THE SHAREHOLDER SERVICE

# OPTIMIZER

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

VOLUME 22, NUMBER 2 NOW IN OUR 23rd YEAR! SECOND QUARTER 2016



IN THIS ISSUE:

A QUICK OVERVIEW OF THE BIG SPRING MEETING SEASON

THE WEIRDEST DOINGS TO CROSS OUR DESK

VSMs GAIN BIG TRACTION THIS SEASON

WHAT TO DO IF YOUR POWER GOES OFF AT YOUR ANNUAL MEETING

ON THE SUPPLIER SCENE:

AST SETTLES LAWSUIT WITH LAUREL HILL; SEEKS TO SELL ITSELF FOR $1+BILLION

HUGE NEW DOINGS IN PROXY-LAND: SODALI ACQUIRES MORROW; GEORGESON EMPLOYEES ARRESTED; MORE NEWCOMERS TO THE SCENE

ELSEWHERE ON THE SUPPLIER SCENE:

BROADRIDGE ACQUIRES DST'S BIG CUSTOMER COMMUNICATIONS BUSINESS

COMPUTERSHARE SAYS BLOCKCHAIN IS NO THREAT

SCSGP CELEBRATES ITS 70TH YEAR WITH NAME CHANGE

SSA CELEBRATES 70TH YEAR WITH MIDWEST STA MERGER

TRANSFER AGENT AND CORPORATE LIABILITIES RE: RECORD KEEPING

RUDE BOOS FROM THE CEO OF ONE SMALLER TRANSFER AGENCY

PEOPLE

REGULATORY NOTES... AND COMMENT

WATCHING THE WEB

## A QUICK OVERVIEW OF THE BIG SPRING MEETING SEASON…PLUS OUR BETS ON NEXT YEAR'S HOTTEST MEETING ISSUES

*The big spring meeting season was surprisingly uneventful on the whole - with lots of proxy-access proposals passing - or being adopted voluntarily - and with most says-on-pay sailing by with 90%+ margins…much as we'd predicted.*

*The many threatened proxy fights we witnessed got largely settled beforehand, as companies agreed to add new directors - sometimes put forth by and sometimes approved in advance by activists - well before their record date…except, that is, for the usual number of small-company fights, which are most often based on family feuds or on well-planned sneak attacks on companies that were asleep at the switch - sometimes in terms of overall management, but sometimes because the management just seemed unwary or unprepared to offer strong counter arguments on short notice to a well-organized group, looking to seize control on the cheap, as some did.*

*The biggest and rowdiest actions on the governance scene were the almost daily announcements of new concessions being demanded of and made by incumbent directors, in response to fresh demands for rapid changes in strategic direction from activist investors.*

*So with proxy access essentially a done deal across the board as time goes on, and with most companies now savvy enough to tailor their pay packages to please the proxy advisors and the mostly-easy-to-please mutual funds - but with corporate governance still a big business for lots of people - where do we think next year's shareholder activism will be focused?*

*Our number-one bet as far as the new "popular issues" are concerned is for a much sharper and more aggressive focus on the board's gender diversity - where women are way, way underrepresented - despite a lot of evidence that having more women of the board creates shareholder value in a number of ways - and where many men too are starting to say that we need to do more to right the gender balance.*

***But the number one way to attract activist interest, please note, is by being a fairly prominent "outlier" - whether it's on gender or other board diversity issues - or - still the top lightening rod - performance vs. peer companies - and/ or high executive pay vs. peers - followed by demands for more disclosure on environmental or sustainability issues, then by demands for more lobbying disclosures. This last item seems to be losing a lot of steam of late, mainly because most of the data IS really out there - if one looks hard enough.***

***Do remember, the biggest way to get struck by activist lightening is seeming not to listen carefully, or worse, to seem intransigent where such issues are concerned when activists knock.***

***NOW is really the right time to start benchmarking your own company's standing vs. peer companies on all these matters - and to reach out to your top investors as soon as you spot potential "issues" - to assure them that you and your board are very actively "on the case"***

## THE WEIRDEST EVENTS TO CROSS OUR DESK DURING THE SPRING MEETING SEASON

***Despite the relatively quiet season on the whole, we, and our Team of 50 Independent Inspectors of Election, experienced more weird and wacky events than ever before - and more events where corporate managers, and in many cases their outside counsel too, seemed way behind the curve. Here are a few of our traditional shareholder meeting horror stories:***

**Wildest and most horrible by far, for the lead plaintiff in the big Delaware appraisal case, was the ruling that Dell Inc. had underpaid investors about $6 billion in their going-private transaction. Weirdest, however, was that T Rowe Price would lose out on almost $200 million in underpayments on the Dell stock it held…because of a back-office error,** where they voted Yes on the deal when they meant to vote No…thereby losing their rights as lead plaintiff in round-one - and the appraisal rights themselves in round-two. Nicest, however, was T Rowe's decision to pay shareholders in several funds that held Dell Computer stock a whopping $194 million, even before being asked - because T Rowe employees forgot to 'adjust the switch' on their automated vote-casting platform and erroneously voted FOR the management-led buyout when they told the world they'd vote NO. Earlier reports indicated to us that ISS systems appeared to be at fault…But no, T Rowe's 'default option' for voting is Yes - and while they'd initially voted NO, turns out it was up to *them* to re-set the switch when the deal was improved mid-way…and they simply did not do so.

**What are the important takeaways here?** First, "stuff happens" in the proxy voting business: voting mistakes will be made no matter how careful everyone tries to be: Even when 99.9% of all votes are recorded correctly, as current, audited stats indicate, there are still plenty of opportunities left for mistakes to be made. And YOU don't want to be in that one-tenth-of-one-percent category.

**So as we've said many times before, (a) your company and your own results are the only ones that really matter, so never rest easy based on averages; (b) you can never be too careful or 'over-prepared' for your meeting - especially where voting and vote-tabulating and vote-reporting procedures are concerned; (c) you need to have folks with intimate knowledge of voting *mechanics* and *voting minutia* - and with "good sniffers" too - involved in cases where voting outcomes might be close or contested or simply very important to you…and (d) there are never any do-overs in corporate elections if mistakes, or simple clerical errors or omissions are made, and discovered after the polls have closed, as the Delaware Chancellor reluctantly had to rule.**

**Some related weirdness**; we saw three cases this spring where one or more directors resigned shortly before the annual meeting and where, heaven help us, the client, and in one case their outside attorney as well, insisted that the votes that had been cast for them could simply be 'transferred" to the new nominees! One lawyer we talked down from the wall here ultimately advised the company to send out all new

proxy materials naming new candidates, which they did… But Hello…The easy and far less expensive option would have been for the board to "take time to carefully consider new candidates" - then fill the vacancies after a decent interval - and after the meeting was over - where all of the newly appointed directors could have served unchallenged and undisturbed until the next annual election.

**Still more weirdness…Remember our warning about voting agreements - and "irrevocable proxies" coming into play more and more often?** At one company whose meeting we covered this year a 30% holder - who had signed a voting agreement to vote with the board's recommendation on any proposed merger - said he'd likely not cast his vote. This would likely have deep-sixed the deal. Or maybe, said he, he'd show up and vote no - voting agreement be damned - which would have *assured* the deal's doom. The voting agreement was very well drafted however - in a way that it constituted an irrevocable proxy in and of itself - that the company could exercise on its own and that the Inspector of Election would recognize as valid… And happy day, the holder wised up, showed up and voted for the deal as called for**.**

**Maybe the *scariest thing of all* was the large number of companies we saw that did not understand the basic *principles* much less the basic mechanics of proper proxy voting:** At one company - a mid-sized utility that had a wholly owned subsidiary - there was no regular "process" in place to assure that the subsidiary directors would be validly elected - or to formally cast the subsidiary's own votes for the election of parent company directors. The four company staffers who had formerly served as their own proxy tabulators and Inspectors, insisted that the Inspector should add the votes into the Final Reports simply on their say-so - with no paperwork at all - which, apparently, is what they had been doing all along. Ultimately, they drew up the courage to ask a senior officer of the sub to fill out and execute the required ballots…but not before rudely telling the Inspector that she "had no business telling them how to do their job"…which, of course *was* part of her job, and where she was under oath to do it correctly and to the very best of her ability.

**Lo and behold, just a few days later, we got an email from Broc Romanek, forwarding a question from one of his many readers on a nearly identical situation, asking if *we'd* ever heard of an "Affidavit of Regularity and Election"**…with the comment/question, ***"It can't hurt?"*** Here's the question:

***"A client has a Delaware company subsidiary with one stockholder (the parent company). At the Annual Meeting of the Sole Stockholder, the Corporate Secretary of the Parent acted as the representative of the Sole Stockholder and voted the stock at the meeting electing the subsidiaries directors.***

***In the past, a proxy process was used whereby the General Counsel of the Parent (because he could not attend the meeting) appointed the President of the subsidiary to vote the shares on behalf of the Parent; he is an officer of the Parent).***

***This year the Corporate Secretary of the Parent voted the stock and no proxy process was used. In the past, with the proxy process an "Affidavit of Regularity and Election" was then produced to prove the election. Client has asked if this is needed. I can't find anything on this and think minutes from the Sole Stockholder meeting should suffice to prove the election of directors. Thoughts?"***

**Here's our response:** ***"This sure seems like putting on a belt - and suspenders too - when there are no pants in place: All that was really needed was the subsidiary's proxy card, signed by a person representing themselves as having the authority to sign it...which is adequately done in Delaware by simply signing it.***

***And yes, while an Affidavit of Regularity and Election, which we'd never heard of either, "can't hurt" - the most important takeaway is that the observing all the fine details - or not - usually doesn't matter all that much… Unless one day it DOES - like in a close or contested election or a disputed plan to merge: Best to observe the fine details we say…to be sure you are always in fighting trim...and completely "challenge-proof."***

***The biggest source of confusion we saw this season, hands down, was the mass confusion that exists on how to properly calculate the percentages if one wants to emphasize or merely clarify the margin of victory, or defeat, on specific proposals.***

We saw over a dozen cases where the proxy statement stated one way on one page and a totally different way a dozen or more pages later…and at least three instances where there were three versions!

***Continued on page 4***

The biggest source of confusion revolves around much-imitated language that asserts that "abstentions have the same effect as votes against the proposal"….which is *sort of correct* in terms of the *"effect"* on the outcomes - but which has nothing to do with the math, where at least a dozen companies we saw, insisted on putting the abstentions into the denominator when they had no business being there if one referred to the company's Articles and Bylaws.

Abstentions are NOT "votes" as we have said time and again…But, please note, including them in the denominator will reduce the reported percentages on proposals you oppose, but they also reduce them on proposals you want to pass with decent margins.

***Our website has a primer on proxy tabulation and reporting, which we will update and likely expand on toward year-end, since companies continue to tweak the language in their Bylaws…but not always with a full understanding of (a) how unpredictable the gap can be between the For and Against votes if there are a lot of abstentions and they get included in the denominator and (b) how a company runs the risk of incorrectly claiming that a proponent can't resubmit, by incorrectly treating abstentions as "votes cast" when, under SEC rules they are NOT.***

## WHAT TO DO IF THE POWER GOES OFF AT YOUR SHAREHOLDER MEETING… WHILE THE FIRE ALARMS SHRIEK ALARMINGLY

***How's this for a shareholder meeting horror-story to take to heart?***

***Ten minutes or so into the meeting a gigantic thunderstorm rolls through town, shutting off all the electric power while setting off loud, piercing shrieks from the hotel's battery-backed fire alarm system.***

***And how's this for what seems like a kicker? It was a Virtual-Only Meeting…so the feed from the site to the meeting attendees was instantly cut off: What to do????***

**This meeting actually had a great ending: Fortunately, the business part of the meeting was already over, the polls were closed so the voting was done. And Broadridge, as part of its standard Virtual Meeting protocol was able to post a notice on the website within minutes, saying that the meeting was suspended due to a storm, that the voting was already in, and would be reported on the company's website, and that if any shareholders had questions, they could and should be directed to the company's investor page. Just FYI, if there was a NEED to re-convene, the company would have been set to post the time for that as well.**

### SO HERE ARE OUR TOP-TIPS ON PREPARING FOR THE UNEXPECTED:

- **First, remember that there are other types of emergencies where you might need to end the meeting at once: An actual fire, for example, or, heaven forbid, a meeting where some attendees get totally out of hand.**
- **Accordingly, always make sure that the Chairman - and you - have an emergency script at hand that will let the Chairman very quickly end the meeting and very quickly clear the room, regardless of the circumstances.**
- **Be sure to have brief and crystal clear instructions on how to exit in a quick, safe and orderly fashion - and make sure beforehand that you have staff who will know exactly what they need to do to assure this.**
- **Always have a signed copy of the Ballot of the Appointed Proxies in hand - and in the hands of the Inspector of Election. We know that many company officers may not want to sign a blank ballot - so be sure that it says, "Vote in accordance with the proxies on file." The Inspector can fill in the numbers afterwards, or simply attach a copy of the Final Report and hand print "see attached" - but this assures that the votes in hand were *cast* and seals the deal.**

## VIRTUAL MEETINGS GAIN TRACTION

**This year, through June, Broadridge has enabled 140 Virtual Shareholder Meetings - almost all of them "virtual-only" - with no in-person attendees - vs 134 for all of 2015 They are projecting a 30% increase over 2015 by year-end. VSMs can be huge time and money savers for public companies - and, of course, can reach vastly wider audiences without the hassles - and the hall.**

**Is a VSM right for your company? Be sure to tune in to Broc Romanek's webinar on September 27 at 11 a.m. Pacific 2 p.m. ET for his webcast at https://www.thecorporatecounsel.net/Webcast/2016/09_27/ - where the ins and outs will be explored in detail by an expert panel.**

## ON THE SUPPLIER SCENE:

**AST SETTLES LAWSUIT WITH LAUREL HILL:** The lawsuit, **Laurel Hill v AST, Phoenix Advisors et al** goes all the way back to 2011, where 'the old AST' seemed to have settled in for a protracted war of attrition, waged by its big-name law firm. The suit alleged that "*While AST engaged in preliminary discussions with Laurel Hill to acquire Plaintiff, it ultimately decided it would be easier and cheaper to steal Laurel Hill's business*"…and it cited a long list of alleged wrongful acts, such as Laurel Hill employees using Laurel Hill computers to create new letterhead - and to send messages to L-H clients indicating that signing a new contract with AST would be perfectly fine - and taking away not just the clients but the computers themselves! While terms were not disclosed, an inside source told us that "there are a lot of people smiling at Laurel Hill" - and we'd bet that there were big smiles at 'the new AST' too - since, ta-da…

**THE AST SETTLEMENT CLEARED THE DECKS FOR ITS NEW CEO TO EXPLORE AN IPO, OR, MORE LIKELY, AN OUTRIGHT SALE**… in early July, when Australia's *Street Talk* website revealed that AST's parent, **Pacific Equity Partners (PEP)** "has called in the major investment banks to pitch around its options for United States-based AST. PEP wants a bank to run a strategic review and explore options around a $US 1.5 billion to $US 2 billion trade sale or initial public offering… Interested parties are expected to include private equity, the major banks, such as **Wells Fargo**, and bourses, including the **Toronto Stock Exchange.**"

While we wish AST and PEP all the best, PEP's valuation pitch seems "a bit stratospheric" as one analyst told us: The *Street Talk* article, which failed to mention PEP's purchase price of well over $1 billion US in 2008 - noted that *"soon after PEP bought in, financial markets froze over and interest rates plummeted. AST made about half of its earnings in overnight money markets – and that dried up almost instantly."* Another analyst we spoke with noted that publicly traded Computershare's current market cap is just a bit over $3 billion US - and CPU has, as we both estimated, roughly four times the US and Canadian share registry market share, dollar-wise…plus registry businesses in the EU, UK, India and other locations around the globe… so stay tuned for more here. Maybe they do have some sort of 'secret sauce' here…but do not lay odds on a Wells Fargo buyout we say, who'd be the least likely buyer anywhere, for sure.

**IN ANOTHER MAJOR DEVELOPMENT, MORROW & CO IS ACQUIRED BY SODALI INC.** creating **Morrow Sodali Global**, "the largest independent corporate governance, proxy solicitation, investor relations, capital markets and shareholder services firm in the world… headquartered in New York City and London, with offices and representatives in Beijing, Geneva, Johannesburg, Madrid, Mexico City, Paris, Rome, Sao Paulo, Stamford, Connecticut and Tokyo… Together, Morrow Sodali Global will serve more than 600 corporate clients in 30 countries, with aggregate market capitalization in excess of US$5 trillion." according to their May 11 press release.

**John Wilcox**, one of the best-known and most highly respected people in the governance space, we'd note, will serve as Chairman of Morrow Sodali. Prior to serving as Chairman of Sodali he served as Senior Vice President and Head of Corporate Governance at **TIAA-CREF** and was previously Chairman of **Georgeson & Company**. The founding partner of Sodali, **Alvise Recchi**, will be the CEO. Given the huge number of cross-border deals that we have been seeing - and which we think will become a permanent, and growing part of the landscape - plus John's impeccable reputation for integrity, wisdom and plain old-fashioned know-how - we predict that middle-sized Morrow - which also has some of the most knowledgeable people around - will quickly turn into a major powerhouse here in the U.S..

# GEORGESON STAFFERS ARRESTED FOR MISUSE OF CONFIDENTIAL VOTING DATA AND FRAUDULENT BILLING PRACTICES

We are very sad to report that long-term Georgeson employees Donna Ackerly, Richard Gottcent, Keith Haynes, and Michael Sedlak were arrested in July and charged in a criminal complaint with one count of conspiracy to commit wire fraud and honest services wire fraud for conspiring to bribe an employee of proxy advisory firm and voting agent ISS to obtain confidential information about how ISS clients had voted on numerous shareholder proposals. Charles Garske, a former employee, appeared in court later in the week to answer the same charges. The defendants are scheduled to appear in U.S. District Court in Boston on Aug. 4, 2016.

The *OPTIMIZER* has been following this case since 2013 when a whistleblower, who had been fired by Georgeson, revealed that from September 2007 to March 2012, the defendants conspired to provide tickets to concerts and sporting events to Brian M. Bennett, formerly known as Brian Zentmyer, an ISS employee, in order to obtain information about whether and how the proxy advisory firm's clients had voted on particular shareholder proposals - and naming Sedlak as the mastermind of the scheme. Bennett pleaded guilty in July 2015 to one count of conspiracy to commit wire fraud and honest services wire fraud. The big issues, as we noted when he was sentenced, was "Who was involved in obtaining and using the information, who arranged the bribes and perks, and, perhaps most important, who signed off on the expenses?"…So now we seem to know…

This is really a sad and sorry tale: As the Massachusetts Attorney General noted, "Today's charges lay out in stark detail a practice by which senior employees of a prominent firm allegedly used bribes as a business tool to obtain confidential information to which they were not entitled. With tickets to expensive concerts and sporting events—which, in some instances, they billed to their own clients using falsified invoices—the defendants are alleged to have bought confidential shareholder data and voting information they could not otherwise obtain."

"These defendants are charged with conspiring to use bribes to obtain confidential information to gain an unfair business edge over their law-abiding competitors," said Harold H. Shaw, Special Agent in Charge of the Federal Bureau of Investigation, Boston Field Division, in the same press release. "This investigation is another example of the FBI's commitment to ensuring that nonpublic business information is properly safeguarded, and not misused by individuals and third parties for their own improper advantage."

It's worth noting that the exchange of perks and other outright bribes for voting info has reared its ugly head in the proxy industry every five-to-seven years for as long as we can remember. But in the past, most of the perps got off with a mere rap on the knuckles vs. the criminal penalties being sought here. (One firm basically got off scot-free a second time, not long after being caught and promising not to do it again!)

It also seems worth noting that the complaint alleges that Ackerly, Garske and Haynes provided the information directly to the firm's clients, who, we note, should have known that this kind of information could simply not be obtained in a legal manner…so shame on them. And let's hope their names do not come up during the trial.

***The charging statute provides for a sentence of no greater than five years in prison, three years of supervised release and a fine of $250,000 or twice the gross gain or loss, whichever is greater…so fair warning to proxy agents that raps on the knuckles can no longer be expected.***

***And fair warning to issuers too - to think twice before forking over corporate funds or perks for info that the issuer should really know is not obtainable, other than through unethical and probably illegal activities. Here's hoping that no one else will be outed as the trial progresses.***

**THE SHAREHOLDER SERVICE**
**OPTIMIZER**
**is published quarterly by**
**CARL T. HAGBERG & ASSOCIATES**
**SUBSCRIPTION PRICE:**
**$300 per year print/$250 e-edition**
**Questions, comments or letters to the editor about material in this newsletter are also most welcome.**



**P.O. Box 531, Jackson New Jersey 08527-0531**
**Telephone (732) 928-6133 Fax: (732) 928-6136**
**E-mail: cthagberg@aol.com**
**www.OptimizerOnline.com**

**MORE NEWCOMERS ARRIVE IN THE ALREADY CROWDED PROXY SPACE: THREE MORROW EXECS DEPART TO FORM SARATOGA PROXY PARTNERS:** Long-term Morrow exec **John Ferguson** - with 22 ½ years there - left Morrow Sodali in early July to form a new firm, based on a "smaller, boutique model, focusing on individualized service to public companies" he told us. Joining him are **Joe Mills**, another long-term Morrow pro, with a strong focus on stock surveillance programs and proxy fights, and **Anne Marie Malone.**

**AND OOPS…HOW'D WE MISS IT?** **Peter Harkins**, a 23-year veteran of **DF King** - where he'd served as President & CEO until 2013 - recently formed **The Harkins Group**, with co-founder **Mary Ellen Goodall**, and IR and Governance specialist and proxy-pro **John Bibas.**

***This, with Kingsdale's try for a U.S. beachhead here, makes three new additions to the already crowded proxy solicitation universe in less than a year…although R&Ts proxy business largely scattered after Computershare's purchase of R&T and AST's Phoenix Advisors was basically folded into the D.F. King business that AST acquired last year, so a net of one firm. But as we have been saying, and still say about Transfer Agents, "The dealin's are far from done in the proxy world too"….so stay tuned.***

# BROADRIDGE ACQUIRES DST'S BIG NORTH AMERICAN CUSTOMER COMMUNICATIONS BUSINESS

According to the June press release, the former DST division is "the largest transactional printer in North America [and] a leading provider of customer communication services including print and digital communication solutions, content management, postal optimization, and fulfillment. The NACC business has over 2,300 associates and four production facilities located in El Dorado Hills, CA, South Windsor, CT, Kansas City, MO, and Markham, Ontario, Canada…Its clients include many Fortune 500 companies, primarily in financial services and also in healthcare, telecommunications and utilities."

The business, which was acquired for $410 million in cash, generated $1.1 billion of total revenue, and $445 million of fee revenue in 2015. Senior management, led by **Mike Abbaei**, Head of DST's Customer Communications business, will be joining Broadridge as part of this transaction.

**This sure strikes us as a blockbuster deal:** "Upon closing, the NACC business will become part of Broadridge's Investor Communication Solutions business, creating North America's premier customer communications technology platform. This will enhance Broadridge's position as a leading provider of multi-channel communications with exceptional scale in print communications and leading offerings for digital communications. The combination will allow clients to engage customers with new, unique capabilities and further enhance Broadridge's ability to meet its clients' current and future customer communications needs" and, will be immediately accretive to earnings on a GAAP basis.

"This is the next step forward in Broadridge's journey, and it will create value for clients and shareholders in the near, medium and long term," commented **Richard J. Daly**, President and Chief Executive Officer, Broadridge…"It also positions us to be a communications leader across a number of market verticals and a provider of a unique suite of multi-channel communications solutions, empowering Broadridge to accelerate the industry's conversion to digital communications and meet the diverse preferences of our clients' customers." **Douglas R. DeSchutter**, President, Digital Communications, Broadridge, noted that "The consumer reach of the combined business exceeds 75% of North America's mailboxes… and will allow Broadridge to greatly expand its role in digitizing critical investor and consumer content and to make every communication more valuable."

# COMPUTERSHARE CHIEF REJECTS BLOCKCHAIN FEARS; UNVEILS NEW BLOCKCHAIN SYSTEM

Speaking at an investor conference in April, Computershare CEO **Stuart Irving** says claims it will be undermined by blockchain are "the ill-informed views of vested interests. The focus should be on payments and trade settlement, not registry. The view that 'distributed ledger' technology means everyone will get a copy of a share register is naive."

"Computershare is not an intermediary in the traditional sense" he explained, "Computershare is an agent for a critical end-user segment of the market – an enviable position in a blockchain environment. We see real-life commercial opportunities given Computershare's unique positioning." Irving then went on to unveil a deal with British blockchain company **SETL** to establish the first securities register in the world based on blockchain in Australia and he provided attendees with a demonstration of the new system.

Computershare has also been working with online retailer **Overstock** in the US - a company whose stock price, as readers may remember, was repeatedly victimized by naked short sellers a few years ago; something that blockchain will prevent. Overstock has set up its own exchange based on blockchain and plans to issue shares on it. Computershare is its share registrar.

**Morgan Stanley** analysts have argued blockchain could allow companies or exchanges to do the share registration and verification themselves. But in its investor presentation Computershare stresses that distributed ledgers will still need an 'issuer agent': "Only one trusted party can logically act as the gateway [or node] for the issuer for the purposes of maintaining issued share capital, otherwise the system will lack the integrity it needs on a distributed basis."

**Remember our list issue, where we predicted that DTCC itself could go by the boards with blockchain?** Computershare argues that the existing "four level" market of exchange trading, clearing, settlement and registry functions is likely to be reduced to just two - trading and registry - and it is working with the ASX and the US Securities Exchange Commission on how this might work. "Connecting a registry platform directly to a trading platform through a distributed ledger is a logical construct for a streamlined and efficient market model." CPU also argues that legal and privacy reasons will mean the share register will not be replaced by a distributed ledger, and we are very much inclined to agree.

An important footnote here: Delaware has created a **Delaware Blockchain Initiative** to assure that Delaware laws will accommodate the new technology. "Blockchain Legal Ambassadors" are currently developing proposed amendments to Delaware law and the Delaware Corporation Law Council has agreed, at the Governor's request, to consider these proposed amendments and modify them where appropriate, after which a final set of amendments will be proposed to the state legislature…which could happen as early as the summer of 2017

***Most noteworthy we say, SETL estimates that blockchain will eventually remove about US$80 billion in costs from the post-securities trading sector and will be used to record and verify instantly a host of payments, including cash, foreign exchange, securities and derivatives…basically obviating "clearinghouses" and "securities depositories" alike. Maybe the transfer agency community is about to catch a much needed break - IF they can come up with the will, and the money to compete, as Computershare seems clearly to have done.***

# ELSEWHERE ON THE SUPPLIER SCENE

## "SCSGP" - AKA "THE SOCIETY" - CELEBRATES ITS 70TH YEAR AND CHANGES ITS NAME…AT LONG LAST:

Hooray for them, and for us, the members - not just for their 70th anniversary, but for finally ditching that long-winded and impossible to abbreviate moniker in favor of the short and sweet **"Society for Corporate Governance"** - which neatly explains what "The Society" (a nickname that always struck us as subconsciously signaling a secretive and clique-ridden cabal) is *really* all about these days…and now signaling a much more welcoming and good-goal-oriented group. Three cheers for the just -retired chair, **Dannette Smith**, Corporate Secretary of **UnitedHealth**, for successfully bringing this to fruition!

## THE SHAREHOLDER RELATIONS ASSOCIATION (SSA) CELEBRATES ITS 70TH YEAR; MIDWEST STOCK TRANSFER ASSOCIATION MERGES WITH THEM AFTER 43 YEARS ON THEIR OWN:

Three cheers for the SSA too - which capped its 70th anniversary celebration in Chicago by welcoming all the members of the Midwest Securities Transfer Association into the SSA. In typical Midwest fashion, the MSTA stuck tightly together as an organization, and as a large group of *friends*, who truly valued both their public-company and service-provider colleagues and maintained their independence from the STA for 43 years. Among other benefits, MSTA members will all get two full years of membership…with no offensive surcharges for "vendors" that both the STA and NIRI impose, as if, somehow, the insiders are not vendors themselves.

# OUT OF OUR INBOX

## REMEMBER OUR MANY WARNINGS ABOUT THE FAILURE TO PRESERVE CRITICAL SHAREOWNER RECORDS? IN THE SECOND QUARTER WE HAD NOT ONE BUT TWO INQUIRIES FROM LAW FIRMS REPRESENTING PLAINTIFFS WHO CLAIMED THAT TWO BIG COMPANIES OWED THEM BIG MONEY:

The first one involved a stock certificate that would be worth $1 million if deemed valid - but where the company claimed that (a) the initial records could not be found that would either substantiate or disprove the claim, and be that the core documents were "too old" for the transfer agent, or the company itself to have kept.

In the second case, a (former?) shareholder filed a lawsuit seeking $200 million (!) in damages over an alleged "improper transfer"… or maybe due to a mistake or defalcation by the T-A - where (a) the plaintiff's account disappeared from the transfer agent's records shortly after his first inquiry, along with a previously documented group of stock certificates and $185,000+ in uncashed dividends that were in the transfer agent's vault… and (b) there was a gap in the shareholder ledgers - and in the transfer journals and canceled stock certificates between the time of the first inquiry and when the balance went to zero - all within a matter of months - which would, if available, show exactly what had gone down. Specifically, they would have provided the names of the transferee(s), the recipients of the missing certificates and cash, and the names and insurance companies of the signature guarantors, if there was a fraudulent transfer - that would show the plaintiff, and the company, exactly what to do next.

Then, just a week ago, the SSA conference had a session on records retention that we attended - with about 25 public company reps there too - where no two companies seemed to have the same understanding as to what records needed to be retained, or for how long, or who was responsible for doing so - and where about half the attendees reported that many of their records were created by two or three predecessor transfer agents. And most had no idea as to when, or to whom they were transferred for safekeeping - if at all.

***We urged the SSA to convene a workshop on records retention, and to round up the experts, although actually, there seem to be mighty few of them in this highly specialized and arcane "space" at the moment. We will keep you posted on developments on all of these fronts, and on the SEC front too, where we had a lot to say on this subject, and lots more recordkeeping horror stories to share, which we urge you to review on our website under "Transfer Agent Liabilities" if you missed them earlier.***

# PEOPLE

Just a few months after leaving **Georgeson** to join the staff of the **Girl Scouts of the U.S.A.**, **Rhonda Brauer** left for a *new* job…**Senior Fellow at The Conference Board Governance Center.**

**Keane**, the country's "leading provider of comprehensive unclaimed property services", announced in May that **Debbie L. Zumoff** will lead its National Consulting & Advisory Services team and continue to serve as Chief Compliance Officer. *"Debbie has been at the forefront of the unclaimed property industry since the beginning", noted **Mike O'Donnell**, Keane Chief Executive Officer. "She has witnessed firsthand the rapid growth in third-party audit activity, the evolution of state escheat laws, and the increased responsibilities that accompany compliance with state and federal regulations. With Debbie's experience and expertise, we are thrilled to have her leading our consulting practice and are confident our clients will be as well."*

**At NIRI**, their relatively new President and CEO **James M. Cudahy** "steps down following successful launch of IR Certification Program…to pursue other professional interests," according to their press release. The board has retained **Korn Ferry** to assist in the search for a new President and CEO and is assembling a search committee of NIRI member leaders. Meanwhile, NIRI Vice Presidents **Mike McGough** and **Matt Brusch** will serve as interim co-leads for the organization, reporting directly to the board of directors.

Two of our very long-term Society friends and colleagues, **Amy Corn**, who recently retired as Corporate Secretary at **Pitney Bowes** and **Tony Horan**, who recently stepped down as Corporate Secretary at **JP Morgan Chase**, were awarded the Society's highest honor - The **Bracebridge H. Young Distinguished Service Award** at the annual conference in June. Two of the Society's most distinguished (and nicest) members, for sure.

We are also pleased to note that another of our very long-term (and nicest) friends and colleagues - **Ginny Fogg**, General Counsel at **Norfolk Southern Corporation** has been elected Chair-Elect of the **Society for Corporate Governance** for the term beginning in 2017.

And speaking of nice...and hard-working…"After more than 26 years at the **Society** (six Presidents and three names) **Suzanne Walker**, SVP, is retiring from the Society" the Society's President, **Darla Stuckey** e-mailed the membership in July. "Suzanne has been responsible for our many wonderful conferences and she has made life-long friends through the Society. She leaves with our gratitude for her service, loyalty, and steady guidance. She has been the heart and soul of our National Office during her tenure" - a statement we most heartily second. We wish her all the best for her well-deserved retirement.

**Sean McKessy**, first ever Chief of the SEC's Office of the Whistleblower is leaving the post he's held since Feburary, 2011 when the Dodd-Frank mandated program was created. Current Deputy Chief Jane Norberg, who was appointed to that role in January 2012 will serve as Acting Whistleblower Chief upon McKessy's departure.

**Paul Dudek**, Chief of the SEC's Office of International Corporate Finance, is leaving after more than 22 years in the position. The office serves as the point of contact for non-U.S. companies and governments that register securities with the SEC. The office also is responsible for rule-writing initiatives and interpretive matters relating to offerings by foreign issuers in the U.S. and multinational offerings by foreign and domestic issuers.

Could both of these moves possibly be connected to the current investigation of ADRs and ADR execs? We asked the chief ADR whistleblower...who has been whistling for over three years now, mostly in vain, and who chuckled with glee.

## SOME KUDOS FOR YOUR EDITOR'S COMMENTS RE TRANSFER AGENT REGULATION….BUT RUDE BOOS FROM THE CEO OF ONE SMALLER AGENT: WHAT'S THIS GUY WORRIED ABOUT, WE ASK?

**Your editor's comments on the SEC's long-awaited initiatives on transfer agency regulation got pretty good notice we think, with 79 views on LinkedIn to date, five "likes" and 11 more likes following the comments of a noted regulatory and operations-management consultant, who challenged the SEC *"to address each and every bullet-point, and, if they fail to embrace any of them, to explain why…because the logic is so clear."***

***"Really well done, lucid and understandable"* said another commenter, who leads a major proxy advisory firm…and, *"Your comments are on the side of the angels"*… from the senior exec at one of the top-three TAs, in a personal note.**

**So we felt pretty good about all of the time and effort we'd put into this in the interest of sharing some facts, figures and horror stories from our 50+ years in and around the transfer agency business…until we got this, in an e-mail from the President & Chairman of one of the top-five agents:**

***Carl: Every time I think you have gone further over to the dark side, you surprise me by going even further. Your 2 pieces are so adversarial to the Transfer Agent industry, it is surprising to me that you continue to seek transfer agent advertising and support. Your LinkedIn posting is the final straw.***

**OUCH! Our goal was to *help transfer agents*, by encouraging regulations that would provide better clarity, and thus protect transfer agents from the many liabilities that arise when there is a lack of clear rules and regs.**

**We also tried hard to educate the SEC - and ideally, the corporate community too - about the huge liabilities that transfer agents actually take on, which, so often, the current pricing environment fails to take into account.**

**And actually, we took pains not to belabor the facts, as the SEC's discussion draft noted in the footnotes, that two of the larger TAs were caught leaking unregistered securities into the marketplace - and that one of the biggest 'smaller agents' was shut down entirely by the SEC… within the past two years.**

**We still don't know what set this guy off…We THINK his company already carries sufficient insurance, which is required to serve as a T-A for NYSE listed companies, which he does…but oooh…maybe not? Maybe it was our section on abandoned property…and on companies that 'mined the shareholder records' as if they were their own - by talking fees from shareholders without full disclosure to the issuers…and sometimes, in a practice we hope and pray is over, by taking abandoned property into the income line…all of which we warned about.**

***Oh well. You can't be an editor without having thick skin… or without doing one's homework either, which we always take great pains to do…But as one senior T-A exec told us, "This guy sounds pretty desperate."***

## HUGE NEWS ON THE ABANDONED PROPERTY FRONT:

As we just learned at the SSA conference in July, a sweeping re-draft of the so-called Uniform Abandoned Property Act has been approved, that would, among other things, call for state treasurers to wait at least three years before selling any "underlying securities" deemed abandoned… AND that would require them to return the full-value of the escheated shares, plus all accrued interest and dividends, to owners who come forward within six years of the escheatment date.

This would basically put a stop, once and for all, to all the lawsuits thanks to state seizures and sales of so-called abandoned property that have been plaguing public companies and their transfer agents.

The not-so-good news is that each state would have to adopt the new rules - and it's not that likely that all will do so. AND… it seems likely that many will stick to their bad old ways…unless the Supreme Court stops them, which maybe they will …IF a good test case can be found. (The recent case that SCOTUS was asked to take up was ruled "too convoluted" although two justices noted what appear to be unconstitutional seizures of property by state treasurers.)

And ouch, there's more bad news: As we noted in our last Special Supplement, a host of new "contingent auditors" of abandoned property are being hired by a host of "bad state treasurers" and they are "descending on public companies like flies on a big, fat, abandoned-property pie."

Seems that most states now limit a single auditor to auditing no more than 50% of the "pie." And since the "auditors" collect a cool 12 ½% of the value of the monies obtained (which would create conflicts of interest for REAL auditors) they are relentless, and breeding like flies besides. Stay tuned for more news in our next issue.

# REGULATORY NOTES…AND COMMENTS

## ON THE HILL:

The two nominees to fill vacancies on the Securities and Exchange Commission face new and lengthy delays - as at least one Democratic lawmaker has moved to block a Senate confirmation vote by placing a "hold," on the nomination of **Hester Peirce**, the Republican nominee for the agency - which basically thwarts the confirmation of the Democratic nominee as well….all before adjourning for a seven week recess.

And oh yes, a single Senator on the Republican side is still holding up a nomination to the Ex-Im Bank board that prevents them from guaranteeing loans over $10 million…and where companies like **Boeing** and **GE** have had to export thousands of high-paying jobs abroad.

## AT THE SEC:

The staff has issued new guidance and promises to step up its scrutiny of and its comment letters on using non-GAAP reporting...while a growing number of senior US execs have been taking aim at misleading non-GAAP reports as well.

In a speech before the **International Corporate Governance Network**, SEC Chair **Mary Jo White** signaled forthcoming rulemaking on board diversity disclosure that entails an amendment to Reg. S-K Item 407(c) "I can report today that the staff is preparing a recommendation to the Commission to propose amending the rule to require companies to include in their proxy statements more meaningful board diversity disclosures on their board members and nominees where that information is voluntarily self-reported by directors. Some may oppose even minimally more prescriptive diversity disclosure requirements. My view is that the SEC has a responsibility to ensure that our disclosure rules are serving their intended purpose of meaningfully informing investors. This rule does not and it should be changed. Our lens of board diversity disclosure needs to be re-focused in order to better serve and inform investors."

## IN THE COURTHOUSE:

**A "Yuge" win for corporate directors** - and for investment bankers too - as a 5/13 WSJ article pointed out - thanks to a recent ruling from the **Delaware Supreme Court** in the **Zale** Inc. case, where plaintiffs alleged that directors had not done enough to get the best price. The Court, which upheld a lower court dismissal upon appeal, went even further - saying that once shareholders approve a deal, even gross negligence would not be enough to sustain a charge under the business judgement rule - once the shareholders ratify the deal.

# WATCHING THE WEB:

"YE BREXIT YE'LL PAY FER IT" say all the leading indicators as we went to press. While US stocks have recovered all the losses posted in the two days after the UK's vote to exit the EU - then went higher yet - the British pound is still down about 12% - after dropping as much as 30%, to a 30 year low - and hedge-funds are shorting it by a two-to-one margin. And while a few UK companies, like **Burberry**, are doing well by collecting lots of money from buyers with strong currencies and paying their bills in deeply devalued pounds, many more are feeling the pinch. And many others fear they will be snapped up entirely by non-UK companies with the pound at such a large discount to the dollar. We also think that the UK - which really is a bigger global financial center than New York is - will inevitably see its stature slip away if they muff their Brexit…and we are saddened to think that one of our strongest and staunchest allies could fast become a second-rate or third-rate power. We sure hope we are wrong about this!