Breaking Free of Misery

Through shareholder advocacy, The HSUS nudges companies toward reforms

by ANDY MACALPINE

At its annual shareholder meeting in May, McDonald's touted its recent launch of quarter pounders at "minimalist" Japanese restaurants, parmigiano-reggiano burgers for the Italian set, and "winter warmer" meals in the U.K.

Company officials pride themselves on their slick localized marketing strategy, listing it among the strengths that helped them rake in $23.5 billion last year. But for all the choices McDonald's purports to offer patrons around the world, the fast food giant lags far behind competitors in meeting the needs of U.S. consumers who want better treatment for its most helpless suppliers: the millions of egg-laying hens packed so tightly in cages on factory farms they can't even spread their wings.

Though Burger King, Wendy's, Hardee's, Carl's Jr., Quiznos, and many other companies have agreed to begin transitioning to cage-free eggs, change has been elusive under the golden arches. McDonald's uses only cage-free eggs in the U.K. and is on its way to implementing a similar policy throughout Europe. But in the U.S.—where it buys 2.5 percent of all eggs produced—the iconic restaurant chain remains steadfast in its exclusive use of eggs from hens forced to live in small battery cages that give them each less room than a sheet of paper.

Animal advocates have long tried to persuade McDonald's that many of the 26 million people spending money daily at its almost 14,000 U.S. restaurants don't support such a cruel confinement method. The late activist Henry Spira expressed concerns to company executives as long ago as 1989, and The HSUS has taken up the cause, attempting negotiations for the past four years.

At this year's annual meeting, The HSUS used its status as an owner of McDonald's stock to debut a shareholder resolution urging the phase-in of cage-free eggs in U.S. restaurants. A preliminary count showed that the resolution garnered at least 5 percent of the vote, qualifying it to appear on next year's proxy and allowing shareholders to cast their votes again in 2010.

It may seem like a small victory, but corporate change often comes one step at a time. The move also brought the animals' side of the story to the forefront during a meeting otherwise dominated by talk of profit—generating an unprecedented response from others in the audience, says

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Paul Shapiro, senior director of The HSUS's Factory Farming Campaign, who introduced the proposal. "After I spoke, shareholders broke into applause," he says.

LONG-TERM GAINS

The HSUS jumped into shareholder advocacy in April 2006, when its board of directors began allowing for the purchase of the minimum number of shares needed to submit proposals to companies that harm animals. Under federal regulations, a single share gives the owner the right to attend and speak at a company's annual meeting; the ability to file a resolution requires ownership of at least $2,000 in stock for 12 consecutive months.

The first animal activist to enter the shareholder arena is believed to be Spira, who waged a successful campaign to stop cosmetics titan Revlon from using the inhumane Draize eye irritancy test on rabbits. After his letters to Procter & Gamble urging nonanimal testing alternatives went unanswered, Spira purchased one share of company stock—his ticket to the 1982 annual meeting. There he launched a barrage of facts and questions aimed at the board chairman, who finally agreed to set up a meeting between Spira and P&G's research and development team.

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Though votes on resolutions are nonbinding, their introduction provides a way to force a response from top company officials, says philosopher and bioethicist Peter Singer, who wrote *Ethics into Action* about Spira's activism. "Maybe they're saying, 'Shut this guy up,' and [they] try and go on with business as usual, but at least they've got to say *something* about it," he says.

At the 2009 shareholder meeting of Allergan, The HSUS's Jodi Smith outlined a proposal requesting annual statements of progress related to the company's use of the Lethal Dose 50 Percent test in its Botox manufacturing; it was the second year an HSUS resolution urged the health care company to seek alternatives to the inhumane, outdated procedure that determines potency by killing half its test subjects.

In his response this year, Allergan CEO David Pyott agreed that a more humane test is needed and announced that the number of animals used in the LD_{50} method had been reduced by 80 percent, Smith says. But he stopped short of releasing additional public statements that would document the company's progress, prompting The HSUS to start thinking about its next move. "Even though it's still somewhat under the radar, the fact that we're forcing Allergan to discuss this and making shareholders realize what's going on is significant," says Smith.

LET THE NEGOTIATIONS BEGIN

Sometimes even the specter of exposure is enough to inspire change. In 2007, after Safeway denied Shapiro's requests for a meaningful dialogue, submission of a shareholder resolution prompted the nation's third largest grocery chain to quickly reverse course. "Within two days, they were on the phone calling us to negotiate," says Factory Farming Campaign corporate marketing manager Karla Koebernick.

The talks resulted in three major commitments from Safeway officials, who agreed to double the percentage of cage-free eggs offered to customers, switch more pork purchases to vendors phasing out small crates for breeding pigs, and give preference to suppliers using a less painful method of slaughtering chickens. The negotiations prompted The HSUS to pull its resolution before the annual meeting—often a desired outcome indicating that two parties have come to an agreement about how to proceed, says Ellen Kennedy, a senior social research analyst for the Calvert Group, a socially conscious investment group that advises The HSUS.

The shareholder strategy also includes outreach to institutional investment firms that can each own millions of shares in companies like McDonald's. After hearing from The HSUS about its bid to change McDonald's egg-purchasing policies, Christian Brothers Investment Services agreed to cast its votes in favor of it.

Once a proposal is submitted, a company can try to keep it from ever seeing the light of day—by requesting permission from the Securities and Exchange Commission to exclude it altogether from its proxy materials.

Denny's made such an appeal this year following a proposal from The HSUS to convert 10 percent of its eggs to cage-free; the restaurant chain argued that it buys eggs from other vendors and is therefore not accountable for the methods used to produce them. But detailed counterarguments by HSUS attorneys prompted a denial of the request—a major victory that will prevent future restaurants resistant to change from borrowing a page from the same playbook.

"The SEC wisely rejected Denny's absurd claim that the company simply has no responsibility for the tremendous suffering caused by its large-scale purchases of eggs from caged hens," says Jonathan Lovvorn, The HSUS's vice president and chief counsel for Animal Protection Litigation and Research. "Left unchallenged, Denny's narrow view of corporate responsibility could have set a dangerous precedent and foreclosed other important shareholder advocacy."

Singer praises The HSUS's comprehensive approach toward shareholder advocacy as one tool in a larger campaign with strategically sound targets. "I'm encouraged by the amount of change that there's been in the last few years," he says, "particularly in the farm animal sector. There is some momentum now."