Heard Off the Street: Message posters take their dismay to the boardroom

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Posters on Yahoo! stock message boards are known more for their virulent slurs and mindless drivel than for their erudition, which makes it remarkable that a proxy fight launched on one of those boards has grown into a credible revolt against the way directors of publicly held companies are elected.

Les Greenberg, the leader of the movement, is not your average message board malingerer. The 59-year-old Culver City, Calif. resident is a semi-retired securities lawyer who has represented investors as well as brokerage firms. He's also head of the Committee of Concerned Shareholders, an Internet-based (**www.concernedshareholders.com**) group that doesn't have formal membership requirements.

"You're not talking with General Motors," he says. "Our expenses are so low we don't even have budgets."

It was an unsuccessful investment that put Greenberg where he is today. In the summer of 2000, he and other shareholders routinely commiserated on Yahoo's! message board for Luby's [**Ticker: LUB**]. Shares of the San Antonio, Texas-based chain of cafeterias had fallen 60 percent over the three previous years.

"I started making noises about why don't we do something about it instead of just complaining to one another," says Greenberg, who owned about 5,600 Luby's shares.

His plan was to win four seats on Luby's board of directors at the January 2001 shareholder meeting. Against long odds, Greenberg's dissident slate received about 24 percent of the vote, not enough to give it seats in the boardroom. But it was enough to convince Greenberg that something could, and should, be done.

"Shareholders really don't have much say, if any, in how a corporation is run," he says. "I came in there just like any other shareholder. I expected a level playing field and for the most part I was shocked."

What Greenberg found was that the deck is stacked against shareholders who want to oust poorly performing directors, because of how directors are selected and elected. Theoretically, new directors are identified by existing directors who are looking for someone who will have shareholders' best interests at heart. But in the real world, CEOs hand-pick directors and many times don't go out of their way to find nominees who will ask tough questions about executive compensation, shareholder rights and other important issues.

Moreover, while state laws generally permit any shareholder to nominate directors, Securities and Exchange Commission regulations don't require companies to list those nominees on ballots mailed to shareholders. Only names of directors nominated by the company have to appear on the ballot. That means dissidents must prepare and mail their own ballots and supporting materials to shareholders, something small shareholders can't afford. Even if they come up with the $250,000 or so needed, Greenberg says, their company can use shareholder money to resist reform. Although mutual funds, labor unions and other institutional investors can afford proxy contests, they have, with some notable exceptions, been reluctant to wage them, he says.

As a result, the CEO's nominees win nearly all the time. Greenberg compares the process to an election in a Communist country: Everybody can vote, but there's just one candidate to vote for.

"It seems directors would perform a lot better if they knew they could be thrown out," he says. "What it really comes down to is that shareholders own the company and they should decide."

In August, Greenberg and James McRitchie, editor of CorpGov.net, a Web site on corporate governance, petitioned the SEC to change the way directors are elected. They want to require companies to place shareholder nominees on the ballot as long as the nominations comply with state law and company bylaws and include the age, address, work experience, holdings and other information about the nominee.

"Each year, shareholders of American corporations are asked to participate in an exercise which bears little resemblance to the word 'election' as commonly used in any democratic country," they wrote. "The real election for directors occurs within the boardroom, with shareholders relegated to a rubber-stamp process of affirmation."

Given the actions of directors at Enron and other scandal-plagued corporate democracies, it's easy to see how the proposal has captivated small investors.

"It's beyond a joke that shareholders can own a majority of a corporation's stock and not be able to elect a board of directors who represent their interests. Do we live in the United States or Iraq?" Bryan Case, a 44-year-old computer programmer from Sandy, Utah, wrote to the SEC this month.

Not everyone is enamored. Some fear the proposal would open corporate boardrooms to kooks, gadflies and the ignorant masses, a concern compounded by the movement's chat-room roots. Although the SEC hasn't acted on Greenberg's petition, it gave the cause a big boost last week when it ordered the staff to examine proxy regulations and to submit recommendations to the commission by July 15.

"The time has come for a thorough review of the proxy rules and regulations to ensure that they are serving the best interests of today's investors," SEC Chairman William Donaldson said.

Greenberg's hopeful the SEC will go even further than his proposal, addressing such issues as how much money companies can spend fighting shareholder proposals and financing proxy fights launched by shareholders.

"This is going to get red hot within the next 90 days," he says.

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