



## Proxy Advisors and Institutional Shareholders Revise Voting Guidelines on Board Prepare for Changes to the Shareholder Engagement Process

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As companies prepare for engagement with their shareholders in connection with the 2025 annual meeting season, they should be prepared for a change in the approach followed by institutional investors. These changes are being driven by recent Securities and Exchange Commission (SEC) staff guidance related to the ability of institutional investors to report their beneficial ownership of more than 5% of a company's voting, equity securities with the SEC on Schedule 13G.

On February 11, 2025, the staff of the SEC's Division of Corporation Finance issued **updated and new guidance** regarding the eligibility of shareholders to file Schedule 13G instead of Schedule 13D beneficial ownership reports. The guidance notes that a shareholder's ability to report on Schedule 13G depends on whether it holds the securities with a purpose or effect of "changing or influencing" control of the issuer. The staff withdrew previous guidance that stated that engagement with management on executive compensation, environmental, social or other public interest issues, or corporate governance topics unrelated to a change of control typically would not prevent the company from using Schedule 13G.

The new guidance articulates a broader notion of the actions that would constitute an attempt to influence control, thus disqualifying the shareholder from reporting on Schedule 13G. A shareholder's discussion with an issuer's management that "goes beyond such a discussion" and "exerts pressure on management to implement specific measures or changes to a policy may be 'influencing' control over the issuer." The list of the measures or policy changes that could trigger a change in filing status under the new guidance, if the shareholder exerts pressure on management, includes recommending that an issuer "remove its staggered board, switch to a majority voting standard in uncontested director elections, eliminate its poison pill plan, change its executive compensation practices, or undertake specific actions on a social, environmental, or political policy."

In response to this new guidance, institutional investors are expected to modify the process they follow when engaging with companies. The following is a summary of the modifications we expect and our recommendations for how companies should consider responding.

- Investors will likely be cautious about requesting an engagement and, in many cases, may engage only when requested by companies. Among the factors that investors will likely consider when agreeing to a meeting may include the proposed date of the meeting in relation to the date of the shareholder meeting and the proposals on the agenda at the meeting. Meetings with contested agenda items will likely be greeted with particular caution.
  - *Response: Companies that want to speak to an investor should take the initiative to arrange the meeting.*
- In the past, investors have weighed in on the agenda for engagement meetings. We expect investors will no longer do that and, if they do, any suggested agenda topics are expected to be less prescriptive.
  - *Response: Companies should be prepared to discuss the topics that they expect the investor will likely want to cover and not wait for the investor to raise particular topics.*
- Questions from investors at engagement meetings will likely be more open-ended and less targeted. For instance, we expect questions to be more broadly worded. Such as: “We would appreciate if you could share your thoughts on...”
  - *Response: Companies should be prepared to answer the questions and add gloss that they expect the investor will want/need to make informed investment decisions.*
- Similarly, investors will likely not answer pointed questions, including and most specifically any questions about how the investor intends to vote.
  - *Response: Companies should be prepared to ask investors more broad-based questions, such as: “Did you get enough information to make an informed voting and/or investment decision.”*
- Investors may read disclaimers at the beginning of engagement meetings. The use of these disclaimers will not necessarily eliminate the possible implications under the new staff guidance. Nonetheless, investors will likely want to make it clear that they do not intend to exert pressure or take the discussion beyond what the staff currently thinks is allowed for Schedule 13G filers.

- *Response: Companies may want to respond that they understand the plan for the discussion and they similarly do not intend for the discussion to go beyond what is required.*

Many companies have significantly expanded their shareholder engagement efforts over the past few years and it remains the case that companies typically are well served in building productive relationships with their long-term investors, notwithstanding these changes to potential engagement meetings.