# the Corporate Governance advisor

January/February 2026 • Volume 34, Number 1

# Exxon's Retail Voting Program: A Path for Delaware Corporations Facing Low Voter Turnout?

***By Robert B. Greco***

In a significant move, the U.S. Securities and Exchange Commission issued a no-action letter advising that it will not recommend enforcement action in respect of Exxon Mobil Corporation's proposed "Retail Voting Program." Exxon's novel Retail Voting Program would be offered to all retail investors at no cost on an opt-in basis, allowing retail investors to grant standing instructions to vote their shares as recommended by Exxon's board of directors on either (i) all matters or (ii) all matters other than contested elections and acquisitions, mergers or divestitures requiring stockholder approval.[1]

Participants would be given the opportunity to freely opt out at any time or override their standing instructions for a particular meeting; they would receive annual reminders of their enrollment; and they would continue to receive all proxy materials.

The development should be welcome news for countless public companies, as many have struggled with low voter turnout among retail investors in recent years, attributable to "rational apathy" and other factors. Although Exxon is a New Jersey corporation, Delaware's enabling General Corporation Law (the "DGCL") permits Delaware corporations to implement similar retail voting programs.

Delaware law does not impose any statutory restrictions on the term of agency relationships in respect of voting shares of a Delaware corporation. On the contrary, Delaware law expressly acknowledges that proxies may, by their terms, endure for a term exceeding three years.[2]

While a retail voting program may not necessarily consist of a traditional proxy given by the record holder of shares, particularly in the case of beneficial owners who participate by way of voting instructions given to a bank, broker or plan administrator,[3] there is no reason to believe Delaware law would view this type of voting agency relationship differently.[4] Indeed, Delaware amended its corporate law to eliminate any temporal limitations on agency or contractual relationships in respect of voting more than 30 years ago.[5]

Of course, any retail voting program must be implemented equitably in accordance with directors' fiduciary duties. In this regard, the equities of a retail voting program based on Exxon's Retail Voting Program may be furthered by its voluntary nature and protective features—being a fully voluntary and no-cost program in which participants may freely opt-out or override their standing instructions at any time and are given full disclosure and annual reminders—as well as the legitimate objectives that may be served by the program's implementation. These objectives include the promotion of retail investor voting and the elimination of time and cost burdens otherwise placed on retail investors in the proxy voting process.[6] Retail voting programs also serve the objective of mitigating the rational apathy and low voter turnout problems facing many corporations, which Delaware law has acknowledged and sought to address in recent years.[7]

## Notes

1. Additional information regarding Exxon's proposed Retail Voting Program is available in Exxon's letter to the SEC seeking no-action relief (hereinafter, "No-Action Request Letter").

2. 8 *Del. C.* § 212(b).

3. *See* No-Action Request Letter, at 3 ("Shareholders participating in the Retail Voting Program would have their voting positions submitted after the Company files the definitive proxy statement with the Commission, but

*Robert B. Greco is a Shareholder of Richards, Layton & Finger, P.A.*

prior to the distribution of the definitive proxy statement to shareholders.").

4. *See Daniel v. Hawkins*, 289 A.3d 631, 647–48 (Del. 2023) (explaining that a proxy constitutes "an agency relationship wherein the beneficial owner-principal appoints a proxy holder-agent as attorney-in-fact with respect to the voting rights of the shares").

5. 69 Del. Laws ch. 263 (1994). "Prior to the 1994 amendments to the General Corporation Law, voting trust agreements and other voting agreements could only be enforced for up to ten years." 1 R. Franklin Balotti & Jesse A. Finkelstein, *The Delaware Law of Corporations & Business Organizations*, § 7.19, at 7-128 n.935 (4th ed. 2025-1 supp.).

6. *See* No-Action Request Letter, at 2.

7. In 2023, these problems prompted amendments to Section 242 of the DGCL reducing the default stockholder vote required for charter amendments changing the authorized number of shares of a class of stock or reclassifying a class of stock to effect a reverse stock split in certain cases. See *2023 Proposed Amendments to the General Corporation Law of the State of Delaware*, Richards, Layton & Finger, P.A. (May 1, 2023), *https://www.rlf.com/2023-proposed-amendments-to-the-general-corporation-law-of-the-state-of-delaware*. The same difficulties contributed to the implementation of a less onerous "votes cast" standard for disinterested stockholder approvals as part of Section 144's newly enacted statutory safe harbors. This "phenomenon" has also been acknowledged by the Delaware courts. *See, e.g.*, *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, 299 A.3d 501, 510 (Del. Ch. 2023) ("Retail investors . . . traditionally have a poor record of attending and voting at meetings. Commentators have described this phenomenon as 'rational apathy.'" (internal citations omitted)).