

SEC Climate Action 100+ Report Flags Group Formation and “Passive Investor” Status Risks

October 27, 2026

On October 7, 2026, the SEC issued a report on its investigation of certain Climate Action 100+ (CA100) members’ conduct in connection with the 2021 ExxonMobil proxy contest. While the SEC chose not to bring an enforcement action based on its investigation, the report sends a clear warning: coordinated engagement by investors, even through an intermediary, could create a reportable group or cost investors their Schedule 13G eligibility. This memo summarizes the SEC’s concerns and what investors and issuers should do before the 2027 proxy season.

The SEC issued the report under Section 21(a) of the Exchange Act. The report makes no findings of violations and adopts no new rules, so no effective dates or transition periods apply. Because the SEC itself issued it, however, the report carries more weight than staff interpretive guidance and signals how the SEC may approach future investigations. The SEC stressed that its concerns reach all CA100 members that own the relevant securities, and anyone in a similar intermediary-driven organization. Read the full [SEC report](#) (Release No. 34-106611).

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Background

CA100 is an investor-led initiative, started by CalPERS in 2017. It seeks to ensure that the world's largest corporate greenhouse gas emitters improve climate governance, reduce emissions, and strengthen climate-related financial disclosures. It launched with 225 institutional investors holding more than \$26 trillion in assets under management and is coordinated by five investor networks. For companies on its focus list, CA100 designates "lead investors" to engage with management and sponsor shareholder proposals. It also "flags" votes it considers important and encourages members to support them.

ExxonMobil has been a CA100 focus since the organization's founding, and CA100 flagged a number of climate-related shareholder proposals at ExxonMobil for member support. In 2019, ExxonMobil obtained SEC staff no-action relief to exclude an emissions-target proposal. CA100 participants then began developing a multi-prong "board refresh" strategy that contemplated recruiting an outside activist to replace ExxonMobil directors. That strategy converged with an activist investor's campaign to elect four dissident directors at ExxonMobil's May 2021 annual meeting. Before the meeting, CA100 changed its procedures to allow flagging of director elections to its members for the first time, then flagged the ExxonMobil director vote. According to the report, this change was motivated by a desire to increase public pressure on major institutional investors to support the dissident slate of directors, three of whom were ultimately elected. The report also describes a sustained pressure campaign on large asset managers, including media benchmarking of their proxy votes, client pressure (including a large client's withdrawal of approximately \$25 billion from one asset manager), and funder-imposed performance indicators tied to aligning asset managers' votes with CA100 objectives.

The SEC's report examines that coordinated effort. It asks whether CA100 members used the organization to coordinate their votes and, more broadly, when similar engagement can create a reportable Schedule 13D

group or jeopardize Schedule 13G eligibility. The report describes communications between certain asset managers and a CA100 investor network about ExxonMobil votes. But the investigation did not develop evidence that those asset managers agreed to vote proxies in a particular manner or shared their proxy voting intentions with investors or others associated with CA100. The report identifies circumstances that raise concerns about group formation, without finding that a group actually formed.

When Does Coordinated Engagement Create a Reportable Group?

The report confirms the SEC's view that an informal or implied understanding or arrangement, and even "acting with a common purpose in the holding and voting of securities," can result in shareholders forming a "group" under Section 13 of the Exchange Act, and that group formation may be shown by circumstantial evidence based on the totality of the circumstances. On the other hand, the SEC confirmed that parallel conduct arising from independent decision-making, ordinary-course commercial transactions negotiated at arm's length or a conversation with an activist seeking support, without additional coordinated conduct, would not, on its own, result in a finding that shareholders have formed a "group."

The SEC pointed to specific practices by CA100 and certain members that raise serious group-formation concerns:

- Designating "lead investors" for a target issuer to sponsor shareholder proposals and votes, in an effort to coordinate voting toward a common objective.
- Implementing a "flagging" protocol to mark proposals and director elections as important and prompt members to vote for them.
- Pursuing negative publicity and coordinated client engagement to pressure members whose votes departed from flagged positions.

- Coordinating, including through intermediaries, around common objectives, such as organized engagement efforts, agreed-upon evaluative frameworks, and harmonized voting decisions on specific matters.

The report also notes two risks of coordinated funding among investors:

- *Scheme to evade*: investors who fund an activist through an intermediary to disguise their coordination and efforts to influence control of a specific issuer could face concerns under the “scheme to evade” provision of Rule 13d-3(b). An arrangement deemed a “scheme to evade” the reporting requirements of Section 13(d) may result in the shares held by the intermediary being attributed to the contributing investors (or vice versa).
- *Proxy participant status*: an investor whose contributions exceed \$500 and are channeled through an intermediary to support a proxy solicitation may become a “participant” in the solicitation that must be named under Item 4 of Schedule 14A, and failure to identify the contributor may violate Section 14(a). Notably, the report flagged that one institutional investor paid unrestricted annual membership dues of \$14,375 to one of CA100’s supporting investor networks, suggesting that even routine membership dues could raise this issue if used to fund a solicitation. This is consistent with the SEC staff’s [July 2026 interpretations](#) requiring investors in single-issuer activist vehicles to be named in Schedule 13D and treated as Schedule 14A participants.

The SEC’s [2023 guidance related to group formation](#) clarified that shareholders do not form a group merely by exchanging views, jointly submitting a non-binding shareholder proposal, or talking with an activist. The report goes further in several respects by clarifying that:

- Investors can form a group through an intermediary, even if they never coordinate with one another directly.

- An organization’s flagging of votes and pressure on members who do not support them may serve as circumstantial evidence of an agreement among its members.
- A member’s disclaimer of group status is not conclusive. Limits on participation help only if they are adequate and the member actually follows them.
- Joining an organization ordinarily does not, by itself, create a group, but membership combined with voting commitments or engagement with specific issuers may do so.
- Trade associations or public advocacy groups that do not pressure specific issuers or make control-related proposals typically do not raise similar group concerns.

Passive or Active? When Coalition Activity Puts Schedule 13G Eligibility at Risk

Even if no group is formed by coordinated activity among investors, an investor’s own conduct can turn it from passive to active in the SEC’s eyes. The report warns that coalition activity can show a purpose or effect of changing or influencing control. That would jeopardize Schedule 13G eligibility for investors that file as “qualified institutional investors” or “passive investors.” Each such filer bears this risk individually, whether or not it belongs to a group.

The report follows SEC staff guidance from [February 2025](#) and [September 2026](#). That guidance preserves room for ordinary-course shareholder engagement but stresses that the context and purpose of engagement matter. In particular, the September 2026 guidance confirms that the following do not, by themselves, jeopardize Schedule 13G eligibility: issuer-initiated discussions about voting decisions, discussions with persons engaged in proxy solicitations, and requests to clarify an issuer’s disclosures.

The report offers the SEC's view on the following activities:

Activity	SEC's View
Voting in favor of insurgent candidates	Without more, typically compatible with passive investor status
Nominating board candidates	Typically incompatible with passive investor status
Joining an organization with a stated board-refresh agenda	Together with commitments and actions supporting the organization's objectives, may show a purpose or effect of changing or influencing control of the issuer
Membership in an organization targeting specific issuers for management or policy change	Together with commitments and actions supporting the organization's objectives, may show a purpose or effect of changing or influencing control of the issuer
Exchanging ideas with the issuer's management or with other investors	Without more, typically compatible with passive investor status
Explaining to the issuer's management or other investors the reasoning for a voting decision on a particular matter	Without more, typically compatible with passive investor status
Coordinated engagement and collective signaling aimed at altering the composition of an issuer's board or policies	May fall outside the ordinary-course engagement that Schedule 13G permits
Communications that seek to change or influence issuer management or policy, rather than simply exchange views	May fall outside the ordinary-course engagement that Schedule 13G permits

Consistent with prior SEC guidance, the report appears to draw a line between two kinds of conduct. On one side: exchanging views or explaining voting decisions. On the other: pressuring an issuer to make specific changes or coordinating efforts to influence issuer management or policy.

Finally, the report notes that losing passive status affects more than which form an investor files under

Section 13. For qualified institutional investors holding more than 10%, losing eligibility to file on a Schedule 13G may also have Section 16 consequences, including potential exposure to additional reporting obligations and short-swing profit disgorgement under Section 16(b) of the Exchange Act.

Practical Takeaways

Although the report focuses on climate-related engagement and a contested director election, its implications reach further. Investor coalitions focused on corporate governance, executive compensation, or other issuer-specific policy objectives may raise similar concerns if they coordinate votes or seek to influence issuer management or policies. What matters is not the initiative's subject matter, but the organization's activities and its members' commitments and conduct.

For investors, especially members of coalition-style organizations:

- Understand that ordinary-course engagement with issuers, especially when initiated by the issuer, should not, standing alone, result in group formation or the loss of passive investor status.
- Document internal limits on engagement and enforce them. A limit that members ignore will not support a disclaimer of group status.
- Separate ordinary-course dialogue with management from coordinated conduct tied to an organization's control-related agenda, especially around board nominations and director elections.
- If you manage an index fund, ask whether joining a coordinated initiative unrelated to the fund's benchmark fits the "ordinary course of business" requirement for Schedule 13G eligibility.
- Review client mandates. The report highlights asset owners that built CA100 into their management contracts and used asset withdrawals as leverage. Assess client-driven stewardship commitments for group and Schedule 13G implications.
- Confirm that coalitions cannot use your membership dues and other payments to fund proxy solicitations, to limit Schedule 14A participant risk.
- Expect continued SEC scrutiny of intermediary-driven engagement models in the 2027 proxy season and beyond.

For issuers and their counsel:

- Continued, ordinary-course engagement with investors, especially when initiated by the issuer, should not prevent or discourage investors from sharing their views on a particular matter or policy.
- Scrutinize whether an investor's engagement reflects a purpose or effect of changing or influencing control. Even absent Schedule 13D group formation, coordinated efforts to pressure management to adopt specific changes may jeopardize an investor's Schedule 13G eligibility and provide issuers with a basis to question whether Schedule 13D disclosure is required.
- Watch for coordinated voting through an intermediary ahead of a contested vote. Paired with signs such as negative media pressure on members who do not align, it can point to group formation and provide issuers with a basis on which to scrutinize or challenge the activity of insurgent investors and their supporters.
- In proxy contests, watch for funding that flows into proxy solicitations through coordinating organizations or single-issuer vehicles. It may trigger participant disclosure obligations under Schedule 14A and investor-identity disclosure under Item 3 of Schedule 13D. It may also give issuers a basis to scrutinize or challenge insurgent investors.

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