

Majority Voting for Director Elections in the News

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Recent controversy surrounding Hewlett-Packard's board elections have put the spotlight on referendums for directors, with the *New York Times* alone running three stories on the subject over two weeks. The first [article](#) complained about the difficulty of removing directors after HP's board members all received majority support even in the face of several active and well-publicized "vote no" campaigns. The article blamed large shareholders, intimating that they tend to be mutual funds and asset management companies that may have inherent conflicts of interest, and criticized HP's biggest shareholder for supporting management's recommendation on directors 100% of the time from January 2009 to June 2012.

Then, after the announcement that two HP directors are leaving the board and a third is stepping down as chairman, additional [articles](#) focused on other boards where directors did not actually receive majority support from shareholders, but continued to govern. Only a small number of directors receive less than majority support, .36% last year (or 61 directors out of over 17,000 up for election). Of those 61 directors, 51 remained on their boards, according to ISS. This time, the plurality voting system came under attack as "an electoral system unworthy of Soviet-era sham democracies." 78% of S&P 500 companies have majority voting for uncontested board elections, while overall only 45% of the S&P 1500 have joined the movement. Prior efforts by the Council of Institutional Investors to provoke the Delaware legislature to amend its corporation laws were mentioned. Apparently, North Dakota is the only state that bars plurality voting. No major company is incorporated in that state.

Several companies were highlighted in this article, but the most interesting may be Iris International in confronting the "what-if?" scenario that is often considered by companies debating whether to adopt majority voting. After adopting a resignation policy coupled with plurality voting in January 2010, the entire board received more "withhold" than "for" votes at the May 2011 meeting when ISS recommended against board members for deciding earlier in the year to retain a poison pill without subjecting it to shareholder approval. Pursuant to their majority voting policy, all nine directors tendered their resignations. At the same time that they announced the meeting results, the board firmly rejected those resignations, attributing the outcome to ISS influence. Later that year, the company terminated its rights plan. The company has since been acquired.

Finally, a DealBook [article](#) cites to a study that found that director turnover does not depend on company performance, as there was less than a percentage point difference between companies that were deemed to have performed well or poorly. The biggest driver causing new faces on boards is mandatory retirement age.

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.

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