

Chairman Clayton Stresses Shareholder Engagement and Proxy Process as Part of Commission's Long-Term Agenda; May Reopen Proxy Plumbing Concept Release

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In [a speech yesterday](#), Chairman Clayton expressed interest in examining the proxy process, including investor participation, as one of the Commission's key long-term agenda items. He stated that the Commission should take a "hard look" at whether companies' and shareholders' needs are being met. This includes how shareholders are receiving information, the type of information they are getting, and whether they are effectively participating in voting. At the same time, Clayton is concerned about the costs and burdens on companies in the proxy system. The upshot is that the Commission may reopen for comment the 2010 proxy plumbing concept release, an ambitious undertaking to review the proxy voting system that got sidetracked once the Dodd-Frank Act was implemented.

Clayton also addressed shareholder proposals and retail shareholder participation. He acknowledged that diverse views surround shareholder proposals, noting that "there seems to be little ground for building a consensus." Companies may be disappointed to learn that he is generally supportive of the rules that permit proposals, because proposals "can gain traction and lead to corporate governance changes that better track the long-term interests of Main Street investors."

However, Clayton recognizes that this shareholder right comes with costs for companies, including the use of board and management time that could otherwise be used to operate the company.

The SEC is interested in looking for common ground on possible reforms, and in his speech, Clayton raised both the ownership threshold for submission and the level of approval required in order to resubmit proposals. There was no reference to proposal by proxy, the third prong of the reforms under the Choice Act. The recent Staff Legal Bulletin may be a tacit admission that the Commission believes that allowing an authorized representative to send proposals is not problematic unless the authorization is ambiguous.

Echoing a common theme in his other speeches, Clayton wondered whether the SEC is adequately serving the interests of Main Street investors, particularly in regard to retail shareholders' participation in the proxy voting process. These shareholders often do not have voting power because they are holding shares through investment advisers, who vote in accordance with the adviser's duties. Clayton asks: Are the voting decisions made by advisers "maximizing the funds' value for those shareholders?" It is not clear what Clayton's specific concerns may be.

Even when Main Street investors are the beneficial owners of shares, they often do not vote. Retail shareholders beneficially owned 30% of U.S. companies in the 2017 proxy season, but only 29% of those shares were voted.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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