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Recommendations to Increase Retail Shareholder Participation

James McRitchie, [February 17, 2015](#),



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I will be on a panel at the [2/19 SEC Roundtable](#) discussing how to increase retail shareholder participation in the proxy process. Now is the time to boil my rambling posts down to recommendations to increase retail shareholder participation. The SEC agenda is in bold italics; my advice is not.

This panel will focus on strategies for increasing retail shareholder participation in the proxy process. The panel will discuss how technology – by providing better access to information or easier means of voting – might affect retail participation. In addition, the panel will discuss whether the format of disclosure could be improved to increase the engagement of shareholders and how the mechanics of voting could be improved to affect retail shareholder participation.



Recommendations to increase retail shareholder participation

Based on my discussion in [Part 1](#), [Part 2](#), and [Part 3](#).

- The SEC should move to direct registration and do away with all the complications involving DTC. Cede. etc. Simplify the system. Let us vote proxies, not voter information forms(VIFs). Moving from street name to direct registration as was planned when we temporarily immobilized shares in 1975. If we actually own shares, maybe we will start acting like shareowners instead of speculators of 'security entitlements.'
- Shareholders need to know how our funds vote in a way that is easy to compare voting records (sortable database, not pdfs). N-PX filings should have votes, and reason codes (if available) XBRL tagged.
- Name the fund manager, so that we can compare within fund families. Require 401(k) and other plans to pass this information through.
- Move regulation of collective investment trusts (CITs) to the SEC? Maybe, if that is what it takes. CITs should be required to disclose and report their proxy votes to their investors in a useable format, facilitating the comparison of voting records.
- Require brokers to deliver VIFs/proxies to wherever the investor requests, such as open CDV systems.
- Open CDV systems should be paid by issuers for the cost of processing votes (it should still cost less than

mailing). The SEC needs to address charges by Broadridge (per ballot processing fees discriminate against CDV systems that process small blocks of shares held by individuals, instead of batched, like brokers, or in large blocks like funds).

- Virtual-only 'lockout' meetings should be banned. The press should be allowed to attend all shareholder meetings.
- Shareholders presenting proposals should be able to do so electronically if the company holds hybrid meetings (or if virtual-only meetings continue).
- The SEC should make a finding that all shareholder votes involve 'significant' matters per section 957 of Dodd-Frank. Therefore, back-door broker voting should come to a stop. Votes left blank should stay blank.
- Rule 14a-4 mandates real requirements on proxies and confers real protections on shareholders. If we must continue with VIFs, and until we can convert to direct registration, the SEC should to confer the same requirements on VIFs and proxies. Shareholder proposals must be objectively labeled, whether on a proxy or a VIF. For draft underline and strikeout amendments, see my [letter of October 20, 2010](#).
- Link ProxyDemocracy.org and other sits the compile announced votes to the SEC's Investor.gov.
- The SEC should encourage the development of shareowner selected proxy advisors by amending rule 14a-8(i)8 to allow shareowner proposals that would allocate corporate funds to those who undertake to offer proxy voting advice, *including advice on director nominees*, that is made freely available to all of a company's shareowners. (See [no-action letter](#))
- The SEC should sponsor an ongoing competition on investor education, which would compete for a small amount of funding from the SEC allocated by retail investor vote on who provides the most useful information.
- All stock confirmations and monthly statements should include a reminder of assumed rights responsibilities, such as voting on directors, pay, shareholder proposals, etc.

I'm still looking for recommendations to increase retail shareholder participation help from my readers. [Send me](#) your recommendations or post them below as comments.

Related Posts

- [SEC Panelists & Agenda for Proxy Voting Roundtable](#) (2)
- [CSP Inc. \(CSPI\): Proxy Score 89](#) (2)
- [Recommendations to SEC-IAC on Proxy Access](#) (2)
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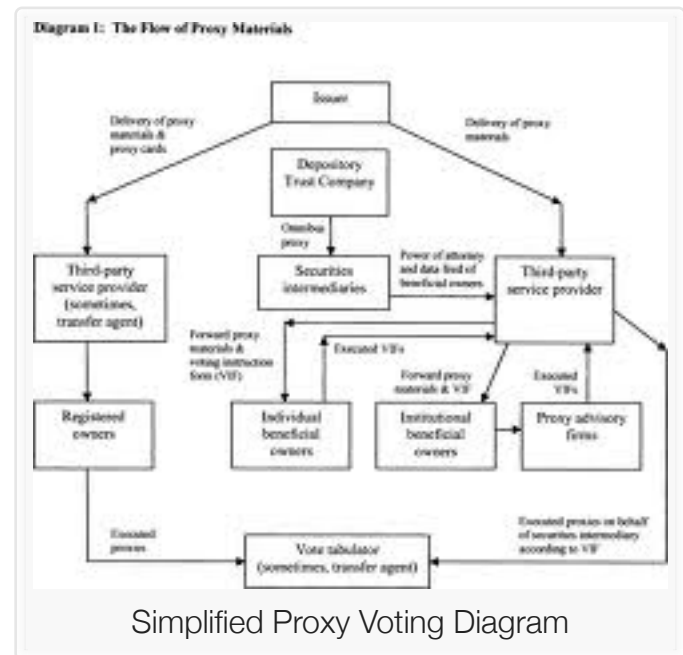
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Retail Shareholder Participation in the Proxy Process: Part 1

James McRitchie, February 16, 2015 ,



As mentioned before, I will be on a panel at the **2/19 SEC Roundtable** discussing how to increase retail shareholder participation in the proxy process. I've been collecting a few thoughts with the help of readers. Time is a major constraint, so I will need to prioritize my main points and will probably end up with a few bullet points by the time Thursday rolls around. In the meantime, I welcome further comments. The SEC agenda is in bold italics. Our thoughts are in normal type.



This panel will focus on strategies for increasing retail shareholder participation in the proxy process. The panel will discuss how technology – by providing better access to information or easier means of voting – might affect retail participation. In addition, the panel will discuss whether the format of disclosure could be improved to increase the engagement of shareholders and how the mechanics of voting could be improved to affect retail shareholder participation.

Can technology help increase retail participation?

How is e-delivery of proxy information working?

When we simply look at retail shareholder participation by proxy delivery method, advanced technology appears more of a hindrance than a help, since those who received printed proxy packages through the mail voted in far greater numbers than other methods. Mixing technologies, by sending notice through the mail to access proxy materials on the Internet, was the least effective method. According to Broadridge, distribution and retail shareholder participation in FY2014 was as follows:

Retail Proxy Voting Participation by Distribution Method, FY 2014

Delivery Method	Millions Distributed	% Positions Voted	% Shares Voted
Mail Full Pack	34.2	31	40.8

e-mail	64.6	9.2	22.6
Notice & Access	52.4	4.7	18.7
Total	151.2	12.6	28.9

Of course, distribution of proxies is not the only way technology can impact retail shareholder participation. The SEC raises several questions below and in their last group of questions on client directed voting, which I discuss in Part 2 of this post.

Our laws and regulations have failed to keep up with technological developments in the way we invest. We saw the dire consequences of that fact in the Great Recession. Most investors have not really been buying or holding ‘shares’ since 1975. Additionally, with the dissolution of defined benefit plans, more and more of our investments are channeled through **collective investment trusts** that are not regulated by the SEC.

The ‘elephant’ in the room is that retail shareholder participation is low, at least in part, because we do not legally own shares. The disconnect between our investments and our legal rights to ownership has consequences. Since I do not expect this to be a topic of discussion at the SEC roundtable, I’ll save my coverage of the topic to Part 3. Here I will just say that, in my opinion, if most of our ‘stock’ investments were in actual shares, instead of derivatives, retail shareholder participation rates in the proxy process would be much higher. Corporate elections would be a topic of serious discussion. More thoughtful debate regarding how our corporations are governed would lead to a better alignment of resource allocation and human values.

How has the NYSE enhanced broker internet platform affected retail participation?

It looks like the SEC went ahead with a program to incent e-delivery and voting through brokerage websites. Although I commented on part of the original proposal (**The False Promise of the Enhanced Broker Internet Platform**), I have not followed subsequent developments. Who is using EBIP? What does it look like? Is it essentially incentivizing shareholder’s to yield their votes to corporate boards?

Are there impediments to voting through mobile technologies?

I will be mostly in listen mode. Mobile technologies hold great promise. See **Announcing Proxy Votes Improves Corporate Governance** under the subheading ‘Varieties of CDV.’

Are there legal or practical impediments to holding virtual meetings?

I will raise the **usual objections** to shareholders being physically locked out of our own meetings. **Best practices** notwithstanding, Delaware law allows virtual-only meetings contingent upon shareholders simply being able to hear what is going on. See **Virtual Shareholder Meetings Reconsidered** by Lisa Fairfax from the first panel and my own post, **Virtual Meetings**.

Virtual meetings also allow the issuer to exclude media. For many companies, media coverage is the only

information the vast majority of shareholders have of important issues confronting a company at an annual meeting. For the evidence of the importance of public opinion on proxy votes, see [Influence of Public Opinion on Investor Voting and Proxy Advisors](#) by fellow panelist Reena Aggarwal.

If companies do hold virtual OR hybrid meetings, shareholder proponents should be able to present their proposals via YouTube, phone or whatever electronic method they choose.

Would tagging proxy information help shareholders more easily find information relevant to them?

It would certainly help data crunchers and some of that would filter out to retail. All items voted on in the proxy should certainly be XBRL tagged. It would also be helpful to tag additional factors, such as metrics that are measured to determine the reimbursement of named executive officers (NEOs). Investors need to be able to compare these factors more consistently across companies. For example, what companies are rewarding NEOs for increasing the return on invested capital or lowering carbon footprint.

It is also critical to include N-PX filings if retail shareholders are going to be able to use mutual fund voting in advance of meetings to be able to help guide their voting. See [SEC-IAC recommendations](#). Tagging N-PX filings would not only increase retail participation by letting them copy institutional ‘brands,’ it would also put pressure on institutional investors to improve their voting. The easier it is for retail investors to compare the quality of institutional voting, the more impact they will have on increasing institutional voting. An institution’s reputation for voting quality would become an important factor in choosing where to invest, perhaps most importantly when it comes to index funds.

Besides tags for all the fields that are presently supposed to be disclosed in N-PX filings, an important additional tag would be to identify the individual advisors for each fund. This information is especially important where funds are sub-advised and proxy voting responsibility is delegated to the sub-advisor. Across a family of funds, this gives rise to inconsistent voting and also makes it difficult to hold a fund manager accountable for their vote decisions.

Does the format of disclosure affect retail participation?

Yes, of course. If shareholders can vote against a director, that means more to most than withholding a vote. Incorporate by reference my [letter to the SEC of October 20, 2010](#), which raised objections to the following:

- Despite section 957, of Dodd-Frank, which prohibits broker voting with respect to “significant” matters, the SEC has not, to my knowledge, made a determination that all proxy matters are significant.
- Rule 14a-4 confers certain protections with regard to the format and substance of proxies, which are not afforded Voter Instruction Forms (VIF). This makes little sense when 85-90% of shares are held in street name and are voted using a VIF. The following table indicates just two specific examples of shareholders being injured by the current system (there may be many more):

SEC Rule	How Owner Rights are Violated
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1. Rule 14a-4(b)(1) specifies that when the security holder does not specify a choice, a proxy may confer discretionary authority “provided that the form of proxy states in bold-face type how it is intended to vote the shares represented by the proxy in each such case.”

Instead of highlighting each ignored item in **bold** as now being voted per management or the soliciting committee, ProxyVote includes the following more obscure statement. “If you select the SUBMIT button at the bottom of the agenda without specifying choices among the boxes below, your vote instructions will be cast in accordance with the recommendations of the Board of Directors.”

2. Rule 14a-4(a)(3) states the proxy “shall identify clearly and impartially each separate matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters, and whether proposed by the registrant or by security holders.”

Again, VIFs don’t have to follow rules required for proxies. Broadridge can simply reference “a shareholder proposal described in the proxy statement,” rather than clearly describing the resolution, as is required for proxies.

What changes to the format of disclosure can be made that could increase retail participation? The issue of blank votes was discussed in my [May 15, 2009 petition to the SEC to amend Rule 14a-4](#) and my [October 20, 2010 comments to the SEC](#).

I recommend Rule 14a-4 be amended as follows:

“

(a) The form of proxy, including voting instruction forms...

(3) Shall identify clearly and impartially each separate matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters, and whether proposed by the registrant or by security holders. ~~No reference need be made, however, to proposals as to which discretionary authority is conferred pursuant to paragraph (c) of this section.~~

(b)(1) Means shall be provided in the voting instruction form and proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to each separate matter referred to therein as intended to be acted upon, other than elections to office. Neither a voting instruction form nor a proxy may confer discretionary authority with respect to matters as to which a choice is not specified by the beneficial owner or security holder. ~~provided that~~

~~the form of proxy states in boldface type how it is intended to vote the shares represented by the proxy in each such case. When votes are cast and fields are left blank, the beneficial owner or security holder shall be deemed to have abstained on those matters. Furthermore, when votes are cast using an electronic platform a subsequent screen, before final submission, must warn the security holder in large-font boldface red type that each field left blank will be treated as an abstention, and that no vote will be cast on their behalf regarding those matters. Nothing in this paragraph shall be construed to prohibit a security holder or beneficial owner from explicitly assigning their proxy to a third party...~~

~~Delete subdivision (c) A proxy may confer discretionary authority to vote on any of the following matters:~~

The integrity of the voting system is critical. The SEC's current rule sends the wrong message to shareowners. It says, "don't worry about voting. If you leave an item blank, we will allow that vote to be assigned to someone else," regardless of possible conflicting or nonaligned interests of brokers, banks and corporate management. The current rule does not reinforce a robust market or vigilance by shareowners. It does not send a message that voting is important. Shareowners then become shareholders, without responsibilities, much like gamblers with betting slips. The Commission should encourage responsible ownership, not gambling.

The SEC should regulate the power relationships between actors in the market to provide a level playing field, not tip the balance to one party when the other fails to act. Instead, the SEC should remind each party of the importance of their respective roles. The current Rule 14a-4 misaligns interests by yielding disproportionate control to brokers, bankers, managers and boards, instead of educating and engaging shareowners.

Related Posts

- [Recommendations to Increase Retail Shareholder Participation](#) (1)
- [Retail Shareholder Proxy Participation: Part 3 – VIFs & CITs](#) (1)
- [Retail Shareholder Proxy Participation: Part 2 – CDV](#) (1)
- [Whole Foods Punts](#) (1)
- [Video Friday: Triple Feature on Shareholder Engagement](#) (1)

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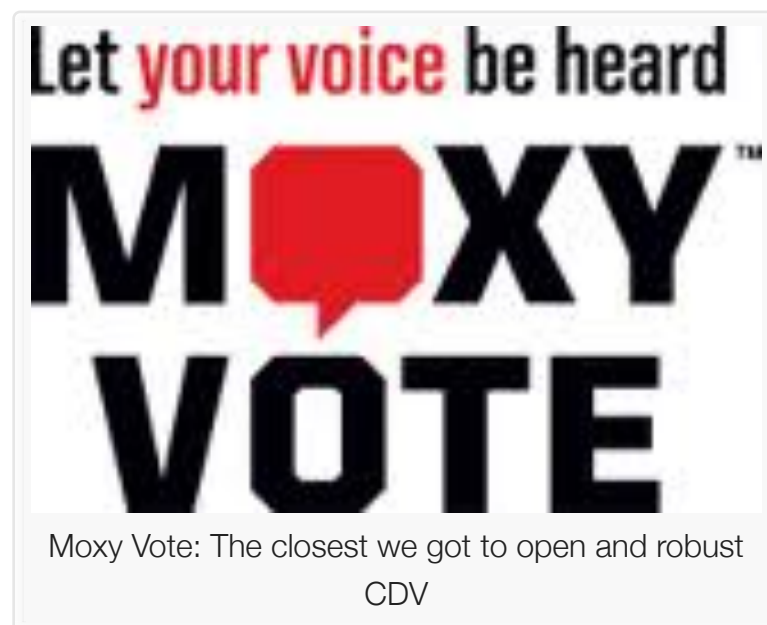
Retail Shareholder Proxy Participation: Part 2 – CDV

James McRitchie, [February 17, 2015](#) ,



The last set of questions for panel at the **2/19 SEC Roundtable** deal with client directed voting (CDV). Below are a few thoughts with the help of readers. I welcome further comments. The SEC agenda and questions are in bold italics. Our thoughts are in normal type. **Part 1 is here.**

This panel will focus on strategies for increasing retail shareholder participation in the proxy process. The panel will discuss how technology – by providing better access to information or easier means of voting – might affect retail participation. In addition, the panel will discuss whether the format of disclosure could be improved to increase the engagement of shareholders and how the mechanics of voting could be improved to affect retail shareholder participation.



The SEC raises several questions in their last group of questions for the panel on client directed voting, which I discuss below.

What are the legal limitations and what are the practical implications of client directed voting/advance voting instructions? How could such a system be implemented to ensure that investors are making informed voting decisions and that voting is accurately reflecting their views?

These same concerns should also be raised about institutional voting. Do retail investors make informed voting decisions now, when they choose which institution will not only be investing but voting their shares? Does institutional voting accurately reflect the views of the retail investors whose funds they are voting? An open robust form of client directed voting (CDV) would handle these issues better than the current system of institutional voting, which generally makes no effort to survey the views of investors.

First, one very easy recommendation is to include [ProxyDemocracy.org](#) and other resources that might help investors decide to vote their proxies in the SEC's links to the [other resources page of Investor.gov](#).

Shareholders should be free to have their proxies distributed to and voted by anyone of their own choosing.

Some brokers were refusing to deliver to the now defunct Moxy Vote CDV system. In Australia, many shareholders (and increasingly they are all shareholders due to the nature of the self-managed super funds) assign voting rights to the Australian Shareholders Association (ASA), which is the retail shareholders proxy group.

The ASA takes positions on proxy issues but goes a step further than most proxy advisors. They not only offer proxy voting advice but they actually attend the AGMs, presenting proposals and raising the key issues. They have their own guidelines and recommendations shaped by their members, but they are not dissimilar to the guidelines of the major proxy advisors in the key areas. Whatever action the SEC takes, should help facilitate such efforts in the US.

CDV systems should be financially incentivized with a portion of funds distributed to encourage movement from paper delivery. The current system acts like a **Jim Crow** poll tax because it financially discriminates against independent voting platforms, especially those processing small batches of votes. Issuers should pay for proxy and VIF distribution to whatever voting platform the individual investor specifies. Advance voting instructions should not be limited to specified choices like always vote with or against management but should be able to reflect a wide variety of voting behavior based on individual surveys, ranked preferences, etc.

Historically, most retail shareowners toss their proxies. This contrasts with almost all institutional investors voting, since they have a fiduciary duty to do so. “Client directed voting” (CDV), a term coined by Stephen Norman, is seen by many as a solution for getting more retail shareowners to vote, ensuring companies get a quorum, and helping management recapture a good portion of the broker-votes cast in their favor that evaporated with recent reforms. An open form of CDV, could result in similar impacts but would also create much more thoughtful and robust corporate elections.

Retail investors are the principals in the principal-agent system of corporate governance. We are the beneficial owners of all equities – in the U.S., 25 to 30 percent via direct purchases, and 70 to 75 percent via our “ownership” of shares in mutual funds, pension funds and other intermediaries. The agents in our corporate governance system include CEOs, boards of directors, institutional investors, proxy advisory firms, compensation consultants, etc. An “Open Proposal” on CDV will improve the accountability of all these agents to the principals by empowering retail investors with better information and voting tools.

Since Stephen Norman coined the phrase in 2006, the concept of CDV is generally attributed to him and his work with NYSE’s Proxy Working Group. Looking back at the origins of the concept, on October 24, 2006, the NYSE filed a proposed rule change with the SEC to eliminate all broker voting in the election of directors. Two months later in December 2006, Steve Norman presented a proposal called **Client Directed Voting** to an investor communications conference.

The case for CDV was again made on the Harvard Law School Forum on Corporate Governance and Financial Regulation by Frank G. Zarb, Jr. and John Endean (available [here](#)). Similar to Norman, the voting options presented were severely restricted to the following: (1) in proportion to other retail shareholders; (2) in a manner consistent with the board’s recommendation; or (3) in a manner that is contrary to the board’s recommendation.

John Wilcox’s post several weeks later, **Fixing the Problems with Client Directed Voting**, helped to expand and

popularize the concept beyond Norman's initial concept with a much more open proposal.

Shareowners and the SEC would be well served to review the work of Mark Latham, a former member of the SEC's [Investor Advisory Committee](#), who proposed something similar to CDV at least as far back as the year 2000. See *The Internet Will Drive Corporate Monitoring* and other papers on the [VoterMedia.org Publications page](#)). In stark contrast to Norman, Latham's proposed system is open and competitive, using a market-driven framework. This post builds on his work, especially Latham's *Client Directed Voting Q&A*, also found on the [VoterMedia.org site](#).

How Open CDV Would Work

Open CDV enables retail shareowners to implement a specialization strategy similar to that of institutional investors. Most fund managers do not read the proxy statement and understand the proposals in the context of a company's particular circumstances. They have specialized staff for that review, some in-house, some outsourced. Likewise a few retail shareowners will read proxies, but most will not. Those who do not read them can increasingly be informed by those who do and by voting announcements posted on the Internet.

With an Open CDV system, anyone should be able to create a voting feed, just as anyone can now create a blog. One way to create a feed would be to remix other feeds, just as blogs often post or link to material from other blogs. A remixed feed could select different source feeds for different stocks or different industries or different categories of voting matters (director elections vs. shareowner proposals etc.). In his article *The Internet Will Drive Corporate Monitoring*, Latham called remixed feeds "meta-advisors."

Engagement requires either a fiduciary obligation, which we won't have for retail shareowners, the perception of value in the process (which may take years to establish) or passion around relevant issues. Of the three, passion around relevant issues will be the easiest to ignite.

Many third-party platforms or voting feeds will be designed around "issues," rather than harder to understand policies and procedures. That will naturally appeal to a broader base of retail shareowners. More people will choose voting advice around policy concerns, like global climate change, than around procedural concerns, like whether or not the roles of board chair and CEO should be split.

A small but important percentage of retail shareowners will get more involved in helping to determine voting feed reputations. They will compare feed quality and issue/value identification by such means as creating focus lists at [ProxyDemocracy.org](#). See, for example, [this page](#).

Most retail investors will only pay attention to the best-known voting feeds. A small minority of institutional and retail investors, along with writers in the financial media, are likely to become the most influential opinion leaders helping to determine public reputations, and thus which of potentially hundreds of voting feeds deserve to be followed.

Investors should be able to choose voting feeds and instruct our brokers to implement them for our shares. That is powerful because it takes little time, yet can implement intelligent voting based on reputation – just as the reputations of carmakers and computer makers are widely available and influence our purchases.

There is already a healthy base of “brands” developing with Domini, Calvert, Florida SBA, CalSTRS, CalPERS and others announcing a growing number of their votes in advance of annual meetings. In addition, there are plenty of other sources of voting advice besides institutional investors, many of which focus on a limited number of issues and many participated on Moxy Vote.com when it was alive

Moxy Vote had already built an open CDV platform on a relatively low budget. **Proxy Democracy** could be readily enhanced to include voting capability if the SEC adopts additional data standardization and if cost reimbursement is forthcoming from issuers. See comments submitted by Moxy Vote to the SEC [here](#).

Essential Elements of Open CDV

The key issue in any open CDV system is to let shareowners control where their electronic ballots are delivered. Just as there is no question shareowners can control where hardcopy ballots are delivered, there should be no question they can direct where their electronic ballots are delivered. This simple requirement would insure third-party content providers an opportunity to compete and improve the quality of voting advice.

Additional elements for a more effective CDV system include:

- A wide range of voting opinion sources that will eventually cover all issues;
- Open access for any new opinion sources to publish their opinions;
- Open access for shareowners to choose any opinion source for our standing instructions on voting;
- Sufficient funding for professional voting opinion sources that compete for funding allocated by retail shareowner vote (or by beneficial owners of funds that may choose to “pass through” their votes).

Under an Open Proposal, feeds will offer the ability for retail shareowners to essentially build a “voting policy,” just as institutional voters are now able to do. That model will increase participation and voting quality. We shouldn’t ask shareowners to affirm every single pre-filled ballot. That could be a deal breaker for people with stock in many different companies who would rather spend their time on other activities.

Third-party CDV systems, like Moxy Vote, will allow investors to create hierarchies of voting instructions. (Vote like X. If X hasn’t voted the item, vote per Y. If Y hasn’t voted, vote per Z, etc. Eventually, these systems could become very complex. Vote like X on issue A; vote like Y on issue B, also specifying defaults if either X or Y don’t have votes recorded.)

If brokers are required to deliver proxies as directed by their clients, another whole model could emerge around “proxy assignments.” Proxies assigned to organizations or individuals, for example, could give annual meetings a new meaning. See *Investor Suffrage Movement* by Glyn A. Holton.

In the 1940s and 1950s thousands of shareowners frequently showed up for shareowner meetings because they frequently deliberated issues and some of those in attendance held substantial proxies from others. Lewis Gilbert, for example, was often given unsolicited proxies, which he used to negotiate motions at meetings.

Impact of Open CDV

We are a long way removed from those days and advance notice requirements would preclude much of the activities Gilbert made famous. Voting at meetings is important, but having a say in setting the agenda on what

will be voted on is even more powerful. If a significant number of proxies are assigned to others or thousands of shareowners routinely follow specific voting advisors or institutions, leading voices can actually begin to influence how agendas for annual meetings are set.

An Open Proposal will increase both the quantity and the quality of voting by both retail and institutional investors. Ease of voting and the ability to align with valued brands will drive quantity. Increased quality will result from competition between voting opinion sources for reputation in the eyes of investors. Opinion sources will include institutional investors, retail investors, bloggers, activists and professional proxy voting advisors funded by new mechanisms discussed later in this article.

An Open Proposal will cause retail shareowners to engage in proxy voting because it offers several new and powerful ways for us to do so, while respecting our other interests and time constraints.

Additionally, institutional investors will begin to discuss their votes with each other more frequently, as well as with beneficial owners and funds. This is already happening. I have personally initiated such dialogues with several funds and have increasingly been met with a favorable response. As funds learn how and why other funds are voting, many are open to reexamining their own position.

Director elections in particular will be more closely watched, once shareowners gain a sense of empowerment. Prior to nascent CDV sites, we had little or no basis for voting against or withholding votes from individual directors. Soon we will be able to drill down through recommendations to discover which directors are overboarded, miss meetings, have potential conflicts of interest, were on compensation committees that overpaid executives, etc. Funds will increasingly provide the reason for their votes, since that will drive more investors to vote with them. When a fund discloses not only their vote, but also the reason for their vote, investors get a better picture of their values and we begin to trust given “brands” as consistent with our own values.

Do Not Restrict CDV

Limiting CDV to only selected situations, like uncontested elections, would only lessen the benefits of CDV, so I don't recommend imposing any such limits. It would be better not to establish any CDV through regulations that severely limits voting options, since once such systems are enacted they will be difficult to amend, given that those who benefit from such limitations will be in an even stronger position to fight opening up the process.

All matters should be eligible for inclusion in a CDV arrangement. All can be handled the same way, with the retail shareowner voting as per standing instructions to use specified voting feeds. Preferably, systems should allow users the ability to override standing instructions in any given situation. Competition among voting feeds will encourage those who create them to constantly improve their voting quality and reputation. One improvement is to adapt their analysis and voting decisions to the significant variation among proposals on any given matter. Another is to create industry specific analysis. Analysis could also vary by a company's maturation and/or a great many other factors. Deeper levels of analysis are more likely with open CDV systems that enhance competition.

CDV System Defaults

The default choice should either be whatever the shareowner selects or it should be a “not voted” vote, just like if a voter fails to mark an item on the proxy, that item should be left blank, although it is now often counted in favor of management. (See my petition to the SEC for a rulemaking on “blank votes” [here](#))

Counting a blank vote as anything else would make mounting campaigns to deny companies a quorum much more difficult. Neither brokers nor anyone else should be permitted to vote on any ballot item in the absence of voter instructions (i.e., all items should be considered non-routine matters in NYSE rules).

Brokers/banks should not be forced to take on CDV design responsibilities. Other third-party specialist firms will probably do a better job. The key is to ensure that brokers or their agents deliver ballots to whomever the shareowner directs. Of course, it would also be a plus if brokers and banks would make their clients aware of the available options.

Competition for Funds Would Enhance CDV

I would recommend an ongoing competition open to providers of investor education, which would compete for a small amount of funding from the SEC allocated by retail investor vote. This could be limited to education about voting issues (informing CDV, providing voting opinions, organizing voting opinion data feeds, discussing reputations etc.), or voting could be included in a broader retail investor education competition. For more explanation, see Mark Latham’s [Voter Funded Investor Education Proposal](#) (November 30, 2009).

This would benefit all retail investors. Since the benefit is shared broadly, it should not be paid by individual retail investors, but rather through funds that we own collectively – corporate funds. There are several possible ways of arranging this. One example is Mark Latham’s [Ultimate Proxy Advisor Proposal](#) (June 1, 2010).

Under that proposal, companies pay voting advisors selected by their shareowners. Since there are no “free riders” and the advice is essentially paid for by all shareowners, we can pay much more for proxy research on our companies than current proxy advisors typically allocate. Additionally, the advice we get is less likely to be of a “box ticking” nature, more likely to be industry and company specific.

The SEC should encourage the development of shareowner selected proxy advisors by amending [rule 14a-8\(i\)8](#) to allow shareowner proposals that would allocate corporate funds to those who undertake to offer proxy voting advice, *including advice on director nominees*, that is made freely available to all of a company’s shareowners.

In the near term, the entrenched agents in our corporate governance system may try to prevent investors from using our funds to empower ourselves this way, so enabling regulations from the SEC and public funds may be helpful to get started. Public funds earmarked for retail investor education and advocacy could be used for the first such initiatives.

Cost of CDV

Cost categories for CDV include: (a) creating voting opinion feeds; (b) system development for brokers; (c) vote processing by Broadridge and similar service providers.

If the SEC publicly encourages the development of CDV, many organizations are likely to build the necessary

systems. As previously mentioned, voting opinion websites have already appeared (ProxyDemocracy.org, TransparentDemocracy.org, Moxy Vote.com). Most have failed because every vote cast on their platform results in a loss of funds. To enhance their quality, public funds earmarked for retail investor education and advocacy could be allocated by investor vote among such competing providers of tools for CDV.

CDV will increase the quality of voting and decrease the quantity and costs of paper mailings. These benefits will outweigh the costs of building CDV systems. Standardized data tagging will likewise streamline the system and reduce costs in the long run, although it will require some up-front investment.

NYSE rules currently require payment by issuers for the cost of voting electronically but issuers may not always be making such payments to CDV platforms like Moxy Vote. See NYSE Rules 450-460 pertaining to proxy distribution, available [here](#). The Rules are actually written for “member organizations” (i.e., brokers) and specify what brokers or their agents (e.g., Broadridge) can charge for distribution and collection of proxy-related items. The rules are clear that Issuers are supposed to pay for all of the distribution (and *collection*) costs and that brokers can expect to collect from them. These rules should be amended to apply to Issuers when shareowners choose to take delivery of proxies or to vote through sites like the defunct Moxy Vote.

The fees that Broadridge is charging to electronic voting platforms should be paid by the issuers as part of the overall collection costs (like postage). The electronic platforms, in this function, are merely an extension of the proxy distribution agent. However, I understand that Broadridge charges on the order of 10X for electronic vote collection from these platforms than it is permitted to charge the issuers.

If Broadridge is offering a “value-added” service to these electronic platforms, where is the “baseline” service that costs less? Perhaps the value-added services revolve around the ability to turn blank vote into votes for management without following the rules that apply to proxies. (See my blog post, [Jim Crow “Protections” for Retail Shareowners](#))

My understanding is that fees are charged to electronic platforms on a “per ballot” basis (generally one fee per position per year) and that electronic platforms are generally passing along these costs to voters. That becomes much more difficult, perhaps impossible, when trying to service retail shareowners with small position sizes and many more per ballot transactions, relative to shares voted.

This is, in effect, becomes a system where the voter is paying to vote, like the old Jim Crow poll tax. It also inhibits progress (i.e., the development of electronic platforms for retail shareowners) because voting through the mail and through the phone is free. Why should retail shareowners have to pay when voting online, which is inherently the least expensive method of voting? Why should services like Moxy Vote have to front such expenses? Without a change, it is hard to see how they can ever turn a profit and it seems even less likely that nonprofits, such as Proxy Democracy, would ever be able to offer users the option of voting on a Proxy Democracy platform. Such costs need to be eliminated or minimized if a robust open CDV system is to mature.

The NYSE should consider forcing Broadridge to direct some of its “paper suppression fees” to firms like Moxy Vote that should be sharing in this incentive, since shifting to electronic from paper voting saves money. That would be a simple way of beginning to address the cost issue. The most fundamental point regarding costs is that issuers should bear the actual cost of voting, not shareowners or CDV systems.

Conclusion

An open CDV system improves corporate governance because voting advisors will make it easier for shareowners to meaningfully participate in voting, without having to read through proxies. Open CDV systems do this by allowing shareowners to informally build individualized proxy voting policies, much like formal policies maintained by many institutional investors. Unlike many institutional investors, who may ponder over their voting policies for months, retail shareowners will mostly build default policies based on brand identification. Voting advisors, chosen by shareowners through competitive markets for shared information, will help make agents more accountable and democracy in corporate elections an emerging reality.

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- [Recommendations to Increase Retail Shareholder Participation](#) (1)
- [Retail Shareholder Proxy Participation: Part 3 – VIFs & CITs](#) (1)
- [Retail Shareholder Participation in the Proxy Process: Part 1](#) (1)
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Retail Shareholder Proxy Participation: Part 3 – VIFs & CITs

James McRitchie, [February 17, 2015](#), 

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I will be on a panel at the [2/19 SEC Roundtable](#) discussing how to increase retail shareholder participation in the proxy process. The SEC agenda is in bold italics. Our thoughts on VIFs and CITs are in normal type. [Part 1 is here](#). [Part 2 here](#).

This panel will focus on strategies for increasing retail shareholder participation in the proxy process. The panel will discuss how technology – by providing better access to information or easier means of voting – might affect retail participation. In addition, the panel will discuss whether the format of disclosure could be improved to increase the engagement of shareholders and how the mechanics of voting could be improved to affect retail shareholder participation.



Our laws and regulations have failed to keep up with technological developments in the way we invest. We saw the dire consequences of that fact in the Great Recession. Most investors have not really been buying or holding 'shares' since 1975. Additionally, with the dissolution of defined benefit plans, more and more of our investments are channeled through **collective investment trusts** that are not regulated by the SEC.

The 'elephant' in the room is that retail shareholder participation is low, at least in part, because we do not legally own shares. That disconnect between our investments and our legal rights to ownership has consequences. I do not expect this to be much of a topic of discussion at the SEC roundtable. However, in my opinion, if our 'stock' investments were in actual shares, instead of derivatives, retail shareholder participation rates in the proxy process would be higher. Corporate elections would be a topic of serious discussion. More thoughtful debate regarding how our corporations are governed would lead to a better alignment of resource allocation and human values.

Not Covered by SEC Questions

Proxies versus VIFs

OK, I did raise this issue in [Part 1](#). It is late at night after arriving in DC, so at the risk of repeating myself, here are a few additional notes on the topic. Proxy rules, aimed at protecting shareholders, only apply to 10-15% of shares, since 85-90% of shares are held in street name (including those of institutional investors) and are voted using a VIF. SEC rules haven't kept up with technology.

The 1975 Act ended the physical movement of securities certificates and the panic. Stocks were "immobilized" at Cede and we began owning and trading derivative rights, instead of shares. The "immobilized" system was supposed to be temporary, until a direct registration system could be developed around "uncertified" or "dematerialized" shares. Legal changes were needed in many states and computer systems needed to gear up and integrate.

That has all happened but too many business earn money off the current system. It has become entrenched because everyone now depends on intermediaries like brokers, banks and Broadridge. Of course, brokers and banks don't want a direct registration system because they are the only ones who know who owns what at ground level. They have all the names and names are worth money. What we have been stuck with is a system that can't accurately count ballots because it can't audit back to the beneficial owner, only to the bank or broker, whom we are supposed to trust to reconcile the voting... and they can do it either before or after the fact. It leads to empty voting and might even facilitate tax evasion (my own paranoid speculation).

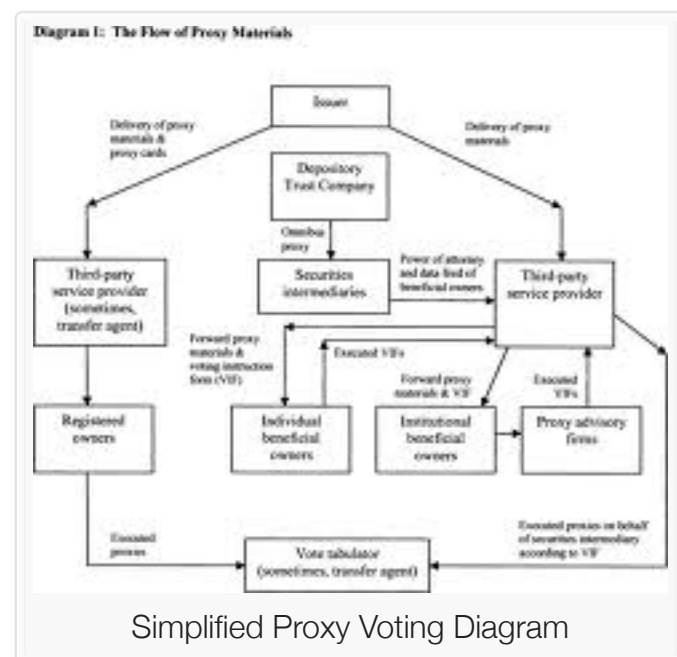
Because the rules don't apply, we have insufficient warnings of blank votes going to the board, biased titles for shareholder proposals and ??what else. Companies don't know who there shareholders are. Shareholders can't identify fellow shareholders. Most importantly, shareholders don't feel like shareholders because they aren't. Feeling like a shareholder and knowing the voting system is fair, would help incentivize proxy voting.

The SEC should move to direct registration and do away with all the complications involving DTC. Cede. etc. Simplify the system.

Collective Investment Trusts (CITs)/Mutual Funds and Vote Disclosure

As more and more Americans lose defined benefit plans and are shifted into 401(k) plans, a growing proportion of investments are made into [CITs](#). While the SEC requires mutual funds to disclose their proxy votes, there appears to be no such requirement for CITs or for deferred compensation plans as a whole. The number of CITs, which are regulated by the Comptroller of the Currency instead of the SEC has doubled from 1,680 to 3,300 in the last two years. This looks like it is going to be another case, like the shift from proxies to VIFs, where the interests of investors will be left in the dust.

I can not even get my plan to disclose how any of the funds voted, even mutual funds, which are required to do so by law. However, there is no requirement that 401(k) administrators pass through that information. If I know it is a mutual fund I can usually go the mutual fund's site and get some information but the SEC doesn't specify



a useful format for the disclosure, so I get hundreds, actually thousands of pdfs representing the votes of one fund at each company in their portfolio.

Funds must have to spend a lot of money creating these pdfs. It would be simpler and useful to link to the fund's voting platform. The fund could put parameters on access, allowing information to be viewed immediately upon voting, six months later or something in between. Changing the disclosure requirements to allow links to voting databases instead of unsortable pdfs would make it encourage more funds to announce their votes in advance of the AGM, especially where doing so might influence other voters, since their databases are likely to be closely watched and their votes scraped, much as ProxyDemocracy.org does. This provides voters with valuable information on how those with greater resources to analyze proxies are voting, allowing them to follow suit.

Since most Americans invest through mutual funds and increasingly CITs, not through investments in individual companies, it is critical that they know how those funds are being voted if they are to feel at all like owners, instead of speculators. If they don't see how their funds vote, they are more likely to conclude that voting is unimportant if they ever own stocks more directly.

Move regulation of CITs to the SEC? Maybe, if that would help. CITs should be required to disclose and report their proxy votes to their investors in a useable format, facilitating the comparison of voting records.



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