From the Governance, Securities & Reporting Group of Weil, Gotshal & Manges LLP

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New SEC Staff Guidance May Ease Constraints on Shareholder Engagement for Schedule 13G Filers

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On September 2, 2026, the staff of the SEC's Division of Corporation Finance issued three new interpretations addressing when a shareholder reporting beneficial ownership on Schedule 13G may engage with an issuer or with participants in a proxy contest without forfeiting its eligibility to remain on Schedule 13G. The new guidance is a welcome clarification of the staff's February 2025 interpretations, which had an immediate chilling effect on communications between public companies and their significant institutional shareholders. In this Alert we discuss the new interpretations and provide important takeaways for companies and their 13G institutional investors.

Background

Schedule 13G offers greater-than-5% beneficial owners a streamlined alternative to Schedule 13D, but most filers must certify that they do not hold the securities with the "purpose or effect of changing or influencing the control of the issuer." In February 2025, the SEC staff revised Question 103.11 and added Question 103.12 to its interpretations under Regulation 13D-G, taking the position that a shareholder's stewardship engagement (for example, recommending governance, compensation or policy changes while explicitly or implicitly conditioning support for the issuer's director nominees on the issuer's responsiveness) could constitute "influencing" control, disqualifying the shareholder from Schedule 13G and requiring the filing of the far more burdensome Schedule 13D.

As we discussed in our alert, *Looking to the 2026 Proxy Season: Key Corporate Governance, Engagement, Disclosure and Annual Meeting Topics*, the reaction was swift: several of the largest institutional investors paused or restructured their engagement programs. For example, institutions would meet only at a company's request, adopt a "listen-only" posture and/or highly script their participation. As a consequence, companies have found it difficult to get candid feedback from their largest holders, especially during in-season engagement.

The New Interpretations

The three new Corporation Finance Interpretations (CFIs 103.13, 103.14 and 103.15) do not displace the February 2025 framework, but they mark out safe territory:

- **Issuer-initiated engagement (103.13).** A 13G filer's participation in a discussion that the issuer itself initiated, including responding to an issuer's request to understand how or why the shareholder voted at a past meeting, or its views on matters coming to a vote, is "less likely" to be viewed as an attempt to influence control and will not, by itself, cause the shareholder to lose 13G eligibility. Since the February 2025 CFIs, many issues have already been taking the lead in initiating discussions with investors.
- **Discussions with proxy contestants (103.14).** A 13G filer may discuss its views on a topic, and how those views could inform its voting decisions, with a person engaged in a proxy solicitation without that fact alone forfeiting 13G eligibility.
- **Questions about disclosure (103.15).** Contacting an issuer to seek clarification of statements in its filings, proxy materials or other public communications is not, standing alone, disqualifying.

The new interpretations are grounded in the staff's existing facts and circumstances approach. The concerns in CFI 103.12 remain applicable. The subject matter of an engagement can still be dispositive (e.g., calling for a sale of the company, a restructuring, or the election of non-issuer nominees). A shareholder that goes beyond exchanging views (e.g., exerting pressure on management by conditioning its voting support on the adoption of specific measures) still risks losing Schedule 13G eligibility.

Takeaways for Companies and 13G Institutional Investors

- **Company-initiated engagement is on firmer footing.** Because issuer initiation is now an explicit mitigating factor, public companies seeking substantive dialogue with large passive stockholders should consider extending the invitation themselves and documenting that they did so.
- **Do not expect a return to 2024.** Institutional investors' engagement protocols were rebuilt around the 2025 guidance. Companies should anticipate that many institutional holders will remain measured in engagement heading into the 2027 proxy season.
- **Limited comfort in proxy contests.** CFI 103.14 confirms that 13G filers can hear out and share views with both sides of a proxy contest. Companies in contested or potentially contested situations should assume their passive holders are talking to the other side, and calibrate their own solicitation and engagement strategy accordingly.
- **Structure the conversation.** Agendas and framing still matter. Well-prepared companies will make it easier for their shareholders to stay in the 13G lane.
- **Safer ground for 13G investors, within limits.** For institutional investors, issuer-initiated meetings, explaining the rationale for a past or upcoming vote, and seeking clarification of a company's disclosures are now expressly safer ground. Pressuring management, including conditioning voting support on the adoption of specific measures, remains disqualifying, and 13G eligibility continues to turn on all of the facts and circumstances. Investors should consider documenting who initiated each engagement.

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