
Final Rule: SEC's Amendments to Regulation 14A Codifying the SEC's Current Position on Bylaw Proposals Requiring the Inclusion of Shareholder Nominees and Concerning Electronic Shareholder Forums

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On November 28, 2007, the Securities and Exchange Commission ("SEC" or "Commission") at an open meeting, voted to adopt sections of two proposals made on July 25, 2007.¹ One vote adopted a proposed amendment to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"),² which permits a company to exclude from its proxy statement any shareholder proposal seeking to amend company bylaws to require the company to list shareholder-nominated candidates for the board of directors on the corporate ballot (the "Exclusion Rule"). The new provision permits such exclusion on the ground that such a proposal "relates to an election" under Exchange Act Rule 14a-8(i)(8). Another vote adopted a proposed rule³ (the "Shareholder Forum Rule") that would expand paragraph(b) of Rule 14a-2 under the Exchange Act, to allow an exemption from the proxy rules of solicitations made within an "electronic shareholder forum" more than 60 days prior to a shareholder meeting by persons who are not soliciting proxies, and would exempt persons who establish, maintain or operate such forums from liability under the federal securities laws for any statement made by another person on such a forum.