

SHAREHOLDER ENGAGEMENT

SEC Staff Updates Schedule 13G Interpretive Guidance Addressing Routine Shareholder Engagement

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On September 2, 2026, the Staff of the Division of Corporation Finance (Staff) of the US Securities and Exchange Commission (SEC or Commission) published three new Corporation Finance Interpretations (CFIs),¹ updating its guidance on shareholders' eligibility to report beneficial ownership on Schedule 13G. The new CFIs (103.13, 103.14, and 103.15) address whether certain forms of shareholder engagement are consistent with the requirement under Exchange Act Rules 13d-1(b) and 13d-1(c) that a Schedule 13G filer certify that the subject securities "were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer."

The new CFIs do not amend the interpretations or the fundamental concept of "disqualifying" intent addressed in Staff CFIs issued on February 11, 2025 (CFIs 103.11 and 103.12), but do provide additional color on how that guidance should be applied and should provide some comfort to passive institutions in routine engagement contexts. The February 2025 guidance risked chilling the routine engagement that companies have sought to foster with their investors. In fact, following the February 2025 guidance, many institutional investors adjusted their engagement strategies, with some canceling or delaying routine

and long-scheduled engagements or opting into a "listen-only" mode.

The updated guidance identifies three categories of engagement that will not, by themselves, cause a shareholder to lose its Schedule 13G eligibility:

- certain issuer-initiated discussions;
- certain discussions with persons engaged in a proxy solicitation; and
- discussions with an issuer to clarify its disclosures or public communications.

Below is a summary of the key takeaways from the new CFIs.

Issuer-Initiated Discussions of a Shareholder's Views and Voting Decisions Are Less Likely to Be Viewed as "Influencing" Control

New CFI 103.13 addresses whether a Schedule 13G filer may participate in a meeting that an issuer requests to discuss the shareholder's views or voting decisions on matters that were submitted for a vote at a past shareholder meeting or will be submitted at an upcoming meeting. The Staff emphasized that the context in which the engagement occurs is pertinent to whether a shareholder is holding securities with a disqualifying purpose or effect of "influencing" control of the issuer. It identified two scenarios that are less likely to be viewed as an attempt by the shareholder to influence control of the issuer: (1) an engagement initiated by the issuer itself; and (2) a response to the issuer's request to understand why the shareholder voted in a certain manner at a past meeting. The new CFI confirms that participation

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in such a discussion does not, by itself, disqualify a shareholder from reporting on Schedule 13G, with the ultimate determination continuing to depend on all relevant facts and circumstances.

CFI 103.13 is consistent with the guideposts we earlier observed that investor responses to issuer-initiated inquiries about the investor's views should carry less risk of being characterized as an attempt to influence control.² We also noted that issuers would need to be more proactive in requesting engagement and posing questions on key topics during those meetings. Which party initiates an engagement now carries interpretive weight. Both issuers and investors should document who requested a meeting and the intended agenda as part of their ordinary-course engagement records.

Discussing Views with a Person Engaged in a Proxy Solicitation Is Not, by Itself, Disqualifying

New CFI 103.14 confirms that a Schedule 13G filer that discusses its views on a particular topic, and how those views could inform its voting decisions, with a person engaged in a proxy solicitation does not, on that basis alone, lose its eligibility to report on Schedule 13G. The CFI responds to a collateral consequence that companies engaged in proxy contests could find it more difficult to engage with their largest institutional investors, who might be concerned that expressing views on issues arising in a contest would be viewed as influencing control. The CFI is not limited to solicitations conducted by or on behalf of the issuer, and it appears to cover conversations with dissident soliciting parties in a contested election.

Notably, this new CFI also aligns with the Commission's prior guidance on when two or more shareholders form a "group" that could be required to report jointly on Schedule 13G. Similar to the guidance on "group formation" in the October 2023 Modernization of Beneficial Ownership Reporting adopting release,³ the new

CFI clarifies that engagement in certain types of discussions with other shareholders, without more, would not result in the shareholder being deemed a part of a newly formed "group" or the shareholder being deemed to have a disqualifying intent. CFI 103.14 enables institutional investors reporting on Schedule 13G to hear from and communicate with both sides of a contest in the course of making a voting decision.

That said, the parameters of what is discussed and overall context will continue to factor into an analysis of whether the shareholder remains eligible to file on Schedule 13G and potentially also whether a shareholder could be deemed to have formed a "group" with other shareholders. The February Staff guidance in CFI 103.12 remains in place and continues to provide that a shareholder that engages with issuer management to call for specific actions to be taken by the issuer or the election of director nominees other than the issuer's nominees is ineligible to report on Schedule 13G. The assurance provided by CFI 103.14 therefore extends only to discussing views with a soliciting party, not to advocating for a dissident slate.

Seeking Clarification About an Issuer's Disclosures or Public Communications Does Not Jeopardize Schedule 13G Eligibility

New CFI 103.15 confirms that a Schedule 13G filer may review an issuer's filings, such as its proxy soliciting materials, and contact the issuer to seek clarification about particular facts or statements in those filings. Engaging with the issuer to better understand its disclosures or other public communications does not, by itself, disqualify the shareholder from reporting on Schedule 13G. This CFI should provide meaningful comfort for ordinary-course stewardship diligence, such as pre-vote outreach to confirm the operation of governance provisions, features of compensation programs or other disclosed matters.

Conclusion

The new CFIs provide helpful elaboration on the February 2025 framework, while not establishing a new baseline. The recurring qualifiers “by itself” and “solely,” together with the Staff’s facts-and-circumstances overlay, mean that the substance of what is said in a meeting still controls. A discussion that begins in a protected category can become disqualifying if the shareholder pivots to pressuring management to implement specific measures or conditioning its voting support in the manner described in CFI 103.12.⁴

Schedule 13G filers should refresh, rather than retire, the engagement protocols that many adopted after the Staff released updated guidance in February 2025. This new guidance, which arrives at the start of the fall engagement season, may help restore some of the dialogue between issuers and shareholders that has diminished over the past two proxy seasons.

Notes

1. The Staff previously referred to these interpretations as Compliance and Disclosure Interpretations, or C&DIs.
2. See <https://www.gibsondunn.com/passive-aggressive-investor-significant-new-sec-staff-interpretive-guidance-on-schedule-13g-eligibility/>.
3. Additional information regarding the Commission’s October 2023 guidance on group formations can be found in <https://www.gibsondunn.com/sec-adopts-significant-amendments-to-beneficial-ownership-reporting-requirements-and-provides-guidance-on-derivatives-reporting-and-group-formation/>.
4. Examples of such pressure include explicitly or implicitly conditioning support for the issuer’s director nominees on the issuer adopting the shareholder’s recommendations, such as removing a staggered board, adopting majority voting, eliminating a rights plan, changing executive compensation practices or taking specific actions on an environmental, social or political policy issue.