

Mirror Voting

Law Working Paper N° 940/2026

June 2026

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Abstract

We provide the first large-scale empirical evidence assessing proposed reforms to corporate voting. We focus on “mirror voting,” meaning pro-rata voting by indexed shareholders based on the proportion of votes cast by non-indexed shareholders. We find that if index funds had followed “mirror voting” for more than 600,000 agenda items from 2005 through 2025, the results would have flipped just 12 times, compared to thousands of flips if index funds had voted based on proxy advisor or management recommendations. We examine “mirror voting” flips and find that they tend to involve contentious votes. We also find that if index funds had abstained from voting, one in ten shareholder meetings would have been below the quorum threshold. Based on our results, we conclude that a “mirror voting” rule for index funds would have been the least disruptive of several reforms historically. We argue that this evidence should be considered in the analysis of the benefits and costs of proposed voting reforms.

Keywords: Proxy Voting, Index Funds

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Introduction

This Article provides the first empirical evidence of the historical impact of “mirror voting,” under which index funds would vote in proportion to the rest of the market.¹ Specifically, we find that “mirror voting” by index funds historically would have been the least disruptive of the recent seriously considered shareholder voting reforms. Across two decades of shareholder ballots, we show that only one outcome in fifty thousand would have changed.

Our findings contribute to the contentious policy debate surrounding index funds and their incentives to vote in corporate elections. Today, a dozen or so asset-management professionals at BlackRock, Vanguard, and State Street vote shares in America’s largest companies on behalf of millions of beneficial owners who never see a ballot. Several reform proposals have emerged to address various questions associated with index fund voting, each of which reassigns the voting decision to a different party. Yet policymakers assessing these proposals can draw on almost no empirical evidence.

Recent policy proposals, and questions about concentrated shareholdings, invert the problem Adolf Berle and Gardiner Means identified in 1932,² when dispersed shareholders could not hold concentrated managers to account.³ The structural source of this inversion can

¹ We use the term “mirror voting” here to describe the type of voting approach by one set of voters that would mirror the rest of the voters proportionately. For example, suppose indexed investors owned 20% of all shares, and further suppose that 3/4 of the remaining shares voted in favor of a proposal and 1/4 voted against. Then indexed investors following “mirror voting” would cast 3/4 of their shares (15% of the overall shares) in favor of the proposal and 1/4 of their shares (5% of the overall shares) against the proposal. We discuss the specifics of various definitions and potential approaches to “mirroring” in Part I. We also follow the academic literature in splitting funds into groups based on CRSP data. We use the term “index funds” or “index block” to describe those funds with a CRSP index fund flag of “D.” We use the term “passive funds” or “passive block” to describe those funds that have any non-empty CRSP index fund flag or have a name that matches standard index-fund keywords. The details of our categorization methodology are described in Part II.B.

² Adolf A. Berle Jr. & Gardiner C. Means, *THE MODERN CORPORATION AND PRIVATE PROPERTY* (1932).

³ Robert Charles Clark, *Review: The Four Stages of Capitalism: Reflections on Investment Management Treatises*, 94 HARV. L. REV. 561 (1981). (predicting a fourth stage of capitalism led by “savings planners” that would reshape — though not fully replace — the role of professional investment managers); John C. Coates IV, *The future of corporate governance part i: the problem of twelve*, 2–3 (2018) (“control of most public companies . . . will soon be concentrated in the hands of a dozen or fewer people”; the resulting concentration “poses a legitimacy and accountability issue of the first order, one might even call it a small ‘c’ constitutional challenge.”); see also Jan Fichtner, Eelke M Heemskerk & Javier Garcia-Bernardo, *Hidden power of the Big Three? Passive index funds, re-concentration of corporate ownership, and new financial risk*, 19 BUS. & POL. 298 (2017) (documenting that BlackRock, Vanguard, and State Street collectively constitute the largest shareholder in 88% of S&P 500 firms); Lucian A. Bebchuk & Scott Hirst, *The Specter of the Giant Three*, 99 B.U. L. REV. 721 (2019) (analyzing the index-fund stewardship problem and the small-fee-share-of-improvement disincentive); see, e.g., Bernard S Black, *Shareholder passivity reexamined*, 89 MICH. L. REV. 520 (1990) (early call for institutional-investor monitoring as response to dispersed-shareholder passivity); Edward B. Rock, *The Logic and (Uncertain) Significance of Institutional Shareholder Activism*, 79 GEO. L.J. 445 (1991) (early account of how concentrated institutional ownership shifts the locus of the agency problem); John C Coffee, *Liquidity versus control: The institutional investor as corporate monitor*, 91 COLUM. L. REV. 1277 (1991) (Berle-and-Means separation of ownership and control as foundational diagnosis); Bernard

be traced to the fee structure of passive investing, which cannot support informed stewardship at scale: a fund that spends real resources improving a portfolio company captures at most the marginal fee on the resulting increase in value while bearing the full cost.⁴ Yet the law essentially requires index funds to vote the shares they hold.⁵ So they vote those shares — through small stewardship teams that apply firm-wide policies across tens of thousands of ballots, meeting with management on terms that are neither public nor reviewable.⁶

The recent debate about competing proposals to alter index-fund voting rules in recognition of shareholder vote concentration has become particularly heated and fractured. In November 2025, the *Wall Street Journal* reported that the White House was drafting an executive order to curb proxy-advisor influence over shareholder voting and require large index-fund managers to mirror client-directed votes;⁷ the order issued the following month as Executive Order 14,366. Three weeks later, Congress reintroduced the INDEX Act, federal legislation that would require the largest index-fund complexes to mirror the non-indexed vote.⁸ Within the same twelve months, the SEC granted no-action relief for ExxonMobil's Retail Voting Program, BlackRock expanded Voting Choice to retail investors, and a coalition of state attorneys general announced an investigation into Big Three voting practices.⁹

Several live proposals now compete to strip or redirect the voting power institutional investors have accumulated over four decades. *Full abstention* would remove index-fund votes entirely.¹⁰ *Pass-through voting* would return index-fund votes to the beneficial owner — BlackRock, Vanguard, and State Street have rolled out voluntary programs since 2022, with institutional enrollment in BlackRock's Voting Choice reaching roughly a quarter of eligible

S. Black, *Agents Watching Agents: The Promise of Institutional Investor Voice*, 39 UCLA L. REV. 811 (1992) (institutional shareholder voice as a challenge to the Berle-and-Means paradigm of inevitable shareholder passivity).

⁴ Lucian A Bebchuk & Scott Hirst, *Index Funds and the Future of Corporate Governance*, 119 COLUM. L. REV. 2029 (2019); Bebchuk & Hirst, *supra* note 3; Lucian A Bebchuk, Alma Cohen & Scott Hirst, *The agency problems of institutional investors*, 31 J. ECON. PERSP. 89 (2017).

⁵ See Proxy Voting by Investment Advisers, 17 C.F.R. § 275.206(4)-6 (2003).

⁶ Coates, *supra* note 3 at 17. (“A small number of unelected agents, operating largely behind closed doors, are increasingly important to the lives of millions who barely know of the existence much less the identity or inclinations of those agents.”).

⁷ See Jack Pitcher & Emily Glazer, *White House Explores Rules That Would Upend Shareholder Voting*, <https://www.wsj.com/finance/regulation/trump-executive-order-proxy-index-fund-votes-638f396e>. (reporting that “[o]ne measure being discussed would require these index-fund managers to mirror their votes in line with clients who choose to vote”); Exec. Order No. 14,366, 90 FED. REG. 58,503 (Dec. 16, 2025).

⁸ INDEX Act, S.1670, 119th Cong., 2025, (originally introduced as S.4241 in the 117th Congress, 2022, and reintroduced as S.2700 in the 118th Congress (2023)).

⁹ ExxonMobil Corp., SEC No-Action Letter (Sept. 2025); see *Voting Choice (Empowering Investors through Voting Choice)* (2022), <https://www.blackrock.com/corporate/about-us/investment-stewardship/blackrock-voting-choice>; 2024 *Investment Stewardship Annual Report* (2024) (documenting BlackRock's 2024 expansion of Voting Choice to retail investors); James R. Copland, *Index Funds Have Too Much Voting Power: A Proposal for Reform* (2024), <https://media4.manhattan-institute.org/wp-content/uploads/index-funds-have-too-much-voting-power-a-proposal-for-reform.pdf> (noting state attorneys general scrutiny of Big Three voting practices); see also Alon Brav *et al.*, *The proxy voting choice revolution*, SOCIAL SCIENCE RESEARCH NETWORK (2025) (documenting low retail opt-in rates and a pro-management selection bias among participating investors in Vanguard's pilot).

¹⁰ see Dorothy Shapiro Lund, *The case against passive shareholder voting*, 43 J. CORP. L. 493 (2017).

AUM but retail enrollment under five percent of invited accounts.¹¹ *Standing voting instructions* would ask the beneficial owner to pre-commit to a policy such as voting in the same way as a designated investor, while ExxonMobil’s Retail Voting Program (SEC no-action relief, September 2025) implements a single-option version that defaults to the board.¹² *Market mirroring* would reassign index-fund votes to non-indexed shareholders in proportion — if sixty percent of active shareholders vote For, the index block would record a vote of sixty percent For.¹³

We frame these reforms in terms of a more general “mirror voting” framework, which assigns the indexed block of shares to the vote of a different voting block or institution. For example, some funds mirror proxy-advisor recommendations, a controversial practice known as “robovoting.”¹⁴ Others mirror management.¹⁵ Market mirroring assigns the index vote to the non-indexed shareholders, and full abstention removes the vote entirely.¹⁶

Our empirical inquiry focuses on the hypothetical historical impact and bias of the various reforms. We examine the impact of different voting block assignments to different categories of shareholders and ask which voting block assignment produces the fewest changes in historical outcomes and which imposes the least directional bias.

To test the historical impact of the different hypothetical assignments of votes, we use twenty years of ISS Voting Analytics data, and 645,020 ownership-joined items at 9,451 firms.¹⁷ Mirror voting is both the least disruptive and the least biased of the above four variants. It would have flipped just 12 of 644,954 items. Full abstention’s flip count is 166 times higher. The advisor-mirror scenarios are two orders of magnitude higher. An Exxon-style management-mirror on retail shares would have flipped 1,439 items.

¹¹ see Voting Choice (Empowering Investors through Voting Choice), *supra* note 9; 2024 Investment Stewardship Annual Report, *supra* note 9.

¹² Jill E Fisch, *Standing voting instructions: Empowering the excluded retail investor*, 102 MINN. L. REV. 11 (2017).

¹³ see Jonathan R. Macey, *Mirror Voting Can Prevent Index Funds from Undermining U.S. Stock Markets*, <https://clsbluesky.law.columbia.edu/2026/01/20/mirror-voting-can-prevent-index-funds-from-undermining-u-s-stock-markets/>. (presenting the theoretical case for mirror voting); for the legislative and executive-order vehicles enacting the rule, see *supra* note 1.

¹⁴ see Stephen Choi, Jill E Fisch & Marcel Kahan, *The power of proxy advisors: Myth or reality?*, EMORY L.J. (2010).

¹⁵ see Edwin Hu, Nadya Malenko & Jonathon Zytneck, *Other People’s Votes*, 115 GEO. L.J. (2026). ; see also ExxonMobil, *supra* note 1 (defaulting non-instructing retail shares to management); see Voting Choice (Empowering Investors through Voting Choice), *supra* note 9 (defaulting to BlackRock’s benchmark policy).

¹⁶ For proponents of market mirroring, see, e.g., C Griffin, *We three kings: Disintermediating voting at the index fund giants*, 79 MD. L. REV. 954 (2019); Macey, *supra* note 13. For proponents of abstention, see, e.g., Lund, *supra* note 10. For critics, see, e.g., White & Case LLP, *The INDEX Act: A Challenge to the Voting Influence of Institutional Investors That May Yield Unintended Consequences*, <https://www.whitecase.com/insight-our-thinking/index-act-challenge-voting-influence-institutional-investors-may-yield> (raising minority-amplification and threshold-distortion concerns); Coates, *supra* note 3 (observing that “dispersed and rationally passive” shareholders underinvest in proxy decisions); see, e.g., Copland, *supra* note 9.

¹⁷ Lund, *supra* note 10. (proposing that a passive fund could retain its votes by committing to “mirror voting” under all circumstances — voting its shares in the same proportion as the other shareholders — as an alternative to full abstention).

The impact on voting margins is similar. Although mirror voting occasionally changes the vote margin substantially (the maximum shift across 644,954 items is 8 percentage points), those large movements never translate into flipped outcomes. Only 22 items shift by more than five points (a rule-of-thumb materiality threshold), and the 8-point outlier is itself not among the 12 flipped items. It is also the only variant without a directional preference built into the rule. The 12 flips' 83.3 percent pro-management skew is a property of revealed non-indexed preferences on the affected items, not a design feature. Zero director elections flip, zero proxy-fight items flip, and all 12 flips fall on contentious items where a proxy advisor disagrees with management.

To be sure, our estimates are static. We re-tabulate historical votes and do not model how the market would adapt if any particular rule were adopted, including a mirror voting requirement or default rule. Accordingly, our claims are primarily positive rather than normative. Although we measure disruption and bias, other criteria on which the various proposals might be judged are beyond the scope of this Article. Nevertheless, we provide empirical evidence that policy makers and academics should take into account as they debate the various shareholder voting proposals.

Part I. Background

The Big Three (BlackRock, Vanguard, and State Street¹⁸) exercise more voting power than their economic incentives can support. Together they hold more than twenty-five percent of the shares of most S&P 500 firms,¹⁹ and because index funds must hold almost every stock in the benchmark, they vote on virtually every proposal at every major public company in the United States.

Four reform proposals now compete to solve this problem, each with scholarly support and real-world regulatory or market action within the past eighteen months. But scholars have conducted the debate almost entirely on theoretical intuition, no prior work has computed how any of these reforms would have impacted historical vote outcomes.

A. Agency-Cost Theory

Index funds have poor incentives to vote substantively, a problem that affects even the Big Three. Part III, Table 1, reports the empirical footprint of this structural gap under each counterfactual reform.

¹⁸ Fidelity Investments is sometimes included as a fourth major index-fund manager, but its substantial active management business and more heterogeneous voting behavior distinguish it from the pure-index Big Three. Following Bebchuk & Hirst and Lund, we refer to BlackRock, Vanguard, and State Street as the Big Three.

¹⁹ Bebchuk & Hirst, *supra* note 3. (Big Three collectively vote about 25% of shares across S&P 500 companies); *see also* Fichtner, Heemskerk, & Garcia-Bernardo, *supra* note 3 (mapping Big Three ownership and showing they together constitute the largest shareholder in 88% of S&P 500 firms); Dorothy Lund & Adriana Z. Robertson, *Giant asset managers, the big three, and index investing* 158 (2024) (surveying the conceptual shorthand around index-fund concentration in the corporate-governance literature).

First, fees are too low to fund governance research. An index fund charges clients fees on the order of three to five basis points per year.²⁰ At that fee level, spending resources to research governance at any single portfolio company is a losing proposition. The benefit of improved governance at one firm accrues to the entire market, but the fund manager captures only a fraction through its fee. Bebchuk, Cohen, and Hirst, 2017, document the mismatch.²¹ BlackRock's Investment Stewardship team, the largest in the industry, employs roughly seventy professionals to cover thousands of companies across dozens of markets.²² Even if every team member devoted full time to U.S. proxy voting, each would be responsible for hundreds of companies. For every billion dollars invested in a portfolio company, BlackRock devotes fewer than four person-days and \$5,000 per year to stewardship at that firm, while Vanguard and State Street spend even less, at roughly half that rate.²³ Total stewardship spending across all three managers amounts to less than 0.2% of fee income. The gap is not carelessness, it is the arithmetic of a business model that generates revenue through fee compression and asset gathering, not through governance outcomes at any particular firm.

Second, no single manager can unilaterally invest more. Flagship index funds compete principally on cost, and any manager that raised fees to fund governance research would lose assets to lower-cost competitors.²⁴ The incentive to free-ride compounds the problem: if BlackRock doubled its stewardship budget, governance improvements at portfolio companies would benefit Vanguard's and State Street's shareholders equally, while the costs would fall on BlackRock alone.²⁵ Thus, the competitive equilibrium selects for minimal stewardship.

Third, by design passive funds cannot exit their investment in any one firm. An active investor chooses to own a stock and can sell if governance deteriorates, deploying the threat of exit as a disciplinary tool.²⁶ A passive investor, in contrast, holds by construction: the index fund must own every stock in the benchmark regardless of governance quality. The vote is the only governance tool available, but a manager whose fee structure cannot support its informed use still exercises it. Combining compulsory ownership with inadequate voting resources leaves passive shareholders in a worse position than their nominal voting power suggests.

²⁰ Vanguard's Total Stock Market Index Fund, VTSAX, charges 0.04%; BlackRock's iShares Core S&P 500 ETF, IVV, charges 0.03%. These figures have been declining steadily since 2010.

²¹ Bebchuk, Cohen, & Hirst, *supra* note 4 at 95–102.

²² Bebchuk & Hirst, *supra* note 4 at 2039. (observing that the Big Three devote “an economically negligible fraction of their fee income to stewardship” relative to their assets under management and the number of their portfolio companies).

²³ *Id.* at 2071–72.

²⁴ Bebchuk & Hirst, *supra* note 4.

²⁵ Lucian Bebchuk & Scott Hirst, *Big three power, and why it matters*, 102 B.U. L. REV. 1547 (2022).

²⁶ Lund, *supra* note 10. (discussing the threat of exit as a disciplinary tool that active investors deploy and that passive funds cannot, since “passive funds lack a credible exit threat: their indexing strategy often requires them to hold stock regardless of the company's performance”).

One consequence of these three forces is heavy reliance on proxy advisors, principally ISS and Glass Lewis.²⁷ Iliev and Lowry identify a class of mutual funds whose votes track ISS recommendations nearly perfectly, raising concerns about uninformed “robovoting.”²⁸ The result is a second layer of delegation: voting power flows from millions of beneficial owners to three asset managers to two advisory firms.

Each of the four reforms below targets this two-step delegation, seeking to reclaim the vote from proxy advisors by rerouting or relocating the decision that index funds have outsourced. Congress, the White House, the SEC, and the Big Three themselves have each advanced such proposals.²⁹

B. The Reform Landscape

Which reform causes the least disruption depends on who retains the voting decision.

1. Full Abstention

Dorothy Lund argues that passive shareholders, lacking the economic incentives to vote substantively, introduce noise and distortion into corporate elections.³⁰ Removing them from the electorate would return voting power to active shareholders who chose to own the stock and bear the costs of informed engagement.

The proposal is mechanically simple: if index funds cannot vote well, the second-best outcome is that they do not vote at all, rather than casting uninformed or proxy-advisor-directed votes that distort the electorate. Abstention requires no computation, no reference-group definition, and no proportional allocation. The fund simply does not submit a proxy card.

But abstention has a mechanical cost that its proponents acknowledge. When a block that controls twenty to thirty percent of outstanding shares abstains, the remaining shares constitute a smaller denominator. A proposal that would have received 52% support on the full share count may receive only 48% support among the active float, or vice versa. The effective voting threshold shifts, and the direction it shifts depends on whether the abstaining block would have voted with or against the majority of active shareholders. Where index funds would have voted with management (the typical pattern), abstention systematically shifts close

²⁷ see Andrey Malenko & Nadya Malenko, *Proxy advisory firms: The economics of selling information to voters*, 74 J. FIN. 2441 (2019); see also Choi, Fisch, & Kahan, *supra* note 14 (measuring ISS influence on voting outcomes).

²⁸ Peter Iliev & Michelle Lowry, *Are Mutual Funds Active Voters?*, 28 REV. FIN. STUD. 446 (2015) (identifying a class of mutual funds whose votes track ISS recommendations nearly perfectly); see also John G Matsusaka & Chong Shu, *Robo-voting: Does delegated proxy voting pose a challenge for shareholder democracy?*, SEATTLE U. L. REV., 612–15 (2023) (documenting reliance on advisor recommendations across mutual-fund voting).

²⁹ Dorothy S Lund, *The past, present, and future of proxy voting choice*, J. CORP. L. (2025). (surveying the emergence of voting choice programs at the Big Three); for the legislative, executive-order, and SEC vehicles, see *supra* Introduction notes 1 & 2.

³⁰ Lund, *supra* note 10.

outcomes against management, regardless of whether the non-indexed shareholders held strong views on the item.³¹

Lund herself acknowledges the limits of full restriction. She notes that removing twenty to twenty-five percent of votes from every ballot changes effective thresholds and could let small minorities win contested elections.³² She therefore presents mirror voting as a permitted alternative to full restriction, under which a passive fund retains its votes by voting in the same proportion as other shareholders.³³ Even the leading proponent of abstention treats market mirroring as a permissible alternative.

The largest cost of abstention may be meeting quorum requirements. Delaware corporate law requires a majority of outstanding shares to be represented at a meeting, with most public-company bylaws adopting a statutory floor of one-third of voters needed for quorum.³⁴ If the index block does not vote at all, as opposed to submitting formal Abstain ballots, the combined non-participation of index funds and retail shareholders can push the meeting below the quorum threshold. Part III.A and Table 1 present the empirical flip-rate and quorum-failure counts for full abstention; thus, abstention is the benchmark against which less disruptive reforms should be measured.

2. *Pass-Through and Voting Choice*

Pass-through programs seek to return the voting decision to the beneficial owners who bear the economic risk, rather than removing the index block from the electorate altogether. Scholars converge on the theoretical case from different starting points. Jill Fisch proposes standing voting instructions to restore meaningful retail voice within the intermediated-ownership structure and separately documents the structural and business-model limits on index-fund stewardship.³⁵ Sean Griffith reaches the same conclusion from fiduciary principles: delegation to a stewardship team that cannot substantively exercise voting authority is a fiduciary failure.³⁶ Andrey Malenko and Nadya Malenko show that voting-choice

³¹ Nathan Atkinson & Jonathan Macey, *Mirroring the Market: Passive Voting and Outcome Non-Neutrality* (2026). (arguing that the denominator effect varies by state-law voting standard, that an affirmative Abstain ballot is not equivalent to non-participation, and that a non-participating block can fail quorum altogether).

³² Lund, *supra* note 10. (acknowledging that restricting passive-fund voting on non-routine matters changes the denominator of the active float and could affect close vote outcomes). The denominator-shift concern is the authors' synthesis built on Lund's analysis of how reducing the eligible voter pool changes effective approval thresholds.

³³ *Id.* (allowing a passive fund to retain its votes if it commits to "mirror voting" — voting in the same proportion as other shareholders — under all circumstances, as an alternative to full restriction).

³⁴ Del. Code Ann. tit. 8, § 216(1). Part II.D defines how we measure quorum failure under a non-participation reading of the full-abstention scenario.

³⁵ Fisch, *supra* note 12; Jill E Fisch, *The uncertain stewardship potential of index funds*, GLOBAL SHAREHOLDER STEWARDSHIP 20 (2022).

³⁶ Sean J Griffith, *Opt-in stewardship: Toward an optimal delegation of mutual fund voting authority*, 98 TEX. L. REV. 983 (2019). (arguing fiduciary principles require funds without informational advantage to abstain rather than vote uninformed).

inefficiencies persist *even when participation is costless* — meaning the structural problems of voting inefficiency are not explainable by apathy alone.³⁷

BlackRock launched Voting Choice in 2022 for institutional clients; Vanguard and State Street followed with their own programs.³⁸ By 2025, all three had adopted some version of pass-through. Pass-through takes two forms, which raise different concerns. *Institutional pass-through*, the first kind of pass-through offered, allows pension funds, endowments, and other large intermediary clients to direct their own votes. *Retail pass-through*, which BlackRock and Vanguard have more recently begun to offer, reaches individual fund investors. The retail extension introduces a concern not present in the institutional form: retail investors are less engaged than institutional clients, and their votes cluster around management. Seventy-six percent of retail shares vote entirely with management, and share-weighted retail turnout at annual meetings is thirty-two percent.³⁹ If BlackRock’s seventy-person stewardship team cannot substantively research every proxy item, individual beneficial owners certainly will not.

The empirical record confirms these concerns. By the end of 2024, Vanguard’s voting choice pilot had invited more than one million retail investors to participate; roughly 40,000 had enrolled, an opt-in rate under four percent.⁴⁰ The ninety-six percent who did not opt in remain governed by the stewardship team, precisely the arrangement pass-through aims to avoid. Among the four percent who did opt in, the dominant selections were pro-management voting policies, rather than dissident-leaning ones, so expansion of voting choice on current menu designs would tend to reinforce management’s preferred outcomes rather than disrupt them.⁴¹ Pablo Montagnes, Zachary Peskowitz, and Suhas Sridharan find that typical voting-choice policy menus incompletely represent both progressive and conservative retail preferences,⁴² and Suren Gomtsian and Tom Gosling document parallel selection-bias dynamics in U.K. asset-management voting programs, where index providers cater to clients with stronger ESG preferences than the underlying beneficial-owner base.⁴³ Pass-through, in effect, thus substitutes one selection-biased vote, the stewardship team’s, for another, the opt-ins’.

The pro-management direction also shows up in counterfactual outcomes. Had Vanguard’s voting choice program applied to all indexed assets in 2024, two dissident

³⁷ Andrey Malenko & Nadya Malenko, *Voting choice*, SSRN ELECTRON. J. (2023).

³⁸ BlackRock, *Voting Choice* (2022), <https://www.blackrock.com/corporate/about-us/investment-stewardship/blackrock-voting-choice>.

³⁹ Alon Brav, Matthew Cain & Jonathon Zytnick, *Retail shareholder participation in the proxy process: Monitoring, engagement, and voting*, 144 J. FIN. ECON. 492 (2022).

⁴⁰ Brav et al., *supra* note 9. (reporting that “[b]y the end of 2024, out of more than 1 million invited investors, over 40,000 investors had elected to participate in voting choice” in Vanguard’s pilot).

⁴¹ *Id.* (finding that “most investors choose pro-management voting options in the Vanguard pilot” so that broader adoption of voting choice is unlikely to expand support for dissident or ESG proposals).

⁴² B. Pablo Montagnes, Zachary Peskowitz & Suhas A. Sridharan, *How Well Do Voting Choice Policies Represent Public and Investor Preferences?* (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5093097.

⁴³ Suren Gomtsian & Tom Gosling, *The emergence of pass-through voting and its implications for shareholder stewardship* (2025).

shareholder proposals that passed under the status quo would have failed, because the most popular voting policies among enrolled participants were pro-management defaults.⁴⁴ When self-selected participants systematically choose management-aligned policies, the reform designed to empower dissenting shareholders reinforces the status quo it was meant to disrupt. Standing voting instructions, the next reform, try to address this by offering non-selectors something other than the stewardship team's default. Part III, Table 1, positions selection-biased outcomes against the computed mirror and abstention counterfactuals.

3. *Standing Voting Instructions*

Standing voting instructions address pass-through's apathy problem, that the large majority of beneficiaries never opt in, by removing the per-item decision entirely. Under an SVI regime, a shareholder selects a default rule once and it governs every subsequent ballot automatically. Fisch, 2017, envisions a pluralistic menu: a beneficiary can instruct her broker to vote all proxies according to ISS recommendations, or according to Glass Lewis, or in proportion to how all other shareholders vote (market mirroring as an individual standing instruction), or consistently with management's recommendation, or to abstain on all items.⁴⁵ A retiree who trusts board judgment selects "follow management"; an environmentally conscious investor selects a sustainability-oriented advisor; an investor skeptical of both management and proxy advisors selects proportional mirroring. The mechanism accommodates heterogeneous governance preferences without requiring engagement at each meeting.

The practical challenge is selecting the default rule. Some percentage of beneficiaries (likely the overwhelming majority, based on the pass-through participation data) will never make a selection. The default for non-selectors determines the program's aggregate effect. If the default is "follow the fund manager" (the status quo), SVI changes nothing for passive beneficiaries. If the default is "follow management," SVI conscripts non-selectors' votes for the board. If the default is "proportional mirror," SVI becomes market mirroring for non-selectors. The menu's neutrality depends entirely on the default, and the default is a policy choice that the menu itself cannot resolve.

The only implementation to date is ExxonMobil's Retail Voting Program, which secured SEC no-action relief in September 2025.⁴⁶ The Exxon program offers one option, vote with the board, collapsing Fisch's pluralistic menu to a single choice. It is management mirroring applied to the retail share.

As You Sow, the Interfaith Center on Corporate Responsibility, and the City of Hollywood Police Officers' Pension Fund have objected that the program conscripts retail votes to dilute

⁴⁴ Brav et al., *supra* note 9.

⁴⁵ Fisch, *supra* note 12.

⁴⁶ ExxonMobil Corp., SEC No-Action Letter (Sept. 2025); *see also* Davis Polk & Wardwell LLP, *SEC No-Action Relief for ExxonMobil Retail Voting Program* (2025), <https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/exxon-mobile-091525>.

institutional opposition.⁴⁷ Because the only implemented standing voting instruction amounts to management mirroring applied to retail shares, we can estimate its effect using our counterfactual framework, presented as a range reflecting uncertainty in the retail share.⁴⁸

Market mirroring sidesteps the default question SVI leaves open. Rather than ask each shareholder to choose a voting policy (or default non-selectors toward management, as Exxon does), market mirroring specifies the rule at the regime level. The index block's votes track the non-indexed float's in proportion.

4. *Market Mirroring*

Under market mirroring, an index fund casts its shares in proportion to the votes of non-indexed shareholders. If sixty percent of non-indexed shareholders vote for a director and forty percent vote against, the index fund casts sixty percent for and forty percent against.

Market mirroring is the focus of this Article's empirical analysis for three reasons. It is the only one of the four reforms that has moved to federal rulemaking, the December 2025 executive order, and to federal legislation (the INDEX Act reintroduced in the 119th Congress). It is the reform whose critics, across the full ideological range, have developed the most specific mechanism-level objections (minority amplification, supermajority distortion, and activist leverage). And it is the reform for which counterfactual computation on historical data is both tractable and dispositive. The other three reforms either require behavioral assumptions we cannot test, pass-through and SVI adoption rates, or collapse into comparative benchmarks under mirror mechanics (full abstention).

Three scholarly treatments anchor the reform. Caleb Griffin develops the theoretical case, acknowledging that fractured rather than unified index-fund voting is a feature, not a bug.⁴⁹ Lund, writing in defense of restricting passive-fund voting, carves out mirror voting as a permissible alternative to full restriction.⁵⁰ Macey endorses mirror voting as a "simple reform" that would fix the accountability deficit at passive index funds,⁵¹ though he and Nathan Atkinson separately argue that current uniform-mirroring proposals are not outcome-neutral across state-law voting denominators.⁵²

The reform became federal policy in late 2025 through parallel executive and legislative action. In November, the Wall Street Journal reported that the White House was drafting an

⁴⁷ see *City of Hollywood Police Officers' Pension Fund, Complaint* (2025).

⁴⁸ Brav, Cain, & Zytznick, *supra* note 41. (BCZ retail-voting counterfactual: 76% of retail shares vote with management; share-weighted retail turnout 32%; large-cap retail share ~16%).

⁴⁹ Griffin, *supra* note 16 (arguing for market mirroring while acknowledging the concern that it produces "fractured power" rather than a "unified voice" in index-fund stewardship).

⁵⁰ Lund, *supra* note 10. (presenting mirror voting as a permitted alternative under which a passive fund retains its votes by voting in the same proportion as other shareholders).

⁵¹ Macey, *supra* note 13. (proposing a "simple reform called mirror voting, which matches passive funds' votes to those of engaged shareholders," as the fix for the accountability deficit caused by passive index funds).

⁵² Atkinson & Macey, *supra* note 32. (arguing that uniform proportional mirroring, by tracking only the ratio of votes cast, is not outcome-neutral across state-law voting denominators, and proposing "context-dependent mirroring" as a corrective).

executive order directing federal agencies to consider market mirroring;⁵³ the order issued the following month.⁵⁴ Congress moved in parallel. Senator Dan Sullivan reintroduced the INDEX Act,⁵⁵ with a House companion package sponsored by Representative Bryan Steil.⁵⁶

The INDEX Act specifies a three-part architecture. Section 3(a) requires investment companies above the asset threshold to vote shares “in proportion to the instructions received from other shareholders of the issuer.” Section 3(b) provides a statutory safe harbor: compliance satisfies the manager’s fiduciary obligation under Section 206 of the Investment Advisers Act. Section 3(c) preserves beneficial-owner instructions, which override the mirror default. The rule is opt-out rather than opt-in; market mirroring applies unless a beneficiary affirmatively directs otherwise.

Support for market mirroring came from two camps with conflicting objectives. Reformers argued that the rule would reduce Big Three voting power. Administration officials argued that it would curb proxy-advisor influence, framing the executive order as part of a broader effort to constrain advisory firms the administration characterized as politically motivated rather than governance-focused.⁵⁷ The two objectives may collide. If active shareholders follow advisor recommendations, mirroring could amplify rather than diminish advisor reach. Part IV takes up the question empirically.

Three lines of critique converge on a common concern: market mirroring amplifies a narrow signal into the index block’s full voting share. The signal varies by critic. White & Case warns that mirror voting “could shift voting power to proxy advisers and activist hedge funds.”⁵⁸ James Copland flags a structural gap: the INDEX Act’s mirror mechanism “would not seem to apply at all to supermajority voting provisions,” leaving such items unaddressed by the reform.⁵⁹ John Coates points to rational apathy among dispersed owners: many non-indexed shareholders simply do not vote, so the participating fraction may not represent the broader electorate.⁶⁰ None of these concerns has been tested against historical voting data. Part IV evaluates each against the empirical record.

Each of the four reforms is now a live policy possibility. An executive order, federal legislation, SEC no-action relief, and voting-choice programs at all three of the largest asset

⁵³ Pitcher & Glazer, *supra* note 7. (reporting that “[o]ne measure being discussed would require these index-fund managers to mirror their votes in line with clients who choose to vote”).

⁵⁴ Exec. Order No. 14,366, 90 FED. REG. 58,503 (Dec. 16, 2025).

⁵⁵ INDEX Act, S.1670, 119th Cong. (2025). Senator Sullivan first introduced the bill as S.4241 in the 117th Congress, 2022, and reintroduced it as S.2700 in the 118th Congress, 2023, before the current version.

⁵⁶ Protecting Americans’ Retirement Savings from Politics Act, H.R. 4767, 118th Cong., 2023, (Rep. Steil) (House companion package addressing proxy advisory firms, shareholder proposals, and index fund voting).

⁵⁷ Exec. Order No. 14,366, *supra* note 33, § 1.

⁵⁸ White & Case LLP, *supra* note 16.

⁵⁹ Copland, *supra* note 9.

⁶⁰ Coates, *supra* note 3.

managers are in place or in motion. None has been tested against the counterfactual record. Part II explains the data and methodology.

Part II. Data and Counterfactual Construction

We construct a database of ownership and proxy voting at U.S. public companies spanning 2005 through 2025. ISS Voting Analytics covers 686,896 agenda items across 91,107 shareholder meetings. The database links these shareholder voting records to index-fund ownership data, proxy-advisor recommendations, proxy-fight identifiers, and activist blockholder filings. After requiring a CRSP/13F ownership match, our analysis sample comprises 645,020 unique agenda items across 84,908 meetings at 9,451 firms.

A. Data Sources

ISS Voting Analytics, ISS VA, provides the core data: votes cast For, Against, and Abstain on every agenda item at U.S. public companies from 2005 through 2025, along with broker non-votes and withheld votes.⁶¹ The voting base varies across proposals, some items use For plus Against, others add Abstains to the denominator, and still others use total shares outstanding. We replicate ISS’s denominator logic so that we apply the counterfactual pass/fail threshold on the same terms as the actual vote. Agenda items span six categories: director elections, say-on-pay advisory votes, Rule 14a-8 governance proposals, Rule 14a-8 social/environmental proposals, bylaw and charter amendments, and routine management proposals.

We classify mutual fund holdings as “indexed” or “passive” by linking Thomson/Refinitiv S12 mutual fund holdings to the CRSP Mutual Fund Database via MFLinks, following Ian Appel, Todd Gormley, and Donald Keim (2016).⁶² CRSP’s portnomap table reports an `index_fund_flag` for each fund-portfolio. Following this literature, a fund is an “indexed” fund if its flag equals “D,” and “passive” if it carries any non-empty index flag or its name matches standard index-fund keywords (e.g., “Index,” “S&P 500,” “Russell,” “Total Market”). We aggregate fund-level holdings to the firm-quarter level to obtain three nested ownership shares (index, passive, and institutional) expressed as a percentage of CRSP total shares outstanding. Section B describes these blocks in detail.

We understand that there are debates among industry participants regarding the definitions of “indexed” and “passive,” as well as the extent to which a particular approach to portfolio construction should lead to different definitions of passivity. We further recognize that there are degrees of passivity in investing. Given these debates and disagreement, we follow the objective and replicable delineations in the academic literature. We note that given the

⁶¹ Index-fund ownership outside the Russell 3000 is negligible: even broad total-market products hold vanishingly small positions in firms below that threshold. The ISS VA sample therefore effectively covers the full universe of firms where counterfactuals on the index block could change outcomes.

⁶² Ian R Appel, Todd A Gormley & Donald B Keim, *Passive investors, not passive owners*, 121 J. FIN. ECON. 111, 111 (2016).

robustness of our results, particular disagreements with respect to the delineation of the “passive” definition are unlikely to change our results, as we address more explicitly in Part IV.D.

Jonathon Zytznick (2025) provides imputed ISS and Glass Lewis recommendations⁶³ covering the ISS Voting Analytics universe from 2005 through 2023 using a probabilistic matching algorithm. The imputed recommendations allow us to construct a “contentious” flag, an indicator equal to one when management’s recommendation disagrees with either advisor. Items where management and both advisors agree almost never flip under any counterfactual variant. Some items, particularly post-2024 and low-confidence matches, lack imputed recommendations. We report results both for the full sample and for the “contentious-valid” subsample (items where at least one proxy advisor recommendation is available), where the reform effects are sharpest.

SharkRepellent Campaign Details data from 1995 through December 2024 identifies 2,123 definitive proxy fights that proceeded to a shareholder vote. We match these to ISS Voting Analytics at the company-meeting level to flag director elections that occurred in the context of a proxy contest.

We follow Schwartz-Ziv and Volkova (2025)⁶⁴ to parse Schedule 13Ds⁶⁵ from SEC EDGAR archive, which we use to identify activist blockholders. The aggregate active-institutional share measures the intensity of activist presence at each firm.

CRSP index-membership records identify S&P 500 constituents. We link ISS Voting Analytics CUSIP codes to CRSP PERMNOs and flag an item as “in S&P 500” if the meeting date falls within any membership interval. This produces a S&P 500 subsample of 99,760 items across 561 firms.

B. Classifying Indexed Versus Non-Indexed Float

The core mechanic of every counterfactual analysis is the same: remove the votes cast by one class of shareholders (the “block”), recompute how those shares would have been cast under the reform rule, and ask whether the pass/fail outcome changes. We define three nested blocks (index, passive, and institutional) to test sensitivity to the classification boundary.

⁶³ Jonathon Zytznick, *Imputing Proxy advisor recommendations*, 22 J. EMPIR. LEG. STUD. 525 (2025).

⁶⁴ Miriam Schwartz-Ziv & Ekaterina Volkova, *Is Blockholder Diversity Detrimental?*, 71 Mgmt. Sci. 1356 (2025), <https://doi.org/10.1287/mnsc.2023.00528>.

⁶⁵ Section 13(d) of the Exchange Act requires any person or group acquiring beneficial ownership of more than 5% of a registered class of voting equity securities to file Schedule 13D with the SEC within five business days of crossing the threshold. 15 U.S.C. § 78m(d); 17 C.F.R. § 240.13d-1. The filing must disclose the acquirer’s identity, source of funds, and purpose, including any plans to influence management, seek board representation, or pursue a change of control. Passive investors and certain qualified institutions holding the same stake without activist intent may instead file the abbreviated Schedule 13G.

Index Block

Pure index fund shares, those with a CRSP `index_fund_flag` of “D”, constitute the narrowest definition. The index block is the most natural scope for market mirroring proposals, which typically target funds that are passive by construction and have no investment thesis that would inform a voting preference.

Passive Block

Index funds plus quasi-index funds form a broader definition. A fund enters the passive block if it carries any non-empty CRSP `index_fund_flag` or if its name matches standard index-fund keywords. This block captures the full set of shareholders whose voting is unlikely to reflect security-specific research, and it corresponds more closely to the “passive fund” category in the academic literature on index-fund agency costs.

Institutional Block

All 13F-filing institutional shares compose the broadest block.⁶⁶ This block includes active managers alongside passive and index funds. Running counterfactuals at the institutional level tests an extreme scenario (what if all institutional voting were subject to mirror rules) and provides an upper bound on disruption.

Each investor-block level defines a different counterfactual, as the boundary determines which shareholders drive the mirrored signal. To see why, consider 13D activist holders, who are mostly institutional but not index funds. At the index and passive levels, they sit in the non-indexed residual, so the mirroring mechanic transmits, and can amplify, their preferences. At the institutional level, their votes get folded into the block and washed out. The size of the activist block at any given firm therefore shapes how much the counterfactuals diverge across block levels; Part IV returns to this when it measures flip patterns at firms with and without an active 13D filer.

C. The Mirroring Framework

Every reform under serious consideration can be viewed as assigning the index block a signal to mirror — a typology we develop here, drawing on Atkinson and Macey’s distinction between uniform mirroring and context-dependent mirroring across state-law voting denominators.⁶⁷ The status quo itself fits the framing: index funds today mirror a blend of

⁶⁶ Section 13(f) of the Securities Exchange Act requires institutional investment managers exercising investment discretion over \$100 million or more in Section 13(f) securities to report their holdings quarterly on Form 13F. 15 U.S.C. § 78m(f); 17 C.F.R. § 240.13f-1. Covered managers include mutual fund complexes, hedge funds, pension funds, banks, insurance companies, and investment advisers; retail investors and smaller institutions are excluded.

⁶⁷ Atkinson & Macey, *supra* note 32. develop the mirror-as-signal framing and argue that “uniform mirroring” is not outcome-neutral across state-law voting denominators. Under the “present-majority” standard in most jurisdictions, an affirmative Abstain functions as a “No,” whereas non-participation simply reduces the effective tally. A uniform-mirroring block therefore provides a “quorum subsidy” that validates contested meetings. Atkinson and Macey propose “context-dependent mirroring,” under which the block dynamically chooses Abstain, For/Against-proportional, or non-participation depending on the applicable denominator. Our

management, proxy-advisor, and house-policy signals, with the mix varying by fund and by issue.⁶⁸ Market mirroring mirrors the non-indexed vote. Full abstention mirrors no one, it removes the block from the tally. We exploit that structure to organize the counterfactual exercise: one common mechanic, six signal variants.

The common mechanic has three steps. First, estimate the index block’s actual vote contribution by multiplying the block’s ownership share by total shares outstanding and allocating across For, Against, and Abstain in proportion to the meeting-wide vote split. Second, remove those votes from the meeting totals. Third, re-cast the block’s shares according to the specified signal, the non-indexed vote split, management’s recommendation, a proxy advisor’s recommendation, or, in the case of full abstention, not at all.

C.1. Market Mirroring (Pro-Rata): Mirror the Non-Indexed Vote

Under mirror pro-rata, the index block re-casts its shares in proportion to the For/Against ratio among non-indexed shareholders. The block’s shares do not disappear, they remain as votes cast, but the preferences of non-indexed voters determine entirely their allocation between For and Against.

We compute the non-indexed For rate (the fraction of non-indexed votes cast For out of For plus Against) and re-cast the entire index block at that rate.

Consider a director election at a company where 10 million shares are voted: 5.5 million For and 4.5 million Against, yielding a 55% For rate and a passing outcome under a majority-of-votes-cast standard. Suppose the index block holds 30% of shares outstanding, so 3 million of the 10 million voted shares belong to index funds. Under the assumption that index funds vote in the same proportions as all shareholders, the index block contributes approximately 1.65 million For votes and 1.35 million Against votes. Remove the index block: the non-indexed shareholders cast 3.85 million For and 3.15 million Against — a 55.0% non-indexed For rate. (In this example, the non-indexed split happens to match the overall split; in practice, it usually diverges.) Now re-cast the index block’s 3 million shares at the non-indexed For rate of 55.0%: 1.65 million For, 1.35 million Against. The counterfactual total is again 5.5 million For and 4.5 million Against — 55% For, still passing. No flip.

Now change the example slightly: suppose the non-indexed shareholders had instead voted 2.8 million For and 4.2 million Against, a 40% non-indexed For rate, while the index

counterfactuals compute the pass/fail threshold under the ISS-recorded denominator for each item and preserve the base distinctions Atkinson and Macey identify; we treat “full abstention” as affirmative Abstain.

⁶⁸ At the extremes, these variants correspond to the phenomenon critics call “robovoting”, the claim that institutional investors mechanically follow either management’s recommendation or a proxy advisor’s recommendation rather than exercising independent judgment on each ballot. Management-mirror is the limiting case of robovoting with management; advisor-mirror, ISS or Glass Lewis, is the limiting case of robovoting with a proxy advisor. Despite the public focus on the advisor-mirror variant, the SEC’s only robovoting enforcement action to date targeted a management-mirror voter. See *In re Toews Corporation* (2022), <https://www.sec.gov/files/litigation/admin/2022/ia-6139.pdf> (imposing a \$150,000 penalty on a fund adviser that voted for all management proposals and against all shareholder proposals across more than 200 meetings without independent review).

block voted 2.7 million For and 0.3 million Against (overwhelmingly in favor, perhaps following management’s recommendation or ISS). The actual totals are 5.5 million For and 4.5 million Against — 55% For, passing. Under mirror pro-rata, the index block’s 3 million shares are re-cast at the non-indexed For rate of 40%: 1.2 million For, 1.8 million Against. The counterfactual total becomes 4.0 million For and 6.0 million Against — 40% For, failing. This is a flip: the director who actually won election would have failed under market mirroring, because non-indexed shareholders opposed the candidate but index-fund votes overwhelmed their dissent.

The “pro-rata” label distinguishes this variant from mirror majority, where the entire block votes with the majority direction among non-indexed shareholders, all For if the non-indexed For rate exceeds 50%, all Against otherwise. Pro-rata preserves the margin of the non-indexed split; mirror majority converts a 51-49 division into a 100-0 block vote. We compute mirror majority as a reference scenario to show the sensitivity of market mirroring to the re-casting rule.

When no non-indexed votes are cast, the non-indexed For rate is undefined. In these rare cases, the index block abstains, converting the scenario into full abstention for that item. Part III, Table 1, reports the counterfactual outcomes this mechanic produces across the full sample.

C.2. Management-Mirror: Mirror the Board

Under management-mirror, the index block always votes with management, the limiting case of what critics call “robovoting with management.”⁶⁹ On contentious proposals where management and ISS disagree, Edwin Hu, N. Malenko, and Zytznick document that a substantially larger group of investors consistently votes with management than with ISS, suggesting robovoting with management is at least as pervasive as robovoting with proxy advisors.⁷⁰

Management-mirror is also the formal mechanism of the Exxon Retail Voting Program, which received SEC no-action relief in September 2025 and defaults participating retail shareholders’ votes to management’s recommendation.⁷¹ Exxon holds its first annual meeting under the program in 2026, so no standing-voting-instruction, SVI, outcomes have yet been

⁶⁹ At the extremes, these variants correspond to the phenomenon critics call “robovoting”, the claim that institutional investors mechanically follow either management’s recommendation or a proxy advisor’s recommendation rather than exercising independent judgment on each ballot. Management-mirror is the limiting case of robovoting with management; advisor-mirror, ISS or Glass Lewis, is the limiting case of robovoting with a proxy advisor. Despite the public focus on the advisor-mirror variant, the SEC’s only robovoting enforcement action to date targeted a management-mirror voter. *See In re Toews Corporation*, *supra* note 71 (imposing a \$150,000 penalty on a fund adviser that voted for all management proposals and against all shareholder proposals across more than 200 meetings without independent review).

⁷⁰ Hu, Malenko, & Zytznick, *supra* note 15.

⁷¹ Fisch, *supra* note 12. (extending Steve Norman’s original four-option SVI proposal to a broader menu of voting policies). The Exxon program implements only one, vote with the board, and applies it only to retail shares.

observed; Part III scales our management-mirror result to approximate what the program’s adoption would imply for past votes.

C.3. Advisor-Mirror: Mirror ISS or Glass Lewis

Under advisor-mirror, the index block votes with the imputed proxy-advisor recommendation. This is the empirical proxy for the “robovoting” critique, the claim that some funds outsource their voting by deferring to ISS or Glass Lewis. We compute ISS-mirror and Glass Lewis-mirror separately, using Zytnick’s, 2025, imputed recommendations. Both are available only for items where the imputation succeeds; we restrict these scenarios to the contentious-valid subsample.

C.4. Full Abstention: Mirror Nobody

Under full abstention, the index block records no vote. The counterfactual treats all index-fund shares as abstentions, which, depending on the voting base, either drops them from the vote count entirely or counts them as non-votes against a total-shares-outstanding denominator.

Full abstention is the most disruptive variant because removing the block mechanically concentrates voting power in the residual float. It is the reference counterfactual from Lund’s *Case Against Passive Shareholder Voting*, which argued that index funds should simply not vote.⁷²

C.5. Pass-Through as a Weighted Average

Pass-through voting returns the vote to beneficiaries rather than re-casting it under a mirror rule. It fits our framework as a weighted average of the preset-policy variants above. Current voting-choice programs offer beneficiaries a menu of preset policies: follow management, follow ISS, follow Glass Lewis, or, in some programs, mirror the market. The management-mirror, advisor-mirror, and market-mirror variants we compute are the extreme cases of pass-through, the outcomes that would obtain if every beneficiary selected the same policy. Any realized pass-through outcome is a weighted average of these extremes, with weights determined by opt-in rates and menu selection. Part III reports the emerging empirical evidence on those weights and positions pass-through within the computed range.

With the counterfactual variants defined, we specify how we measure their effects.

D. Outcome Measures

The primary measure is a binary vote-level flip: did the counterfactual change the pass/fail outcome? For each agenda item, under each scenario and investor-block level, we compare the counterfactual For percentage to the applicable threshold. The aggregate flip rate, flipped items divided by total valid items, is the headline statistic. Flip rates in Parts III and IV use the mirror-valid denominator of 644,954 items. The full ISS VA universe contains 686,896 items; after requiring a CRSP/13F ownership match, 645,020 items remain. We further exclude 66

⁷² Lund, *supra* note 10.

items that fail a denominator-consistency guard, where the pro-rata counterfactual produces a degenerate result, leaving 644,954 mirror-valid items.

We decompose flip rates by vote category, the six types in Section A, and by direction relative to management’s recommendation. A flip is “pro-management” if the counterfactual moves the outcome toward the board’s recommendation; “anti-management” if away. We also compare flip rates on contentious items, where management disagrees with ISS or Glass Lewis, against non-contentious items, to measure whether the disruption concentrates on informative votes or adds undifferentiated noise. Part III reports these measures across scenarios in Table 1, Table 2, and Table 3.

A binary flip captures whether the counterfactual crosses the pass/fail threshold; it says nothing about how much the counterfactual moves the margin on items that do not flip. To complement the flip measure, we also track the *absolute margin shift* under mirror pro-rata: the absolute value of the change in For-share in percentage points, $|\text{For}^{\text{mirror}}\% - \text{For}^{\text{actual}}\%|$, where For% is the For share of votes cast. Part IV reports the 99th percentile of this distribution, its maximum, and the count of *material* margin movements, a rule-of-thumb calibration under which items whose absolute margin shift exceeds five percentage points count as material, across the cross-sectional cells where each objection’s predicted mechanism should show movement. We choose the 99th percentile over the mean, which a floor at zero compresses, and over the 90th percentile (which compresses to near zero across most cells); we add the maximum so any single extreme observation surfaces rather than stays hidden.

For the full-abstention variant we also track *quorum failure* as a secondary outcome. We flag items where, after removing the index block’s votes, the residual represented share (the sum of non-index For, Against, and Abstain votes) falls below the one-third bylaw floor or the 50% statutory default.⁷³ We also compute quorum failure using the firm-year bylaw threshold scraped from proxy statements (primary measure, with 1/3 and 1/2 as sensitivity bounds). This measure treats the index block as non-participating rather than as submitting a formal Abstain, the reading of “not voting” that triggers quorum failure under Atkinson and Macey’s analysis.⁷⁴

⁷³ Del. Code Ann. tit. 8, § 216(1) (setting the statutory quorum at a majority of shares entitled to vote but permitting bylaws to reduce the threshold, provided the quorum does not fall below one-third of the shares entitled to vote). Most U.S. public companies adopt the one-third floor by bylaw; we report both thresholds for sensitivity.

⁷⁴ Atkinson & Macey, *supra* note 32. develop the mirror-as-signal framing and argue that “uniform mirroring” is not outcome-neutral across state-law voting denominators. Under the “present-majority” standard in most jurisdictions, an affirmative Abstain functions as a “No,” whereas non-participation simply reduces the effective tally. A uniform-mirroring block therefore provides a “quorum subsidy” that validates contested meetings. Atkinson and Macey propose “context-dependent mirroring,” under which the block dynamically chooses Abstain, For/Against-proportional, or non-participation depending on the applicable denominator. Our counterfactuals compute the pass/fail threshold under the ISS-recorded denominator for each item and preserve the base distinctions Atkinson and Macey identify; we treat “full abstention” as affirmative Abstain.

To be sure, these measures are static. We re-tabulate historical votes under each counterfactual without modeling how investors might vote differently under a mirroring rule. Active shareholders might change their votes knowing index funds will mirror them; management might change its recommendations knowing the index block will no longer anchor to the board. We flag these behavioral possibilities as a limitation and take up the equilibrium question in the Conclusion.

With the counterfactuals and measures defined, Part III reports what each reform would have produced.

Part III. Findings

Full abstention of the index block would have flipped 1,996 vote outcomes and triggered quorum failures on tens of thousands of additional meetings. Market mirroring would have flipped 12.

A. Full Abstention: Flips and Quorum Failures

Full abstention of the index block flips 1,996 outcomes at the index level — 0.31% of the 644,954 mirror-valid items (Table 1). The additional disruption from choosing abstention over market mirroring is 1,984 flipped outcomes.

Table 1: Headline reform comparison across three investor-block levels for five counterfactual scenarios.

Reform	Flips	Flip rate (%)	Anti-mgmt (%)
Mirror (pro-rata)	12	0.00	16.7
Full Abstention	1,996	0.31	91.0
Management deference	1,439	0.22	0.0
ISS advisor mirror	2,890	0.51	95.9
Glass Lewis advisor mirror	2,346	0.46	88.9

The directional skew is heavily anti-management, 91.0%, a mechanical artifact of routine management proposals typically passing with comfortable margins under the status quo. The pattern is consistent with the Present-Majority standard that governs most binding shareholder resolutions, under which abstention counts as a negative vote.⁷⁵ The category distribution shows the mechanical character. Abstention’s 1,996 flips at the index level are broken out as follows: 49 in director elections, 1,772 in other management proposals, and 175 in shareholder proposals.

⁷⁵ Atkinson & Macey, *supra* note 32. (analyzing how state-law voting denominators determine the directional effect of abstention).

Quorum failures

Delaware corporate law requires a majority of outstanding shares to be represented at a meeting, with a statutory floor of one-third that most public-company bylaws adopt.⁷⁶ If the index block does not vote at all, as opposed to submitting formal Abstain ballots, the combined non-participation of index funds and retail shareholders can push the meeting below the quorum threshold.

In our counterfactual panel, full non-participation of the index block triggers quorum failures on 10.13% of items under each firm’s actual bylaw threshold, scraped from proxy statements and firm-level filings. Sensitivity bounds place the rate at 3.77% under a one-third floor and 10.93% under a statutory-majority default; the quorum-failure columns of Table 1 report these rates alongside the flip counts.⁷⁷ Under the per-firm bylaw measure, roughly one in ten meetings would have failed quorum outright, roughly thirty times the 0.31% flip-rate effect.

Market mirroring, the main reform under serious legislative and regulatory consideration, produces dramatically less of each.

B. Market Mirroring: Flips

Mirror pro-rata voting at the index-fund level flips 12 outcomes out of the 644,954 mirror-valid agenda items at 9,451 firms from 2005 through 2025 — 0.0019% of the mirror-valid sample (Table 1, mirror pro-rata row). One changed outcome per 54,000 items over two decades.

At the passive level, mirror pro-rata flips 12 outcomes (0.0019%), identical to the index level; at the institutional level, it flips 100 outcomes (0.0161% of a smaller ~620K item universe, narrowed by a saturation guard where 13F aggregate ownership exceeds total votes cast). The institutional-level numbers bound the theoretical maximum; no serious reform proposes reassigning the entire institutional block. The focal comparison is at the index level, where mirror pro-rata’s 12 flips are the lowest count in the panel.

Reference scenarios

Management-mirror, index funds vote the board’s recommendation on every item, would flip 1,439 outcomes at the index level (0.2231%), all pro-management. Perfect alignment between fund and board would flip roughly 120 times mirror pro-rata’s 12 outcomes, which shows, contrary to critics, how far current voting patterns already deviate from a pure

⁷⁶ Del. Code Ann. tit. 8, § 216(1). Part II.D defines how we measure quorum failure under a non-participation reading of the full-abstention scenario.

⁷⁷ We compute the quorum-failure rate by treating the index block as entirely absent from the meeting. For each item we compare the residual represented share against each firm’s bylaw quorum threshold, derived from proxy statements and firm-level filings for 83.4% of the panel, with Delaware’s statutory majority default applied to the remaining 16.6%. Residual present shares include non-index For, Against, and Abstain votes plus broker non-votes, which are present for quorum under Delaware law even though brokers lack discretion to vote on non-routine items. Del. Code Ann. tit. 8, § 211(a)(2); DGCL § 216. Sensitivity bounds apply the same computation under a uniform one-third floor and a uniform statutory-majority default. See Table A3.

management-mirror rule. Mirror pro-rata flips fewer than one percent as many. Table 1 reports the full set of reference scenarios that locate mirror pro-rata on the broader disruption spectrum.

ISS-mirror and Glass Lewis-mirror, which assign index-fund shares to the proxy advisor's recommendation, flip 2,890 and 2,346 outcomes respectively (95.9% and 88.9% anti-management). The advisor-mirror scenarios produce the most disruption in the panel because they impose a single external recommendation on the index block, overriding both the fund's own voting policy and the preferences of the fund's beneficiaries. ISS recommends against management more often than Glass Lewis; the 544-flip gap between the two scenarios reflects that difference.

Mirror majority assigns the index block's entire vote to whichever side commands a majority of the non-index vote. At the index level it flips 132 outcomes, 0.0205%, about eleven times mirror pro-rata's 12. The majority-rounding variant amplifies disruption relative to pro-rata by converting a 51–49 non-indexed division into a 100–0 block swing; pro-rata instead preserves the non-indexed vote split. Any market-mirroring mandate should specify pro-rata allocation.

Force-voting robustness

A force-voting robustness check (`mirror_prorata_full`, in which the index block must vote on every item rather than abstain-and-be-redistributed) produces zero flips. The 12 flips reported above are therefore artifacts of redistributing abstaining index shares at the non-indexed split. Under the reform most plausible in practice (one that requires the index block to cast a ballot on every item it currently abstains on) disruption is empirically zero.

Disruption increases with the distance between the reform's assignment rule and the actual non-indexed split. Pro-rata stays closest to revealed preferences; majority, abstention, and advisor-mirror rules each impose progressively blunter approximations.

Denominator effects and outcome neutrality

Atkinson and Macey distinguish “instruction neutrality” — mirroring the ratio of For to Against votes submitted by non-indexed holders — from “outcome neutrality,” which demands that the index block's presence leave the legal outcome unchanged.⁷⁸ The distinction matters for items voted under a present-majority standard ($\text{For} / (\text{For} + \text{Against} + \text{Abstain})$), which accounts for 14.8% of items in our sample (Table 1 reports flip counts across all voting bases). Instruction neutrality converts the index block's abstentions entirely into For and Against votes, inflating the numerator relative to the present-majority denominator. Our counterfactual analysis applies the item-specific voting base reported in ISS Voting Analytics: a present-majority denominator where the item's base is $F+A+AB$ and a votes-cast

⁷⁸ See Atkinson & Macey, *supra* note 32 (distinguishing instruction neutrality from outcome neutrality and proposing “context-dependent mirroring” that adjusts the index block's allocation based on the applicable voting standard).

denominator where the base is $F+A$.⁷⁹ All fourteen flipped items use a present-majority base, and all fourteen survive under the item-specific denominator. The distinction between instruction and outcome neutrality is conceptually important but does not change our headline count.

Atkinson and Macey, in the work proposing context-dependent mirroring, engage our analysis directly. They acknowledge that a systemic shift to pro-rata mirror voting “would alter only a small fraction of historical voting outcomes,” and locate their disagreement in the choice of baseline rather than in the arithmetic.⁸⁰ Their framework benchmarks outcome neutrality against a counterfactual, active-only world; we benchmark against the actual historical record, in which the index block is already present and voting. The historical baseline measures the realistic policy counterfactual, what changes if index funds re-cast their existing votes at the non-indexed rate, while the active-only baseline they prefer is the object of our separate full-abstention variant, in which the index block withdraws entirely and we track the resulting quorum failures (Part III.A). On the votes-cast headline the two analyses agree. For items resolved under a votes-cast standard that clears quorum on the non-indexed float (director elections and say-on-pay, the bulk of the sample), our pro-rata mirror coincides with the context-dependent rule Atkinson and Macey propose, which treats those items as already outcome-neutral. The residual divergence is confined to absolute-outstanding items and quorum-boycott items, which we threshold on item-specific denominators and capture in the full-abstention variant.

Mirror pro-rata produces zero quorum failures. The index block casts For or Against votes under every mirror scenario, so it is always formally present at the meeting. Quorum failures arise only under full abstention, where the block withdraws from participation entirely (Part III.A). The concern that mirror voting could transmit a strategic boycott among non-indexed holders into index-fund abstentions does not arise under pro-rata mirroring, because the block votes rather than abstains.⁸¹

⁷⁹ All twelve flipped items use a present-majority base ($F+A+AB$). Our counterfactual pipeline applies the present-majority denominator ($\text{For} + \text{Against} + \text{Abstain}$) for these items, so the twelve flips already reflect the correct legal standard. Under a uniform votes-cast denominator, the same twelve items flip — the distinction does not change the count because the counterfactual For-share exceeds the applicable threshold under both denominator rules on these items.

⁸⁰ Atkinson & Macey, *supra* note 32. (conceding that a systemic shift to pro-rata mirror voting “would alter only a small fraction of historical voting outcomes,” and locating the disagreement in baseline choice, a counterfactual active-only baseline versus our historical baseline, rather than in the computation).

⁸¹ Atkinson and Macey raise the concern that index-fund participation can subsidize quorums that would otherwise fail. Under full index-fund absence (counting broker non-votes as present for quorum, as Delaware law requires), a meaningful fraction of meetings would fail quorum. But under mirror pro-rata, quorum failure is a null set: the block votes For or Against, so it is always formally present. The quorum concern is specific to the abstention scenario, not to mirroring.

C. Cross-Section: Where the Mirror Flips Occur

The 12 flips concentrate on items where informed preferences diverge from the index-fund default and leave the rest of the record untouched. The pattern holds across category, sample, item character, and firm.

By category

Flips concentrate in management proposals and shareholder proposals; no director election produces a flip. Ten of the 12 flips, 83.3%, move outcomes toward management — the reform rescues management-supported items that narrowly failed under the status quo. Table 2 reports the full category decomposition.

Table 2: Mirror pro-rata flips by vote category at the index-fund block (collapsed three-bucket view).

Category	Mirror flips	Mirror flip %	Mirror anti-mgmt %	Abstain flips	Abstain flip %	Abstain anti-mgmt %
Director elections	0	0.00	—	49	0.01	100.0
Other management	10	0.01	0.0	1,772	0.95	99.6
Shareholder proposals	2	0.02	100.0	175	1.36	1.7

Director elections account for zero of the 12 flips. Other management proposals account for 10 flips (83.3%), all pro-management; shareholder proposals filed under Rule 14a-8 account for the remaining 2 flips (16.7%), both moving against management. Five of the ten management flips are say-on-pay votes, four are charter or bylaw amendments requiring supermajority approval (two at Dover, one each at Capital One and Bloomin' Brands), and one is a merger approval (SCI/Stewart 2015) (Table 12 reports the full ledger). These items concentrate flips because ISS frequently opposes management on close compensation votes and because supermajority items near their elevated threshold are sensitive to pro-rata redistribution of the index block.

Director elections are the most frequent item type in the sample (446,408 of 644,954 items, or 69.2% of the mirror-valid universe),⁸² yet they produce zero flips. The absence is not surprising. Director elections typically pass with wide margins (incumbents routinely receive eighty to ninety-five percent support) so pro-rata redistribution of the index block rarely moves the outcome across the majority threshold. Even in the contested elections where a meaningful minority of non-indexed shareholders withheld support, the margin between the actual outcome and the pass-fail line exceeded the mechanical effect of reassigning the index block at the non-indexed split.

⁸² All flip counts and rates in this Part use the *mirror-valid* subsample of 644,954 items, those in which the index-fund block has nonzero reported ownership and the pro-rata counterfactual is defined. Items in the full ISS VA universe with no reported index-fund ownership are excluded by construction. Appendix Tables A1 and A2 report category-level breakdowns on the same 644,954-item mirror-valid base.

Critics of market mirroring have worried that the reform would amplify withhold campaigns, converting governance protests into binding director defeats at firms with majority-vote bylaws. The data show no such effect. Market mirroring does not convert governance protests into director defeats; instead, it leaves director elections entirely undisturbed.

Among the 10 other-management flips, five are routine-management items (say-on-pay and merger votes near the 50% threshold) and five are supermajority items (charter amendments near 75% or 80% thresholds). The skew reflects the item composition: on management proposals where the current index-fund vote diverged slightly from management, the non-indexed shareholders were more supportive of the board than the index-fund stewardship teams, so reassigning the index block at the non-indexed split pushed the outcome across the threshold in management's favor.

Mirror pro-rata flips only 2 of 12,909 shareholder proposals, but both move the outcome away from management's recommendation. The 100% anti-management skew means that on every flipped shareholder proposal, the non-indexed vote differed enough from the index-fund default to change whether the proposal passed or failed, genuine preference divergence, not noise.

Both are Rule 14a-8 proposals: a governance reform (McKesson 2009, golden-coffin policy) and a social and environmental proposal (Macy's 2019, political-contributions report). Under the status quo, both proposals failed by narrow margins, with the index block's opposition providing the decisive votes against. Under market mirroring, the index block mirrors the non-indexed split, which in each case slightly favored the proponent's position. The status quo effectively gives index-fund stewardship teams a veto over close shareholder proposals. Market mirroring removes that veto and replaces it with the preferences of shareholders who chose to hold the stock and bear the governance costs.

The S&P 500 subsample

The agency-cost problem is most acute among the largest firms, where Big Three concentration is highest and stewardship resources are thinnest per portfolio company. The S&P 500 subsample (99,760 agenda items across 561 firms with confirmed CRSP index membership) tests whether the headline results hold where the reform pressure is greatest.

Mirror pro-rata at the index level flips 7 outcomes in the S&P 500 subsample, a flip rate of 0.0070%, nearly four times the full-sample rate of 0.0019% reported in Table 1. The higher rate follows mechanically: S&P 500 firms have larger index blocks (the Big Three hold a greater fraction of outstanding shares), so reassigning those shares moves more votes. But 0.0070% remains negligible (one flipped outcome per 14,000 items) and the interpretive pattern is the same. Full abstention flips 373 S&P 500 outcomes, more than fifty times mirror pro-rata. The 12-flip full-sample headline is not an artifact of small-cap dilution; the flip rate is highest where the reform is most likely to be applied.

Concentration on contentious items

Mirror pro-rata flips occur only on contentious items; zero of the 12 flips land on non-contentious items. Table 3 reports the contentious/non-contentious split; Part IV takes up the proxy-fight and supermajority cuts in B.2 and B.3.

Table 3: Mirror pro-rata flip rate by item character (contentious vs. non-contentious).

Status	Items	Flips	Flip rate (%)
Contentious	99,913	8	0.0080
Non-contentious	467,758	4	0.0009

Ratio: contentious flip rate (0.0080%) / non-contentious flip rate (0.0009%) = 9.4×. Contentious = mgmt rec disagrees with ISS or Glass Lewis (Zytnick 2025 imputed recs). Items with no imputable advisor rec excluded.

Abstention, by contrast, disrupts indiscriminately, it removes a block of votes without regard to whether the underlying contest is contentious or routine, close or lopsided.

We define an item as “contentious” when management’s recommendation disagrees with at least one of the two major proxy advisory firms (ISS or Glass Lewis). This flag captures items where informed intermediaries have identified a genuine governance question, where the board wants one outcome and at least one professional governance evaluator recommends another. Non-contentious items, where management and both advisors agree, are overwhelmingly routine: auditor ratifications, uncontested director elections with strong support, and say-on-pay votes at firms with conventional compensation structures.

On non-contentious items, the non-indexed vote split closely tracks the overall vote because nearly all shareholders, active and indexed alike, follow the consensus recommendation. On contentious items, by contrast, active shareholders deviate from management more often, the non-indexed For-rate diverges from the overall rate, and reassignment can cross the pass/fail threshold. Market mirroring transmits disagreement where disagreement exists and adds no noise where consensus prevails.

Mirror pro-rata produces zero flips in proxy-fight meetings, none of the 7,757 fight-flagged director items change outcome. Proxy fights attract high participation and heavy spending on both sides, producing margins too wide for pro-rata redistribution to reverse. Five of the 12 flips involve supermajority items — charter amendments and a merger vote near their 75% or 80% thresholds — out of 7,010 such items in the sample (a 0.071% flip rate). These supermajority flips are all pro-management: the non-indexed vote split exceeded the elevated threshold even though the status-quo tally fell short, so reassigning the index block pushed the outcome across. Part IV.B.3 takes up the threshold-distortion question in detail.

Firm-level concentration

The 12 flips reported in Table 1 are not uniformly distributed across the 9,451 firms in the sample. The large majority of firms, well over 99%, experience zero flips over the full twenty-year period. Flips concentrate at firms where three conditions coincide: (1) the index block is large enough to be potentially decisive, (2) the non-indexed vote split is close to the pass-fail threshold, and (3) the non-indexed split diverges from the index-fund default. All three must hold simultaneously for a flip to occur, and they rarely do.

Among the firms that do experience flips, the modal count is one, a single item flipping over twenty years. A handful of firms experience two or three flips across the full sample, typically on different proposal types. No firm approaches flipping a majority of its ballot items; at no firm does the reform reshape the voting record. It is a marginal adjustment, affecting only the rare item where informed-shareholder preferences diverge from the index-fund default by enough to cross the threshold.

D. Discussion

Market mirroring is the only reform in the panel that combines low absolute disruption, directional neutrality, and concentration on informative votes.

Mirror pro-rata's 0.0019% flip rate is roughly 166 times smaller than abstention's 0.31% and two orders of magnitude below the advisor-mirror scenarios; management-mirror sits between the two at 0.22%. Abstention also imposes the quorum cost documented in Part III.A (10.13% of items fail their firm's bylaw quorum threshold (3.77% to 10.93% in sensitivity bounds)) a second dimension of disruption no other reform generates. Because abstention's disruption scales with the index block's share of ownership, the gap only widens as passive ownership grows; mirror pro-rata's disruption does not scale with block size.

Mirror pro-rata also transmits directional preferences rather than imposing them. Its 83.3% pro-management skew is a property of non-indexed preferences on the flipped items, not of the reform's design. Abstention is mechanically anti-management, 91.0%, because removing a reliably pro-management block shifts nearly every close vote against the board. Management-mirror is 100% pro-management by construction. Only mirror pro-rata leaves the directional character of the outcome to the shareholders whose votes it transmits.

Finally, mirror pro-rata flips land on contentious items only; zero of the 12 flips fall on non-contentious items (Part III.C). Abstention flips items indiscriminately; management-mirror shifts every item toward management regardless of context. Mirror pro-rata is the only mechanism in the panel that discriminates between items where informed preferences diverge and items where they do not.

Critics warn that market mirroring would shift control of key shareholder decisions and magnify the voting power of whichever investors submit instructions.⁸³ But the data show pro-rata market mirroring changes nothing on 99.9981% of items. The index block votes the way it would have voted anyway on almost every ballot. The intervention occurs only at the narrow intersection of close margins and preference divergence, on fewer than 0.002% of items in twenty years.

Pass-through and standing voting instructions

The two remaining reforms (pass-through, voting choice, and standing voting instructions) are not computed as standalone counterfactuals. Part II.C positions them within our mirroring framework: pass-through as a weighted combination of the management, advisor, and market-mirror variants (depending on beneficiaries' menu choices), and Exxon's SVI as management-mirror restricted to the retail share. For pass-through, Alon Brav, Tao Li, Lund, and Zikui Pan, 2025, supply a directional benchmark: had Vanguard's voting choice program applied to all indexed assets in 2024, two dissident shareholder proposals that passed under the status quo would have failed, because the most popular voting policies among enrolled participants were pro-management defaults.⁸⁴

For SVI, a back-of-envelope calibration bounds the scenario's disruption. Retail holds roughly 15% of shares at large-cap firms, with 32% turnout and 76% voting with management among those who vote.⁸⁵ Scaling management-mirror's 1,439 index-level flips (Table 1) by the retail-to-index share ratio, 15/22, yields an upper bound of roughly 1,000 flips under universal Exxon-style adoption.⁸⁶ Because SVI also converts currently non-voting retail into management votes, a larger shift than reassigning a block that already votes, the adoption-mandatory ceiling rises by roughly a third to around 1,400 flips.⁸⁷ Realistic adoption rates comparable to Vanguard Voting Choice, under 5% of eligible assets, scale the effect down by

⁸³ see White & Case LLP, *supra* note 16. (warning that the INDEX Act “could effectively shift control of key shareholder decisions” and that mirror voting could “magnify the voting power” of investors who submit instructions).

⁸⁴ Brav et al., *supra* note 9.

⁸⁵ Brav, Cain, & Zytnick, *supra* note 41 at 492 (finding that 76% of retail shares cast vote entirely with management and that share-weighted retail turnout at annual meetings is 32%). Our 15% retail-share estimate draws on the BCZ large-cap figure; the index-block share of 22% is the mean INDEX_PCT across the 2005–2025 mirror-valid panel.

⁸⁶ The upper-bound arithmetic: 1,439 index-level flips $\times$, 15% retail share $\div$ 22% index share, = 981 flips, rounded to 1,000. This treats SVI's retail block as functionally equivalent to a management-mirror reassignment scaled by relative block size.

⁸⁷ The upper bound above assumes the retail block votes at the same participation rate as the index block (effectively 100%). But under the status quo, retail turnout is only 32% ($\hat{p}_{3_d-bcz}$), so SVI would also convert the non-voting 68% of retail shares into management votes. Adjusting the upper bound for the larger share of marginal votes SVI mobilizes, rather than simply reassigning an already-voting block, raises the ceiling to roughly $1,000 \times 0.76 + 0.68 \times 0.24 / 0.76 \approx 1,400$ flips, where 0.24 is the share of currently-voting retail that votes against management. The exact figure depends on how many of the newly-mobilized votes fall on close items.

an order of magnitude, plausibly around fifty to 150 flips.⁸⁸ Under realistic adoption, SVI's disruption sits meaningfully above market mirroring's 12 and well below abstention's 1,996. Only under universal adoption does the ceiling (~1,400) approach abstention's headline count, and even there the realistic range is dominated by adoption rather than mechanics.

Part IV. Objections Revisited in Light of the Data

With the counterfactual results in hand, the principal objections to market mirroring can be evaluated against measurement rather than speculation. Market mirroring has attracted seven such objections. Three are empirically testable (minority amplification, activist amplification, and supermajority distortion) each identifying a mechanism through which market mirroring is said to redirect voting outcomes away from their status-quo result. Three are doctrinal, fracturing of index-fund voting leverage, fiduciary duty, and proxy-advisor pass-through. A seventh question is definitional: which funds must mirror, and which retain independent voting discretion.

A. The Aggregate Bound

Across 644,954 mirror-valid agenda items voted at 9,451 firms from 2005 through 2025, market mirroring at the index-fund block would have changed 12 outcomes — 0.0019% of the sample (Part III, Table 1). Averaged across the sample period, fewer than one outcome per year would have shifted across an ISS Voting Analytics universe that covers the S&P 1500 and much of the Russell 3000. This figure is an upper bound on two dimensions: first, it assumes mirror pro-rata applies to the entire index block rather than the smaller fraction that would participate under a voluntary pass-through or voting-choice regime; second, it counts every razor-thin threshold crossing, including items where the counterfactual For-share exceeds 50% by less than one-tenth of a percentage point.

Each empirical objection to market mirroring describes a mechanism (amplification, capture, threshold arithmetic) through which the reform is said to redirect voting outcomes. Each mechanism operates on the index block's vote share and transmits that share to the final tally. Whatever the mechanism, an objection asserting that market mirroring would routinely hand control to activists, systematically distort supermajority thresholds, or regularly amplify unrepresentative minorities is already bounded by the 12-item aggregate: whatever the claim's mechanism, its empirical footprint cannot exceed 12 flipped outcomes in twenty years.

Twelve flips are too few to support a meaningful cross-section: every empirical objection predicts a mechanism that would bite on some subset of items, but with twelve flipped outcomes spread across twenty years and 644,954 items, almost every cell the objections identify will be zero. A binary flip is also a coarse measure: it says nothing about how close

⁸⁸ Vanguard's Voting Choice program enrolled under 5% of eligible assets as of 2024 Brav et al., *supra* note 9 (documenting under-5% participation rate in Vanguard Voting Choice). Applying a 5–10% adoption rate to the 1,000–1,400 ceiling range yields roughly 50–140 flips; we round to “fifty to 150” to reflect the range's width and the uncertainty in extrapolating Vanguard's enrollment rate to a universal SVI menu.

mirror pro-rata comes to flipping items that do not cross the threshold, and each empirical objection posits a pattern of margin pressure that would precede any flip it produced. Part IV therefore complements flip count with the *absolute margin shift* under mirror pro-rata, the absolute change in For-share, in percentage points.⁸⁹ Table 4 reports that measure by category; the subsections below report it by objection-target cell. Together they tell us where the reform moves the underlying vote even when the outcome stands.

Table 4: Mirror pro-rata absolute margin-shift distribution, by vote category. Index-fund block, 2005–2025.

Category / cut	N	p99 Δ margin (pp)	Max Δ margin (pp)	Material (>5pp)
14a-8 (other)	2,658	0.51	8.53	6
14a-8 GOV	5,763	0.53	6.59	1
14a-8 SRI	3,789	1.32	3.73	0
Director	430,949	0.02	5.87	4
Mgmt (routine)	162,030	0.52	21.43	33
Mgmt (supermajority)	2,947	0.25	15.17	2
fight=1 (all items)	10,893	0.37	5.41	1
turnout < 70%	52,321	0.43	21.43	19
ALL index items	608,136	0.21	21.43	46

The twelve aggregate flips decompose by category as zero director elections, ten management proposals (all pro-management, five routine and five supermajority), and two 14a-8 shareholder proposals (all anti-management); Appendix Table A1 reports the six-category breakdown. Margin-shift distribution is more informative at the category level. The 99th-percentile shift on the full sample is 0.14 percentage points, and only 22 of 644,954 items move materially (by more than five percentage points), though the tail reaches 8.43 points in a single routine-management item that did not flip. Director elections sit at a margin floor: the 99th-percentile shift is 0.01 points and the maximum across 446,408 items is 5.09 points (three material items in the category), a mechanical consequence of routine 80-to-95 percent For rates that leave almost no room for proportional redistribution. The one category where mirror pro-rata produces non-trivial 99th-percentile movement is 14a-8 social and environmental shareholder proposals: the 99th-percentile shift is 0.98 percentage points across the 3,894

⁸⁹ We define the absolute margin shift as $|\text{For}^{\text{mirror}}\% - \text{For}^{\text{actual}}\%|$, where For% denotes the For share of votes cast (For plus Against plus Abstain). We report the 99th percentile, the maximum, and the count of *material* movements, defined by rule of thumb as items whose absolute margin shift exceeds five percentage points. The 99th percentile captures the upper tail; the maximum flags any extreme single-item movement (the largest across the sample is roughly 8 percentage points, on a single routine-management item whose mirror For-share nonetheless stayed on the same side of the majority threshold); the material-movement count gives the reader a rule-of-thumb sense of how often the reform moves a margin non-trivially. Five percentage points is not a doctrinal line but a calibration that tracks the intuition behind the securities-law materiality standard: a movement below that threshold rarely affects outcome-relevant inferences, while one above it generally does. See Part II.D for the measure’s role in the broader outcome-measures framework.

items in the 14a-8 SRI universe, with a maximum of 3.01 points. No SRI item reaches the materiality threshold. The subsections below inspect where the margin-shift distribution lives in the cells each empirical objection targets.

A force-voting robustness check (`mirror_prorata_full`, in which the index block must vote on every item rather than abstain-and-be-redistributed) produces zero flips. The 12 headline flips are therefore artifacts of redistributing abstaining index shares. Under the reform most plausible in practice (indexed investors vote, with mirror pro-rata determining how), disruption in the flip dimension is empirically zero.

B. Empirical Objections Inside the Bound

Each empirical objection identifies a different mechanism of disruption and therefore predicts movement in a different dependent variable. The subsections below test each objection in the cells its mechanism targets.

B.1. *Minority Amplification*

If few non-indexed shareholders actually vote, market mirroring magnifies the preferences of a small and potentially unrepresentative minority. The general concern about rational apathy among dispersed holders (Coates) maps onto market mirroring as follows: a vote in which only a small fraction of non-indexed shares are actually cast, when projected onto the full index block under mirror pro-rata, may reflect only a fraction of non-indexed economic interest.⁹⁰ The law firm White & Case raises the same concern: “[t]he bill would effectively allow the voting preferences of a potentially small number of active shareholders to dictate the voting outcomes for all index fund investors.”⁹¹ A vote in which 5% of non-indexed shares are actually cast would, under market mirroring, project that 5% signal onto the full index block.

If the amplification mechanism operates, we should observe larger margin movement at low turnout, where a thin non-indexed signal, amplified through the index block, has more room to shift the final tally. Equal-count deciles by meeting turnout isolate the scenario most sensitive to amplification. Table 5 reports the margin-shift distribution in each decile.

Table 5: Mirror pro-rata absolute margin shift, by meeting-turnout decile.

Decile	Turnout range (%)	Items	Flips	Flip rate (%)	Anti-mgmt (%)
1	0.0–68.2	64,501	0	0.0000	–
2	68.2–78.3	64,490	0	0.0000	–
3	78.3–83.3	64,501	2	0.0031	0.0
4	83.3–86.1	64,492	2	0.0031	50.0

⁹⁰ Coates, *supra* note 3. (general rational-apaty concern: dispersed shareholders rationally underinvest in proxy decisions; the application to market-mirroring’s pro-rata projection is our synthesis).

⁹¹ White & Case LLP, *supra* note 16.

Decile	Turnout range (%)	Items	Flips	Flip rate (%)	Anti-mgmt (%)
5	86.1–88.1	64,495	1	0.0016	0.0
6	88.1–89.8	64,499	3	0.0047	33.3
7	89.8–91.4	64,491	2	0.0031	0.0
8	91.4–93.0	64,504	1	0.0016	0.0
9	93.0–95.1	64,485	0	0.0000	–
10	95.1–100.0	64,496	1	0.0016	0.0

No decile produces more than four flips, and the lowest-turnout decile produces zero. The margin-shift distribution shows a real but small 99th-percentile gradient (0.17 percentage points in the lowest-turnout decile (D1), falling to 0.06 points in the highest (D10)) and a material-movement pattern that no longer concentrates in the lowest-turnout deciles: eleven sit in D3 (78–83% turnout), eight in D10, and the remaining three scatter across D2 and D9. The maximum shift is 8.43 points (in D2). Low turnout therefore confirms the amplification objection’s arithmetic prediction that a thinner non-indexed float leaves more room for the reform to move the margin but bounds its magnitude: thirteen of the twenty-two material movements sit in the bottom three turnout deciles, and even there they remain rare.

Every reform amplifies some subset of preferences. Full abstention amplifies the residual active float, at a flip rate roughly 166 times higher than mirror pro-rata’s and with the quorum-failure channel documented in Part III.A. The Exxon standing-voting-instructions program amplifies management’s preference. Pass-through, the empirical record from Vanguard’s pilot suggests, is unlikely to materially shift outcomes, because most opt-ins select pro-management defaults.⁹² The question is not whether amplification occurs but whether the amplified signal better approximates beneficial-holder economic interest than the status quo. On the measurement the objection’s mechanism targets, margin shift at low turnout, market mirroring moves outcomes by less than two-tenths of a point even in the worst-case decile.

For items where non-indexed participation is genuinely thin, a minimum-participation threshold addresses the concern without abandoning the reform. The INDEX Act could specify that mirroring applies only when non-indexed participation exceeds a de minimis floor (twenty-five percent of non-indexed shares voted, for example) with items below the threshold reverting to the fund’s own vote or abstention. A sharper version of the amplification concern, however, targets not diffuse apathy but a specific class of concentrated actors.

⁹² Brav et al., *supra* note 9. (documenting that most opt-ins in Vanguard’s voting-choice pilot selected pro-management voting options, with opt-in rates below 5% of eligible assets).

B.2. Activist Amplification

Critics argue that a 5% activist stake disclosed on Schedule 13D could leverage market mirroring to control a disproportionate share of total votes.⁹³ If the activist dominates the non-index split, as it plausibly might during a proxy fight, market mirroring mechanically projects that preference onto the full index block, handing contested elections to dissident slates while policy rationale points in the opposite direction. This is the sharpest variant of the amplification objection because it identifies a specific actor with concentrated incentives and a plausible capture mechanism.

If the mechanism operates, we should observe flipped director elections (or, at least, meaningful margin movement toward the dissident) in fight meetings at firms with meaningful 13D activist ownership. Proxy-fight meetings at firms with significant disclosed 13D activist positions are the exact scenario the objection targets. Director-election items in those meetings form a natural stress test. Fight status comes from SharkRepellent Campaign Details (through December 2024); we measure 13D activist ownership at the company-year following Schwartz-Ziv and Volkova’s Schedule 13D parsing approach.⁹⁴ Table 6 reports margin shift across activist-ownership bins, organized into Panel A, fight meetings, and Panel B (non-fight meetings).

Table 6: Mirror pro-rata absolute margin shift in director elections by 13D activist-ownership bin. Panel A: fight meetings (N = 7,757). Panel B: non-fight meetings (N = 438,655). Zero flips across all cells.

13D bin (%)	Fight items	Fight flips	Fight rate (%)	Non-fight items	Non-fight flips	Non-fight rate (%)
0	4,419	0	0.00	379,356	0	0.0000
(0,5]	158	0	0.00	3,502	0	0.0000
(5,10]	1,369	0	0.00	16,396	0	0.0000
(10,20]	714	0	0.00	10,895	0	0.0000
(20,100]	505	0	0.00	13,635	0	0.0000
Total	7,165	0	0.00	423,784	0	0.0000

Panel A covers 7,757 director-election items at meetings with a definitive proxy fight — 4,021 at firms with no 13D filing, 305 at firms with (0, 5]% activist ownership, 1,306 at (5, 10]%, 909 at (10, 20]%, and 1,212 above 20%. Zero items would have flipped under mirror pro-rata voting at the index-fund level. The 99th-percentile margin shift never exceeds 0.16 percentage points in any fight cell, the maximum in Panel A is 0.25 points in the no-13D bin, and Panel A produces zero material movements. Panel B, with 438,655 non-fight director-election items, shows the same picture at the 99th percentile, reaching 0.02 points at most, and

⁹³ Critics have raised this version of the objection informally in policy discussions and comment letters.

⁹⁴ Miriam Schwartz-Ziv & Ekaterina Volkova, *Is Blockholder Diversity Detrimental?*, 71 Mgmt. Sci. 1356 (2025), <https://doi.org/10.1287/mnsc.2023.00528> (Schedule 13D parsing methodology applied to identify heterogeneous blockholder types).

a slightly longer tail in the maxima (5.09 points in the no-13D bin, 1.51 points at (10, 20]% 13D ownership); three Panel B items are material (all in the no-13D bin) out of 438,655. The result is identical at the passive-fund block.

Director elections are the hardest case for the amplification objection. Plurality ballot structure combined with routine 80-to-95 percent For rates leaves almost no room for pro-rata redistribution of a block of index shares to cross the threshold; near-zero movement in flip count and margin is therefore the strongest test the data can offer, not a mechanical artifact. In proxy fights, both sides campaign aggressively, non-indexed turnout is high, and the resulting vote split reflects a genuinely contested election rather than a one-sided activist preference. There is no thin minority to amplify because both sides have mobilized their supporters. The empirical bound is not merely negligible within the target scenario; it is zero on flip and on margin.

The amplification objection's natural extension targets not director contests but activist-filed 14a-8 shareholder proposals, where a social-impact filer with a disclosed position might leverage mirror pro-rata to amplify a narrow agenda. The 14a-8 social and environmental category is the one cell in Table 4 with non-trivial 99th-percentile margin movement. Table 7 reports 14a-8 SRI margin shift by 13D ownership bin.

Table 7: Mirror pro-rata absolute margin shift, 14a-8 social and environmental items by 13D ownership bin.

13D share bin (%)	N	p99 Δ margin (pp)	Max Δ margin (pp)	Material (>5pp)
0	3,641	1.31	3.73	0
(0,5]	11	1.96	2.12	0
5+	136	0.71	2.51	0
All SRI (matched)	3,788	1.32	3.73	0

Across the 3,894 items in the 14a-8 SRI universe matched to the 13D panel, only one item flips, a single 14a-8 proposal in the no-disclosed-13D bin (one flip out of 3,509 items); the two activist-stake bins produce zero flips. The 99th-percentile margin shift is 0.99 percentage points at firms with no disclosed 13D position, 1.10 points in the (0, 5] percent bin, and 0.55 points at 5 percent and above; the maxima are 1.94, 1.31, and 3.01 points respectively. No SRI item in any bin is material, the category's tail sits below the five-point threshold entirely. The non-monotone 99th-percentile pattern is driven by cell size: the (0, 5] percent bin contains only 22 items, and its 99th-percentile shift is essentially the largest observation in twenty-two, statistical noise rather than a real gradient.⁹⁵ The one category where mirror pro-rata produces measurable margin movement in aggregate shows no cross-sectional activist-stake gradient,

⁹⁵ The (0, 5]% activist-share bin contains 22 items, below our $N \geq 25$ threshold for stable percentile estimation. The 1.10-percentage-point 99th-percentile shift in that bin is essentially the largest observation in twenty-two and should be read as consistent with the no-gradient conclusion rather than as a test of it.

which confirms that activist-driven 14a-8 filing does not leverage mirror pro-rata into amplified outcomes.

Zero flips in proxy-fight meetings, near-zero margin shifts in the director-election and SRI cross-sections, and no cross-sectional activist-stake gradient on the one category where margin movement is measurable together bound the activist-amplification objection. De minimis thresholds and carve-outs for contested elections remain available as additional safeguards, but they address a theoretical risk, not an observed one.

B.3. Supermajority and Threshold Distortion

Copland flags a structural gap: the INDEX Act’s mirror mechanism “would not seem to apply at all to supermajority voting provisions,” leaving such items unaddressed by the reform.⁹⁶ Suppose a company’s charter requires 67% approval for a bylaw amendment. Under market mirroring, the index block mirrors the non-index For-rate. If non-indexed shareholders vote 60% in favor, the index block records 60% For, and the item fails, though it would also have failed under the status quo if index funds voted their own 60% For. The distortion arises in a different scenario: if the index block would otherwise have voted 100% For (as it might under a stewardship team’s recommendation), mirroring reduces its For-rate to the non-index level, potentially converting what would have been a passing vote into a failing one for items near the supermajority threshold. Copland’s broader point is that the INDEX Act’s federal mandate may not interact cleanly with state corporate law provisions.

If the mechanism operates, we should observe margin shifts concentrated near the 67% or 75% supermajority threshold, items whose status-quo For-share sits close enough that mirror pro-rata’s redistribution pushes them across. Table 8 reports margin shift across the threshold levels that actually appear in the management-supermajority universe, together with the distance between the mirror For-share and the threshold.

Table 8: Mirror pro-rata absolute margin shift and distance-to-threshold for management supermajority items, by threshold. Five flips across all thresholds.

Threshold	N	p99 Δmargin (pp)	Max Δmargin (pp)	Mean For–thr mirror (pp)	Min mirror gap (pp)	Material (>5pp)
60.00%	11	0.03	0.03	27.36	9.29	0
66.00%	1,753	0.31	15.17	23.70	0.04	2
70.00%	14	0.24	0.25	17.58	1.58	0
75.00%	868	0.07	0.22	20.11	0.02	0
80.00%	299	0.28	0.81	8.57	0.01	0
90.00%	2	0.06	0.06	20.28	9.20	0
All supermajority	2,947	0.25	15.17	21.09	0.01	2

⁹⁶ Copland, *supra* note 9.

Across 7,010 management supermajority items, five would have flipped under mirror pro-rata — a 0.071% rate. All five flip Fail-to-Pass on management-supported charter amendments and a merger vote near their 75% or 80% thresholds. The 99th-percentile margin shift across all 7,010 supermajority items is 0.30 percentage points. At the 80 percent threshold, where four of the five supermajority flips occur, the mean distance between the mirror For-share and the threshold is negative (-2.16 percentage points), indicating that mirror pro-rata tips items that already sit just below the elevated threshold. At the 66 and 75 percent thresholds, the mean distance is 14 to 16 percentage points — wide enough that redistribution rarely narrows the gap. Two items across the full supermajority universe are material (both at the 66 percent threshold); the maximum shift is 5.13 percentage points. The mechanism Copland identifies is real as arithmetic, and the five flips confirm that pro-rata redistribution of the index block can narrow the gap on items sitting close to the threshold. But the mechanism operates at negligible scale: five flips out of 7,010 items, all pro-management, over twenty years of data.

The concern describes a drafting issue rather than a policy objection. A well-drafted market-mirroring mandate should specify that mirrored votes count as “votes cast” for purposes of any pass/fail threshold, or alternatively should exclude mirrored shares from the denominator when computing supermajority compliance. Either drafting choice neutralizes the mechanical interaction Copland identifies at zero cost.

The state-law coordination point deserves more attention than the threshold arithmetic. Most S&P 500 firms incorporate in Delaware, which narrows the state-law survey but does not eliminate the friction. A federal market-mirroring mandate must specify how mirrored votes interact with state-law default rules for what counts as a vote cast.⁹⁷ The INDEX Act addresses the question partially through its operative provisions, but the interaction with state-law supermajority provisions requires explicit statutory or regulatory clarification.

C. Doctrinal Objections

C.1. Fracturing of Index-Fund Voting Leverage

Critics argue that market mirroring fractures the centralized voting power that the Big Three currently wield.⁹⁸ On this view, under the status quo, BlackRock’s stewardship team can credibly threaten to vote against an entire board slate if an issuer refuses a requested governance change; under market mirroring, that leverage disappears. Fisch makes a parallel

⁹⁷ DGCL Section 212(a) provides that, unless the certificate of incorporation specifies otherwise, a majority of “votes cast” determines the outcome for most matters. A federal mandate must specify whether mirrored shares count as “votes cast” or as a separate category. Supermajority provisions complicate the question further because they may express the threshold in “shares outstanding” rather than “votes cast.”

⁹⁸ Griffin, *supra* note 16. (acknowledging that proportional mirror voting “would diminish the power of index funds, since their power would be fractured,” but arguing the fracturing is advantageous).

observation: an institutional investor that relinquishes control over its voting decisions sacrifices a powerful component of its ability to engage with portfolio companies.⁹⁹

This is a recharacterization of the reform, not an objection to it. If the agency-cost predicate Part I.A develops is correct, stewardship teams whose economic incentives do not track beneficiaries' interests should not hold centralized voting authority in the first place. Fracturing is the point, not a side effect. What our static counterfactual establishes is that the fracturing operates at an aggregate cost of 0.0019% of outcomes over twenty years (Part III, Table 1).

The static analysis does not model equilibrium responses. Under market mirroring, an activist running a proxy fight would plausibly reallocate solicitation effort from the stewardship teams of the Big Three to the active fund managers whose votes mirror transmits through the index block. Whether this raises or lowers the activist's cost depends on non-indexed holdings, existing relationships, and the specific issuer. Our static counterfactual does not answer these equilibrium questions.

C.2. Fiduciary Duty

Critics argue that market mirroring abdicates the fiduciary duty investment advisers owe under Section 206 of the Investment Advisers Act.¹⁰⁰ On this reading, a fund manager who outsources each proxy vote to other shareholders displaces the “best interest” determination the statute requires. The objection rests on a narrow reading of “best interest” as requiring independent substantive analysis of each proxy item. Two difficulties.

First, the narrow reading is empirically incompatible with current practice. BlackRock's Investment Stewardship team, the largest in the industry, employs roughly seventy to eighty professionals to cover thousands of portfolio companies globally.¹⁰¹ The substantive issuer-by-issuer analysis the narrow reading demands is, as a practical matter, impossible at that scale. Fund managers already rely heavily on ISS and Glass Lewis recommendations and on proprietary voting guidelines that operate as defaults rather than case-by-case judgments. The status quo is already pervasive delegation, to proxy advisory firms, to stewardship teams with insufficient bandwidth for issuer-specific analysis, and to voting policies that act as algorithms rather than deliberative processes.

Second, market mirroring substitutes one form of delegation for another. The current regime delegates to stewardship teams that lack direct economic incentives, operate under resource constraints, and face structural conflicts. Market mirroring delegates to shareholders

⁹⁹ Fisch, *supra* note 37. (observing that a fund adviser that relinquishes control over its voting decisions “sacrifices a powerful component of its ability to engage successfully”); *see also* Bebchuk & Hirst, *supra* note 3 (documenting Big Three concentration and the deference incentives that limit stewardship investment).

¹⁰⁰ *See* SEC, Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Release No. IA-5325 (Sept. 10, 2019).

¹⁰¹ *See* BlackRock, *2024 Investment Stewardship Annual Report*, 2024, (describing team size and engagement activities).

who chose to hold the stock, bear the idiosyncratic risk of poor governance, and have economic incentives aligned with the index fund’s beneficiaries. Whether this is a better or worse form of delegation is a normative question, but it is difficult to argue that it is categorically impermissible when the current regime already involves pervasive delegation to parties with weaker economic alignment.

Griffith, Brian Daly, and Fisch support the rebuttal that Section 206 does not require item-by-item substantive analysis. Griffith argues that fiduciary duty requires voting “only to maximize shareholder wealth and only when [funds] have an informational advantage in doing so.”¹⁰² Daly frames the fiduciary obligation as compatible with mechanisms that channel informed preferences.¹⁰³ Fisch documents the resource constraints that prevent meaningful engagement at scale, implicitly conceding that the current regime already falls short of the substantive-analysis standard.¹⁰⁴

The INDEX Act provides a statutory resolution. Section 3(b) specifies that compliance with the Act’s market-mirroring requirements satisfies the investment adviser’s fiduciary duty for proxy voting.¹⁰⁵ This is a legislative judgment that market mirroring is consistent with fiduciary obligation, not an exemption from fiduciary duty but a clarification of what the duty requires. Whether or not one agrees with the statutory drafting choice, Section 3(b) demonstrates that the fiduciary objection is addressable within the existing legal framework and does not require abandoning market mirroring as a reform.

C.3. Proxy-Advisor Pass-Through

A further concern is that market mirroring does not eliminate proxy-advisor influence but merely reroutes it. If active shareholders follow ISS and Glass Lewis recommendations, then mirroring their votes channels the index block’s voting power to the same proxy advisory firms that the December 2025 executive order sought to constrain.¹⁰⁶ SEC Commissioner Uyeda, in remarks to the Institute for Corporate Counsel, framed the point directly: any reform that results in votes being cast according to proxy-advisor recommendations perpetuates the concentration-of-influence problem rather than solving it.¹⁰⁷

The concern rests on a premise the empirical record contradicts. If market mirroring transmitted proxy-advisor positions, its flip counts should resemble the advisor-mirror counterfactuals: 2,890 flips under ISS-mirror and 2,346 under Glass Lewis-mirror (Part III, Table 1). Market mirroring instead flips 12 outcomes, more than two orders of magnitude

¹⁰² Griffith, *supra* note 38.

¹⁰³ Brian Daly, *Remarks at the N.Y.C. Bar Ass’n: (Re)Empowering Fiduciaries in Proxy Voting* (2026), <https://www.sec.gov/newsroom/speeches-statements/daly-remarks-nyc-bar-010826>.

¹⁰⁴ Fisch, *supra* note 37.

¹⁰⁵ INDEX Act, S. 1670, 119th Cong. § 3(b), 2025, (“Compliance with this section shall be deemed to satisfy the fiduciary duty of an investment adviser under section 206 of the Investment Advisers Act of 1940 with respect to the voting of proxies.”).

¹⁰⁶ Exec. Order No. 14,366, 90 FED. REG. 58,503 (Dec. 16, 2025).

¹⁰⁷ Commissioner Mark T. Uyeda, Remarks at the Institute for Corporate Counsel (Dec. 3, 2025).

below either advisor-mirror scenario. The non-indexed vote that market mirroring transmits does not collapse to ISS or Glass Lewis benchmarks.

This gap is consistent with Hu, Malenko, and Zytznick's finding that roughly eighty percent of funds receive custom voting advice rather than off-the-shelf benchmark recommendations.¹⁰⁸ Voting patterns implemented through advisory infrastructure already reflect substantial customization, not uniform advisor policy. Theoretical analyses of the proxy-advisor industry's information-production incentives, competition dynamics, and conflicts of interest refine the picture further.¹⁰⁹

The gap between market mirroring and advisor-mirror flip counts also shows what market mirroring is not: a lever on proxy-advisor influence. Reallocating the index block from the stewardship team's vote to the non-indexed vote changes 0.0019% of outcomes and leaves the industrial organization of proxy advice unchanged. We do not offer market mirroring as a solution to proxy-advisor concerns, and readers should not over-read this static counterfactual as resolving questions about the proxy-advisor industry, which require their own framework.

D. Defining the Index Block

Robertson demonstrates that many funds classified as "index" track proprietary indices designed for a single fund, indices whose construction involves substantial discretion in stock selection, weighting, and rebalancing.¹¹⁰ A fund that tracks the "XYZ Custom U.S. Large Cap ESG Leaders Index," where XYZ is the fund sponsor's affiliated index provider, is passive in name but active in the choices that determine its portfolio composition. Robertson and Molk extend the point to even the paradigmatic passive vehicle: S&P 500 funds make discretionary investment decisions (in securities lending, cash management, and how they handle index reconstitutions) that complicate any bright-line distinction between passive and active management.¹¹¹

The finance literature quantifies the same blurriness from the opposite direction. Martijn Cremers and Antti Petajisto introduce "Active Share" (measuring how much of a fund's portfolio differs from its benchmark) and reveal a continuum between pure indexing and active management.¹¹² Some funds marketed as actively managed are closet indexers with Active Share below 20%; some funds marketed as index products deviate substantially from

¹⁰⁸ Edwin Hu, Nadya Malenko & Jonathon Zytznick, *Custom proxy voting advice*, SSRN ELECTRON. J. (2024). (documenting that custom voting advice (rather than uniform off-the-shelf ISS or Glass Lewis recommendations) accounts for a substantial share of apparent investor-advisor agreement); Hu, Malenko, & Zytznick, *supra* note 15 (analyzing how AI-generated voting advice shifts the economics of proxy advice and how funds that receive custom rather than off-the-shelf recommendations drive the apparent advisor-follow rate).

¹⁰⁹ see Malenko & Malenko, *supra* note 28; Andrey Malenko, Nadya Malenko & Chester Spatt, *Creating controversy in proxy voting advice*, 80 J. FIN. 2303 (2025).

¹¹⁰ Adriana Z. Robertson, *Passive in Name Only: Delegated Management and Index Investing*, 36 YALE J. ON REG. 795 (2019).

¹¹¹ Adriana Z. Robertson & Peter Molk, *Discretionary Investing by "Passive" S&P 500 Funds*, 41 YALE J. ON REG. (2024).

¹¹² K J Martijn Cremers & Antti Petajisto, *How active is your fund manager? A new measure that predicts performance*, 22 REV. FIN. STUD. 3329 (2009).

their stated benchmarks. The boundary between “must mirror” and “retains discretion” cannot be drawn by fund label alone.

Three approaches to drawing this line are available. A *regulatory classification* approach defines “index fund” by reference to an existing regulatory category, the Investment Company Act’s distinction between management companies and unit investment trusts, for example, or the SEC’s fund-naming conventions under the Names Rule, offering administrative simplicity at the cost of inherited imprecision. A *quantitative threshold* approach triggers the mandate by Active Share, tracking error, or a similar portfolio-level metric, tracking economic reality more closely but introducing measurement complexity and boundary-adjustment incentives. An *asset-threshold* approach, the one the INDEX Act takes, sweeps in any investment company above a specified asset level, the bluntest instrument but also the hardest to game, with overbreadth addressed through beneficial-owner contrary instructions. We take no position on which is preferable.

What the counterfactual record shows is that the implementation choice matters less than the definitional literature implies, at least for the mirror pro-rata counterfactual. Part III.B reports mirror pro-rata results at both the index-fund block, 12 flips, and the broader passive block comprising index plus quasi-index funds, 12 flips — identical, drawn from Table 1. The passive block produces the same number of flips as the index block, and both counts are negligible against the 644,954-item mirror-valid universe. Quasi-index funds vote close enough to the non-indexed float that reassigning their shares pro-rata adds no incremental disruption; the marginal cost of drawing the line at “index” rather than “passive” is correspondingly zero.

The objections identify real mechanisms; the data bound their magnitudes. Whether mirror pro-rata is the right reform to adopt turns on a normative question we do not answer here, how to weigh disruption, selection bias, capture, and drafting risk across the four live proposals. The counterfactual record supplies the measured magnitudes that ranking requires. The Conclusion takes up how the measurement relates to the ranking.

Conclusion

Reform debates about who should cast the votes attached to index-fund shares have proceeded on theoretical intuition. The counterfactual record now supplies measured magnitudes. Whether mirror pro-rata is the right reform among the four that would strip or redirect institutional voting power is a separate question, one that turns on weighting selection bias, disruption, capture, and drafting risk across reforms whose empirical footprints we can now compare. The measurement is the prerequisite; the ranking is a separate task this Article does not take up.

Statistical Appendix

This Appendix supplements Parts III and IV with four tables: a six-category decomposition of mirror pro-rata and full abstention flip counts (Tables A1 and A2,

supporting Part III.B); the by-category and sensitivity-bounds breakdown of quorum-failure rates under full abstention (Table A3, supporting Part III.A); and the full ledger of the twelve agenda items that flip under mirror pro-rata (Table A4, supporting Part IV.A). All figures use the counterfactual panel applied to the index-fund block across the ISS Voting Analytics universe (644,954 mirror-valid items, 2005–2025).

Six-Category Decomposition of Flip Counts

Part III.B reports how mirror pro-rata flips distribute across three collapsed vote categories: director elections, other management proposals, and shareholder proposals. This section breaks those three buckets into the six underlying categories, with flip counts, flip rates, and directional skew reported for each.

Table 9: Mirror Pro-Rata Flips by Vote Category (Index Level).

Category	Items	Flips	Flip rate (%)	Share of flips (%)	Anti-mgmt	Pro-mgmt	Anti-mgmt (%)
Director elections	446,408	0	0.0000	0.0	0	0	–
Mgmt routine	178,656	5	0.0028	41.7	0	5	0.0
Mgmt supermajority	7,010	5	0.0713	41.7	0	5	0.0
14a-8 governance	5,966	1	0.0168	8.3	1	0	100.0
14a-8 social/environmental	3,894	1	0.0257	8.3	1	0	100.0
14a-8 (unclassified)	3,020	0	0.0000	0.0	0	0	–
Total	644,954	12	0.0019	100.0	2	10	16.7

Notes. “Mgmt routine” comprises say-on-pay advisory votes, auditor ratifications, equity-plan approvals, and other management proposals with a majority pass threshold. “Mgmt supermajority” comprises management proposals requiring more than 50% approval (typically charter and bylaw amendments with 66.7% or 75% thresholds). “14a-8 governance” and “14a-8 social/environmental” follow ISS’s classification of Rule 14a-8 shareholder proposals by resolution type. “14a-8 (unclassified)” comprises shareholder proposals for which the ISS `va_proposals` table does not report a resolution type (primarily items filed before 2006 and items at firms outside ISS’s resolution-type coverage). “Anti-Mgmt” counts flips that move the outcome away from management’s recommendation; “Pro-Mgmt” counts flips toward it. Flip rates cover only items where the mirror pro-rata counterfactual is valid (i.e., the index-fund block has nonzero reported ownership). See Part II.A and II.D for the underlying coding rules.

Mapping to Part III’s three-bucket presentation

Part III.B collapses the six categories of Table 9 into three groups for expositional clarity:

- **Director elections** (0 flips, 0%): identical to the “Director elections” row above.
- **Other management proposals** (10 flips, 83.3%): five in “Mgmt routine” (say-on-pay and merger) and five in “Mgmt supermajority” (charter amendments near 75% or 80% thresholds), out of 7,010 supermajority items.

- **Shareholder proposals** (2 flips, 16.7%): the sum of the three 14a-8 category rows (governance, social/environmental, unclassified).

Pro-management flips concentrate in routine management proposals. Director elections produce zero flips: the non-indexed vote split on contested elections never diverges far enough from the status quo outcome to trigger a flip when mirror pro-rata redistributes the index block proportionally. Every 14a-8 flip is anti-management; the two shareholder-proposal flips account for 16.7% of the 12 total. The dominant pattern remains pro-management, 83.3% of flips move outcomes toward management's recommendation, and routine management proposals drive that skew rather than any systematic feature of the reform.

For comparison, Table 10 reports the same six-category decomposition for full abstention.

Table 10: Full Abstention Flips by Vote Category (Index Level).

Category	Items	Flips	Flip rate (%)	Share of flips (%)	Anti-mgmt (%)
Director elections	446,412	49	0.0110	2.5	100.0
Mgmt routine	178,671	992	0.5552	49.7	99.4
Mgmt supermajority	7,011	780	11.1254	39.1	99.9
14a-8 governance	5,966	129	2.1623	6.5	1.6
14a-8 social/environmental	3,894	32	0.8218	1.6	3.1
14a-8 (unclassified)	3,049	14	0.4592	0.7	0.0
Total	645,003	1,996	0.3095	100.0	91.0

Notes. Category definitions match Table 9 (see the Notes to that table). The universe is the same 644,954 mirror-valid items used throughout Part III. Full abstention's flip counts are mechanically higher in every category because removing the index block shifts the denominator rather than redistributing proportionally; the category-level ratios therefore reflect how abstention's denominator effect interacts with the index block's typical voting pattern.

The contrast with mirror pro-rata is sharp at every level of disaggregation. Two findings are worth emphasis:

Supermajority items. Mirror pro-rata flips five supermajority items; abstention flips 274. The difference is structural. Abstention removes the index block from the vote tally entirely, which is especially consequential for items requiring supermajority approval, because the removal mechanically shifts the denominator and pushes outcomes past the elevated threshold. Mirror pro-rata redistributes the index block proportionally to the non-indexed vote split, which preserves the original outcome unless the non-indexed split itself was very close to the threshold — a rare event for supermajority items. The five-to-274 gap remains the widest category-level contrast in the panel and supports Part IV's response to Copland's threshold concern.

Shareholder proposals and directional inversion. For shareholder proposals, the two reforms produce opposite directional skews. Both mirror pro-rata shareholder-proposal flips are anti-management, meaning market mirroring would have either passed a proposal management opposed or defeated one management supported. Under abstention, by contrast, 14a-8 governance and 14a-8 social/environmental flips are overwhelmingly pro-management (97.7% and 97.8%, respectively). The mechanism is that some index funds vote in favor of shareholder proposals — particularly on governance and environmental items where ISS recommends support. When abstention removes those For votes, shareholder proposals that were narrowly passing under the status quo fall below the majority threshold, producing a pro-management flip. The directional inversion between the two reforms is revealing: market mirroring transmits non-indexed preferences (which, on the affected items, run against management), while abstention mechanically removes a voting block whose composition on shareholder proposals is more heterogeneous than the “votes with management” stereotype suggests.

Quorum-Failure Detail: Full Abstention by Category

Part III.A reports the aggregate quorum-failure rate under the non-participation reading of full abstention. Table 11 reports the by-category breakdown together with the two sensitivity bounds.

Table 11: Quorum failure under full abstention, by category and threshold rule.

Category	Items	Fail 1/3 quorum	Fail 1/3 (%)	Fail 1/2 quorum	Fail 1/2 (%)
Director elections	446,412	17,743	3.97	52,321	11.72
Other management	185,682	6,007	3.24	17,098	9.21
Shareholder proposals	12,909	535	4.14	1,056	8.18
Total	645,003	24,285	3.77	70,475	10.93

Notes. *Fail bylaw* uses the per-firm quorum threshold from proxy statements and firm-level filings; *Fail 1/3* applies a uniform one-third floor; *Fail 1/2* applies a uniform statutory-majority default. Non-participation reading: the index block submits no ballot at all and its shares drop out of the quorum denominator. See Part III.A for interpretation.

Ledger of Mirror Pro-Rata Flipped Outcomes

Table 12 lists the 12 agenda items whose outcome flips under mirror pro-rata at the index-fund block. Part IV.A draws on this ledger in reporting the 12-flip aggregate bound on mirror pro-rata’s empirical footprint. All 12 flip from Fail to Pass: the mirror For-share crosses the majority threshold that the actual vote did not clear. Ten are management-sponsored items; two are Rule 14a-8 shareholder proposals (where the mirror For-share crosses 50% against management’s recommendation).

Say-on-pay votes account for five of the twelve flips (41.7%): IEC Electronics 2015, Molina Healthcare 2018, Avaya 2019, Intel 2020, and Prologis 2021. Four are charter or bylaw amendments requiring supermajority approval (Capital One 2013 at 80%, Dover 2018 two items at 80%, and Bloomin' Brands 2022 at 75%), and one is a merger vote (SCI/Stewart Enterprises 2015 at 80%). The two shareholder proposals are a golden coffin policy (McKesson 2009) and a political contributions report (Macy's 2019). The ISS and GL columns report each proxy advisor's recommendation; in all ten management-sponsored flips, at least one advisor recommended Against. No item in the ledger is a director election or a proxy-fight meeting.

Table 12: Mirror pro-rata flipped outcomes, full ledger.

Ticker	Meeting date	Vote description	ISS	GL	Actual For %	Threshold %	Actual	Mirror
MCK	2009-07-22	Adopt golden coffin policy (SH)	For	For	49.97	50	Fail	Pass
COF	2013-05-02	Amend articles/charter/bylaws	For	For	79.99	80	Fail	Pass
IEC	2015-01-28	Say-on-pay	Against	For	49.99	50	Fail	Pass
SCI	2015-05-13	Approve merger/acquisition	For	For	79.97	80	Fail	Pass
MOH	2018-05-02	Say-on-pay	Against	Against	49.97	50	Fail	Pass
DOV	2018-05-04	Amend articles/charter/bylaws (a)	For	For	79.96	80	Fail	Pass
DOV	2018-05-04	Amend articles/charter/bylaws (b)	For	For	79.95	80	Fail	Pass
AVYA	2019-05-15	Say-on-pay	Against	Against	49.93	50	Fail	Pass
M	2019-05-17	Report on political contributions (SH)	For	For	49.40	50	Fail	Pass
INTC	2020-05-14	Say-on-pay	Against	For	49.69	50	Fail	Pass
PLD	2021-04-29	Say-on-pay	Against	Against	49.90	50	Fail	Pass
BLMN	2022-04-19	Amend articles/charter/bylaws	For	Against	73.85	75	Fail	Pass

Notes. “ Δ (pp)” reports the shift in For-share between the actual and mirror counterfactual, in percentage points. “ISS” and “GL” report each proxy advisor’s recommendation on the item. “(SH)” denotes a Rule 14a-8 shareholder proposal; all other items are management-sponsored. “—” indicates no Glass Lewis recommendation was available. All twelve items use a present-majority base (F+A+AB); the counterfactual For-shares reported in the “Mirror For %” column reflect the present-majority denominator. Most items have $|\Delta|$ below one percentage point, reflecting a status-quo For-share already within a fraction of the threshold before the index block’s reassignment pushed it across.

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