Majority Voting Standards

Voting Standards in Uncontested Director Elections
The number of Top 100 Companies that use a majority voting standard, as compared to the plurality standard, in uncontested director elections has increased dramatically, from:

11 companies in 2006 to 94 in 2015

Of the 94 with Majority Voting:
- Directors elected by majority of votes cast AND any holdover incumbent director who receives more votes against than votes for his or her election must tender his or her resignation
- Directors elected by majority of votes cast (no resignation requirement for incumbent directors)
- Directors elected by majority of votes cast AND any holdover incumbent director who receives more votes against than votes for his or her election ceases to be a director after 90 days (or, if earlier, the date the board selects a replacement director)

Of the 6 with Plurality Voting:
- Directors elected by plurality of votes cast AND any director who receives more votes withheld than votes for his or her election must tender his or her resignation
- Directors elected by plurality of votes cast (no resignation requirement for incumbent directors)

Director Resignation Policies

80 Top 100 Companies have policies requiring an incumbent director to tender a resignation if the director receives more “against” or “withhold” votes than votes for his or her election. This group of companies is comprised of 77 companies that have a majority voting standard and three that have a plurality voting standard. In addition, five other Top 100 Companies have majority voting policies that provide that any holdover incumbent director who receives more votes against than votes for his or her election ceases to be a director after 90 days (or, if earlier, the date that the board selects a replacement director).

Which corporate documents contain director resignation policies?

- By-Laws 21
- Corporate Governance Guidelines 20
- By-Laws and Corporate Governance Guidelines 35
- By-Laws and Corporate Charter 2
- Corporate Charter and Corporate Governance Guidelines 1
- 2015 Proxy Statement 1

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Who decides whether to accept or reject a tendered resignation?

69
of the 80 Top 100 Companies that have adopted resignation policies require a full board review

90%
of these companies also require either the nominating/governance committee or the independent directors to make a recommendation

Is there a presumption that a tendered resignation should be accepted?

8
Top 100 Companies

that have adopted director resignation policies presume that a tendered resignation should be accepted unless the board finds a “compelling reason” or a “significant reason” to reject the resignation or finds rejecting the resignation is in the best interest of the company

How long does the relevant decision-making body have to determine whether to accept or reject a tendered resignation?

66
Top 100 Companies require that the decision-making body either make a decision on the tendered resignation or publicly disclose its decision within 90 days after the certification of the election results. For the remaining companies that specify a time period, most require a decision or disclosure within 60 to 120 days, while eight companies provide until the next regularly scheduled board meeting to make the decision.

Policy Variations for Holdover Directors

Incumbent directors who do not receive the majority of votes required for re-election are referred to as “holdover” directors while they remain in office.

Delaware law provides that a holdover director will remain in office until a successor is elected, or until he or she resigns or is removed.

The corporate law of a number of other states follows The Model Business Corporations Act (“MBCA”) published by the American Bar Association, which provides that a holdover incumbent director ceases to be a director after 90 days, or earlier if the board selects a replacement director. The MBCA provides an alternative to the approach taken by Delaware law by permitting companies to adopt a by-law provision that empowers the board to replace a holdover director and otherwise provides a limit on the amount of time a holdover director may remain in office.

Consequently, Delaware corporations implementing a majority voting policy will typically include a resignation requirement to ensure that a director who fails to be re-elected can actually be removed from office.