Shareholders Making Voices Heard To Boards

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Lopsided favorable vote tallies in most corporate elections are so routine that it’s only when a company loses a vote that you realize that, occasionally, shareholders can rally to send a message to the board.

Urban Outfitters Inc. lost two votes on shareholder proposals at its May 22 annual meeting. Shareholders approved a nonbinding proposal trying to change board elections from plurality voting to majority voting.

(In the former, receiving just one "for" vote in an uncontested election means a director is elected. In majority voting, a nominee must receive a favorable majority of the votes cast.)

That proposal was approved with 68.25 million "for" votes, or 52.5 percent of the votes cast, according to a document filed with the Securities and Exchange Commission.

The California State Teachers’ Retirement System (CalSTRS), one of the nation’s largest public pension funds with $153.7 billion under management, said in its supporting statement that 77 percent of the companies in the Standard & Poor’s 500 index have adopted majority voting for uncontested elections.

Noting that Urban Outfitters’ public image is very hip and fashion-forward, CalSTRS investment officer Aeisha Mastagni said: "It’s interesting that their governance practices are not hip."

Urban Outfitters, which had urged shareholders to turn down the majority-voting measure, also was rebuffed when shareholders approved a nonbinding proposal seeking to "declassify" the board of directors.

The Philadelphia-based operator of Anthropologie, Free People and stores emblazoned with its namesake brand currently has three classes of directors for its six-member board. Each year, shareholders are able to vote "for," "withhold" or "abstain" on just one class, or two directors seeking three-year terms. Declassifying the board would force all directors to stand for election annually.

The proposal, sponsored by the Illinois State Board of Investment, attracted 77.98 million "for" votes, or 60 percent of the votes cast. The public pension fund, with $11.5 billion in assets as of June 30, was advised by the Harvard Law School Shareholder Rights Project, which has been involved in similar decategorization efforts at 35 other public companies in 2012.

Of those, voting results have been released on 29 of the proposals and an overwhelming number passed — 27, including Urban Outfitters. Philadelphia-based chemical company FMC Corp. also faced such a proposal at its April 24 annual meeting and recommended shareholders turn it down.
FMC’s arguments that classified boards provide "enhanced continuity and stability" and help resist hostile takeover bids did not sway shareholders who voted 48.46 million shares "for" and 10.05 million shares "against."

According to the Shareholder Rights Project website, 44 other companies agreed to change their staggered boards after negotiations with the group, which is led by Harvard law professor and corporate governance expert Lucian Bebchuk.

Still, Urban Outfitters investors did not approve a third shareholder proposal, which sought to address the lack of diversity in its boardroom by urging the company to commit to considering women and minority candidates when it has a seat to fill. The measure, sponsored by four institutional investors, was defeated, but attracted more "for" votes this year than last: 38 percent in 2012, compared with 23 percent in 2011.

"This high vote count should send a strong and clear signal to management. Increasingly, shareholders are acknowledging the strong business case for board diversity and expect companies to respond," said Aditi Mohapatra, strategic initiatives manager at Calvert Investment Management Inc., one of the sponsors. "The board has, up to now, resisted making diversity an explicit part of its nominating process. We hope that they will reconsider that position in light of the vote."

A call to Urban Outfitters seeking comment on the vote results was not returned.

But it’s important to note that all such proposals are nonbinding. Urban Outfitters isn’t required to change anything as a result of losing such votes. However, shareholder activists say that directors generally address the results at a future board meeting, and some do change their governance practices to appease their shareholders.