

Calpers Majority Vote Push Could Propel Issue Forward

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NEW YORK -- The decision by the California Public Employees' Retirement System to throw its weight behind a push to change how shareholders elect corporate directors is the latest sign the majority vote movement will pick up speed in the coming months.

Late Monday, the nation's largest public pension adopted a plan that it characterized as "a new frontier" in its corporate governance program. Under its plan, the longtime activist investor said it will "seek to implement majority vote policies at individual companies through company bylaw and charter amendments; pursue changes to state laws to implement majority (voting) where feasible; and amend Calpers Corporate Governance Core Principles and Guidelines to advocate majority votes for corporate directors."

"As they have in so many cases in the past, they have come up with a refined and targeted program that will help define the agenda for other institutional investors," said Nell Minow, editor of the Corporate Library, an independent research firm and governance watchdog. Minow contrasted the new campaign with Calpers' "overly broad and inflexible program" last year that targeted all directors that engaged in practices that violated the fund's governance principles. As it stands now, most U.S. companies use plurality voting, which allows uncontested management nominees to be elected even with a single vote. The process has led to bitter complaints from some pension-fund investors, concerned they have no real say in director elections. Further, shareholders in most cases don't have a right to vote against a director; they can only "withhold" their votes.

Majority voting "will give shareowners the power to hold directors accountable for their actions and their performance, and elect the best person for the job," said Rob Feckner, Calpers board president, in a press release. Calpers officials weren't immediately available to elaborate on their specific plans for the proxy season.

As noted by the \$186 billion pension fund, directors received less than 50% of the shares voting at several companies yet remained on a company's board. One such example was at Federated Department Stores Inc. (FD). Although there was no set campaign, a majority of withhold votes were cast against four directors up for election.

Calpers' announcement follows several other moves that are expected to put the issue on the front burner in corporate America this year. Several building trade unions have submitted non-binding shareholder proposals calling for a switch to majority voting to dozens of companies. In an unusual move, 11 of those companies pledged to work with the unions to study the issue. In addition, last week, Institutional Shareholder Services said it would back such resolutions on a company-by-company basis.

Also, in a sign that it isn't just activist investors stirring things up, an American Bar Association task force is examining whether or not it's time to update its so-called "model" business law, which has plurality voting as the default system. A majority of states follow provisions in ABA's Model Business Corporation Act.

The agitation around the issue comes as the Securities and Exchange Commission has stalled in its own attempt to reform the director election process. A 2003 proposed rule that would have given shareholders the right to nominate directors on a corporate ballot has been bogged down amid opposition from business groups.

Though there have been some attempts by companies to keep the building trade unions' resolution from their proxies, there has yet to be an organized response by the business community on majority voting.

"With 'proxy access' stalled, apparently permanently, at the SEC, this is the most effective way to make sure that shareholders can respond to board members that are not providing effective oversight," Minow said. "Compensation committee members are responsible for excessive pay, audit committee members are responsible for fuzzy numbers...With majority vote requirements, shareholders will be responsible for replacing them."

Some governance experts, however, don't even think majority voting goes far enough. It's "a mild but important step toward improving the arrangement governing corporate elections," said Harvard law and economics professor Lucian Bebchuk.

"While majority voting is a useful step in the right direction, it isn't sufficient. More needs to be done to turn corporate elections from a myth into a reality. To this end, shareholders should be provided with access to the ballot and staggered boards should be dismantled."