TRACKING THE NUMBERS

Street Sleuth

SEC's Online Plan to Cut Costs May Rally Dissident Investors

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DOW JONES NEWSWIRES
December 27, 2005; Page C3

When Aaron Brown's eRaider began waging proxy contests in cyberspace five years ago, it was a pretty lonely existence: The self-proclaimed "Internet confederation of investors" he co-founded was among the first to make the Web home base for activist campaigns aimed at toppling corporate directors.

But it didn't work out too well for Mr. Brown's site, which is now dormant. As the years went by, the idea of rallying investors online didn't take off in a big way. Few full-fledged board challenges were mounted in cyberspace.

That could change if the Securities and Exchange Commission makes good on a proposed plan to encourage shareholders to communicate with each other online. The plan is in the form of a rule draft now available for public comment through Feb. 16.

The change is aimed at both companies and investors. Indeed, companies are poised to save a bundle if they can electronically replace all the annual reports and proxy vote advisories they mail each year to shareholders.

On the other hand, these same companies could face increased challenges from shareholders.

"It's likely, generally, to be a benefit to companies as it can significantly reduce the costs of the preparation and distribution of proxy material," says Warren de Wied, a partner at Fried, Frank, Harris, Shriver & Jacobson LLP in New York. But the reforms also come at a cost, he says, in that they allow dissident shareholders to reach other shareholders "at a significantly lower cost than in the past."

Under the draft rule, companies can just post shareholder materials online, provided they let shareholders know the information is available there. Currently, companies must get explicit permission to disseminate information electronically.

The rule is one of a first batch of proposals issued under the watch of SEC Chairman Christopher Cox, who joined the commission this summer. Mr. Cox signaled his interest in the issue early on when he raised concerns about the expense of shareholder communications. Companies pay hundreds of millions of dollars in printing and mailing costs each year.

"These decreased costs may improve corporate governance by increasing management's accountability and responsiveness and providing shareholders with increased power to direct corporate policy," the SEC's rule release reads. "This may, in turn, enhance the value of shareholders' investments."

The SEC's proposal would give such contests "clout," says Bruce Goldfarb, senior managing director at Georgeson Shareholder Communications Inc. "I believe there will be more proxy fights initiated by dissidents who were previously deterred from acting because the printing and mailing costs were viewed as too high."

The proposed rule is also seen as something of a shareholder-friendly consolation prize, following the SEC's failure to adopt separate "proxy access" changes that would have given shareholders more power to elect directors. Under that proposal -- killed amid opposition from business groups -- companies would have been forced, under certain circumstances, to list shareholder nominees on a corporate ballot, which advocates saw as a way to level the playing field.

So far, organized corporate groups aren't seeing the rule as a threat to peace and stability in the boardroom. "We continue to view [the proposal] with an eye toward the benefits," says Thomas Lehner, director of public policy at the Business Roundtable, the CEO organization that was fervently opposed to proxy access. "One of the underlying things we firmly believe is that this better flow of communication will lead to improved relations between companies and shareholders."

Being able to cheaply mount a challenge to management-picked directors and winning board seats are two different things, as Mr. Brown -- who hung up his activist hat to take up risk management at Morgan Stanley in 2001 -- learned during his days with the now dormant eRaider. Though eRaider counted a number of successes, it lost both proxy contests it waged to replace management nominees on company boards, at Goldfield Corp. and Employee Solutions Inc.

However, Mr. Brown thinks a string of corporate scandals and the resulting atmosphere of improved governance has made management more circumspect about bashing dissidents, perhaps creating opportunities for the dissidents to take up their battles online.