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Speaking Sustainability: Policy & Regulatory Updates | August 2026

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Key Topics

- SEC Proposes Rescission of Rule 14a-8
- Federal Court Strikes Down NY Climate Change Superfund Act
- Cyber Insurance and Emerging AI Coverage

The Details

On September 16, 2028, the U.S. Securities and Exchange Commission (SEC) issued two proposals that would reshape the federal proxy landscape. The first proposal, Release No. 34-106383, would rescind Rule 14a-8, eliminating the federal framework for including shareholder proposals in company proxy materials, and would amend Rule 14a-4(c) to expand companies' discretionary proxy voting authority over proposals not included in their proxy materials. The second proposal, Release No. 33-11439, would modernize proxy solicitation rules, including by eliminating the separate annual report delivery requirement and the Notice of Exempt Solicitation, and shortening the minimum broker search period from 20 to five business days.

- SEC Chair Paul Atkins has **questioned** whether Rule 14a-8 intrudes on matters traditionally governed by state corporate law and stated in July that the agency was "holistically evaluating" both the rule and the federal government's role in the shareholder proposal process. The SEC **indicated** the proposal would return greater regulatory authority over shareholder proposals to the states.
- If adopted, a full rescission of Rule 14a-8 could fundamentally reshape the shareholder proposal process, shifting disputes over shareholder rights and proposal inclusion away

from a uniform federal framework and toward state corporate law, direct company-shareholder engagement and potentially litigation.
- For public companies and investors, the proposal could have significant implications for proxy-season strategy, shareholder engagement and the use of proposals addressing potentially controversial issues, including in relation to sustainability and ESG matters.
- We wrote about the proposals **here**.

A federal court struck down New York's Climate Change Superfund Act, ruling that the law is preempted by federal statutes and the Supremacy Clause, dealing a significant blow to one of the nation's most aggressive efforts to make fossil fuel companies pay for climate adaptation. The law sought to recover $75 billion over 25 years from large fossil fuel producers and refiners based on their share of worldwide greenhouse gas (GHG) emissions from 2000 through 2024.

- The U.S. District Court for the Northern District of New York granted **summary judgment** to a coalition of states and industry groups, holding that the Act is preempted by federal law and cannot be enforced. The court concluded New York's attempt to impose liability for interstate and global emissions conflicts with the Supremacy Clause and the federal legislative framework governing air pollution under the Clean Air Act (CAA).
- Judge Sannes's ruling noted that the Environmental Protection Agency's (EPA) decision to rescind its Endangerment Finding earlier this year had no bearing on her analysis. The court also acknowledged that the U.S. Supreme Court granted certiorari in ***Suncor Energy (U.S.A.) v. County Commissioners of Boulder County*** to consider whether federal law precludes state-law climate claims for harms allegedly caused by GHG emissions.
- The ruling could have implications well beyond New York. Vermont has enacted a **similar climate superfund law**, and other states have considered comparable "polluter pays" regimes. If the decision survives appeal, it could significantly constrain states' ability to impose retroactive financial liability on companies for historical GHG emissions and provide a roadmap for challenges to similar state climate laws.

Cyber insurers are reassessing coverage as autonomous artificial intelligence (AI) agents create risks beyond those contemplated by traditional policies. Major participants in the approximately $15 billion market are reviewing policy language as companies deploy AI

systems capable of independent, and unexpected, action. While relevant insurers in the sector offer targeted coverage for AI-specific risks, including model underperformance, intellectual property infringement and hallucinations, traditional cyber policies cover broader losses from issues such as ransomware, business interruption and forensic investigations. The central question becomes whether coverage applies when an AI agent causes a loss without a hacker, unauthorized access or other traditional cyber events.

- Much of the insurance industry appears focused on clarifying how existing cyber coverage applies rather than broadly excluding AI-related losses. But insurers are also examining harder-to-price exposures, including autonomous decisions that cause damage and potentially systemic events in which a widely used AI model contributes to losses across multiple companies simultaneously.
- AI risk is quickly becoming an insurance and contract issue in addition to a technology-governance issue. As companies give AI agents greater access to networks, data and business processes, risk managers should be reviewing whether existing cyber policies respond to AI-driven incidents—and whether new exclusions, definitions or coverage gaps emerge at renewal.

Attachments

Download the August recap of Speaking Sustainability: Policy and Regulatory Developments

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