Investors Back 'Say on Pay' Bill

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WASHINGTON -- Investor advocates on Thursday expressed support for a Democratic bill that would give shareholders at U.S. companies the right to cast a nonbinding vote on executive pay.

The American Federation of State, County and Municipal Employees, a union group, joined a Harvard University law professor and corporate governance experts to tell a House panel that an advisory vote would give investors a mechanism to influence board directors who set pay for public-company executives.

"An expression of widespread shareholder dissatisfaction would provide a valuable signal to the board," Lucian Bebchuk, director of the corporate governance program at Harvard Law School, said in prepared testimony. "The fact that the outcome of the vote would be publicly known would apply some pressure on the board to take the shareholders' preferences into account."

Rep. Barney Frank (D., Mass.), the chairman of the House Financial Services Committee, last week introduced legislation to require the Securities and Exchange Commission to develop rules requiring companies to include in their proxy statements a section for investors to vote on executive pay packages.

Investors are hoping that even if the bill fails to become law, it will prompt companies to voluntarily permit advisory votes. Companies sometimes act voluntarily to avoid being subject to new legislative requirements. For their part, companies and their supporters are warning that the bill might make it harder to hire good chief executives or for boards to make pay decisions.

"The regulation, criticism and hounding of public-company CEOs may have a major cost," Steven Kaplan, a University of Chicago professor who has studied corporate governance, said in prepared testimony. "CEOs can and will leave public companies to do something else. And it is the better CEOs who will tend to do so."

U.S. investors have increasingly been demanding a "say on pay" vote, as currently exists in the U.K., Australia and Sweden. Already, they have had some victories. Last month, the SEC staff told **AT&T** Inc. that the telecommunications giant couldn't exclude such a proposal from its 2007 proxy, according to a letter released this week. AT&T had tried to win assurances from the SEC staff that it could exclude such a proposal.

U.S. businesses are wary of what they see as usurping the role played by board directors. John Castellani, president of the Business Roundtable, which represents chief executives of the 160 biggest companies, told Congress that "if we moved to a referendum system, fractured shareholder groups would subsequently campaign for or against ballot questions."

"Boards and CEOs would spend less time on planning, product development, and oversight and more time meeting with advocacy groups and lobbyists."

Some Republicans are sympathetic to such arguments. Rep. Scott Garrett (R., N.J.), said that he was "concerned with the road this legislation might lead us down." He likened an advisory vote to "letting the camel's nose under the tent, and I just wonder where we might go next."

But Nell Minow, the co-founder of corporate governance information group the Corporate Library, said that "requiring an advisory vote on pay strikes exactly the right balance in providing a mechanism that is meaningful but not disruptive."

Some investors told Congress that an advisory vote would be significant, but not sufficient. Richard Ferlauto, the director of pension and benefit policy at AFSCME, said that an advisory vote "must be paired with a shareholder proxy access right to nominate directors."

He said that "if an advisory vote fails to produce reform, then shareholders could withhold votes or replace members of compensation committees that overpay or do not properly link CEO pay to performance."

In the past, companies won the right from the SEC staff to exclude the names of shareholder-backed board nominees from their proxy ballots. But a court decision last year called the SEC staff practice into question, and now investors are finding that they have more room to seek access to the proxy ballot to nominate directors.

In January, the SEC's staff declined to take a position on whether **Hewlett-Packard** Co. could block a proposal to give shareholders a process for nominating their own candidates to the board and include the names on company proxy ballots. Hewlett-Packard included the proposal on its ballot in order to avoid a lawsuit by AFSCME, and shareholders will vote on the proposal at the company's annual meeting March 14.