THE SHAREHOLDER SERVICE

OPTIMIZER

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

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OUR LAST-DITCH EFFORT TO PREVENT THE FEDERALIZATION OF SHAREHOLDER MEETINGS: WE ALSO URGE THE SEC TO URGENTLY FIX THE SCANDALOUS DEFECTS IN OUR OLD AND BADLY BROKEN "PROXY PLUMBING" SYSTEMS BEFORE FORGING AHEAD... AND TELL THEM HOW TO DO IT

Impressed, we hope, by the many good comment letters on "Proxy Access" the SEC received on the rules they proposed in June 2009 – and properly fearful, we hope, about the huge mess they could potentially make here - the SEC reopened its comment period in mid December for a 30 day period.

Since expanded proxy access seems a sure thing, several of our colleagues asked us to address the most potentially disruptive features of the proposed rules, and offer comments on how to deal with the major defects in the current system. These defects will be more important then ever to fix as proxy fights expand – four to five-fold, we predict. Here's a slightly abbreviated version of our letter:

Dear ladies and gentlemen at the SEC;

I wish to offer a few comments on the subject of your most recent release on FACILITATING SHAREHOLDER DIRECTOR NOMINATIONS - from a very *practical* and a very *practice-oriented* perspective; that of someone who has served as the Inspector of Election at well over 400 annual and special shareholder meetings, and at well over 50 shareholder meetings where non-management shareholders had nominated director candidates of their own.

I should begin by saying that as I have written to you before, I am in favor of the ability of non-management-affiliated shareholders to nominate director candidates – and to use the company proxy and the company's proxy machinery to do so – strictly as a matter of principle.

Clearly, if shareowners are allowed to use the proxy card and proxy materials to force a vote on as many mostly immaterial issues as they have been doing for decades now, they should, of course, be allowed access to the company proxy in order to facilitate the very serious matter of nominating director candidates.

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Let me start by pointing out, however – as I and several other writers on this subject have pointed out in earlier comment letters – that most truly serious nominators of director candidates will surely produce their own proxy materials, and take control of their own "electioneering" with materials and proxy cards of their own, if they want to stand a reasonable chance to win.

That said; let me add that in roughly half of the 50 or so election contests I've been involved in over the past few years, the proponents of short-slates did NOT make a full-blown solicitation of the entire shareholder population, because of the very high costs involved in doing so.

Very important to note however, the overwhelming majority of these 50-odd contests were driven by factors that most disinterested observers would say were really about the conduct of the ordinary business of the company, or, even more commonly, were motivated by "personal grievances" or "personal pique" concerning one or more of the management candidates, rather than by serious strategic or investment issues.

Thus, as you draft your final rules, and work with the Congress on rules that some in the Congress are looking to put in place with new legislation, you need to be keenly aware, I believe, that…

(a) the number of such "proxy contests" will increase dramatically if Direct Access to the nominating machinery is implemented, as now seems likely (my own prediction is for a four or five-fold increase, which would translate to 200 – 250 proxy fights a year to seat one or more shareholder nominated directors vs. the current 50 or so per year) and

(b) that the vast majority of the new contests will occur at *small companies:* At large, high-profile companies, most "serious activists" will surely run their own slates on their own proxy cards…and will run "short slates" of alternative candidates only where they believe there are truly serious "issues"…although, for sure, a few "opportunists" and "professional noisemakers" will take advantage of the low-cost route you will be opening up to simply "make noise"…and maybe run up the stock price temporarily, as usually happens when a proxy contest is announced.

While all of these new proxy fights will be great fun for the proponents, and for the law firms, proxy solicitors, advisors, tabulators and other providers – including myself – that the target companies will have to hire, it is very important to note how expensive such fights usually prove to be for the companies that are targeted – and what a major "strategic distraction" they prove to be for them when it comes to managing the company's ordinary business at the same time.

Accordingly, and as I have written to you before, I think it is *imperative* to have "reasonably-high ownership thresholds" before allowing dissidents to nominate director candidates of their own: In my own long-considered opinion, I think that 10% ownership – whether by an individual or by a "group" should be the absolute minimum level. Based on my many experiences as the Inspector of Election in proxy contests, I can attest that a 10% ownership stake is at the *very low end* of what a sensible proponent would want to have in hand before launching a proxy contest, unless their only objective is to "make noise" – and maybe attract potential bidders for the company as a whole. (*See our comments on the SEC website for more on this.)*

Equally important for the SEC to address in its final rules, are the thresholds for resubmission of shareholder nominees: Given the costs, the distractions to the conduct of ordinary business – and the highly questionable benefits to long-term shareholders as a group that these campaigns typically produce – I feel strongly that any individual or group that nominates one or more directors under any new rules you promulgate should be prohibited from nominating one or more candidates for three full years following the election, unless the candidate(s) they nominate in year-one receive at least 25% of the vote in year-one and 35% in year-two.

There is another set of very practical concerns that I would like to bring to your attention. These revolve around the dangers of potentially making State laws – and State precedents totally moot – unless your final rules, and any enabling federal laws, are specifically crafted to make it clear that once there IS an election contest, existing State laws will continue to apply.

The current rules as to what is a valid proxy and what is not have evolved over 200+ years – in State model business codes, in the Articles of Incorporation and Bylaws of State-Chartered companies and in hundreds of decisions that have been handed down by State courts. *Numerous* variations exist among our 50 States as to exactly what constitutes a valid signature on a proxy, and what distinguishes a valid proxy from an invalid one – and as to what, exactly, the proper procedures should be if there are "gray areas" with respect to specific proxies, or to specific procedural aspects concerning the conduct of the meeting itself - as there so often are in proxy contests.

A very high percentage of proxy fights end up in court because (a) so often, the outcomes are extremely close and (b) almost always, there are arguably gray areas in terms of the way the rules of procedure at a meeting and the "rules of proxy" may be interpreted and applied. The last thing the SEC should want, in my opinion, is for the SEC to suddenly become the arbiter of such disputes, or to see Federal courts forced to reinvent the wheel where the "rules of proxy" are concerned, or to decide which of the many State court precedents should decide the out-

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comes of specific cases.

One last comment on the importance of a State-Regulated system before I move on to some additional areas that must urgently be improved upon before more proxy contests are unleashed upon us – concerning "private ordering" and the calls by some observers for companies to be able to "opt out" of Direct Access:

I believe that any SEC action should simply (a) establish that shareowners, as *owners*, DO have a basic right to nominate directors and (b) establish some reasonable ownership levels in order to initiate such actions, to prevent too-small groups from wasting the valuable time and money of shareholders at large.

Ironically, it has been the SEC's own rule that has been preventing holders from exercising this right, and this rule should indeed be repealed.

But, as many other writers have pointed out, it flies in the face of logic to pass a new rule – especially under the guise of improving "shareholder democracy" – that does not allow the share owners themselves to democratically place reasonable limits of their own choosing on the thresholds for access to the company's proxy machinery. Here, it seems crystal clear that a 5% minimum threshold is at the *very low end*…and that 25% is probably at the very high end of what would actually "fly" with reasonable voters, should experience prove that a 10% ownership threshold was too low or two high at a particular company…in the view of a majority of the share owners.

Now for some comments on some of the major deficiencies that exist with the proxy system itself, and which *absolutely must be fixed* before activist investors are allowed to so greatly ratchet up the number of proxy contests we will undoubtedly see, following any efforts to facilitate easier and essentially cost-free "proxy access" for minority shareholders:

First and foremost, the current system for issuing proxies – a system that currently allows both the borrower and the lender of a security to cast a vote when there should be only one vote per share, and which, as the CSX proxy fight demonstrated in 2008, allows activists, arbitrageurs and speculators to cast "extra votes" via derivatives and other "synthetic securities" – is an unconscionable scandal – and one that makes a mockery of the idea of "shareholder democracy".

Whenever there are close election contests, and especially when there are high voter turnouts, as is typically the case in proxy contests, there are instances of "over-voting". And, although the number of over-votes has *appeared* to decline in recent years, this is largely because a duplicate vote or over-vote is not visible to anyone under the current system - unless the vote of an individual bank or broker, casting votes both for themselves and for their clients, goes over 100%.

In formal proxy contests, the slight decline in the number of duplicate or over-votes I have witnessed as an Inspector of Election over the past year or two is largely because banks, brokers and tabulators are "making adjustments" in their back offices when their votes go over 100%. These adjustments are often totally arbitrary; they are not subject to any outside review, and they are often dead wrong. (Typically, for example, it is the *last vote* – which "created" the over-vote – that gets thrown out by these self-appointed and self-governed arbiters, which is exactly the *opposite* of what should happen.)

I believe, however, that there is a relatively simple solution to this problem:

If securities are lent out in order to settle.....*(see our complete comments on the SEC's website for the details)*

A bit of extra bookkeeping, yes…and maybe the need for a mini-system to keep tabs on shares lent and borrowed, but a very small price to pay to restore integrity to the proxy voting system.

There is a second and much needed "fix" to the proxy system that must be made; the very clear need for shareholder education, both about the value of their votes and about the mechanics of casting a vote: The SEC has been promising to address this issue since 2006, when a NYSE committee was formed to address this issue, along with the "proxy plumbing" issues. But so far, there has been no action at all - other than the appointment of new *committees* in 2009, to study these problems yet again.

Indeed, the SEC's own actions – to *prohibit* the inclusion of educational materials with the Notice that is sent to shareholders under the "Notice & Access" system – has contributed to the shockingly large decline in voting by ordinary investors that we have seen since N&A was first introduced. To unleash a barrage of election contests when ordinary investors are so ill informed would also be unconscionable in my opinion.

This leads to a third and very disturbing development that needs immediate SEC attention: There is an urgent need for a concerted effort to understand and address the huge decline in voting by *ordinary investors* – at the very time when we are about to give *activist investors* a powerful new weapon with which to wage proxy contests.

My own almost daily observations of proxy voting tell me that, yes, the lack of shareowner education is part of the problem. And yes, the Notice & Access system has contributed to the problem in at least two respects; (1) the absence of a clear

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"roadmap" as to what comes next and what to do with the Notice in hand and (2) the fact that N&A is based on a "pull model" – where the recipient must take the time and trouble to go to yet another place to take action – vs. the pre-N&A "push model" where the materials needed for recipients to take action are automatically "pushed" to them, which, as one should be easily able to understand, always increases response rates vs. pull-models.

But there are two, much larger problems behind the falloff in shareholder voting:

The first problem, and one the SEC needs to address with the most urgency in my opinion, is the extent to which ordinary voters have become overwhelmed by, and turned-off by the literal explosion of proxy disclosures over the past few years: As a consequence, ordinary investors have difficulty even *finding*, much less understanding, the information they need to have to make an informed voting decision.

Yes, shareholder education will help here, but what is really needed is a major paring-down and re-ordering of the "proxy package" itself. What is most needed, if the goal is to improve shareholder understanding, and shareholder action, is a much shorter, up-front presentation of the information that would allow most shareholders to make a voting decision, most of the time, without having to wade through 200 pages of text, charts and footnotes, which, of course, should always be *available* to shareholders who feel that more information, and more investigation may be warranted before they cast a vote.

The second problem, related to the prior one – and one the SEC must recognize, I believe, as it reflects on the information that average investors need to make voting decisions – is that all the evidence of late seems to reinforce the idea that the "agency theory" of corporate governance works just fine for most ordinary share owners – most of the time. As long as they are reasonably happy to BE shareholders, most investors seem to be perfectly willing to let the company management, and the company's board of directors, make most of the governance decisions.

Clearly, ordinary shareowners have been literally "voting with their feet" – by walking away from prior habits of voting their proxies…in droves. This is not to imply that good corporate governance is not important to average investors, but it does indicate that *most of the time*, the governance issues that are so important to activist investors fail to resonate with ordinary shareowners…And frankly, there is a very real danger that truly important issues will be ignored due to the current information overkill.

In any event, I firmly believe that if the SEC develops and OKs a greatly condensed model of the essential information that most investors need to cast a vote on most proxy issues…most of the time…and allows issuers to include it with the Notice, shareholder voting will indeed rebound to and may well *exceed* long-term historical levels.

There is one last practice-oriented area I believe the SEC needs to address, and that is the need for a completely fresh look at, and, almost certainly, a totally fresh approach to the so called NOBOs and OBOs: The need here has become *much more urgent* as the number of proxy contests continues to increase – and especially since the number of individual investors who vote their proxies continues to fall.

Astoundingly, this system has not been looked at critically since it was first put in place in 1986 – following passage of the Shareholder Communications Act of 1985.

And ironically (and exactly what has happened with the SEC's N&A rules, that were also designed with the goal of making it easier and less expensive to communicate more effectively with shareholders) the system that the SEC approved in 1986 had the effect of greatly *reducing* corporate communications with shareowners. Almost immediately after the NOBO/OBO rules went into effect, public companies began to eliminate the long-standing practice of sending quarterly and semi-annual reports to shareholders, for example, because of the increased costs of communicating with them.

I believe that a totally new and much clearer definition is needed as to exactly WHO is "objecting"…and exactly what they are objecting to under the NOBO/OBO "system":

I am not at all sure that *anyone* knows the answer to these questions anymore - or that the need to *be* an OBO, that banks, brokers and some investors too articulated way back in 1985, when these designations were devised - is relevant anymore. But clearly, as we stand poised to dramatically ramp up the number of proxy contests that shareowners will be confronted with, and asked to vote on, the need to have robust and more transparent systems for communicating with shareholders will be more important than ever.

It also seems clear to me that with the enormous advances that have been made in ways to communicate with investors since 1986 - and in the *costs* of communicating, thanks to the Internet - there are potentially enormous improvements that can be made here, both in terms of allowing investors to self-select the kinds of communications they *want* to have – and in terms of the overall cost structure.

I believe that more than ever before, investors will *welcome* well-crafted and well-targeted messages from the companies they have invested in. I also believe that public companies will

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be smart enough to respect the wishes of their shareowners with respect to the *kinds* of communications they want to have *and* to properly guard the privacy of their own share owners. I also believe that thanks to the many technological advances that have been made since 1986, there are many safe and sound ways to satisfy the "privacy issues" that proponents of "OBO status" made back then.

When I last wrote to you about these subjects – in the context of repealing the NYSE Rule that allowed brokers to cast votes for directors in the absence of specific shareowner instructions, I took issue with the assertions of so many of my colleagues that all the problems of the "proxy plumbing system" needed to be addressed all of a piece before any rule-changes were made. I felt then, that if we were to wait until all the problems were solved, we would never solve any of them.

But the adoption of a new Proxy Access rule will change the entire landscape in a very dramatic way: Giving minority shareholders such broad new powers – at a time when ordinary investors seem so ignorant about the proxy system, so unconvinced as to the value of their vote, and maybe convinced that the system is "rigged" anyway - and where there is evidence that *they are right about this* to some degree – is simply untenable.

If the Commission acts in the first quarter of 2010 to grant minority shareowners direct access to the proxy system for the purpose of nominating directors, as it seems ready to do, there is ample time, I feel certain, to correct all the technical, procedural and educational deficiencies that currently exist where "proxy plumbing issues" are concerned *before* direct access takes effect…as long as the Commission resolves to tackle these issues immediately, and with vigor.

As always, if there are any questions I might answer, of if there are any ways I might be of assistance in helping to improve the shareholder communications system, and the proxy voting process in general, please do not hesitate to contact me.

Sincerely, Carl T. Hagberg, Chairman & CEO,
Carl T. Hagberg and Associates

"THE NOUGHTIES"

As Y2k09 came to an end, it was quite an unpleasant shock for boosters of long-term investing like us to realize that for most individual investors – especially those who faithfully followed a "buy and hold" approach – the entire decade of the 2000s came to naught…and to NOUGHT - to a big fat *zero*.

As a January 2 *New York Time*s article pointed out, "If you invested $100,000 in the Vanguard index fund that tracks the Standard & Poor's 500" [and invested all the income] "you would have ended up with $89,072 by mid-December of 2009." Worse yet, adjusted for inflation - where ordinarily we think of stocks as a "hedge" - you're left with only $69,114, the article pointed out.

AND "THE NAUGHTYS"

…Worse yet, as we look back, the 2000s can also be quite appropriately thought of as the decade of "The Naughtys" – where clearly, bad legislators (who somehow have managed to escape the consequences of the major part *they* played here), bad regulators and bad corporate managers led us to a major market meltdown, that served to erase the gains we might otherwise have been able to book…and created a credit-crisis that's still far from over, we think.

Adding insult to injury where ordinary investors are concerned, corporations have slashed their dividends at record-breaking rates. In 2009, U.S. companies reduced dividends by $58 billion a year. What a kick in the breadbasket for long-term investors THIS is! Adding even more insult to the injury we think, U.S. companies are sitting on more cash than they've held in 40 years: According to a November 2nd *WSJ* article, the 500 largest non-financial companies were sitting on $994 billion in cash and short-term investments, or 9.8% of their assets in the third quarter, up from $846 billion or 7.9% in 2008…and on-track to go higher yet by year-end. And adding even MORE insult to injury, this is after many of these same companies burned up TRILLIONS of shareowner money buying back stock at highly inflated pre-bust prices…using money that we say should have been mostly forked over directly to us, the "owners"…while other companies have burned up trillions more, making bad acquisitions.

The good news is that with any luck, this huge hoard of cash will help to set the stage for a big rebound in payouts to long-term share owners - and maybe for the return of confidence where "average investors" are concerned. But frankly, the jury is still out here. What a grand opportunity however, for companies that keep their priorities straight, to jump out ahead of the pack, and watch their stock prices soar in response.

OUT OF OUR IN-BOX

Wow! The article on "Vendors Holding Shareowner Records for Ransom" in our last issue drew more phone calls from readers than anything we've written in quite a long while: At least two calls came from suppliers whose main purpose seemed to be to sniff out whether or not they were on our list of "bad actors." (The *main malefactors*, who, as we said, "know who they are," were not among them, no surprise.) Two calls came from public companies, where callers reported on similar situations, and asked how to work around such deals. (We DO have free advice for readers, so call if you'd like it.) The largest number of calls came from vendors themselves, to say "Thanks so much…We have been prevented from competing too…on such and such kinds of programs…Glad this is coming to light."

Several callers protested that we might have "tarred every vendor with the same brush" – which we tried hard NOT to do…and, where we pointed out to them that this should be a huge opportunity for all the "good guys" (like them, presumably) to really stand out. One of our good buddies went to great lengths to expound in detail – and quite compellingly – on the many steps it sometimes takes a transfer agent to properly deal with outside finders, heirs, attorneys, states where properties may have been escheated earlier, surety companies, and to rummage through old records, which were often created by prior TAs… in the case of long-un-exchanged securities for example. And yes, he convinced us, as we *thought* we'd implied in the article, *sometimes*, added transfer agent fees are indeed warranted.

Several vendors also called to remind us that having "preferred providers" is often a great benefit – not just to vendors – but to their clients too – in terms of having faster, simpler and more streamlined service and thus, lower costs and lower fees…And yes, absolutely, if a vendor is "preferred" for *these reasons*, we'd agree wholeheartedly. We are fine with "revenue sharing arrangements" too, in situations where the mutual cooperation of two or more vendors produces better results for clients…BUT...going back to the main point of the article, clients need to KNOW about the existence of any revenue sharing deals, simply because they are the *client*, and, very often, revenue-sharing is a signal that there may be "excess profits" being divvied up. And if their main vendor wants to add big surcharges when clients try to shop around with other vendors, in search of a possible better deal, it should be a major red flag. Such vendors better be able to *justify* those surcharges, or clients should run for the hills.

A READER ASKS ABOUT DSPPs…and PLAN AGENTS: *"When you have a minute, I am curious to know which companies offer your favorite direct stock purchase plans and the reasons why. I recall that you are a participant of many plans on behalf of your grandchildren.*

"As a registered stockholder in various plans, and from a technology point of view and in terms of the levels of service you have experienced, do you have a favorite TA?"

We were delighted to know that there are still companies that care about DSPPs, since many companies with such plans seem to be treating them as orphans these days, and we were delighted to answer:

"As to DSPPS...here are the things that equate to an "outstanding Plan" with our family of investors...

(1) A company with a brand we love and trust...and that appears to treat stockholders, employees, suppliers and the public in general - well, and with respect.

(2) A generous yield, that seem fairly well-protected (When we go to make a decision, we'll look at 3 or 4 companies per industry - in categories like banks (very chancy these days, with too-low yields right now besides), electric utilities, telecom companies, pharmaceuticals, "other consumer brands" – like Disney, Kellogg, P&G et al And, for kids' portfolios, we avoid tobacco, guns, gambling and other industries that we think are inappropriate for kids... but which, for adults (think Altria & Philip Morris) are often among our very best investments.

(3) Fees...or rather, the *absence of fees*...or *very moderate fees* - are extremely important to us, both as first time-buyers AND as faithful reinvestors of dividends... So, other things being equal, we'll pick the companies with the lowest fees that pass our "screen tests". (For $15 bucks, we can "buy direct" from a discount broker, let's remember...and have control over the purchase price besides).

(4) A major deal-breaker for us; ANY fee to reinvest dividends (Our broker does this for free!)

As to my "favorite transfer agents/DSPP agents" - if I do have any, I would never tell for publication. (And truth to tell, most agents, even many of the better ones, have had some ups and downs along the way, and will probably continue to have them)...But I DO say...try their websites - almost all of which offer pretty decent ways to check on companies that have such plans, the fees, current yield (sometimes) AND that let you do the entire deal on the website. Some of these sites are really great. Others are so balky, they are a complete turnoff! (When this happens, as it sometimes does - even at the sites for companies at the top of our buy-list - we download a form and send a check).

Further on this subject, we asked our caller… *"Do you remember the DRP/DSPP Benchmarking Program your*

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Out of our in -box...

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company participated in over six years ago? Back then, your company was in LAST place on almost every measure of "Plan Success"...And we both realized that if you could do only HALF AS WELL as the *average company*, in terms of the initial investment & the percentage of your total dividends reinvested, you could have raised hundreds of millions of dollars of very low cost capital!!! Sadly, other developments intervened. But today IS another day for your company...And I DO believe that a well-designed and well-marketed plan would get a GREAT reception from your big base of loyal customers and fans"

Readers; Do give a call if you'd like to discuss any of this. Remember our promise to subscribers of "some free consulting on any shareholder servicing issue to ever cross your desk." And we are going to try one last time to get a meaningful number and "mix" of companies into our benchmarking program, so please give a call to discuss that too.

CALL IN THE ENGLISH POLICE! "Wells Fargo Shareowner Services ranks highest in Overall Satisfaction with Your Transfer Agent" a colorful flyer in our P.O. Box from Stockholder Consulting Service, Inc. proclaimed. "Wait a minute…we don't *have* a Transfer Agent," was our first reaction. "And hey! This can't possibly be right" was our second: If we HAD a Transfer Agent, we seriously doubt they'd rank Wells Fargo highest…unless of course they were Wells Fargo. Oh well, it gave our brain a little work, to figure out what they were trying to say…And the *OPTIMIZER* has misplaced modifiers and used plenty of the wrong pronouns too.

PEOPLE:

Debra Hacka, the crack'a jack operations officer for the late great **National City Bank's** transfer agency business, and who was responsible, we think, for a good part of their famous service levels, has landed a nice spot at **BNY-Mellon's** T-A operations center in Pittsburgh. Great news for the industry, and a great move by BNY-Mellon, we say.

Michael F. Mackey, father of **Michael & Kevin Mackey**, of Alliance Advisors, LLC, passed away on January 3, 2010 at 84. Truly an "Old time proxy guy" as Michael Jr. emailed us; born to Irish immigrant parents in the Red Hook section of Brooklyn, he delivered **Western Union** telegrams on a bike, worked on the construction of the Brooklyn Battery tunnel, and was a flyboy with the **Daily Mirror** before landing as the Superintendant of the lower-Manhattan building where **Georgeson** rented space… "Here was a guy who ran **Georgeson's** proxy operations throughout the 1960's. During the early 1970's he did the same for **Morrow & Co.** when they just started that firm. In 1975, he, along with **Don Gundry** and **Herb Janicki** founded **Corporate Investor Communications.** For the next 28 years, my father ran CIC's proxy distribution center and mailing operations, retiring in 2003 at 77. A 40 year career in the proxy business!" Michael wrote. And truly *a legend in the business* for his famously hands-on approach.

Gordon Stevenson, yet another well known industry expert – who did stints at **Boston Equiserve, Computershare, DF King** – and who served a year on our own Team of Inspectors of Election – has signed on with **AST**, where he will focus on clients and prospects in the New England and Atlantic Coast areas.

Joe Trezza, who recently retired from **DTCC** after a long stint as their top go-to person for securities transfer issues, and related practical and regulatory matters, has formed his own consultancy, Seagull Securities Consulting, Inc., based in Breezy Point, NY. So he is sort of "*on the beach*" but still ready for assignments: Contact Joe via...www.seagullsecuritiesconsulting.com

REGULATORY NOTES... and comment

ON THE HILL...

The House passed its version of a Bill to overhaul the oversight of financial markets and the financial industry itself in mid-December. No real news yet on Conference Committee goings on, but we are hoping there will be no rush to finish, since clearly there are MANY devils lurking in the details.

Bank CEOs have been getting quite a scolding, and at Dec. hearings were forced to acknowledge serious "disconnects" between the "good governance reforms" they were backing in public, and what their lobbyists were advocating re: proposed regs. Wall Street pay has gotten tons of attention...as have the huge bonus pools that many have set aside. Look for executive pay and bonus to grab headlines – and maybe to set a bad tone, just when the Director Election season kicks in.

The Senate Committee on Agriculture Nutrition and Forestry has been working flat out (?) on how to properly regulate the derivatives market – which most observers would say was the number-one cause of the financial industry and credit market meltdowns. And yes, you read right; THIS is the agency that oversees the folks who currently write the rules…which no one seems to be seriously questioning.

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On the Supplier Scene:

Broadridge has very quietly made a *major improvement* in their procedures to withhold or vote No for specific directors, and in their telephone-voting scripts, we noticed recently: Allowing voters to enter the *number* associated with each director to withhold or vote No, instead of having to go down the list one by one, cuts the time it takes to vote by phone by about 80% we'd say. "Listen up" TAs and other providers of telephone voting, and do us all a big favor by following suit.

REGULATORY NOTES...and comment ....*continued*

Yassuh! Protect yo' turf and keep it all rat in there with them hawg bellies and corn futures.

AT THE IRS...

They've authorized a "pilot program" that will allow issuers of securities and their transfer agents to "truncate" the Taxpayer IDs of shareholders on the annual 1099 forms for 2009. Why they think a "pilot program" is needed here – when identity theft is running rampant, and virtually every 1099 form we get says "Important Tax Information Inside" is a mystery to us…But hats off to the **STA** for wising the IRS bureaucrats up, at least partly, and getting them to agree, tentatively, to what the rest of the world does routinely these days.

AT THE SEC...

As expected, the SEC approved new rules on Proxy disclosure and Solicitation Enhancements, to take effect in the 2010 proxy season. Key points; Expanded disclosure of specific experience, qualifications "attributes or skills" relevant to board service; board approaches to considering "diversity" and to "Leadership Structure" (read Chairman/CEO split); a requirement for disclosure if compensation is "reasonably likely" to encourage excessive and "material" risk-taking (yeah, sure…watch for THAT) and what most pay-watchers say is a much better way to value awards of stock and options; the *probable value* on the date of the grant. **Another big, and positive and long overdue change, we think; much better disclosure of the fees paid to comp-consultants and the nature of other assignments that may influence their advice-giving.**

And a *very important* new "practice point" to note: Companies will have to report Annual Meeting voting results within four days of the meeting on Form 8-K.

AT THE NYSE...

"Rub-a-dub-dub"*...again*…This September, the NYSE announced the formation of "an independent advisory commission to examine U.S. corporate governance and the overall proxy process". "And who do you think they be?" as the old nursery rhyme continues?… Why it will be chaired by none other than Larry Sonsini, who chaired the former *"Proxy Working Group"* the NYSE formed in 2005.

Way back in 2006, when the old committee was new, we wrote, "Rub-a- dub-dub…three committees and an economic consultant in a tub…our first and admittedly cynical thought on this." And back then, Larry presided over a "Communications and Process subcommittee," an "Individual Advisory subcommittee," an "Investor Education subcommittee" and a "Cost and Pricing subcommittee." We are not sure if they ever got around to hiring that economics consultant, but we sure know what these committees accomplished, at least where any of the above-captioned areas were concerned –essentially NOTHING. (They did, in fairness, shake up the old system a bit, by recommending that the old "broker may vote" rule be repealed, and ultimately it was.) Any bets on Larry's *second*-go-round here?

And at the very time WE are asking the SEC to re-think the information investors need to make informed voting decisions, amendments to NYSE listing standards will allow issuers to move several disclosure items that we, as investors, feel are important, solely to the company website! A recent Society survey indicated that 72% of the 20 companies surveyed are considering website-only disclosure of their Director Independence standards – and, ***talk about calling down the furies upon oneself – 67% are considering web-only disclosure on how to contact the board…and 33% are considering web-only disclosure of Director Attendance at shareholder meetings.***

IN THE COURTHOUSE...

Two interesting cases to watch were filed in early January; Shareholder Ken Brown filed a derivative suit against **Goldman Sachs**, alleging that the $16.7 billion set aside for bonuses in the first three Qs of 2009 constitutes a breach of fiduciary duty and the duty of loyalty…and **Apache Corporation** has sued serial-proxy-proponent **John Chevedden** in Texas, asking permission to exclude his shareholder proposal for failure to prove his ownership stake as required, and asking for "costs of court, attorneys' fees and expenses."

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