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BUSINESS

'Dale vs. Goliath'

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Dale Wannen wanted a $37 billion Irish pharmaceutical company to tell the public what it's doing about climate change and environmental stewardship. To pursue his goal, the Petaluma investment adviser didn't write a letter to executives at Actavis. Instead, Wannen got a spot on the Dublin company's annual proxy ballot this spring for a proposal seeking a sustainability report.

His proposal received support from the owners of nearly 45 million shares — 32 percent of all the votes tallied. While it didn't win, Wannen's measure was seen as a hit by those who advance shareholder proposals on a range of social, environmental and corporate governance issues. Under federal rules, a measure needs only 3 percent of the vote in order to automatically reappear a second time on the company ballot.

“He did really well for a first-time proposal,” said Meg Voorhes, research director at the Forum for Sustainable and Responsible Investment, a Washington, D.C., investors association. Shareholder proposals remain a key way for stock owners to voice concerns and rally support at the annual meetings of publicly traded companies. By some estimates, about 800 such proposals were filed last year. Roughly half of those dealt with social and environmental concerns.

The use of shareholder proposals gained prominence nearly four decades ago when anti-apartheid activists began calling on universities to divest from companies doing business in South Africa. Since the last recession, shareholders have put forth proposals on executive pay and the rules for removing company boards of directors. This spring, pushback has come from the U.S. Chamber of Commerce and other business groups. They maintain the current rules make it too easy to repeatedly place matters on company ballots that have no chance of ever gaining majority support. The chamber wrote in a petition to the U.S. Securities and Exchange Commission that the proposals often amount to a “tyranny of the minority” — wasting resources and diminishing shareholder attention on items that aren't key to boosting the company's value.

Wannen, who operates Sustainvest Asset Management in Petaluma, comes down on the side of those who support the current rules. He and others maintain their proposals do affect a company's bottom line because doing good is good for business. At the same time, they insist they are considering more than just short-term profitability. In his ballot argument, Wannen noted that more than half of the S&P 500 companies already report on “environmental, social and governance impact,” including such pharmaceutical giants as Johnson & Johnson, Pfizer and Abbott Laboratories. He considers sustainability reporting a minimum requirement for responsible corporations.

“As a green investment adviser, I want to see that a company is making that first step of transparency,” Wannen said.

Wannen qualified to place his proposal on the Actavis ballot because he had owned at least $2,000 worth of the company's stock for one year. Even so, he had to find a friend's relative to personally represent him last month at the annual shareholders meeting in Dublin. To pass muster, a shareholder proposal can't involve a personal grievance, contain false or misleading statements or deal with what the SEC considers ordinary business, Voorhes said. For example, decisions on what a company pays its workers has been deemed ordinary business. Some nonprofits put forth their proposals without directly owning stock by finding a shareholder willing to sponsor the item. Those who put forth proposals say corporations often take an adversarial approach to their requests.

“It's a very rare company that actually embraces a shareholder who comes forth and says, 'you should change this policy,'” said James McRitchie, the Elk Grove-based publisher of the website Corporate Governance and a regular author of shareholder proposals.

Gaining support typically requires winning over institutional investors like CalPERS, the state's public employee pension fund. Today, individual investors directly control only about a third of all company shares, said McRitchie, and they vote only about 30 percent of the shares they own.

But online tools exist today to help small investors get informed. The website Proxy Democracy can tell them how a mutual fund has voted on proxy proposals — for those seeking investments that match their beliefs. And before annual meetings, the same site reports the declared votes of institutional investors — for shareholders who want to pool their votes with like-minded stock owners. By all accounts, relatively few shareholder proposals ever gain a majority of support. And the rules can make winning more difficult.

For example, for Wannen's proposal, Actavis counted those owners who abstained — amounting to 37 million shares — as votes against the item. If the company instead had set aside the abstentions, those voting in favor of the item would have totaled 43 percent of the vote. Even so, activists say winning the vote isn't typically their goal. For one thing, the proposals usually are non-binding. Instead, their aim is to get the company to change its practices, and that can happen without victory in the ballot box.

“Even seemingly small votes can bring leverage and bring the company to the table,” said Conrad MacKerron, a senior vice president for the Oakland nonprofit As You Sow.

MacKerron recalled how a decade ago, activists had put forth shareholder proposals to get Apple to recycle more computers. After a few years, then-CEO Steve Jobs agreed at a shareholders meeting to discuss the matter with activists, and Apple went on to triple the number of computers that it takes back when customers buy new products.

Similarly, activists' work on recycling programs with Best Buy, Hewlett-Packard and Dell now keep more than 500,000 tons of e-waste out of landfills every year, according to As You Sow.

Other examples of changed practices involved pollution reductions, adopting fair employment practices regardless of sexual orientation and curbing CEO compensation. On the last topic, as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act, companies now are required to hold advisory votes by shareholders for executive compensation and “golden parachutes.”

But this spring, a government official and business groups called for tightening the rules on shareholder proposals.

In March, SEC Commissioner Daniel Gallagher spoke at a conference at Tulane University Law School in New Orleans and described the $2,000 stock ownership threshold as "absurdly low," according to Reuters. Gallagher called for various revisions to the SEC rules, which he maintained often force shareholders to "subsidize activist agendas."

The U.S. Chamber of Commerce didn't respond to requests for comment, but its petition called for revisions to the rule on the resubmitting of shareholder proposals. Under the current regulations, a proposal must receive 3 percent support the first year, followed by 6 percent the second and 9 percent the third year to qualify to keep appearing on future ballots.

The chamber maintained that hardly any shareholder proposals ever win majority support, but they are repeatedly brought back because the current percentage thresholds are so low.

For example, it maintained that only one of 420 proposals on environmental issues passed between 2005 and 2013. The other 419 items "did not garner anything approximating significant shareholder support," the petition stated.

In the same period, only three of 237 labor-related proposals passed. The other 234 proposals garnered less than 20 percent of the vote, on average, according to the chamber. The chamber didn't offer a specific proposal but said the SEC should "significantly increase" the percentage thresholds and require proposals that fail to achieve the revised minimum levels be prohibited from reappearing on proxy ballots for three years. Not surprisingly, the activist investors oppose the chamber proposal. Among their arguments is that large corporations must accept the responsibilities of engaging with stock owners in exchange for the benefit of being publicly traded.

"I suppose if company managements don't want to have to deal with this aspect of shareholder democracy, they shouldn't be publicly held," said Voorhes, the investment forum's research director.

For his part, Wannen plans to put his call for a sustainability report on next year's proxy ballot, unless Actavis officials offer to simply undertake the work. The company didn't respond to a request for comment.

Wannen previously submitted shareholder proposals when he worked for another investment firm.

He acknowledged at times feeling overmatched — "Dale versus Goliath," he called it. But he also admitted to being energized when he spoke at past shareholder meetings.

"It's great," said Wannen, "to stare (Oracle CEO) Larry Ellison in the eye and tell him he's overcompensated."

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