

Rulemaking Petitions on Voting Standards to Elect Directors

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CII filed a [rulemaking petition](#) asking that the SEC require companies to clarify the voting standards for the election of directors. In their view, companies that use the state law default plurality rule, coupled with a policy that requires the director to submit a resignation if the director does not receive a majority of votes in favor (which CII calls “plurality-plus”), should not be permitted to state that their directors are elected by majority voting standards. In addition, their proxy cards should only allow for the ability to “withhold” instead of voting “against”.

CII believes companies’ disclosures about the votes necessary to elect directors are often confusing. It refers to a company that disclosed majority voting standards for the election of directors, but also had a company proposal in the proxy statement to amend governing documents to adopt majority voting. CII had separately urged the SEC to mandate that listing exchanges require all companies to adopt majority voting for election of directors.

The United Brotherhood of Carpenters previously submitted a supplement to an [original petition](#) it filed in 2011, complaining about a similar problem but with a different solution. The Carpenters ask that the SEC amend Rule 14a-4(b)(2) and remove the “withhold” option in director elections. They argue that companies with majority voting should provide on the card the ability to vote “for, against and abstain” and those with plurality voting would then have cards that include only the options “for and abstain.”

Like CII, Carpenters believe that plurality-plus standards should not be disclosed as the equivalent of majority voting, since under the plurality voting only “for” votes count. Withholds are treated like abstentions. They state that companies’ disclosures mistakenly indicate that “withhold” votes have an actual impact on whether directors are elected, and urge the Commission to require clearer disclosures.

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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