Proxy voting and portfolio company engagement are integral to managing foundation, endowment and other institutional investor fiduciary responsibilities. Non-profits have a fiduciary duty to invest consistent with their mission. But in many instances, shares are voted in ways that undermine program and mission goals, while fostering unsustainable company practices.

Proxy Voting Is A Basic Part Of Fiduciary Duty:

State Laws: The National Conference of Commissioners on Uniform State Laws explained in their prefatory note to the Uniform Prudent Management of Institutional Funds Act (UPMIFA):

[S]tandards for managing and investing institutional funds are and should be the same regardless of whether a charitable organization is organized as a trust, a nonprofit corporation, or some other entity. The modern paradigm of prudence applies to all fiduciaries who are subject to some version of the prudent man rule…

Department of Labor: Accordingly, standards for various institutional investors provide guidance to foundations and endowments on managing their proxy voting rights and corporate engagement activities. In 1988, the Federal Department of Labor established the legal standard for voting proxies:

[T]he fiduciary act of managing plan assets which are shares of corporate stock would include the voting of proxies appurtenant to those shares of stock. For example, it is the Department's position that the decision as to how proxies should be voted . . . are fiduciary acts of plan asset management.

Proper Guidelines: The SEC also has confirmed that investment advisers act as fiduciaries when voting proxies on behalf of clients. If authorized to vote client shares, advisers must have written policies “reasonably designed to ensure that the investment adviser votes proxies in the best interest of its clients.” The SEC also warns that proxy voting decisions cannot be mindlessly delegated. It requires ongoing monitoring of policies and their implementation.

Changing Expectations Of Engagement:

Fiduciary responsibilities are moving beyond merely voting proxies. They evolve in response to changes in the markets, society and peer practices, as exemplified by the global growth of investor stewardship codes and engagement with portfolio companies.

International Corporate Governance Network (ICGN): The IGCN, whose members represent investors with more than $26 trillion in assets, defines engagement as “purposeful dialogue with investee companies with the aim of preserving or enhancing value on behalf of beneficiaries or clients…Institutional investors should engage intelligently and proactively with investee companies as appropriate on risks to long-term performance in order to advance beneficiary or client interests.” ICGN principles also encourage investor collaboration when individual investor action is impractical.

As implementation of fiduciary principles evolves, investors who fail to reevaluate old policies and practices may find they have fallen out of compliance with fiduciary obligations. Examples of currently fit for purpose fiduciary policies and practices can be found at http://www.intentionalendowments.org/resources.

Shareholder Advocacy

Shareholder advocacy uses the power of stock ownership to promote change in corporate practices through filing shareholder proposals and/or conducting shareholder dialogues with senior company officials. To file a proposal, a shareholder must hold at least $2,000 worth of shares at a company, prove those shares have been continuously held for at least one year prior to the proposal filing date and agree to hold them through the annual general meeting date. For four decades, active investors have effectively used proposals and dialogues with corporate management to influence corporate practices.

Well-established shareholder networks exist that coordinate shareholder advocacy efforts and introduce new advocates to the process.

Screened Investments and ESG Integration

Investors can take environmental, social, and governance (ESG) issues into account by applying screens to their investment portfolio. For example, positive screens may include companies that have strong environmental practices or explicitly protect human rights. Negative screens aim to avoid investing in companies whose products and practices the investors find harmful
to individuals, communities or the environment. Many investment firms also have begun to incorporate some ESG considerations into their risk and opportunity analyses. Studies show that most ESG-managed funds have performed the same or better to date than others not managed this way.

Mission and Program-Related Investments

Mission-related investing (MRI) directs a portion of a foundation’s assets into projects or companies that reflect the mission of the investing institution. Funds come from the endowment’s assets and often strive for market returns. The term MRI can be confusing as it is often used as an umbrella term for any environmental or social investment. It is also often used interchangeably with Program-Related Investments (PRI). PRIs are typically low-interest loans for housing, education and business and they are usually disbursed from a foundation’s granting funds; in these cases, financial gain may not be their primary goal.

Impact Investments and Green Bonds

Impact investments aim to generate positive environmental and social impact with a financial return. These investments encompass both private and public equity and investments are made across all asset classes and often focus on private companies. Impact investments can range from microfinance to women-owned manufacturing. A rapidly growing sector is tax-exempt Green Bonds which aim to reclaim neglected, abandoned or polluted “brownfield” sites and provide capital for scalable renewable infrastructure. These include repowering facilities with solar energy, improving irrigation systems to save water, relamping streetlights with low energy LEDs and loans for hybrid and electric plug-in vehicles.
APPENDIX

More on the Web

All resolutions must conform to the Shareholder Proposal Rule of the Securities and Exchange Act of 1934, which sets procedural as well as substantive standards for admissibility. Read more on www.proxypreview.org.


Read more about the contributing authors at www.proxypreview.org.

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