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*Large US companies want to communicate Public groups are seeking major changes in SEC rules on investor relations so they can defuse growing activism, writes Andrew Parker
Financial Times (London, England) December 12, 2005 Monday*

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HEADLINE: Large US companies want to communicate Public groups are seeking major changes in SEC rules on investor relations so they can defuse growing activism, writes Andrew Parker

BYLINE: By ANDREW PARKER

BODY:

Leading US companies are pressing regulators to allow them more direct **communication with shareholders** so they can better respond to increasing investor activism.

The Business Roundtable, the US lobby group that represents big public companies, is asking the Securities and Exchange Commission for a sweeping overhaul of rules governing investor relations.

But investor groups and trade unions fear the roundtable's initiative could undermine their ability to hold boards to account.

"It is a very serious threat to good corporate governance," said Damon Silvers, associate general counsel at the AFL-CIO, the US labour movement's umbrella body.

The latest wave of investor activism, where dissident shareholders are increasingly willing to challenge management to the point of seeking to oust directors, means that companies want to be able to speak directly and quickly to shareholders.

However, an estimated 70 to 80 per cent of shares are held in "street name", which means they are held by banks and brokers on behalf of the beneficial owners, whose identities are not known by companies.

Increasing investor activism has highlighted the importance of reaching out to shareholders quickly to win arguments with dissidents. Companies particularly want less expensive and faster contact with shareholders ahead of annual meetings.

Existing SEC and New York Stock Exchange rules require a company to provide shareholders with a proxy statement ahead of its annual meeting, which sets out issues such as the re-

election of directors.

Many companies are frustrated at how the street name arrangement can slow **communications with shareholders** because the exchange of proxy statements and instructions for voting must be passed through a bank or broker.

This is important in proxy battles, where a company may need to rapidly rebut information released by dissident shareholders if management is to win support for its stance.

Most banks and brokers that hold shares for beneficial owners hire Automatic Data Processing, a company that specialises in investor communications, to distribute proxy statements and to obtain voting instructions.

ADP, which was unavailable for comment, dominates this role and companies pay fees to it set by the NYSE.

Companies are entitled to ask banks and brokers for lists of shareholders who do not object to having their identities disclosed. They are known as "non-objecting beneficial owners", or NOBOs, and ADP provides lists to companies. "Objecting beneficial owners", or **OBOs**, retain anonymity.

The roundtable is pressing the SEC to abolish the distinction between NOBOs and **OBOs**, and allow companies to obtain lists of all beneficial owners. This would speed up communications by avoiding the need to send large amounts of information via intermediaries.

Beneficial owners who insist on anonymity could keep it under the proposed reform, but they would have to bear the cost of companies using intermediaries to contact them.

Unions that have affiliated pension funds are opposed to the roundtable's initiative because they fear it could undermine the role of ADP and leave companies in control of lists of shareholders.

Companies might then be unwilling to give dissident investors the identities of fellow shareholders, which would make campaigns to oust directors impossible.

Richard Ferlauto, director of pension and benefit policy at the AFSCME union, said the roundtable's initiative could thus reduce the accountability of boards.

"We believe there needs to be an independent third party that controls the lists of shareholders," he said.

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