Paul Atkins, Chairman
Mark Uyeda, Commissioner
Hester Peirce, Commissioner
Caroline Crenshaw, Commissioner
Securities and Exchange Commission (SEC)
100 F Street, NE, Washington, DC 20549

20 October 2025

Dear Chairman Atkins, and Commissioners Uyeda, Peirce and Crenshaw,

Subject: Retail voting programs and standing voting instruction mechanisms, and mandatory arbitration clauses

The International Corporate Governance Network (ICGN) would like to offer its perspective on the SEC's Division of Corporation Finance's letter regarding a company's proposed Retail Voting Program and the SEC's policy statement concerning mandatory arbitration.

Led by investors responsible for assets under management of >US$ 90 trillion, ICGN promotes high standards of corporate governance and investor stewardship globally. Our membership is based in more than 40 countries, and comprises asset owners, asset managers and advisers.

We encourage the Commission to consider returning to public consultation processes on matters that substantively alter policy. We feel that the absence of public consultations on important announcements which may negatively affect shareholder rights, risks lowering the quality of the highly regarded due process and governance standards in the United States, thereby presenting a risk to the attractiveness of U.S. capital markets.

Retail voting programs and standing voting instruction mechanisms

We support the Commission's goal of empowering retail shareholders and ensuring that they are able to fully and effectively participate in the proxy voting process. However, we are concerned by the Division's clearance of a retail voting program that permits standing voting instructions to be placed to vote all proposals in line with the Board's recommendations (which we would describe as "auto voting").[1] We believe such mechanisms, unless designed with stringent safeguards, could impair the ability of shareholders to exercise their rights fully, may distort governance incentives, and erode accountability. While we do not wish to comment on the particular circumstances of any individual company, we believe the recently given no action relief may set a precedent that could be widely replicated. Without significant safeguards in place, such widespread adoption could have damaging effects on the integrity of proxy voting and shareholder oversight on a broad systemic level across the US market.

Below we outline our principal objections and considerations. We urge the SEC to reconsider whether (or under what constraints) retail standing voting programs should be permitted, and to solicit further public input before such mechanisms become commonplace.

We are concerned that a standing instruction to vote in favour of management across successive meetings can entrench boards by effectively "locking in" votes from retail holders, without giving the retail holder the ability to consider the specific facts and circumstances of the proposals at the time of each meeting. The auto voting default position to agree with a company's board creates an asymmetry favouring management and thus raises governance concerns. In certain circumstances, this could significantly reduce the impact of the votes of institutional investors, as well as the voice of retail holders who may want to vote against management but whose exercise of rights is not facilitated by the companies as it is for those aligned with management. This may, therefore, reduce accountability of companies towards their shareholders.

While some retail investors are active participants in the voting process, many are not deeply familiar with proxy mechanics or the consequences of standing voting instructions. Without careful oversight and active communications, the enrolment, opt-out, and override mechanics may be confusing or overlooked. Even if the program permits an override or opt-out, there is a clear risk that "default inertia" could dominate. Annual reminders may not be sufficient to ensure that shareholders fully understand their rights and the implications of their ongoing participation in any such scheme.

Proxy rules and longstanding practice require that shareholders receive meeting specific disclosures in advance of meetings, giving them ample time to decide how to vote. Permitting standing instructions risks circumventing that deliberative process. In effect, by enrolling in any such scheme, retail shareholders are committing their votes in advance of knowing the full facts or context of proposals at a given meeting, potentially undermining informed decision-making. Each year's proxy statement will bring new proxy voting issues which all investors should be able to review and vote in their best interests based upon their ownership.

Finally, the no-action relief letter effectively allows a departure from traditional proxy rules - particularly Exchange Act Rule 14a-4(d)(2)[2] and Rule 14a-4(d)(3)[3], which generally prohibit conferring proxy authority beyond a single meeting. We believe that the SEC should review the proposed retail voting program with these Rules in mind well before the 2026 proxy season commences, providing investors with the opportunity to comment in advance.

ICGN strongly advises against the introduction of auto voting mechanisms. If the Commission concludes that standing-vote programs may be allowable in narrow circumstances, we encourage it to impose robust safeguards, such as:

- Retail shareholders should affirmatively enroll, rather than being defaulted into the program (**default opt-out, not opt-in**). This helps preserve voluntary choice.
- For contested board elections, M&A decisions, auditor appointment, changes to bylaws and incorporation, and other **significant matters, shareholders should be required to reconfirm or override their standing instruction explicitly** for each meeting.
- **Disclosures from companies should be clear** and easily understandable by retail investors.
- Any **standing instruction should expire** after a fixed, limited period unless proactively renewed, rather than be an indefinite authorization.
- The verification of votes, oversight of override mechanisms, and records of voting elections and outcomes should be under **independent oversight** to ensure integrity and prevent misuse.

- The SEC should **periodically review and reassess** the prevalence and consequences of standing-vote programs, with the ability to require sunset or suspension if negative outcomes emerge.

Mandatory arbitration clauses

Given our interest in preserving long-term market integrity and investor confidence, we would also like to comment on the SEC's recent policy statement indicating that the presence of mandatory arbitration clauses in governing documents will not affect the staff's assessment of registration statements[4]. We are concerned that this policy change may impair shareholder protections and reduce accountability mechanisms that are essential to well-functioning capital markets.

Mandatory arbitration provisions, when imposed through corporate charters or bylaws, can significantly impair investors' access to redress. These clauses often preclude collective legal actions such as class actions, which are vital in addressing securities violations where individual claims may be too small or impractical to pursue. Arbitration proceedings are typically private and do not produce precedents, thereby weakening the transparency and legal certainty that public court proceedings provide. The ability of investors - particularly minority investors - to seek remedies through the judicial system is a foundational element of shareholder rights and plays an important role in market discipline and price discovery.

We appreciate the critical role that the SEC plays in balancing issuer flexibility with investor safeguards, and we encourage the Commission to retain a role in scrutinising the use of arbitration provisions during the registration process. We believe this oversight supports investor confidence, preserves access to justice, and aligns with the Commission's mandate to protect investors and maintain fair, orderly, and efficient markets.

We would welcome the opportunity for further dialogue on these issues. Should you have any question, please contact Severine Neervoort, Global Policy Director at policy@icgn.org.

Yours faithfully,

Jen Sisson

Jen Sisson
Chief Executive Officer, ICGN

Third Floor, York House, 78 Queen Victoria Street, London, EC4N 4SJ
VAT No: 927 1665 09 | Registered in England No: 6467372
e: membership@icgn.org | **w:** www.icgn.org
in: International Corporate Governance Network