14a-8 remains in effect unless and until the SEC adopts a final rule.

In the meantime, Fund boards should audit their governing documents to understand what controls shareholder proposals in a world without Rule 14a-8, including advance notice requirements, special meeting thresholds, consent rights and existing defensive provisions. Fund boards should also model the Rule 14a-4 opt-out box to understand how it will function on paper and electronic voting platforms and how conflicting cards will be reconciled. If the SEC also adopts its proposed Regulation E-Delivery, more retail

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18 *See ICI Study* at 1, 30.

19 *See* Debevoise & Plimpton LLP, "From Opt-In to Opt-Out: SEC's Proposed Regulation E-Delivery Would End the Paper Default," *In Depth* (July 21, 2026), for a summary of the SEC's Regulation E-Delivery proposal.

20 *See* "Recommendations of the SEC Investor Advisory Committee Regarding Fund Proxy Voting" (June 4, 2026).

holders would likely receive proxy materials and vote electronically, making the design and presentation of the opt-out box on electronic platforms particularly important. Operations teams should prepare for the fact that exempt solicitation notices would no longer appear on EDGAR and establish monitoring protocols for third-party platforms and direct outreach. And your Funds should engage in the comment process, particularly on the question of a registered fund-specific 1940 Act rule.

Taken together, the Supreme Court's recent decision and the SEC Proposals move listed Fund governance two steps in the right direction: (i) away from implied private rights of action under Section 47(b) and (ii) away from the federal proxy requirements that have historically disadvantaged Fund sponsors and boards.

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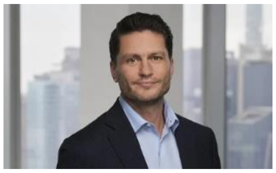
Please do not hesitate to contact us with any questions.



Vadim Avdeychik
Partner, New York
+1 212 909 6867
vavdeychik@debevoise.com

Marc Ponchione
Partner, Washington, D.C.
+1 202 383 8290
mponchione@debevoise.com

Andrew Friedman
Associate, New York
+1 212 909 6857
amfriedman@debevoise.com

Sam Scarritt-Selman
Associate, New York
+1 212 909 6931
shscarrittselman@debevoise.com