

## **WALL STREET JOURNAL**

### **SEC Rules Won't Improve Boards Gone Bad**

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In "Money, Money, Money" (editorial page, Nov. 22), Arthur Levitt Jr. states, "To foster greater accountability, the SEC also should pass its current proposal to open up proxy access to shareholders and make directors accountable for their actions. The SEC proposal . . . would prevent a free-for-all of board nominations and management chaos." The SEC's current proxy proposal was ill-conceived, impractical and, thus, would not make directors more accountable for their actions. (1) The SEC incorrectly assumes the present proxy solicitation rules are too costly for institutional shareholders to field director-candidates. The cost of filing a bare bones proxy statement is negligible. If there were institutional shareholder support, one could assure a candidate's election with less than 30 phone calls. (2) The SEC assumes, without factual basis, that institutional shareholders have the intestinal fortitude to engage in proxy contests. (3) The SEC incorrectly assumes institutional shareholders could unite to reach a 5% ownership level to qualify to use the proposed rule. However, just agreeing on director-candidates and entering into indemnity agreements would be a nearly impossible task. Further, corporate targets can easily disunite such groups by catering to the desires of a few members. (4) The proposed rule is basically inequitable in that it does not place similar stock ownership requirements on members of a company's nominating committee. In most instances incumbent and prospective members of boards own negligible amounts of a company's stock. (5) Even if some activist institutional shareholders used the proposed rule, individual investors at more than 14,000 companies with publicly traded securities would not be benefited. (6) Proposed Rule 14a-11 ignores individual investors. We, individual investors, not institutional holders, are the ones in need of effective access to a company's ballot.

There is a much more practical alternative. On Aug. 1, 2002, James McRitchie, editor of CorpGov.Net, and the Committee of Concerned Shareholders jointly filed a Petition for Rulemaking (File No. 4-461) with the SEC. Essentially, the petition seeks to revoke SEC Rule 14(a)-8(i)(8) so that all shareholders of record can use the shareholder proposal procedure to cause the names of director-nominees to appear on the corporate ballot. The petition could be supplemented with a "lead-nominator" approach -- only the largest shareholder to come forward would be eligible to nominate director-candidates.

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