INDIVIDUAL VOTE COUNT IN BOARD ELECTIONS

POSITION PAPER

NORGES BANK INVESTMENT MANAGEMENT POSITION

Board members should be elected with an individual vote count at the shareholder meeting, and the vote tally published.

BACKGROUND

It is the right and responsibility of shareholders to elect and remove the board of directors. The OECD Principles of Corporate Governance states that for the election process to be effective, shareholders should be able to participate in the vote on individual nominees or on different lists of them.[1]

The majority of board elections are uncontested. Board elections are then generally recognised as an approval process. In the absence of contest, shareholders in most markets have the ability to differentiate votes between candidates. This provides the possibility to withhold votes, or expressly vote against, in case of concerns with individual candidates.

However, in some markets, often for reason of custom rather than law, no individual director vote count is undertaken or published.[2] In line with this practise, all board candidates may be presented as one voting item to shareholders. In some of these markets, it can be the case that counterproposals presented at the general meeting compel the count for individual directors, but this action excludes the shareholders who have issued vote instructions prior to the meeting.

In other cases, certain impediments arise in the voting chain that hinder the differentiation of votes by shareholders or the effective delivery of differentiated votes at the shareholder meeting. Some markets allow vote by show of hands at the shareholder meeting (no count by share). Finally, some markets provide for individual count, but do not require the disclosure of vote tallies.

The practice of *individual vote count in board elections* requires the ability for shareholders to differentiate votes on directors, with those votes being counted at the shareholder meeting and subsequently disclosed. Hence, companies will not be allowed to bundle candidates into one voting item and each candidate will be treated as a separate voting item throughout the voting chain.

ARGUMENTS FOR INDIVIDUAL VOTE COUNT

Provides the ability for shareholders to hold individual board members accountable

Accountability of boards to shareholders is dependent on a mechanism in which shareholders can effectively hold board members responsible. That requires a way to withhold votes on individual board members, or express an against-vote. Bundling deprives shareholders of their right to use their voting rights adequately and effectively in board elections.

[1] OECD Principles of Corporate Governance 2004.
[2] Bundled elections is routine practice in Brazil, Chile, Colombia, Finland, Indonesia, Luxembourg, Sweden and Turkey. It is also common in Greece, Italy, Mexico and South Korea.

Gives more nuanced shareholder signals in case of concern than a vote against the full slate

Bundling coerces shareholders into artificially support all board candidates, or vote against entire slates. Hence, in some cases shareholders will suppress legitimate concerns in fear of destabilising the whole board, in others they will send an imprecise message by voting against the entire candidate slate because single candidates are unacceptable. More nuanced voting can avoid unnecessary conflict and better signal preferences and concerns. In a deliberate process, the board and the nomination body can use differentiated vote data in the evaluation of corporate governance practises and as a basis for shareholder dialogue.

Shareholders may have legitimate reasons to withhold votes on individuals

While the board has a collegiate responsibility for its decisions and the subsequent outcomes, shareholders may legitimately reserve the right to not back individual board members or candidates. For instance, shareholders may react to over-commitment by board members, low attendance, long board tenure, lack of independence, conflicts of interests, or other factors. If shareholders seek to withhold votes on board members due to unsatisfactory strategies or financial outcomes or prospects, they may want to shield board members who are seen as constructive or who have been recruited recently, as well as new candidates.

ARGUMENTS AGAINST INDIVIDUAL VOTE COUNT

Differentiated shareholder votes undermine the authority of the nominated slate

The nominating body, in most markets either a nomination committee or the incumbent board, has a mandate to deliberate and prepare a nominated slate of candidate for the upcoming board term. The process involves balancing key considerations to arrive at an integral recommendation towards shareholders. The ability of shareholders to choose among nominated candidates undermines the authoritative nature of the nomination process and risks unsettling the board composition intentions of the body charged with nomination.

Shareholders lack the knowledge necessary to assess the contribution of each board member

Boards hold their discussions behind closed doors. Shareholders are not able to judge the contribution and stances of individual board members. Therefore, they have only an illusory ability to differentiate between candidates when casting votes.

Procedures may permit individual voting when called for

Where the number of board candidates equals the number of seats, a single vote on the nominated director slate is the most practical and cost-effective approach to board election. In markets where bundled election is used there may be procedures that give shareholder the right to ask the chair of the shareholder meeting to instruct the shareholders to vote for each candidate individually. Such a right is sufficient protection for shareholders on the occasion of a contentious event.

NORGES BANK INVESTMENT MANAGEMENT’S CONSIDERATION

We find that the balance of arguments are clearly in favour of a policy requiring each board candidate to be a separate voting item, with individual count at the shareholder meeting and subsequent disclosure of vote statistics. We emphasise board elections as a mechanism for accountability of the board towards shareholders, and we find that individual count appears to work satisfactorily in markets with this practise. The associated cost is negligible.

This conclusion is supported by the trend to reverse the practice of bundling and move to individual votes in key markets where bundling previously was the custom. In France unbundled director elections is now market practice. In Germany, it has been recommended best practice since 2005, and in Spain it has been recommended best practice since 2007. Sweden and Finland are among the few remaining advanced markets with bundled board elections.

While conflicting with incumbent practice in some markets, we find that proper recording and reporting of shareholder votes in board elections will support the integrity of the board election process. We encourage all stakeholders in the proxy voting chain, including companies and regulators, to contribute to an individual-vote count market standard. In cases were votes are effectively bundled, we may need to vote against the board slate if we have serious concerns with individual board candidates.