



Shareholder Proposals

We are in the thick of proxy season, and shareholders are getting collectively cranky about their 401K declines and need to continue working past their planned retirement date. So here are some ideas about how to handle those pesky shareholder proposals at your annual meeting this year. Know the rules for handling shareholder proposals. Pay attention to the deadlines. Proposals for an annual meeting generally must be received at least 120 calendar days before the anniversary of the release date of the previous year's proxy statement. Make sure the proposals are not defective in timing, ownership, form, etc. Notify the proponent of any defects within 14 calendar days of receiving the proposal. The proponent then has a chance to cure any defects. And why not reach out to the proponent? Sometimes they just want to talk about a concern. Sometimes they will withdraw the proposal. Check carefully to see if you can exclude the proposal if that is what you decide is best. There may be substantive or procedural defects. The SEC Staff has issued many so-called "no-action letters" responding to requests from companies to exclude all kinds of shareholder proposals, all of which provide some guidance. In fact, if you are in a grey area think about submitting a no-action letter request yourself. You may get useful guidance. And consider including the proposal possibly based on who is making it, what it concerns, and whether your shareholders might like a vote on the proposal being made. If you include the proposal, tailor the Board's response to appear alongside the proposal in the proxy statement, and timely send the response to the proponent. Maybe check out what other companies thought of similar proposals. And, always pay attention to your shareholders. After all it's their company. You can find SEC Staff Legal Bulletins at <http://www.sec.gov/interp/legals.html>.

Corporations are People Too

By now we're sure you've heard of *Citizens United v. Federal Election Commission*, the Supremes case in which the Court struck prohibitions on political activity by corporations. Previously, corporations and unions were both prohibited from using general treasury funds for "electioneering" as well as from making campaign donations. The plaintiff was releasing "Hillary: The Movie" and, afraid of civil and criminal sanctions, sued for declaratory relief. The Buzz's mom often quoted Evelyn Beatrice Hall who said, "I [may] disapprove of what you say, but I will defend to the death your right to say it." [sometimes misattributed to Voltaire]. We generally think more speech is better and we think that Justice Kennedy writing for a plurality decision got it right when he said, in the opinion, "Governments are often hostile to speech." We say, put aside attempts to silence an unpopular speaker and revel in the speech itself.

Avoid Litigation

It used to be generally true that the great companies of our day tried hard not to litigate. That meant that they were defendants in most of the litigation in which they were involved. They tried not to file suit. There is a certain elegance to this that is lost on most of our society today. Now being involved in litigation is seen as some kind of badge of honor; a sign that you will not be pushed around; and sadly for many, possibly some sort of profit center. We've even seen business owners ask that their children be deposed so they could get deposition experience. Thanks Dad. We're not completely opposed to suing others; hello?; we're a law firm. But we do think that discretion should always be involved in making the decision to file suit. Having your company involved in litigation is highly distracting and will certainly take all kinds of resources away from growth. If you are the CEO and your company is small it might take up as much as 1/3 of your time depending on how you are staffed. So in addition to legal fees and the possibility of losing, you need to factor in the opportunity costs for your company's time. Could you complete product development on a great new product, or capture another part of your market? Maybe let the losses go. The trick is to make sure that those losses are as small as possible so you do not have to pursue them. When your customer goes 60 or 90 days past due, maybe stop selling to them so you aren't suing for 2 years worth of unpaid products or services. Litigation is almost never any fun even when you win. Maybe move on rather than hit the courthouse.

BizBuzz Jazzz 🎵🎵🎵

Entrepreneurship

Believe it or not the Buzz has three daughters at USC. [OK, we're not completely rabid fans; we actually clap for opposing sports teams and like a good contest better than a blowout.] In any case we were flipping through a USC periodical and were interested in an article about the Lloyd Greif Entrepreneurship program at USC's Marshall School of Business. Mostly, we loved the start-ups profiled, including a woman who started a special university housing text response business for landlords too busy to answer all inquiries; and a gentleman who started a sausage, Belgian fries, and beer specialty restaurant called Wurstkuche (Hans, where do the umlauts go?) selling everything from Kielbasa to Rattlesnake and Rabbit with Jalapeno Peppers. Hmm-mmm good.

Res Ipsa Loquitur

Washington

OK, so his birthday is past already, but we thought we'd include here a snip from Washington's farewell address:
 "Though in reviewing the incidents of my administration, I am unconscious of intentional error, I am nevertheless too sensible of my defects not to think it probable that I may have committed many errors. Whatever they may be, I fervently beseech the Almighty to avert or mitigate the evils to which they may tend.
 "I shall also carry with me the hope that my country will never cease to view them with indulgence; and that, after forty-five years of my life dedicated to its service, with an upright zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the mansions of rest." Read it all [here](#).

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