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The Legal Gray Zone of Proxy Voting Policies

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Abstract:

Proxy voting policies are documents used by fiduciaries to outline how institutional shareholders use their voting power in corporate votes within their portfolio companies. These policies govern tens of trillions of dollars of assets under management (AUM) in the U.S. alone.[2] However, they occupy an unstable legal position. They are treated primarily as disclosure documents but operate as private regulatory instruments. This article develops the first doctrinal taxonomy of proxy voting policies, evaluating their functions as disclosure instruments, internal guidelines, contractual undertakings, and as private regulation. This analysis is supplemented by an empirical review of disclosures of proxy voting policies showing substantial heterogeneity in disclosure quality, presence of boilerplate language, reliance on proxy advisers, and uneven substantive guidance.[3] This article argues that current law under-regulates PVPs because it focuses on discretionary disclosure while ignoring their norm-setting powers. It proposes a tiered regulatory model based on proportionality and democratic legitimacy to enhance disclosure, compliance and accountability.

Keywords: Disclosure Regulations, Proxy Voting, Corporate Governance, Financial Regulation, Behavioural Finance, Information Processing, Stewardship, Fiduciary Duties

JEL classification: K22, K23, G23, G34, G38, G40, D82

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[2] *What Directors Should Know About the 2025 Proxy Season*, Harv. L. Sch. Forum on Corp. Gov. (Feb. 25, 2025), https://corpgov.law.harvard.edu/2025/02/25/what-directors-should-know-about-the-2025-proxy-season/.

[3] The article discusses the current disclosure landscape and provides descriptive evidence concerning the content, availability, and revision of policies. A separate working paper, to be finalised during 2026, based on the same constructed dataset, will examine the relationship between policies and vote-level behaviours by funds.

I. Introduction

Proxy voting policies (hereinafter also "PVPs"), are a set of guidelines, rules, or procedures that shareholders use to guide their voting decisions in their portfolio companies. For several types of institutional investors, the publication and disclosure of PVPs is mandatory in the United States and subject to "disclose or explain" requirements in the European Union. Further, some level of stewardship among institutional shareholders is required to satisfy legally binding fiduciary duties towards both individual investors whose assets are held in trust and potentially towards third-party stakeholders.

Traditionally, many institutional shareholders opted to simply rely on third-party proxy advisors, making their PVPs limited in scope, with the room for customization being relatively narrow[4]. However, in recent years, the importance of PVPs has grown as traditional reliance on third party proxy advisors' default policies has weakened[5] with major proxy advisors also announcing a shift away from their default policy services towards assisting in the implementation of customized policies[6], partially as a result of growing backlash, regarding the perceived intertwining of political agendas and shareholders' power[7].

As shareholders come to rely more on customized PVPs, questions arise as to their legal status under fiduciary law, capital markets regulations, and the disclosure regime. Existing scholarship has extensively commented on proxy advisors, institutional stewardship and fund governance. However, the legal status of the documents that translate fiduciary obligations into voting decisions remained undertheorized. The paper aims to fill this gap. It will begin with a legal overview outlining the legal sources of PVPs and the current status of obligations applicable to them. An analysis of the various legal categories in which PVPs may fall and explore the best fit for these documents, policy recommendations will follow.

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[4] Stephen J. Choi, Jill E. Fisch & Marcel Kahan, *The Power of Proxy Advisors: Myth or Reality*, 59 **Emory L. J.** 869 (2010).

[5] In 2026, JPMorgan has cut in an industry first all ties with proxy advisors, focusing on its own policies, with Wells Fargo releasing a similar step and other institutional shareholders rumoured to considering following suit. This is coupled with the rise of customized policies and advice, see Edwin Hu, Nadya Malenko & Jonathon Zytnick, *Custom Proxy Voting Advice*, **National Bureau of Economic Research Working Paper** No. 32559 (2024); Jack Pitcher, *JPMorgan Cuts All Ties With Proxy Advisers in Industry First,* Wall Street Journal (January 7th, 2026), https://www.wsj.com/finance/banking/jpmorgan-cuts-all-ties-with-proxy-advisers-in-industry-first-78c43d5f?st=BipA9U.; Manya Saini, *Wells Fargo cuts reliance on big proxy advisers*, Reuters (January 28th, 2026), https://www.reuters.com/business/finance/wells-fargo-cuts-ties-with-proxy-adviser-iss-wsj-reports-2026-01-28/

[6] See Glass Lewis, *Glass Lewis Leads Change in Proxy Voting Practices* (October 15, 2025), https://www.glasslewis.com/news-release/glass-lewis-leads-change-in-proxy-voting-practices ; and ISS STOXX, *ISS STOXX Introduces New Research Services to Support Investors' Proprietary Stewardship Programs,* (October 7, 2025), https://www.iss-stoxx.com/press-releases/iss-stoxx-introduces-new-research-services-to-support-investors-proprietary-stewardship-programs/

[7] *The Anti-ESG Backlash and Asset Manager Capitalism*, 53 **Politics & Society** 603 (2025); and Arnoud W.A. Boot, Jan Pieter Krahnen, Lemma W. Senbet & Chester S. Spatt, *The Controversy over Proxy Voting: The Role of Fund Managers and Proxy Advisors*, 79 **Financial Analysts Journal** 8 (2023).

The current regime also creates information and incentive problems within the investment chain. Asset managers possess substantially more information than beneficiaries concerning how their own voting policies are formulated[8], whether proxy advisors shaped their content, how consistently they are implemented, and when and why deviations occur[9]. Ultimate beneficiaries face significant costs in obtaining and comparing this information, which is not standardized, and ordinarily select funds on the basis of a bundle of characteristics rather than stewardship quality alone. At the same time, the costs of developing and implementing substantive PVPs are borne by individual managers, while in general, corporate-governance benefits accrue to shareholders across the market[10]. These conditions weaken both investor discipline and managers' incentives to invest in detailed, verifiable and independently formulated voting policies which can maximize shareholder value and account for effects on other stakeholders.

This article makes several contributions to the legal analysis of PVPs. First, it develops the first (to my knowledge) structural doctrinal framework that clearly classifies PVPs into four legal dimensions of PVPs: Private Regulations, Internal Guidelines, Contractual Undertakings, and Financial Disclosures, thereby classifying a conceptual terrain that is currently undertheorized. Second, this legal analysis is supplemented with an original empirical review of more than 1,600 mutual funds, demonstrating for the first time the heterogeneity, limitations, and deficiencies in the current disclosure landscape. Third, this article advances a normative argument that PVPs are functionally private regulatory instruments with wide effects, potentially justifying obligations beyond the current legal framework which treats PVPs merely as a disclosure item, resulting in a doctrinal mismatch. Finally, it proposes a regulatory model grounded in proportionality and democratic legitimacy which would align PVPs with their governance significance. Together, these elements fill an existing gap in literature on stewardship, fiduciary law and corporate governance regulation.

[8] OECD (2025), *Institutional Investor Engagement and Stewardship*, OECD Publishing, Paris, https://doi.org/10.1787/a4902cee-en.
[9] Vote Reporting Group (June 2023), Vote Reporting: A consultation and discussion paper from the Vote Reporting Group, United Kingdom Financial Conduct Authority, London, https://www.fca.org.uk/publication/consultation/vote-reporting-consultation-discussion-paper.pdf
[10] Ronald J. Gilson & Jeffrey N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 Colum. L. Rev. 863, 890–92 (2013)

II. Legal and Regulatory Background

U.S. Legal Framework: Fiduciary Obligations, Voting, Disclosure and the Policy Gap

Fiduciary duties were long established as requiring high standards of care for a principal towards those whose assets are held in trust[11] and supply the background for institutional proxy voting. These high standards of care serve as the basis for various rules, such as the prohibition on self-dealing[12], the duty of loyalty to the company itself, including all its shareholders[13], and other good-faith based rules against bad faith behavior or unjust enrichment. This duty was explicitly extended to investment advisers in the U.S. in 1940[14] and was likewise codified for directors in British law[15]. Over the years the approach to fiduciary duties, which was legally codified, also developed to specify that these duties extend an active obligation to affirmatively act for the benefit of the investors[16]. Such may also arise from monitoring duties of individual officers[17], a proactive continuous obligation on investment managers to monitor investments[18] and remove imprudent ones.[19]

Economically, fiduciary duties are aimed at solving agency problems in which an agent has limited incentive to fully follow principal's interests[20]. Such agency problems are common within capital markets where managers primarily manage capital for their clients[21].

In the investment-adviser context, U.S. regulation determined that advisers holding voting authority over client securities in portfolio companies have a fiduciary duty to actively utilize the voting rights attached to their shares, to increase the value of the investments and take voting decisions in the best interest of the beneficiaries when the benefits of voting outweigh the costs. Therefore, in the American legal system, various rules were implemented mandating the exercise of proxy voting rights and the parameters for said exercise. The central regulatory provision is Rule 206(4)-6 under the Investment Advisers Act of 1940[22]. The rule requires registered investment advisers that exercise proxy-voting authority over client securities to

[11] **Keech v. Sandford**, (1726) 25 Eng. Rep. 223 (Ch.).
[12] **Aberdeen Ry. Co. v. Blaikie Bros.**, (1854) 1 Macq. 461 (H.L.) (appeal taken from Scot.).
[13] **Percival v. Wright**, [1902] 2 Ch. 421 (Eng.).
[14] Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-1 to 80b-21 (2024).
[15] Companies Act 2006, c. 46, pt. 10, ch. 2 (U.K.).
[16] **SEC v. Capital Gains Research Bureau, Inc.**, 375 U.S. 180 (1963).
[17] In **re Caremark Int'l Inc. Derivative Litig.**, 698 A.2d 959 (Del. Ch. 1996).
[18] Employee Retirement Income Security Act of 1974 § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B) (2024).
[19] **Tibble v. Edison Int'l**, 575 U.S. 523 (2015).
[20] Frank H. Easterbrook & Daniel R. Fischel, *Contract and Fiduciary Duty*, 36 J.L. & Econ. 425 (1993).
[21] Jensen, Michael C., & Meckling, William H., *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. Fin. Econ. 305 (1976).
[22] See **Proxy Voting by Investment Advisers**, 17 C.F.R. § 275.206(4)-6 (2024); **Unif. Prudent Inv. Act** § 3(b)(2) (Unif. L. Comm'n 1994); **Restatement (Third) of Trusts** § 78 (Am. L. Inst. 2007); **Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers**, Investment Advisers Act Release No. IA-5325, 84 Fed. Reg. 47,416 (Sept. 10, 2019).

adopt and implement written policies and procedures designed to ensure that proxies are voted in the best interests of clients. It also requires advisers to describe their proxy-voting policies and procedures to clients, disclose how clients may obtain information about how their securities were voted, and provide a copy of the policies upon request. The SEC's adopting release framed the rule as a response to conflicts of interest in proxy voting and as a mechanism for ensuring that advisers exercise voting authority consistently with their fiduciary obligations, while explicitly allowing flexibility to shape policies. Non-compliance may expose an adviser to SEC regulatory and administrative enforcement because Rule 206(4)-6 defines violations as "*a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act for an investment adviser*".

Form ADV reinforces this disclosure-focused model. Part 2 of Form ADV[23] requires advisers with proxy-voting authority to provide a description of their voting policies and procedures, address whether clients may direct votes in particular solicitations, explain how conflicts of interest are handled, and describe how clients may obtain information about voting decisions. These requirements make proxy voting policies visible, but they do not regulate the substantive content of those policies. Nor do they require advisers to use standardized disclosures, provide detailed voting criteria, disclose policy-drafting methodologies, or explain deviations from disclosed policies.

This structure reveals that U.S. law treats proxy voting policies primarily as an important matter but mainly ascribes disclosure obligations. The legal obligation is to have policies and procedures reasonably designed to serve client interests, to disclose their existence and general operation, and to make them available to clients. There is no requirement that a policy contain specific positions on director elections, executive compensation, shareholder rights, ESG proposals, or other recurring voting matters. Nor is there a requirement that the policy be drafted in a machine-readable or comparable format. As a result, two advisers may both comply with Rule 206(4)-6 while providing radically different levels of substantive guidance.

A separate but related regime governs the disclosure of actual voting records. Notably, regulation on proxy voting by institutional shareholders historically received relatively limited regulatory attention. While declaratory announcements made clear the obligation to vote, only after the introduction of the Sarbanes-Oxley Act in 2002[24] increased disclosure on the issuer

[23] **Form ADV** part 2A, item 17, 17 C.F.R. § 279.1 (2024).
[24] **Sarbanes–Oxley Act of 2002**, Pub. L. No. 107-204, 116 Stat. 745 (codified as amended in scattered sections of 15, 18, 28, and 29 U.S.C.).

side, legal disclosure obligations took shape. Say on pay votes became obligatory with the Dodd Frank act in 2010[25]. Reporting on votes only commenced in 2004 and remained non standardized until recently[26]. The modernization of Form N-PX renders this gap more visible. Once voting records become easier to compare, investors and researchers are able to identify voting patterns more clearly than before. But the interpretive significance of those patterns still depends on the underlying policy framework. A standardized vote record without a regulated policy disclosure reveals the outcome of stewardship, but not necessarily its governing logic.

To conclude, the U.S. framework creates an accountability structure built around disclosure and procedures rather than substantive policy regulation. The law largely leaves open how detailed those policies must be, which topics they must cover, how deviations should be reported, and whether investors or issuers can rely on them as commitments. This is the doctrinal space in which PVPs become legally unstable: formally required as fiduciary-compliance documents, practically used as governance standards with market-wide impact in the case of major investors, but not regulated as such.

Proxy Voting as a Governance Mechanism

Institutional shareholders, whether banks, mutual funds, or other financial bodies, manage assets on behalf of and play a crucial role within the financial system. Following the global financial crisis, monitoring by audit firms bore the brunt of the blame for bank failures and bad investments. However, shareholders' apathy was also blamed as a factor in the crisis[27] with limited accountability of boards and officers towards shareholders and their interests. Shareholders' voting is not merely a regulatory requirement but also an economically significant phenomenon as it is the exercise of economic rights and can have significant impact on governance, and following from that, on the performance and returns of traded firms. Further, shareholder voting has attracted significant public attention[28], due to its power to set norms with an impact on ESG issues with potentially significant political implications.

Voting in public companies is often seen as a way to improve corporate governance[29]. Corporate governance in turn is seen as a driver of sound management, preventing the

[25] **Dodd-Frank Wall Street Reform and Consumer Protection Act,** Pub. L. No. 111-203, 124 Stat. 1376 (2010)

[26] **Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers**, Exchange Act Release No. 96,651, Investment Company Act Release No. 34,696, 87 Fed. Reg. 78,764, 78,769–73, 78,782–85 (Dec. 22, 2022)

[27] **Brian R. Cheffins**, *Did Corporate Governance "Fail" During the 2008 Stock Market Meltdown? The Case of the S&P 500*, 65 **Bus. Law.** 1 (2009).

[28] **Lucian A. Bebchuk & Scott Hirst**, *Index Funds and the Future of Corporate Governance: Theory, Evidence, and Policy*, 119 **Colum. L. Rev.** 2029 (2019).

[29] Peter Iliev, Jonathan Kalodimos & Michelle Lowry, *Investors' Attention to Corporate Governance*, 34 **Rev. Fin. Stud.** 5581 (2021).

extraction of private benefits by either executives or controllers and as a socially desirable outcome[30]. Nevertheless, in recent years, some doubts have emerged regarding the actual returns associated with corporate governance, with indications that previous research was often based on flawed datasets, resulting in claims that the actual additional returns are more limited than originally believed[31].

In order to solve agency problems, rules also provide minority shareholders with special powers. For example, in both the U.S. and the EU, a "Majority of the Minority" requirement rule applies to some related party transactions approvals, despite doubts regarding their ability to make informed decisions[32]. This potentially increases the power of institutional shareholders on pivotal corporate decisions, even when they constitute a minority of total votes. Proxy advisory firms also emphasize shareholders voting as a tool to impose higher corporate governance standards[33]. Therefore, the two major proxy advisers, ISS[34] and Glass Lewis[35] both implemented processes for soliciting opinions from policymakers, academics, issuers, and institutional investors to assist them in formulating their policy updates.

While the legal background clarifies the formal obligations surrounding proxy voting, it must be discussed together with the broader forces that shape PVPs' operations in practice. Therefore, it is important to situate PVPs within a theoretical framework concerning private ordering, regulatory intermediation, soft law and norm production. The next section lays the conceptual foundation for the doctrinal analysis that follows.

[30] Paul A. Gompers, Joy L. Ishii & Andrew Metrick, *Corporate Governance and Equity Prices*, 118 **Q.J. Econ.** 107 (2003).
[31] Jens Frankenreiter, Cathy Hwang, Yaron Nili & Eric Talley, *Cleaning Corporate Governance*, 170 **U. Pa. L. Rev.** 1 (2021).
[32] Alperen A. Gözlügöl, *Majority of the Minority Approval of Related Party Transactions: The Analysis of Institutional Shareholder Voting*, 18 **Eur. Co. & Fin. L. Rev.** 820 (2021).
[33] See both U.S. benchmark policies as examples, which both repeatedly highlight corporate governance standards as a guiding principle: *United States Proxy Voting Guidelines: Benchmark Policy Recommendations Effective for Meetings on or after February 1, 2025*, published Jan. 9, 2025, updated Feb. 25, 2025, Institutional Shareholder Services, https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf; and *2025 Benchmark Policy Guidelines: United States*, Glass Lewis (Nov. 14, 2024), https://resources.glasslewis.com/hubfs/2025%20Guidelines/2025%20US%20Benchmark%20Policy%20Guidelines.pdf.
[34] *ISS Benchmark Policy Updates: Executive Summary: Global Proxy Voting Guidelines Updates for 2025 and Process of ISS Benchmark Policy Development*, (September 22, 2025), https://www.issgovernance.com/file/policy/active/updates/Executive-Summary-of-ISS-Policy-Updates-and-Process.pdf.
[35] *Glass Lewis Publishes Its 2025 Proxy Voting Policy Guidelines for the U.S., U.K. and Europe*, Glass Lewis (Nov. 14, 2024), https://www.glasslewis.com/news-release/glass-lewis-publishes-its-2025-proxy-voting-policy-guidelines-for-the-us-uk-and-europe.

III. Theoretical Framework

Proxy voting policies ("PVPs") do not exist in a theoretical vacuum. Their emergence as governance instruments reflects broader trends in modern regulation: the rise of private ordering, soft law, regulatory intermediaries, and the consolidation of voting power within fiduciary capitalism. Each of these concepts can inform the classification of PVPs as instruments of private norm production with regulatory relevance. The following framework situates PVPs within these scholarly traditions.

a. Private Ordering in Corporate Governance

Corporate governance has long relied on private ordering, a system in which fundamental organizational rules are created by private actors rather than legislators[36]. Private ordering manifests through charters, bylaws, shareholder agreements, governance codes, and market norms. In contemporary markets, however, private ordering has expanded from firm-specific arrangements to industry-wide norm production, generating governance expectations that operate across markets and jurisdictions[37].

PVPs typically include general rules, such as director independence thresholds, overboarding limitations, governance red flags, and they communicate expectations on various issues. These are not individual terms but rather generalized standards applying with limited distinction between portfolio firms[38], which characterize private ordering with regulatory effects.

Legal scholars have emphasized that the "infrastructure" of modern capitalism is increasingly shaped by privately authored rules.[39] Pistor argues that private actors, particularly lawyers and financial professionals, design the "code" of capital, effectively creating a body of private law that governs markets.[40] Hadfield similarly describes how, in the absence of effective public lawmaking, private rule systems may emerge to govern complex transactions more effectively.[41] PVPs fit neatly into this scholarly account: they are privately drafted, yet exert an outsized role in determining corporate governance arrangements. They reflect a shift from firm-specific contracting to market-level norm formation.

[36] Schwarcz, Steven L., *Private Ordering*, **97** Northwestern U. L. Rev. **319** (2002).
[37] Jean-Christophe Graz, *Grounding the Politics of Transnational Private Governance*, **29** Rev. Int'l Pol. Econ. **456** (2022).
[38] See SEC guidance on voting policies, supra note 22.
[39] Katharina Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton Univ. Press 2019).
[40] Id.
[41] Gillian K. Hadfield, *Rules for a Flat World: Why Humans Invented Law and How to Reinvent It for a Complex Global Economy* (Oxford Univ. Press 2017).

b. Institutional Investors as Regulatory Intermediaries

Regulatory theory also recognizes the role of private intermediaries-actors who interpret or implement regulatory standards on behalf of the state[42]. Examples include auditors, rating agencies, credit intermediaries, and proxy advisers. In corporate governance, institutional investors increasingly serve as "regulatory intermediaries", translating broad fiduciary principles into concrete behavioural rules.

This is apparent in the case of PVPs, as the general rules requiring active stewardship are subject to interpretation by institutional shareholders, who mediate between such duties, portfolio firms, and market expectations. The authority of institutional shareholders derives from practical circumstances – while they are not the ultimate beneficiaries of the shares held by them in trust; they possess the expertise, market power, and legitimacy to intermediate on behalf of their clients vis-à-vis their portfolio firms.

c. Fiduciary Capitalism and Centralised Norm Production

The theory of fiduciary capitalism, developed by Hawley, Williams, and later expanded by Bebchuk and Hirst, refers to a market structure where a small set of institutional investors, primarily large asset managers, exercise decisive influence over public corporations[43].

Index funds and other diversified asset managers often hold a combined 20%–30% of the voting power in large public firms.[44] This renders their PVPs importance at shaping governance norms at scale and influencing firm behavior, both ex ante and ex post while coordinating market expectations regarding standards.

Thus, PVPs potentially serve similarly to default rules in corporate law which can be contracted upon[45], filling gaps in incomplete legal regimes and exerting significant influence on firm practices while still allowing deviations in fitting cases. In this sense, PVPs create governance templates with structural influence over the economy.

d. Delegation of Norm Creation to Private Actors

The literature on delegated lawmaking and democratic legitimacy warns that private actors increasingly participate in the creation of norms that have public consequences without

[42] Julia Black, Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a "Post-Regulatory" World, 54 Current Legal Probs. 103 (2001).
[43] James P. Hawley & Andrew T. Williams, *The Rise of Fiduciary Capitalism: How Institutional Investors Can Make Corporate America More Democratic* (2000); Lucian A. Bebchuk & Scott Hirst, *The Specter of the Giant Three*, **99** B.U. L. Rev. **721** (2019).
[44] Lucian A. Bebchuk, Alma Cohen & Scott Hirst, *The Agency Problems of Institutional Investors*, 31 J. Econ. Persp. 89 (2017).
[45] Ian Ayres & Robert Gertner, Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules, 99 Yale L.J. 87 (1989).

adequate safeguards[46]. When this occurs, questions arise regarding accountability, transparency, and participation.

PVPs can potentially influence board composition, executive compensation practices, ESG disclosures and practices, risk management and diversity policies within major firms. Thus, they have significant public relevance regarding some of the topics that are currently being debated in the political sphere.

However, most PVPs are produced without public consultation, transparency, and scrutiny by regulators or the public as a whole. The public has no visibility into potential issues such as internal debates, conflicts of interests, and corporate influence. These issues can create a legitimacy gap, because PVPs have public effects but are created in a private setting.

These concerns are only partially addressed through voluntary stewardship codes and related initiatives. Stewardship codes generally establish guiding principles regarding how institutional investors should monitor portfolio companies and exercise shareholder rights, while accounting to clients and beneficiaries. In Europe, similar expectations appear in national stewardship codes, industry initiatives such as the EFAMA Stewardship Code, and the engagement-policy "disclose or explain" requirements of SRD II as detailed above. These instruments focus on the conduct of institutional investors and establish broad expectations regarding responsible ownership. They do not, however, prescribe the substantive topics that investors should formulate positions on, and leave a room for non-disclosure of policies.

e. <u>The Need for a Clear Classification</u>

The theoretical frameworks regarding private ordering, soft law, regulatory intermediation, fiduciary capitalism, and delegated lawmaking show that PVPs perform regulatory functions even though they are not legally recognized as regulatory instruments. This theoretical grounding supports a doctrinal evaluation. The next section of the article examines four possible legal classifications of PVPs. The theoretical analysis presented here informs this discussion and suggests that classifications that minimize their regulatory impact are descriptively incomplete, while those that recognize the normative role of influential policies more accurately capture their real-world function.

[46] Benedict Kingsbury et al., The Emergence of Global Administrative Law, 68 Law & Contemp. Probs. 15 (2005); Michael Barnett & Raymond Duvall, *Power in International Politics*, 59 Int'l Org. 39 (2005).

IV. Four Legal Classifications of Proxy Voting Policies

In order to understand the legal obligations and rights deriving from PVPs, I will assess their status from a doctrinal perspective, focusing on four broad categories of legal instruments. These classifications are analytical categories rather than four mutually exclusive alternatives. They address different aspects of the document: disclosure concerns its publication and informational function; the internal-guideline and contractual classifications concern its binding force within certain legal relationships; and private regulation concerns its functional *ex-ante* effects on issuing firms and the wider market.

The disclosure instrument classification can apply together with any of the other three. A voting policy may be a legally required disclosure while remaining an internally discretionary guideline without binding commitments, or while functioning as a private regulatory standard subject to procedural duties. The clearest tension is between the internal-guideline and contractual classifications: with respect to the same provision and the same party, a rule cannot ordinarily be both entirely non-binding and legally enforceable. Even this distinction may vary across provisions and relationships, because a PVP may contain some commitments capable of creating a basis for reliance while preserving discretion in other policy areas or specific categories of votes.

a. Proxy Voting Policies as a Disclosure Instrument

Under current U.S./EU frameworks, PVPs function primarily as disclosure items. Regulations from both the U.S. and Europe mandate disclosures concerning proxy voting policies. This is currently, in practical terms, the focus of the legislators when concerning PVPs. Further, the regulations do not include substantive requirements regarding the required level of compliance with disclosed policies or on their contents.

Thus, the basis for this classification could arise from both the legal 'location' or 'space' of the obligation to disclose, which in the U.S. arises from Form ADV[47], and SEC rules[48] as well as the form of the regulations, which focus on disclosure as a tool to increase transparency for investors and other stakeholders. Both would suggest the obligation to disclose belongs under the capital markets information regime. Courts previously interpreted such obligations as

[47] Supra note 23, Form ADV.
[48] See SEC guidance on proxy voting by investment advisers, Supra note 22.

mandating transparency, not substantial obligations, with liability being restricted to 'material facts' on which buyers of securities rely[49].

It could therefore be inferred that regulators view proxy voting policies as an item for disclosure, similar to financial disclosure items. The focus in this case would be transparency and comparability among institutional investors, allowing retail investors to make informed choices, rather than imposing strict requirements regarding the substance of the PVPs or compliance with their provisions.

From a comparative perspective, the European framework addresses voting through multiple layers. Sector-specific investment management rules require certain asset managers to establish internal strategies for voting[50], suggesting such strategies represent internal guidelines. At the same time, art. 3g of the Shareholder Rights Directive II[51] (hereinafter "SRD II") focuses on the disclosure side and encourages asset managers and institutional investors to disclose their engagement and voting policies, but in a "comply or explain" format. Empirical studies have shown that many European investors tend to "explain" non-compliance with boilerplate reasoning, raising concerns that disclosure regimes without substantive benchmarks encourage symbolic compliance. Commenting on the implementation of the portions of SRD-II pertaining to shareholder voting, the European Securities and Market Authority (ESMA) noted that gaps in disclosure remain, with SRD-II providing limited specificity regarding various processes and disclosure requirements aimed at streamlining shareholder voting. Notably, manual shareholders identification processes and lack of machine readability for disclosures hamper engagement options and in some cases mean that shareholders have very limited time to assess proposals and make informed voting decisions[52]. Taken together, these layers result in a similar legal outcome as in the US, with fiduciary duties firmly in place, but disclosure framework being incomplete and non standardised.

In the U.S., scholars such as Lucian Bebchuk and Scott Hirst argue[53] that proxy disclosures rarely capture the strategic dimensions of stewardship, leaving a gap between what is disclosed and actual investor influence, especially when concerning large institutional shareholders.

[49] **TSC Indus., Inc. v. Northway, Inc.**, 426 U.S. 438, 448–49 (1976).
[50] Directive (EU) 2010/43 of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company, art. 21; and Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision, art. 37
[51] Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 Amending Directive 2007/36/EC as Regards the Encouragement of Long-Term Shareholder Engagement, 2017 O.J. (L 132) 1.
[52] European Securities & Markets Authority (ESMA), *Report: Implementation of SRD2 Provisions on Proxy Advisors and the Investment Chain*, ESMA32-380-267 / EBA/Rep/2023/26 (27 July 2023).
[53] Lucian A. Bebchuk & Scott Hirst, *The Specter of the Giant Three*, 99 B.U. L. Rev. 721 (2019).

Theoretically, such an approach should also promote competition in stewardship quality, similar to other elements of the investment manager practice. However, as with other elements of non-financial disclosure, it runs the risk of becoming a "box-ticking" exercise, without comparable substance. Further, the fact that policies are not necessarily standardised may make comparability difficult. Assessing their quality would require investors to compare the disclosed policy with thousands or millions of subsequent voting decisions. The cost of determining whether a policy is effective is significant and may therefore exceed the expected benefit to an individual beneficiary.

Stewardship quality is also only one element of a bundled investment product. Investors ordinarily select funds on the basis of fees, expected returns, tax treatment and investment strategy, rather than focusing on voting policies independently. An investor dissatisfied with a manager's voting practices would generally[54] need to exit the entire investment product rather than replace only the stewardship service. Even if beneficiaries care about voting, differences between PVPs may therefore have only a limited observable effect on capital flows. This weakens the competitive reward available to managers that invest in more detailed or independently formulated policies. The supply-side incentives are similarly limited. Policy development, issuer-specific research and monitoring impose costs upon the manager, while improvements in portfolio-company governance benefit all shareholders in the relevant companies, including competing funds that do not incur those costs. Managers may therefore underinvest in stewardship. Moreover, boilerplate or limited disclosures preserve flexibility and reduce potential legal, political and reputational exposures. The resulting equilibrium may involve formal compliance with disclosure requirements even absent meaningful substantive disclosure and competition over the quality of PVPs.

Lastly, while the obligations share the same legal traits as financial disclosures, this approach would raise concerns due to the uniqueness of PVPs. These are purely textual documents, which are difficult to quantify, assess, and analyse. They are also not standardized similarly to financial reports, nor are there any industry-wide standards regarding their form and substance. Thus, until these are standardized in a similar way to financial disclosures, we are left with a flawed disclosure regime; on the one hand treating it similarly to financial disclosures but on the other hand lacking provisions ensuring such disclosures are meaningful and discernible for

[54] Excluding limited number of investment managers offering 'voting choice' programs.

the reader. In practice, the current disclosure regime results in only limited insight on actual voting practices and essentially relies on the goodwill of firms.

b. Proxy Voting Policies as Contract Undertakings

Proxy voting policies could be treated as unilateral undertakings towards investors, and perhaps the portfolio firms themselves. This could impose quasi-contractual obligations to follow both the processes outlined within voting policies as well as the substantive rules contained within the policies. For example, if a policy mandates a negative vote toward directors in non-majority-independent boards (a common provision), investment managers may be contractually compelled to follow this rule vis-a-vis their clients. On the flip side, portfolio firms which meet the requirements set in the policy, they could assert reliance in edge cases (such as cases where management practices materially changed in order to be compliant with a PVP and assure a positive vote).

The main advantage of such an approach would be that it would offer predictability and assurance to market players, and create a direct link between PVPs and actual voting practice.

This doctrinal definition could rely on inference from other disclosures, whose violation is a cause for a suit. Thus, voting policies could impose a *bona fide* obligation to comply with them vis-a-vis individual investors and perhaps portfolio companies themselves (assuming reliance on the policies in designing their governance or compensation practices). A legal basis could be found in American law recognizing the validity of unilateral undertakings under Promissory Estoppel principles[55]. Academics[56] and Courts have occasionally found that disclosures, in prospectuses and other reports, could constitute binding obligations, when reliance was caused by their publication, using terms such as 'fraud' to describe miscommunications[57]. U.S. case law also implicitly recognized that state law theories of contractual obligations arising from disclosures may be valid, allowing individual such claims[58] while barring class actions on such claims due to statutory limitations.[59] Thus, while case law explicitly using the term 'contract' in relation to disclosures is limited, this approach would be doctrinally logical upon possible statutory adoption, especially with regard to retail-facing funds, where information asymmetries are common.

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[55] **Restatement (Second) of Contracts § 90(1)** (Am. L. Inst. 1981).
[56] **Melvin Aron Eisenberg**, *The World of Contract and the World of Gift*, 85 **Calif. L. Rev.** 821, 839–42 (1997).
[57] *In re Time Warner Inc. Securities Litigation*, 9 F.3d 259, 266–68 (2d Cir. 1993); **SEC v. Texas Gulf Sulphur Co.**, 401 F.2d 833, 862 (2d Cir. 1968) (en banc); and ***Basic Inc. v. Levinson***, 485 U.S. 224 (1988).
[58] **Northstar Fin. Advisors, Inc. v. Schwab Invs.,** 779 F.3d 1036 (9th Cir. 2015).
[59] **Securities Litigation Uniform Standards Act of 1998,** Pub. L. No. 105-353, 112 Stat. 3227.

This approach may result in enforceable and presumably more consistent voting practices. However, such approach would limit the flexibility of voting entities, binding them to a set of technical points which may not capture the inherent uniqueness of each voting situation, and constraining them from making even justified exceptions in extraordinary cases.

Additional concern would be discouraging substantive disclosure, out of fear of creating actionable breaches of obligations. Thus, assuming the disclosure rules remain relatively discretionary (in the US) or almost fully discretionary (in the EU), there is a concern that if contractual undertakings are interpreted into the legal consequences of PVPs' disclosures institutional investors would publish even more fully boilerplate disclosures, thereby limiting transparency further.

In Europe, contract-based arguments would face even more hurdles. EU law generally places stewardship disclosure in the realm of soft law, as highlighted by the European Commission itself in the run-up years towards the introduction of the SRD-II[60]. However, some European national jurisdictions did recognise capital markets disclosures, recommended within SRD-II, as legally binding, effectively adopting stricter national laws than the European standard.[61]

Thus, in both major markets, the contractual approach remains theoretically and normatively attractive but legally underdeveloped. Any future adoption would also have to come in tandem with the strengthening of disclosure requirements to prevent backsliding into boilerplate, meaningless, disclosures.

c. Proxy Voting Policies as Private Regulations

There are several compelling arguments in support of classifying proxy voting policies as private regulatory instruments. Namely, the substantive content of the policies normally includes recommended guidelines for corporate governance and rules regarding both the process of voting and the decision-making calculus, which resemble regulatory documents released by public regulators.

Further, while proxy voting policies are not fully standardised, they often exhibit significant similarity to each other, which suggests a level of market alignment. This is true especially

[60] **European Commission**, *Communication from the Commission: Action Plan: European Company Law and Corporate Governance – A Modern Legal Framework for More Engaged Shareholders and Sustainable Companies*, COM(2012) 740.

[61] For example, in Germany (see **Gesetz zur Umsetzung der zweiten Aktionärsrechterichtlinie (ARUG II)**, Dec. 12, 2019, **BGBl. I** at 2637 (F.R.G.); and France (see **Loi n° 2019-486 du 22 mai 2019 relative à la croissance et la transformation des entreprises** [Law on Growth and Transformation of Enterprises], **J.O.** 22 mai 2019, text no. 1 (Fr.)).

because many rely on the benchmark policies by proxy advisors or their assistance[62]. Thus, the body of proxy voting policies as a whole seems to have a certain normative power to create industry standards. This is true especially for market actors with concentrated power, who effectively create governance standards outside the formal legislative process.

This regulatory element is not equally applicable for every voting policy. A short, boilerplate or general policy which was issued by a family of small funds may serve primarily as an internal guideline without materially influencing portfolio-company behaviour. The private-regulation classification is strongest when a policy contains easily identifiable and generally applicable guidelines with clear thresholds, connects non-compliance with a predictable voting response, and is issued by an investor with sufficient ownership and influence to induce changes in market behaviour among issuers and peers.

Classifying PVPs as private regulatory documents would possibly justify the imposition of certain duties arising from private or even administrative legal spheres. Duties similar to those already applied voluntarily by proxy advisors such as heightened transparency, conflict-of-interest management, and accountability, both in the process of shaping and drafting PVPs as well as in their application could theoretically be extended to institutional investors themselves. This would reflect an already emerging reality: large index funds such as BlackRock, Vanguard, and State Street exert regulatory-like influence by setting governance standards that portfolio companies adopt pre-emptively. Correspondingly, some of them have voluntarily adopted processes or transparency measures to increase the legitimacy of their policies[63].

From a public law perspective, democratic legitimacy is threatened when private actors perform quasi-regulatory functions without parliamentary oversight. Scholars like Katharina Pistor[64] have argued that financial markets increasingly generate private regulations eroding the previous monopoly of states over norm-setting while having their own ideology or norms. PVPs fall squarely within this phenomenon. At the same time, proponents argue[65] that private regulation, especially when done by objective organisations, fills gaps left by under-resourced regulators, promoting adaptive and specialized governance standards which can tackle unique situations and differing portfolios and priorities. The general model of private legislation will

[62] See statistical analysis below.

[63] For example **BlackRock**, *Investment Stewardship Annual Report 2024* (Apr. 2024), https://www.blackrock.com/corporate/about-us/investment-stewardship.

[64] Katharina Pistor, *Capital's Global Rule*, 26 **Constellations** 430 (2019); Katharina Pistor, *Ideology and Institutions in the Evolution of Capital*, 43 **Analyse & Kritik** 23 (2021); Katharina Pistor & Chenggang Xu, *Incomplete Law*, 35 **N.Y.U. J. Int'l L. & Pol.** 931 (2003).

[65] **Kenneth W. Abbott & Duncan Snidal**, *The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State*, in *The Politics of Global Regulation* 44 (Walter Mattli & Ngaire Woods eds., 2009).

have to be assessed as well, as literature identified models of cooperation between private actors, experts, and governments with a looming threat of hard-law regulations[66].

Legally, this approach would be grounded in the actual power of PVPs. However, absent main legislative instruments supplemented by regulations, procedural standards would remain *ad hoc*, depending on the goodwill of the investors. Further, imposing additional demands could increase regulatory burden, exacerbating the costs of active stewardship, and, similarly to the contractual approach, create incentives against detailed disclosures.

d. Proxy Voting Policies as Internal Guidelines

PVPs can also be seen as purely internal documents, which, while publicly disclosed, are neither binding nor enforceable. They would have a role similar to that of employee manuals, and serve as internal instructions to these employees responsible of voting proxies.

Under such a scenario, PVPs would not create any obligations, either towards third parties and portfolio companies or even individual investors themselves. An advantage of such a model would be that it would accord maximum flexibility to investment managers to vote on a case-by-case basis, and rigorously protect investors' interest, resulting in lower overall regulatory burden.

Comparatively, this view is closest to the pre-SRD II European landscape, where engagement and voting were considered mostly internal matters before a limited disclosure layer was added. Yet research on "rational apathy" in shareholder voting[67] demonstrates that institutional investors often lack incentives to actively monitor every portfolio company. Purely internal treatment of PVPs therefore risks undermining the very rationale behind stewardship codes, reducing them to symbolic gestures rather than instruments of accountability.

However, given the large volume of proxy votes, numbering millions of voting decisions per year, and the limited incentive of individual funds to undertake an in-depth review into every issue, there would be a concern that this model would legitimize shareholders' apathy and limit accountability, sacrificing the long-term business and societal benefits of stewardship. In addition, while it would have the benefit of giving managers the freedom to disclose and shape their PVPs in accordance with their actual views, it may result in inaccurate or weaker

[66] Fabrizio Cafaggi, *New Foundations of Transnational Private Regulation*, 38 **J.L. & Soc'y** 20 (2011).
[67] Sanford J. Grossman & Oliver D. Hart, *Takeover Bids, the Free-Rider Problem, and the Theory of the Corporation*, 11 **Bell J. Econ.** 42 (1980).

disclosure of PVPs, as the disclosure would not necessarily represent the actual consistent practice of institutional shareholders.

V. Doctrinal and Empirical Assessment of PVPs

Following from the legal dimensions outlined above and in order to assess what is the current correct legal classification of PVPs, I will rely on both legal inference and the structure of current regulations, supplemented by an empirical review of current disclosure landscape.

a. Doctrinal Perspective

Proxy voting policies appear, *prima facie*, as disclosure instruments. This is based on the legal source obligating their disclosure, which uses language similar to that of other disclosed items. Further, lacking standardisation, it is hard to argue that they carry contractual power, with actions and liability based on faulty disclosure limited due to the wide latitude granted to firms in disclosing their voting practices. This also suggests that an internal guidelines interpretation is also reasonable, due to fiduciary discretion, characterized by a wide degree of deference[68].

The absence of a statutory instrument imposing additional duties further confirms that PVPs should be viewed within the disclosure framework rather than as autonomous regulatory instruments. In contrast to financial reporting where statutes such as the Securities Exchange Act of 1934[69] provide a detailed legislative foundation, proxy voting policies and associated votes are mandated only through disclosure-oriented rules (e.g., Form ADV[70], Form N-PX[71], and SRD II[72] in Europe). This structural positioning may signal that lawmakers and regulators conceptualize PVPs primarily as part of the information regime. Their function is thus analogous to other disclosure obligations, aimed at increasing transparency for investors, rather than creating new substantive governance standards.

Within this doctrinal framework, an additional strong classification of PVPs is as internal guidelines, primarily because fiduciary discretion is a prevalent element under both U.S. and EU law. Institutional investors are generally entitled to a broad margin of judgment in exercising their stewardship functions, including voting discretion. The policies serve as reference points for internal decision-making rather than enforceable obligations vis-à-vis third

[68] See legal background above, as well as relevant legislative paragraph indicating wide discretion - *Uniform Prudent Investor Act* § 2(b) (1994); and interpretation of existing laws - *Restatement (Third) of Trusts* § 87 & cmt. b (Am. L. Inst. 2007).
[69]***Securities Exchange Act of 1934**, 15 U.S.C. §§ 78a–78qq (2024).*
[70] *Supra note 23.*
[71] **Form N-PX**, 17 C.F.R. § 249.332 (2024).
[72] *Supra* note 38.

parties. Regulators have acknowledged this: the SEC has noted in interpretive releases that proxy voting responsibilities are exercised within the fiduciary duty of advisers to act in the "best interests" of clients, but have not elevated disclosed policies to binding commitments.

Current law therefore results in a fragmented classification rather than a single answer. PVPs are governed primarily as disclosure instruments of an internal nature: the law requires (in the US) or encourages (in the EU) their adoption and publication without providing guidelines regarding their content and application. The contractual classification may apply in exceptional cases where sufficiently definite representations and legally cognisable reliance are present, but it does not describe PVPs generally. Private regulation is not an alternative status in the same sense; it describes the functional effect that influential policies may exercise over issuers despite limited formal enforceability, requiring different legal treatment.

b. Current Disclosure Landscape[73]

While, as mentioned, institutional shareholders in the U.S. have an obligation to disclose their PVPs and procedures, many do it in a limited fashion. My review has shown that, out of 1,605 distinct registrants (funds) that disclose their 2024 voting record, around 5% have not disclosed any policy, while around 20% have disclosed policies which do not contain substantive voting criteria such as disclosing full or almost full reliance on proxy advisors[74] (approximately 15%), mirror or automatic voting (approximately 1%), or simply boiler plate disclosures lacking substantive content[75] (approximately 4%). In many cases, several mutual funds share the same policy (mutual fund family), resulting in 265 substantive director election policies.

Many policies which are disclosed often include two or three short paragraphs, with many expressing positions on the topic of directors' elections (a major topics constituting the majority of votes) in the length of one or two lines (approximately 24%). Nevertheless, as smaller funds (in terms of voting activities) are the ones choosing to provide limited disclosure, around 87% of voting decisions (on the topic of directors' elections) for which a policy is available remain tied to a substantive policy with relatively clear criteria.

Notably, a renewed review of proxy voting policies in 2026 revealed they are "live" documents which are routinely updated in response to social and governance developments. Nearly two

[73] The data contained within this section was manually compiled by the author and is available upon request. The author expects that in 2026, he will publish additional working paper focusing on the empirical analysis of PVPs, based primarily on said data. For further details regarding the dataset, see Appendix I (methodological appendix) below.
[74] Defined as "Noting that except in extraordinary circumstances, the registrant intends to vote in line with the recommendation of the proxy adviser".
[75] Defined as "Outlining only short, vague and non-measurable rules regarding directors' elections"

thirds of funds (765 out of 1200 mutual funds with relevant substantive policies) updated their policies (mostly on an annual basis). The content of the updates itself is striking with by far the biggest group (82% of funds with updates) softening their commitments to gender diversity and social inclusion by removing specific contentious words and explicit thresholds, further reflecting the role of PVPs as reflecting societal developments, such as the backlash against ESG activism. Notably, governance and ESG changes in policies overlapped and several policies reflected weakened commitment to diversity and increased commitment to corporate governance best practice standards.

This heterogeneous level of disclosure suggests that, indeed, PVPs are seen by many reporting shareholders as a 'box-ticking' exercise. Further, the ability of portfolio companies, clients, policymakers and other stakeholders to infer actual voting behaviours and voting intentions from the content of PVPs is limited[76]. This is in line with the legal assessment above, which shows that PVPs are underregulated, with institutional shareholders mostly focusing on the disclosure aspect. Nevertheless, the caution exhibited by many institutional shareholders may also show that some may have concerns regarding the possible legal implications of disclosing detailed PVPs. Further, a large number of policies include caveats, exceptions, and discretionary provisions allowing for votes contrary to those policies.

The observed heterogeneity is in line with the theorized incentive problems. Certain entities may have insufficient incentives to incur the fixed costs of producing detailed policies and update them regularly, particularly where beneficiaries cannot readily observe or reward that investment. Simultaneously, entities disclosing more elaborate policies retain broad exceptions because the benefits of flexibility are internal to the manager, while the resulting reduction in verifiability is borne by beneficiaries and other users of the disclosure. The empirical findings therefore do more than demonstrate formal incompleteness: they are in line with theorized disclosure and monitoring frictions under the current regulatory arrangement.

c. Normative and Policy Perspectives

Because certain influential PVPs shape governance outcomes at scale, exhibit *de facto* regulatory influence over public corporations, and affect stakeholders beyond the investor-manager relationship, they should be treated as private regulatory instruments subject to procedural safeguards, substantive minimum disclosure requirments, and enforceable

[76] As noted above, the work on the casual analysis of PVPs is still ongoing. However, initial results point at a complex picture which is sometimes counterintuitive, with limited explanatory power of PVPs.

accountability mechanisms. This should come in addition to current disclosure obligations. This claim goes beyond the conventional stewardship account: the relevant concern is not only whether investors exercise their rights responsibly, but whether the detailed standards through which influential investors exercise those rights generate governance rules for firms and other stakeholders who were not involved in their formulation. I will now discuss various normative principles leading to that outcome.

Transparency versus Accountability

The SEC has taken steps toward addressing the lack of transparency in voting behaviour by standardizing the format of Form N-PX. Recent amendments require funds to categorize votes in a structured manner, facilitating comparability across investors and proposals. However, the underlying documents guiding these votes, the PVPs, have not received equivalent regulatory attention. This asymmetry leaves the SEC's work incomplete. Without standardized or substantive disclosure requirements for PVPs, investors and stakeholders cannot meaningfully evaluate the principles shaping funds' voting behaviour. Further, deviation from the policy may be difficult to detect and even if detected, would not be legally actionable. The lack of policy version identifiers or archive can also render tying a specific policy version to a given reporting period virtually impossible. As a result, standardized N-PX disclosures may reveal the "what" of voting behaviour but obscure the "why," depriving markets of a critical layer of accountability.

A similar gap exists in the European Union. The Shareholder Rights Directive II requires institutional investors to disclose their engagement and voting policies under a "comply or explain" regime. Yet in practice, many investors opt for generic boilerplate explanations, and even when disclosures are made, the scope is limited: asset managers are only required to report on the reasoning of their "most significant votes," rather than providing a comprehensive account. This approach undermines the transparency objectives of the Directive, as it allows funds to selectively report on votes that are reputationally favourable while obscuring less flattering practices.

Finally, reclassifying PVPs as private regulation would better reflect their norm-setting role in practice. Policies issued by dominant institutional investors such as BlackRock, Vanguard, and State Street have already created de facto governance standards around board independence, climate risk disclosure, and executive compensation. Yet because these standards are expressed only in voluntary PVPs, they escape the kind of accountability normally expected of regulators or legislators. A legal framework that recognizes PVPs as private regulations complete with procedural safeguards, disclosure duties, and perhaps consultation requirements would enhance the legitimacy of this private lawmaking while avoiding the democratic deficit that currently surrounds it.

As a second-best option which would require only a limited doctrinal change, regulators may also opt to keep PVPs as a disclosure item but tighten the disclosure regime. Such tightening could include a "minimum topics" requirement which would require reference to the main vote types, already present (as a starting point) within N-PX regulations[77], disclosure requirement on deviations from the policy, and a prohibition on "boilerplate" disclosures. In order to enhance possible analysis by stakeholders, regulators could also require a specific format for PVPs, in machine-readable form. However, this would constrain the discretion of funds and impair innovation and competition for stewardship. Striking the right balance between transparency and flexibility would remain a difficult task for regulators. Two main principles for an updated regulatory regime would be proportionality and democratic legitimacy.

Proportionality

The principle of proportionality is deeply rooted in both administrative law and corporate governance regulatory design[78] and provides a normative foundation for differentiating the desirable legal obligations attached to PVPs. In contexts where regulatory burdens risk inhibiting legitimate private activity or imposing excessive costs on smaller actors, proportionality demands that obligations be calibrated to the scale of influence, resource capacity, and potential externalities associated with the regulated entity.

Applied to institutional investors and PVPs, proportionality implies that major asset managers controlling substantial fractions of the equity markets or conducting significant voting activity should bear more rigorous procedural and disclosure responsibilities than small funds with limited market impact. The vast majority of smaller mutual funds and asset managers hold only marginal voting stakes in each issuer. Their PVPs have little market-wide impact on corporate behaviour.

[77] *Supra* note 70, N-PX regulations. Namely, the topics included in N-PX forms are: Director elections, Section 14A say-on-pay votes, Audit-related, Investment company matters, Shareholder rights and defenses, Extraordinary transactions, Capital structure, Compensation, Corporate governance, Environment or climate, Human rights or human capital/workforce, Diversity, equity, and inclusion, Other social issues, and an additional "other" category.

[78] Mathews, *Proportionality Review in Administrative Law*, in Comparative Administrative Law 405, 405–08 (Susan Rose-Ackerman, Peter L. Lindseth & Blake Emerson eds., 2d ed. 2017); OECD (2018), Flexibility and Proportionality in Corporate Governance, OECD Publishing, Paris.
https://doi.org/10.1787/9789264307490-en

The logic of proportionality therefore suggests that legal obligations surrounding PVPs should be scaled rather than uniform. Large funds, whose policies carry systemic implications, cannot rely on procedural norms appropriate for small actors. Their stewardship teams are sophisticated, well-resourced, and capable of articulating comprehensive governance standards. Requiring them to adopt rigorous processes such as publishing draft PVPs for comment, engaging with affected stakeholders, or explaining methodological choices is not only administratively feasible but normatively justified given the externalities their policies create.

Conversely, smaller, less active funds lack the infrastructure to engage in extensive stewardship processes while larger investors are more likely to adopt rich voting policies[79]. Imposing identical procedural or disclosure requirements on them risks creating compliance burdens disproportionate to their market influence and unrelated to investor protection. Rather than enhancing governance, over-regulation could incentivize smaller funds to adopt boilerplate PVPs or rely blindly on proxy advisors.

By grounding reform in proportionality, regulators can ensure that enhanced oversight of PVPs strengthens market function without distorting competition or placing undue demands on entities with negligible systemic influence.

Democratic Legitimacy

As explained above, PVPs have evolved into powerful instruments shaping corporate behaviour, yet they remain privately formulated documents produced in opaque institutional settings. The democratic legitimacy principle offers an additional normative lens to assess this tension. Broadly understood, democratic legitimacy requires that rules affecting public or quasi-public interests be produced through processes that embody transparency, participation, and accountability with affected parties[80]. Although institutional investors are not public agencies, the governance standards embedded within PVPs increasingly carry public significance, influencing firm-level decisions on compensation gaps, climate risk, political spending, diversity, labor practices, and strategic oversight. As PVPs take on the characteristics of regulatory norms, their formulation should satisfy at least a minimal level of procedural legitimacy.

[79] Edwin Hu, Nadya Malenko & Jonathon Zytnick, *Other People's Votes: The Law and Economics of Proxy Advice* 1(Eur. Corp. Governance Inst., Law Working Paper No. 938/2026, June 2026), https://www.ecgi.global/sites/default/files/2026-06/other-people.pdf
[80] Julia Black, *Proceduralizing Regulation: Part I*, 20 Oxford J. Legal Stud. 597, 597–604 (2000); Julia Black, *Proceduralizing Regulation: Part II*, 21 Oxford J. Legal Stud. 33, 33–40 (2001)

At present, PVPs are mostly developed through internal deliberations shielded from public scrutiny without external review, stakeholder consultation, or published rationale. This stands in sharp contrast to the mechanisms governing public lawmaking or even private standard-setting in other fields, such as accounting or sustainability reporting, where consultation and oversight are standard. The absence of transparent reasoning or opportunity for comment prevents issuers, investors, and affected stakeholders from understanding why certain governance standards are adopted and how they relate to broader social or economic concerns. It also obscures the extent to which PVPs reflect internal conflicts of interest, market pressures, or political sensitivities rather than a principled approach to stewardship.

Moreover, most PVPs currently offer no mechanisms through which those affected by governance norms such as employees, communities, civil society organizations, and minority shareholders, may challenge or question the assumptions underlying those norms. Because PVPs often guide decisions with wide-ranging consequences, particularly in areas like ESG oversight and executive compensation, their unilateral production by private investors raises questions about legitimacy and accountability. This is especially acute where large funds exercise stewardship power on economies of scale, effectively setting governance norms across entire markets without democratic checks, legal constraints, or mechanisms for appeal.

Incorporating democratic legitimacy into the regulation of PVPs does not require transforming private asset managers into public agencies nor replicating administrative law wholesale. Rather, it implies adopting concrete procedural commitments in line with the public impact of their policies: transparent articulation of the reasoning and evidence underlying PVPs; engagement with affected stakeholders, particularly in areas with political or social significance; and *post hoc* mechanisms such as deviation reporting or third-party review. By embedding elements of democratic legitimacy into stewardship practices, regulators can reduce opacity, enhance public trust, and ensure that PVPs develop through processes that reflect their broader societal influence.

d. <u>Comparison Table</u>

Below, the table outlines the traits and theorized outcomes of each of the possible legal classifications discussed above. Of course, it is discernible that shareholders would exhibit significant heterogeneity regarding these traits. Larger shareholders, who are subject to more regulatory and public attention, would often be incentivised to exhibit higher compliance and transparency standards than small funds. Nevertheless, the table serves as a visual illustration of perceived advantages and disadvantages of each legal dimension.

Table 1: Legal Taxonomy of Proxy Voting Policies

Legal Dimensions of PVPs	**Disclosure Item**	**Contractual Undertakings**	**Private Regulation**	**Internal Guidelines**
Expected Disclosure Level	Currently Limited, but room for standardisation	Limited due to freedom of contracts and incentives against expanded disclosure	High, as similar to government regulations	Limited, due to the guidelines being internal documents.
Expected Compliance Level with published PVPs	Medium, given incentives to avoid accusation of materially misleading disclosures	High, due to PVPs being enforceable	High, due to the application of administrative duties	Limited, as no actionability.
Expected Government Regulatory Oversight	High, as regulators drive the disclosure duties	Limited due to freedom of contracts	Medium, oversight may apply on the formulation process	Limited, due to management's discretion over internal documents
Expected Transparency of PVPs Formulation Process	Low, as no procedural duties in place	Medium, as legal consideration will be given to PVPs	High, as administrative duties may apply to influential policies	Medium, as subject to internal corporate governance mechanisms
Actionability by Third-Party Stakeholders	None, as no substantive duties arise for non-investors	None, as not a party to implicit contractual commitment	Possible, due to public interest consideration affecting private regulations	None, due to the internal nature of this instrument

VI. ESG Issues and PVPs

As detailed above, a significant number of PVPs refer to environmental and other ESG issues. This is notable because corporate governance structures and compensation incentives can significantly impact the environmental footprint of public corporations[81]. This is also an aspect of proxy voting that has received outsized media attention, with regulators and commentators sometimes arguing that only 'financial considerations' aimed at maximizing shareholder value should be taken into account when making proxy voting decisions.

However, the procedures described in most PVPs, which guide the voting decisions in practice, remain fully internal and do not include interaction with the public, either through NGOs or experts. Thus, in practice, ESG-related voting practices depend on the in-house expertise of institutional shareholders or the recommendations of proxy advisory firms.

With the regulatory pressure on proxy advisory firms ESG-based recommendations[82], proxy advisors are signalling a "political retreat" from controversial topics[83]. This signals a weakening of the market consensus regarding the importance of ESG issues and may effectively limit the ability of small investment funds to access ESG-based advice.

Thus, shareholders would have to rely more on their own voting policies and publicly take a clear position on whether such topics are relevant when considering corporate votes. Under the current piecemeal disclosure regime there is a concern that vague disclosures and methodologies could weaken ESG-related oversight of management teams, to the detriment of the public and other stakeholders.

Importantly, a stricter disclosure regime could also provide retail investors, NGOs, environmental experts and ESG rating agencies the tools to take into account votes when assessing or engaging with institutional investors, increasing transparency and benefiting public discussion. To depoliticize such disclosures and ensure comparability, specific ESG disclosure requirements in relation to PVPs may include mandatory information on: (i) how ESG topics are deemed financially material (by sector/topic), (ii) which external inputs (e.g. NGOs, scientific experts, industry bodies, engagement with issuers) informed ESG-related

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[81] **Babajide Oyewo**, *Corporate Governance and Carbon Emissions Performance*, 334 **J. Envtl. Mgmt.** 117474 (2023).
[82] Tex. S.B. 2337, 89th Leg., Reg. Sess. (Tex. 2025).
[83] Liz Hoffman & Rohan Goswami, *Shareholder Adviser Glass Lewis Joins Political Retreat*, **Semafor** (Apr. 29, 2025), https://www.semafor.com/article/04/28/2025/shareholder-adviser-glass-lewis-is-considering-ending-its-recommendations-in-corporate-ballots-under-political-pressure.

policy drafting, and (iii) how national and regional best-practice codes inform divergence of ESG practice by market.

VII. Policy Recommendations

Based on the above, it is clear that PVPs exist in a 'gray' legal space which leaves many unanswered questions. Without proposing a wholly new regulatory regime, several practical steps may be needed in order to make PVP disclosure stronger and more reliable: (i) Standardisation (ii) Tiered Obligations and (iii) Oversight mechanisms and (iv) accountability.

First, it is apparent that the highly discretionary disclosure regime, permits in practice institutional shareholders to avoid the adoption of meaningful policies, provide boilerplate disclosures, or on the other hand publish overly detailed policies or even multiple policies without clarifying when and how each one is implemented. This is not in line with other disclosure requirements which, combined with jurisprudence, provide guidance to corporations and stakeholders alike. Thus, some level of standardisation is needed. However, considering that PVPs are not numerical information, full standardisation would be too constraining, preventing innovation regarding stewardship. A proposed model for standardisation may be requiring PVPs to address a minimum list of issues. This would be in line with other comparable disclosure items both in American and EU jurisdictions, with Regulation S-K[84] requiring references to specific items and the EU: CSRD[85] referring to an open list of ESG topics, as well as the UK and Japan stewardship codes[86], which establish various guiding principles relevant to the shaping of PVPs.

A specific concern about regulating the process of formulating PVPs is unduly increasing the regulatory burden disproportionate to social benefits. Thus, a tiered regulation may be justified. For example, families of funds with significant resources (such as BlackRock and Vanguard), may be subject to procedural requirements such as public consultations, solicitation of opinions from their clients, review by an independent committees and other procedural constraints. At the same time, regulation should be more light-touch for small managers, whose team is often only a few employees. Assets Under Management (AUM), size, or scale of voting activity may serve as the guiding criteria of these tiered procedural obligations.

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[84] Regulation S-K, 17 C.F.R. §§ 229.10 – 229.1400 (2024).
[85] *Corporate Sustainability Reporting Directive* (CSRD), Directive (EU) 2022/2464, 2022 O.J. (L 322) 15.
[86] Financial Reporting Council (FRC), The UK Stewardship Code 2026 (2025), https://www.frc.org.uk/docs/8364/html/; Financial Services Agency (FSA), Principles for Responsible Institutional Investors (Japan's Stewardship Code) (2020, revised June 2025), https://www.fsa.go.jp/en/refer/councils/stewardship/20250626/01.pdf

Concerning oversight mechanisms, these can be implemented similarly to existing mechanisms within publicly traded entities. For example, similarly to the approval of remuneration reports and policies, fund shareholders' approval may be required to approve PVPs within funds. In addition, auditing PVPs may be included under the internal or external auditing mandates regarding corporate governance risks.

A final element in this new updated framework would be enforcing accountability. Indeed, without binding obligations, PVPs run the risk of remaining technical, box-ticking documents which would not accurately reflect the voting behaviours of institutional shareholders. Direct enforcement may be difficult as public regulatory cannot be reasonably expected to review millions of voting decision and compare each one to an applicable policy[87]. However, updated regulations may more clearly prescribe that unjustified deviations from PVPs can be actionable by individual investors, similarly to existing remedies for inaccurate disclosures.[88]

These requirements would aim to alleviate possible market frictions rather than merely improve the appearance of disclosure. A minimum-topics requirement would lower search and comparison costs. Consistent policy identifiers and machine-readable publication would facilitate analysis both by intermediaries and beneficiaries themselves. Finally, a clear link between policies and voting records while requiring explanation or at least disclosure of deviations would reduce the cost of monitoring and informational asymmetries.

A significant concern about tightened regulation would be that voting practices could become rigid and technical, with shareholders prevented from taking into account the unique circumstances of extraordinary votes. PVPs themselves can be shaped in a way that will prevent such rigidity, employing general clauses or open-textured terms to allow for flexible but accountable implementation. However, it should remain permissible to deviate from PVPs under special circumstances. Special disclosure may be required in such cases through a standardized "exceptions log", which would allow evaluation and tracking of such special situations.

[87] Stephen M. Johnson, Phillip Williams & Guadalupe Aguilera, *Proxy Voting Reform: What Is on the Agenda, What Is Not, and Why It Matters*, 99 **B.U. L. Rev.** 1347 (2019).
[88] Codified in the US under Rule 10b-5 (17 C.F.R. § 240.10b-5 (2024)). In the EU, the prohibition (but not the remedies) is codified under the Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 Apr. 2014 on Market Abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC, 2014 O.J. (L 173) 1. However, there is a clearly codified remedy for misleading statements in prospectus, under *Prospectus Regulation*, Regulation (EU) 2017/1129, arts. 11–12, 2017 O.J. (L 168) 12.

VIII. Conclusion

With regulatory, political and public pressures on proxy advisory firms rising and with the lessons of lax stewardship remaining relevant, the importance of PVPs as a rule-setting instrument by private parties is expected to increase. However, the regulatory regime governing their formulation and disclosure has become dated, remaining broadly discretionary in major jurisdictions and resulting in fragmented and incomplete disclosure landscape. This problem persists in both the U.S, and European legal systems.

In this paper, which is complemented by a separate paper analysing empirically PVPs' association with voting patterns, I have proposed four different legal dimensions of PVPs and reviewed, from a doctrinal and normative perspectives, the pros and cons of each of them. I argue that in order to fulfil their intended function, the law should recognize PVPs role as quasi-regulatory instruments, while standardizing their form.

More than merely surveying the regulatory landscape, this article establishes a new analytical architecture which helps explain PVPs. The structural doctrinal framework, supplemented by original empirical evidence, advances a theoretically grounded model of PVPs as private regulation. This model, anchored by proportionality and democratic legitimacy, extends beyond existing commentary and aims to reconcile private corporate governance power with public oversight, laying the groundwork for a coherent and accountable stewardship regime as well as future doctrinal and empirical research on the topic.

By closing gaps in the regulations surrounding PVPs, regulators can improve the predictability of the regulatory environment regarding stewardship, strengthen communication and signalling between shareholders and portfolio companies, and provide avenues for stakeholder participation in the process.

Appendix I - Methodological Appendix

The database is based on a dataset of all N-PX filings during 2023 as indicated by the advanced search function on the SEC's EDGAR website, representing the entire universe of mutual funds submitting voting reports that year. These N-PX filings, representing 2,754 different forms submitted, were reduced to 2,085 following consolidation of multiple filings for the same registrant and to 1,644 different funds when cleaning irrelevant funds investing primarily in private equity, debt instruments, natural resources, and other non-voting assets. Overall, 501 fund families with distinct voting guidelines were detected, 296 documents include substantial voting criteria on the topic of directors.

For each of these funds, between January and June 2025, best efforts were made to collect a matching voting policy underlying its voting rules and guidelines. These efforts included: review of EDGAR SEC filings, checking website's governance section, Google searches of documents based on various combinations and the use of of a Large Language Model (LLM) to supplement the search. All documents were verified and classified by the writer.

In order to leverage the commencement of the standardized reporting regulatory framework of voting decisions, the focus of the first phase is the N-PX filings for 2024 (covering the period between June 2023 and June 2024), despite representing an empirical limitation (focusing on a 2023 list for a 2024 scraping process). 1,279 N-PX files matching the database were found, crawled and processed. CSV normalization removed non-ASCII/escape artifacts; rows failing required-field validation (issuer, meeting date, proposal, vote) were dropped. Following the cleaning of the data, approximately 99% of the remaining rows passed the required-field validation checks.

In May-June 2026, an empirical extension was conducted using updated policy data following the same 'best effort' standard to locate updated policies. Where updated policies were located, they were compared using redline comparison scripts, revealing exact wording changes serving as the basis for categorization of changes.

Statistical data presented above thus relies on both the disclosure catalogue derived from publicly available SEC filings, crossed with the voting data retrieved from publicly available N-PX forms filed on EDGAR. The source data is shareable upon request.

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