THE SHAREHOLDER SERVICE

OPTIMIZER

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

VOLUME 20, NUMBER 1 NOW IN OUR 21st YEAR FIRST QUARTER 2014

IN THIS ISSUE:

EARLY RETURNS FROM THE ANNUAL MEETING FRONT:

SPRING-SEASON HAS JUST BEGUN – AND ILL-WINDS ARE BLOWING

Pity poor Citi – whose top management team – and board – were taken totally by surprise when the Fed refused to allow Citi to increase the quarterly dividend from a measly penny a share and to buy back shares to prop up the stock – as everyone, including the investor community, was confidently expecting – and where the bombshell dropped just a few weeks before Citi's annual meeting.

And we pity the good folks at Coke – where the very same week an analyst took exception to Coca-Cola's Compensation Plan, and got extensive coverage in the press – also just weeks before their annual meeting, where Coke will want to ratify its Say On Pay proposal with a respectable margin, as all companies do.

If this was not enough to send shivers down the spine of annual meeting planners - at the very time a big political debate on income inequality is ramping up, with November elections in mind - and companies are looking for positive Says on Pay - a New York Times column by the estimable Floyd Norris drew prominent attention to the fact that "Corporate profits are at their highest level in at least 85 years. Employee Compensation is at the lowest level in 65 years."

Meanwhile, as a big 3/19 New York Times article discussed in detail, institutional money managers like **BlackRock, T. Rowe Price** and **Vanguard** have changed their old, basically pro-management proxy voting playbooks – and (surprise?) are quietly being consulted by the "old-time activists"… long before they fine tune their own playbooks to shake up below-par performers with proposals to spin-off or divest assets or to shake up the board with new candidates of their own choosing – a la the recent swift and smooth move on little ol'

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Microsoft Corporation. "This is the biggest shift in the battle for corporate control since private equity was invented in the 1980s" the head of "corporate preparedness" at **Lazard** told Norris. And as the head of M&A at **Goldman Sachs** told Norris, to end the article with a clearly understated bang, "the boundary between long-only money managers and activists is starting to blur."

Until these ill-winds began to blow, we had been predicting a fairly quiet 2014 Annual Meeting Season – ex that fairly big handful of targeted "underperformers" – like Abercrombie and Fitch, Avon Products, Darden Restaurants, McDonalds, Mondelez and Yahoo and the usual crop of smallish banks that raiders like to raid – but now we're not so sure.

Time to repeat our annual Annual Meeting mantra, dear readers: Hope for the best…but prepare for the worst.

HERE'S ANOTHER SEA-CHANGE RE: "SOCIAL" AND "SUSTAINABILITY" PROPOSALS:

IT'S NOT "JUST ABOUT THE NUNS" ANYMORE

In late March, your editor attended a dinner meeting where a very, very lively discussion of the newest and "hottest topics" that attendees feel are out there on the Annual Meeting front super-charged the entire evening.

"I think the biggest new thing is the growing number of social, environmental, fair-employment and so-called 'sustainability issues' we face" one attendee volunteered. "I think that corporate governance officers need to be devoting a lot more time, attention and active 'engagement' – and much more 'active listening' to this," she added.

"Oh, no!" at least three attendees loudly groaned in unison…"We can't spend a lot of time with all these fringy do-gooders… and professional pot-stirrers… and the nuns…or give them a lot of 'air time' at our conferences either. It just encourages more of the same annoying old thing!"

"Wait! Wait!" one of the younger attendees, whose company caters primarily to the younger generation yelled out – in what your editor feels is the top Quote of the Quarter:

"It just not 'about the nuns' anymore!... My employees are genuinely concerned about these issues… And our customers are too! My company has – and wants to have – a lot of employee and customer stock ownership - And it's critically important to us to be – and to be seen as being good citizens. The very last thing we need is to be seen as being deaf and dumb to these issues, or worse, for people in our jobs to be seen as professional stonewallers."

"What about your company?" we asked one of the attendees, from a major financial institution. "It seems to me that you have one of the smallest carbon footprints in the Russell 3000 – but that you are getting more social, environmental and "sustainability proposals" than anyone."

"This is absolutely a critical set of issues for us" she confirmed: "Our lenders and investment bankers now look closely at the way these issues impact every single company in every single deal we are asked to consider, before we'll do it."

Ironically, this discussion occurred on the very day that Exxon Mobil summarized the kind of disclosures it would make in detail, to settle a shareholder proposal on "carbon risk" disclosures – an oil industry "first." It was also the same day Ernst & Young announced that this year – for the first time ever – "social and environmental proposals" constituted the majority of all shareholder proposals files to date: a whopping 56% vs. 40% in 2012 and 2013.

Even the initial naysayers ended up agreeing with this issue's QUOTE of the QUARTER:

"No, it's not 'just about the nuns' anymore."

STILL ANOTHER SEA-CHANGE THIS SEASON: FOUR COMPANIES SUE GADFLY JOHN CHEVEDDEN AFTER THE SEC REFUSES TO GRANT 'NO-ACTION LETTERS' …PROMPTING FAST AND FURIOUS REACTIONS BY ACTIVIST INVESTORS

More ill-winds seem to be sweeping the streets in the run-up to the spring meeting season: So far this year, four well-known companies have sued gadfly John Chevedden, seeking to block his non-binding proposals from coming to a vote: EMC Corp., Express Scripts Holding Co., Omnicom Group, Inc. and Chipotle Mexican Grill.

A group of 19 activist investors - including **Julie Goodridge** of **NorthStar Asset Management**, **Tim Smith**, of **Walden Asset Management**, leaders at **Boston Common Asset Management**, **Trillium Asset Management**, **The Interfaith Center on Corporate Responsibility**…and yes…the **Maryknoll Sisters** and **Sisters of St. Francis**, to name a few – immediately sent sharply worded letters to the Chairmen of the Boards and CEOs of all four companies, questioning "the necessity, wisdom and use of shareowner resources," asking why they deemed it necessary, "what specific benefits will come to shareowners?"…whether the company is concerned about potentially negative public reaction… and whether the Board approved "management's high-risk plan to engage in unnecessary litigation, rather than constructive engagement?"

Express Scripts handily – and very properly so, in our opinion – won its case in a Missouri District Court, which granted summary judgment on the grounds that there were four separate misstatements of facts in the Chevedden proposal.

But the three other lawsuits were quickly dismissed for lack of standing, basically on the grounds that "no actual or immanent harm" to the company would come from allowing the proposals to go forward to a vote, as the judge in the **Omnicom** case ruled.

In the **EMC** case, the Massachusetts federal district court judge described the EMC's action as "an inappropriate practice of depriving the SEC of the opportunity to perform its proper role" – also noting that "abetting an end-run around the SEC deprives shareholders(s) of a relatively inexpensive opportunity to get claims disputes resolved."

Here's where we come out on all this:

The OPTIMIZER's editor totally agrees that public companies should not, and should not be obliged to include proposals that contain material misstatements of fact in its own proxy statement.

We also agree with SEC Commissioner Daniel Gallagher, that "use of the statement in opposition is sometimes an incomplete remedy. Taking valuable space" (and expensive time, we'd add) "to correct misstatements distracts from substantive discussion about the proposal itself, and proposals that are overly vague" (or that betray a total misunderstanding of the proxy process and how it works, we'd add – like those crazy new 'confidential voting' proposals, or the equally ill-informed one about granting proxy authority on 'all other business') " make it difficult to draft a sensible rebuttal."

Thus, we also agree with Gallagher that "A company should be able to use all available means, including litigation, to fulfill its fiduciary obligations to all shareholders by seeking to exclude improper proposals.

We even agree with co-defendant James McRitchie, who was described in the NY Times as complaining that such suits are meant to "make small shareholders 'think twice' before filing proposals" – which we wish that sloppy thinkers and sloppy filers WOULD DO!

And finally, we also agree with Gallagher's remarks at a 3/27 conference at Tulane University, that a fresh look at both the dollar and ownership-period thresholds for submitting shareholder proposals is way, way overdue… and that new thresholds for re-submission should also be considered.

But we also think that both his proposed dollar or percentage-ownership limits –and his proposed "three-strikes-and-you're out" limits are way, way off base. It must be noted that a huge number of the governance provisions we now take for granted were submitted by small shareholders – and often took nearly a decade to gain traction with voters.

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Also, as long term observers of and participants in the proxy voting process, we have to warn that having the company perceived as being a bunch of big, bad, billionaire-bullies of little investors is NOT a good place to be…

And, worst of all, it can call down a raft of fresh new shareholder proposals – and automatically-cast Votes-No against one's own proposals – if activists decide to retaliate, or to 'send a message' about their unhappiness with your ham-handedness.

(Apropos…and p.s. – the FORTUNE article about this flap that's on the web – "A lazy, inexpensive way to intimidate shareholders" – incorrectly reported that Walden Asset Management "has filed a new resolution at Chevron, citing harassment of long-time shareholders." Totally incorrect, as Walden's Tim Smith confirmed for us…but certainly something that could happen to your company if you overplay your hand, we'd say.)

WE SUGGEST A 'KINDER, GENTLER, AND SIMPLER AND FAR MORE COST-EFFECTIVE WAY TO ACT' IF YOU THINK GADFLIES – AND THE SEC – ARE OFF-BASE:

SIMPLY OMIT THE PROPOSAL…AND LEAVE IT TO THE SEC – OR TO THE PROPONENTS THEMSELVES - TO TAKE ANY "ACTION" THEY FEEL IS WARRANTED.

THE CHAIRMAN'S "BRIEFING BOOK": TIME FOR A NEW LOOK

Corporate Secretaries, meeting planners, IRO folks and other governance professionals ask about Annual Meeting Briefing-Book practices at virtually every conference on such matters we've ever attended. But, as far as we know, there is no list of best practices for building a really good book out there – 'til this one, we hope.

Some of the interest in Briefing Books is a vestige of the old, old days – when gadflies like the Gilbert brothers would always ask "Were there any changes in the bylaws since the last meeting?" (Still a good question to ask, we think, though no one seems to ask anymore)…and "How much did you pay your auditors for audit services – and for other non-audit services last year?"…and the nutsiest Gilbert question, "How many of the votes on each matter were cast by 'unmarked' proxy cards?"- a statistic that many companies still religiously collect and place in their briefing books, even though the Gilberts, and their questions, are long gone.

In any event, as we always point out about shareholder meetings in general, "One briefing-book size and shape does not fit all": There IS a need to have different strokes for different folks – and for different years too – depending on how your company has fared – businesswise and in the press – and whether or not there are "hot issues" surrounding your industry or your company. And yes, in our experience, there are important issues with how much of a 'control freak' your own Chairman may or may not be.

So in our own book, every year ideally requires a fresh look at the issues – and at the book itself – and what needs to be in there – and what is simply a waste of staff time – and yours – and your Chairman's valuable time too.

The best model we've ever seen dates back to our old days at Manufacturers Hanover Trust Company – where each year, about 45 days before the scheduled meeting date, a memo would go out from the Legal Department (now, typically, the "Legal and Compliance Department") to the heads of each of our many business units. It would remind them of the impending meeting and ask each unit head to promptly report back in writing on any event or threatened event in their unit that a stockholder would be likely to ask about – and, of course, to follow up right through the morning of the meeting should there be new developments.

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Talk about a good governance best practice! We still think the soul-searching alone is worth the effort – not to mention the coming clean part – where a failure to disclose and discuss anything important enough to be in the book would end, implicitly, with a death sentence.

This is probably a good time to briefly address the "front part" of the briefing book – the script – and rules of conduct – which should specify that (1) all questions must be addressed to the meeting Chair; (2) that questioners must wait to be recognized, then identify themselves by name, as shareholders or proxy holders; (3) that their questions during the official "business portion" of the meeting must relate directly to the matter being considered, per the agenda; (4) that general questions about the business will be dealt with immediately following the conclusion of the "business portion" and (5) that questions or statements about personal business matters should be addressed in person, to designated staffers at the back of the room, after the meeting is concluded and (6) that anyone who is deemed out of order will be removed from the room after one 'fair warning.'

This is also the time in the script for the Chair to refer to the printed Rules of Conduct that each attendee should have had placed directly into their hands before they enter the hall, we say…which should cover the kinds of personal questions and statements that are out of order, time and turn-taking limits, etc. – and ideally, for the Chair to review them briefly, with emphasis on sections that may be potential flashpoints in a given year.

Now for the briefings themselves: We are strong believers in short briefing books. Why? First, because good Chairmen have no patience with, nor should they have patience with written materials that are not short, pointed and keenly focused on the most important issues at hand.

The old "kitchen sink approach" – where staffers try to anticipate everything under the sun that could possibly be asked is truly a waste of everyone's valuable time and attention. And, apropos, and an even more compelling set of reasons, (1) there is absolutely nothing wrong with the Chairman saying, "I don't have the answer to your question at my fingertips, so we will get back to you after the meeting with the specifics" and (2) the very idea that a Chairman should know, or pretend to know the answer to every question under the sun is simply stupid – and (3) it presents an image of the "Imperial Chair" that is both insulting to our intelligence and dangerously hubristic, both for the chairman and for you briefing-book compilers. (Just an aside here, years ago we had a client that used a "kitchen sink approach on steroids" – where a four inch thick briefing book had answers to each and every conceivable question, that a crew of people who were literally behind the curtain could instantly post on the Chairman's teleprompter! Every year we feared that the curtain might fall, revealing the Wizard of Oz-like enterprise for all to see.)

A few words on anticipating – and dealing with questions aimed at Officers and Directors: As we point out whenever we discuss Annual Meetings, the "First Commandment" - which should never be broken - is that *"All questions must be directed to the Chair of the meeting."* But that is not to say that the Chair should not be free to ask a company officer – or a director – and specifically the Chair of a key board committee, we'd note – to answer a shareholder's question. In fact, we think that doing this judiciously is fast becoming a "best meeting practice" – not just to overcome the Wizard of Oz factor, but because any rational person would expect the BEST answer to come from the person in charge – like the Chair of the Comp or Audit Committees, for example.

Four related points on having Officers and/or Directors answer questions:

1. **The most important point, by far, is never "wing it": Any such decisions should be made in advance – and shared with the intended recipient of the question – and with the answer(s) rehearsed and critiqued and polished beforehand.**

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2. **A very important related point, often made by our great friend and keen meeting-practitioner and observer Peggy Foran, of Prudential, is to "Make sure that all your potential speakers are 'ready for 'prime time.'" Face it, some really great operating officers, and some outside directors too, are not all that good at stand-up speaking, even when rehearsed, so better to be safe than sorry.**

3. **It is often a very smart tactic – if one knows there are "issues" that are almost certain to come up – to act proactively, and to preempt the question by having, say, the Chair of the Compensation Committee briefly summarize the committee's careful work before a vote to ratify the comp plan(s) is taken.**

4. **Something fairly new, but that's bound to increase in today's governance environment: Be prepared for stockholders to push back if they ask to hear from the Chair of a key committee and the Chair of the Meeting refuses to comply. It is almost impossible to refuse to honor such requests these days - and digging in one's heels may end up as page-one news – or worse.**

HAVE YOU CARELESSLY "STRATIFIED-OUT" YOUR MOST LOYAL VOTERS?

Long-term readers will recall, we hope, our many articles on "The Best and Worst Annual Meeting Materials to Cross Our Desk" each year – many of which inspired readers to do better, we were told – many of which engendered hearty belly-laughs – and some of which inspired pure pity, for the poor fools who'd fouled up badly.

But of late, our mailbox has been seriously emptied of serious content – even though your editor continues to manage most of his own pension funds via a Sep-IRA that's mostly (still) in 70 – 100 stocks at any given time – and where he tries to follow his holdings carefully.

So far this season, those green-imprinted envelopes that hold only "Notices" – which your editor automatically rips in half, and tosses in the round file – have been outnumbering actual proxy materials by about two or three-to-one. Do you really think that the receipt of the "Notice' will impel people to go to a website, download and try to review the typically awful stuff that most companies put up there – and vote on your proposals? Current statistics tell you the answer is mostly NO…

Actually, we don't mind being "stratified out" of getting hard copy materials from companies where our investment is "immaterial" – either because the stock arose from a spin-off – or, in at least 10 cases are "vestiges" of old DRPs that we tried to cash out, or move to our brokerage account, but where the totally un-portable fractional share still remains - too small to warrant our own time and attention to clean up. And yes, we have more than a few holdings where the stock has dropped so much that the portfolio manager (me) has mentally written it off…even while hoping for a miraculous return from the dead. And guess what? If yours is one of those companies, maybe it is more important than ever to get your story out there!

But people…Some of you are "stratifying" your mailings of hard copy to holders of 5,000 shares or more! So for a $30 stock, you have to hold $150,000 worth to get a hard-copy annual report, proxy statement, proxy card or VIF. For the many otherwise

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outstanding companies that are in the $65 - $85 per share range, in these lamentably stock-split-less days – you'd have to have an investment of $325,00 to $425,000 in order to "qualify" for hard copies of all that stuff you corporate folks, and your pricey lawyers and "creative teams" work so hard to produce!

Let's look at stratification in a simpler and better way: We say, any investor with $20,000 worth of your stock – which really isn't chump change – is a valuable investor. That's 667 shares of a $30 stock. For those of you with math issues – a one-thousand share investment in a $30 stock – which many companies seem to be "stratifying out" – is worth $30,000 – as is a 500 share investment in a $60 stock, or a 250 share investment in an $80 stock - which really isn't chump-change, but which many companies seem to be mindlessly stratifying out these days.

As the headline is trying to remind you, "ordinary investors" - in the $20k - $30k range - are among your most loyal stockholders. And, until recently, they have been among your most loyal voters – and among your most faithful voters – since such investments are "meaningful ones" – to them…

And as we have been reminding in nearly every issue, when so many important proxy issues are decided by a majority of the votes actually cast – by actual people – and not counting in the "broker non-votes" as one can not do – except on totally routine matters – every real vote really counts in a close race.

The votes of "ordinary people" – who have what they think is a meaningful investment in your company – really count big-time when there are a lot of "professional investors" looking to Vote No on certain directors, just to 'send a message.'

But there is another important takeaway here: By not sending printed matter to your most loyal fans, you are not just effectively disenfranchising them, you are cutting most of them out of the communications loop altogether: Your company will soon fall off their radar screens – and, as voting statistics clearly show, ordinary people will totally lose the habit of voting. And if, some fine year, like maybe this one, you may really need their vote - it will cost you plenty to try to get them to make an exception – just for you – after you have been off their radar screen a few years.

So please readers, do your own math – with care. At most companies we look at, 80% or more of the savings can be realized by "stratifying out" folks with fewer than100 shares. So why diss investors whose investments may be in the mid-teens, or low-ish tens of thousands of dollars – but who, in the aggregate, often have 30% - 50% of your entire voting stock… and lose their loyalty as well as their votes?

THREE MORE TIPS TO MAXIMIZE YOUR RETAIL VOTE:

1. Be sure to mail hard-copy materials to every retail holder who has voted a proxy in the past three years: These are the most faithful voters out there.

2. Bird-dog your Employee Plan Votes: Send voting reminders via email, with a link to the voting site. Employee Plan participants often have six percentage points of your outstanding shares - or more

3. Bird-dog your Officer and Director votes - which often amount to a big double-digit percentage of your overall ownership. Many times, your Os & Ds will have shares both in registered and street-name positions - And some use more than one broker - and have shares in various "Plans" as well. Sometimes they seem to think that voting one position does the trick for all…or are just too busy to round up and cast their votes. Sadly, and every year, we see companies lose on items that would have gone just fine, had officer and directors cast their own votes.

MARK YOUR CALENDARS FOR THE JUNE 6TH "END OF ANNUAL MEETING SEASON CELEBRATION" – HONORING KEN BERTSCH

Friday, June 6th, please note, will be the "End of Annual Meeting Season Celebration" – a great and well-deserved chance to celebrate – that will also benefit NYC's Fountain House – a 66-year-old non-profit that provides housing, plus social, educational, medical and wellness support – and meaningful employment – to over 1,000 people each year who live with schizophrenia and bi-polar disorders, and who would otherwise be utterly lost.

This year's honoree will be Ken Bertsch, who recently left the **Society of Corporate Secretaries and Governance Professionals** to become a Partner of the recently formed **CamberView Partners** in San Francisco – a perfect fit, we'd say, with Ken's lifelong and varied career in the corporate governance space. Both in his earliest positions in the "investor" and "governance" spaces - and in his tenure as The Society's President, during a critical stage in its own 60+-year history, Ken has done more than anyone we can think of to raise the substance… and the tone… and the frequency…and the usefulness of "Positive Shareholder Engagement" that has become such a critical component of Annual Meeting Seasons these days.

And this year, please note, the Celebration will be at Fountain House Headquarters itself – on West 47th Street – so that visitors will be able to get a better sense of the "Clubhouse" and its trailblazing "Membership Model" – and of the dozens of programs Fountain House offers, that allow so many members to return to, and stay within the mainstream of life each year.

This year's Benefit Co-Chairmen – Maryellen Andersen of Broadridge Financial Solutions and Jeremy Goldstein of Wachtell, Lipton – are expecting to drum up a record-breaking turnout of corporate citizens – plus a record-breaking number of the "major movers and shakers" from the investor world. Also, the crowd of industry sponsors constitutes a "Who's Who" in the supplier world" as well…so this is a networking opportunity you can't miss!

A "Must Attend Event" we say, "if shareholder meetings are in your DNA."

For further info, go to www.fountainhouse.org – and watch your in-boxes and mailboxes for official invitations, to come soon.

OUR "FIRST RUNNER-UP" for the QUOTE OF THE QUARTER:

"If you look at a shareholder list, there is no one you can count on. It's amazing. Your best friend is willing to support" the activist side…

Dan Burch, Chairman of **MacKenzie Partners Inc.** in advice to board members at the **Tulane University M&A Conference**, as quoted in the March 29th *Wall Street Journal*

COMING SOON

OUR SPECIAL 20TH ANNIVERSARY ISSUE!

WITH STORIES FROM THE "OLD DAYS" -- WHEN THE INTERNET, AND THE "CORPORATE GOVERNANCE MOVEMENT" WERE STILL IN THE INCUBATOR STAGE AND WITH SOME OF OUR BEST AND WORST AND WEIRDEST AND WACKIEST STORIES - AND PRACTICES - AND PEOPLE

FINALLY…SOME LONG OVERDUE ACTION ON SELLERS AND USERS OF "EARLY PEEKS" AT MARKET-MOVING INFO - AND ON THOSE FAST-TRADERS… "RIGGED"… CAN YOU BELIEVE IT? ARE YOU SURPRISED?

Whoopee! After the press began to shine increasingly strong spotlights on the collection, sale and use of advance looks at potentially market-moving data - and as part of a settlement with NY Attorney General Eric Schneiderman – thank you Eric – BlackRock agreed in January to stop surveying analysts to get clues about views on public companies before such data was published, also paying $400k to settle the investigation.

Then, in February, after consultation they noted, with Schneiderman, and with owner **Warren Buffett, Business Wire** agreed to stop selling direct, high-frequency data feeds to high-frequency trading firms. In March, privately owned **Marketwired** agreed to do the same. **Thomson Reuters**, to its credit, stopped giving traders early looks at consumer confidence reports to traders who paid for the privilege, way back in July.

Now, suddenly, in a mad scramble, everyone wants in on the act – with investigations of insider trading based on early, paid-for looks at market-moving data reportedly underway at the **SEC**, **FINRA**, the **CFTC**… and lately the **FBI**! Maybe they had some advance info of their own, regarding the publication in late March of ***"Flash Boys"***- the flashy, fast-moving, fast-selling book by **Michael Lewis**, kick-started with a flashy March 31st interview on **"60 Minutes"**…that began thusly:

"The United States stock market, the most iconic market in global capitalism, is rigged."

Shock? Awe? Not to readers of the OPTIMIZER, we'd have to say, which has been writing and railing about this for over five years now! Maybe THIS TIME, the SEC – and the stock exchanges they purportedly regulate, and who are among the major aiders and abettors – and beneficiaries of fast-feeds and flash trading – will actually REGULATE!

ON THE SUPPLIER SCENE:

The NJ-based proxy solicitation and governance advisory firm Alliance Advisors has opened two regional offices; one in Reston, VA, headed by CFA and Managing Director **Waheed Hassan**, will focus on proxy contests and M&A activity, and the other, in Atlanta, GA, headed by EVP **Reid Pierson** will focus on corporate governance and compensation plan proposals. Both Hassan and Pierson honed their craft at ISS, and "have been a tremendous asset to our firm with their respective fields of expertise," a January Press Release stated. Nice to see some growth in this mostly beleaguered business!

Computershare's US Plan Managers Unit has enhanced its online restricted stock platform to include 'retirement eligibility taxation functionality' that will calculate taxes on restricted stock, or restricted stock units – including performance awards – on whatever schedule the plan sponsor elects. Nice to see some investment, in another business where investments have been scarce in today's mostly tough times for T-As.

Two small Transfer Agents are offering financial incentives in bids to gain new business: Issuer Direct (a publicly traded company, we were surprised to note) is giving visitors to its website a chance to "receive all our services" (Financial Reporting, Annual Meeting Planning and Proxy Management Services, Transfer Agency, IR Portal – and Investor Targeting, Press Release Distribution and access to 'our new and improved' Disclosure Management System) "for the rest of 2014, absolutely free - a $40,000 value!" Las Vegas-based **Pacific** (?) **Stock Transfer** – founded in 1983, and which represents over 950 issuers, with 250,000+ shareholders, its press release notes, is offering clients a $2500 credit on their bill "for every referral that results in a new client."

PEOPLE:

Robert "Andy" Andersen, husband of **Broadridge**'s investor go-to person and governance expert **Maryellen Andersen**, and an always smiling and totally engaging 'mixer' at industry events, passed away in January, after a long and hard-fought fight with cancer. What a wonderful and fun guy he was – and an excellent winemaker to boot – much better than your editor, he's forced to admit. When people asked what he did for a living, he'd say, with a totally straight face, "A very rare profession – I'm a bagpipe tuner" - and his loving family took care to have real bagpipers at the church steps to pipe him off to a far better place, in style.

After a lengthy search, the **Society of Corporate Secretaries and Governance Professionals** announced the appointment of **Stephen L. Brown** as the Society's new **President and CEO** on March 17th, effective April 21st. Stephen is a truly wonderful choice, we say: A super-smart, no-nonsense guy - always direct and to the point – well-respected by governance experts and practitioners in both the corporate and investor communities – and with a great wit – and with a great CV: BA from **Yale**, JD from **Columbia University**, a former practicing securities lawyer at **Wilmer, Cutler & Pickering and Skadden**, **Arps**, and currently Senior Director of Corporate Governance and General Counsel of **TIAA-CREF**. (Readers who would like to get a bit of insight into Steve's thinking and style should take a look at the "Interviews" tab on our website, www.optimizeronline.com) Concurrently, the Society Board appointed the irreplaceable **Darla Stuckey** as **Executive Vice President and General Counsel**, where she will continue to spearhead the Society's advocacy and educational efforts.

Nancy Hoffman, who many readers will remember as the long-term head of **UMB**'s Stock Transfer business until it was sold to **Computershare** five years or so ago - and who just retired from UMB as a Senior-VP – has joined the **CT Hagberg LLC Team of Inspectors of Election**…just in time for the super-busy 2014 "season." A former member of the **Securities Transfer Association'**s Board of Directors and a **Past President of the Society of Corporate Secretaries Kansas City Chapter**, Nancy served as Inspector for former UMB clients at hundreds of shareholder meetings, and is happy to be 'on the road again' – as are we…

The omnipresent pro-corporate lawyer **Marty Lipton**, of **Wachtell, Lipton, Rosen & Katz** fame, speaking at the annual M&A conference at **Tulane University** in March, nodded and blinked a bit in the long-term debate he's been having with the almost-equally-omnipresent **Lucian Bebchuk** of **Harvard Law School** fame… saying that some kinds of shareholder activism should be "encouraged" – and mentioning several activist investors by name, as people he respects, although "I wouldn't say 'like'" – like **Ralph Whitworth** and **David Batchelder** of **Relational Investors**, **Nelson Peltz** and **Peter May** of **Trian Fund** and **Barry Rosenstein** of **Jana Partners.** No big surprise, he views **Carl Icahn**, **William Ackman** of **Pershing Square Capital**, **Daniel Loeb** of **Third Point** and **Paul Singer** of **Elliott Management** as too short-term in nature, as most of our readers will too, we bet.

The inimitable **Broc Romanek** has "gone Videal" over the web - in a big way: His 2-minute video, "21 Cool Things About **GE**'s '14 Proxy Statement" is required viewing, we say…along with his subsequent video of "32 Cool Things About **Prudential**'s '14 Statement" and "18 Cool Things" about **Coke**'s. Browse them all at **corporateaffairs.tv** - And just for fun, be sure to watch **"10 Silly Ways Towards Better Shareholder Engagement"** - featuring an opening bed-roomy beefcake shot with the message "BlackRock - Thinking of You" – followed by suggestions for better engagement like Give the activists silly nicknames, "Use your best Monty Python voice" - and, our favorite, "Sext them." (We asked Brock if the beefcake photos were selfies, hoping to get a big scoop, but no, he assured us, asserting that he is in much better shape than the model from the "stock photo shop."

The colorful Delaware Chancellor **Leo E. Strine**, who had been head of the lower Court of Chancery, is now the **Chief Justice of the State's Supreme Court**, beating out three other contenders, including Chancellor **J. Travis Laster**, following the retirement of **Judge Myron Steele**. Described in a 1/10 WSJ article as "about the closest thing to a celebrity in the buttoned up world of corporate law," Strine is known for his frequent, and sometimes weird/sometimes hilarious references to pop-cultural events and figures in his opinions and remarks from the bench. And also, as

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the WSJ story noted, for his propensity to opine on legal issues that were not before him, "a habit that has earned him unusual rebukes from the state's supreme court" – something that will never happen again, for sure. Usually viewed as a strong defender of directors' rights in cases that have come before him, it was Strine who awarded $1.26 billion in damages to shareholders of a South American mining company – plus a record $300 million in fees to plaintiffs' lawyers – due to lapses in director due diligence efforts. (The also-very-ready-for-prime-time Travis Laster, by the way, did a riveting presentation on this case – and the very strong message it should send to directors on what they should and should not be doing, and thinking when M&A deals come up – that is still on the Society's website and should be "required watching.") Another contender for the Chief Justice's job, Delaware attorney **Andre Bouchard**, has been nominated by the governor to fill Strine's slot on the Chancery Court. Meanwhile, another Supreme Court Justice, **Jack Jacobs** will retire on July 4th.

Patrick Tracey, who learned the TA and Reorg businesses from the experts, at the old Manny Hanny, and currently a long-term **Computershare** super-star and SVP – and the current Program Chair par excellence of **NIRI NY** – is set to undertake a 300+ mile bike ride in Cambodia, to raise money for three Cambodian orphanages that Computershare helps to support. To show your support – and to donate – go to www.gofundme.com/PAT-RIDECAMBODIA2014. We are betting that Pat's many friends and fans will cause him to greatly exceed the $5,000 fundraising goal he set for himself…and we've asked him to take lots of photos for our 2014 magazine…

Daniel J. Witman, the son of **SSA** member **Kathy Witman** of **Integrated Software Solutions** in Malverne, PA and her husband Chris Witman, is the 2014 recipient of the **Shareholder Services Association**'s **James R. Smith Scholarship Award**. A polymath for sure, Daniel's favorite subjects are science, math…and English. He also draws and paints, writes for his school's literary magazine, served as director of the school's 2014 variety show/charity drive and has a passel of academic honors to his credit. What a joy it is to see the children of hard working parents – who often don't qualify for very much in the way of financial aid, thanks to their parents' success at work – recognized and rewarded by the SSA membership. The annual award – which is good for every year a recipient stays in school, and academically qualified (which, to date, every single recipient has done) – has been raised this year from $1,500 to $2,500 per year. And P.S. – Daniel's older brother **Matthew** also won the award in 2009. So special congrats to the parents – and special ones too to the **SSA** – and to **Jimmy Smith**, who must be constantly thrilled to see how this program has grown.

WATCHING THE WEB:

Law firms are coming under increasing scrutiny from companies – and their security consultants – about what they are doing to reduce the ability of hackers to access client data: "Clients are putting more restrictions on law firms about things to do to protect themselves" according to Mary Galligan, an ex-FBI cyber-crime expert, and now an exec in the "cyber-risk services division" of Deloitte Touche, as quoted in a lengthy NYTimes article on 3/27. "A lot of firms have been hacked, and like most…they don't know it for some time" added Vincent I. Polley, a lawyer and author of a recent American Bar Association book on cybersecurity, in response to law firm outcries that FBI and consultant reports of hacking are overstated.

Once again, we could not resist the colorful little display of gold-tooled, leather-bound books that ran along the bottom of the WSJ's front page as Annual Meeting Season began in earnest – from www.Paperbecause.com. We went straight there to see if they had any new videos, which were a huge hit with us – and with our readers last year – who really need a dose of humor about now…Check out "Jason and the Paperless Office" – "Ration" – "Office" – and last year's readers' favorite, "Tech Support." And…on pain of death, do not miss "Anniversary"

REGULATORY NOTES... and comment

AT THE OCC: The Office of the Comptroller of the Currency, which rarely rates mention here, has told banks that they no longer have any "wiggle room" in terms of calculating the amounts they can lend to finance takeover deals, which must be capped at six times EBITDA: "On new issuances, we have a 'no exceptions' policy" they told the WSJ. The very same WSJ article that reported on this on 3/21 also reported that so far in 2014, 30% of new US LBOs were financed at higher debt-to-EBITDA ratios!

AT THE SEC:

In another regulatory "first" the SEC recently fined Lions Gate Entertainment, which also agreed to admit guilt, a whopping (?) $7.5 million under the tender offer rules, for "withholding material information just as its shareholders were faced with a critical decision about the future of the company." The first such action in over 25 years, the SEC crowed. The last such fine was way back in 1986…against Allied Stores.

IN THE COURT HOUSE:

A huge win for Chevron in its long-running battle over environmental damages in Ecuador: A US federal judge has ruled that a $9.5 billion award against Chevron was fatally tainted by fraud and corruption and that the lead attorney and two associates engaged in a conspiracy and in criminal conduct and barred them "from profiting from the egregious fraud that occurred." In a related action, Chevron asked the judge to award it $32.3 million in attorneys' fees, which it says represent only a portion of its total fees. *"If ever there were a case warranting equitable relief with respect to a judgment procured by fraud, this is it"* the judge said in his ruling.

The Supreme Court is expected to weigh in with a landmark ruling on Class Actions in June, with the smart money betting on a "middle ground" position that will require plaintiffs to show, at an early stage, whether the alleged fraud affected the market place in order to certify the class action, rather than to continue under the current "fraud on the market theory" that foolishly assumes, as many once did, that all information is automatically reflected in stock prices. "Once you get the class certified, the case is over," **Justice Scalia** noted in March. Meanwhile, securities class action cases continue to soar – and investors continue to recover only 1% - 5% of their losses – while most of the proceeds go to securities lawyers.

The Supremes declined, without comment, to hear an appeal of the Delaware Supreme Court's decision that the Delaware "arbitration program" for corporate cases was unconstitutional because the proceedings were closed to the public.

Last year, 94% of all M&A deals were challenged in court – up from 44% in 2007 according to a recent report from **Cornerstone Research**. And lately, appraisal rights have become the big new thing – with actions pending in the **Dell** case, in a much larger set of cases re **Dole Food**, and numerous other cases. Last year's appraisal cases totaled $1.5 billion – a ten-fold increase from 2004, according to a recent study by two law professors at Brooklyn Law and Case Western.

Comes now one Jerome J. Schlichter of St. Louis, dubbed the "Lone Ranger of 401(k)s" by Gretchen Morgensen in her March 30 NY Times "Fair Game" column – whose $13.4 million judgment against **ABB Inc.** (which spent $42 million to defend itself!), for breaching its duty to find reasonable fees for plan participants was upheld on appeal. So far he has settled eight such cases, with five more pending and one dismissed. But watch out! The US Supreme Court has expressed interest in this issue, recently asking the solicitor general for its views on the pending case against **Edison International**…and a big case against **Lockheed** is barreling down the pike.

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