

OPTIMIZER

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

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NOW IN OUR 20th YEAR

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ACTIVIST INVESTORS CONTINUE TO STEP-UP THEIR FOCUS ON STEWARDSHIP OF CORPORATE ASSETS - AND ON USE OF CASH – AND, INCREASINGLY – AND LOOK SHARP DEAR READERS, AS YOU PREPARE FOR 2014 – ON “HOLDING DIRECTORS’ FEET TO THE FIRE”

Way back in 2011 we predicted that this would become “The Next Big Thing” in the corporate governance movement...and boy were we on the money. The original article is on our website, www.optimizeronline.com, under “What’s New” – and it’s still very much worth a look, because in many ways, the last quarter showed an even faster and more alarming ramping up of the trends we saw emerging:

“**Activist Storms Microsoft Board**” an August WSJ headline screamed: The only real surprise here – after we’d noted back in 2011 that Microsoft – a serial and big-time buyer-back of its own stock – had produced a truly pathetic total return to investors of 0.2% over the past decade – was how long it took for an activist to strike. With numerous analyses being floated – to show that a broken-up Microsoft would be worth way more than the current stock price – Microsoft quickly capitulated to **Mason Morfit** and his **ValueAct** hedge fund – that had accumulated a \$2.2 billion investment, and said it was talking with other big investors about “new and better strategies.” Microsoft promised to put a ValueAct-named director on the board... and give Morfit regular meetings with Microsoft’s president and “selected directors and management”... “to discuss a range of business and strategic issues.”

Meanwhile, **Nelson Pelz** – whose **Trian Fund Management** fund has **racked up numerous home runs for investors with basically “friendly” approaches** – providing what proved to be great advice to companies like **Heinz** and **P&G** for example – has taken big positions both in **Pepsi** and in recent **Kraft**-spinoff **Mondelez**. Pelz told a CNBC conference that Pepsi should acquire Mondelez for \$35 - \$38 a share, then dividend-out 20% of the combined market cap to shareholders in cash...before spinning off the **Pepsico** beverage business to shareholders. What a home run THAT would be for investors – at least in the short run.

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And how can we leave out Apple? They have been an investment *bonanza* for long-term holders, but, nonetheless, David Einhorn attacked them earlier in the year for hoarding too much cash – as we predicted that *someone* would, since it was earning less than a 1% return. *And* he DID extract a big boost in cash payouts to investors. But Oh... Woe...Fast on his heels comes fast-buckster **Carl Icahn** – who wants Apple to borrow about \$150 billion (!!) to fund an even bigger cash payout, and who’s been tweeting like mad, to hype the stock price so he can sell out fast.

And how could we ignore another big and related trend – to disrupt planned mergers with arguments that money is being left on the table – or that the strategy is somehow “flawed”? – like at **Dell**, where the agitators proved right, but also in at least four other big deals of late, like **Office Depot/OfficeMax, Softbank/Sprint, Glencore/xstrata** and **T-Mobile/MetroPCS**.

One of the major “wedges” in virtually all of the deals cited above – as we also predicted earlier – is the “feet-to-fire part” – where dissidents propose a short-slate of new directors – usually targeting specific incumbents to be ousted - and threatening an outright proxy fight if the dissident groups’ demands are not met.

And lo...as we’ve also been warning for several years - **it is no longer socially “questionable” to be on a dissident slate.** And lo again, September brought news in the WSJ that dissidents at companies like **Allscripts, Cedar Fair Entertainment, CSX, Hess, Office Depot** and **Tessera Technologies** have been hiring executive search firms to recruit new directors who will have better CVs, higher name recognition and greater shareholder appeal than the targeted incumbents, which, often, ain’t that hard to do. **Please note especially - every one of these campaigns succeeded handsomely.**

What to do in this environment? See the tips on page 3

OUT OF OUR IN-BOX:

AN IMPRESSIVE PRESS RELEASE FROM ALLIANCE ADVISORS, announcing the expansion of its corporate headquarters; “our third expansion in as many years...more than doubling the size of our call center” to 125 seats. Mighty impressive indeed!

WELLS FARGO SHAREOWNER SERVICES PUTS MONEY WHERE ITS MOUTH IS RE: ELECTRONIC DELIVERY: “Activate your account at shareowneronline.com and you’ll be automatically entered for a chance to win a \$5,000 cash prize, a \$500 Wells Fargo Visa® Gift Card, or one of three \$100 Visa® Gift Cards” the little flyer with one of our DRP statements promised... “Then, enroll to receive your shareholder documents by eDelivery and receive another entry.” Kudos: Way cool...

AN IMPORTANT ADDITION TO OUR 2ND QUARTER STORY ON “FINDERS OF LOST ASSETS” AS ORIGINALLY REPORTED IN THE NEW YORK TIMES...The ink was barely dry on our report on the NY Times exposé when we got a call from a friend at the “very good firm...with very good people” that had been “fingered” by the story...And NO...they had not asked for a whopping 36% as the Times reported, And guess what else? They had settled the case with the heir to the property they’d found... well before the article ran! While we were

kind of shocked that the Times - normally an impeccable source - had jumped the gun – and done its math wrong besides, your editor can also report that he himself has never been quoted accurately and in full...and completely in context, though he has been interviewed many times...So we were not entirely surprised to learn that the Times was wrong. One of the important morals of the story is still the same however; that we need to consider “reputational issues” when hiring any firm to deal with shareholder matters. So one should always be sure that such firms are very good ones...with very good people...and that, often, despite our best efforts, the old saw proves true - that “no good deed goes unpunished.”

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WHAT SHOULD CORPORATE FOLKS BE DOING TO PREPARE FOR, AND IDEALLY TO AVERT, ACTIVIST KNOCKS ON THEIR DOORS? A QUICK CHECKLIST OF OUR TOP-TEN TIPS ON THINGS TO DO...ASAP

- IF YOUR COMPANY IS NOT COMFORTABLY IN THE TOP QUARTILE ON MOST PERFORMANCE MEASURES, JUMPSTART YOUR ENGINES IMMEDIATELY: RECOGNIZE THAT THIS IS A SERIOUS PROBLEM IN ITSELF THESE DAYS, REGARDLESS OF YOUR MARKET CAP OR PROMINENCE, OR OF ANY PLANS YOU MIGHT BE 'HATCHING.' IT'S A PROBLEM THAT REQUIRES AN AGGRESSIVE ACTION PLAN – AND A GREATLY STEPPED-UP COMMUNICATIONS PLAN...WITHOUT DELAY
- IRONICALLY, IF YOUR COMPANY IS DOING VERY WELL – SAY WITH A BIG STOCKPILE OF CASH, A HIGH STOCK PRICE AND A LOW DEBT-TO-EQUITY RATIO – YOU NEED TO PREPARE FOR ACTIVISTS TO KNOCK TOO – AND TO KNOCK HARDER THAN EVER IN TODAY'S GO-GO ENVIRONMENT
- IF YOU ARE VULNERABLE ON POINTS ONE OR TWO, GET PROFESSIONAL HELP *IMMEDIATELY* – FROM A MARKET-SAVVY INVESTMENT BANK YOU CAN TRUST TO BE BRUTALLY RIGOROUS... AND BRUTALLY FRANK...FROM A TOP-FLIGHT INVESTOR COMMUNICATIONS ADVISOR AND MESSAGE-CRAFTER ...AND FROM A TOP-FLIGHT PROXY ADVISOR
- GET YOUR BOARD ON BOARD AND INVOLVED... IMMEDIATELY
- STEP UP YOUR COMMUNICATIONS EFFORTS ...WITHOUT DELAY...TO MAKE SURE THAT INVESTORS ARE AWARE THAT YOU – AND YOUR BOARD - ARE AWARE OF AND "ON THE CASE" OF ANY AND ALL PERFORMANCE ISSUES, YOUR COMPANY'S LONG AND SHORT-TERM CAPITAL ALLOCATION PLANS, AND ALTERNATIVES... AND THE OVERRIDING IMPORTANCE OF HAVING ROBUST, LONG-TERM STRATEGIC PLANS IN PLACE: "RAMPED-UP MD&A" ON CAPITAL ALLOCATION PHILOSOPHIES, PLANS AND RESULTS NEED TO BECOME MUCH MORE OF A DAILY EXERCISE THAN AN ANNUAL ONE, WE ADVISE.
- CONDUCT A TOP-TO-BOTTOM ANALYSIS OF YOUR ENTIRE INVESTOR BASE – INCLUDING THE NUMBER AND PERCENTAGE OF SHARES HELD BY EACH SIGNIFICANT INVESTOR, AND INVESTOR SEGMENT ...BUT REMEMBERING ALL THE WHILE THAT THINGS CAN AND WILL CHANGE OVERNIGHT – AND USUALLY NOT IN YOUR FAVOR – IF ACTISTS KNOCK
- QUICKLY IDENTIFY THE GOVERNANCE HOT-BUTTONS OF EACH SIGNIFICANT INVESTOR AND INVESTOR SEGMENT: IDENTIFY ANY "GAPS" THAT ACTIVISTS MIGHT SEIZE UPON - AND DO A RIGOROUS PRO-FORMA ANALYSIS OF LIKELY SUPPORT FOR POPULAR ACTIVIST POSITIONS - AND FOR PRO-MANAGEMENT POSITIONS - SHOULD THAT KNOCK ON THE DOOR COME TOMORROW
- TAKE IMMEDIATE ACTION TO BE PROACTIVE ABOUT "GOOD GOVERNANCE" MEASURES: IF YOU STILL HAVE PLURALITY VOTING, A STAGGERED BOARD, OR POISON PILLS, CONSIDER "MAKING NICE" AND INTRODUCING YOUR OWN PROPOSALS ON SOME OR ALL OF THESE FRONTS BEFORE THE DOOR-KNOCKERS KNOCK, TO MINIMIZE YOUR VULNERABILITIES
- HAVE THE BOARD TAKE AN ESPECIALLY HARD LOOK AT ITSELF: A REALLY STRONG BOARD IS ONE OF YOUR STRONGEST BULWARKS AGAINST ACTIVIST "KNOCKS" OF ANY AND ALL KINDS. WEAK BOARD DIVERSITY – WHETHER IN TERMS OF GENDER, AGE, ETHNICITY OR INDUSTRY EXPERIENCE - OR TOO MANY MEMBERS WHO MIGHT SEEM 'OVER-BOARDED' OR WITH 'OVER-LONG TENURE' CAN BECOME MAJOR STRATEGIC AND TACTICAL WEAKNESSES IN A FIGHT TO EXERT CONTROL OVER YOUR COMPANY'S FUTURE.
- REACH OUT PERSONALLY TO ALL YOUR LARGER INVESTORS...WITHOUT DELAY...TO MAKE SURE THAT THEY ARE AWARE OF YOUR HEIGHTENED AWARENESS OF POTENTIAL GOVERNANCE "ISSUES"...AND YOUR WILLINGNESS TO LISTEN TO ANY AND ALL CONCERNS
- BE SURE TO DO ALL THIS BEFORE ANYONE KNOCKS ON YOUR DOOR TO DEMAND CHANGE. DON'T EXPECT INVESTORS TO TAKE YOUR CALL IF THEY HAVEN'T HEARD FROM YOU BEFORE.

COMING SOON

"RIGHTING THE GOVERNANCE BALANCE" - OUR ANNUAL FULL-COLOR SPECIAL SUPPLEMENT... FOCUSING ON WHAT WE BELIEVE IS THE BIGGEST "GOVERNANCE ISSUE" WE FACE

TIME FOR MORE PROACTIVE MD&A ON SHARE-BUYBACK ACTIVITIES? NOT TO WORRY - ACTIVISTS ARE ALREADY ON THE CASE

NEW ANALYSIS FROM FORTUNA ADVISORS REVEALS MOSTLY AWFUL RETURNS ON INVESTMENT IN SHARE BUYBACKS

Wake corporate treasurers, governance advisors...and directors too! The focus on the deployment of corporate assets – and particularly on the use of hard cash – has, as we warned here, way back in 2011 - come very much further to the forefront these days. Harsh focus will surely come your way soon if you are in the bottom two-thirds of the pack, ready or not...

“**The Institutional Investors’ Corporate Buyback Scorecard**” – a recent study of stock repurchases by S&P 500 companies over the past two years ending June 28, 2013 - designed and calculated by **Fortuna Advisors** - shows, very graphically, that, on the whole, US companies continue to buy at the high and sit the bench during low-points, with truly appalling results.

And while yes, some buybacks have been highly successful, the top-ten companies in the survey accounted for over 90% of the gains.

Meanwhile, “The median buyback company delivered a ROI of 3% - and three of every four companies delivered a buyback ROI of less than 10% - a common hurdle rate for capital investment.” Ouch!

The bottom ten companies – including BofA, Citigroup and GE - repurchased \$250 billion worth of shares at prices that averaged 94% higher than today’s. Apple - where Carl Icahn is currently insisting that Apple should borrow \$150 billion to buy back MORE shares - saw its ROI skid by 43.1% over the two year period, while the worst company in the survey, **Cliffs Natural Resources**, saw its return drop by 54.3%.

What to do? Fortuna offered an amazingly simple solution to the buy-high scenarios that most buyback programs effectively guarantee: Commit to a level, pre-determined monthly buyback amount. Wow! Just like the ancient but tried and true advice about the

benefits of “dollar cost averaging”: You automatically buy more shares when their cheap – and fewer as they rise – something one would think most CFOs woulda figured out before now...

We – as observers and as investors – still say “Show US the money...and give US a larger chunk of cash...so WE have it...and can do as we wish with it, rather to see it permanently “vaporized” and sent straight to money-heaven by bad execution – or by a fickle stock market.

Public companies need to seriously re-think here...and to prepare for very hard questions as investors begin to digest the FORTUNA analysis.

We say that smart companies will begin to monitor and report the results of their buyback programs – ideally with a special section in their disclosure of sources-and-uses of cash – AND with better and more robust MD&A where buybacks are concerned. But if not, no worries, as the headline says...smart investors will do it for you....Do remember: You read it here first!

WATCHING THE WEB

If you don’t do anything else this month to prepare for annual meeting season, go to www.paperbecause.com and spend a few seconds there, to reflect on the many ways that properly written and well-designed paper documents serve a purpose and get results that no webinized version can ever produce. How do we know this? We read it in the paper – a tiny but eye-catching, full-color piece on the first page of a recent WSJ to be exact – where we were induced to follow up on the web. You’ll also get a few laughs from the videos: Watch “The Waiter”... and “Paper is Dead”... and the poor fellow looking for Tech Support, in case you miss the point right off the bat.

A LITTLE PRIMER ON ANNUAL MEETING ETIQUETTE: OUR TOP-TEN TIPS ON MEETING MANNERS – PLUS ONE TO THINK ON

Recently, your editor realized that he may be approaching a world-record for the number of shareholder meetings he's attended: Well over 500 by his reckoning – although the late Gilbert brothers, who went to meetings as their primary “business activity” – and one with lots of vacation and dining and mooching opportunities they enjoyed to the fullest – and all fully tax deductible back then – may not be surpassable by anyone.

In any event, we also realized that although we've published many meeting-planning tips – including a few passing tips on “meeting etiquette” – we've never done so from the perspective of meeting-attendees. And, after all, that's what etiquette is all about, no? Being conscious of what our guests like to have...and delivering it. So here are our top-ten pointers, with one to ponder:

- 1. Always remember that meeting attendees are not only your guests, they are indeed “owners of the business” – and expect to be treated accordingly. When they are, they will be happy, and polite, and will think well of you and your company. When they are not – or if they witness what seems to them as a major breach of etiquette – they will be - and have a right to be - rather miffed, to say the least.*
- 2. Accordingly, be sure to set a welcoming tone - from the very first encounter your guest will have with you and your staff until the very end: A neat and attractive venue helps hugely. This - along with welcoming signage, and a truly welcoming staff - are essentials for setting the right tone...from your guests' perspective.*
- 3. Here's another important thing to remember: A lot of us shareholders are kind of old...So we appreciate things like big and prominent signage, good lighting, comfortable seating, handicap entrances and facilities, A-V programs that we can hear and see...and again, welcoming and helpful staff. (We'd also promised several friends from internet chat rooms that we'd mention the need to think harder about “special accommodations” for people with visual and hearing impairments, and mobility issues - which many leading companies are indeed thinking about, and acting on these days.)*
- 4. Having light refreshments is a must in our book...something that more and more companies seem to overlook, or try to get away without these days...as a way of hustling us out as fast as possible...And don't think we're fooled here either! We don't need anything real fancy. In fact, too lavish a spread often sends warning signals to share owners. But having tea, coffee, juice, soft drinks and something light to eat is one of the top ‘welcoming signals’ a host can send. (The best refreshment idea we've ever seen in our 40+ years of meeting-going was at the old BellSouth, where they served Girl Scout cookies. What could possibly be nicer...or more “proper” in every way at a shareholder meeting? And mighty reasonable too, cost-wise.)*
- 5. We've long reminded readers about the many benefits of having officers and directors and business managers and official “hosts” available (with their names and roles or titles on readily-readable and distinctive badges) during at least part of the coffee-hour: Not only does this set a very open and welcoming tone – it often enables potentially hot issues to be addressed and defused ahead of time, and can provide answers to questions that would otherwise prolong the official meeting unnecessarily.*
- 6. As with any other social occasion, attendees like to know the “rules of the road” – and what to expect. So we like to see a written agenda – and written rules of conduct too – and, of course, we expect that all attendees – including the hosts – will faithfully abide by them. Our favored procedure is to have the Agenda and Rules personally handed to guests when they arrive, with a friendly suggestion that they review them before the meeting starts: Good etiquette, we say, as opposed to plopping them on the seats...Plus it increases the likelihood that people will read them...Plus, it's one of the best meeting-security measures around, as long as you are ready to enforce the rules after “fair warning” to rule breakers: What could possibly be a worse breach of etiquette, we'd ask, than letting some loudmouth - or worse yet an unruly mob - take control of the meeting?*

7. Apropos, and perhaps the most important rule of meeting etiquette – and our top safety tip too – is our longstanding dictate that the chairman must always be in charge: All questioners must wait to be recognized by the chair, and to properly identify themselves as being shareholders or proxy-holders with a right to speak. All questions must be directed to and disposed of by the meeting chair, who is solely responsible for deciding whether a question is “in order” at that point, and who should answer it...and when.

8. One of our pet peeves at annual meetings –and something that comes across as incredibly rude and disrespectful to attentive and well-mannered shareholder attendees -- and maybe to officers and directors too – is when slam-bam introductions of officers and directors are made - and where, typically, the introductions are ungraciously acknowledged to boot: Directors should be expected to stand up straight and face the audience when they are introduced – and to smile, and acknowledge the audience by holding up a hand, or with a little wave, so we can see them – and to remain standing until all directors are introduced and applauded. Same for officers that rate an intro. What bad form to see directors barely rise from their chair, then hunch down and turn quickly around - which happens at the majority of meeting we attend. And what a bad message it sends - as if they're embarrassed to be there, or have something to fear if they stand up, and out from the crowd. A quick P.S. as to whether directors should face the audience, rather than the chair: The best answer ever came from former Verizon Chairman Ivan Seidenberg, who told a questioner, “The Directors are doing their most important job: Watching ME...to make sure I don't flub anything.” Case closed.

9. Another item that companies increasingly overlook these days in order to show us the door asap; your editor strongly believes that proper etiquette at a shareholder meeting requires a brief overview of the prior year, and a brief review of the important issues ahead...and the expected outcomes; (a) since it IS a “meeting of shareholders” and (b) to properly set the stage for the items to be voted upon. The new “slam-bam approach” - to race like sixty, to finish the meeting as soon as humanly possible - is literally the height of rudeness to attendees in our etiquette book. We also think that “proper meeting etiquette” requires that the official “business of the meeting” be disposed of FIRST – with a general Q&A period to follow the closing of the polls and the official “adjournment” of the annual meeting until next year.

10. A very important set of issues in our etiquette book is that the hosts should be highly respectful of our time: Never, ever use Robert's Rules of Order at a shareholder meeting: It is decidedly NOT a parliamentary proceeding – and, as mentioned, the chairman must always be in charge. No “moving and seconding” please. Everything is already in the written materials - and most of the votes are already in. Make sure your rules of conduct are fair – and reasonable ones to all reasonable attendees. Shareholders hate it when speakers hog the floor, and try to opine on every single thing. Having reasonable time limits for each section of the meeting, and for each speaker, are simply “good form” - and properly respectful of our valuable time.

Something to think on: What about a parting gift?

In the old days, a gift (or gifts in the case of many consumer products companies) was de rigeur at shareholder meetings. Then, a few boorishly grabby shareholders – coupled with the new-era desire to make the meetings as quick and as boring as possible so we wouldn't come at all – and then to shoo us out as soon as possible if we DID show up – caused the traditional “goodie bags” to go out of favor.

What does our own etiquette book have to say about this? First, no one should feel obligated to give a guest a parting gift – and none should be expected. But, on the other hand, shareholders ARE our owners – so a sample of our company's wares is not only an especially gracious touch - it's educational - and maybe even “promotional” . And face it, everyone loves a freebie. (Fresh news - Hershey Foods, after many years of ditching the traditional big-bar giveaway come the end - and hearing about it annually ever after – recently returned to its old ways – to boundless joy we hear.)

But the best reason for considering a parting gift is that the chair literally holds the meeting in his or her hands if there's a goodie-bag in the offering: We guarantee that everyone will bolt for the door the second the farewell goodie is mentioned and the gift-desk officially opens up.

PEOPLE:

Ken Bertsch, who has led the **Society of Corporate Secretaries and Governance Professionals** with the greatest distinction over the past three years, has resigned - to take a new position with a new Governance Advisory Group. His shoes will be very big ones to fill at the Society...but after a lot of fretting, and head-scratching, we did indeed come up with a very good short-list of folks who, we think, would be up to the big challenges the Society continues to face in today's incredibly complex but still very tight-fisted corporate environment...so stay tuned. Naturally, we expect Ken to fast become a major superstar in his new role, so stay tuned for more on that as well.

Francis Byrd, who qualifies in our book for a Doctor's degree summa cum laude in Corporate Governance, following senior-level policy stints at **Laurel Hill, The Altman Group, Moodys, and NYCERS** has found a wonderful new perch - as Assistant Treasurer - Policy at the **Office of the Treasurer, State of Connecticut**.

Michael Connor - who many readers may know from his stints at **Equiserve, Computershare, Broadridge, AST & Registrar & Transfer Co.** - has formed his own company, **Connor STARS, LLC**...where the Stars part stands for **Stock Transfer Agent Review Service**...which sort of speaks for itself. Best of luck, Mike, in today's hurly-burly TA world, where, we say, the need for true industry stars is greater than ever, while candidates seem to be fewer and fewer.

Speaking of stars...**Mike Nespoli**, Senior Vice President and Head of Relationship Management at **American Stock Transfer & Trust Co.** - a former superstar at **BNY-Mellon**...and one of the original superstars of "**Old Manny Hanny**" where your editor first had the privilege to work with him - has been elected to the Board of the **Securities Transfer Association**. Great move for the STA, which has been showing signs of renewed vigor of late: (Check their website for the very fulsome agenda for their upcoming conference in sunny Florida: **www.sta.org**)

And speaking further of stars... the "**Hagberg Team of Independent Inspectors of Election**" has been adding industry super-stars at a brisk pace, gearing up for what is expected to be a proposal-loaded, unusually well-targeted and vigorously- fought 2014 proxy season:

Among the newest additions to the Team; **Gene Capello**, in the greater NY-CT area, who recently retired from **Pfizer Inc.**, after a distinguished career there - and earlier, at **JP Morgan & JPMorgan Chase**; **Rhonda Carroll**, based in the Houston area, former Chief Governance Officer and Corporate Secretary of **Encore Bankshares**, which was recently acquired; **Denise Kuprionis**, now an independent board consultant, following a long and very distinguished career at **EW Scripps**, in Cincinnati; **David Siddall**, formerly a VP, Deputy General Counsel , Chief Compliance Officer and Secretary of **Anadarko Petroleum**, and a one-time proxy-fight battler and survivor to boot, who is now based in Scottsdale, where he's concentrating mainly on estate & trust matters. **In California** - home to so many emerging companies these days , who've never had a shareholder meeting - there are four new stellar additions; **Kathy Blackwell**, an employee-ownership-plan expert who first honed her craft at **Charles Schwab**, and **Pat Scatena**, an independent legal and governance expert, formerly at **Intel** - both of them in the San Francisco-Silicon Valley area; **Chandi Neuberger-Jackson**, a former retail-industry analyst, based in Corona Del Mar and **Carol Zepke**, former Senior Vice President & Corporate Secretary of **Pacific Capital Bancorp**, which was recently acquired - and a former Society director and past-president of the LA Chapter, who is based in Santa Barbara. The latest addition - the inimitable **Bob Lamm** - who recently retired from **Pfizer** to resettle on the east coast of Florida, where he has established his own legal practice and governance consultancy - which was much in demand within days. Thankfully, we expect that the energy and wisdom Bob provides as Chair of the Society's Securities Law Committee will continue undiminished...

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REGULATORY NOTES ... and comment

ON THE HILL: The government is mostly “closed for business” as we write this...and Congress has a 10% favorable rating from the public at large.

Before going into gridlock-mode, however, the House amended a SOX provision that would have forced public companies to rotate audit firms – with a hugely bipartisan 321-62 margin...so maybe there’s hope for this hapless crew.

In another bi-partisan action, Senators Elizabeth Warren (D., MA) and John McCain (R., AZ) among others, introduced a new “21st Century Glass-Steagall Act”...to loud boos from financial institutions and their lobbyists, coupled with protests from various regulators that they were already “on the case” with existing regs...

AT THE SEC: In a record breaking 24 hour period the SEC flexed its muscles big-time in mid-July – reaching a big monetary settlement with hedgeie Philip Falcone that will bar him from the industry for five years, charging billionaire Steven Cohen of SAC Capital Advisors with “failure to supervise” in a civil action, while also, reportedly, working on a criminal indictment, and accusing the city of Miami of securities fraud.

Soon after came a big settlement with JP Morgan, where JPMC admitted culpability...with more such admissions to come in other cases soon, SEC staffers say...but followed shortly by the regulatory anti-climax of the century: draft rules on calculating and reporting the “average worker’s salary” for comparison with the top boss’s take....which virtually everyone thinks is the dumbest and least useful bit of info one can think of...Do we think this will somehow diminish the focus on the huge and ever-widening gap between the 1% of all income earners and the other 99%??? No...So stay tuned for more on this front, which appears to us to be increasingly spilling over into Say-On-Pay and Director-approval votes at companies with less than stellar performance.

In what we believe will be a truly earthshaking change, the SEC will let hedge funds, buyout firms and start-up companies seeking capital to advertise to “qualified investors” ...pursuant to the JOBS Act. As rock-solid first-amendment supporters we

must applaud the support of unrestricted speech. But as long-term market watchers, we fear – along with many other critics – that lax enforcement of the “qualified investor” criteria will make the pundits’ prediction come true – that “JOBS” will come to stand for “Jumpstarting Our Bilking of Suckers.”

AT PCAOB: New audit rules are out for comment that would require auditors to address CAMS (critical audit matters) that warranted special attention...and examine the MD&A against the reported numbers, to see they match up (Duuuh!) and say how long they’ve been working for the issuer. But, while PCAOB continues to report whopping percentages of deficient audits by all the major firms – despite earlier PCAOB warnings and auditors’ promises to reform...there’s nothing new on *this front*...And any revisions will not take effect before 2017! *Peekaboo! We see you! And what a lazy and totally toothless watchdog you are!*

AT FINRA: A “record fine” of \$9.5 million was assessed against Newledge USA (jointly owned by Société Générale and Crédit Agricole CIB) for a series of mere bagatelles it would seem - like allowing clients to systematically “spoofer” by entering phony orders, “mark to the close” to manipulate prices upward in the last few seconds of the day - to flood the market with “wash trades” to distort actual buying/selling interest and to repeatedly sell short “naked” ...all despite numerous warnings from regulators, and from Newledge staff – that their “controls” were out of control. *In what seems like weird retribution to us, the NYSE gets \$2 million, NASDAQ and BATS get \$1.75 million each, FINRA gets \$4 million... and investors get...zip.*

AT THE EXCHANGES: Bad news for NASDAQ...as it suffers yet another systems outage in late August, lasting three hours...and another bad ding to its reputation...at a very bad time: Rival exchanges BATS and Direct Edge announced plans to merge – which will displace NASDAQ OMX from its number-two slot in trading volume...And, oh, woe, the “new BATS” is expected to start seeking corporate listings - though, let’s remember, BATS was unable to list its own stock as planned after its own famous flub, which we say, was worse than NASDAQ’s Facebook fiasco.