

Why Individual Investors File Shareholder Resolutions

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A new report from the Rock Center for Corporate Governance with the provocative title “Gadflies at the Gate” tries to answer the question so many companies have asked themselves: Why do individual investors submit shareholder proposals?

Individual investors can represent up to 25% of the total number of shareholder proposals annually, with over 1,100 submissions in a ten-year time span. Although those proposals received only 29% support on average, and only a handful of subject matters brought forth by individual investors had any kind of meaningful, favorable vote tallies, the report notes that individual investors can have influence. The first individual shareholder activism, which dates back to the 1930s, focused on topics that were then viewed as highly controversial, including elimination of classified boards and allowing shareholders to ratify the selection of auditors.

The authors interviewed nine individual investors (Andy Behar, Eric Cohen, Alan Farago, James McRitchie, Eve Sprunt, Elton Shepard, Tom Strobhar, Jing Zhao and one person who wished to remain anonymous). They found that the vast majority tend to be deliberately narrow in their focus, as seven of them filed proposals related exclusively to a single social or compensation topic, while two of the individuals targeted governance issues that included independent chair, staggered boards and proxy access. Most file between two and 20 resolutions per year, although one person files up to 60 per year.

Their motivation stems from issues that they saw during their careers, which includes work as engineers, scientists, stock brokers, consultants, lawyers, writers and community activists, as well as social matters that they care about deeply. For the most part, they target companies in which they already own shares, with only one of them expressly purchasing shares to file proposals. Several have affiliations with nonprofit groups who advocate for similar issues.

As companies have suspected, since it is generally not common to receive two proposals on the same topic, individual investors are careful not to duplicate others’ efforts before filing. If a large institution is planning to file a similar proposal, they will defer to them because they have greater resources. At the same time, none collaborate with larger investors, although some may find support from pension or socially responsible funds that share their viewpoints. Filing a proposal is fairly inexpensive, but the cost of attending annual meetings is a factor that limits the number of proposals they submit.

They are not bothered by the low level of support for the proposals, stating that “every material issue was once an immaterial issue” and “sometimes it takes five, seven, ten year” to bring about change. It appears from the report that they record their victories based not on whether a proposal passed, but on whether practices were modified as a result. Individual investors described how they convinced companies to offer non-GMO products, make additional environmental or governance disclosures, add more female directors, amend an existing equity award, and adopt proxy access and majority voting.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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