

Major Institutional Investors Comment on, and Disagree About, the Proxy Process

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The SEC's [solicitation of comments](#) on the proxy process has led to more than 150 public letters. While almost no companies sent in letters under their own names, investors have submitted the bulk of the commentary, including nearly all of the familiar groups of shareholder proponents. Insight from a few major institutional investors follows, with diverging views about shareholder proposals and oversight of proxy advisory firms.

Don't change, or do change, ownership or resubmission thresholds for shareholder proposals, and related rules.

"As such, we would view *any* action to limit some shareholders' rights to file proposals as an action to limit *all* shareholders' ability to fully consider all risks and opportunities of their investment. We believe that the current requirements with respect to the size of a shareholder's holdings and the time period that a shareholder must hold shares in the company before making a proposal are appropriate and the ability to analyze and vote on shareholder proposals with minimal intervention in the process is in the best interest of all shareholders...[W]e do not believe every shareholder proposal that is submitted to our portfolio companies is financially material, but we do believe it is critical that shareholders continue to have the opportunity to vote on these proposals, regardless of the size of the submitting shareholder, as these proposals have helped improve governance, disclosure, and our knowledge of the companies we own." *MFS Investment Management*

"[T]he thresholds for submission and resubmission of these proposals are outdated and the Commission should consider refreshment of the ownership threshold, holding period and resubmission framework." *The Capital Group Companies*

"We do not believe that new regulation is necessary, especially any that abridges the existing access and rights for shareholders to file shareholder proposals." *Neuberger Berman*

"[P]roponents of shareholder proposals are not required to disclose if they are working with or have appointed another individual or institution to advocate or engage with an issuer on their behalf...this information may be relevant to proxy advisors and investors in assessing proposals...the evidence suggests that the costs [incurred by companies] are substantial, and of course, these costs are borne by all shareholders...We recommend requiring the proponents of a shareholder proposal to include a discussion of the materiality of the issue being addressed by their proposal." *BlackRock*

Proxy advisory firms work fine, or maybe not.

"[W]e have not observed any evidence that the general policies or voting recommendations published by proxy advisory firms have been influenced by actual or potential conflicts of interest, or that there are inadequate controls in place to manage such conflicts of interest." *Neuberger Berman*

"[T]here are no standards or regulations that apply to reports prepared by proxy advisory forms...proxy advisory firms do not disclose their methodology for their analyses and vote recommendations, and offer limited insight into which companies receive consulting services...we recommend exploring technology solutions such as a digital portal for the review of draft company reports. We imagine a scenario where a portal would provide companies at least two business days to correct factual errors prior to the recommendation being issued to clients of the proxy advisory firm. The same portal could also be used to enable companies to submit a 'rebuttal' that could be included in the final report...[W]hen a proxy advisory firm recommends in favor of a shareholder proposal, their analysis and report should consider the costs to the company associated with the implementation of the proposal." *BlackRock*

“While investment advisers and investors in the past may have aligned their votes based on the views of proxy voting advisors, we do not believe most Investors and Investment advisers take this approach today for two reasons. First, the investment industry has increasingly realized that ESG topics included in proxy votes may be financially material in their investment decision making process. We have seen this shift at MFS over the past ten years, as our investment team now closely collaborates with our proxy voting experts in the development of our policies and execution of our votes. Second, large institutional asset owners simply will no longer accept investment advisers who allow third parties to dictate their voting policies or activities. Our clients expect us to articulate clear rationale for our policies and votes, and they demand that we vote based on our own internal assessment of what is in their best long-term economic interests. For these reasons, we do not believe the proxy voting advisory firms have undue influence on our voting policies or actual votes.” *MFS Investment Management*

Other interesting commentary about the proxy voting system from those on the front lines of casting votes include:

Lengthy record dates could disenfranchise those with economic interest.

“[T]he record date can be set up to 60 days before the meeting date. This relatively long period of time can be problematic for two main reasons. First, at the record date, investors have generally not yet received the meeting agenda and cannot predict whether there will be important matters subject to a vote. This may prevent them from recalling loaned securities and voting on key issues. Second, the ownership of the company might change between the record date and the meeting. This increases the likelihood that a shareholder without an economic interest (i.e. one that has sold its shares) will get to vote at the general assembly, while a shareholder that does have an economic interest (i.e. has bought shares) is not entitled to vote.” *Norges Bank Investment Management*

Get with the technology and evolve.

“Given the widespread adoption of digital communications, the Commission should permit issuers to provide notice electronically with a direct link to the full proxy statement and the ballot...We believe that the relatively low levels of retail investor participation in the voting process are in part driven by the manner in which proxies are distributed.” *The Capital Group Companies*

Pass-through voting by mutual funds to holders are unnecessary, impractical and costly.

“Last year, CSIM voted over 80,000 ballot items across its dozens of mutual funds and exchange-traded funds (“ETFs”). If CSIM was required to facilitate outreach to every shareholder on every proxy question put forward by every public company in a fund’s portfolio, it would be an overwhelming and prohibitively expensive task. But more critically, it would also overwhelm shareholders with a staggering amount of paper, electronic mail and phone calls, a process that could make the very act of investing in a fund a miserable experience and discourage participation in our capital markets.” *Charles Schwab Investment Management*

“Mutual fund shareholders invest in funds because they want an experienced, professional money manager to select and manage a portfolio of securities on their behalf.” *The Capital Group Companies*

And finally, from a smaller investor, shareholder proposals as a form of student learning.

“I am a student who is a part of a group that co-filed a shareholder resolution with a Fortune 50 company. I believe the \$2,000 threshold for filing shareholder proposals enables smaller shareholders, even individuals, to engage with the companies they own and take an active role in the mutual pursuit of the shared goal of long term shareholder value creation. Without the \$2,000 threshold, I would not have been able to be a part of this resolution process, would not know anything about shareholder engagement, would not know to vote my personal proxies, etc. The educational opportunity offered by the proxy process remains invaluable.” *Student at Yale University*

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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