

**ICGN**International Corporate Governance Network
Inspiring good governance & stewardship

ICGN Viewpoint

Shareholder Proposals – An Essential Instrument for Ensuring Corporate Accountability

December 2021

Over the last several years, there has been a proliferation of stewardship codes adopted around the world. These codes underscore the importance for institutional investors, fund managers, and retail investors to effectively utilize their shareholder rights and fiduciary responsibilities to hold investee companies to account. The filing of shareholder proposals (or resolutions) is one of the instruments in the shareholder toolkit to influence a company's policies, practices, and boards of directors/management related to environmental, social, and governance ("ESG") issues.

Next to improving the ESG practices of listed corporations, shareholder proposals are also utilized to enhance overall shareholder rights. For example, shareholders, in certain jurisdictions, have had a say on executive pay, including the right to vote on a company's remuneration policy and implementation report since the early 2000s.¹ However, before that, shareholders did not have any voice over executive compensation awards until a wave of shareholder proposals demanding a "say on pay" were allowed on ballots. In response, regulations were enacted to give shareholders greater influence over executive pay. While the proposals (in many, but not all, jurisdictions) are advisory in nature, they serve to provide the board members and senior management with investor views on executive pay and compensation plans.

The majority of shareholder proposals were historically filed by individual shareholders and special interest groups to support their respective agendas. Filing and co-filing shareholder proposals has increasingly become an important element of stewardship for institutional investors and investment managers. One of the trends in the United States, and other several markets, is the continued emergence of new proponents and coalitions of co-filers, acting in concert to file shareholder resolutions. Several ICGN members have been actively involved over the last few years in the (co-)filing of proposals; there continues to be a growing interest.

This Viewpoint will explore the various experiences asset managers, pension funds, interest groups, organizations, and leading experts have had with (co-)filing shareholder resolutions. The Viewpoint summarises information gleaned from interviews with parties that filed shareholder proposals recently. It also includes a discussion of challenges and leading practices in order to help readers optimise the process of filing shareholder proposals. This includes

¹ Say on Pay dates back to early 2000s globally. www.gibsondunn.com/wp-content/uploads/documents/publications/Lee-ONeill-DoddFranksSayonPayProvisions

consideration of the main hurdles shareholders experienced in the process of (co-)filing shareholder resolutions.

I. Shareholder proposals

Shareholder proposals, also known as shareholder resolutions, are an important investor tool, typically used when a dialogue with a corporation on a given issue stalls or further discussion is unproductive. Shareholder proposals are often associated with shareholder activism, but there is significant evidence that shareholder proposals can be an important management and board oversight mechanism. Filing shareholder proposals proves to be a helpful tool in the process of addressing shortcomings in a company's ESG strategy and an opportunity to address management practices and policies.

During the 2021 proxy season in the United States, shareholder proposals were successfully utilised to address gaps in the environmental policies and practices of several oil and gas corporations.² In addition, shareholder proposals can be utilized to seek broader market changes, such as expanding shareholder rights. Well-known examples are the “Say on Pay” proposals that have provided shareholders with a right in many markets to cast votes on company remuneration policy and practices.³

Over the past three decades, shareholder proposals have transformed the global corporate landscape by spurring the adoption of governance best practices.⁴ Annual director elections, majority vote rules for director elections, shareholder approval for poison pills, and proxy access bylaws are some of the critical governance reforms that have become common practice thanks to investor support for shareholder proposal campaigns led by a wide variety of investors—some large; others small.⁵ Despite the advisory (non-binding) nature of most shareholder proposals, successive waves of campaigns have eroded boardroom entrenchment by convincing directors to respond to shareholders' calls for accountability, transparency and stewardship.⁶

The vast majority of all shareholder proposals have been filed in the United States, followed by Japan. However, shareholder proposals can be found on the ballot in various other jurisdictions. The following table provides data from the year 2020.⁷

² At Chevron Corporation, for example, near [61% of shareholders voted to 'substantially reduce the greenhouse gas \(GHG\) emissions of their energy products \(Scope 3\) in the medium- and long- term future'](#).

³ [A BRIEF HISTORY OF SAY ON PAY - Ivey Business Journal](#), by Paul Hodgson, (September/October 2009).

⁴ [The Long View: The Role of Shareholder Proposals in Shaping U.S. Corporate Governance \(2000-2018\)](#) (Over the past three decades, shareholder proposals have transformed the corporate landscape in the U.S. by spurring the adoption of governance best practices. Annual director elections, majority vote rules for director elections, shareholder approval for poison pills, and proxy access bylaws are some of the critical governance practices that have become common practice thanks to investor support for shareholder proposal campaigns led by a wide variety of investors—some large; others small. Despite the advisory (non-binding) nature of most shareholder proposals in the U.S., successive waves of campaigns eroded boardroom entrenchment by convincing directors to respond to shareholders' calls for accountability, transparency, and stewardship.)

⁵ Ibid. [The Long View: The Role of Shareholder Proposals in Shaping U.S. Corporate Governance \(2000-2018\)](#).

⁶ Ibid. [The Long View: The Role of Shareholder Proposals in Shaping U.S. Corporate Governance \(2000-2018\)](#).

⁷ Thank you to Minerva Analytics for sharing its proprietary database on shareholder meetings (AGM/EGM) 2020.

Country	# Proposals filed	# Companies where a proposal was filed
United States	379	199
Japan	105	18
Sweden	43	13
United Kingdom	36	9
Australia	33	15
Canada	30	15
France	28	8
Germany	21	2
TOTAL	675	279

Source: Minerva Analytics (2020)

The following table shows Global E&S Shareholder & Management Proposals on the Ballot from 2018 to August 30, 2021. The total number of proposals grew from 2018, with 260 filed, to 318 in 2020. Thus far, in 2021, 311 proposals have been filed:⁸

Country	2018	2019	2020	2021 YTD
Australia	10	17	20	6
Canada	11	20	24	17
Denmark	6	14	13	16
Finland	0	0	1	0
France	0	0	1	3
Japan	49	44	49	48
Norway	2	4	5	9
South Africa	0	4	2	2
Spain	0	0	3	5
Sweden	3	1	2	10
Switzerland	0	0	0	1
United Kingdom	1	4	3	13
USA	178	192	195	181
TOTAL	260	300	318	311

Source: Institutional Shareholder Services (2021)

⁸ Thank you to Institutional Shareholder Services (ISS) for providing its database on Global E&S Shareholder and Management Proposals on Ballot as of August 30, 2021.

The 2021 Annual Corporate Governance Review, published by the proxy advisor Georgeson in November 2021, provides further statistics on the U.S. proxy season:

The most active shareholder proponents during the 2021 season are all familiar names, and included individuals, socially responsible investors, pension funds, labor unions and faith-based organizations. The Chevedden group of investors accounted for the largest number of proposals submitted. As in previous years, the individuals comprising that group largely focused on traditional governance matters, although they did file more environmental and social proposals than in previous years, with particular focus on political spending and corporate purpose.⁹

From discussions with institutional investors and special interest groups, it became clear that the filing of a proposal typically comes into scope when the dialogue with company management on a given issue stalls or is unproductive. The filing of shareholder proposals for several organizations is an important element of their ongoing engagement to address perceived shortcomings in a company's ESG policies and practices. As a general rule, investors and interest organisations indicated that they only consider the option of (co-)filing a proposal after a longer period of dialogue ends unsuccessfully, as recommended in the ICGN Global Stewardship Principles.¹⁰

The ultimate objective of filing a proposal is not necessarily to put it to a vote at the AGM, but to exert additional pressure on corporations to adjust or adopt certain ESG practices or policies. Some companies amend their policies and practices in line with investor demands ahead of the shareholder meeting and, under these circumstances, the proposal is withdrawn. The withdrawal of a shareholder proposal after reaching an agreement with company management, is often seen as a successful outcome for shareholders and other interested parties.

II. Shareholder proposal trends

One of the observations from the 2020 proxy season in the United States was the continued growth of new proponents and (co-)filers who joined together to file shareholder proposals. The number of shareholders using the Securities and Exchange Commission (SEC) Rule 14a-8 shareholder process grew to over 300 proponents in each of 2020 and 2019 proxy seasons (compared to approximately 200 proponents in 2018). Across other markets, there is a continuing trend of multiple co-filers submitting proposals. This finding is in line with the growing interest in the (co-)filing of shareholder proposals among ICGN members.

Minerva Analytics provided access to its database for the 2020 AGM season, which established that a total of 735 shareholder proposals were filed in markets globally.¹¹ The proposals covered

⁹ [2021 Annual Corporate Governance Review \(harvard.edu\)](#), by Hannah Orowitz, Brigid Rosati and Rajeev Kumar, Georgeson LLC, November 24, 2021. Note that the Chevedden Group is a US-based group of shareholder activists focused on shareholder proposals relating to corporate governance and shareholder rights.

¹⁰ Principle 4, Engaging Companies, and investor collaboration, 4.3 Engagement escalation, [ICGN Global Stewardship Principles 2020](#), p. 19.

¹¹ Minerva Analytics, shareholder meetings (AGM/EGM) 2020. This represents the total number of proposals filed. The earlier table showed 675 proposals from eight countries only in 2020.

a wide range of topics including shareholder rights (211 proposals), sustainability (174 proposals), board-related issues (211 proposals), political activity, and remuneration (46 proposals). Out of the 735 shareholder proposals that were captured in the database, an average of 12.3% received the necessary support from a company's shareholder base and passed. The vast majority of the proposals, on average 84.4%, did not receive the level of required support from shareholders. A small percentage of the proposals, an average of 3.3%, were withdrawn.¹²

Proposal category	Number of proposals	Passed	Defeated	Withdrawn
Shareholder rights	211	11.4%	85.8%	2.8%
Board-related	211	15.6%	81.5%	2.9%
Sustainability	174	10.3%	83.9%	5.8%
Political activity	56	16.1%	83.9%	0.0%
Remuneration	46	6.5%	89.1%	4.4%
Corporate actions	12	8.3%	91.7%	0.0%
Capital	10	0.0%	100.0%	0.0%
Other	8	0.0%	75.0%	25.0%
Audit and reporting	5	40.0%	60.0%	0.0%
Charitable activity	2	0.0%	100.0%	0.0%
TOTAL	735			

Source: Minerva Analytics (2020)

Shareholder proposals may reflect environmental, social, or governance topics that relate to financial performance and reporting, diversity of board members, and/or the reporting of risks, such as climate risk disclosures. Proposals may also reflect good governance practices that, upon adoption, could lead the companies to longer-term and sustainable shareholder value creation. In comparison to earlier years, the number of environmental proposals increased substantially reflecting the growing understanding that physical and transitional climate risks pose a threat to shareholder value, economies, and societies.

One observation that may be drawn from these statistics is that a comparatively higher number of sustainability-related proposals were withdrawn relative to other issues. As reported by Sullivan & Cromwell LLP, in August 2021:

Environmental proposals were withdrawn at a meaningfully higher rate this year compared to last year. Given the increased focus of institutional investors (including [BlackRock](#), [Vanguard](#) and [State Street](#)) on climate-related issues, many companies may have preferred engaging with a proponent rather than taking the

¹² Minerva Analytics, shareholder meetings (AGM/EGM) 2020.

proposal to a vote. Of the 115 environmental proposals submitted, over half (70 total) were withdrawn (compared to 39 in 2020).¹³

This could be an indication that corporations recognised that the sustainability proposals would more than likely be approved by shareholders, and ahead of their AGMs, many companies decided to agree to the sustainability proposal. Also, during the 2021 proxy season, investors showed unprecedented levels of support for both environmental and social proposals, and the number of environmental and social proposals that received majority support exceeded prior year results.¹⁴

During the 2021 proxy season in the United States not only the number of environmental and social proposals increased, but also the number of shareholder proposals targeting corporate governance. Looking at the first half of 2021, 237 corporate governance related shareholder proposals were filed versus 228 on ballot in the same period in 2020.¹⁵ This has been the third consecutive year that the aggregate number of governance related shareholder proposals increased. Also, more governance proposals received majority support, 39 in 2021 versus 29 majority supported proposals in the same period in 2020.¹⁶

Environmental and social proposals comprised a majority of shareholder proposals submitted in 2021. To date in 2021 they made up 60% of all proposals filed, up from 55% in 2020. It was mainly several high-profile campaigns for environmental proposals in 2021 that attracted public attention. Shareholder proposals submitted on environmental matters and, in particular, climate-related proposals, increased for the second consecutive year¹⁷. In the first half of 2021, 509 environmental and social related proposals were tracked. This is an increase from the 445 submitted in 2020's full calendar year. What is notable is that a record number of 242 proposals were withdrawn due to settlements whereby the company made upfront commitments to implement the requested changes in the filed proposal.

A total of 77 proposals were omitted due to a SEC 'no action' relief. Taking into account the proposals that were withdrawn and omitted, 182 environmental and social proposals made it onto ballot (186 in 2020).¹⁸

During the 2021 proxy season, thus far, there have been several high-profile campaigns centered on environmental proposals that received majority support. Of all environmental and social proposals, those related to climate change also received the most majority support this year. There were 11 majority-supported proposals, including requests for information on climate

¹³ [2021 Proxy Season Review: Shareholder Proposals on Environmental Matters \(harvard.edu\)](#), Sullivan & Cromwell LLP, August 11, 2021. [2021 Proxy Season Review: Shareholder Proposals on Environmental Matters \(harvard.edu\)](#).

¹⁴ *Shareholder Proposal Developments During the 2021 Proxy Season*, Gibson Dunn, August 19, 2021. ("This year also saw a double-digit increase in the number of shareholder proposals that received majority support (74 in total, up from 50 in 2020), with an increasing number of such proposals focused on issues other than traditional governance topics.")

¹⁵ ISS, 2021 proxy season review United States – Director Elections & Governance.

¹⁶ ISS, *Ibid.*

¹⁷ Harvard Law School Forum on Corporate Governance, *2021 Proxy Season Review: Shareholder Proposals on Environmental Matters*. Cited above.

¹⁸ ISS, 2021 proxy season review United States – Environmental & Social Issues.

lobbying. The media picked up on the activity and reported that several shareholders had targeted the supermajors in the oil and gas industry.

In its “Early Look” at the 2021 proxy season, Georgeson reported record-breaking support for environmental proposals that were filed at Russell 3000 companies. As of early June 2021, 12 of 33 environmental shareholder proposals that reached a vote received majority support, which translates into a passage rate of 36% of environmental proposals voted upon. This is double the number that passed in all of the 2020 proxy season. Of these, five requested transparent disclosure of climate-related lobbying efforts, two requested increased reporting on contributions to, or measures addressing, climate change and four requested the adoption of GHG emissions targets.¹⁹

Climate resolutions on the rise

Several high-profile environmental proposals were filed by specific investor groups: the Climate Action 100+ Alliance, Follow This, As You Sow, and Engine No. 1. They were responsible for the filing of environmental proposals in the United States as well as in Europe. Three GHG-related emissions proposals were filed at oil majors Philips66, ConocoPhillips, and Chevron Corp, which received 80%, 58% and 61% of shareholders’ votes respectively. The proposal filed by Follow This at Chevron called for the company to substantially reduce emissions not from their own operations (Scope 1 and 2 emissions), but from the end use of their product (Scope 3 emissions). Engine No.1 successfully campaigned for, and won, three board seats at Exxon Mobil Corp. based in part on their argument that the firm had not appropriately moved to address climate risk to date.²⁰

In Europe, there was increased support for climate resolutions filed at oil majors BP and Royal Dutch Shell. The climate resolution at Royal Dutch Shell filed by Follow This gained support of over 30% of the votes in 2021, which is a sharp increase from last year's vote where a similar resolution won 14.4% support.²¹

In South Africa, climate disclosure resolutions were filed with BHP Group plc, SASOL Limited, and Standard Bank Group Limited (although the company refused to table the resolution citing legal reasons referred to further below). The BHP Group meeting was held on November 12th and the results for the climate-related lobbying proposal show that it did not pass as a valid resolution.²²

In the case of the shareholder resolution filed at Standard Bank Group Ltd., the company responded as follows:

The Proposed Resolution “recommends and requests” that “the Company and its directors, include in its reporting to shareholders for the year ending 31 December 2021, the Company’s plans, if any, to set and publish a strategy, and short-, medium-, and long-term targets, to reduce its exposure to fossil fuel assets on a timeline aligned with the goals of the Paris Agreement (the “Paris goals”).

We are pleased to be able to inform you that Standard Bank is already committed to publishing, either in its reporting to shareholders for the year ending 31 December 2021, or within a reasonable

¹⁹ Georgeson, An Early Look at the 2021 Proxy Season, June 2, 2021, [Georgeson-Early-Proxy-Season-Review.pdf](#)

²⁰ Ibid.

²¹ Support for Follow This climate resolution more than doubles, signaling dissent over Shell's climate plan ([follow-this.org](#))

²² [BHP \(afr.com\)](#)

period after that, a strategy and targets to reduce its exposure to fossil fuel assets on a timeline aligned with the Paris Goals.

Accordingly, there is no reason for the Proposed Resolution to be tabled at the 27 May AGM.²³

The SASOL Limited AGM was held on 19 November. The Company reported that the “Non-binding advisory resolution number 3: To endorse, on a non-binding advisory basis, the Company’s 2021 Climate Change Report which sets out Sasol’s climate change ambition, strategy and its actions”, with 72.90% of shares voting, received 96.63% of votes received, with 3.37% against, and 1.32% abstained.²⁴

III. What makes a good shareholder proposal?

What becomes clear from these voting statistics is that while not all proposals are receiving majority support from shareholders, the support is increasing. Some companies have supermajority voting requirements in place that may call for 67% or greater before a proposal will receive the requisite amount of support needed. Majority support of a shareholder proposal, however, is not always needed to effect change. Significant levels of support (e.g., 20-30%) may put some pressure on a company’s board and management to consider the suggested changes and continue dialogue with shareholders.

In some jurisdictions, such as the United Kingdom, boards must consider a proposal when a significant minority of the shareholders supports a proposal. The UK Corporate Governance Code states that when 20 percent or more of votes have been cast against the board recommendation for a resolution, the company should explain what actions it intends to take to consult shareholders in order to understand the reasons behind the result.²⁵

Key provisions of shareholder proposals

It is worth noting that not all shareholder proposals are well-written or thought-through. There have been cases of proposals filed by activist groups who had bought ‘action shares’ for the purposes of political theatre at company AGMs. In other cases, proposals can be unduly general and misdirected. For example, on one occasion a shareholder proposal was filed for the AGM in an *in-situ* oil sands company, asking the company to enhance disclosure on tailings pond management. However, as *in-situ* producers, they do not have tailings ponds. A poorly drafted or targeted proposal can have the effect of impacting investor credibility in engaging with companies.

What makes a good shareholder proposal that may gain adequate support levels? From the discussions with institutional investors and experts about the qualities of a good shareholder proposal, it becomes clear that several factors may have an impact on the success of a shareholder proposal:

1. A proposal should be specific to the company where it is filed;

²³ [Standard Bank response to filing of proposed non-binding shareholder resolution](#), May 6, 2021.

²⁴ [Results of the annual general meeting of Sasol held on Friday, 19 November 2021 | Sasol](#)

²⁵ UK Corporate Governance Code, [2018-UK-Corporate-Governance-Code-FINAL.PDF \(frc.org.uk\)](#)

2. The proposal should address a significant gap in either shareholder rights or issuer reporting, and management of material environmental, social and, governance risks;
3. The proposal should be worded to meet regulatory requirements, i.e., wording to adhere to specific actions and meets regulatory requirements;
4. The proposal should be as clear as possible in articulating the actions expected of an issuer or the board; and
5. The proposal should be feasible, practical, timely, and proportional to the remedy sought.

What comes first? Dialogue or a shareholder proposal?

The filing of a shareholder proposal can be a powerful tool when it is preceded by dialogue with a company’s management or board. Most institutional investors will first enter into a dialogue with the corporation on a certain topic before a proposal is filed, a recommended practice by ICGN.²⁶ Larger-sized institutional investors or investors with higher levels of ownership, may have better access to corporate boards, which facilitates the dialogue with senior management, board representatives, or members of the (supervisory) board. There are investors who prefer to file a proposal first and then work to negotiate its withdrawal after a successful agreement with an issuer.

The filer’s identity may be an important factor for some investors, where it is known. A proposal that has been filed by a well-respected asset manager or institutional investor, with a well-reasoned case for support, may resonate with other investors. One important factor may be that the larger asset managers and investors have the ability to communicate effectively with fellow institutional shareholders and may have more extensive resources for advocating for the support of the proposal.

IV. Hurdles in the process of (co)-filing proposals

Institutional investors and interest organizations with experience in the process of filing shareholder proposals indicate that similar hurdles are routinely encountered across markets. Some of these hurdles are such that they may serve to discourage shareholders from utilizing the instrument of filing shareholder proposals. In some jurisdictions, (co)-filing a shareholder proposal is a straightforward process, with low ownership thresholds in place to facilitate the filing. Whereas in other countries, the process is more complex with challenging hurdles to overcome, including higher ownership thresholds.

A. Legal hurdles

The obstacle that was most often mentioned during the interviews, was the difference in the threshold requirement for filing a proposal, including countries within the European Union. While in some countries only a nominal value of shares is required to file a proposal, in other jurisdictions the threshold can be as high as 10% of stated capital. Also, the time-period between when a company needs to be notified of a proposal’s filing and the date of the shareholder meeting or the setting of the record date differs per jurisdiction. The following table provides information for country requirements in a range of leading global markets:

²⁶ [ICGN Global Stewardship Principles 2020](#), p. 19.

Jurisdiction	Threshold for filing a proposal	Deadline
Australia	The voting rights shareholders currently enjoy in Australia include a mechanism to put resolutions on general meeting agenda under s 249N of the Act if the threshold of 5% shareholding or 100 shareholders is met. However, s 249D requisitions to the company to call a meeting of members are restricted to shareholders who are able to command the minimum 5% threshold.	There needs to be sufficient time to be incorporated in the notice of meeting without additional costs to company beyond added size of notice. Listed companies have to post/distribute notice of meeting no less than 28 days prior to company meeting, and where they are posting the notice to widely dispersed shareholders, they may send it 2 to 3 weeks before that date. Printing timelines may also be impacted by COVID-19. You will typically need to allow an additional 21 to 42 days to allow for design and printing. Sensible practice is to contact the company to ask when they will need it - and in case the company is not as upstanding as most, document the answer and comply with dates. They can't wilfully obstruct.
Canada (Federal)	Under the <i>Canada Business Corporations Act</i> , a shareholder wishing to submit a proposal must hold not less than 1% of the total number of voting shares or voting shares with a fair market value of at least \$2,000.	90 days before anniversary date of notice of meeting for previous annual meeting of shareholders.
Select Provinces	Alberta	Not less than 1% of the total number of voting shares or voting shares with a fair market value of at least \$2,000. The proposal must also be supported by shareholders holding at least 5% of the total number of voting shares.
	British Columbia	Not less than 1% of the total number of voting shares or voting shares with a fair market value of at least \$2,000. If shareholder does not meet minimum shareholdings/period requirements, must have support of one or more other shareholders who do meet such requirements.
	Ontario	The Ontario's <i>Business Corporations Act</i> provides that shareholder must be entitled to vote at the annual meeting of shareholders.
	Quebec	Not less than 1% of the total number of voting shares or voting shares with a fair market value of at least \$2,000. If shareholder does not meet minimum shareholdings/period requirements, must have support of one or more other shareholders who do meet such requirements.
France	5% of share capital.	25 days' notice.
Germany	5% of share capital or equivalent to EUR 500,000.	30 days' notice.
Italy	2.5% of share capital.	10 days' notice.
Japan	At least either 1% of the voting rights or 300 voting rights, and who has held those shares for a continuous period of at least six months.	A shareholder needs to submit its shareholder proposal within 8 weeks prior to the AGM, except stipulated otherwise earlier than 8 weeks in the articles of incorporation. The articles of incorporation are revised by two thirds votes at AGMs.
Netherlands	3% of share capital (although the company's bylaws can stipulate a lower threshold).	60 days' notice.
South Africa	Any two shareholders may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights.	21 days' notice accompanied with sufficient explanatory material.
Spain	3% of share capital.	5 days' notice.
Sweden	Any shareholder holding at least 1 share.	The matter must be addressed at the general meeting if the request from the shareholder is received by the board no later than seven weeks prior to the general meeting, or at a later date, if the request is submitted in due time for the matter to be included in the notice to attend the general meeting.
Switzerland	10% of the stated capital or hold shares with a par value of CHF1 million.	Upon receipt of a request to call an extraordinary general meeting, the board must comply with the request within a reasonable period. According to precedents, this generally means between four and eight weeks, depending on the circumstances. Pursuant to the Swiss Corporate Law Reform Bill, the board will have to comply with the request at the latest within 60 calendar days.
United Kingdom	5% of share capital or 100 members with shares having an aggregate value of at least £10,000.	
United States	As of January 1, 2022-1) A shareholder must have continuously held: (A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or (B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or (C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or (D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and (ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted;	Under Rule 14a-8(e), the shareholder must ensure that its proposal is received at the company's principal executive offices not fewer than 120 calendar days before the date on which the company released its definitive proxy statement in the previous year. This deadline normally is disclosed in the company's proxy statement from the prior year. (iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. ²⁷

B. Legal thresholds for filing shareholder proposals

It is not always entirely clear under the rules what types of proposals are permissible. In the United States, for example, issuers can file no-action requests²⁸ with the Securities and Exchange Commission (SEC).²⁹ Investors and experts observe that the SEC does publish its response to an issuer, which confirms whether it will or will not recommend enforcement action relating to the issuer's proposed exclusion of the proposal, as long as the specific facts and circumstances presented by the issuer do not change. In other jurisdictions, such as Germany, companies have quite a bit of influence over what should be on the agenda.³⁰ Another interviewed investor indicated that they faced challenges filing a proposal in the Netherlands that was considered to be related to the company's strategy. Therefore, they decided to file a discussion item at the Annual General Meeting instead of a shareholder proposal. Also, in other jurisdictions, such as South Africa, there are legal hurdles in place that prohibit shareholder proposals that direct company strategy.

In some global markets, it is still an open question whether shareholders are entitled to exercise their voting rights over ESG matters. "Strategic direction" is generally considered to remain strictly under the purview of board responsibilities and shareholders are prohibited from influencing such decisions through the filing of shareholder proposals. Shareholder engagement with company management and board members on ESG matters would be necessary.

C. Resources Necessary

Filing or co-filing a shareholder proposal may require a review of resources, including the internal or external resources needed as a result of the documentation to be drafted and filed by staff, any costs that may need to be incurred for assistance and time spent educating investors on the proposal, among other factors. One important consideration is to ensure that whatever level of capital or share value required by the country's regulations is held continuously from the time of the filing until after the annual general meeting (AGM), if required. Some investors may need to consider different allocation strategies to meet and fulfil these holding requirements.

D. Internal and External Resources

As the (co-)filing of a shareholder proposal is not everyday business for most institutional investors, they may need to spend time and resources understanding the process for filing a resolution or proposal. This responsibility can often fall on the governance, stewardship and/or ESG team who must also draw on experts from Investments, Legal and Compliance as well.

²⁷ The SEC's announced its Reg Flex Agenda in June 2021 indicates that the SEC intends to revisit Rule 14a-8 as a new rulemaking item on the September 2020 amendments. [Agency Rule List - Spring 2021 \(reginfo.gov\)](#).

²⁸ The Division of Corporation Finance receives requests from companies to state its informal, non-binding views on whether it concurs that there is a legal basis to exclude shareholder proposals under Exchange Act Rule 14a-8 ("Rule 14a-8"). For information on the Division's processing of Rule 14a-8 no-action requests, see our [informal procedures regarding shareholder proposals](#). [SEC.gov | Shareholder Proposal No-Action Responses Issued Under Exchange Act Rule 14a-8](#)

²⁹ See, e.g. The SEC Shareholder Proposal No-Action Responses Database available at <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/shareholder-proposal-no-action-responses.htm>

³⁰ [Germany Introduces 'Virtual' General Meetings for Public Companies - Skadden, Arps, Slate, Meagher & Flom LLP, April 3, 2020.](#)

Some investors may need to hire external resources, including legal counsel that specialize in securities law.

It is important to remember that filing the proposal is not the end of the matter. While individuals may file a proposal that passes all legal and regulatory requirements, those same individuals also likely to spend considerable time engaging with both the company representatives and other investors. In addition, to garner support, they may want to explain their rationale for filing to other stakeholders, who may be located all over the world.

E. Proof of Ownership

Companies (and some regulators) are routinely requiring that shareholders provide documentation that the requisite holding periods have been met. Arranging the necessary Proof of Ownership with the investor's custodian bank can take some time and may, under some circumstances, be challenging to acquire.

The structure of the holdings also plays a role. Where an investor holds shares in multiple accounts, a proof of ownership is likely required for the funds which will be set aside to meet the threshold requirements over the duration of the process. Such proof is especially difficult where an investor holds its shares only in co-mingled funds. As a result, filing parties may only have the capability of receiving Proof of Ownership for a portion of the holdings.

F. Costs

The range of costs associated with filing can vary by jurisdiction and factors can vary by filer. Parties that do not have the legal expertise in-house may need to consult outside counsel to advise on the filing requirements, draft a satisfactory proposal, and generally navigate the process all the way from the initial submission all the way through to the annual shareholder meeting.

During our interviews, we heard from filers that legal advice was necessary where a company located in the United States filed a no-action request with the SEC. One investor also incurred considerable legal costs filing at a corporation that was dual listed in the United States and Canada. In order to deal with the complexities that arose as a result of the dual listing, both US and Canadian attorneys were consulted.

G. Liquidity Risk

There is some liquidity risk associated with filing a proposal. Most jurisdictions require filing parties to hold shares through the date of the annual shareholder meeting. Filers, therefore, take on some liquidity risk between the date of filing and the AGM because they cannot sell at least a portion of their shares or loan those shares in that window of time. The threshold levels differ between countries; therefore, it is important to check on any investment impact on the holding requirements.

H. Communication

The communication strategy to align interests with other shareholders in order to educate about a proposal can be quite time intensive. This can be challenging for smaller investors and special interest groups that lack direct access to larger investor networks. There are a few centralized channels available for promoting a proposal, by way of memberships in international and national organizations that provide member access to upcoming proxy season proposal discussions. In the end, it is up to the investor to spend whatever time is necessary to bring the proposal to the attention of fellow shareholders. Some funds may not wish to or be able to participate in the proposal process, given that the subject matter may be viewed as contentious or from an activist standpoint.

The type of proposal to be filed may matter when setting the communication strategy with other shareholders. There is currently a significant focus on environmental policies and practices of listed corporations, following the concerns with climate change and concerns with Scope 1, 2 and 3 emissions. Some investors are relatively more willing to review and support proposals filed in this area and to meet with the proponents.

V. Best practices for optimizing the filing of proposals

A. More uniformity in holding requirements and filing deadlines

Most parties surveyed recommended lower legal ownership thresholds to make the ballots more accessible for retail and institutional investors. Greater uniformity of such thresholds between jurisdictions would also facilitate the filing process for global owners. Even within the European Union, there are significant differences between holding requirements to be eligible to file a proposal. In several jurisdictions there are currently ongoing discussions about lowering the legal threshold. In Switzerland, for example, new legislation will enter into force that will lower the holding requirement from 10% of outstanding share capital to 0.5%.³¹

B. Clarity, specificity, and explanatory material

As noted earlier, a shareholder proposal should be drafted with sufficient clarity and specificity on the issue, accompanied by sufficient information or explanatory material to enable other shareholders to determine whether to support it. The key provisions in the proposal should be relevant to all shareholders, seek to promote the long-term success of the company and its ability to generate sustainable value.

C. Consistency about the type of proposals that are permissible

In the United States, a broad range of topics are being addressed through shareholder proposals. There is a procedure in place through the SEC for companies that wish to challenge

³¹ [Corporate Governance and Directors' Duties in Switzerland: Overview \(thomsonreuters.com\)](https://www.thomsonreuters.com)

submitted proposals. U.S. issuers have the opportunity to file a no-action request with the SEC.³² In other jurisdictions, there is less clarity about what type of proposals are permissible and there is typically no streamlined process in place when a company disputes a proposal. It would be useful for all markets to have an established protocol for issuers to agree to or challenge shareholder proposals.

D. Option of electronic filing to lower the administrative burden

The filing of shareholder proposals comes with an administrative burden that takes up in-house resources and should be considered by proponents. The cost of filing a proposal, including any liquidity risk, should be considered by an investor. The benefit of a shareholder right that could be gained versus any costs is an important consideration.³²

Companies have also expressed the view that shareholder proposals can raise costs. In the U.S. Society for Corporate Governance survey of public company members, 41% estimated their company's monetary costs of addressing shareholder proposals is between \$10,000 to more than \$200,000 in any given year. The disparate range is due to differing company practices about how they resource responding to shareholder proposals and whether they track the costs of internally resourced strategies. A key variable is the use of outside counsel, usually with respect to the drafting and filing of no-action letters. A 2019 study by the Center for Capital Markets Competitiveness found that such costs average \$87,000 per proposal, which is consistent with Society member experience.³³

Due to the Covid-19 pandemic, it became possible to file all necessary paperwork electronically. One result is that the administrative burden has been lowered to some degree. There is the possibility that regulators will provide investors with the ability to file shareholder proposals or resolutions electronically in the future.

E. Lowering the approval threshold

In some jurisdictions, shareholder proposals need to receive the support of a supermajority of investors, up to 75% or more of share capital before being adopted. This is a high supermajority threshold. A lower threshold of 50% + 1, or a simple majority of investors, is generally considered a more effective measure of shareholder support and is a leading practice.

F. Improving communication for educating on shareholder proposals

³² [A]n adequate economic analysis should take into account these "indirect" benefits of the ability to submit shareholder proposals and thus the "indirect" costs resulting from a significant tightening of the submission and re-submission rules. To this end, the analysis should consider the literature and available evidence on engagements and changes that are produced without a shareholder proposal going to a vote. For example, the analysis should examine empirically the incidence of companies adopting annual elections without the passage of a shareholder proposal to make such a change but following the passage of such proposals in many other companies, by Lucian Bebchuk (Harvard Law School), on February 5, 2020 [The Economics of Shareholder Proposal Rules \(harvard.edu\)](#).

³³ Society of Corporate Governance Letter, February 3, 2020 to the SEC, re: Procedural Requirements and Resubmission Thresholds under Exchange Act 14a-8. [sec.gov](#), p.1.

There is currently no adequate centralized channel available for discussing and promoting a shareholder proposal. Companies generally are required or may agree to include proposals in their proxy statements but may not support the actual proposals. The investor or group of investors must gain support from other investors, stakeholders, and interest groups to adequately explain and seek support for their proposals.

In the United States, proponents of a shareholder proposal, for example, have the opportunity to run a so-called ‘exempt solicitation’.³⁴ An exempt solicitation can provide a cost-effective way for proponents to express their views and lobby fellow shareholders. Exempt solicitations can also, however, become expensive endeavours, which can entail significant spending by issuers and investors to obtain a majority of votes.

In most jurisdictions, the possibility for effectively communicating with fellow shareholders about a proposal is limited. At the moment, investors and interest groups that filed a proposal occasionally organize so called “proxy debriefs”. This allows them to better understand the voting behaviour of shareholders *ex ante* and make certain improvements when they need to refile the proposal.

G. Disclosing the identity of shareholder proponents

During the 2020 proxy season there was an increase in the number and proportion of undisclosed shareholder proponents.³⁵ This means that companies did not include the names of the shareholders (co-)filing the proposal in their proxy statements. Disclosing the identity of the proponent provides investors with crucial information as to the nature and ultimate intention of the proposal being submitted to a vote. We view this as leading practice.

Conclusion

ICGN encourages its members to make effective use of all available shareholder rights to hold corporations and their boards to account. This includes utilizing voting rights and addressing risks in a company’s ESG policies and practices, through dialogue and engagement. From discussions with institutional investors and interest groups, it was clear that the filing of a shareholder proposal or resolution should not be regarded as an antagonistic move against a company; rather, it should be viewed as a natural extension of ongoing engagement. An investor’s decision to file a proposal typically comes into scope after a substantive period of dialogue and engagement with a company that did not lead to an agreement. While many companies may not be receptive to the filing of a proposal, some companies will agree to add the shareholder proposal to the ballot in order to allow shareholders to vote “for” or “against” it or file their own management proposal.

³⁴ Exempt solicitation- SEC Exchange Act Rule 14a-6(g)(1) requires that any person who engages in a solicitation pursuant to Exchange Act Rule 14a-2(b)(1) and beneficially owns over \$5 million of the class of securities that is the subject of the solicitation to furnish or mail to the Commission a statement containing the information specified in the Notice of Exempt Solicitation (Exchange Act Rule 14a-103) no later than three days after the date the written solicitation is first sent or given to any security holder, August 2, 2018. [SEC Issues C&DIs on Exempt Solicitations | Stinson - Corporate & Securities Law Blog - JDSupra](#).

³⁵ 2020 proxy season review shareholder proposals, Glass Lewis (2020). [2020 Proxy Season Review Shareholder Proposals \(glasslewis.com\)](#)

Where the opportunity for filing a proposal is diligently utilized, it can be an effective instrument to exert additional pressure on corporations to create or revise their ESG policies and practices. The filing of a shareholder proposal serves as an opportunity to place an item on the proxy which management would not have advanced on its own. These proposals may be of interest to regulators, who keep a close eye on the filings and levels of support for particular proposals, such as majority voting and “say on pay”.

ICGN recognizes some companies may be concerned that regulations to increase access to the shareholder proposal process, such as lowering the threshold for filing a shareholder proposal and thereby making the process more accessible, will trigger misuse of the instrument. From the voting statistics reported during the recent proxy season, and a historical review of previous seasons, a limited number of proposals received enough votes to indicate overall support; the proposals dealt with climate risks and social issues primarily. In some cases, proposals did not garner enough votes overall, however, they may have reached high enough voting levels that management should consider implementation.³⁶

While it is unlikely that all companies will acquiesce to investor demands when confronted with shareholder proposals, they may file their own management proposals to counter them. Some companies will allow a shareholder proposal to be included on the ballot as a way to gauge shareholder support. As noted in earlier proxy reports, some proposals are refiled over a period of years in the effort to gain majority support.

The leading practices as suggested in this Viewpoint are meant to inform institutional and other investors as they consider whether to file or co-file resolutions at companies. Pursuing these best practices will thereby ensure that shareholder proposals become even more effective instruments to effectuate the changes being sought and needed at companies.

ICGN Viewpoints

ICGN Viewpoints are produced by Secretariat and by our member-led Policy Committees. While not defining a formal ICGN position on the subject, they provide opinion on emerging corporate governance issues and are intended to inform and generate debate. This ICGN Viewpoint was written by Bram Hendriks, a member of ICGN’s Global Governance Committee.

We welcome dialogue with the ICGN Secretariat and/or Committee members, as follows:

Bram Hendriks, **ICGN Global Stewardship Committee**, principal author
Catherine McCall, Chair, **Global Stewardship Committee**

Carol Nolan Drake, **ICGN Secretariat’s Office**: carol.nolandrake@icgn.org

³⁶ Average support for social proposals increased to 32.6%, compared to approximately 27% average support in both the 2020 and 2019 seasons. [2021 Annual Corporate Governance Review \(harvard.edu\)](#).