

Group Seeks Regulatory Requirement for Disclosure on Reasons That Directors Who Do Not Receive Majority Support Remain on Their Boards

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85% of directors at Russell 3000 companies who failed to receive majority support for their election remain on those boards two years later, a [recent study](#) by the Committee on Capital Markets Regulation found. The Committee recommends that the SEC require boards that retain directors who did not achieve majority support publicly disclose in some form the specific reasons for the boards' decisions that those directors should remain.

The Committee indicates that its mission is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial market, and its [membership](#) includes a former SEC commissioner and a range of business leaders as well as those in academics.

Analyzing results over three years from 2010 to 2012, the Committee uncovered 176 directors out of 60,920 (0.3%) who did not obtain a majority of votes cast in director elections. In the ordinary course, about 10% of directors leave their boards within two years, which is only slightly lower than the rate for directors who did not obtain majority support for their election, such that the study ends up concluding that it is likely that those directors resign for reasons that have nothing to do with their election results.

The voting system for director elections makes a substantial difference, including whether directors are more likely to fail to achieve majority support in the first place as well as the likelihood that they would then vacate their board seats.

Almost 91% of the directors in the study who failed to achieve majority support operated under a plurality voting standard, and only 21 of those 160 directors resigned within two years. In contrast, at companies with a plurality director election standard that also has a resignation policy (plurality-plus resignation), 33% of the 12 directors who failed to receive majority support resigned in that same time period. Companies with "true" majority voting had the lowest rates, as only four directors subject to majority voting for elections got more "against" rather than "for" votes, and half left within two years.

The Committee does not advocate for any kind of blanket prohibition that these directors should always resign, but instead wants the SEC to compel boards to provide public disclosure on the specific reasons, and not simply general statements, on why the directors stay on their boards. As the study noted, many companies with plurality-plus resignation and majority voting election standards already provide this type of information, as their election policies likely require it.

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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