Debevoise & Plimpton

The Debrief

SEC Provides Additional Clarification Around Schedule 13G Eligibility for Shareholder Engagements

September 4, 2026

On September 2, 2026, the staff of the Division of Corporation Finance of the Securities and Exchange Commission issued three additional Corporation Finance Interpretations[1] ("CFIs") addressing the circumstances in which shareholders relying on Rule 13d-1(b) or Rule 13d-1(c) may engage in common shareholder communications without losing their eligibility to report beneficial ownership on Schedule 13G.

This debrief follows related guidance on Schedule 13G issued in 2025—discussed in our debrief, "SEC Provides New Guidance on Schedule 13G Eligibility"—and provides a framework for distinguishing ordinary-course shareholder engagement from conduct that may indicate a purpose or effect of changing or influencing control of an issuer.

BACKGROUND

Rule 13d-1(b) and Rule 13d-1(c) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), permit certain shareholders to report their beneficial ownership of voting equity securities on Schedule 13G only if, among other requirements, the securities were not acquired and are not held with the purpose or effect of changing or influencing control of the issuer.[2] The 2025 guidance expanded on prior guidance by describing specific actions or situations that could be deemed to influence control over the issuer. For example, in the context of either a specific recommendation to an issuer on governance or policy matters, or discussions with management on a shareholder's voting policy that may be inconsistent with the issuer's policies, the staff noted that if a shareholder explicitly or implicitly conditions its support of one or more of the issuer's

[1] Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting, CFI Questions 103.13, 103.14 and 103.15.

[2] A shareholder relying on Rule 13d-1(c) must beneficially own more than 5% but less than 20% of the subject class of securities. A shareholder relying on Rule 13d-1(b) must qualify as one of the enumerated institutional investors, which include, among others, banks, insurance companies, registered investment companies and certain employee benefit plans, and must have acquired the securities in the ordinary course of business. Alternatively, a shareholder may report its beneficial ownership of equity securities on Schedule 13G irrespective of its control intent under Rule 13d-1(d) if it acquired the subject securities before the issuer was subject to the reporting requirements of the Exchange Act, e.g., prior to the issuer's initial public offering.

director nominees at the next director election on the issuer's adoption of its recommendation or policy changes, a shareholder may be disqualified from relying on Rule 13d-1(b) and Rule 13d-1(c). In addition, such guidance noted that the subject matter of the engagement may itself be dispositive. For example, Schedule 13G is unavailable where a shareholder engages with management to specifically call for the sale of the issuer or a significant amount of its assets, a restructuring of the issuer or the election of director nominees other than the issuer's nominees.

Following the release of the 2025 guidance, it has been reported that some large index fund managers took fewer meetings and were less willing to provide their views on governance and other topics.

NEW GUIDANCE

- Issuer-Requested Engagements. New Question 103.13 addresses whether a Schedule 13G filer may participate in an issuer-requested meeting to discuss the shareholder's views or voting decisions on matters submitted for a vote at a past shareholder meeting or expected to be submitted at an upcoming meeting without losing its eligibility to report on Schedule 13G.

  The staff stated that the context in which an engagement occurs is highly relevant. In particular, an engagement initiated by the issuer, or a shareholder's response to an issuer's request to understand why the shareholder voted in a particular manner at a past meeting, is less likely to be viewed as an attempt by the shareholder to influence control. Accordingly, participating in such a discussion would not, by itself, cause the shareholder to lose its Schedule 13G eligibility.

  Question 103.13 does not, however, establish a categorical safe harbor for all discussions initiated by an issuer. The staff expressly notes that a facts-and-circumstances analysis, including the substance and context, of any such discussion remains relevant in determining whether a shareholder has a disqualifying purpose or effect.

- Discussions with Persons Engaged in Proxy Solicitations. New Question 103.14 indicates that a Schedule 13G filer may discuss its views on a particular topic, and how those views could inform its voting decisions, with a person engaged in a proxy solicitation with respect to a particular issuer without losing its eligibility to report on Schedule 13G.

- Requests for Clarification of Issuer Disclosures. New Question 103.15 states that a Schedule 13G filer may contact an issuer to seek clarification of particular facts or statements in the issuer's filings—including its proxy soliciting materials—or other public communications without losing its eligibility to report on Schedule 13G.

TAKEAWAYS

The new CFIs, when considered alongside the staff's 2025 guidance, provide a useful standard by which shareholders can assess whether ordinary-course engagement constitutes a purpose or effect of "changing or influencing control" of an issuer that precludes reporting on Schedule 13G. In particular, the new CFIs draw a practical distinction between exchanging information or explaining voting views, on the one hand, and using an engagement to exert pressure on an issuer to implement particular measures (either directly or through aligning with a proxy solicitation campaign), on the other.

The new CFIs will also be welcome to institutional shareholders that viewed the 2025 guidance as limiting their ability to directly engage with issuers. While the 2025 guidance remains in effect, the new guidance should therefore provide Schedule 13G filers with greater comfort that certain common communications do not, by themselves, jeopardize Schedule 13G eligibility.

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Please do not hesitate to contact us with any questions regarding beneficial ownership reporting on Schedule 13G or Schedule 13D.

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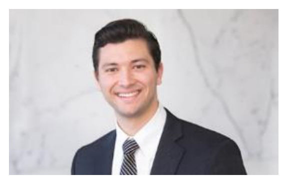

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