QUILTER CHEVIOT

RESPONSIBLE INVESTMENT

Beyond Special Meetings: Written Consent in an Uncertain Governance Era

The Right to Act by Written Consent: this right allows shareholders to approve corporate actions like removing directors or approving mergers without holding a meeting. In most cases, it requires a simple majority of all outstanding voting shares, meaning action can be taken once sufficient support is secured, without waiting for a formal meeting process.

This year's proxy season brought a long-forgotten governance item back into focus. Shareholder proposals to adopt the right to act by written consent were on the ballot again at a number of large US companies, including McDonald's, Honeywell, and Caterpillar. All these proposals were submitted by John Chevedden, a long-standing advocate of shareholder rights, and all argued a similar point: even where shareholders can call a special meeting, the ability to act by written consent would still enhance shareholder rights.

These proposals are easy to overlook and are often dismissed with a standard board response that the company already provides a right to a special meeting[1]. If the two rights are truly interchangeable, why do shareholders keep asking for written consent, and why do proxy advisers continue to recommend voting in favour?

The standard argument against written consent is straightforward. Special meetings already allow shareholders to act outside the annual meeting cycle, and they provide notice, a formal voting process, and an opportunity for all shareholders to participate. On that basis, boards often argue that written consent is unnecessary and potentially disruptive as this action does not require any of those prerequisites.

This logic is appealing on the surface, but it does not hold up to scrutiny.

The starting point is to recognise how corporate governance has evolved. Two decades ago, most large US companies had a range of mechanisms in place that made it difficult for shareholders to influence control. Poison pills, staggered boards, and various procedural limits were common. Over time, many of these were dismantled as institutional investors pushed for greater accountability and stronger shareholder rights. Companies now routinely present themselves as having shareholder-friendly governance.

Yet the right to act by written consent has not followed the same trajectory. 67% of S&P 500 companies still do not allow it. The argument is never that the right is unimportant, but that the right is duplicative. This framing equates the right to call a special meeting with the right to act by written consent. In practice, it is not the same, or a substitute at all.

The right to call a special meeting is now widely available, with around 76% of S&P 500 companies and roughly half of the Russell 3000 granting shareholders this ability, at least in principle[2]. Yet that headline figure obscures how the right operates in practice. At many companies, the special meeting right is heavily conditioned through bylaws that boards can amend. These conditions often go well beyond what most shareholders would consider reasonable. It is common

1 Honeywell Proxy Voting Statement 2026

2 Gibson Dunn, Shareholder Proposal Developments During the 2025 Proxy Season, August 2025

to see ownership thresholds set at 20 or 25%, meaning shareholders need to coordinate at scale before they can even request a meeting. The direction of travel in recent proxy seasons reflects this tension: many proposals no longer seek to introduce the right, but to make it usable by lowering ownership thresholds and removing minimum holding requirements. There are also often timing restrictions that prevent meetings from being called during large parts of the year, particularly if the request relates to board elections. Even when a valid request is made, boards can typically delay the meeting for weeks or months, with additional disclosure requirements adding further friction.

Another objection to the right to act by written consent often cited is the possibility of abuse by a small group of shareholders[3]. However, under US corporate law, particularly in Delaware, which is still the dominant jurisdiction for large companies, action by written consent generally requires an absolute majority of all outstanding shares entitled to vote. That is typically more than 50%, unless the company's charter sets a higher threshold. This is an important safeguard that means that action cannot be taken by a small or opportunistic minority.

At the same time, on a positive note, the structure of the law limits the ability of boards to impose additional procedural barriers. Meaningful restrictions on written consent usually need to be included in the company's charter, which requires shareholder approval, which makes the right harder to dilute over time.

Looking at how these rights have been used in practice can help illustrate my point. One of the clearest examples is Wet Seal in 2012[4], where shareholders used written consent to replace a majority of the board in under a month. More than 63% of outstanding shares backed the move, comfortably above the required threshold. The annual meeting had taken place only five months earlier but concerns about leadership and direction meant investors were not willing to wait for the next cycle. The company did not have a CEO, and there was limited confidence in the board's ability to resolve the precarious governance situation quickly. Written consent gave shareholders a way to act once support was there, without getting caught up in the delays and procedural constraints that come with calling a meeting.

This is not an isolated example. Data on shareholder activism shows that consent solicitations are used more frequently than special meetings in campaigns for board change, even though much fewer companies allow them[5].

In the current geopolitical environment, vigilance around governance is essential. At Quilter Cheviot, we believe that supporting the right to act by written consent serves as a useful mechanism to ensure that shareholder rights, particularly the ability to exercise control proportionate to share ownership, remain effective in practice.

The broader backdrop also matters. In recent proxy seasons, companies have increasingly relied on the SEC's no-action process to exclude proposals from the ballot. Requests have risen sharply, with close to 70% now succeeding[6]. In the 2025 season alone, thirteen proposals on special meeting thresholds were challenged in this way, with most excluded before shareholders had the opportunity to vote. This points to a more constrained environment for shareholder engagement, where access to formal mechanisms may narrow over time[7].

From our perspective as stewards of capital, this is about maintaining standards. Supporting written consent is one way of helping to ensure that at least one credible pathway for shareholder action remains available when needed. It is not about promoting activism for its own sake. Rather, it is about reinforcing discipline in governance and signalling that shareholder rights should continue to function as intended. In a more uncertain governance environment, those signals matter.

3 Honeywell Proxy Voting Statement 2026

4 Harvard Law School Forum on Corporate Governance, Lessons from the Wet Seal Consent Solicitation, October 2012

5 The Yale Law Journal, Special Meetings and Consent Solicitations: How the Written-Consent Right Uniquely Empowers Shareholders, April 2019

6 Skadden, Shareholder Proposal No-Action Requests in the 2025 Proxy Season: A Continuing Surge in Requests and a Favorable Regulatory Environment, September 2025

7 Gibson Dunn, Shareholder Proposal Developments During the 2025 Proxy Season, August 2025

Adeola Egunnike
Proxy Voting Analyst

Quilter Cheviot
Senator House
85 Queen Victoria Street
London EC4V 4AB

+44 (0)207 150 4000 **enquiries@quiltercheviot.com** **quiltercheviot.com**

QUILTER CHEVIOT

SPECIALISTS IN INVESTMENT MANAGEMENT

(06/2026)