

Spotlight on Shareholder Proposals: Written Consents

August 10, 2011 | Client Update | 2-minute read

A fairly recent development in governance proposals has been the surge in proposals seeking the ability of shareholders to act by written consent, in lieu of a meeting. The proposal has gained substantial momentum in a short period, averaging 48.4% support at 32 companies where the proposal was voted on during the 2011 proxy season and winning majority support at 12 companies. Almost all of the proposals were submitted by Chevedden or the Steiners. As of April, ISS reported that 30% of S&P 500 companies allow shareholders to act by less than unanimous written consent.

Some believe that shareholders are less likely to support a written consent proposal if a company already permits shareholders to call special meetings. Our analysis indicates that while there is correlation, it is not dispositive. 19 of the 22 companies where the proposal failed give shareholders the right to call special meetings at 25% thresholds or below. However, 5 companies that provide for the special meeting right nonetheless received majority support for the written consent proposal, including at Liz Claiborne (67%), Staples (60%) and AT&T (54%). AT&T announced that it intends to implement the proposal at its next annual meeting.

In response to a shareholder proposal from the prior year, Home Depot proposed restating its charter to allow for action to be taken without a meeting and without a vote by shareholders, through the written consent of not less than the minimum number of votes necessary to authorize the action. The adopted provision requires certain advance notice, including a request to the board by at least 25% of the outstanding shares to set a record date, and the same kind of information about the soliciting shareholders mandated under the company's advanced notice bylaws. In addition, consents must be solicited from all shareholders. The proposal was approved by 82% of Home Depot's outstanding shares.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.