The Motley Fool. To Educate, Amuse & Enrich™

Activist Investors Gear Up for 2013 Proxy Season

By Sara Murphy | March 7, 2013

The 2013 proxy-voting season is about to begin, and activist investors are increasingly using the process to advance corporate environmental, social, and governance, or ESG, improvements. The movement to use shareholder resolutions to promote more sustainable business practices is small but growing, and it is becoming increasingly difficult for corporate boards to ignore.

Proxy what?
If you are a shareholder, you have the right to vote on certain corporate matters. Since most people cannot attend companies' annual meetings, corporations offer shareholders the option to cast a proxy vote by mail.

Most proxy votes originate with company management and a few dozen large financial institutions, which typically vote automatically with management and hold the majority of a company's shares. It is thus difficult and extremely rare to see a majority vote on a shareholder-initiated proposal. Still, even relatively modest shareholder votes can drive significant corporate policy changes.

A new report called the "Proxy Preview," published today by As You Sow, the Sustainable Investments Institute, and Proxy Impact, lays out all the sustainability-related shareholder resolutions for the 2013 season and frames the broader context of the issues at play.

The report explains that "in most cases, an investor with 3% ownership in a company would be one of the top shareholders, and thus even single digit votes may gain considerable attention from company management. Votes above 10% are virtually impossible to ignore and often—but not always—result in some action by the company to address the shareholder's concerns."

Sustainability-minded investors now file about 50% more shareholder proposals than they did 10 years ago, with nearly 400 submitted each year. In that time, the average level of support from all voting parties for such proposals has grown from 11.9% in 2003 to 18.5% in 2012.

2013's shareholder resolutions
As of Feb. 15, investors had filed 365 social or environmental resolutions, and a few more are likely to emerge as the season progresses. Following are a few examples.

Mercy Investment Services has filed a resolution with **Molycorp** (NYSE: MCP) that pushes for the company to produce a detailed and transparent sustainability report "describing the company's ESG performance including a review of efforts to mitigate water risks in the company's operations." Mercy notes that "investors have faced significant financial risks from Molycorp's environmental impact and resource usage, including a $410,000 settlement in 1998 for discharging thousands of gallons of contaminated wastewater from a pipeline running through the Mojave National Preserve. In addition, in 2010 the EPA released its cleanup plan for Molycorp's Superfund site, the cost of which could reach $800 million and take 20-30 years to complete."

A 2012 resolution the Communication Workers of America, or CWA, filed with communications technology company **Windstream** (NASDAQ: WIN) sought more transparency on the company's political spending. That resolution received unusually high support, garnering 43.3% of votes. CWA has resubmitted the resolution for the 2013 season.

The most successful of 2012's board-related proposals were those that the New York State Common Retirement Fund, or NYSCRF, initiated requesting that companies add an environmental expert to the board. The highest vote – 31% – was for the resolution filed at **Freeport-McMoRan Copper & Gold** (NYSE: FCX) , the giant mining company with operations in Indonesia and war-torn Democratic Republic of Congo. In 2011, workers demanding higher pay at an Indonesian mine launched protracted strikes that hurt the company's business. The mine in question had long faced a volatile mix of environmental and human rights challenges in a sensitive and remote province of Indonesia. The NYSCRF has refilled its resolution for 2013.

Apple (NASDAQ: AAPL) is no stranger to sustainability-related shareholder resolutions. The NYSCRF withdrew one resolution this year after Apple agreed to pursue sustainability reporting from its suppliers. Trillium Asset Management withdrew another resolution asking Apple to report on how its board oversees privacy and data security risks after the company agreed to amend its charter to add responsibilities for the legal, regulatory, and reputational risk issues that the resolution raised. A third resolution from Harrington Investments, urging Apple to establish a board committee on human rights, went to vote on Feb. 27, garnering 5.6% of votes.

The NYSCRF filed a resolution with **TECO Energy** (NYSE: TE) asking that TECO report on "(1) the conditions resulting from the company's mountaintop removal operations that could lead to environmental and public health harms and (2) feasible, effective measures to mitigate the harms associated with mountaintop removal mining." TECO challenged the proposal at the SEC, arguing that it had already been substantially implemented. The SEC agreed and allowed the company to omit the proposal, saying that "it appears that TECO Energy's public disclosures compare favorably with the guidelines of the proposal and that TECO Energy has, therefore, substantially implemented the proposal."

Shareholder activism is here to stay

Shareholder activism on ESG issues keeps growing, and it will be harder and harder for companies to ignore. Managers that successfully prevent such resolutions with strong ESG practices will be able to spend time running their businesses instead of fending off shareholders. That sounds like a good long-term strategy to me.