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US banks under fire over AGM abstentions

Ben McLannahan in New York

Three of the biggest banks on Wall Street are under fire from investors over their inconsistent treatment of abstentions in votes at annual meetings — a system that critics claim entrenches management while setting shareholders up for failure.

Goldman Sachs, Morgan Stanley and JPMorgan Chase each received proposals from shareholders asking the board to amend bylaws so that all non-binding matters presented by shareholders be decided by a simple majority of votes cast. At the moment, the shareholders argue, investors are disadvantaged because abstentions to shareholder-sponsored items are treated as votes against — but not when tallying votes to elect directors, where abstentions are ignored and a simple majority applies.

In its proxy statement filed on Friday, Goldman disclosed that it had received a proposal from two firms, Equality Network Foundation of Seattle and the United Church Funds of New York, which between them own 1,020 shares in the bank. Morgan Stanley and JPMorgan had disclosed similar proposals earlier in the week.

"Why provide ballots on shareholder proposals that offer three choices — for, against and abstain — when in reality, stockholders only have two choices: for or against?" said the supporting statement from ENF and United Church Funds. "By simple math, including abstentions in a formula lowers the vote result and raises the threshold required to pass."

The banks' boards have recommend that shareholders reject the proposals. All three banks declined to comment, beyond what they have filed in their proxy statements.

The proposals on abstentions could be one of several flashpoints in the big banks' annual-meeting season, which begins later this month. Others are likely to be over pay, as governance advocates push for tougher standards on bonus "clawbacks," and over structure. Citigroup and JPMorgan have been asked to set up committees to examine spin-offs which could push up the value of the shares.

Newground Social Investment, a Seattle-based firm, has filed proposals on abstentions at Morgan Stanley and JPMorgan, arguing that unequal treatment of shareholder and management items results in a system that is "unfair, inappropriate and opaque".

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Bruce Herbert, chief executive of NSI, said the difference in treatment of abstentions can have "a seismic impact" on the outcome. He noted that in one instance a few years ago at Plum Creek, the timber company now owned by Weyerhauser, a shareholder proposal was struck down on the day with less than 6 per cent support — even though the raw vote data, disclosed months later, showed that it would have won 56 per cent of the votes by a simple majority formula. Plum Creek went on to change its bylaws.

Mr Herbert said about half of the S&P 500 companies have adopted the voting standard requested by his proposal. He urged the banks to follow the lead of big companies such as Cardinal Health, ConAgra Foods and American International Group, which tweaked bylaws after shareholders complained.

In their responses to the proposals on abstentions, each of the banks has argued that it does treat proposals equally — and that the sole exception is over the re-election of directors.

"They continue to say that board-of-director votes are a different category, but it is a management-sponsored item," said Mr Herbert. "Saying management and shareholder-sponsored items are counted the same, that is a falsehood. And the banks continue to promulgate the same falsehood over and over."