

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.

CLIENT DIRECTED VOTING INTERVIEW QUESTIONS

General

1. What do you view as the most significant merits and drawbacks of CDV?
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?
3. What other complementary reforms would you view as essential to ensure the success of any CDV approach that were to be implemented?

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 Original Proposal or Modified Proposal would be more likely to engage retail shareholder participation? Why?
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 Original Proposal or Modified Proposal were implemented?
 - (b) In your view, would CDV have a meaningful impact on the level of category (iii) investors?
3. In your view, would implementation of CDV increase retail shareholder engagement with the annual meeting process? Why or why not?
4. Do you think a CDV arrangement that called for individualized marked proxy cards, as contemplated under the Original Proposal, would encourage or discourage retail shareholder engagement in the proxy process?
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 Original Proposal and Modified Proposal?
6. What investor education measures would you recommend to ensure investors were sufficiently informed about CDV? Who should undertake those and bear the cost?

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)?
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?
3. How should CDV address director slates, in contested and uncontested elections?
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?
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?
6. Should preferences be indicated on a portfolio or per stock basis?
7. The Original 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?
8. What choices should a retail shareholder have when deciding its standing voting instructions?
 - (a) Only those from the Original 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?

9. The Original 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)?

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)?

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?

12. Should brokers be able to delegate responsibility for fulfilling their obligations under a CDV approach such as that contemplated by the Original 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?

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?

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)?

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)?

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

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?

Modified Proposal

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.)
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 Modified Proposal? What operational concerns might you have?
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?
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?
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?
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?
7. How easy or difficult would it be to develop the technology for the voting decision database and proxy-voting platform contemplated in the Modified Proposal?
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)?

Institutional Investor Perspective

1. Why should institutional investors care about CDV? Isn't this a retail shareholder issue?
2. If a database of institutional investor voting decisions were made available as contemplated under the Modified Proposal, would other, smaller, institutional investors make use of this database?

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

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