

Reliance on Proxy Advisory Firm Recommendations May Have Contributed to Majority Withhold Votes for Directors

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According to a filing by Nabors, four directors received less than a majority of the shares voted (or withheld) and tendered their resignations, in accordance with the company's majority vote policy. After considering the structure and needs of the board and the company and the contributions of the directors, especially in the strategic review process that included an important merger transaction recently, the board decided to reject the resignations.

The company noted that feedback from shareholders revealed three reasons underlying the withhold votes, which were considered in the board decision. First, the company stated that "several institutional shareholders' voting policies call for their shares to be automatically voted solely in accordance with the recommendations of certain proxy advisory services," which had recommended against the election of these directors. The board estimates that one third of institutional investors' shareholdings are "automatically voted" with, and others may be influenced by, proxy advisory firm recommendations.

The board believes that those recommendations "are based upon flawed or inaccurate information, and in some cases give undue weight to issues that are of lesser relative importance in evaluating the services of those directors." The filing also criticizes Glass Lewis for not making its recommendations available to the company and not allowing the company "the opportunity to respond or comment upon any concerns it may have." With respect to ISS, the company states that it "fails to correct all factual errors and does not address comments that relate to omitted or skewed information." As a result, the board questioned whether the vote truly reflected shareholder preferences, including those who may have "relied upon flawed or inaccurate statements" by the proxy advisers.

Some shareholders had also expressed concern about one of the director's independence, "based primarily upon proxy advisory service commentary" regarding the disclosure of payments to companies affiliated with an entity of which one of the directors is the CEO.

Finally, the company believed that the votes could be related to a perceived lack of responsiveness to prior majority-supported shareholder proposals. The company discusses how the board has addressed several of those concerns, including elimination of the effect of broker non-votes counting "against" votes, the turnover of the entire board since the departure of the previous CEO, and that "over 28% of the board is currently comprised of directors nominated by a shareholder."

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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