

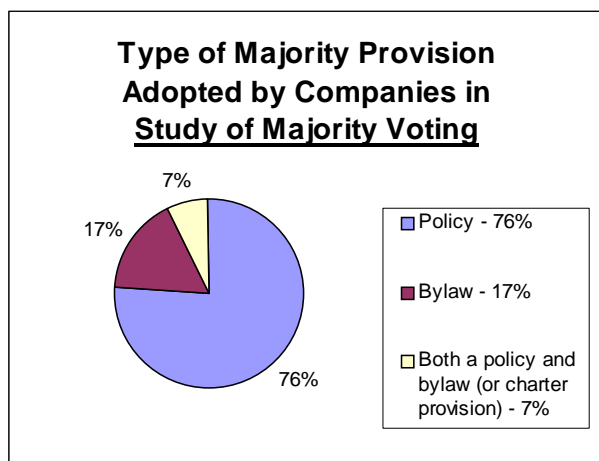
ALERT
May 18, 2006

**May 17, 2006 Study Update Reveals 25% of Fortune 500 Companies and
28% of S&P 500 Companies Have Adopted Majority Voting Standards**

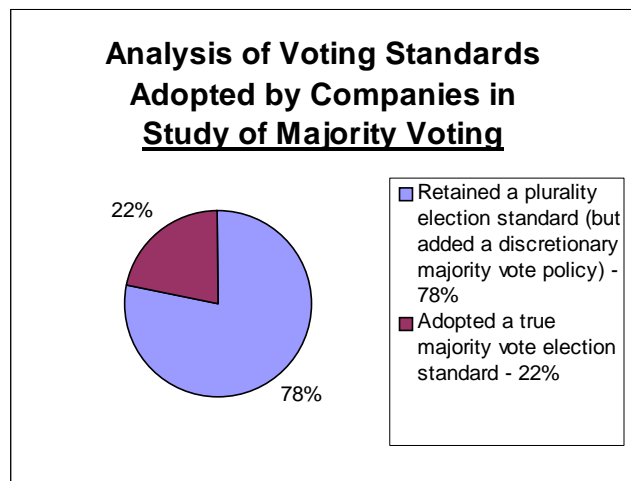
Until recently, virtually all directors of U.S. public companies were elected under a “plurality” vote standard. Under such a standard, the nominees with the largest number of votes are elected as directors, up to the maximum number of directors to be chosen at the election, without regard to votes “withheld”, “against” or not cast. A nominee in an election to be decided by a plurality could theoretically be elected with as little as one vote, thereby ensuring that, in an uncontested election, nominees slated by a board will be elected and that board seats will not be left vacant. Following the apparent failure of the SEC’s 2003 initiative to give large, long-term security holders direct access to a company’s proxy statement for purposes of nominating a limited number of director candidates, stockholder activists began exploring a majority voting standard (and related changes in state corporate laws, the preponderance of which provide for plurality voting as the default voting standard) as an alternative mechanism which would make stockholder votes cast against a nominee meaningful.

The updated Study of Majority Voting in Director Elections (available at <http://www.ngelaw.com/files/upload/majority051806.pdf>), which was prepared by Claudia H. Allen, partner and chair of the Corporate Governance Practice Group of Neal Gerber Eisenberg, is arranged alphabetically by company and highlights whether a company has adopted: (a) a non-binding policy addressing the consequences of a director otherwise elected by a plurality vote failing to garner a majority vote or (b) a binding bylaw (or, in a limited number of cases, charter provision) which requires that a nominee receive a majority vote in order to be elected. Additionally, the study identifies those bylaws which are functionally majority vote policies tied to a plurality voting standard (“Plurality-Plus Bylaws”), the existence of which underscores the need to examine the substance as well as the form of each majority voting provision. The following trends are worth noting:

Policy vs. Bylaw/Charter. The study indicates that a clear majority of companies that have taken definitive action have adopted policies rather than bylaws. Of 179 companies listed in the study, 135 (76%) adopted policies, 31 (17%) adopted bylaws (of which four (2%) were Plurality-Plus Bylaws) and 13 (7%) adopted both a policy and bylaw (or, in two cases, majority policies which complement pre-existing majority vote charter provisions). An additional ten companies listed in the study have publicly announced an intention to adopt some form of majority voting. Examined from a different perspective, of the 179 companies, 139



(78%) retained a plurality election standard, but added a discretionary policy addressing the status of nominees who receive a majority withhold vote, while 40 (22%) adopted a true majority election standard.



Initially, many companies followed the lead of Pfizer, Inc., which adopted a majority vote policy on June 23, 2005 and then amended its policy on October 27, 2005 to include a detailed director resignation policy addressing the status of director nominees who fail to receive support from a majority of votes cast. The trend toward including detailed director resignation policies was also fueled, in part, by Institutional Shareholder Services (“ISS”) announcing on November 18, 2005 that, although it would generally support stockholder proposals calling for directors to

be elected by a majority of votes cast, it would consider recommending against such proposals if companies adopted formal governance principles that presented “a meaningful alternative to the majority voting standard” and included, at a minimum, certain stipulated elements addressing the status of nominees who fail to receive support from a majority of votes cast.

However, some of the enthusiasm for adopting a majority vote policy was muted by FAQs issued by ISS in December 2005 indicating that: (i) ISS would only support “true majority voting standard policies” which address the state-law holdover rule and (ii) ISS’s policy did not constitute a blueprint for a policy acceptable to ISS. To date, ISS has only recommended against one majority proposal on the basis of these criteria. Moreover, the SEC’s denial of Hewlett-Packard Company’s request to exclude a non-binding, precatory majority vote stockholder proposal from its 2006 proxy statement, on the grounds that the majority vote policy previously adopted by HP “substantially implemented” the substance of the proposal (together with the SEC’s denial of relief to all other companies making similar arguments), also served to make the adoption of a policy less attractive.

Since Intel Corporation adopted a majority vote bylaw on January 19, 2006, which includes a director resignation policy addressing the issue of holdover directors, there has been a marked uptick in the number of majority vote bylaws adopted. Of the 39 other majority vote bylaws described in the study (which number excludes the four Plurality-Plus Bylaws), 30 (77%) were adopted subsequent to Intel’s action. Additionally, of such 39 other majority vote bylaws, 30 (77%) are accompanied by a resignation policy addressing the status of holdover directors in the bylaw itself or in a separate policy.

The most recent developments in majority voting have involved a limited number of companies seeking stockholder approval of board-recommended charter amendments, which provide for a majority vote standard. ISS referred to the amendment proposed by Progress Energy Inc., and subsequently approved by its stockholders, as “the new gold standard”, presumably because a binding voting standard contained in a charter may not be further amended without a stockholder

vote. Lowe's Companies, Inc. is also seeking stockholder approval for a majority vote charter provision.

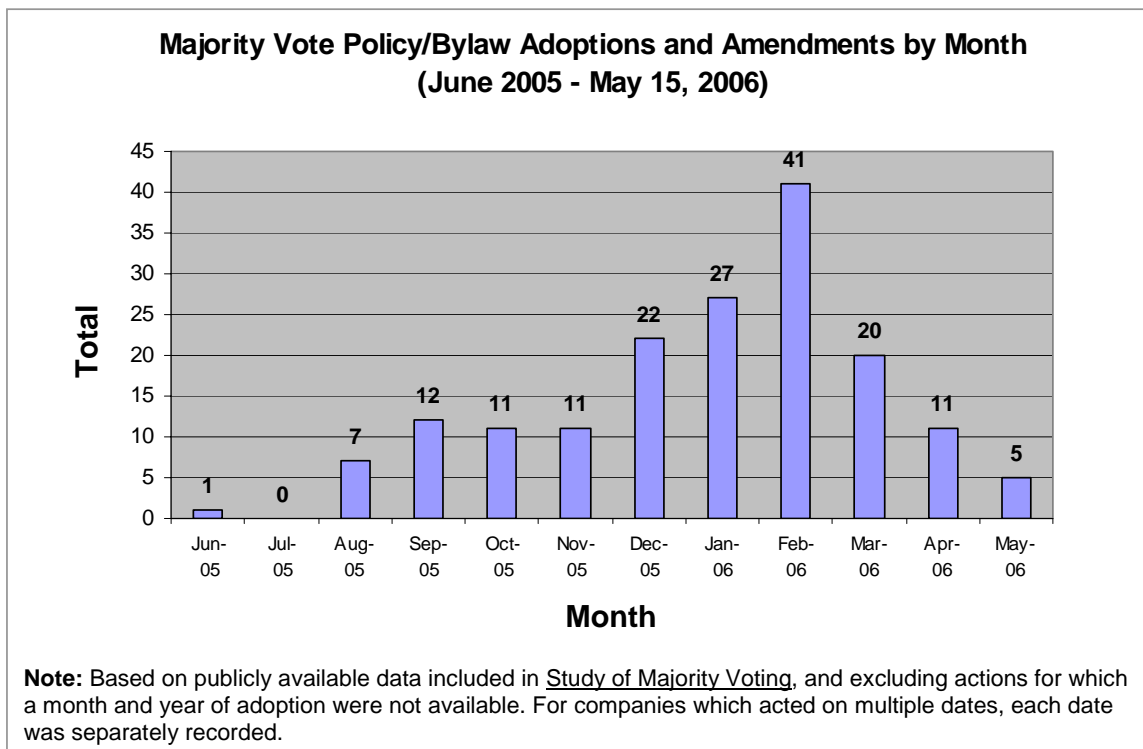
To date, and taking into account the limited number of majority vote bylaws which pre-dated the recent movement, at least 28% of the companies in the S&P 500 and over 25% of the companies in the Fortune 500 have adopted a majority vote policy, bylaw and/or charter provision. Demonstrating the velocity of the majority vote movement, when the study was first published on February 20, 2006, it included majority vote provisions from only 87 companies and indicated that only 16% of the companies in the S&P 500 were known to have adopted either a majority vote bylaw or policy.

Votes Cast vs. Votes Outstanding. Of the 148 policies reflected in the study, 143 (97%) are based upon a majority of votes cast standard. The above-described positions of ISS and the SEC served to limit the utility of adopting the more rigorous standard of a majority of outstanding votes, and, as indicated in the study, two companies that originally adopted policies based upon votes outstanding have modified their policies to refer to a majority of votes cast. Of the 40 majority vote bylaw provisions described in the study (which number excludes the four Plurality-Plus Bylaws), 39 (98%) require that a nominee receive the affirmative vote of a majority of votes cast, rather than the more rigorous standard of a majority of votes outstanding. The latter standard could, as a practical matter, make it very difficult to elect a director.

Uncontested Elections. Of the 148 policies described in the study, 131 (89%) contain a carve-out for contested elections, with the terms of two announced, but as yet unpublished policies not being clear enough to make a determination. As to bylaws, 31 of the 40 (78%) majority vote bylaw provisions described in the study (which numbers exclude the four Plurality-Plus Bylaws) contain a carve-out for contested elections providing that directors will be elected by a plurality vote in such situations. By not including such a carve-out in a majority vote bylaw, a board could effectively create a takeover deterrent, knowing that if no candidates receive support from a majority of the votes cast, the holdover rule will keep the incumbent directors in office.

Influence of Stockholder Activism. As indicated in the study, the influence of stockholder activism, particularly from the building trades unions, on the majority vote movement is undeniable. ISS reports that more than 140 majority vote proposals were filed for the 2006 proxy season (including at least 66 from the United Brotherhood of Carpenters and Joiners of America), marking a material increase from the 89 filed in 2005 (of which the 62 that came to a stockholder vote received average support of 44%, and 17 received majority support) and the 12 filed in 2004 (which received average support of 12%). It appears that a number of majority vote policies and bylaws were adopted in the face of an imminent stockholder proposal, in response to the receipt of such a proposal or in response to stockholder litigation. Moreover, as the time for printing and mailing 2006 proxy statements drew near, the pace of adopting majority vote policies and bylaws increased. Of the 179 companies that took definitive action, at least 110 (62%) adopted policies and/or bylaws (or amendments to the foregoing) in the period from January 1, 2006 through May 17, 2006. There has also been a marked incidence of majority vote bylaws or policies being announced as part of a package of corporate governance reforms, such as board declassification.

Additionally, any change in the voting policies of mutual funds managed by Vanguard, Fidelity, Putnam and certain others who generally opposed director majority vote proposals during the 2005 proxy season, could have a material impact.



State Law Changes. In connection with the focus on director election standards, changes are also percolating on the state law level. Among other things: (a) the Committee on Corporate Laws of the American Bar Association has proposed changes to the Model Business Corporation Act which would permit stockholders to adopt a bylaw providing for a form of majority voting, (b) a bill has been introduced in the California legislature which would require that companies incorporated in California elect directors by a majority of votes cast and (c) the Delaware Bar Association has recommended changes to the Delaware General Corporation Law which would allow stockholders to adopt a bylaw prescribing the voting standard for director elections.

2006 Proxy Season Voting Trends. As the 2006 proxy season hit full stride, certain trends began to appear: (i) proposals tended to be defeated at companies which had adopted majority voting policies (although the proposals generally received material support) and (ii) proposals often passed at companies which had not adopted a majority vote provision. Based upon preliminary publicly-available data, at least 20 majority vote proposals have already passed during the 2006 proxy season, which total exceeds the number of proposals that passed during the entire 2005 season. Of the proposals which have passed to date in 2006, only four (25%) were at companies which had adopted a majority vote policy, while 16 (75%) were at companies that had not adopted a policy (including Progress Energy, Inc., which sought stockholder approval for a majority vote charter provision and Marriott International, which supported a union majority proposal). A thorough analysis of trends, which are still evolving, will, however, not be possible until the proxy season concludes.

The Shifting Balance of Power. In considering the impact of the majority vote movement, it is important to recognize that majority voting has not come to the fore alone. Combined with: (x) the successful on-going movements to declassify boards, thereby forcing all directors to stand for election annually, and to eliminate other takeover deterrents, such as poison pills and supermajority stockholder approval requirements, and (y) the New York Stock Exchange's review of the broker-vote rule (Rule 452), which has generally allowed brokers to vote uninstructed client shares in favor of management's slate in uncontested elections, a "perfect storm" is brewing which could shift the balance of power toward stockholders.

Since companies are continuing to address majority voting and those that have adopted policies have sought varying degrees of publicity for their response to the majority vote movement, the statistics in this summary cannot be viewed as definitive. Nonetheless, the study reveals a number of distinct trends, including the dominance of majority voting as an issue for the 2006 proxy season and beyond, and the apparent reality that majority voting, in one of its forms, is here to stay.

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The complete 91-page Study may be accessed via the firm's website at
<http://www.ngelaw.com/files/upload/majority051806.pdf>.

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