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HISTORICAL SHAREHOLDER ENGAGEMENT PRACTICES PUT UNDER MICROSCOPE DUE TO MID-PROXY SEASON GUIDANCE FROM SEC

One of the more striking developments to emerge from the 2025 proxy season was the decision by the staff in the Division of Corporation Finance at the US Securities and Exchange Commission to issue updated guidance in the form of Compliance and Disclosure Interpretations in February 2025 — the peak of proxy season — addressing certain activity in connection with shareholder engagement and activism. The guidance sought to clarify when investor engagement with issuers — especially engagement that may be deemed to exert pressure or seeks to influence control — may cause passive investors to lose eligibility to report beneficial ownership on Schedule 13G and require transition to the more disclosure-intensive Schedule 13D. The Staff's timing prompted a swift and widespread response from both investors and issuers. This article examines these developments, along with the resulting market reactions, practical considerations and strategic adjustments now facing investors and issuers as they navigate the 2025 proxy season and beyond.

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'PASSIVE' INTENT AND 'SHORT-FORM' SCHEDULE 13G REPORTING

The beneficial ownership reporting regime of the US Securities and Exchange Commission ("SEC") is primarily governed by Section 13(d) and Section 13(g) of the Securities Exchange Act of 1934, as amended ("Exchange Act"). These sections require that beneficial owners of more than 5% of a voting class of equity securities registered under Section 12 of the Exchange Act report their beneficial ownership on a Schedule 13D or, if eligible, a Schedule 13G. The "long-form" Schedule 13D requires significant disclosure regarding, among other things, plans or proposals with respect to the issuer, transactions in securities of the issuer, and agreements with respect to securities of the issuer, as well as the reporting person's beneficial ownership of the relevant class. The "short-form" Schedule 13G requires substantially less disclosure, focusing primarily on the reporting person's beneficial ownership of the relevant class, and, unlike Schedule 13D, does not require a description of any plans or proposals of the reporting person that would result in significant transactions with the issuer. The purpose of beneficial ownership reporting is to promote market transparency through the timely public dissemination of accurate

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