Intuit shareholders overwhelmingly reject mandatory arbitration proposal

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(Reuters) - More than 213 litcmillion Intuit shareholders cast votes against a proposal that would have required them to arbitrate individually any federal securities claim against the company, according to Intuit's newly filed report to the Securities and Exchange Commission on its Jan. 23 annual meeting. Only 5.3 million shareholders voted for the proposal, which called on Intuit's board to adopt a bylaw barring securities class actions and mandating shareholder arbitration. Intuit investors, in other words, overwhelmingly voted in favor of retaining their right to sue as a class.

The mandatory arbitration proposal was submitted by emeritus Harvard law professor - and longtime securities class action skeptic - Hal Scott, as trustee for a trust that owns about 900 Intuit shares. As I reported earlier this month, Intuit's own board urged shareholders to vote down the Scott proposal, pointing out that no other public company in the U.S. has adopted a mandatory arbitration bylaw. It's not at all clear, Intuit told investors, that such a proposal would even be legal. Given that uncertainty, the company said, approving Scott's proposal "would expose Inuit to unnecessary litigation or other actions challenging the bylaw and its consequences."

Shareholder and consumer groups had rallied against the Intuit proposal, which marked only the second time that a mandatory arbitration proposal has gone to a vote by investors. (Google shareholders voted down a shareholder arbitration proposal in 2012.) They responded quite gleefully to Intuit's report of the vote tally. "This vote is a victory for all investors," said the Secure Our Savings Coalition in a statement. "Intuit shareholders sent a resounding message that forced arbitration is bad for investors and bad for markets and efforts to take away shareholder rights are bad for business."

Public Justice executive director Paul Bland said in an email statement that Intuit shareholders understood that Scott's proposal threatened investor confidence and would have shaken Intuit's reputation. "The overwhelming results of the Intuit vote should be a wake-up call to Scott: His risky, activist agenda is universally unpopular and will continue to be defeated," Bland said.

Scott told me in a phone interview that he does not intend to stop pushing for mandatory shareholder arbitration. He said he believes the Intuit vote was so lopsided because the company's board made a good point about the cloud of legal uncertainty hovering over mandatory shareholder arbitration. Scott is in the midst of litigation in federal court in New Jersey against Johnson & Johnson, which refused last year to allow a shareholder vote on a mandatory arbitration proposal from Scott's trust, that could determine whether such proposals pass muster under New Jersey and federal law. He told me he is considering a similar declaratory judgment suit against Intuit, which is incorporated in Delaware, to test the legality of mandatory shareholder arbitration under Delaware law.

"The takeaway is that we're going to do whatever we can to clarify what the law is," Scott said. "Without clarity, shareholders won't vote for it."

(Reporting by Alison Frankel)

References

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