

From Persuasion to Enrollment – The ExxonMobil Retail Voting Program

September 30, 2025

On September 15, 2025, the staff of the SEC's Division of Corporation Finance altered the landscape of proxy contests by granting no-action relief to ExxonMobil's retail voting program. This program, which permits retail shareholders to establish standing instructions to vote their shares in accordance with board recommendations, represents the most significant structural innovation in proxy contest mechanics since the adoption of the universal proxy rules. By potentially converting a significant segment of ExxonMobil's shareholder base that often did not bother to vote into a management-aligned voting bloc, the program could create a meaningful obstacle to activists seeking to elect directors or otherwise contest company actions requiring shareholder approval. The SEC staff's indication that the ExxonMobil framework may be used by any public company, without the need for individual no-action relief, creates a pathway for rapid proliferation of these programs, particularly among companies with substantial retail ownership.

Background. Under the program, ExxonMobil's retail shareholders (whether shareholders of record or beneficial owners through banks or brokerage firms) will have the opportunity to provide a standing voting instruction authorizing Exxon to vote their shares in accordance with the recommendations of the company's board of directors. Shareholders will have the ability to decide whether the standing instruction will be applicable to all matters, or to all matters except contested director elections and any extraordinary transactions that require a shareholder vote under applicable law (such as mergers). Shareholders will be able to opt out at any time for future meetings and can override the standing instruction for a particular proposal by voting their shares themselves.

Strategic Implications for Market Participants. For management teams, the program offers a tool to transform latent retail support into active voting power. Companies with historically loyal retail investor bases, particularly those in consumer-facing industries or with strong retail brand recognition, may find this tool especially valuable. The ability to mobilize retail shareholders who have traditionally abstained from voting due to complexity or lack of interest, rather than opposition to management, could prove decisive in close contests. It will also help companies achieve quorums at shareholder

meetings, as well as obtain votes requiring a majority of outstanding shares, such as amendments to the certificate of incorporation.

The program also enables companies to improve defensive positioning during peacetime rather than waiting for an activist threat to materialize. Annual enrollment campaigns, conducted when no threat is visible, can be framed as expanding shareholder participation, potentially avoiding the scrutiny that accompanies mid-contest defensive measures. These programs may also cause companies to encourage increased retail share ownership, including by company employees, as a built-in source of management support.

Activists will need to reconsider campaign economics and timing in light of these programs. It seems unlikely that activists will devote resources to preemptive campaigns aimed at preventing enrollment. Instead, activists may face uphill battles trying to persuade retail shareholders to override their voting instructions, adding cost and complexity to activist campaigns. As a result, the programs may influence which companies are targeted for activism.

Legal Framework and Enforcement Mechanisms. While the Delaware Supreme Court’s 2023 *Coster*¹ decision replaced the strict *Blasius*² “compelling justification” standard with a more flexible reasonableness test for determining whether company actions impermissibly interfere with the shareholder franchise, retail voting programs may provide opportunities for challenge under state corporate law. Such challenges might result from company actions that create impediments to de-enrollment, vote overrides or changes to instructions, or from company disclosures in connection with the program or its administration.

The no-action relief granted to ExxonMobil excludes registered investment advisers exercising voting authority with respect to client securities from participation. This exclusion, while addressing potential conflicts of interest, creates an interesting dynamic. Many retail investors hold shares through managed accounts or advisory relationships, limiting the universe of eligible participants. This structural limitation may provide a natural ceiling on the program’s impact, though the precise magnitude of this constraint remains unclear.

Implementation Considerations and Adoption Prospects. The operational complexity of implementing and administering these programs should not be understated, although well-resourced companies are unlikely to view this as prohibitive. The required coordination among transfer agents, brokers and vote-processing intermediaries

¹ *Coster v. UIP Cos., Inc.* (Del. June 28, 2023).

² *Blasius v. Atlas Industries, Inc.* (Del. Ch. July 25, 1988).

demands upfront investment and ongoing administrative oversight. Broadridge and other service providers are reportedly developing standardized solutions that could reduce implementation barriers, potentially accelerating adoption among mid-sized companies that might otherwise lack the resources for custom development.

Early adoption patterns will likely concentrate among companies with specific characteristics: substantial retail ownership, histories of activist challenges, and sufficient resources to manage implementation complexity. Companies in sectors like energy, consumer goods and retail, where individual investors often have emotional connections to the brand, may see particular value. Conversely, companies with predominantly institutional ownership or one or more controlling shareholders, or those in sectors with limited retail interest, may find the cost-benefit proposition less compelling.

The response of proxy advisory firms remains a critical unknown that could significantly influence adoption rates. If ISS and Glass Lewis develop policies opposing these programs or recommending against directors who implement them, the reputational costs could outweigh the tactical benefits for some companies. However, if advisory firms view properly structured programs as expanding shareholder participation rather than limiting it, widespread adoption could accelerate rapidly. Large institutional shareholders may also express a point of view on these programs.

The New Governance Landscape. This development could catalyze a broader reconsideration of retail shareholder engagement. If enrollment rates prove substantial, we may see innovations in how companies encourage retail share ownership and how they communicate with retail shareholders, how activists approach retail-heavy companies, and how proxy advisory firms evaluate contests where significant portions of shares are pre-committed. The traditional focus on institutional investors, while still paramount, may need to be balanced with renewed attention to retail shareholders as active participants rather than passive bystanders.

While uncertainties remain regarding enrollment rates, shareholder behavior and legal challenges, the potential impact justifies serious attention from companies, activists and governance professionals. The 2026 proxy season will provide the first real test of these programs' effectiveness, but companies considering adoption should begin preparation now given the lengthy implementation timeline.

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