
A New Politics of Engagement: Shareholder Activism for Corporate Social Responsibility

By: Anastasia O'Rourke
Research Associate, CMER INSEAD
Anastasia.orourke@insead.edu

For the Greening of Industry Conference, June 23-26, 2002, Göteborg.
Submitted April 24, 2002.

ABSTRACT

A commonly agreed definition of 'Corporate Social Responsibility' (CSR) is currently being battled out in many arenas. One of the most interesting of these is in the interaction between corporations and one of their most powerful stakeholders: the shareholders. Shareholders groups are going beyond the decision to invest, to not invest, or to divest by proposing and voting on company specific CSR issues at annual shareholder meetings. This activity is joined by an increasingly sophisticated 'strategy of engagement' which exploits their rights as shareholders. In the process, a new model of 'responsible' ownership is being forged, based on the ideals of corporate citizenship and democratic shareholder decision-making powers.

What can be expected from such activism? This paper reviews the current trends towards shareholder activism for CSR. It asks: does shareholder activism have the potential to change mainstream corporate and shareholder attitudes towards CSR, and will it provide a rigorous method for corporations to implement of the key principles?

The paper first gives some background to growth and spread of shareholder activism, it describes the key actors involved, the CSR issues being raised, the process of preparing resolutions and entering into dialogue, and assesses some of the results gained so far. Two short cases are then presented on shareholder activist campaigns (BP Amoco on climate change and biodiversity; and the U.S. Forestry Sector on the financial implications of environmental risks and related SEC rules of disclosure). The relative effects of these activities are then discussed including the opportunities and limitations this method of pressuring for CSR brings.

Keywords: *Shareholder activism, Corporate Social Responsibility (CSR), Socially Responsible Investing, Corporate Engagement*

1. Introduction

The recent crisis of corporate accountability brought about by the collapse of ENRON has suddenly pushed issues of accountability, reporting, transparency and minority shareholder rights into the media and regulatory spotlight. Information disclosure is now a fundamental tool for regulating and controlling companies and markets. A collapse of the scale of ENRON is calling into question the very processes and methods by which companies have been voluntarily reporting their financial and non-financial risks to their stakeholders.

However, before the current crisis occurred, another movement aimed to force corporate accountability was already generating much heat and interest. From the late 1990s, in particular, we have witnessed the emergence of a vibrant social protest movement that is highly critical of certain types of corporate behaviour. The general theme of the criticism levelled by this movement at corporations is that they are not sufficiently accountable to the societies in which they operate for their environmental and social impacts.

This idea is currently undergoing a kind of renaissance of interest under the banner of 'Corporate Social Responsibility' (CSR). CSR concerns how business enterprises relate to and impact upon a society's needs and goals¹. In the case of trans-national publicly listed companies – such needs and expectations are currently changing in part due to the role these enterprises play in a rapidly globalising economy (UNCTAD 1999).

Summarizing the trend towards corporate social responsibility, an article in the Financial Times emphasised its importance:

“Last week was a bad one for some very big corporate names. The problem was not only about their results, but also about their public images big companies are also discovering that criticism is coming not only from isolated outside protestors but from big shareholders, too. The cases demonstrate a trend: demands for greater Corporate Social Responsibility from business are getting louder, better organised, and more popular. They cannot be ignored”.

Financial Times, Editorial: 'Good Names' 23rd April, 2001

As this quote hints, one arena where the boundary zone of CSR is currently being negotiated, is the interaction between companies and its primary stakeholders: its shareholders. The power and influence of this previously unlikely group is now being used by environmental and social activists; and what's more, the shareholders themselves are turning into active lobbyists.

¹ CSR is defined by the Prince of Wales Business Leaders Forum as: “every aspect of business has a social dimension. CSR means open and transparent business practices that are based on ethical values and respect for employees, communities, and the environment. It is designed to deliver sustainable value to society at large, as well as to shareholders” (PWBLF, 2002). For a review of the shifts in the concept of CSR since the 1970's, see Hockerts 2002.

This activity challenges some of the key assumptions of what is of most interest to shareholders (i.e. shareholder value) and shifts some of the typical corporate responses to NGO led social and environmental demands. Andrew Hoffman crystallises this shift by asking:

“How can a corporate executive balance social and economic pressures when social activists and corporate investors are the same people?” (Hoffman, 1996)

Shareholders groups are using their power by going beyond the decision to invest, to not invest, or to divest - in order to make their voices heard. A more sophisticated ‘strategy of engagement’ is being pursued which exploits their rights as shareholders to demand information and change corporate behaviour via a process of dialogue and proposing changes at the annual shareholders meeting. Shareholder activism thus can be defined as including the following activities:

- Corporate engagement or dialogue (communicating with management on particular issues);
- Shareholder resolutions (filing or supporting shareholder proposals on social and environmental issues);
- Proxy voting (establishing policies for voting shares on social and environmental issues); and
- Divestment (selling of shares)².

Shareholder activism is not just found with interested private shareholders and noisy minorities, as increasingly collaborations between NGO’s and large institutional investors are being forged. Even larger institutional investors such as pension funds are joining the fray - arguing that concern with the environmental and social performance of companies represents a part of their long-term fiduciary responsibility.

Despite some successes and increasing media interest, CSR is still not the force for change that it could be. Some are critical that it simply does not go beyond the façade of a public relations response. Furthermore, even in its current form, CSR issues are not taken seriously by most mainstream investment houses or large corporations. Does shareholder activism have the potential to change this situation and to provide a rigorous and guiding approach to CSR?

Very little academic research has been produced that examines the trend of shareholder activism for CSR, and even less actually discuss its relative effectiveness (from the perspective of either the activists’ or the corporate agenda)³. Although some studies look

² This definition of shareholder activism was adapted from the definition given by L. Chen, UBS Warburg, 2001, p 5.

³ With the exception of Hoffman, 1996 who looks at CERES’s pressure on Amoco in the 1990’s which utilised shareholder activism; and Graves, Rehbein and Waddock, 2001 who trace the different ‘Fads and Fashions in Shareholder Activism’ between 1988 and 1998 in the U.S., asking “Do social issues addressed by shareholder resolutions shift with the shifting winds of public opinion?” (Grave et al, 2001, p 294). Additionally, the The World Resources Institute (WRI) study the environmentally induced financial risks of the US forestry sector and argue that shareholders are being misinformed about the level of financial risk

at the effectiveness of shareholder activism to change companies on issues of corporate governance (for example executive pay, board structure etc) and increased shareholder value⁴, the effectiveness of the social and environmental agenda is yet to be analysed in depth.

1.1 Aim of the paper

This paper aims to fill the gap by presenting and then assessing the trends towards shareholder activism for CSR. It examines the shareholder activism as representative of a new form politics that is attempting to shape corporate behaviour by process of long-term 'engagement' process, combined with the pressure of a specific demand communicated to all shareholders.

The case of shareholder activism offers unique insights into the nature of contemporary activism, the various pressure tactics used on companies to demonstrate and improve their CSR, and the variation in corporate response to this pressure.

Shareholder activism on CSR also illustrates the growing tension around the very term CSR – a concept which is evolving as a result of a political and PR-saturated process. By studying the picture of CSR through the lens of all the small pieces of shareholder activism, we can start to see the conceptual and practical boundaries of what can be achieved more clearly, and perhaps even predict where it will head.

The underlying questions this paper thus asks is:

Can shareholder activism actually deliver the desired change? Furthermore, what conditions would make it possible (or constrain its use) to promote the rigorous uptake of CSR?

My rationale for asking these questions is ultimately in order to improve the effectiveness of actions to change corporate behaviour and to contribute to a better knowledge and understanding of corporate governance structures and their implications for CSR. It aims to build some conceptual foundations by which we should analyse the effectiveness of Shareholder Activism.

1.2 Structure of the paper

In order to examine these questions, this descriptive paper first gives an overview of the main players who have been using shareholder voting rights to pressure companies for their various causes. Then in Section 3 we take a closer look at these CSR 'causes' or

to which they are being exposed (Repetto & Austin 2000). Their subsequent campaign against the SEC is analysed in Case 2: Section 7.2 of this paper.

⁴ See for example T. Opler & J. Sokobin (1998), B. Black (1998), S. Gillian & L. Starks (1998), Campbell et al (1999), R. Romano (2000)

issues and briefly demonstrate how they have shifted over time. Section 4 then delves into the details of the process of shareholder activism and what the final aims might be. An overview of some of the results and ‘successes’ of shareholder activism is then given in Section 5.

However, because the success of these tactics is not always represented by voting results, two short cases are presented in Section 6 to delve deeper into the political intricacies of this controversial activity. Section 7 discusses some of the effects of the activities on companies and thus the opportunities and limitations of this approach of influencing corporate change. Here a conceptual foundation is built by which we could analyse the effectiveness of shareholder activism and begin to define the framework conditions for a successful campaign.

1.3 Methodology

This paper stems from discussions with a number of specialists in the shareholder activism and SRI field in Europe and the U.S. It is based on research undertaken for the preparation of a Case Study on shareholder activism for CSR to be taught in INSEAD Business School’s MBA and Executive Programmes.

This research on which this paper rests is exploratory in nature rather than being a fully fledged empirical survey of the phenomenon. Aside from data coming from the U.S., there is no consolidated data that tracks shareholder activist movements and cases worldwide. Some trends can be noted in different countries and an overview of the spread of issues raised by shareholders can be given. However to see whether and when the shareholder activists are successful in their aims we need to look beneath the surface of the final voting results. In this situation, a case-based approach is most appropriate in order to look more closely at the specific political configurations and movements that can make or break a ‘positive’ corporate response to the demand.

The paper is thus based on three levels of research:

1. Critical readings of literature on corporate governance, rise of institutional shareholding, shareholder activism, CSR and Stakeholder theory;
2. A study of available data on shareholder activism; and
3. Two short illustrative cases based on literature and interviews with the main actors in the chain: the shareholder groups, the NGOs and the companies being targeted.

The data and information on shareholder activism is typically well represented in the U.S. and far less systematically screened or gathered elsewhere. Thus this paper tends to focus on the U.S. trends, even though some activities have been found in Europe and Australasia. Such non U.S. activities are represented in a case by case fashion. It is hoped

that more data will be collected at the E.U. level in future years with new investment into research consortiums such as the European Social Investment Forum⁵.

The two short cases - on BP Amoco and Risk disclosure rules of the SEC - were chosen in order to illustrate the following issues:

- different country specific rules (i.e. UK and US);
- the spread of issues being targeted (i.e. both biodiversity, climate change, environmental risks in the forestry sector, SEC rules of disclosure);
- the spread of different players using this tactic (i.e. institutional investors, minority shareholders, NGOs, consortiums); and
- the different effects of the activism (i.e. successes in terms of the percentage of votes gained, withdrawals, and changes made by company as a result).

2. Who are the shareholder activists?

There are many different ways to tell the story of shareholder activism. Like some, we could focus on the number of actions and its recent fast tracked growth. For instance, according to the US Social Investment Forum, the amount of money that such 'shareholder advocates' now control can be seen to have grown in the past 6 years.

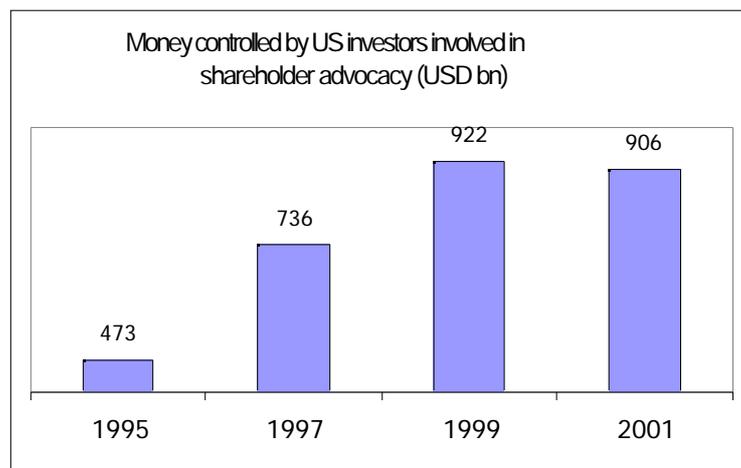


Figure 2: Amount of Money controlled by U.S. Investors involved in 'Shareholder advocacy' (in USS Dollars)

Source: based data from SIF, 2001. (<http://www.socialinvest.org/areas/research/TRENDS>)

The shareholder activist movement is currently predominantly being led by U.S. 'active investors' – however it is now a worldwide phenomenon. Who are these investors involved in 'shareholder advocacy'?

⁵ See www.eurosif.info

Shareholder groups engaged in such activities cover a wide spectrum, from Churches and religious groups, to 'Socially Responsible Investment' (SRI) fund managers, Other Institutional Investors (such as pension funds and insurers), Trust funds and endowments, Non Government Organisations (NGOs), and finally individual or private investors. Each of these groups is described briefly below:

- **Churches and religious groups** such as the Interfaith Centre on Corporate Responsibility in the U.S., have been proposing resolutions since the 1960's and 1970's on issues such as apartheid in South Africa, peace issues and anti-militarism. Now many church groups of every denomination have been launching shareholder proposals. For example, in 2002, the Benedictine Sisters, the Sisters of Humility of Mary and Trillium Asset Management are asking Citigroup that "the company incorporate in its project risk analysis the impact on the environment, human rights and risk to our company's reputation." (see <http://www.socialfunds.com/sa>)
- Some of the more active **Socially Responsible Investment (SRI)** fund managers are flexing their collective muscles by either launching or backing proposals. An example is the Swiss fund Ethos, who, apart from screening the investee companies on the grounds of environmental and social performance, promote: "*an active approach that promotes greater awareness among companies of the environmental and social aspects of their businesses.*" (Ethos, 2001)

There has been a phenomenal growth rate of the number of such SRI mutual funds, the amounts invested, and the rapid proliferation of investment and analytical products catering to this segment. According to the Social Investment Forum, assets in socially screened investment portfolios in the U.S. rose by more than a third from 1999 to 2001 (the 36 percent growth rate is over 1.5 times the 22 percent rise reported for all investment assets under professional management in the United States during the same two-year period). The total assets under management in portfolios screened for socially concerned investors in the U.S. climbed from \$1.49 trillion in 1999 to \$2.03 trillion in 2001 (SIF, Nov 2001). This trend is not confined just to the US. The universe of retail ethical funds doubled in size every three years in the UK during the 1990s, from £321m in 1990 to £3.197 bn in 1999. (UBS Warburg, 2001, p 3.)

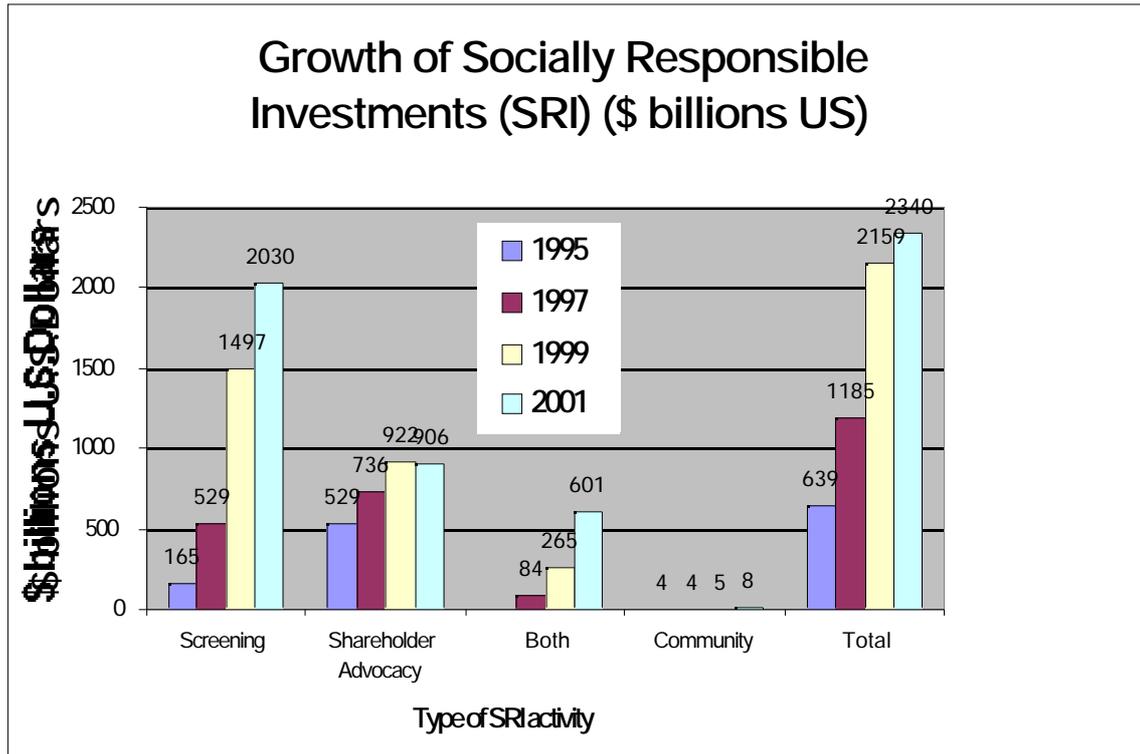


Figure 2: Growth of Socially Responsible Investments in the U.S. from 1995 to 2001.
Source: Social Investment Forum 2001 Trends Report.

Figure 2 illustrates some of this trend towards Socially responsible Investment in the U.S., albeit somewhat loosely defined as to what constitutes a ‘social’ screening or advocacy. Here ‘Shareholder Advocacy’ (i.e. both ‘dialoguing’ with companies and filing, co-filing and voting proxy resolutions) is shown to overlap with Screened funds demonstrating that many SRI’s are participating in the Shareholder activist movement.

- Other mainstream **Institutional Investors** are picking up on some of the demands of the SRI’s and activists. Institutional Investment Managers of both Pension funds and Insurance companies represent ownership of some half of all listed shares. Their managers compete on performance and their portfolios are subject to rapid turnover which has made corporate managers more concerned with their market valuations (Conference Board 1998, quoted in Repetto & Austin, 2000b, p 2). The engagement of institutional investors on CSR issues represents a potentially large shift if they are engaging companies on corporate governance and financial performance issues given their power.

A number of umbrella groups also help mobilise institutional investor economic and political clout over companies beyond what could be achieved alone (Brancato, 1997, p 81). The major U.S. Institutional Shareholder groups include:

- Council of Institutional Investors (formed in 1984 now comprise of more than 100 state., local and public pension funds and some corporate pension funds) (see www.cii.com)
- The Investor Responsibility Research Centre (IRRC) formed in 1972 to provide timely and impartial analysis concerning CSR issues and provide proxy tracking and voting analysis services;
- Institutional Shareholder Services (ISS) who advise institutional investors on how to carry out their fiduciary responsibility to vote their shares.
- Public sector pension funds such as the Californian State Pension Fund, CalPERS (the largest defined benefit pension fund in the U.S.). An CalPERS have played a leading role in the CSR and corporate governance shareholder activism game (Davis, 2000).

In the U.K., recent interest of institutional investors has been stimulated by Pension fund legislation adopted in 2000, which states that such funds must declare:

“The extent (if at all) to which social, environmental, or ethical considerations are taken into account in the selection, retention and realization of investments, and their policy (if any) in relation to the exercise of rights (including voting rights) attaching to investments.” (Quoted at UK Social Investment Forum, 2001)

Additionally, investment guidelines have been issued by the Association of British Insurers (ABI) that encourage companies to adopt best practice and fuller disclosure when responding to social, ethical and environmental risks. The guidelines call on companies to confirm in their annual reports that they have assessed these risks and are managing them to preserve or enhance the value of the business (ABI 2001, p 44).

The UK Institutional Investor Hermes Investment Management Ltd has a leading and comprehensive strategy of ‘responsible ownership’ which asks of all its investments that the company should disclose in their annual rep, whether social, environmental and ethical (SEE) issues are taken into account in board decisions, if the significant long terms and short term risks associated with SEE risks have been assessed, if SEE is taken into account in the training of directors, if SEE issues are taken into account in performance related remuneration schemes (Monks, 2001, p 134). Similarly, Morely Asset Management (a large U.K. pension fund owning some 3% of all UK shares), in 2001 stated a policy whereby if their investee company does not have an environmental report – it will vote against their annual report. Their demand follows on from the UK governments’ Company Law Review, and change in legislation over the fiduciary responsibility of pension fund managers.

- In the U.S. in particular, attention has now turned to large **trust funds**, **endowments** and the investment of other **philanthropic funds**. For example, students are demanding to know where University endowments are placed, and

groups such as the Jessie Noyes Smith Foundation are starting to look into investing their capital 'responsibly'. As Stephen Viederman of the Jessie Noyes Smith Foundation states: "...the Foundation should move make things as seamless as possible between our giving and our investing" (JNSF Annual Report, 2000; quoted in Monks, 2001, p 122). However many others are reluctant to enter the fray, preferring to rest their argument on performing their fiduciary responsibility.

- **Non-Government Organizations** (NGOs) have bought shares sometimes just in order to vote, or use proxy voting mechanisms to influence other shareholders to support their cause (for example, see Greenpeace, 2001's *Get Active: How to change corporations*). Additionally, NGOs are increasingly using their own investments and savings to pressure companies towards various change-oriented ends (Miller, 2002). For example, the WorldWide Fund for Nature in the U.K. in 2002 filed a resolution with BP Amoco on issues of biodiversity and BP's activities in ecologically sensitive 'no-go' areas (see Case 1, section 6.1). NGOs are also active in lobbying other shareholders on a particular issue of concern. Shareholder activism often represents a key rallying point of a larger campaign led by an NGO to a change a corporation's behaviour (see FOE, 2001 guidelines to shareholder activism).
- Finally, scrolling through the shareholder activist resolutions placed each year, one can see a number of **Individual Investors** who are actively placing resolutions and voting on them or collaborating with other groups. The number of individual shareholders divesting for social or ethical reasons could be far higher than these incidents suggest. It is now also possible to research a mainstream mutual or pension fund operator (acting on individuals' behalf) on environmental and social grounds, using on-line databases such as Calvert's: "Know what you own"⁶ and the IRRC's proxy Voting Service⁷.

Furthermore, **new groups and coalitions** are being formed with the sole aim of raising specific environmental and social performance issues at corporate Annual General Meetings. A good example of this is the shareholder coalition built up around BP Amoco in the 'SANE BP' campaign of 2000 – 2001 (See Case Study 1, Section 6.1). Friends of the Earth in their guidelines on Shareholder activism, state that campaigners thinking of launching a proposal should consider the potential constrictions from collaboration as well as the opportunities. For instance, there will be complexity from having to set objectives and strategy jointly, or in ensuring co-filers agree with the lead filers' objectives. There also may be some work in negotiating thresholds for acceptable results (e.g. in deciding when to withdraw a resolution). These differences have in some cases been used by companies in order to 'divide and conquer' the activist groups (FOE 2001).

⁶ Calvert, www.calvertgroup.com

⁷ IRRC, <http://www.irrc.org/>

Proxy-voting mechanisms using internet polling are being developed to leverage 'average' shareholders into making their concerns 'heard' via a particular platform. Mark Latham argues that the internet will:

“awaken the sleeping giant of corporate governance – individual investors... giving shareholders unprecedented influence over the policies of large corporations, by making ‘corporate monitoring’ possible (and thus)... counteracting voter apathy ” (Latham, 2000 p 1)

There is also increasing overlap between activists who were more interested in corporate governance and those interested in social or environmental issues (IRRC & SIF, 2002). To investigate this further, we now look into trends of the actual issues raised to companies via the shareholder resolution process.

3. CSR issues raised by Shareholders

The types of social and environmental issues being targeted by shareholder activists form a picture of Corporate Social Responsibility as an evolving concern over certain public issues. By looking at the types of issues targeted in this section, we start to define the landscape of what is considered to be contemporary 'CSR'.

This section is intended to briefly trace the development of the main CSR issues that have been raised by shareholders. It does not attempt to give an historical overview of the shareholder activist movement, as this is well and beyond the scope of a single paper. Nonetheless, some important events and longer term trends are worth outlining not only in order to give some context to current shareholder activism, but also because these events critically shaped what is, and is not, possible for shareholders to undertake today.

3.1 Shareholder Activism in the 20th Century

Thousands of social and environmentally oriented issues have been proposed to companies using shareholder rights in the past 5 – 10 years. However, shareholder activism, under different guises, has been taking place for decades. Brancato claims that U.S. shareholders have been actively pressuring managements to address social issues through proxy voting process for more than 60 years. This started with two individual investors (the Gilbert brothers) who formed the first shareholder activist group in the 1930's, and tried to make management more accountable, to increase the disclosure of financial data, to safeguard shareholders rights to elect directors, to improve shareholder benefits and to curb excessive executive compensation packages. Furthermore they tried to transform annual meetings from 'perfunctory legal rituals' into forums for discussion between management and shareholders (Brancato, 1997, p 89-90).

In 1946, the SEC adopted rule 14a-8 which requires companies to include shareholder resolutions in their proxy statements⁸. Resolutions are to be disseminated in the proxy

⁸ The process of raising resolutions and rule 14a-8 is described in more detail in Section 4.

materials at the company's expense and discussed at annual meetings. Without this, shareholder activists would most likely not be able to afford the mailings and information costs of launching a proposal and garnering support for it with other shareholders (Brancato, 1997, p 92). Furthermore, it was decided that Resolutions must be of concern to all shareholders and relate to the ordinary conduct of business.

In the 1960's and 1970's shareholders pressured companies on issues such as black rights and equal opportunities (e.g. the FIGHT group challenged Eastman Kodak on black employment and training issues); on anti-Vietnam war protests against companies such as Dow Chemical for the production of napalm and Honeywell for producing weapons. In 1970, a U.S. District Court ruled against the SEC (which had disallowed a proposal forcing Dow stop producing napalm), a decision that opened the door for other social responsibility issues and proposals (Brancato 1997, p 93).

Meanwhile in 1970, the case against General Motors was also being fought by Ralph Nader's 'Campaign GM' combined with the 'Project on Corporate Responsibility'. This landmark case argued that GM should be more responsible to society's needs in a range of areas such as product safety, environmental pollution and employment discrimination. The campaign used shareholder proxy votes as a means to pressure the company and gained high profile media interest (Monks & Minnow, 1991; Vogel 1978)

Later in the 1970's socially oriented activism occurred through the 'Interfaith Centre on Corporate Responsibility' using shareholder proposal process as a way of working for peace and social justice, most famously filing resolutions on South African Apartheid and against militarism (FOE, 2001).

During the 1980's, shareholder activism in the U.S. tended to swing towards anti-takeover activities partly as a result of the 'deal decade', which many saw as eroding shareholder value and eliminating the market of corporate control (Brancato, 1997, p 84). Institutions such as the Council of Institutional Investors (formed in 1985) embraced the proxy voting mechanism (as developed by the social activists) to oppose management attempts to block takeovers, and to prevent management tactics such as 'golden parachutes' for executives, 'greenmail' by management, the use of poison pills, and to protect their right to decide whether to 'tender' or surrender their shares to a bidding company for the premium generally offered (Brancato, 1997, p 84).

In the late 1980's and early 90's a shift occurred towards pressing for structural governance change in the companies (ie corporate governance issues such as the separation of the role of CEO and Board Chairman; the number of 'outside' directors independent of management; and the composition of key Board committees such as for auditing and compensation) (Brancato 1997 p 85). The focus shifted towards monitoring corporate performance and finally towards incorporate non-financial performance issues into indicators of corporate performance.

Calls for improved corporate social and environmental responsibility in the early and mid-1990s were initially stimulated by particular incidents or events involving negative external impacts, such as accidents or exposure of mal-practice. For instance, a group

called CERES⁹ (an investor and environmental activist alliance formed in wake of Exxon Valdez disaster), built up the idea of environmental disclosure. They used their power as shareholders to pressure companies to adopt a set of principles, and to produce standardised environmental reports (FOE, 2001).

A Study by Graves et al assessed data from the IRRC to track all ‘social policy’¹⁰ shareholder proposals 1988 and 1998, including those that were voted on, withdrawn or omitted. They found for this period that a total of 2,994 proxies were gathered in total.

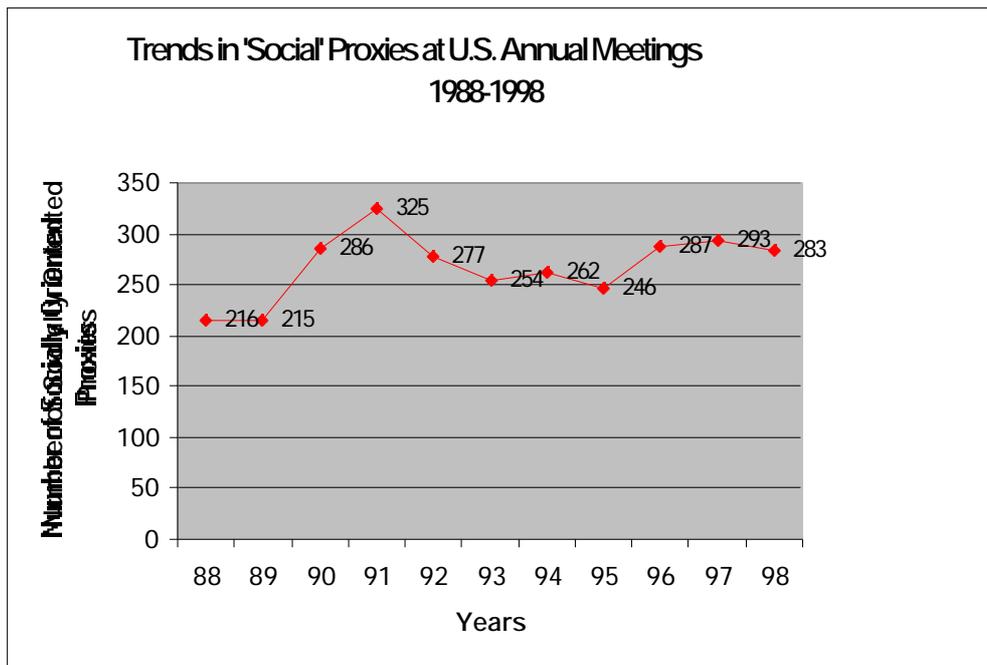


Figure 3 : Trends in Social Proxies at U.S. Annual Meetings from 1988 – 1998. Note: ‘Social’ include environmental, health, media, Human rights, diversity etc.
Source: Graves et al, 2001, p 300.

As can be seen in Figure 3 (based on Graves et al’s study) there is a jump in the number of social policy resolutions placed in 1990 - 1991. Collapsing the proposals into 27 categories then tracking these over the 11 year period, the authors found that the most popular categories were: South Africa (542 resolutions), environment (483 – not including another 100 on energy issues), Human rights (289); Diversity (253); tobacco (209), labour (198) and military contracting (173) (Graves et al, 2001, p 303). They found that other issues receive less attention during this period in part because interest in them waned, or started later in the time period. The issues that seemed to go ‘out of fashion’ were South African and to a lesser extent, animal rights and military contracting. The issues that seem to be ‘standby’ or perennial were those to do with human rights, banking/insurance and energy. The emerging issues (towards the end of the time period)

⁹ www.CERES.org

¹⁰ Graves et al’s definition of ‘social policy’ issues include environment,

were tobacco, labour, governance, political action, abortion/contraception and compensation. Issues that tend to wax and wane (perhaps due to difficulty in resolving them) included environment and diversity. (Graves et al, 2001, p 304-307).

3.2 Shareholder activism at the turn of the Millennium

From the late 1990s, campaigns by stakeholder groups started to demand more management system and reporting procedures aimed at generating accountability and integrating these concerns into the whole company (rather than just being focused on one particular product or a supply chain issue). For example, companies are frequently asked to adopt certain management practices such as environmental and social reporting, to adopt principles (such as the CERES principles or McBride principles) or demanded that companies implement international standards such as ISO 14001 and the ILO Labour standards¹¹ (SIF 2000).

The following figure illustrates the breadth of Shareholder resolutions associated with CSR in 2001.

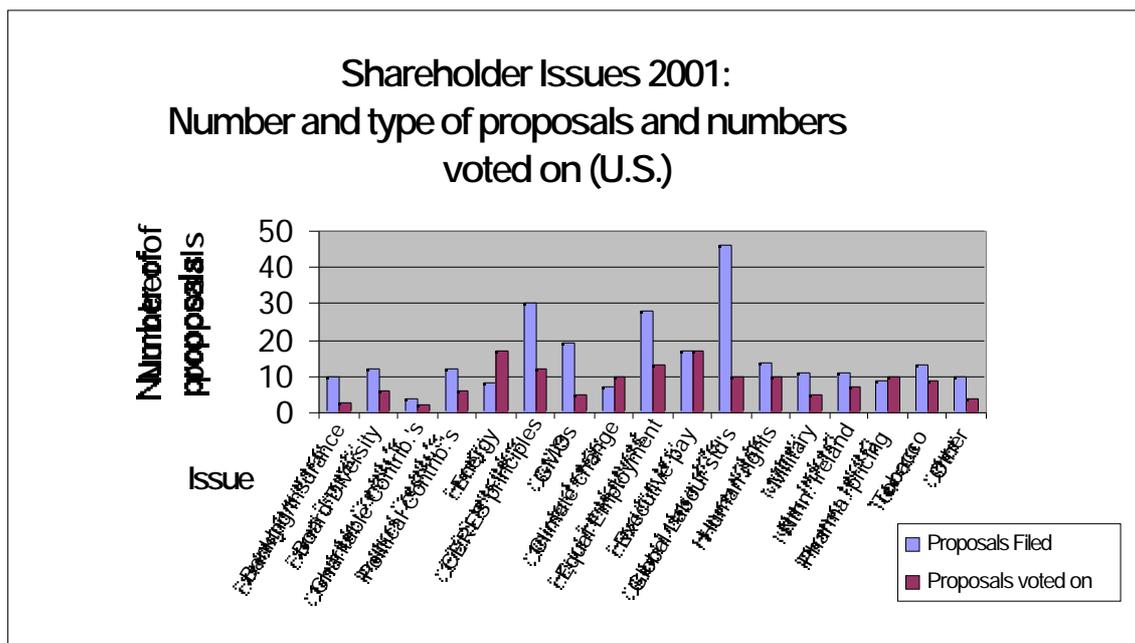


Figure 4: CSR issues voted in the 2001 proxy Season.
Source: based on data from: [IRRC, 2001](#)

The difference between a proposal filed and finally voted on is due to either the shareholders withdrawing the proposal or the company omitting it on legal grounds. The implications of both these outcomes in discussed in Section 4.

¹¹ Information platforms such as the ‘Shareholder Action Network’s website provides details on each of these tools and principles. See www.socialinvest.org

A trend noteworthy in the late 1990's, is that of shareholder activists linking their environmental or social performance issue to the economic and financial performance of the company. Even more strongly, some are asking companies to demonstrate the link between financial and environmental or social performance – or to at least assess the financial risks of some of their environmental and social impacts and core issues. For example, Rob Lake of the U.K. SRI fund manager Henderson stated:

"Companies, you need to help your investors understand the real business benefits derived from addressing sustainability and CSR. Give us chapter and verse on the cost savings, the increased ability to attract and motivate good staff, the intellectual capital development that generates new products, the enhanced reputation and avoided risks." (R.Lake, Green Futures, 2001)

By claiming that environmental and social issues have a direct effect on shareholder value, they and other shareholder activists are moving the rhetoric of their activism out of the realm of 'ethics' or good versus bad behaviour, and into that of hard-core issues of profitability and shareholder value. For example, the Investor Responsibility Research Centre (IRRC) and U.S. Social Investment Forum (SIF) state:

Investors Initiatives apprise management on reputational and sector risk, and sometimes ask management to address the realities of a changing political climate in key future decisions around growth, new products and acquisitions." (IRRC & SIF, 2002, p 3)

The tactic of linking CSR to shareholder value is partly based on the fact that many SRI's (using a best in class screening method) have been reporting positive financial results. This out-performance has led many researchers to delve into the question of the correlation between stock and environmental performance exists. Over the past decade, the question of whether proactive environmental management and corporate social responsibility have a positive impact on the financial performance of firms has become one of the holy grails of corporate sustainability research¹². Many quantitative correlation studies have looked at the question, as posed by Stuart Hart in 1996 "Does it pay to be Green?"¹³, and have found that a positive correlation does in fact exist.¹⁴ Despite the fact that correlation is not necessarily the same thing as causality, the rhetoric of CSR (as

¹² Bercicci,V, Hockerts, K and Wagner,M (2001) *Towards a Better Understanding of the Correlation Between*

Corporate Environmental Sustainability and Financial Performance Business Strategy and The Environment Conference, Leeds University, September 2001.

¹³ S.Hart (1996) Does it pay to be Green?: in *Business Strategy and the Environment* 5: 30-37

¹⁴ Bercicci et al, *ibid*. Some 15 correlation studies were found as part of the literature review, with at least 10 claiming a positive correlation between environmental and financial performance of firms. However it should be noted that the indicators of good environmental and financial performance do differ between studies and that the results of many studies are marred by insufficient statistical analysis, and a lack of time series data.

represented in shareholder activist proposals) is increasingly concerned with building and justifying the ‘business case’ for social and environmental responsibility.

In 2002, the IRRC and SIF note a recent trend in ‘Crossover’ proposals submitted that link corporate governance and CSR issues. Examples of this include Increasing racial and/or gender diversity at the Board level and linking executive pay to social or environmental performance criteria. They claim that this is, in part, due to the unfolding Enron crisis and subsequent attention on disclosure and accounting. (IRRC & SIF 2002 p 1- 5).

Figure 5: Snapshot of the Resolution Categories of the 2002 Proxy Season

Type of Proposal	Filed	Pending or Voted on €	Meetings 1/3 – 30/6
Governance	428	358	341
Crossover	23	19	17
Social Policy€	261	171	156
Total €€	712	548	514

€ ‘Social Policy’ include environmental, labour, energy, human rights, military issues, northern Ireland and pharmaceutical pricing issues.

€€ As of 13 March 2002, this total represents that number of resolutions that will come (or have come) to vote. This may decline if companies omit the proposal (with SEC approval) or if activists withdraw the proposal.

Source: IRRC, 2002, p 5

4. The Procedures of Shareholder Activism

Shareholder activists ultimately are trying to influence the behaviour of a firm by exercising their ownership rights. The two main ways to do this are by:

- o preparing Shareholder proposals which are voted on by all shareholders at the company’s annual shareholders’ meeting; and/or
- o entering into shareholder dialogue with the company’s management.

The following Figure illustrates some of the possible outcomes of the shareholder proposal process. Each of these is then described in turn.

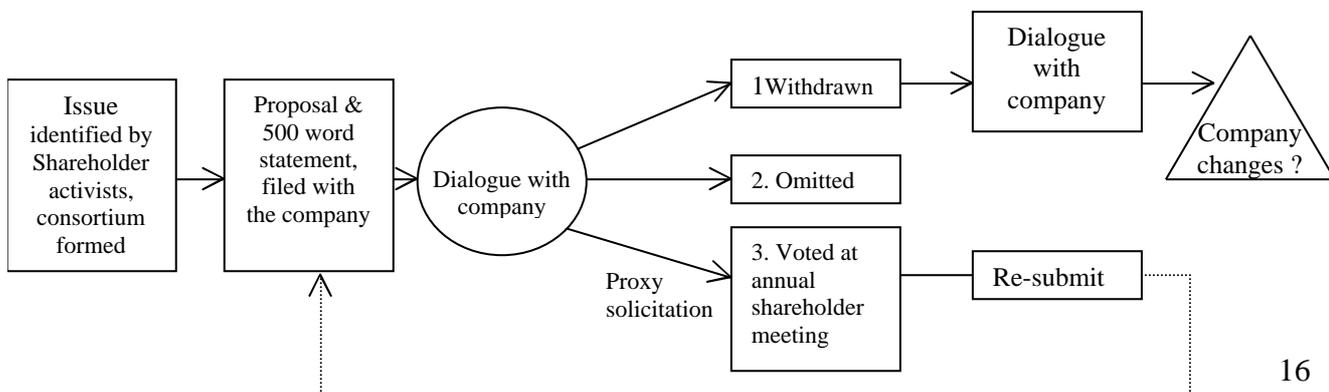


Figure 6. Simplified schema of the typical outcomes of a shareholder resolution process.

This Section(4) focuses on the shareholder resolution process. Section 5 then looks at one of the outcomes of this process: shareholder dialogue.

4.1 Preparing the Shareholder Resolution

The rules that govern the ability of shareholders to propose issues to a company using proposals differ from country to country¹⁵. It is important to note that these rules have themselves been subject to activist pressure. For instance, in the U.S., the institutional shareholder activism movement of the 1990s was assisted by a change to the Securities and Exchange Commission (SEC) rules. Shareholders were previously required to file and distribute a proxy statement with the SEC when communicating in writing with 10 or more shareholders. The policy was eliminated in 1992 allowing shareholders to both communicate and coordinate their activities without laborious regulatory oversight (Opler & Sokobin, 1998, p1).

According to the SEC:

A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action you believe the company should follow (SEC, 2002)

In the U.S., securities laws govern a process by which a shareholder has a right to introduce formal proposals, have the proposal circulated to all the company's shareholders, vote upon the resolution and present it in person at the company annual meetings (FOE, 2001, p 4). Shareholder proposals on CSR are typically submitted under the SEC Rule 14a-8 which permits a shareholder to include a proposal and a 500 word supporting statement in the proxy statement distributed by a company for its annual shareholder meeting. Shareholders must own at least USD \$2000 in market value, or 1%, of the company's securities (voting stock or common stock), for at least one year to file a shareholder resolution (SEC Quoted in FOE, 2001). Shareholders may submit no more than one proposal to a company for a particular shareholders' meeting. The proposal must be worded in terms of a request or a recommendation (not a demand) and the supporting statement should give relevant background information (such as facts) in 500 words or less.

¹⁵ A brief overview of the rules and processes are given here only for countries relevant to the Cases presented in Section XX, ie U.S., Australia, U.K.

The advantage of using the SEC 14a-8 rule is that the shareholder can avoid the expense of preparing its own proxy statement (Black, 1997, p 3). The 14a-8 rule states that a shareholder must submit a proposal for a specified amount of time before the date of the shareholder meeting, and is limited in the subjects it can address .

By contrast, *in Australia – like the U.K.*, a resolution can only be placed in a company's proxy material if over 100 shareholders already back it. Small shareholders can, however, be present at AGMs. This rule has been used by some NGOs and individuals to disrupt meeting to draw media and shareholder attention to a particular issue. For instance, in 1999, a shareholder action group called 'North Ethical Shareholders' disrupted a meeting of North Ltd in regards to a controversial uranium mine at Jabiluka in Australia's Northern Territory¹⁶. The result was that they were thrown out of the meeting, and it is questionable how much positive response was gained from other shareholders to their cause. Nonetheless the widespread activist pressure against the Jabiluka mine has forced now owners Rio Tinto to stall the mine's development.

4.2 Submission of the Proposal

Because each shareholder resolution establishes a precedence for following years, activists such as the Friends of the Earth stress that shareholders have a duty to prepare resolutions that are well crafted and properly defended (FOE, 2001).

Once a proposal is submitted, in general three things can happen:

1. The resolution may be withdrawn by the shareholder,
2. The resolution may be omitted or excluded by the company, or
3. Issue can be presented at the shareholders meeting, voted on, and possibly re-submitted the next year if its garners enough support.

Each of these outcomes is now taken in turn.

4.2.1 The Proposal is Withdrawn

Shareholders may choose to withdraw their proposals for a number of reasons – the most common being that the company shows that it is willing to negotiate on the issue with the shareholder group. Thus many shareholder advocates view withdrawal of their proposals as victories because they typically only withdraw when management shows sincerity and legitimate progress towards meeting the goal or demand made (Grave et al, 2001, p 296)

¹⁶ see <http://www.northeethical.shares.green.net.au/>

4.2.2 The proposal is omitted or excluded by the company

In the U.S., companies can exclude proposals on some 13 grounds according to SEC rules¹⁷. These can be challenged by the shareholders making the proposal, the SEC becoming the arbitrator of these so called ‘proxy fights’.

Typical reasons for exclusion of social and environmentally oriented proposals include:

1. If the proposal relates to operations which account for less than 5% of the company’s total assets at the end of the most recent fiscal year (e.g. the activity in question is undertaken by a small subsidiary);
2. Absence of power or authority of the company to act – if the company would lack the power or authority to implement the proposal;
3. Management functions – if the proposal deals with a matter relating to the company’s ordinary business operations. (eg typically used to exclude proposals dealing with labour or employment issues);
4. Substantially implemented - if the company has already substantially implemented the proposal (e.g. the existence of an corporate ethical standard is used to claim that the issue is already handled by the company, even if that standard is not – according to the activists- fully implemented);
5. Duplication – if the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company’s proxy materials for the same meeting (eg if two groups pressure the company on the same issue of human rights)
6. Did not gain enough votes for re-submission last time - if the proposal deals with substantially the same subject matter as another proposal(s) that has or have been previously included in the company’s proxy materials – and did not earn over the required numbers of votes needed to re-submit the proposal.

Points 3 and 4 (i.e. claiming that the company is already implementing what the resolution asks for, or stating that it is simply part of ‘ordinary business’), are two of the most common ways companies exclude social and environmental resolutions. Activists have thus developed ways around this in the actual wording of the resolutions. For example, they may ask to establish a new policy (rather than ordinary business issues). To avoid omission on the charge of being ‘mundane or devoid of policy implications’, activists gather back up materials to their case in the form of media clippings and broaden the proposal so it addresses a company wide manner so it is not deemed ‘mundane’ (FOE, 2001, p 5). Furthermore, the SEC’s interpretations of these rules of exclusion are also shifting, so for example, issues of employment and CEO salaries (which were once considered mundane) are now fair game for resolutions (FOE, 2001).

¹⁷ For a the full list of 13 rules of exclusion and explanations, see the US Securities and Exchange Commission www.sec.gov

4.2.4 The Proposal goes to the vote at the shareholder meeting

If all the above conditions are met and the proposal indeed makes it to the shareholders annual meeting, the next step is for the activists to solicit support (and thus votes) for their resolution. To do this there are several steps – including identifying the shareholders or proxy voters, creating the materials, advertising for the issue in the media, generating endorsements from major shareholder groups or proxy advice groups (such as the Institutional Shareholder service who give influential advice followed by many shareholders), notifying proxy voting services (which are used by institutional investors to review and vote their proxies in each season), and finally contacting a targeted list of shareholders likely to be sympathetic to the proposal. Proxy solicitation activities are increasingly supported by professional intermediaries who try to maximise the support for the activity, for example, by providing internet based voting mechanisms to voters.

4.3 Voting Results

At the actual shareholder meeting, the party who filed the resolution must present the issue to the other shareholders present and to the Board. Sir Ronal Hampen, the UK Chairman of ICI, states:

“The AGM in the UK became increasingly a vehicle, firstly for the small interested private shareholder and secondly for self-interest groups who have a particular concern about an activity which they wish to contest publicly and often noisily.” (quoted in Bradley, 2001, p 1)

Environmental and social proposals typically gain a low number of overall votes – often below 10%. The IRRC and Social Investment Forum attribute this to the fact that:

- Management, board members founders often control large portions of company’s shares;
- Many institutional investors automatically cast their ballots with management when proxies come to a vote; and
- Abstentions and a lack of shareholder interest have the effect of giving management a stronger voice.

(IRRC & SIF 2002, p 3)

If the issue gains a certain number of votes, and is not otherwise dealt with by the company (and thus omitted), it can be re-submitted the next year. In the U.S., resolution votes must satisfy relatively low thresholds for re-submission – it must get 3% in the first year, 6% in the second, and 10% thereafter (SEC 2002).

However, even if a resolution gets majority support, it does not bind management to a decision. Shareholder proposals are precatory – i.e. the company’s Board of Directors can, and often do, ignore the proposal (Black, 1997, p 4).

Given that many groups only go the step towards a filing a proxy when such negotiations fail to produce real change or progress, we must be careful in looking at the results of the so-called 'voting successes' of the shareholder activists.

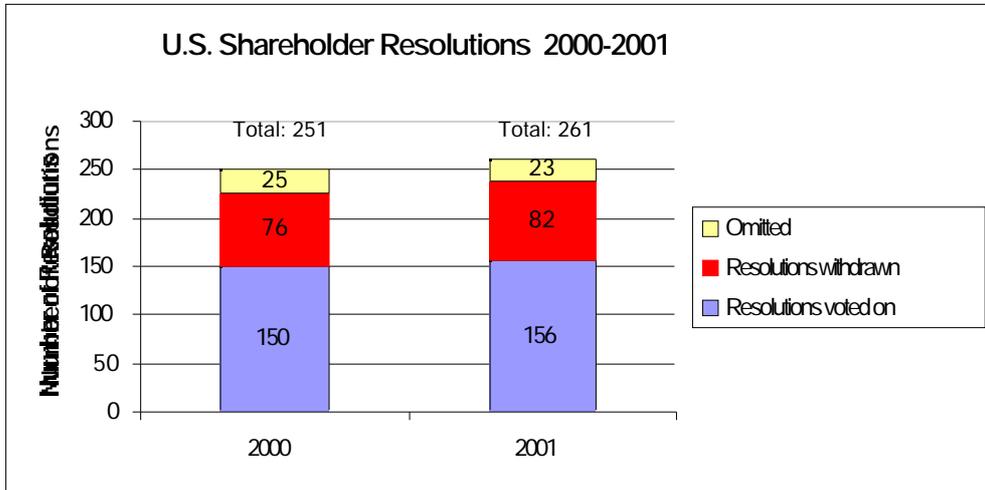


Figure 7: Numbers of Shareholder proposals in the U.S. 2000-2001 voted on, Withdrawn and Omitted. Source based on: SIF Trends Report, 2001, p 16

Note: Numbers include those proposals withdrawn due to mergers.

Notable shareholder activist 'successes' usually cited in the SRI literature include – participation in the dismantling of apartheid, the phasing out of polystyrene at Mc Donalds, Home Depot's phase out of wood sourced from environmentally sensitive areas, and Ford pulling out of the Global Climate Coalition (FOE, 2001). Most of these successes were achieved not only through the actual preparation and defending of proposals, rather they formed part of a comprehensive and sustained campaign, in which dialogue and engagement with the company figured large. It is to this that we now turn.

5. Another Outcome: Shareholder Dialogue?

Even though most resolutions introduced concerning social and environmental issues generate less than 10% of the votes, and the company is not predicated to act in any case, shareholder activists often claim success for their campaigns. This is the grounds that the company agrees to negotiate on the issue or at the least to enter into serious dialogue. The voting mechanism is seen as opening a "window of opportunity" to generate publicity for the cause, and to "open the door" to further dialogue (FOE 2001). Campaigners argue that companies need to move from the position 'trust me' - to a 'show me' and indeed 'involve me' world (WWF 2002).

Thus the crafting and filing of a shareholder proposal is often undertaken in the hope that management will dialogue with proponents or make substantial changes in practice as a result of the engagement process (IRRC and SIF, 2002). For instance, Barclays Global

Investors in the UK has recently added social responsibility requirements to its corporate governance policy. They write:

“By actively engaging with companies, rather than selling and walking away, we think that SRI can become a credible force for change not just for a few companies, but for all. It meets shareholders duties for ownership and can make companies change poor practice” (Barclays quoted in Financial Times, 4-4-2002)

On the other hand, the proposal might be submitted *because* such talk have failed to deliver the change which the activist is seeking. The 1st case presented below (7.1 on BP Amoco) is illustrative of this situation, wherein WWF after a long process of engagement with BP Amoco, decided to launch a shareholder campaign to exert greater pressure on an issue which it felt the company had avoided to the detriment of its shareholders and stakeholders.

Often resolutions are used in tandem with dialogue and other activist pressure tactics such media campaigns. For example, Friends of the Earth write:

Changing a company’s thought, rhetoric and behaviour toward a particular issue is a long process and is most likely to occur with strategic ongoing dialogue and negotiation where the shareholder advocates for continuous progress. (FOE 2001)

Companies often enter into negotiation with the aim of getting the shareholder activist to *withdraw* the resolution before it is printed and distributed to all of the companies shareholders. Often the shareholders are indeed willing to withdraw their resolution if they feel the company is meeting certain conditions and are considered to be responding legitimately. For instance, a resolution might be withdrawn on the condition that the company gives a written commitment to take certain steps to report on its environmental performance by a certain date, or demonstrates its willingness to appoint a high-level dialogue team that will meet about the issue and set a timetable (FOE 2001).

Even though SRI’s and Shareholder groups have much anecdotal evidence to support such claims that changes in companies are made as a result of their activities, there is little empirically studied evidence to back up this claim. One way to understanding the process better is to study a few cases of shareholder activism for CSR and see what the longer-term results are beyond the proposal and the voting outcomes at meetings.

6. Case Studies

7.1. Shareholders demand BP Amoco to demonstrate how it will move “Beyond Petroleum”.

On 13 April 2000, some 13.5% of BP Amoco shareholders voted ‘yes’ to an agenda item raised by shareholder activists concerning its strategic positioning in the debate over climate change. The resolution asked BP to halt the development of the Northslope field in Alaska and redistribute the investment to the BP Solarex division. The initial proxy vote, displayed at the BP AGM, showed 9,541 million shares against the resolution and 1,491 million shares in favour (or 13.5 % of the vote).

The shareholder activity was part of a larger campaign launched by a consortium of activists including Greenpeace, the UK based Pension Investment Research Centre (PIRC), U.S. based US Public Interest Research Group, the U.S. based Trillium asset management company, the SRI rating agency Innovest, as well as many other individual investors. A campaign website (www.sanebp.com) was created for shareholders and the public which contained background information on the company and its practices, as well as the text of the actual shareholder proposal. In the run up to the annual general meeting, the activist group hosted and spoke at a UK Social Investment Forum event on the resolution and lobbied other shareholders. They were also in contact with Senior Management at BP Amoco to encourage a positive response to the proposal.

The Campaign was dependant on the use of new internet voting proxy mechanisms and relied heavily on e-communication tools to garner support. It demonstrates a shift in the ambitions and specificity of the shareholder’s demands, which allowed it to appeal to more shareholders and build a longer-term dialogue with the company. Following the AGM in 2000, Greenpeace stated that BP had:

“acknowledged the threat of global climate change and that it would mean a substantial reduction in the use of oil and gas - its core products at present”.

However, campaigners were concerned because:

“the company had not outlined to shareholders how it would manage this transition and what it would mean for the companies oil and gas investments which represent 99.9 per cent of its total energy investments.”

Therefore in 2001, another shareholder proposal and campaign was launched which asked for:

The 2001 Proposal

Despite its claims to be moving 'beyond petroleum', BP remains firmly wedded to fossil fuels. Oil and gas make up 99.9% of its investments.

This is inconsistent with the company’s public call for precautionary action on climate change – and takes no account of the effects of future climate protection measures, which are likely to restrict the production and sale of fossil fuels.

Greenpeace has therefore submitted a resolution to BP’s AGM, calling on the Board to publish a report, by the end of 2001, outlining how it will make the transition from fossil fuels to renewable energy.

(www.sanebp.com) Italics added

The amended resolution was supported by more than 130 shareholders (including the London Boroughs of Hounslow and Islington, Derbyshire County Council's Pension Fund, and the WorldWide Fund for Nature) who hold over 11 million shares. Nonetheless BP ruled the resolutions out of order on a legal technicality.

In 2002, the Worldwide Fund for Nature (WWF) launched a campaign on BP in collaboration with a large group of shareholders from the NGO, SRI and Institutional Investor community. The WWF used its own shares to launch the campaign and also put money into it –also paying for adverts in the Financial Times and Washington Post addressing shareholders prior to the meeting. Many of the same shareholders and NGOs were involved as in the 'SANE BP' campaign on climate change. Led by the WWF, they backed the proposal so it could be included in the companies proxy statement (i.e. it needs 100 supporters in the UK).

WWF had been working closely with BP and many other companies in their sector for many years to help them develop policies and procedures to deal with their impacts on the environment. In the last two years, WWF has held more than forty meetings with the company and helped them develop many of their ground-breaking policies and processes (WWF 2002). BP are viewed as leaders in sustainability in their sector, in fact, they are known to have invested at least \$180m in CSR in 2000-2001. However, campaigners remained concerned that:

"...their [BP's] procedures for dealing with these (environmental) risks are in need of disclosure so that shareholders can ensure their share-value is being protected and enhanced" (WWF 2002)

The WWF led resolution required BP to disclose how it analyses and minimises the risk to shareholder value from operating in environmentally or culturally sensitive areas.

The proposal followed intensive talks with BP on the topic of risk assessment and sensitive areas like the Artic National wildlife reserve. In fact, one reason WWF claims it launched the shareholder campaign was to raise the issue to other parts of the company apart from the environmental managers who they were already in dialogue. Another reason was to generate media interest in the cause – but not just in the environmental 'ghetto' section of the newspaper – rather in the business pages.

In their response to the resolution (before it went to the vote) BP recognised the need for increased disclosure and asked the shareholders to withdraw the proposal on the grounds that it already performed risk assessments. However their response was considered by WWF to be far too vague about what will actually be disclosed, and how their risk assessment process relates to actual go/no-go decisions for example, about work sensitive areas (WWF, 2002).

The result for 2002 of 11% votes supporting the proposal plus further 9% positive abstentions constitutes a 'success' for the campaigners. Furthermore, BP increased its disclosure since the WWF filed the resolution. To campaigners, it indicates that they

were “right to file the proposal” and that there was indeed a dissonance between the rhetoric and reality on these issues (WWF 2002). BP, at the time of writing this paper, was yet to publicly respond. Only in time will we see if this constitutes a success (for the actual cause proposed by the WWF) or not and how it may alter the relationship between BP and this vocal stakeholder.

7.2 A Challenge to the Forestry Sector to disclose their Environmental risks and to the SEC to enforce their own rules

In 2000, the U.S. research group World Resources Institute (WRI) released report ‘Pure Profit’, which addressed the environmental risks faced by the forest products industry and made financial assessments for 13 forest products companies¹⁸. The report argued that the impact of environmental issues on the share price varies widely among companies. At least half the companies studied face expected negative impacts from environmental issues of at least 5 percent of total shareholder value, while several face expected impacts approaching or exceeding 10 percent.

The core of the author’s argument is that:

“ unless financial market valuations of risk and return accurately reflect the financial risks that companies incur through their environmental management decisions, investors will be endangered and an important market incentive for prudent environmental management will be lacking.” (Coming Clean, 2000, p 2)

In 2001-2, a consortium of shareholder activists are using the ‘Pure Profit’ report as a baseline for their attempt to pressure the forestry sector. U.S. based Newground Investments organised a shareholder campaign at the beginning of 2001, and has filed proposals on 10 of the companies studied by the WRI (SIF 2002). Campaigners consider that the analytically rigorous ‘Pure Profit’ will help win over institutional investors that typically do not get involved in social & environmental issues unless they see a direct effect on shareholder value.

Later that year, a follow up report was then published by the same group called ‘Coming Clean’¹⁹. Here the authors reviewed the financial statements filed by the same 13 companies in 1998 and 1999. They found that although companies differed in the thoroughness of their reporting, few companies adequately disclosed the financial risks or potential competitive impacts arising from their exposures to known environmental uncertainties.

Then they shifted their focus to the SEC rules of disclosure of public companies:

“despite explicit statements promising vigorous enforcement of disclosure requirements for financially material environmental risks, the SEC’s enforcement efforts in this area have been minimal. Of more than 5,000 administrative proceedings initiated by the SEC over the last 25 years, only 3 are based on

¹⁸ <http://www.wri.org/capmarkets/pureprofit.html>

¹⁹ <http://www.wri.org/capmarkets/comeclean2.html>

insufficient disclosure of environmental risks or liabilities. Over the same period, the SEC has brought only one civil action against a company on the grounds of inadequate environmental disclosure. This dates to 1977.” (Repetto & Austin, 2000b, p 20)

The argument was thus made that the SEC needed to enforce its own rules of disclosure of financial risks and furthermore to review its disclosure regulations to include environmentally induced financial risks. Specifically, the Report recommends that:

- The SEC should issue a general guidance document reinforcing and clarifying existing rules regarding disclosure of material environmental exposures under Item 303, Regulation S-K, and informing registrants that these rules will be enforced. In addition, the SEC should clarify its guidance regarding the reporting of uncertain financial risks posed by prospective environmental regulations and liabilities;
- The SEC should honour its previous commitments by allocating additional enforcement resources specifically to ensure that companies comply adequately with environmental disclosure requirements; and
- Without waiting for SEC action, registered companies should begin to disclose more fully their known, financially material environmental risks and uncertainties. (Repetto & Austin, 2000, p 27)

This work is now being used by a campaign group started in 1998 called the ‘Corporate Sunshine Working Group’ which consists of 100 institutions. This consortium asked the SEC to clarify and improve environmental reporting requirements and step-up enforcement. In 2000, the SEC issued a statement that stated:

“There are more stringent problems with the financial reporting system and GAAP than environmental issues” (quoted in IRRC, Nov 2000).

In the wake of ENRON scandal, the campaigners on environmental disclosure will probably similarly receive short shrift from the SEC. The result in the short term of this effort will thus be as much due to external political issues on disclosure, as it will be on the efficacy of arguments for increased environmental disclosure and enforcement per se. Over time, it will be interesting to see whether the larger shake up will work to mask or assist the case for environmental risk disclosure. Perhaps we can expect that enforcement of current rules might be more vigilantly attended to by regulators keen to restore public trust in the reporting and auditing system as a whole.

7. Discussion and Conclusions: Longer term effects of Shareholder activism for CSR

This paper has outlined some of the current activities, and has given a flavour of the more complex debates hovering underneath the phenomenon of shareholder activism for CSR. To revisit the research question posed at the start of the paper: *Can shareholder activism actually deliver the desired change? Furthermore, what conditions would make it possible (or constrain its use) to promote the rigorous uptake of CSR?.* By asking this

question I am deliberately adopting an activist's agenda for change, however it can be extended to thinking more critically about the longer- term implications of shareholder activism – especially if it becomes a stronger force than today as some of the trends indicate it might. But firstly, this section starts the process of defining a framework for a successful shareholder activist campaign by summarising the opportunities and limits of this activity in meeting the aims of its proponents.

7.1 Towards a Framework for defining the Success of Shareholder Activism.

As was discussed in Sections 3 and 4, the actual aim of filing proposals, defending them and voting is often not so much the final voting results, rather it is the access to the company that it brings and the possibility to enter into dialogue. The success of the shareholder campaign, for the activists at least, is whether the company actually makes a change as a result that fulfills their demands by whatever means.

7.1.1 The opportunities

To summarise, shareholder activism is thus a valuable tool to those wishing to change companies towards CSR for the following reasons:

- It opens up CSR issues to a broader audience internally to firms beyond just the environmental or sustainability department;
- It gives campaigners access to companies previously closed to them – to top management and the Board (FOE 2001);
- It opens up CSR issues to shareholders helping to educate investors about CSR issues and potentially about their financial implications; and;
- It gives campaigners the possibility to affect corporate culture by a process of engagement and building trust so that CSR is not seen as a threat rather an opportunity and somewhat voluntary;
- It provides a reason to build partnerships and consortiums which can have spin-off effects into other companies;
- It can stimulate media attention on CSR and the specific issue – and not just in the 'environment ghetto' sections of news but in the business pages and media; and
- It forces the top level of companies to respond in some way to the demand – even if they eventually reject the proposal.

7.1.2 The Limitations

Despite all the positive effects for CSR and the activists, there exist some caveats to this optimism.

For the activists:

- The costs are high to prepare, defend, and follow up with companies compared to the outcomes possible to be achieved;

- It places high demands on the organizations filing resolutions – eg need to defend proposal at short notice, participate in meetings, evaluate corporate documents, potential legal fees etc (FOE 2001);
- It will have implications for other activist strategies on the same company or even sector. For example, company conversations will be confidential which might change the publicity tactics of NGOs (FOE 2001);
- It can be difficult to share agendas between campaigners and other shareholders;
- The politics of jointly preparing agendas and that co-filers agree with lead filers objectives can be time consuming and/or result in a watered down proposal that suits all and none really;
- Similarly, the different thresholds of acceptable results between consortium parties have to be negotiated. For instance, at what point would the group be willing to withdraw the resolution? This can lead to problems between groups and can make it easier for companies to ‘divide and conquer’ their adversaries;

- The results of the activism could vary from what was aimed, i.e.:
 - The company could actually harden its position because of the public nature of the confrontation and use the small number of votes as supporting evidence;
 - It could actually negatively impact on the relationship with the company. Some companies have stopped talking to activists as a result of resolution;

- Finally there are some legal restrictions which limit its use such as the SEC rules limiting proposals to ‘ordinary business’ issues that are not mundane.

7.2 Some Broader Implications of Shareholder Activism for CSR

In order to understand the potential effectiveness of shareholder activism for changing corporate behaviour, we needed to understand the mechanisms by which it works, and how the strategies will necessarily shift over time as more and more shareholders ‘wake up to their ownership responsibilities’. The final limitation described in Section 7.1 above concerning the rules of the game has implications for the likely broader success of shareholder activism in achieving CSR.

As we saw in the second case, the activists have from time to time shifted their target to the rules themselves in order to demand a broader scope for action in this arena. The lobbying of governments to properly regulate companies on CSR issues shows that some shareholder activists are not content to leave CSR 100% to the private sector domain’s voluntary uptake and the piece-by-piece approach that current structures of shareholder activism allow. In my opinion, shareholder activism cannot substitute for government regulation and control, despite the opportunity it presents to activists to directly access companies in ways unthought of before and despite some of the successful results gained so far.

Firstly, it achieves only voluntary change by companies and is limited to those who already have the power of ownership and those who have the extra time and money to undertake these activities. The stakeholders who are not in this group must be content to be represented by benevolent shareholders who presume to know the best way to act on their behalf.

Secondly, the structure of the process and the rules themselves encourages companies to take incremental steps towards CSR rather than any really radical or transformative change. Resolutions and campaigns must break down desired change into objectives that can be done step by step. As a result, only modest changes in each single company can be achieved. For example, we can see the tendency to emphasise issues such as reporting and disclosure in resolutions rather than action on environmental and social performance.

Thirdly, the current rules also determine that no fundamental critique of the business that the companies are involved in can be made using this avenue. This adds up to a picture of CSR as simply softening the edges of 'business as usual'. Some with a strong view of sustainability might question whether CSR under the guidance of shareholders using this system, will really lead to sustainable development in the business sector.

The aspects of CSR which can be asked for under the SEC type rules are necessarily piecemeal in scope. It builds a picture of CSR as being about a loosely collected gaggle of issues all fighting to be heard rather than a systematic or global approach that truly guides change. Part of the problem is the specificity of each and every instance of shareholder activism – as the corporate responses vary widely as do the skill and relative degree of influence of the activists in question. Shareholder activism tends towards becoming an informal control system imposed from the outside, not one that cannot currently seek long-term solutions.

As corporations themselves start to become more sophisticated in their responses, in their use of CSR to pre-empt legislation and in their own 'engagement activities' with stakeholders, certain issues of power are opened up. For example, Graves et al argue that companies could actually use studies of the spread of shareholder activism over time as a leading indicator of stakeholder concerns which they may have to deal with in the future.

For instance, both of the Cases indicated the growing tendency to link CSR issues to traditional shareholder and financial issues as a way of activists gaining attention and even power. Given both the proponents of shareholder activism and the audience they are campaigning to change, it is perhaps only surprising that it took so long to reach this level of argumentation. This tactic represents a broader paradigm shift occurring wherein environmental and social issues are slowly being accepted as business issues first and foremost (rather than issues of government).

In this world, shareholder activism is one of the most direct ways to voice the (hereto) public concerns to companies who are themselves now deemed 'corporate citizens'. But is this just a rhetorical game? Although what I have presented in this report indeed shows much promise from an activists perspective in gaining access to corporations by engaging

them, we can also question whether corporations are simply co-opting the activist agenda to provide a rhetoric and legitimacy to their ongoing activities. Obviously it is not as black and white as the last statement might suggest, particularly as the ‘engagement practices’ are only now gaining steam and transformations in both companies and NGOs are taking place.

What seems to be needed now by the shareholder activist community is a dedicated research effort to establish the connections between CSR and core business issues both on a general level (such as through correlation studies) combined with specific studies of the companies particular risks, costs and opportunities. The question is who currently has the incentive to undertake such work, who would pay for it, and how should it be reported? What the shareholder activists seem to be saying in both Cases is that companies should undertake this work and report it to their stakeholders (including shareholders), not just those already conversant with the implications of environmental management and CSR. Such a wish appears to be a long way off judging from the relative modesty of the ‘successes’ of shareholder activist campaigns in changing corporate behaviour.

The crucial question, which is yet to be answered by any research, is whether shareholder activism is effective in changing corporate behaviour in both the short and the long term. The problem, as ever, is how to measure this change and whether it is indeed possible to demonstrate a causal link between these activities and the corporate change in questions. This is definitely a topic for future research.

Another implication yet to be scrutinised is what the impact of shareholder activism (and engagement practices) will have on the positions of SRI and financial sector itself. If companies do start to develop more sophisticated methods of measuring and transforming their environmental and social impacts into financial languages, and if markets learn (on a broad scale) how to decipher these messages with more sophistication, then we can say that the market for SRI will have truly changed. SRIs are now somewhat specialised and the better ones being premised on the idea that they are able to select the ‘winners’ on the basis of a more rigorous stock selection and understanding of longer-term trends. Perhaps by then, new markets will be opened up for previously unimagined social and environmental derivatives which will become the new growth sector. By then, the whole landscape and purpose of shareholder activism and engagement practices will have changed once more. But only on behalf of a dedicated effort by many activists, researchers and companies to shift current governance structures for CSR.

8. References

Association of British Insurers (ABI) (2001) *Investing in Social Responsibility: Risks and Opportunities*
London: ABI

Black, Bernard S (1998) *Shareholder Activism and Corporate Governance in the U.S.* In Peter Newman (ed) *the New Palgrave Dictionary of Economics and the Law*

Calvert Group, 2001, ‘Know what you own’ http://www.calvertgroup.com/sri_kwyo.asp

Campbell,C, Gillan,S, Niden,C (1999) Current Perspectives on Shareholder Proposals: Lessons from the 1997 Proxy season *Financial Management* Vol 28, Issue 1, 1999, p 89-98

CERES, 1999, *CERES Principles*, Accessed Online: <http://www.ceres.org/about/principles.htm>

Cowe, R (2002) 'Rules of Engagement: A new approach to ethical Investment will help to balance financial and Social Demands' in *The Financial Times* April 3, 2002.

Cory, Jacques (2001) *Business Ethics: The Ethical Revolution of Minority Shareholders* Boston: Kluwer Academic Publishers

Commission of the European Communities, 2001, *Green Paper: Promoting a Framework for Corporate Social Responsibility* (Brussels 18.7.2001)

Davis, Stephen (2000) 'CalPERS becomes biggest fund pushing social investment criteria' in *Global Proxy Watch* Vol IV, NO 42, November 17, 2000.

Ethos Fund, 2001, Website: <http://www.ethosfund.ch/>

Financial Times, October 2001, 'Responsible Business Guide'

Freeman, R (1994) *Strategic Management: A Stakeholder Approach* Boston: Pitman

Friedman, 1983, 'The Social Responsibility of Business is to increase its profits' in W. M. Hoffman and J.M. Moore, eds, *Business Ethics: Readings and Cases in Corporate Morality* New York: McGraw Hill, pp 126-131

Friends of the Earth (2000) *Confronting Companies Using Shareholder Power: A Handbook on Socially-Oriented Shareholder Activism* Accessed Online: <http://www.foe.org/international/shareholder/index.html>

Gillian,S & Starks, L (1998) 'A Survey of Shareholder Activism: Motivation and Empirical Evidence' in *Contemporary Finance Digest* Vol 2, No 3, pp 10-34, Autumn 1998.

Greenpeace (2001) Press Release: Sane BP. Accessed online: www.sanebp.com

Greenpeace (2001) 'BP accused of stifling shareholder debate' accessed online at www.sanebp.com

Greenpeace (2001) "Get Active!: How to change corporations": Accessed Online: <http://www.greenpeace.org.au/getactive/happen/corp.html>

Guardian, The, 2001, *New Logo: CSR is the perfect solution for a government looking for the middle ground between capitalism and socialism,* " *The Guardian*, November 5, 2001.

Henderson Global Investors, 2001, *Corporate Governance Policy*

Hawley, J.P. Williams,A.T (Unpublished manuscript, 2001) *The rise of Fiduciary Capitalism: How institutional Investors can make corporate America more democratic*

Hockerts, K (2002) " Corporate Social Responsibility as a Source for Sustainable Competitive Advantage", INSEAD Working Paper, 2002

Innovest (2001) [Climate Change and Shareholder Value: Case Study of BP - full report](#) Innovest Strategic Advisors. Accessed online: www.innovest.com

Investor Responsibility Research Center (IRRC) and Social Investment Forum (SIF) (2002) *Towards a shared Agenda: Emerging corporate and social trends for the 2002 proxy season and 2001 Issues review* IRRC and SIF, accessed online: www.socialfunds.com

Investor Responsibility Research Center (IRRC) (2001) *2001 Issues Review* Accessed online: www.irrc.com

Investor Responsibility Research Centre (IRRC) (Nov 2000) *Corporate Sunshine Working Group Issues Paper:* Accessed Online: http://www.irrc.org/Paper_Campaign_Nov_2000.pdf

Lake, R (2001) 'Translators and tailors needed' Green Futures Newsletter

- Latham, M (2000) 'The Internet will Drive Corporate Monitoring' *Corporate Governance International* June, 2000
- Miller, K.L. (2002) 'Pin Striped Protestors – Activists are learning to work the capitalist system' in *Newsweek International* 25th February, 2002.
- Monks, Robert A.G (2001) *The New Global Investors: How Shareowners can unlock sustainable prosperity worldwide* Oxford U.K.: Capstone
- Monks, Robert, A.G. (1998) *How Active Shareholders Drive Company Performance* LENS (accessed online: <http://www.ragm.com>)
- Prince of Wales Business Leaders Forum (2002) CSR (accessed online: www.pwblf.org.uk)
- Opler, T.C. Sokobin, J (1998) 'Does coordinated shareholder activism work? An analysis of the Council of Institutional Investors' Ohio State University, Accessed Online: <http://fisher.ose.edu/fin/faculty/opler/ciweb/>
- O'Sullivan, Mary (2000) *Contests for Corporate Control: Corporate Governance and Economic Performance in the U.S. and Germany*
- NPI News Website (2001) *BP faces increasing shareholder demands* http://www.npi.co.uk/npi/npipb.nsf/Content/gc_environmental_news
- Repetto, R & Austin, D (2000) *Pure Profit: The Financial Implications of Environmental Performance*, World Resources Institute, Washington DC. Accessed Online:
- Repetto, R & Austin, D (2000) *Coming Clean: Corporate Disclosure of Financially Significant Environmental Risks* World Resources Institute, Washington DC. Accessed online: <http://www.wri.org/capmarkets/comeclean2.html>
- Romano, R (2000) 'Less is more: Making Shareholder Activisms a Valued Mechanism of Corporate Governance' *Yale Law and Economics Research Paper* no 241, 2000
- Securities and Exchange Commission (SEC) (2002) 'Guidelines for shareholder proxies' Accessed online: <http://www.sec.gov>
- Social Investment Forum, UK (SIF UK), 2001, *Shareholder activism* <http://www.sif.org>
- Shareholder Action Network (2001) *Resolutions, Victories* <http://shareholderaction.org/>
- Stanford Graduate School of Business (1994) CALPERS and Institutional Shareholder Activism
- Thomsen, Mark (2001) *Socially Responsible Shareowner Proposals Continue to Gain Support* Shareholder Action Network: <http://www.socialfunds.com/news/article.cgi?sfArticleId=662>
- UNCTAD, 1999, *World Investment Report, 1999: Foreign Direct Investment and the Challenge of Development: Chapter XII: The Social Responsibility of Transnational Corporations* New York: United Nations
- World Wildlife Fund for Nature (WWF) (2002) *Letter to BP Shareholders, March 2002*