

Plurality Carve-Out in Majority Voting Standards

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Ethan Allen's seven nominees for the company's board received overwhelming support in the recent proxy contest against the six candidates proposed by Sandell Asset Management.

The contest received some unusual attention, as noted in this [WSJ article](#), after ISS criticized the company for using majority voting for the election of directors as a "potential entrenchment device." Over 40% of the Russell 3000 companies require directors to be elected by a majority of the votes cast. However, in a contested election, most often the standard reverts back to plurality, meaning that nominees who receive the most number of votes are elected regardless of whether they obtained a majority.

Ethan Allen is among the nearly 6% of companies that do not have a plurality carve-out, according to ISS. That posed the interesting question of what happens if none of the candidates on either ballot, or in any case less candidates than the seven available seats for the board, receive a majority of the votes cast. The incumbents would hold over under Delaware law, while the dissidents, even those who receive more votes than the current directors but less than a majority, would not be elected.

In this situation, the question remains academic. Glass Lewis recommended that shareholders vote in support of all the company's incumbent directors. As is often the case, ISS split its recommendation and favored three of the dissidents, who received the highest level of support among their slate, but still much lower than votes for the company nominees. [Sandell's release](#) separately interprets the vote results.

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

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