



GIBSON DUNN

Securities Regulation & Corporate Governance and
Capital Markets Update

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Clarifications, Reversals and Expansions: Corp Fin Delivers Helpful Updates to Guidance

The Division of Corporation Finance of the Securities and Exchange Commission issued several new and updated Compliance and Disclosure Interpretations related to Proxy Rules, Executive Compensation, Tender Offers and Schedules, and Securities Act matters.

On January 23, 2026, the Division of Corporation Finance (the Division) of the Securities and Exchange Commission issued several new and updated Compliance and Disclosure Interpretations (C&DIs) related to Proxy Rules, Executive Compensation, Tender Offers and Schedules, and Securities Act matters. The updated C&DIs, including, if applicable, comparisons to previously issued C&DIs have been compiled in Annex A and are linked below

Guidance Related to Proxy Rules and Schedules 14A/14C.

Eliminating Voluntary PX14A6G Filings for Exempt Solicitations. In welcome news to issuers, the Division amended its prior interpretative position and stated in revised [Question 126.06](#) to the Proxy Rules and Schedules 14A/14C C&DIs that the Division will object to submission of a Notice of Exempt Solicitation on PX14A6G by persons who do not own more than \$5 million of stock of the company with respect to which the filing is made. Although the Division previously has not objected to voluntary EDGAR filings submissions of Notices of Exempt Solicitation by beneficial owners of \$5 million or less of relevant securities, the revised C&DI notes that the rule was designed to provide for public notice of exempt solicitations by large shareholders and provides for disclosure of only written soliciting materials “required to be submitted” pursuant to Rule 14a-6(g)(1). In practice, however, most PX14A6G filings are made

by shareholders who do not meet the ownership threshold, and in some cases may not own any shares of a company's stock. As noted in the Division's revised interpretation, in those cases the voluntary submission of such notices on EDGAR appears to be primarily a means to generate publicity. The revised interpretation does not directly address how the revised position will be monitored and enforced, but we note that Rule 15 of Regulation S-T provides the SEC with the authority to remove a submission from EDGAR if, among other things, the agency has reason to believe the submission is misleading or unauthorized. Notably, the new interpretation does not prevent shareholder proponents and others from conducting exempt solicitations through platforms other than EDGAR. However, whether or not filed on EDGAR, exempt solicitations remain subject to the anti-fraud provision of Rule 14a-9, which makes it unlawful for any soliciting materials to contain false or misleading statements or omissions of a material fact. They are also subject to the conditions set forth in Rule 14a-2(b)(1)(vi), under which exemption is not available to "[a]ny person who, because of a substantial interest in the subject matter of the solicitation, is likely to receive a benefit from a successful solicitation that would not be shared pro rata by all other holders of the same class of securities."

Flexible Timing of Broker Searches. Under Rule 14a-13(a) and Rule 14c-7(a)(3), a company is generally required to perform a "broker search" at least 20 business days prior to the record date of any meeting of securityholders. The "broker search" requires the company to notify banks, brokerage firms, and other intermediaries of the meeting record date and request information, including the number of copies of the proxy required for distribution to beneficial shareholders. In new [Question 133.02](#), the Division acknowledged changes in technology since the rule was adopted, and indicated it would not object to a "broker search" performed less than 20 business days before the record date, as long as a company reasonably believes the proxy materials will be timely disseminated to beneficial owners and otherwise complies with Rule 14a-13. This new guidance will be useful for shareholder meetings when timing uncertainty—often caused by the need for last-minute shifts in meeting dates or possible SEC filing review—previously required registrants to anticipate key milestones or conduct multiple broker searches in order to comply with the rule. Going forward companies can work with their transfer and proxy mailing agents to determine an appropriate time for conducting the broker search.

Effective Date for Corporate Action by Written Consent. New [Question 182.01](#) clarifies that SEC Rules do not pre-empt state corporate law when determining the effective date of corporate action taken by written consent or authorization of dissident shareholders. When securityholders take corporate action by written consent or authorization *without proxies or consents being solicited by the company*, Exchange Act Rule 14c-2 requires the registrant to distribute an information statement to its securityholders at least 20 calendar days *prior* to the earliest date on which such corporate action may be taken or become effective. In contested scenarios involving the solicitation of written consents by dissident shareholders, the company may not know of the dissident's solicitation of written consents or may delay distribution of an information statement. The Division explained that "[a]pplicable state law or the registrant's governing documents, not Rule 14c-2, determines when a corporate action taken by written consent becomes effective . . . the failure to comply with the 20-calendar-day requirement in Rule 14c-2 does not invalidate the corporate action." The Division provided that when written consents are solicited by a dissident securityholder, the Division will not object to failure to satisfy the Rule 14c-2 if the company distributes the information statement as soon as practicable after it becomes aware of the written consents.

Executive Compensation Disclosure in Spin-Offs. The Division revised [Question 217.01](#) to [Regulation S-K C&DIs](#) to clarify the analysis that applies to determining what executive compensation disclosures are required under Item 402 of Regulation S-K in the context of spin-off transactions. The prior C&DI was focused on whether spin-offs should be treated as initial public offerings (IPOs, each an IPO), which would require at least one year of historic executive compensation disclosure for a spin-off company's (the SpinCo) future named executive officers. As a result, prior guidance did not appreciate that for spin-offs, unlike IPOs, historic executive compensation information often had nothing to do with a SpinCo's actual executive compensation program but rather was completely determined and designed by its parent. The revised C&DI makes clear that the need for inclusion of historical executive compensation information depends on analysis of whether, before the spin-off, the SpinCo operated as a separate division or standalone business of the parent, and if so, whether there was continuity of management. As such, where the parent spins off a subsidiary that operated a discrete line of business and the subsidiary's executive officers, before and after the spin-off, (1) were the same, (2) provided the same services to the subsidiary, and (3) provided no services to the parent, then historical compensation disclosure will generally be required. In this circumstance, Instruction 1 to Item 402(c), which generally requires only one year of executive compensation for registrants that were not previously subject to SEC reporting requirements, should be available to issuers. In contrast, where the registrant is composed of portions of different parts of the parent's business or will have new management after the spin-off, then the historical compensation information generally need not be disclosed, and only post-spin-off compensation needs to be reported. In this case, the SpinCo need only report compensation awarded to, earned by, or paid to the SpinCo's named executive officers in connection with and following the spin-off.

New Clarifications to Tender Offer Rules and Schedules.

Permissible Outside Purchases Exception in Tier I Tender Offers. The Division issued new [Question 166.02](#) to note that the Rule 14e-5(b)(10) exception for purchases during cross-border tender offers remains available for Tier I cross-border tender offers, even if permitted purchases outside of the tender offer occur after the public announcement of, but before the offering documents relating to, the tender offer are distributed. If the interpretation is relied on, the tender offer documents must disclose that such purchases have already occurred and, if applicable, may continue during the offer. The intent of the exception is to allow purchases outside of the U.S. tender offer regime that are permitted by laws of the subject company's home jurisdiction if other conditions are met. The same approach applies to the parallel disclosure conditions in Rule 14e-5(b)(11)(iv) and Rule 14e-5(b)(12)(i)(D).

Financial Advisor Affiliate Purchases. The Division issued a new [Question 166.03](#) to clarify that, when an affiliate of a financial advisor makes purchases outside of a tender offer in an "agent-of-the-offeror capacity," such purchases are not subject to Rule 14e-5(b)(12)(G)'s prohibition on purchases made to facilitate the tender offer. However, such "agent-of-the-offeror" purchases must still comply with the other conditions of Rule 14e-5(b)(12), including the requirement to increase the tender offer price if a higher price is paid outside the offer.

Securities Act Issues: Extension of Guidance Regarding Stockholder Lock-Ups.

Lock-Ups Before Registration. In March 2025, the Division updated its guidance regarding the Securities Act implications of using lock-ups and written consents in merger transactions. At the time, the Division indicated it would not object to the registration of an offer or sale of securities where lock-up agreements, such as voting agreements and support agreements, were signed, so long as certain criteria were satisfied. Those interpretations are addressed in our publication, [SEC Corp Fin Staff Updates Guidance on Lock-Ups, Written Consents and Financing Matters in Tender Offers and Business Combination Transactions](#) (March 7, 2025).

Lock-Ups in Registered Exchange Offers. The Division has further updated its interpretation and [Question 139.29](#) regarding lock-up agreements and agreements to tender, which used to be limited to the context of registered exchange offers of debt. The Division expanded its interpretation to include any registered exchange offer on Form S-4 or Form F-4. The Division added that, even if the registration of such offers and sales on Form S-4 or Form F-4 does not satisfy a handful of conditions detailed in the updated C&DI, it will not object to the registration of such offers and sales if:

- (1) the accredited investors or qualified institutional investors who executed the lock-up agreements or agreements to tender will be offered and sold securities only in an offering made pursuant to a valid Securities Act exemption; and
- (2) the securities registered on the Form S-4 or Form F-4 will be offered and sold only to those securityholders who did not execute such agreements.

Lock-Ups in Negotiated Third-Party Exchange Offers. The Division similarly revised [Question 139.30](#) to expand its interpretation regarding lock-up agreements and agreements to tender before the filing of the Form S-4 or Form F-4 in the context of negotiated third-party equity exchange offers to all negotiated third-party exchange offers. The Division also clarified that it will not object to the registration of such exchange offers on Form S-4 or Form F-4 if:

- (1) the target company insiders who executed lock-up agreements or agreements to tender will be offered and sold securities only in an offering made pursuant to a valid Securities Act exemption; and
- (2) the securities registered on the Form S-4 or Form F-4 will be offered and sold only to those securityholders who did not execute such agreements.

Lock-Ups in Rule 145(a) Transactions. The Division revised [Question 239.13](#) to note, consistent with the interpretation provided in [Question 139.29](#) and [Question 139.30](#), that when lock-up agreements in the context of a Rule 145(a) transaction are executed before the filing of a registration statement on Form S-4 or Form F-4, such registration is generally not permitted unless certain conditions are met.

Securities Act Issues: New Guidance Regarding Integration of Securities Offerings.

The Division issued new guidance regarding Rule 152 under the Securities Act, which provides a general principle on when securities offerings will be “integrated” for purposes of determining the availability of registration statements and exemptions and provides non-exclusive safe harbors

from integration of registered and exempt offerings.

Non-Integration of Regulation D Exempt Offerings Under Rules 506(b) and 506(c).

Securities Act Rule 506 provides alternative exemptions from registration for securities offerings conducted under Regulation D. New [Question 148.01](#) states that an issuer may sell securities under Rule 506(b) to individuals whom it previously solicited in a Rule 506(c) offering, so long as the issuer establishes a pre-existing, substantive relationship with those investors before starting the Rule 506(b) offering. Because the investors were originally reached through general solicitation in the Rule 506(c) offering, the issuer must rely on Rule 152(a)(1)(ii), not the safe harbor that applies where no prior solicitation occurred (*i.e.*, the issuer cannot rely on Rule 152(a)(1)(i)). Whether a substantive relationship exists depends on facts and circumstances, with the “quality” of the relationship being the most important factor. The Division noted the issuer “must have sufficient information to evaluate and must, in fact, evaluate the investor’s sophistication, financial circumstances, and ability to understand the nature and risks of the securities.” These investors may include the issuer’s existing or prior investors, or friends or family of the issuer’s control persons. A substantive relationship cannot be created solely by waiting a set period or using a short accreditation questionnaire. The Division noted that establishing a pre-existing substantive relationship can be challenging when engaging in an online offering.

Registration Alone Not Integration. New [Question 148.02](#) states that the mere fact that a registration statement is effective alone does not raise integration concerns under Rule 152.

Integration After Failed Shelf Takedown. In addition, the Division withdrew former Question 152.02 and revised its content in a new [Question 148.03](#) regarding an issuer that was unsuccessful in completing a takedown offering from an existing shelf registration statement. Previously, the interpretation allowed the offering to be completed in a private placement if the company disclosed withdrawal of its registration statement in a prospectus supplement, in reliance on Rule 155(c). The revised interpretation instead allows the offering to be completed privately if the issuer complies with the general principle of integration under Rule 152(a)(1). Whereas previously an issuer that failed to complete a shelf takedown essentially had one clean exit ramp—Rule 155 and its formulaic conditions—it may now rely on the flexibility of Rule 152 to assess its particular facts and decide whether the private offering stands on its own.

The Division also revised and withdrew several interpretations to integrate or consolidate related Securities Act guidance.

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