

SEC Report on Climate Action 100+ Signals Broader Scrutiny of Coordinated Shareholder Voting

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On October 7, 2026, the Securities and Exchange Commission (SEC) issued a report of investigation under Section 21(a) of the Securities Exchange Act of 1934 addressing the activities of Climate Action 100+ (CA100) and certain of its members in connection with the 2021 contested director election at ExxonMobil.

The SEC determined not to pursue an enforcement action based on the conduct known to it at this time and made no findings of violations. The report is nevertheless a significant warning to institutional investors and other shareholders that coordinated engagement, including voting activity, even if organized through an intermediary, may implicate beneficial ownership reporting requirements under Sections 13(d) and 13(g).

The report also comes amid broader regulatory pressure on coordinated shareholder voting and the proxy voting ecosystem. One important question to watch is whether the SEC applies similar theories to proxy advisory firms, particularly given the White House's December 2025 executive order expressly directing the SEC to analyze whether proxy advisers may serve as vehicles through which investment advisers coordinate their voting decisions and form a "group" under Sections 13(d) and 13(g). That question is especially timely given the SEC's ongoing subpoena-enforcement action against ISS seeking data relating to its proxy recommendations and votes.

Key takeaways

- **No enforcement action, but a clear warning.** The SEC's investigation raised serious concerns, and the SEC used the report to provide guidance for investors participating in similar organizations. Coordinated action prompted by an intermediary's pressure on members to align regarding the acquisition, holding, disposition or voting of securities may provide circumstantial evidence of an agreement or understanding sufficient to create a "group" as determined under Sections 13(d)(3) and 13(g)(3).
- **Disclaimers alone are not enough.** Investors may reserve independent voting discretion and disclaim "group" status, but the SEC emphasized that actual conduct controls. At the same time, parallel voting, ordinary-course communications, independent voting decisions and passive receipt of an activist solicitation do not, standing alone, establish a "group."
- **Schedule 13G eligibility presents a separate risk.** Even if investors have not formed a "group," a qualified institutional investor or passive investor holding more than 5% may lose eligibility to report on Schedule 13G if its activities have the purpose or effect of changing or influencing control of the issuer. The report suggests that this analysis can extend beyond a director contest to coordinated efforts targeting specific management or policy outcomes.
- **Proxy advisers are a natural area to watch.** The report repeatedly focuses on intermediaries that organize investors around shared objectives and voting outcomes. That framework closely tracks the December 2025 executive order, which specifically directed the SEC to consider whether a proxy adviser can facilitate coordination among investment advisers sufficient to create a "group" as determined under Sections 13(d)(3) and 13(g)(3).

What happened at ExxonMobil?

CA100 is an investor coalition organized around climate-related engagement with designated public companies. According to the report, CA100 identified focus companies, designated lead investors to engage with those companies, and developed a process for "flagging" shareholder proposals – and, ultimately, director elections for member support.

ExxonMobil became a particular focus. Following disputes over climate-related shareholder proposals, CA100 participants developed a strategy that contemplated a "board refresh." In 2021, Engine No. 1 launched a proxy

contest seeking to elect four directors to ExxonMobil's board. CA100 subsequently changed its procedures to permit the flagging of director elections and flagged the ExxonMobil vote. The SEC examined communications and interactions among CA100, Ceres, Engine No. 1 and institutional investors, including BlackRock and State Street, in considering whether investors' activities reflected coordinated voting rather than independent decision-making.

The SEC ultimately did not bring an enforcement action. But it concluded that coordinated activities of this type may provide circumstantial evidence of an implied agreement to act together, particularly where an intermediary seeks to align investors' votes, applies pressure to investors whose voting does not align with the coalition's objectives or otherwise facilitates collective action directed at a particular issuer.

Two distinct beneficial ownership issues

The report emphasizes that "group" formation and Schedule 13G eligibility are separate inquiries.

First, two or more investors can form a "group" under Sections 13(d)(3) and 13(g)(3) through an express or implied agreement, arrangement, understanding or concerted action concerning the acquisition, holding, disposition or voting of securities. If the "group" collectively beneficially owns more than 5% of a covered class, beneficial ownership reporting obligations may arise. Formation of a "group" is a facts-and-circumstances inquiry and can be established through circumstantial evidence; a written agreement is not required.

Second, a qualified institutional investor or passive investor generally may use Schedule 13G only if the securities were not acquired or held with the purpose or effect of changing or influencing control of the issuer. Participation in an organization focused on replacing directors is an obvious area of concern, but the report goes further: Even absent a board refresh campaign, membership coupled with commitments and actions aimed at specific management or policy outcomes may call Schedule 13G eligibility into question.

The report also flags potential consequences from intermediary funding arrangements. In appropriate circumstances, funding routed through an intermediary could raise issues under Rule 13d-3(b)'s anti-evasion provision, which permits beneficial ownership to be imputed where an arrangement is used to circumvent the reporting requirements of Sections 13(d) or 13(g). The SEC did not find such an arrangement with respect to Engine No. 1, but expressly warned that intermediaries cannot be used to shield coordinated activity and influence from disclosure requirements imposed by the beneficial ownership reporting requirements under Sections 13(d) and 13(g).

Separately, the report flagged whether funding channeled through CA100 or Ceres to support Engine No. 1's solicitation could have made BlackRock or other contributing CA100 members "participants" in that solicitation under Schedule 14A, a status that itself would trigger disclosure obligations under the proxy rules. The report found no evidence of direct funding to CA100 by the asset managers investigated, noting only routine membership dues paid to its investor network, but did not take a view on whether this exposed those members to participant disclosure obligations under Schedule 14A.

What to watch: Could proxy advisers be next?

The report may be most consequential for what comes next. Its focus on organizations that act as hubs for coordinated shareholder engagement overlaps directly with ongoing scrutiny of ISS, Glass Lewis and the broader proxy voting ecosystem.

In December 2025, the White House directed the SEC to analyze specifically whether a proxy adviser can serve as a vehicle through which investment advisers coordinate and augment their voting decisions and thereby form a "group" under Sections 13(d)(3) and 13(g)(3). The executive order also directed the SEC to scrutinize proxy adviser recommendations under the anti-fraud rules, consider additional transparency and registration requirements, and examine investment advisers' reliance on proxy advice.

The report does not address proxy advisers, and ordinary use of a common proxy adviser does not necessarily mean that investors have agreed to act together. Indeed, the SEC's emphasis on actual coordination, rather than mere parallel conduct or independently reached voting decisions, is an important limitation on the theory.

Still, the report gives the SEC a detailed analytical framework for examining intermediary-facilitated voting coordination at a time when the administration has already directed it to investigate substantially the same issue in the proxy adviser context. How, and whether, the SEC connects those dots will be an important development to watch heading into the 2027 proxy season.

For public companies, one practical consequence may be more guarded investor engagement. Only last month, SEC staff issued new corporation finance interpretations (CFIs) clarifying that an investor does not, without more, lose Schedule 13G eligibility by participating in issuer-requested discussions about voting decisions or by discussing its views with a person conducting a proxy solicitation. The report pulls in the other direction by emphasizing the risks of coordinated conduct and intermediary-facilitated engagement. Qualified institutional investors and passive investors may therefore become more cautious about engaging in contested or high-profile situations, even when companies themselves are seeking dialogue, potentially making shareholder outreach less candid and predictable heading into proxy season. Companies should also be alert to the beneficial ownership and proxy solicitation disclosure questions that arise where multiple investors appear to be acting through an intermediary or common coalition.

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