

# THE SHAREHOLDER SERVICE OPTIMIZER

HELPING PUBLIC COMPANIES – AND THEIR SUPPLIERS – DELIVER BETTER AND MORE COST-EFFECTIVE PROGRAMS

VOLUME 17, NUMBER 3

★★★ NOW IN OUR 18th YEAR ★★★

THIRD QUARTER, 2011

©CARL T. HAGBERG & ASSOCIATES • P.O. BOX 531 • JACKSON, NJ 08527-0531

ISSN:1091-4811

ALL RIGHTS RESERVED

## IN THIS ISSUE:

- **AS A-M SEASON 2012 LOOMS... MORE TIPS FOR GETTING READY...AND FOR USING YOUR MONEY IN A MORE COST-EFFECTIVE WAY...**
  
- RE: VOTING RESULTS... “EIGHTY IS THE NEW FIFTY”**
  
- **GET SET FOR “PRIVATE ORDERING” OF PROXY ACCESS: WHAT YOU SHOULD BE THINKING ABOUT, AND MAYBE DOING...NOW**
  
- **OUR LIST OF INCENTIVES THAT WILL GET MORE FOLKS TO VOTE THEIR PROXIES...AND SAVE YOUR COMPANY MONEY ON PROXY SOLICITATION EFFORTS IN THE BARGAIN**
  
- **A SHORT LIST OF VOTING DIS-INCENTIVES TO AVOID**
  
- **OUR LONG-PROMISED UPDATE ON SMALL SHAREHOLDER BUYOUTS AND HOW TO DO ‘EM RIGHT: THE TIME TO TEE-UP THE SAVINGS IS NOW...BEFORE YOUR 2012 A-M RECORD DATE**
  
- **THE CORPORATE GOVERNANCE CORNER: MORE ON STOCK BUYBACKS AND SOME IMPORTANT FACTS ABOUT DIVIDENDS**
  
- **FIXING THE SEC: A REPORT CARD, BASED ON OUR OWN 2008 RECIPE**
  
- **ON THE SUPPLIER SCENE**
  
- **OUT OF OUR IN-BOX**
  
- **REGULATORY NOTES... AND COMMENT**
  
- **PEOPLE**

## AS THE 2012 ANNUAL MEETING SEASON LOOMS...

### MORE TIPS FOR GETTING READY...AND FOR SAVING REALLY BIG MONEY IN THE BARGAIN...

#### FOR STARTERS, PLEASE NOTE THAT ON PROXY VOTING MATTERS... “EIGHTY IS THE NEW FIFTY”

*Once upon a time, if a shareholder proposal got even the tiniest tad over 50% of the votes-cast AGAINST it, companies would declare victory and move on with alacrity.*

*As to votes on directors, companies that had a plurality standard didn't pay much heed at all to the Withheld votes, since a single vote FOR was all it took to get elected. Even companies with a majority election standard – which will soon be the overwhelming majority of all companies – paid little attention to the votes NO... unless they crept over 20% for a given director.*

These days, however, we say that eighty percent in favor of a company proposal – or against a shareholder proposal – is the absolute *minimum amount* you need to see. And even then, it's no longer safe to rest easy: A 20% vote against your Say On Pay - or against a given director - or against *anything* you favor - or in support of a shareholder proposal you do not favor – should trigger alarm bells at your company, along with a clear-cut plan to assess the sources of discontent, identify and reach-out to important allies – as well as to the “dissident voters” – with a goal of doing better – and not worse – come the next election.

If you do nothing, the chances of doing much worse in 2012 are becoming way too big to risk: Many activist investors are saying they're ticked-off about the way Says On Pay sailed by...and are looking to use high Votes-No – on ANY company-supported item – as a screen to trigger higher scrutiny in 2012...and a higher level of calls to Vote NO...not just on pay, but on a wide variety of matters. One can expect the proxy advisory firms to raise the ante in similar fashion.

Several thoughtful leaders - including the Society of Corporate Secretaries and Governance Professionals president **Ken Bertsch** - have called attention to the very large number of companies whose Says On Pay passed...but with

*cont'd on page 2*

## 2012 ANNUAL MEETING

*cont'd from page 1*

scanty – and we say scary margins – and also to the large number of such companies that actually got OKs from the proxy advisory firms: Roughly 300 companies had Yes votes between 51% and 80% *despite* a “pass” from ISS. Results like these clearly indicate that there are significant “pockets of discontent” that smart companies will want to investigate and address with vigor before the 2011 season kicks in.

**A hot new topic these days – both in the corporate and activist investor communities – is the level of Says-No that ought to trigger a specific, written response from management, or**

**from the Compensation or Governance Committee in the 2012 proxy statement on their own assessment, and on what, if anything they have done in response.** In the just-released annual ISS survey on governance issues, half of the investor respondents said that a 20% level of opposition should trigger a written response, while – no big surprise – only 13% of issuers said the same.

**Whether or not you decide to address low levels of voting support in your proxy statement or, much better, we think, in one-on-one conversations with the naysayers, it really does seem that a 20% Vote No on *anything* you support – as well as a 20% Yes vote on anything you do not support – ought to be the number that rings the alarm bell.**

## AND WHILE YOU'RE AT IT, BETTER DO SOME THINKING ABOUT WHAT YOUR COMPANY WILL DO IF ACTIVISTS COME KNOCKING WITH A PROPOSAL FOR PROXY ACCESS

Last month we were part of a small group of issuers - and some very savvy proxy-fight lawyers - who were brainstorming on what might be coming down the pike regarding “access” and what kind of strategies to have in mind, and on the shelf.

Midway through, someone said, “Hey! I bet that lots of activist investors are having the same kind of brainstorming and strategy sessions we’re having!” Indeed they are.

Another wake-up call that seems to have gone largely unremarked is that several companies have previously adopted bylaw changes that allow for “proxy access”...like AIG...thanks to some arm-twisting when they were on the mat...and Apria, thanks to activist Ralph Whitworth, who ended up chairing the company. Disney, Exxon Mobil and UnitedHealth Group, along with several smaller companies, also received access proposals in the past. So there are precedents...and roadmaps...and templates already out there to bone up on – which we think will resonate big with investors at a lot of companies in the news.

Most issuers, and their outside counsel, seem to agree that making bylaw changes to grant access before being asked is probably not the best strategy. But having at least a sketch of something on the drawing board – that your own board could live with – and

maybe offer up on your own if activists come knocking, as a way to knock them out – or maybe to use as the basis for a negotiated deal – sure seems like good insurance to us. As we mentioned last issue, it’s also smart to look at your director qualification and selection criteria, and maybe look to raise the bars.

With all of these developments lurking in the background, rounding up the votes of individual investors is more important than ever...so please read on...

### THE SHAREHOLDER SERVICE OPTIMIZER

is published quarterly by

**CARL T. HAGBERG & ASSOCIATES**

P.O. Box 531 • Jackson, New Jersey 08527-0531

SUBSCRIPTION PRICE: \$300 per year

ALL RIGHTS RESERVED:

Reproduction or transmission of this newsletter, in part or whole, by any means whatsoever, is prohibited unless the permission of the editor is first obtained. Such requests are welcome and permission will be liberally granted.

Questions, comments or letters to the editor about material in this newsletter are also most welcome.

**Telephone: 732-928-6133**

**Fax: 732-928-6136**

**e-mail: [cthagberg@aol.com](mailto:cthagberg@aol.com)**

**WEBSITE: [www.optimizeronline.com](http://www.optimizeronline.com)**

## **A SHORT-LIST OF INCENTIVES...THAT MIGHT GET MORE FOLKS TO VOTE THEIR PROXIES...AND SAVE MONEY ON EXPENSIVE - AND MOSTLY-ANNOYING PROXY SOLICITATION EFFORTS**

*With individual investor votes increasingly being the “swing votes” in close corporate election outcomes, we’ve been wracking our brains hard...to come up with incentives that really WILL incentivize over-busy investors to cast their votes.*

*Individual investors, as we’ve noted over and over again – are voting their proxies less and less often with every passing year – But when they DO vote, please note well, they are typically 90%+ in favor of the management position:*

**The easiest-to-implement tip on our list – with a payback that’s virtually guaranteed to boot – is using “stratified mailings” to mail full-sets of your printed proxy package to individual investors who will have, in the aggregate, a meaningful percentage of your votable shares:** The most recent Broadridge study shows that a whopping 42% of the voters who receive a full-package through stratification cast their votes in 2011: This is more than *twice* the voting rate of folks who receive e-delivery or “Notices” that materials are available if they want to take the extra trouble to get them.

Amazingly, Broadridge reports that only 10% of their clients used the stratified mailing technique in 2011. So DO plan to do a careful share-range analysis in 2012 we urge – and decide where your own company’s sweet-spot for mailing full-sets is likely to be – with special attention paid to the specific items to be voted on: For some companies, the optimal number is 1,000 or maybe even 1,500 shares. For other companies – or if a vote is expected to be really close – it may be as low as 200 shares. The closer the expected outcomes, the more you should lower your stratification thresholds. At most companies we’ve seen, raising the number of shares that vote with management by a full 6 percentage points is a very achievable number to shoot for.

**An equally compelling strategy – and another proven one – is to come up an actual reward for voting one’s proxy:** Prudential Financial’s “trees or totes for votes” giveaways have incentivized additional holders to cast their votes by double-digit numbers for two years running...And, it also seems clear, they have helped to assure that the *previously habitual voters* would *continue to vote*. But the 120,000 folks who chose the totes (another 112,000 chose trees in 2009) present a rather daunting logistical issue – just to send all those totes – and a rather daunting expense too, for most companies to deal with...unless you have over a million registered holders like Pru – and where your proxy-solicitation expense would be a much costlier expenditure...which turns the trees or totes thing into a financially winning deal.

*Here’s our brainstorm for a really cost-effective incentive for producers of goods and services to offer: How about a sheet of coupons, or a ‘dollars off’ offer...prominently designated as being for shareholder voters only...that web voters can click on after they’ve voted, print out and cash in? Sending identical coupons to paper and telephone voters should be easy and inexpensive to do as well, and will generate a double-benefit, please note, since you’ve*

*certain to get more votes... and move more products too!*

**Don’t make or sell anything you could offer to individual investors? How about a cash donation to a non-profit dedicated to financial literacy, on behalf of every investor who casts a vote?** Lord knows, our country is sorely in need of financial literacy these days. We especially like programs that are developed for high-school students – like those from the National Endowment for Financial Education ([www.nefe.org](http://www.nefe.org)) and the Institute for Financial Literacy ([www.financiallit.org](http://www.financiallit.org))

*Maybe even more compelling; how about promising an added donation to a cause that’s near to your own corporate heart for every shareholder who casts a vote...like the Ronald McDonald Foundation...or Wendy’s adoption promotion activities, to cite two easy ones that tug at the heartstrings?*

**But speaking of financial literacy – the lack of which we consider to be the root cause of voter apathy – how about delivering some to your investors with the proxy materials?** Yes, we’re still flogging our little pamphlet, “*Shareholder Votes Have Value... Please Don’t Let Your Votes Go To Waste!*” We have spoken to hundreds and hundreds of investors who all say the same basic things about proxy voting: “We don’t understand a lot of these issues... We don’t have the time to focus on this... We are not sure how to find the info we need to make up our minds... Many of these things do not seem to be that important... and... the really big vote killer, “Our small shareholdings don’t really matter, do they?” Our little booklet tries to explain exactly HOW votes have value for investors...and to offer very simple strategies for deciding on proxy issues, based on what IS important to them... and on making a habit of voting...and on choosing and using the method that is quickest and easiest for each individual voter. Call or email us for a copy... And, to put our own money where our mouth is, we’ll donate our copyright fee to charity for the first two companies to use both the print and web versions.

**Consider a “personalized pitch” from your Chairman or CEO about the importance of voting even seemingly “small” positions.** In our experience, a personal touch gets results like magic: Append a hotlink to a short and sweet video clip on all your e-deliveries. Print the link prominently in the Chairman’s letter, or, better yet, feature it in an insert of its own, to the folks who get hard-copy. Print the link – and a QR code that will automatically link to the video – and to the voting site too – on the Notice. Consider a special video – and a unique QR code – designed to motivate employee owners to visit...and to vote.

*Think about saying a sincere “thank you” to the folks who DO vote...if only on the voting screen or in the telephone script, or in a thank-you letter - or better, as we said, with a tangible reward...if indeed you DO care, as we think you should. This can be the most powerful motivator and habit-builder of all... to set you up nicely – and inexpensively – for next year.*

## A SHORT LIST OF VOTING DIS-INCENTIVES TO AVOID

- **The number-one disincentive in our book is a proxy package where the info one NEEDS to cast one's vote is buried somewhere in the middle of a big fat booklet.** Time is scarce, folks. PLEASE take our oft-repeated advice to put the voting items way up front – where they belong...and where folks can find them... Explain why you want folks to vote your way – but don't "protest too much": Keep your reasons – and your arguments against proposals you don't want to pass – as short and as simple as you possibly can!
- **A very close second in the disincentive department is a poorly timed, poorly targeted and poorly-delivered phone call from a proxy solicitor:** Sometimes these calls are needed...and can be helpful to potential voters...and will be worth the money spent. But a badly introduced and badly delivered call – especially during the dinner hour, when yes, that's when we're home – will make folks so mad they'll not vote, or worse, vote against you...out of pure pique. Make sure you know exactly what kind of people will get

such calls...and when...And issuers; read the script yourselves, or maybe have it read to you by one of the callers before authorizing such campaigns.

- **A relatively new – but MAJOR disincentive – arises from way-over-long telephone voting drills:** This used to be the quickest and easiest way to cast one's vote. But today, companies that have adopted majority voting now need to have the list of directors - and the three voting choices - read out one by one...unless the voter opts to vote as management recommends, which fewer and fewer voters opt to do each year. Couple this with the new and now mostly annual Say-On-Pay vote at most companies...and a long list of shareholder proposals at most of our most widely held companies...and you're in for a 15 minute siege. Telephone voting now needs to come with a warning to consumers...or better, to flog our little booklet yet again...with a discussion of the many ways to vote... and how each voter can decide on the quickest and easiest way for them.

## OUR NUMBER-ONE MONEYSAVING TIP FOR THIS QUARTER... HELP YOUR REALLY SMALL SHAREHOLDERS TO CASH OUT...NOW; BEFORE YOUR A-M RECORD DATE:

*Times have changed a lot since we last visited this topic, and it's way past time for some fresh advice:*

*Used to be that transfer agents were always peddling "odd-lot buyback/roundup programs": These days, however, a successful program for issuers tends to cut mighty deep into the TA's revenue stream...so most TAs have gone to radio silence.*

*Proxy solicitors were big on selling "turn-key programs" too – many of which, as we've pointed out earlier, were great for THEM – but they were not always so good for issuers: Many of these programs wiped out lots of middlin' investors ('cause that's where the money was, for the vendors) who, most times, actually earned their keep as part of the shareholder profile – without putting much of a dent in the teensy tiny folks...who keep on coming back anyway.*

**But these days, a huge number of the companies whose records we look at have hundreds – and sometimes many thousands of shareholders with a truly immaterial number of shares...with no prospect at all of them ever acquiring a "material" position in your stock.**

**The vast majority of the really small investors are there by**

**accident:** Typically, they sold a "round lot" way back when – leaving behind a few odd stock split or stock dividend shares, simply because they'd mislaid them, or couldn't lay hands on them on the day they wanted to sell. Another, very common cause: they sold shares from their DRP or DSPP just after the record date for a dividend...inadvertently creating a *really tiny* fractional-share position. Yes...occasionally – and your editor has been guilty of this too – some very small shareholders intentionally left a small balance in the Plan as their "readmission ticket" – thinking (wrongly, as we can see if we take a careful look) that they'd buy again...someday.

**These tiny hangers-on cost you a ton of money – without producing any material benefits at all:** More than half of them tend to be registered holders, so you're paying Transfer Agency fees that effectively buy you zilch. Adding insult to injury, most of these cling-ons – and most of the really small street-name holders too – who generate handling fees of their own – cling on to paper deliveries: So there goes *more money* out the window for paper, postage, enclosing, mailing and processing fees – which also, typically, produce *zilch* for your company. Get rid of them, we say, before your Annual Meeting record date rolls around, and use the money for something useful!



## OUR TOP-TEN TIPS ON CONDUCTING A SUCCESSFUL SMALL-SHAREHOLDER CASH-OUT PROGRAM

1. Years ago, we advised; “Stop calling these programs - and thinking about them - as “odd-lot programs: Focus instead on what constitutes an ‘OK investor’ for your company – based on dollars invested – and set your target audience accordingly.” It’s still good advice.
2. Don’t buy into a totally off-the-shelf program: Definitely, one-size and one shape may be good for the vendors - but it does not suit all companies well, as we think you’ll see as you read on.
3. Get a statistical breakdown of both your registered and street-name holders by size of holding - with the *number of holders* in each sub-group and the *actual and cumulative percentage of ownership* represented by each group as you go up the ownership ladder; say from less-than-one to 1 share, 2-5 shares, 6-10...on up to say, \$500 worth or \$1000 worth...or whatever level seems to constitute a “good” or “OK investor” from your company’s perspective. Then target the groups that will allow you to “optimize” your program – by taking out the folks who create the biggest percentage of the expense – while creating the least amount of *value* for you. It’s not at all unusual to find that 80% of the odd-lotters by number hold less than 15 shares each – and less than 4% of the shares held by ALL individual investors combined!
4. Do some mathematical modeling to see if you won’t have the best results by charging your target-class NOTHING: If you can save a “blended” \$6 to \$10 a year per holder eliminated - on TA fees, Broadridge fees, printed matter, envelopes, postage and “miscellaneous charges” – you’d be smart to design a program – and find a provider to manage it – that will cost the shareholders in this class *nothing* to cash out. Pay the agent’s fee yourself...and you’ll generally get your money back in year-one, or no later that year-two – if you target correctly. Participation is *bound* to be high, since *everybody* likes a free service. And guess what? We’ve seen lots of companies that could afford to give a cash *bonus* for cashing out, or maybe to match or even double each donation to charity - in light of the savings going forward.
5. Keep the program as simple as possible: Years back we used to advise; “Never conduct an odd-lot buyback program without a rounding-up feature.” Today, sad to say, we’ve got to advise; “Don’t waste your time.” In today’s environment, the fewer choices you give people, the likelier they are to pick one, and act on it.
6. So today, we say - in a tip we learned from ShareGift USA – “If you want really small shareholders to do take action, offer three simple choices: (1) Do nothing...(2) Check the charity check-off box and donate...or (3) Sell all shares and send a check.
7. Make the program as *hassle-free* as possible: A huge number of really small shareholders simply can’t find the certificates – OR...they’re too busy to look...OR to fill out a lot of forms. Get an insurance policy to cover really small amounts that MAY show up one day – or get your agent to get one – and let people simply check a box to say they’re “lost” – then cash’em out.
8. Consider developing a separate strategy for small shareholders who are in a DRP or DSPP – or in a “book-entry plan” because of an old spin-off. This class alone may be big enough to take a big bite out of your really small-owner population – WITHOUT the need to make an offer to all the street and registered holders in the share range you select. Most such plans are written so that participants can cash out at ANY TIME: If they have some certificated shares at home, they’d have to send them in of course...or check that box to say they’re “lost.” But often, a simple letter from you to them, outlining the cost and bother of managing immaterial holdings, and explaining what they need to do to cash out, and enclosing the form and a return envelope, is all that’s needed to get them to do so. Here too, consider waiving the usual sales fees for the littlest accounts.
9. In any event, do not close off the ability to sell through the DRP while the offer is in progress – as some providers have talked issuers into doing: Allowing vendors to sell a service to shareholders that they can get for free – or at a much lower fee through a DRP or DSPP – is immoral, and a major breach of the duty of fairness an issuer OWES its investors.
10. Whether you are launching a broad-based program – or simply targeting Plan participants – stress that it’s a “limited time offer” – and issue no more than one reminder...while there’s still ample time to act on it.

## OUT OF OUR IN-BOX

**“Is there anything you can do to normalize the termination fees [some] transfer agents are trying to enforce on poor, unsuspecting issuers?”** a TA sales-rep emailed in September. “There is absolutely no rhyme or reason for the process [which] varies greatly across TAs. While I understand there is an inherent cost to ‘off-boarding’ a client, it should not be treated as a formidable revenue stream for the agent” he wrote. “We are seeing some ridiculous charges – and an apparent ‘scorched earth’ mentality to uphold them. We don’t have any termination fees” he wrote - and this agent is not alone in our experience. “To us, if you cannot hold on to a client through relationship, service and value, you deserve to lose them.” Having run a TA business himself, your editor usually reminds folks who ask that “the very longstanding ‘industry standard’ – one that was typically inserted in the contract – was for 5% of the previous year’s ‘basic fee’ (no reorg, stock split or one-off expenses and no out-of-pocket expenses) as the absolute MAXIMUM – with lower – or even no fees – if the agent was dismissed for ‘cause’ and not just over money.” “If I were in your shoes, I’d consider writing the STA – and the SEC – and demanding that the industry address this – and that STA members commit to behaving in a proper and businesslike manner, by charging fees that are related to the actual off-boarding work involved” – as most TAs once did –and as the ethical ones still do.

**A long-term reader from a very famous issuer also emailed, to ask if we might spearhead an industry-wide drive to standardize the RFP response process – at least with respect to the out-of-pocket expenses:** These, as we’ve written numerous times before, are not just

hard to decode, and to compare on a true apples-to-apples basis, but have become a major profit center for a few super-sneaky TAs. *“Yes...we have a pretty good template, we think...with a hook at the end that if you haven’t detailed an expense item it won’t be billable under the contract that’s negotiated – without prior negotiation and the agreement of the issuer...And we’d be happy to take part in an industry-wide standardization effort.”* We think that this would be a very worthy industry project for the STA to undertake, although we firmly believe that as to the RFP for services, one-size does not, nor ever will fit all.

**A deluge of news about new money-grabbing schemes by desperate State Treasurers crossed our desk last quarter:** Texas has proposed that a 10% “handling fee” be tacked onto and remitted with escheatment reports. **California** continues to file claims that some amounts remitted were “late” – and reportedly, in addition to demanding fines and penalties, has been looking to negotiate tolling agreements, to keep alleged cases “open” longer. California is also looking to join **CT, IL, ID and Puerto Rico** in declaring property “abandoned” if a company’s transfer agent has not received some sort of written communication from the holder (!!!) over 3 or sometimes five years. **Delaware** and **Massachusetts** have engaged an outside audit firm to go over corporate books and records with a fine tooth comb - looking for reporting errors and omissions that would generate fines and penalties...and, reportedly, demanding a twenty year look-back! **Much more on this, we promise, in our next issue – including a BIG change in our advice on what to do to fend off these intrusive and scandalously over-reaching moves.**

## ELSEWHERE ON THE SUPPLIER SCENE:

Just as we were going to press, the Securities Transfer Association (SSA) fired a loud shot across the bow of the SEC – and the NYSE – with a press release and survey that shows “average cost savings, for public companies, of 42 percent for distributing annual meeting materials under a proxy processing system that uses competitive pricing instead of a fixed fee schedule established by regulators.” Go to [www.stai.org](http://www.stai.org) to see the complete survey. We promise to share our own analysis in the next issue on an issue we’ve been following for 18 years now...and meanwhile, if you’d like to weigh in with us, please give a call.

In a rather humorous departure from the current, and often ill-advised price-slashing forays in the TA industry, more than half of the top-fifty US law firms appear to have overstated their profits per partner significantly in the numbers they give out for publication. According to a study by a Citigroup unit that lends to the industry, 22% of them overstated profits by 20% or more, an additional 16% inflated their numbers by 10-20% and 15% hyped the numbers between 5% and 10%. Apparently they’re betting that paying more per partner-hour will convince clients that they’ll be getting better service...and that, maybe, bigness alone is somehow better.

## QUOTES OF THE QUARTER: CORPORATE COMMUNICATIONS IN THE INTERNET AGE...

*“I am very sorry to tell you that I’ve just been fired over the phone by Yahoo’s chairman of the board” Former Yahoo CEO Carol Bartz, in an emailed message to Yahoo employees.*

*“I thought you were classier” she blogged to Yahoo Chairman Roy Bostock over a Fortune magazine blog post, where she accused him of reading the news to her from a script. “These people f---ed me over” the famously blunt Bartz added, and as the WSJ noted in a 9/9 article on “How not to fire a worker.” And indeed, just a few weeks before, Bostock publicly praised her performance, even as Yahoo’s continued to sag.*

### THE CORPORATE GOVERNANCE CORNER:

**As predicted in our last issue, share buybacks vs. cash dividends continue to get more notice:** Our absolute favorite, a 9/2 WSJ “Heard On The Street” column that began, *“Picture this: J.P. Morgan Chase CEO James Dimon walks up to a paper shredder and feeds \$100 bills into it while Federal Reserve Chairman Ben Bernanke looks on approvingly.”* Not every day that we can scoop the journal...but as we’d also predicted, it would have been *much better for us shareholders* if he’d upped the dividend instead. We could’a used the cash...and maybe could’a stimulated the economy a little in the bargain...But as the WSJ noted, JPMC stuffed \$4.3 billion into the buyback money-shredding machine in the first seven months of the year, which, at 9/2, left us continuing shareholders \$600 million in the red...instead.

**Warren Buffett won kudos in the press for HIS buyback plan – which has the eminent good sense to allow buybacks of shares only when they can be bought at a 10% discount from book value – or better...and will keep at least \$20 billion in cash on hand.** With just shy of \$50 billion in cash – and no good place to invest it profitably in his cross-hairs – it is indeed smart to do as he suggested in his 1984 letter to shareholders, about purchasing stock at less than fair value: Companies “often find it easy to get \$2 of present value for \$1” under these circumstances. But with \$53 million in free cash coming in every

day, maybe even Buffett needs to reconsider his no dividend policy. His long-held objections to the double-taxation of dividends – plus the fact that he used to be able to generate much better returns on investment than investors could possibly do on their own – made great sense, and proved to be a great deal for investors. But that was then...

**At long last, dividend-paying companies – and the clear cut benefits of such payouts to shareholders – and to companies as well – are getting some well-deserved attention. A few important facts to note:**

- **From 1926 through 2009, dividends were responsible for roughly 40% of stock-market returns.**
- **From 1972 through June 2011, the dividend payers in the S&P 500 returned 8.92% on average, vs. 1.82% for non dividend payers.**
- **Dividend payers’ stock prices are also far less volatile – nearly 9 percentage points lower in standard deviations for those in the S&P 500, for eg. – which should come as no big surprise: Paying a regular dividend – with a tangible and accessible YIELD – serves to place a solid floor under the stock price vs. stocks that only offer a bird in the bush...which, all to often, is simply a “vision” – or one that simply flies away...**

## REGULATORY NOTES...and comment

### ON THE HILL...

Loud calls for the complete repeal of Dodd-Frank are coming from the congressional right wing – and from at least three wannabe presidential candidates.

Instead of the \$222 million increase over this year's \$2.19 billion budget the SEC asked for to cover the greatly expanded Dodd-Frank-mandated activities – where the SEC is badly behind schedule – their 2012 budget is now slated to be flat.

And in August, Rep. Spencer Bachus (R-Alabama) Chairman of the House Financial Services Committee introduced his “SEC Modernization Act” – that, for starters, would break up the SEC's Office of Compliance and Inspections!

Let's take a long deep breath here...and let's reflect on a few quotations from strongly pro-business spokes-folks – that providentially crossed our desk as we perused the 2008 issue of the *OPTIMIZER* – written as the financial crisis was reaching its crest:

*“The ‘de-regulation era’ that began in the 80s is over. Capitalism has forfeited the right to say ‘trust me’.” Ben Heinemann, former General Counsel of GE, speaking at the Society's 2008 NY/Fairfield Westchester & Hartford Chapter Fall Conference.*

*“The last six months [of 2008] have made it abundantly clear that voluntary regulation does not work.”* SEC Chairman Chris Cox...whose many de-regulatory initiatives and basic disregard for regulatory *activities* by the then largely deaf, dumb, blind and mind-blowingly-lazy regulatory and enforcement staff were among the major causative factors that produced the financial meltdown. **Have we really forgotten all this? If so, heaven help us; the plague will visit soon again.**

### AT THE SEC...

A sudden flurry of activity...on many of the topics we covered in our 4<sup>th</sup> Quarter 2008 “prescription” for fixing the SEC. It's worth remembering, we think, that back then, folks on the Hill were calling for a merger of the SEC with the Commodity Futures Commission, so they

would focus on simply “watching the “markets”...and proposing that actual *regulation* should be left to the Treasury Department – and the Fed!

In any event we've been promising to issue a report card on the SEC – based mostly on our original prescription for fixing it, rather than ditching it. Issuing a “report card” seems like a good way to catch up on what's new and improved at the SEC...and what's just more of the same-old regulatory shell-game. So here goes:

**RE-FOCUS ON THE SEC'S LEGALLY MANDATED MISSION – INVESTOR PROTECTION – INSTEAD OF ON “LAWYERING”:** Would anyone really argue that the SEC's grade here, from Jan. 2009 'til now should be more than...**D**?

**BROADCAST THE RIGHT “TONE FROM THE TOP”:** Ouch! We still *love* Mary Shapiro...and even the Republicans on the Hill cut her a lot of slack last month, when she humbly apologized for allowing her good friend and then General Counsel **David Becker** to help develop a system to reimburse **Bernie Madoff** victims... when he and his family were part of the interested class...and he asked for and received a “waiver”... from his own subordinate...and where none of the other commissioners knew about the clear conflict of interest! Sadly, all the previous good “broadcasting” went down the tubes here, and we have to award a grade of...**F**

**DE-POLITICIZE THE SEC:** Alright, this is something the SEC can't fix entirely on its own, though focusing primarily on Investor Protection rather than writing more rules would surely help. But this has been the most highly politicized SEC Commission in memory - with virtually every important action decided along strict party lines...**F**

**OVERHAUL THE MANAGEMENT STRUCTURE, AND THE BUDGET, TO ADD BRAINPOWER AND MANAGEMENT SKILLS AT THE TOP – AND FOCUS MOST OF THE RESOURCES ON INSPECTION AND ENFORCEMENT:** Chairman Shapiro sure tried hard – And just for recruiting the hard-hitting **Robert Khuzami** as Enforcement Director



– and also because the needed budgetary resources fell so far short – we’re willing to award an **E** for Effort.... and overall, a rather generous...**B-**

(Sadly, it now looks like the SEC will have to hire a lot of economists instead (!) so they can “cost justify” their lawyerly rules a lot better.)

**TUNE UP THE WHISTLEBLOWER PROCESS AND PURSUE EVERY ‘WHISTLE’ RIGOROUSLY:**

Here, the SEC stuck to its guns under pressure; As we said in ‘08, “Money talks. Just think how much we’d pay NOW...if only someone had halted Bernie Madoff before he bilked his best friends and their favorite charities for \$50,000,000,000. So for part A...**A**. For part B...an **“Incomplete”**

**FIX THE RATING-AGENCY FIASCO – PRONTO!**

Hard to believe that they are just starting to tackle this NOW...with a Wells Notice reportedly out to S&P... and others likely on the way, since all the others gave the same kind of top ratings to objectively junky bonds. We’ll be kind, and give them a very generous...**C-**

**HERE ARE A FEW RULES AND REGULATIONS THAT WE SAID ISSUERS OF SECURITIES WOULD ACTUALLY LIKE TO SEE FROM THE SEC...ALL OF THEM VERY SIMPLE FIXES, AS WE TRIED TO EXPLAIN IN 2008...**

**TOTALLY ELIMINATE NAKED SHORT SELLING:**

They haven’t eliminated it totally, but tougher delivery rules and the daily short-interest reports that allow for daylight – that great and inexpensive antiseptic – have made the problem a lot smaller now...So, for now...**C+**

**FIX THE “EMPTY VOTING SCAM”: A TRAVESTY, THAT U.S. COMPANIES HAVE BEEN WHISTLEBLOWING ABOUT FOR 5+ YEARS, TO NO AVAIL:**

All that is needed, we said then, is for the SEC...or FINRA, if they prefer to take the lead, to simply DECLARE that votes remain with the LEGAL OWNER of the shares...unless the owner executes an irrevocable proxy, signifying that he has given up the right to vote, in favor of the proxy-holder. As we later realized, there are indeed fails-to-deliver that temporarily assign the vote to the parties

on both sides of unsettled transactions...so a Pre-Reconciliation of proxy votes is needed before voting instruments can be issued, to assure that only one vote per share, and per share-owner, can be cast. As we noted in 2008, there is nothing new about “buying votes” – and there is nothing intrinsically wrong about it either, as long as there’s reasonable disclosure. But there IS something wrong with selling votes and not giving the proceeds to the OWNER of the vote, as many brokers are clearly doing. **It’s been seven long years now, and still NOTHING...so a big fat F**

**BROKER A SETTLEMENT OF THE PROXY ACCESS DEBATE:**

What an enormous opportunity the SEC blew here! The issuer community – and the savvier members of the investor community – would really have been “OK” with a 5% or 6% ownership hurdle. Even before looking at the horrific consequences for future rulemaking, given the elaborate “cost justifications” that will likely be required, clearly, they deserve to get...**F**

**CONDUCT THE TOP-TO-BOTTOM REVIEW OF THE PROXY DISTRIBUTION AND VOTING SYSTEMS, AND THE NOBO/OBO MUMBO-JUMBO THAT THE ISSUER COMMUNITY HAS BEEN CALLING FOR - FOR 10 YEARS NOW:**

Wow! They actually put out a very robust discussion paper, and went out for comments...and got a ton... Then appointed yet another NYSE committee to “study” and report back. Zip so far but we’ll give them a (barely) passing grade, for asking the questions...**C**

**ISSUE THOSE TRANSFER AGENT REGULATIONS: ANOTHER TRULY IMPORTANT INITIATIVE THE SEC HAS BEEN DIDDLING WITH FOR OVER 10 YEARS NOW!**

Here’s yet another instance where the SEC staff has been unwilling to get its “hands” into something that requires a bit of brainpower - and maybe a *bit* of work: Where else than at the SEC could the same staffers promise action “soon” for well over ten years...and deliver NOTHING! TAs are dumb too, for allowing this to happen, since “irregular transfers” – and most “reorg items” – which are currently not covered by SEC rules – create big liabilities for TAs – and for issuers too. So here’s a big, fat, flying...**F**

## PEOPLE

**Derek K. Cole**, vice president, investor relations and corporate communications for **ARCA Biopharma** has been elected as the 2012 Chairman of the Board at **NIRI**...as they begin to execute on a recently completed strategic plan for “moving our organization forward and ensuring we continue to provide the best value possible for members” as NIRI’s president & CEO **Jeffrey Morgan** noted in a 9/26 press release

**Gary D’Alessandro**, a seasoned transfer agency veteran with over 28 years at **BNY-Mellon** - from which he retired a good while back - and earlier experience in the **Texaco** stock transfer department, way back when - has joined **Registrar and Transfer Company** as an Account Executive in the Corporate Relations Dept. Welcome back, Gary...and congrats to R&T!

**Brendan Sheehan**, who left not long ago as the senior editor of **Corporate Secretary Magazine** to take a position as editorial director at the **National Association of Corporate Directors** has struck off on his own, as an industry communications and marketing consultant. (Sadly for NACD members, he was unable to make the much needed impact he surely could have made. But instead of sending fresh new material, as we were hoping, NACD management still persists in emailing a “Directors Daily” – that basically repeats the big business headline of the day; something most wide-awake directors have already read in the **WSJ** beforehand. Ouch!) No big surprise, Sheehan landed some clients in a trice...and will, we have no doubt,

make a big mark on his own...Plus, as we told him, he’ll have the best boss he’ll ever have.

Four heavy-hitters in the shareholder servicing space who only recently made these pages – when they threw in their lot with **AST** – **Jim Alden** and **Ray Dunn**, formerly heads of shareholder services at **The Walt Disney Company** and **The Southern Company**, respectively – and **Karri Van Dell**, formerly a sales superstar at **Wells Fargo Shareowner Services** – and **Ed Timmons**, a senior client relationship guy who’d been riffed not so long ago by **BNY-Mellon** – were recently riffed by **AST**. Some major talent here...and we’re sure that all will surface shortly in new and exciting roles where, frankly, we think there are serious talent shortages these days.

**Two corrections to last issue’s PEOPLE column need to be made here:** It is **Gordon Stevenson**, of course, who recently signed on as a top salesperson with **Broadridge** – and a former **CTH&A** Inspector of Election, to boot – NOT **Gordon Garney**, who, as very old-timers will remember was once in charge of shareholder services at **Exxon Mobil** -and whose name your editor absentmindedly inserted, out of the blue – prompted perhaps by his perennial proclivity for alliteration. Also, the **Gibson Dunn** attorney who worked with our good friend **Amy Goodman** on the shareholder-no-access case is **Eugene Scalia**...not Erik, as the editor also absentmindedly typed. A good reminder, as annual meeting drafting and proofreading season draws near, that it’s always the names you think you know BEST that trip you up!

### COMING SOON: “GETTING YOUR MESSAGE ACROSS TO INVESTORS”...

#### The **OPTIMIZER’S** 15<sup>th</sup> Annual Special Supplement:

U.S. companies are spending hundreds of millions of dollars each year delivering messages to investors, and to other key constituencies...

But clearly – and all too often – their messages are simply not “getting across” as intended ... or prompting the kinds of support that companies are trying to win over.

“Bad Delivery?”...“Mixed” or unclear messages?...“Information overload?”...  
Do recipients simply not care anymore?... “How DO we get our message across?”

As usual, we will reach out to some of the smartest and best and most-effective communicators we know... to find the secrets of success. Watch for the magazine to come your way in mid December.