Mark Latham's May 9, 2010 responses to questionnaire for Council of Institutional Investors' white paper on Client Directed Voting: Questionnaire text is in black (but "Original Proposal" is renamed as "Limited Proposal" below, and "Modified Proposal" renamed as "Centralized Proposal"); Latham responses in blue, indented.

April 19, 2010

CLIENT DIRECTED VOTING

Historically, less than half of retail shareholders participate in the proxy voting process. Even fewer retail shareholders participate with companies that use the "notice and access" method for Internet delivery of proxy materials. At the same time, over 90% of institutional investors participate in proxy voting. One proposal aimed at increasing retail participation rates is "client directed voting" (CDV). The SEC has indicated that CDV will, among other "proxy plumbing" matters, be the subject of a forthcoming concept release.

Under CDV as originally conceived (the Original Proposal), an investor's brokerage agreement would allow an investor to provide to his or her broker standing instructions regarding how to vote various matters at companies in which the investor owns stock. The options from which a retail customer could select would be (i) to vote all matters in accordance with the board's recommendation, (ii) vote all matters against the board's recommendation, (iii) abstain from voting on all matters, and (iv) vote proportionally with the brokerage firm's retail client instructed votes on all matters. These standing instructions would always be revocable and only operable in the absence of specific voting instructions from an investor on a particular matter.

At the time of proxy solicitation, a retail shareholder would receive a voting instruction form from his or her broker pre-marked based on the standing instructions provided by the investor. Upon receipt of the voting instruction form, an investor would have the ability to mark the form to override his or her standing instructions. In addition, investors would always have the ability to override their standing instructions and instead provide specific voting instructions to their brokers.

At least one commentator has supported a modified CDV approach (the Modified Proposal). Under the Modified Proposal, investors would have access to a wider range of information to inform directed voting. The Modified Proposal contemplates a central database of the voting decisions of various institutional investors. A third-party service provider would collect these voting decisions, process the decisions with the aim of presenting them in a standard format, and provide the voting decisions, along with the company board's recommendation, to retail shareholders sufficiently in advance of the company's annual meeting to give investors a meaningful opportunity to review the information. Retail investors could review the information and provide their brokers with standing instructions based on the voting decisions of the institutional investors they would like to follow. Under the Modified Proposal, an investor's CDV arrangement with its financial intermediary would be reviewed annually.

My 2010-03-25 comment on the VoterMedia Finance Blog 2010-01-29 post Investor Education on Proxy Voting is relevant here:

> I'm happy to see that the term "Client Directed Voting" (CDV) is now being used for systems that would give retail investors a wide range of automated voting options (e.g.

> John Wilcox's post). When the term CDV was originally coined (by Stephen Norman in 2007, I believe), only a few options were being proposed; likewise in the recent post by Zarb and Endean.
> That is why I suggested a different term (FAVE) in the post above, to distinguish a system with wider voting options. But if CDV now has this broader meaning, then I see no need for another term (FAVE).
> This growing consensus will encourage the implementation of systems to empower retail investor voting, as outlined in the articles "The Internet Will Drive Corporate Monitoring " (2000) and "Proxy Voting Brand Reputation" (2007) at http://votermedia.org/publications.

What matters is the concept, not the name. Now that the term CDV is being used with this broader meaning (more voting options), it is simplest to describe my earlier proposals of this concept as versions of CDV. I first published them in 1999, which I think predates what is called the "Original Proposal" above. So for clarity of the discussion below, I will use the term "Limited Proposal" instead of "Original Proposal", to describe a CDV system that limits retail investors to just a few choices like the four listed above.

Likewise to reduce ambiguity, I will use the term "Centralized Proposal" instead of "Modified Proposal", to describe a CDV system with a central database of institutional investor voting decisions. I have edited the questions below to reflect these two redefined terms. This will help distinguish the CDV design that I favor, which I will call the "Open Proposal" or "Open CDV". It was outlined in the paper "The Internet Will Drive Corporate Monitoring". A recent update is the feed-based system described in section 5 the VoterMedia Finance Blog 2010-01-29 post Investor Education on Proxy Voting. I write as a retail investor, representing retail investors on the SEC Investor Advisory Committee:

> These tools are the retail analog of the specialized team approach used by institutional investors in their proxy voting decisions. Fund managers don't read all the proxies of all the stocks they hold and decide how to vote each issue. They have professional staff for that, some in-house, some out-sourced. (The beneficial owners of those stocks – e.g. retail investors in mutual funds – don't read and make voting decisions on all those proxies either.)
> Likewise it would be inefficient for every retail investor to read all the proxies of every stock we own directly. Instead, we can specialize too. Some of us can read proxies and share our insights on how to vote. We can also get insights from some institutional investors who choose to share their voting decisions before the deadline. We can discuss the voting records of those institutions, and share insights on which are worth emulating. Two new websites offer free platforms for this: moxyvote.com and ProxyDemocracy.org. A third, TransparentDemocracy.org, has similar plans. No doubt more such sites will appear, and existing investor sites will add such functions.
> Most of us retail investors will not want to spend much time on proxy voting. But this specialization strategy will enable us to vote intelligently – even those who only spend a few minutes on it per year. All we need is a convenient option to select which source of voting decisions we want to emulate. I expect that when such options are offered on retail broker websites, we will see a rapid rise in the quality and quantity of retail investor voting.
> One way for that to happen would be if some websites where retail investors share voting insight, start publishing "proxy voting feeds" on the internet. Similar to blog RSS feeds, these would have a standardized format for transmitting and receiving proxy voting decisions. Anyone could publish a feed, and anyone could subscribe to any published feed. You would instruct your broker to vote your shares according to the decisions in your chosen feed. You could change your choice of feed at any time, and manually override any specific voting decision.

CLIENT DIRECTED VOTING
INTERVIEW QUESTIONS

General

1. What do you view as the most significant merits and drawbacks of CDV?

Merits of the Open Proposal:

Quality of voting is more important than quantity of voting (voter turnout). The Open Proposal will increase both the quality and the quantity of voting by us retail investors. But I think its most significant impact will be to increase the quality of voting by *institutional* investors. This will happen because of the implicit competition among various voting opinion sources, and their evolving reputations in the eyes of retail investors. Opinion sources will include institutional investors, retail investors, bloggers, activists and professional proxy voting advisors funded by possible new mechanisms discussed later in this questionnaire.

We 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. (By "share" of a pension fund, I mean the fraction of the fund's assets that funds a person's expected future benefits.) The agents in our corporate governance system include CEOs, boards of directors, institutional investors, proxy advisory firms, compensation consultants etc. The Open Proposal will improve the accountability of all these agents to the principals, by empowering retail investors with better information and voting tools.

Drawbacks: The Limited Proposal has the substantial drawback of severely limiting retail investors' choices for standing instructions on voting. The Centralized Proposal likewise has the drawback of limiting our choices to only the decisions shared by institutional investors. The Open Proposal has no drawbacks that I can think of.

2. In your view, how viable a solution is CDV to increase retail participation in proxy voting in the short term? How long do you think it would take before CDV materially increased retail participation rates?

Once the Open Proposal is implemented by more and more retail brokers, I expect the quality of all voting and the quantity of retail voting to increase materially within 2 years. The increase in quality is more important, but I expect our retail voting rate to increase steadily and substantially in the long term, eventually surpassing 70%.

3. What other complementary reforms would you view as essential to ensure the success of any CDV approach that were to be implemented?

We should fund various competing sources of proxy voting advice that would be available free to all investors. We should also fund some infrastructure for sharing voting opinions. Funds should be allocated among competing providers by retail investor vote. Sources of funds are discussed in my responses to later questions below.

Retail Shareholder Participation

1. In your view, would CDV be more likely to cause retail shareholders to engage with or disengage from proxy voting? Why? Do you think that either of the Limited Proposal or Centralized Proposal would be more likely to engage retail shareholder participation? Why?

> I don't think the Limited Proposal would engage retail participation significantly. A wider range of voting choices is needed for that, so the Centralized Proposal would engage more retail participation, and the Open Proposal would engage the most retail participation.
>
> The Open Proposal will cause retail shareowners to engage with proxy voting because it offers several new and powerful ways for us to do so. Most will just choose a voting feed and instruct our brokers to implement it for our shares. That is powerful because it takes little time, yet can implement intelligent voting based on reputations of the voting feeds – reputations that will become conveniently available in the financial media, just as the reputations of car makers and computer makers are widely available.
>
> A small but important percentage of retail shareowners will get more involved in helping to determine those reputations of voting feeds. They will compare feed quality by such means as creating focus lists at ProxyDemocracy – see for example http://proxydemocracy.org/fund_owners/focus_lists/25.

2. Assume there are three groups of retail shareholders: (i) those who participate in proxy voting currently, (ii) those who would participate but find the process too time consuming and onerous and (iii) those who are unlikely to ever participate in proxy voting.

(a) In your view, how many retail shareholders would switch from category (ii) to category (i) if CDV were implemented? Would it make a difference in your view if the Limited Proposal or Centralized Proposal were implemented?

> My rough guesses for long term participation rates:
>
> Limited Proposal: no significant increase
>
> Centralized Proposal: 50% participation
>
> Open Proposal: 70% participation
>
> Of course, these numbers depend on the promotion, regulation and disclosure of the whatever CDV system is implemented.

(b) In your view, would CDV have a meaningful impact on the level of category (iii) investors?

> Yes – the Open Proposal in particular will significantly reduce category (iii).

3. In your view, would implementation of CDV increase retail shareholder engagement with the annual meeting process? Why or why not?

Yes. The most important part of the AGM is voting, so in my view engagement with voting is one type of engagement with the annual meeting process, even if the shareowner doesn't physically attend the meeting. So my answer to this question is "Yes", and my reasons are given in answer #1 above.

4. Do you think a CDV arrangement that called for individualized marked proxy cards, as contemplated under the Limited Proposal, would encourage or discourage retail shareholder engagement in the proxy process?

I have no particular view on this.

5. In your view, would CDV encourage sufficiently informed retail shareholder voting or would it effectively discourage retail investors from reading the proxy statement and understanding the particular proposals in the context of a company's particular circumstances? What criteria do you use in determining whether retail shareholder voting is sufficiently informed? Does your answer differ as between the Limited Proposal and Centralized Proposal?

In my view, the Open Proposal will encourage sufficiently informed retail shareowner voting. In order for retail voting to be sufficiently informed, it is not necessary for *all* retail shareowners to read the proxy statement and understand the particular proposals in the context of a company's particular circumstances.

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 particular proposals in the context of a company's particular circumstances. They have specialized staff for that, some in-house, some out-sourced. Likewise a few of us retail shareowners will read proxies, but most will not. Those who do not read them will be informed by those who do, and by the many other sources of voting opinions who read the proxies.

The criteria for determining sufficient information are in general too complex and subjective to describe concisely. But some features I would look for in an effective retail shareowner information system include:
(a) a wide range of voting opinion sources;
(b) open access for any new opinion sources to publish their opinions;
(c) open access for shareowners to choose any opinion source for our standing instructions on voting;
(d) sufficient funding for professional voting opinion sources that compete for funding allocated by retail shareowner vote.

Thus the Limited Proposal would not inform shareowners sufficiently; the Centralized Proposal would be better; and the Open Proposal would be best.

6. What investor education measures would you recommend to ensure investors were sufficiently informed about CDV? Who should undertake those and bear the cost?

I would recommend an ongoing competition open to any providers of investor education, who would compete for funding allocated by retail investor vote. This could be limited to education about voting issues (informing about 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, please see http://votermedia.wordpress.com/2010/01/23/voter-funded-investor-education-proposal/.

This would benefit us retail investors, so we should paid for it. Since the benefit is shared broadly, it should not be paid by retail investors one at a time, but rather by funds that we own collectively – corporate funds. (See my answer to General question #1 above – "Retail investors are the beneficial owners of all equities.") There are several possible ways of arranging this. One example is the "Proxy Advisor" proposal at votermedia.org/proposals. In the near term, the agents in our corporate governance system may try to prevent us from using our funds to empower ourselves this way, so a helping hand from regulators may be needed to get it started. Public funds earmarked for retail investor education and advocacy could be used for the first such initiatives.

Implementation and Ongoing Administration

1. Should retail shareholders have to renew their agreement with their brokers with respect to standing voting instructions annually or on some other basis? Why? Is your conclusion affected by the lower incidence of retail voting following the introduction of "notice and access" (i.e., even asking shareholders to take the time to access the proxy statement online resulted in a significant drop in participation)?

Yes, it's reasonable to require retail shareowners to renew their standing instructions annually. This renewal should only require a simple mouse-click, once the investor has logged in to the broker's website and gone to the standing instructions page. The renewal could be done at any time, and be valid for one year from the last time the investor clicked to renew.

The quality and reputation of voting feeds will change over time, so retail investors should review their choice of feed at least annually.

No, the "notice and access" participation dropoff may not be relevant here, since it occurred in a system without CDV. CDV is likely to fundamentally change retail investor attitudes and behavior regarding proxy voting.

2. Should the renewal process be an affirmative one – that is, the arrangement would drop away, absent shareholder action to renew his / her voting preferences? Does the fact of a rapidly changing governance landscape affect your decision? Why or why not?

My answer to the previous question covers this question also.

3. How should CDV address director slates, in contested and uncontested elections?

I don't think director slates in contested and uncontested elections would make any difference to the implementation of CDV. All such cases can be handled the same way, with the retail shareowner voting as per standing instructions to use a specified voting feed.

4. Which matters should be eligible for inclusion in a CDV arrangement (e.g., only uncontested

matters)? How would those matters be defined (e.g., shareholder proposals are almost always "contested" by management and the board)? How should the fact of significant variation among proposals on a given matter, particularly in light of a company's particular circumstances, affect the decision about whether a matter is appropriate for treatment within a CDV arrangement?

> Like my answer to #3 above: 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 a specified voting feed. Competition among voting feeds will encourage those who create them to constantly try to improve their voting quality and reputation. One improvement is to adapt their analysis and voting decisions to the significant variation among proposals on a given matter.

5. If only selected matters are eligible for inclusion in a CDV arrangement, will CDV materially improve the retail investor's engagement in the annual meeting process or the administration of proxy voting, given that there could be other matters on the proxy card as to which the shareholder would have to vote?

> Limiting CDV to selected matters only would lessen the benefits of CDV, so I don't recommend such limits. But even with such a handicap, CDV would still materially improve retail investor engagement with voting.

6. Should preferences be indicated on a portfolio or per stock basis?

> Preferences should be indicated on a portfolio basis. That is simplest for retail investors and for brokers when they offer CDV to clients. Changing preferences stock-by-stock can be handled by those who create the voting feeds. So brokers need not build systems for stock-by-stock customization of standing instructions.
>
> With the Open Proposal, anyone can create a voting feed, just as anyone now can create a blog. One way to create a feed is to remix other feeds, just as blogs often post or link to material from other blogs. A remixed feed can select different source feeds for different stocks or different industries or different categories of voting matters (director elections vs shareowner proposals etc.). In the article "The Internet Will Drive Corporate Monitoring" I called remixed feeds "meta-advisors".

7. The Limited Proposal is constructed such that retail investors could provide standing voting instructions to their brokers in their brokerage agreements. If standing voting instructions were indicated on a portfolio basis, should the instructions cover only those companies in which a retail investor owns shares at the time the brokerage agreement is signed or all subsequent purchases of stock as well? If instead preferences were indicated on a per stock basis, when would retail investors indicate their preferences with respect to stocks purchased after the investor's brokerage agreement was signed? At the time of purchase or some other time?

> Standing voting instructions on a portfolio basis should cover all subsequent purchases of stock in that portfolio.

8. What choices should a retail shareholder have when deciding its standing voting instructions?

(a) Only those from the Limited Proposal, namely (i) vote against management, (ii) vote for management, (iii) abstain on all matters, and (iv) vote proportionally with the firm's other clients' instructed votes?

(b) Vote in accordance with the brokerage firm's published guidelines?

(c) Various institutional investor voting guidelines?

(d) Proxy advisory firm guidelines?

What do you see as the pros and cons in providing each of these choices to shareholders (e.g., insufficient number of choices, information overload, likely absence of action when too many choices)? Are there other choices that are appropriate?

> Because we retail investors are principals not agents, there are few reasons to regulate how we vote our stock. One valid reason is to prevent vote-selling. The tried-and-true way to prevent vote-selling is to keep voting decisions confidential, as we do in democracies. Only when an agent is voting other people's stock do we require vote disclosure, even though that opens the door to vote-selling.
>
> Therefore retail shareowners should be able to vote any way we choose, subject only to a prohibition on selling our votes. So I recommend the Open Proposal, where we can choose any voting feed. The potential information overload problem can be handled well enough by the market for public reputation. Most retail investors will only pay attention to perhaps the top ten best known voting feeds. A small minority of retail investors, along with writers in the financial media, will be the opinion leaders helping to determine public reputations, and thus which of the hundreds of voting feeds deserve to become the best known.

9. The Limited Proposal, as originally conceived, calls for the default choice to be proportional voting with the brokerage firm's other instructed votes. Do you agree or disagree with this default choice and, if the latter, what should the default choice be (e.g., no vote)?

> This question arises for all three CDV proposals discussed here: what about investors who don't give standing instructions, or whose instructions have lapsed after one year with no renewal? I agree with the default choice being proportional voting with the brokerage firm's other instructed votes (including CDV votes).

10. What administrative steps would brokers have to take to implement CDV? What step is most likely to provide an obstacle for CDV (e.g., individualized marked proxy cards, having information from companies about proposals to be voted on a timely basis)? How would broker obligations affect the company's own obligations under Rule 14a-8 (e.g., would those obligations have to be accelerated)?

> Brokers would have to create a page on their website for retail investors to indicate which voting feed they want to use for standing instructions. Brokers would have to store their clients' instructions and transmit them to Broadridge (or other service provider). I don't think individualized marked proxy cards are necessary, but could be provided if an investor requests them. Broadridge could handle the details of getting the voting decisions from the selected voting feeds, matching them with client shareholdings, and offering electronic and paper-based ways for investors to override their feed-based instructions if desired. I don't think broker obligations would affect the

company's own obligations under Rule 14a-8.

11. In your view, would brokers in fact increase their engagement with retail investors about matters subject to a vote at a company's next annual meeting? Would liability considerations affect your conclusion? Should brokers who do engage be exempt from the solicitation rules?

I don't think it would be the brokers' role increase their engagement with retail investors on voting matters. There will be plenty of engagement in the public shared realm, for example via sites like moxyvote.com. Brokers could just link to such sites from their client web interface.

12. Should brokers be able to delegate responsibility for fulfilling their obligations under a CDV approach such as that contemplated by the Limited Proposal (i.e., filling out individualized proxy cards, maintaining lists of customer standing voting instructions, etc.) to a third party agent? Are there any obligations brokers should not be able to delegate to an agent?

I've addressed most of these issues in my response to question #10 above, and have nothing in particular to add here.

13. What level of responsibility and liability should be attached to intermediaries for properly completing a proxy card for CDV, if that feature were adopted as part of a CDV arrangement? If brokers are able to delegate such responsibilities to a third party agent, what liability, if any, should attach to the agent?

I have no particular view on this, beyond the obvious general principle that there must be enough responsibility to make the overall CDV system work. I'm not sure which design will best balance cost, integrity and ease of use.

14. Should a clear audit trail and related reporting be required elements of CDV? Who would bear responsibility for assuring the quality of the audit trail and producing related reports? Who should receive the reports in the first instance (e.g., only the company and the tabulation agent)?

Same answer as for #13 above.

15. What costs would you foresee in implementation of CDV? Who should bear those costs? If the costs should be shared, how should that decision be made? Why should companies wish to pay for CDV, given that they may view CDV as a reductionist approach to complex issues of governance (i.e., indirect subsidies by smaller companies with fewer issues or larger institutional ownership, as compared to larger companies that attract greater attention and have potentially larger retail ownership)?

Cost categories 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 voluntarily at their own cost. Voting opinion websites have already started appearing (ProxyDemocracy.org, TransparentDemocracy.org, MoxyVote.com). These can easily start sharing voting opinion feeds. 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.

Once we have a broad choice of publicly available voting feeds, it will not be expensive for brokers and Broadridge to adapt their existing proxy vote systems to use the feeds. Some adjustment to the existing system of issuer fees for vote processing will help shift payments from paper mailings to electronic submission via CDV standing instructions.

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 sysem and reduce costs in the long run, although it will require some up-front investment.

In your question "Why should companies wish to pay...?", I'm not sure if you mean "Why should the *owners* of companies wish to pay...?" or "Why should *senior employees* of companies (e.g. CEOs) want companies to pay...?" So I'll answer both questions: We owners of companies should wish to pay (with our companies' funds) because for us, the benefits of better voting, increased accountability, better corporate governance, and resulting higher investment returns will outweigh the costs. Some employees (e.g. some CEOs) may not want companies to pay, because the increased accountability would reduce their power and influence over their own pay and tenure as CEOs.

16. What ongoing costs would there be in the use of CDV? Who should bear those costs?

My answer to the previous question applies to this question also.

17. Do websites such as ProxyDemocracy.org, TransparentDemocracy.org or MoxyVote.com (or even a new database of institutional decisions) make CDV, or at least the need for tailored proxy cards, less necessary as a method?

These websites are the first steps toward Open CDV. For the sake of improved accountability, corporate governance and investment returns, we should build on these pioneering initiatives and develop a complete Open CDV system to empower all retail shareowners. I don't think hard-copy proxy cards are important, but could be offered to those investors who request them. We should have online systems that let investors manually override their standing instructions. All CDV proposals include this feature. We can preserve the manual online voting systems we already have, as an option that each investor could use if and when desired.

Centralized Proposal

In this section, I try to answer the questions in two contexts – for the Centralized Proposal and for the Open Proposal (which I also call Open CDV).

1. In your view, would institutional investors be willing to provide their voting decisions in advance of

a meeting? Are there obstacles to institutional investors' providing this information (e.g., confidentiality considerations, considerations relating to proprietary investing strategies or investments)? (Note that some mutual funds do this now.)

If predisclosing their voting decisions is voluntary, then some institutional investors would do so and some would not. One reason could be to maintain confidentiality of their voting decisions, for example to avoid improper influence on them from corporate management. Another may be to avoid revealing their holdings (and thus proprietary investing strategies) at that moment.

In the Open Proposal which I favor, it's not a problem if many institutional investors don't predisclose their votes. There will be plenty of other sources of voting advice besides institutional investors. Some can already be seen at MoxyVote.com.

2. In your view, is it feasible to receive institutional investor voting decisions sufficiently in advance of an annual meeting to input into a database as contemplated in the Centralized Proposal? What operational concerns might you have?

Yes, with automated networked systems, timeliness should not be a problem. This would be less of a concern with the Open Proposal, since its numerous sources of voting advice can be used as fallbacks in case some voting decision sources are too late or missing. MoxyVote.com has already built its sytem that way, where users specify a priority list of decision sources, and the highest priority one with a decision available is used.

A fundamental operational issue is data standardization across all users in this shared networked system. The SEC Investor Advisory Committee's Proxy Voting Transparency proposal, passed unanimously on February 22, 2010, advocated standardized data tagging that should resolve this issue.

3. Should retail investors be given notice when new institutional investors add their voting decisions to the database after a retail investor has provided its standing voting instructions? What sort of notice should be provided? Who should be responsible for providing the notice?

CDV will induce an active public discussion in the financial media about the reputation of various sources of voting opinions. Most of us retail investors will not need to pay attention to every new source of opinions. Most of us will pay attention to the opinion leaders in this public discussion, who will let us know, for example, their top ten recommended and/or popular opinion sources, and their general characteristics – e.g. degree of emphasis on financial vs environmental vs social/political considerations. It will be like brand reputation for makers of complex products like cars or computers.

So no, there is no need for notice to be sent to retail investors when new institutional investors add their voting decisions.

Again, this issue is less of a concern in the Open Proposal, with its greater breadth of available voting opinion sources.

4. Would you allow any institutional investor who wanted its voting decisions to be in the database to be included? Why or why not? If not, what criteria should be used to decide which voting decisions

would be available? Should there be an ownership threshold? If so, what threshold would you recommend? Should they be paid a license fee?

> Likewise, these kinds of concerns are a good illustration of why the Open Proposal is better than the Centralized Proposal. In the Open Proposal, anyone can publish a voting feed for free, just as anyone can now publish a blog for free. There is no centralized database of blogs; there is just a data standard, which we should soon have for proxy votes.

5. Should a CDV database of voting decisions provide background about the nature of the contributing institutional investors, so that retail investors could place the voting decisions in context (e.g., determine whether the institutional investor likely has a bias)? If an institutional investor's voting guidelines or decisions are reported, should it be required to provide context for the guidelines or decisions (e.g., conflict of interest disclosure)? If so, what contextual information would be appropriate? Should liability attach to that information?

> An unregulated public market for reputation of voting opinion sources can probably handle most of these issues well enough, especially in the Open Proposal where it is easy for new entrants to compete by building better reputations for serving retail investor interests.

6. In your view, should a proxy advisory firm's guidelines on voting various measures be included in a database of voting decisions? Why or why not? Would your view change if the SEC regulated proxy advisory firms?

> If I answer in the context of the Centralized Proposal, I would favor making it as much like the Open Proposal as possible: free voluntary access by all who want to participate, as providers of voting decisions and receivers of voting decisions. If a proxy advisory firm wants to publish its guidelines and/or its specific voting recommendations, they should be allowed to do so. The Open Proposal does not depend on a centralized database, so the inclusion question does not arise. My views here do not depend on SEC regulation of advisory firms.

7. How easy or difficult would it be to develop the technology for the voting decision database and proxy-voting platform contemplated in the Centralized Proposal?

> Not difficult. ProxyDemocracy and Moxy Vote have already built much of this, on a very low budget.

8. Who should bear the costs of maintaining any database of voting decisions? Who would determine what fees could be charged for use of the database? Should CDV be premised on retail investor willingness to pay for access to the database (as is the case for existing proxy advisory firms)?

> Voting systems are a *collective* benefit to all shareowners of a company. So it does not make sense to make *each individual* voter pay to be able to vote. That's why democracies don't charge their citizens a fee to use a polling booth when there is an election. Citizens pay for election administration costs as a group, not one by one.
>
> Likewise the information systems to enable intelligent voting are a collective benefit, and should be paid collectively, not one user at a time. To encourage competition among information providers, collective funds (i.e. corporate funds) should be allocated among them by the voters. Thus retail

shareowners should allocate at least some of the CDV infrastructure funds by vote. This could pay for professional proxy voting advice that could then be shared freely. It could also pay for some infrastructure, such as free shared databases if they are needed.

Institutional Investor Perspective

1. Why should institutional investors care about CDV? Isn't this a retail shareholder issue?

As mentioned above, CDV will create a new public debate about the quality of institutional investor voting. Institutions are voting on behalf of retail shareowners now. So this retail issue is also an institutional issue.

2. If a database of institutional investor voting decisions were made available as contemplated under the Centralized Proposal, would other, smaller, institutional investors make use of this database?

Under either the Centralized Proposal or the Open Proposal, I expect that many smaller institutional investors would make use of the voting opinions available.

Management Perspective

1. In your view, would corporate managements generally be willing to support CDV as a means to increase retail shareholder participation or does the diversity of issues facing public companies in light of their particular circumstances make it less likely that they would favor participation over informed participation? Do you think CDV would be more or less likely to promote a "one size fits all" approach to governance and other issues?

Some corporate managements would be willing to support CDV as a means to increase retail shareholder participation. Other corporate managements may oppose CDV (especially the Open Proposal) because it will reduce their power while empowering the firm's beneficial owners.

It sounds like your question is implying that "informed participation" characterizes the existing system of retail investor voting, whereas "participation" (i.e. less informed participation) characterizes CDV. It seems to me that the opposite is true, at least for Open CDV. It will enable more informed voting by networking and sharing the information available. This is similar to the way institutional investors vote stock, where typically a staff of specialists make the voting decisions on behalf of fund managers and beneficial owners.

One key difference with CDV however, especially under the Open Proposal, will be that we beneficial owners will have the power to choose among competing sources of voting opinions. We will also have more opportunity to contribute to the voting opinions and the reputation assessment of opinion sources. Open CDV will increase informed participation by retail investors in the voting decisions of stock we beneficially own through institutional investors. At a minimum, we will be able to express more informed opinions about how institutions are voting our stock.

Open CDV would be less likely to promote a "one size fits all" approach to governance and other issues, since it offers maximum competition among sources of voting opinions. Competition will enhance voting quality, and "one size fits all" is a low quality approach which will thus be used less and less.

2. In your view, would you expect that solicitation expenditures would decline, increase or stay the same if CDV were implemented? Why?

> I expect that that solicitation expenditures will decline under Open CDV. Solicitation will be replaced by and/or migrate to elements of the CDV system, which will be supported by collective funds, becoming free or low cost to all users. Solicitation will focus on convincing the CDV opinion leaders of the relative merits of each possible voting decision, just as solicitation now gives emphasis to convincing proxy advisory firms.

Other

1. Are other approaches that are comparable to CDV more desirable?

a. Creating a system of "public" proxy advisory firms to increase public availability of professional voting advice?

> This would be a valuable adjunct to CDV. Even under the Open Proposal where anyone can contribute voting opinions to the public, I expect we will still need professional voting advice. Widespread sharing of free advice via the internet is likely to undermine the business model of existing proxy advisory firms (PAFs), just as free sharing of news is now undermining business models of the mainstream media. So to raise the overall quality of voting, a system of "public" PAFs makes sense. That was the reason for the title of my article "The Internet Will Drive Corporate Monitoring". "The Internet" was a reference to internet-based CDV, and "Corporate Monitoring" was a reference to public PAFs and enhancements thereof.
>
> For such a system to work, it is important for the public PAFs to be chosen by shareowner vote, to give PAFs a strong incentive to serve the owners' interests. They should be paid from the shareowners' corporate funds.

b. Changing the pop-up on proxyvote.com to allow for other choices besides voting for management?

> This too would work best as an adjunct to CDV. A potential difficulty with the pop-up approach is, which choices should be offered? With Open CDV, there will be potentially hundreds of choices – too many for a pop-up. But the proxyvote.com pop-up could show the top ten choices being selected by those retail investors who are using the full CDV system.

c. Allowing shareholders to "plug in" to a voting feed or electronic voting platform (e.g., by requiring companies to permit shareholders to direct the proxy card or VIF to the desired platform)?

> Voting feeds and electronic voting platforms like Moxy Vote are not *comparable* to CDV. They *are* CDV – ways for clients to direct voting by giving standing instructions. I think the best design for CDV is the Open Proposal with voting feeds.

2. Would you be in favor of additional regulation to facilitate the creation of public voting databases, such as data-tagging of proxy and vote filings and further relaxation of solicitation rules?

I would be in favor of data tagging mandates. They are a mild and inexpensive form of regulation, just a transparency requirement. In the long run, Open CDV will make it feasible to reduce many other more expensive and intrusive forms of regulation, that try to limit abuses by the agents in our corporate governance system. It is cheaper and more effective to empower the principals with a better information system.

I also favor relaxation of solicitation rules. That would be *less* regulation, not "additional regulation".

Further Comments

The development and implementation of Open CDV seem to me both desirable and inevitable. The SEC Investor Advisory Committee has created momentum toward data standards (like XBRL) for proxy votes. General principles of free speech would support allowing anyone with an opinion on any proxy voting issue to share that opinion with others, such as in a voting feed published on the internet. When a range of well informed voting feeds become available, some brokers will start offering CDV, and retail clients at other brokers will start demanding it too. In "The Internet Will Drive Corporate Monitoring", I described the inevitability this way: "Would you outlaw software that makes voting easy? Would you outlaw advice?"

Not only will CDV improve our corporate governance system, but "public" voting advisors will make agents more accountable to principals in corporations and in democracies. We will have competitive markets for shared information. Voting advisors that compete for public funds allocated by citizen vote in democracies are called "Voter Funded Media" or VFM. They make political leaders and bureaucrats more accountable to citizens.

The VFM system has been developed and tested at the University of British Columbia for the past four years – see "Global Voter Media Platform" at votermedia.org/publications. Its success provides a live illustration of how a new competitive voter information system can influence the older less competitive system, even when the older system has far more funding. If the new system is more closely aligned with the principals' interests, it will put competitive pressure on the old system.

The established campus newspaper, The Ubyssey, receives an annual fee of $5 from each student, totalling over $200,000 per year. In the new VFM system, blogs compete for slices of an award pool averaging less than $10,000 per year for the past four years. Not surprisingly, the bloggers appreciate this support, even though they have to compete hard for a piece of it. The voting system does not guarantee positive shares for all; many receive nothing – see votermedia.org/communities/82-ubc-ams.

Perhaps more surprising however, is the reaction of The Ubyssey's Coordinating Editor Justin McElroy:

"...the established media, the one that students are giving their money to, and are more or less bound to giving, you know, that media wasn't doing its job, and so competition is always good. It ensures that people do their best, and try to break the stories first, and get that information out there. And from a simple standpoint of, does it ensure that The Ubyssey does a better job meeting the needs of students and getting stories out there, VFMs ensure that, because it provides accountability to us, simply because if a story's out there by a VFM that's better than ours before us, you know, we have egg on our face. So, we're paid way more money, we have way more resources..."

"...the fundamental questions of whether, does VFM work for students? I think yes. Does it increase campus discussion and student engagement? I think absolutely. Does it ensure that established media, you know, does a better job? Yeah. Are students and is this campus better off because of that? Well, absolutely." [Video interview, 2010-04-30]

The new equilibrium is one of cooperative competition. The Ubyssey now cooperates with VFMs on joint news media productions. These media competitors often link to each other. Student journalists comment on their competitors' news stories, and sometimes leave one media group to join a competing media group.