

# OPTIMIZER

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

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## CYBERSECURITY SOARS TO THE TOP OF BOARD AGENDAS...

**BUT NONE OF THE CHECKLISTS WE'VE SEEN ADDRESS ONE OF THE BIGGEST AREAS OF PUBLIC-COMPANY VULNERABILITY: THE WAY THEIR KEY VENDORS GUARD, OR MAYBE FAIL TO GUARD THE SECURITY OF THEIR MOST SENSITIVE RECORDS...**

*Our in-box has been brimming over these past few months, with invitations to attend conferences, webinars and to download white-papers and checklists on Cybersecurity – and on what, exactly, a Board of Directors needs to know and do about it.*

No wonder, of course, after the almost daily reports of successful cyber-attacks on the most sensitive kinds of corporate records: records of their customers' names and addresses, their email addresses and maybe their passwords, and no doubt, on the frequency, distribution and dollar amounts of many of their financial transactions as well. A recent *WSJ* tally showed that roughly 600 million customer records had been exposed to some degree over the past few months by breaches at a mere handful of companies: at **Heartland Payment Systems** (130mm), **Sony** (100mm), **TJX** (90mm), **J.P. Morgan** (76mm), **Target** (70mm) **Home-Depot** (56mm) **Card Systems** (40mm) and **Neiman Marcus** (1.1mm – but where we'd bet a dollar-weighted measure would have vaulted them into the very top tier of victims in terms of net worth).

A recent posting on the *Society Huddle*, by Jennifer Naylor of the *Center for Board Excellence* cited two documents that she – and we too – found to be particularly useful, and relatively easy for non-techies to comprehend: **Verizon's 2014 Data Breach Investigation Report**, which readily Googles up and covers huge ground in a mere 60 pages – and the **"Twenty Critical Controls"** framework, [www.counciloncybersecurity.org](http://www.counciloncybersecurity.org) (106 pages) – which Naylor nicely summarized as "a solid, actionable check list for boards to review with their security teams." (By the way, if you are not Society members – and/or not in "The Huddle" – you are missing out on one of the best resources for public companies... and their suppliers... anywhere!)

*But none of these documents focus attention on one of the most dangerous*

*continued on page 2*

*areas of all to public citizens and their boards – the need to adequately evaluate the Cybersecurity measures that are in force – or maybe not – at your key corporate suppliers.*

**At a recent Shareholder Services Association meeting in NYC (another group where, by the way, every public company should have a member) a panelist ticked off some of the super-sensitive data a public company's transfer agent has on file – like every registered shareholder's name, address, Social Security or TIN number, the number of shares owned, and often, the holders' e-mail addresses. “And please note too” your editor chimed in, “many transfer agent records also record the holders' bank account numbers, if they sign up to get dividends via ACH, or for automatic deductions for their DRP - and sometimes their brokerage account numbers, if they have moved money or shares back and forth. And, please don't forget, many transfer agents are able to look at every stock ownership position a shareholder has – with every single issue that is serviced by that T-A...so this is serious stuff!”** Just think for one moment on how easy it is for criminals with access to this info to identify the oldest and richest shareholders - and the most vulnerable ones - for “pishing expeditions” - or outright theft of their dollars - and all their “dematerialized shares” - by very convincingly impersonating them.

**Moving on to some other key suppliers, let's not forget about one's proxy solicitors – who often have exactly the same info on hand – and who often drum up the holders' phone numbers to boot – which is incredibly easy to do these days.**

**And, OMG, the various servicers, reporters and ‘finders’ of so-called abandoned property, where the shares and dollars are literally ‘up for grabs’ should unscrupulous vendors – or hackers – find the keys to the kingdom and masquerade as the lost holders or their heirs – and where failures on their part will end up solidly in your company's lap, or, God forbid, your own.**

**Scarier yet, perhaps, are your outside law firms – where, as the *OPTIMIZER* reported several years ago, sensitive files have been hacked – and sophisticated cyber-experts have listened in on Board deliberations and on other strategy meetings involving some of the most sensitive info your company has.**

**And let's not forget those outside providers of telephonic and video conferencing services that public companies, and their law firms and other key advisors, use with ever increasing frequency these days.**

**And OUCH!... You really need to ask your key suppliers about firms THEY use - and how *their* cybersecurity measures stack up - and exactly what kinds of data are being shared.**

**And DOUBLE OUCH!...You really need to ask all your vendors about any and all offshoring arrangements they may have – and exactly what kinds of data are being off-shored – and the kinds of *basic security measures* their suppliers have in place – even before probing for their *cyber-security measures*. Your editor is absolutely fine with the idea of offshoring – as long as the services are as good as those that can be obtained domestically – and will clearly be less-costly in the end - which oftentimes times they are. But your editor has dealt with many companies where their corporate charter documents (and sometimes federal and/or state regulations too) flatly prohibit the offshoring of share-ownership info, and similar kinds of corporate records (especially in sensitive industries like defense-contractors, and the communications industry as a whole) but where the corporate buyer, or the renewer of service contracts is *completely unaware* of such issues. And many times, U.S. vendors themselves seem to be unaware of limitations on the info that can be off-shored.**

**Here, by way of illustration, is a true *horror story* – that was witnessed a few years ago by your editor and by the Corporate Secretary and Chief Governance Officer of a large and highly-regulated public company during a “due diligence visit” to what then was a major transfer agent:**

*An employee of the transfer agent was filling in for the usual tour-giver when she brought up an actual transfer in progress to show us. When we asked exactly where this transaction was actually happening, we discovered that it was being processed live and in real time ... “by an associate in India.”*

*As we watched the screen, we could see that the Indian ‘associate’ was paging through a large group of stock certificates, then the death certificate for the registered owner, then the owner's account on the TA's records – that showed his name, address, account number and TIN. The actual will of the decedent was there too – along with the transfer instructions, that gave the names, addresses, TINS and entitlements of the heirs and soon to be transferees...And ooops again!...In observing the pagings-through, we were given a tour of all the other holdings of the decedent - in all of the other issues where the T-A served as T-A!*

(Please know, dear readers, that India is your editor's second favorite country in the world, after his own – and that he is delighted when work can be off-shored there – creating much needed work for our Indian friends – and dollar-savings – and, very often, fast and truly outstanding service for our U.S. friends. But information like this? Which info, by the way is to be shared in the U.S. only with employees that have been finger-printed and bonded when last we looked? “*Oh yes, all of our associates have*

*been thoroughly checked-out”* we were assured...But having been to India, your editor knows that, sadly, there is no “social security system” there – much less one that issues I-D numbers (except for government employees that is)...and that literally millions of Indians share the same first and last names, and that most dwellings have no house-numbers, and most streets have no visible

names...which makes ‘thorough checking’ a difficult if not a totally impossible task, we’d have to say. But please understand: our issue is not about offshoring per se, but about the nature and extent of the information that is offshored...and, about the *most basic security measures in effect*...even before exploring cyber-security issues.)

## **SO WHAT SHOULD A SMART CORPORATE CITIZEN BE DOING TO PROTECT THEIR BOARDS – AND THEIR OWN JOBS?**

- **For starters, checking on all of one’s key vendors, and specifically on their security and cybersecurity measures, as suggested above, really needs to be an annual event, rather than something that is usually done only when renewing a contract, exploring other vendors or changing vendors. These days, technological changes at vendors - and technological advances made by cyber-crooks - are happening with cybernetic speed.**
- **Second - and while we initially thought of palming it all off on your company’s cybersecurity staff - YOU really need to be part of the process – since only you, as the ‘subject matter expert’ can fully understand and explore the nature and the sensitivity of the information that is within your own domain.**
- **Trying to do this on your own – by chatting with your vendors or exchanging memos – is a terribly risky option: You need expert assistance from your I-T and cybercrime experts, just as they need your expertise. Interestingly, more and more companies are developing expert cyber-security teams and formal protocols each year – with the financial services industry – the most vulnerable of all to cyber-crime – very much leading the way.**
- **Do not wait for your cyber-crime experts to come knocking: Be proactive. And be aware that most cyber-crime experts would never think of the Corporate Secretary’s office, or the Corporate Governance office, or the I-R department as being places where super-sensitive information is being created and overseen!**
- **A very important insight we gained from the SSA session is the need to develop a “culture of security” in your own team, which really rang a bell: A few years ago, several of the Inspectors of Election on our Team, including your editor, were asked to download to our laptops and carry a major company’s entire shareholder file to the Annual Meeting, to assist in the check-in process. What were they thinking??? No way would we do such a thing – even if the entire file was encrypted - which this one was not – given the number of laptops that get lost or stolen every day.**
- **Another excellent insight that came out of the SSA session is that while formal checklists (and better yet, more detailed questionnaires, that flesh out the issues and the answers) add structure and discipline to the process, the most valuable information is often shared most effectively via an in-person visit, or a teleconference between the experts on both sides.**
- **Lastly; cover your tail – and your Board’s tail too...by creating a schedule, and a checklist of annually required actions to check on ALL of your department’s vendors; to briefly review them during your periodic meetings with internal risk-management committees, and ideally to create brief written reports on the efforts, “for the record”...and perhaps to review them with the relevant Board committees too...so they know you are properly watching their backs.**

## STRAWS IN THE WIND: OUR PREDICTIONS ON 'BIG NEW THINGS' COMING SOON ON THE SHAREHOLDER PROPOSAL SCENE

*Every year around this time we try to look way, way ahead where Annual Shareholder Meetings are concerned, and to offer our predictions on the "big new things" we foresee as coming down the pike.*

We think that our track record has been mighty good: We predicted many years beforehand, for example, that trying to assert that voting for directors was still a "routine matter" – where brokers could vote the absent votes on behalf of their retail customers – could not possibly withstand the sniff test, much less the test of time. We predicted that a "majority voting standard" for director elections would, inevitably, replace the old "plurality standard" – which is happening at an ever accelerating rate ...and that it would, indeed turn into an incredibly potent "nuclear option" when shareholder wishes were ignored (a lesson that quite a few company boards never learned 'til the bomb actually fell – like at Darden Restaurants last week.)

The biggest and boldest prediction we ever made – about "investors increasingly holding Directors' feet to the fire over their stewardship of corporate assets" – has come to pass in spades - to the point that activist investors are virtually invincible if they can show just a "reasonable sounding way" to deliver bigger and better shareholder returns, faster than the old board has in mind.

Our only big "miss" to date has been on the executive comp front, where we've been predicting for about 15 years that this issue would come to the fore...any day now. We have to admit that (a) we severely underestimated the willingness of investors to pay top execs almost anything the comp committee recommends, as long as the company, and they, are doing "OK" and (b) we underestimated the extent to which a "say on pay" would serve as a safety valve, or a sop, that would defuse the issue with a mere "check of a box" to say "OK".

But now, after the recent flap over employee comp at **Coca Cola**, we think the jig is up, and that analysts, and activist investors – not to mention corporate squires, and actual fans, like **Warren Buffett** - will begin to delve much more deeply into the nitty-gritty, ask more questions, run more numbers with more 'what if' scenarios and challenge more pay provisions. And we predict, as we did in our last issue, that increasingly, they will do so in the "eleventh hour", as they did at Coke - to get maximum exposure in the press that will put directors on the spot, and increasingly force revisions to show that boards are "listening"...So that's prediction number-one.

Prediction number two is that treating the ratification of auditors as a "routine proposal" is also failing the sniff test these days, and will not withstand the test of time either. Point one re: rubberstamping the selection of auditors; Check out the recent report from "peekaboo" that reveals serious deficiencies in roughly 43% of the audits that the **PCAOB** audits. Point two; The entire accounting industry is finally resigned to the need to disclose the names of the audit

partners in charge of every corporate audit. The only issues are when this will happen, and where the disclosures will be made – but with search engines, it hardly matters...And you can bet your life that the same handful of partners and firms will be associated with many of the failed audits that come to light. So look not only for no more rubberstamping, but for actual Vote-No campaigns on auditor ratification, we predict.

Prediction number three is that not only will shareholder proposals to reveal more details on corporate political giving not go away, they will continue to increase dramatically – and will ultimately end in near-universal corporate disclosure of all such giving...and the devil will take the hindmost here. A group of activists recently announced that one million comments have been filed in support of a petition for the SEC to require such disclosures, which, likely they will not do...But remember, it was Supreme Court Justice **Antonin Scalia** himself who noted in the **Citizens United** case that he expected the *marketplace* to demand such information - as it is now doing.

Prediction four is that the push for more disclosures about stock buybacks, perhaps including demands for shareholder approval here, as is the common mode in the EU - will begin to gain much more traction with shareholder proponents, as we predicted back in our second quarter 2011 issue (which is worth a re-reading, we say). Here are just a few other 'straws in the wind' – in the form of headlines from recent articles; "**Beware Banks Bearing Share-Buyback Gifts**" (WSJ 3/17); "**Stock Buybacks: Will They Bite Back?**" (also from the WSJ in June) – and our favorite, and required reading we say, "**Profits Without Prosperity**" by **William Lazonick**, in the September 2014 *Harvard Business Review* – which, like the open letter to big companies from **Blackrock's Larry Fink** in March, blames boards for underinvesting in their companies to fund share-buybacks that basically enrich short-term investors and, as Lazonick very pointedly points out, serve mainly to enrich corporate execs at the expense of regular shareholders by artificially increasing ROE as it relates to their performance targets – and bonuses.

*Whether you sign on to our predictions or not, we absolutely guarantee that (1) shareholder proposals will never go away - since a huge and highly-paid army of lawyers, advisors, proxy chasers and muckrakers has grown like Topsy... and accordingly, (2) shareholder proposals are more likely to increase than they are to decrease - at least in terms of their seriousness, and (3) activist agendas will continue to gain traction with voters...making the votes of "regular investors" more important than ever... So please do read our next article with care...and see the Quote of the Quarter too...*

## **GETTING OUT THE “EMPLOYEE VOTE”...INCLUDING VOTES FROM OFFICERS...AND DIRECTORS...WHOSE BIG VOTES OFTTIMES GO MISSING...EVEN IN ‘VOTE NO CAMPAIGNS’ AGAINST OFFICERS AND DIRECTORS THEMSELVES!**

How ironic – and how totally crazy this is! Every year, we see more and more “Vote No” campaigns against officers and directors – more “close” or even “losing votes” on individual Director approvals – and on proposals companies want to pass – and on things they don’t want to pass... and where the “employee vote” would almost certainly have tipped the scales in favor of management...if only those votes showed up at the meeting.

As we have been pointing out with regularity, it’s NOT just that many activist investor causes are gaining traction with regular voters – as indeed they are – that make so many proposals increasingly close calls these days – and giving more of them winning margins each year: It’s the number of once “regular voters” who don’t bother to vote anymore – plus the increasing number of voters who are abstaining on many items, instead of voting yes or no – plus the fact that ACTIVIST INVESTORS ALWAYS VOTE. So it’s not at all unusual these days to have a quorum of 80%+ - but to have the total number of FOR and AGAINST votes total only 50% of the outstanding shares, since broker non-votes and abstentions don’t count on such matters – and for the difference between shareholder approval or rejection to be a mere one or two percentage points.

Against this background one would think that companies would be paying much more attention to the normally pro-company employee vote than ever before. Yet instead, we see dozens and dozens of companies each year where 6% of the shares are held by employees – and dozens and dozens more when total employee ownership is in the high teens, and sometimes higher – but where all but a small fraction of the employee, and officer and director votes too, go totally missing.

### **HERE’S OUR ANALYSIS OF WHAT GOES WRONG IN THE EMPLOYEE VOTING ARENA:**

*For starters, individual investors of every stripe have become increasingly apathetic about proxy voting with every passing year...And employee-owners*

typically lag the general investor population by a huge margin when it comes to voting, so please read on....

*Most individual investors are already over-busy – so it’s no big surprise that voting proxies is pretty far down on their lists of ‘things to do this week’ – but employee owners have many additional challenges:*

*A huge inhibitor; individual investors - and employee-owners especially, we find - feel that their holdings are “too small to make a difference”...And most public companies have done nothing to change their minds...unless you include those mindless slogans on the “Notice and Access” envelopes, which, as we keep pointing out, envelop little or nothing that will impel them to vote, much less help them to quickly cast their vote.*

*Another factor worth noting, most employee-owners don’t really think of themselves as “investors”, much less act like investors: For many of them – and probably for the majority of them – their Employee-Plan or 401-k position is perceived as an “employee benefit” – and is the only investment in securities they have.*

*Very important for public companies to note - and activist investors should really take note here too - most individual investors are not truly “invested” in the proposals that are on the agenda...And they really have no way – even if they had the time – to become better informed about the few items on the increasingly long lists of proposals to mull over that might actually matter to them...if only they knew more.*

*Another big factor in the low-voting department, employee owners tend to get the shortest shrift of all when it comes to get-out-the-vote campaigns...because, in our experience, many companies fear they might be perceived as using “undue influence” to sway the voting if they try too hard, or too often, to reach out to employee owners. Totally wrong, we say...unless of course they go at in an amateurish and ham-handed way...as yes, we have seen more than a few companies do.*

*The big move to Notice and Access – while it has saved billions of dollars for corporations – has become a major contributor to increased voter apathy and absenteeism – at least where smaller investors are concerned. It requires investors to exert considerable initiative – and expend valuable personal time – to become informed. And, unlike the systems that institutional owners use to pre-register “standing instructions” with voting agents on various types of matters, there is no way for individual and employee investors to do the same – even though most would vote, we’re sure, to automatically cast their votes for the home team if there was such a system.*

*Worse yet, as we have noted with regularity – the majority of the informational and voting sites – and the information one finds, or tries to find thereon – suffer from such bad design – and present the information so badly over the web, that even a saint would give up in disgust, and never come back.*

*The biggest inhibitor to employee voting – as we have reminded time and time again – is that many employee-shareholders – including lots of senior and mid-level officers too – have serious concerns about the confidentiality of their vote. Why? Because many employees have certain officers and certain directors they just don’t like – and don’t want to vote for. And some employees sympathize with some proposals that companies oppose. And sadly, your editor has witnessed far too many cases where corporate people snoop – and sometimes hold such votes against employees – and sometimes even take reprisal actions. But even if they DON’T – as most companies don’t – the fear that they *might* is a powerful one... So “playing safe” by not voting at all seems like the smartest thing to do, and sometimes *is*...*

### **SO WHAT’S UP WITH THOSE OFFICERS AND DIRECTORS? WHY DO SO MANY OF THEIR VOTES GO MISSING?**

*Let’s start with the most obvious thing: Corporate officers and directors tend to be even busier than the rest of us. And...hello...they are used to having most of their paperwork handled for them by someone else...and tend to simply assume it will all get handled.*

*Another major stumbling block, most of this crew – and many regular employees too, please note – tend*

*to have their holdings in many different places these days: Many officers and directors have big positions in their own names – often with several different brokers – and often in joint names with spouses, once they become ‘vested’...and sometimes in registered form too.*

*And...hello again...many officers, directors – and regular employees too – often have shares in multiple kinds of employee-ownership and executive comp plans – often with a number of different trustees and “plan administrators.” And many such people naively think that filling out one proxy, or one VIF votes all their shares!*

*Last, and one of the most common things we see at “close meetings” – officers and directors – or their AAs – typically check the box that they will attend the meeting...but then, never realizing they need to do so, fail to bring the required Legal Proxy to vote their street-shares in person. Over the past few years we have seen at least two dozen cases where last minute scrambling around to get Director votes into the tally actually turned the tide in a major way – and even more cases where companies woke up to the fact that Director votes could have turned the tide, but only *after* they’d lost a director or two, or on a proposal or two.*

### **HERE ARE OUR TOP TEN TIPS, PLUS ONE TO GROW ON - TO GET OUT – AND TO MAXIMIZE – YOUR USUALLY PRO-COMPANY EMPLOYEE AND OFFICER & DIRECTOR VOTE:**

*First and foremost, create a complete inventory of all your employee and O&D stock ownership plans, including the number of shares in each – and the plan administrators and recordkeepers for each one. (And please remember, that only shares that are “issued and outstanding” have the right to vote, so no “phantom shares” should be on this list.)*

*Create a list of all your Directors – and all your NEOs – and maybe the next ten most highly compensated officers – and tactfully try to find out where all, or at least the majority of their shares are actually held... explaining to them – and/or their AAs – that their votes are extremely important, and that every single vote counts in today’s environment.*

*Next, with respect to employee plans, try to consolidate as many of the votes into a single file, and onto a single voting platform as best you can – so that one single trip to the voting site and one press of “the button” will indeed cast most of their votes.* Most of the better proxy tabulators are able to consolidate most, if not all of these votes with the “registered investor” file.

*Next, take a tiny portion of the big savings from “electronic delivery” and reinvest them in one or more thoughtfully designed and executed voter education and voter outreach programs. The more “customized” they are for each discrete subset of voters, the better they will work.*

*When handled well, Notice and Access and electronic delivery rules can help you greatly increase the voting by “regular employees”:* The best practice we’ve seen is to email employee shareholders directly, with a brief message from the Chairman (and where a short audio-visual message is the most powerful motivator by far, we think) – but in any event, noting that their votes are important (and maybe *particularly important* to the company this year), Include a *very brief primer* on the issues, and a link to the proxy statement, “if you wish to review information on the agenda items in detail.” Most important of all, end the email with a link directly to the voting site, like, “To cast your votes now, please click here”... so viewers will be inclined, and *able* to vote right then and there if they are ready to do so.

*As we hope we implied above, assuring employees that their votes will be kept completely confidential - and strictly off-limits to any management scrutiny whatsoever - will, in our experience, markedly increase the employee vote.* (And here, the usually cited exceptions for proxy fights, and formal challenges to the reported results tends to draw attention to the fact that management MAY be allowed to peek! It can, we think, be handled much better by promising to restrict access - even in such rare events - to *non-management officials*, like the company’s outside counsel, or to an Independent Inspector of Election – who would not – and would not really *need* to disclose specific voter information to management at all: We can’t emphasize enough how “antsy” many employee voters feel (including many fairly senior officers too) about the possibility that their own votes will come under top management scrutiny...and what a vote killer this is.

*Now for the hardest nuts to crack, but often, and pardon the triple pun, those nuts with the biggest returns; the Director and Senior Officer voters: The easiest and best way to deal with them, we think, is to instruct the folks on this list to sign and mail back (or maybe hand you personally) any and all proxy cards and Voter Instruction Forms they get...as soon as they, or more typically, their AAs, get them.*

*It’s also very worthwhile, in our experience, to tell them that they do NOT need to mark any of the boxes to vote for the entire management slate,* which will save them time and trouble, and assure that there are no slip-ups: Every single year we see one or more Directors who dutifully tick all the FOR boxes – without realizing that sometimes they may be voting AGAINST the company’s recommendation to vote NO. One CEO actually lost a proxy fight we worked on a few years ago, by doing that very thing!

*Resolve to closely track the Employee Plan and the individual Officer and Director voting* as the meeting date approaches: This isn’t always easy – but very often, just a friendly emailed reminder is all that is really needed – as long as you don’t wait ‘til the last minute.

*If emailed reminders to regular employees seem advisable, as so often they really are, “specially crafted and tailored messages” are very good things to employ* - to explain WHY they should vote - regardless of HOW they vote. And be sure to remind that while it *appears* they may not have voted yet, you will NOT ever compile a list of non-voters and that you will NOT ever know HOW they vote if they do so.

*Finally; be sure to include that “Vote Now” link in any and all such reminders: Ironically, employee and officer and director voters are the biggest segment of voters you can actually REACH with emails.*

Readers: If you have any other tips – or any programs that worked well for you, please let us know!

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## ELSEWHERE ON THE SUPPLIER SCENE:

- **Computershare** released the results of a survey of **Employee Stock Purchase Plan** participants, conducted for them by researchers at the **London School of Economics**, showing, as the September press release reports, that employees who participate in an ESPP work longer hours, are absent less frequently, are less likely to quit the firm and are more motivated than non-participants in ESPs. To download a copy, go to [www.computershare/shareplanresearch](http://www.computershare/shareplanresearch).
- **Group Five** has just released two major surveys – its 16<sup>th</sup> annual report on client ratings of **Corporate Stock Plan Administration Service Providers**, rating ten providers this year, and its 24<sup>th</sup> (Wow – Three cheers!) **Annual Survey of Client Satisfaction with Shareholder Service Providers**, that focuses intently on Transfer Agents. Both reports are required reading, we say, for public companies and service providers alike.

For the fourth year in a row, **Fidelity Investments**, takes top honors for fully outsourced plan services

with a whopping 94% favorable rating – with **BofA Merrill Lynch** coming in a close second – surging by 14 percentage points vs. last year, and demonstrating, as Group Five’s **Kathy Huston** noted, that “*service providers are responding aggressively to plan sponsor concerns documented in prior year studies.*” Transfer Agent providers fare poorly in the study, at least partly, we think, due to the fact that most TAs have very limited “full service offerings” compared to brokerage firms and other plan systems providers.

**On the transfer agency scene, Computershare and Wells Fargo are tied for overall satisfaction**, with a very robust 94% rating, while **AST and Broadridge** are tied for second place, with healthy 86% overall satisfaction ratings. We hasten to add that the extensive data in this year’s report is very much worth reviewing, and parsing carefully, since there are some significant differences when one looks at company size, and product usage, and at the items that are most important to your own company, which, as we always remind, are key elements in any benchmarking efforts you may engage in.

## OUT OF OUR IN-BOX: “BOARD REFRESHMENT”

**Not about the drinks and appies anymore, we say...**

*A few weeks ago, a reader wrote us as follows: “At a recent **RR Donnelly** Seminar I attended, one of the speakers said that ‘Director Tenure’ may become an issue with **ISS**. Have you heard this and are there any other issues **ISS** may develop?”*

*Here is what we wrote back: The **BIG** issue has now become “Director Refreshment” - which recognizes that yes, some Directors have very long tenure - and may be well over the previously normal “age limits” - but they indeed may be, and often are, among the **BEST** Directors...So the focus should be less on one-size-fits-all term-limits - and less on age-limits (since 80 is now the new 70...or so they say)...but on very carefully evaluating the composition, expertise and diversity of the Board...and using this analysis to “refresh the talent” in light of current developments, opportunities, challenges etc...My own belief is that the only way this will ever accomplish meaningful change in Boards, however, is if they conduct frequent and rigorous evaluations of **individual directors**, and, of course, use the findings as part of the re-nomination process... something I have been advocating for over 10 years now...and which finally, and inevitably, I still say, seems to be taking hold.*

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## TRANSFER AGENT PAYS AN EXTRA FIVE-CENTS PER SHARE TO EVERY STOCKHOLDER OF A MAJOR US COMPANY: 158 MILLION NICKELS TOO MANY!

*We are hoping that this headline will grab your attention and impel you to read on, and will maybe give you a jolt of adrenaline, and a feel for the gut-wrenching shock we experienced back in the mid-1970s – when around 8:15 one morning we found out from a brokerage firm that we (the old Manny Hanny transfer agency business) had paid out 37 ½ cents per share instead of the 32 ½ cents per share we should have paid out... to each and every shareholder of American Home Products.*

*The good news here is that it is indeed ‘ancient history’ – but what happened next still has some important lessons for those of us on the firing line, which all our readers basically are...*

AHP was then one of the largest, and most admired, and most widely-held companies in America back then. It was one of our Division’s - and our Bank’s most important clients. And, heaven help us, we had paid out 158 million nickels too many...to 80,000 or so investors – most of them individual investors – for a total overpayment of \$7.4 million too much... which, believe it or not, was really big money back in those days...

### HOW OL’MANNY HANNY RECOVERED: AN ADDITION TO OUR “HISTORY SECTION” - AND STILL ONE OF THE BEST DISASTER RECOVERY TALES ANYWHERE, WE SAY

Before anyone on Wall Street even opened for business, **Ray Riley** – who was our IT manager and our number-two operating officer back then – and who is still going strong as your editor’s business partner in our Inspector of Election and Proxy Fight business -- went straight to the bank’s “lockbox” that was specially reserved to receive the checks for DTC. Brilliantly, he brought and substituted a *new check* - for the correct amount - which immediately recovered roughly 35% of the overpayment before anyone actually got it.

Precisely at 8:50 the most senior officer on the premises placed a call to the AHP CFO and Treasurer to give him the news, and to say that he, and Ray, and Ray’s then boss, **Barney O’Rourke** would be jumping in a cab immediately, to work out a plan to set things right, asap. “Be sure to bring your legal counsel!” the Treasurer grimly advised them. Both our in-house and outside lawyers were within walking distance of the famously Spartan AHP offices, and were pacing nervously outside when the T-A team arrived.

“We need to put out a press release immediately...and we need to call the NYSE too” the Treasurer said first thing, “and, of course, we need to spell out the plan to set things right in the most detailed way we possibly can.”

“If we get moving right away, we can mail a notice to everyone affected by tonight,” Ray volunteered, “along with a letter of apology and a post-paid return envelope. The notice can serve both as a statement of the amount that’s due – and, if shareholders want – instead of sending a check - they can check a box that will authorize us to deduct the amount from their next dividend check.”

What genius! What luck! And what great timing: Ray had designed, and just used a system that was developed for another long-term client, **National Fuel Gas** – that they used to solicit and collect shareholder contributions to a lobbying effort they were supporting, to end, or to at least reduce the tax bite on corporate dividends.

With that, the press release was drafted, and read to a NYSE official over the phone, and it was decided that the news should also run on the NYSE ticker...as soon as the Manny Hanny guys could inform their own “big boss” – the fearsome **Frank W. Kaestner**, SVP. And ouch again...He had to be paged at the Greenbrier, where he was attending the annual American Society of Corporate Secretaries Convention. How’s that for *another* gut-wrenching thing - to hear your name being loudly cried-out in the Greenbrier’s posh public spaces, surrounded by customers, prospective customers... and competitors – and then to get the news that poor FWK got when he called in? The only thing that could be worse - and was - was having to *place the call*, which, fortunately for him, your editor was way too junior to do, even if he had been in the initial ‘loop’, which he wasn’t.

But, unforgettably, your editor did get to hear the fearsome yelling when a ditsy secretary told the fearsome FWK that she could not accept a collect call...then told him a second time, after he demanded to know why she did not know his name and rank, and obey his orders immediately, as she should – and as his typically terrified minions normally did, no questions asked...“I’m sorry, but *my orders* are not to accept collect calls”...and she hung up on him. Soon, your editor was treated to hearing even more, and louder yelling over the phone, when FWK eventually got through to ditsy’s boss, who was the most senior officer that could be found in the hubbub.

Then it fell to FWK to call our then Chairman – **Gabriel Hauge** – a professorial and wonderfully statesmanlike son of a Lutheran minister from the Mid-west – who listened calmly – and was content with the plan of action - but who had two directives of his own: “I do not want to see anyone fired over this” he said; “We all make mistakes. And I insist that every stockholder who takes the trouble to write us a letter will receive an individualized, hand-signed reply from an officer

of the bank, that will include the officer's direct telephone number." (Your editor was one of the two junior officers – the other being **John Stevenson**, who later enjoyed a nice and very long career at **Georgeson** – who got the job of answering the hundreds and hundreds of letters that poured in. And what a lesson about the best and worst of human nature it was!

Meanwhile, the letter and the "statement forms" were already being printed - to be enclosed and mailed with a customized return envelope before the close of business that same day. (Ray used the record-date file to produce a "dummy dividend" of five cents per share – which was printed out as the amount due instead - on a specially designed form that was the same size and shape as our normal dividend checks.)

That afternoon a messenger from AHP arrived with a large box, addressed to the officer who was in charge of the AHP account – whose 2s and 7s were normally printed out by him with Germanic precision – and whose long record for perfectionism in matters big and small probably contributed to the slippage in the usual double-checking procedures – and who was, clearly, the "initiator" of the debacle. The box contained a full year's supply of one of AHP's best-selling products...Preparation-H: An unforgettable gift that relieved a huge amount of tension, all around.

By day-two, virtually all of the checks that had been sent to banks and brokers had been replaced with new ones. (Very few of the old ones had been deposited, because internal book keeping systems were typically pre-programmed to anticipate and redistribute the correct amounts.)

By day- three, envelopes began to arrive by the hundreds, and soon by the thousands per day. Many of them enclosed cash – and coins – and a few shareholders enclosed postage stamps for the mostly smallish amounts that were owed. Most shareholders responded within the first ten days, and only about 20% of the shareholders opted to have the overpayment deducted from the next check. Many of the envelopes included little notes, expressing sympathy for our mishap, and understanding, though many frugal small-share-holders expressed frustration that the cost of the round-trip postage was almost as much as the overpayment. As commanded by our Chairman, we individually acknowledged them all, with our thanks. One shareholder enclosed a six-page, handwritten "Ode to O'Rourke" - since it was Bernard J. O'Rourke who had signed the outgoing letter - describing Barney's imagined shock and dismay in elaborate and highly poetical detail, then going on to extoll his heroically fast action, to sympathize with him over the angry letters he doubtlessly had to cope with from pathetically small-minded people, and imagining his triumph come the end, since good people outnumber the bad ones...And, while of course Barney couldn't do it all singlehandedly, the shareholder was exactly right about the ending.

We got maybe 40 real nasty-grams – many of them asking

about the sex and/or race of the "culprit" – and demanding to know whether he or she had been fired. A bank president, whose bank had been overpaid by a few thousand dollars, wrote to say his bank would not return the money and that it served us damned Yankees right, for hiring so many minorities. The head of our Trust Division was so infuriated he called him on the phone and, at the top of his voice, threatened to file a complaint with the State Banking Commissioner if we did not get our money in five days or less, which we did. A minister wrote on church stationery to say that we should suffer for our mistake, and he was not paying us back...But your editor, assuming that the pious Gabe Hauge would back him up if need be, wrote back politely to ask him to search his conscience again, and suggesting that, in the writer's humble opinion, it would not be right – especially for a man of God like him – to retain items of value that rightfully belonged to others...and that we were sure he would do the right thing when he thought it through...which he quietly did.

Come the end, virtually all of the money was returned to us... and your editor figured out much later that we probably came close to breaking-even after expenses, thanks to the extra "float" – since so many of the original and largest checks went uncashed for several days...although, for sure, no expense was spared, and no one ever thought about running a P&L on the cleanup effort...because that was *then*..

**An instructive and unforgettable postscript:** Two days after the payable date, the fearsome FWK got a call from the equally fearsome CFO and Treasurer of AHP: "*I had a visit from the banking officer and the top operating officer in the stock transfer department at one of your competitors today that I thought you should know about.*"

*"I asked them what brought them to my office on such short notice and they said they 'assumed I would be interested in hearing about their stock transfer services.' So I asked them, Can I assume that you are here to offer me a written guarantee that if I move our business to you, you will never make a mistake? Of course they said no, but they wanted me to hear all about their 'very extensive proofs and controls – the best in the business, they said."*

*"What happened next?"* our big-boss asked, no doubt with his heart in his throat...

*"Well, I told them, I can give you two firm guarantees of my own:"* (And, oops, the poor schnooks from the famously-bottom-feeding NY bank had failed to realize that it was the Treasurer's office that had *given us* the extra money.)

*"First, I can absolutely guarantee that Manny Hanny will make another mistake along the way. But second, I will bet any amount of money you care to name that they will never make that mistake again. So get the \_ \_ \_ \_ out of my office, and never come back to waste my time with b---s--- like this, ever again!"*

## PEOPLE:

“One of the truly rare events in the realm of elite law firms: A partner leaves **Wachtell, Lipton, Rosen & Katz**” ...an *American Lawyer* article noted, re: the recent departure of one of the top executive compensation experts in the country, **Jeremy Goldstein**, who left after 14 years to form his own firm, **Jeremy L. Goldstein & Associates, LLC**, (Full disclosure; Jeremy is your editor’s fellow Director at **Fountain House**, a 65+ year old NYC nonprofit, where he also serves as the Chairman of the Development Committee.) Noting that Wachtell is “essentially an M&A shop” - and that in today’s environment, public companies and their boards are increasingly wary of potential or simply *perceived* conflicts of interest where executive comp issues are concerned - it’s become an issue that Jeremy estimated affected about two-thirds of his practice. Jeremy also wanted to “do something a little bit more entrepreneurial” - and so he has: Goldstein noted that “it’s going gangbusters” and that he has been handling “a new matter every other day.”

**Pete Sablich**, who we think is known to and liked by everyone in the shareholder servicing space, retired from **Computershare** in September, after a 40-year career with **First Chicago**...then its successor, **Equiserve**... then **BNY-Mellon** and back to **Computershare**...and he has already been signed-on to the **CT Hagberg LLC Team** of Independent Inspectors of Election, to help us cover our fast-growing new business in the mid-west.

Speaking of which, the **CTH LLC Team** has added several new members over the last few months, starting, alphabetically, with **Alissa Ballot**, who recently retired as the Assistant Secretary at **NextEra**, and who will divide her time between **Florida** and **Chicago**. **Iris Glaze**, who everyone in the **Pacific Northwest** seems to know - and vice-versa - and who left our Team a while back to work full-time for **Broadridge Financial Solutions** - and who now wants to slow down a bit and work a bit more on some of her favorite non-profit causes - has come back to the Team. In the greater-NY area, we have added **Karen Gormandy** - whom is well known to the management team from her days at the old **Manny Hanny** - and who then spent 10 years in the shareholder relations unit of **Manufacturers Hanover Trust Company of California**, before returning to NYC. Also, your editor’s middle son, **Peder Hagberg**, who served time in the mutual funds unit of **Bankers Trust Company**, then at **Deutsche Bank**, is joining the Team part time, so we will have *two* of the younger Hagbergs in the business, to help us keep up with our steady growth, and as part of our long-term business continuity program. (Pete, who is a co-owner and

publisher of a popular NJ lifestyle publication, will also be assisting his Dad with the upcoming **Special Supplement to the Shareholder Service OPTIMIZER**, to learn the ropes there too.) Also joining our Team of Inspectors is **Los Angeles-based Wendy Shiba**, a former tenured law professor, who has tons of shareholder meeting experience - having served as Corporate Secretary at three NYSE listed companies during her distinguished career. Another wonderful new addition is **Tina Van Dam**, the former Corporate Secretary of **Dow Chemical**, who is based in **Midland, Michigan**. Tina served as editor of the recently revised edition of the **Handbook for the Conduct of Shareholder Meetings**, published by the Corporate Laws and Corporate Governance Committees of the **American Bar Association**.

Elsewhere on the supplier scene, **Michael Spelman** has moved from financial printer **DG3**, where he was Director of Print Sales, to **Command Financial**, as SVP - Sales.

The exceptionally smart and savvy **Greg Taxin** announced in early October that he has resigned as President of **The Clinton Group**, an investment banking firm with \$1.5 billion under management, mostly in investments with an activist agenda. The normally taciturn Taxin - at least where his deals are concerned - sports an astonishingly impressive resume - and was a founder of **Glass Lewis**. At Clinton Group, he mounted 41 campaigns for change - mostly on the quiet - but including four that turned into proxy fights, where he won three of them, he told a group of NY execs...and produced a nifty 25%+ return over his five years there. “*Can you give us a hint about your next act?*” your editor asked, noting that many in the audience were hoping he’ll do a stint in the Peace Corps. No news yet...but we are betting that he, like so many others in his field, will launch a big capital-raising campaign of his own, and in short order. Stay tuned.

**Jackie Walding** is leaving her long-term position at **Prudential Financial, Inc.** in order to remain in Florida, where she had been Director of Program Management, responsible for the oversight of 1.5 million registered shareholders. Jackie has been part of Prudential’s leadership team within many areas in the Shareholder Services field, including the Company’s early adoption of the SEC’s Notice and Access model and the Company’s multi-year vote incentive strategy. She was also part of the Prudential team recognized at the 2011 Corporate Governance Awards ceremony for Best Proxy Statement and the 2014 NYSE Inaugural Award ceremony for Shareholder Engagement - and she will surely resurface soon, somewhere in the shareholder relations or corporate governance space. You can contact Jackie at (904) 910-9751, or at [jackiewalding9@gmail.com](mailto:jackiewalding9@gmail.com)

## COMING SOON:

**COPING WITH THE NEW ACTIVISM – The 2014 Special Supplement to  
The Shareholder Service OPTIMIZER**

## REGULATORY NOTES...AND COMMENT

### ON THE HILL:

**Obama** does an end-run around **Congress** – with recent guidelines from the **Treasury Dept.** to make it harder and less lucrative for U.S. companies to “invert” that actually appear to be working, witness a few large deals that quickly unraveled in the aftermath.

### AT THE SEC:

**After years of wrangling, new rules to avert panicky exits from money market mutual funds were approved** – and amazingly, NOT along party lines – with the Chair and one Republican & one Democrat in favor, and one from each party against.

**New “Broken Windows Strategy” breaks lots of windows:** Hey? Wasn’t the original idea to *fix* the windows, albeit with painted replicas, so the neighborhood did not look so much like a crime scene, and then move in to police the area so criminals would stop trashing the neighborhood? In any event, the SEC lobbed rocks through at least 34 windows in September, charging corporate execs and ten companies with failing to file their Form-4s on time, and settling them all, they bragged. Oooh! Scary! Bet this will prevent lots of crime...Not...

### IN THE COURTHOUSE:

**The Delaware Court of Chancery is set to hear a class action suit against Cheniere Energy, Inc.,** alleging that they falsely reported that a proposal to increase the number of shares available for an employee plan “passed” – when it did not – then proceeded to issue new shares over and above the properly authorized number – and then tried to amend its bylaws to “clarify” and use the faulty logic

and the faulty math they were using. **Where were the gatekeepers, we ask?** A quick reading of the complaint, the math and the bylaws tells us that the proposal did not pass – But who was checking? It used to be that the exchanges - and the company’s transfer agent - checked up on this, to guard against unlawful over-issuance of securities. And those bylaws, and proposed amendments? Total gobbledegook in both versions, we say, that do not clearly say, much less *do* what they were trying to do at all. Aren’t the outside attorneys supposed to be checking on this stuff too? And checking their own work? If the allegations prove true, it looks like the directors will have to return a boatload of stock to be cancelled, and those lawyers will have some serious ‘splainin’ to do...Stay tuned!

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## WATCHING THE WEB

As if our cybersecurity article isn’t scary enough, an 8/1 WSJ article quotes a hacker as assuring the reporter that he “can take over a smartphone from 30 feet away, without alerting the user or the phone company” – then browse its contents and read its text messages. We sure DO need to develop a “culture of security” among our colleagues, and start today!

## QUOTE OF THE QUARTER

*“Virtually every activist attack involves reduction in assets, reduction in invested capital, reduction in R&D , reduction in future capex and, most significantly for the economy, reduction in employment. Is it good, appropriate national policy to permit Carl Icahn to scream at one company after another to try to get to do something that will create profits for Carl Icahn?”*

**Marty Lipton**, as quoted in *Financial Times*