

SEC Releases Guidance on PX14A6G Filings for Shareholder Letters

January 31, 2025

On January 27, 2025, the staff of the Division of Corporation Finance of the Securities and Exchange Commission (the “Staff”) released two updated and three new Compliance & Disclosure Interpretations (“C&DIs”) relating to the use of PX14A6G filings pursuant to Exchange Act Rule 14a-6(g). A summary of the C&DIs is below with the full text of the recently revised C&DIs, including links to markups showing the revisions from the SEC, attached.

Overview of SEC Form PX14A6G. Pursuant to Exchange Act Rule 14a-6(g), SEC Form PX14A6G is a notice of exempt solicitation filed with the SEC. The form acts as a cover page for copies of soliciting materials (e.g., letters sent to shareholders) used by a shareholder who wants to communicate or recommend a particular issue to other shareholders (for example, electing board members), owns more than \$5 million of a company’s securities and who is not seeking to act as a proxy (or furnishing or requesting a form of revocation, abstention, consent or authorization).

The updates clarify certain use and criteria of PX14A6G filings, including:

- **Voluntary Submission.** A voluntary submission of a PX14A6G filing by a soliciting person who does not beneficially own more than \$5 million of the class of subject securities (i.e., does not meet the requirements of Rule 14a-6(g)(1)) is permissible with appropriate disclosure. The Staff notes that the cover page must clearly state that “the soliciting person does not beneficially own more than \$5 million of the class of subject securities; and the notice is therefore being provided on a voluntary basis.” (Q&A 126.06)
- **Cover Page.** Whether filing voluntarily or to satisfy the requirements of Rule 14a-6(g)(1), written soliciting material must be submitted “under cover” of the Notice of Exempt Solicitation. In particular, the C&DIs state that “all of the information required under Rule 14a-103 must be presented in the submission before any written soliciting materials.” (Q&A 126.07)

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- **Previously Disseminated Written Soliciting Material.** The Staff reminds filers that the filing of a Notice of Exempt Solicitation is intended to only notify the public of the written soliciting material that the person has previously sent or given to security holders through other means. The Staff further notes that the filing itself is not meant to be the means through which a person provides written soliciting material to security holders. (Q&A 126.08)

 - **Must Constitute a “Solicitation”.** Only written communications that constitute a “solicitation” under the Rule 14a-2(b)(1) exemption should be submitted under the cover of a Notice of Exempt Solicitation as Rule 14a-6(g) only applies to solicitations made pursuant to the Rule 14a-2(b)(1) exemption. Under Rule 14a-1(l)(1)(iii)(A), a “solicitation” for purposes of Regulation 14A is any proxy voting advice that recommends how a security holder should vote on a specific matter. The Staff provides, as an example, that generally a written communication on matters that are not the subject of a solicitation by the registrant or a third party for an upcoming shareholder meeting would not be viewed as a solicitation and thus should not be submitted under the cover of a Notice of Exempt Solicitation. (Q&A 126.09)

 - **Rule 14a-9 Liability.** Any written soliciting material attached to a Notice of Exempt Solicitation is subject to liability under Rule 14a-9, which prohibits materially false or misleading statements in soliciting materials. The Staff further reminds filers that Rule 14a-2(b) does not provide an exemption from Rule 14a-9. The notes to Rule 14a-9 provide the following examples of what, in certain circumstances, may be deemed misleading:
 - Predictions as to specific future market values.

 - Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.

 - Failure to so identify a proxy statement, form of proxy and other soliciting material as to clearly distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter.

 - Claims made prior to a meeting regarding the results of a solicitation. (Q&A 126.10)

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We are available to discuss these updates and other considerations related to the use of PX14A6G filings. Please do not hesitate to contact us with any questions.



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UPDATED AND NEW C&DIS:**Question 126.06**

Question: Exchange Act Rule 14a-6(g)(1) requires any person who engages in a solicitation pursuant to Exchange Act Rule 14a-2(b)(1) and beneficially owns over \$5 million of the class of securities that is the subject of the solicitation to furnish or mail to the Commission a statement containing the information specified in the Notice of Exempt Solicitation (Exchange Act Rule 14a-103) no later than three days after the date the written solicitation is first sent or given to any security holder. Rule 14a-103 requires the soliciting person to attach only those written soliciting materials “required to be submitted” pursuant to Rule 14a-6(g)(1). If a soliciting person is not subject to Rule 14a-6(g)(1), is it permitted to submit a Notice of Exempt Solicitation?

Answer: Although the requirements of Rule 14a-6(g)(1), including the submission of a Notice of Exempt Solicitation, only apply to a soliciting person who beneficially owns more than \$5 million of the class of subject securities, the staff will not object to a voluntary submission of such a notice by a soliciting person who does not beneficially own more than \$5 million of the class of subject securities, provided that the written soliciting material is submitted under the cover of Notice of Exempt Solicitation as described in Question 126.07 and such cover notice clearly states that:

- the soliciting person does not beneficially own more than \$5 million of the class of subject securities; and
- the notice is therefore being provided on a voluntary basis.

[January 27, 2025] [[Comparison to prior version](#)]

Question 126.07

Question: Rule 14a-6(g)(1) requires a Notice of Exempt Solicitation to contain the information specified in Rule 14a-103, including the name and address of the person relying on the exemption in Rule 14a-2(b)(1), and that the written soliciting material be attached to the notice. When submitting a Notice of Exempt Solicitation to the Commission electronically on EDGAR, can the written soliciting material appear in the notice before the Rule 14a-103 information is presented?

Answer: No. Rule 14a-103 is designed to be a “cover” to which previously disseminated written soliciting material is “attached.” See Rule 14a-103 (“Attach written material required to be submitted pursuant to Rule 14a-6(g)(1).”); Release No. 34-31326 (Oct. 16, 1992) (noting that the written soliciting material must be submitted “under cover” of the Notice of Exempt Solicitation). Therefore, when submitting a notice on EDGAR,

whether voluntarily or to satisfy the requirements of Rule 14a-6(g)(1), all of the information required by Rule 14a-103 must be presented in the submission before any written soliciting materials (including any logo or other graphics used by the soliciting person) are presented. [January 27, 2025] [[Comparison to prior version](#)]

Question 126.08

Question: Can a person submit written soliciting material under the cover of a Notice of Exempt Solicitation on EDGAR if the written soliciting material has not been sent or given to security holders?

Answer: No. The submission of a Notice of Exempt Solicitation on EDGAR is not intended to be the means through which a person disseminates written soliciting material to security holders. Rather, its purpose is to notify the public of the written soliciting material that the person has sent or given to security holders through other means. See Release No. 34-30849 (June 23, 1992) (proposing the notice requirement so there would be public notice of extensive soliciting activity made in reliance on the Rule 14a-2(b)(1) exemption); Release No. 34-31326 (Oct. 16, 1992) (adopting the notice requirement in response to commenters' concerns that, absent such a requirement, the Rule 14a-2(b)(1) exemption would permit large shareholders to conduct "secret" solicitation campaigns). [January 27, 2025]

Question 126.09

Question: Can a person submit a Notice of Exempt Solicitation on EDGAR for a written communication that does not constitute a "solicitation" under Rule 14a-1(l)?

Answer: No. Because Rule 14a-6(g) only applies to solicitations made pursuant to the Rule 14a-2(b)(1) exemption, only written communications that constitute a "solicitation" should be submitted under the cover of a Notice of Exempt Solicitation. For example, a written communication solely about matters that are not the subject of a solicitation by the registrant or a third party for an upcoming shareholder meeting generally would not be viewed as a solicitation and, therefore, should not be submitted under the cover of a Notice of Exempt Solicitation. [January 27, 2025]

Question 126.10

Question: Does Rule 14a-9, which prohibits materially false or misleading statements, apply to written soliciting materials sent or given to security holders in reliance on the Rule 14a-2(b)(1) exemption and filed under the cover of a Notice of Exempt Solicitation?

Answer: Yes. Rule 14a-2(b) does not provide an exemption from Rule 14a-9. As a result, written soliciting material attached to a Notice of Exempt Solicitation is subject to

liability under Rule 14a-9. See also Release No. 34-31326 (Oct. 16, 1992) (“Pursuant to the [Rule 14a-2(b)(1)] exemption, solicitations by or on behalf of eligible persons would be exempt from all of the proxy statement filing, delivery and information requirements imposed by the proxy rules but remain subject to Rule 14a-9, which prohibits false or misleading statements in connection with written or oral solicitations.”). [January 27, 2025]