This week, the House Subcommittee on Capital Markets, Insurance, and Government-Sponsored Enterprises heard from various investors and issuer advocates during a hearing on corporate governance and shareholder empowerment. The House of Representatives passed a reform bill in December that includes an annual "say on pay" mandate and authorization for the SEC to issue a proxy access rule, but that measure doesn't require majority voting.

The April 21 hearing focused on three bills--H.R. 2861, H.R. 3272, and H.R. 3351--which were introduced last year by Reps. Gary Peters of Michigan, Keith Ellison of Minnesota, and Mary Jo Kilroy of Ohio, respectively.

Peters' bill, H.R. 2861, the "Shareholder Empowerment Act of 2009," includes provisions to mandate a majority voting standard in uncontested elections and independent board chairs. Ellison's bill, H.R. 3272, the "Corporate Governance Reform Act of 2009," calls for independent board chairs and risk management committees, and would direct the SEC to study whether corporate directors should be certified by the commission. Kilroy's bill calls for shareholder votes on annual pay practices and severance pay, and would require large institutional investment managers to disclose their votes on those agenda items.

The subcommittee has not scheduled a mark-up on any of the bills, but the House may eventually have to decide whether to support majority voting and other governance provisions that were not in the House bill if the Senate approves Senator Christopher Dodd's financial reform legislation.

In discussing his bill, Peters stressed the role that governance failures played in the financial crisis. "The balance of power must change," Peters said. "Shareholders should have the power to hold management and corporate boards accountable."

The Republicans on the panel disagreed. Rep. Scott Garrett of New Jersey said he wasn't convinced that the reforms in Peters' bill would have prevented the financial crisis or would be a "net positive" in the future. Garrett said he didn't want to overturn 150 years of state law precedent, and asked why new governance rules should be imposed on non-financial firms.

Likewise, Rep. Jeb Hensarling of Texas said, "I'm not sure the federal government is qualified to

determine the best practices of corporate governance," recalling the collapse of Fannie Mae, a federally chartered mortgage firm.

In response, Peters said: "It's not about a federal government takeover. It's about empowering the people who actually own these companies."

Three of the investor representatives at the hearing--Brandon Rees, deputy director of the AFL-CIO's Office of Investment; Gregory Smith, general counsel of the Public Employees' Retirement Association of Colorado; and James Allen, head of capital markets policy at the CFA Institute--all endorsed proxy access, majority voting, and greater disclosure of proxy voting. However, Allen said the CFA Institute didn't support a requirement for independent board chairs, saying "such matters should be left to the boards to decide."

Republican lawmakers and corporate advocates also opposed a mandate for companies to appoint a independent chairman. Garrett recalled that Warren Buffett, Bill Gates, and Sam Walton all held both the CEO and chairman titles. Buffett continues to hold both roles at Berkshire Hathaway, Gates now serves as Microsoft'schairman, and a Walton family member chairs the board at Wal-Mart Stores.

Rees responded by noting that most CEOs are "no Bill Gates." Smith observed that Gates, as a CEO, would have worked well with an independent board chair, and said, "nothing would have tied his hands" while running Microsoft.

Rep. Paul Kanjorski, the Pennsylvania Democrat who chairs the subcommittee, said an independent board chair "is an appealing idea," but said, "we must explore the impact on small companies."

Rep. John Campbell, **a Republican from California, said he supported proxy access and majority voting and observed that they would eliminate the need to mandate other reforms. However, Campbell said he objected to the provisions in the House and Senate bills that would let the SEC set the ownership thresholds for nominating directors. He said the thresholds (1, 3, or 5 percent, depending on a firm's market cap) in the SEC's draft rule are too low and should be raised to 5, 10, and 20 percent.**
Smith responded by noting that the 10 largest U.S. public pension funds collectively own less

than 1 percent of most companies, with their largest stake amounting to just 2.6 percent.

Most Democrats voiced support for the concept of majority voting, but Rep. Melissa Bean of Illinois expressed concern about imposing a mandate on investors who voted against shareholder proposals seeking that reform. In response, Rees said majority voting will make elections "more meaningful," and said minimum federal standards are needed because of supermajority requirements, dual-class structures, and other barriers to shareholder action that some firms have.

Alexander Cutler, CEO and chairman of Eaton Corp., and Robert E. Smith, deputy general counsel at NiSource, both testified against the bills. Cutler and Smith said there had been a "sea change" among boards, and that the perception that most directors are docile and don't question management is no longer accurate. They also noted the various governance reforms--such as majority voting--that many issuers had adopted voluntarily.

Gregory Smith of Colorado PERA said the fact that some companies have adopted reforms shouldn't be used to "shield" those firms that haven't acted. "To suggest that this relieves the need for federal legislation would be a travesty," he said.