Activist investors rally to reclaim power

CALLING OUT LAX OVERSIGHT

Groups ready to take on banks and lawmakers

BY TOMOEH MURAKAMI TSE

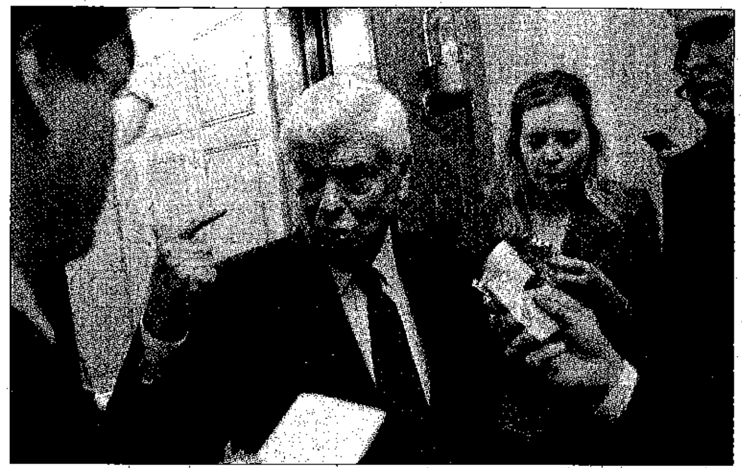
Investor groups have launched a two-pronged battle this spring against the lax corporate governance that they say helped precipitate the financial crisis.

On one front, shareholder advocates will pressure banks to rein in hazardous pay practices, hold directors of corporate boards more accountable and improve oversight of risk at annual shareholder meetings in coming weeks.

On another, the activist investors are pushing lawmakers to preserve elements of pending financial reform legislation that would give shareholders more power to nominate directors to run against management-backed slates.

Buoyed by prospects of changes to come, the investor groups have peppered financial firms with proposals seeking to give stockholders more say in everything from employee pay packages to when shareholders can call meetings.

Banks and brokerages have been targeted with similar proposals for several years as the financial crisis drained investment portfolios. But this year, activist investors have on their side rules requiring companies to make new disclosures on pay and risk management, courtesy of the Securities and Exchange Commission. The SEC has also reversed its stance on controversial shareholder proposals, forcing companies to put them on their ballots for the first time for a vote before stock holders at the annual meetings.



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Sen. Christopher Dodd's reform bill keeps largely intact corporate governance provisions championed by activist investors in the draft.

And the Senate's version of the reform bill unveiled this week by banking committee chairman Christopher J. Dodd (D-Conn.) — which reflected compromises meant to win support from Republicans concerned about too much government intervention in financial markets — keeps largely intact the corporate governance provisions championed by activist investors in the original draft bill released in November. Investor groups are vowing to keep it that way, putting pressure on lawmakers to make sure corporate governance measures would not be used as a trading chip to save other aspects of the 1,300-page bill that have received much of the public attention, such as a new process for the government to liquidate large, failing financial companies.

"It's time for lawmakers to hold the line and do what's right for investors. . . . Reform should not be what is in Wall Street's best interests," said Amy Borrus, deputy director of the Council of Institutional Investors. "It's not just enough to overhaul the regulatory architecture. We need market-based discipline. Investors need the tools to hold the directors' feet to the fire."

One of the critical issues for shareholders is a provision that would explicitly allow the SEC to make it much easier for shareholders to nominate candidates to the board of directors. It would effectively undercut legal challenges sure to be launched by business groups if commissioners of the SEC approve its controversial proposal later this year. The measure, known as proxy access, has the backing of many corporate governance experts who view it as a necessary pillar of effective governance. It has become a rallying cry for shareholders who blame directors for failing to oversee risk at financial institutions.

The measure has also become a significant target for industry lobbyists, who have been busy on the Hill trying to shape the financial reform bill. The Financial Services Roundtable, which represents the nation's largest financial firms, said proxy access is "on the priority list." The U.S. Chamber of Commerce said it would campaign against the "federalization of corporate governance."

"This isn't about better governance. This is about unions, special-interest groups being able to use the director-election process to further push their special-interest agendas," said Tom Quaadman, an executive director at the Chamber of Commerce. "We're engaged in an education campaign with members of the Senate banking committee, with the members of the Senate. We are at the start of the process. Financial regulatory reform is still going to take a while . . . and we will take that time to educate."

The legislation making its way through the Senate also mandates majority voting of director elections, and includes a measure that would give shareholders of public companies an advisory vote on executive compensation packages. The House version of the bill passed last December includes the proxy access and say on pay.

Bolstering shareholder groups this season is the termination of a decades-old rule that allowed brokers to vote their clients' shares in uncontested director elections. The SEC banned the practice starting this year, a move that could take away 10 to 15 percent of votes from management-nominated directors because brokers have typically voted with management, according to those who study the issue.

In addition, the SEC reversed its long-standing position that companies can exclude shareholder proposals focusing on succession planning of chief executives. The agency also took steps to narrow the number of risk-related proposals that can be kept off the proxy ballot. In making the changes, the SEC said it had become increasingly aware that "risk management and oversight can have major consequences," and that recent events had underscored the importance of the board to provide for succession planning to keep a company from being "adversely affected due to a vacancy in leadership."

"I'm certainly encouraged," said Richard Metcalf, a director at the Laborers' International Union of North America, which has tried in vain until this year to bring to a vote a proposal calling on companies to adopt and disclose a detailed succession policy for chief executives.

That measure is one of seven shareholder proposals appearing on Bank of America's proxy statement filed Wednesday.

"It is very hard for people to deny that there has been a lack of proactive planning on these kinds of critical questions," Metcalf said.

Bank of America, whose newly reshaped board appeared caught off-guard last year when a beleaguered Kenneth D. Lewis said he would step down as chief executive, is urging shareholders to vote against the measure. The bank said in its proxy statement that it has a well-developed succession plan.

"The board conducted an expansive, systematic and thorough evaluation and made its decision," a spokesman said, regarding the search for Lewis's replacement.

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Treasury nominees r