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Shifting from Manual to Automatic: Exxon Mobil's Retail Voting Program Gets SEC Green Light

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On September 15, 2025, the Securities and Exchange Commission (the "SEC") issued a no-action letter granting relief for a "retail voting program" that allows retail shareholders to automatically vote in line with board of director recommendations for annual and special shareholder meetings. Traditional retail investors have historically exhibited low voting participation rates, effectively amplifying the influence of institutional and activist investors who vote at much higher rates. A "retail voting program" could address this participation gap and alter the balance of power in public company proxy voting.

Key Conditions and Requirements

The no-action letter provides that the SEC will not object[1] to the implementation of the retail voting program if it aligns with the conditions and requirements set forth in the incoming letter to the SEC, including the following:

- *Opt-in process.* Participating shareholders may opt-in to the program, without cost, and choose a standing voting instruction for either (1) all matters or (2) all matters except contested director elections or any corporate action that would require shareholder approval under state law or stock exchange rules ("Extraordinary Matters"). The program would be available to all retail shareholders, including registered owners and beneficial owners (via their bank, broker, or plan administrator).

- *Opt-out process*. Participating shareholders must be able to opt-out of the program or change their instruction at any time, without cost.[2]

[1] The no-action letter provides that the SEC will not recommend enforcement action under Rules 14a-4(d)(2) and 14a-4(d)(3), which provide that a proxy may only grant voting authority for the next subsequent meeting.

[2] A program may prevent participating shareholders from opting out with respect to upcoming meetings after the company has filed the related definitive proxy statement, but the participating shareholders must still be able to override the standing voting instruction by delivering a proxy card for the meeting.

- *Reminders*. Participating shareholders must receive reminders of enrollment annually and prior to any meeting involving Extraordinary Matters, including opt-out instructions.

- *Public disclosure*. The company must describe the program and any material changes in proxy materials filed with the SEC, on its website, and in its proxy statement sent to all shareholders.

- *Program mechanics*. Program opt-in/opt-out, voting of shares, and related administrative actions must be facilitated by the company's vote processing agent.

Although the no-action letter grants relief to a specific company, the letter provides regulatory comfort to companies seeking to implement a similar program while preserving the SEC's flexibility for future refinements or formal rulemaking.

Next Steps for Public Companies

Companies interested in implementing a retail voting program should first analyze program viability under state law. Exxon Mobil is somewhat unique in that it is a New Jersey corporation. Exxon Mobil noted in its no-action request that in addition to New Jersey law allowing standing voting instructions that do not expire, Delaware General Corporation Law provides that proxies are valid for up to three years, "unless the proxy provides for a longer period." 8 Del. C. § 212(b).

Assuming state law permits standing voting instructions, companies should then analyze their shareholder base and recent voting patterns to see if a retail voting plan would be beneficial. Exxon Mobil noted in its no-action request that at its most recent annual meeting, 40% of its outstanding shares were held by retail shareholders and that only a quarter of those shares were voted. Thus, for Exxon Mobil, obtaining votes from retail shareholders could produce a significant swing in the results of a contested election or controversial shareholder proposal. Whether other companies would equally benefit from a retail voting program will depend on, among other things, their shareholder base.

Monitoring of investor and proxy advisory firm reactions, judicial challenges, and practical implementation experiences will also be essential for companies seeking to effectively leverage a retail voting program.

Companies interested in adopting a retail voting program for the 2026 proxy season should begin preparations now – particularly those anticipating proposals where enhanced retail participation could prove decisive.

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