RICHARDS LAYTON & FINGER

Delaware Corporate Law Update

Friday, November 13, 2026

Delaware Corporation Law Council Proposes New DGCL Section 214 to Govern Precatory Stockholder Proposals if Rule 14a-8 Is Rescinded

On November 9, 2026, the Council of the Corporation Law Section of the Delaware State Bar Association (the "Council") released a White Paper and Discussion Draft proposing a potential new Section 214 of the Delaware General Corporation Law (the "DGCL"). Revised Section 214 would establish a state-law framework governing when stockholders of a Delaware corporation may submit precatory (i.e., non-binding) proposals at annual stockholders' meetings and require their inclusion in the corporation's proxy materials. The proposal responds to the Securities and Exchange Commission's ("SEC") September 16, 2026, proposal to rescind Rule 14a-8 under the Securities Exchange Act of 1934. The amendments would take effect only if, and when, the rescission of Rule 14a-8 becomes effective. Release of the White Paper opened a 60-day public comment period.

In sum, Section 214 would permit stockholders of only the largest listed Delaware corporations to present a capped "basket" of one to three precatory proposals per annual meeting, filled by the qualifying proposals backed by the most stock. Proponents would be subject to substantially higher ownership thresholds than under Rule 14a-8, a short list of primarily objective exclusions would replace Rule 14a-8's subjective bases (including the "ordinary business" exclusion), and disputes would be resolved through a 30-day Court of Chancery action available only to the proponent.

Background

Rule 14a-8 has long served as the practical source of authority for stockholder proposals, largely independent of state law. As the White Paper observes, the DGCL does not directly address whether stockholders have a state-law right to present precatory proposals or the extent to which a charter or bylaws may regulate them, nor does it provide any default right to require a corporation to include a stockholder proposal in its proxy materials. Indeed, the DGCL and Delaware case law would suggest that a stockholder-adopted bylaw mandating the inclusion of stockholder proposals in the corporation's proxy materials would not be binding on the board.

The SEC recently proposed rescinding Rule 14a-8 and returning the matter of proxy access for stockholder business proposals to the states. Rather than leaving the matter to private ordering, the Council has proposed a statutory regime that would replace Rule 14a-8 if it is rescinded. The White Paper explains that the Council determined a statutory approach would provide certainty and efficiency to both corporations and investors and thus avoid the time and cost that corporations and their directors, officers and stockholders likely would incur if they were expected to develop and implement their own rules.

One Rodney Square ■ 920 North King Street ■ Wilmington, DE 19801 ■ Phone: 302-651-7700 ■ Fax: 302-651-7701

www.rlf.com

Copyright © 2026 Richards, Layton & Finger. All rights reserved.

The Council considers amendments to the DGCL on an annual basis. Most of the Council's proposed amendments deal with technical aspects of corporate law and are proposed to accommodate developments in business practice unique to the internal affairs of Delaware corporations. Because Rule 14a-8 was in place for roughly 80 years and had seemingly become a permanent fixture of the corporate landscape, the Council historically had little need to examine the subject. As proposed Section 214 represents Delaware's initial foray into a territory that had previously been the domain of a federal regime, the Council determined it would be advisable to propose a discussion draft and to seek comment on the proposed approach.

Key Features of Proposed Section 214

Exclusivity and Board Flexibility

Section 214 would be the exclusive means for stockholders to present a precatory proposal. Precatory proposals outside the basket could not be voted on, even if the proponent were willing to solicit proxies at its own expense. Charters and bylaws could neither impose additional or greater conditions nor eliminate or reduce Section 214's requirements. Section 214 would, however, expressly preserve the board's ability to submit any precatory proposal for a vote on a case-by-case basis (including one originating from a stockholder and opposed by the board), and would authorize contracts under Section 122(18) regarding the submission of precatory proposals at future meetings and their inclusion in proxy materials.

Covered Corporations and the Proposal "Basket"

Section 214 would apply only to corporations with voting stock listed on a national securities exchange, and only at annual meetings (not special meetings or actions by written consent). The aggregate number of precatory proposals would be capped by market capitalization tier:

- Tier 1 (corporations with a market cap of $100 billion or more): three proposals

- Tier 2 (corporations with a market cap of at least $50 billion but less than $100 billion): two proposals

- Tier 3 (corporations with at least $30 billion but less than $50 billion): one proposal

Tier status for a given annual meeting would be determined by market capitalization as of the tenth calendar day before the notice record date for the immediately preceding annual meeting, so that a corporation would know well in advance of a meeting whether proposals may be submitted. Market capitalization would include all classes and series of stock not designated as preferred (including unlisted common stock), valued at the trading price of the listed voting stock.

Grace Period for Newly Public Corporations

Section 214 would not apply until the first annual meeting noticed for a date after the fifth anniversary of the corporation's "Initial Listing," unless the charter, by specific reference to Section 214, provides for an earlier start. For a SPAC, the period would run from consummation of its business combination. Notably, for an already-listed entity that converts or otherwise redomiciles into Delaware, the Initial Listing would be deemed to occur on the date of the redomestication, and a Section 251(g) holding company would inherit its predecessor's Initial Listing date.

Opt-Out

Private ordering would be limited to a binary choice. After the five-year grace period, a corporation could elect out of Section 214 entirely (in which case no stockholder precatory proposals could be submitted) through a charter or bylaw provision that specifically references Section 214 and is approved at a stockholder meeting (not by written consent) by each class and series of voting stock, voting separately.

Proponent Eligibility

- *Ownership*. A proponent must beneficially own either (i) individually, at least $250,000 in market value, or (ii) together with up to nine co-filers, at least $1 million in market value, of voting stock. The individual threshold is ten times the highest current Rule 14a-8 threshold.

- *Holding period and measurement*. Shares count only if held continuously for at least 365 days ending on the 30th day before the submission deadline. Market value is based on the highest selling price during the 60 days before that measurement date. Each proponent and co-filer must state its intent to hold the minimum amount through the meeting.

- *One proposal per person*. A person may serve as proponent or co-filer for only one proposal per annual meeting. Violations result in disregarding the person's shares and, for a proponent, its proposal(s).

- *Co-filers*. Co-filers must deliver a written document supporting a vote on the proposal, disclaiming authority to direct the proponent, and acknowledging that the proponent is not their proxy or representative.

- *Ownership evidence*. Record ownership is established by the stock list; beneficial owners may rely on nominee and DTC participant statements similar to those used under current SEC staff guidance.

Submission Requirements and Timing

Proposals must be received at the corporation's principal executive office no later than the 180th day before the anniversary of the prior year's annual meeting (with adjustments if the meeting is advanced by more than 30 days or no meeting was held in the prior year), a somewhat earlier deadline than under Rule 14a-8. Delivery is limited to hand delivery, certified or

registered mail, or an email address expressly designated by the corporation. The proposal and supporting statement together may not exceed 500 words, and the submission must include the proponent's and co-filers' names and addresses, the co-filer documents, ownership evidence, and holding-intent statements.

Bases for Exclusion

A proposal would be disregarded only on enumerated grounds: (1) failure to deliver required materials; (2) exceeding 500 words; (3) untimely submission; (4) failure to satisfy the ownership requirements; (5) any part of the proposal or supporting statement expressly questions the character of a director nominee; (6) the proponent's proposal at either of the two preceding eligible annual meetings received less than 15% of the votes cast; (7) the proposal primarily seeks to redress a personal claim or grievance; (8) the proposal seeks a board policy or other arrangement to present precatory proposals in a manner different from, or supplemental to, Section 214; (9) the proponent or a co-filer is, is controlled by, or is acting for a director, officer or the corporation; (10) "no rational person would determine" that the proposal is relevant to the corporation or its business; (11) the proponent sponsors more than one proposal; and (12) any other failure to satisfy Section 214.

There is no "ordinary business" or comparable subjective exclusion. The White Paper notes that the Delaware courts may look to SEC no-action precedent in applying the exclusions derived from Rule 14a-8, and that the character, personal-grievance and relevance exclusions were deliberately drafted to set a high bar for exclusion in order to reduce litigation.

Cure, Selection, and Notice

- *Limited cure right*. A corporation must, within 14 days of receipt, notify the proponent of any missing materials or word-count deficiency (enclosing copies of Sections 214 and 232(a)); the proponent then has 14 days to cure. The corporation may not offer a cure opportunity for any other deficiency.

- *Filling the basket*. After applying the exclusions, the corporation selects, up to its cap, the proposals whose proponent groups beneficially own the greatest number of shares as of the measurement date. No share may be counted more than once, ties are resolved by random selection, and a later withdrawal does not open a slot for another proposal.

- *Determination notice*. Within 60 days after the submission deadline, the corporation must notify every proponent (including noncompliant proponents) of its determination, identifying all proponents and co-filers and their share ownership.

Proxy Inclusion and Presentation

Selected proposals, with supporting statements, must be included in the corporation's proxy statement and form of proxy. The corporation may include a statement in response or opposition, must state that the proposal and supporting statement are solely the proponent's responsibility, and, together with its directors and officers, would not be responsible under Delaware law for the

proponent's statements. As under Rule 14a-8, a vote would be taken only if the proponent (or its proxy holder) attends the meeting and requests a vote, or the chair submits the proposal.

Exclusive Remedy

Only the proponent of the affected proposal could challenge the corporation's application of Section 214, and only in the Court of Chancery within 30 days after the determination notice is given. The corporation would bear the burden of establishing that a proposal was properly disregarded. A failure to comply with Section 214 would not invalidate any other action taken at the annual meeting.

Binding Proposals, Nominations, and Conforming Changes

The Discussion Draft would not change the rules for binding stockholder action. Stockholders could continue to present, and solicit their own proxies for, director nominations, removals, and bylaw amendments, subject to advance notice bylaws and Section 141(a), and binding proposals would not be subject to Section 214's cap or exclusions. The definition of "precatory proposal" excludes nominations and "vote no" or "withhold" recommendations. A new Section 211(f) would confirm that a corporation is not required under Delaware law to include any stockholder nominee or proposal in its proxy materials except as required by Section 214 or a proxy access provision adopted under Section 112. Section 222(a) would be amended to require the annual meeting notice to state the anticipated deadline for precatory proposals for the following year's meeting, and the existing cumulative voting provisions of Section 214 would be relocated to Section 212.

Timing and Next Steps

Comments are due within 60 days of the White Paper's November 9 release. The Council will then prepare a revised draft for approval by the Corporation Law Section and the DSBA Executive Committee before submission to the General Assembly, which will be in session during the first half of 2027. The Council's stated objective is to have rules in place before corporations begin preparing for the 2028 proxy season, after the legislative session concludes in June 2027. The SEC's own comment period on the proposed rescission closes November 20, 2026. As a practical matter, Section 214 would not govern 2027 annual meetings.

A copy of the Council's White Paper is available here.