

Memorandum

SEC Staff Clears Path for Regulated Funds to Implement Shareholder Directed Voting Programs, but Key Matters Remain Outside the Program

October 28, 2026

On September 29, 2026, the staff of the Securities and Exchange Commission's (the "SEC") Division of Investment Management (the "IM Staff") granted no-action relief to the Mutual Fund Directors Forum ("MFDF") permitting investment companies registered under the Investment Company Act of 1940, as amended (the "1940 Act"), and business development companies ("BDCs") that have elected to be regulated under the 1940 Act (collectively, "Regulated Funds") to implement shareholder directed voting programs (the "MFDF Letter"). Under such a program, shareholders may give standing instructions to vote in favor of certain matters recommended by a Regulated Fund's board of directors/trustees. The MFDF Letter follows a September 2025 no-action letter issued by the SEC's Division of Corporation Finance ("CorpFin") to Exxon Mobil Corporation ("Exxon"), which permitted Exxon to implement a similar program for its shareholders, and comparable relief subsequently granted to other operating companies.¹ Until the MFDF Letter, the IM Staff had not extended similar relief to Regulated Funds.

The MFDF Letter is a welcome development, particularly for Regulated Funds with a large, diverse retail investor base that face persistent challenges obtaining shareholder approval under the 1940 Act. A shareholder directed voting program could add predictability and reduce the cost and time associated with obtaining shareholder approvals. However, the MFDF Letter is also notable for what it leaves out. The program would not extend to contested director elections or to advisory agreement approvals with its primary adviser requiring a shareholder vote, which are often the matters with the greatest impact on Regulated Funds and the most expensive to solicit. This Alert summarizes the key features of the program outlined in the MFDF Letter and highlights practical considerations for Regulated Funds and their sponsors.

I. Key Features of the MFDF Shareholder Directed Voting Program

The principal conditions that a Regulated Fund would need to satisfy to rely on the MFDF Letter are as follows:

- **Voluntary, revocable and available to all shareholders.** The program must be voluntary, revocable at any time and available to all shareholders at no cost.

¹ Exxon Mobil Corporation, SEC Staff No-Action Letter (Sept. 15, 2025); see Tesla, Inc., SEC Staff No-Action Letter (Sept. 29, 2026); see also The Goldman Sachs Group, Inc., SEC Staff No-Action Letter (Sept. 28, 2026).

- **Board approvals.** The Regulated Fund's board of directors/trustees, including all of the directors/trustees who are not "interested persons" under the 1940 Act, must (i) initially approve the program prior to its implementation, (ii) reapprove the program at least every three years if they determine the program remains in the best interests of shareholders and (iii) recommend each matter on which shareholders will be deemed to have voted in favor of under the program.
- **Required exclusions.** Regulated Funds must exclude from standing instructions (i) contested director/trustee elections and (ii) changes to the fund's advisory agreement with its primary adviser that require shareholder approval (*e.g.*, a new adviser, fee increases or other material changes) (together, the "Exclusions"). Notably, approval of a sub-advisory agreement requiring a shareholder vote is not excluded from a shareholder voting program.
- **Optional exclusions.** Regulated Funds must also give shareholders the option to exclude (i) fund mergers and (ii) the adoption of, or changes to, a fund's plan adopted pursuant to Rule 12b-1 under the 1940 Act that result in an increase in 12b-1 fees for a fund (together, the "Optional Exclusions").
- **Override votes.** Shareholders will retain the ability to override their standing instructions by voting on specific matters using the proxy materials, which will continue to be distributed to all shareholders.
- **Reminders.** Participating shareholders must receive annual reminders, outside of solicitation periods, of their status under the program and their ability to revoke their standing instructions. Participants that have not elected the Optional Exclusions must also receive a reminder before any meeting at which an Optional Exclusion item will be considered.
- **Website disclosure and SEC filing.** Regulated Funds must disclose the program on their websites and prominently in each relevant proxy statement. The program materials, and any material changes to the program, must be filed with the SEC under cover of Schedule 14A pursuant to Rule 14a-12 under the Securities Exchange Act of 1934, as amended.

II. Practical Considerations & Observations

Although the MFDF Letter provides Regulated Funds with a meaningful new tool, its utility will depend on the matters a Regulated Fund expects to put to shareholders and on how investors and the market respond. Advisers and Regulated Fund boards should consider the following:

- **Potential uses.** Standing shareholder instructions could be used to approve, among other things: (i) uncontested director/trustee elections; (ii) a change in subclassification from diversified to non-diversified; (iii) changes to fundamental policies, including deviations from concentration policies; (iv) approvals of sub-advisory agreements requiring a shareholder vote; (v) amendments to Rule 12b-1 plans that result in an increase in 12b-1 fees for a fund; (vi) sales of shares below a Regulated Fund's net asset value; and (vii) for BDCs, approval to reduce asset coverage to 150%.² For many Regulated Funds, the

² See Sections 13(a), 15(a), 16(a), 23(b), 61(a)(2)(D)(II), and 63(2) of the 1940 Act and Rule 12b-1(b)(4) under the 1940 Act.

most significant benefit may be reducing the cost and time required to obtain shareholder approvals required under the 1940 Act.

- **Fund mergers.** Affiliated and non-affiliated Regulated Funds often seek to merge to reduce costs and add scale, which can benefit shareholders through lower expenses, greater diversification and improved liquidity. Because such mergers may require shareholder approval, they often involve soliciting a large, hard-to-reach retail investor base, which is time-consuming and expensive. Standing instructions could reduce the cost and disruption of these mergers and improve their viability, to the benefit of the Regulated Funds and their shareholders, although shareholders may elect to exclude mergers as an Optional Exclusion.
- **Exclusions: a limitation on the program's utility.** The Exclusions leave out the matters that often have the greatest impact on Regulated Funds, namely contested director/trustee elections and changes to the fund's advisory agreement with its primary adviser requiring a shareholder vote. As a result, shareholders will likely continue to bear the full expense of soliciting these approvals. Given the investor protections built into the program, it is notable that the IM Staff did not extend relief to these matters, and sponsors may wish to engage with the IM Staff on whether such relief could be available in the future.
- **No policy basis for excluding contested elections.** In our view, there is no apparent policy reason to exclude contested director/trustee elections from a Regulated Fund voting program when the SEC's CorpFin did not exclude contested elections from the relief it granted to operating companies. Treating Regulated Funds differently on this point is also difficult to reconcile with the SEC's stated approach in *Securities Offering Reform for Closed-End Investment Companies*, Release Nos. 33-10771; 34-88606; IC-33836 (April 8, 2020), in which the SEC implemented Congress's directive to afford certain Regulated Funds parity with operating companies. Extending the Regulated Fund shareholder voting programs to contested elections would be a further form of such parity and of responsible retailization, a current policy and regulatory initiative championed by SEC Chairman Paul Atkins.³
- **Investor protection safeguards.** In our view, the conditions in the MFDF Letter provide appropriate safeguards for investors, including shareholders' ability to revoke their standing instructions, their ability to override any deemed vote and the required reminder notices.
- **State law and organizational documents.** In addition to the conditions set out in the MFDF Letter, Regulated Funds may face challenges prior to obtaining standing instructions under a voting program depending on the applicable requirements in the jurisdiction in which they are formed and/or what is prescribed in their organizational documents. In particular, state law may limit how long a proxy remains valid absent a longer period stated in the proxy itself. For example, under Section 212(b) of the Delaware

³ Paul Atkins, Chairman, SEC, Remarks at the Investment Advisory Committee Meeting, (Sept. 18, 2025), [here](#), ("The Commission is exploring ways to facilitate the ability of individual investors to participate in the private markets, while at the same time protecting those investors from bad actors and fraud.")

General Corporation Law, a proxy is not valid after three years from its date unless the proxy provides for a longer period, and under Section 2-507(b) of the Maryland General Corporation Law, a proxy is generally valid for eleven months unless the proxy provides otherwise. Regulated Funds organized as Delaware statutory trusts or Massachusetts business trusts should look principally to their governing instruments, which may address proxy duration and may need to be amended to accommodate standing voting instructions.

- **Operational challenges.** Regulated Funds may face operational challenges in obtaining standing voting instructions from shareholders, particularly those holding their interests through intermediaries, and in re-obtaining instructions where they lapse under state law or the fund's organizational documents, are revoked, or must be refreshed following board reapproval or material program changes. Coordination with transfer agents, intermediaries and proxy service providers will be important. Listed funds may also have a different experience implementing a voting program since their shareholders often hold their interests through brokers and can change daily.
- **Market reception.** It is not yet clear whether Regulated Funds will adopt shareholder directed voting programs in the near term, given uncertainty about how investors will react. Some investors may perceive these programs as facilitating actions that shareholders would not otherwise approve, notwithstanding the protections built into the program. Listed Regulated Funds are likely to be the most cautious, given the potential impact on share prices of a negative shareholder reaction. Institutional Shareholder Services, a proxy advisory firm, has also criticized these programs, and sponsors should monitor the positions of proxy advisers going forward.

III. Next Steps

We commend the IM Staff for extending to Regulated Funds relief comparable to that available to operating companies, which could meaningfully reduce the cost and burden of obtaining routine shareholder approvals. However, we believe the MFDF Letter stops short by excluding the matters that are often the costliest to solicit. Regulated Funds and their sponsors should assess which anticipated shareholder approvals could be addressed through a program, evaluate the board approval, disclosure, reminder and filing processes the program would require, and consider likely investor and proxy adviser reactions before implementation. We welcome the opportunity to discuss these programs with Regulated Funds, their boards and sponsors.

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