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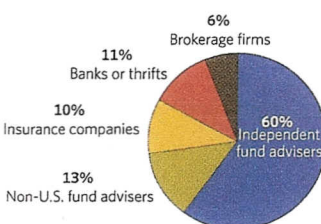
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60 Percent of Fund Sponsors Were Independent Fund Advisors



In 2008, there were nearly 700 financial firms from around the world that competed in the U.S. retail investment management market. Sixty percent of U.S. fund and trust sponsors were independent fund advisers, and these sponsors managed more than half of investment company assets.

Source: Investment Company Institute

SEC Gives Shareholders More Proxy Voting Rights

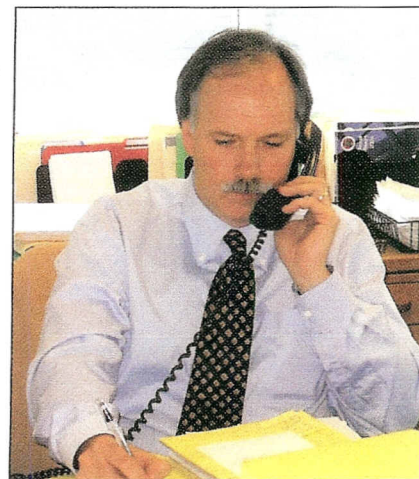
By John Morgan

After several failed attempts, the **Securities and Exchange Commission** is again revisiting the contentious debate on shareholder proxy voting.

In a split 3-2 vote on May 20, the SEC approved a proposal for a series of rule amendments that could give large, individual shareholders or groups of shareholders more rights to nominate board directors, suggest amendments to a company's governing documents, or in the case of mutual funds, dictate which investments a fund may or may not invest in. The public has 60 days to comment.

"This proposal represents nearly seven years of debate about whether the federal proxy rules should support—or stand in the way of—shareholders exercising their fundamental right to nominate directors," said SEC Chairman **Mary Schapiro**.

PROXY RIGHTS, *cont. on page 8*



Niels Holch

Industry Opposes Mandatory Index Funds In 401(k) Plans

By John Morgan

While index funds already have a place in the lineup of most 401(k) plans, a proposed federal mandate to require at least one index fund option in

these plans is intrusive and unnecessary, according to industry experts.



Larry Goldbrum

"I think it's pretty clear that an index fund would be a vehicle to start people out. Then, they can de-

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ETF Providers Make A Run for 401(k) Market

By Steve Garmhausen, American Banker

In a challenge to one of mutual funds' strongholds, exchange-traded fund providers are targeting defined contribution plans.

Barclays Global Investors' iShares, the largest ETF provider, just launched its iShares in 401(k) Program with the goal of helping financial advisers use the funds as standard options in retirement plans.

The program identifies administrators that offer "competitively priced and straightforward access to ETFs in 401(k) accounts," according to Barclays.

"Our goal is to make iShares available broadly, with more than 100 choices" of administrators, said **Darek Wojnar**, head of iShares product research and strategy at Barclays Global Investors.

A Barclays spokeswoman said the initiative will
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The issue of proxy access has stumped the Commission at various times since the 1940s, most recently with three proposed rules and four roundtables related to the proxy process that went nowhere.

“The time has come to resolve this debate,” Schapiro said, adding that the current economic crisis has highlighted concerns over high levels of executive compensation, proper risk management and board accountability to shareholder interests.

“Recent events have reinforced the need for change,” said Commissioner **Elisse Walter**. “Given the erosion of investor confidence in our markets throughout this financial crisis, the Commission has a responsibility to consider and address investor concerns about the accountability and responsiveness of some corporate boards of directors. I believe that proxy access is critically important to restoring investor trust in our markets.”

Schapiro said the goal of the proposed rules is to “strike the appropriate balance between facilitating shareholder rights and understanding the logistical mechanics of putting together proxy materials and holding annual shareholder meetings.”

Three previous attempts failed to achieve this balance, and the SEC’s two Republican commissioners fear that the current proposal, particularly Rule 14a-11, encroaches on internal corporate affairs and steps into the domain of state corporate law.

“The proposal reaches too far past the point of being about disclosure or even about the voting process,” said Commissioner **Troy Paredes**. “Rather, the fundamental essence of the proposal is to realign corporate control at the federal level.”

“This release places the Commission squarely into the territory of creating a federal corporate governance regime, as it affects two matters at the heart of corporate governance—director elections and shareholder rights,” added Commissioner **Kathleen Casey**. “The states are best situated to understand and respond to the needs of companies organized un-

der their laws and shareholders of those companies.”

Furthermore, Casey said the **D.C. Circuit Court** has repeatedly invalidated proxy rules that are substantive, rather than procedural or related to disclosure, and said the Commission’s proposed rules “regulate matters at the heart of corporate law, and thus our authority to adopt them is questionable.”

Paredes suggested an amendment to the proposal—which the Commission included—that allows shareholders proxy access as long as the company’s jurisdiction of incorporation has a provision explicitly authorizing proxy access.

“Such an amendment to Rule 14a-8(i)(8) would accommodate state corporate law developments and rest on firmer legal ground than today’s proposal,” he said.

Proxy Problems

Niels Holch, executive director of the Washington-based **Shareholder Communications Coalition**, said the SEC should reevaluate the whole shareholder communications system, which he calls “cumbersome, circuitous and overly expensive.”

“The shareholder voting process has been permitted to evolve in piecemeal fashion over many years,” Holch said, and it has not kept up with technological advances like the Internet and e-mail.

“A reformed shareholder communications system should make use of these advances to facilitate more efficient communications between companies and their beneficial owners,” he said. “It’s so simple to send an e-mail, but they can’t under current law.”

Boards of directors are given so much power and responsibility that it can be difficult for shareholders to hold directors accountable for their actions. It can be done, but the coordination and communication required can be very expensive.

“It is simply not possible for shareholders to meet in person and decide who will sit on the board of directors,” said SEC Commissioner **Luis Aguilar**.

Most investors choose to have their broker, bank or other financial institu-

tion act as their proxy as shareholder and vote on their behalf. By the time the shareholder meeting is held, most shareholders will have already made their decisions and signed their proxy cards.

A shareholder who attends the meeting and makes a nomination for director essentially has no chance, as most of the other shareholders will have already voted by proxy, Aguilar said.

The SEC recently drafted a proposal to repeal **New York Stock Exchange** Rule 452, which allows brokers to vote on routine proposals if a shareholder doesn’t give them specific instructions at least 10 days before a vote.

“The SEC felt that nobody should be voting on shareholders’ behalf,” Holch said, “but the problem is that it’s really hard for publicly traded companies to reach shareholders.”

Voting by proxy gets even more complicated for mutual fund shareholders.

Most mutual fund investors are buy-and-hold investors and tend to support management, although that doesn’t necessarily mean investors agree with everything. It can be very difficult to make a change that goes against the board’s wishes, such as including socially responsible investments or limiting executive compensation. Individual mutual fund investors have very little say, but as a group, they can be quite influential.

The SEC’s current proposal has a sliding scale to determine how large an investor must be in order to have their nominee or proposal included in the proxy materials. They must own at least 1% of companies with a worldwide market value exceeding \$700 million, at least 3% of a company with between \$75 million to \$700 million, and at least 5% of a company with less than \$75 in worldwide market value.

While mutual fund investors can benefit by grouping together, it is much more difficult for everyone else unless they are very rich or institutional investors.

“The proxy process is oriented more to the efficiency interests of brokers and banks than to encouraging effective and efficient communication between companies and their shareholders,” Holch said. 