



## **Déjà vu: Shareholder Rights Under Attack**

From the Summer 2014 Edition of Walden's *Values* Newsletter

By Timothy Smith

Every once in a long while a group of companies, usually led by the U.S. Chamber of Commerce, launches a campaign to change the rules allowing investors to file shareholder resolutions. Welcome to the latest iteration.

We are witnessing a coordinated buzz about so-called "problems" with the shareholder resolution process led by Securities and Exchange (SEC) Commissioner Daniel Gallagher, who argued recently that investor advocates have "hijacked" the proxy proposal process. Gallagher was supported by the general counsel of NASDAQ in a recent op-ed for *The Wall Street Journal*, and abetted by the Chamber's official petition to the SEC to review and change the proxy rules.

Ironically, these voices against shareholder resolutions are materializing during a proxy season in which many shareholder initiatives seeking to strengthen companies' management of climate change risk, political spending and lobbying disclosure, governance practices, and sustainability reporting, among other issues, are reaching new highs in proxy vote tallies. Perhaps it is this traction at the ballot box that has stimulated the attempt to roll back shareholder rights.

These events are alarming but not surprising. Walden has been closely monitoring the Chamber of Commerce's speeches, articles, and conference proceedings over the last several years as it regularly challenged the proxy resolution process and the right of investors to file resolutions. The Chamber has also vigorously challenged proxy advisory firms like ISS that wield significant influence with voting shareholders.

What are the specific recommendations and criticisms of these shareholder resolution naysayers?

Commissioner Gallagher advocates that a filer of a shareholder resolution should have to own "perhaps \$200,000 or, even better, \$2 million" in a stock or hold a specific percent of outstanding shares. Currently, the threshold for shareholder filing is ownership of \$2,000 in stock, so such a change would disenfranchise smaller individual and institutional investors, even though many of their resolutions are equally effective as those from larger investors and receive high votes. The Commissioner also seeks to limit the number of shareholder proposals a company should have to include in its proxy statement. He further argues that shareholder proposals advance social, environmental, or political interests that are not in companies' (or shareholders') financial interests.

The Chamber's petition, supported by the American Petroleum Institute and the Financial Services Roundtable, among others, promoted an increase in the percentage of votes required to resubmit a shareholder resolution in order to deter repeat filings. Presently thresholds are 3 percent in year one, 6 percent in year two, and 10 percent thereafter. Using this one recommendation, we suspect that the Chamber hopes the SEC will open the door to a proxy rule review that would result in multiple radical changes limiting the influence of shareholders.

Walden will advance a different perspective in defending the current rules that govern the submission of shareholder resolutions. We will explain how shareholder proposals on environmental, social, and corporate governance

matters often raise issues with a direct impact on long-term shareholder value (e.g., effective management of climate change risk or encouraging stronger board oversight and independence). We will highlight that many companies embrace the substance of these shareholder proposals as good for business. We will make the case that fiduciary duty compels us to raise these matters that address long-term risk and brand reputation. And finally, we will argue that sometimes voting support is modest in early years but later garners significant shareholder backing as knowledge about an issue accumulates.

In May we met with Commissioner Gallagher to put our case on the record. We are confident that Walden and the institutional investor community will make a persuasive case that the existing shareholder resolution process is not broken. Indeed, the current proxy process provides shareholders an important voice. A voice that, we believe, makes the companies they own much stronger.



**Timothy Smith**  
Director of ESG Shareowner  
Engagement

*Walden is a division of Boston Trust & Investment Management Company. For more information please contact us at (617) 726-7250 or visit our website at [www.waldenassetmgmt.com](http://www.waldenassetmgmt.com).*

*The information contained herein has been prepared from sources and data we believe to be reliable, but we make no guarantee as to its adequacy, accuracy, timeliness, or completeness. We cannot and do not guarantee the suitability or profitability of any particular investment. No information herein is intended as an offer or solicitation of an offer to sell or buy, or as a sponsorship of any company, security, or fund. Neither Boston Trust nor any of its contributors make any representations about the suitability of the information contained herein. Opinions expressed herein are subject to change without notice.*