

June 24, 2005

Majority Vote to Elect Directors

The effort by activist shareholders to get corporations to adopt majority voting for election of directors continues to pick up steam. The response to this effort also is picking up steam.

Within the week, the Council of Institutional Investors has written to 1,500 corporations requesting that they adopt majority voting, the Committee on Corporate Laws of the American Bar Association has released a discussion paper highlighting the issues involved in switching to majority voting and Pfizer has amended its corporate governance guidelines to require that any director who receives a majority of withheld votes must submit his or her resignation to the board, with the board to then decide what to do.

The new Pfizer policy is a variation of the proposal I made in my March 13 memo <http://www.wlrk.com/docs/MajorityVote.pdf> to the effect that if a majority of the outstanding shares vote to withhold against a director, then that director is not elected. My proposal and the Pfizer policy differ in that (1) Pfizer requires withholding of only a majority of the **votes cast**, while mine requires a majority of the **outstanding** shares and (2) Pfizer provides that the director submit a resignation to be considered by the board and I proposed that the director was not elected.

I continue to believe that whether the result is board consideration of resignation or non-election, the threshold should be a majority of the outstanding shares voting to withhold. I think the Pfizer approach of board consideration of resignation is preferable to non-election in that it solves or avoids many of the issues discussed in the ABA paper and our March 24 memo <http://www.wlrk.com/docs/MajorityElection.pdf>.

Adopting a corporate governance guideline now that provides for board consideration of a resignation if a majority of the **outstanding** shares are withheld may set a pattern that, if widely followed, should substantially address the concerns of the majority-voting movement.

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