

A GUIDE TO FILING IMPACTFUL SHAREHOLDER PROPOSALS

FEBRUARY 2023



THE SIX PRINCIPLES

PREAMBLE TO THE PRINCIPLES

As institutional investors, we have a duty to act in the best long-term interests of our beneficiaries. In this fiduciary role, we believe that environmental, social, and governance (ESG) issues can affect the performance of investment portfolios (to varying degrees across companies, sectors, regions, asset classes and through time). We also recognise that applying these Principles may better align investors with broader objectives of society. Therefore, where consistent with our fiduciary responsibilities, we commit to the following:

- 1 We will incorporate ESG issues into investment analysis and decision-making processes.
- 2 We will be active owners and incorporate ESG issues into our ownership policies and practices.
- 3 We will seek appropriate disclosure on ESG issues by the entities in which we invest.
- 4 We will promote acceptance and implementation of the Principles within the investment industry.
- 5 We will work together to enhance our effectiveness in implementing the Principles.
- 6 We will each report on our activities and progress towards implementing the Principles.



PRI's MISSION

We believe that an economically efficient, sustainable global financial system is a necessity for long-term value creation. Such a system will reward long-term, responsible investment and benefit the environment and society as a whole.

The PRI will work to achieve this sustainable global financial system by encouraging adoption of the Principles and collaboration on their implementation; by fostering good governance, integrity and accountability; and by addressing obstacles to a sustainable financial system that lie within market practices, structures and regulation.

PRI DISCLAIMER

The information contained on this document is meant for the purposes of information only and is not intended to be investment, legal, tax or other advice, nor is it intended to be relied upon in making an investment or other decision. All content is provided with the understanding that the authors and publishers are not providing advice on legal, economic, investment or other professional issues and services. PRI Association is not responsible for the content of websites and information resources that may be referenced. The access provided to these sites or the provision of such information resources does not constitute an endorsement by PRI Association of the information contained therein. PRI Association is not responsible for any errors or omissions, for any decision made or action taken based on information on this document or for any loss or damage arising from or caused by such decision or action. All information is provided "as-is" with no guarantee of completeness, accuracy or timeliness, or of the results obtained from the use of this information, and without warranty of any kind, expressed or implied.

Content authored by PRI Association

For content authored by PRI Association, except where expressly stated otherwise, the opinions, recommendations, findings, interpretations and conclusions expressed are those of PRI Association alone, and do not necessarily represent the views of any contributors or any signatories to the Principles for Responsible Investment (individually or as a whole). It should not be inferred that any other organisation referenced endorses or agrees with any conclusions set out. The inclusion of company examples does not in any way constitute an endorsement of these organisations by PRI Association or the signatories to the Principles for Responsible Investment. While we have endeavoured to ensure that information has been obtained from reliable and up-to-date sources, the changing nature of statistics, laws, rules and regulations may result in delays, omissions or inaccuracies in information.

Content authored by third parties

The accuracy of any content provided by an external contributor remains the responsibility of such external contributor. The views expressed in any content provided by external contributors are those of the external contributor(s) alone, and are neither endorsed by, nor necessarily correspond with, the views of PRI Association or any signatories to the Principles for Responsible Investment other than the external contributor(s) named as authors.

CONTENTS

EXECUTIVE SUMMARY	5
ABOUT THIS PAPER	9
INTRODUCTION	10
SHAREHOLDER PROPOSALS: PART OF A STEWARDSHIP STRATEGY	13
SHAREHOLDER RIGHTS AND ELIGIBILITY	17
DRAFTING A SHAREHOLDER PROPOSAL	21
FILING A SHAREHOLDER PROPOSAL	23
CO-FILING A SHAREHOLDER PROPOSAL	24
POST-FILING ENGAGEMENT	26
GATHERING SUPPORT FOR A SHAREHOLDER PROPOSAL	27
AT THE ANNUAL GENERAL MEETING	30
AFTER THE VOTE	31

ACKNOWLEDGEMENTS

The PRI would like to thank the following individuals for participating in interviews and providing valuable input and feedback on this paper:

- Dan Gocher, Director of Climate and Environment, Australasian Centre for Corporate Responsibility
- Clare Richards, Senior Engagement Manager, Church of England Pensions Board
- Alice Evans, Managing Director, Responsible Investment, Columbia Threadneedle Investments
- Dr Anna Irmisch, Advisor, Engagement International
- Matthias Narr, Head of Engagement International, Ethos Foundation
- Akemi Yamasaki, Chief Consultant, Japan Shareholder Services
- Tracey Edwards, Director, Just Share
- David Sheasby, Head of Stewardship and ESG, Martin Currie Investment Management
- Sarah Couturier-Tanoh, Manager Corporate Engagement and Advocacy, SHARE
- Michael Kind, Senior Campaigns Manager, ShareAction
- Sanford Lewis, Attorney and Director, Shareholder Rights Group
- Stephen Miles, Head of Equities and Investment Stewardship, WTW

The following resources were particularly useful in preparing this paper:

- Client Earth's [Know Your Rights](#): a guide for institutional investor on climate-related shareholder resolution law, covering 13 European markets
- Client Earth and AIGCC's [Net zero engagement in Asia: A guide to shareholder climate resolutions](#): supporting institutional investors to consider shareholder resolutions as part of effective engagement with companies on climate-related matters in 11 key Asian jurisdictions: Japan, South Korea, the People's Republic of China, Hong Kong SAR, India, Thailand, Vietnam, the Philippines, Malaysia, Singapore, and Indonesia
- ICCR's [How to File a Shareholder Resolution](#): includes a detailed explanation of filing requirements in the US, as well as strategies for boosting a resolution's vote
- Thomson Reuter's [Practical Law](#): an online resource for lawyers that includes practice notes, standard documents, checklists, forms, legal updates, global guides, and more
- ShareAction's [UK Guide to Shareholder Resolutions](#): a practical guide setting out the legal and technical requirements of filing a shareholder resolution in the UK, and how to overcome associated challenges
- The [Harvard Law School Forum on Corporate Governance](#): an online resource for discourse in the areas of corporate governance and financial regulation

EXECUTIVE SUMMARY

ABOUT THIS PAPER

This paper guides investors as to how they can use shareholder proposals to drive improvements at investee companies on matters related to environmental, social and governance (ESG) issues. Country-specific [factsheets](#) have also been developed to provide an overview of the key legal and technical processes related to filing a shareholder proposal in Australia, Canada, France, Germany, Japan, South Africa, the UK and the US.

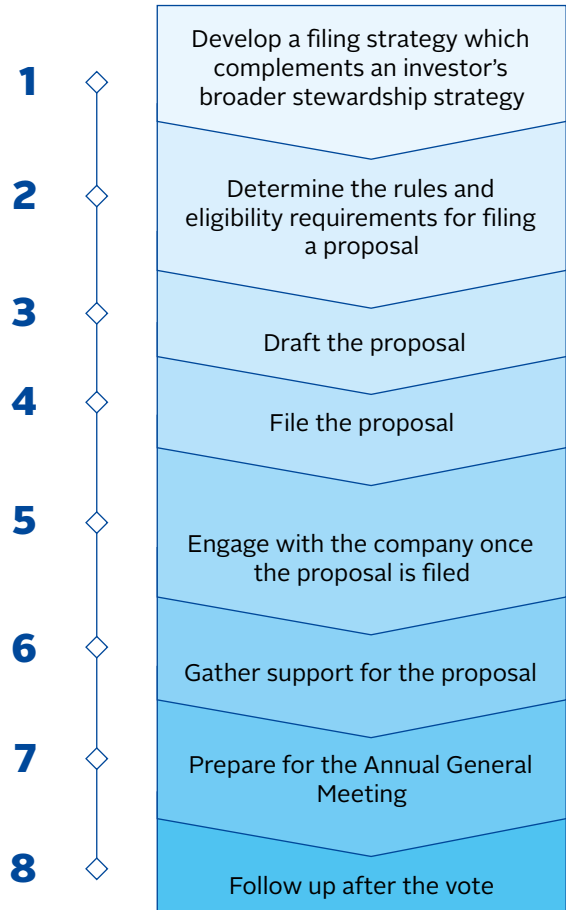
INTRODUCTION

A shareholder proposal is a resolution that is put forward by a single shareholder, or group of shareholders, to a company board, asking for a matter to be voted upon at the company's Annual General Meeting (AGM). It is an important stewardship tool that focuses efforts on a concrete call to action.

Shareholder proposals are an important corporate engagement mechanism. They allow investors to use their formal rights as owners to publicly and transparently escalate important matters, and directly interact with a company's board.

The number of shareholder proposals focused on ESG issues has grown dramatically and is part of a wider trend of growing investor stewardship. There are several drivers, including the increase in [stewardship codes](#) requiring investors to disclose how they have exercised their voting rights, and pressure on investors to be responsible stewards of their beneficiaries' capital.

Filing a shareholder proposal usually entails the following steps:



SHAREHOLDER PROPOSALS: PART OF A STEWARDSHIP STRATEGY

Filing a shareholder proposal should be in line with an investor's overall stewardship strategy, objectives and voting principles / policies. This means determining when, how and why filing a shareholder proposal will meet or contribute to the investor's broader stewardship objectives.

Filing shareholder proposals is just one of the many stewardship tools or uses of influence available to investors. Investors looking to influence a company's ESG policies and practices should decide which combination of tools are most likely to influence a company's behaviour and / or drive progress on sustainability outcomes.

When filing shareholder proposals, investors' contribution to positive sustainability outcomes can be maximised where there is alignment between:

- **the issue / topic** (prioritising ESG issues that relate to systematic risks or those where their portfolio generates the most significant sustainability outcomes)
- **the target company / companies** (identifying target companies where there is the greatest opportunity to trigger significant improvements in sustainability performance)
- **the level of ambition** (considering how a proposal can mitigate systematic risks and drive progress on sustainability outcomes rather than only seeking improvements on disclosures and current practice)
- **the tools** (considering whether a shareholder proposal is the right tool, and where it may need to be supplemented by a combination of other levers)

SHAREHOLDER RIGHTS AND ELIGIBILITY

Investors wishing to file a shareholder proposal should be aware of aspects including: the investors' right to file; the constraints on the scope and content of proposals; the rules set by securities regulators and exchanges; the company's articles of association / incorporation and any other constitutional documents that shape how the resolution can be presented; and where relevant, case law that may define shareholders' powers and rights in their interactions with company management.

Legislative frameworks can typically be divided into two categories: **1) flexible frameworks** in which shareholders have a clear right to submit a proposal and relative freedom to present a matter to the board; and **2) restrictive frameworks**, in which shareholder proposals must take the form of amendments to the company's constitution or 'bylaws' via special resolution. Generally, these proposals require higher levels of shareholder support to pass, because if passed they often take binding effect as part of the company's constitution or articles of association.

Voting on resolutions can create binding or non-binding outcomes for the company. Any special resolution passed by shareholders becomes part of a company's constitution and creates binding commitments. **Binding votes** are the most forceful form of driving change as a company is legally bound to act if the vote is passed.

Non-binding advisory votes, which are most commonly used for shareholder resolutions in the US and Canada, are less forceful as companies are not legally bound to implement the proposal (regardless of the level of support for the resolution). However, wilfully ignoring a strong vote on a non-binding resolution is a signal of poor shareholder relations. It carries reputational risks for the company and can result in investors and stakeholders deploying escalation measures in the following proxy season.

Once investors understand the legal pathway for filing a shareholder proposal, investors must verify that they are eligible to file. This includes understanding what the threshold is at which a shareholder may file a proposal (with reference to their shareholding) and whether there are any rules regarding the time period that the investor must have held their shares.

DRAFTING A SHAREHOLDER PROPOSAL

The importance of drafting a procedurally correct, comprehensive and persuasive proposal cannot be underestimated. Whilst the approach taken will be adapted to the market in which the target company operates, some general guidelines are set out below.

- Understand the legislative requirements for the relevant market and company
- Connect the proposal ask to the company's circumstances
- Back up the proposal with thorough research and understanding of the issue
- Review investment peers' positions to understand how they will examine ESG proposals and the type of proposal wording they tend to support
- Convey investor affirmation by ensuring the proposal language is constructive and collaborative
- Have one clear focus and consistent ask throughout the proposal with a clear narrative
- Set out the case for why the proposal is relevant and important to investors
- Make the ask achievable and balance the achievability of the ask with the urgency and severity of the issue at hand
- Understand the investor role and take care to avoid overstepping these boundaries

FILING A SHAREHOLDER PROPOSAL

A shareholder proposal submission must be received by the company in good time. Circulation of the AGM notice varies across jurisdictions and company constitutions. So, it is important to seek confirmation of filing dates from company documentation (e.g., the company's previous year's proxy statement) and through contact with the company.

There are some reasons why companies may be permitted to reject or appeal a shareholder proposal from being included on the ballot papers, besides procedural errors in the filing. In some markets, it is possible to appeal when a company rejects a proposal.

CO-FILING A SHAREHOLDER PROPOSAL

Co-filing involves shareholders working together to file a proposal. Reasons to co-file can include to meet the legal threshold for filing a proposal; to reduce liquidity constraints where share ownership or share-blocking rules exist; to help first-time filers navigate the challenges of drafting and filing a proposal; and to demonstrate that a proposal has wide-scale support, and possibly endow the proposal with more legitimacy. Some general guidelines for co-filing are set out below.

- Obtain funding early on and understand how co-filing group members can contribute to costs such as those associated with legal drafting
- Be clear on rules regarding acting in concert and anti-trust in the respective jurisdictions
- Go above and beyond the threshold level required to allow for any changes in stock market values or challenges to demonstrating share ownership
- Target credible co-filers with a demonstrable track record of preparing and submitting thoughtful shareholder proposals, and organisations with experience mobilising support for resolutions
- Co-ordinate and agree on the detail of a draft resolution
- Ensure every co-filer has the correct relevant paperwork well in advance of deadline dates

POST-FILING ENGAGEMENT

Companies often look to negotiate an agreement with filers in return for the proposal being withdrawn. Companies may simply agree to the requested action, look to negotiate on a reduced action, or offer an alternative such as submitting a management-sponsored proposal on the topic. Whether investors are prepared to negotiate, and what they are prepared to accept in return for withdrawing a resolution, depends on their engagement intentions and desired outcomes.

Investors who agree to withdraw a resolution following a corporate commitment should track the company's progress and be prepared to escalate if the company fails to deliver on its commitment. It is advisable that investors request that any commitments made during private negotiations are made public so companies can be held accountable.

GATHERING SUPPORT FOR A SHAREHOLDER PROPOSAL

Investors can consider adopting some of the below recommendations to gather more support for a shareholder proposal, whilst also considering market rules and legislation (such as proxy solicitation in the US) that may restrict the use of some these recommendations.

- Prepare and circulate supplementary material that provides investors with more background to the proposal
- Use investor platforms, such as the PRI's [collaboration platform and resolution database](#) to promote shareholder proposals amongst a large group of investors
- Engage with proxy advisers to ensure they are informed about the proposal and its relevance to investors, and that they make a recommendation based on this information
- Engage directly with individual shareholders and consider prioritising outreach to the company's largest shareholders
- If available, publicise the views of beneficiaries where this is relevant to the ask of the proposal
- Develop a media plan early and aim to engage with all relevant outlets and channels
- Work with other proponents who are filing on a similar topic at other companies

AT THE ANNUAL GENERAL MEETING

A company's AGM is where the board and management engage with shareholders in a public forum to present a summary of the company's performance and strategic plan. For those filing shareholder resolutions, AGMs provide the opportunity to promote their resolution, raise the profile of the issues underpinning the resolution and engage directly with the board. Investors should, therefore, incorporate the AGM into their engagement strategy. The meeting documents generally set out full instructions on how to attend an AGM. The filers of resolutions may also consider contacting the company beforehand to confirm due process for attending and presenting a question.

In some markets, the proponents of a proposal (or an authorised representative of a proponent) are required to attend the AGM to authenticate the submission. Proponents may also be asked to make a short statement in support of the proposal. Filers should be clear on these rules.

AFTER THE VOTE

After the AGM, the company will publish the voting results. The filers of a shareholder resolution should have a post-vote engagement plan, which includes tracking the company's progress in implementing the proposal ask if the vote is successful or deciding on next steps if the vote is unsuccessful. Filers should also consider having a media plan, which includes commenting on the outcomes achieved and the next steps. This post-vote outreach is important to maintain the momentum of the proposal, to continue gathering support on the issue and hold the company accountable to investors' expectations.

Investors may also consider filing a similar shareholder proposal at the company in following years. Whether this is possible depends on the jurisdiction.



ABOUT THIS PAPER

This paper guides investors as to how they can use shareholder proposals to drive improvements at investee companies on matters related to environmental, social and governance (ESG) issues.

We offer practical suggestions to ensure that proposals are effective and impactful. Throughout the report, we set out what factors need to be considered when preparing and building support for a proposal, and we provide examples.

The [country factsheets](#) provide more specific information for Australia, Canada, France, Germany, Japan, South Africa, the UK and the US, and we show how the process of filing a shareholder proposal may vary.

This paper has been informed by a detailed review of the literature on shareholder proposals, an analysis of practice in the eight countries mentioned above and a series of interviews – see [‘Acknowledgements’](#) – with institutional investors, shareholder advocacy organisations and proxy advisers in these jurisdictions.

PREVIOUS WORK: MAKING VOTING COUNT

In our 2021 [Making Voting Count report](#), we identified shareholder proposals as a powerful instrument in investors’ stewardship toolkit. The above report explained how investors can develop high-level principles to govern voting decisions on ESG issues and apply these voting principles consistently when voting. The report recommended that investors should support all resolutions which, if successful, would be consistent with their voting principles, and should oppose those resolutions that would be contrary to their principles.

The information on regulatory requirements and voting statistics in this report are correct as of 2022.



INTRODUCTION

WHAT IS A SHAREHOLDER PROPOSAL?

A shareholder proposal is a resolution¹ that is put forward by a single shareholder, or group of shareholders, to a company board, asking for a matter to be voted upon at the company's Annual General Meeting (AGM). It is an important stewardship tool that focuses efforts on a concrete call to action.

If permissible and unchallenged, and if not withdrawn by the filer, the resolution is put up for a vote by shareholders at the AGM. If the vote is passed, the company is generally expected to take action to implement the resolution. Even if a resolution is unsuccessful, it can still have an influence on the actions taken by the company and its industry peers.

The specific conditions under which a proposal can be filed depend on the market rules and legislation in which the company is based. Market rules and legislation can also determine whether a proposal can impose binding obligations on a company.

WHY ARE SHAREHOLDER PROPOSALS IMPORTANT?

Shareholder proposals are an important corporate engagement mechanism. They allow investors to use their formal rights as owners to escalate important matters in a public and transparent way, and directly interact with a company's board. Filing and voting on shareholder proposals – when used effectively – can also:

- focus efforts on a single, concrete call to action;
- aggregate a wider set of shareholder views on that call to action, including views of those who lack the resources or access to conduct other types of stewardship; and
- express those views as quantitative evidence of support, which resists mischaracterisation by companies, shareholders or commentators, and provides clarity to clients and beneficiaries.

Proposals are particularly important when other stewardship activities have failed to obtain a satisfactory outcome, or where urgent action on a matter is required. This step up in action may be considered more assertive than other stewardship tools; however, investors can articulate how the proposal seeks to support the long-term success of the company and / or the overall sustainability of the financial systems on which companies and investors collectively depend.

Shareholder proposals can provide a solid basis for company action, including:

- improving how a company manages ESG-related risks and opportunities;
- making progress on sustainability outcomes and a company's influence on systematic issues; and
- bringing about wider industry and market change.

TRAJECTORY OF ESG-RELATED SHAREHOLDER PROPOSALS

Filing and voting on shareholder proposals to hold companies to account is not new. However, the number of shareholder proposals focused on ESG issues has grown dramatically. In the US, the most active market, shareholders raised a record 529 proposals related to environmental and social topics for the 2022 AGM season, up 22% from the same point in 2021² and up substantially from an average of 270 per year over the period from 1997 to 2002.³

The increased filing of shareholder proposals is part of a wider trend of growing investor stewardship efforts. There are several drivers, including the growth in stewardship codes requiring investors to disclose how they have exercised their voting rights, and pressure on investors to be responsible stewards of their beneficiaries' capital.⁴

"Stewardship in Japan is in a transition stage and a more diverse group of players are actively engaging with companies. Historically, shareholder proposals were mainly submitted by retail activist investors. However, following the introduction of the Stewardship Code and Corporate Governance Code in 2014-15, institutions have become more willing to use their voting powers and to lodge shareholder proposals."

Akemi Yamasaki, Chief Consultant, ESG, Japan Shareholder Services Ltd

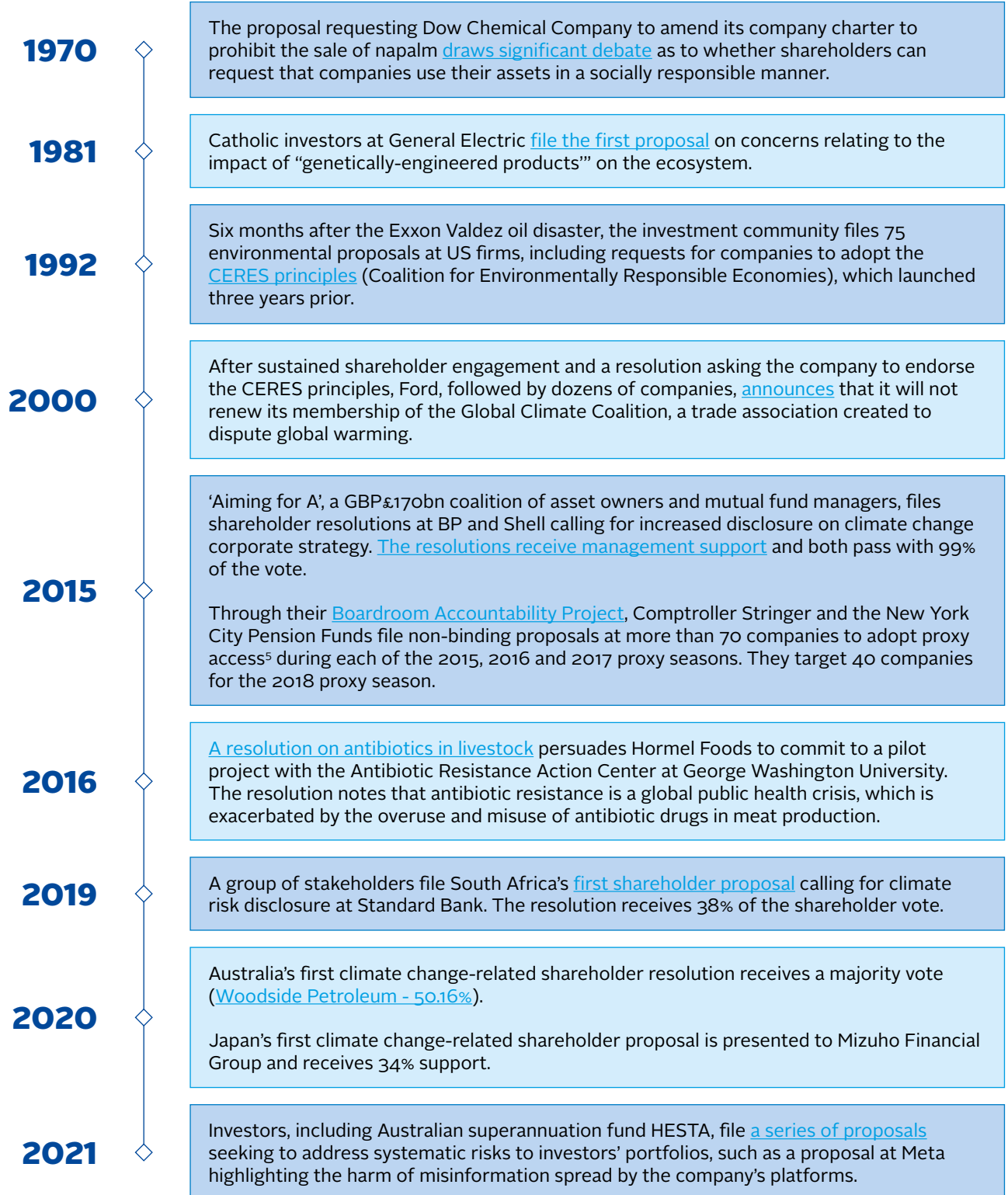
¹ Resolutions are a formal decision passed by vote at a company meeting and are an important part of corporate democracy. Many routine decisions such as approval of the annual report and accounts and director elections are presented as resolutions to be voted on by shareholders at a company's AGM. These are commonly known as management resolutions

² As you Sow (2022), [2022 Proxy Season Overview](#)

³ Levit, D., & Malenko, N. (2011), [Nonbinding Voting for Shareholder Proposals](#). The Journal of Finance, 66 (5), 1579-1614

⁴ PRI (2021), [Understanding and aligning with beneficiaries' sustainability preferences](#)

Figure 1: ESG shareholder proposals: a timeline

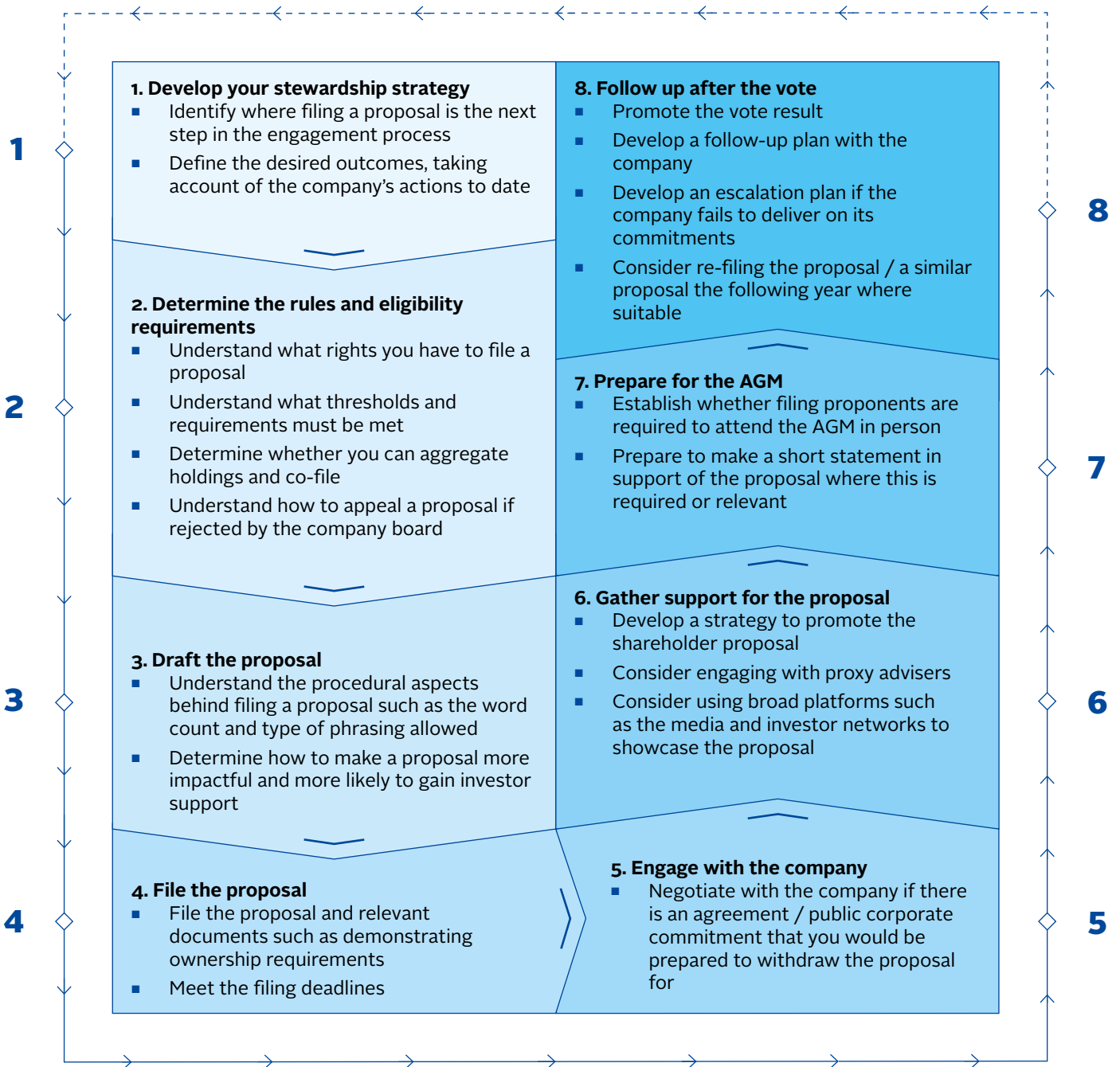


⁵ The [Council of Institutional Investors](#) describes ‘proxy access’ as the ability of an individual or group of long-term shareowners to place a limited number of alternative board candidates on the company’s proxy card (ballot) for the annual shareowner meeting. Proxy access also allows the nominating shareowner to provide a brief description of each alternative candidate in the proxy card’s accompanying document, known as the proxy statement

THE FILING PROCESS

Figure 2: Filing a shareholder proposal: the process

More detail is provided on each of the steps in the following sections.



SHAREHOLDER PROPOSALS: PART OF A STEWARDSHIP STRATEGY

Stewardship is the use of influence by institutional investors to maximise overall long-term value, including the value of common economic, social and environmental assets on which returns, and clients' and beneficiaries' interests depend.

Filing a proposal should be in line with an investor's overall stewardship strategy, objectives and voting principles / policies. **This means determining when, how and why filing a shareholder proposal will meet or contribute to the investor's broader stewardship objectives.**

DEVELOPING A FILING STRATEGY

Filers need to develop a clear plan for how to file a shareholder proposal that would lead to improved company performance on an ESG issue and / or contribute to positive outcomes. Below are some considerations when developing a filing strategy.

- **Impact is dependent on timing, among other factors.** The decision of a company to act on a particular issue may not just be dependent on the urgency or importance of the issue but also on factors such as external pressures, including peer performance and impending regulatory changes.
- **Modest requests can play a role in driving progress.** Shareholder appetite for demanding proposals will depend on the market the proposal is filed in, prominence of the issue and existing company efforts, etc. More highly supported proposals tend to take these factors into account.

A well-supported proposal with a more modest request may also demonstrate the level of interest on a particular ESG issue, encouraging the company and its peers to reconsider its approach to managing and reporting on the issue at hand.

Of course, investors should consider the urgency and severity of the issue and be clear that such modest proposals need to form part of wider efforts to drive improvements in corporate practice and performance. The proposal can act as an entry point for more demanding expectations in the future.

Where it is considered more appropriate to file a proposal with a more modest ask, consider how other stewardship tools can complement the ask of the proposal and drive more ambitious company action. For example, an investor may propose that a company discloses how it plans to manage a particular ESG risk and complement this proposal by using board votes to hold directors accountable where the investor thinks the plan or its delivery is insufficient.

- **Even 'unsuccessful' proposals can be impactful.** The results of a shareholder vote provide a tangible measure of shareholders' views – and success is not always determined by a majority vote. A lower level of support may still be sufficient to encourage a company to act, provide a solid position for future engagement with the company, and play a role in a longer-term strategy to move public and political opinion on an issue.

"Our strategy for shareholder proposals is to move three to five years ahead of policy and regulatory change. By doing so we look to accelerate progress on underrepresented or critical issues. When we look back on the proposals we filed a few years ago (requests for disclosure and climate reporting as part of our longer-term campaign to accelerate Australia's transition to a low-carbon economy) they seem tame and are often now just part of usual business."

■ Dan Gocher, Director of Climate and Environment, Australasian Centre for Corporate Responsibility (ACCR)

THE STEWARDSHIP TOOLKIT

Filing shareholder proposals is just one of the many stewardship tools or uses of influence available to investors. Others include engaging, individually or collectively, with current or potential investees, engaging with policy makers, obtaining positions on investee boards and board committees, as well as potentially more assertive strategies such as calling publicly for action and litigation.

Investors looking to influence a company's ESG policies and practices should decide which combination of tools are most likely to influence a company's behaviour and / or drive progress on sustainability outcomes. The below stewardship tools may be used by investors instead of or alongside filing a shareholder proposal:

- **Investee engagement**, or engaging in dialogue with companies, allows for nuance and clarification and can help to build rapport. However, this richness and flexibility can also introduce ambiguity, as private engagement is undertaken by a range of investors, individually and collaboratively, and there may be different views. One potential result is that a company may exploit minor differences between different shareholders' positions to reduce scrutiny or avoid taking action. Filing and voting on shareholder proposals can allow investors to strengthen engagement by focusing on a concrete call to action that resists mischaracterisation by companies, shareholders, or commentators.
- **Nominating and electing / re-electing directors** gives shareholders the right to appoint and remove members of a company board to represent their interests in promoting long-term value creation. This is a particularly relevant tool when, for example, shareholders would like to hold directors accountable if they do not meet shareholders' expectations, or if board refreshment is needed to ensure the board has the necessary skills to transition to a more sustainable business model. Where investors feel that shareholder proposals are too prescriptive or overstep the boundaries between investor and company, it is particularly important to consider the use of director votes to elect a board of competent directors with aligned interests and hold them accountable when ESG expectations are not met.
- **Divestment** – defined here as a complete exit from the shareholding of a company – is sometimes seen as the final step in an escalation strategy. Investors should distinguish between situations where a negative sustainability outcome relates to particular practices that they could address through filing a shareholder proposal (e.g., human rights issues in apparel supply chains), and where the issue at hand is intrinsic to the business model (e.g., the health effects of tobacco products) and where filing a shareholder proposal is unlikely to bring change. In addition, where an investor is seeking value alignment, (e.g., not wishing to profit from industries or business practices that violate their ethical beliefs) divestment will often be more appropriate, particularly when the business practices at issue are unlikely to change in the medium term.⁶
- **Engagement with policy makers** can be conducted to support sustainable finance policy reform and drive progress on sustainability outcomes.⁷ It includes writing and co-signing letters, responding to policy consultations, and providing technical input via government or regulatory-backed working groups. Investors should consider where engagement with policy makers may be a more appropriate or complementary tool to filing shareholder proposals. For example, seeking company improvements on topics that rely on addressing sector-wide or systemic problems, or setting investor expectations for companies where the asks are of a similar or identical nature across sectors (e.g., sustainability disclosure requests) may be more effectively and efficiently achieved via public policy change.⁸

⁶ PRI (2022), [Discussing divestment: Developing an approach when pursuing sustainability outcomes in listed equities](#)

⁷ The PRI provides [resources, updates and guidance](#) to support investors' policy engagement

⁸ UN-convened Net-Zero Asset Owner Alliance (2022), [The Future of Investor Engagement: A call for systematic stewardship to address systemic climate risk](#)

ALIGNING PROPOSALS WITH ACTIVE OWNERSHIP 2.0

[Active Ownership 2.0](#) is a framework for the more ambitious stewardship that is needed to deliver against beneficiaries' interests and improve the sustainability and resilience of the financial system. Under this framework, investors engage in more effective and assertive stewardship activities to drive progress on sustainability outcomes.

When filing shareholder proposals, investors' contribution to positive sustainability outcomes can be maximised where there is alignment between the issue / topic, the target company/ies, the level of ambition and the tools.

Figure 3: Achieving alignment with the issue, the company, the level of ambition and the tools



THE ISSUE

Investors may prioritise ESG issues that relate to systematic risks or those where their portfolio generates the most significant sustainability outcomes.

THE TARGET COMPANY / COMPANIES

Investors should identify target companies where there is the greatest opportunity to trigger significant improvements in sustainability performance, considering:

- Which companies are outsized contributors to negative sustainability outcomes?
- Where does the investor have the greatest credibility and influence, either with the company or fellow shareholders? For example, where the investor is a major and / or long-term shareholder; where the investor has a history of engagement with the company; or where the company is headquartered in the investor's domestic market.
- Are there companies, due to their size or prominence, where improvements could catalyse broader change among peers or across value chains?
- Conversely, are there overlooked companies that receive less direct attention from shareholders but where investors would still support proposals asking for sustainability improvements?

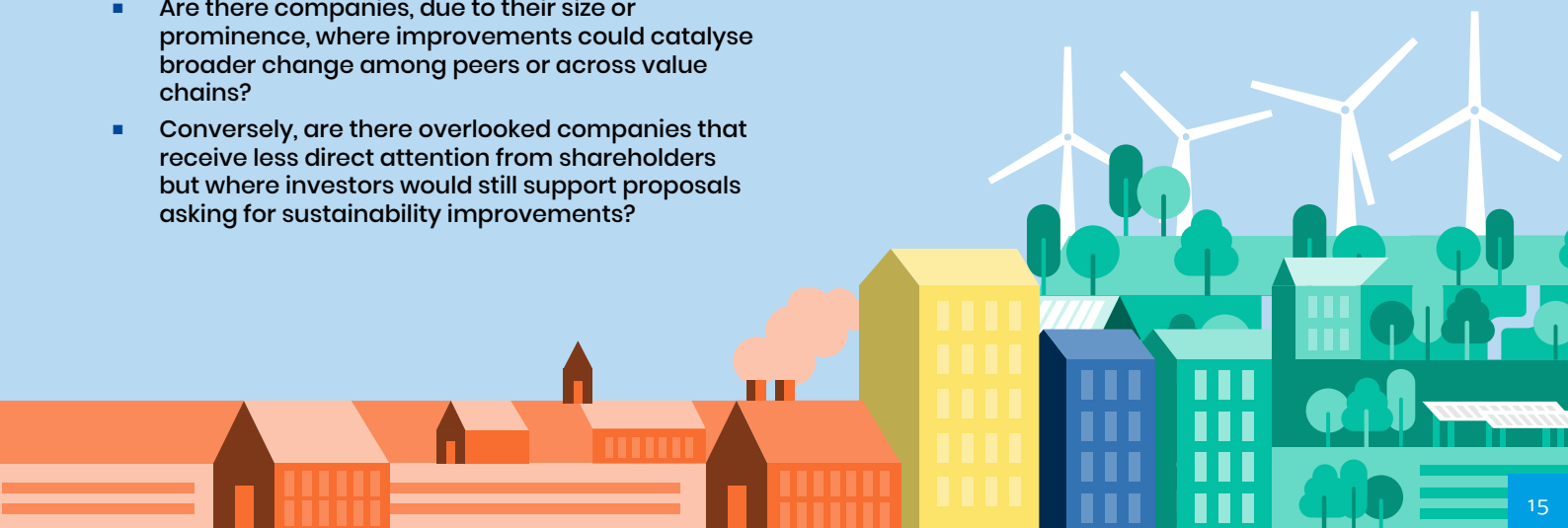
THE LEVEL OF AMBITION

Rather than only seeking improvements on disclosures and current practice, investors should consider how they can mitigate systematic risks and drive progress on sustainability outcomes. For example, proposals may seek to align companies with the Paris Agreement or the Sustainable Development Goals.

Where regulatory frameworks allow, investors should consider focusing the ask of the proposal on committing the company to an action (e.g., setting Paris-aligned greenhouse gas reduction targets) rather than simply requesting disclosure.

THE TOOLS

As noted above, investors should consider whether a shareholder proposal is the right tool, and where it may need to be supplemented by a combination of other levers.



BLANKET FILING AS A STRATEGY

If an investor would like to see improved ESG performance across multiple companies, they may consider using an approach called 'blanket filing', which is targeting a large number of companies with similar shareholder proposals. Blanket filings have been used semi-frequently as a strategy in the US.

EXAMPLE: NEW YORK CITY COMPTROLLER

In the 2021 AGM season, the New York City Comptroller's Office filed proposals at S&P100 companies that were unresponsive to requests to disclose EEO-1 workforce diversity data to the US Equal Employment Opportunity Commission (EEOC). Any US employer with 100 or more employees is required to submit an EEO-1 Report to the EEOC, making it a readily available, standardised tool to compare diversity data across companies. Most of the Comptroller Office's proposals were withdrawn after the target companies agreed to disclose the requested information. Just three proposals reached a vote, and two of the three proposals received majority support.

Our interviewee experts in other markets recognised the potential for blanket filing to accelerate progress on a common issue such as climate lobbying or decent work. In fact, several interviewees suggested that global investors and advocacy organisations may make greater use of this tactic in the future. However, interviewees cautioned that investors' ability to submit blanket filings may be constrained in more procedurally restrictive markets outside of the US. They also said that whilst blanket resolutions partially ease administrative burdens, filers should still take the time to develop strong supporting documents that explicitly link the proposals to the individual company's practices and operations.

"Standardising proposals on issues such as climate change can allow investors to reach more of the market by using a consistent model proposal as well as a consistent approach to proposal defence at the SEC."

Sanford Lewis, Lawyer and Director, Shareholder Rights Group

SHAREHOLDER RIGHTS AND ELIGIBILITY

Investors wishing to submit shareholder proposals must be aware of the following aspects:

- the legal framework of the market in which a target company operates to confirm investors' right to file and any constraints on the scope and content of resolutions;
- the rules set by securities regulators and exchanges;⁹
- the company's articles of association / incorporation and any other constitutional documents that shape how the resolution can be presented. For example, in the UK, companies may explicitly require shareholder resolutions to be framed as special resolutions (needing a clear majority to approve the resolution), as opposed to ordinary resolutions (needing a simple majority to approve the resolution); and
- where relevant, case law that may define shareholders' powers and rights in their interaction with company management and influencing factors such as the processes and content of resolutions.¹⁰

The [country factsheets](#) provide an overview of the key legal and technical points for filing shareholder proposals in eight key markets: Australia, Canada, France, Germany, Japan, South Africa, the UK and the US.

"Filing a shareholder proposal in Canada is an established practice that provides shareholders with an effective lever to drive corporate sustainability improvements in capital markets. In Canada's system of federalism, there are sweeping procedural differences in each of the provinces, territories, and federal jurisdiction. Therefore, when engaging a company, we need a detailed understanding of the specific legal and other requirements which are determined by a company's place of incorporation and other relevant federal and provincial laws. We cannot just assume that what works for a bank in Quebec will work for a retailer in British Columbia."

Sarah Couturier-Tanoh, Corporate Engagement and Advocacy, SHARE

⁹ Such as Rule 14a-8 of the [US SEC](#)

¹⁰ Just Share (2021), [Legal opinion on shareholders' right to file climate change-related shareholder resolutions](#)

THE RIGHT TO FILE

The eight legislative frameworks covered in this paper can be divided into two generic categories:

- **Flexible frameworks:** shareholders have a clear right to submit a proposal and relative freedom to present a matter to the board. Canada, the UK, the US and South Africa can be classed as countries with flexible frameworks. It is worth noting that the use of shareholder proposals to progress ESG issues in [South Africa](#) is a relatively new form of stewardship and the procedural basis for filing is less clear.¹¹
- **Restrictive frameworks:** shareholder proposals must take the form of amendments to the company's constitution or 'bylaws' via a special resolution. Generally, these proposals require higher levels of shareholder support to pass, because if passed they often take binding effect as part of the company's constitution or articles of association. Japan, France, Germany and Australia can be classed as countries with restrictive frameworks.

"Section 65(3) of the Companies Act of South Africa 71 of 2008 sets out clearly that shareholders have wide powers to submit a resolution, but this is an untested area of law and there is no procedural guidance to support the process, and our experience so far has been that companies are resistant to tabling shareholder proposed resolutions. This is particularly concerning in light of the clear provision in the Companies Act that the Act should be interpreted in a manner that promotes compliance with the Bill of Rights in the Constitutions. Shareholder rights will only be strengthened in South Africa when case law and regulatory intervention bring clarity."

Tracey Davies, Executive Director, Just Share

¹¹ See the [South Africa country factsheet](#) for further information

The law is not always clear and remains relatively untested in some countries. In the case of restrictive frameworks, there is sometimes uncertainty as to whether boards will be prepared to accept a proposal that looks to amend the company's constitution. There is recent evidence of boards rejecting these types of proposals on the grounds that the board alone has the authority to manage the company's affairs.¹² When such instances occur, investors can continue to escalate the engagement by publicly highlighting the companies' defensive position and use it as an opportunity to engage and educate fellow shareholders and the public about an issue.¹³

With regards to restrictive frameworks, there is usually no legal reason why boards cannot exercise their discretion to allow an advisory matter to be voted on. Therefore, despite possible challenges, our interviewees suggested that, provided the resolution is properly framed, there are strong arguments in favour of shareholder proposals as a lever for change.¹⁴

CASE STUDY: NAVIGATING RESTRICTIVE FRAMEWORKS IN AUSTRALIA

In the case of [ACCR v Commonwealth Bank of Australia \(2016\)](#), it was found that shareholders may not propose resolutions that usurp the board's powers to manage the company, unless a company's constitution or Australia's Corporations Act (2001) says otherwise.

Australian shareholders wishing to have a resolution considered at an AGM deal with this by proposing two resolutions at the same time.¹⁵ The first is a special resolution that amends the company's constitution to allow ordinary resolutions to be placed on the agenda at a company's AGM. Such a resolution requires 75% support. The second is an advisory ordinary resolution (limited to issues of material relevance) for consideration at the AGM.

Even though no resolution to amend a company's constitution has ever reached the 75% threshold, this method of engagement can have an impact. One recent example is Origin Energy's decision to bring forward the closure date of a coal-fired power station to 2025, which was announced after a period of sustained engagement, including ACCR's 2021 [shareholder resolution](#) requesting that Origin align its capital allocation with the Paris Agreement. The resolution received 44% in favour.

¹² In 2022, Volkswagen AG rejected a shareholder proposal on climate lobbying on the basis that "The Board of Management alone is responsible for deciding on the content of the non-financial report in accordance with the interests of the company". In 2020, Total and Vinci argued that climate resolutions were not legally permissible, on the grounds that they would violate the mandatory division of powers

¹³ [Example media statements](#) after Volkswagen rejected a shareholder proposal on climate lobbying

¹⁴ The Client Earth 2021 [Know Your Rights](#) report provides more detail on the law on filing and framing shareholder resolutions (it focuses on climate resolutions but is relevant to ESG issues)

¹⁵ ACCR, [Shareholder Resolutions](#)

BINDING VS NON-BINDING OUTCOMES

Voting on resolutions can create binding or non-binding outcomes for the company. Any special resolution passed by shareholders becomes part of a company's constitution and creates binding commitments. Binding votes are the most forceful form of driving change as a company is legally bound to act if the vote is passed.

Non-binding advisory votes, which are most commonly used for shareholder resolutions in the US and Canada, are less forceful as companies are not legally bound to implement the proposal (regardless of the level of support

for the resolution). However, wilfully ignoring a strong vote on a non-binding resolution is a signal of poor shareholder relations. It carries reputational risks for the company and can result in investors and stakeholders deploying escalation measures in the following proxy season.

The table below outlines the merits of binding and non-binding resolutions from the shareholder's perspective. The ability to use binding versus non-binding resolutions is generally determined by the local legislative framework.

Table 1: Binding versus non-binding resolutions

Binding	Non-binding
<p>Benefits</p> <ul style="list-style-type: none"> ■ Cannot be further amended by the board ■ The board is legally compelled to act 	<p>Benefits</p> <ul style="list-style-type: none"> ■ Opportunity to be more ambitious in the proposal ask as the company has flexibility in the way the resolution is implemented ■ Where the legislative framework is clear and supportive, an advisory ask is a more accessible way for shareholders to raise an issue with the board
<p>Disadvantages</p> <ul style="list-style-type: none"> ■ Legislative frameworks impose stricter criteria for framing the ask ■ Often require higher thresholds of support to pass 	<p>Disadvantages</p> <ul style="list-style-type: none"> ■ Companies may ignore or delay implementing the recommendation (even if the level of shareholder support is high)¹⁶ ■ Companies may not fully implement the proposal ask as they have discretion on how to respond

THRESHOLDS TO FILE A RESOLUTION

Once investors understand the legal pathway for filing a shareholder proposal, investors must verify that they are eligible to file. There are two key questions:

- What is the threshold at which shareholders may file a resolution, with reference to their shareholding (this is generally expressed as a % of the company's share capital, a monetary value of their investments over time, or a number of shares held)?
- Are there any rules regarding the time period that the investor must have held their shares? For example, in some markets shareholders must not sell their shares in a certain period prior to the AGM.

When submitting a resolution proposal, proponents are typically required to submit paperwork to demonstrate their ownership of the shares held at the time of filing.¹⁷ The approach to demonstrating ownership varies between jurisdictions, from special forms to simple reference to the shareholder register.

The nature of the shareholding matters too, with shares held directly in certificated form being much easier to evidence than institutional share ownership where shares are often held in custodian institutions. In our interviews, several organisations stressed the importance of allocating time to fully understand the process.

¹⁶ ACCR (2022), [Media Release: Rio Tinto board fails to deliver on 2021 lobbying commitment](#)

¹⁷ In South Africa, there is no legal or regulatory requirement to demonstrate record of ownership when submitting a proposal

DRAFTING A SHAREHOLDER PROPOSAL

The importance of drafting a procedurally correct, comprehensive and persuasive proposal cannot be underestimated.

There are typically two parts to be drafted: 1) the resolution, which sets out the formal 'ask' of the company and 2) the supporting statement, which provides the justification for the resolution. The supporting statement may not be a legal requirement, but in all eight of the markets covered by this guide, a supporting statement is permitted and strongly recommended.

Whilst the approach taken will be adapted to the market in which the target company operates, some general guidelines are set out below.

UNDERSTAND THE LEGISLATIVE REQUIREMENTS

Fully understand the rules that govern what proposals may and may not include. For example, the word count and type of phrasing allowed can vary significantly around the world. Working with legal counsel and / or proxy voting experts can help the proposal filers ensure that the resolution is procedurally correct. The [country factsheets](#) outline some of the requirements in each of the key markets.

CONNECT THE ASK TO THE COMPANY'S CIRCUMSTANCES

Acknowledge what the company is already doing and make it clear how the proposal seeks to fill a meaningful gap between existing efforts and investors' expectations. Acknowledge any constraints the company has and set out short and long-term benefits that would be achieved if the resolution is adopted. Provide examples of what peers are doing on the same topic and outline opportunities for a company to be a leader in the industry, or where it risks becoming a laggard.

BACK UP YOUR PROPOSAL

Demonstrate thorough research and understanding of the issue. Evidence all points and provide references that support the proposal, such as industry standards, regulatory developments, stakeholder expectations, and competitor best practices that support the proposal.

GREATER DISCLOSURE OF DEI DATA AT UNION PACIFIC CORPORATION

The [2022 proposal](#) filed by As You Sow cited several studies on the corporate benefits of a diverse workforce, including greater financial returns. The proposal also highlighted the public DEI commitments made by the company on its website, and the risk associated with insufficient information on the issue where public commitments have been made, including stakeholder concerns of "corporate puffery", which the filers highlighted was a term used by the United States Federal Trade Commission. Finally, the proposal highlighted growing investor demand for this information and referenced a recent investor statement (signed by a collective of USD\$1.9 trillion in represented assets) on corporate transparency on workplace equity data. This proposal received 81.4% votes in favour.

REVIEW INVESTMENT PEERS' POSITIONS

Look to relevant investor and proxy advisory services' voting guidelines, policies or principles to understand how these investors and service providers will examine ESG proposals, and what type of proposal wording they tend to support / recommend supporting.

CONVEY INVESTOR AFFIRMATION

Ensure proposal language is constructive and collaborative. Avoid the use of accusatory or inflammatory language. The wording should make clear that the filers' core aim is to support the long-term success of the company and / or the overall sustainability of the systems on which companies and investors collectively depend.

TACKLING CLIMATE CHANGE AT RIO TINTO

The 2021 [proposal](#) filed by Market Forces and ACCR asked the company to include climate change in its annual reporting. The proposal acknowledged the company's existing commitments and asked for this reporting to build on the positive steps the company had taken, outlining that the additional reporting steps were designed by the Task Force on Climate-related Financial Disclosures (TCFD) to allow investors to "appropriately assess and price climate-related risk and opportunities". This proposal received 99% votes in favour.

HAVE ONE CLEAR FOCUS

Where possible, avoid combining many asks into the proposal and instead focus on one consistent ask throughout – a clear narrative is vital.

SET OUT THE INVESTOR CASE

Make clear why the resolution is relevant and important to investors. The resolution should state why the proponent(s) believes the ask will maximise long-term value for shareholders. The investor case should be supported by strong quantitative evidence from authoritative bodies.

Consider the framing of the investor case. Where the shareholder proposal is addressing a systematic risk, investors may consider detailing how the company contributes to that systematic risk, how these risks impact investors' overall portfolios, and how improved performance will positively impact the long-term success of the company and create broader effects relevant to diversified investors.

ANTIBIOTIC USE AND PUBLIC HEALTH AT MCDONALD'S

The 2021 [proposal](#) filed by Amundi asked McDonald's to report on the public health costs created by the use of antibiotics in its meat supply chain and how these costs affect "the vast majority of shareholders who rely on a healthy stock market".

The proposal outlined that McDonald's may overuse antibiotics in raising livestock, which may increase the ability of diseases to resist antibiotics. It then set out the risks of antimicrobial resistance (AMR) and how shareholders are materially harmed when "companies impose external costs that lower GDP, which reduces equity market values".

As a request-for-disclosure proposal, the proponents believed that the report would "help shareholders determine whether to seek a change in corporate direction, structure, or form in order to better serve their interests". The proposal received 11.94% votes in favour.

MAKE ASKS ACHIEVABLE

Balance the achievability of the ask with the urgency and severity of the issue at hand. Consider how realistic implementation of the resolution would be for the company and acknowledge any constraints that the company may face.

Consider whether a reasonable timeframe has been given for the company to implement or respond to the proposal. Consider whether a hard deadline is necessary, feasible, or likely to garner support.

UNDERSTAND THE INVESTOR ROLE

Be clear on the role of an investor and take care to avoid overstepping these boundaries. Typically, shareholders are more likely to gather support by asking a company to do something rather than telling the company how to do it. Proposals deemed as 'too prescriptive' can be associated with lower support levels, and this may lead to signalling lower shareholder support for company action than may in fact be the case.¹⁸ Therefore, the focus of a proposal is typically on the desired results (or outcomes) rather than on the process of how this outcome should be achieved.

There are many examples of strong drafting practices and investors are encouraged to review the [PRI resolution database](#) for relevant proposals.

¹⁸ SGP (2022), [The 2022 Proxy Season: Forces Collide](#)

FILING A SHAREHOLDER PROPOSAL

WHEN SHOULD A PROPOSAL BE FILED?

A shareholder proposal submission must be received by the company in good time. Generally, this means in advance of the notice of the AGM being circulated to shareholders so that the resolution, if accepted, will appear on the AGM ballot papers.

Circulation of the AGM notice varies across jurisdictions and company constitutions. It is important to seek confirmation of filing dates from company documentation (e.g., the company's previous year's proxy statement) and through contact with the company.

CAN YOU APPEAL WHEN A COMPANY REJECTS A PROPOSAL?

There are some reasons why companies may be permitted to reject or appeal a shareholder proposal from being included on the ballot papers, besides procedural errors in the filing. For example, some jurisdictions allow companies to reject proposals that are judged to interfere with the company's powers to set strategy.¹⁹ The [country factsheets](#) provide an overview of when a company may be permitted to reject a shareholder proposal from being included on the ballot papers, and where there is an appeal process.



¹⁹ ClientEarth's [Know Your Rights](#) (2021) guidance describes the types of appeals that are possible

CO-FILING A SHAREHOLDER PROPOSAL

WHY CO-FILE?

Co-filing involves shareholders working together to file a resolution. There are various reasons to co-file:

- to meet the legal threshold for filing a proposal (in some jurisdictions, co-filing allows small investors who cannot meet high ownership thresholds on their own to file a resolution);
- to reduce liquidity constraints for larger investors where share ownership or share-blocking rules exist;
- to help first-time proponents of a proposal navigate the challenges of drafting and filing a resolution; and
- to demonstrate that a proposal has wide-scale support, and possibly endow the proposal with more legitimacy.

"Co-filing with 100 shareholders can be challenging to co-ordinate but it allows us to mobilise institutional and individual investors and leverage their voting power and influence. Our resolutions are made stronger with a diverse set of shareholders who bring different experiences and expertise to the table, while sharing a vision of the impact a company should be having."

Michael Kind, Senior Campaigns Manager, ShareAction

DRIVING BETTER HEALTH DISCLOSURES AT UNILEVER

In 2022, ShareAction co-ordinated and filed a [shareholder proposal](#), urging Unilever to report against government-endorsed health models and to adopt ambitious targets to increase the share of healthy foods in its sales.

The proposal was supported by several co-filers including pan-European asset manager Candriam, Dutch asset manager ACTIAM, US healthcare provider Trinity Health, the UK's Guy's & St Thomas' Foundation, CCLA Investment Management, and Greater Manchester Pension Fund, as well as individual co-filers including Unilever customers, medical professionals and health campaigners.

As a result, Unilever committed to measuring the sales of its products against major government-endorsed Nutrient Profile Models as well as its own internal metric.

A co-filing group can demonstrate to the company and to the media that there is significant support for a particular resolution, as illustrated by this coalition of 11 institutional investors representing USD\$215 billion in assets.

GENERAL GUIDELINES ON CO-FILING

Effective co-filing requires efficient planning and investors should consider the following points:

- Be clear on which organisation will lead the co-filing initiative – filing a shareholder proposal is a resource-intensive and time-critical process. It is essential that the procedural aspects are managed well. In some jurisdictions, it is recommended that co-filers also indicate who has authority to withdraw the proposal on their behalf.
- Filing a shareholder proposal can be expensive in some jurisdictions, largely due to legal drafting costs and procedural elements, such as obtaining and co-ordinating the level of support required to meet the threshold for filing. Obtain funding early on and understand how co-filing group members can contribute.
- Be clear on rules regarding acting in concert and anti-trust in the respective jurisdictions (see section [‘Deciding your own course of action’](#) for more information). Under certain circumstances and in certain jurisdictions, co-filing can heighten the likelihood of being classified as forming a group – this is particularly likely in the US, where co-filers may therefore be subjected to additional reporting and filing requirements.
- Go above and beyond the threshold level required to allow for any changes in stock market value or challenges to demonstrating share ownership. This is very important in jurisdictions where the threshold for filing is higher, ownership periods are longer or share-blocking rules exist. Do this as early as possible to meet filing deadlines.
- Target credible co-filers: other investors; advocacy organisations with a demonstrable track record of preparing and submitting thoughtful shareholder proposals; and organisations with experience mobilising support for resolutions.
- Co-ordinate and agree on the detail of a draft resolution. This can take time, as a group of investors is likely to have different investment principles and may not immediately align on the ask for a company.
- Filers need to demonstrate ownership of their shares. Given that at least some shares may be held in intermediary accounts, investors should ensure that they have the correct paperwork well in advance of deadline dates.



POST-FILING ENGAGEMENT

Signalling the intention to file or formally filing a shareholder proposal can sometimes prompt the company to act. Rather than risk a vote against management or negative media coverage, companies may look to negotiate an agreement with shareholders in return for the proposal being withdrawn. The company may simply agree to the requested action, look to negotiate on a reduced action, or offer an alternative such as submitting a management-sponsored proposal on the topic.

Withdrawing proposals is a common action in some markets. For example, in the 2022 AGM season, over a third of proposals recorded on the [PRI resolution database](#) were withdrawn, with proponents agreeing to withdraw in return for corporate action on the specified issues or for improved corporate disclosures.

"Providing a draft resolution and indicating our intention to formally submit a shareholder proposal has, on occasion, been enough to encourage companies to respond more actively to our requests for greater disclosure. In such cases we have agreed not to file so long as the commitments are made public. But companies do not always want to negotiate. In these situations, we see shareholder proposals as being an essential stewardship tool to highlight unreasonable corporate practices and drive better market outcomes."

Clare Richards, Senior Engagement Manager,
Church of England Pensions Board

Whether investors are prepared to negotiate, and what they are prepared to accept in return for withdrawing a resolution, depends on their engagement intentions and desired outcomes. Investors who agree to withdraw a resolution following a corporate commitment should track the company's progress and be prepared to escalate if the company fails to deliver. It is advisable that investors request that any commitments agreed during private negotiations are made public so companies can be held accountable.

WITHDRAWAL PROCEDURES

Typically, companies would seek to have a proposal withdrawn before the notice of meeting and voting papers are sent to shareholders, as this is administratively preferable and avoids the risk of negative press. It is possible for a resolution to be withdrawn after this point and, in some markets, this is an accepted practice. As the resolution will have been included on the AGM agenda, the company will need to make an announcement to confirm that the resolution is withdrawn, and will, therefore, not be voted on. As a general principle, companies should also explain to shareholders why a resolution has been withdrawn.

National rules and practices can define how the withdrawal process is managed. For example, in France, there is a short period between the filing deadline and the AGM (a resolution can be filed up to 20 days after the notice of meeting is issued), and filers must formally demonstrate their share ownership both at the point of filing and two days before the AGM. Therefore, in the event of an agreed withdrawal, it is accepted practice for the filing proponent to fail to deliver the second part of the ownership paperwork as the board is then permitted to remove the resolution from the agenda.

GATHERING SUPPORT FOR A SHAREHOLDER PROPOSAL

INVESTOR BRIEFINGS

In most jurisdictions, investors can prepare and circulate supplementary written material to provide other investors with more background to the proposal (e.g., the relevance of the issue to the company, and the reasons why investors should support the resolution). The US is a notable exception as outlined below.

Filers can reach out to key investors, investor groups and networks, and can also engage other shareholders through participating in meetings, roundtables, webinars, roadshows and presentations. This outreach also allows filers to answer questions from other investors.

INVESTOR PLATFORMS

Filers can use investor platforms – e.g., the [PRI's collaboration platform and resolution database](#), and the media – to promote shareholder resolutions amongst a large group of investors.

ABOUT THE PRI COLLABORATION PLATFORM

The collaboration platform is a unique forum that allows investors and other stakeholders to pool resources, share information and enhance their influence on ESG issues. With up to 5,200 global users each month, collaborations between investors and others include requests for support on upcoming resolutions and votes, for example seeking co-filers for a shareholder resolution, and using the platform to raise awareness of upcoming votes.

By using the collaboration platform, investors and other stakeholders promote their work among investors beyond their immediate networks and with other influential stakeholders such as NGOs and academics. Alongside filing shareholder proposals, investors can use the collaboration platform to encourage collaborative investor engagement with companies between AGMs. The platform hosts a publicly available and comprehensive database of ESG-related resolutions and votes. Investors can also monitor upcoming votes and results.

Filers should be strategic when deciding which investors should publicly promote the shareholder proposal. Investors with an interest in the long-term returns of a company may be more effective and credible spokespeople to mobilise the shareholder vote compared to, say, NGOs or other special interest groups.

ENGAGING WITH PROXY VOTING SERVICES

Many investors use proxy voting agencies' analysis and recommendations when forming their own view on how to cast their vote on shareholder proposals. Proponents should therefore look to engage with relevant proxy advisers to increase the chances of resolution success.

HOW CAN A FILER ENGAGE WITH PROXY ADVISERS?

- Start by understanding the proxy adviser's views on the particular issue, and on ESG issues more generally
- Seek a meeting with the proxy advisers once you have filed. If possible, schedule it sooner rather than later as proxy advisers tend to be very busy in the period leading up to the voting season
- Be aware of non-solicitation periods (typically once the notice of meeting has been released)
- Provide proxy advisers with copies of briefing notes and other materials that set out the background and explain the investor case for supporting the resolution
- Understand the proxy adviser's procedures. For example, some only use publicly available information when forming their opinions, so publishing briefing notes on the investor's own website and / or another public forum increases the likelihood of proxy advisory consideration

ENGAGING WITH OTHER INVESTORS

Direct engagement with shareholders can also help increase the level of support for a shareholder proposal. As it is not feasible to connect one-on-one with all of a company's investors, many proponents prioritise outreach to a company's largest shareholders. Investors can find a list of large shareholders through company filings, public access resources or subscription services.

Filers can also approach asset owners and ask them to press their investment managers to support the resolution. For example, asset owners could:

- check whether their asset managers' voting principles and other publicly stated goals imply that the asset manager will support the resolution;
- ask their asset managers to pre-disclose their voting positions; and
- ask their asset managers to provide a rationale for voting decisions where they plan to abstain or vote against the resolution.

BENEFICIARY VIEWS

If the information is available, filers may consider publicising the views of beneficiaries, where this is relevant to the ask of the proposal. For example, filers may share survey evidence or use fintech solutions²⁰ to demonstrate beneficiaries' general position on the issue.

MEDIA COVERAGE

Filers can develop a media plan early and aim to engage with all relevant outlets and channels. Issuing a press release at the point of filing and at key points in the process – e.g., in the lead up to the AGM, when large institutions express support for the proposal, and after the vote – will help highlight the issue to a broad set of stakeholders. Filers could also work with interested parties such as affected community groups that could promote awareness in the media and among their own networks.

CO-ORDINATED ACTION

Filers should seek to work with other proponents that are filing on a similar topic at other companies. Filers may be able to support each other through, for example, sharing experiences (e.g., on how to prepare for company meetings), as well as co-ordinating promotion through their contacts and networks, press releases, and social media. Such engagement also has longer-term benefits as it leads to developing networks and communities that may collaborate again on future resolutions.

EXEMPT SOLICITATION IN THE US

In the US there are strict regulations related to proxy solicitation – where a shareholder seeks to obtain or influence other shareholders' voting activities. This means activities highlighted above, such as investor roadshows and briefings, may not be practical.

However, the SEC does provide an important exemption under rule 14a-2(b)(1) of the Exchange Act that allows a proponent to approach up to 10 investors. Exempt solicitation is an effective practice that provides investors an easy and low-cost way to express their views to other shareholders beyond the 500-word limit of the proposal text in the company's proxy statement. The other advantage of filing an exempt solicitation is that it appears alongside documents and information submitted by the company in focus in the SEC's [EDGAR](#) database,²¹ meaning the shareholder proposal and supplementary material could gather greater attention from investors and other stakeholders visiting the database to view the company's own filings.

²⁰ Treviño, Hu & Levin (2021), [2021 Proxy Season Review: Shareholder Proposals on Environmental Matters](#)

²¹ EDGAR, the Electronic Data Gathering, Analysis, and Retrieval system, is the primary system for companies and others submitting documents under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, and the Investment Company Act of 1940. Access to EDGAR's public database is free

DECIDING YOUR OWN COURSE OF ACTION²²

Certain types of collaboration between a company's shareholders may trigger disclosure obligations or raise concerns from the perspective of securities, market abuse or anti-trust laws.²³ A potential trigger for regulatory requirements is where shareholders are deemed to be 'acting in concert'.

In many jurisdictions, including Germany, the UK and South Africa,²⁴ jointly filing or co-sponsoring shareholder resolutions is unlikely to raise acting in concert concerns where proposals focus on a specific ESG issue rather than, for example, broader control of the company or going against a proposal put forward by management.

Discussions regarding voting decisions (without concerted exercise of voting power and without sharing material non-public information) are often unlikely to raise concerns, but agreements on voting need to be considered on a case-by-case basis. Voting together on one particular resolution (as opposed to adopting a common policy towards the management of an undertaking) may not systematically be construed as acting in concert,²⁵ but contextual elements and patterns of behaviour are taken into account by regulators in determining whether investors are acting in concert may vary.

Additionally, the scope and forcefulness of a given proposal – whether filed or voted on – has relevance: while proposals that look to change company behaviours on environmental and social issues raise little to no concern in many jurisdictions, proposals which would constitute 'material changes' to strategy may raise flags in others.²⁶



²² The relevance of acting in concert considerations in the context of co-ordinated action varies across jurisdictions and on a case-by-case basis. This section briefly summarises findings from country-specific guidance documents commissioned by the PRI. Investors may want to consult these underlying documents for more detailed information and / or seek legal advice tailored to their own facts and circumstances

²³ PRI (2020), [Acting in concert guidance](#)

²⁴ The US is a notable exception

²⁵ Again, the US is a notable exception

²⁶ See the Germany guidance on acting in concert on the [PRI's collaboration platform](#)

AT THE ANNUAL GENERAL MEETING

A company's AGM is where the board and management engage with shareholders in a public forum to present a summary of the company's performance and strategic plan.

The board will generally have a strong indication of the vote results in advance, as shareholders typically vote by proxy rather than by attending in person. Even though AGMs themselves rarely alter the results of a vote, they are important governance occasions. For those filing shareholder resolutions, AGMs provide the opportunity to promote their resolution, to raise the profile of the issues underpinning the resolution and to engage directly with the board. Investors should, therefore, incorporate the AGM into their engagement strategy.

The meeting documents generally set out full instructions on how to attend an AGM. The filers of resolutions may also consider contacting the company before a meeting to confirm due process for attending and presenting a question.

ARE RESOLUTION PROPONENTS REQUIRED TO ATTEND THE AGM?

In the US and Canada, the proponents of a proposal (or an authorised representative of a proponent) are required to attend the AGM to authenticate the submission. In both countries, proponents are asked to make a short statement in support of the proposal. In the US this is usually a three-minute window.

VIRTUAL AGMS

During the covid pandemic, many companies delivered their AGMs online. Virtual meetings – now that the legal barriers have been overcome and the technology is well proven – offer advantages such as accessibility, reduced travel and cost savings. Some companies have signalled that they are likely to continue offering virtual attendance, and some have even suggested that all future AGMs could be virtual.

However, there is debate as to whether the benefits of improved access and lower costs outweigh the ability for investors to engage in more open and in-person dialogue directly with management and the board. For example, virtual meetings can allow companies to exert more control over the AGM dialogue by requiring questions to be pre-submitted, restricting the questions that are asked and limiting the time for discussion.²⁷

As with all AGMs, if a company decides to hold the AGM virtually, investors filing or co-filing a shareholder proposal should contact the company to establish the format of the meeting and to understand how questions or statements can be raised to the board.

EXAMPLE: A SPEECH AT THE EXXONMOBIL AGM

In 2017, the Church Commissioners for England and New York State Comptroller Thomas P DiNapoli co-filed a shareholder proposal at ExxonMobil, asking the company to report on how the business would be affected by worldwide efforts to combat climate change. This proposal was complemented [by a speech from one of the co-filers](#) at ExxonMobil's AGM. Almost two thirds – 62.3% – of votes were cast in favour, despite strong opposition from the company.

"The 2017 ExxonMobil shareholder meeting was a critical moment in our effort to push Exxon to recognise the relevance of the goal of limiting the global average temperature rise to well below 2 degrees Celsius. After nearly two years of engagement, the shareholder resolution on 2-degree scenario analysis that we had filed with the New York State Common Retirement Fund was going to the vote for the second time, and our goal was for it to pass. The AGM speech is a unique opportunity to address the whole board of a company personally and in public, and in 2017 I wanted to call out non-executive directors on how far behind on climate change they had let Exxon fall."

Edward Mason, Generation Investment Management, previously at the Church Commissioners for England

²⁷ ShareAction (2020), [Virtual AGMs in light of Coronavirus must maintain shareholder democracy](#)

AFTER THE VOTE

After the AGM, the company will publish the voting results. The filers of a shareholder resolution should have a post-vote engagement plan, which includes tracking the company's progress in implementing the proposal ask if the vote is successful or deciding on next steps if the vote is unsuccessful. Filers should also consider preparing a media plan, which includes comment on the outcomes achieved and the next steps. This post-vote outreach is important to maintain the momentum of the proposal, to continue gathering support on the issue and hold the company accountable to investors' expectations.

As discussed throughout this report, a resolution does not need to pass for the company to act. A well-drafted, impactful resolution that has been thoughtfully promoted and distributed may focus the company's attention on an issue and lead to action.

"Follow-up is an essential part of our campaign strategy as companies do often wilfully ignore the resolution result. We continue our engagement and prepare to re-file the next year."

Dan Gocher, Director of Climate and Environment, ACCR

DETERMINING THE LEVEL OF SUPPORT FOR A VOTE

It is important to understand the voting base that will be used to determine whether a proposal has passed or failed. The voting base can vary by country, state or company.

There are two voting bases commonly used:

- Total voting rights – Ordinary shares generally provide a shareholder the right to vote (one share, one vote). The total voting rights is the aggregate value of all shares with voting rights attached.
- Total votes cast – Generally votes cast by shareholders present at the general meeting or represented – abstentions may or may not be included.

The [country factsheets](#) advise on the typical approach used in each of the countries reviewed.

THE UK 20% THRESHOLD

Under the UK Corporate Governance Code, when 20% or more of votes have been cast against the recommendation(s) of the board, the company should explain, when announcing voting results, what action it intends to take to consult shareholders. In the annual report, it should explain the impact the feedback has had on board-level decisions and any actions or resolutions proposed.

For example, after the Barclays 2020 AGM where 23.95% of the votes supported the ShareAction climate change resolution, the company made a short statement²⁸ acknowledging the result and the obligation to update shareholders. Barclays made a commitment to "engag[e] further with shareholders and other stakeholders over the coming months as we continue to develop our climate strategy and both the metrics for measuring our progress and the targets against which we will report". The company's 2021 annual report and accounts, published the following year, set out the company's climate strategy and reporting commitments.

²⁸ Barclays (2020), [Results of Annual General Meeting](#)

Table 2: Follow-up actions for investors

Resolution passes voting threshold	Resolution does not pass voting threshold
<ul style="list-style-type: none"> ■ Investors should promote the result. If co-filed, recognising the other organisations involved, and the value of their votes and support is considered good etiquette. ■ Investors should arrange a dialogue with the board or management to review the favourable vote result and discuss the company’s thinking around implementation. Investors should continue to engage with the company and review implementation progress. ■ Investors should track the company’s communications. Formally, the company should act to inform all shareholders of the resolution and of the company’s intended actions e.g., through the annual report, results statements or press statements. Companies may also seek to shape or influence the narrative, by providing their interpretation of the vote and of the obligations it imposes on them. Investors should be prepared to challenge the company if they feel that the company is misrepresenting the vote. ■ Investors should track the company’s progress to confirm whether actions taken are sufficiently robust and timely. ■ If a company has stalled, or failed to deliver on commitments, investors can escalate engagement through holding directors to account and / or, subject to relevant legal and practical constraints, resubmitting the shareholder resolution. 	<ul style="list-style-type: none"> ■ Investors should promote the voting result. Even if it received low support, the outcome provides a marker at a specific point in time and is another opportunity to raise awareness of the issue. ■ Filers may provide commentary on the details of the vote (e.g., who expressed support, the level of support, any comments from other investors) and should set out their next steps. ■ Investors should analyse the reasons why the resolution was not passed. A low vote may indicate a nascent issue, an overly ambitious ask or simply be down to timing. Investors should build this analysis into their future engagement strategies (e.g., assess the need to build investor awareness, and to encourage the company to take specific actions), including whether they may re-file in future (subject, of course, to relevant jurisdictional resubmission thresholds). If re-filing, investors should consider how they could strengthen the resolution and pre-AGM outreach to gather higher support in future years.

RESUBMISSION RESTRICTIONS

Whether an investor can file a similar shareholder resolution in following years depends on the jurisdiction. For example:

- In the US, the ‘resubmission rule’²⁹ means companies can exclude a proposal if it “deals with substantially the same subject matter as another proposal that has previously been included in the company’s proxy materials within the preceding five calendar years and did not receive a specified percentage of the vote on its last submission” – that is 5% of the votes cast if previously voted on once, 15% of the votes cast if previously voted on twice, or 25% of the votes cast if previously voted on three or more times.
- In Japan, if a resolution receives less than 10% of votes, a similar resolution cannot be resubmitted for three years.

²⁹ US SEC (2020), [Procedural Requirements and Resubmission Thresholds](#)

CREDITS

AUTHORS:

- Lyndsey Hurley, Chronos Sustainability
- Dr Rory Sullivan, Chronos Sustainability
- Chloe Horne, PRI

CONTRIBUTORS:

- Emmet McNamee, PRI
- Nogoye Dieng, PRI
- Carly Greenberg, PRI
- Paul Chandler, PRI

EDITOR:

Rachael Revesz, PRI

DESIGN:

Alejandro De la Peza, PRI

The Principles for Responsible Investment (PRI)

The PRI works with its international network of signatories to put the six Principles for Responsible Investment into practice. Its goals are to understand the investment implications of environmental, social and governance (ESG) issues and to support signatories in integrating these issues into investment and ownership decisions. The PRI acts in the long-term interests of its signatories, of the financial markets and economies in which they operate and ultimately of the environment and society as a whole.

The six Principles for Responsible Investment are a voluntary and aspirational set of investment principles that offer a menu of possible actions for incorporating ESG issues into investment practice. The Principles were developed by investors, for investors. In implementing them, signatories contribute to developing a more sustainable global financial system.

More information: www.unpri.org



The PRI is an investor initiative in partnership with **UNEP Finance Initiative** and the **UN Global Compact**.

United Nations Environment Programme Finance Initiative (UNEP FI)

UNEP FI is a unique partnership between the United Nations Environment Programme (UNEP) and the global financial sector. UNEP FI works closely with over 200 financial institutions that are signatories to the UNEP FI Statement on Sustainable Development, and a range of partner organisations, to develop and promote linkages between sustainability and financial performance. Through peer-to-peer networks, research and training, UNEP FI carries out its mission to identify, promote, and realise the adoption of best environmental and sustainability practice at all levels of financial institution operations.

More information: www.unepfi.org



United Nations Global Compact

The United Nations Global Compact is a call to companies everywhere to align their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption, and to take action in support of UN goals and issues embodied in the Sustainable Development Goals. The UN Global Compact is a leadership platform for the development, implementation and disclosure of responsible corporate practices. Launched in 2000, it is the largest corporate sustainability initiative in the world, with more than 8,800 companies and 4,000 non-business signatories based in over 160 countries, and more than 80 Local Networks.

More information: www.unglobalcompact.org

