

ANNUAL SHAREHOLDER MEETINGS AND THE CONUNDRUM OF “UNELECTED” DIRECTORS

EXECUTIVE SUMMARY

The staff of the Committee on Capital Markets Regulation has conducted an empirical study of the frequency with which corporate directors resign or decline to stand for reelection after failing to obtain successful election results at annual shareholder meetings. This study expands the Committee’s prior work on this issue, which was released in June 2014.¹ We refer to the counterintuitive findings of our study—namely, that in a substantial percentage of corporate elections, candidates who have been effectively rejected by a majority of shareholders nevertheless remain in office—as the “unelected directors” phenomenon. After summarizing the results of the study, this paper sets forth the Committee’s recommendations for reform.

The Committee’s study compared the three primary shareholder voting formats of U.S. corporations—“**plurality voting**,” “**plurality plus resignation voting**,” and “**true majority voting**.” The study compiled and analyzed selected governance data and related information from companies of the Russell 3000 Index, finding that among the 97,958 director elections held at Russell 3000 companies during the five years 2010, 2011, 2012, 2013, and 2014, in 270 cases (0.28%) directors failed to achieve a majority of votes cast in director elections conducted under any voting format. (Henceforth, this paper shall refer to such directors as “**losing directors**.”) The study then compared the 270 losing directors with a control group of 270 non-losing directors whose companies match various characteristics of the losing director companies. Control group companies were matched based on (i) industry, (ii) market capitalization, (iii) board size, and (iv) board governance (staggered vs. non-staggered).

		#/% Resigning Within			
Voting Regime	# of Losing Directors	3 Months	6 Months	1 Year	2 Years
Plurality Voting	237	9 (3.80%)	12 (5.06%)	25 (10.55%)	31 (13.08%)
Plurality + Resignation Policy	15	1 (6.67%)	1 (6.67%)	4 (26.67%)	4 (26.67%)
True Majority Voting	18	2 (11.11%)	4 (22.22%)	5 (27.78%)	5 (27.78%)
Total	270	12 (4.44%)	17 (6.30%)	34 (12.59%)	40 (14.81%)
	# of Directors	3 Months	6 Months	1 Year	2 Years
Control Group	270	2 (0.74%)	6 (2.22%)	14 (5.19%)	23 (8.52%)

¹ See Comm. on Cap. Mkts. Reg. *Annual Shareholder Meetings and the Conundrum of “Unelected” Directors* 1 (Jun. 2014).

A comparison of the 270 losing directors to the control group indicates that directors often resign in the ordinary course of business, even where such directors have not failed to command a majority vote in their respective election contests. Control group directors resigned their board seats at a rate of 0.74%, 2.22%, 5.19%, and 8.52% at the three month, six month, one year, and two year periods, respectively, as compared to 4.44%, 6.30%, 12.59%, and 14.81% for losing directors. Consequently, one may expect that some percentage of the losing director resignations listed in the table were the result of extraneous factors unrelated to the outcome of shareholder elections—that is, the directors in question would have resigned in any case, win or lose. By two years after “losing” an election, approximately 85% of losing directors remain on the board, as compared to 91% for “winners,” a relatively small difference.

While the overall incidence of the unelected director phenomenon as a percentage of all corporate elections in the Russell 3000 is low, the Committee believes that under the current voting regimes, institutional investors may be refraining from voting against or withholding votes from directors due to the likelihood that such votes would not result in any change to board compositions or have any consequences for the companies in question.

The Committee recommends that the Securities and Exchange Commission adopt regulations such that a board that decides to retain a losing director would be required to disclose publicly in some form the specific reasons why the company’s board chose not to accept any “unelected” director’s resignation.

Part I of this paper provides background on the three primary voting regimes of U.S. corporations. Part II provides an empirical and comparative analysis of governance and voting data of companies in the Russell 3000 Index. Part III provides potential policy approaches to resolving the issue of unelected directors and sets forth the Committee’s recommended reforms. Part IV provides a list of additional background literature. Finally, the Appendix provides statistical charts and tables derived from the empirical study.

I. BACKGROUND ON VOTING REGIMES

There are three primary types of voting systems—“plurality voting,” “plurality plus resignation voting,” and “true majority” voting. This Part I discusses the mechanics of each regime in turn, as well as the Delaware state corporate law of director elections. In addition, this section discusses the limited case law addressing majority withhold vote scenarios in director elections.

A. Voting Thresholds in Director Elections

Plurality Standard. Under the plurality standard, an unopposed director receiving the highest number of votes for any given seat is elected—even a single supporting vote suffices.²

² State corporate law, absent a charter or bylaw provision to the contrary, only requires a plurality shareholder vote for the election of a director. For example, the Delaware General Corporation Law § 216(3) provides that “Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.”

While the origins of the plurality voting threshold are obscure, it is generally recognized that the standard was developed to address scenarios in which the number of director nominees exceeds the number of vacant director positions. This is, naturally, most common in contested director elections. In a contested election, abstentions and spoiled ballots might result in fewer nominees than the number of vacancies receiving a majority of the votes cast. In a more extreme scenario, the election might fail entirely if no director receives a majority. The establishment of the plurality voting threshold was intended to avoid these risks.

Under plurality voting, a shareholder may either (i) grant authority to a proxy agent to vote for the shareholder's specified director candidates or (ii) withhold such authority. In an unopposed director election involving a plurality standard, if the holder of at least a single share grants authority for his share to be cast in favor of the nominees, the slate of directors nominated by the incumbent board wins election, including in the theoretical case where every other shareholder withholds authority for his shares to be voted.

Over time, deploying the "withhold vote" developed into a "protest" tactic used by activist shareholders unsatisfied with the performance of the board or management. A notable example occurred during the 2004 shareholder revolt at The Walt Disney Company annual meeting, where shareholder activists opposed the election of CEO Michael Eisner and certain other director candidates. Under Disney's then-existing plurality standard, Eisner would have been re-elected even if holders of a majority of the shares had withheld their votes for him. The election resulted in holders of 43% of Disney shares withholding votes for Eisner. Although Eisner was re-elected, the high withhold vote was viewed as a powerful indication of shareholders' dissatisfaction with Eisner's performance. Shortly after the election, Eisner initiated a succession process.

The Disney episode prompted increased interest in revising the conventional plurality voting standard. In 2006, Delaware responded to considerable pressure from activists and others by amending the statutory provisions on director election to accommodate various forms of majority voting.

Plurality Plus Resignation Standard. A number of Delaware corporations responded to post-Disney pressure by voluntarily adopting the so-called "Pfizer policy"—named after the first prominent corporation to adopt the approach. This voting standard is identical to standard plurality voting, with a single distinction: directors who receive a majority of withhold "votes" are required to submit a letter of resignation to the board of directors, which retains the discretionary authority to accept or reject the director's resignation.

Pursuant to Section 141(b) of the Delaware General Corporation Law ("DGCL"), corporate bylaws can condition resignation on the occurrence of a specified event, effectively allowing for a plurality plus resignation voting system: "A resignation [of a director] is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a specified vote for re-election as a director may provide that it is irrevocable."

Majority Voting Standard. Under a true majority standard, a director running unopposed must receive the support of a majority of votes cast in order to be elected. Even under a true majority standard, however, a sitting director up for re-election must submit a resignation, effective upon failure to receive the support of a majority of votes cast, at least in those states, like Delaware, where directors remain in office until their successor is elected or until they resign (see Section 141(b) of the DGCL). Although, as noted above, a resignation conditioned upon a director failing to receive a specified vote for re-election as a director may provide that it is irrevocable, a board has the authority to fill the resulting vacancy with the unelected director.

B. Resignation under Plurality Plus Resignation Voting

Under the “Pfizer policy” or “plurality plus resignation” standard, the board of directors retains the authority to decline to accept the resignation of a director who receives a majority withhold vote.

While case law is limited on this point, Delaware courts have generally been reluctant to question board rejections of resignations. In *City of Westland Police & Fire Retirement System v. Axcelis Technologies, Inc.*, 1 A.3d 281 (Del. 2010), the Delaware Supreme Court concluded that the board had substantial discretion in refusing to accept three directors’ resignations in the wake of receiving a majority withhold vote. The Delaware Supreme Court affirmed the dismissal, holding that the plaintiff did not meet its evidentiary burden to demonstrate a “proper purpose” to support a Delaware Section 220 request to inspect the relevant books and records of Axcelis for the purpose of preparing to file a derivative action challenging the board’s decision.³

The board of Axcelis Technologies (“**Axcelis**”) consisted of seven directors, staggered into three classes. Axcelis adopted the standard plurality voting provisions of Delaware statutory law. Significantly, the Axcelis board also had adopted a “plurality plus” governance policy, which provided that any nominee in an uncontested election receiving a greater number of votes “withheld” than votes “for” would be required to submit a letter of resignation for consideration by the board of directors.

In 2008, all three of the incumbent Axcelis directors up for re-election failed to receive a majority of the votes cast. Pursuant to the company’s plurality plus resignation policy, all three directors submitted their resignations. However, upon consideration, the board rejected all three resignations. Thereafter, a shareholder of Axcelis commenced a Section 220 request.

The court observed that “the question arises whether the directors, as fiduciaries, made a disinterested, informed business judgment that the best interests of the corporation require the continued service of these directors, or whether the Board had some different, ulterior motivation.”⁴ The court acknowledged that plaintiff’s stated purpose for its action—the

³ In order to prevent shareholders from conducting costly “fishing” expeditions, Delaware courts may grant Section 220 inspection requests usually only where there is a proper purpose for the inspection. Delaware courts recognize suspected wrongdoing as a proper purpose only where plaintiffs present a credible basis from which a court can infer wrongdoing may have occurred.

⁴ *City of Westland Police & Fire Retirement System v. Axcelis Technologies, Inc.* 1 A.3d 281, 291 (Del. 2010).

investigation of possible wrongdoing or mismanagement—was a proper purpose, yet it held that the plaintiff had failed to offer any evidence to suggest a credible basis for inferring mismanagement or wrongdoing on the part of the Axcelis board that would warrant further investigation.

II. EMPIRICAL AND COMPARATIVE FINDINGS

A. Dataset, Methodology, and Control Group

Dataset. The Committee’s study analyzed a historical GMI Ratings⁵ dataset of majority withhold (in plurality systems) or losing votes (in a true majority system) at Russell 3000 companies during the years 2010, 2011, 2012, 2013 and 2014.

Methodology. First, the study created a test group containing the total number of majority withhold votes or losing votes among Russell 3000 companies during the years 2010, 2011, 2012, 2013 and 2014. Second, among these occurrences of majority withhold or losing votes, the study analyzed each individual case to determine if/when a director resigned or did not stand for re-election, (i) within 3 months of the vote, (ii) within 6 months, (iii) within 1 year, and (iv) within 2 years.

Control Group. The study then created a control group of directors selected from Russell 3000 companies. The control group was composed of 270 non-losing directors whose companies match various characteristics of the companies in the test group. Control group companies were matched based on (i) industry, (ii) market capitalization, (iii) board size, and (iv) board governance (staggered vs. non-staggered).

- (i) *Industry.* The companies in the test group were organized into sub-groups based on industry. These industries included: Internet Technology, Aerospace/Airlines, Finance & Insurance, Auto/Road/Rail, Food & Lodging, Computer Software & Communications, Building & Engineering, Chemicals & Biotech, Consumer Retail & Services, Distributors, Real Estate, Energy, Healthcare & Pharmaceuticals, Media, and Industrial Conglomerates.
- (ii) *Market Capitalization.* For each industry sub-group, a median market-capitalization figure of the test group companies was obtained using data compiled by GMI Ratings.
- (iii) *Board Size.* For each industry sub-group, a median board size (rounded to the nearest integer) of the test group companies was obtained using data compiled by GMI Ratings.
- (iv) *Board Governance.* Each test group company was identified as having either a staggered or non-staggered board using data compiled by GMI Ratings.

⁵ GMI Ratings collects data regarding and publishes studies on, among other topics, corporate governance.

Using the historical data, a control group of companies was selected based upon: (i) industry, (ii) market capitalization (control group companies falling within a $\pm 25\%$ band of the test group median), (iii) board size (control group companies falling within a $\pm 25\%$ band of the test group median), and (iv) board governance (staggered versus non-staggered boards). For each industry sub-group, an equivalent number of directors was added to the control group as the number of test group directors for such industry sub-group. (E.g.: A total of 20 majority withhold votes in Healthcare & Pharmaceuticals companies would translate into 20 comparable “control group” directors selected from Healthcare & Pharmaceuticals companies in the Russell 3000 Index based upon market capitalization, board size, and the ratio of staggered versus non-staggered boards.)

B. Key Findings

Voting Regime	# of Losing Directors	#/% Resigning Within			
		3 Months	6 Months	1 Year	2 Years
Plurality Voting	237	9 (3.80%)	12 (5.06%)	25 (10.55%)	31 (13.08%)
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Total	270	12 (4.44%)	17 (6.30%)	34 (12.59%)	40 (14.81%)
	# of Directors	3 Months	6 Months	1 Year	2 Years
Control Group	270	2 (0.74%)	6 (2.22%)	14 (5.19%)	23 (8.52%)

The data indicate that losing directors in the test group resigned at a rate in excess of the rate of resignation displayed by the control group, although the total number of resigning directors in the test group remains low as a percentage of the total losing directors. Comparison to the control group indicates that directors often resign in the ordinary course of business, even where such directors have not failed to command a majority vote in their respective election contests. Control group directors resigned their board seats at a rate of 0.74%, 2.22%, 5.19%, and 8.52% at the three month, six month, one year, and two year periods, respectively, as compared to 4.44%, 6.30%, 12.59%, and 14.81% for losing directors. Consequently, one may expect that some percentage of the losing director resignations listed in the table were the result of extraneous factors unrelated to the outcome of shareholder elections—that is, the directors in question would have resigned in any case, win or lose. By two years after “losing” an election, approximately 85% of losing directors remain on the board, as compared to 91% for “winners,” a relatively small difference.

III. POLICY APPROACHES

The issue presented is how to deal with losing directors in a withhold system or a true majority system where a losing director remains on the board. This issue has been of concern to the two leading proxy advisory firms, Institutional Shareholder Services (“ISS”) and Glass Lewis. ISS recommends voting against the entire board if any board member in the previous board election received a majority of withhold votes and the company failed to address the issues leading to the majority of withhold votes.⁶ Glass Lewis has a policy that boards should demonstrate “some level of responsiveness to address the concerns of shareholders” anytime a director receives at least 25% of withhold votes.⁷ Asset managers, including Blackrock and BNY Mellon, and industry associations, including the Council of Institutional Investors, also maintain policies addressing losing directors remaining on the board. Blackrock, for example, will “[withhold our votes from] the chair of the nominating committee, or where no chair exists, the nominating committee member with the longest tenure, where board member(s) at the most recent election of directors have received withhold votes from more than 30% of shares voting and the board has not taken appropriate action to respond to shareholder concerns.”⁸ BNY Mellon similarly “will generally [withhold] its support” of a board nominee if the “nominee received less than majority support at the prior election and the board has not addressed the cause of that low support.”⁹ According to CII, “directors who fail to receive majority support should step down from the board and not be reappointed.”¹⁰

The Committee believes that the SEC should take action to address this issue.

Assuming a director loses because there is majority of withheld votes or a failure to obtain a majority of votes cast and must submit a resignation, there are the following options:

- a. No change in present policy
- b. The losing director can only remain on the board if the board determines that the director’s service is necessary for a company to maintain compliance with federal or state law, for example, have a majority of independent directors but such losing director should be replaced within a given period of time.

⁶ See ISS U.S. Corporate Governance Policy 2014 Updates, Nov. 21, 2013, found at http://www.issgovernance.com/file/2014_Policies/2014USPolicyUpdates.pdf.

⁷ Glass Lewis Proxy Paper Guidelines 2014 Proxy Season, *available at* http://www.glasslewis.com/assets/uploads/2013/12/2014_GUIDELINES_United_States3.pdf

⁸ Blackrock Proxy voting guidelines for U.S. securities 1, 5-6, *available at* <http://www.blackrock.com/corporate/en-us/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf>.

⁹ BNY Mellon, Introduction to BNY Mellon’s Proxy Voting and Governance Committee 1, 4 (Jan. 15, 2014), *available at* https://www.bnymellon.com/_global-assets/pdf/investment-management/introduction-to-bny-mellon-s-proxy-voting-and-governance-committee.pdf.

¹⁰ Council of Institutional Investors, *Majority Voting for Directors*, *available at* http://www.cii.org/majority_voting_directors.

- c. A company whose board retains a losing director would be required to disclose publicly in some form the specific reasons why the board chose to retain the “unelected” director on the board.
- d. The board must accept the resignation of a losing director—or, in a true majority voting system, not reappoint that director.

The Committee is of the belief that the above option (c)—namely, a requirement that a company whose board chooses to retain an unelected director (or, in a true majority system, reappoints an unelected director post-resignation) be required to disclose publicly in some form the specific reasons why the board did so—could be adopted within the ambit of the Securities and Exchange Commission’s regulatory authority. Requiring that a company disclose the specific reasons for the board’s decision to retain an unelected director not only would provide shareholders with critical information for judging the adequacy of a firm’s governance but would also deter boards from ignoring the standard corporate democratic process. The value in an SEC requirement is that the enforcement mechanism of the SEC will encourage honesty. That is, even if many companies already disclose specific reasons, if there is no requirement by the SEC, then there is no enforcement regime to keep them honest.

While some companies have provided varying levels of disclosure regarding losing directors, only in 18 of the 237 cases of losing directors in plurality voting regimes did the companies provide disclosure explaining why the losing director should remain on the board notwithstanding having received a majority of withhold votes. Within those eighteen disclosures, one of the explanations was simply a general statement claiming it would be “detrimental to shareholders” if the losing director were to resign. In one example of a specific disclosure, the board pointed out that certain proxy firms advised a “withhold” vote on any director who attended fewer than 75% of board meetings. That particular losing director fell slightly below that threshold due to pre-disclosed conflicts that were known prior to his initial election to the board (in which he received a majority of votes). The board made it clear that the losing director did not have future conflicts and would exceed the 75% mark going forward. The Committee believes that the disclosures should not be generic, but should clearly outline the *specific* reasons why a losing director should remain on the board, such as in the above example. General statements that do not provide real reasons would undermine the value of the disclosure requirement.

Companies in plurality plus resignation and true majority also provided disclosure in varying degrees. Plurality plus resignation companies provided disclosure in 11 of the 15 cases of losing directors. True majority companies provided disclosure in 4 out of the 18 cases of losing directors. While 9 of the 14 rejected resignations in the plurality plus resignation regime included specific reasons for retaining the losing directors, 2 merely provided generalized statements. Only two of the rejected resignations in the true majority voting regime included specific reasons. Since general statements would not achieve the desired goals of improving corporate governance by making shareholder votes meaningful, the Committee favors a requirement that the mandatory disclosure provide specific reasons.

While the Committee advocates for a disclosure standard, the Committee would disfavor a blanket prohibition on the retention of unelected directors, which in certain cases may unnecessarily curb the exercise of the board's business judgment. For example, it is conceivable that in some cases, corporate boards would be left with either no serving directors or an insufficient number of independent directors if they accepted the resignations of losing directors. It is also possible that some shareholder election results represent a general protest against company policy and do not necessarily reflect the shareholders' views regarding a specific director's job performance. In short, where, in the judgment of the board, the benefits to the company of retaining the director in question outweigh the concerns about the director's past performance that may be reflected by the shareholder vote, the board will continue to have the authority to retain that director. But in these cases, the boards in question will have some explaining to do.

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APPENDIX

2010-2012 STUDY DATA

		Total Majority Withhold Vote Occurrences											
		176	Market Capitalization Ranges					Board Size Ranges					
Industry Categories	Specific Sectors	# of Directors (in Each Industry) with Majority Withhold Votes	Staggered vs. Non-staggered Board	Median Market Cap	Market Cap (25% Below Median)	Market Cap (25% Above Median)	Min. Market Cap	Max. Market Cap	Median # of Directors	Directors (~25% Below Median)	Directors (~25% Above Median)	Min Directors	Max Directors
Internet Technology	IT Services	5	4 Staggered	\$501,889,870	\$376,417,403	\$627,362,338	\$191,686,133	\$1,926,531,368	8	7	10	7	10
	Internet Software & Services		1 Non-Staggered										
	Internet & Catalog Retail												
Aerospace/Airlines	Aerospace & Defense	7	2 Staggered	\$683,539,582	\$512,654,687	\$854,424,478	\$195,111,053	\$1,226,737,755	9	7	9	4	9
	Airlines		5 Non-staggered										
	Air Freight & Logistics												
Finance & Insurance	Commercial Banks	11	4 Staggered	\$216,430,749	\$162,323,062	\$270,538,436	\$165,412,855	\$7,751,583,000	11	11	14	11	16
	Insurance		7 Non-staggered										
	Diversified Financial Services												
	Thrifths & Mortgage Finance												
Auto, Road & Rail	Auto Components	4	3 Staggered	\$1,448,126,773	\$1,086,095,080	\$1,810,158,466	\$169,440,222	\$2,726,813,324	7	7	9	7	10
	Road & Rail		1 Non-Staggered										
Food & Lodging	Beverages	12	5 Staggered	\$293,762,142	\$220,321,606	\$367,202,677	\$149,109,206	\$1,374,671,468	8	6	10	6	10
	Hotels, Restaurants & Leisure		7 Non-staggered										
	Food Products												
	Food & Staples Retailing												
Computer Software & Communications	Semiconductors	20	7 Staggered	\$628,694,579	\$471,520,934	\$785,868,223	\$101,159,486	\$3,119,063,669	8	6	10	6	10
	Communications Equipment		13 Non-Staggered										
	Software												
	Computers & Peripherals												
	Electrical Equipment												
Diversified Telecommunications Equipment													
Building & Engineering	Machinery	25	7 Staggered	\$310,864,700	\$233,148,525	\$388,580,875	\$171,627,598	\$3,175,600,143	8	6	10	6	11
	Building Products		18 Non-staggered										
	Life Sciences Tools & Services												
	Construction & Engineering												
Chemicals & Biotech	Biotechnology	9	3 Staggered	\$721,744,063	\$541,308,047	\$902,180,079	\$156,439,655	\$1,163,308,769	7	6	9	6	10
	Chemicals		6 Non-staggered										
Consumer Retail & Services	Multiline Retail	24	3 Staggered	\$649,760,718	\$487,320,539	\$812,200,898	\$205,807,662	\$1,757,036,909	7	7	9	7	15
	Specialty Retail		21 Non-staggered										
	Household Durables												
	Professional Services												
	Commercial Services & Supplies												
	Diversified Consumer Services												
Distributors	Trading Companies & Distributors	5	2 Staggered	\$570,244,118	\$427,683,089	\$712,805,148	\$178,617,556	\$3,806,190,108	9	7	10	7	10
	Distributors		3 Non-staggered										
Real Estate	Real Estate Investment Trusts (REITS)	11	9 Staggered	\$15,512,976,256	\$11,634,732,192	\$19,391,220,320	\$945,768,716	\$17,167,448,071	10	8	11	5	11
			2 Non-staggered										
Energy	Oil, Gas & Consumable Fuels	11	5 Staggered	\$1,017,724,656	\$763,293,492	\$1,272,155,820	\$237,417,485	\$15,350,097,775	8	6	10	6	10
	Energy Equipment & Services		6 Non-staggered										
Healthcare & Pharma	Health Care Technology	20	6 Staggered	\$177,793,168	\$133,344,876	\$222,241,460	\$121,761,053	\$2,930,246,131	9	7	9	6	9
	Health Care Providers & Services		14 Non-staggered										
	Health Care Equipment & Supplies												
	Pharmaceuticals												
Media	Media	11	11 Non-staggered	\$4,102,352,937	\$3,076,764,703	\$5,127,941,171	\$464,394,570	\$8,674,642,457	17	13	17	9	17
Industrial Conglomerates	Industrial Conglomerates	1	1 Non-Staggered	\$1,007,217,635	\$755,413,226	\$1,259,022,044	\$1,007,217,635	\$1,007,217,635	7	7	7	7	7

			COMPARISON WITH CONTROL GROUP DIRECTORS								
			Majority Withhold Vote Directors (by Industry)				Control Group Directors (by Industry)				
			Resignations / Stand-Downs By...				Resignations / Stand-Downs By...				
Industry Categories	Specific Sectors	# of Directors (in Each Industry) with Majority Withhold Votes	3 Months	6 Months	1 Year	2 Years		3 Months	6 Months	1 Year	2 Years
Internet Technology	IT Services	5	0.0%	0.0%	20.0%	20.0%		0.00%	0.00%	20.00%	20.00%
	Internet Software & Services										
	Internet & Catalog Retail										
Aerospace/Airlines	Aerospace & Defense	7	14.3%	14.3%	14.3%	14.3%		0.00%	0.00%	0.00%	0.00%
	Airlines										
	Air Freight & Logistics										
Finance & Insurance	Commercial Banks	11	9.1%	9.1%	9.1%	9.1%		0.00%	9.09%	9.09%	18.18%
	Insurance										
	Diversified Financial Services										
	Thrifts & Mortgage Finance										
Auto, Road & Rail	Auto Components	4	0.0%	0.0%	50.0%	75.0%		25.00%	25.00%	25.00%	25.00%
	Road & Rail										
Food & Lodging	Beverages	12	8.3%	8.3%	8.3%	8.3%		0.00%	0.00%	0.00%	8.33%
	Hotels, Restaurants & Leisure										
	Food Products										
	Food & Staples Retailing										
Computer Software & Communications	Semiconductors	20	5.0%	5.0%	10.0%	15.0%		5.00%	5.00%	5.00%	10.00%
	Communications Equipment										
	Software										
	Computers & Peripherals										
	Electrical Equipment										
	Diversified Telecommunications Equipment										
Building & Engineering	Machinery	25	0.0%	0.0%	4.0%	4.0%		0.00%	0.00%	0.00%	8.00%
	Building Products										
	Life Sciences Tools & Services										
	Construction & Engineering										
Chemicals & Biotech	Biotechnology	9	0.0%	0.0%	11.1%	11.1%		0.00%	0.00%	0.00%	0.00%
	Chemicals										
Consumer Retail & Services	Multiline Retail	24	4.2%	4.2%	4.2%	8.3%		0.00%	4.17%	4.17%	8.33%
	Specialty Retail										
	Household Durables										
	Professional Services										
	Commercial Services & Supplies										
	Diversified Consumer Services										
Distributors	Trading Companies & Distributors	5	40.0%	40.0%	40.0%	40.0%		0.00%	0.00%	0.00%	0.00%
	Distributors										
Real Estate	Real Estate Investment Trusts (REITS)	11	0.0%	9.1%	9.1%	18.2%		0.00%	9.09%	9.09%	9.09%
Energy	Oil, Gas & Consumable Fuels	11	27.3%	27.3%	54.5%	54.5%		0.0%	0.0%	18.2%	27.3%
	Energy Equipment & Services										
Healthcare & Pharma	Health Care Technology	20	0.0%	0.0%	10.0%	10.0%		0.0%	0.0%	5.0%	10.0%
	Health Care Providers & Services										
	Health Care Equipment & Supplies										
	Pharmaceuticals										
Media	Media	11	0.0%	0.0%	9.1%	9.1%		0.00%	0.00%	0.00%	0.00%
Industrial Conglomerates	Industrial Conglomerates	1	0.0%	0.0%	0.0%	0.0%		0.00%	0.00%	0.00%	0.00%

2013-2014 STUDY DATA

Industry Categories	Specific Sectors	# of Directors (in Each Industry) with Majority Withhold Votes	Staggered vs. Non-staggered Board	Median Market Cap	Market Cap (25% Below Median)	Market Cap (25% Above Median)	Min. Market Cap	Max. Market Cap	Median # of Directors	Directors (~25% Below Median)	Directors (~25% Above Median)	Min Directors	Max Directors
Internet Technology	IT Services	2	2 Staggered	\$2,753,310,709.00	\$1,556,558,167.50	\$3,950,063,250.50	\$359,805,626.00	\$5,146,815,792.00	7	7	7	7	7
	Internet Software & Services		0 Non-Staggered										
	Internet & Catalog Retail												
Aerospace/Airlines	Aerospace & Defense	1	0 Staggered	\$3,265,224,240.00	\$3,265,224,240.00	\$3,265,224,240.00	\$3,265,224,240.00	\$3,265,224,240.00	11	11	11	11	11
	Airlines		1 Non-staggered										
	Air Freight & Logistics												
Finance & Insurance	Commercial Banks	5	2 Staggered	\$536,329,096.00	\$256,580,412.00	\$597,851,074.00	\$143,653,141.00	\$883,969,630.00	11	11	12	9	13
	Insurance		3 Non-staggered										
	Diversified Financial Services												
	Thrifts & Mortgage Finance												
Auto, Road & Rail	Auto Components	2	0 Staggered	\$142,927,180.00	\$142,927,180.00	\$211,562,087.00	\$142,927,180.00	\$280,196,994.00	8	8	8	7	8
	Road & Rail		2 Non-Staggered										
Food & Lodging	Beverages	4	1 Staggered	\$627,662,066.00	\$253,526,059.00	\$797,940,000.00	\$173,079,832.00	\$917,451,727.00	8	8	9	7	9
	Hotels, Restaurants & Leisure		3 Non-staggered										
	Food Products												
	Food & Staples Retailing												
Computer Software & Communications	Semiconductors	11	3 Staggered	\$1,117,288,304.00	\$390,501,693.00	\$2,194,407,345.25	\$148,869,226.00	\$7,769,558,972.00	7	7	8	7	9
	Communications Equipment		8 Non-Staggered										
	Software												
	Computers & Peripherals												
	Electrical Equipment												
Diversified Telecommunications Equipment													
Building & Engineering	Machinery	8	2 Staggered	\$243,620,541.00	\$187,809,349.00	\$499,074,154.00	\$163,962,447.00	\$2,717,539,009.00	9	9	9	9	9
	Building Products		6 Non-staggered										
	Life Sciences Tools & Services												
	Metals & Mining												
	Construction & Engineering												
Chemicals & Biotech	Biotechnology	5	1 Staggered	\$532,389,653.00	\$306,684,196.00	\$532,389,653.00	\$306,684,196.00	\$1,205,217,940.00	8	7	8	7	8
	Chemicals		4 Non-staggered										
Consumer Retail & Services	Multiline Retail	19	2 Staggered	\$2,331,185,435.00	\$2,108,170,462.50	\$2,331,185,435.00	\$209,594,955.00	\$4,923,082,339.00	7	7	7	5	14
	Specialty Retail		17 Non-staggered										
	Household Durables												
	Professional Services												
	Commercial Services & Supplies												
	Textile Apparel & Luxury Goods												
	Diversified Consumer Services												
Real Estate	Real Estate Investment Trusts (REITs)	16	12 Staggered	\$4,182,978,374.00	\$4,120,454,978.00	\$16,592,660,284.00	\$537,744,161.00	\$16,592,660,284.00	7.5	6	9	5	9
			4 Non-staggered										
Energy	Oil, Gas & Consumable Fuels	10	6 Staggered	\$195,478,275.00	\$79,452,306.00	\$4,196,046,502.00	\$79,452,306.00	\$10,569,689,400.00	7	5	8	5	12
	Energy Equipment & Services		4 Non-staggered										
Healthcare & Pharma	Health Care Technology	9	2 Staggered	\$1,748,672,432.00	\$891,107,252.00	\$1,748,672,432.00	\$121,372,872.00	\$2,372,314,140.00	7	6	9	5	9
	Health Care Providers & Services		7 Non-staggered										
	Health Care Equipment & Supplies												
Media	Media	2	2 Non-staggered	\$4,798,105,025.00	\$4,798,105,025.00	\$4,798,105,025.00	\$4,798,105,025.00	\$4,798,105,025.00	18	18	18	18	18

			COMPARISON WITH CONTROL GROUP DIRECTORS									
			Majority Withhold Vote Directors (by Industry)				Control Group Directors (by Industry)					
			Resignations / Stand-Downs By...				Resignations / Stand-Downs By...					
Industry Categories	Specific Sectors	# of Directors (in Each Industry) with Majority Withhold Votes										
			3 Months	6 Months	1 Year	2 Years	3 Months	6 Months	1 Year	2 Years		
Internet Technology	IT Services	2										
	Internet Software & Services		0.0%	0.0%	50.0%	50.0%			0.00%	0.00%	0.00%	0.00%
	Internet & Catalog Retail											
Aerospace/Airlines	Aerospace & Defense	1										
	Airlines		0.0%	100.0%	100.0%	100.0%			0.00%	0.00%	0.00%	0.00%
	Air Freight & Logistics											
Finance & Insurance	Commercial Banks	5										
	Insurance		0.0%	0.0%	0.0%	20.0%			0.00%	0.00%	0.00%	0.00%
	Diversified Financial Services											
	Thrifts & Mortgage Finance											
Auto, Road & Rail	Auto Components	2										
	Road & Rail		0.0%	0.0%	0.0%	0.0%			0.00%	0.00%	0.00%	0.00%
Food & Lodging	Beverages	4										
	Hotels, Restaurants & Leisure		0.0%	25.0%	25.0%	25.0%			0.00%	0.00%	0.00%	0.00%
	Food Products											
	Food & Staples Retailing											
Computer Software & Communications	Semiconductors	11										
	Communications Equipment											
	Software		9.1%	18.2%	27.3%	27.3%			0.00%	9.09%	18.18%	18.18%
	Computers & Peripherals											
	Electrical Equipment											
Building & Engineering	Diversified Telecommunications Equipment	8										
	Machinery		0.0%	12.5%	25.0%	25.0%			0.00%	0.00%	0.00%	0.00%
	Building Products											
Chemicals & Biotech	Life Sciences Tools & Services	5										
	Construction & Engineering		0.0%	0.0%	20.0%	20.0%			0.00%	0.00%	0.00%	0.00%
Consumer Retail & Services	Biotechnology	19										
	Chemicals											
	Multiline Retail											
	Specialty Retail		5.3%	5.3%	5.3%	5.3%			0.00%	0.00%	10.53%	10.53%
	Household Durables											
	Professional Services											
Real Estate	Commercial Services & Supplies	16										
	Diversified Consumer Services		0.0%	0.0%	6.3%	12.5%			0.00%	0.00%	6.25%	6.25%
Energy	Real Estate Investment Trusts (REITs)	10										
	Oil, Gas & Consumable Fuels		0.0%	0.0%	0.0%	0.0%			0.0%	0.0%	0.0%	0.0%
Healthcare & Pharma	Energy Equipment & Services	9										
	Health Care Technology											
	Health Care Providers & Services		0.0%	0.0%	0.0%	0.0%			0.0%	0.0%	0.0%	11.1%
	Health Care Equipment & Supplies											
Media	Pharmaceuticals	2										
	Media		0.0%	0.0%	0.0%	0.0%			0.00%	0.00%	0.00%	0.00%