

## **What Explains a Negotiated Outcome for Social Policy Shareholder Resolutions?**

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### **ABSTRACT**

*This article analyzes the outcome of social policy shareholder resolutions. It does so by focusing on many types of resolution*

*withdrawals sponsored by various types of filers. The paper shows that some characteristics of the resolutions themselves as well as those of the targeted firms play a role in the likelihood of a negotiated settlement between filer and management. Some issues, such as board diversity or equal employment, seem more conducive to a negotiated settlement of the resolutions filed. Others, such as energy and environment, against our expectations, do not seem to tilt the negotiation in favour of filers. The percentage of votes received by the resolution the year before also increases the probability of a favourable settlement for filers. Moreover, when introduced into the regressions, this variable overrides many other variables' influence in the outcome.*

**Keywords:** Outcomes of shareholder resolutions, firm ownership, corporate social responsibility, filer of shareholder resolutions

## INTRODUCTION

The so-called Rule 14 a-8, enacted in 1942 by the United States' Securities and Exchange Commission (SEC), entitles investors of US public firms to use the proxy machinery to file shareholder resolutions calling, among other things, for a better relationship with the different societal groups which are affected by the firms' business activities.(Ryan 1988). For instance, shareholders use Rule 14 a-8 to request that firms increase minority and gender diversity on their boards or to implement measures intended to reduce the environmental impact of corporation operations or products.

There are three possible outcomes when the firm receives a shareholder proposal that has been submitted. A first possibility is that the firm publishes and distributes the proposal to

shareholders, along with the proponent's statement of support and management's statement of opposition. A second potential outcome is that management negotiates with the resolution's sponsors to have them withdraw the proposal, removing it from the consideration of shareholders. A third possibility is that the firm requests that the SEC omit the resolution from the proxy materials to be distributed to shareholders (Proffitt and Spicer 2006). If the SEC concurs with the corporation officials, the resolution cannot be placed in the proxy materials. There are thirteen grounds for exclusion of a proposal.

These outcomes are not indifferent for filers. If the resolution is omitted, it comes to a dead end, showing, in fact, a very limited possibility of shaping corporate policy in any meaningful way. Chidambaran and Woidtke (1999) argued that the initiation of a shareholder proposal is part of an ongoing process of negotiations between shareholders and management. Only if an agreement cannot be reached by the parties is the proposal put to vote. We reason that withdrawals should be preferred by filers if Chidambaran and Woidtke's view is correct. First, they would prefer a negotiation of any sort (including maintaining dialogue with management) to a halt in exchanges and discussions on the disputed issue. Secondly, if the social resolution is put to a vote and gathers a very small percentage of votes, the filers may not be able to re-submit it again for five years, limiting further actions of the filer and entailing the risk of a clear signal from other owners of the firm of the rejection and detraction from the issue presented in the resolution.

In accordance to the view that withdrawals signal a negotiation between filers and management, in this article, we examine whether some characteristics of the firm, identity of the filers or characteristics of the resolutions themselves (such as the

type of issue they deal with) increase the likelihood of a withdrawal.

The rest of our article continues as follows. The next section presents the results from previous literature and states the hypotheses of the study. A third section presents data sources and methodology. A fourth section discusses the results of the study. A final section wraps up the article, suggesting future avenues for research.

## **PREVIOUS LITERATURE ON THE OUTCOMES OF SHAREHOLDER RESOLUTIONS**

An important body of empirical literature on shareholder filing activity deals with the outcomes of the activity, in particular the capacity of shareholder resolution filers to influence management to adopt the suggested policies. Most of this literature deals exclusively with outcomes of resolutions related to corporate governance shareholder-initiated resolutions, i.e. calls to repeal management decisions intended to isolate the firm from the market of corporate control (for instance, Bizjak and Marquette, 1998; Smith, 1996).

Social shareholder resolutions have attracted much less attention from scholars. Chidambaran and Woidtke (1999) have examined the impact of a number of variables connected with size and profitability on the withdrawals of social policy proposals and corporate governance proposals. Their results suggest that social activist shareholders are more likely to strike deals for withdrawal with management of larger and more profitable firms. To the best of our knowledge, only three previous articles have focused exclusively at the empirical level on the influence of shareholder resolution filers on management. Hoffman (1996)

presents a case study of the interactions between the Coalition for Environmentally Responsible Economies (CERES) and Amoco, a large chemical, gas and oil firm that merged with British Petroleum (now BP) in 1998 (History of Amoco, 2009). These interactions included the filing of social proxies by socially responsible investors associated with CERES, calling Amoco to endorse a ten-point code of corporate environmental conduct promoted by CERES and intended to be publicly endorsed by companies that strive to improve their environmental performance. Proffitt and Spicer (2006) examined the evolution of shareholder proposals on the topics of international and labour human rights, filed from 1969 to 2003. They draw on the social movement perspective to analyze the influence of shareholder filers on the policies of targeted firms. Within this perspective, they assert that social movement activists deploy efforts to shape collective attitudes and beliefs over a long period, while trying to force change immediately through case-by-case struggles. In this context, they sustain that influence on management can only be discernible over years or decades, thus making the “success” of campaigns (in terms of influence on managerial decision-making) an elusive concept, which can be assimilated to the capacity of shareholder proposals to focus managerial attention on the issues raised in the proposals that create debate. Tkac (2006) analyzed all corporate social responsibility (CSR) proxies filed during the 1992–2002 period, not only those related to international labour and human rights. Tkac also concurred with the view that withdrawal of social resolutions signals a negotiation with management.

Our article makes a distinct contribution to the literature on the ability of social policy shareholder proposal resolution filers to influence management of targeted firms in a number of ways. First, based on Chidambaran and Woidtke (1999), we saw the

initiation of a shareholder proposal as being part of an ongoing process of negotiations between shareholders and management. Only when an agreement cannot be reached by the parties, is the proposal put to a vote. Thus, in an initial step, we study whether a number of factors (including characteristics of the targeted firms, of the filers and of the resolutions) influence the outcome of withdrawn resolutions. To the best of our knowledge, only Chidambaran and Woidtke (1999) have previously conducted an examination of the influence of certain numbers of firm traits using univariate tests (size and profitability) on the likelihood of withdrawal of social policy shareholder resolutions. However, their study differs from ours in a number of aspects. Most notably, Chidambaran and Woidtke (1999) compared the traits of firms exhibiting a withdrawal with those of firms that have not received a shareholder proposal. In our view, this design could be more appropriate for the examination of the firm targeting decisions of shareholder resolution filers. Thus, unlike Chidambaran and Woidtke (1999), we used regression analysis to study a number of factors that may affect the likelihood that social proxy is withdrawn (instead of being voted on). In summary, we focus our analysis on the outcomes of the resolutions of a sample of firms that have been targeted by filers, avoiding any comparison with a hypothetical matching sample of companies not receiving a social policy resolution.

We examine the influence of a number of factors on the likelihood of withdrawal, assuming that a withdrawal signals a sort of negotiation between the filer and management of the targeted firm. We are able to examine econometrically if firm traits, such as size, and profitability, social performance, and ownership structure may play a role in the outcome of social resolutions. These traits were suggested to us by the literature on corporate governance shareholder activism, as well as literature

on the interplay between CSR and corporate financial performance (Waddock and Graves, 1997; Orlitzky *et al.*, 2003), and the review of accounts of the operation of activist campaigns, such as those presented by Vogel (1978), Manheim (2001), and Hoffman (1996). Previous findings in the area of corporate governance shareholder activism suggest that characteristics associated with resolutions themselves, such as the type of issue raised or the filer may play a role in management decision to adopt requests from shareholders.

Previous literature on corporate governance shareholder activism suggests that it is possible to identify a number of factors that may strengthen the capacity of activist shareholders to negotiate with management. This literature depicts an adversarial relationship between managers and activist shareholders. In the framework of this adversarial relationship—basically modelled along the lines of agency theory—activist shareholders can file resolutions to discipline managers of firms with poor financial performance who pursue their selfish interests to the detriment of the targeted company's stockholder base. In turn, corporate governance activist shareholders can also pursue their own interests, advancing resolutions to gain personal publicity in order to advance professional or political careers. We also consider the negotiation between management and filers of social proxies as adversarial. However, the variables that may favour the negotiation for filers of social proxies are arguably different, given that firm-value maximization is not necessarily the main motivation of filers, who can also pursue other objectives.

## **Characteristics of Resolutions**

### ***Types of Issues and Filers***

Characteristics of the resolutions themselves (such as the type of issue that they raise or the identities of their sponsors) have shown to favour a settlement of the issue with management (Smith, 1996). Chidambaran and Woidtke (1999) found that corporate governance proposals sponsored by institutions and coordinated groups have a higher probability of withdrawal than those filed by individuals. We concluded from the above-mentioned articles that some type of investors could have more financial clout than others, which is favourable to them in their dealings with management. Moreover, some types of issues presented in the resolutions could be perceived as more harmful for market valuation if management does not deal with them. On the basis of this discussion, we formulated the following hypotheses:

H1a. Social policy shareholder resolutions sponsored by some particular types of filers exhibit a greater likelihood of being conducive to a settlement with management.

H1b. Social policy shareholder resolutions containing some particular types of requests could be more likely to be the object of a settlement with management.

### ***Previous Vote Turnover***

It also seems plausible that resolutions that have been voted in a year before, receiving relatively large vote tallies, could have a greater likelihood of ending up in a settlement between management of the targeted company and the filer. It has been argued that the proxy machinery favours management in a number of ways (Davis and Thompson, 1994). For instance, a proxy vote is not generally anonymous, which leaves institutional investors open to pressure from managers who may be able to determine in many circumstances who voted for them and against

them. This may be a sensitive issue for institutional investors who supply financial services to the firm. Because proxy votes are revocable up to the time of the vote at the annual meeting, management can lobby to change the votes of shareholders who voted against its wishes. In some cases, however, management anticipations about vote turnover can be proved wrong, with higher unexpected vote turnover signalling investors' dissatisfaction with corporate lack of responsiveness toward a sensitive social topic. This leads us to formulate a second hypothesis concerning the study.

H2. Vote turnover of resolutions being subsequently re-submitted have a greater likelihood of being part of a settlement between management of the targeted firm and the filer.

### **Firm Size**

Previous research about firm targeting—in both areas, corporate governance and social policy shareholder resolutions—suggest that large firms are preferred by activist investors. Thomas and Cotter (2007) found that companies targeted by corporate governance shareholders are relatively large, albeit those targeted by social policy shareholder resolutions could be even larger. Three reasons could explain that preference. First, large firms can be leaders in the industry. Innovative social policies can be copied, if smaller competitors adopt them, either by mimesis, out of fear of losing an important segment of the consumer or investors bases, or to avoid harsher forms of governmental intervention. Secondly, McWilliams and Siegel (2001) conjecture that there are economies of scale in firms provision of goods with CSR attributes. Thirdly, larger firms are more visible and are more likely to have global operations, and

consequently attract media attention. This could be particularly relevant if political or personal careers can be furthered by social policy shareholder activism, as Romano (2001) and Del Guercio and Hawkins (1999) have argued that it can be the case of corporate governance activism. As well, Baron (2003) suggested activists advocating for social causes (whether using the proxy machinery or not) may want to attract new members and contributions. If these motivations apply in the case of social proxy filer, clearly larger firms are more likely to provide higher rewards. Thomas and Cotter (2007) provide partial evidence that larger firms are more likely to respond to shareholder proposals. Nevertheless, Smith (1996) uncovered evidence that firm size, although important in the targeting selection process for corporate governance shareholder activism, does not affect the likelihood of a successful outcome.

This discussion leads us to formulate another hypothesis:

H3: Resolutions filed at large firms are more likely to end up in a settlement.

### **Firm Profitability**

Researchers have pointed out that firms with higher profits could invest in programs allowing them to improve their social performance (Waddock and Graves, 1997; Seifert *et al.*, 2004; Orlitzky *et al.*, 2003). If that is the case, firm profitability will be positively related to management decision to yield to socially concerned shareholders' requests. Thomas and Cotter (2007) found that the firms' market adjusted one-year return increased the likelihood of the board taking action on corporate governance resolutions receiving majority votes, indicating that well-performing firms are more willing to abide by the their activist

shareholders' requests, especially when it comes to removing anti-takeover defences. On the contrary, Carleton *et al.* (1998) reported weak evidence that poor stock market performance leads to a higher likelihood of a negotiated settlement.

This discussion allows us to formulate the following hypothesis:

H4: Resolutions received by more profitable firms are more likely to generate a negotiated settlement.

#### **Previous Firms' Social Performance**

Arguably, companies that perform better in social terms should be more likely to integrate social activist shareholder requests presented to them in social policy resolutions. There is anecdotal evidence showing that socially performing firms could attract corporate campaigns intended to transform them in setters of new trends in CSR that could be mimicked by other less performing firms. Likewise, Rehbein *et al.* (2004) presented anecdotal evidence that Operation PUSH, an organization intended to promote African-American people's advancement, decided to target a beer maker with a number of actions, because of its lack of minority distributors. However, these authors claim that the main reason for targeting the company was to maximize publicity about diversity issues, even if the company had an above-average record regarding those issues.

In accordance, we present the following hypothesis:

H5: Resolutions targeting more socially responsible firms are more likely to have a negotiated settlement as an outcome.

### **Ownership Structure**

Shleifer and Vishny (1997) argued that the most direct way to align cash flow and control the rights of outside investors is to concentrate shareholdings. A substantial minority shareholder has the incentive to collect information and monitor management, avoiding the so-called “free-rider” problem, i.e., the fact that investors holding limited amounts of stock do not have a financial interest to invest in monitoring management. Furthermore, investors holding a substantial minority have enough voting power to put pressure on management to the point of ousting management through a proxy vote or a takeover. Thus, investors holding large stakes in a firm could have an interest to deploy major resources to monitor management regarding decisions of social policy deemed as detrimental for major key stakeholders, and having a potential implication in financial returns for their investments. Institutional investors, given their accrued salience on capital markets in the United States, tend to hold large percentages of outstanding shares. In this way, they have an interest in deploying resources to monitor social issues that could pose a threat to the future financial rewards of the companies in their portfolios. The same could be argued about block-holders. These aspects of the firms’ ownership structure lead us to formulate the following hypothesis:

H6a: Firms with larger percentages of institutional ownership or block-holder ownership are more intensively monitored regarding their social performance, making it more likely to have a negotiated settlement of the shareholder resolution.

If institutional ownership could favour filers in their negotiations with management of targeted firms, it is not

arguably the case of insider stockholders, which should tend to vote with management. Thomas and Cotter (2007) reported, in fact, that vote turnover for social policy resolution in their sample was negatively related to the level of insider ownership. Low expected vote turnovers tilt negotiations with filers in favour of management. In consequence, we propose another hypothesis.

H6b: Management of firms with larger proportions of insider ownership can be less inclined to negotiate a settlement of a social policy shareholder resolution.

## **SAMPLE AND SOURCES OF DATA**

We put together all social policy resolutions received by US firms during 2000 to 2004. The source of these shareholder resolution proposals was the yearly publication of Social Policy Shareholder Resolutions, from the Investor Responsibility Research Center (IRRC). A total of 1,486 resolutions (presumably, the entirety of resolutions received by U.S. companies during the above-mentioned years) were assembled. We used Compustat to retrieve targeted firms' accounting data and market returns. KLD's Socrates database provided data intended to evaluate the social performance of firms. In some cases, we could not find any sort of information about the firms, causing us to drop those firms from the sample. In total, we kept 1,424 for further analysis. Ownership data were retrieved from Compact D/SEC (Disclosure SEC).

For each proposal, IRRC provides a checklist, containing the name of the company; the summarized title of the resolution; the sponsor(s) name; as well as the status of the resolution, i.e., withdrawn, omitted, not in proxy or voted (in this later case,

turnover is reported in percentage of shares). This information allows us to examine the likelihood of a negotiated settlement.

We identified 18 shareholder resolutions that were withdrawn, although the IRRC reported that, in those cases, the omission could be very likely or even imminent because the resolution did not comply with the technical requirements of Rule 14 a-8, and one or more of the thirteen reasons invoked to omit resolutions could apply. Five resolutions also were withdrawn because the company reported that the resolution did not apply or the requested policy was already implemented. In both cases, we re-classified those withdrawn resolutions as omissions. In two cases, filers preferred to withdraw their proposals because the targeted company merged or it was acquired since the proposal had been filed. We did not consider these resolutions as withdrawals, because there was no meaningful negotiation to talk about. Instead, we classified them with those in the original category from IRRC comprising shareholder resolutions proposals that were reported as not presented, not in proxy, had cancelled the shareholder meeting, or were taken over or merged during the proxy season.

Between 2000 and 2003, IRRC reported the names of the first sponsor and co-sponsors of resolutions. For 2004, nonetheless, only the main sponsor's identity was reported. We dropped the identity of co-sponsors from the analysis to facilitate comparison. Thus, only the first sponsor is associated with each of the resolutions.

## **DISCUSSION OF RESULTS**

If withdrawals signal a negotiated settlement of an issue between the filer of the resolution and management of the targeted firm, as Chidambaran and Woidtke (1999) proposed, Table 1 shows that

most resolutions are not conducive to such an agreement. More than half of the 1,424 resolutions in our sample (54.3%) ended up being voted by shareholders, presumably signalling management's unwillingness to negotiate with the resolution filers. Slightly less than 28% of all resolutions in our sample ended up being withdrawn, while about 13% of resolutions were omitted by the regulator, which sided with management requests to keep these resolution proposals out of the proxy materials distributed to shareholders.

Withdrawal of resolutions is not uniform across the types of topics raised in resolutions and filers.<sup>1</sup> For instance, calls to

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<sup>1</sup> Most categories for issues and filers are self-explanatory. However, it is important to include clarification for a few of them. Equal employment proposals seek to promote discrimination-free workplace environments in domestic operations of firms. Discrimination could be the result of gender identity, ethnicity, religious confession, sexual orientation or age. Resolutions in the international labour and human rights category include calls for management to adopt codes of conduct in their operations in certain countries, such as China, or adoption of the International Labour Organization standards and external monitoring. Shareholder resolutions in the "fairness in society" category seek to promote corporate policies that are consistent with fairer access to wealth and well-being for disadvantaged groups or communities, at domestic or international levels (such as calls to banks to apply globally the community investment act, or to create stakeholders' committees to supervise plant closings). Human health issues' resolutions intend to promote corporate initiatives seeking to improve or expand access to healthcare or healthier products, including calls to develop ethical criteria for patent extension. Filer categories were established on the basis of the information retrieved from the Web sites and publications of the IRRC. We considered mutual funds to be those identified as such in the Social Investment Forum (2003).

Table 1. Outcome of Social Policy Shareholder Proposals in the U.S., 2000–2004, According to the Category of Issues Raised and Type of Sponsors

Type of Issues	Total		Voted		Withdrawn		Omitted		Not Presented <sup>1/</sup>	
	No.	% <sup>2/</sup>	No.	% <sup>3/</sup>	No.	% <sup>3/</sup>	No.	% <sup>3/</sup>	No.	% <sup>3/</sup>
Energy and environment	362	25.4	203	56.1	103	28.5	44	12.2	12	3.3
International labour and human rights	287	20.2	178	62.0	71	24.7	31	10.8	7	2.4
Equal employment	145	10.2	54	37.2	78	53.8	10	6.9	3	2.1
Fairness in society	102	7.2	62	60.8	27	26.5	11	10.8	2	2.0
Human health issues	97	6.8	41	42.3	41	42.3	13	13.4	2	2.1
Involvement in partisan politics	87	6.1	66	75.9	4	4.6	13	14.9	4	4.6
Charitable giving	71	5.0	28	39.4	3	4.2	39	54.9	1	1.4
Tobacco issues	64	4.5	39	60.9	14	21.9	9	14.1	2	3.1
Involvement in the military	57	4.0	46	80.7	5	8.8	3	5.3	3	5.3
Board diversity	55	3.9	27	49.1	25	45.5	2	3.6	1	1.8
Local or indigenous community rights	16	1.1	6	37.5	7	43.8	2	12.5	1	6.3
Animal rights	15	1.1	8	53.3	1	6.7	0	0.0	6	40.0
Other/unknown <sup>4/</sup>	66	4.6	15	22.7	15	22.7	2	3.0	34	51.5
<b>Total</b>	<b>1424</b>	<b>100.0</b>	<b>773</b>	<b>54.3</b>	<b>394</b>	<b>27.7</b>	<b>217</b>	<b>15.2</b>	<b>40</b>	<b>2.8</b>

  

Type of sponsor	Total		Voted		Withdrawn		Omitted		N/A	
	No.	% <sup>2/</sup>	No.	% <sup>3/</sup>	No.	% <sup>3/</sup>	No.	% <sup>3/</sup>	No.	% <sup>3/</sup>
Religious investor	469	32.9	267	56.9	154	32.8	34	7.2	14	3.0
Mutual fund	249	17.5	101	40.6	119	47.8	22	8.8	7	2.8
Individual	246	17.3	128	52.0	10	4.1	100	40.7	8	3.3
Public pension fund	185	13.0	99	53.5	68	36.8	15	8.1	3	1.6
Asset manager	109	7.7	70	64.2	27	24.8	8	7.3	4	3.7
Advocacy group	99	7.0	63	63.6	12	12.1	23	23.2	1	1.0
Trade union	56	3.9	42	75.0	3	5.4	9	16.1	2	3.6
Unknown/other <sup>4/</sup>	11	0.8	3	27.3	1	9.1	6	54.5	1	9.1
<b>Total</b>	<b>1424</b>	<b>100.0</b>	<b>773</b>	<b>54.3</b>	<b>394</b>	<b>29.4</b>	<b>217</b>	<b>2.9</b>	<b>40</b>	<b>13.4</b>

1/ Not presented, not in proxy, shareholder meeting cancelled, or takeover or merger took place during the proxy season.

2/ Percentage of total number of resolutions.

3/ Percentage of each outcome for the issue or filers' category.

4/ No category found; plus other categories comprising each one less than 1% of total number of resolutions.

diversify boards (adding more women or minorities) exhibited a large percentage of withdrawals during the period. It was also the case of resolutions requesting the firm to offer a discrimination-free working environment in their domestic operations (equal employment). From the point of view of sponsors, religious investors, mutual funds and pension funds exhibited a greater number of withdrawals.

The view that certain types of issues and filers could have an accrued capacity to negotiate with management is reinforced by the examination of voting patterns. As Table 2 reports, when negotiations with management fail and the resolution is put to a vote, resolutions linked to energy and environment, international labour and human rights, and especially equal employment and board diversity receive tallies that are higher than average. Likewise, voted resolutions sponsored by mutual funds and pension funds gather a higher turnover than those sponsored by other types of filers. The clout of these two latter types of filers may be connected with a greater financial might in terms of stockholdings, as well as a greater access to specialized human resources.

In a next step of our analysis, we used logit analysis to check our intuition that factors concerning the resolution characteristics, firm size, profitability, social performance and ownership structure of companies could tilt the negotiation of resolutions in favour of one of the parties involved, as stated in the hypotheses of this study. Concerning the traits of the resolution themselves, we hypothesized that resolutions connected with energy and environment, international labour and human rights, equal employment, and board diversity, as well as those being filed by mutual funds and pension funds, are more likely to end up in a settlement.

Table 2. Vote Turnover of Voted Proposals in the US, 2000–2004, According to Category of Issues raised and Type of Main Sponsor

Type of Issue	No.	Average Turnover (%)
Energy and environment	203	10.8
International labour and human rights	178	10.3
Equal employment	54	16.9
Fairness in society	62	8.3
Human health issues	41	8.4
Involvement in partisan politics	66	7.6
Charitable giving	28	5.7
Tobacco issues	39	7.2
Involvement in the military	46	6.2
Board diversity	27	19.8
Local or indigenous community rights	6	7.3
Animal rights	8	4.1
Other/unknown <sup>1/</sup>	15	6.3
<b>Total</b>	<b>773</b>	<b>10.0</b>

  

Type of sponsor	No.	Average Turnover (%)
Religious investor	267	9.0
Mutual fund	101	13.5
Individual	128	7.0
Public pension fund	99	13.5
Asset manager	70	10.7
Advocacy group	63	7.6
Trade union	42	9.6
Unknown/other <sup>1/</sup>	3	43.8
<b>Total</b>	<b>773</b>	<b>10.0</b>

<sup>1/</sup> No category found, plus other categories comprising less than 1% of all resolutions.

This is based on the evidence presented in the tables already discussed and other intuition that mutual funds and pension funds have more financial power and access to resources, including specialized human resources, to conduct their activism. High vote turnovers received by the resolutions that these actors sponsored may be uncomfortable for management, and thus previous vote turnover may play a role in the possibility of a settlement if the resolution is submitted the year after.

Table 3 presents the results of a logistic regression, based on the information used to develop Table 1. The dependent variable in our regression is set to be one (1) if filers have withdrawn their resolution (presumably in exchange for negotiation) and zero (0) if management, instead of negotiating a settlement with the filer, felt confident enough to let the proposal be voted on by stockholders. We dropped the group of omitted resolutions from the analysis, because omission depends on technicalities and opinions of the SEC rather than on firm characteristics. We also dropped resolutions that were not presented or not in the proxy from this analysis, because a merger or takeover occurred after the filing, since there was not a meaningful negotiation to talk about in this case. Four models were run in order to test our hypotheses. The first model includes as independent variables the natural logarithm of market value of the firm (the proxy for size), one-year total return (as indicator of profitability), separate dummy variables set to one (1) if the resolution was connected to issues of energy and environment, international labour and human rights, equal employment or board diversity, or if the resolution was filed by a mutual fund or a pension fund, and set to zero (0) otherwise. Other independent variables are the social performance of the firm, as reported by KLD, and the percentage of the firm value owned by the institutional investors, the top five

investors and insiders. Model 2 replaces one-year total return as the indicator of profitability with the three-year total return.

Table 3. Determinants of Shareholder Resolution Withdrawals

	Model 1	Model 2	Model 3	Model 4
Ln (market value)	-0.040	-0.060	-0.180	-0.160
One-year total return	-0.004		-0.016 ***	
Three-year total return		-0.002		0.003
Dummy energy & environment	0.175	0.151	-0.001	-0.278
Dummy int. labour & human rights	-0.830 **	-0.760 **	0.360	0.330
Dummy equal employment	0.870 *	0.900 *	0.790	0.700
Dummy board diversity	0.370	0.440	1.420	1.070
Dummy mutual fund filer	0.200 *	0.190 *	0.060	0.070
Dummy pension fund filer	0.190 *	0.170 *	-0.010	-0.040
KLD rating	0.800 **	0.760 **	0.150	0.250
Institutional ownership	0.010 **	0.010 **	0.010	0.010
Five largest owners	-0.012 **	-0.015 **	-0.006	-0.005
Insider ownership	-0.010	-0.010	-0.040	-0.050
Vote previous year			0.080 *	0.060 **
Constant	-0.900	-0.770	-2.370	-2.120
No. of observations	643	632	179	178
Pseudo R2	0.0889	0.0861	0.1436	0.1221

\*, \*\*, \*\*\* significant at 99%, 95% and 90% respectively.

Logit regression, dependent variable 1= resolution withdrawn, 0= resolution voted

Models 3 and 4 add the vote turnover gathered by the resolution the previous year (in percentage). To run the models,

all variables had been lagged by one period. This is because the so-called proxy season covers a number of months, and proposals for one year can start to be filed as early as the month of March the previous years (Karpoff et al. 1996). Logistic regressions reported in Table 3 (models 1 and 2) partially confirm our hypothesis H1a) concerning the identity of filers. Estimated coefficients in the models 1 and 2 show that a withdrawal of the resolution is more likely if it was filed by a mutual fund or a pension fund. Results from models 1 and 2 also partially confirm our hypothesis 1b). In effect, resolutions calling companies to provide discrimination-free workplace environments in domestic operations show a greater likelihood of ending up being withdrawn as hypothesized. The estimated coefficients for this dummy variable are positive and significant at the 99% confidence level in models 1 and 2. However, the coefficient for the dummy for resolutions related to international labour and human rights issues, albeit significant at the 95% level of confidence is negative, indicating that this type of resolutions are less likely to be conducive to a withdrawal. The coefficients estimated for the dummy variables assigned to the resolution if it was related to the energy and environment and the board diversity categories were not statistically different from zero in any of the four models. Results concerning the two latter dummy variables are puzzling to us. Environmental issues are, in fact, pervasive in the public arena concerning firms' interaction with society (Hoffman 1996). Firms that neglect the energy and environmental impact of their operations can indeed be harshly punished by large segments of consumers, and, consequently, can fare worse in capital markets. A partial explanation for our results regarding energy and environment issues could be provided by the fact that energy and environment as well as international labour and human rights are heterogeneous and broad categories. We have the intuition that only some of the calls to reform

environmental or energy policy of the corporation could be perceived by management of the targeted firm as having a potential to damage financial performance if shareholder concerns are not addressed properly. In many other cases—our argument goes—energy and environment resolution could reflect the concerns of a very limited segment of activist shareowners, with a narrow agenda, and a very limited potential of hurting the economic fortunes of the concerned firm if left unanswered.

This can be also the case of the resolutions in the category that we labelled as international labour and human rights. These resolutions include, for instance, calls to multinational corporations to adopt codes of conduct that can guarantee the respect of workers' rights in operations overseas (including their suppliers) and independent monitoring of compliance. O'Rourke (2003) and Elliott and Freeman (2001) present anecdotal evidence that many firms have positively reacted to pressure from stakeholders to adopt codes of conduct for themselves and their suppliers abroad. O'Rourke (2003) identifies a host of schemes (mostly non-governmental) that have emerged during the late 1990s and early 2000s to develop appropriate codes of conduct for multinational firms and certifications of compliance. These firms enter these arrangements voluntarily in order to avoid negative reactions from consumers who could refuse to buy products, presumably developed under exploitative conditions. This corporate commitment to the adoption of codes of conduct and independent monitoring runs contrary to our finding. Our only provisory explanation is that resolutions that we have put together since international labour and human rights constitute also a relatively broad array of issues. Some of them could be related to the adoption of codes of conduct (for which management could presumably be responsive), but some others are connected with more requests more difficult for firms to implement, such as

demands for a “living wage” in their operations in developing countries, or calls to divest from countries with a record of mass violation of human rights. These latter types of resolutions could reflect rather a protectionist attempt from some groups. This explanation is only partial, and more research is needed on the issue.

It is interesting to observe as well that the coefficients for the dummy variable equal employment is positive and significant while those of the dummy international labour and human rights are negative and significant. We reason that potential damage of the issues connected with operations outside the country would be less damaging in terms of discrediting the firm than domestic issues connected with employment or board design, or perhaps threats of legal action or consumer boycotts are larger at the domestic level.

Models 3 and 4 introduce the percentage of votes gathered by the resolution the previous year as an independent variable. The estimated coefficient for the variable is positive and significant (H2). Moreover, when this variable is introduced into the regression, other variables (such as the dummies for mutual funds and pension funds, or rating from KLD) lose their significance, suggesting that it dominates over them. This dominance tells us that a relatively high vote turnover for a resolution constitutes for management an indication of the potential resonance of the issue in society at large, and facilitates negotiations for filers. This conclusion, however, must be handled with care, because introducing the percentage of voted received the previous year implies that the outcome of the resolution (voted, not withdrawn) at time  $t$  becomes an independent variable at  $t+1$ , which could be the source of potential econometric problems.

Our logistic regressions presented in Table 4 suggest that firm size (H3) does not increase the likelihood of a withdrawal,

even if larger firms could benefit from economies of scale to adopt innovative social policies, or take advantage of early adoption of them to foster their competitiveness. The estimated coefficient for the variable is not statistically different from zero in any of the models. Contrary to our expectations as well, profitability (H4) appears to have only a limited impact on the probability of a resolution withdrawal. The estimated coefficient for the three-year total return (models 2 and 4) are not statistically different from zero. The coefficient for the one-year total return is significant—and negative, thus against our expectations—in just one model. We suspect that this could reflect that financially underperforming firms are subject to heavier scrutiny from stockholders than their more performing counterparts. If so, their management could be tempted to give more consideration to demands from social activist shareholders, because refusing to do so could provoke reactions (like threats of divestment) or bad publicity that can be particularly damaging for a financially underperforming firm.

Estimates of the coefficient for the rating received by the company from KLD suggest that socially over-performing firms are more likely to integrate demands from social policy activist shareholders. It also appears, from Table 3, that institutional ownership in the firm increases the likelihood of a withdrawal (H6a). However, blockholder ownership decreases the likelihood of a withdrawal. This could reflect that this type of owners, who are considered to favour monitoring of managers and alignment of managerial and shareholder interests (Shleifer and Vishny, 1997), consider social policy shareholder resolutions as detractive for the firm market value.

Insider ownership, however, shows statistically insignificant coefficients in all models.<sup>2</sup>

## CONCLUSION

This paper examines empirically whether a number of characteristics of social policy resolutions and targeted firms have an influence on their outcomes. Drawing on Chidambaran and Woidtke (1999), we considered that voted resolutions spelled the end of negotiations between firm management and filers, while withdrawals imply a negotiation of some sort. If this view applies, about 28% of all resolutions in our sample would end in negotiations between the parties, while, in slightly more than half of the cases, management felt confident enough to put the resolution to a vote.

We examined, using logit regression, whether a number of factors related to the characteristics of the resolution themselves as well as those of the targeted firms increased the possibility of a negotiated settlement. The indicator of this negotiated settlement of the resolution is the withdrawal of the resolution.

Our results falsify some of our hypotheses and confirm others. Resolutions filed by mutual funds and pension funds exhibit positive coefficients suggesting that these resolutions are more likely to end up in a withdrawal. Institutional ownership also increases this likelihood, as it does, among other aspects, the

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<sup>2</sup> It is important to highlight that the introduction of the vote turnover received by the resolution the previous year strongly decreases the number of observations. When models 1 and 2 are run using the sub-sample of resolutions that have been voted the previous year and then re-submitted, results are qualitatively similar to those of models 3 and 4. It is thus possible that the impact of the vote turnover gathered by re-submit proposals can be the result of the sub-sample, rather than the explanatory power of the variable.

rating received from KLD by the company. In many cases, though, these variables lose significance when the vote percentage received by the resolution the previous year is introduced into the analysis. Thus, this latter variable seems to dominate over other variables.

Our article focuses on all types of filers and issues. Future research, however, could gain if other approaches were implemented. For instance, by focusing on a single filer of social shareholder resolutions that gives access to its communications, researchers could gain additional information about the capacity of all resolutions over a number of proxy seasons, both withdrawn resolutions and those that have been submitted to a vote. Future research could also benefit of taking into consideration how media coverage of social policy shareholder resolutions may tilt negotiations in favour of filers. Reports in the financial press suggest that media attention may indeed play a role in management decisions to implement an action suggested by activist shareholders. For instance, in 2007, Berkshire Hathaway, a financial company controlled by renowned investor Warren Buffett, received a shareholder resolution asking it to sell its shareholding stake in PetroChina, a company that activists have accused of indirectly funding human right abuses in the region of Darfur, Sudan. The board of Berkshire suggested stockowners vote against the proposal, and received slightly less than 2% of support (Berkshire Hathaway, 2009). However, and presumably as a consequence of media coverage and demonstrations outside the building where the general annual meeting of the company was taking place, Berkshire Hathaway's board decided to divest, effectively abiding by shareholders' request.<sup>3</sup> Thus, the role of

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<sup>3</sup> Some analysts have pointed out that Berkshire Hathaway's decision could have been driven by profit-seeking, rather than a desire to appease criticism on its social policies (National Public Radio, 2009).

media coverage can be potentially fruitful for research on shareholder activism, although it may imply methodological challenges, such as how to develop the appropriate metrics for it.

Future research could also address another limitation of our study. Although we do not deal with the topic, previous research on corporate governance and social policy suggests that less public forms of activism such as private letters and phone calls to management could be common. Del Guercio and Hawkins (1999) pointed out that a pension fund proposing changes in corporate governance will only use the proxy machinery to file a shareholder resolution as a last resort. Naturally, this only works if the threat is credible. As one pension official quoted by Del Guercio and Hawkins (1999: 297) put it, “every once in a while the junkyard dog has to bite.”<sup>4</sup> Logsdon and Van Buren (2009) have already noticed that a resolution was not filed for several years because of an ongoing dialogue, putting this form of activism out of the public view, and making it much more difficult for researchers to scrutinize it. In spite of the difficulties of this avenue of research, we agree with the observation of Logsdon and Van Buren that understanding dialogue could greatly enlarge our capacity to examine the ability of activist shareholders to influence management on matters of social policy.

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<sup>4</sup> Baron (2003: 36) in his study about activism seeking to promote “private orderings” intended to change targeted firms’ social policies, states that more important than the successful or failed attempts of activists are the proactive measures adopted by many firms to avoid private politics. Some of these attempts are, according to the researcher, a little more than public relations, but many represent real commitments to changes in policies and practices.

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