

January 26, 2026

Updated SEC Interpretations – M&A, Offerings, Spin-Offs and Solicitations

This past Friday, the SEC’s Division of Corporation Finance updated a number of compliance and disclosure interpretations (CDIs) and issued a no-action letter addressing a variety of offering, transaction and proxy-related topics, including the following:

- *Historic Compensation Disclosure in Spin-Offs.* Form 10 requires compliance with Regulation S-K Item 402, which covers historical compensation of the registrant’s named executive officers. The application of Item 402 to spin-offs is frequently a source of confusion and frustration that requires a significant investment of resources to prepare disclosure that may be of limited utility to investors, particularly where the disclosed compensation is not representative of SpinCo’s post-spin-off executive compensation program. The [revised CDI](#) provides welcome clarification by explicitly requiring historical compensation disclosure only where SpinCo’s business was operated as a separate division or standalone business of the parent prior to the spin-off and there is continuity of management of the SpinCo’s business before and after the spin-off.
- *Broker Searches.* Rule 14a-13 requires registrants to conduct broker searches at least 20 business days prior to the record date of a shareholder meeting. To square this requirement with the timely holding of meetings, market participants have developed commonly used workarounds (e.g., rolling “dummy” record dates). An [updated CDI](#) acknowledges that technological advancements since adoption of this requirement in 1986 render it out of date and provides that the staff will not object to a shorter period, provided the registrant reasonably believes that its proxy materials will be timely disseminated to beneficial owners and otherwise complies with Rule 14a-13.
- *Lock-ups in Registered Transactions.* In a further [update of a CDI](#) revised in March 2025 (and other related CDIs), the staff broadened the guidance regarding registration of exchange offers, mergers and other Rule 145(a) transactions on Form S-4 (or F-4) where lock-up agreements (or agreements to tender) are executed, expanding the circumstances where such arrangements may be combined with a registration of the shares issued to non-signatory securityholders.
- *Purchases Outside a Cross-Border Tender Offer.* In tender offers that qualify for the cross-border exemptions, a [new CDI](#) states that the Rule 14e-5 exception permitting purchases outside the offer where the possibility of purchases is disclosed in offer documents is available for purchases made before dissemination of the offering documents. In addition, offerors may [use a financial advisor](#) to make purchases outside the offer in an agency capacity.
- *Accredited Investor Verification.* In Rule 506(c) offerings where all purchasers must be accredited investors, an issuer can use different verification methods for different investors. [This CDI](#) is consistent with [other recent SEC guidance](#) emphasizing the flexibility the rule provides.

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- *Integration.* The updates added, withdrew or revised guidance regarding potential integration of multiple offerings, including the withdrawal of prior CDIs that characterized certain fact patterns as problematic for purposes of conducting private offerings. The withdrawals and changes are, to a significant extent, intended to harmonize the CDIs with Rule 152, the SEC’s integration rule.
- *Notices of Exempt Solicitation.* An [updated CDI](#) reversing a prior position provides the staff will now object to a voluntary submission of a notice of exempt solicitation filed by a person that does not beneficially own over \$5 million of the company’s shares (the threshold for being required to file the notice). The staff noted that such voluntary submissions appear to be primarily a means to generate publicity.
- *OTC Derivatives and “Group” Status.* In a [no-action letter](#), the SEC clarified that entering into over-the-counter derivatives contracts would not, by itself, cause the parties to be deemed a “group” under Sections 13(d)(3) or 13(g)(3) of the Exchange Act, and thus would not automatically trigger joint beneficial ownership reporting requirements.

The updated interpretations demonstrate the SEC staff’s continued commitment to providing (and reconsidering) public guidance in a manner that facilitates transactions and investor activity while balancing investor protections.

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