Grants for Shareowner Action

The Power of an Overlooked Tool
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Did you know that foundations can leverage their investments and fortify grantees through the foundation’s power as a shareholder? You may know that foundations can give grantees their proxies, so that they can attend corporations’ annual stockholder meetings. But do you know that if a foundation gives its grantees an opportunity to own $2000 of stock - either through a grant or through stock transfer - the grantee can then negotiate a deal with the corporation? Exercising shareholder power also gains the grantee national recognition, both from the business press and from other communities facing that same corporation in another part of the country. This is a resource guide about a tool often mentioned but not fully understood in the Confluence Philanthropy community - for its members and for the organizations they fund.

If grantee organizations are working to influence a U.S. corporation that is publicly held, this can be a powerful new organizing tool. First, grantors should check their own investment portfolios to see if they own stock in the company the grantee is facing. If they give their grantees a small amount of stock or a grant of $2000 to buy stock in that corporation, they will find that they are giving them far more than $2000 in value. This action turns the grantee into a shareowner of that corporation – a status that gives them insider access to the board and management of that corporation.

U.S. law allows the shareholders of U.S. companies the right and power to engage companies from within – and far more readily than in any other country. If you overlook this potential, you will miss an invaluable opportunity for grantees and corporations to interact directly, to share their own perspectives, and ideally to negotiate a resolution of conflict. Surprisingly, companies will go quite far to appease their shareholders. As we re-assess those results, it is clear that shareowner status also gives an even wider benefit. It raises the public profile of the organization—that with national business media and their readers, and with organizations facing similar issues in other parts of the country or abroad.

As foundations become interested in impact investing, it is worth reconsidering this powerful tool. It is, in fact, a critical component of impact investing. A pressing question for foundations is whether they are willing to align their investments with their mission. That question affects not only a foundation’s investments but also the clout it has as an investor. Harnessing shareowner power offers foundations and the organizations they fund an often untried new dimension to foundations’ role as investors, and a strategy often overlooked in their program-related investing (PRI).

Precedents

There is a large and continually growing body of institutional investors who conduct shareholder engagement. Religious institutions, 250 Catholic orders independent of the Catholic Church, 22 Protestant denominations, and several Jewish funds, began it in 1971, addressing environmental and social issues. Labor pension funds, notably AFSCME, lead shareholder engagements on corporate governance. Public pension funds, such as CalPERS, CalSTRS, New York State and New York City employees’ retirement funds expanding from original focus on corporate governance to tackle climate change and other issues. Foundations began shareholder engagement and proxy voting in the 1990s,
such as the Educational Fund of America, Needmor Fund, Nathan Cummings, and others pursuing shareholder dialogue and resolutions with various objectives and with corporations companies in a range or industrial sectors. The Jessie Smith Noyes Foundation was the first foundation to grant stock, to the South West Organizing Project (SWOP) as it was confronting Intel. It did this also for the Cornucopia Institute, giving three grants of $2,000 each, in order to buy stock in Dean Foods, Whole Foods and WalMart. The Needmor Fund supported the Immokalee Workers and other grantees by giving them its proxies to attend the annual stockholder meetings of Yum Corporation and others.

Benefits

One of the most significant benefits – if wielded carefully - is that shareholder engagement can be used effectively in conjunction with other tactics and other constituencies in a carrot and stick approach. Companies respond positively to shareholder engagement when they are simultaneously facing public embarrassment from other quarters. This context enhances their view of shareholders as insiders and someone the corporation can talk to. The engagement becomes the carrot for the company. If other groups are using the stick of harassment through public action or through media campaigns, the corporation has a greater incentive and interest in complying with shareholder requests.

The benefits of providing shareholder access to grantees are significant. It offers both the grantee and the corporation the possibility of learning the other’s perspective and the opportunity to negotiate a resolution of the issue. If that negotiation does not lead to a satisfactory solution, the shareholder engagement then serves to educate the corporation’s other shareholders about the grantee’s concerns with the company. It also gets the attention of the business press, such as the Wall Street Journal, and so gains a national spotlight. Other communities learn from it, and the organization starts to interact with them as resources beyond their original community – which becomes empowering to all alike.

Foundations can take numerous steps to advance the practice of shareholder engagement and to empower grantees. They then have the possibility of granting $2000 of stock to their grantee, enabling them to address the company as a shareholder and not just as a community group. Alternatively, the foundation can undertake to engage directly with the foundation on their grantee’s behalf.

How It Works

The Securities and Exchange Act of 1934 gave shareholders of any publicly held company headquartered in the U.S. the legal right to address its policies. A minimum of $2000 of stock is required for a shareholder to put forth a proposal or resolution. Since the value of the stock can fluctuate in the stock market, proponents of shareholder engagement often set aside 100 shares or $3000-worth, so that they will keep their standing as a shareholder even if the stock value falls over the course of the year; required that the stock be held before filing a resolution, plus 120 days from the corporation’s filing deadline and the date of the its annual meeting of stockholders. This stock is best kept in a separate account, where it can be kept and enable the resolution to be resubmitted for however long it takes for the company meet the shareholder’s request.
The method and impact of shareholder resolutions are well covered by others. The best tactic is to word the resolution as a request for disclosure about the issue, rather than as a demand for immediate action, because the largest shareowners – the state, city, and labor pension funds which own most of the corporation’s stock – have general policies to vote in favor of disclosure, based on the assumption that information is necessary to the shareowners. Framing the resolution as a request for disclosure in the form of a report “at reasonable cost and omitting proprietary information” also helps protect the resolution against an inevitable challenge from the corporation’s lawyers. Although disclosure can appear to the grantee or other activists as an insufficient request, this must be seen in as a multi-year strategy. Requests for disclosure will gain significant support from other shareholders. The bar can then be progressively raised in subsequent years of negotiation. Organizations must understand that shareholder engagement is a long-term strategy of gradually gaining ground by interacting with the corporation’s officers, establishing mutual respect, enlisting support from other shareholders, and eliciting ideally successive voluntary concessions from the corporation. Institutional and religious investors got 160 corporations out of South Africa during its apartheid regime, but that took 23 years.

It is wise to seek the advice of people experienced in crafting shareholder resolutions, when planning and writing a shareholder resolution. The 500-word resolution must be able to withstand challenges on any of thirteen legal grounds, which its lawyers will make to try to convince the SEC that they need not observe the resolution. Those challenges can range from ‘ordinary business’ (meaning that shareholders must address major issues about corporate policy and affecting more than 5% of its business), ‘mootness’ (meaning the corporation’s arguments that they have already done what the resolution is requesting and is therefore moot), to ‘vague or misleading’ (meaning the proposal’s wording and content are imprecise or flawed in some other way that the corporation will cite to try to convince the SEC that it is inadequate to bring to the attention of other shareholders).

The shareholder resolution must then be formally submitted to the company by the filing deadline 120 days before its annual meeting of stockholders. The company will then try to get the proponents of shareholder resolutions to withdraw them before the company has to print it its proxy statement that goes out to all its shareholders. The corporation or the resolution’s proponents next set up a dialogue meeting. The corporation’s officers will try to convince the proponents that its policies and practices already exceed what is requested with an elaborate presentation that many shareholders consider a ‘dog and pony show’ designed to impress while making little substantive change in existing policies or practices.

Proponents typically ask for more than the company is willing to do in a single round of negotiation. One of the concerns for grantmakers supporting grantees in this sort of organizing is that it can take several years of incremental voluntary movement by the company to meet the proponents’ expectation. The foundation and its grantee must have a clear strategy and open dialogue about how to sustain this effort. The trick is then to stage the request in progressive steps that will ultimately lead to a satisfactory result. It may be that external conditions or pressure for change will have to mount will before the corporation will voluntarily make the changes being requested. Shareholder resolutions are most useful at two key stages of a corporate campaign: the beginning and the end. They serve to put a new issue directly onto the agenda of companies’ board of
directors and to keep it there until the corporation responds significant. They are also invaluable at the end of the process, in that they embody a legal leverage for negotiation and simultaneously carry a precise timeline for that negotiation to be satisfied.

It is essential for the proponents to decide in advance which specific conditions they require the corporation to meet before they will withdraw the resolution. The conditions for withdrawal are essential for clear negotiation. When other shareholders have added their weight by co-sponsoring the resolution, it becomes even more important to agree in advance and through careful communication what conditions must be met before the resolution is withdrawn. Failure to specify and agree the conditions for withdrawal can become a sticking point or result in the loss of leverage if the resolution is withdrawn without getting a concrete result from the corporation.

If the conditions for withdrawal are not met, and if the company’s lawyers do not succeed in challenging the resolution legally at the SEC, then the resolution is printed in the company’s proxy statement and goes to a vote of the other shareholders. It needs to meet minimum thresholds set by the SEC in order not to be defeated entirely. If it gets 3% of the vote in the first year, 6% in the second year, and 10% in all subsequent years, it can be brought back for another year and the company will continue to have to deal with it. Ways of raising the shareholder vote for the resolution include finding other sympathetic shareholders willing to co-sponsor or co-file the resolution. It is good if the issue can be brought to the attention of established networks of shareholder activist investors, such as the Interfaith Center on Corporate Responsibility. It is necessary also to present a justification for the resolution to the major proxy-voting firms, Institutional Shareholder Services and Glass Lewis, whose services many large institutional investors buy to advise them how to vote on shareholder proposals each year, and sometimes to vote their shares for them.

**Strategic Questions**

The key question for foundations and their grantees is whether this process supports their objectives or detracts from other work. Shareholder engagement can bring major results, but it raises questions about the organization’s objectives and whether a protracted, multi-year negotiation with the corporation is consistent with those objectives. It also creates its own particular challenges, such as the need for staff time. In the course of their 1999 Intel campaign, the SouthWest Organizing Project (SWOP) found that it easily occupied its staff people for an extra couple of hours every day at times. A grantee may also need considerable support from foundation staff or other experts in this process to get the process going.

Negotiations with companies are held behind closed doors and are generally confidential. This goes against the transparency goal of organizing and community work. The grantee must therefore be able to balance both modes of work. It can appear contradictory for a grantee to hold stock in the company they are targeting in their organizing work, and would thus need to be specifically explained as a tactic or strategy in their larger plan. This can work well when paired with a strategy to embarrass the corporation by a different organization. The grantee has to be prepared to be the shareholder offering the ‘carrot’ and to desist from tactics such as going to the press, which constitute the ‘stick’.
The stock grants need to be additional to the regular grants given to a group, rather than subtracting from that funding.

**Results**

Shareholder action produces a range of results. It:

- Brings the grantee’s issues to the attention of the company’s board of directors and keeps them on the board agenda as long as the resolution continues to draw the minimum necessary shareholder vote.
- Creates a basis for wider publicity about the issues and organizing other constituencies: informing shareholders, getting business press, getting support of other institutional investors who own stock in the same company (other foundations, religious institutional investors, labor pension funds, public pension funds).
- Gives the grantee another organizing tool, around which it can gain much additional support from shareholders, other communities, the public, and the business press, leveraging a small investment ($2000) to potentially great effect.
- Is a nuisance - as well as a legal obligation - for the corporation, which tries to get the proponent to withdraw it, and constituting whereupon the leverage to cause the corporation to make a concession.
- Allows other shareholders and constituencies to become informed and devise their own response to the company, as occurred when cities exercised their institutional purchasing power to take business away from companies still in South Africa. In that case, as in the movement now to divest from fossil fuels, shareholder engagement can educate students about how university endowments can be used to pressure companies.

**Challenges**

- The biggest issue is whether engaging in the complex and arcane process of shareholder engagement could draw valuable time and resources away from the grantee’s ultimate objective. To be successful, it would need to be prioritized for staff time and attention in the grantee organization. As with any project, shortage of knowledgeable staff within the grantee organization could result in failure.
- Needs board support within the foundation and the cooperation of investment staff and committees. Requires foundation staff time, since they too will need to become informed about shareholder engagement in order to support the grantee or orient them towards other knowledgeable sources. This responsibility needs to be clearly allocated to the foundation president’s office or to program staff.
- Works best in a multi-year strategy where the grantee’s ultimate objective attainable several years down the line, and concrete steps toward that objective can be outlined for each successive year. Those steps have to be not too onerous for the company to agree to each
year. They need to lead progressively to the grantee’s ultimate objective, calling for an astute, patient strategy. Will the grantees be able to commit to sustain a shareholder engagement over several years and granting cycles, changes in leadership, or other shifts? Does the shareholder action have support of the grantee’s board?

- Problem of disclosure: Whether getting a report from the company will achieve the grantee’s objectives and the foundation’s purpose on giving the grant. Are the winnable objectives a fulfillment of the foundation’s purpose in giving the original grant? This is a question that needs to be evaluated.

- Whose priority, the grantor’s or the grantee’s? If the shareholder engagement is undertaken at the initiative of the foundation, it may be considered a foundation objective imposed on grantees.

- Voluntary for the company, so has to be within what they are willing to do. Since incremental, unlikely to be on the timescale of urgency of many grantees.

- Shareholder resolutions are non-binding, even if they attract a majority vote of other shareholders, so there is no outside recourse other than embarrassment or pressure by other shareholders.

**Field Building Opportunities**

Foundations can also provide:

- Training for grantees to undertake investor activism productively, learn how to work with investors, and understand the relative roles of publicity and negotiation with a corporation.

- Grants to support grantees’ collaboration with investors active on their issues, either to become a member of investors networks, or to identify and work with particular investors wishing to promote grantee interests with the corporation(s) targeted.

- Grants to support a consultant to the grantee to staff a campaign on investor action on grantee issues.

- Grants to support use of the media to support investor activism on grantee issues.

- Assurance that grants to support investor engagement do not subtract from other grants to grantees.

Foundations can:

- Assign foundation staff to become versed in investor engagement to support grantees.

- Allocate staff to comprehend and expound the relevance of investor action to impact investing, including Mission-Related and Program-Related Investing.

- Consider participating in investor networks which examine fiduciary duty and its interpretation to align with the social or environmental objectives of the foundation.
Resources:

Principal networks and consultants on shareholder activism.

Good organizations the foundation can join as an investor, and its grantees can also join if they are investors.

Interfaith Center on Corporate Responsibility (ICCR) - a coalition of 300 faith and values-driven organizations with combined assets over $100 billion, who view the management of their investments as a powerful catalyst for social change.

As You Sow - promotes environmental and social corporate responsibility through shareholder advocacy, coalition building, and innovative legal strategies.

Investor Environmental Health Network (IEHN) - a collaborative partnership of investment managers, advised by nongovernmental organizations, concerned about the financial and public health risks associated with corporate toxic chemicals policies. Through dialogue and shareholder resolutions, IEHN encourages companies to adopt policies to continually and systematically reduce and eliminate the toxic chemicals in their products and activities.

CDP (Carbon Disclosure Project) - works with market forces to motivate companies to disclose their impacts on the environment and natural resources and take action to reduce them, works on climate change, water issues, corporate and municipal action.

Investor Network on Climate Risk (INCR) - a network of 100 institutional investors representing over $11 trillion in assets committed to addressing the risks and seizing the opportunities resulting from climate change and other sustainability challenges.

Ceres - a coalition of investors, companies and public interest groups advocating for sustainability leadership and mobilizing a powerful network to accelerate and expand the adoption of sustainable business practices and solutions to build a healthy global economy, with particular focus on climate, insurance, water, and corporate engagement on a breadth of sustainability issues.

Sustainability Issues Shareholder Campaign (run by Ceres and ICCR) - No website and they may prefer to remain behind the scenes. Not for circulation until clarified.

US/SIF: Forum for Sustainable and Responsible Investment - US professionals, firms, institutions and organizations engaged in sustainable and responsible investing and advancing investment practices that consider environmental, social and corporate governance criteria to generate long-term competitive financial returns and positive societal impact.

Principles for Responsible Investment (PRI) Initiative - an international network of investors working together to put six Principles for Responsible Investment into practice, understand the implications of sustainability for investors, and support signatories to incorporate these issues into their investment decision making and ownership practices.

Compass Sustainable Investing Program - intensive content and skills based classes and workshops for institutional investors, including philanthropic foundations.
About the Author

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