

SEC Issues New Beneficial Ownership and Other Guidance

July 14, 2026

On July 9, 2026, the staff of the SEC's Division of Corporation Finance published a number of new Corporation Finance Interpretations ("CFIs") relating to beneficial ownership reporting of total return swaps and by partnerships, disclosure obligations in shareholder activism campaigns, tender offers and Regulation Crowdfunding. Set forth below is a summary of the most significant developments.

Beneficial Ownership Reporting of Total Return Swaps. Three new CFIs address the reporting implications of ownership of standard cash-settled total return equity swaps ("TRSs") under Section 13(d) of, and Rule 13d-3 under, the Exchange Act.

In [Question 105.08](#), the staff confirms that entry into a TRS that does not confer any voting or investment power with respect to—or any right to acquire—the referenced securities does not necessarily result in beneficial ownership of the referenced securities, including any equity securities the dealer may hold for hedging purposes, or evidence a plan or scheme designed to evade Section 13 beneficial ownership reporting obligations.

However, [Questions 105.09](#) and [105.10](#) emphasize that a person may nonetheless be deemed a beneficial owner of equity securities pursuant to Rule 13d-3(b) if such a TRS is used in connection with an arrangement that prevents the vesting of beneficial ownership while effectively conferring attributes of beneficial ownership as part of a plan or scheme to evade reporting obligations. Use of a TRS, for example, to direct the counterparty how to vote its hedged securities or as a form of pre-arranged acquisition of such securities would result in beneficial ownership under Rule 13d-3(b). The staff further explained that a "plan or scheme to evade" as used in Rule 13d-3(b) generally contemplates an intent to enter into an arrangement that creates a false appearance or an illusion contrary to the actual facts. Accordingly, while entry into a TRS solely for economic exposure to the relevant security would not constitute a plan or scheme to evade the reporting requirements of Section 13(d) or Section 13(g), if the person knew, or was reckless in not knowing, that the arrangement's purpose or effect was to acquire the power to vote or a future right to acquire the reference securities, the TRS may be deemed a "plan or scheme to evade" as used in Rule 13d-3(b), and therefore, result in beneficial ownership.

These CFIs provide meaningful comfort that conventional cash-settled TRSs used solely to obtain economic exposure, without accompanying voting rights or acquisition arrangements, generally will not by themselves trigger beneficial ownership reporting obligations.

These new CFIs should also be considered in the context of the SEC's 2023 amendments to the beneficial ownership reporting rules (the "[2023 Adopting Release](#)"). Although the 2023 Adopting Release expanded Item 6 of Schedule 13D to require disclosure of cash-settled derivatives by Schedule 13D filers, the SEC ultimately declined to adopt proposed Rule 13d-3(e), which would have deemed certain holders of cash-settled derivatives to be beneficial owners. The new CFIs described above provide the interpretive guidance that the 2023 Adopting Release contemplated by confirming that a standard cash-settled TRS does not necessarily result in beneficial ownership under Rule 13d-3.

Reporting by Partnerships on Schedule 13D. In [Question 110.10](#), the staff clarifies that, when a Schedule 13D reporting person is a general or limited partnership, the information required by Items 2 through 6 of Schedule 13D must be provided for the reporting person itself, as well as for the additional persons and entities identified in Instruction C. In other words, Instruction C of Schedule 13D is not intended to limit or substitute the information required by Items 2 through 6 as to the reporting person itself.

Disclosure Obligations in Shareholder Activism Campaigns. The new CFIs also address various disclosures of investors indirectly involved in shareholder activist campaigns. Under new [Question 110.09](#), where an entity is formed for the purpose of acquiring securities of a specific issuer and pursuing an activism campaign, the identities of the investors funding that vehicle must be disclosed in any resulting Schedule 13D when the investors are informed in advance of the specific purpose for which their funds will be used, including the identity of the targeted issuer.

Similarly, investors contributing more than \$500 to an entity formed for the purpose of acquiring securities of a specific issuer and engaging in a proxy solicitation to change the composition of the issuer's board of directors will be considered "participants" under Instruction 3(a)(iv) to Item 4 of Schedule 14A in the solicitation when such investors are informed in advance of the specific purpose for which their funds will be used, including the identity of the targeted issuer and the purpose of the planned proxy solicitation. As a result, such investors are subject to the participant disclosure requirements of Schedule 14A.

Taken together, this new guidance is likely to affect how activist shareholders structure fundraising and investor communications relating to specific campaigns to the extent disclosure of such backers is not preferred.

Modernizing Tender Offer Dissemination: Shifting to Press Releases away from Tombstones. The new CFIs also modernize the methods by which an issuer may publish, send or give the disclosure required in connection with certain cash tender offers.

Separate CFIs under Rules [13e-4](#) and [14d-4](#) provide that the staff will not object if an issuer disseminates a tender offer by means of a press release that (i) is issued as soon as practicable on the date of commencement of the tender offer, (ii) is released through a widely disseminated news or wire service, and (iii) contains the required disclosure and an active hyperlink directing investors to the complete tender offer materials; provided that the tender offer is not subject to Rule 13e-3 and complete offering materials are furnished promptly upon request.

This new guidance reflects the staff's recognition that electronic dissemination has largely replaced the communication methods (e.g., newspaper tombstone advertisements) contemplated when the tender offer rules were adopted.

Regulation Crowdfunding Reporting. Finally, the staff addressed the interaction between Regulation Crowdfunding reporting obligations and crowdfunding vehicles. The new [CFI](#) concludes that an issuer may not treat a crowdfunding vehicle as a single holder of record when determining whether it may terminate its annual reporting obligations under Rule 202(b).

Instead, the staff explains that for purposes of Rule 202(b), "record holders" means investors who invested in the offering because crowdfunding vehicles function merely as conduits through which investors receive the same economic exposure, rights and disclosures as if they had invested directly in the issuer. Accordingly, an issuer generally must continue filing annual reports until there are fewer than 300 investors or another termination event specified in Rule 202(b) occurs.

Please do not hesitate to contact us with any questions.

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