Why the SEC’s Proxy-Access Plan Won’t Help Tame Wall Street

*BNET*
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August 5, 2010

Hooray, the SEC is set to make it easier for shareholders to nominate corporate directors! There’s only one hitch — to qualify under the agency’s proposed “proxy access” rule, investors must own at least three percent of a company’s shares for at least two years. For shareholders in large companies, that threshold is just about impossible to reach.

Although investors will gain more control over boardrooms at small and midsize public companies, in other words, governance at big players — like, oh, Wall Street banks — will remain the near-exclusive preserve of corporate insiders. Reports the *WSJ*:

> The change means the largest U.S. companies will likely be unaffected. The reason? The sheer amount of money a shareholder will need to invest to reach the 3 percent threshold. Deal Journal, with the help of Factset, looked at the 20 largest U.S. companies by market cap. The smallest sum an investor would need to control would be $3.5 billion. And then the investor would have to keep that money tied up for three years.

Citing data from CalPERS, California’s giant state pension fund, governance expert Lucian Bebchuk of Harvard recently noted that the 10 largest pension funds hold less than 2.5 percent of Bank of America, Exxon Mobile, IBM and Microsoft. Even if these giant investors were to join forces, in fact, they’d still fall short of the three percent ownership requirement.

Shareholder rights activists have pressed the SEC for years to open up the process for nominating boardmembers. And for good reason. There’s ample evidence that companies that make it harder to remove incumbent directors do worse than organizations with more democratic governance rules. After all, why should boardmembers focus on shareholder interests, rather than on those of management, if there’s little risk of being tossed out on your ear?

And for years, big business has duly resisted such reform efforts. But for a while it looked like real change was in the air. The SEC originally had proposed a tiered threshold for shareholders to nominate directors. Investors would’ve needed a one percent stake in a big company, three percent for a midsize firm and five percent for small firms. But setting the ownership floor at three percent regardless of a company’s size would hand large corporations a major victory, and investors a significant defeat.

Of course, it’s unclear whether empowering shareholders would’ve done anything to prevent the financial crisis. The problems that led to the meltdown — lax underwriting, opaque financial products, flawed economic incentives, among other factors — unquestionably represent a massive failure in corporate governance.
I’m just not convinced that letting investors choose boardmembers would cure such pathologies. When Wall Street was minting profits, for instance, I don’t remember many (any?) investors complaining about sky-high bonuses or the perils of structured finance.

Still, the goal here should be to give shareholders more say over how companies are run. As Bebchuk writes:

> Any reform of corporate elections should include ending incumbents’ monopoly over the corporate ballot — the proxy card sent by the company at its expense to all shareholders…. Providing shareholders with proxy access — the right to place candidates on the ballot — would contribute to leveling the playing field.

In continuing to shield big companies from investors, the SEC risks tilting the playing field even more.