



ExxonMobil's Game-Changer: SEC Approves Standing Voting Instructions (SVIs) for Retail Investors

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ExxonMobil Corporation (Exxon) recently made headlines as the first U.S. public company to receive a green light from the SEC for a retail voting program based on Standing Voting Instructions (SVIs), officially known as the Exxon Voter Pool. The SEC's "no-action letter" – a document indicating that the SEC staff won't recommend enforcement action to the Commission if the company proceeds in the manner laid out in the no-action request letter submitted to the staff – issued on September 15, 2025 permits Exxon to allow individual investors to provide a standing instruction for their votes to be cast in accordance with the company's board recommendations, which will then be executed for each meeting unless overridden by the shareholder.

HOW EXXON'S STANDING VOTING INSTRUCTION PROGRAM WORKS

Retail shareholders – whether they directly own shares or hold them through a broker – can easily opt in to Exxon's voluntary program. Shareholders are sent written materials that allow them to provide a standing voting instruction at no cost, directing their shares to be voted according to the board's recommendations for all annual and special meetings. Investors can also choose to provide a standing instruction to vote with management on most items, opting out only for extraordinary matters like contested director elections or mergers. This program is offered equally to all retail investors, but is not available for investment advisers voting on behalf of clients.

Once enrolled, a shareholder's standing voting instructions are executed, and their votes are recorded in line with management's recommendations on the day the company files its proxy statement (the document detailing what will be voted on) for each meeting. Participants can override any instructed vote by casting their vote via a proxy card or online portal, and they can opt out of the program at any time without cost. Exxon will send annual reminders with clear opt-out instructions, plus additional notices before meetings involving extraordinary matters, to ensure that shareholders stay informed.

SEC proxy rules typically limit a proxy's (an investor's representative to vote their shares) authority to a single meeting. To navigate this, Exxon secured a no-action letter from the Division of Corporation Finance confirming that Exxon's standing voting instruction structure wouldn't violate these limitations. Exxon successfully argued that because shareholders can continuously revoke or override their instructions, the program doesn't disempower investors or create an unending proxy. The SEC staff's approval suggests that similar programs may be allowed, provided they include comparable investor protections, such as voluntary enrollment, clear disclosures, and periodic reminders.

The program also aligns with state corporate law. New Jersey (the state of Exxon's incorporation) explicitly allows non-expiring standing instructions, and Delaware permits proxies to remain valid beyond one year if specified.

CLOSING THE RETAIL-VOTING GAP

Exxon boasts one of the largest retail shareholder bases among U.S. publicly traded companies, with roughly 40% of its outstanding shares held by individual investors, compared to 15%-30% for most peers. Despite this, only about a quarter of these shares were voted at its last annual meeting. By streamlining the standing voting instruction process, Exxon aims to boost participation and better align votes with management's recommendations. The company frames this initiative as enhancing access to voting, claiming it levels the playing field for small investors who often lack the sophisticated "proxy tools" (such as specialized software and staff) that institutional investors use.

REGULATORY AND MARKET IMPLICATIONS

The SEC's no-action letter effectively opens a path for other companies to adopt Exxon's standing voting instruction model.

Potential benefits for companies include higher voter turnout, more predictable support for management, and reduced susceptibility to short-term activist campaigns. However, companies considering this model must carefully assess several factors:

- State-law compatibility, particularly regarding proxy duration rules and the general rule that a later-dated proxy overrides an earlier proxy.
- Administrative costs of enrollment systems and annual notifications.
- Investor perception: Will this initiative truly enhance governance credibility, or could it erode it?
- Proxy advisor reactions: It is unclear whether, and how, proxy advisors such as ISS and Glass Lewis will react to these programs.

INVESTOR REACTION AND NEXT STEPS

On September 30, shareholder representatives As You Sow and the Interfaith Center for Corporate Responsibility submitted a request to the SEC staff to reconsider and rescind the Exxon no-action letter. The request for reconsideration and rescission claims that the Exxon no-action letter directly contradicts the plain language of Rule 14a-4(d)(2) under the Securities Exchange Act of 1934, which prohibits a proxy from conferring authority to vote "at any annual meeting other than the next annual meeting," and of Rule 14a-4(d)(3), which prohibits a proxy from conferring authority "[t]o vote with respect to more than one meeting."

In addition, the City of Hollywood Police Officers' Retirement System recently filed a proposed class action in the U.S. District Court of New Jersey challenging the retail voting program and alleging breaches of fiduciary duties by the board in connection with the program's adoption.

Exxon's standing voting instruction experiment could mark a significant shift in how retail shareholders engage with public companies. While it is too soon to tell what the level of participation will be and whether there will be adverse consequences in litigation or from institutional investors, public companies, especially those with a substantial retail investor base, should continue to monitor developments and decide whether a retail voting program is right for them.

Winston's Capital Markets and Securities Law Watch will continue to monitor developments and will provide our readers with additional updates as they become available.

For more information, or if you have any questions, please contact the authors of this blog post or your regular Winston contacts.

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[Jeffrey R. Shuman](#)

[Ben D. Smolij](#)

[Matthew Regens](#)

[Vito Vang](#)

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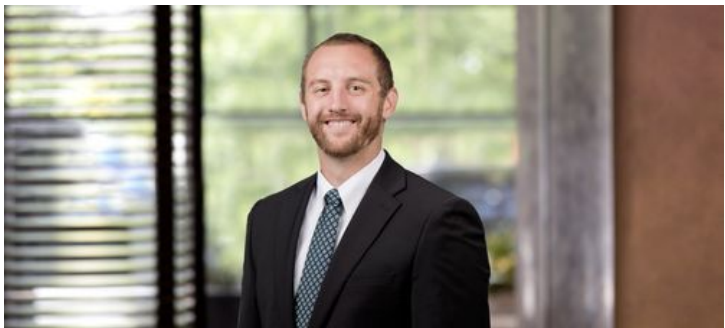
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Vito Vang

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