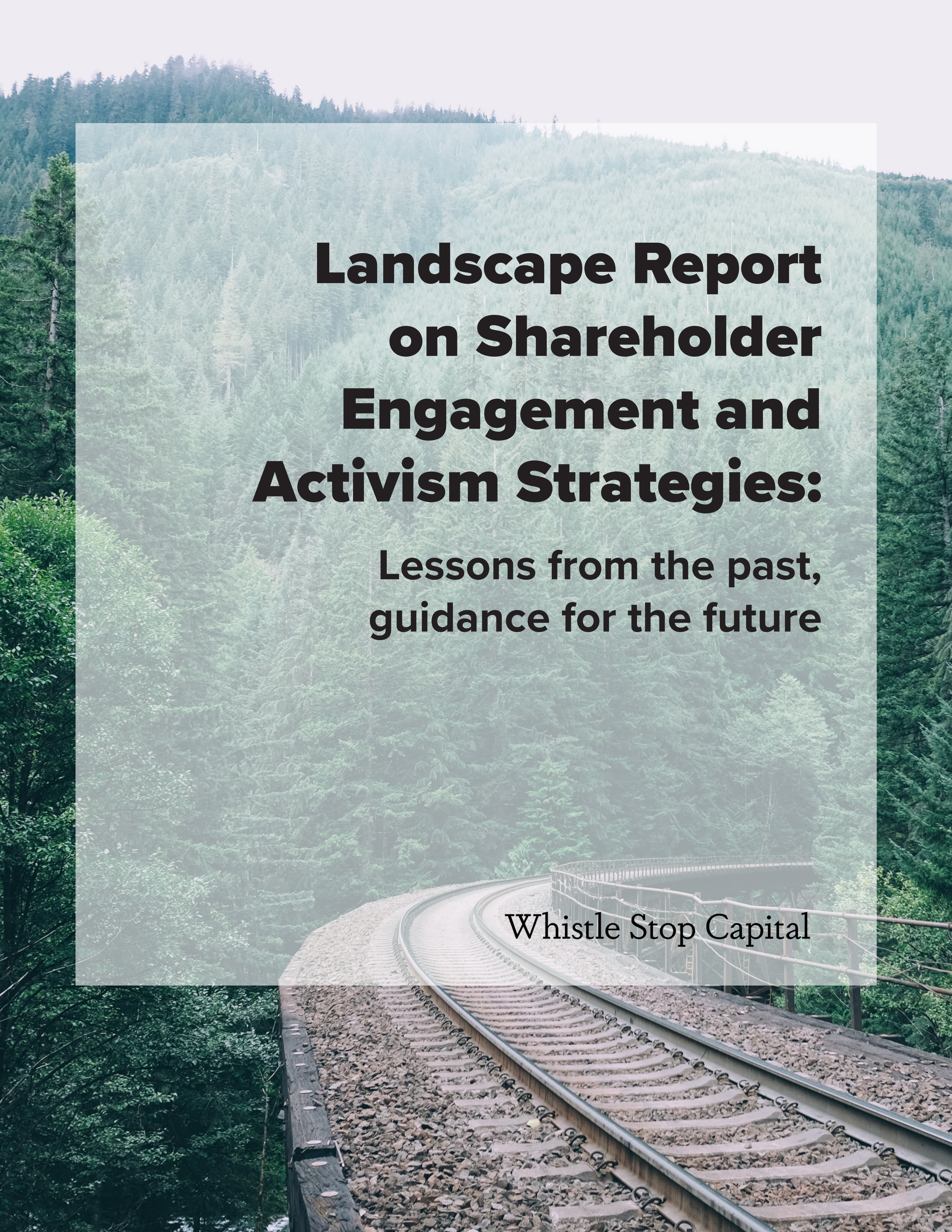


Landscape Report on Shareholder Engagement and Activism Strategies:

Lessons from the past, guidance for the future

Whistle Stop Capital

Whistle Stop Capital

Whistle Stop Capital, LLC (Whistle Stop) was founded in 2017 by Meredith Benton. It is a consultancy focused on helping investors assess, and address, environmental, social and governance (ESG) topics. Whistle Stop works with its clients to: identify the key areas of exposure and opportunity within investment portfolios, build and implement engagement strategies to encourage improved corporate practices, and incorporate appropriate metrics and benchmarks to track the positive changes catalyzed.

Whistle Stop provides services to field builders, foundations, individuals, investment advisors, endowments, and newly forming investment funds. Its allies include academic institutions, activist organizations, public pension funds, religious orders, corporate leaders, and innovators.

The lead authors of this report were Tim Brennan and Meredith Benton, supported by the broader Whistle Stop team. Team members and their bios are available at: whistlestop.capital/team.

This report was prepared in support of the NetGain Partnership, a philanthropic collaboration seeking to advance the public interest in the digital age. This research provided here is part of a larger initiative which has sought to assess the investors' role in encouraging greater accountability from technology companies to civil society.

Contents

Key Takeaways

1. Historically, investors have used eight key tools in pushing publicly traded companies to change their practices.

- **Coalitions** – Coalitions are the first step in building a successful shareholder engagement. Investors must have shared goals and views of an issue in order to successfully build and sustain change. Formalized coalitions, with staffing, provide essential knowledge centers and coordination of investors.
- **Business Case Research** – Mainstream investors need to view tech accountability practices as key to business performance issues. Business case research, and related reports, identify and prioritize concerning actions and provide a legitimizing rationale for investors to become involved in encouraging improved corporate practices.
- **Framework Creation** – Complex ideas need to be presented to investors in a digestible way. Frameworks and benchmarking companies allows for a simplified explanation of the changes sought, a differentiation of leading and lagging companies, and the tracking of changes overtime.
- **Screens and Divestment** – Screens and divestment encourage investors to disassociate their financing from morally unacceptable products and services. This approach does not try to change the cost of capital for the targeted companies; it allows investors an opportunity to reflect on their investment portfolios and how they align with the issue of concern. It also can often act as a simplified communications tool that engages stakeholders beyond large institutional capital, such as students, media and policy makers.
- **Direct Engagement** – Investors, independently or in coalition, have been able to catalyze changed corporate practices by speaking directly with companies. Building a trust relationship with a company that allows for information sharing and discussion allows for collaboration with internal advocates and has led to long-term changes.
- **Shareholder Resolutions & Proxy Voting** – Shareholder resolutions allow for relatively easy public communication with other investors, and proxy voting is a relatively easy process to show support for other investors' efforts. Shareholder resolutions put pressure on companies to engage constructively in private conversations, or else they risk the public scrutiny that the resolution process brings.
- **Board Campaigns** – Board campaigns have been reserved for the most incalcitrant companies. They are rarely deployed because a very specific set of circumstances must exist for them to be effective: the stock has to be underperforming financially and the board has to be non-responsive to shareholder concerns for an extended period of time.
- **Lawsuits** – Investor lawsuits have been used when wrongdoing is explicit, or when investors want to ensure that an issue is being carefully managed. This approach is legally complex and expensive, but can be used to push forward meaningful change.

2. Having a clearly defined goal (such as a change in policy or practice that is sought) is an essential component in the use of many of these tools. The specific goal of a tech accountability effort will guide the applicability and utility of each of these tools.
3. The tools are not independent; they are more effective as they build from and rely on each other. The successes of past investment involvement also relied on long-term planning. These efforts are more marathon than sprint.
4. Depending on the issue of concern, not all approaches detailed in this report will be applicable. Broader cultural actions - whether these be consumer sentiment, employee expectations, the regulatory environment, or enthusiasm for tech stocks – also matter significantly in how successful these tools will be.

Notes to the reader

This report details previous successes in changing the behavior of publicly traded companies as a result of investor engagement. It looks to the ways in which shareholder advocates, fiduciaries and securities' analysts have worked with civil society organizations to move forward social or environmental issues. Our primary example is climate change, an area of focus for the investor community for over 25 years. We also speak to some of the tools more recently deployed by those investors seeking to change corporate practices on social issues.

The report is unable to be a full retelling of all past efforts, nor is it able to detail the contributions of all key organizations. It is intended as a guide for those investors and civil society organizations seeking to catalyze action within the investor community around social or environmental issues currently being poorly managed within corporate America. In this we look to the past, for those efforts that have been successful and the approaches which might be well applied again.

The following twelve case studies detail the steps taken which, over time, helped change the thinking of investors and of corporate leaders. The report focuses on illustrating the use of key tools which investor advocates have deployed to encourage these changes.

This report is US-centric. The regulations and structures under which investors operate vary by nation and political landscape. However, the approaches detailed in this report, although with modifications, apply widely. This is because they focus on building a shared interest between civil society, investors, and the companies themselves in improving corporate practices.

Depending on the issue of concern, not all approaches detailed in this report will be applicable. Broader cultural actions - whether these be consumer sentiment, employee expectations, or the regulatory environment - matter significantly in the strength of the business case that might be developed. In addition, access to useable data, how a company or an industry is currently performing financially, as well as any protections the company has in place against outside influence, will also impact the success of investor efforts to change corporate behavior.

This field continues to evolve. Many of the successful initiatives detailed in this report might have gotten further faster if certain structural barriers were removed. New approaches will continue to be needed as we move towards a more resilient economic system, one with a stronger understanding of the shared interest between companies, investors and the social sector.

Introduction

Companies implement strong social, environmental, and governance practices (ESG) for a number of reasons. Often, these reasons are not focused on business ethics. Rather, a company wants to appear as though it shares the same values as its clients, distract clients and shareholders from damaging news elsewhere, or hold off government regulations. Sometimes the implementation of an environmental or social program is driven by the personal passions of a high-ranking manager, for instance, when a CEO has a strong personal commitment to human rights issues.

Most often, however, companies take on ESG programs to mitigate risk or enhance long-term returns. For a corporate ESG program to be sustained beyond an individual CEO or after the attention of an activism campaign shift, it is important that financial incentives exist and are understood by senior management. Investors play a key role in building and legitimizing economic incentives by raising ESG issues to corporate boards (which are charged with representing shareholders) and holding companies accountable.

For investors not driven by philanthropic, personal, or religious values, improvements in social or environmental practices are supported when they are understood to enhance the long-term value of a company. Investors can be powerful allies in pressing for change in companies – if there is a persuasive case showing that changes would enhance financial returns and if the change being requested is clear. When social activists link their social or environmental causes to the improvement of an investment's return, they gain a broader audience for their message and, given their new allies, more power when speaking with decision makers.

Activists have been working to gain the trust and capital of investors for decades, with increasing success over time. To understand the approaches they have successfully deployed, and how these approaches might be applied to rising social issues, an understanding of capital markets and of investor behavior is necessary.

The capital markets are not static.

The capital markets of today are not an impenetrable and unchanging system. Investment theories and the ways investors consider and understand social and environmental issues are evolving constantly.

Guiding example

For example, consider the shift from the "Prudent Man Rule" to the "Prudent Investor Rule." "The Prudent Man" rule – considered the "way things are done" from 1830 through the 1960's – stated that trustees should invest in a way that focused their efforts on the preservation of capital. This interpretation meant that trustees assessed risk within each investment, avoided risk as much as possible, and considered investments independently of one another, without attention to their correlations or to broader market movements. This approach led investors to load up on bonds and avoid equities (stocks), which lowered long-term returns. This approach stymied the use of current market mainstays such as mutual funds, leverage and short selling – practices we now take for granted.

This conventional "wisdom" did not disappear naturally or fade into irrelevance. It had to be intentionally shifted – aided through a series of reports and studies in the 1960s that were commissioned by the Ford Foundation. These argued for the aggressive pursuit of risk and led to modern portfolio theory.

> ***"We recognize the risks of unconventional investing, but the true test of performance in the handling of money is the record of achievement, not the opinion of the respectable,"***
>
> — McGeorge Bundy, president of the Ford Foundation.[1]

NetGain seeks to shift the market's expectations of technology companies in order to consider how they impact the broader society. Fortunately, the road ahead is not as steep as it may have once been. To *only* invest to preserve capital, or to beat the market, has now been deemed *at odds* with best-practice investing. Investors now allow for more complexity and nuance when they consider environmental and social topics. There is a greater understanding of the financial value sustainability leadership might bring to a company. This understanding was only brought about, however, after long hours and multi-faceted coalition-focused efforts by investors and activists.

The NetGain Partnership is now exploring opportunities to use shareholder advocacy and finance-focused strategies to hold key internet platforms accountable and create a healthier digital public sphere.

Below we explore case studies of advocacy efforts that employ shareholder pressure and other financial leverage strategies to influence corporate boards and management. In each case, we detail the successful tools used in these campaigns, identifying where these tools might also be deployed to reach the goals of the NetGain partnership. It is important to note that, while these shareholder campaigns have been focused on an array of issues, the greatest impact over the last two decades has been in the arena of climate change. Thus, our case studies on this issue are more detailed and lengthier. There is much to be learned from the efforts to address climate change that can be applied to other issues. As one of the key architects of the initial climate efforts said many years ago, "Climate change is the wedge issue that will bring other environmental and social issues into the boardroom."

These examples are certainly not an exhaustive account of all parties involved and all actions taken. Rather, the studies below represent successful tools and approaches which might be replicated in service of other social and environmental initiatives.

Topic area: Climate change

Investor engagement on climate change has created a sea change in the way companies view and act on climate risk. After years of investor efforts, disclosure from companies on climate strategies and greenhouse gas emissions have improved dramatically, and many companies are setting ambitious emissions reduction goals.

Successful shareholder campaigns have multiple component parts. It is essential, however, to acknowledge that the investor-focused work does not occur in a vacuum. Simultaneous to the work detailed here actions were taken by a wide range of additional stakeholders, such as: scientists, educators, consumer groups, public policy makers, and street activists. Physical evidence of the impact of climate change has also increased the willingness of investors to take seriously the need for companies to build climate-focused strategies.

In order to bring about real changes in corporate climate policies and practices, investors needed to motivate corporations to disclose information on emissions, reduce direct and indirect emissions, and play a positive role in the policy process. Our first case study looks at the early actions taken by foundations and nonprofits to bring together investors to address climate concerns.

Case study #1: Investor collaborations

The story:

During the 1990s, there were occasional resolutions filed addressing climate change, but they received low votes – sometimes barely enough to refile the following year. (At the time the SEC rules allowed companies to omit resolutions for three years that had received support from fewer than 6% of shares voted.) That is not to say that these filings had no impact. Many of these proposals were filed by orders of Catholic nuns. These religious women were not naïve. They filed cogent resolutions and represented them well at corporate annual general meetings, drawing important attention to an overlooked issue. They were simply ahead of their time.

The limited attention to climate change at shareholder meetings began to change after 2000, when Ceres, in partnership with the Interfaith Center on Corporate Responsibility (ICCR), launched the Global Warming Shareholder Campaign (now Shareholder Initiative on Climate and Sustainability, or SICS). Its purpose was to organize and support shareholders in filing resolutions addressing climate change. The campaign was launched with an initial grant of $50,000 from a private philanthropist to the two organizations, with the idea that a collaborative campaign between the faith-based ICCR and the investor group Ceres would increase the effectiveness of the advocates' efforts.
Initial funding allowed these organizations to fundraise for, and then hire staff with, subject matter experts to conduct the research needed on climate's connection to business strategies, as well as to recommend focus companies for prioritized engagement by investors. These staffers also provide direct support to investors by doing company-specific research, drafting resolutions and participating directly in conversations with companies.

Important to the success of the campaign were in-person planning meetings, which helped to create a sense of community, allowed for shared problem solving, and generated discussion of new approaches. The Nathan Cummings Foundation played an important role by hosting these meetings at their New York offices. Representatives of shareholders gathered to hear presentations from Ceres and ICCR staff or other experts on efforts focused on different industry sectors. Investors could select sectors and companies that they wished to engage and file proposals with.

SICS has since become a major, well-staffed program at Ceres coordinating more than 200 resolutions in 2022. Foundation support enables Ceres to provide not just coordination, but subject matter expertise and research reports on such issues as carbon asset risk, banking and finance, board oversight, methane emissions, electric utilities, food and forests, water management, corporate lobbying, transportation, and Just Transition. Each of these subject areas has dedicated staff who coordinate filings and produce research reports.

Filing in 2021 for 2022 proxy votes, SICS members achieved 32 majority votes. That is more majorities than had been attained in the previous eight years combined. Even more significant was the number of negotiated withdrawals of shareholder resolutions, which, for the first time in 2022, exceeded 100. Clearly, the increasing vote levels and majority votes are motivating companies to negotiate seriously with their shareholders to find solutions.

Coalition Building

The key to the success of the shareholder campaigns is coalition building. Existing investor organizations have played an essential role in organizing and coordinating investors around ESG issues. Among the most important are:

- Council of Institutional Investors
- UN Principles for Responsible Investing
- Interfaith Center on Corporate Responsibility
- Ceres' Investor Network on Climate and Sustainability
- Asia Investor Group on Climate Change
- Investor Group on Climate Change (Australia)
- Institutional Investor Group on Climate Change (Europe)

Specific to foundation, Confluence Philanthropy and Mission Investors Exchange have been actively involved in encouraging investor engagement.

Investors also sometimes come together in ad hoc groups to address issues of concern such as reproductive rights, lobbying disclosure, gender diversity on boards, and Indigenous People's rights. In addition, investors and investor groups have collaborated with NGOs that have provided important research and organized concerned citizens to advocate for change on these issues.

Success assessment: Key factors

To reach this level of success, the small initial grants to launch key projects and encourage collaboration were critical. As important was the involvement of smaller activist investors, like the Catholic nuns, but also asset managers like BostonTrust Walden and Green Century Capital Management. These organizations were important because they were willing to file the untested resolutions early on; most large institutional investors rarely file resolutions and will only do so when there is limited risk of controversy or low support.

The campaign also benefited from the advice of legal counsel in the drafting of resolutions, helping to ensure that the resolutions would survive challenges at the SEC. Having staff experts at Ceres and ICCR, as well as access to legal counsel funded by foundation support, allowed smaller investors to more confidently enter into the filing of shareholder resolutions without worrying about additional costs or the lack of expertise on their own teams.

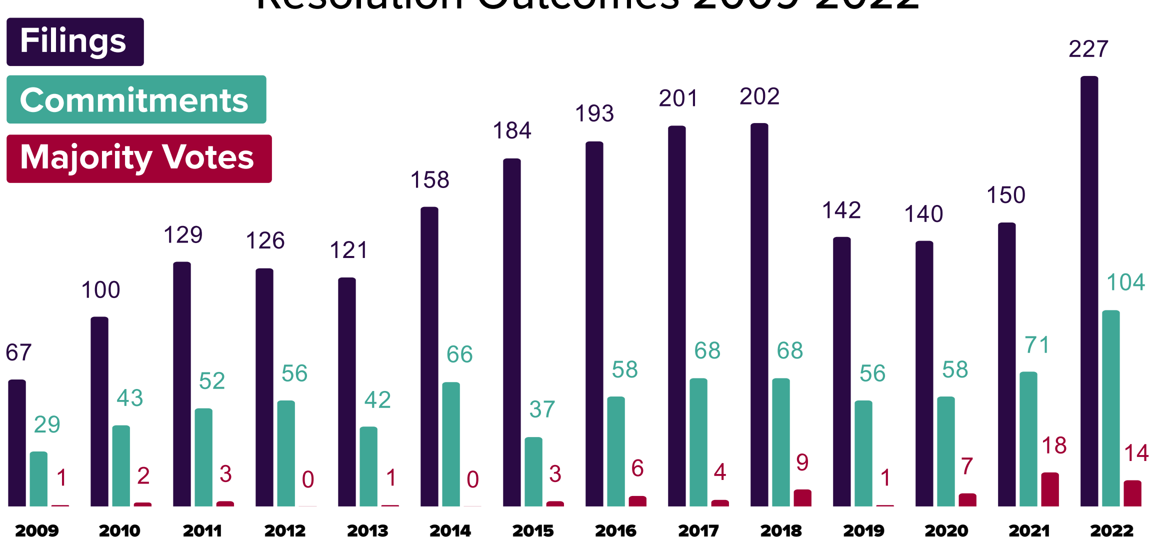
Role of foundations:

Foundations have provided seed funding and ongoing support. Some have been active shareholders, filing resolutions and voting their proxies.

Key organizations:

Ceres, Interfaith Center on Corporate Responsibility (ICCR), Nathan Cummings Foundation and many others.

Climate-Related Shareholder Resolution Outcomes 2009-2022



Source: Ceres SICS program

In order to **change corporate behavior, the smaller, more activist-oriented investors of the early '00s needed to convince other, more mainstream investors about the importance of climate change** as an investment risk factor. Climate change needed to be seen as linked to strong corporate governance; that is, an issue that is tied to a successful long-term business strategy and must be addressed by the board of directors. Climate change needed to shift from being an issue of concern only to faith-based and socially responsible investors to being a high priority for large institutional investors and asset managers.

Case study #2: Enabling investors' understanding of climate as an investment concern

The story:

In 2001, the UK Universities Superannuation Scheme (a pension fund for university teachers) published a report titled "Climate Change - A Risk Management Challenge for Institutional Investors"[2] that made the case that climate change represented significant risk for investors. The paper argued that climate change represented a particular risk to pension funds because they were "universal owners." That is, their holdings were so broad-based that they essentially owned the market. They couldn't de-risk by changing their mix of holdings.

"Business Case" Research Reports

Scholarly and NGO reports linking social and environmental issues to "the business case" have been crucial tools in changing corporate behavior. Research findings help explain to business executives, board members, and investors how a topic area links to business performance. These reports can articulate and substantiate the need for engagement and activism, and they help explain why a company must focus its attention on particular issues.

At about the same time, several organizations, including the UN Foundation, the UN Environment Programme, Ceres, and several pension funds began strategizing about how to get large institutional investors to consider climate change in their investment processes. At this point in time, the investors active in pressing public companies to address climate change were primarily faith-based funds and socially responsible investing managers. Large institutional investors, especially public pension funds, were needed.

Ceres had recently launched and spun off the Global Reporting Initiative, an effort to create a global standard for sustainability reporting that was created in collaboration with the United Nations' Environment Programme. Ceres' relationship with the United Nations was critical to the climate change strategy that developed.

As a first step Ceres, supported by foundation funding, commissioned a report on the intersection of corporate governance and climate change called "Value at Risk: Climate Change and the Future of Governance" (2002).[3] Building from the work done by the UK Universities Superannuation Scheme, this report argued that climate change was an issue of corporate governance and fiduciary duty. At the time of the report's issuance, institutional investor attention to environmental issues was thought to be a violation of fiduciary duty. This seriously limited investors' ability to address social and environmental issues within their portfolios. A fiduciary was obligated to focus solely on the interest of its clients and beneficiaries. Social and environmental issues were viewed as peripheral to this core responsibility. Ceres' report argued that the opposite was true: that it was a violation of fiduciary duty to *not* address climate change. At the time of the report, this claim was equivalent to Galileo's understanding of the sun's central location. It was a heretical approach, requiring a real change in investors' views of their key responsibilities.

In 2003, the National Association of State Treasurers held its annual meeting in New York City. State treasurers have important leadership roles with state pension funds and often serve as trustees. The members of the Pocantico meeting planned a one-day conference for the day following the treasurers' conference, in order to make it convenient for the treasurers to attend. Through the relationship with the United Nations, they were able to obtain an impressive location for this first convening, at the United Nations headquarters. The "UN Summit on Climate Risk" invitation came from the UN Secretary-General, Kofi Annan. In advance of the meeting, a number of foundations agreed to serve as formal "conveners." This involved no financial commitment; rather it offered a strong public signal of support for the effort.

Among the speakers were Secretary-General Kofi Annan, Harvard climate scientist John Holdren (later director of the White House Office of Science and Technology Policy in the Obama Administration), and former vice president of the United States, Al Gore. At the end of the morning session, time was available for questions. Nearly all the questions were directed to Dr. Holdren. For many of the state treasurers, this meeting was the first time they took in the seriousness of the climate change threat and the relevance to their long-term investment portfolios.

That afternoon, the "Investor Call for Action on Climate Risk,"[4] a ten-point action plan, was released by ten leaders of institutional investors with approximately $1 trillion[5] in assets under management. The signers included state and city treasurers from Connecticut, California, New York State, New York City, plus the officials of two labor funds. Note that no actual pension fund signed the statement. In retrospect, this may seem like a paltry amount of assets, but it was enough to legitimize and launch the movement as well as to attract press coverage, including from the New York Times. As of 2022, this group, now called the Investor Network on Climate Change and Sustainability (INCS), has grown to 200 institutional investors managing more than $47 trillion in assets. Many foundations have joined.

Success assessment: Key factors

Getting foundations involved from the beginning, by having them directly participate in strategy setting and contribute their internal expertise, allowed them to "own" the strategy and motivated them to provide early and significant funding. Similarly, having some institutional investors involved up-front allowed their fiduciary perspective to guide the development of the strategy. The United Nation's role as a convenor and the active involvement of the Secretary General motivated participation by state treasurers and encouraged broader interest in participating. The topic *felt* more important inside of the grandeur and pomp of the UN formal meeting rooms. The reports were essential in creating an intellectual framework for investors' involvement. However, successful as the initial efforts were, patience remained critical. The strategy gained momentum and size over multiple years.

Role of foundations:

Foundations participated in early strategy-development meetings. They also served as "convenors" of the UN Investor Summit, lending their names to elevate the importance of the event. Importantly, they provided continuing financial support to the effort over a number of years.

Key organizations:

United Nations, UN Foundation, Ceres, Connecticut Treasurer's Office, New York City Office of the Comptroller and many others.

In the early 2000's, investors were beginning to understand the importance of assessing their companies' approach to climate change but did not yet have a sense of what they should be considering or what they would want a "good" company to do. They needed complex scientific ideas presented to them in a digestible way, so that information could be integrated into their portfolio management processes and conveyed to their fund managers and security analysts.

Case study #3: Data frameworks and benchmarks

The story:

In 2002, the CDP (formerly the Carbon Disclosure Project) was a new greenhouse gas emissions questionnaire-focused organization. It sent a selection of prioritized questions about climate change policies, programs, and emissions to 500 companies. At that time, only 35 institutional investors had signed their names in support of the questionnaire and the data it requested. This represented a (non-paltry, but not industry-shifting) $4 trillion. By 2005, however, there were 155 investors participating, representing $21 trillion. By 2007, Bill Clinton was headlining the release of the annual report, and by 2013 over 650 investors representing $87 trillion had signed their names as wanting the data requested in the report. With this growth, the CDP was able to expand its scope and write to 5,000 companies, cities, states, and regions and broaden its scope to include water and forest use.

The CDP has enabled investors to review and compare corporate climate policies and practices against a defined set of expectations. It has pushed forward the development of corporate climate policies and practices, given companies' need to respond to the questionnaire. Benchmark reports and frameworks also motivate companies to improve, allowing them an understanding of the actions of their peer group. Corporate managers are keenly interested in what others are doing on a particular issue, and they want to be as good or better than their peers. As a result of that desire, a secondary ecosystem has developed, of consultants who support companies in responding to the CDP and in improving their CDP scores.

The initial traction gained by the CDP in corporate climate reporting has allowed disclosure expectations to become increasingly formalized and institutionalized. In particular, the Task Force for Climate-Related Financial Disclosure (TCFD), established by G20 Finance Ministers and Central Bank Governors, released a set of recommendations to companies in 2017 on climate-related disclosure and reporting. The CDP's questionnaire and structure shifted to align with that reporting structure.

Frameworks to Benchmark Corporate Performance

Benchmarking organizations evaluate and rate corporations on specific issues, for example, greenhouse gas emissions or racial and gender diversity and equity. The frameworks and rankings are important tools for investors in pressing companies for change. They identify key data expectations, set standards for best practices, and provide important data that can be used by investment managers to choose stocks to purchase, or rely on, in a dialogue with the company.

Benchmarking reports also support the development of screens which would exclude stocks that perform lower than a certain standard set by the benchmark ("no companies in the bottom quartile" for example). They also enable investors to factor weight their portfolios, increasing their investment in companies that outperform on the focus issue.

Success assessment: Key factors

The CDP showed investors and companies the framework and dataset that was needed to assess a company's climate performance. That both raised the profile of climate as an investors' concern and gave investors a standardized dataset to integrate into their financial models. Signing onto statements in support of the CDP's data disclosure request was, for many large asset owners, the first public statement they made about climate issues. As a data disclosure request, rather than a request for any specific action or behavior, it was more palatable to investors.

Role of foundations:

Funding of research organizations.

Key organizations:

Rockefeller Foundation, Esmee Fairbairn Foundation, Foundation de Sauve, Full Circle Foundation, Home Foundation, Nathan Cummings Foundation, Network for Social Change, Turner Foundation, W Alton Jones Foundation, WWF, and many others.

As public policy and legislative responses to climate change continued to stall, a number of investors moved to a strong moral stance against the continued funding of fossil fuel-oriented companies. In divesting, or screening out, investors called out the harm being caused by this industry.

Case study #4: The divest/invest movement

The story:

In 2011, a paper from Carbon Tracker titled "Unburnable Carbon: Are the World's Financial Markets Carrying a Carbon Bubble?"[6] stated that current fossil fuel reserves held by oil and gas companies and by state-owned enterprises, such as Saudi Aramco, were far in excess of what could be consumed if the world was going to keep global temperatures from rising more than 2°C. The Carbon Tracker report identified the top 200 companies with the largest reserves.

A year later, Bill McKibben popularized this research in an article in the July 2012 issue of Rolling Stone called "Global Warming's Terrifying New Math,"[7] in which he observed that "We have five times as much oil and coal and gas on the books as climate scientists think is safe to burn. We'd have to keep 80 percent of those reserves locked away underground to avoid that fate." McKibben and the organization 350.org called on investors to divest their portfolios of these companies.

The campaign initially focused on university campuses but was successful in attracting many faith-based and values-based investors to sign on, pledging to divest their portfolios of companies holding large amounts of the world's fossil fuel reserves and to reinvest into cleaner energy sources. According to a report from DivestmentDatabase.org, 1,485 institutions with assets over $39.2 trillion have committed to some form of divestment from fossil fuel companies.[8] This effort was greatly emboldened by DivestInvest Philanthropy, which coordinated foundations in making similar commitments.

At Harvard, for instance, students took up the call for divestment in 2012. While HMC considered divesting a nonstarter, they took steps to address climate risk in other ways. Perhaps most importantly, they joined Climate Action 100+ in 2019. Since the Harvard endowment is almost entirely invested in co-mingled funds, mutual funds, exchange-traded funds, and alternatives, it directly holds little if any stock in fossil fuel companies. Nevertheless, by joining in direct engagements with oil and gas companies through Climate Action 100+ structured dialogues, they lent their prestige and the heft of their $50 billion endowment[9] to these engagements and helped to change company practices, actions it may not have taken without divestment pressure. Then in October 2021, in a reversal, Harvard announced that it "does not intend" to make any future investments in fossil fuels and is winding down its legacy investments in the industry.

However, few pension funds or large asset managers have chosen to go the divestment route. Some are concerned that an exclusion of the investable universe at this scale is a violation of their fiduciary duty for which they could be held legally liable.

Divestment and Screening

One of the earliest tactics employed by responsible investors to change company practices was divestment – that is, selling off shares of companies engaged in irresponsible practices. The most prominent example is the anti-Apartheid divestment campaign that targeted companies doing business in South Africa. In the South Africa divestment campaign, corporations were placed in the uncomfortable position of defending their economic complicity with the explicitly racist regime in Pretoria. The divestment campaign in conjunction with other tactics, voluntary codes of conduct, purchasing boycotts by states and cities, and congressional action eventually led to the fall of the regime.[26]

Since that time, the divestment tactic has been applied to other social issues and industries including tobacco, private prisons, and fossil fuel companies. Divestment's power is in conjunction with other pressure tactics, such as shareholder resolutions, public policy, and consumer campaigns.

A number of research providers now generate reports that track individual companies, or total portfolios, against their involvement with these topic areas. These include: Sustainalytics, MSCI, ISS ESG, Moody's (Viegeo Eiris), S&P ESG, Refinitiv, FTSE Russell, CDP, RepRisk, HIP Investor, Arabesque, Bloomberg,

Success assessment: Key factors

These divestment efforts did not expect to change the cost of capital for the fossil fuel companies. Oil and gas companies are mature enterprises that rarely raise capital from the public markets; in fact, there has been a recent surge in stock buybacks, which essentially means that they are returning money to the markets rather than raising money from them. However, these efforts created an avenue for investors to better align their investment portfolios with their concerns about climate change and to get involved with the existing investor movement addressing the climate crisis.

However, the divestment effort also played a key role in:

- Engaging young people, especially college and university students, in the effort to address climate change; and
- Engaging universities, foundations, churches, denominations, and people of faith in climate action.

This grassroots people's movement success was in part because it provided individuals with opportunities to act as positive catalysts at a smaller, more local scale. The simplicity of the message "divest from fossil fuels" allowed an entry point for the education and mobilization of a broader audience more than complex public policy efforts allowed. The ease of communication and the simplification of the message aided significantly in communicating the urgency of climate action. This led to real public policy impacts. As Christiana Figueres, Executive Secretary of the United Nations Framework Convention on Climate Change (UNFCCC) 2010-2016, stated, "The global DivestInvest movement was a primary driver of success at the Paris Climate Talks in 2015."[10]

Role of foundations:

Foundations played key roles as funders of the divestment efforts as well as public adopters and implementers of the divestment request.

Key organizations:

350.org, Wallace Global Fund, and many others.

When investor understanding of climate change rose, it became more feasible to effectively change corporate behavior. Investors set out, in a systematic way, to engage the companies that produced the largest amounts of greenhouse gasses and to pressure them to set targets aligned with the Paris Agreement.

Case study #5: Shareholder resolutions and engagement

The story:

CalPERS, the $442 billion pension fund, was a founding signatory to the Montréal Carbon Pledge, through which investors committed to measure and publicly disclose the carbon footprint of their investment portfolios on an annual basis. The Pledge was launched on September 25, 2014, at PRI in Person in Montréal, and is supported by the Principles for Responsible Investment (PRI) and the United Nations Environment Programme Finance Initiative (UNEP FI). One aspect of the Pledge was a commitment by each signatory to measure the carbon footprint of their investment portfolio. CalPERS did so in a report issued in November 2015.[11]

The report came to this startling conclusion: fully 50% of the entire portfolio's greenhouse gas footprint came from only 100 companies out of the 10,000 held by the fund. CalPERS and Ceres collaborated to initiate conversations with institutional investors and invited them to join in an organized process of engaging these companies on climate change. They also invited five key investor networks from different parts of the world to help lead the effort: Ceres' Investor Network on Climate and Sustainability (covering North America), the Asia Investor Group on Climate Change (AIGCC, Asia), the Investor Group on Climate Change (IGCC, Australia), the Institutional Investor Group on Climate Change (IIGCC, Europe) and Principles for Responsible Investment (PRI, global).

Direct Engagement

While some shareholders will file resolutions without any notice, many investors reach out to companies in advance of filing, usually by sending a letter inviting a dialogue about the issue of concern. If the company does not respond, or if the resulting dialogue is unsatisfactory, the investor may then decide to escalate the engagement through a resolution filing. Furthermore, after a resolution is filed, a dialogue may take place, often at the instigation of the company as it seeks to have the resolution withdrawn.

Many other investors will not file shareholder resolutions. They rely on reaching out to top management or the board to discuss issues of concern directly. This has generally been the practice of large asset managers, although this is changing, as discussed below.

The initiative was officially launched in 2017 at the One Planet Summit in Paris, with an initial list of 100 focus companies and 225 signatories. Later, members of the investor group requested that another 67 systemically important companies be added to the focus list. (Thus the "+" in CA100+.)

CA100+ was primarily an *engagement* strategy as contrasted with a *proxy voting* strategy. Investors who joined the initiative committed to engaging with at least one company on the CA100+ agenda. Because of the size of the assets under management represented by the investor group (700 investors responsible for over USD 68 trillion in assets under management as of March 2022[12]), it could get the attention of CEOs, top management, and boards of directors.

The initiative's engagements were coordinated and focused on the same three asks:

- Implement a strong governance framework on climate change;
- Take action to reduce greenhouse gas emissions across the value chain; and
- Provide enhanced corporate disclosure.

The investor groups worked with independent experts, including Carbon Tracker Initiative, the Climate Accounting and Audit Project, and InfluenceMap, to assess the companies against 10 key indicators defined by the Benchmark. The results were released publicly in March 2021. Importantly, the assessments were based only on public disclosures by the companies.

While CA100+ itself does not file or sponsor resolutions, many of the participating investors do file proposals aligned with the framework. The proposals address GHG reduction targets, Paris-aligned lobbying practices, capital expenditures, transition plans, and climate accounting. In 2022, for example, 20 proposals were withdrawn after signatories reached agreements with companies.

Filing Shareholder Resolutions

Owners of public stock in companies have the right, under the rules of the Securities and Exchange Commission (SEC), to file resolutions (also called "proposals") to be voted on by shareholders at the companies' annual general meetings (AGMs). Resolutions are "precatory," that is, they are advisory, or the equivalent of a poll. Even a majority vote does not compel the company to comply with the resolution. The resolution containing the request and the company's response to the request are published in the proxy statement and shared with all investors. This forces the company to develop an "on the record" statement about their approach to an issue. The public nature of the company's proxy statement and the annual general meeting often encourage companies to hold constructive conversations with the shareholders that submitted the resolutions (the "proponents"). In exchange for a commitment to address the concerns of the resolution, proponents will often withdraw their resolutions. Resolutions that remain on the proxy ballot are voted on remotely in advance of, or during, the annual investor meeting and those that receive significant support from investors, even if less than a majority, can be highly influential on corporate behavior.

The SEC rules on how to file are complex, as are the rules about what resolutions may requests of a company. The proposals are limited in what they can ask of the companies. They may not micromanage companies, may not address the "ordinary business" of the company, and may not be too specific or personal in their requests, etc. Companies often seek permission from the SEC to omit resolutions from the proxy statement if the resolutions fall afoul of these rules.

Resolutions are currently filed by a small subset of shareholders: primarily faith-based institutions and sustainable investment firms. In addition, a few pension funds and foundations are active filers. But the very large asset managers influence corporate behavior through direct engagement and proxy voting. There were over 500 resolutions on ESG topics filed in 2022.[27]

Proxy Voting

A shareholder resolution only succeeds if investors vote in its favor. Voting on the shareholder resolutions appearing in the proxy statement is called "proxy voting." In addition to resolutions submitted by other investors, shareholders vote on the election of directors and whether to approve executive compensation ("say on pay"). While most pension funds and large asset managers do not file resolutions, they do vote their proxies and this support is essential for social and environmental topics to gain the traction they need with corporate boards and managers. Many shareholders, particularly large institutional investors, rely on proxy voting advisors for recommendations and sometimes even outsource the voting process to them.

A recent trend is that large asset managers like State Street and Blackrock, mutual funds and other money managers are increasingly voting for shareholder resolutions on ESG issues. Previously, they had taken the position that they did not need to vote for these resolutions as they had confidence in management or because they were able to express their concerns directly to management given their substantial share positions in the companies. They often deferred to board expertise as a matter of pre-existing policy. But over the last few years, these asset managers are increasingly expressing their views through the proxy ballot, a positive shift.

Success assessment: Key factors

Many of the companies on the CA100+ focus list have now set aggressive emissions reduction targets and are disclosing in line with the Task Force on Climate-related Financial Disclosures (TCFD),[13] the global standard. This success was in large part because CA100+ sent a united message from global investor group with clear asks. Leadership from the largest pension fund in the U.S., CalPERS, was also critical to the effort's credibility and helped to attract other large institutional investors. Eventually even Blackrock, the largest asset manager in the world, joined. It was important that funders recognized that public pension funds generally do not have large operating budgets, and, therefore, their philanthropic support was critical.

Role of foundations:

Foundations provided early and ongoing financial support. Large pension funds are perceived by many to be deep-pocketed institutions. In reality, these organizations operate on resource-constrained state and municipal operating budgets. Thus, funding for external resources such as staff and researchers to support their climate risk engagement efforts, was critical.

Key organizations:

CalPERS, Investor climate change networks around the world, UN Principles for Responsible Investment, Ceres and many others.

The impact of direct engagement with companies, through "behind the scenes" conversations and the filing of resolutions has been remarkable – but holdout companies have remained. For those companies where resolutions and investors have been ignored, more aggressive (and, unfortunately, expensive) tactics have been pursued.

Case study #6: Board-focused activism

The story:

ExxonMobil (Exxon) has been a focus of climate-concerned investors for a long time. According to ICCR, in 2004, Christian Brothers Investment Services first filed a climate-related shareholder resolution at Exxon. This asked for explanation of the company's understanding of the science of global warming. This resolution received less than ten percent support from voting investors.

Fourteen years later, in 2017, much had changed. A shareholder resolution by the New York State Common Retirement Fund that asked the company to share its plan for a two-degree Celsius warming scenario received support from 60% of voting investors. Despite this strong showing of investor preferences that the company address climate change, Exxon did not significantly improve its practices. Activist investors could now reasonably expect mainstream investors would be receptive to the idea of replacing board members with individuals with higher levels of climate expertise.

Engine No.1, was a small fund founded in 2020 with only $240 million in funds under management. It had $40 million invested in Exxon. When it proposed a set of new board members, Exxon had been underperforming its sector peers for ten years. Its total return was 57% lower than its competitors.[14]

The company responded by adding two new board members, intending to dilute the influence newly elected directors might have. It also announced a carbon capture and storage initiative with a hefty $3 billion investment.

Engine No. 1 carried a very carefully constructed message to investors, focused on Exxon's existing board's inability to manage the company through the changes climate change was creating. It argued that carbon output wasn't sufficiently incorporated into Exxon's capital allocation and growth plans. It also made the case that large, long-term Exxon projects would need to take into consideration societal responses and adaptation requirements associated with climate change. As Aeisha Mastagni, a key supporter at CalSTRS said, "It's not about the size of your investment, it's about the credibility of your argument."[15]

Engine No. 1's communication efforts concentrated heavily on electronic communications instead of more expensive mailings sent by post, as had been typical in other proxy battles. In their messaging, they pressed the credentials of its board candidates, including the former executive vice chairman of Marathon Petroleum Corp and the renewable fuels chief at Finnish refiner Neste Oyj. They made the case that their candidates all had outstanding leadership skills and diversified energy experience critically needed on the board. It also steered away from negativity, something institutional investors often dislike.

Board Director Campaigns

In addition to the right to vote on shareholder resolutions, shareholders also have the right to vote "for" or "against" board directors. Sometimes alternative directors or slates of directors are proposed by shareholders. While shareholder resolutions are advisory, the votes on directors are binding. If a board seat is contested, and a director does not receive sufficient support from shareholders, they lose their seat. In rare cases, shareholders will organize to propose an alternative slate of directors. Historically, this has happened primarily when activist shareholders like Carl Icahn attempt to take over a company. Such campaigns are very expensive and must be led by well-connected and deep-pocketed investors.

Approximately 21% of Exxon Mobil's voting stock was held by BlackRock, State Street Global Advisors and Vanguard. Their support was essential. However, each firm had already been successfully brought into climate-focused efforts. They were each signatories to the Net Zero Asset Managers initiative and each had made public statements on reducing the carbon emissions of their investments.

Campaigns to elect an alternative slate of directors are expensive. In the end, Engine #1 spent roughly $12.5 million to elect three of its four candidates to board seats at Exxon[16], and that is considered very low compared to other contested board battles. Typically, these are instigated by corporate raiders; that is, activist investors pursuing a hostile takeover or an aggressive campaign to force a restructuring. Campaigns driven by ESG concerns are extremely unusual and rarely successful.

It was a very close vote, with investors still deciding on the day of the AGM. Engine No. 1 was ultimately successful in electing three of their four candidates to the board. Since then, Exxon has taken a multitude of actions to reduce its emissions footprint and has begun to lay the foundations for a viable low-carbon business strategy.

Success assessment: Key factors

Exxon was a carefully selected target and the board campaign was built on known shareholder frustrations at an underperforming company. The election of the climate-focused directors sent a strong message to the industry and the markets that major institutional investors were very concerned about climate change risk and expected their portfolio companies to take meaningful steps to develop strategies to operate in a carbon constrained world. Other companies, particularly those in the oil and gas sector, took the vote as a warning sign and were more responsive to shareholders filing resolutions or seeking dialogue.

Role of foundations:

Foundations provided operating support to shareholder activism-oriented NGOs.

Key organizations:

Engine No. 1, CalSTRS, and many others.

Not all companies are as vulnerable as ExxonMobil was to a board seat takeover. If they are performing well financially other investors are unlikely to support the removal of a board member based solely on a social or environmental issue. Shareholder resolutions and board votes are also a uniquely American process. When a company is based outside of the U.S., other approaches have been needed.

Case study #7: Climate lawsuit at Shell Oil

The story:

In April 2019, the environmental group Friends of the Earth Netherlands and co-plaintiffs filed a lawsuit against Royal Dutch Shell, Europe's largest oil company, alleging Shell's contributions to climate change violate its duty of care under Dutch law and human rights obligations. The case was filed in the Hague where Shell is headquartered.[17]

In May 2021, the District Court in The Hague ruled that Shell must accelerate its efforts to reduce carbon dioxide emissions to tackle climate change. The court's decision stated that Shell was "obliged" to reduce the carbon dioxide emissions of its activities by 45 percent at the end of 2030 compared with 2019. The obligation to reduce emissions applied to all emissions, including Scope 3 – that is, emissions resulting from the use of its products. Shell is appealing the decision but must comply while the case is under appeal.

This case is part of a global trend. According to a database maintained by the London School of Economics' Grantham Research Institute, there are nearly 2,000 climate lawsuits active worldwide. Just over 800 cases were filed between 1986 and 2014, but more than 1,000 have been brought before the courts since then.[18]

Furthermore, fossil fuel companies have lost court rulings in California, Colorado, Maryland, and Massachusetts. France sued TotalEnergies, the country's largest energy producer, for misleading the public about its net-zero claims. "Activists are getting funding from philanthropic foundations, notably the MacArthur Foundation and the George Soros-backed Open Society Foundation, both of which have opened their wallets to support climate action in general and climate justice in particular."[19]

Derivative Lawsuits

Another tactic that can be used by shareholders is stockholder investigations of wrongdoing, typically utilizing Delaware's books and records statute. Section 220 of the Delaware General Corporations law allows stockholders to seek access to internal documents and core materials so long as they can articulate a proper purpose of the inspection (typically, investigating possible breaches of fiduciary duty by the board or top executives). If the documents produced reveal wrongdoing or culpable misconduct by management, shareholders could bring direct or derivatives actions in the Delaware Chancery Court on behalf of stockholders aimed at governance reforms or financial compensation.

Success assessment: Key factors

Derivative lawsuits on climate change are highly complex and can only succeed with sophisticated legal counsel and significant funding. The courts, however, can be a powerful tool in forcing change when investors are not finding purchase elsewhere. Shell is appealing the decision, but the ruling and the risk of litigation is a strong warning to other companies.

Role of foundations:

Funding plaintiffs such as Friends of the Earth and Greenpeace. Also funding the Grantham Research Institute on Climate Change and the Environment which maintains a database of 2000 climate lawsuits filed worldwide.[20]

Key organizations:

Grantham Research Institute on Climate Change and the Environment; London School of Economics; international branches of environmental organizations such as Friends of the Earth and Greenpeace.

Topic area: Social justice

While investors, and faith-based investors in particular, have pressed corporations on their lack of diversity for decades, shareholder campaigns on racial and social justice have only reached critical mass in the last few years. Although climate activism has a singular focus, social justice efforts do not. Because a wide range of factors contribute to ongoing social inequities, a number of different approaches apply to its remedy.

Case study #8: Board diversity

Members of ICCR began filing resolutions asking for greater board diversity in the 1990s. The earliest such proposal in the ICCR Shareholder Exchange database was filed at Walmart in 1994 by the Evangelical Lutheran Church of America and the Missionary Oblates. It was withdrawn for agreement. Similar resolutions at other companies that went to a vote received single digit support. Nevertheless, many companies negotiated withdrawals.

It will not shock anyone to observe that U.S. corporate boards have been dominated by white men. But there has been some progress in the last several years, driven in large part by the 30% Coalition.

The dominating race and gender of US corporate boards has been White and male. But there has been some progress in the last several years to increase gender and racial diversity. One of the driving forces of this change was the 30% Coalition. Founded in 2011, the 30% Coalition initially focused primarily on increasing gender representation on the Board. It began an “Adopt a Company” campaign, sending letters to public companies with no women on their boards. The Coalition believes that 500 companies added a woman for the first time as a result of their influence. Members represent over $8 trillion in assets and include large institutional members, state treasurers, and sustainable investment firms.

The shareholder campaign for racial justice at corporations has been focused on urging adoption of the “Rooney Rule” in board director searches. This is a reference to the National Football League’s efforts to encourage teams to broaden their recruitment efforts for general managers and coaches to include more black and brown candidates. As applied to corporate boards, the rule is intended to ensure that candidates of color and women are included in every search pool. Corporate boards are made up primarily of white men, and their recruitment tended to rely on personal networks. The goal of the campaign is to pressure companies to make their boards more diverse, both on race and gender.

Initially one challenge was the lack of data. While one could approximate the gender and racial makeup of a board by looking at pictures of members, this approach was prone to error and vulnerable to stereotypes. This changed in 2020 when Institutional Shareholder Services (ISS) started compiling data on board diversity (or lack thereof).[21] This helped investors to target companies lacking diversity on their boards and press them for change. 2020 marked the high-water mark for board diversity proposals, with 49 filed.

Case study #9: Racial equity audits

In 2013, Kellogg Foundation issued an important study called "The Business Case for Racial Equity," which quantified the cost of racism in the U.S.[22] This report made a business case for addressing racial inequity in companies and encouraged institutional investors concerned about fiduciary duty to support these efforts.

A key partner was the racial justice group, Color of Change. They started by convening racial justice groups, both national and grassroots. They believed it was important to have the voices of People of Color at the table as the audit process was designed. A central concern was to lift up the voices of workers in a way that allows for independence and confidentiality, with little control by the company.

Starting in 2016, investors filed several resolutions asking for racial equity audits at Airbnb, Facebook, and others. The resolutions received 20-30% support from shareholders, strong enough support to help the filers get meetings with the companies. As a result of the resolution at Airbnb, the company embarked on a three-year process with Color of Change to conduct the audit. It is now publicly available and considered a model audit.[23]

The Service Employees International Union (SEIU) was a leader in this campaign and obtained their first settlements with Invesco, State Street, and Blackrock. Facebook also agreed to conduct an audit and has since made the report public.[24] In their dialogues, SEIU has been flexible on timelines, but inflexible on the need for a third party reviewer and stakeholder involvement. SEIU believed it was essential that the companies have relationships with racial justice groups and not conduct these racial equity audits with their usual consultants and audit firms.

In June 2020, the SOC Investment Group (formerly CtW Investment Group), a labor affiliated organization, filed resolutions requesting that "systemically important" financial institutions conduct racial equity audits. They demanded an audit that "identifies, prioritizes, and remedies the adverse impacts of the bank's policies and practices on non-white stakeholders and communities of color."[25] Importantly, they recommended that boards engage a variety of key stakeholders in undergoing this audit.

The call for racial equity audits has been enthusiastically taken up by shareholder advocates. According to ICCR, there were 27 of these resolutions filed in 2022.

Case study #10: Workplace equity

In July 2019, when Whistle Stop Capital, in collaboration with *As You Sow*, formally launched our Workplace Diversity, Equity and Inclusion program, there was very limited data being released from companies. What was there was often anecdotal, linguistically bombastic or cloying, and not clearly linked to strong workplaces. This was true despite investors such as the NYC Comptroller's Office, Calvert, Trillium and BostonTrust Walden having pushed for years to receive more meaningful information.

Whistle Stop began by reviewing what research existed, seeking out quantitative, statistically sound research on current workplace conditions and the factors that contributed to them. The research found was sparse, and success assessments of corporate programs and policies were often based on narrative anecdotes or statements of best intentions. The lack of data was a significant problem in identifying which companies truly had strong diversity, equity and inclusion programs – and which companies had talented marketing and PR teams.

We also reviewed the landscape of current investor initiatives seeking to address some aspect of workplace inequity. Many of these efforts were (and are still) led by well-respected and very effective advocates. We wanted our work to be additive, to amplify the ecosystem of existing efforts and also significantly raise expectations for company attention to DEI issues.

We knew that, for investment analysts to care about a company's DEI programs, the data had to be connected to the operating strength of a company, and it had to be clean, not adding noise to their portfolio construction models. It had to be easily applied to the differentiation of potential holdings and to the determinations of appropriate portfolio weighting.

We also knew that with clear data, empirical studies could also be more easily conducted on the materiality of workplace inclusion programs to corporate success – something that is currently untested, but intuitively expected. Indications of this topic being highly material would spread the interest in corporate change from a few small investors to the mainstream and institutional.

The seven-year plan

Alongside *As You Sow*, we built a seven-year plan that facilitated funding from a number of funders. It focused on increasing investors' understanding of the importance of DEI, increasing corporate disclosure of DEI data, and having the data released be consistent and meaningful. We focused our data needs on *output* measures, those data points which would result from successful DEI programs and policies. These were: workforce composition data, with an emphasis on best-practice disclosure through the EEO-1 form, alongside the release of hiring, retention and promotion rate data by gender, race and ethnicity.

We believed that this data from companies would enable the creation of a benchmark of corporate practices and the tracking of trends over time. The datasets would not be compromised by corporate acquisitions or divestitures, nor by differing definitions of job titles.

How we began

With *As You Sow* as the lead client and hosting organization, we drafted and solicited investor support for an Investor Statement calling for an increase in workplace equity reporting from companies. More than 110 investors representing $4.7 trillion eventually signed this public document.

We also benchmarked the Russell 1000 on their DEI data transparency, and we made that dataset free and public on *As You Sow*'s website. This database is essential because it tracks current transparency, emphasizing to lagging companies that they are being left behind. It also helps investors understand which of their companies are lagging, as well as companies looking for peers whose reporting they might emulate.

The world changes around us

Significant cultural changes in the summer of 2020 after the murder of George Floyd dramatically shifted companies' willingness to discuss DEI programs with us. Companies that had been antagonistic on earlier phone calls concerning DEI shifted their language, to speak of organizational commitments and planned future improvements. Other companies, looking to improve, contacted us unbidden, and we joyfully shared the information and resources we had with them. Of the five dozen companies we spoke or filed with, 78% increased their DEI data transparency at some level.

Companies that made commitments to increase disclosure included: AIG, CVS Health, Netflix, NextEra Energy, Nike, PayPal, Pfizer, P&G, Ross Stores, Union Pacific and Visa. A major part of why we were able to convince so many companies to increase their disclosures was the support we earned from mainstream institutional investors; most of our votes received a majority of support from non-management investors.

Data disclosure, in and of itself, is not our goal. Improved programs and practices are. Like the CDP, however, the requirement to report incentivizes stronger programs. The data being released also provides long-needed quantitative information to allow for an outcomes-based analysis of which DEI programs and policies lead to better workplace DEI conditions.

Case study #11: Indigenous people's rights

The Investors and Indigenous People's Working Group (IIPWG) brings together investors, financial institutions serving Indian Country, and organizations promoting Indigenous Peoples' rights. Since its inception in 2006, IIPWG's founding principle has been to bring together investors and Indigenous Peoples to forward the human rights of Indigenous Peoples through the capital markets.

In 2017, more than 130 investors representing over $685 billion in assets under management (AUM) called on banks financing the Dakota Access Pipeline to address the Standing Rock Sioux Tribe's request to reroute the pipeline. Institutional investors representing $1.2 trillion AUM submitted recommendations in 2019 to improve proposed revisions to the Equator Principles.

In 2020, investors with $620 billion in AUM called on sponsors of the Washington Football Team to change its racist name. Investors used their holdings in FedEx, the named sponsor of the team's stadium, to engage the company, arguing that the sponsorship was causing reputational damage. The name was retired in July 2020.

In 2021-2022, investors with more than $1 trillion in AUM sent letters to the banks that provide lending and underwrite bonds for Enbridge, the developer of the Line 3 pipeline, which was opposed by several Indian tribes. Several resolutions were also filed. There are ongoing engagements with several of the banks.

While Indigenous People's rights are not high on the agendas of most investors, this network demonstrates that a small group of committed investors and allies – with the patience to pursue their concerns over multiple years – can have significant impact. Highly visible changes, like the Washington team name change, brings visibility to the rights of Indigenous Peoples. Many companies state their commitment to upholding human rights, but most downplay Indigenous rights. Investors have the leverage to engage top management on a topic that would otherwise have little attention paid to it.

Case study #12: A tech industry engagement story

The Transparency in Employment Agreements (TEA) Coalition formed in 2021 to combat the prevalence of concealment clauses in employment agreements that prevent employees from speaking about harassment or other unlawful acts in the workplace. Coalition organizations included Whistle Stop Capital, Open MIC, Earthseed, and the Minderoo Foundation, which also provided funding.

Research, analysis & strategy setting

The TEA Coalition benchmarked technology sector companies to assess and compare their current employment practices. It then determined which companies to prioritize for engagement, given company size, number of impacted employees, known concerns with corporate culture, and company brand exposure.

Engagement

The TEA Coalition partnered with shareholders to speak with or file proposals at technology companies, calling on the companies' boards to prepare public reports assessing the potential risks associated with its use of concealment clauses. The companies included: Alphabet, Amazon, Apple, Etsy, IBM, Meta, Microsoft, Salesforce, and Twitter. It successfully defended proposals against attempted no-action filings at the SEC by Amazon and Apple, advocated for them with major proxy advisors, and filed exempt solicitations in support of proposals that made it to the company proxies.

Initiative outcomes

The proposal at Salesforce was successfully withdrawn after the company agreed to extend the protections in California's Silenced No More Act to all U.S. employees. Expensify, Twilio, and Microsoft also announced they would suspend use of concealment clauses after engagement with TEA Coalition members. Alphabet and Apple also announced commitments to avoid using concealment clauses in employment agreements in public communications to their shareholders.

Year	Climate	Racial Justice / Workplace Equity
2022	Majority votes on climate resolutions	JPMorgan Chase engages 3rd party for Racial Equity Audit
2021	Benchmark results published	70 proposals on diversity Home Depot releases its EEO-1 report
2020	10-point Benchmark released INCS reaches $47 trillion in AUM	SOC files at banks; Facebook releases report George Floyd murdered; Record 49 proposals on board diversity
2018	Church of England announces divestment plan	
2017	Climate Action 100 launched Ceres becomes coordinator of CA100+ for N. America	Resolution filed at Amazon
2016		Resolution filed at Facebook, Airbnb; Airbnb report released
2015	CalPERS report on carbon footprint of portfolio	
2014	Carbon Underground 200 divestment campaign launched	
2012	Rolling Stone article by Bill McKibben	
2011	Stranded Assets Paper from Carbon Tracker	
2010	SEC climate risk disclosure rule	
2006	GWSC planning meeting at Cummings Foundation	
2005	Second UN Investor Summit	
2004	“Corporate Governance and Climate Change” report	
2003	UN Investor Summit	
2002	“Value at Risk” report	
2001	Unsolicited grant to fund Ceres-ICCR collaboration Pocantico meeting	Home Depot resolution filed most years through 2020
1990s	ICCR members file resolutions on climate change but receive low votes	1997 resolution filed at Home Depot

Application to the technology sector

Individual companies

A number of different forces need to act in concert in order to catalyze a shift in companies' policies or practices. As seen in the studies above, historically, this has involved building a business case, building consensus within investors on the "ask," and using the various rights that come alongside share ownership to coordinate in the push for change.

Company by company, however, investors' influence varies in accordance with how the shares are structured and owned. The reported results of votes on matters contained in the proxy statement can be distorted by dual-class shares and insider shares. (The two categories often overlap.) Some companies have different classes of shares designed to give founders or insiders disproportionate say in shareholder votes. For instance, at the Ford Motor Company, members of the Ford family hold Class B shares which give each share 16 votes. Class B shares make up less than 2 percent of outstanding Ford shares but hold 40 percent of the voting power. The result is that reported proxy voting results give a distorted picture of the sentiment of shareholders. At the 2020 AGM shareholders, including the New York City Pension Funds, presented a resolution asking for expanded disclosure of lobbying spending and governance. The results reported by the company in their 8-K (a required filing with the SEC) stated that only 20% of shares voted for the resolution. But if the results were recalculated with every share getting one vote (which is the case with the vast majority of companies), the result would have been 52% for the proposal.

This situation is especially endemic in the tech industry. Since many of these companies were founded by entrepreneurs who wanted to retain significant control of their companies, they established dual-class share structures in their founding documents. Given the strong returns delivered by these companies, most shareholders have accepted the resulting diminished level of control. At Alphabet, the founders hold Class A shares that give them 10 votes for every share. At the 2022 AGM, a resolution asking for a report on how their lobbying activities align with the goal of the Paris Agreement received an investor support vote of 19%. When adjusted for one vote per share, support rose to 55%.

In some companies, founders retain a significant share of the outstanding stock. Even with one vote per share, this leads to a distortion in the sentiments of independent shareholders. At Meta, Mark Zuckerberg holds 17% of the outstanding shares. To learn that Mark Zuckerberg is happy with his own management and so votes against a shareholder resolution is not surprising news. What we are interested in learning is how independent shareholders assess the performance of management and the board.

Currently, the SEC does not require companies to report proxy votes by share class or to separate out insider votes. Nor is there any independent organization reporting AGM voting results adjusting for insiders and share class. Investors are beginning to engage the SEC on this issue seeking more complete disclosure of shareholder votes.

Beyond share structure and insider ownership, companies have distinct personalities, similar to humans. Past experience with different tech companies indicates how they are likely to respond to future investor outreach. While subjective, this assessment is included in the table below which assesses predicted responsiveness of specific tech companies to investor engagement efforts.

Key characteristics	**Alphabet**	**Amazon**	**Facebook**	**Yelp**	**Twitter**
Share structure	Classified, Class A 10x vote, Class B, Class C-no votes	Class A-1 vote per share	Dual class, Class A-one vote per share, Class B-10 votes per share	Class A (ended its dual class structure in 2016)-1 vote per share	Twitter was taken private on 10/27/22
Insider ownership	Class A: ~0%, Class B:~88.2%	~12.7%	~Class A: 0%, Class B: ~88.7%	~7.7%	
Board chair and CEO separate	Yes	No	No	Yes	
Board classification	Not classified	Not classified	Not classified	Not classified	
Historic responsiveness to investors	Limited	Limited	Limited	Strong	
1-year stock performance (as of 11/12/22)	34%	-42%	-66%	-21%	n/a
Assessed expected responsiveness	**Low**	**Low**	**Low**	**High**	**Low**

Technology as an industry

The main characteristic that these successful initiatives held in common was that they had clear goals relative to their specific social or environmental issue. Advocates and activist investors were able to explain to key stakeholders where their involvement was needed, why that involvement was needed, and what actions were being requested. For example, with climate change, reducing greenhouse gas emissions was an easily elucidating and widely supported goal. In social justice as well, although the topic is broader and more complex, specific action items could be identified to support equity goals.

In addition, for many of the efforts detailed above, a broader ecosystem of organizational coordination and communication existed. While technology company accountability has been the focus of extensive research and communication, there does not appear to be clearly established forums for discussion, connection and the development of shared expectations. There are clearly many experts in the field speaking to the concerns associated with technology, but there appears to be a lack of cohesive narrative coming from these individual voices about what actions are sought or changes needed from the technology sector. The coalition component of this work is still clearly needed. To borrow a metaphor, there appear to be many beautiful singers, but there is no choral director or chorus.

Climate change, as a focus issue, has also remained relatively static. Social justice problems, similarly, are unfortunately, long standing. This is not true within the technology sector. Concerns and challenges arrive as the technology is itself developed. While the initiatives detailed above worked towards individual solutions, the ever-changing nature of technology indicates that governance and preventative measures must be emphasized over the identification and amelioration of individual harms.

The applicability of investor engagement as a tool to address the issue of concern must also be considered. Investors' climate and human capital management work has been able to change corporate practices because they have been able to identify and, to some extent quantify, the link between corporate practices and the long term success of the business. The responsibility of the advocate has been to educate other investors about these connections and to work with companies to help increase their own internal knowledge and willingness to change. Looking at the technology sector, there are civil society issues where there is clear overlap with the long term success of a business. For example, Twitter and Meta must learn how to better manage hate speech, harassment and discrimination on their platforms. Their businesses rely on the platform users feeling safe in active and ongoing public conversations. However, other areas of concern, such as the size or scope of a technology company is more challenging for an investor of that company to advocate around.

Next steps

As illustrated here, effective investor engagement strategies are multi-year and multi-faceted, with multiple partners involved. Allied voices must be coordinated with, using their insights and expertise to best define the issue and the possible solutions sought from corporate actors. Investors must be educated on the topic area, with clear intersections drawn between their portfolio performance and the focus issues. Companies must be prioritized for engagement, and constructive, trusting relationships must be built between shareholders and corporate leadership. Where collaboration is not possible, other approaches may be needed, such as shareholder resolutions.

This report sits within a larger project intended to assess existing and needed research and collaborations, link this content to corporate practices, and build out multi-year strategies to encourage corporate changes. In coordination with the non-profit organization Open MIC, the other components of this effort are:

- A report that identifies the key players in shareholder engagement in the tech sector and summarize strategies currently in use,
- A report on venture capital and private equity and the implications for tech,
- A report on investment standards for artificial intelligence (AI) development and use, and
- A determination of criteria and data sets existent and needed to assess tech company practices.

This work is intended to lead to recommendations and implementation strategies for next steps, considering both short- and long-term opportunities. It is also intended to create a funder-specific analysis focused on where grant dollars are most needed as well as how endowments might be directly involved.

Endnotes

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