RESEARCH & ADVOCACY BRIEF

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ACTION ALERT: SEC TESTS RULES THAT WOULD UNDERMINE SHAREHOLDERS' RIGHT TO SPONSOR RESOLUTIONS

Actions by the SEC have put the shareholder resolution process in jeopardy. Investors can play an important role in efforts to preserve essential shareholder rights.

IMPORTANCE TO INVESTORS

Partnering with our clients, Walden has used the shareholder resolution process for over twenty years to encourage positive corporate change on environmental, social and governance issues. Resolutions have been a vitally important tool in communicating with directors, management and other investors on key issues such as climate change, workforce diversity, executive compensation, human rights in overseas factories and governance reforms.

There is a long history of positive results stemming from the use of shareholder resolutions, demonstrated by companies making specific reforms, changing policies and increasing transparency. Annually, approximately one-quarter to one-third of shareholder resolutions are withdrawn because constructive dialogue with companies leads to win-win agreements. For Walden, over two-thirds of the resolutions we filed were withdrawn in 2007, a record. More than twenty-five Walden clients have been involved as co-sponsors of resolutions, adding their voice and vote for positive change.

BACKGROUND TO SEC ACTION

On July 25, 2007, the Securities and Exchange Commission (SEC) voted on issues of deep concern to the investor community, including potential changes to rules that govern investors' ability to sponsor shareholder resolutions. The SEC has suggested that its staff is burdened by the current resolution process. But it is not rhetorical flourish to describe the SEC's proposed solutions as perilous for shareholder rights. Three suggested changes, described below, would eliminate or severely cripple the shareholder resolution process.

Walden takes strong issue with public remarks of SEC Commissioner Paul Atkins, a supporter of the proposed changes, who noted that advisory resolutions (most shareholder resolutions) detract management from primary business operations and represent "the tyranny of the minority… [using their] nominal economic interest to hijack the agenda of all investors." (*Money Management Executive*, July 30, 2007) Certainly, Mr. Atkins's argument is flawed since many shareholder resolutions receive votes in the 25% to 75% range, reflecting significant agreement among investors.

The public has 60 days to comment before the SEC will "study the comments for a month" and issue final rules. The deadline for public comments is October 2, 2007.

1. THE OPT-OUT OPTION

The SEC asks for comments on the right of a company to "opt-out" of the shareholder resolution process, either by obtaining approval from shareholders through a proxy vote, or, if sanctioned under state law, by having a Board vote authorizing the company to opt-out.

Walden believes that an opt-out option would have significant negative consequences. The most unresponsive companies would be more likely to opt-out because resolutions are an important mechanism to strengthen corporate accountability. Companies with relatively poor investor communications would be empowered to isolate themselves further. Consider, for example, a company with an inferior governance

record which had received a number of resolutions garnering strong shareholder votes. If the company opts-out of shareholder resolutions, it disenfranchises its shareowners by removing a right they had been successfully utilizing. Additionally, the lack of uniform rules that would result from an opt-out option is a complicating factor for both investors and companies.

We also can not support an opt-out rule implemented through a shareholder vote. Far from an appropriate democratic process, this more accurately reflects the anti-democratic notion of *one person*, *one vote*, *one time*. Future shareholders will have no such voice.

2. THE ELECTRONIC PETITION MODEL OR "CHAT ROOM"

The release asks, "Should the Commission adopt a provision to enable companies to follow an electronic petition model for non-binding shareholder proposals in lieu of 14a-8?" This question builds on the SEC Roundtable discussion of "electronic chat rooms" and suggests that such a forum could substitute for the right to file shareholder resolutions.

This proposal ignores the ongoing success of the shareholder resolution process and attempts to create an untested option as a substitute. It is also fraught with logistical difficulties and unanswered questions. Presently, shareholder resolutions assure that management and the Board focus on the issue at hand since it is included in the proxy and debated at the annual stockholder meeting. Additionally, each and every investor receiving a proxy has the opportunity to consider the proxy item and cast a vote. Walden believes that to substitute a chat room or other forms of electronic petition for the current proxy process erodes a valuable fiduciary tool.

Chat rooms and electronic forums are welcome approaches for enhancing communication with investors. They are not a substitute for a shareholder's right to file resolutions.

3. RESUBMISSION THRESHOLDS

In its release, the Commission also asks for comments on increasing the votes required for resubmitting resolutions to 10% after the first year, 15% after year two and 20% thereafter, compared to current thresholds of 3%, 6% and 10%, respectively.

Raising the thresholds as proposed would make it much more difficult for investors to resubmit resolutions for a vote, further insulating management from shareholder accountability. Over the last 40 years, many proxy topics initially received very modest levels of support. Yet support increased over time as shareholder awareness and knowledge increased.

In 2007, there were fewer than 1,400 shareholder resolutions at less than 1,000 companies, representing well under 20% of publicly traded companies in the United States. Hence, overall, companies are not burdened by the resolution process.

Adding more restrictive thresholds on resubmitting resolutions simply makes it more difficult for investors seeking constructive engagement with companies. Walden opposes changes in the resubmission thresholds.

OPPORTUNITIES FOR ACTION

Walden is working with concerned investors to maximize our collective outreach to the SEC and expand media coverage of this important issue. Additionally, we are asking companies believed to be responsive to shareholders to state publicly that they support the shareholder resolution process or, at the very least, to remain neutral in this debate.

Walden is also helping investors speak out to protect shareholders' right to file proxy resolutions by furnishing a model letter to the SEC and members of Congress. The template letter can be accessed at our website (www.waldenassetmgmt.com). All comments should be submitted by October 2, 2007.

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