Judge Blocks Shareholder Vote on Apple Proposal

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NEW YORK (AP) — A federal judge is blocking Apple from conducting a shareholder vote on a package of governance proposals, handing a victory to a rebel investor who is trying to persuade the company to share more of its cash with its investors.

U.S. District Judge Richard Sullivan in New York ruled Friday that Apple Inc. was wrong to bundle four amendments to its corporate charter into one proposal for a vote at next Wednesday's annual meeting. Shareholders should get to vote on the amendments separately, he said. Although the ruling was preliminary, before both sides had a chance to fully make their case, Sullivan said Apple was likely to lose.

He granted dissident investors a preliminary injunction against Apple pending a full trial.

Apple will comply with Sullivan's order and withdraw the issue from the agenda of next week's meeting, said Steve Dowling, a spokesman for the Cupertino, Calif., company. It had appeared on the shareholder voting list as proposal No. 2.

"We are disappointed with the court's ruling," Dowling said. "Proposal No. 2 is part of our efforts to further enhance corporate governance and serve our shareholders' best interests."

Greenlight Capital, a hedge fund run by Wall Street maverick David Einhorn, sued Apple over the proposal because it would remove the board's ability to issue preferred stock without shareholder authorization. Einhorn wants Apple to issue "iPrefs," preferred shares with a guaranteed dividend, as a way of committing the company to sharing its massive profits with shareholders.

Einhorn has been trying to rally Wall Street to vote against the Apple proposal as a way of showing their displeasure with the company's capital-allocation policies. Right now, Apple hands only a small amount of its profits to shareholders through dividends and stock buybacks. The rest of the money goes in the bank, where Apple's cash hoard amounted to $137 billion at the end of last year. That amount grows by about $40 billion every year, much of it from selling trend-setting gadgets such as the iPad and the iPhone.

Investors almost universally want Apple to hand out at least some of that cash, but Einhorn hasn't gotten much support for his "iPrefs" idea or his "No on Proposal 2" campaign.

Last week, Apple CEO Tim Cook said the company's proposal puts more power in the hands of shareholders, making it difficult to understand why a shareholder

would fight it. Calling Greenlight's campaign a waste of time, Cook said Apple wouldn't squander money by mailing letters to shareholders to persuade them to vote for the proposal.

The California Public Employees' Retirement System, the country's largest pension fund, had said it would vote for Apple's proposal, because it would have strengthened shareholder rights. Among other measures, it would let shareholders vote against directors.

Apple's stock fell 31 cents to $450.50 in extended trading after the ruling came out.

"This is a significant win for all Apple shareholders and for good corporate governance," Greenlight said in a statement. "We are pleased the court has recognized that Apple's proxy is not compliant with (federal securities) rules because it bundles different matters in Proposal 2. We look forward to Apple's evaluation of our iPref idea and we encourage fellow shareholders to urge Apple to unlock the significant value residing on its balance sheet."

A company with excess cash will usually reward shareholders by raising its dividend or issuing a one-time dividend. It could also buy back more shares. Einhorn believes none of these routes would yield as much shareholder value as the iPrefs, because their 4 percent annual dividend yield would make them attractive to investors that otherwise wouldn't look at Apple shares, such as pension funds and endowments.

Greenlight has been an Apple shareholder since 2010 and has 1.3 million shares worth about $580 million.

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