THE SHAREHOLDER SERVICE

OPTIMIZER

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

VOLUME 23, NUMBER 2 NOW IN OUR 24th YEAR! SECOND QUARTER 2017

IN THIS ISSUE

OUR FOUR TOP TAKEAWAYS FROM THE SPRING MEETING SEASON

This year's big-meeting-season brought two earthshaking changes in the overall corporate governance climate that will, we believe, alter the landscape forever. Also, there were developments on political disclosure and so-called diversity proposals that issuers should take note of as they plan for next year:

To lead off with the 'environmentally earthshaking' analogy, investor demand for much more robust disclosure of the likely effects of climate change on a public company's overall business model can no longer be ignored - or answered with empty promises to do more… followed with boilerplate rather than real substance:

At **Occidental Petroleum**, one of the first climate change disclosure proposals to come to a vote this season, an astonishing 67% of the votes cast favored the shareholder proposal, filed by **CalPers**. And shame on you, Oxy, for stating in your press release that the proposal received "over 50%" - with final numbers to be reported later, when no one much was looking anymore. In the corporate governance world, there's a mighty big difference between "over 50%" and 67% so you just looked stupid - and surely the real numbers were readily available when they spoke to the press. **BlackRock** noted that this was the first time they had ever voted for more climate change disclosures - and they issued a stinging rebuke, and a clear warning to issuers on their website: "*When we do not see progress despite ongoing engagement, or companies are insufficiently responsive to our efforts to protect the long-term economic interests of our clients, we will not hesitate to exercise our right to vote.*"

Exxon Mobil bore the brunt of the headlines on this "hot subject" later in the month, where a big WSJ article led off with the statement that *"shareholders delivered a significant rebuke to the oil giant"* and noting that 62% of the votes cast were in favor. They added at the end that the Say On Pay got only 68% - down from 90% in previous years…so very much a red flag, and who knows, maybe even related to their stubbornness on climate change issues. The *NY Times* article reported a 62.3% yes vote - and noted that last year the proposal garnered only 38%.

cont'd →

Similar proposals were also approved at electrical giant **PPL** - and at **Royal Dutch Shell**, where we were surprised to discover on their website that Shell actually endorsed a shareholder resolution in 2015. Obviously, as at Oxy, investors decided that Shell had failed to deliver in a meaningful way.

So, this debate is over, we say - at least on the governance front. The official voting policies - and the actions of our largest institutional investors - have shifted markedly this year. Public companies would be wise to strive for much more robust and meaningful disclosure in their proxy statements rather than writing, or promising to write special one-off "reports."

Item-Two: Shock, awe and a previously unheard of number of sudden departures and dismissals in the C-Suite this season: Perhaps the most noteworthy and important takeaway for public companies - and it is a major game-changer - No CEO is safe from being ousted in a heartbeat these days if performance lags activist expectations;

The all-time record of sudden CEO departures started early in the year, at **AIG** when CEO **Peter Hancock** - who your editor thought had done a wonderful job of stabilizing, and growing the company again, rather than dismembering it, as activists had been calling for earlier - resigned from the board following an unexpectedly large 4th quarter loss, and reportedly under pressure from activists **Carl Icahn** and **John Paulson**. The strangest thing, however, were the AIG board communications: "[Hancock] tackled the company's most complex issues, including the repayment of AIG's obligations to the U.S. Treasury in full and with a profit, and is leaving AIG as a strong, focused and profitable insurance company," said chairman of the board **Douglas Steenland**. Then, the press release expressed the board's support for the very same strategic plans and programs he had forged!

Soon thereafter, at **Alliance Bernstein, AXA Financial** - the French insurance company that owns the money manager - ousted the Chairman - and eight other directors - and brought in six new ones, due to various "performance issues."

At aerospace parts maker **Arconic** (part of **Alcoa**, not so long ago) CEO **Klaus Kleinfeld** was ousted by the board about a month before their hotly-contested annual meeting was to take place, after sending a "bizarre" and vaguely threatening letter - and a soccer ball - to **Elliott Management** chief **Paul Singer**, without telling the Arconic board. (Worth a read, if only to speculate on what he thought he might accomplish with such a dumb letter. And, one has to ask, "How'd he get the CEO job in the first place?") After postponing the shareholder meeting - then learning a few days before the new D-day that they'd likely lose at least two seats - Arconic offered a truce, agreeing to give up three directorships, put an Elliott-named director on the CEO search committee and eliminate their staggered board. (P.S. Kleinfeld also stepped down as a director at **Morgan Stanley**, and we'd bet his **Hewlett Packard Enterprises** seat will be next.) …

At **Buffalo Wild Wings**, activist hedge fund **Marcato Capital Management** elected its founder and two other of their four candidates to the board, and the sitting CEO, **Sally Smith**, announced she would retire at year end. Actually, both the long-term performance of the company and the future outlook seemed pretty impressive. But recent growth just wasn't good enough - or fast enough - for anxious hedgies.

At **CSX**, a **Pershing Square** partner, **Paul Hilal**, whom the WSJ called "a rookie activist investor" scored what would be an unthinkable coup in ordinary times: He left Pershing in January to start his own **Mantle Ridge LP** - solely to replace the CSX CEO with 72 year old **Hunter Harrison**. And, in a blink of an eye, he did so. The CSX board - reportedly "pushed" by **Neuburger Berman** - and more notably, by **Fidelity** - agreed to appoint Harrison and named five new directors after watching the stock gain over $10 billion on Hilal's mere announcement of his plan. *"Shareholders took a much more active role than I have ever seen before"* Harrison said in an interview, adding, in what may be the understatement - and also the motto of the year - ***"They wanted change."*** Harrison, who resigned from **Canadian Pacific Railroad** as CEO to run for the CSX slot (actually, he walked, usually toting an oxygen bottle, which drew some belated investor concerns about his health, which were blithely brushed aside) will reportedly receive somewhere between $60 and $80 million to cover foregone benefits from his old job…That's a lot of "change" for sure.

In mid-June…another bombshell: "General Electric, Under Pressure From Its Investors, Changes Chief Executive" the *New York Times* headline blared. **Jeffrey Immelt**, who will remain as Chairman until year end was replaced immediately as CEO - following an all-day beauty pageant before the board in May of four internal candidates, where **John L. Flannery** was the unanimous choice. **Charles Elson**, the **University of Delaware**'s corporate governance guru summed up the long, slow, Immelt slog vs. peers precisely and succinctly; *"What took the GE board so long?"* Interestingly, in a move that did not get much press attention, if any at all, Flannery has also been named as Chair-Elect and will become Chairman too on January 1, 2018.

Then came news that the number-two and number-three people at Uber had been ousted for a different kind of "performance issue" - eerily like Kleinfeld's tone deaf social behaviors - this time due to a corporate culture that seemed to be pervasively hostile to women. And, oh yes,

co-founder and CEO **Travis Kalanick** might be asked to take an extensive leave of absence. Then, in a flash - while Kalanick was on the road, interviewing a potential new top lieutenant (!) he received a surprise visit from two investors, including one from **Fidelity**, which had, traditionally, stayed out of fracases like this one. They handed him a letter demanding his resignation at once. After a quick telephone huddle with the one board member he felt he could count on, he resigned that day.

Just a few nanoseconds later, came news that **Whole Foods** would shake up its board, after activist investors urged the company to explore a sale - with one (Neuberger Berman again, we think) hinting at calling for a second, mid-term shareholder election of directors before the regular AGM. They named a new Chairman, replaced five directors and noted that more would step down before the next shareholder meeting. *"Our competitors are not standing still,"* co-founder and CEO **John Mackey** said during the June earnings call, in maybe the second biggest understatement of the year. Indeed they weren't. Shazam! Out of the blue and in a flash came the deal - basically an irresistible bear hug - to merge with **Amazon**. Any bets on how the **Bezos/Mackey** integration efforts will play out? Actually, they seem to have many traits and quirks in common…Stay tuned for a real food-fight, come what may - and for lots more astonishing actions on the CEO front, for sure.

Two other sets of developments this season also give us reason to think hard as we plan for 2018:

First has been a very noticeable increase in the votes in favor of greater disclosures of spending on political and lobbying efforts: Where not so long ago the voting "mode" was in the mid-teens, we saw many companies getting votes-in-favor in the mid to the high 30s this season - and *many more than ever* in the mid-to-high 40s. Clearly these proposals have been gaining major traction. And issuers, as we've reminded many time before - any proposals that get 30% or more are sure signs of shareholder discontent - and likely of more trouble ahead. When **Citizens United** was decided it was Judge **Scalia** who insisted that the marketplace would assure that important information on these subjects would be widely revealed. And now, suddenly, it seems to be coming true.

The second big development to watch out for in 2018 is the "diversity issue": We had predicted that 2017 would be a "breakout year" so your editor was rather disappointed that S**tate Street, BlackRock, Fidelity,** and most of the big public pension funds made bold-faced statements about raising the bars here, while basically giving companies a full year's fair warning to get ready. But this season, a **Calsters** proposal at **Hudson Pacific Properties** got an astonishing 85% in favor. And at Philadelphia-based **Cognex**, a diversity proposal was approved with 63% of the votes cast. As with climate change, the scientific evidence is pretty compelling: Companies with "diverse boards" outperform "homogeneous boards" by very big margins. So issuers…check under the 'hood and start your engines now, if you have not already done so.

Also; check out the article on BofA's outstanding ESG disclosures in our last issue and the update below. Check the documents on their website - and, especially, read the "handwriting on the wall" as you gear up for next year.

MORE NEWS FROM THE MEETING FRONT:

BofA'S DONATIONS TO SPECIAL OLYMPICS PRODUCED BIG NEW-VOTER TURNOUT: ***In our last issue we singled out Bank of America's proxy package for special mention as "required viewing." With most of the 'big season' now behind us, it remains the best and most effective set of proxy documents to cross our desk this year.***

Following their meeting, we spoke with Ross Jeffries, BofA's Deputy General Counsel and Corporate Secretary and his colleague, Gale Chang, to learn more about their process - and, of course, we especially wanted to hear if their prominently featured plan to donate $1 to the Special Olympics on behalf of every individual investor who returned a voted proxy drew the big support we'd predicted.

"As to our process, it was really a top-down thing, starting with our Chairman, and our Board, and our entire Management Team" Jeffries told us. "We wanted to educate all of our shareholders about the many important things that are going on at BofA. We also wanted to think more creatively - and to focus on themes, and how they relate to one another, as a way to better tell our story.

"We used three different printers for the three main items, and, as you'd noted, we devoted a lot of time and attention to our 'by the numbers' highlights, and to the graphics, where we got excellent support from our financial printer" [RR Donnelley] "who produced the proxy statement. We were not looking for something pretty, or glitzy. Too much glitz can actually detract from the story. We wanted all the graphics, and all of the highlighted sections to be useful.

"We also spent a lot of time and effort on our separate ESG piece, as you'd noted. We hadn't seen anything like ours before, but we felt that investors do want to learn more about this, and we were right. We got a lot of positive feedback from investors, many of whom remarked 'Wow, we didn't know that' about ESG information that struck a chord with them.

"As to the Special Olympics incentive, it was not just about getting votes. It was a good organization for us to pick, as you noted, but a natural one for us. Our support for the Special Olympics goes back three decades.

"Our total accounts voted went up by 8%" [almost 50,000 more voters than last year] "and our quorum went up to 86% vs, the low 80s in previous years. It's hard to attribute all of the increase to our promised additional donations, because we made some other new efforts to get out the retail vote - which amounts to a third of our shares outstanding. We sent full proxy packages to every shareholder with 101 or more shares and we had our proxy solicitor make calls to the larger un-voted positions. We also paid more attention than usual to our employee plan votes, and, of course, we were very satisfied with the results."

Editor's note: As very long-term and up-close watchers of proxy voting, we at the OPTIMIZER would definitely attribute the lion's share of the increased voting directly to the appeal of the Special Olympics donations, since this year, as in the past 10 years, retail voting went down, again, at almost every meeting we studied.

So an increase of nearly 50,000 net new voters is something very special - as is a 4% or 5% increase in the quorum - thanks to shares that are actually voted, where, as we keep reminding, "Broker Non Votes" keep going up as a percentage of the quorum at most companies, effectively narrowing the margins between the For and Against votes. Accordingly, since virtually all of the retail votes keep on voting with the management positions, almost any increase can make a noticeable difference…

BROADRIDGE ALSO SUCCEEDS WITH 'SPECIAL OUTREACH' TO 'LOW-PROPENSITY VOTERS'…Their latest newsletter reported on a client that wisely cranked up its efforts to increase the retail investor vote (which represented a whopping 37% of the outstanding shares): "After failing to get 70% support for its Say On Pay proposal" they sent 'targeted communications' in advance of the mailing date for proxy materials, with "customized content, designed to better engage with retail investors with a 'low propensity to vote.'" Then, closer to the meeting date, they sent reminder letters, with a message to "GO VOTE" to the larger, still un-voted holders. The result: Recipients of the 'targeted communications' responded at a 50% greater rate than non-recipients.

GE FLUBS BIG in our book - and misses a big opportunity: Our last issue sent kudos to GE for promising to send the poor folks who simply got a "Notice of Internet Availability of Proxy Materials" - and therefore, who did not get a proxy statement - or a proxy card - *"a paper copy of their integrated summary report [that] combines in one concise document the most critical information from our annual report, proxy statement and sustainability website"…AND…"to make it easier for you to vote you will receive a proxy card or voting instruction form."*

Kudos turned out to be undeserved - and shame on you, GE…When the promised package arrived, it did include a VIF - but it did NOT contain all of the "most critical information" a reasonably diligent voter would need to cast a fully informed vote on important matters: On page 61 of its 63 page, old-fashioned and overcrowded "integrated summary report" the shareholder proposals were summarized in a single short sentence for each one. Then, to the right, they stated, in a single sentence of their own, "Why the Board recommends a vote **Against** the proposal" (bold-face theirs). ***In our book, this violates not only the spirit but the letter of the law where shareholder voting procedures are concerned: No proxy statement information provided? No proxy should be solicited. The really sad thing is that GE could easily have provided the information needed in the summary report - and could have broken important new ground in doing so.***

THE SHAREHOLDER SERVICE
OPTIMIZER
is published quarterly by
CARL T. HAGBERG & ASSOCIATES
SUBSCRIPTION PRICE:
$300 per year print/$275 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

AN 8-MILLION-VOTE MARGIN ON 2.75 BILLION VOTES CAST: "HOW COULD THE INSPECTORS POSSIBLY CONFIRM THAT THE NUMBERS WERE RIGHT?"

Talk about a photo-finish! At one of the shareholder meetings your editor and his business partner inspected this season, one of the six shareholder proposals received 49.85% of the votes cast while the company-favored votes against garnered 50.15% - a difference of just 8-million-odd votes out of 2.75 billion that were cast on the matter, or a mere three-tenths of one-percent of the votes cast.

Put the way a smart Inspector should put it, if just 4-million-odd votes were erroneously recorded as Against instead of For, the vote would go the other way. No wonder, we thought, that our article on "What, Exactly, Should Inspectors Be Doing to Inspect…and How Do We Know the Reported Numbers Are Right?" has been one of the most re-visited and most carefully perused on our website, logging nine+ minutes per visit.

While we don't want to give away all of our 'trade secrets' as Inspectors, here's an overview of what we did to verify that the reported numbers were indeed correct. Amazingly, it did not take all that much time and clerical work to accomplish…IF one knows what one is doing, and if the systems themselves are readily "auditable."

For starters, we were able to take the **Broadridge** numbers completely at face value, because (a) we had personally reviewed and observed their day-to-day quality-control procedures just a few months earlier...and (b) we had also reviewed the official reports of Broadridge's outside auditors, stating that one can rely on their reports as having a 99.9% degree of accuracy - based partly on the Q-C procedures - and on their testing of them - and (c) as we knew, on the fact that the overwhelming majority of all the votes recorded were actually input by institutional voters themselves, or by their designated voting agents.

So we began with a review of all of the larger votes recorded by the tabulating agent, whose Q-C procedures we also knew very well - and which incorporated many reports and reporting features we'd helped them implement years earlier, when there were several other "squeakers" of similar closeness. This was much easier to accomplish than one might think - since there were relatively few votes of four-million shares or more to look at that had not been input by voters themselves.

Then, we reviewed each of the methods by which the votes were recorded - and the number of votes in each category: Happy day for us all, the overwhelming majority of the votes were recorded automatically, with most of them via various kinds of actions taken by the voters themselves. For example, with respect to the registered-owner votes, 18 million votes were cast over the web - by voters themselves, typing away. Another 6.4 million votes were voted on the phone - with the voters themselves punching the buttons and getting a read-back, so no possible problems there either.

The rest of the registered votes (10.275 million votes) were scanned and recorded directly into the system, and no "glitches" or "anomalies" were apparent: The recorded votes were consistent with what was expected to be a "fairly close vote" and with "all systems working consistently and accurately" as built.

As noted earlier, institutional investors enter their votes directly into the system themselves, or by using professional voting agents to do it, so no legitimate gripes can come from that source. And these votes constituted the overwhelming majority of all votes cast.

The last two steps were the most important ones, given the overall closeness: (1) a review of each and every vote that was manually entered (where a "tally clerk" could easily transpose or over-state or understate a number - or worse, vote 4 million-odd shares the wrong way) and (2) a review of every initial "over-vote" - and how each such item was ultimately resolved and recorded.

The tabulating agent - **Computershare** - was ready and able to produce the full records for us on these items…And, happy day…the manually entered votes totaled-up to 2.6 million - a number that could not have changed the vote. So, although we could have done so had we needed to, we didn't need to review the proxy cards that were manually entered, one-by-one.

And happy day again, not one of the initially identified two-million-share "over-voted positions" were over-voted on the proposal under special scrutiny.

We, and the company, were able to sign off on and release the final numbers with complete confidence in their accuracy, which made for a happy day indeed.

Readers, please remember that not every close vote can be resolved so easily - unless, of course, you have tabulating agents - and Inspectors - with procedures and controls in place like those described above. So choose your providers with special care - especially if you have items that you fear WILL be close come the end…

P.S, There was yet another important takeaway here: While there were 2.75 billion votes cast on the proposal in question, the quorum was 3.5 billion shares - thanks to Abstentions and to over three-quarters of a billion (!) Broker Non Votes. The BNVs amounted to 21% of the quorum! If only five percentage points of the BNVs had been VOTED - by individual investors who did not take the trouble to vote - the "squeaker" would have gone the company's way with a much more comfortable margin…since, as noted earlier, the retail vote goes overwhelming to the management positions.

FINANCIAL CHOICE ACT PASSES THE HOUSE, WITH MAJOR CHANGES IN PROXY PROPOSAL RULES: ISSUERS; BEWARE OF GETTING WHAT YOU WISH FOR, WE WARN…

The oddly and inaptly named "Financial Choice Act" which, among other things, makes a feeble first attempt to repeal and replace Dodd-Frank, has passed the House, with not a single Democratic Party vote, as expected. It has three proposals regarding shareholder proposals that should provoke a vigorous debate when the bill is taken up by the Senate:

- **Shareholder proponents would have to have 1% of the outstanding shares, held continuously over a three year period.**
- **The resubmission thresholds (consistent with the SEC's old 1997 proposal that was never adopted) would rise to 6% on first submission, 15% on the second submission, and 30% on the third submission)**
- **Shareholder proposals would have to be proposed by shareholders themselves, and not by any designated "proxies" - which a few proponents have tried to sneak in to avoid the current one-proposal-per-proponent rule.**

Here's our take on this, as 50+ year observers of shareholder meetings and the rise and fall - and sometime successes - of shareholder proposals:

Right now there is a pretty good chance that the bill as a whole will not make it through the Senate. Surely there are much bigger legislative challenges that need more attention, and more urgently, than these offhanded and highhanded swipes at very longstanding individual investor rights, which, as our recent article on the Gilbert brothers noted, date back to the 1940s. But there is at least one set of decent proposals in the bill - to loosen regulation and capital requirements at smaller financial institutions - that might well drive the overall deal along.

The use of "proxies" to evade the current rules can be handled directly by the SEC…which indeed, they should attend to, we say.

The revised resubmission thresholds - which the SEC could also institute on its own, after a written release and comment period - are not terribly draconian, although 5%, 10% and 20% hurdles have better "optics" that may make them a lot more palatable. They *might* reduce the number of proposals put forth each year, as the **Business Roundtable** desires…but not necessarily so, since serial proponents can simply move on to other companies, while maybe submitting different proposals at companies where they failed to make the mark…as proponents have been doing forever

The real deal-killer, if dealings are begun, is likely to be - and should be - the 1% of the outstanding share threshold that's being proposed: As activist investors were quick to point out, this provision would rule out the participation of ordinary individual investors altogether…And guess what, most institutional investors would be squeezed out too at most large-cap companies, even if many of them band together: An investor in Apple - with its $745 billion market cap - would have to have seven billion dollars-worth of shares to put a proposal forward.

Our own big concerns however, revolve around the likely consequences to issuers of "getting what they wish for" - which, we believe, would likely be very negative ones.

First, we'd note, rather cynically - but based on our many years of attending meetings and tabulating votes - that having a few seemingly offbeat or even frivolous proposals on the ballot is often a *good thing* for corporate citizens, in that they create a nice aura of "shareholder democracy in action" - but often serve to distract voters from the truly important issues on the agenda or in the air. (Why, for example, did so many corporate chieftains send cars for - and in a few cases *give cars* to **Evelyn Y. Davis** - surely the peskiest and most audience-annoying gadfly ever?)

But to put small-shareholder proposals in a more positive light, as they should be put and as we have written over many

years, shareholder proposals serve as a sort of "pressure gauge" that often provides an early warning to companies that there is some level of shareholder discontent. And they often provide a useful way for shareholders to "blow off a bit of steam" rather than to have issues suddenly "explode" at the meeting itself.

We especially need to note that virtually every one of the corporate governance practices we now take for granted - like nominating women to the board, having majority voting rules, and even 'proxy access' were first proposed by smaller shareholders - and typically received negligibly low votes for many years before ultimately catching on with investors. The campaign to "end the stagger system," which was begun in the 1940s by individual investors **Lewis** and **John Gilbert** - which typically received less than 20% of the votes cast through the 1990s - became nearly universal in just a few short years. The annual election of directors is now considered a "best practice" by stock exchanges and by U.S. companies.

An April whitepaper drafted by Ceres, ICCR and US IF (the US Sustainable Investment Forum) made perhaps the most important and under-remarked-upon point of all; that the shareholder proposal tradition "helps investors to protect their ownership rights and interests" [and to assert them, we'd add] "and helps to hold corporate boards accountable to the owners of the corporation."

Last, but far from least, it is downright dumb to think that the Cheveddens and Steiners and McRitchies of the world would simply slink away. Nor would we expect many of the largest and most active institutional investors to quietly accede to the idea that this bill provides issuers - or investors - with some sort of meaningful "financial choice."

Here's what **Anne Simpson**, Investment Director, Sustainability at **Calpers**, the biggest U.S. public pension fund had to say: ***"This raises the bar for entry to ordinary investors and would make shareholder proposals a billionaire investor's privilege, when it should be a right for all investors.…If this channel is closed off, investors will have to exercise their votes in other ways...That would be unfortunate."***

We'd bet the ranch that activist investors of many stripes would band together to create more agitation - and more and better-crafted shareholder proposals than ever before, "on principal." But also, as Simpson suggests if one reads between the lines, companies that stiff-arm reasonable investor requests will find their Nominating Committee directors, and others - being targeted by Vote No campaigns, and sometimes losing.

Lastly, as we have noted many times before, corporate governance has become a huge and profitable business for literally thousands of mostly intelligent and pretty crafty players…So issuers, do, please, be alert to the potentially dire consequences of getting what you wish for before jumping on the Business Roundtable's bandwagon.

"MINI-TENDER" OFFERORS ARE BACK AGAIN: "HEED THE JUDGE" IN A LANDMARK CASE, BEFORE TURNING OVER YOUR SHAREHOLDER RECORDS TO UNKNOWN AND POSSIBLY UNSCRUPULOUS "SERVICE PROVIDERS."

Recently, the Society Huddle - perhaps the best source of breaking issues and of good solutions anywhere - posted an inquiry from an issuer about "mini-tenders" and the company's obligations, if any, to furnish offering materials to shareholders, following a "friendly inquiry" about procedures from a previously unknown entity.

Here is the response we posted - along with our oft-repeated warning about scamsters and outright fraudsters that periodically try to make unsolicited and below-market offers to shareholders:

"Every few years we see a sudden upsurge in "mini-tenders" being offered by entities other than the transfer agents and proxy solicitation firms that specialize in issuer-authorized "odd-lot buybacks."

"Typically, an entirely different breed of small and never-before-heard-from entrepreneurs springs up, trying to offer holders of 99 shares or less a deal to buy out their holdings *themselves*.

"Most often, but not always, they are aimed at investors in thinly traded companies, where typically the offerors take advantage of the limited market to offer a price per share that is much less than the intrinsic value of the stock - along with fees that are often substantially above the going rates for such deals when sponsored by the corporation itself.

"I am not a lawyer, but I am 99% sure that not only do public companies NOT have to authorize the distribution of such materials to their shareholders, they would be unwise to do so unless they make a very thorough check on the offering

entity, and look carefully at the fairness of the terms and conditions being proffered to shareholders. Issuers run a serious risk of breaching their fiduciary duties to share owners if the deal is later found to have disadvantaged them, of if, God forbid, the entity disappears without paying out the proceeds to participants, as has indeed happened."

The very next day we heard from a prominent Delaware lawyer that yes, they have been seeing an upsurge in clients who were receiving similar "friendly inquiries" from parties that were previously unknown to them. And, of course, he completely agreed that issuers had no obligations to pass along such materials - and could incur serious liabilities were they to do so. Forewarned is forearmed, dear readers.

"Way back in 1994 The OPTIMIZER issued a warning to issuers to "Heed the Judge in the [landmark] *Badger v. Tandy* case" that we have repeated periodically ever since. While this case concerned a "lost shareholder search firm" it is equally applicable here:

"A corporation should be cautious in handing around its record of missing shareholders" - or any shareholder records we'd add. ***"When a shareholder does not know what shares he owns in what company or the value thereof, the circumstances are ripe for overreaching by unscrupulous hunters...A corporation has an interest in protecting its shareholders from abuse."***....Words to live by, for sure...."

Readers: We would be very interested in hearing from you if your Company has received unsolicited offers to authorize the release of shareholder records to publicize and/or facilitate a "mini-tender offer"....on a strictly confidential basis of course.

And, P.S. - just as we were going to press, we got an e-mail from a Fortune-50 company - one with a very handsome dividend and with a bit more volatility than usual of late - attaching a "friendly" pitch to have them send out mini-tender docs. It looked to us as if the prospective offeror was basically an arb, who could easily time his actions to snatch away the dividend from unwary investors - and make a quick and guaranteed return for himself - plus some fat fees (although none were specified) - and who made no case at all as to how the company, or its shareholders would benefit from his sketchily described deal. Why, we ask again, would any public company want to aid and abet him by handing over sensitive corporate records of small shareholders?

PEOPLE

Maura Byrne, a 17-year-old Connecticut high school student who plans to enter university this fall, has been chosen to receive the **SSA**'s 13th award under the **James R. Smith Scholarship** Program. Her selection was announced by Scholarship Management Service, the independent organization that administers the program and oversees the annual application process on behalf of the SSA's Board of Directors.

Maura is the daughter of Ken and Cathy Byrne of Stamford and the granddaughter of long-time SSA and Society member **Gordon G. Garney**, formerly of **Mobil Corporation**, who many readers will still remember with affection. Maura plans to study journalism at **American University** in Washington, D.C., and sees herself in a writing career focused on issues 'that are interesting and relevant." Like all of the previous recipients of the Scholarship award, Maura is a highly accomplished, multi-talented and community-minded star - and we feel certain she will continue the unbroken 12-year old tradition of remaining eligible for the Scholarship for her entire college career.

David Cary, based in Texas and a former Inspector of Election for **CT Hagberg LLC**, and earlier, a former employee of **UPPR**, is now a Senior Relationship Manager at **American Stock Transfer & Trust Company, LLC**. A great addition for AST, who will be missed at CTH LLC.

Wilton Davila, an abandoned property expert who has done stints at **Ryan, Laurel Hill** and **Georgeson** is now a Principal at **Assets Reunited LLC**.

Dan Fahey, a former **Bank of Boston** transfer agent veteran, then an investment advisor, who frequently volunteered time and talent to help senior citizens in his Boston-area community, then a wonderful and meticulous Inspector of Election for **CT Hagberg LLC**, passed away peacefully in his sleep in April, after ten courageous months dealing with glioblastoma. Dan will be greatly missed by family, friends, colleagues, clients and fellow citizens, who turned out in force, we are told, for a joyful memorial service in his home town.

Richard Ferlauto, one of the pioneers of the corporate governance movement and a leading spokesman for "socially responsible investment" passed away in his sleep on May

8th, at 60 years of age. A true innovator, and one of the most thoughtful and respected voices in the industry, Rich began his career as a community organizer and affordable housing activist. After an 11 year stint at ISS, he worked for union rights and rose to the position of Director of Corporate Governance and Pension Investments for **AFSCME** (American Federation of State, County and Municipal Employees). He also helped launch the **Office of Investments** of the **AFL-CIO**, after which he served for several years as a Deputy Director at the **SEC**. Most recently, Rich co-founded the **50/50 Climate Project** which persuades corporate boards to respond to the challenges of climate change.

The *OPTIMIZER* was pleased and proud to have interviewed Rich for its 2008 Special Supplement: Still highly relevant and a wonderful demonstration of Rich's ability to articulate complex and often controversial issues in a clear, well-reasoned and non-confrontational manner. Go to http://www.optimizeronline.com/search/article/100631/ or click on "Issue Archives" at the Optimizer site, then click on the cover of the 2008 issue and skim to page 33.

Michael Goedecke, a securities industry veteran based in California - formerly with the **Harris Trust** and later the **BNY-Mellon** transfer agency sales teams, then as the West Coast sales rep for **NASDAQ** - has signed on with **Broadridge Financial Solutions** as a T-A sales rep. A really fine and knowledgeable guy.

William H. Hinman, who recently retired as a partner in the Silicon Valley office of **Simpson Thatcher & Bartlett, LLP** has been named as the new director of the **SEC's Division of Corporation Finance**. *"Bill is widely recognized for his judgment and expertise in the area of corporate finance. He also is a proven leader, mentor, and counselor. I know the SEC and the people it serves will benefit greatly from his valuable experience," said SEC Chairman Jay Clayton in the SEC's press release. "He has spent the last 37 years working in our public and private markets, and he understands the SEC's mission to promote capital formation while ensuring that investors have the information necessary to make informed decisions."*

Keane UP names **Kevin Ryan** as Chief Executive Officer: Prior to being named as CEO, Ryan served, since 2014, as Keane's Chief Financial Officer. **"Kevin positions Keane for sustained growth and success. He has a proven ability to understand the business at a deeper level and drive results," said Robert Belke, Chairman of Keane's Board of Directors. "Through Kevin's operational leadership and financial acumen, Keane saw record revenues in 2016 for its unclaimed property reporting division and continued expansion within its National Consulting & Advisory Services Group. We're confident that Kevin's strategic vision and leadership will allow Keane to strengthen and grow the services we deliver in a continuously regulated industry"** the April 5th Press Release noted.

More moves in the abandoned property space: Maureen Ferrari who was VP of Keane's Reporting Division moved to **AP Advocates**; **Freda Pepper** who was Deputy Chief Compliance Officer of Keane went to **ReedSmith** and **Pam Wentz** - who was the Unclaimed Property Director at Keane for 6+ years - has joined **Georgeson** as the National Practice Leader for their newly formed unclaimed property consulting practice.

ON THE SUPPLIER SCENE: WHAT'S UP WITH ALL THE PERSONNEL MOVES - AND ALL THE NEW ENTRANTS AS PURPORTED "EXPERTS" IN THE ABANDONED PROPERTY SPACE?

WHAT ISSUERS NEED TO KNOW…AND DO…

Over the past six months we have been amazed by the number of seasoned veterans who have been changing employers - and even more amazed by the number of abandoned property firms popping up; firms we never heard mentioned in our 45+years of following this business intensively.

"What's up with this space?" we asked ourselves…Smells like there's a story here…

For starters, we went to the web, to google up "Abandoned Property" and then "Unclaimed Property" where we were surprised to discover that many of the new firms - and many of the old timers too - appeared to be among the missing. **Keane** - the best known brand-name in the industry was there - prominently, as one would expect - and so was **Georgeson**, which has been expanding its practice of late, to include banks, brokers, corporate general ledger escheatments, and most recently, consulting services. But strange, we thought…No **AP Advocates** or **Assets Reunited** or **ReedSmith** jumped out to get our attention, although there was an apparent husband and wife team at **Reid Unclaimed Property Services LLC**. **KPMG** popped up - much to our surprise - as did auditors **BDO** - as players. There were dozens and dozens of **Ryans** - plumbers, roofers, insurance agents, etc. - but it took us 20

minutes to find the "Abandoned Property Ryan" - a division of a successful regional accounting advisory firm, whose 2017 web-page devoted to abandoned property claimed they were "The most seasoned, accomplished and respected team in the industry." How come we'd never heard of them until last month, we wondered…What IS going on in this space?

Our favorite Google-find was SCAMBUSTERS - which warned readers in detail - as we ourselves have been doing for 24 years now - about the way the term itself - "Abandoned Property" - attracts a giant bucketful of scams and scamsters who try to appropriate unclaimed property as their very own…or who charge outrageously high "finder's fees" - and often collect them - since for most of the owners or heirs it's truly "found money" they never knew was out there.

We learned something new and very important to know from SCAMBUSTERS: Many scamsters reach out far and wide via blast e-mails, asserting that almost everyone in the world has some unclaimed property somewhere…Then they offer you a paid "membership" to learn if you are one of them…Then they may or may not find some unclaimed property that you might be able to lay a claim to as your own…if you agree to fork over some more dough…AND… some detailed information about yourself, like name, address, SSN and banking info…which scamsters can use to grab onto your own assets!

So next, we hit the phone…reaching out to a few trusted providers we know personally, and a few of the unknowns as well, to find out what, exactly, is driving all the changes here:

"The main driver of change" as our good friend and now part-time Inspector of Election colleague **Jen Borden** Esq., of **Borden Consulting Group** confirmed for us, ***"is the enormous upsurge of abandoned property audits"*** - initiated by state treasurers and aided, abetted and egged-on by so-called "auditors" who, unlike real auditors - who are prohibited from doing so, due to the obviously conflicting interests that arise - work largely on commission. "If you suddenly find yourself, or your transfer agent, 'under audit" with respect to your company's escheatments - or real or alleged non-escheatments - doing nothing is not an option anymore."

Another big factor has been the big drop in the holding periods, after which property is deemed abandoned, she noted: While ten years or so ago 10 or even 15 year "dormancy periods" were common, the average holding period has dropped year after year, and is now down to about three and a half years on average…So lots more so-called "abandoned property" is becoming available for collection by hungry state treasurers a lot earlier.

Another factor; ***"Anyone in the world can pitch a tent in this space"*** our long-term friend **Patricia Barganier** of **Barganier Associates** in Atlanta reminded us - *"without spending much money, and frankly, without knowing much at all about the subject matter, much less the finer points of the business"*… And clearly, there are quite a few such people out there. Trish told us about a brand new client whose previous provider was found, under audit, to have made numerous clerical oversights and outright mistakes - setting the company up for scores of threatened fines - and for a cascade of additional audits by additional states, after state-one's auditors tipped them off.

Another interesting fact we learned is that all of the Big Four accounting firms but one (to date, that is) have quietly gotten back in the abandoned property auditing and reporting businesses. Back in 2004, when SOX hit the streets, the Big Four sold off or otherwise exited this line of business, as posing potential conflicts with their core audit duties and relationships. But now, when the audit stakes have risen - along with the time and money that clients need to spend here - they're baaaaack…And, arguably, we'd say, they bring an aura of respectability, size and stability, and *seeming expertise* that might upset the tents and apple-carts of other less-well-known providers - for better or for worse.

We also discovered a "fun fact" from our good friend since about 1970, **Al (Alexander) Miller**, who founded **Shareholder Communications Corporation** way back then and built it big, then bought **Georgeson** and then sold it to **Computershare** a few years later: "Mostly for fun" - but also in support of three of his former SCC colleagues, **Mike Gallagher**, **Jane Persico** and **Mike Sharpe** - Al has been backing them in a firm called **Connect Shareholder Services LLC**. They have been specializing in a "post-escheat service" where, in states like Wisconsin, and eleven others that have "friendly or neutral rules" regarding "finders" they can get the names and other relevant info on escheated property, find the owners or their heirs, and get the property back to them for a modest fee. While we always advise issuers to find and return so-called abandoned property as quickly as possible - so the state auditors have nothing to audit - lots of them still don't do so…So better late than never, for sure!

So…as we so often ask, and try to answer…"What should a good, and smart corporate citizen need to know - and to do in this fast-changing environment?"

- **First and foremost, issuers need to know that they have very large and very serious liabilities with respect to unclaimed property** - if, for example, they, or any of their service providers, fail to properly safeguard investor assets from scamsters, fraudsters, impostors, serious "over-chargers" - OR - if they fail to assure that a "reasonable search" for the so-called "lost shareholder" is undertaken before escheatment. (Please review the many articles on abandoned property that are on our website - especially, our "Tales from the Crypt" which give some truly frightening examples of frauds, scams, outright thefts, and serious managerial and service-provider oversights that have led to lawsuits - and to *huge amounts* of lost corporate time and money.)

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- **As noted above, states have been hiring abandoned property auditors at ever increasing rates.** And, quite aside from being time consuming, expensive, difficult and sometimes disruptive to manage - they very often result in demands for large amounts of "estimated funds" - if some records are missing or if prior non-escheatment is simply alleged. Typically, they also call for big fines and penalties - and, even worse, they often result in a cascade of audits and similar demands from other states.
- **Sad to say, if your company has not been in compliance with state abandoned property laws, the auditors will be coming for you soon, we guarantee.** And also sad to say, a lot of companies - particularly non-dividend-paying companies, which, as a consequence, are the most likely to *have* "lost shareholders" - don't seem to be aware that they have to comply with the laws, so brace yourselves:
- **Issuers…You need to know that it's the stock itself that states want to lay hands on - so they can sell the shares and use the cash to balance their budgets. And, if the so-called lost-shareholders or their heirs do come forward, all they will get from most states will be the proceeds of sale: No dividends that might accrue thereafter - and no stock-price appreciation either, which sometimes amounts to really big money… Therein lies the big liability for your company if you or your hired agents are found to have "not done right" by your stock *owners*.**
- **Issuers also need to be keenly aware that this is a field where very special knowledge, experience, and wisdom is required - AND - that while there is currently a huge over-supply of persons and entities who *claim* to be "experts" - that expertise is often grossly exaggerated.**
- **Do not make the mistake of hiring the first firm that makes a pitch for this business - which seems to be how so many providers are out there and getting hired in this complicated and rather arcane "space" - *regardless* of how good the pitch may sound, or how nice and how experienced they may *seem to be* - or even if you have used the firm for other non-related or only marginally related tasks.**
- **"Heed the judge" in the landmark case, we'd remind yet again: *"A corporation should be cautious in handing around its record of missing shareholders. When a shareholder does not know what shares he owns in what company or the value thereof, the circumstances are ripe for overreaching by unscrupulous hunters...A corporation has an interest in protecting its shareholders from abuse."***

A READER CALLED TO ASK US IN JUNE… "WHAT'S UP WITH "THE BIGGEST FINANCIAL INDUSTRY SCANDAL EVER"?

Lo and behold, the very next day - June 22nd - the SEC put out a press release announcing a $100,000 fine for failures to supervise against the former Managing Director and COO of trader **ITG Inc.**, which had earlier been slapped with a $24 million fine for a host of violations involving ADRs - and noting that the investigation of the ADR business, run out of the SEC's NY office, is still ongoing.

Our sources tell us that both of the prior actions, while relatively small ones dollar-wise, were undertaken to establish some benchmarks for fines and penalties to come - and to signal that specific individuals will be held accountable at the 35 or so firms that dealt heavily in ADRs, where ITG was one of the smallest players by far. **Deutsche Bank**, for example, has been accused of using ADR "mirror trades" to launder over $10 billion for Russian oligarchs, and we hear that the SEC has subpoenaed and seen lots of hard evidence on this. (To add spice to the stew, we'd bet $100 that many of the major players here will also prove to be "friends, lenders and sometime business partners" of **The Donald** and family.) And yes, there's more, at the other big ADR dealer banks, so stay tuned.

ELSEWHERE ON THE SUPPLIER SCENE:

Broadridge has successfully tested a proxy tabulation system using **Blockchain** technology. Also, **Citigroup** and **NASDAQ** have joined forces to develop ways to move money via Blockchain.

Financial printer **Toppan Vite** announced a strategic rebrand to **'Toppan Vintage,'** reflecting its recent acquisition of **Vintage** and "its plans for future international growth and expansion to solidify our status as one of the world's top financial printing, communications and technology companies," its June press release noted.

REGULATORY NOTES …AND COMMENTS

ON THE HILL:

As we go to press, plans to repeal and replace Obamacare with Trumpcare - and also to come up with firm budget proposals - are in disarray as the Congress hustles off for the 4th of July break, and with their summer recess coming up soon thereafter.

Despite all the focus on climate change by big investors, and a 5/12 full-page WSJ ad signed by 31 big-company CEOs urging the President to stick to the Paris Agreement, the Director of the EPA has come up with a plan to form "Red and Blue Teams" to debate the issue of climate change, as a way to "get to the bottom of things." As one congressman aptly noted, "This is like asking scientists to form two teams to debate the law of gravity.

A bit of good news, Trump named a proposed chairman and one other director candidate to serve on the Ex-Im Bank board…which, when they are confirmed, will give the Bank a full bench and once again allow it to make loans in deals worth over the current, paltry, $10 million.

The Fiduciary Rule went into effect, at least while the Treasury Dept. continues to study issues raised mainly by Republican opponents…But folks, this ship has sailed, we say, since every financial service provider has spent tons of time and money on systems, procedural and pricing changes - and most are OK with the rule. And who but a fool could really argue that forcing providers to "act in the best interest of clients" when handling their money, rather than putting their own best interests first, is somehow a BAD thing?

The OCC issued a blistering report on the Wells Fargo fake-account flap - harshly blaming itself, as well as the WFB Board for failures to supervise. They noted that the OCC efforts were "untimely and ineffective" - and that even when they belatedly presented evidence of over 700 cases of whistleblower complaints, in 2010, they failed to demand that the bank follow up on them. The OCC also removed its top WFB examiner, who formerly led 60 regulatory supervisors.

AT THE SEC:

While some companies have stopped using non-GAAP financials altogether, at least 35 public companies have been able to convince the SEC that their non-GAAP adjusted earnings presentations are not misleading investors, a 5/23 WSJ story reported.

Chairman Jay Clayton, believing that SEC red-tape is a big factor in the long-running dearth of IPOs, gave all companies, not just tiny ones, the ability to keep a lot of the details secret until just before the roadshow…effective July 11th. He also wants to roll back so far unspecified Dodd Frank provisions that he thinks are part of the problem. This reminds us of the old adage about the carpenter who thinks that every problem can be solved with a hammer - or perhaps by not hammering so hard in the future. SEC regs are surely the least likely reason for the drought - way behind super-low-interest-rates, the big number of cash-rich companies that can buy up promising startups with chump-change, well before they even think of going public, the enormous amounts of financing that can be obtained from private investors - and the fact that big investors want liquidity, so money has moved to big company stocks in a big way. One of the biggest problems, as we have been pointing out; individual investments in equities have shrunk to a tiny fraction of what it used to be - and no one is spending time or money to get them back as investors, or, for that matter, searching them out in IPOs. ***Wake up Jay… Assorted regulatory tinkerings and softer "hammerings" are the least likely ways to magically end the IPO drought.***

IN THE COURTHOUSE:

Good news for public companies, a Supreme Court decision in May severely limits the ability of so-called patent trolls to shop for friendly venues - unanimously reversing a nearly 30-year old appeals court decision.

Bad news for the SEC, which will likely have many big pending cases affected, SCOTUS ruled that the SEC has only five years to institute cases seeking claw-backs of ill-gotten gains.

WATCHING THE WEB:

Remember our warnings that senior execs are the most likely of all corporate folks to click on emails containing malware? And that they are also being regularly targeted with Phishing efforts that are cleverly written to look like mail from trusted colleagues? And that many smart companies have instituted regular tests, with fake phishing of their own, to keep folks on their toes? Well OOPS…this quarter a prankster posted the posts of the CEOs of Citigroup and Goldman Sachs…with no malware attached - just to publicly embarrass them we guess…Now we have to wonder if there IS a way to detect a really well-constructed fake e-mail…

QUOTE OF THE QUARTER

"The quality of one's ideas is not correlated with the size of one's investment"

Adam Kanzer, Managing Director at Domini Impact Investments LLC re: "The Business Roundtable's Unreasonable Proposal"