

Investor Choice Advocates Network

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September 28, 2026

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Via email: Secretarys-Office@SEC.GOV

Re: Petition for Rulemaking — Preserving Investor Access to, and Anonymity in, Pooled Investment Vehicles; Request to Withdraw Corporation Finance Interpretations 110.09, 110.10, and 155.02 and to Amend Instruction 3(a)(iv) to Item 4 of Schedule 14A

Dear Ms. Countryman:

The Investor Choice Advocates Network (“ICAN”) submits this petition to the U.S. Securities and Exchange Commission (“Commission” or “SEC”) pursuant to Rule 192(a) of the Commission’s Rules of Practice.¹ ICAN is a nonprofit public interest law firm and advocacy organization dedicated to expanding access to capital markets and protecting the fundamental right of investors to make their own informed financial decisions.

On July 9, 2026, the Division of Corporation Finance (the “Staff”) published a series of new interpretations (the “Interpretations”). Three of them disregard the separate existence of a pooled investment vehicle and reach through it to the individual investors who supplied the capital.

Interpretation 155.02 provides that where an entity is formed to raise funds to acquire the securities of a specific registrant and to conduct a proxy solicitation to change the composition of that registrant’s board, and prospective investors are told in advance of that purpose, each investor who contributed more than \$500 is a “participant” in the solicitation under Instruction 3(a)(iv) to Item 4 of Schedule 14A.² Interpretation 110.09 provides that where an entity is formed to raise funds to acquire the securities of a specific issuer and to conduct a campaign at that issuer, and prospective investors are told in advance of that purpose, the identities of the entity’s investors must be disclosed in the entity’s Schedule 13D under Item 3 — with no dollar threshold at all.³

¹17 C.F.R. § 201.192(a).

²Division of Corporation Finance, Corporation Finance Interpretations, Proxy Rules and Schedules 14A/14C, Question 155.02 (July 9, 2026).

³Division of Corporation Finance, Corporation Finance Interpretations, Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting, Question 110.09 (July 9, 2026).

Interpretation 110.10, published the same day, provides that General Instruction C to Schedule 13D does not limit the information required by Items 2 through 6 as to the reporting person itself.⁴

Together these Interpretations require that an ordinary investor who commits capital to a pooled vehicle be identified by name in a public filing. This petition addresses those three and no others.⁵

Relief requested. Pursuant to Rule 192(a), ICAN petitions the Commission to:

- (1) **Amend Instruction 3(a)(iv) to Item 4 of Schedule 14A** to provide that a person who supplies capital to an entity that engages in a solicitation is a “participant” only where (a) that person supplies more than ten percent of the financing for the solicitation, or (b) the person’s investment is designed to result in a benefit to that person, or to further a personal interest, which is not shared by the other shareholders at large; to permit a soliciting person to establish that clause (b) does not apply by representation, as described in Section 3 below, rather than by identifying its investors; and to replace the fixed \$500 threshold, which has not been adjusted since 1956; and
- (2) **Establish a procedure** by which a person may seek confidential treatment of his or her identity in a filing that would otherwise require it, upon a showing of a reasonable probability of harassment or reprisal.

The text of the proposed amendments required by Rule 192(a) is set forth in Appendix A.

Related requests. Because the following two requests seek Commission action that is not itself the issuance, amendment or repeal of a rule of general application, ICAN presents them alongside the petition rather than as part of it, and asks that the Commission consider them together:

- (3) **Withdraw Interpretations 110.09, 110.10, and 155.02**, or state publicly that they do not represent the position of the Commission, pending Commission action on this petition; and
- (4) **Adopt a policy** governing the publication of Staff interpretations that materially alter the obligations of market participants, including publication for comment and periodic Commission ratification.

The pending proxy solicitation proceeding. On September 16, 2026, the Commission proposed amendments to modernize certain rules governing the proxy solicitation process; the proposing

⁴*Id.*, Question 110.10 (July 9, 2026).

⁵A fourth interpretation published the same day construes “record holders” in Rule 202(b) of Regulation Crowdfunding to mean the investors who invested in the offering, rather than a crowdfunding vehicle relied upon under Rule 3a-9. See Division of Corporation Finance, Corporation Finance Interpretations, Regulation Crowdfunding, Question 202.02 (July 9, 2026). That interpretation concerns when an issuer’s ongoing reporting obligation terminates and does not compel the public identification of any investor. ICAN does not address it here and reserves the right to address the reporting of crowdfunding vehicles separately.

release was published in the Federal Register on September 21, 2026, and comments are due November 20, 2026.⁶ That release does not address Instruction 3 to Item 4 of Schedule 14A or the definition of “participant,” which is why ICAN proceeds by petition. But the Commission has invited comment on “any suggestions for additional changes” to the proxy solicitation rules,⁷ and the subject matter of request (1) falls within that invitation. ICAN is therefore submitting this petition into File No. S7-2026-33 as a comment as well, and respectfully suggests that the amendment described in request (1) could be addressed in that proceeding rather than in a separate one.

What this petition is not. ICAN takes no position on the merits of any proxy solicitation, any contested election, or any investment strategy, and represents no sponsor of any pooled vehicle. ICAN represents investors. Our concern is narrow: whether an ordinary investor who commits a modest sum to a pooled vehicle must surrender his or her anonymity, by name, in a public filing, as the price of participating at all — and whether doing so tells any voting shareholder anything worth knowing.

Summary of Argument

Part I of this petition describes the investors on whom the Interpretations operate and the two consequences that follow: a disclosure burden that falls hardest on those who must pool their capital in order to participate at all, and the compelled public identification of individuals whose only act was to place money with a manager. Part II shows that neither provision the Staff has construed reaches those investors. Instruction 3(a)(iv) to Item 4 of Schedule 14A was written in 1956 to reach persons responsible for conducting a solicitation, and its structure, its drafting history, and the Commission’s contemporaneous explanation all confirm it. Item 3 of Schedule 13D does not reach them either: a federal court so held in 1985, the Commission proposed in 1989 to change that result at a ten percent threshold, and it did not adopt the proposal. Part III explains why, whatever the Commission’s authority, these questions belong in a rulemaking rather than in a staff interpretation.

Part I — The Investors on Whom the Interpretations Operate

1. The Burden Falls Hardest on the Smallest Investors, and the Rule Rewards Sponsors Who Tell Investors Less

The burden is regressive. Under Interpretation 155.02, an investor who commits \$501 is named in a public filing. Under Interpretation 110.09, which contains no threshold at all, an investor who commits any amount whatsoever is named. An investor with capital enough to acquire a position

⁶Proxy Solicitation Modernization, Release Nos. 33-11439; 34-106385; 39-2566, File No. S7-2026-33, RIN 3235-AN63 (Sept. 16, 2026), 91 Fed. Reg. 59852 (Sept. 21, 2026).

⁷*Id.* at Part II.F (General Request for Comment) (inviting comment on “any aspect of the proposed amendments, other matters that might have an impact on the proposed amendments, and any suggestions for additional changes”).

directly, without pooling, incurs no comparable obligation. The result is inverted: the disclosure obligation attaches to the investor of modest means who must pool in order to participate, and not to the investor wealthy enough to act alone.

A \$500 threshold set in 1956 also separates almost no one from anyone in 2026. It does not distinguish investors with influence over a solicitation from investors with none, or investors with divergent interests from investors with none. It distinguishes only the very smallest investors from everyone else, and then places all of the latter on the same public list. The Interpretations are unclear at the margins as well: an adviser who allocates client capital across dozens of separately managed accounts into a single vehicle cannot tell from their face whether each client is a participant.

ICAN has previously petitioned the Commission to reconsider the net worth and income thresholds of Rule 501(a), on the ground that they condition access to private offerings on wealth rather than judgment.⁸ The Interpretations raise the same concern in a different form. Where the accredited investor thresholds bar participation outright, these Interpretations impose a price on the structure — pooling — that ordinary investors depend upon to participate at all.

The disclosure trigger is perverse. Under Interpretations 110.09 and 155.02, the obligation turns on whether prospective investors were informed in advance of the purpose for which their capital would be used and of the identity of the issuer. Disclosure to investors is the condition that produces the burden. Withholding that information from investors avoids it.

A sponsor who tells prospective investors what the fund will do, and which issuer it will do it at, triggers the look-through. A sponsor who raises a blind or semi-blind pool, disclosing only a strategy, does not. Nothing in the Interpretations suggests the Staff intended to encourage the second structure over the first, but that is what they do. The predictable effect is a shift toward vehicles in which investors are told less about what their capital will be used for. A disclosure requirement whose operation rewards a sponsor for keeping its own investors in the dark has inverted the purpose of the disclosure regime. This is the kind of second-order consequence that surfaces in notice and comment and does not surface in an interpretive question and answer.

The effect on access. Sponsors will respond to both features rationally. Some will restructure to avoid advance disclosure. Others will raise capital only from investors large enough that a public listing is unobjectionable, or from investors who can be relied upon not to object. The investors who lose access are the small ones — a result at odds with the Commission’s own identification of expanded access to private markets as a priority.⁹

⁸Petition for Rulemaking — Replacing Net Worth and Income Requirements Under Rule 501(a) to Reduce DEI Barriers, Investor Choice Advocates Network (Nov. 9, 2022).

⁹SEC, Strategic Plan, Fiscal Years 2026–2030, at 6 (Sept. 2, 2026).

2. Compelled Public Identification of Passive Investors Raises Serious Constitutional Questions

In *Americans for Prosperity Foundation v. Bonta*, the Supreme Court held that a state requirement compelling disclosure of the names of an organization's supporters was subject to exacting scrutiny and was not narrowly tailored to the government's asserted interest.¹⁰ The Court emphasized that the burden on associational rights is borne by the individuals whose names are compelled, that it exists whether or not any particular individual can prove retaliation, and that a disclosure regime must be narrowly tailored even where the government's interest is substantial. Those principles descend from *NAACP v. Alabama ex rel. Patterson*, and the Court has recognized as-applied relief where identification would expose individuals to threats or reprisal.¹¹ The compelled disclosure here runs against individuals whose only act was to place capital with a manager: they do not direct the solicitation, do not select the nominees, and, as Section 3 explains, hold no interest a voting shareholder needs to weigh.

ICAN is aware that the Court of Appeals for the District of Columbia Circuit rejected a First Amendment challenge to compelled disclosure of an investment manager's securities holdings under Section 13(f) of the Exchange Act.¹² That decision does not answer the question presented here, for reasons the court itself identified. Its holding was that required notification of the government does not constitute compelled speech; the court observed that the Commission, not the public, was the manager's audience, and it declined as unripe to reach the challenge to public disclosure.¹³ The Interpretations require publication. The court found that challenge unripe, moreover, precisely because Section 13(f) permits a manager to seek confidential treatment before information becomes public, with judicial review available if the request is denied.¹⁴ Instruction 3(a)(iv) and Item 3 of Schedule 13D provide no comparable mechanism. The reasoning that made the constitutional question premature in that case presupposes a safety valve that does not exist here.

The interests at stake also differ. ICAN acknowledges that the D.C. Circuit has said securities regulation involves a different balance of concerns and calls for different applications of First Amendment principles.¹⁵ But the interest asserted in that case was a firm's proprietary trading strategy — a commercial and economic interest of a regulated professional. The interest here is

¹⁰*Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021).

¹¹*NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); see also *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87 (1982).

¹²*Full Value Advisors, LLC v. SEC*, 633 F.3d 1101 (D.C. Cir. 2011).

¹³*Id.* at 1106–07, 1109.

¹⁴*Id.* at 1106–07; see 15 U.S.C. § 78m(f)(3).

¹⁵*Full Value Advisors*, 633 F.3d at 1109.

the associational anonymity of individual investors who are not regulated entities, have no filing obligation of their own, and have done nothing beyond committing capital.

ICAN does not ask the Commission to resolve a constitutional question in this petition. We make a narrower point. Where an ambiguous instruction can be read either to compel the public identification of passive investors or not to, the reading that avoids the constitutional difficulty is the one an agency should ordinarily adopt — and that choice is not one to be made in a Staff interpretation. That is especially so where a less restrictive alternative is available and familiar. Concurring in the result in *Lowe v. SEC*, Justice White invoked the principle that frauds may be denounced as offenses and punished by law, and that the comparative inefficiency of proceeding that way does not empower the government to abridge protected expression.¹⁶ The representation described in Section 3 is the analogue here: a person who falsely denies a divergent interest is answerable under the antifraud provisions, and the Commission need not compel the identification of every investor in advance in order to reach the few whose interests diverge. At a minimum, the Commission should provide here what it has provided elsewhere in the Exchange Act: a mechanism by which a person may seek confidential treatment upon an appropriate showing.

Part II — Neither Provision the Staff Has Construed Reaches These Investors

3. Participant Disclosure Exists to Reveal Divergent Interests, and Schedule 14A Already Says So

Section 14(a) authorizes the Commission to prescribe proxy rules as necessary or appropriate in the public interest or for the protection of investors.¹⁷ The purpose of identifying participants in a solicitation is to give voting shareholders information bearing on their voting decision. The Staff has explained as much: the availability of participant information allows shareholders evaluating soliciting materials to understand the interests of those soliciting them, at the time the solicitations occur.¹⁸

The proxy rules require both the identity of a participant and a description of that participant's interests.¹⁹ ICAN does not suggest otherwise. The point is the relationship between the two. Identity is required because it is ordinarily the route to interest: a name lets a shareholder see who stands behind a solicitation and what that person may stand to gain. Where a person's entire stake

¹⁶*Lowe v. SEC*, 472 U.S. 181, 235 (1985) (White, J., concurring in the result, joined by Burger, C.J., and Rehnquist, J.) (quoting *Schneider v. State*, 308 U.S. 147, 164 (1939)).

¹⁷15 U.S.C. § 78n(a) (authorizing rules “as necessary or appropriate in the public interest or for the protection of investors”).

¹⁸Division of Corporation Finance, Corporation Finance Interpretations, Proxy Rules and Schedules 14A/14C, Question 132.03 (Nov. 17, 2023); *see also* Regulation of Takeovers and Security Holder Communications, Release Nos. 33-7760; 34-42055 (Oct. 22, 1999), 64 Fed. Reg. 61408, 61414 (Nov. 10, 1999), at § II.C.1.

¹⁹*See* 17 C.F.R. § 240.14a-12(a)(1)(i) (requiring the identity of the participants in the solicitation and a description of their direct or indirect interests, by security holdings or otherwise, or a prominent legend advising security holders where that information may be obtained); Item 5(b)(1) of Schedule 14A, 17 C.F.R. § 240.14a-101.

is a pro rata interest in the same securities every other shareholder holds, the name leads nowhere. It reveals no interest the shareholder does not already share, and publishing it conveys nothing a shareholder could act on.

Schedule 14A already contains this principle. The Instruction to Item 5(a) provides that the item does not apply to any interest arising from the ownership of securities of the registrant where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.²⁰ The Commission has thus written into the very item that elicits participant interests the judgment that a purely pro rata holding is not the object of the inquiry.

ICAN states candidly that this instruction does not, by its terms, apply here. It opens with an exception for a solicitation made in opposition to another solicitation subject to Regulation 14A, and Item 5(b), which governs disclosure in a contested solicitation, contains no counterpart.²¹ ICAN therefore does not contend that the Commission has already decided this question. It asks the Commission to extend to passive investors, in contested solicitations, the principle it has already articulated for every other solicitation.

There is good reason to do so. The Item 5(a) exception operates on a class of persons that Instruction 3 has already defined. It reflects a judgment that once a person is a participant in a contest, the shareholders are entitled to a full account of that person's interests, pro rata or otherwise. It says nothing about the antecedent question this petition presents, which is whether a person who bought an interest in a fund is a participant at all. Nothing in the 1956 rulemaking that produced the participant definition, or in the Commission's contemporaneous explanation of it, suggests that the Commission was making a considered judgment about passive investors in pooled vehicles. As Section 4 shows, the Commission was addressing a different class of persons entirely.

The standard and its compliance mechanism. The formulation ICAN proposes is not new language. The Commission has used it for decades in Rule 14a-8(i)(4), which permits exclusion of a shareholder proposal designed to result in a benefit to the proponent, or to further a personal interest, which is not shared by the other shareholders at large.²² The test is not whether a person has an interest; every shareholder has one. It is whether the person has an interest others do not share. Because the Commission has proposed to rescind Rule 14a-8,²³ ICAN does not propose a cross-reference to that rule. The proposed text in Appendix A is self-contained, so that the standard survives whatever the Commission decides about Rule 14a-8.

²⁰Instruction to paragraph (a) of Item 5 of Schedule 14A, 17 C.F.R. § 240.14a-101.

²¹*Id.* (“Except in the case of a solicitation subject to this regulation made in opposition to another solicitation subject to this regulation”); see Item 5(b) of Schedule 14A, 17 C.F.R. § 240.14a-101 (disclosure required in a solicitation subject to § 240.14a-12(c)).

²²17 C.F.R. § 240.14a-8(i)(4).

²³Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4, Release No. 34-106383, File No. S7-2026-32, RIN 3235-AN47 (Sept. 16, 2026), 91 Fed. Reg. 59904 (Sept. 21, 2026).

Practice under Rule 14a-8(i)(4) also supplies a workable compliance mechanism. Where an issuer contends that a proposal serves an interest not shared by shareholders generally, the proponent responds by stating that it does not — a representation made subject to the antifraud provisions and tested against the facts if it is challenged. The same approach fits here, and it is far less burdensome than compelled identification. A soliciting person could represent that its investors neither seek nor expect a benefit, or the furtherance of any personal interest, that is not shared by the registrant’s shareholders at large. Where that representation can be made, a list of names adds nothing. Where it cannot, the divergent interest is precisely what a voting shareholder would want to weigh, and disclosure follows.

A standard framed this way reaches every divergence the Commission might reasonably be concerned about — a competitor of the registrant, a supplier, a creditor, an adversary in litigation, or any other relationship producing a benefit or interest that shareholders at large do not share — without requiring the identification of investors who have none. Measured against it, Interpretations 110.09 and 155.02 do not identify a class of persons whose identities inform a voting decision. They identify a class defined solely by the amount of capital contributed to an entity. A dollar figure is not a proxy for a divergent interest. As the Chairman recently observed, the Commission’s authority to prescribe rules in the public interest “is not plenary, as some glibly assert.”²⁴

4. Interpretation 155.02 Reads Instruction 3(a)(iv) Against Its Structure and Its Drafting History

Instruction 3(a)(iv) to Item 4 of Schedule 14A reaches a person who finances, or joins with another to finance, the solicitation of proxies, and excludes persons who contribute not more than \$500 and who are not otherwise participants.²⁵

The Staff has now read that instruction to reach an investor who did nothing more than buy an interest in a fund. The investor did not finance a solicitation. The investor financed an entity; the entity financed the solicitation. Both the structure of Instruction 3 and the record of its adoption show that this is not what the clause was written to do.

The surrounding subparagraphs. Subparagraphs (iii) and (vi) already reach any committee or group that solicits proxies, every member of such a committee or group, any person — named or not — who acting alone or with others directly or indirectly takes the initiative in organizing, directing, or financing such a committee or group, and any person who solicits proxies.²⁶ The persons who conceive, direct, and run a solicitation are captured without any resort to

²⁴Paul S. Atkins, Chairman, SEC, Remarks at the Society for Corporate Governance Conference, Nashville, Tenn. (July 9, 2026).

²⁵Instruction 3(a)(iv) to Item 4 of Schedule 14A, 17 C.F.R. § 240.14a-101.

²⁶Instruction 3(a)(iii) and (vi) to Item 4 of Schedule 14A, 17 C.F.R. § 240.14a-101.

subparagraph (iv). Reading subparagraph (iv) narrowly leaves no one out. The Staff has itself confirmed as much in the parallel case of an entity created to conduct a solicitation, which it treats as a participant under subparagraph (vi).²⁷

Subparagraph (v) is more telling still. It reaches a person who lends money or furnishes credit, or enters into other arrangements, pursuant to a contract or understanding with a participant, for the purpose of financing or otherwise inducing the purchase, sale, holding, or voting of the registrant's securities — and it expressly excludes a bank, broker, or dealer who does so in the ordinary course of business and is not otherwise a participant.²⁸ The Commission thus already determined, within this very instruction, that not everyone who supplies capital in connection with a solicitation is a participant, and wrote a carve-out for the passive commercial supplier of that capital. ICAN asks for the analogous treatment of the passive investor.

Subparagraph (v) also requires both a purpose and a contract or understanding with a participant. Subparagraph (iv), as the Staff now reads it, requires neither: an investor becomes a participant by contributing money, without any relationship to the solicitation, any intent respecting it, or any ability to affect it. The residual clause has been construed to sweep further than the specific clause immediately following it. That is not how an instruction of this kind is ordinarily read.

The 1956 rulemaking. The participant definition and its \$500 exception were adopted in the Commission's proxy contest amendments of January 1956.²⁹ The drafting record contains two facts that an interpretive question and answer had no occasion to consider, and they point the same way.

First, the \$500 exception did not appear in the Commission's August 1955 proposal. The proposed definition contained no de minimis carve-out at all; its only exclusions were for banks, brokers, and dealers acting in the ordinary course, for persons retained to do no more than request security holders to execute a proxy, and for attorneys, accountants, and advertising, public relations, or financial advisers.³⁰ The \$500 exception was added before adoption. It was deliberate relief for small contributors. Interpretation 155.02 turns that relief into the mechanism by which small contributors are identified.

Second, the proposed definition would have reached a person who finances or joins with another to finance the solicitation of proxies *or the acquisition of securities in connection with a*

²⁷Division of Corporation Finance, Corporation Finance Interpretations, Proxy Rules and Schedules 14A/14C, Question 155.01 (May 11, 2018) (a subsidiary created by a parent for the purpose of engaging in a proxy solicitation is a participant under Instruction 3(a)(vi)).

²⁸Instruction 3(a)(v) to Item 4 of Schedule 14A, 17 C.F.R. § 240.14a-101.

²⁹Adoption of Amendments to Proxy Rules, Exchange Act Release No. 5276 (Jan. 17, 1956), 21 Fed. Reg. 577 (Jan. 26, 1956) (adopting Rule X-14A-11(b)(4)).

³⁰Proposed Amendment of Proxy Rules, Exchange Act Release No. 5212 (Aug. 23, 1955) (proposed definition of "Participant or Participant in a Solicitation" to be added to Rule X-14A-1).

solicitation.³¹ The italicized language is absent from the definition the Commission adopted five months later. In the same rulemaking, the Commission both dropped the clause that would have reached the financing of securities acquisitions and added the exception for small contributors. Interpretation 155.02 reaches investors precisely because their capital was used by an entity to acquire securities — the object of language the Commission proposed and did not carry forward.

The contemporaneous explanation. Commissioner Orrick described the new rules to the Securities Regulation Round Table of the Association of American Law Schools weeks before adoption. He explained that the term participant covers, in addition to the issuer, its directors, and nominees, “persons and groups primarily engaged in, and responsible for, the conduct of the proxy solicitation,” and that those included are persons “taking the initiative to organize a stockholders’ committee or contributing more than \$500 to the committee, or lending money or furnishing credit for the purpose of financing or otherwise influencing the contest.”³² The \$500 clause was understood as reaching a contribution *to the soliciting committee* — not an investment in an entity that buys stock. Commissioner Orrick explained the purpose as well: where persons seek to be appointed fiduciaries of the property interests of security holders, conflicts of interest should be identified and exposed.³³ A passive investor seeks no such appointment.

The figure has not moved. The \$500 threshold has not been adjusted since 1956. In current dollars it exceeds \$6,000.³⁴ Whatever the Commission meant it to screen out seventy years ago, it screens out almost no one today. The clause has been relocated since — when the Commission rescinded Rule 14a-11 in 1999, the participant definition traveled into Instruction 3 to Item 4 of Schedule 14A,³⁵ and the 2021 universal proxy amendments revised Instruction 3(a)(i) and (ii) while leaving subparagraph (iv) untouched.³⁶ The Commission has had occasion to look at this instruction and has never revisited the \$500 figure or the class of persons it was designed to capture.

³¹*Id.* (emphasis added); *compare* Release No. 5276, *supra* note 29, 21 Fed. Reg. at 579 (adopted Rule X-14A-11(b)(4), omitting the quoted phrase).

³²Andrew Downey Orrick, Commissioner, SEC, The Revised Proxy Rules of the Securities and Exchange Commission, Address at the Securities Regulation Round Table Meeting of the Association of American Law Schools, Chicago, Ill. (Dec. 29, 1955), at 4.

³³*Id.* at 5.

³⁴\$500 in January 1956 is equivalent to more than \$6,000 in 2026 dollars. Applying the Consumer Price Index for All Urban Consumers (CPI-U, U.S. city average, all items, 1982–84 = 100), the January 1956 index value of 26.8 and the August 2026 index value of 334.980 yield approximately \$6,250. *See* Bureau of Labor Statistics, U.S. Dep’t of Labor, Consumer Price Index — August 2026 (2026).

³⁵Release No. 34-42055, *supra* note 18, 64 Fed. Reg. at 61414 n.68 (rescinding Exchange Act Rule 14a-11); *see* Instruction 3 to Item 4 of Schedule 14A, 17 C.F.R. § 240.14a-101.

³⁶Universal Proxy, Release No. 34-93596 (Nov. 17, 2021), amendatory instruction 9.a (revising Instruction 3(a)(i) and (ii) to Item 4 of Schedule 14A).

5. Interpretations 110.09 and 110.10 Accomplish by Interpretation What the Commission Proposed for Comment and Did Not Adopt

Interpretation 110.09 does not rest on Instruction 3(a)(iv). It rests on Item 3 of Schedule 13D, which provides that where any part of the purchase price is represented by funds obtained for the purpose of acquiring, holding, trading, or voting the securities, the filer must describe the transaction and name the parties to it.³⁷ Interpretation 110.10 supplies the necessary second step, providing that General Instruction C does not limit the information required by Items 2 through 6 as to the reporting person itself.³⁸ The two work together, and the question they present has a long and specific regulatory history.

A court addressed this reading and rejected it. In *Hubco, Inc. v. Rappaport*, the district court held that a Schedule 13D filer was not required to identify the limited partners of the partnership through which shares had been acquired. General Instruction C, the court held, “requiring information only from the general partner in a limited partnership, controls over the more general instruction in Item 3.”³⁹ The plaintiffs in that case advanced the precise distinction the Staff now draws — that Instruction C governs only limited partnerships “which were not specifically organized for the purpose of acquiring the issuer’s securities.” The court declined to adopt it, noting that the plaintiffs cited no authority for the proposition.⁴⁰ *Hubco* was decided in 1985 and has not been overruled.

The Commission proposed to change that result, and took comment on how. In March 1989, the Commission published for comment a proposal titled *Disclosure of Equity Participants in Control Transactions*.⁴¹ It observed that limited partnerships and similar closely held entities had become a common means of raising capital to acquire corporate control, and that under the existing framework the acquiring entity, rather than the persons actually financing and benefiting from the transaction, bore the disclosure obligation. It stated plainly that the items to the schedules “do not require disclosure concerning substantial equity participants, as such, because the current regulations elicit disclosure only from persons acting in an express or de facto control relationship with the acquiring entity.”⁴² That is a Commission statement, on the record, that the schedules as written do not reach the persons Interpretation 110.09 now reaches.

The Commission was not speaking only of tender offers. It identified the same issue in proxy contests, citing a contest in which the identity of the limited partners financing the effort became

³⁷Item 3 of Schedule 13D, 17 C.F.R. § 240.13d-101.

³⁸General Instruction C to Schedule 13D, 17 C.F.R. § 240.13d-101.

³⁹*Hubco, Inc. v. Rappaport*, 628 F. Supp. 345, 357–58 (D.N.J. 1985).

⁴⁰*Id.* at 358.

⁴¹Disclosure of Equity Participants in Control Transactions, Exchange Act Release No. 26599, File No. S7-9-89, 54 Fed. Reg. 10360 (Mar. 13, 1989).

⁴²*Id.* at 10362.

a central issue, and it proposed to conform Instruction 2 to Schedule 14B — the schedule then governing participant disclosure — to the revised Instruction C.⁴³

The proposal would have required disclosure concerning any person who contributed more than ten percent of the equity capital of the filing person, or who had the right to receive more than ten percent of its profits or assets upon liquidation or dissolution, with interests aggregated so that capital contributed through a series of stacked entities could not escape the threshold.⁴⁴ The Commission asked commenters whether ten percent was the appropriate level, “or whether a lower or higher threshold, e.g., 5 percent, 15 percent, or 20 percent, should apply,” and observed that disclosure might sensibly be limited to a specified number of the filing entity’s largest participants.⁴⁵

The Commission did not adopt it. General Instruction C reads today as it read in 1985. It identifies each partner of a general partnership, each general partner or person functioning as a general partner of a limited partnership, each member of a syndicate or group, each person controlling such a partner or member, and, for corporations, executive officers, directors, and controlling persons. It says nothing about equity participants.⁴⁶

The consequence is straightforward. The Commission considered whether Schedule 13D should reach the persons who supply equity capital to an acquiring vehicle. It published a proposal, invited comment, and asked how high the threshold should be. It then declined to adopt the amendment. Thirty-seven years later, the Staff has reached the same result by interpretation — and has gone considerably further than the Commission ever proposed, because Interpretation 110.09 contains no threshold at all. An investor who contributes one percent of an entity’s capital, or one-tenth of one percent, is named. The Commission asked in 1989 whether ten percent was too low a bar for public identification. The Staff has now answered a question the Commission left open, in the direction the Commission did not take, without notice, comment, or a Commission vote.

ICAN does not suggest in this petition that the Commission lacks authority to require this disclosure. Whether or not the Commission has that authority, it must proceed by way of rulemaking, as it once proposed to do. It has not done so, and the choice not to do so was a deliberate one, made after the Commission had put the question to the public.

⁴³*Id.* at 10361–62.

⁴⁴*Id.* at 10363.

⁴⁵*Id.*

⁴⁶General Instruction C to Schedule 13D, 17 C.F.R. § 240.13d-101. The proposed revisions to General Instruction C were not adopted. *See also* SEC, Annual Report 1989, at 23 (describing the equity-participant revisions as proposed).

Part III — The Commission, Not the Staff, Should Decide These Questions

6. These Are Questions for the Commission, Not for a Staff Interpretation

On July 9, 2026 — the day the Interpretations were published — the Chairman told the Society for Corporate Governance that “[g]overnment agencies may not add to their powers by adverse possession; longevity is not a substitute for legal authority.”⁴⁷ ICAN agrees, and the principle applies with particular force where an instruction adopted in 1956 and a schedule instruction left unamended in 1989 are read to reach a class of persons neither has been understood to cover.

Everything in the preceding sections concerns policy judgments — what disclosure is for, where a threshold should sit, whether a rule’s incentives are perverse, how an obligation should be tailored to a constitutional constraint. Those are the questions notice and comment exists to answer. In 1989, on materially the same question, the Commission answered them that way: it published a proposal, explained its reasoning, proposed a threshold, and asked the public whether the threshold was right. Here the same ground was covered in a question and answer published without a Commission vote, without economic analysis, and without a comment file.

The contrast with the Commission’s own current practice is stark. In September 2026 the Commission proposed to rescind Rule 14a-8, to amend Rule 14a-4, and to modernize the proxy solicitation rules — each through a proposing release, with economic analysis and a public comment period.⁴⁸ The Commission is proceeding by rulemaking on the shareholder franchise. In the same year and within the same body of rules, the Staff has extended a disclosure obligation to a class of persons the Commission never reached, by a means that affords no one an opportunity to be heard.

Nor is the answer that these are merely Staff views that bind no one. The Comptroller General has rejected that characterization in this precise context, concluding that a Staff-issued bulletin was an agency statement notwithstanding that it was not held out as representing the full Commission.⁴⁹ A federal court has held that the Commission violated the Administrative Procedure Act through a Division of Corporation Finance statement concerning the proxy rules.⁵⁰ Members of this Commission have made the same observation about interpretations of this kind, including in the proxy context specifically.⁵¹ Market participants structure their filings around these

⁴⁷Atkins, *supra* note 24.

⁴⁸*See supra* notes 6 and 23.

⁴⁹Securities and Exchange Commission — Applicability of the Congressional Review Act to Staff Accounting Bulletin No. 121, B-334540 (Comp. Gen. Oct. 31, 2023).

⁵⁰*Nat’l Ass’n of Mfrs. v. SEC*, No. 7:21-cv-183, 2022 WL 16727731 (W.D. Tex. Sept. 28, 2022) (holding that the Commission violated the Administrative Procedure Act when the Division of Corporation Finance announced that it would not recommend enforcement of the 2020 proxy voting advice rules).

⁵¹*See* Hester M. Peirce & Elad L. Roisman, Commissioners, SEC, Response to Chair Gensler’s and the Division of Corporation Finance’s Statements Regarding the Application of the Proxy Rules to Proxy Voting Advice (June 1,

Interpretations, and Staff comments follow when filings depart from them. It is also worth noting that the Interpretations bearing on the proxy rules and on beneficial ownership carry no disclaimer of Commission endorsement, though the Staff includes such a disclaimer in other bodies of interpretations it maintains.⁵² Whatever they are called, they operate as rules.

ICAN recognizes that Rule 192(b), like Section 553(b)(A) of the Administrative Procedure Act, exempts interpretive rules from notice and comment, and that an agency may revise a genuine interpretation without it.⁵³ That exemption does not reach these Interpretations. It belongs to the Commission, and a Staff position no Commission vote has adopted is not the Commission's authoritative interpretation.⁵⁴ And an interpretation is exempt only if it construes what a rule already requires. The Commission told the public in 1989 that Schedule 13D as written did not elicit disclosure about equity participants, and proposed an amendment to change that.⁵⁵ A reading that produces the amendment's result without the amendment does not interpret the rule. It supplies the amendment.

The Commission need not agree with ICAN on any substantive point in this petition to agree with this one. If the position in the Interpretations is correct, it will survive notice and comment. If it is not, the Commission will have learned so before it becomes settled market practice.

Conclusion

The Commission's disclosure framework rests on the premise that investors receive the information they need and are then trusted to decide for themselves. The Interpretations depart from that premise in two directions at once. They give investors less credit than they deserve, by treating a passive commitment of capital as participation in a solicitation. And they give the

2021); Hester M. Peirce & Elad L. Roisman, Commissioners, SEC, Statement on Shareholder Proposals (Nov. 3, 2021).

⁵²*Compare* Division of Corporation Finance, Corporation Finance Interpretations, Regulation Crowdfunding (introductory note stating that the interpretations are not rules, regulations, or statements of the Commission, that the Commission has neither approved nor disapproved them, and that they are not binding), *with* Division of Corporation Finance, Corporation Finance Interpretations, Proxy Rules and Schedules 14A/14C, *and id.*, Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting (containing no such statement). The interpretations were originally compiled by the Office of Chief Counsel as an internal telephone interpretations manual, published in 1997 as the Manual of Publicly Available Telephone Interpretations, renamed Compliance and Disclosure Interpretations in 2008, and renamed Corporation Finance Interpretations in March 2026.

⁵³17 C.F.R. § 201.192(b); 5 U.S.C. § 553(b)(A); *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 100–01 (2015). The Court in *Perez* declined to address the contention that the interpretation at issue there should in fact be classified as a legislative rule. *Id.* at 107.

⁵⁴*Cf. Kisor v. Wilkie*, 588 U.S. 558, 577 (2019) (an agency interpretation must be the agency's "authoritative" or "official position," and must "emanate from those actors, using those vehicles, understood to make authoritative policy in the relevant context").

⁵⁵*See supra* note 42 and accompanying text.

disclosure regime more reach than its purpose supports, by compelling the publication of names that convey nothing a voting shareholder could use.

For the foregoing reasons, ICAN respectfully requests the relief described at the outset of this petition. We would be pleased to answer any questions the Commission or its Staff may have, and we appreciate the opportunity to present our views.

Respectfully submitted,

/s/ Nicolas Morgan

Nicolas Morgan

President

Investor Choice Advocates Network

cc: Hon. Paul S. Atkins, Chairman
Hon. Hester M. Peirce, Commissioner
Hon. Mark T. Uyeda, Commissioner
James J. Moloney, Director, Division of Corporation Finance

Appendix A — Text of Proposed Amendments

Set forth below is the text of the amendments described in requests (1) and (2), furnished pursuant to Rule 192(a). Additions are *italicized*; deletions are shown in brackets.

A. Amendment to Instruction 3(a)(iv) to Item 4 of Schedule 14A (17 C.F.R. § 240.14a-101)

Instruction 3. (a) * * *

(iv) Any person who finances or joins with another to finance the solicitation of proxies, [except persons who contribute not more than \$500 and who are not otherwise participants] *except that a person who supplies capital to an entity that engages in a solicitation is not a participant by reason of supplying that capital unless (A) that person supplies more than ten percent of the aggregate amount expended or committed to be expended in furtherance of the solicitation, or (B) that person's investment is designed to result in a benefit to that person, or to further a personal interest of that person, which is not shared by the other shareholders at large;*

Instruction to paragraph (a)(iv). A soliciting person may establish that clause (B) of paragraph (a)(iv) does not apply with respect to persons who supply capital to an entity that engages in the solicitation by including in its proxy statement a statement that, to the knowledge of the soliciting person after reasonable inquiry, no such person's investment is designed to result in a benefit to that person, or to further a personal interest of that person, which is not shared by the other shareholders at large. A soliciting person that includes such a statement is not required to identify those persons. This instruction does not limit the obligation to disclose any person who is a participant on any other basis set forth in this Instruction 3.

B. New Rule 14a-22 — Confidential Treatment of the Identity of Certain Persons (17 C.F.R. § 240.14a-22)

(a) Any person whose identity would otherwise be required to be disclosed in a filing under this Regulation 14A, or in a statement filed pursuant to § 240.13d-101, may apply to the Commission for confidential treatment of that identity.

(b) An application under paragraph (a) shall set forth the facts supporting a reasonable probability that disclosure of the applicant's identity would subject the applicant, or persons associated with the applicant, to threats, harassment, economic reprisal, or other manifestations of hostility. The application shall be accompanied by the information for which confidential treatment is sought, which shall be furnished to the Commission and shall not be made public pending final disposition of the application.

(c) The Commission shall grant the application if it finds that the applicant has made the showing described in paragraph (b) and that the information withheld is not necessary for the protection of investors. Information as to which an application is granted shall be withheld from public disclosure for the period specified in the Commission's order.

(d) Where a determination under this section is made pursuant to delegated authority, an applicant whose application is denied in whole or in part may seek Commission review of that determination in accordance with § 201.430 and § 201.431 of this chapter.

Note on scope. Requests (3) and (4) concern the withdrawal of the Interpretations and the adoption of a policy governing the publication of Staff interpretations. Neither involves the issuance, amendment, or repeal of a rule of general application, and no amendatory text is furnished for them. Should the Commission conclude that request (4) is more appropriately implemented by rule, ICAN would be pleased to submit proposed text.