

### A Guide to Filing Resolutions

Shareholder advocacy, also known as active ownership, covers a wide spectrum of tactics used by investors to influence the companies they own on questions of corporate social responsibility (CSR). Levels of advocacy can range from proxy voting in favor of shareholder-sponsored resolutions to direct engagement of management in investor dialogues; the intensity of engagement depends on the priorities and resources of the investor.

What is implicit in this work, however, is an acknowledgement of the responsibility that comes with stock ownership to ensure that management is doing what it can to improve its performance both financially and in terms of environmental, social and governance (ESG) measures.

Visit ICCR's website ([www.iccr.org](http://www.iccr.org)) for more information on shareholder advocacy.

### What is a Shareholder Resolution?

Every year beginning roughly in March, American corporations begin sending out proxy statements to their shareholders. Proxy statements list all the resolutions scheduled for a vote at a company's upcoming shareholder meeting, both those proposed by management, and those proposed by shareholders. Roughly one page in length, these resolutions contain a formal resolved clause, which is a specific request or "ask", with a number of carefully-researched rationales in the form of "whereas clauses" as supporting statements. The timetable for soliciting votes for the annual meeting depends largely on a company's meeting date, which usually is determined by the board of directors.

Proxy statements also include important information that the Securities and Exchange Commission (SEC) requires corporations provide to their shareholders, such as corporate governance and financing information, like nominations for the board of directors, proposed incentive structures, or capitalization plans.

Shareholders are part-owners of companies, and as such they have the right to participate in annual general meetings (AGMs) where key decision making takes place. Therefore, any shareholder who has held at least one share of company stock for at least two months or more may vote on resolutions, either in person at the company's annual meeting, or via a proxy ballot, which can be done online using special voting websites like [www.proxyvote.com](http://www.proxyvote.com), or by return mail. It is important to note that proxy voting is the primary forum by which management seeks affirmation of its actions: At the same time, it is the primary method investors use to reach out to other shareholders for support of their resolutions.

If you don't actively vote your proxies, they automatically default to a vote for management. For this reason you should carefully review the company proxy statements you receive in the mail and exercise your shareholder rights by voting your proxies.

The rules governing these decisions can be found on the SEC website:

<http://www.sec.gov/interp/leg/cfs14.htm>



### Who Can File?

Any shareholder or group of shareholders owning \$2,000 or more of a company's stock for a minimum of a year can introduce a proposal. Shareholder-sponsored resolutions must be filed with companies' corporate secretaries by specific dates in order to be placed on the company proxy ballot. Individual investors new to the process might want to consider teaming up with more experienced investors as the SEC rules on the drafting and submission of resolutions can be somewhat difficult to navigate and, if they are challenged at the SEC, they can be difficult to appeal.

ICCR members are familiar enough with the process that they can draft resolutions that are not only more likely to withstand challenges at the SEC but will achieve a higher vote at the AGM. Moreover, by working in coalition and co-filing with other ICCR members, our proposals are likely to receive greater attention from management who may wish to negotiate a withdrawal in exchange for taking some action on the issue.

### What are the Guidelines for Writing a Shareholder Resolution?

The text of a resolution may not exceed 500 words (including any accompanying statement of support) and it may not contain any materially false or misleading statements. The matter addressed in the shareholder proposal must be "relevant" — i.e., it must relate to at least 5% of the company's total assets and at least 5% of its net earnings and gross sales for the most current fiscal year. A shareholder proposal may be excluded from the proxy statement if it conflicts with a resolution put forward by another investor on the same subject, or if the company has already substantially implemented the proposal.

The proposal may not advocate action that would be improper under the laws of the state in

which the company is organized or incorporated. Some states consider it improper for shareholders to issue mandates to the board of directors. (However, the SEC usually interprets shareholder proposals to be recommendations or requests rather than mandates.) The proposal may not recommend action that would violate any state, federal, or foreign law, nor can it call for action that the company has no power or authority to implement.

Corporate management may ask the SEC for permission to exclude a proposal that does not conform to all requirements. The filers have a right to appeal a company's challenge, and this is usually done through legal counsel.

### What does it Take to Get a Resolution Adopted?

At the annual meeting one of the filers (or a designee) must make a motion from the floor to put the resolution to a vote (each Class A share gets one vote). In some cases, there must also be someone to second the motion.

A resolution need not garner 51% of the vote to "win" — something that rarely happens for a number of reasons; not only is it rare for 100% of company shareholders to vote, in many cases, shareholder votes — particularly institutional shareholder votes — are determined by proxy voting firms which advise shareholders. Proxy voting firms generally prefer to leave decisions regarding day-to-day management, as well as social, environmental or political issues, to management and the board, and therefore vote in line with management recommendations on proxy ballots.

In fact, votes in the double digits are generally considered very successful in focusing investor and management attention on issues. The SEC's rules recognize this and give small shareholders a voice by requiring a fairly low threshold of support for a proposal to be resubmitted a second

and third year. A resolution must get at least 3% of the vote in its first year; 6% of the vote in its second year; and 10% in its third year, and every year thereafter, to be eligible to remain on the ballot. This gives shareholder advocates the opportunity to mount multi-year education campaigns on proposals before a company. Outreach to pension funds and other institutional investors is especially important to increase the size of the vote for a resolution each year.

### What if All My Investments are in Mutual Funds?

Mutual funds have the clout to hold the companies in their portfolios accountable. Furthermore, they have a duty to do so. As companies which fail to address corporate responsibility and sustainability are at risk for financial losses, lawsuits, and insurance problems, mutual funds act responsibly by ensuring that the companies in their portfolios minimize risk. But many mutual funds fall far short of addressing investor concerns.

While investors do not own stock in privately held asset management firms like Vanguard, they are participants in their mutual funds, and thus have a definite “stake” in what they invest in and how they vote their proxies. While not used frequently, clients can file resolutions with the mutual funds in which they invest. However, a mutual fund is not required to hold an annual stockholder meeting unless it is making significant changes requiring a vote by investors in the fund. Thus, a fund may not hold a stockholder meeting for a decade or more.

By filing a resolution and “getting in line” to be included in a future proxy statement, investors can officially alert asset management companies and specific funds that they are questioning their proxy voting policies and practices on issues like climate change, CEO pay, and LGBT issues.

In addition, since there is no official “filing deadline”, an invitation to co-file can remain on the table indefinitely, allowing investors in selected funds to publicly join in the resolution, thus alerting asset management companies to their concerns.

As a first step, you should find out how your mutual funds vote. Because a fund’s Form N-PX filing with the SEC is publicly available, you can find proxy voting record information for a mutual fund by searching the SEC’s EDGAR database (<http://www.sec.gov/edgar/searchedgar/webusers.htm>). This information is also available in mutual funds’ semi-annual and annual reports to shareholders. You may also want to contact the financial managers who run your mutual funds directly, and request their voting records, as well as their policies on voting shareholder resolutions. You can then encourage them to vote for ESG resolutions. In addition, websites like ProxyDemocracy.org help individual investors follow and evaluate the voting trends of mutual funds and large institutional investors.

