

Roadblocks To Greater Say on Pay

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GREATER detail on executive pay will arrive this spring, thanks to new regulatory requirements. But shareholders won't have a greater say on how that pay is computed if companies like AT&T and Verizon Communications get their way.

Shareholders of both companies have submitted proposals requiring an advisory vote by the owners on corporate pay practices, but AT&T and Verizon are doing their best to stymie the initiatives. Proposals like these were popular last year and promise to be even more so in 2007. A shareholder activist estimates that as many as 75 companies will receive such initiatives this year.

In 2006, the American Federation of State, County and Municipal Employees' pension unit put forward advisory initiatives at seven companies and garnered support from 41 percent of the votes cast, on average. At Merrill Lynch's annual meeting, for example, 35.5 percent of the votes cast favored the proposal.

It is not yet clear what companies besides AT&T and Verizon have received the initiatives this year. Under the terms of the proposals, the shareholder votes would be nonbinding. Given the support that company owners gave these initiatives last year, it is surprising that companies like AT&T and Verizon are fighting hard to keep them off corporate proxies in 2007. After all, these are the owners talking. And let's not forget that these proposals seek something that regulators already require of public companies in Britain and Australia.

Since 2001, for example, shareholders in British companies have been voting on compensation practices; in Australia, holders have been doing so since 2005. Financial markets have not ground to a halt in either country as a result of inviting shareholder input on pay. On the contrary, shareholders say that putting such matters to an advisory, or so-called precatory, vote has brought owners and corporate managers together to talk about compensation. The dialogue has become much less adversarial.

No matter. AT&T and Verizon felt it wise to spend shareholder money to block a reasonable approach to hold directors accountable on pay. Judging from the strange reasoning made by the companies' lawyers when they moved to halt the initiatives, shareholder funds were not well spent.

AT&T and Verizon make essentially the same arguments in asking that the Securities and Exchange Commission permit these proposals to be omitted from proxy materials. In letters written last month, both companies cited, for example, a decision by the S.E.C. that permitted a proposal to be excluded in 1999 from the proxy of the CSX Corporation.

That proposal, by the way, had nothing to do with shareholder approval on pay or board practices. The CSX proposal asked that the company -- get this -- include three poems written by a shareholder in its proxy statement.

Interesting that AT&T and Verizon view executive pay proposals in the same fashion as a wacky request to turn the proxy into a stockholder poetry collection. Both companies' lawyers, meanwhile, ignored the only real precedent out there: a say-on-pay proposal that appeared on the ballot last year at the Sara Lee Corporation. S.E.C. officials rejected Sara Lee's request to omit the proposal; it went on to win support from 42.5 percent of votes cast at the company's annual meeting.

Finally, both AT&T and Verizon argue that the pay proposals do not meet "procedural requirements" of proxy rules because, for example, the shareholders who are submitting the proposals must demonstrate that they will be stockholders in future years when the votes to approve executive pay would take place.

AT&T did not respond to a request for comment.

Robert A. Varettoni, a Verizon spokesman, said: "Our letter is a legal argument and not a response on the merits of the submission. The legal argument is based on the S.E.C. standards of what constitutes a valid proposal."

Cornish F. Hitchcock, a lawyer in Washington, has written to the S.E.C. asking that it deny AT&T's request to omit the proposal from its proxy. "If the shareholders have the power to adopt bylaws, it is difficult to see how they lack the power to propose precatory policy changes," he wrote. "Indeed, it is difficult to see what limiting principle would apply to AT&T's seeming assertion that the board is omnipotent."

While AT&T and Verizon try to thwart owners' attempts to make directors accountable on pay, other companies seem to see the merits of engaging shareholders in the compensation process. After receiving a proposal from Lucian Bebchuk, director of the Program on Corporate Governance at Harvard, Home Depot recently changed its bylaws to require that any decision relating to compensation of the company's chief executive be approved by two-thirds of the independent directors of its board.

"It would be desirable to ensure," Mr. Bebchuk's proposal stated, "as the proposed arrangement would seek to do, that the corporation does not provide a C.E.O. package that cannot obtain widespread support among the corporation's independent directors."

Home Depot's board undoubtedly recognized, after paying its former chief executive, Robert L. Nardelli, a total of \$275 million for six years of mediocrity, that its image would not be helped by intransigence on such a matter. Its decision to amend its by-laws on the issue is progress, nonetheless.

Mr. Bebchuk has submitted similar proposals -- requiring approval from three-quarters of the

independent directors on chief executive pay -- at the American International Group, Bristol-Myers Squibb and Exxon Mobil. It is not yet clear whether the proposals will be put to shareholder votes at those companies.

A.I.G. declined to comment on the proposal, and Exxon Mobil said it was evaluating it. Bristol-Myers has asked the S.E.C. to permit it to omit the proposal, saying that it already requires approval of chief executive pay by all of its independent directors.

Charles T. Munger, vice chairman of Berkshire Hathaway and perspicacious partner of Warren E. Buffett, opined on the irksome issue of executive pay in an interview with The Los Angeles Times this month. First, Mr. Munger said that our current system, "with its envy-driven compensation mania, has developed to a place where it brings out the absolute worst in good people."

But he also said: "If more executive compensation issues required shareholder approval, I think that might dampen some of the excess." He conceded that there was a risk in this: "There are also a lot of malcontented nuts in the world, and you wouldn't want the malcontents to get too much power."

Agreed. But experience at overseas companies seems to demonstrate that shareholder votes on pay have improved relations between corporate managers and their owners. And at some companies, pay has become more closely linked with performance.

Precisely the result, perhaps, that executives at AT&T, Verizon and other companies fear?