

Shareholders' Rights Under Attack: Resolutions Could Be Limited to Billionaires

Kathy Hipple
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Shareholders' rights to engage with management of companies they own are under fierce attack. If passed, a proposed House Bill would allow only the largest shareholders to file shareholder resolutions. Currently, resolutions provide owners – small and large — a tool to engage with companies on issues ranging from climate change disclosure to increasing diversity at the board level to digital security. These resolutions provide critical feedback that improves company governance. The proposed legislation would silence all but billionaires and institutional investors. Quite simply, it is both undemocratic and anti-capitalist.

Shareholder resolutions, which are nonbinding, currently allow shareholders who have owned at least \$2,000 of stock for a year to propose a resolution at a company's annual board meeting. The resolutions must meet rigorous guidelines and pertain to material areas of a company's business.

A Bill proposed by House Financial Services Committee Chairman of Jeb Hensarling (R-Texas) would eviscerate shareholders' rights to engage with the management of the companies they own by requiring they own at least 1% of the company's shares for at least three years. This would mean, effectively, that only Bill Gates could engage with Microsoft, as an ownership stake of more than \$5 billion, held continuously for three years, would be required to file a shareholder resolution.

In short, the proposed Bill would eliminate all resolutions.

Shareholder Resolutions Are Good for Business

Resolutions help spur dialogue between shareholders and management, and are typically withdrawn prior to a vote if management agrees to address area of concern. For example, both Jack in the Box and Starbucks recently agreed to eliminate the routine use of medically important antibiotics from their company's poultry supply chain by 2020, after shareholders raised the issue of the growing threat of antibiotic resistance.

“We identified the use of antibiotics in raising animals to be a growing reputational risk for companies,” recalls Leslie Samuelrich, president of Green Century, a mutual fund advisory company. “Leadership was open to hearing shareholder feedback, which it only received through the conversations around the resolution. The deadline of addressing a shareholder resolution provided the urgency to address the issue quickly.”

While their holdings in Starbucks and Jack in Box stock represented between 1 and 2% of Green Century’s holdings, the mutual fund company would fall far short of the necessary 1% of the required equity required – as would most financial advisory firms except a handful under the draft language.

Even Walden Asset Management, with nearly \$3 billion AUM, would too small. “We’d have to own roughly \$7 billion of Apple stock to file a resolution,” notes Timothy Smith, Director of ESG Shareowner Engagement at Walden Asset Management.

Walden currently uses the resolution process to engage with companies on environmental and social issues, particularly climate risk. Its recent shareholder resolution to BlackRock, which voted against nearly all climate-risk resolutions in 2016, was withdrawn after BlackRock agreed to be more transparent about its voting policies and to make climate risk a priority when it engages with companies and boards.

Smaller Investors = Too Small to Be Heard?

Large institutional shareholders have little difficulty engaging with management. For smaller investors, however, shareholder resolutions offer the only realistic route to engage with company management.

Andrew Behar, author of *The Shareholder Action Guide*, stresses the importance of small shareholders to guide corporate America to make better decisions on behalf of both the companies and the public at large. “For 70 years the shareholder proposal rule has been an effective tool to support the ownership interests of all shareholders,” notes **Behar**. “The process gives us an essential tool to engage with boards and management to reduce risk and improve governance. Bottom line, shareholders provide a new and objective perspective to help make companies better in the long-term.”

Resolutions as Catalyst for Social Change

The Interfaith Center on Corporate Responsibility (ICCR), which represents a coalition of shareholder advocates with combined assets of \$200 billion, lists shareholder resolutions filed on behalf of its 300 member organizations. ICCR issues an annual Proxy Resolutions and Voting Guide, which include

shareholder resolutions filed by its members. The 283 resolutions filed by ICCR's members in 2017 were mostly related to so-called ESG issues, environmental, social, and governance.

"Our members view the management of their investments as a catalyst for social change," says Reverend David Schilling, Senior Program Director. "We engage literally hundreds of corporations annually. Our efforts focus on questions such as climate change, corporate water stewardship, sustainable food production, and human trafficking in global supply chains."

Dodd Frank Under Fire: Shareholder Resolutions Restrictions Only Tip of Iceberg

Heslarling's draft legislation would roll back many Dodd-Frank Act measures, amending securities laws intended to protect investors. Eviscerating the right to file shareholder resolutions — limiting this right to all but the largest institutional investors — would dramatically scale back discourse between the public and companies. At a time when many companies' are larger than the economies of many nations, it is crucial that owners of these companies have a voice.

Corporate America, as the recent financial meltdown illustrated, needs increased scrutiny by owners. Allowing broad ownership to engage with management through the shareholder resolution process — an effective tool used for decades — can provide this scrutiny. It is often smaller shareholders who raise awareness of issues that can guide management's decisions — often creating both financial and societal benefits.

Shareholder resolutions are an integral part of our democratic, capitalist system. The proposed bill to eliminate resolutions should die in committee when it comes up for discussion.

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