An economy-class activist crashes the corporate party

Investor John Chevedden has inflicted a lot of pain on American CEOs. But has he made much real gain?

BY ROSS KERBER
LOS ANGELES, OCTOBER 23, 2013
Shareholder activists come in different flavors. One is the deep-pocketed investor, such as Carl Icahn or Dan Loeb, who takes big stakes in companies and forces management to change strategy. Another type is the persistent provocateur who buys a handful of shares and agitates on a shoestring. That’s John Chevedden.

Now 67 years old, Chevedden launched his career as an activist - he rejects the term “gadfly” - after being laid off from the aerospace industry in the early 1990s. Since then, he has unleashed a relentless flow of shareholder proxy measures at some of the largest U.S. companies.

Even skeptics grant that Chevedden has become one of the most influential U.S. shareholder activists. James Copland of the Manhattan Institute, a free-market think tank, says Chevedden is “leading the intellectual curve, getting proposals out there before they start to get traction.” Texas attorney Geoffrey Harrison, who has faced Chevedden on behalf of corporate clients, describes him as possibly the most persistent sponsor of shareholder resolutions ever.

Chevedden’s method is to target deep-in-the-weeds details of corporate governance, such as how often directors are elected and when shareholders can call special meetings of investors. The measures, he says, are meant to give shareholders more say and make executives more accountable, which in turn improve operations and boost value.

Last year, 50 of his proposals made it onto proxy statements, disclosures to shareholders that include ballots for issues requiring a vote and related information. He successfully pushed through 58 proposals as of mid-September, the most of anyone this year. The resolutions won 41 percent of shares voted on average over both periods, in line with the overall average, according to corporate-governance researcher FactSet SharkRepellent.

He has helped persuade companies to make procedural changes, including grocer Whole Foods Market Inc’s move to make it easier to remove directors. Two years before “say on pay” votes became widely required under U.S. law, he successfully pushed the utility holding company Edison International to give shareholders more influence over executive pay. This year, under pressure from Chevedden, Bank of America Corp required its chief executive to hold on to stock for at least a year after he retires.

The latest sign of his influence: Companies have begun suing Chevedden to keep his proposals off their proxies, with some arguing he can’t prove he owns the shares needed to qualify. The lawsuits mean additional expenses for a man on a shoestring budget.

In a series of interviews, Chevedden said he’s motivated by a desire to improve how companies are run and is disappointed when executives battle his ideas or shun him at shareholder meetings.

“It feels like I’m crashing the party,” he says.

For all his notoriety in the board room, the bottom-line impact of Chevedden’s work is hard to gauge. Big-money activists suggest the importance of small-scale operators like him is overstated. Chevedden’s proposals generally seek procedural changes, and companies often aren’t obliged to implement winning proposals.

Icahn, who became a billionaire through a brand of activism driven by the brute force of buying big stakes, said in an interview that Chevedden’s approach does not “move the needle much.” It’s better for investors to put up their own directors, Icahn says, and negotiate from a position of strength.

“You can’t get these guys on boards to be accountable, unless you have a lot of capital and a lot of firepower,” Icahn said. “You get one or two of your candidates on the boards. That’s how it’s done.”

Chevedden says the support he garners from shareholders “tells you that management could do a better job, and they should listen.” Over the years, Chevedden has added some $100 million of shareholder value. But there is no way to know for sure.

Told of Icahn’s critique, Chevedden replied: “It’s great what he can do with all that money.”

CRASHING THE PARTY

In addition to small-time activists, labor unions – which hold shares through their pension funds - also lodge a large number of resolutions. In theory, there should be another thorn in the side of corporate managers: institutional investors such as mutual
The great gadfly

John Chevedden, sometimes working with his father, has emerged as one of America’s busiest shareholder activists. Number of corporate proxy proposals sponsored per year at U.S. public companies:

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chevedden Family</td>
<td>25</td>
<td>26</td>
<td>35</td>
<td>30</td>
<td>39</td>
<td>43</td>
<td>41</td>
<td>50</td>
</tr>
<tr>
<td>Kenneth Steiner</td>
<td>0</td>
<td>3</td>
<td>11</td>
<td>10</td>
<td>24</td>
<td>21</td>
<td>26</td>
<td>39</td>
</tr>
<tr>
<td>New York City Retirement</td>
<td>37</td>
<td>40</td>
<td>50</td>
<td>55</td>
<td>56</td>
<td>47</td>
<td>27</td>
<td>30</td>
</tr>
<tr>
<td>New York State Retirement</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>6</td>
<td>11</td>
<td>21</td>
</tr>
<tr>
<td>Evelyn Y. Davis</td>
<td>36</td>
<td>34</td>
<td>34</td>
<td>32</td>
<td>28</td>
<td>28</td>
<td>25</td>
<td>20</td>
</tr>
<tr>
<td>Nathan Cummings Foundation</td>
<td>6</td>
<td>3</td>
<td>2</td>
<td>7</td>
<td>11</td>
<td>12</td>
<td>14</td>
<td>19</td>
</tr>
<tr>
<td>Gerald R. Armstrong</td>
<td>11</td>
<td>10</td>
<td>6</td>
<td>50</td>
<td>44</td>
<td>59</td>
<td>28</td>
<td>17</td>
</tr>
<tr>
<td>AFL-CIO</td>
<td>23</td>
<td>9</td>
<td>21</td>
<td>22</td>
<td>38</td>
<td>23</td>
<td>16</td>
<td>15</td>
</tr>
<tr>
<td>AFSCME</td>
<td>12</td>
<td>18</td>
<td>23</td>
<td>21</td>
<td>22</td>
<td>22</td>
<td>13</td>
<td>15</td>
</tr>
<tr>
<td>William Steiner</td>
<td>20</td>
<td>27</td>
<td>28</td>
<td>10</td>
<td>27</td>
<td>22</td>
<td>16</td>
<td>12</td>
</tr>
<tr>
<td>Brotherhood of Carpenters</td>
<td>41</td>
<td>56</td>
<td>40</td>
<td>22</td>
<td>26</td>
<td>17</td>
<td>15</td>
<td>8</td>
</tr>
</tbody>
</table>

Source: FactSet SharkRepellent

fund firms, which own vast swaths of shares in major companies. They, too, are in a position to push reform resolutions.

But data from SharkRepellent show that since 2005, there have been no shareholder proposals at S&P 1500 companies by the largest fund families. Governance experts say part of the reason for the lack of push from big asset managers is simple: The payoff is often not direct and does not justify the cost.

Into the gap have stepped Chevedden and several like-minded allies, often supported by the votes of fund firms happy to let them take the lead.

Chevedden grew up in Southern California. He attended a Jesuit high school and what is now Loyola Marymount University, and eventually the University of San Francisco, another institution run by the Catholic religious order. He also earned an MBA from Pepperdine in 1984.

Chevedden worked at various aerospace companies over the years, including Allied Signal Inc, now part of Honeywell International Inc, and Hughes Aircraft, then part of GM. His jobs included scheduling parts orders for satellites or turbochargers, and he says he had to learn how to hold engineers accountable.

“I had to know enough about what they were doing that they couldn’t feed me baloney,” he said.

RUDE AWAKENING

In 1991, at the age of 45, Chevedden was laid off by Hughes as part of a major retrenchment in the aerospace industry at the end of the Cold War.

Chevedden responded by filing a complaint against Hughes with the Equal Employment Opportunity Commission, alleging age and gender discrimination. (Two other employees with the same job that were not laid off were women, records
showed). The EEOC turned down the claim.

Around the same time, he read the 1991 book “Power and Accountability” by Robert Monks and Nell Minow, which drew more attention to shareholder rights. He filed his first shareholder proposal in 1994: a request that GM put on its 1995 proxy a measure to have it disclose more details of employment practices at Hughes.

In his filing, Chevedden described the move as intended to promote morale among “dedicated employees who made a valuable contribution to Cold War Victory.” He denies it was an attempt to get back at Hughes.

The effort failed. Citing Chevedden’s EEOC complaint, GM won the SEC’s permission to drop the measure, under rules allowing it to skip proposals related “to the redress of a personal claim or grievance or to further a personal interest.” A GM spokesman said executives would not comment on Chevedden’s work.

Chevedden regrouped. He looked up corporate governance experts such as Bart Naylor, a union official at the time, who urged him to push ideas that big fund managers would back.

The next year Chevedden landed a measure at GM calling for an independent board chairman. The measure won just 15 percent of shares voted, but Chevedden was on his way.

Chevedden says he is now more selective in his targets. Any resolution he files now, Chevedden says, must be one that “seems to be good policy and seems to get votes.”

A bachelor, Chevedden lives in a rented apartment in Redondo Beach, California. He wears a 1990s-era Timex watch, and frets over postage and printing costs. He is known to arrive at meetings on foot or by bus. But he gets some respect in high places.

In May, Chevedden put on a suit and took the Los Angeles subway to the annual shareholders meeting at DreamWorks Animation SKG. There, the Hollywood studio’s Chief Executive Jeffrey Katzenberg and Chairman Mellody Hobson – about to marry Star Wars creator George Lucas – walked across the room to say hello to Chevedden.

After the meeting got under way, though, Chevedden began quizzes Hobson on Katzenberg’s pay as the CEO twisted in his chair nearby. Chevedden also spoke in favor of a proposal to diminish the voting power of shares for company insiders. “Without a voice, shareholders cannot hold management accountable,” he read from a script. The measure failed to pass.

A DreamWorks spokeswoman said executives had no comment.

At most of the companies where Chevedden invests, he owns just around the minimum amount of shares needed to be eligible to file a resolution, or $2,000 worth. He said he owns shares in about 100 companies, choosing them both for growth opportunities and for the chance to sponsor resolutions. He also uses his father’s holdings and teams up with like-minded small investors, such as William Steiner and his son Kenneth, based in New York.

Chevedden declined to talk about his finances and portfolio in greater detail.

Company executives and lawyers say there is no reasoning with him. “Some of his proposals are good, but you can never talk to him about his positions or his supporting statement. He wouldn’t change them voluntarily,” says Gregory Lau, General Motors’ retired director of corporate governance, who was on the receiving end of many of Chevedden’s proposals.

Chevedden says few companies offer
substantial changes when they reach out. “They want to talk you to death,” he says.

Now with dozens of proposals a year, Chevedden tracks his work on a document with codes. A typical entry, ESRX=WCjc=55*, signifies a proposal he landed on an Express Scripts Holding Co proxy to allow shareholders to act by “written consent.” It won 55 percent of votes cast in May 2012.

Allies and opponents alike marvel at Chevedden’s focus on such minutia. “He has attention-surplus disorder,” says Naylor, the governance specialist and former union official.

His meticulous approach extends to hobbies. A car buff, Chevedden co-authored a book listing 100 years of Oldsmobile cars with details such as their weight and number of engine cylinders.

**COURT PRESS**

Chevedden and former SEC attorney Keir Gumbs estimate that among the hundreds of requests that companies have made to the regulator over the years to block Chevedden’s proposals, they have succeeded about half the time. In recent years, some companies have opened a new line of attack against him – lawsuits.

Since 2010, energy company Apache Corp and engineering firm KBR Inc have successfully sued to leave Chevedden’s proposals off their proxy statements, claiming in part that he failed to prove owning shares.

In June, trash services company Waste Connections Inc won a judgment after suing to exclude from its proxy statement a board-declassification proposal that Chevedden brought with an ally, James McRitchie, publisher of the website corpgov.net. The proposal to have all directors face election every year, instead of only some of them, is seen as making it easier for activists to push for changes. Chevedden and McRitchie have appealed.

Some worry about the companies’ decision to go to court. While they have the right to do so, “these straight-to-court challenges may be used as a scare tactic” to deter shareholder proponents, especially smaller ones with fewer resources, said Ann Yerger, executive director of the Council of Institutional Investors, which represents big pension funds and other investors.

Chevedden told a judge in 2010 that he was “disadvantaged by the extreme expense” of Apache’s litigation. He regards the suits as an attempt to silence him.

A Waste Connections spokesman declined to comment. Apache Senior Vice President Sarah Teslik says the company turned to the courts mainly for a new legal perspective rather than to silence anyone. Teslik also says Apache often reaches out to shareholders to work things out directly. “If you want to solve a problem, you talk about it,” Teslik says. But when it comes to Chevedden, “He doesn’t try to talk to us; he tries to attack.”

Geoffrey Harrison, the Texas-based corporate attorney, represents KBR. He said via e-mail that while the engineering company has moved to elect all its directors at once, as Chevedden had urged, several other shareholders had sought the same change. “Chevedden certainly is not responsible for the company’s decision,” Harrison says.

Chevedden says he doubts KBR would have acted without his prodding. It’s his relentlessness, he thinks, that has brought him this far. When executives offer what he considers to be poor compromises, he says, “I tell them, ‘good shouldn’t be the enemy of better.’”

**FOR MORE INFORMATION**

Ross Kerber
ross.kerber@thomsonreuters.com

Michael Williams, Global Enterprise Editor
michael.j.williams@thomsonreuters.com