Proskauer

Corp Fin Allows “Auto-Voting” for Retail Shareholders

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On September 15, 2025, the Staff of the Division of Corporation Finance of the Securities and Exchange Commission said that it will not recommend enforcement action if Exxon Mobil Corporation implements its proposed Retail Voting Program. See the no-action letter available here. Exxon’s proposed program would allow its retail shareholders to set standing voting instructions to vote their shares in line with the recommendations of Exxon’s board of directors, without requiring a separate voting election at each annual or special shareholder meeting. Retail investors have voted less frequently in recent years at many companies, and broker discretionary voting has been significantly limited, both of which have made it more difficult for companies with large numbers of retail holders to pass company proposals or to establish a quorum. The concept approved in the no-action letter was first introduced several years ago, then-dubbed “client directed voting,” which, unlike the current approach, would have been available market-wide rather than company-by-company. Neither ISS nor Glass Lewis have publicly announced whether they will have views on Exxon’s proposed program, or whether any views could impact their proxy voting guidelines for institutional investors. Institutional investors have voted with the assistance of such proxy advisory firms as ISS and Glass Lewis for decades, although investors have been under increasing pressure to monitor and customize their voting decisions.

The no-action letter emphasizes the following key features of Exxon’s proposed Retail Voting Program:

- The program would be voluntary and available to all retail investors at no cost, including any registered owner or beneficial owners holding shares in street name.
- The program would not be available to investment advisers registered under the Investment Advisers Act of 1940 exercising voting authority with respect to their clients’ securities.
- Shareholders would have the ability to opt out of the program at any time at no cost and would be able to override the standing vote instruction with respect to any

proposal, also at no cost. Participating shareholders would receive annual reminders of their enrollment in the program and of their standing voting instructions and would continue to receive all proxy materials distributed for the company's shareholder meetings.

- Exxon would publicly disclose the Retail Voting Program under cover of Schedule 14A when it is initiated, as well as any material changes to the program.
- Participating shareholders would have the choice of having their standing voting instructions apply to either all matters voted on by the company's shareholders or all matters except special situations, which include contested director elections and mergers.

In addition to the federal securities law considerations addressed by the no-action letter, companies looking to establish a similar voting program will need to consider the state law requirements applicable in their jurisdiction, including statutory requirements and fiduciary duty considerations. Delaware law in particular provides that proxies may endure for terms exceeding three years.[1] There will also be a number of process items necessary to establish such a program, including obtaining elections from shareholders and coordinating with brokers and their agents that process proxy materials on their behalf, so companies will need to plan well in advance of a meeting where they would want such an auto-voting program in place.

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[1] See Section 212(b) of the Delaware General Corporation Law.

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