

The SEC May Shut You Up

The Motley Fool

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We can thank our friends at the Securities and Exchange Commission (SEC) for many things, such as requiring public companies to file regular financial reports and then making those reports available to us. Just read how it describes its mission as the ultimate investor's advocate: "To protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation." It's enough to make your heart beat faster or lead you to swoon, isn't it? Well, OK, but you have to admit that it's at least encouraging.

Therefore, I was a little surprised to learn recently that the SEC has proposed changing the rules for shareholders - in ways that don't seem to protect them at all. There are several proposed changes afoot, and the SEC is welcoming comments from all of us - until Oct. 2. I urge you to [learn more and to weigh in](#).

The scoop

At [socialfunds.com](#), Anne Moore Odell explained the proposed changes this way:

The first proposal would allow companies' board of directors to "opt-out" of the shareholder resolution process. The second proposal suggests replacing the current public resolution process with unilateral electronic petitions, a.k.a., "chat rooms." The third proposal would raise the voting levels at which shareholders could resubmit proposals.

One specific detail, as I understand it, is that the SEC is proposing requiring shareholders to own at least 5% of a company in order to have the right to nominate someone for the board of directors. That strikes me as unfriendly to the average shareholder, discriminating against the unwealthy. Consider a company such as **Dell** (Nasdaq: DELL), with its market cap around \$60 billion. To own 5% of the company, you'd have to have some \$3 *billion* invested in it. It doesn't seem like that's going to permit many people to be able to nominate directors. Let's use a considerably smaller example, the bookseller **Borders Group** (NYSE: BGP). Its market cap was recently around \$900 million. To own 5% of the company, you'd have to have some \$45 million invested in it. That sure counts me out.

John's list

I heard recently from a reader and activist, John Chevedden, who shared his thoughts on the matter. He'd submitted lengthy and thoughtful comments to the SEC (you can [do so yourself here](#) - look for the proposals with comments accepted until Oct. 2). John noted:

In 2007 alone, 42 advisory proposals by individual investors won majority votes in a single year. If the following companies are allowed to opt-out of the shareholder resolution process, there would be no incentive for each of them to respond positively to votes of their shareholders for greater accountability.

His list included the following companies, along with the majority votes and the proposal that was passed:

Staples (Nasdaq: SPLS): 71% to let shareholders pass resolutions via a simple majority vote instead of a two-thirds vote
Lowe's (NYSE: LOW): 72% for an annual election of each director
Motorola (NYSE: MOT): 51% for the right to vote on executive compensation and 59% in support of recouping "unearned management bonuses"
Time Warner (NYSE: TWX): 79% for simple majority vote and 64% for a shareholder right to call a special meeting
CVS/Caremark (NYSE: CVS): 52% in support of an independent board chairman

Read all of [John's comments](#), if you'd like.

Other voices

Other commentators were similarly persuasive. Daniel E. Rosan, a member of the Harvard Business School class of 2009, said, "Any serious review of the innovations in corporate governance since 2000 shows that shareholders with very small stakes - almost always under 1% - have routinely proposed corporate governance improvements which were supported by a substantial percentage of shareholders. Often they were implemented by directors. There is widespread consensus these innovations have led to improved corporate performance."

Joan Bavaria, President and CEO of Trillium Asset Management, opined:

Investors should have the right to nominate their own directors, whose alleged purpose is to represent our interests. That the right to merely nominate directors is regarded as threatening starkly highlights the lock on corporate governance enjoyed by entrenched boards and managements; shareholders, after all, would still face the uphill battle of getting their nominees elected. The 5% ownership requirement that has been floated begs credibility as a serious alternative, given the practical obstacles in amassing a group of shareholders of that size.

I encourage you to read through [more comments](#) - it's inspiring to see an open discussion in action. Let's hope that the SEC reconsiders its proposals in light of some rather eloquent objections to them.

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