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Thoughtful Pay Alert

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SEC's Three New Corporation Finance Interpretations Provide Clarified Guidance on Investor Engagement

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In September 2026, the SEC's Division of Corporation Finance issued three new Corporation Finance Interpretations ("CFIs") clarifying when a shareholder seeking to report beneficial ownership on Schedule 13G (used by "passive investors" not seeking to influence control) can engage with an issuer without losing their 13G eligibility.

The CFIs mitigate the uncertainty arising from the SEC's February 2025 guidance on the same topic. Institutional investors may participate in off-season engagements, including discussions regarding executive compensation, without undue concern that such engagement will compromise their eligibility to report on Schedule 13G.

As we enter the prime "off-season" shareholder engagement window for calendar year-end companies (i.e., when no shareholder vote is pending), the CFIs offer useful guidance on how issuers can effectively engage with their key investors ahead of making 2027 pay and proxy disclosure decisions.

This new guidance is a welcome, clarifying supplement to earlier CFIs from February 2025 – discussed in our Thoughtful Pay Alert, Navigating Proxy Season Amid Uncertainty – that broadly complicated shareholder engagement efforts and stifled the candor of many investors' feedback, cutting off a key source of feedback and making voting decisions opaque.

The new CFIs underscore that the context of an engagement matters when determining whether a shareholder holds issuer securities with a disqualifying purpose or effect of

influencing "control" of the issuer. While the determination ultimately depends on all relevant facts and circumstances, the CFIs give issuers and shareholders a clearer sense of when engagements can take place without jeopardizing a shareholder's Schedule 13G eligibility.

Most notably, the CFIs give investors greater comfort that off-season engagements are unlikely to trigger unwanted and burdensome disclosure consequences. With the prospect of restored off-season candor, companies that have not proactively conducted shareholder outreach in the past would be wise to do so to understand their evolving views on executive compensation and human capital matters: 2026 proxy season results illustrate institutional asset managers' increased willingness to make voting decisions that diverge from Institutional Shareholder Services' and Glass Lewis' recommendations, making direct engagement an increasingly important input to compensation and annual meeting decisions. Importantly, candid conversations generally remain feasible with large investors only in the off-season.

A summary of the new CFIs, which address three specific scenarios, follows:

1) **Issuer-initiated meetings to discuss voting (CFI 103.13):** If an issuer initiates a meeting to understand a Schedule 13G investor's views or voting decisions on past matters or on matters likely to be submitted for a vote at an upcoming shareholder meeting, the shareholder's participation in that discussion does not, on its own, disqualify it from reporting on Schedule 13G. Most notably, the SEC Staff indicates that an issuer-initiated conversation, or a response to an issuer's request to understand a past vote, is less likely to reflect an attempt by the investor to influence control.

2) **Investor engagement with persons engaged in a proxy solicitation (CFI 103.14):** A shareholder reporting on Schedule 13G may discuss its views on a particular topic, as well as how those views inform its voting decisions, with persons engaged in a proxy solicitation (i.e., during a live vote) without that discussion, by itself, disqualifying it from reporting on Schedule 13G. This addresses a side effect of the February 2025 CFIs, which left investors concerned that expressing views in contested situations could be viewed as influencing control. It also clarifies that Schedule 13G investors can speak with both the company and a dissident to inform their vote in a contested matter without triggering "group formation" under SEC rules.

3) **Investor-initiated engagement with issuer on proxy materials (CFI 103.15):** A shareholder reporting on Schedule 13G may contact an issuer to request

clarification of facts or statements in an issuer’s filings (such as the issuer's own proxy materials) or other public communications without such contact, by itself, disqualifying it from reporting on Schedule 13G.

Need Assistance:

Compensia has extensive experience helping companies design executive compensation programs and develop clear, effective proxy disclosures aligned with SEC requirements, proxy advisor policies, and investor expectations. If you would like assistance or have questions about the topics covered in this Thoughtful Pay Alert, please contact your Compensia team or the authors of this alert.

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