The Murky Future of Shareholder Proposals[µ]

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In *The Corporate Contract & The Private Ordering of Shareholder Proposals*, Professor Manesh offers a thought-provoking and insightful argument that corporations might avoid including shareholder proposals on their proxy materials under Rule 14a-8 through charter and bylaws amendments.[1] This argument occurs as there is a current push by some away from federal involvement in oversight of shareholder proposals. Indeed, the U.S. Securities and Exchange Commission's Chairman has questioned whether the SEC should continue to be involved in the shareholder proposal review process,[2] and—in an unprecedented move—the SEC has largely removed itself from the shareholder proposal process for the 2025–2026 proxy season due to "resource constraints."[3]

Professor Manesh's article follows the trend of encouraging increased private ordering of shareholder proposals under Rule 14a-8. And the increased focus on private ordering has led to redirected focus toward questions surrounding whether (and to what extent) shareholders have a right to bring a proposal under Delaware law.[4] Less attention, however, has been given to two other considerations that may shape regulation of shareholder proposals moving forward. One is the Supreme Court's developing jurisprudence regarding the President's ability to remove the heads of independent agencies without cause. And the other concerns the possible incentives for certain stakeholders to resist a shift towards private ordering of shareholder proposals.[5] These are significant considerations as they may further influence the future regulation of shareholder proposals.

µ Note that this Article went to print before the release of the Trump v. Slaughter decision.

* I am grateful to Andrew Bond, Brittney Lane Kubisch, and Mohsen Manesh for helpful comments and conversations.

1. *See generally* Mohsen Manesh, *The Corporate Contract & the Private Ordering of Shareholder Proposals*, 50 J. CORP. L. 1 (2024).

2. Paul S. Atkins, Chairman, U.S. Sec. Exch. Comm'n, Keynote Address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala (Oct. 9, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governances-25th-anniversary-gala [https://perma.cc/Y9GF-G38S].

3. Statement, U.S. Sec. Exch. Comm'n: Div. of Corp. Fin., Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season (Nov. 17, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season [https://perma.cc/DN4Z-6L5D]. For past criticisms of SEC proposal process, *see, e.g.*, Mark R. Kubisch, *Constitutionally Suspect Interventions in the Shareholder Proposal Forum*, 59 WAKE FOREST L. REV. 1155 (2025); Alan R. Palmiter, *The Shareholder Proposal Rule: A Failed Experiment in Merit Regulation*, 45 ALA. L. REV. 879, 885 (1994).

4. Manesh, *supra* note 1, at 27–35; *see, e.g.*, Kyle Pinder, *The Non-Binding Bind: Reframing Precatory Stockholder Proposals Under Delaware* Law, 15 MICH. BUS. & ENTREPRENEURIAL L. REV. 1 (2026); *see also* Robert Tallarita, *Do Shareholders Have the Right to Make Non-Binding Proposals?*, MOSTLY FOOTNOTES (Nov. 24, 2025), https://rtall.substack.com/p/do-shareholders-have-the-right-to [https://perma.cc/49NU-SXLJ].

5. Professor Manesh's article notes some of these countervailing incentives. This Response elaborates on additional considerations.

This Response proceeds in two parts. In Part I, it considers how the Supreme Court's decision regarding the constitutionality of for-cause removal requirements for administrative agencies may affect the SEC's rulemaking regarding shareholder proposals. Specifically, it suggests that the elimination of the SEC commissioners' for-cause protections may lead the SEC's rulemakings to be more responsive to changes in presidential administrations. This, in turn, may result in volatility in the scope and restrictiveness of the rules concerning shareholder proposals as each change in administration may result in a reshaping of the agencies' rules and enforcement priorities.

Part II considers how large, institutional stakeholders, proxy advisors, and directors may have discrete incentives to maintain some degree of a federal regulatory presence and thus may object to relying on private ordering on account of those incentives. Accordingly, the future of federal oversight over shareholder proposals remains difficult to discern.

I. THE PRESENT AND FUTURE SEC?

Changes in the removal process of commissioners of the SEC may influence the ability of shareholders to raise precatory shareholder proposals under federal law because it may allow for more accelerated SEC policymaking after a change in presidential administrations.

To begin, it is helpful to sketch the conventional view of the SEC. Designed during the New Deal era, the SEC is an "independent agency" led by a bipartisan group of commissioners with expertise in financial regulation.[6] The President selects the chair from among the commissioners.[7] While the President appoints the five commissioners with the advice and consent of the Senate, their five-year terms are staggered and only three commissioners can be members of the same political party.[8] The President, moreover, is instructed by statute to make appointments of members of different political parties "alternately as nearly as may be practicable."[9]

Nor has the President historically been understood to be able to significantly change the Commission's composition at the start of the presidential term. Although the SEC's enabling statute does not contain for-cause protections for the Commissioners,[10] the Supreme Court has assumed such protections do exist.[11] As one member of the Court has explained, the theory is that such for-cause protections were not included because the New Deal Congress thought it lacked the power to impose them, given a contemporaneous Supreme Court decision that suggested Congress could not restrict the President's removal

6. *See, e.g.*, 44 U.S.C. § 3502 (defining the SEC as an "independent regulatory agency" under the Paperwork Reduction Act along with the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, and the Federal Trade Commission).

7. *See* Reorganization Plan No. 10 of 1950, 64 Stat. 1265 ("The functions of the Commission with respect to choosing a Chairman from among the Commissioners composing the Commission are hereby transferred to the President.").

8. 15 U.S.C. § 78d(a); *see* S.E.C. v. Blinder, Robinson & Co., 855 F.2d 677, 681 (10th Cir. 1988).

9. 15 U.S.C. § 78d(a).

10. *See* Note, *The SEC Is Not An Independent Agency*, 126 HARV. L. REV. 781, 782 (2013); *see also* Free Enter. Fund v. Pub. Co. Acct. Oversight Bd., 561 U.S. 477, 546 (2010) (Breyer, J., dissenting) (discussing for-clause protections for Commissioners).

11. *Cf. Free Enter. Fund*, 561 U.S. at 487 (deciding the case on the assumption that the SEC is an independent agency).

power.[12] Based on the assumption that Congress would have included such protections if it thought it could have, it has been "commonly understood that the President may remove a commissioner only for 'inefficiency, neglect of duty or malfeasance in office.'"[13]

Given these deliberate structural protections, therefore, "Presidents have generally stayed away from the Commission" as their influence has been limited.[14] Rather, as Professor Urska Velikonja has explained, Congress has typically exercised the most influence over the SEC, given Congress's role in allocating appropriations.[15]

Of course, the President already has significant influence on the SEC through the President's ability to designate the Chair of the SEC and so set the SEC's day-to-day enforcement priorities.[16] But that influence is constrained by the statutory requirement that overall policy through rulemaking and oversight authority come from the SEC as a whole.[17]

Yet, recent events suggest a different—or, at least, altered—SEC may be in the offing. The long-standing view of SEC commissioners being removable for cause is based on the Supreme Court's 1935 decision in *Humphrey's Executor v. United States*.[18] There, the Court upheld for-cause restrictions on the President's ability to fire members of the Federal Trade Commission because they were a nonpartisan, "body of experts" with "duties [that] [we]re neither political nor executive, but predominantly quasi-judicial and quasi-legislative."[19]

But recent removal of officials by the second Trump administration suggests that *Humphrey's Executor*'s authority is not as robust, given that the Supreme Court has stayed orders to reinstate removed officials with similar for-cause protections.[20] And the argument before the Court this term has been interpreted by many as indicating that *Humphrey's Executor*'s days are numbered.[21] In fairness, the Court may only narrow *Humphrey's Executor*,[22] but, even if that is the case, the absence of any textual protections within the SEC's enabling statute itself offers a textualist court a simple basis for sidestepping *Humphrey's Executor* when it comes to the SEC.[23]

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12. PHH Corp. v. Consumer Fin. Prot. Bureau, 881 F.3d 75, 173 (D.C. Cir. 2018) (Kavanaugh, J, dissenting) ("That said, in the period from *Myers* (1926) to *Humphrey's Executor* (1935), Congress created several multi-member agencies that did not include for-cause provisions, apparently because Congress interpreted *Myers* to outlaw independent agencies. Those agencies included the FCC and the SEC. After *Humphrey's Executor*, those multi-member agencies were treated as independent agencies even though the relevant statutes did not include for-cause provisions."), *abrogated* by Seila L. LLC v. Consumer Fin. Prot. Bureau, 591 U.S. 197 (2020)).

13. *Blinder*, 855 F.2d at 681.

14. Urska Velikonja, *Politics in Securities Enforcemen*t, 50 GA. L. REV. 17, 21 (2015).

15. *Id.*

16. 15 U.S.C. § 78d-2.

17. 15 U.S.C. § 78d-1(a).

18. Humphrey's Ex'r v. United States, 295 U.S. 602, 624 (1935).

19. *Id.*

20. *See generally* Trump v. Wilcox, 145 S. Ct. 1415 (2025); Trump v. Boyle, 145 S. Ct. 2653 (2025).

21. *See generally* Trump v. Slaughter, 146 S. Ct. 18 (2025) (staying lower court order enabling the discharge of a member of the Federal Trade Commission).

22. Adam White, *Is Humphrey's Executor Headed for Slaughter?*, SCOTUSBLOG (Oct. 2, 2025), https://www.scotusblog.com/2025/10/is-humphreys-executor-headed-for-slaughter/ [https://perma.cc/H8VA-NAM3].

23. William N. Eskridge, Jr., Brian G. Slocum & Kevin Tobia, *Textualism's Defining Moment*, 123 COLUM. L. REV. 1611, 1615 (2023) ("In constitutional cases, there are intense debates between these five or six red-

If this comes to pass, the President's newly freed hand to change the composition of the SEC will likely render the SEC more responsive to the President's agenda.[24] The President could (and likely would) dismiss all commissioners from the other party, as well as commissioners out of line with the President's agenda more broadly upon assuming office.[25] And such removals would not necessarily impair the work of the SEC because its regulations expressly provide for a quorum to exist even where not all of the commissioners are present.[26] Accordingly, future iterations of the SEC will likely be more responsive to the President's priorities from the get-go, especially given "en bloc" changes to the Senate's confirmation process which can facilitate commissioners being confirmed early on in a new administration.[27]

Accordingly, the Supreme Court's reconsideration of the Presidential removal power may soon clear the way for an SEC to align more quickly with the Presidential agenda.[28] Commissioners could also avoid procedural obstructions that opposing commissioners might resort to in order to delay certain actions.[29] Plus, an invigorated removal power will strengthen the President's ability to hold commissioners accountable if the President judges them not to be adequately implementing the administration's agenda in a timely manner.

This development relates back to a key part of Professor Manesh's reasoning. Namely, much of Professor Manesh's piece concerns the interpretation of a current regulation: Rule 14a-8.[30] Yet given this overhaul of the administrative state, the possibility that such a regulation might be revised (or rescinded) in the future seems to be a significant one, given the SEC's responsiveness to the President. Indeed, the current Chair has already identified Rule 14a-8 as a potential rule for reconsideration[31] as a pillar of his vision to "de-

blooded textualist Justices and the three true-blue pragmatic Justices on opposing sides in predictable conservative-liberal splits, but in statutory cases, it is textualism all the way down.").

24. During the Obama Administration, SEC Chair Mary L. Schapiro had to withdraw a proposal about money market fund reform due to the opposition of three commissioners. *See* Press Release, U.S. Sec. & Exch. Comm'n, Statement of SEC Chairman Mary L. Schapiro on Money Market Fund Reform (July 28, 2014), https://www.sec.gov/newsroom/press-releases/2012-2012-166htm [https://perma.cc/WS2F-JW4G].

25. *See generally Wilcox*, 145 S. Ct. 1415 (removing NLRB commissioner). Plus, removal of commissioners would also deprive them of an opportunity to "issu[e] vigorous dissents from SEC rulemakings that [could lay] the ground for D.C. Circuit opinions." Roberta S. Karmel, *Little Power Struggles Everywhere: Attacks on the Administrative State at the Securities and Exchange Commission*, 72 ADMIN. L. REV. 207, 235 (2020).

26. 17 CFR § 200.41; *see* S.E.C. v. Feminella, 947 F. Supp. 722, 726 (S.D.N.Y. 1996) (upholding this quorum regulation).

27. Al Weaver, *Senate Republicans Invoke 'nuclear option' to Change Rules to Confirm Trump Nominees*, THE HILL (Sept. 11, 2025), https://thehill.com/homenews/senate/5499527-senate-republicans-nuclear-option-rules-trump-nominees/ [https://perma.cc/9JMH-PTQJ].

28. The SEC still will apprise itself of the economic consequences of a regulation and that will likely delay the action to some degree. *See* 5 U.S.C. § 706; 15 U.S.C. § 78c(f); Karmel, *supra* note 25.

29. *See, e.g.*, 17 C.F.R. § 200.42 ("Any matter circulated for disposition pursuant to this subsection shall not be considered final until each Commission member has reported his or her vote to the Secretary or has reported to the Secretary that the Commissioner does not intend to participate in the matter."); *Id.* § 200.42(b) ("Whenever any member of the Commission so requests, any matter circulated for disposition pursuant to § 200.42(a) shall be withdrawn from circulation and scheduled instead for joint Commission deliberation.").

30. Manesh, *supra* note 1, at 20–23.

31. Atkins, *supra* note 2; *see Shareholder Proposal Modernization*, REGINFO.GOV (2025), https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=3235-AN47 [https://perma.cc/8NAJ-CJRZ] ("considering recommending that the Commission propose rule amendments to modernize the requirements of Exchange Act Rule 14a-8.").

politiciz[e] shareholder meetings and return[] their focus to voting on director elections and significant corporate matters."[32]

An SEC more responsive to changes in Presidential administrations is thus an SEC that is more likely to fluctuate in its approach to shareholder rights with regard to shareholder proposals.[33] Even as the current SEC chair has questioned the value of shareholder proposals, the sole Democratic Commissioner decried the SEC's decision to remove itself from the shareholder review process as "an act of hostility toward shareholders" and accused the SEC staff of "rubber stamp[ing]" a corporation's decision to exclude those proposals "irrespective of their content."[34]

As such, while the current administration has shown a skepticism toward shareholder proposals, a future administration might push for a revised shareholder proposal rule that returns much of the action to the federal system.[35] That a subset of these shareholder proposals can be associated with particular political persuasions further reinforce such a consideration, given that they provide existing constituencies willing to push for the reinstatement of such changes.[36]

In short, then, current trends suggest that the SEC may soon be more responsive to the Executive Branch and, as such, rules related to shareholder proposals may depend in part upon the administration in power.[37]

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32. Paul S. Atkins, Chairman, U.S. Sec. Exch. Comm'n, Revitalizing America's Markets at 250 (Dec. 2, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250?utm_medium=email&utm_source=govdelivery [https://perma.cc/4YNB-XTD4].

33. To be sure, any rulemaking will be constrained by the SEC's enabling statutes that aim to facilitate existing state rights, not create new ones. Manesh, *supra* note 1, at 36, 38–40. Whether the current or future rules regarding shareholder proposals have support in those statutory texts is a question beyond the scope of this response. The point here is simply that the potential for litigation regarding this issue further contributes to the uncertainty surrounding shareholder proposals.

34. Caroline A. Crenshaw, Commissioner, U.S. Sec. Exch. Comm'n, Statement on Division of Corporation Finance's Announcement on the 14a-8 Process (Nov. 17, 2025), https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-division-corp-fins-announcement-14a-8-process-111725 [https://perma.cc/8437-H5XV]; *see also* Caroline A. Crenshaw, Commissioner, U.S. Sec. Exch. Comm'n, Remarks at the Meeting of the Investor Advisory Committee (Dec. 4, 2025), https://www.sec.gov/newsroom/speeches-statements/crenshaw-remarks-meeting-investor-advisory-committee-120425?utm_medium=email&utm_source=govdelivery [https://perma.cc/L7Q8-CWAV].

35. Such shifting may, however, further incentivize companies to pursue private ordering (I am grateful to Professor Manesh for this point). How those companies then pursue private ordering might, in turn, shape how the SEC responds. For instance, if a company restricts the ability to submit a proposal based on a shareholder's voting rights, a future SEC might decouple the existing link in Rule 14a-8 between a shareholder's voting rights and the ability to submit a proposal. *See* Manesh, *supra* note 1, at 20–22; *Cf. supra* footnote 34.

36. *See, e.g.*, *Heritage Foundation Sues Airbnb for Illegally Excluding Shareholder Proposal Encouraging Company to Resist Politicized Demands*, HERITAGE FOUND. (June 2, 2025), https://www.heritage.org/press/heritage-foundation-sues-airbnb-illegally-excluding-shareholder-proposal-encouraging-company [https://perma.cc/8B4Q-QG9H] (discussing recent action by the organization against Airbnb); Manesh, *supra* note 1, at 3 (noting that "today's activists are well-funded organizations with a decisively political bent").

37. Professor Manesh himself implies this when observing that the current SEC may decide to repeal the shareholder proposal rule in its entirety. Mohsen Manesh, *Shareholder Advocates Are Fighting the Wrong Battle on Rule 14a-8*, BLUESKYBLOG (Feb. 17, 2026), https://clsbluesky.law.columbia.edu/2026/02/17/shareholder-advocates-are-fighting-the-wrong-battle-on-rule-14a-8/ [https://perma.cc/8Y8R-JZWG].

II. Stakeholders and the SEC

In addition to the structural changes that might influence removal of the SEC from the shareholder proposal review process, certain stakeholders may also object to eliminating federal oversight of the shareholder proposal process in favor of private ordering or state law.[38]

First, certain institutional investors, such as public pension funds, may be reticent to support eliminating this oversight, given past successes those investors have had in altering corporate behavior through the existing process.[39] Consider, for instance, the response of various state pension funds in New York to the SEC's decision to reduce its role in the no-action review process of shareholder proposals. After AT&T stated that it would not include the pension funds' proposal in its proxy materials, the funds sued in federal court for inclusion of the shareholder proposal on the proxy statement. In just eight days, AT&T agreed to settle and included the proposal rather than continue with the litigation.[40] Other suits have since followed, suggesting that some institutional investors see value in being able to bring shareholder proposals and are willing to resort to litigation if necessary.

To be sure, shifting regulation of the shareholder proposal process to state law or private ordering does not necessarily prevent such investors from submitting shareholder proposals, and such a move could advantage institutional investors over others, given their resources. On the other hand, however, institutional investors generally have a broad portfolio and so may realize efficiency gains from having a centralized decisionmaker in the SEC.

Institutional investors can—and often have—framed the shareholder proposal process as a way to promote long-term shareholder value.[41] And there is an understandable basis

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38. Professor Manesh identifies several of these. *See* Manesh, *supra* note 1, at 44 (institutional investors) and 45 (directors). This Response aims to flesh those considerations out a bit more.

39. *See, e.g.*, Alan R Palmiter, *Rule 14a-8: A Failed Experiment in Merit Regulation (Still)* (2026) (manuscript at 5), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6043114 [https://perma.cc/Q38A-JBA3] ("Public pension funds, union funds, and eventually some activist mutual funds realized that proposals could be used to challenge entrenching antitakeover defenses (poison pills, staggered boards, supermajority provisions), to demand board independence, and to pressure for executive pay restraint. Even non-binding (precatory) proposals, when supported by large vote margins, became bargaining chips in public campaigns."); Jill E. Fisch, *The Transamerica Case*, *in* THE ICONIC CASES IN CORPORATE LAW 46, 60 (Jonathan R. Macey ed., 2008); *see also* Jeff Mahoney, *Letter to the SEC Regarding Rule 14a-8 Proposals*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Jan. 12, 2026), https://corpgov.law.harvard.edu/2026/01/12/letter-to-the-sec-regarding-rule-14a-8-proposals/ [https://perma.cc/64UZ-8DH4] ("Consistent with that policy, CII believes that shareholder proposals, which are almost always nonbinding, are an essential and cost-effective tool for expressing the collective voice of a company's shareowners on particular matters, and have made important contributions to corporate governance over the last 50 years.").

40. Jonathan Stempel, *ATT Settles New York City Lawsuit Over Diversity Proposal*, REUTERS (Feb. 25, 2025), https://www.reuters.com/sustainability/society-equity/att-settles-new-york-city-lawsuit-over-diversity-proposal-2026-02-25/ (on file with the *Journal of Corporation Law*); Sarah Jarvis, *PepsiCo Will Allow Shareholder Proposal Following Lawsuit*, LAW360 (Feb. 25, 2026), https://www.law360.com/articles/2446012/pepsico-will-allow-shareholder-proposal-following-lawsuit (on file with the *Joural of Corporation Law*). Public pensions funds' advocacy for particular shareholder proposals may raise potential First Amendment complications. *See generally* Mark R. Kubisch, *ESG, Public Pensions, and Compelled Speech*, 11 TEX. A&M L. REV. 71 (2023).

41. *See, e.g.*, Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Invs., to Paul S. Atkins, Chairman, Sec. Exch. Comm'n (Dec. 30, 2025), https://www.cii.org//Files/Correspondence/CII-Letter-to-SEC-December-30%E2%80%932025.pdf [https://perma.cc/2QQ8-7CJ4] ("We, however, are concerned that

for providing such a "voice" to large portfolio managers that are unable to exit positions due to the size of their portfolio.[42] As such, it is not difficult to envision certain institutional investors encouraging a future SEC to reach a different conclusion on the importance of including shareholder proposals to promote corporate suffrage.[43]

Second, proxy advisors such as Glass Lewis and ISS likewise may oppose a shift to state law or private ordering, given that such a move could reduce their influence.[44] At present, proxy advisors are under siege on a variety of fronts, from antitrust investigations[45] to executive orders[46] to the challenge posed to their business model through AI.[47] Shifting the shareholder proposal process to state law or private ordering will likely reduce the number of such proposals, particularly environmental and social proposals. And this will reduce the number of proposals for which a proxy advisor's recommendation might be requested as well as the need for consulting by the proxy advisor when it comes to those proposals.[48] That, in turn, could lead to a reduction in the fees typically paid such advisors.[49]

Third, and related to the second point, independent directors may also be hesitant to support removing their respective corporations from the proposal process. This is because proxy advisors will likely be opposed to the removal of shareholder rights, and independent directors will be hesitant to move against the proxy advisors, given the role those advisors play in the election and re-election of independent directors.[50] That is significant, in turn, because the nominations committees of the board of directors of many companies are

the Statement could diminish the use of an important shareholder right that for decades has led to improvements in corporate governance that benefit long-term shareholder value.").

42. *See* Palmiter, *supra* note 3, at 888; *see also* Patrick J. Ryan, *Rule 14a-8, Institutional Shareholder Proposals, and Corporate Democracy*, 23 GA. L. REV. 97, 103 (1988).

43. *See supra* note 35; *see, e.g.*, Elizabeth Steiner, *Preserving Shareholder Rights Protects Workers, Retirees, and the Integrity of American Capital Markets*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Mar. 16, 2026), https://corpgov.law.harvard.edu/2026/03/26/preserving-shareholder-rights-protects-workers-retirees-and-the-integrity-of-american-capital-markets/?utm_source=substack&utm_medium=email [https://perma.cc/JZ3Y-Y6FK] ("What's at stake is safeguarding shareholder democracy by maintaining the SEC's oversight role. Removing the Commission as referee would tip the balance toward management and leave investors with fewer practical tools to hold companies accountable.").

44. *See* Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563, 2595–98 (2021) (describing the role of proxy advisors).

45. Jack Pitcher & Dave Michaels, *Proxy Advisers ISS and Glass Lewis Are Facing Antitrust Probes*, WALL ST. J. (Nov. 12, 2025) https://www.wsj.com/finance/regulation/proxy-advisers-iss-and-glass-lewis-are-facing-antitrust-probes-22f0ff38 (on file with the *Journal of Corporation Law*).

46. *Protecting American Investors From Foreign-Owned and Politically Motivated Proxy Advisors*, Executive Order No. 14,366, 90 Fed. Reg. 58503 (Dec. 16, 2025) (announced December 11, 2025).

47. *See, e.g.*, Jack Pitcher, *JPMorgan Cuts All Ties With Proxy Advisers in Industry First*, WALL ST. J. (Jan. 7, 2026), https://www.wsj.com/finance/banking/jpmorgan-cuts-all-ties-with-proxy-advisers-in-industry-first-78c43d5f (on file with the *Journal of Corporation Law*); Choonsik Lee & Matthew E. Souther, *AI Might Make a Great Proxy Adviser*, BLUESKYBLOG (Aug. 18, 2025), https://clsbluesky.law.columbia.edu/2025/08/18/ai-might-make-a-great-proxy-adviser/ [https://perma.cc/6F4C-7P68].

48. *See* Lee & Souther, *supra* note 47 (noting the consulting role such advisors play).

49. *See* Manesh, *supra* note 37.

50. This concern likewise extends to support from institutional investors as CALPERs, for instance, has stated that it will "[h]old director nominees accountable at companies that have abused Rule 14a-8 surrounding shareowner proposal submission (no-action process)." Charles Hambly, *Proxy Voting & Corporate Engagements Update*, CALPERS (March 17, 2026), https://www.calpers.ca.gov/documents/202603-invest-agenda-item03c-01-a-mar17/download?inline [https://perma.cc/K4FN-6KG3].

entirely composed of independent directors.[51] As such, the boards of many companies may be reluctant to shift to private ordering or state law.

What is more, directors might be reticent to shift on account of a further concern—namely, turning to private ordering can subject shareholder proposals to private ordering controlled by the directors themselves.[52] Put another way, private ordering may necessitate that the board members opine on the desirability and "proper subjects" of shareholder proposals to some degree. Given the sharp views of many on this subject, doing so carries significant downside risks for the directors. Indeed, there may be some early evidence of this concern in the data as, according to Glass Lewis, proffered reasons for exclusion this season tend to be "focus[ed] solely on more clear-cut procedural issues" rather than substantive reasons, which "could indicate that, absent cover from SEC staff, companies may be looking to avoid relying on substantive reasons, which can be open to debate."[53] Hence, the safer course may simply be to allow for the SEC to run interference on the inclusion of particular shareholder proposals.[54]

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To conclude, Professor Manesh's article represents an important contribution to the literature regarding shareholder proposals. And he provides a powerful argument for why the current iteration of the SEC's shareholder proposal rule might allow for private ordering. Yet, even so, as Professor Manesh acknowledges,[55] larger forces may preclude such an approach from being adopted in full. The future of shareholder proposals remains unsettled.

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51. This can be seen in the NYSE and Nasdaq rules regarding nominations. *See e.g.*, N.Y. STOCK EXCH., NYSE LISTED COMPANY MANUAL SECTION 303A CORPORATE GOVERNANCE STANDARDS FREQUENTLY ASKED QUESTIONS 1–3 (July 28, 2021), https://www.nyse.com/publicdocs/nyse/regulation/nyse/FAQ_NYSE_Listed_Company_Manual_Section_303A_7_28_2021.pdf [https://perma.cc/34YH-NZ7M]; *5600. Corporate Governance Requirements*, NASDAQ, https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-5600-series [https://perma.cc/K7XF-EZ49] (referring to Nasdaq Rule 5605(e)).

52. Palmiter, *supra* note 3, at 893.

53. *Tracking Shareholder Proposals and Company Exclusions: Pre-Season Observations*, GLASS LEWIS (Mar. 6, 2026), https://www.glasslewis.com/article/tracking-shareholder-proposals-and-company-exclusions-pre-season-observations [https://perma.cc/S2X5-WLFQ].

54. Nor would the Delaware court system likely provide the same degree of "cover" as the SEC, given the deference the Delaware gives to private ordering.

55. Manesh, *supra* note 1, at 6, 44.