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Securities Regulation & Corporate Governance
Update

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SEC Staff Permits Groundbreaking Retail Shareholder Voting Program To Implement Standing Voting Instructions

The Retail Voting Program will be offered to both shareholders of record and beneficial shareholders who own company shares through banks and brokerage firms.

In a significant no-action letter issued on September 15, 2025 to Exxon Mobil Corporation, available [here](#), the staff of the SEC's Division of Corporation Finance (the SEC Staff) concurred that the company can implement a groundbreaking "Retail Voting Program" allowing retail shareholders to provide a standing instruction under which in future annual meetings their shares will be voted on an on-going basis as recommended by the company's board of directors. Although the no-action request was issued to Exxon Mobil, other companies should be able to implement similar programs in reliance on the SEC Staff's concurrence.

The Retail Voting Program will be offered to both shareholders of record and beneficial shareholders who own company shares through banks and brokerage firms. Under the program:

- Shareholders will be provided the ability, in advance of the company filing its proxy statement, to enter into a standing voting instruction agreement pursuant to which their shares will be voted as recommended by the company's board of directors on all matters being voted on. Alternatively, shareholders can elect to vote as recommended by the board on all matters except on contested elections of directors and acquisition, merger, or divestiture transactions that require shareholder approval.

- Shareholders who opt into the company's program will continue to receive the company's proxy materials in the normal course, and will receive reminder notices of their opt-in status and their ability to opt out.
- Once a shareholder has opted into the program, their shares will be voted as recommended by the board on the day that the company files its definitive proxy statement. However, shareholders will have the ability to override that vote by going through the regular proxy voting process for the meeting. The company's proxy materials will also discuss the program and include instructions on how to override the standing voting instruction by voting using the current meeting's proxy materials and how to opt out of the program for future shareholder meetings.
- The program will be offered to all retail shareholders on the same terms, at no cost to the shareholder. However, registered investment advisors who exercise voting authority with respect to their clients' shares will not be eligible to opt into the program.

In its no-action request, Exxon Mobil argued that, given the ability for shareholders to override their standing voting instruction by voting through the regular proxy voting process, the Retail Voting Program should be viewed as not violating SEC proxy rules that limit the duration of proxies to a single annual meeting. Indeed, many retail investors are supportive of their companies but have difficulty voting all of their shares during the relatively compressed proxy season. As Exxon Mobil explained in its request, "enrollment in the program is a safeguard for those who want to ensure that their vote is actually cast in alignment with the Board's recommendations in an efficient manner, but it does not interfere with their rights and ability to vote at shareholder meetings." The SEC Staff concurred that it would not recommend enforcement action if the Retail Voting Program is implemented as described in the no-action request. The Retail Voting Program should also be viewed as consistent with Delaware corporate law, since (regardless of whether the standing voting instruction is viewed as a proxy) Section 212(b) of the Delaware General Corporation Law allows a proxy to have a term of more than 3 years "if the proxy provides for a longer period."

We expect many public companies will find it attractive to implement standing voting instruction programs such as Exxon Mobil's Retail Voting Program, and that variations in such programs may emerge as additional SEC interpretive and no-action guidance is issued. Companies with a large and stable retail shareholder base that have a high percentage of unvoted shares may well find the additional communications entailed in a standing voting instruction program worth the effort and expense. Among other benefits, standing voting instructions may be able to help companies obtain quorum, counterbalance the impact of institutionally held shares that are voted in line with a proxy advisory firm's recommendations, and mitigate the impact of the lack of brokers' discretionary voting on many items.

The Exxon Mobil no-action letter also is significant in showing the extent to which the SEC Staff, under Chairman Atkins, is willing to reconsider whether the SEC's rules are promoting or impairing investors' rights, particularly when technology and standard practices have evolved. In this case, the no-action letter reflects a reasonable and appropriate accommodation to empower retail investors' exercise of their franchise and promote shareholder democracy while maintaining investor protections through disclosures and voting processes.

The following Gibson Dunn lawyers prepared this update: Ronald Mueller, Brian Lane, Lori Zyskowski, Geoffrey Walter, Michael Titera, and Aaron Briggs.

Gibson Dunn's lawyers are available to assist with any questions you may have regarding these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, or any of the following lawyers in the firm's Securities Regulation and Corporate Governance practice group:

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