

# THE SHAREHOLDER SERVICE OPTIMIZER

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

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★ ★ ★ NOW IN OUR 16TH YEAR ★ ★ ★

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## YIKES! THE TRANSFER AGENT MERRY-GO-ROUND HAS BEEN WHIRLING AT A FASTER AND MORE FURIOUS PACE THAN EVER

*Every year around this time – for 16 years now – we’ve been reporting on the “T-A Merry-Go-Round”, which has been whirling faster and faster every year – at least where the competitive scene is concerned.*

*This year, the competitive merry-go-round seems to have gone almost wild – with clients falling off and spinning off at a record rate, mostly to land on a new merry-go-round. A record number of prominent industry employees are also flying off – and sometimes being thrown off their old merry-go-rounds – while a virtual whirlwind of change is whisking many seasoned work horses onto new merry-go-rounds, also at a dizzying rate.*

*Meanwhile, as you will read more about below, there has been a major new entrant to what looked to many observers (but not to us, as regular readers know) to be a rapidly consolidating business...And we predict, once again, that the dealing is far from done.*

Let’s start off, as we usually do in this issue, with a report on “who went where on the client side” in 2009:

At first blush, Wells Fargo Shareowner Services seems to have been the biggest winner by far: They added a dizzying double-carousel-load of household names...like Fortune Brands, HCP, H&R Block, Heinz, Omnicom, Xcel Energy and Zale Corp. from BNY-Mellon... and Fiserve, HNI Corporation, St. Jude Medical and Walgreen Co. from Computershare...plus 29 names - like American Greetings, Anixter, Briggs & Stratton, Flowserve, Gardner Denver, Moog, Parker-Hannifin, The Timken Co. and Worthington Industries from National City, in the aftermath of the sale of the Nat-City business to Computershare, to name just a few.

But Computershare, which now seems to have its legs solidly under itself again, after a rough patch following their big records-conversion effort, racked up some big wins too: They took the Frontier Communications account from Illinois Stock Transfer, as their long-term client, Verizon, Inc., prepared to spin-off their interest in Frontier. This will result in over 700,000 new Frontier shareholders this summer. They won the Global Fiscal Agency appointment for the State of Israel away from

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**Yikes!....continued from page 1**

BNY-Mellon, which involves paying interest of over \$1 billion per year to bondholders in the U.S., U.K., Canada, and throughout the world. As with the Frontier deal, Computershare reaped additional business from its existing client base, like the spinoff of AOL from **Time Warner** and **CareFusion** from **Cardinal Health** – and also logged a few additional wins from BNY-Mellon; **Commscope**, **Healthsouth** and **Weingarten Realty**.

**BNY-Mellon** also managed a few nice wins – the **Sun/Oracle** merger processing, for eg., where they had been the T-A for Sun, but ended up winning the Oracle business too – along with **Dunn & Bradstreet**, from Computershare. They picked up a few smallish accounts from AST and added three nice west-coast community banks. But their really big wins were the **Norfolk Southern** (80k holders) and **Southern Company** (180k) businesses – both former in-house agents. Watch for more action on this front from all the bigger T-As, as in-house providers grapple with cost-basis reporting, back-up withholding, and constant forays to the corporate decision makers by T-As on the hunt.

At **AST**, 2009 seemed to be largely focused on internal change – with a new CEO and a new CFO, as reported here earlier, and with the founding Karfunkel family members having “left the building” as they say in show biz, in early 2010. Nonetheless, **AST** won “about half” of the IPOs they bid on in 2009, according to **AST’s** sales whiz **Ken Staab** – and they are doing better yet in 2010 to date. They also made big strides, **Staab** told us, in beefing-up and cross selling their “EPS” or Equity Plan Solutions to existing clients.

**Continental Stock Transfer & Trust Company** logged another very strong year, with “more than 50 mostly mid-sized issuers moving to CST” according to CEO **Steve Nelson**. They also continued to dominate the SPAC business, where they

have more than 85% market share – and, despite the dearth of reorg work elsewhere on the TA scene, they handled more than 60 complex business transactions for SPACS, plus a reorg job for a large international bank that they handled on a “private label” basis.

**Registrar & Transfer Company** had its usual long-and-strong-list of new clients, adding 57 of them in 2009 – with a few nice “household names” like **Coach**, and **Cullman** – and with shareholder-oriented and service-oriented community banks from around the country making up the lion’s share of their new biz, also as usual.

On the whole, however, it was a difficult year for most of the biggest agents – with IPOs down, the high-margin reorg business down, earnings on balances way down, transaction volumes down, and continuing to dwindle as more and more investors opt for street-name registration, year after year...and lots of “troubled companies” – financially and otherwise. While yes, the merry-go-round whirled like crazy, some agents were largely spinning their own wheels when it came to adding net new business...and many of them ended up doing the same and sometimes more work for less money than they did in 2008.

Ironically, as we’ve noted here before, the long-awaited “consolidation” that was expected in the business has added to rather than decreased competitiveness – at least where pricing is concerned. And the “new reality” has made what were formerly thought of as “small agents” or “small-issuer- specialist-agents” a lot more viable as competitors than ever before, as we’ve also been noting.

Meanwhile (and see the article below) there has been a major new entrant...And, please remember you read it here first...we still say there’s a lot more “consolidation” to come...

## SAVE THE DATE: JUNE 4, 2010 THE END OF ANNUAL MEETING CELEBRATION AND BENEFIT

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## **BROADRIDGE FINANCIAL SOLUTIONS ENTERS THE TRANSFER AGENCY BUSINESS BY PURCHASING SMALL-TA STOCK TRANS: A MAJOR "GAME-CHANGER" WE PREDICT**

*"Broadridge's strategic acquisition of Stock Trans is intended to better address the needs public companies have voiced for lower-cost, more reliable shareholder records maintenance and communication services" the March 9th press release pointedly announced.*

*"Acquiring Stock Trans is a natural extension of the proxy and shareholder communications services that over 1,600 corporations have chosen Broadridge to perform on their behalf" - a reference to the large and rapidly growing number of issuers that now use Broadridge to tabulate the registered-holder file, instead of using their TA, as virtually all companies did until just a few years ago.*

**A powerful shot across the bow of the larger and long-beleaguered "regulars" in the Stock Transfer industry, we think – and a major game-changer – with more, and bigger, and better-targeted shots to come, we predict – aimed directly at clients that produce the biggest share of the big-TA revenues and their best margins by far; their small and mid-sized customers.**

These days, a huge number of small and mid-size companies – which constitute the overwhelming majority of ALL public companies – are not really using their transfer agents for much at all: No dividends, no DRPs...and not many transfers, or transactions of any kind for that matter...except, that is, at proxy time.

So for a very large number of companies – and we are really sad to say it to our many good TA friends – the "one-stop shopping" convenience – especially at a time when most corporate staffers are severely overburdened – coupled with the promise of "lower costs" – may well seem to be like a slam-dunk. Also, please note; 100% of U.S. public companies deal with Broadridge at least one time a year for their street-side voting needs now...so one big foot is already planted firmly over a lot of thresholds.

The biggest threat to the big-TAs, as mentioned above, will be the effect on their profit margins: For years, the bigger TAs have been falling all over themselves to court the "big companies" with the "big names." The manic

competition here – for companies which are the most "demanding" clients by far – and which usually entail the greatest degree of complexity and require the highest degree of customization – has been the major contributor to the razor-thin margins that most of the "big agents" currently eke out.

Meanwhile, small and mid-size companies – which constitute more than 90% of all public companies these days – and most of which pay the TAs a flat, fixed price – have transaction levels, and overall servicing needs that have been falling every year...And many of them, as the Broadridge press release correctly notes, have been voicing the need for pricing that is better aligned with service levels and with actual product usage.

Unlike many of the "big agents" most of the small and mid-sized TAs that specialize in small and mid-size companies are relatively immune here, we think, in that they have more carefully tuned not just their pricing levels but their service levels to the needs of smaller clients, rather than to the whims of the "biggies".

But the game is far from over for the "big agents" we hasten to point out. While the registered population has indeed been shrinking, employee ownership programs have been booming, and they will continue to boom, we predict, both in terms of the numbers and in terms of complexity. And there's still hope for those DRPs and DSPPs – if only the agents could mobilize *themselves* to motivate their customers once again.

And for Broadridge, their entry will be far from the slam dunk it might seem to be at first blush. The business base they bought is a mighty small one, as is the existing staff. And the proprietary home-grown Stock-Trans system is not likely to be highly scalable either.

But Broadridge has never been shy when it comes to investing in core business – or in good people – or when it comes to taking market share: Any way you slice it, Broadridge's entry will be a major game-changer for the TA industry, we guarantee.

## **MEANWHILE, SOME T-As AGITATE TO COMPETE AGAINST BROADRIDGE FOR SOME OF THEIR GIGANTIC PROXY DISTRIBUTION AND TABULATION BUSINESS; MOST, WE THINK, HAVE MISSED THAT BOAT ENTIRELY:**

Long before the Broadridge entry onto T-A-turf – for roughly 20 years in fact – transfer agents have been protesting the “lock” that Broadridge has on the street-side proxy distribution and tabulation business. And it’s a lock that they have been very rapidly increasing over the past few years - with over 1600 of the 6000 or so “investment-worthy companies” having consolidated their registered proxy processing with Broadridge at present, and with an even bigger total likely by year-end.

Some transfer agents are taking this very much in stride. After all, the number of “registered holders” continues to shrink, year after year...And at the vast majority of public companies, the numbers are so small - both in terms of shareholders and of shares held – that it isn’t really worth the trouble to have two providers receiving and distributing proxy materials, tabulating proxies and running added web and telephone voting sites. Also, many T-As have stripped down their staffing to the point where they have few people to spare to go to annual meetings, much less to “inspect.”

But lately – with a much increased focus on “proxy plumbing” issues, and on having much greater “transparency” where voting, tabulation, reconciliation ...and shareholder communications in general are concerned – calls for a fresh approach have been gaining a lot of traction – both with issuers and issuer-sponsored initiatives like the **Shareholder Communications Coalition**...and with the SEC staff – and with some of the Commissioners themselves, we hear.

The Coalition – with support from the **Securities Transfer Association**, the **Society of Corporate Secretaries and Governance Professionals** and **NIRI** – has been calling for a re-bidding, that would allow for the separation of the task of collecting and collating beneficial owner names (which is a ‘natural monopoly’ we’d say) from that of making mailings and tabulating the votes. This would, in theory, at least, allow other vendors, including Transfer Agents, to compete against Broadridge on a “level playing field.”

The Coalition also calls for a re-thinking of the OBO/NOBO designation – as the **Business Roundtable** and the Society did earlier – which hasn’t had a fresh look since 1986 – and which is totally obsolete – and falls far short of what could and should be done to allow issuers and investors to have more and better communications options, we think.

But for most Transfer Agents, we’re sorry to say, the playing field will *never* be “level” for them: With a few interesting exceptions, most have totally abandoned the real estate, the highly specialized enclosing and mailing equipment and the expertise that is needed to really compete here – and have no hope whatsoever of acquiring the scale that is required to compete effectively. In fact, the largest U.S. T-A has outsourced all its proxy mailing and enclosing operations...to Broadridge.

Most damaging of all to any aspirations that TAs may have to get back into the game is the fact that public companies – and their big institutional investors – and their regulators too, for that matter – will be extremely reluctant to give up procedures that most would say are working well...given the very personal risks that come with snafus in so sensitive an area. Wannabe competitors will have to produce some mighty big cost-savings to compete effectively here, we say...and most will have to put some serious money where their mouths are too. All of this seems mighty unlikely in what is still, on the whole, a scale-oriented, commodity-priced business...which, for many years we’ve been describing as a “goesinta biz.” But quite aside from the envelope-stuffing aspect, a lot more stuff “goesinta” this business than appears at first blush.

None of this is to say, however, that we should not be looking to make changes here. And opening the field to competition – aside from being the “American Way” – is maybe the best way to start. We do believe, as we’ve written before, that there are many “niches” to this business, where clever TAs – with well-integrated products, services and systems could add big value. We’ll hold our fire until the promised “white papers” hit the streets...but do stay tuned for more.

## **TRANSFER AGENTS ARE FACING MULTI-MILLION DOLLAR INVESTMENTS TO BE READY FOR COST-BASIS REPORTING...AND PERHAPS, FOR MORE BACKUP WITHHOLDING BY MONEY-STARVED STATE GOVERNMENTS**

*A reader emailed us after our last issue to ask why we haven't been covering the Cost-Basis Reporting scene...after lots of earlier coverage, where we correctly predicted that there was absolutely no way it could be enforced on a retroactive basis as most people, including the regulators, seemed to think back then.*

*"Gosh, we think that transfer agents will never make the January 1, 2011 deadline for reporting cost-basis on a going forward basis" we said, "especially since the Final Rules aren't out for final comments, and are not even promised before mid-year."*

*Stupid us, to focus on the practical matters! "The money that Congress thinks this will raise is in the budget...And we guarantee the Treasury isn't going to budge an inch" our reader told us. And yes; we realized at once that he is exactly right.*

**So here's the poop, as we see it:**

**For most brokers, this will largely be a slam dunk:** The bigger ones, and lots of the smaller ones too, have been tracking and reporting cost-basis on an account-by-account basis for years.

**For transfer agents, this is turning into a very complex, risky and costly program for them to implement:** Not only do they have to build from scratch, many of them will have to build on very rickety systems platforms...and without all the necessary building-specs in hand. And without a lot of spare cash in hand either. Plus, they have to build a totally new "highway" - that will let them fork over the cost-basis info smoothly, mainly to brokers, when registered holders leave the T-A behind...as so many are doing these days. Ouch! Plus, they have to build new clerical and systems processes that will force them to determine whether transfers are gifts - where the *giver's* cost-basis must somehow be determined and passed along - or whether they are to settle an estate, where the cost-basis "steps up" to the price on the decedent's date of death.

**For Employee Plan Agents - some of whom are brokers, some of whom are T-As and some of whom are "others" - there seem to be numerous tracking and reporting pitfalls to think about, and to deal with, with lots of "customization" required** - especially where options, various kinds of restricted shares and SARs are concerned.

**Do we think there may be some major "washings out" here?** Yes, we do. Many of the "in-house" transfer agency operations will be covered, or course...IF they use a major

provider of such systems, that is. But many will not have such an umbrella. And many of them that DO are likely to come under intensive scrutiny by corporate risk-managers, who really don't need more "compliance issues" to check on, or more "doins" with the Treasury Dept. and the IRS. We also think that there is a good chance that some of the "professional T-As" - and some of the "professional Plan Agents" - and almost all of the in-house Plan operations will have some major implementation snafus, which'll cost them big.

**Perhaps the biggest issue here involves the MONEY:** Many professional agents do have riders in their contracts that call for them to be reimbursed for their efforts in complying with new regs...but many do not. Also worth noting, the actual implementation costs - and the number of "units" - whether of clients, or of account records - against which an agent can lay off such costs - will vary widely from agent to agent. Many folks opined, for example, that this will squeeze the smaller agents. We're not so sure at all, since many of them have smaller and sometimes newer, and often more nimble systems - and nimbler systems people too than a lot of the big guys do.

**Especially important to note, as we did during a recent NASPP-sponsored teleconference** - the industry has not done a particularly good job of "setting the table" for clients, with respect to the costs - in part because they don't have a good handle on them. So there may be some major "sticker shock" when the bills, and the cost-justification arguments for them "hit the fan." As we noted; it is *always* hard to recover spent money, and harder yet in these tough economic times. But it's even harder when the tab takes customers by surprise.

**AND...AS IF THOSE POOR T-As DON'T HAVE TROUBLES ENOUGH, HOW ABOUT STATE-MANDATED BACKUP WITHHOLDING FROM DIVIDEND AND INTEREST CHECKS?**

*Thanks to reader Tom Montrone, the President of Registrar & Transfer Company, for reminding us of yet another issue that's flown beneath the usual radar screens but which, we predict, may well burst from the blue to harass T-As and their clients.*

So far, only two states – California, and more recently Maine – require the paying agent to withhold and remit a percentage of the payments if (i) federal backup withholding is in effect and (ii) the holder is a resident of the state or (iii) if the payments to any holder with federal backup withholding are generated or “sourced” by companies within the state.

And, unfortunately, as Montrone notes in his quarterly newsletter to clients, while the number of shareholders meeting [these] criteria is small, the programming and operational processes required to comply...are not.” In the 1 million+ shareholder database maintained at R&T, there are only 24 Californians and 10 Maine-Staters (a surprisingly high percentage, relatively, we'd say) who qualify at present.

**Do WE think this is likely to spread, in light of the whopping shortfalls in State budgets we're seeing?** Indeed we do. In fact, we think a literal feeding frenzy might take place here – exactly like the way states have been going after abandoned property – with shortened holding periods and stepped-up enforcement actions, including audits and penalties. And, to top it all off, some holders seem to LIKE backup withholding, since it's basically akin to the withholding most people are used to with wages and salaries.

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**SOME “EARLY RETURNS” FROM THE ANNUAL MEETING FRONT:**

It's still early-days as we write this, but a few trends are emerging that seem worth a mention:

The most *visible* trend so far has been the number of directors who are getting No or Withhold votes in the 30% range, and sometimes higher: The much higher than usual percentages are due in part to the fact that previously “uninstructed votes” are no longer being cast by brokers in favor of directors, as in previous years. But ISS seems headed for a record number of “vote no” recommendations this year – mainly due to closer than usual scrutiny of the big universe of smaller companies. So watch your own results we advise, yet again...and do not let such numbers come as a “surprise” to your low vote-getting directors

**We've also seen a much bigger than usual trend to vote No against company sponsored compensation proposals - especially at smaller companies** – In part, we think, it's because of greater ISS coverage and in part because many small companies appear not to have used advisors, or to have checked the ISS guidelines...and in part because we think more individual investors are “reflexively” voting no on higher comp.

**On the other hand, companies that have Say-On-Pay ratification programs are seeing the “OKs” sailing in smoothly, same as last year**, which we think IS a reflection of the greater care that companies have taken in terms of disclosure...and also due to the much greater restraint there has been this year with respect to pay programs in general.

**Those dratted proposals to allow shareholder groups with a mere 10% to call a special meeting are also scoring well, and some are passing** – even where some of the same proponents had earlier called for 10%-25% thresholds...which were indeed adopted at the higher end in previous years.

**Say-On-Pay proposals are still the hot items this year** – with more than 70 slated for a vote – and where Yes votes have been strong.

**Meanwhile, a new proposal – to have the Board develop a formal CEO succession plan and report annually to shareholders** – has been garnering larger than usual votes for a first-year effort, and is “THE proposal to watch” going forward we think.

## AN INTERIM REPORT ON VIRTUAL ANNUAL MEETINGS

*Guess what? It's been nine years since the first "virtual only" annual meeting...at Inforte - And thanks to Broc Romanek for tracking down this bit of history and to Dominic Jones, who writes the IR Web Report, [www.irwebreport.com](http://www.irwebreport.com) for bringing the history up to date:*

Since then, as Jones reported recently, **Herman Miller, Inc., Adaptec, CIBER** and **ICU Medical** also hosted virtual-only meetings...And last year, we reported extensively on the **Intel** meeting, which was a "hybrid meeting" - that still allowed shareholders to attend in person - and on **Broadridge Financial Solutions'** own meeting - which was "virtual only" - both of which used Broadridge technology to allow on-line real-time voting while the meeting was in progress.

Since then, two other companies - **Connexant Systems** and **Warner Music Group** have used the Broadridge platform for V-Ms and at least four other companies will go virtual-only later this season - **Artio Global Investors, Illumina, PICO Holdings** and **Winland Electronics**.

Several other companies - such as **Best Buy, American Water Works** and **Charles Schwab** have announced that they will host "hybrid meetings" this season, with real-time voting. Also worth noting, **Wells Fargo Shareowner Services** has launched the first virtual-meeting/live-voting platform to compete with the Broadridge offering. Street-name holders will have to get a Legal Proxy from Broadridge, however, and send it to Wells Fargo in advance, in order to vote online.

**But in the meantime, Walden Asset Management told both Intel and Broadridge that they would face shareholder proposals to prohibit "virtual only" meetings - based on the fear that while neither of *them* would abuse the virtual-only format to stifle investor participation, other companies might well do so.**

**The good news, however, is that Walden's Tim Smith does realize that V-Ms can be a big plus for companies - and for investors too - under the right circumstances:**

As Intel's **Cary Klaffer** pointed out, far more people attended last year's meeting virtually than attended in person...and more votes were cast too than there would have been without the real-time voting feature. And as we have been pointing out, a huge and rapidly increasing number of annual meeting have "virtually no one" - and often literally no one - other than management people, lawyers and Inspectors - present in person. So what a huge waste of time and money to rent a hall!

### NEW "INVESTOR FORUM" TO OFFER "BEST PRACTICE GUIDELINES"

In response to the above developments, and with the encouragement of Walden Asset Management, and support from Broadridge and Intel, an **Investor Forum** has been launched by Forum inventor and moderator, **Gary Lutin, of Lutin & Company** to gather expert info and report on "exemplary meetings", propose standards for consideration, discuss them in an "open forum" - over the web, and likely in in-person meetings too - and, ideally, achieve a consensus as to best practices under various meeting scenarios. So... stay tuned for more...

### THESE MAY BE OUR TOP-TIPS EVER ON HOW TO GUARANTEE A MORE "CIVIL" ANNUAL MEETING

Last year, we attended the meeting of a long-term client where we were shocked! Shocked!...to see more women wearing hats and gloves - and more men *carrying* hats - than we have seen in one place since the 1950s.

There was, as usual for the company, a large contingent of shareholder proponents, and good-sized delegations from several unions - which, in our long experience, often translates to a meeting that is over-long and somewhat raucous. But it turned out to be the best and most civil meeting that anyone could remember.

Early this year, we attended the Whole Foods meeting - which we were expecting to be extremely long - and potentially raucous - in light of the number and nature of shareholder proposals and especially in light of the "Investor Risk Alert" flyer we found under our door the morning of the meeting, accusing the company of being "Bad for the Planet." But this meeting too - where, much to our surprise, people were being admitted basically with a welcome and a wave of a hand - turned out to be a total love feast, with standing-Os for the management team and for the hard-working employees too.

**So what are the top tips for having shareholder meetings like these?**

*continued on page 8*

**Civil Annual Meeting Tips....** *continued from page 7*

**First, pick a nice city to have the meeting in;** one where “civility” is part of the local culture and ideally one where you have a nice census of employees and retirees. (The two above were in Lexington, KY – which explained all those hats – and Vancouver, Canada. Other really nice meetings we’ve been to lately have been in Bentonville, AR, for Wal-Mart – Omaha, NB, for Berkshire Hathaway – Princeton, NJ – and St. Louis, MO...And people...don’t rule out NYC these days either!)

**Pick a nice venue, where people will be happy to be there and inclined to be on their very best behavior:** Nice hotels are excellent venues in these respects, as we’ve advised frequently – with experienced security-staff and with most having strict policies for dealing with picketers, should any show up.

**Fill the hall with basically friendly people, who will help to “set the tone”** in a positive way: It’s easy to identify local employees, retirees and other local shareowners, to send them personalized invitations, and to extend a special welcome to them...And having them in attendance often sets and even better and stronger and more supportive tone when times are tough, in our experience, than when times are great.

**To be sure of setting a “welcoming tone” give attendees something to eat and drink:** A related suggestion, and one we’ve published before; have company employees – including senior managers and directors circulating, with name tags, as hosts...Aside from setting a very good tone, many folks with a gripe are happier to air it over coffee...or at the least, will give you a heads-up, and time to prepare a good response.

**Be sure, of course, to be just as courteous to shareholder proponents, and to union delegates, and to any other individuals or groups that may want to have “air time” at your meeting as you are to the “friendlies”:** This, in our long experience, is a *major de-fuser* of potentially explosive situations. **But have very firm guidelines in place as to the amount of time allotted to each speaker** – and maybe to each discussion item – and take pains to explain that these guidelines are not just to be fair, but are good for all concerned, since time is a very precious commodity these days.

**Be scrupulous in enforcing your own guidelines – and be scrupulously fair:** both to the “friendlies” in your audience and to declared or potential adversaries, in terms of the sequencing of questions and the times allotted.

## **OMG! THE FASTEST WAY TO VOTE PROXIES IN 2010 TURNS OUT TO BE SNAIL-MAIL!**

**This year we are paying much closer attention to the proxy packages we receive than we ever did before. And we know we’re far from alone here, although how carefully most other *individual investors* will attend to these matters – and perhaps reverse the steady increases in voter apathy we’ve been witnessing over the fast 10 years still remains to be seen. (We’re going to go out on a limb here, and predict that this year there will BE an uptick in individual investor voting...But it ain’t gonna go the corporate way - ‘like it used to was’ - we’ll also predict.)**

**In any event, this year WE very firmly resolved to do a much better job of reviewing the director candidates – and all the proxy issues that are up for a vote – and to take our own advice: To set aside some “quality time” and to vote our proxies faithfully, and in a timely and systematic fashion.**

**So on the 28th of March, we tore the shrink wrap off the packages we’d received over the prior few days and set to work. Here’s what we found in the first five Voting Instruction Forms we looked at:**

**AT&T had 17 items;** 11 director candidates – three of whom we felt were very poor choices – plus one management and 4 shareholder proposals – where voting all FOR – or all AGAINST would not work out for us, however convenient

**BP had 25 proposals;** 16 directors, 8 management proposals and 1 shareholder proposal...but oops...no “All in favor” for us here either.

**BofA had 24 proposals;** 13 directors, all of whom we’d give a free pass after all the vetting that went on, but 4 management and 7 shareholder proposals, where an across the board vote for the management positions would not square with our judgment.

**Citigroup had 25 proposals;** 13 directors, 6 management and 6 shareholder proposals, where a straight management vote was NG with us either.

**IBM had 19 items to vote on;** 14 directors – one of whom we thought was a total clunker – which spoiled our one chance to “vote with management” across the board.

*continued on page 9*

**OMG!.....** *continued from page 8*

After we dutifully checked all the boxes, so we could keep all our choices straight, we started to pick up the phone, for our “usual” way of voting.

*But wait! This was going to take a VERY long time! Maybe we should try Internet voting, we thought. But shoot! By the time we Googled up the voting site – and navigated between five company-oriented sub-sites – and typed in our various control numbers – then tried to check a mind-boggling total of 110 “boxes” – followed by a check of our own box checking – we figured we’d be out of pocket for at least 45 minutes...on top of the nearly two hours we’d spent studying proxy statements.*

How liberating – but also how weird it was – to realize that shoving all five forms into one envelope, where we were able to scavenge one un-torn one from the waste bin – was the fastest and safest way to cast our votes as we wished, by far!

## ELSEWHERE ON THE SUPPLIER SCENE:

**Bowne & Co.** – which, at the age of 230+ is one of America’s oldest companies – is being acquired by its bigger rival, **R.R. Donnelley & Sons Company** – a relative newcomer to the printing stage, but still a respectable 143 years old – for approximately \$481 million in cash. The deal is set to close in the second-half. We hate to see these formerly top-notch rivals consolidate - which will greatly diminish the once keen competition for quality and innovation in a field we love...and where the dealin’s far from done there too. But we must also note the fact that both of them, in our opinion, contributed to their demise as independent players, by failing to adequately defend their own core product: the printed page. To wit, just as the Bowne deal was being announced, five big publishers – Advanced Publications (Condé Nast), **Hearst**, **Meredith**, **Time, Inc.** and **Wenner Media** (Rolling Stone & US Weekly) announced a \$90 million print-ad campaign to illustrate “**The Power of Print**” – with over 1,400 pages of ads, created by **Young & Rubicam**, to be salted prominently into the pages of leading magazines. *“We surf the Internet. We swim in magazines.” reminds the first such ad...Great, and very much needed advice to corporate issuers we say... IF that is, they really want investors to read and reflect on - and ACT on their corporate “stuff.”*

**Risk Metrics**, the company that provides a wide variety of proxy voting services - including those “governance scores” and advice on how to vote, as well as various “models” a company can buy to see if their own proposed proposals will pass muster - is set to be acquired in mid-year by **MSCI Inc.**, “a global provider of investment decision support tools.” There has been much speculation in the press about whether the Risk Metrics **ISS** unit will be treated simply as a cash cow, or maybe sold to another company with a stronger appetite for being disliked by the corporate community – especially in light of recent calls to make the governance-rating business a formally regulated business. Since the ISS ratings are statistically proven to be ineffective as “investment decision support tools” – and since all the money that can be made is basically made by kicking up controversy – we’re betting on option two...but time will tell. That part of the business is not gonna’ wither and die, for sure. In fact, it has fueled a huge and still fast-growing industry. And, much as some folks are wont to complain about ISS, it’s made their jobs a lot more important than before.

**A new governance resource group has just been formed in Switzerland; the Corporate Secretaries International Association (CSIA)**, reportedly with support from chartered secretaries worldwide, along with the U.S. based **Society of Corporate Secretaries and Governance Professionals**, with **Phillip Baldwin** as president-designate. They’ve issued a research report, “20 Ways to Fix Governance,” authored by Prof. **Robert I. “Bob” Tricker**. Among the other founders mentioned in the press release are **Sir Adrian Cadbury** of the Cadbury Committee, blogger **James McRitchie** of the Corporate Governance Network, Harvard B-School’s **Jay Lorsch**, and an assortment of other academics and folks who seem to be mostly-self-designated governance experts.

**At the NYSE...**in a bid to regain its rapidly eroding market share in trades of its own listed companies – which fell from 70% in 2007 to 37% in August of ’09 – high-speed trader” **Getco LLC** (a woefully undercapitalized firm we think, relative to the super-large/super-fast trades it does) is now a “designated market maker” there. More super-fast trading capabilities are scheduled to come on line later this year. And, in an all-time low for them, we think, the once-coveted ringing-of-the-opening-bell ceremony on Feb. 18th was handled by...**a dog...**Scottish Terrier **Sadie**, “best in show” at the Westminster KC.

## OUT OF OUR IN-BOX

We've been watching our in-box with special care this Spring – to see just what companies are doing, if anything, to reverse the major decline in proxy voting by individual shareholders that we have been witnessing, even before N&A kicked in...

- **So far, the first prize goes to Prudential Financial**, for telling registered shareholders, via a post-card, that if they vote their proxies they will either get a tree planted as a thank-you or an environmentally friendly tote bag; their choice. "Everyone loves free stuff" said Pru's Corporate Secretary and Governance Officer, **Peggy Foran**...and so far, "although it's still in the early going," she said when we spoke at the quarter's end, "we are seeing a 40% increase in the voting rate"...And so far, trees are in the lead over totes.

- **BP sent an attention-getting letter asking "Is this the best way to reach you?"** *This is your opportunity to tell us your preference for how to receive company information in the future and, in doing so, help us to reduce our environmental impact.* We liked this fresh and person-to-person kind of approach a lot – and especially their understanding comments about some people still wanting paper copies...But oops...the letter we got said "Just tell us your preference by checking off the box on the front of the proxy card"...but we did not get one: As street name holders, we got a VIF instead...and it had no such box...But no worries in our household, our broker still has us down for all paper.

- **Dominion Resources** had a very eye-catching blue and green abstract image of trees and a computer screen on the envelope that carried its Notice of Internet Availability and a message – in green – **GO GREEN...GO ONLINE TO VIEW PROXY MATERIALS AND VOTE YOUR SHARES** (which, we must confess, we've had no time to do so far, mainly because we have "no issues" with Dominion's stewardship of our investment, to date).

- **GE's V.P. for Corporate Investor Communications** enclosed a one-page letter with our paper materials – sending something of a mixed message we thought, in that he began by urging us to "review these materials carefully and use them to participate in this year's voting"... then went on to tout the "many benefits to (sic) receiving your GE information online"...and closed with a thank you for "voting your enclosed proxy promptly."

- **Wells Fargo Shareowner Services** got our attention with a very short and simple, statement on the envelope, in very large bold type, saying, **Vote. You make a difference.**

**The dumbest and least effective insert we got, was a**

**5½" x 8" yellow flyer saying >>>PROXY VOTING ALERT!** – warning that "Your broker can no longer vote on the election of directors on your behalf"... and concluding with the unattributed ejaculation that "Regardless of how many shares you own, your vote is very important!"...which prompted us to ask ourselves; "Who says so? And WHY?" But what made this so stupid - to our own tiny brain at least - when last we looked at the big survey of investors the NYSE took a while back, only the teensiest tiniest minority of people thought that brokers were voting their shares on anything...much less being in need, we'd say, of a written "warning" when the situation changed, as it's done since then.

**Back to Pru, if you please, for an important closing comment on proxy voting issues in general and on how to "get out the vote":** Their proxy statement this year is a "must read" we say- an excellent example of what can happen if one stops slavishly following the disclosure rules "in sequence" and puts the disclosures into a more logical and more engaging and more understandable narrative sequence. This is something we've been pounding the tables for - for over five years now - and something a new SEC task force on "Core Disclosure Issues" has promised to address later this year. And, as usual, Pru's Peggy Foran is way ahead of the curve. The layout, typography and "visual aids" also help to make it easier to understand and to skim effectively. But when we went to look closely – on the web – we realized at once that it is virtually impossible, even with 20/20 vision, to carefully study such a document from the average computer screen. **Foran and we are in agreement, as usual; "if you really want people to read your materials – and to convince them – and, as the statistics clearly show – to cast their VOTES – push the paper to them."** You will **STILL** save a ton of money using N&A for the folks who haven't voted faithfully, or whose votes are too small to matter.

**Another very important item hit our in-box, thanks to Jeff Morgan of NIRI and his useful weekly update: a heads-up on [www.defendmydividend.org](http://www.defendmydividend.org)** – asking congress, and providing an easy way to send a note and sign a petition to one's congressman asking them to NOT raise taxes on dividends, which is a real threat these days. The website – which is currently sponsored by 31 gas and electric utilities, plus 8 state-based utility shareowner organizations, plus the AGA & EEI trade associations – points out that an eye-opening 65% of households receiving dividends had income below \$100,000 last year. We urge our many readers who still value their individual investors to join this group – and to help get out the word, before it is too late. Your investors will thank you.

## PEOPLE:

**Computershare Limited** has recruited **Mark Hartzell** – a very good and well thought of guy, our sources tell us – formerly the head of global sales and client management in the clearance and collateral management division of **J.P. Morgan Chase**, to be Executive VP of Sales and Marketing for all its U.S. equity services businesses; share registry, employee compensation plans and the **Georgeson** proxy business.

**Tom Kies**, the peripatetic dynamo who in two short years as a co-founder and partner helped to bring **Laurel Hill Advisory Group** from a standing start to a proxy advisory and solicitation powerhouse – currently sporting 125 clients, including a whopping 15% of the **Fortune-500** – has signed on as Executive VP of Strategic Planning for **American Stock Transfer & Trust Company**, where he will “primarily be focused on product enhancements and strategic acquisitions in the shareholder communications, proxy, corporate governance, corporate actions and asset reunification industries,” according to AST’s March 23rd press release. Prior to his stint at Laurel Hill, Kies was an EVP at **Georgeson**, and, for you history buffs, still further back in his 28+ years in the proxy business, he was a co-founder (along with your editor, and **Larry Denedy**, now at **MacKenzie Partners**) of the proxy solicitation, shareholder ID and stock-watch businesses at the old **Manufacturers Hanover Trust Co...** which, after many twists and turns, morphed and shruggled-down into the current proxy business at **BNY-Mellon**.

**Susan Merrill**, who’d headed up **FINRA** for the last three years, following the merger of the **NYSE & NASD** enforcement agencies into **FINRA**, and who was widely criticized for the falloff in enforcement actions during her tenure, is leaving the post, with no successor named as we went to press. In 2009, 1158 cases were filed – up from 1,073 in ’08 but way down from the 1,399 cases brought in 2005, before she came on the scene. And, aside from having totally missed the Madoff scam – and assorted other Ponzi schemes – and the problems that caused the 2008 market meltdown as well – most of the cases that were brought, observers said, were against small players.

Fines totaled \$40 million in ’08 and \$50 million in ’09 vs. the \$148.5 million that were levied in 2005.

**Ron Schneider**, formerly the go-to person at **BNY-Mellon**’s proxy solicitation business – and a top-notch proxy fight advisor to boot – moved to **Laurel Hill Advisory Group** in early March as V.P. - Governance.

**John Siemann**, another co-founder and partner at **Laurel Hill**, who formerly focused primarily on “advice and execution” has stepped up to the plate as the chief salesman there, which is probably no big change for him in terms of total workload, since he, like Kies, had been on the road a lot too.

Three of **BNY-Mellon**’s most senior relationship managers were “rified” this quarter; Texas-based **Barbara Robbins**, who managed their Texas, Chicago and St. Louis regional offices and **John Sievertsen** and **Ed Timmons**, who were the senior R-Ms for many of their biggest and best-known East Coast clients, in a move, we were told, to “better align the skill-sets of the RMs” to **BNY-Mellon**’s new vision of what Relationship Managers should be doing. In an industry where the Optimizer has been commenting regularly on a “brain-drain” as so many veterans retire, and/or get rified, we predict that all three of these folks will surface at other TAs within the next 90 days. And we would not be at all surprised to see consequences that are in line with what happened at Mellon, not so long ago, when they made a similar move in the Pacific Northwest.

## WATCHING THE WEB:

We were planning to do a critical review in this issue of some of the “governance oriented” websites that have been springing up like flies on a pie.

We were also planning to do a critical review of those “proxy voting tutorials” – on the SEC and Broadridge websites (not bad, but not really great either, and all way too long).

But space constraints - and a fear of taxing the patience of readers who are way over-busy just now justify a postponement. For now – just in case you MAY have spare time – here are a few URLs to try:

[www.moxievote.com](http://www.moxievote.com)  
[www.shareowners.org](http://www.shareowners.org)  
[www.irwebreport.com](http://www.irwebreport.com)

[www.proxydemocracy.org](http://www.proxydemocracy.org)  
[www.us.proxyexchange.org](http://www.us.proxyexchange.org)

And new from **The Conference Board**, something with a “corporate flavor” <http://tcbblogs.org/governance>

## REGULATORY NOTES...and comment

### ON THE HILL...

**Sen. Dodd's revised bill, the "Restoring American Financial Stability Act of 2010" seems to be headed, slowly, toward a version that will pass in both houses,** along much the same lines as earlier, but with considerable softening on proxy access – allowing rather than mandating the SEC to permit it.

**The "Financial Crisis Inquiry Commission" – that is supposed to issue a report by Dec. that will identify all the big issues that led to the financial industry meltdown so we can learn from our mistakes** is way behind schedule; reportedly understaffed, under-budgeted for the task and (Surprise!) rife with political infighting. Aside from some embarrassing moments for the bigwigs they've started to grill, don't expect much here, we're sorry to say.

### AT THE SEC...

**Climate Change Disclosure Guidance, issued on 2/2,** which "does not create new legal requirements or modify existing ones" the release pointedly noted, is the "big news" this Q. - and it caused quite a flap with Republicans on the hill: 21 Reps – climate-change deniers all, it appears – sent a scathing letter to Chairman **Schapiro**, demanding answers.

**In another politically charged action, the Commission voted 3-2 to require a curb on short selling on stocks that fall by 10% or more:** additional short sales would have to take place at a price that is higher than any price quoted nationally, for that day and the next. Too "rooted in conjecture" Commissioner **Troy Paredes** opined; "regulation by placebo" said the other Commissioner, **Kathleen Casey**. But neither Commissioner proposed any alternatives that we could discover for a "pill" that would work to curb the unbridled short selling that Wall Street Execs themselves said contributed to the financial meltdown, and to the demise of firms like **Bear Stearns, Lehman Bros.,** and the near demise of **Morgan Stanley**.

**Yet another slap in the face to the SEC – this time from regulatory hawks, and from U.S. District Judge William Pauley III, NY** – as they tried to ease the strict curbs placed in the 2003 "Wall Street Settlement" on communications between analysts and investment bankers in the same firm.

**And two more slaps in the face** – one from SEC Inspector General **H. David Kotz**, whose report on the **Allied Capital** investigation indicated that staff never visited there at all, despite the fact that it is a mere two blocks away – and **another from Republican Senator Charles Grassley**, who noted, re the report, "The revolving door is turning at the SEC, and the problems we've seen before with former senior SEC

employees influencing enforcement decisions has been highlighted in this report."

**Second-request letters from attorneys for GE, IBM and Exxon Mobil - asking the SEC to reverse their earlier rulings and grant No Action letters if the companies failed to include Say On Pay proposals,** using wording that "materially misstates the nature and effect of the Proposal", according to **Gibson Dunn's** elaborately belabored parsing of the language - were summarily rejected in February.

**On a somewhat lighter note, the SEC sued a psychic, Sean David Morgan, "America's Prophet" and his wife for \$6 million...for promising "piles of money" through unregistered vehicles like his Magic Eight Ball company.**

### IN THE COURTHOUSE...

**A Texas court ruled, on 3/10, that Apache Corporation could exclude a shareholder proposal from gadfly John Chevedden,** for failing to show adequate proof of his ownership in a timely fashion, but leaving the question of exactly what he was required to submit somewhat open. But issuers; you'll know it when you see it, we advise, and what he did submit was clearly not IT.

**In a fascinating and important case in Delaware – Kurtz v. Holbrook., C.A. No. 5019-VCL – the Court of Chancery ruled that the consent votes that were bought by insurgent group, to take control of EMAK Worldwide, were indeed valid, because the buyers assumed all the risks of ownership.** In an interesting twist, the court also invalidated a second consent solicitation that had been launched by a large shareholder to change the bylaws to reduce the size of the board, and effectively moot the ability of the insurgents to elect new directors. The court also reversed the decision of the Inspector of Election to throw out approximately 1 million shares in favor of the insurgents, on the grounds that there was no "universal proxy" present, making it clear that banks and brokers that appear on the DTC participant listing are indeed "holders of record." Required reading for wannabe Inspectors, we'd say...But the fascinating discussion missed the point a bit on exactly WHAT made the Inspector throw out those million shares initially: the "universal proxy" (i.e. the DTCC participant list that specifically assigns Cede's voting rights to the downstream owners) was not presented to the Inspector by the company – which was not soliciting votes against the insurgent consents, or by the insurgent group itself. Unlike the ruling here, basically in favor of "enfranchisement" some judges and some jurisdictions have ruled more in line with the "letter of the law" on such matters, however...So make sure that all the paperwork is in hand, we advise – even when there is NOT a previously threatened challenge.