



September 30, 2025

LEGAL UPDATE

SEC Permits Use of Standing Proxies

On September 15, 2025, the Securities and Exchange Commission (the “SEC”) issued a no-action [letter](#) in response to Exxon Mobil Corporation’s (“Exxon”) [request](#) to implement a “retail shareholder voting program” whereby its retail shareholders would authorize the perpetual voting of their shares in favor of management’s recommendations. Shareholders who opt-in to the voting program would have their shares voted on all matters presented at annual or special meetings of shareholders, with the option to carve-out more significant matters from the standing voting instruction (including contested director elections and corporate actions that require shareholder approval, such as mergers, acquisitions, or divestitures).

The SEC confirmed it would not pursue enforcement action against Exxon if the voting program was implemented, based on the program’s permissibility under the corporate law of New Jersey (Exxon’s state of incorporation), which allows proxies to remain in effect until revoked, and on Exxon’s representations regarding its administration of the proposed program. These representations, as set forth in both Exxon’s no-action request and the SEC’s response, are summarized below:

- The voting program will be available only to retail investors/shareholders;
- The voting program will *not* be available to investment advisers;
- Shareholders will be able to cancel their standing voting instructions or override their voting instructions at any time;
- The ability to opt-in, cancel, or override any standing voting instruction will be at no cost to shareholders;
- Shareholders who have opted-in to the voting program will receive annual reminders of their opt-in status and of their ability to cancel or override their standing voting instructions;
- Shareholders will continue to receive all proxy materials for shareholder meetings and may vote at any time using the proxy materials they received for each meeting, regardless of their opt-in status; and
- Exxon will fully disclose the voting program and ability to opt-in (or out) on its website and in its proxy statements.

The SEC conditioned its no-action response on Exxon’s compliance with the representations, noting that any deviations “may require the [SEC] to reach a different conclusion.”¹ Though not made explicit by the SEC in its no-action letter, Exxon’s request included the statement that it was only seeking relief “with respect to voting by retail shareholders at duly called annual general or special shareholder

¹ “This position is based on the representations made to the [SEC] in your letter. Any different facts or conditions may require the [SEC] to reach a different conclusion.”

meetings and not with respect to any corporate actions that are taken by shareholder written consent.”² The SEC did not comment directly on permissibility under state corporate law.

Takeaways

- The ability to use standing proxies will significantly improve voting turnout and can save companies expense from additional solicitation efforts.
- The implementation of a similar program for shareholder meetings should apply equally to holding companies incorporated in New Jersey, based on Exxon’s argument that the program is permissible under New Jersey corporate law (“No proxy shall be valid for more than 11 months, unless a longer time is expressly provided therein”).³
- Exxon also argued its voting program would be permissible under Delaware corporate law (which provides that proxies are valid for up to three years, “unless the proxy provides for a longer period”)⁴, thus it is likely that Delaware holding companies would also be able to implement a similar program.
- The program may also be permissible in other jurisdictions provided they have similar language governing the use of proxies in its corporate law. (For example, Maryland General Corporate Law provides that “[u]nless a proxy provides otherwise, it is not valid more than 11 months after its date”).⁵
- Proxy advisory service providers’ reaction to the SEC’s no-action letter remains to be seen. As of September 29, neither ISS nor Glass Lewis (the leading proxy advisory firms) has issued a public statement addressing the SEC’s decision.
- Standing proxy programs may draw attention from activist investors who may seek to challenge the programs through the shareholder proposal process, or otherwise.
- Companies interested in pursuing a standing proxy program should confer with their transfer agent on implementation procedures and related administrative considerations.

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² See note 1 on page 2 of Exxon’s no-action request letter.

³ See NJ Rev Stat § 14A:5-19.

⁴ See 8 Del. C. § 212(b).

⁵ See MD Code § 2-507(b)(2).