THE SHAREHOLDER SERVICE

OPTIMIZER

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

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EARLY RETURNS FROM THE ANNUAL MEETING FRONT: NO SURPRISE; IT'S ALL ABOUT THE MONEY IN 2009 LOOK OUT BELOW... FOR FALLING DIRECTORS

For openers, how about 100+ proposals for shareholders to have a "say on pay"? Although last year the movement seemed to have lost a bit of steam, we predicted that Say-On-Pay is inevitable. And this year, thanks to the market-meltdown, it really doesn't take a crystal ball to predict higher votes, and more passing proposals than ever before.

In a very bad omen for companies (where we've been predicting that most says-on-pay will fly by handily) the season opened with a big bang, when Royal Bank of Scotland's CEO had his pension-package voted down by a 9-1 margin. Ouch!

Another big movement this year, almost 100 proposals to link pay more tightly to long-term performance and to reduce temptations for execs to take outsize risks…through options that are "indexed" to peer companies, "hold 'til retirement…and beyond" proposals, "bonus banking" and other pay claw-back proposals…mostly sponsored by unions and very much in line with the steps that **AFSCME**'s governance guru outlined in our 2008 magazine. ***Many of these proposals will pass handily, we think, in a year that Risk Metrics' Pat McGurn called a "once in a generation" opportunity for activists.***

As we also predicted last year, the stench that was increasingly emanating from those mostly-buried "golden coffin provisions" caused activists to swarm like flies – and with good reason. At a Jan. 28th meeting, a proposal to curb death benefits for execs at **Shaw Group** drew 67% support. Although at least 14 similar proposals have been filed, a fair number of companies, including **Comcast** and serial-overpayer **Occidental Petroleum** have sniffed the ill wind and backed away from paying salaries to decedents.

But the biggest threat, by far, to corporate citizens – and to corporate directors – are the "Vote-No" efforts that also seem to be swarming like flies this year…despite the huge number of directors that stood-down this year, rather than risk an embarrassing defeat in the polls.

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EARLY RETURNS FROM THE ANNUAL MEETING FRONT...

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Risk Metrics is recommending votes-no against comp-committee directors at companies that pay "gross-ups" to cover taxes on super-high executive pay and perks.

Two formal vote-no campaigns have been launched – against the chairman of AIG's comp-committee…and against BofA CEO Ken Lewis, where a former friend and long-term big shareholder, Jerry Finger, has been using the web very effectively to drum up support for votes-no.

We are betting that many companies that draw press stories just before their meeting dates about large losses, about directors who used discretion to award bonuses when targets were missed, about outsized perks, or even petty ones – or about anything having to do with compensation may find themselves with directors who fail to achieve a majority vote.

Another big thing to watch out for if you are responsible for your company's annual meeting; early returns that we have looked at indicate that a lot of investors are voting reflexively against comp-committee directors in general…which, we say, make those usually friendly individual investor votes more important than ever…

Currently on our radar screen: Badly failed N&A strategies. *(We're watching a company that has garnered only 1% of their individual investor vote - and where directors are way shy of a majority of the shares that have voted to date - thanks to bad advice from advisors who mailed NOTHING to individual investors but a Notice. With less than a week to go 'til their meeting, it's now too late to mail them anything at all.* ***Keep a very sharp eye on director returns this year, we warn…and be prepared to do some early damage prevention – and maybe some post-meeting damage control.***

INTEL PREPARES TO LAUNCH THE FIRST-EVER "VIRTUAL ANNUAL MEETING" – FEATURING ON-LINE, REAL-TIME VOTING

Mark your calendars, readers, for May 20th – and plan to tune in the Intel Annual Meeting (at 8:30 a.m. Pacific time) for the world's first-ever "virtual annual meeting of shareholders" – which will feature on-line, real-time voting – right up until the Inspector of Election determines that the polls are closed. Intel investors will also have the ability to ask questions, real-time, over the Internet.

This is the beginning of a totally new approach to Annual Meetings, and one that will ultimately result in a totally new A-M paradigm, we think.

As the online Notice of Meeting tells us, Intel has moved the meeting into one of its own buildings this year, to save the expense of renting a public hall. And, to underscore the new approach, they won't be serving refreshments this year either. They are also limiting admission to shareholders only – and tightening up the admission procedures to require proof of share ownership, or possession of a valid proxy from the holder, or from the holders' bank or broker to get in if the shares are held in street name; something a great many other companies are also doing this season.

The biggest innovation – and a real game-changer, we think – is the on-line, real-time voting feature, which we think just *may* encourage more voting by individual investors, who have been voting less and less faithfully with every passing year.

Intel's online meeting materials make an exceptionally strong case for the "virtual meeting-material delivery methods" they've been pioneering…and the incredibly positive impact on the environment their methods have had. Here's an excerpt – a footnote to the Chairman's letter in this year's meeting package - and on the Notice and Access model in particular:

** Prior to using the "Notice and Access" model, Intel printed slightly over 4 million copies of SEC materials annually. Once we started using Notice and Access, we reduced our annual printing by over 3.5 million copies to approximately 400,000 copies. During the past two years, Intel has eliminated the printing of more than 7 million copies, equivalent to nearly 300 million pages of paper, saving the company more than $4.5 million in printing and postage costs. Environmentally, the 300 million pages not used to print Intel's SEC materials avoids the generation of approximately 8 million pounds of CO2 equivalent and over 26 million gallons of wastewater. These environmental impact estimates were made using the Environmental Defense Fund Paper Calculator. For more information, visit www.papercalculator.org.

Even more impressive to *us*, however, is the impact on our landfills: Just take one second to imagine how big a pile of paper ultimately lands in the landfill when 7 million A-Rs, proxy statements, proxy cards and VIFs – and usually the envelopes too – a mind-boggling 300 million pages in all - get trucked to the dump!

Interestingly, Intel's environmental impact statements very much changed our minds about the merits of driving to a meeting simply to attend "in person": Activist investors have long said they won't tolerate a "totally virtual" Annual Meeting…and, after all, the meeting does have to be held *somewhere*, as Intel's will be. Activists, of course, want to

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INTEL'S "VIRTUAL ANNUAL MEETING"...
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be able to "grill" the leadership team, if they feel a grilling is called for. And the preparation that management teams do in anticipation of such grillings is, as we've often noted here, something of a good-governance-insurance mechanism in and of itself. But Intel's long history of good-governance makes them less susceptible to public "grillings" in the first place.

So *would we drive to an Annual Meeting* when we could attend via the internet and save all that time, and gas…and maybe avoid a lot of noxious gas from gadflies too? Only if we had an axe to grind, we'd have to say. Or if we were attending in an official capacity.

Also very much worth noting as we get set for the "season", Intel's approach to E-Delivery of their annual meeting materials is still the gold standard: Every bit as good as having a really good hard copy in hand would be, and even easier to skim, we have to say, …Far, far better reading than most of the paper-packages we get from other companies – and light years ahead of the nearly impenetrable e-Proxy packages that most companies post these days.

When E-Delivery first took flight, we predicted that "writing for the web" would FORCE companies to produce materials that were far better organized, much briefer and far more to the point. Sadly, with the exception of Intel, and a still small handful of other web-savvy companies, this has not yet come true. But if YOU would like to get closer to the gold standard, check out the Intel materials with care.

EVERYTHING YOU NEED TO KNOW ABOUT NOTICE & ACCESS... AND ABOUT E-PROXIES TOO

We continue to be amazed by the number of corporate citizens - and by the number of their law firms and other advisors too – who are still confused about Notice and Access.

Some think that it's mandatory this year. (It's not, of course.) Others think that the requirement to post one's annual meeting materials on the web is only for companies who plan to use N&A. (This, of course, isn't true either; it's mandatory this year, as Optimizer readers all know.) Many companies have been thinking that "someone else" is handling this for them – like maybe another area of the company…or maybe their transfer agent, or proxy solicitor…only to wake up at the 11th hour and discover…OH, NO!

If YOU still feel a bit confused…or if you are looking to benchmark your own efforts against "Best Practices"… please visit our website, www.optimizeronline.com (click under "What's New") and read the transcript of a 1-hour webcast that was put on by Broc Romanek and the Corporate Counsel a few month ago. (Amazingly, you can skim the transcript in much less time than it took to listen live!)

There are two Top Takeaways here, we think: First, that it takes much longer than most people think to post your materials on the web in a "reasonably good" way, and longer yet to do a really GOOD job…Say like 60 days…with good partners.

Second, and the most important takeaway by far, is that you do not need to slavishly follow the proxy rules in exactly the order they appear in the regs…and that, almost certainly, you should not do so…if you want people to read your materials and act on them. There are lots of other good, practical and tactical tips outlined here too…by panelists Lyell Dampeer of Broadridge, Keir Gumbs, of Covington & Burling, LLP, proxy solicitation experts Paul Schulman of the Altman Group and Tom Ball of Morrow & Co…plus your editor.

MEANWHILE...A BELATEDLY URGENT CALL FROM SEC COMMISSIONER LUIS AGUILAR, IN LIGHT OF THE HUGE FALLOFF IN INDIVIDUAL VOTING: IMPROVE E-PROXY OR REPEAL IT...

"I strongly suggest we move quickly to consider E-Proxy" he said at a February "SEC Speaks" event in D.C., reported on by the ever-watchful web-crawler Dominic Jones. (www.irwebreport.com/daily)... *"improving it if possible, repealing it if necessary, but with the goal of restoring investor participation."*

Aguilar noted that this year, less than 5% of individual investors were casting a vote after receiving a Notice in the mail. "For these investors, access clearly didn't equal delivery" he said. Jones noted that "uninformed voting is another unintended consequence of the rule", citing statistics that Broadridge provided to Commissioner Elisse Walter that fewer that one-half of one percent of VOTERS actually accessed company material before casting their votes.

Hello…oh, oh, oh…Commissioner Aguilar…and fellow Commissioners…Where's that big Investor Education Program that even YOU realized was needed…and promised to launch…three years ago!!! Let's please get rolling, before it's way too late to save the day for this truly important development!!!

SHOULD BOARD DIRECTORS BE ENGAGING INSTITUTIONAL DIRECTORS DIRECTLY, AS THE NACD BLUE RIBBON REPORT RECOMMENDED? If so, what are the important Dos and Don'ts

If you missed the original webcast on this subject, sponsored by The Capital Markets Board, you can hear it on our website, www.optimizeronline.com under "What's New".

It drew rave reviews from listeners and sparked a series of very lively after-event discussions…Among the top takeaways, always have your corporate governance officer on hand to "moderate" such discussions, keep track of what was said, what was promised, and what followup actions are in order. The top no-no: Never let a director do one-on-ones…as, rather frighteningly, some have done, according to several listeners.

A few worthwhile additions to the comments of the "blue ribbon panel" of panelists: Following the call, all the panelists realized that a main takeaway – the pressing need to "humanize" corporate and director communications may not have come across as strongly as it did during the 'prep-call'. Another very important point that got lost in the discussion of many complex issues - where the importance of "speaking with one voice" got a lot of play – this is NOT really about "speaking"…it's about LISTENING! Another major point, where panelists basically ran out of time, is the pressing need for directors to address strategic issues – without trying to micro-manage the company. Investors consistently identify this as both the most important issue – and the one where director involvement most consistently falls short in their view. Given the response, there will be a second panel on this subject, for sure…after the Annual Meeting Season. We'll keep you posted.

"SMALL" AND "MID-SIZED TRANSFER AGENTS" – AND A QUICK LOOK AT THE "BIGGIES" TOO

We've been expecting to have at least one really big story about Transfer Agency consolidation for well over six months now. But in the meanwhile, we've been amazed at how many questions we've been getting from issuers about "small transfer agents".

As we've mentioned here earlier, issuers are discovering that getting what they wished for, in terms of rock-bottom pricing, has fueled a level of consolidation in the industry that has "shrunk the pool" of transfer agents dramatically. And this has left many issuers yearning to be in a much smaller pond than where they are now, where, ideally, THEY would be among the much bigger fish.

Clearly, a fresh look at the Transfer Agency scene was long overdue. And just as clearly, given all the ferment in the industry, "small transfer agents" seem to have a lot more appeal than they ever had before – even where "large companies" (a list that has also been dramatically revised of late) are concerned.

Amazingly, there are still "way over 1000 transfer agents" a DTCC spokesperson told us – just for equity issues. Many of them, however, are acting for issues that are moribund if not legally dead. And currently, there are roughly 700 transfer agents that are registered with the SEC. But as you will see on our updated chart of T-A market share, the top-four agents – all of whom we'd characterize as "large agents" due to their relative size and to their emphasis on "large companies" – have an almost unbelievable 91% share of the market, when measured by "shareholders of record" – which is the basic billable unit these days.

The next three agents – which we used to think of as "small agents" – as we used to think of AST too, because of its old focus on small companies – are clearly the "middle-sized agents" these days. In the "old days" these agents were largely considered beyond the pale by name-brand companies, who insisted on buying "brand names". And, in the really old days, brand-name companies gave extra weight to the fact that the big-boys, way back when, were all owned by big banks…which lent a note of safety and security. Well clearly, that was THEN.

These three agents are really poised for a big growth spurt, we have to say – thanks in large part to the "ownership culture" that prevails at **Continental** and **R&T** – and to the fact that the owners are *there* – and *available* to staff and to customers every day. And at **National City** – where competitors still seem to be telling their clients that the stock transfer business is toast – their pending acquisition by **PNC** will come as welcome news to their mostly mid-size clientele – and to the friends and neighbors of existing clients where Nat'l City is always on the short list of good agents. Best of all for Nat-City, the PNC connection will double their previously farmed-out geographical footprint.

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TRANSFER AGENT MARKET SHARE – BASED ON # OF REGISTERED HOLDERS (millions)*

TRANSFER AGENT	AS OF JAN. '01	SHARE	AS OF JAN. '09	SHARE
BNY-MELLON**	29.0	44%	32.0	48%
COMPUTERSHARE	22.5	34%	19.0	29%
AMERICAN STOCK TRANSFER	4.5	7%	6.0	9%
WELLS FARGO	1.3	2%	3.4	5%
CONTINENTAL STOCK TRSFR	0.9	1%	1.5	2%
REGISTRAR & TRANSFER CO.	0.7	1%	1.0	1%
NATIONAL CITY/PNC	0.7	1%	0.7	1%
NEXT FOUR LARGEST	0.5	0.75%	0.5	0.75%
ALL OTHERS	5.3	8.8%	2.0	3.75%
TOTALS	64.4	100%	65.0	100%

SOURCE: CARL T. HAGBERG and ASSOCIATES
*EXCLUDES ADR ISSUES
** PRE-MERGER NUMBERS COMBINED TO FACILITATE COMPARISONS

So let's look now at the "truly small agents": Amazingly, the "next-four agents" in size that follow the top-seven serve a mere three-quarters-of-one-percent of the market in total – although, it should be noted, they have almost 10% of the market where "investment-worthy companies" are concerned. After them – when one excludes the 30-odd issuers who still serve as their own transfer agent, like **AFLAC, Disney, P&G, Southern Company** to name a few – the size – and the capabilities, staying-power – and overall trustworthiness of most of the remaining agents – literally fall off the cliff.

We decided to call the owner-operators of each of the four "largest of the small agents" – each of which "makes our cut" as being worthy of a look if one is shopping – to see what they have to tell us:

"We are the biggest small transfer agent that issuers have never heard of" said Jonathan Miller, the owner-operator of Stock Trans, which he has run for 37 years: "We are as technologically advanced as the biggest of the big agents. We can do everything the big ones can do. We have about 200 solid clients – everything from NYSE and NASDAQ down to some pink-sheet companies – with about 200,000 shareholders. We've handled billions of dollars in reorg activities, all kinds of employee ownership plans, using our own software, DRPs - the works" he told us. Miller is a 90% owner, "with no debt, no account execs" (he believes in cross-training his 16 employees to field customer and shareholder inquiries) "and *no voicemail*" he emphasized. "We get our business mainly from attorney and existing client referrals, and we believe that our client retention rate is the highest in the industry."

"If you are looking for hand-holding, and really good service, you should look at us", Robert Pearson, the owner-operator of Illinois Stock Transfer in Chicago told us: "We have no call center" he said, "and we won't mail out a blank form to a shareholder who calls us. We'll walk them through the process and 'fill in the blanks' for them before we send it, which saves us a lot of work in the end. We have about 120 clients, with about 120,000 holders when you count in employee plan owners. And we have a very strong niche with regional banks – especially in Mid-Western states like Ohio, Illinois, Wisconsin, Kentucky and Tennessee – where individualized service to issuers - and to their investors - is

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really valued. This has been a family owned business since 1912. My father bought it in 1974, and I took over in 1990. I'm looking to really grow the business. We recently hired a retired industry exec as a part-time salesperson" he told us, in response to our question/perception that IST was basically in a "maintenance mode".

"Why did I wait so long?" our new customers say. "Why didn't I find you in the first place?" Sallie Marinov, the owner-operator of First American Stock Transfer says her new clients typically tell her. First American has been in business since 1998, and currently has about 200 'active clients' with about 70,000 active holders. "A lot of our business is on what we call a 'presentment basis' – where the brokers, or the holders themselves pay a fee for transfers and other kinds of activities, but we are moving more to issuer-paid services as issuers place more and more emphasis on providing good services to their investors. Most of our new clients come from attorney and existing-client referrals, but recently, in response to what we see as increasing opportunities, we've been doing a lot more marketing, and selling" Sallie told us. "We like the idea of having client reps" she said, "and we are great believers in cross-training all our staff. We see our reps as 'teaching tools' for clients."

"Our fees aren't crippling", Lori Livingston, the 97% owner-operator of Portland, Oregon based Transfer Online told us in response to our request for a quick summary of her business model: "We provide full service to our clients – but we have a major edge, we think, in offering our clients access to all reports, and to all shareholder information over the Internet – plus the ability for them to create their own reports over the net, and slice and dice the info any way they want. We have a lot of banks as clients, and we are the agent for the **Master Card International** Class B stock, which is held exclusively by financial institutions, so we have very high standards and exceptionally high data-security levels." (Lori provided a link to an online demo of their systems, www.transferonline.com/demo). "We have had a sudden upsurge in the number of inquiries we receive from issuers, following widespread publicity about data security and data breaches – and after one of the larger of the 'small West Coast agents' got a cease-and-desist order from regulators."

This brings us to some important caveats when it comes to shopping the other 700+ "small agents": First and foremost, we'd say; remember our remarks about the extent to which T-As literally fall off a cliff size-wise, and in many other ways too, once you dip below the top-11 that are covered here. That's not to say there are no other good ones out there, but for sure, there are a lot of bad or barely-hanging-on agents still around. One of our favorite stories came from **DTCC's Joe Trezza**, who told about visiting "a fairly large small T-A, with a fairly robust business" that was based, literally, in a garage...And the garage was also home to a large number of free-flying exotic birds, who were doing what birds do…all over the stock certificates! Another T-A Joe visited was storing live and cancelled certificates in beer coolers…that were "secured"… with bungee-cords.

On a much more serious note, we've heard of T-As who list themselves – for marketing purposes, we assume – as the agent for companies where they are NOT the agent! Others, reportedly, have entered into "sketchy deals" with market makers…and sometimes with sketchy issuers.

Your editor also knows, from his own personal experiences as an expert witness, that many agents are blissfully unaware of how much *liability* they really have, when acting as a T-A…and/or as Exchange Agent…And some have gone out of business very suddenly as a result. Be sure to check the size of the Blanket Bond and the Errors and Omissions coverage your agent and any prospective agent may be carrying…or not. We were shocked to discover, a few years ago, that one of the top-ten agents had no First Class Mail Insurance coverage in force…and took a very big licking in the courthouse as a result, after they kept insisting that the holders post a huge surety bond themselves -while their stock, which had been mailed to a building that didn't exist on the mailing date, because of the 9-11 tragedy, continued to drop like a stone. Finally, check the SAS-70s of any existing or prospective agents you may be evaluating: If they won't show you a completely "unqualified" one – of the type-2 variety, covering more than just one small audit, or one single day, run for your lives.

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KEY INDUSTRY ORGANIZATIONS TOTALLY MISS THE POINT, WE SAY… AND DON'T HELP THE CORPORATE CAUSE AT ALL… IN THEIR ACTUAL AND "MODEL RESPONSES" TO PROPOSED CHANGES IN THE "BROKER MAY VOTE" RULE… BASICALLY FLICKING A FINGER AT THE NYSE AND ITS PROXY RULE COMMITTEE

We can hardly begin to say how disappointed we were with the responses from our normally beloved industry organizations to the SEC's Proposed Rule Change to NYSE Rule 452, aka the "Ten Day Rule", aka the "Broker May Vote Rule."

The Society of Corporate Secretaries and Governance Professionals, NIRI, the SSA and the STA all managed to totally miss the primary point here…and most of the important secondary points too. And to make it worse, they urged members to second their positions, with reminders, and 'model responses' coming thick and fast, right down to the wire. What a lost opportunity to stand up for good governance…AND to chide the SEC for its many shortcomings where good governance of the proxy system itself is concerned!

Here, with fresh headlines supplied by your editor to aid the skim-reader, are excerpts from the comments he made to the SEC's request for them:

Our key industry-orgs totally failed to address the essential point – and the essential purpose of the proposed rule change: "Currently, it is **incontrovertible** - as the NYSE Proxy Working Group [and the NYSE itself] concluded in 2006 - that while at some time in the past it may, arguably, have been so, the election of directors is no longer a "routine matter."

Second, our thought-leaders failed to note that this horse has already left the barn: "It seems especially worth noting" we wrote, "since so few commenters have apparently done so, that, in practice, this issue is essentially moot anyway in today's environment: Investors who are truly concerned about the overall fairness and reasonableness of director elections know how to count. And they also know how to determine exactly how many votes that are ostensibly cast "for" and "withheld" from individual directors were cast by the actual owners. And increasingly, they insist" [as we've noted in the Optimizer numerous times] "that votes cast by brokers who have not received specific instructions from their customers should NOT be counted in the final report on the voting. This is especially true - and especially important - where there is a majority voting standard in effect. But it is equally true, in my opinion, when there is a plurality voting standard, because votes "for" and "withheld" from individual directors are indeed a valuable corporate governance metric, and a very clear indicator of investors' satisfaction with the performance of individual directors, and where the real vote - by real voters - should not be disguised by uninstructed broker votes."

Even scarier, all our thought-leaders failed to point out that the interim "fix" for mostly unwarranted fears that companies will not achieve quorums - namely, proportional voting by brokers - is actually a BAD THING for them…and one that will actually bite many public companies this very year, we predict: "…the rapidly growing practice on the part of brokers to cast uninstructed votes *proportionately* should also be disallowed if this rule change is adopted, as indeed it should be. From my many years of observing voting outcomes "up close" it is absolutely clear to me that "proportional voting" gives a totally *disproportionate weight* to the votes of "disaffected shareholders", who, by definition, have a greater propensity to vote." (See our full comment letter on the SEC site if you want a real and proper fix to the quorum issue, and read on for fresh evidence that "mirror voting" can be very bad indeed for issuers.)

Very bad, and very sad, from a P-R point of view, the industry responses served to further reinforce the widely-held belief that corporate governance people are reactionaries, obstructionists, foot-draggers who hide behind legalistic minutia and basically, believers in and defenders of the status-quo…who are not really interested in good governance at all: "I also wish to strenuously object to the idea that many of my colleagues in the public-company world have been putting forward; that this reform should wait until all the many longstanding "issues" surrounding the proxy voting system are addressed as a whole. Let me point out that the debate and discussion of the now untenable broker-voting issue has been going on for more than five years. The recommendations of the Proxy Working Group are, already, over two years old. And frankly, there has been no action at all on virtually every other "issue" on the shamefully long list of current proxy-system deficiencies - and there is no timetable on the horizon for dealing with any of the m.

Last and far from least, we, in the industry – where most of us really DO believe in good corporate governance, in your editor's long experience – missed a major opportunity to chide the SEC for ITS bureaucratic foot-dragging…and to demand real action: "The list of unresolved issues is a shockingly long one: a totally out-of-date system surround-

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KEY INDUSTRY ORGANIZATIONS TOTALLY MISS THE POINT...

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ing "objecting" and "non-objecting beneficial owners"; incontrovertible evidence that average investors have no idea of how the proxy voting system actually works, as shown in the Working Group's extensive survey; a system where there has been no competitive bidding-out of the fee and service arrangements in more than 20 years (!); incontrovertible statistical evidence to show that clandestine vote-buying, and probable "vote stealing" schemes exist, where the only possible motive is to "rig" the election results...and finally, the fact that nothing at all has been done to further the "investor education programs" that the SEC has been advocating, and promising to foster for at least three years now, again with no timetable, and no action plan on the table."

P.S. Our "logical thinking skills" as an industry did not look very sharp either: There is absolutely no logical connection between the indisputable but readily-curable bad-governance situations that uninstructed broker-voting and uninstructed proportional voting are causing and the other "issues" that allegedly need to be fixed all of a piece.

And P.P.S. As we read through a sampling of the comment letters, we came upon some fresh and very compelling statistical evidence in the Broadridge letter that demonstrates how harmful to the corporate cause - and to the cause of truly good governance - "proportional" or "mirror" voting can turn out to be:

First, and a very unpleasant surprise indeed, it turns out that only five of the eleven brokers that voted "proportionally" are using only the votes of their individual shareholder population as their "mirror"! In other words, six of the eleven proportional voters are taking the votes of institutional investors into account when they cast votes proportionately. So much for the theories so many companies espoused that proportional voting will somehow "moderate" the influence of proxy advisory firms on voting outcomes. At these six firms, clearly the reverse is true.

In a bit of good news, perhaps, Broadridge reported that in 2007 "Broker votes impacted only 2 directors out of a total of 2,718 in companies with majority voting policies." (Both of these instances, we'd note, were immediately noted by activists, exactly as we mentioned in our letter to the SEC, who ultimately had their way, while 6 other directors failed to receive a majority vote with proportional and all other 'broker votes' counted in).

Now for the bad news: when Broadridge re-ran the numbers on 5.094 directors where there was a plurality standard…as if there was a majority standard…142 directors did not receive a majority of the instructed votes returned, although 68 of them received a "majority vote" after broker votes were counted in.

The real takeaways here, we think, are these:

- **First, in 2009 there will almost certainly be a lot more directors who fail to receive a majority vote than the tiny percentage of all directors who failed to do so in 2007.**

- **Second, all such directors will come under intense scrutiny - regardless of whether there is a majority or a plurality standard – and no one will be able to make a claim that uninstructed broker votes should, properly, be "in the equation".**

- **Third, there is a virtual certainty in our book that the 6 brokers who use their entire customer base as the "mirror" when they vote proportionally – and a goodly handful of public companies too - will suddenly discover that this is NOT an automatic 'gimme' for directors who have been targeted by "vote no" campaigns.**

- **And lastly – even if the number of "failing directors" stays in single-digit percentages vs. ALL directors…if it's one of YOUR directors, he or she will be "toast" in today's environment…And you, and your company too, will really look BAD if you try to pretend that uninstructed broker votes should count as good ones… as the vast majority of companies that commented on the rule change seem still inclined to do.**

ON THE SUPPLIER SCENE:

SMS Vanacore - the unclaimed property company whose offbeat name caused a lot of bemused head-scatching in the industry - and **Jaisan** – another major player in location services for the *banking industry*, whose name was largely unknown outside their (surprisingly big) "niche" – have merged into one company, under a new name - **Venio** - following a big investment by private equity investors **DFW Capital Partners**. DFW veteran **Michael O'Donnell** has been named to a new CEO position to guide Venio through the big strategic expansion that's planned, he told us, with the rest of the management team remaining in place.

"The investment in our company at this time is significant", **Nick Nichols**, Executive Vice President told us. "In just the past four months, we've added 16 people and invested roughly a half-million dollars in technology, to build a fully-encrypted environment on all our servers – and to be sure

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ON THE SUPPLIER SCENE...

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that all the data that comes in and goes out is fully encrypted." (Something very well worth noting, we'd say, given the extreme sensitivity of such data…plus how incredibly tempting it *is* to "misplace", misappropriate or misuse such data…and how often a wide variety of *very bad things have happened in this industry* over the years…as we've been reporting with depressing regularity since 1994!)

"With big financial industry clients like **BofA**, **HSBC** and a host of broker-dealers, our internal data security systems were always strong" Nick noted. "But lately, we're being called on to answer 300 or more questions about data security by the much more careful shoppers we see today in a typical RFP process. The added investments in technology also give us the processing power to quadruple our current volumes" he noted. Your editor's "Old **Manny Hanny**" colleague **Rich Amodeo** came by to say hello during our visit to Venio's recently remodeled Fifth Avenue headquarters, where now, his son **John Amodeo** is also on board…as is **Mike Ryan**, a fellow who is very well-known and well-regarded by State Abandoned Property Office officials. Venio, by the way, is "taken from the Latin word 'invenio', says Venio… "which means to come upon, find, discover."

SOME NOT-TO-BE-MISSED COMING EVENTS:

Ordinarily, as a quarterly publication, we don't post a list of "coming events". But this year – with corporate travel budgets tighter than ever in memory – even while the average corporate citizen is in particularly desperate need of timely information, advice and discussion on a host of pressing matters – we think we should make a pitch for readers to take a stand…and get themselves out there…out of the office for a bit, and into the real world…and in venues where they can, indeed, bring back real value for their companies.

Use your own "membership miles" if you have to, we advise. Use hotel "points" – where both your corporate and personal points often go begging - for free hotel stays. Or, if necessary, stay at a low-cost motel nearby. Take the time in "vacation days"…if you absolutely must…as long as your company pays the registration fees we'd say. (But if you do, be sure to tack on a few extra days as REAL VACATION – especially if you are basically paying your own way!) Here's our short-list of upcoming events that practitioners in the field MUST attend if they want to be in the know:

❑ **NIRI (National Investor Relations Institute) National Conference, June 7-10, Hollywood, FL www.niri.org**

❑ **Society of Corporate Secretaries and Governance Professionals, 63rd National Conference. June 24-28, 2009, San Diego, CA. www.governanceprofessionals.org**

❑ **SSA (Shareholder Services Association) Annual Conference, July 15-18, Coeur D'Alene, ID www.shareholderservices.org**

❑ **Shareholder Notice and Access Symposium, October 5-7, Chicago, IL www.info@insightforums.com (*Optimizer* subscribers will receive discounted admission.)**

WATCHING THE WEB: THREE NEW GOVERNANCE SITES TO WATCH

For a really interesting and informative site – with lots of hard news, and lots of pithy opinions too, go to www.Corpgov.net.news/news/html REALLY GOOD STUFF!

The site above also pointed us to the www.InvestorSuffrageMovement site and the www.ProxyDemocracy site…also worth a look under the "know thy enemy" theorem.

QUOTE OF THE QUARTER...

"This" [loss of trust in our corporate governors] "is an issue of 'we' and 'they'. Compensation is a part of it, but a symbolic part of it. We are a centrist nation…We're now shifting to the left pretty far in terms of business-bashing and it has reached extremes of incivility that are intolerable."

Arthur Levitt, Jr.,
in the March 30, 2009
Wall Street Journal

OUT OF OUR IN-BOX:

Our in-box has been jammed full of "Notices" this year, in advance of upcoming meetings…along with lots of "full sets" of paper copies too, from companies who have decided to "push" the info to us – either because we passed their "stratification test" – or because we've been mostly-faithful proxy voters — or simply because they want to be sure we see their stuff, and maybe skim it. The Notices look slightly better – and slightly more "important" than they did last year – but the "investor education" that the SEC had said was a "top priority" last year – and the year before – and the year before that too - is still sadly lacking. **And amazingly – though basically, we've ceased being amazed by *anything* the SEC does or fails to do in recent years – the Investor Education component has gone backwards!** The instructions on "how to vote" leave out what for us is usually the fastest, easiest and most certain voting method of all…telephone voting! The SEC said "drop it"…apparently so investors would not be confused into trying to vote their proxy by phone…before they had a chance to read all the material. Thanks for nothing, SEC!

For a fun Annual Meeting Season "fix", get thee to NETFLIX: The morning of his March meeting a client lent us his DVD of ***The Solid Gold Cadillac***, a 1956 flick starring Judy Holliday as Laura Partridge, "a small-time stockholder who creates havoc at a board meeting, falls in love with the former CEO (Paul Douglas) and wrests control of the corporation from its selfish, corrupt board of directors" as its cover blurb told us, and which, amazingly, we'd never seen. For a truly delightful *busman's holiday*, check Holliday out one night we'd urge you. The opening scenes - where she's shocked… shocked… by the company's rush to get through the "business of the meeting" and by the amazingly high (to her) executive comp they're trying to ram through – are amazingly current topical this year, we'd say…except, that is, for the then shocking compensation of $125k per year, which would be around a piddling $750k in today's dollars. And, oh yes, the solid gold Cadillac the grateful shareholders gave her as a thank you - which may have been a reasonably modest gift back then, when gold prices were fixed at $32 an ounce – would make all the golden handshakes we've seen in recent years look like chump-change, with gold at $900+ the ounce. But hey, this is Hollywood. The grand climax of the film however - when Judy and her pals wheel in a giant bin of paper proxies, all running to her personally (as the Director of Shareholder Relations) - and that win the day, to the total surprise and consternation of the old guard - may provide 'fair warning' to a lot of companies this year.

"Just-in time delivery": A stress-buster from AST: A cardboard box, too big for our PO Box, but welcome all the same, arrived toward quarter-end, bearing a squeezable stress-buster – in the form of a spongy, spandex-clad superhero, sporting the AST logo – along with a sample of the letter that **American Stock Transfer & Trust** sent its prospects in late March: *"We know the pressure our contacts are under and the economic challenges that are making everyone think that 'sitting tight' in relationships is the safest thing they can do…We disagree…Leaving a marginal relationship can have measurable benefits…Be a hero to your company…to your shareholders…to your management…to yourself"* the letter urges…by investigating "the AST solution". A very nifty marketing pitch, and one that does indeed hit the nail on the head where *most* issuer-supplier relationships are concerned these days. Also enclosed; a nifty little book, "Hero" – with some useful - and inspirational quotes on heroism. Kudos too, to AST for reminding us, as the opening quote from William James reminds us, to "Act as if what you do makes a difference. It does."

PEOPLE:

Francis Byrd, formerly a V.P. and Corporate Governance Specialist at **Moody's Investors' Services**, and before that an analyst for the **New York City Retirement Systems and Pension Funds**, has joined **The Altman Group** as a Managing Director in their fast-growing Corporate Governance Consulting Unit.

Kayla Gillan has been tapped as **Senior Advisor to the Chairman** by SEC Chairman **Mary Schapiro**: a move that will greatly reinforce the increased emphasis on enforcement issues that Schapiro has promised, in the opinion of most Mary Schapiro and Kayla Gillan watchers. Gillan served for 16 years as the General Counsel for the **California Public Employees Retirement System (CalPERS)**, was a founding Board Member of **PCAOB** and, most recently, served as the Chief Administrative Officer of proxy advisory firm **Risk Metrics**, where, we should note, her remarks that their trademark "CGQ" (Corporate Governance Quotient) scores had "outlived their usefulness" proved to be less than prescient…from Risk Metrics' perspective, that is.

Veteran regulator **Richard Ketchum** has been named to succeed Mary Schapiro as the CEO at the **Financial Industry Regulatory Authority (FINRA).** Ketchum earned high marks as the SEC's head of market regulation before heading up the regulatory cleanup at **NASDQ** (following his *initial* defense of the old NASDAQ trading-system, where ultimately, it was determined that market-makers were in

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PEOPLE...

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cahoots to boost profits at the expense of investors)…and then headed off to the **NYSE** to investigate and fix the "penny-jumping" ripoffs of investors by specialists there…and where he played a key role in consolidating NYSE and NASD regulation…under FINRA.

Robert Khuzami, a former federal prosecutor and a widely-regarded "tough-cop" in the **U.S. Attorney's Office for the Southern District of New York**, has been named to head the **SEC's Enforcement Division**, succeeding the infamously inattentive **Linda Chatman Thomsen**. Most recently, Khuzami was the general counsel for the Americas at **Deutsche Bank**.

Gretchen Mohen, BNY-Mellon's very well-liked President and CEO of its **Shareholder Services** Unit, "left the building" very unexpectedly in March, "to pursue other options" we were told. With a rare combination of *high-tech-management* and *people-skills*, she's sure to land something bigger and better before very long, we bet. International Corporate Trust expert **Samir Pandiri** (11 years at **JPMorganChase** before 4 years at BNY-Mellon) has been named to replace Mohen as the unit's CEO.

Former SEC Commissioner **Annette Nazareth** withdrew her name from consideration as a Deputy Treasury Secretary after concerns arose in the Senate about her role as the founder of the **Consolidated Supervised Equities Program** in 2004, when she headed the SEC unit charged with regulating investment banks, and where the banks were essentially allowed to regulate *themselves*; a program that even former SEC Chairman **Chris Cox** ultimately had to admit was "fundamentally flawed from the beginning."

Steve Norman, who has served as Secretary and Corporate Governance Officer at **American Express** for an amazing 27 years, and who, despite his status as "The Dean" of Corporate Secretaries in our book, is still both young and young at heart, will step down after the AXP Annual Meeting, after a 39 year career there. Steve will be succeeded, he told us, by his valued colleague, and a long-term American Express lawyer, **Carol Schwartz**. Your editor, who has known Steve for 37 of those 39 years, is about 99.9% certain that he is the longest-serving Corporate Secretary ever – at least in the "modern era" - and where Fortune-500 kinds of companies, rather than "family fiefdoms" are concerned: All the more amazing when one recalls how many CEOs he's had to please over all these years!

Blanca Barrios Rossbach, the widely known and widely-tapped librarian at the **Society of Corporate Secretaries and Governance Professionals**, has retired after 40 years with the Society. We can hardly count the number of times we went straight to her for the answer to a knotty question or a "model document"…or the number of times she called us, looking for a good source to answer one of the many tough questions that crossed her desk each year…And we don't think she ever let a single question go without an answer. If you'd like to leave her a congratulatory message, she has her own web-space for a while at www.governanceprofessionals.org.

Matt Witman, son of **SSA** member **Kathy Witman** of **Integrated Software Solutions**, has been named as the latest recipient of the SSA's **James R. Smith Scholarship** program. An honor student and star athlete at Great Valley H.S. in Malverne, PA. – and an accomplished musician to boot, Matt will pursue a chemical, bio-chemical or energy/environmental engineering track in college, with a focus on "quality of life issues and environmental sustainability".

REGULATORY NOTES...and comments

ON THE HILL:

The "new regulatory scheme" that the Obama administration promised is beginning to take shape – albeit slowly, which is probably a good thing. Top issues; a 'super regulator' - likely the Fed - which will have the power to regulate hedge funds, the mortgage banking/broking and insurance industries, credit rating agencies (where action is already underway) and other 'financial services companies' too – and which will have the power to serve as a 'super-liquidator' if liquidations are needed. We still believe, very strongly, that the SEC should NOT be merged with the CFTC – but a straw poll on the Society's website shows us to be in the minority where Society members are concerned. Careful about what you wish for, say we…and better the devil you know…

Support for Federal regulation of executive pay seems to be waning - at the presidential level and in both the House and Senate - and 'cooler heads' seem likelier to prevail with each passing day, as proponents realize how complex a subject this is…and how many previously 'unforeseen consequences' there really are… like the ability to switch the IDs of the top pay-getters every other year…DUH! **Nonetheless, the irrepressible Barney Frank, who chairs the House Financial Services Committee, said, in mid-March, "We plan to put laws into effect" [linking pay and bonuses more tightly to performance…over the longer term] "no question."**

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AT FASB:

Just when you thought they were moribund, if not dead by now, FASB moved to ease the mark-to-market rules…for banks…those wondrously accurate guesstimators of asset values! The newly revised guidelines provide "an extraordinary amount of leeway to potentially report information that is not accurate, not reliable and not reflective of economic reality" the director of the financial reporting policy group of the CFA institute told the WSJ. Oh well, as long as bank stocks keep going up, we can all be almost as happy as we were before mark-to-market accounting gave us a dose of *reality* to rudely pop our bubbles.

AT THE SEC:

Potential "triggers" that would put the brakes on short-selling waves came out for comment just as we went to press: We think this is a much more useful approach than restoration of the uptick rule, since upticks are very easy to engineer these days. More important, a reasonable pause – so that investors can evaluate the real news rather than flee in panic-stricken droves – is a *very good idea*, we think. ***Earlier, the SEC actually moved to "require" that unsettled (i.e. naked) short-sales get bought-in on the morning of T+4…which, as we've been saying for seven years now, is the REAL CURE for market manipulation by naked shorters. But please note, SEC: you weren't enforcing the OLD RULE that required a buy in on day-13! So please stick to your guns here!***

The NYSE request to eliminate its longstanding historical policy that prohibited listed companies from charging shareholders for transfers was approved on January 30. This action, coupled with the much higher DTCC fees – and the much increased red-tape that they, and brokers are introducing - actions that make it difficult if not impossible for the average investor to get a stock certificate - will marginalize the already struggling transfer agency business even further, we predict.

AT THE EXCHANGES:

The NYSE will suspend its rule that listed companies have to trade for at least $1 – until June 30. Recently, about 56 NYSE-listed stocks have been trading at less than $1 – and 16 others are in danger of de-listing because of failures to meet other standards.

The NYSE and NASDAQ are jockeying harder than ever to win the listings races, with the NYSE marketing its opening and closing bell-ringing/TV ops harder than ever, and NASDAQ countering with its big Times Square billboard appearances-cum photos for media-savvy companies. In 2008, NASDAQ swiped nine listings from the NYSE – vs. seven that moved to the NYSE. But in terms of market cap, NASDAQ was ahead big-time, with $80 billion of market value of "switchees", vs. $8 billion at the NYSE.

In Canada - where there are 13 (!) mostly "provincial" securities regulators - Finance Minister Jim Flaherty said he'd establish a national stock market regulator…which he hopes public companies will opt-into, for their own good, despite big opposition from (surprise!) Alberta and Quebec.

In the U.K.…and in our *schadenfreud* dept. we must admit… the London Stock Exchange - whose former CEO, **Clara Furse**, its one-time crusty nurse, steadfastly resisted calls to merge with the NYSE - was ousted from the FTSE 100 index…which the LSE helped to found… following an 80% drop in its share price. Ouch, nurse Furse! A painfully bruising game of Footsie here, indeed.

IN THE COURTHOUSE:

A big case to watch, and one that may rival the Disney case in size and scope, and possibly break new ground where executive comp decisions by boards are concerned: the **Louisiana Municipal Police Employee Retirement System** has filed a "books and records demand" against **Chesapeake Energy**, where directors awarded a new five-year contract and a $75 million bonus to the CEO – on New Year's Eve – while the stock had dropped that year by $14 billion ($33 billion vs. the *high* that year) and the CEO was forced to sell 94% of his once-$2 billion of stock to cover margin calls on other investments he'd made.

And oops…another abandoned property lawsuit looms; eerily similar to the now-famous Taylor v. Westly case, also in California: The state's Sixth Appellate District overruled a lower court and held that **Hewlett Packard** was not immune, under California's subsequently discredited abandoned property law, from being sued by ex-employee and Athens, Greece resident Alexander Vondjidis for the loss of value following H-P's escheatment of his stock in 1993, which the State of California promptly sold off. His Athens address was on file all along at H-P, but its Athens *office* was listed on the Employee-Stock-Ownership-Plan records… until they closed it in 1982. (Just as we predicted, the Taylor v Westly case, and the wide publicity it has received, on 60-Minutes and elsewhere, has rung numerous bells with people and caused them to come out of the woodwork in droves. At one recent industry meeting, your editor was approached by three different people, looking to cash in our promise to subscribers of free advice, which we freely gave. Readers, feel free to call - with complete confidentiality assured, of course - if you have specific situations you'd like to vet with someone who knows the ropes.