

SEC Gives Green Light to ExxonMobil's Retail Voting Program — A New Model for Retail Shareholder Participation

by Dan Lyman, Josh Erikson, Cam C. Hoang, David Marx, Christopher L. Doerksen, and Megan J. Penick

1. **Executive Summary** On September 15, 2025, the Division of Corporation Finance ("CorpFin") of the Securities and Exchange Commission ("SEC") issued a no-action response saying it will not recommend enforcement under Exchange Act Rules 14a-4(d)(2) and 14a-4(d)(3) if Exxon Mobil Corporation ("ExxonMobil") implements a retail standing voting instruction program (the "Retail Voting Program") on the facts and representations provided to the staff by ExxonMobil. That relief is narrowly grounded in the representations ExxonMobil made, notably universal availability to retail holders at no cost, exclusion of investment advisers registered under the Investment Advisers Act of 1940 exercising voting authority, annual reminders and clear opt-out and override mechanics, delivery of all proxy materials, and public disclosure of the program. ExxonMobil subsequently adopted the Retail Voting Program and filed the related election materials on September 17, 2025.

The following provides a summary of key features of the Retail Voting Program adopted by ExxonMobil, as well as important considerations for issuers who are looking at adopting such programs.

2. **ExxonMobil Retail Voting Program** Key features of ExxonMobil's Retail Voting Program, as described in the company's solicitation materials and disclosure, include the following:
- Opt-in standing voting instruction.** Retail shareholders may opt in to have their shares automatically voted in future annual (and special, where applicable) meetings in line with the Board's recommendations. Shareholders are offered two SVI choices: (1) vote with Board recommendations on all matters; or (2) vote with Board recommendations on all matters except for contested director elections or M&A transactions that require shareholder approval.
 - Ability to override or opt out at no cost.** Enrollees can override the standing instruction on any specific meeting/proposal by voting through regular proxy materials for that meeting. Holders can also opt out entirely at any time at no cost. If an opt-out is made after the filing of a definitive proxy statement for an upcoming meeting, the opt-out will apply to all future meetings after that meeting, but the holder can change their vote for such meeting by voting directly.
 - Continuing receipt of proxy materials.** Participating shareholders continue to receive all proxy materials for each meeting, and the program does not restrict their ability to vote directly using those materials.
 - Annual reminders and disclosure.** ExxonMobil will send annual reminders of

Related People

- Dan Lyman
- Josh Erikson
- Cam C. Hoang
- David Marx
- Christopher L. Doerksen
- Megan J. Penick

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enrollment and opt-out rights during periods when the company is not soliciting proxies, and will make full disclosure on its investor website and in its proxy statements.

- e. **Universal availability.** The program is available to all shareholders, including beneficial owners, registered shareholders, and participants in company-sponsored equity or retirement plans, but not to registered investment advisers exercising voting authority for clients.

CorpFin's September 15, 2025, no-action response states that, based on the facts and representations in Exxon's incoming letter, CorpFin will not recommend enforcement under Rule 14a-4(d)(2) or Rule 14a-4(d)(3) if ExxonMobil implements the program as described. The staff explicitly tied its position to Exxon's representations and noted it did not reach legal conclusions beyond the narrow request; different facts could change the outcome.

It is important to note that the relief granted by the SEC is fact-specific. CorpFin's conclusion is limited to the representations ExxonMobil made and only to the particular Exchange Act rules cited. Such action does not represent a new SEC rule or broad legal precedent. The staff also reserved the right to reach different conclusions if actual implementation differs from the representations.

- 3. **Practical and Governance Implications** Issuers that are contemplating the adoption of such a program need to consider a broad range of factors, including, among others, recent voting dynamics and shareholder engagement, compliance considerations, and the influence of proxy advisors and institutional investors.

A. Corporate voting dynamics & shareholder engagement

- a. **Retail participation.** The program may increase retail turnout by providing for "automatic" participation by retail holders who historically vote at lower rates than institutions. Increased retail participation can be especially helpful for issuers who have historically struggled with difficulties obtaining required quorums for shareholder meetings, or reaching required approval thresholds (e.g., majority or supermajority of outstanding shares). While the program is intended to automatically vote such shares in accordance with the recommendations of the board of directors, the opt-out and overriding vote features of such program could result in higher retail participation outside of the program. This increased participation could change the electorate mix at meetings and issuers should consider the potential impact on voting outcomes.
- b. **Perception risks.** Some stakeholders (e.g., activists, some institutional investors, proxy advisory firms, etc.) may perceive the program as an effort by management to control shareholder votes, even if legal safeguards exist. The usefulness of a retail voting program depends on the level of participation by retail investors. Therefore, companies should plan investor outreach to educate shareholders on such programs and provide clear messaging explaining the program's pro-participation rationale. Coverage already reflects both supportive and critical views.
- c. **Potential dampening of activist outcomes.** If a material portion of retail shares are enrolled and vote with management recommendations, activist campaigns and close contests could face an additional hurdle. Market commentators have noted

this dynamic and the potential to blunt targeted shareholder activism.

B. Legal/compliance and disclosure considerations

- d. **Strict fidelity to the SEC representations is essential.** Any deviation (e.g., different opt-out mechanics, gating access, fees, or limiting who may enroll) could prompt a different staff reaction and result in enforcement risk. The staff tied its conclusion to specific safeguards and features of ExxonMobil's Retail Voting Program. If an issuer changes or eliminates any such features, no-action relief should be sought for the issuer's program.
- e. **Review applicable state corporate law.** Delaware General Corporation Law permits the giving of a standing voting instruction that does not expire so long as the instruction provides for such extended duration. See 8 Del. C. § 212(b) (proxies valid for up to three years, "unless the proxy provides for a longer period"). Corporations organized in other jurisdictions should confirm that retail voting programs are permissible under their corporate statutes.
- f. **Proxy statement and website disclosure obligations.** Issuers must make clear disclosures in their proxy materials and on their investor relations pages about enrollment mechanics, opt-out/override mechanics, and how votes will be cast.
- g. **Operational issues.** Issuers considering adoption of a retail voting program should consider costs of operating such a program, including, among other things, additional costs associated with the adoption of the program, periodic notifications to shareholders, shareholder outreach, and other administrative costs. Issuers should also ensure that appropriate procedures and controls are in place to ensure the proper operation of the program in accordance with relevant rules and guidance. For example, the timing of opt-outs versus when definitive proxy materials are filed matters. ExxonMobil's materials indicate that an opt-out after a definitive proxy is filed generally applies only to future meetings. Operational rules like this must be clearly communicated and followed.

C. Proxy advisory firms and institutional investors

- h. **Shift in influence.** If retail enrollment becomes widespread, the relative weight of retail votes (voting with management) could reduce the influence of certain institutional blocs or proxy advisor recommendations in some vote tallies, though institutional owners will likely remain dominant in many companies. Expect proxy advisory firms and large institutional holders to monitor developments closely and publish their positions on such programs.

4. Exchange Listing Rules

- a. **Exchange rule frameworks focus on shareholder rights and voting protections.** Neither the NYSE nor Nasdaq rulebooks explicitly prohibit a retail voting program of the sort ExxonMobil adopted. However, listing rules contain provisions concerning voting rights, shareholder approval thresholds, and equal treatment of shareholders that must be respected. Nasdaq's listing rules and interpretive materials reaffirm that shareholder voting rights cannot be disparately reduced or restricted. Issuers should ensure any program does not conflict with those protections and monitor listing rules and interpretive materials as such programs become more widespread.

b. Practical points for listed issuers

- i. **Confirm exchange compliance.** The exchanges have historically scrutinized mechanisms that affect voting processes to ensure fairness. Issuers should consider factors including no discriminatory treatment across holder classes, preserving each shareholder's substantive voting rights, and other considerations.
- ii. **Engagement with legal counsel early.** Engaging appropriate legal counsel is vital to ensuring that a retail voting program complies with regulatory requirements, particularly for companies with exchange-specific governance obligations or where state law issues (e.g., certain M&A votes) intersect with exchange requirements.
- iii. **Monitor future exchange rule filings and guidance.** The corporate governance policy landscape is active. Exchanges and the SEC may update interpretive guidance relating to such programs as adoption becomes widespread and the impacts of such programs begin to be realized.

5. Next Steps for Adopters

- a. **Read ExxonMobil's materials and the SEC staff letter carefully.** Retail voting programs should be modeled carefully on the representations relied on by CorpFin outlined in Section II above (availability, reminders, opt-out/override, continued proxy delivery, no fees, etc.).
- b. **Engage legal counsel early.** Issuers should work closely with legal counsel to confirm compatibility with CorpFin's no action conclusions, exchange rules, and, where applicable, state corporate law implications. Legal counsel should also be involved in preparing disclosures for related SEC filings and website materials to ensure that such materials mirror the safeguards emphasized by CorpFin.
- c. **Design conservative enrollment and operational procedures.** The features and mechanics of retail voting programs should mirror those used by ExxonMobil. Issuers should also coordinate with their transfer agents and other parties involved in the proxy and voting processes to ensure the program operates as represented.
- d. **Coordinate investor outreach.** Issuers should be prepared to address potential criticism of voting programs (e.g., "stacking votes") and explain the program's engagement goals and shareholder protections, noting the benefits of increased shareholder participation. Issuers may consider preparing FAQ materials.

6. Caveats and Regulatory Outlook

- a. **This is staff-level, fact-specific relief, not an SEC rule change.** CorpFin's response is persuasive but its authority is narrowly limited to the facts presented. As with all no-action letters, the staff expressly tied its position to ExxonMobil's representations. Different facts could prompt a different outcome. Corporations should not assume blanket immunity from enforcement simply because ExxonMobil received a no-action response.
- b. **Watch for litigation, additional staff guidance, or policy changes.** Two investment funds have already submitted a joint letter to the SEC asking it to reconsider the no-action relief provided to ExxonMobil. Given the governance sensitivity (and media/political attention), expect commentary, potential shareholder litigation claims if mechanics are defective, and possible follow-on regulatory scrutiny or rulemaking, issuers will need to pay careful attention to developments and work with legal counsel to respond as needed.

7. Bottom Line

The SEC staff's no-action relief provided to ExxonMobil is an important, practical precedent that permits a well-designed retail voting program — but only when implemented in close adherence to the specific protections and disclosures the staff relied upon. Issuers considering adoption of a retail voting program should model mechanics on ExxonMobil's representations, document operational controls, coordinate with legal counsel, and prepare robust disclosure and investor communications to manage legal, governance, and optics risks. Dorsey's capital markets team has the knowledge, experience, and tools to assist companies with evaluating and designing such programs.