

FOR RELEASE  
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Corporate Laws Committee Releases  
Discussion Paper on Director Voting

The Committee on Corporate Laws of the Section of Business Law of the American Bar Association released today its “Discussion Paper on Voting by Shareholders for the Election of Directors.”<sup>1</sup> The text of the Discussion Paper may be accessed on the website of the Section of Business Law at <http://www.abanet.org/buslaw/r/0004.html>.

The Committee has undertaken a detailed analysis of the complex issues involved in considering possible changes to the Model Business Corporation Act (“Model Act”) relating to voting for directors. The substantive law relating to the election of directors of both public and private corporations is a matter governed by state corporation law. The Committee’s attention is limited to the process governing board elections of public corporations.

The default statutory rule of the Model Act provides that “Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast ...” The Discussion Paper sets forth various issues identified by the Committee as well as possible changes to the Model Act that could be considered and the potential consequences of those changes. The purpose of the Discussion Paper is to elicit from interested persons focused input and suggestions of alternative courses of action. The Committee intends to consider that input in arriving at a decision whether to recommend any amendment to the Model Act.

In its most recent release of June 8, 2005, the Committee had indicated that it expected to release the Discussion Paper in early July. Because of the significant public interest in this issue, however, the Committee accelerated by over a week the pace of its process in drafting and releasing the Discussion Paper.

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<sup>1</sup> This Discussion Paper has been prepared by the Committee on Corporate Laws of the Section of Business Law of the American Bar Association (the “ABA”). It is released by the Committee solely for discussion purposes. It does not set forth a proposal recommended by the Committee. Moreover, it does not purport to set forth ABA policy. It has not been approved by the Section of Business Law, the House of Delegates or the Board of Governors of the ABA. Accordingly, it should not be considered as representing the policy of the ABA.

The process of amending the Model Act is always thorough and deliberative. Any proposed amendment involves consideration by the Committee at successive meetings. Moreover, before making a final decision on any substantive amendment, the Committee is required by its traditional processes to publish the proposal and explanatory material for comment in *The Business Lawyer*, the scholarly journal published quarterly by the Section of Business Law. It is too early to predict if or when the full Committee will make any recommendation for amendment to the Model Act relating to the matter of voting for directors.

The Committee is examining various alternative scenarios and their consequences. These alternatives include the following:

- Retain the current plurality vote default rule.
- Change to a majority vote default rule.
- Adopt a default plurality rule requiring that a director must be elected by at least a “minimum” plurality vote, such as one-third.
- Leave the plurality vote default rule in place but specifically authorize “against” votes with consequences where a director achieves a plurality vote but more “against” than “for” votes. These consequences could include, for example, shortening the term of that director, unless the board acted within a specified time frame to confirm the director’s election, or giving the board the authority to remove that director.

We have identified some benefits of and problems with each of the various alternatives. There may be other benefits and problems that we have not identified. And there may be other alternatives that should be considered, as well. We have reached no conclusions on these issues, and we continue to approach the matter objectively.

The Committee seeks the input of knowledgeable and experienced persons about the optimal course of action to assure a clear, understandable and workable voting system. The goal of this Discussion Paper is to focus and stimulate thought on the issues. It would be most helpful to the Committee if we could receive written comments and suggestions on or before August 15, 2005, addressed to:

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