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Market Overview

U.S. Election of Directors Voting Standards

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Overview

Unlike many international companies where simple majority votes for director elections are commonplace, elections at U.S. companies offer boards greater flexibility following the outcome of a shareholder vote. Absent consequential resignation policies forcing failed directors to step down, many companies have adopted resignation policies that require directors who fail to receive majority shareholder support to submit a conditional resignation to the board. Whether or not to accept the resignation is ultimately at the board's discretion. In practice, only a small fraction of failed U.S. directors ultimately leave the board; however, the number of rejected resignations has declined significantly over the past two years.

Most U.S. elections use a plurality or majority standard, with a much smaller number of companies using cumulative voting. Plurality voting standards are maintained by a majority of U.S. companies and are the default voting provision provided by the Delaware General Corporation Law. As such, plurality voting is common among smaller and newly-public companies that have yet to adopt market best practices. By contrast, larger and more mature companies have tended toward the adoption of majority voting standards, often upon the requests of their shareholders.

Both plurality and majority voting standards allow for resignations to be rejected and those directors that failed to receive majority shareholder support to remain on the board. In this election of directors voting guide, we review the voting standards used by U.S. companies, the function of resignation policies, and a shareholder-focused analysis of the advantages and disadvantages of each standard.

Voting Standards

Plurality

Plurality voting remains the default voting standard for uncontested elections of directors at most mid-cap and small-cap companies. Under plurality voting, director nominees receiving the most "for" votes are elected to office until all available board seats are filled, regardless of whether those nominees receive a majority of votes cast in favor of their election (i.e., more than 50% of the total votes). As a result, in an uncontested election, where the number of director nominees is equal to the number of available board seats, it is possible for a nominee to secure their election by receiving a single "for" vote.

Generally, in a plurality election shareholders who wish to oppose a nominee can only "withhold" their vote, rather than vote "against". While withholding a vote provides shareholders with a symbolic means of communicating their disapproval of a candidate, it has no legal effect on the outcome of the election and is thus equivalent to an abstention. Though it is rare, this means that in some cases directors receiving a greater number of "withhold" votes than "for" votes can be elected to office.

Proponents of the plurality standard argue that while the effect of withholding a vote is non-binding, a substantial number of withhold votes for a specific candidate can communicate shareholder concerns and influence the board's decision regarding future director nominations. Nonetheless, in practice, plurality voting in uncontested elections limits the degree to which directors are accountable to shareholders and, in some cases, leads to directors remaining on the board despite failing to receive the support of a majority of shareholders.

Companies may choose to implement resignation policies in conjunction with their plurality voting standards, requiring directors who receive a greater number of “withhold” votes than “for” votes to submit a letter of resignation to the company’s board and/or nominating and corporate governance committee for consideration, which can then be approved or rejected by the board. See “Resignation Policies” below for more information.

Plurality (contested elections)

Regardless of the voting standard used for uncontested elections, it is widely considered best practice for companies to include a plurality carve out for contested elections. In contested elections, where the number of director nominees generally exceeds the number of available board seats, plurality voting ensures that only the nominees receiving the greatest number of votes will be elected to the board, whereas majority voting tends to favor incumbency and may unduly restrict a shareholder’s ability to elect their desired candidates.

A majority voting standard in a contested election means that dissident nominees must obtain both more votes than the company’s nominees *and* at least a majority of the votes cast—a feat that could prove more difficult for a dissident nominee. Further, under a majority voting standard, it is possible that an insufficient number of nominees will receive the requisite majority of votes required to be elected, due in part to the potential impact of withhold votes and abstentions. In this case, the incumbent directors would either continue to serve as holdovers, or would cease to serve on the board, thus creating a vacancy which would then be filled by the board rather than shareholders. Accordingly, plurality voting is best suited for contested elections because it gives shareholders a voice and ensures that only the director nominees receiving the highest number of votes are elected.

Majority

Regarded as best practice for uncontested elections, majority voting standards have been adopted by most large cap and S&P 500 companies. Under majority voting, uncontested nominees are elected to the board when they receive a higher number of votes cast "for" than the number of votes cast "against".

Most (but not all) majority voting policies contain resignation clauses, whereby nominees who fail to receive a majority of shareholder votes must submit their conditional resignation to the board. The board may opt to either *accept or reject* the nominee's resignation, which gives the board final authority over whether to accept the outcome of the shareholders' vote. Furthermore, in cases where a board accepts a nominee’s resignation, the board is still empowered to name the failed nominee’s replacement.

True Majority

Similar to majority voting, true majority requires uncontested nominees to receive more “for” votes than “against” votes to be elected. However, unlike voting standards containing rejectable resignation policies, true majority standards are consequential and dictate that failed directors *must* resign from the board.

While this approach does not provide for exceptions, (i.e., situations in which a board or director has demonstrated sufficient responsiveness to shareholder concerns), concerns regarding potential disruptions to the board are offset by the rarity of director failures; over the past five years, fewer than 100 directors have failed annually to receive majority support. Furthermore, true majority standards must contain a holdover provision to prevent abrupt vacancies and ensure smooth transitions. Holdover provisions provide for a transition period, typically up to 90 days, during which a failed director may remain on the board, allowing the board sufficient time to recruit a suitable replacement. With these factors mitigating potential disruptions, true majority voting standards represent a reasonable and effective method for ensuring board accountability.

Cumulative

Less commonly used in the U.S. markets, cumulative voting is an alternative voting standard that strengthens minority votes. Shareholders may cast as many votes as the number of shares they own multiplied by the number of directors up for election (i.e., if there are 5 nominees, the owner of 100 shares would be entitled to cast 500 total votes). Shareholders may choose to distribute such votes among the nominees or cast all votes in favor of one nominee. This allows for minority shareholders to elect preferred nominees to the board and exercise a greater amount of influence over the election of directors. Notably, cumulative voting is only effective when paired with a plurality voting standard; it is incompatible with a true majority vote standard since there is an increased chance of skewed shareholder opposition as a result of the cumulated votes, possibly resulting in false director failures.

Resignation Policies

Both plurality and (non-true) majority vote standards may also be accompanied by director resignation policies, which require directors to submit a letter of resignation to the board or nominating and corporate governance committee should they fail to receive a majority of votes cast in favor of their election. Some variations of the policy mandate that, as a condition to their nomination, nominees submit their resignations prior to the election to then be considered upon failure to achieve majority support. Where applicable, these policies are generally disclosed in the company’s bylaws and/or corporate governance guidelines.

Applying a resignation policy introduces a level of accountability to the board, encouraging boards to address shareholder concerns and the continued service of a failed director. However, even where a resignation policy is in place, the board retains the right to reject a director’s resignation, despite majority shareholder opposition. True majority is the only voting standard that provides directors must stand down upon receiving majority opposition, granting shareholders the ultimate authority and disallowing boards’ ability to reject director resignations.

Glass Lewis Benchmark Policy View

From the perspective of Glass Lewis' benchmark voting policy, true majority voting best represents shareholder interests while effectively promoting board accountability. Given that so few directors fail to receive majority support from shareholders, true majority will neither result in many failed director elections nor reduce the willingness of qualified, shareholder-focused directors to serve in the future.

Where true majority voting is not in place, cumulative voting with a plurality standard represents an improvement over a traditional plurality voting standard; and the presence of resignation policies provides some degree of accountability to plurality and majority voting standards. However, even with a resignation policy in place, boards' ultimate authority to reject director resignations under these voting standards does not allow shareholders a definitive voice in the election process.

For more information on voting standards for U.S. director elections, please refer to our benchmark policy guidelines. If you are interested in learning more about failed directors, please reference our 2024 U.S. Proxy Season Review.

Appendix: Common Voting Standards for U.S. Director Elections

	Plurality	Plurality w/ Resignation	Majority w/ Resignation	True Majority
Shareholder Opposition	Withhold Vote	Withhold Vote	Vote Against	Vote Against
Which nominees are elected?	Nominees receiving the most votes until all available board seats are filled (practically all nominees)	Nominees receiving the most votes until all available board seats are filled (practically all nominees)	Nominees receiving more For votes than Against	Nominees receiving more For votes than Against
Does majority shareholder opposition impact board composition?	No	The board may reject or accept a director's resignation	The board may reject or accept a director's resignation	Yes
Pros	Maintains board continuity and weakens the potential of activist investors	Creates a means for shareholders to influence the composition of the board	An established threshold for majority support strengthens shareholders' ability to influence the board	Directors who fail to receive majority shareholder support may not serve on the board
Cons	Shareholders do not significantly influence director elections	Resignations can be rejected by the board	Resignations can be rejected by the board	Qualified nominees may not meet election thresholds
Glass Lewis Benchmark Policy Perspective	Entrenches directors and limits shareholder ability to impact director elections	Encourages board responsiveness but a lack of voting threshold and rejectable resignations diminishes shareholder ability to impact director elections	A majority threshold of shareholder support provides a baseline level of board accountability	A true majority standard for director elections ensures boards best represent shareholder interests

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