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ICCR Advocate eNewsletter – September 2007

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[Taking Ownership: Protecting Your Shareholder Rights](#)



"It is time for American investors large and small to voice their concerns to the SEC and Congress. As representatives of faith-based institutional investors, investment managers and other allies, the members of the Interfaith Center on Corporate Responsibility are deeply committed to protecting this important link between morality and markets. We are united in our resolve to protect our right to continue to be active owners of corporate America and we intend to vigorously communicate our concerns to the SEC. We have worked for over 35 years with companies, protecting and strengthening a process that has served shareholders and publicly held corporations well."

- Laura Berry, ICCR Executive Director

Many Americans have the good fortune of ownership. It's one of the great freedoms that our economy promises our citizens. When you buy your first house, a big part of the buzz is knowing that you can finally have a say in what kind of tile is on the floor or paint is on the wall. No longer can some landlord tell you what to do with your home. You own it. You have a say. Many couples know that sometimes their opinion is heard more than others, depending on the significant other in question – but you still get a say.

But how quickly would you walk out the door in a huff if your partner told you that you weren't allowed to speak up anymore? Or imagine the government sending you a letter saying that you still get to own the house, but you no longer have a voice in what color the walls are.

To some degree, that's what happening right now to American shareholders.

Your rights as a shareholder are in serious jeopardy today from proposals being considered by the U.S. Securities and Exchange Commission (SEC). Turning this tide, and taking our ownership, will take 10,000 website clicks, 1,000 phone calls and 100 letters.

So let's start at the beginning.

What Is A Shareholder Resolution?

As owners of a corporation, shareholders have the right to take part in the firm's management by participating in annual meetings. The right to file a social advisory shareholder resolution was affirmed as far back as 1947. A company's management proposes issues to be voted on at these meetings, and shareholders have the right to place their own proposals on the ballot. These proposals, or written *requests* to management, are filed with the SEC and placed on the ballot.



Important note: these resolutions – are ***non-binding***. Resolutions rarely get over 51% of the shareholder vote as most large blocks of shares are held by investors who support management. So why file them? Because “unsuccessful” resolutions can still:

- educate shareholders about corporate misconduct,
- draw attention to companies and executives engaged in misdeeds, and
- highlight a lack of interest in corporate reform.

For sixty years, the SEC rules have recognized this and given small shareholders a voice by requiring a fairly low threshold of support for a proposal being resubmitted a second and third year. The proposal must get at least 3% of the vote in the first year; 6% of the vote in the second year; and 10% in the third year.

The SEC has broad power over corporate practices, including the way in which proxy votes are solicited and when a company must include a shareholder proposal in its proxy statement. These rules can be found in the [Code of Federal Regulations](#).

Proxy voting is the primary forum where management seeks affirmation of what it is doing, and where shareowners weigh in on important issues. Resolutions can request reports from management or propose that the company consider changes in practices or policies. Shareholder resolutions deal with a variety of issues, including diversity, environmental practices, and sweatshop practices.

Who Is Eligible To File A Shareholder Resolution?

Any shareholder who owns \$2,000 worth of a company's stock for a year or more can introduce a proposal.

Often, the first thing a company will do upon receiving a resolution is to take it before the SEC and ask that it be thrown out, a standard process which ensures that frivolous or inappropriate resolutions get weeded out. Corporations may get a resolution omitted if it: Contains any false statements or information, deals with an issue beyond the corporation's capability to address, relates to the redress of a personal claim or grievance that is only designed to result in a benefit to the proponent or to further a personal interest, deals with a matter relating to the conduct of the ordinary business operations, has been rendered moot, or applies to specific amounts of cash or stock dividends.

ICCR Members and other groups with experience introducing shareholder resolutions have the resources and legal backing to ensure that their proposals make it onto the ballot and are written correctly. Some groups, that are new to the process, join an existing group of filers and become co-filers, lending their shares to the coalition, being updated on its progress, and providing input on negotiations with the company.

What Changes Is the SEC Proposing?



That's a good question.

SEC commissioners Paul Atkins and Roel Campos are simultaneously pushing two *different* proposals on whether to allow shareholders the right to get proposals on proxies. The SEC is considering two competing changes to proxy rules. One would clarify a current rule, essentially preventing shareholders from adding their own board candidates to a company's proxy statement.

The other would clear the way for shareholders to nominate their own directors. But investors would have to own at least 5 percent of the stock in order to do so.

Five percent of a large public company, a Fortune 500 company, is a huge amount of stock.

The first proposal, the longer of the two, would allow shareholders to call for bylaw changes allowing for shareholders to approve directors during corporate elections. However, it also would establish a particularly high threshold for such bylaw changes: Only if a shareholder proponent holds 5% of the company's shares for more than a year would the vote be legitimate.

This is a prohibitive number for even the nation's largest investors.

This year, 17 shareholder proposals on global warming were filed. In no case did a group of resolution filers hold 5% of a company. Yet the resolutions received substantial support, such as 29% at General Motors (GM). The filer, GM investor the Sisters of St. Dominic of Caldwell, NJ, are ICCR-affiliated shareholders with less than .01% in holdings.

In 2003, a Coca-Cola Company shareholder (the Sisters of Adorers of the Blood of Christ of Wichita, Kansas) proposed the Company increase its disclosures on public health threats, such as HIV, in emerging markets. (Coke is the largest private sector employer on the continent of Africa.) Virtually all (98%) Coke shareholders - and every single Coke director - ultimately supported this proposal, despite its author holding less than .01% of the company.

The second proposal would reinstate the SEC's 1990 position, in which companies are permitted to exclude director nomination proposals by shareholders from the proxy. That position was challenged and declared invalid by the 2nd Circuit Court of Appeals in September 2006, a decision that forced the SEC to act.

The SEC's Annette Nazareth has publicly expressed concern that the shorter proposal could lead to a final rule that restricts non-binding proposals and prohibits shareholder votes on director nominations altogether. "This one is probably best called the shareholder non-access proposal," she said in a Financial Week article.

The proposal does not outline specific changes to the non-binding resolution process. Instead it appears to endorse leaving the entire process to management's discretion. In practice, this would end non-binding resolutions.

Why Oppose These Changes?

There are no documented problems that would justify such extreme restrictions on shareholder rights. Proxy resolutions, already under strict supervision by the SEC, are not akin to frivolous or nuisance lawsuits, which demand excessive time and/or expense of corporations or the SEC.

Over 95 percent of the shareholder resolutions filed in the last 35 years have been purely “advisory.” In no way are activist investors demanding that companies be run at their whim. Well under 20 percent of publicly traded companies face shareholder resolutions in a typical proxy season, and the reality is that many of these companies have documented problems with:

- Runaway CEO compensation,
- Non-responsive boards,
- A history of pollution and/or inaction on climate change,
- Costly racial/gender discrimination lawsuits, and
- A wide range of other very serious problems impacting sustainability as well as social justice.



These are not companies that the SEC should be protecting from shareholders who are understandably concerned about what are often major and unmitigated risks to their investments. These are not companies that should be permitted by the SEC to “opt out” of facing the understandable concerns of their own shareholders.

The Bottom Line

Proxy resolutions give ICCR members and all shareholders the opportunity to help put their money where their faith is.

The resolutions help to promote positive dialogue that results in improved corporate governance, greater accountability and more meaningful disclosure. These resolutions have resulted in positive changes in company policies and practices, including in the areas of executive compensation, environmental pollution, climate-related improvements, minority/gender hiring practices, and global health justice, among others. This is one of the *reasons* why the instances where shareholder resolutions which have won majority support of 50 percent or more of the shares actually voted, has risen dramatically from 16 percent in 2000 to 23 percent in 2006.

Shareholder resolutions have had a profound and beneficial impact on corporations, making them stronger and more competitive.

The bottom line is: Proxy resolutions can help save companies - and their owners - money. Sometimes, as in the case with Coca-Cola, proxy resolutions can also save lives.

You, too, have a right to put your money where your faith is. You, too, have a right to speak up about the things you own. You, too, can have a voice. But only if you use it now can you be assured to *keep* it.

Action Alert: What You Can Do

"I cannot stress enough how important it is for concerned investors to contact their local Representatives and Senators to alert them to their concerns regarding the SEC's proposed changes to Rule 14a8 during the 60-day public comment period, expected to run through early October. Many Congressmen/women are in their local offices and available to meet with their constituents this month. This outreach is another step in the process to shut down any possibility that the SEC will eliminate or weaken our collective ability to assert our ownership rights through the filing of advisory resolutions."

- ICCR Statement on Proposed Changes to Rule 14-a8

As Congress is coming back from vacation, it is extremely important for them to hear from you, and from every individual and institution that you can encourage, to: NOT support the SEC's Shareholder Proposals.

There have been reports from Washington that many people are not interested or care about this issue. That is why you can make a big difference when they hear from you about how important shareholder rights and corporate social responsibility is to a civil economy.



You can tell the SEC and your elected members of Congress that you do not want your voice as an investor to be silenced.

A new site, www.SaveShareholderRights.org, was created with the aim of enlisting institutions and financial professionals to sign a joint statement opposing the SEC proposals, as well as to help facilitate the filing of several thousand comments by individual investors before the Commission **comment period ends on October 2, 2007**. Copies of investors' comments posted on the site will be forwarded both to the SEC and to the individual investors Congressional representatives.

The institutional/financial professional sign-on statement addresses three specific concerns: An 'opt-out' option that would allow companies to drop out of the shareholder resolution process entirely; the unilateral substitution of the electronic petition model or 'chat room' for the public 14a-8 shareholder resolution process; and the raising of shareholder resolution resubmission. It also supports the continued right of investors to nominate board members using the proxy process and urges the SEC to set a reasonable level of shares required for the nomination process.

If we can get:

- **10,000 individuals to [click on the site's action buttons](#)**
- **1,000 individuals to [pick up the phone and call their representatives](#)**
- **[letters and/or submissions to the SEC website](#)**

Then we can *truly* make a difference.

ICCR In The News And On The Web

[Resolved: Public Corporations Shall Take Us Seriously](#) - New York Times
[Shareholder Activists Turn Up Heat on the SEC](#) - SocialFunds.com
[What Price Earth?](#) - Women's Media Center
[Activists Launch Online Opposition To SEC Proxy-Access Plans](#) - CNNMoney.com
[Chris Cox: Put Up Your Dukes!](#) - Conde Nast Portfolio
[Shareholder activists call for more access](#) - Financial News Online US
[The globalization of giving](#) - Crain's Chicago Business
[Environmental Finance Online News](#) - Environmental Finance
[Faith-based investors say proposed rule could gut shareholder rights](#) - Catholic Online
[SEC Chair Cox Votes For Two Opposing Proxy Access Proposals--Both ...](#) - SocialFunds.com
[SEC Debating Shareholder Proposals](#) - Washington Post
[SEC Probably Seeks New Limitations on Shareholders' Resolution Powers](#) - Associated Content
[The CEO, Off the Pedestal](#) - New York Times
[Corporate Social Responsibility: The Next Wave](#) - Stratfor
[Grassroots Coalition Launches Campaign To Expose Fox Network's ...](#) - Media Channel
[Protecting children](#) - Episcopal News Service
[Shareholder Activism in the Annual Reporting Season](#) - Stratfor
[GM holders to eye greenhouse gas proposal](#) - CNNMoney.com
[Bringing Faith To Bear on Firms](#) - Washington Post
[26 food security projects to share nearly \\$200000](#) - Worldwide Faith News
[Stocks With Scruples](#) - Motley Fool
[WRI Establishes First Business Case for Community Consent](#) - Insurance News Net
[Highly paid amid cuts](#) - Toledo Blade
[Churches pressure travel](#) - Dallas Baptist Standard

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