



It is impractical to identify all the incidences of inaccurate and confusing company proxy statement disclosures and proxy forms encountered during the recent proxy season; they are simply too numerous. However, it is instructive to review examples of the types of misleading vote standard descriptions commonly found and how shareholders are routinely not provided the correct vote options on many proxy forms. Attachment #1 is a spreadsheet that provides examples of inaccurate and misleading vote standard descriptions in proxy statements and proxy cards that present incorrect vote options. These corporate election ballots are denying shareholders important voting rights.

A significant percentage of the proxy statement and proxy card inaccuracies fit into the following categories:

- (1) The company has a majority vote standard and the proxy statement accurately describes a majority vote standard, but the proxy form provides “For” and “Withhold” vote options rather than the “For” “Against” and “Abstain” options required with a majority vote standard. The Form 8-K issued following the election typically confirms the incorrect vote options as it describes the recorded votes as “Votes For” and “Votes Withheld” (See: PPG, Abbott Laboratories, Ameren, Intuitive Surgical, Littelfuse, PS Business Parks, Inc., Realogy Holdings Corporation, and Flowserve Corporation). At these companies, shareholders are denied the right established under company governance documents to cast an “Against” vote that has a legal effect in determining whether a nominee is actually elected.
- (2) The company has a plurality vote standard for its director election, but the proxy card presents the vote options associated with a majority vote standard (“For” “Against” and “Abstain”) (See: Boise Cascade and First NBC Bank Holding Co.). In these instances, the proxy form presents vote options that appear to provide the shareholders the right to cast a vote “Against” a nominee’s candidacy, but the company’s plurality vote standard provides no such right. Under the plurality vote standard these “Against” votes would be treated as abstentions with no effect on the election outcome.
- (3) The company has a plurality vote standard with a director resignation policy, and the proxy statement description of the two indicates that a director resignation will be triggered by a majority of votes cast “Against” a nominee. Despite the proxy statement narrative describing a majority vote standard and an “Against” vote option, the proxy ballot at these companies does not provide an “Against” option. (See: Stanley Black and Decker).

A review of the ProxyEdge<sup>2</sup> Vote Ballots for the companies cited above clearly indicates that the incorrect vote options on the companies’ proxy cards are the same vote options contained on these ProxyEdge cards, indicating that the incorrect vote options are indeed passed through the voting system. Attachment #2 is a compilation of the ProxyEdge Vote Ballots for the cited companies.

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<sup>2</sup> ProxyEdge is Broadridge’s suite of electronic voting services that help simplify the management of institutional proxies. The system manages the process of meeting notifications, voting, tracking, mailing, reporting, record maintenance and vote disclosure, <http://www.broadridge.com/>.

As noted in our March 10, 2015 petition, the vote standard confusion spawned by the market transition to a majority vote standard is not just reflected in corporate proxy statements and proxy cards. The proxy voting guidelines of the two leading proxy advisory firms, Institutional Shareholder Services Inc. (“ISS”) and Glass, Lewis & Co., LLC, contribute to the vote standard confusion in that they fail to demonstrate any awareness that a legally-consequential “Against” vote associated with a majority vote standard is fundamentally different from a Withhold Vote, which is an abstention from voting and used on plurality voting proxy cards. ISS’ treatment of “Against” votes and “Withhold” votes as simply “valid contrary vote option[s]” incorrectly suggests that these are functionally equivalent votes.<sup>3</sup> Under a majority vote standard, a nominee who receives more votes “Against” than “For” his or her candidacy is not elected. In contrast, a “Withhold” vote is simply a symbolic display of dissatisfaction with no legal effect on the election outcome. Similarly, in its “Proxy Paper Guidelines 2015 Proxy Season” section concerning the Election of Directors Glass-Lewis fails to differentiate in any way an “Against” and “Withhold” vote.<sup>4</sup> The Guidelines contain only a single reference to a “Withhold” vote (see page 7 “Board Responsiveness” of its guidelines) and that reference equates “Against” and “Withhold” Votes.<sup>5</sup> By conflating these two completely different vote options, the proxy advisors add to the director election vote standard confusion seen in proxy statements and on proxy cards.

In a June speech to the Society of Corporate Secretaries and Governance Professionals following the 2015 proxy season, Chair Mary Jo White addressed the issue of “unelected” directors, those directors “who do not receive a majority of shareholder votes but who continue to serve on the board.” Chair White referenced a recent study by the Committee for Capital Markets Regulation<sup>6</sup> that she indicated showed that 85% of these “unelected” directors were still board members two years after an “unfavorable vote.” She concluded by indicating the Commission could certainly amend its proxy rules to mandate more specific disclosures about the boards’ decisions concerning “unelected directors,” such as requiring companies to “inform the shareholders in clear terms why the board member’s resignation was not accepted.” The reason there was no disclosure at the vast majority of the companies in the study Chair White references is that there were no resignations required. Over 87% of the supposedly “unelected directors” documented in the study came from companies with a plurality vote standard and no director resignation policy. These companies made absolutely no representations whatsoever that any number of Withhold Votes would require an elected

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<sup>3</sup> See ISS 2015 US Proxy Voting Summary Guidelines, <http://www.issgovernance.com/file/policy/2015ussummaryvotingguidelines.pdf>, and its 2015 Taft-Hartley Proxy Voting Guidelines <http://www.issgovernance.com/file/policy/2015-taft-hartley-advisory-services-us-guidelines.pdf>. Footnote #1 in both of these guidelines explains the withhold/against vote recommendation as follows: “In general, companies with a plurality vote standard use ‘Withhold’ as the contrary vote option in director elections; companies with a majority vote standard use ‘Against’. However, it will vary by company and the proxy must be checked to determine the valid contrary vote option for the particular company.”

<sup>4</sup> See Proxy Paper Guidelines 2015 Proxy Season, [http://www.glasslewis.com/assets/uploads/2013/12/2015\\_GUIDELINES\\_United\\_States.pdf](http://www.glasslewis.com/assets/uploads/2013/12/2015_GUIDELINES_United_States.pdf)

<sup>5</sup> Ironically, page 23 of Glass-Lewis’s guidelines contains a detailed discussion of the advantages of a majority vote standard in the context of its support for shareholder proposals seeking a majority vote standard, yet as noted above the advice rendered by Glass-Lewis under the discussion of the Election of Directors does not reflect the significance of an “Against” vote versus a “Withhold” vote, which is no more than an abstention.

<sup>6</sup> See Committee on Capital Markets Regulation, *Annual Shareholder Meetings and the Conundrum of “Unelected” Directors*, available at [http://capmktreg.org/app/uploads/2015/03/Unelected\\_Directors\\_Statement\\_Updated\\_2015.pdf](http://capmktreg.org/app/uploads/2015/03/Unelected_Directors_Statement_Updated_2015.pdf).

director to tender his or her resignation. In these elections, the "unelected" directors were all actually elected not only by a majority of the votes cast, but by every vote cast. The "For" votes are the only votes actually cast in these plurality vote uncontested elections. The answer is not to mandate more disclosure (it should be noted that each company that has adopted a director resignation policy in conjunction with either a majority or plurality vote standard generally commits to disclosure concerning their decision on any tendered resignation), but rather to revise Rule 14a-4(b) (2) to once again call the "withhold authority to vote" option by its accurate name on the proxy card, an abstention.

Many corporate boards have chosen to retain a plurality vote standard in uncontested director elections, with no director resignation policy to address majority Withhold Vote outcomes. These companies have chosen not to afford their shareholders an opposition vote in director elections that has a legal effect on determining whether or not a director nominee is elected. The appropriate proxy form vote options in director elections at these companies are "For" and "Abstain," with associated proxy statement disclosure that clearly and succinctly describes the election impact of each vote option. When the Commission substituted the Withhold Vote for its proposed "Against" vote in its 1979 rulemaking, it acknowledged that an "Against" vote could be "confusing and misleading to shareholders" in the plurality vote environment of the day.<sup>7</sup> Ironically, in today's new majority vote environment that provides an "Against" vote option with legal consequence, the Commission's symbolic Withhold Vote is "confusing and misleading."

Thank you for consideration of our concerns.

Sincerely,



Edward J. Durkin  
Director, Corporate Affairs Department  
United Brotherhood of Carpenters

Attachments

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<sup>7</sup> Securities Exchange Act Release No, 34-16356 (November 21, 1979), 44 FR 68764 (November 29, 1979) at FR 68765.

**ATTACHMENT #1 2015 Proxy Statement Vote Standard Disclosure & Proxy Card Vote Options**

<b>Company Name</b>	<b>Vote Standard Described in Proxy Statement</b>	<b>Actual Vote Standard in Place</b>	<b>Proxy Card Vote Options</b>	<b>Director Resignation Policy</b>	<b>Note</b>	<b>ProxyEdge Vote Ballot Vote Options</b>	<b>Form 8-K following 2015 annual meeting</b>
PPG	Majority Vote	Majority Vote	FOR and WTTHHOLD	YES	The proxy describes a majority vote standard, but the proxy has a FOR and WTTHHOLD option.	FOR ALL, WTTHHOLD ALL, FOR ALL EXCEPT	Votes For and Votes Withheld
Abbott Labs	Majority Vote	Unclear	FOR and WTTHHOLD	NO	The proxy describes a majority vote standard, but the proxy has a FOR and WTTHHOLD option.	FOR ALL, WTTHHOLD ALL, FOR ALL EXCEPT	Votes For and Votes Withheld
Ameren	Majority Vote	Majority Vote	FOR and WTTHHOLD	YES	The proxy describes a majority vote standard, but the proxy has a FOR and WTTHHOLD option.	FOR ALL, WTTHHOLD ALL, FOR ALL EXCEPT	Votes For and Votes Withheld
Intuitive Surgical	Majority Vote	Majority Vote	FOR and WTTHHOLD	NO	The proxy describes a majority vote standard, but the proxy has a FOR and WTTHHOLD option.	FOR ALL, WTTHHOLD ALL, FOR ALL EXCEPT	Votes For and Votes Withheld
Littelfuse	Majority Vote	Majority Vote	FOR and WTTHHOLD	YES	The proxy describes a majority vote standard, but the proxy has a FOR and WTTHHOLD option.	FOR ALL, WTTHHOLD ALL, FOR ALL EXCEPT	Votes For and Votes Withheld
PS Business Parks, Inc	Majority Vote	Majority Vote	FOR and WTTHHOLD	NO	The proxy describes a majority vote standard, but the proxy has a FOR and WTTHHOLD option.	FOR ALL, WTTHHOLD ALL, FOR ALL EXCEPT	Votes For and Votes Withheld
Realogy Holdings Corp.	Majority Vote	Majority Vote	FOR and WTTHHOLD	YES	The proxy describes a majority vote standard, but the proxy has a FOR and WTTHHOLD option.	FOR ALL, WTTHHOLD ALL, FOR ALL EXCEPT	Votes For and Votes Withheld
Flowerserve Corporation	Majority Vote	Majority Vote	FOR and WTTHHOLD	YES	The proxy describes a majority vote standard, but the proxy has a FOR and WTTHHOLD option.	FOR ALL, WTTHHOLD ALL, FOR ALL EXCEPT	Votes For and Votes Withheld

Stanley Black & Decker	Plurality Vote	Plurality Vote	FOR and WITTHOLD	YES	The proxy describes a plurality vote standard with a director resignation policy, but later states that "if a director nominee in an uncontested election receives more votes "against" than "for" election, the term of that director will end on the earlier of ..."	FOR ALL, WITTHOLD ALL, FOR ALL EXCEPT	Votes For and Votes Withheld
Boise Cascade	Plurality Vote	Plurality Vote	FOR AGAINST ABSTAIN	NO	The proxy describes a plurality vote standard, but the proxy card has FOR AGAINST and ABSTAIN vote options.	FOR, AGAINST, ABSTAIN	For, Against, Abstain, Broker Non-Votes
First NBC Bank Holding Co.	Plurality Vote	Plurality Vote	FOR AGAINST ABSTAIN	NO	The proxy describes a plurality vote standard, but the proxy card has FOR AGAINST and ABSTAIN vote options.	FOR, AGAINST, ABSTAIN	Voted For Withheld and Broker Nonvotes