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Reaching Out To Investors:

Dear readers;

If you've seen any of our annual Special Supplements – as most of you have I think – you may remember that we have had a different “theme” each year...depending on what seems to us to be the big corporate governance fad – or the investor relations hot button – or maybe “the crying need” of the year.

As we looked back at our old covers, most of the themes seemed to us to have built on the *previous year's fad* – as fads have a way of doing – or on some major industry mishap that startled us all to attention.

Each year, however, we try very hard to stay focused on *practical issues* – and on things that work...or maybe that did not, to general dismay...and we will try to do the same in this issue too.

A lot of our covers have focused on technological issues – and the need for us corporate citizens to stay up to speed – such as “Checking Your Tool-Kit,” “Chuckling Your Tool-Kit,” Getting Re-Wired” and “Staying Connected.”

This year, the “Connected World” sure seems to be the buzzword of the year...and with good reason:

Technology – and the mass social and business migration to the connected world is driving change – and sometimes driving us nuts – like never before. And sometimes it's making it harder rather than easier to “reach out to investors” – or at least the kind we *like*.

This little cartoon – and thanks so much to John Seethoff of Microsoft for bringing it to our attention – is funny on its own. But it also reminds us of the frenetic and sometimes almost comical efforts we've been *making* to “reach out to investors” these days.



And frankly, it reminded us how difficult it really IS to reach out to overburdened, and dare we say it? “Easily distracted investors” these days – folks who are not always as focused, or as savvy as *they think they are*, given the complexities of modern business, and modern life.

As we have pointed out on these pages before; yes, technology is a great enabler...that allows us to accomplish more with less...But for many of us in corporate life, this has placed a bigger burden than ever on our finite time and our so often shrinking budgets. And, as

we also try to point out each year, nothing creates more corporate waste, more corporate risk – and more stress – than technologies that are balky at best or badly conceived and badly-wired together at worst.

So once again, we have tried to come up with some of the best practices, the best technologies, and the best suppliers of useful products and services that we know of.

We have also tried to “cover the waterfront” as thoroughly as we possibly can - by getting some excellent tips from highly respected executives on “reaching out to investors” of every description.

We hope you will enjoy reading this issue – and that you will pass it along to others in your company that may have an interest in and maybe a need-to-know about these matters.

Please note too that we are binding in the regular 4th Quarter issue of the *OPTIMIZER* (now in its 17th year, and where normally, there are no ads at all) plus a special subscription offer to readers of this issue who are not yet subscribers.

With all our best wishes for a peaceful and prosperous New Year...

Sincerely

Carl Hagberg,
Publisher and editor in chief of
The Shareholder Service *OPTIMIZER*



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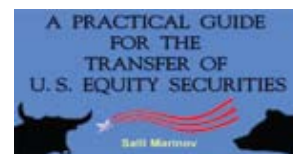
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Reaching Out To Directors:

Most corporate citizens would agree that corporate directors are among their most important and most demanding constituencies. But ironically, we think that Directors are among the most under-served constituencies of all – at least where “reaching out” is concerned. Here are a few things that are normally sure to please Directors...plus some hints on prepping for and reaching out in a crisis:

REACHING OUT TO DIRECTORS WITH SOME GOOD DIRECTOR EDUCATION PROGRAMS:

Those gosh-darned university off-sites aimed at Directors seem to be proliferating like flies on a warm mincemeat pie – although lately, a bit of much needed consolidation seems to be afoot.

The last thing YOU want to do is to enroll a Director in a program where they are the only Director who’s not on the panel – or one where lawyers and other wannabe vendors outnumber them ten to one.

Worst of all is when directors find the same tired old crowd of “usual suspects” – the same self-anointed governance “gurus” and who bored them to tears last year.

There are some very good programs out there, of course. So do your homework. And be sure to network extensively with your colleagues.

And please note that the Director-Ed programs that get the highest grades from Directors are those that have been custom-designed – specifically for them if they’re new... or for the Board as a whole if there is something really new on the governance scene, or if a brief review and catch-up session may seem warranted.

REACHING OUT TO DIRECTORS WITH A WELL-DESIGNED AND WELL-DELIVERED BOARD SURVEY:

Some helpful comments from Stuart Levine, Chairman/CEO of Stuart Levine & Associates:

Recent research indicates that annual board performance evaluations have become the norm.

In fact, the NYSE Corporate Governance Standards require that the Boards of listed companies and their mandated Board committees (Audit, Governance and Compensation) undertake annual performance self-evaluations (with the Governance Committee overseeing the evaluation of the Board). Investors expect boards to conduct them and professional directors understand the value they provide.

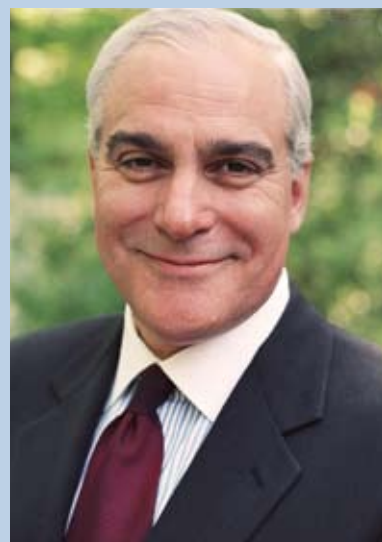
But time constraints – and a variety of “logistical considerations” often stand in the way of delivering the best possible product. Surprisingly, only 21% of all companies that conduct such evaluations review performance at every level – the full board, committees and individual directors. Only 17% use a third party to conduct these evaluations, although in my experience, retaining a trusted and experienced firm to conduct these assessments provides an invaluable opportunity to strengthen the culture of the board.

In response, our firm has developed a proprietary web-based board evaluation tool. It is easy to use and customize. It greatly reduces the amount of time directors need to spend on filling out forms. It provides prompt results and absolute confidentiality.

Collecting the data independently and using a trusted third-party to deliver it allows the board to dedicate its time to reviewing the data together, which begins an important collaborative process around improving board culture.

Mr. Levine is a Director of Broadridge Financial Solutions, Inc. (BR), and a member of the Advisory Council on the New York Stock Exchange that focuses on boardroom guidelines for the new director.

For more information, visit www.stuartlevine.com.



REACHING OUT TO AFFINITY GROUP INVESTORS:

The biggest money-saving tip – and also the biggest money-making tip that your editor has published over the past 16 years is to turn your company's natural "affinity groups" into new, and/or bigger and better investors.

Every company in the world has natural affinity groups; customers, suppliers, employees – doctors and dentists if you make products they are interested in – hobbyists, and just plain fans.

By definition, they will be your company's best friends through thick and thin. They will vote faithfully – and always with you – unless of course, someone fouls up unconscionably. This will let your management sleep better at night, and save you tons of money on proxy solicitation efforts. And best of all, in terms of money-making – if you have a well-designed Direct Stock Purchase program; one that will let you switch on and off to an "original issuance mode" as needed, they will be a literal fountain of money, that will typically provide all of your short-term funding... essentially for free. If this is of interest to you – or if you are simply tired of watching your stock price languish for lack of a following – or worse, being "whipsawed" by arbs, speculators and rumor-mongers, go to www.optimizeronline.com and read the three "Articles of Interest" entitled "Our Top Ten Reasons to Grow and Guard your Individual Investor Base," "DRPs and DSPPs – Powerful Tools to Optimize your Investor Mix" and "Shareholders as Customers – Show Me The Money!"

REACHING OUT TO DIRECTORS IN A CRISIS... AND BEYOND: *Carol Zepke, EVP & Corporate Secretary, Pacific Capital Bancorp, Santa Barbara, CA – who was surely the busiest Corporate Secretary in America in 2009 and 2010 – shares some experiences...and tips...*



"In the Fall of 2008 – after the housing bubble burst in California, the banking industry spiraled downward and the capital markets dried up – my bank was among the first to participate in the Troubled Asset Relief Program/Capital Purchase Program (TARP).

In 2009, the board created two new oversight committees and by yearend, I had drafted and distributed over 90 sets of minutes for the board and its committees. Through the third quarter 2010, I counted another 75 board and committee meetings. Since the Ford Financial Fund acquired a majority interest in the bank on August 31, meetings have slowed down a bit, but the board and certain committees are still required to meet monthly.

I became a huge fan of DirectorsDesk, the secure NASDAQ Board portal. I was very impressed with DD pre-TARP and, given the importance of selecting the right supplier to our Board, I also weighed the options and figured that NASDAQ would be around for quite some time.

Literally, I could not have coped during the last two years without DirectorsDesk. During 2009 and 2010, I utilized DD to post committee and board materials, confidential documents about potential merger partners, and numerous loans and unanimous consent resolutions for approval by a vote. Certain directors were not comfortable using DD initially, but after a quick telephone "coaching" session, they got with the program and started viewing the material online through DD – and casting votes. As one director said, "Crisis mode and necessity made me view the material on DD."

Material is posted for all meetings now, including management committees. I would like to say that we are "paperless" but in reality, our directors still prefer a hard copy of the material when they arrive for a board meeting. In time, I hope to wean them over to an I-pad that they can bring to the meeting to view their DD material.

I know the theme this year is "reaching out to investors," but our investors have been reaching out to me and the assistant secretary with endless questions about what is going on with the bank now. We have filed over 30 documents with the SEC since May, conducted a rights offering and are now doing a reverse stock split to avoid delisting and to attract long-term investors (will be trading post split on 12/29) and reincorporating in Delaware (12/30). As you can imagine, I'm looking forward to a year-end vacation!

(Editor's note: Currently, Carol is also the Secretary to the Society of Corporate Secretaries and Governance Professionals; Proof positive of the old saying that "when you really need to get a job done, give it to a busy person.")

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REACHING OUT TO EMPLOYEE INVESTORS: *Some practical tips on reaching out – and on getting employees to respond – from Ellen Philip, of Ellen Philip Associates:*

“Employee investors should be among a company’s best friends and most steadfast and reliable voting blocs – and the easiest of all votes to garner. It’s not at all unusual for employees to hold 6% or even 10% or more of the total voting power. But many times, rounding up their votes is not seen as terribly important...until a crisis arises. Here are a few tips: First and foremost, get your employee owners to form a habit of voting. Let them know their vote is important. Email reminders to them. Technology should truly be your friend here – as well as a huge cost-saver. Make sure that yours is easy to use. Provide multiple technologies, to accommodate employee preferences, such as phone, web-based, and yes, paper voting. If you have multiple employee plans, be sure that you give them an employee-friendly “one-stop polling place.” Consider a personal message from the Chairman...whether in print, via email or in an easily emailed video clip. Another very important thing to know: guaranteeing to employees that their votes will be entirely confidential will definitely increase employee voting.”

REACHING OUT to FOUNDING FAMILIES and OTHER VERY LONG-TERM INVESTORS:

Here’s another investor category where, ironically, some Very Important People are often taken for granted and not reached out to at all...until trouble arises...So we reached out to Artie Regan, President of Regan Associates – who we call “The King of the Community Proxy Fight” for some advice:



“A huge number of the proxy fights I’ve been involved in over the years have arisen among founding families and other of the original investors. This should not be a big surprise if you think about it: By the third generation, there’s a whole new cast of characters, and often they have conflicting ideas about what should be done with the “family business” – or they simply have new investment objectives or financial needs of their own. The biggest and baddest fight I was involved in was between a father – who was sort of ‘losing it’ but who held a ton of stock – and his son, whom the board ended up supporting after a lot of handwringing. Another very common thing that generates proxy fights is when a father passes the business along to a son – who some investors feel is not up to the job.

The most common “trigger” by far is the ex-CEO who tries to come back if the business suffers a bad year or two, and who can often win a lot of community support. Recently, we were engaged in a literal war – between a very prominent “mentee” – the CEO of a regional bank – and his original mentor, the CEO of another, larger regional bank; one that was set to become much smaller if the merger of the mentee’s bank with a third bank went through.

Another very important thing to know about proxy fights – especially when the company has a strong local presence, and where there are a lot of long-term owners – is that, typically, the voting comes down to an essentially 50-50 split: Half the ownership wants a merger to go through, so they can cash in, while the other half is concerned about job losses and loss of support for local charities and local events within the community – and often, is not too keen on taking a big capital gains hit either.

So what should smart companies be doing if they have a strong base of founding-family members, long-term employees and retirees and other local owners in terms of ‘reaching out’? My number-one suggestion is to be sure you do reach out...and not at the last moment, after the storm clouds have gathered. Be proactive: Be sure to extend a special welcome to long-termers at your annual meeting, of course. And make it a ‘special event.’ But more important if you have a large base of older and/or local investors – and it’s something that can be done for just a few hundred dollars at the local civic center or VFW hall – host an interim shareholder meeting, midway through the year, so there are no surprises. I can’t tell you how many fights I’ve been involved in that started when a bad year or a dividend cut took investors totally by surprise. Another thing; founding-family stock often ends up in some “interesting” and not always friendly places, so keep an eye on that too. Most important of all, remember that reaching out successfully to long-term individual investors is a totally different thing than communicating with Wall Street types.”



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REACHING OUT WHEN A DEAL IS ABOUT TO GO DOWN...some tips from Bruce Goldfarb, President & Chief Executive Officer of Okapi Partners LLC:



"We have seen a steady upsurge in deal-scoping and deal-making activities this year, especially in situations involving private equity sponsors, which we expect to continue into 2011. With almost \$2 trillion in cash on hand at U.S. companies alone, we also expect 2011 to be an extremely active year for deals that will involve strategic buyers. (The cash balances may also make some companies potential targets for proxy fights, if recent past history is an indicator of future behavior. That evaluation process is well underway for a number of investors right now.)

The most important thing to think about in terms of reaching out to investors when a deal is set to go down is to target your announcement – and your message – to your specific investor audience – and to do so in the most well-planned, precise and thoughtful way from the very outset. Many investors have already thought about their target price and will be poised to make a very quick decision about any deals that are announced. That is one reason why deal announcement creates huge trading volume and it's especially important to note that as soon as a deal of any kind is announced, your investor base will change dramatically. You need to keep this turnover in mind when crafting, targeting and delivering your message.

In an era where there is a lot of skepticism about anything a public company does and says, there is always the potential for some investors to put their mouth where their money is and sound off pretty quickly if they are not happy with the way a deal is structured – and maybe to counter with a bid or fight of their own if the message is not crafted and delivered in a very compelling way – or simply to serve as the spark that will cause another investor to jump in.

REACHING OUT TO CUSTOMERS, SUPPLIERS, EMPLOYEES AND OTHER INTERESTED PARTIES VIA A "VIRTUAL SHAREHOLDER MEETING": Regular readers of the Optimizer know that we are big fans of Virtual Shareholder Meetings – partly because, when done right, a V-M will allow a company to "optimize" its spending on something they have to spend time and money on anyway – but largely because, when done right, a V-M will add importance to something that IS important...and open the meeting to thousands of people who could never attend in person. So we made haste to contact Lisa Beth Lentini, Senior Corporate Counsel at Best Buy Co., Inc., whose Virtual Shareholder Meeting drew a lot of attention in 2010:



"Our Virtual Shareholder meeting landed a great brand message for us. We were able to show off 'the art of the possible'...in today's 'connected world'. We know we were able to reach a lot of people who could never attend an in-person meeting – including older and home-bound people. But we also wanted to attract the younger generation who, as we know, have been walking away from traditional meetings, and from voting proxies in droves. And it does seem that many of the younger generation – who are the most attuned to the 'connected world' – have little patience with, and are never going to visit the 'old media world' very often. We especially wanted to reach out to customers – to show them the art of the possible – and to our 180,000 employees, who do not have regular access to or interaction with our senior management or our directors – and to socially conscious investors – and to analysts too – many of whom do not fully understand or fully appreciate the 'connected world' to the extent we'd like them to.

We were very happy with the results: We were one of the first companies to have a director attend the meeting virtually. We were thrilled with the live streaming over the web. We tried to keep to fairly easy things to do, technologically – and there were no glitches at all. We had two and a half times as many people on the web as we had in the room, which was really great. And over 600,000 shares were voted on line – which is a very gratifying number. Did we get any push-back from people whose own technology wasn't up to snuff? Actually, we've had none...but if anyone had trouble, we sure know a store where they can get help. A large number of companies have tuned in to have a look, we hear...and of course the meeting is still up there on our site. We tried hard to make it more engaging – and somewhat entertaining – and something of an 'event' – and we think it went well. We got lots of good press. Our Board and the senior management team were very happy. I think we achieved a different and a very well-branded story. And, most important to us, the meeting was brand-related – and fit beautifully with our strategic ideas."

REACHING OUT to VERY SMALL INVESTORS...some timely information and advice from Chairman Barbara Vogelstein (left) and President Barbara Wynne, of Share Gift USA:

"With corporate cash-on-hand at a 50-year record, we expect to see a lot of mergers and acquisitions in 2011.

We hope that whenever new securities are issued, companies will consider the many small holdings that M&A transactions typically generate, and think of ShareGift USA as a way of helping smaller and/or disinterested new shareholders to conveniently cash out.

Many companies that we talk to understand that a small-shareholder clean-up program will save them money – and know they are a bit behind times in terms of dealing with it. We think that many companies will find time to address this in 2011.

We believe that keeping these programs as simple as possible will produce the best results – offer just three simple choices: "Sell, Donate or Do Nothing."

We at ShareGift USA are ready to work with you and any of the service providers you choose to make your cleanup programs a big success. In our experience, the 'donate option' is a very attractive one to offer.

For more information, please contact **Barbara Vogelstein** or **Barbara Wynne** at **212-813-9677** or **info@sharegiftusa.org."**

REACHING OUT TO REGISTERED HOLDERS: *Some practical tips, and, as always, a few interesting innovations from Peggy Foran, the Chief Governance Officer & Secretary at Prudential Financial:*



"Engaging, and communicating effectively with all of our investors is a very high priority task at Prudential. Because we are a de-mutualized insurance company, we have a very large population of registered shareholders – a group that most large companies find very hard to engage these days. For many such investors, the inner workings of a company are something of a mystery, similar to a "black box."

This year, we had several important goals in mind: giving individual investors a better and more understandable look into our governance processes, making sure they know that they have a voice in governance matters – and various ways to be heard – and motivating more of them to cast their votes.

We went to great lengths this year to ensure our proxy materials were written in plain language. We completely revamped the formatting, layout and design of the proxy statement and proxy cards. The board and senior management also wanted to give shareholders the best possible sense of our strategy, and a sense that we are doing the right things – and to provide a better look at what exactly the board had done on their behalf. So the governance committee proposed a "State of the Union" letter in the proxy statement, describing the work the board had done over the previous year on compensation and governance issues and emphasizing the Board's role as steward of the company. The letter is in plain language and was signed by each of the directors. As far as I know, we are the only company to have done this, although I've gotten quite a few phone calls from other companies saying that their board is considering doing something similar next year.

It is also important to us that shareholders feel they have a voice, and that the company is listening. So in addition to a revamped executive compensation website and an Independent Directors' email portal, we proactively solicited feedback from registered shareholders on the 2010 proxy card and Internet Voting website. With over 2,600 shareholder comments received, the Board gained valuable insight regarding the issues of most importance to our registered shareholders.

Last but far from least, recognizing our voting participation challenges, we implemented a novel incentive program to encourage voting. Registered holders who voted in 2010 had the option of receiving an eco-friendly Prudential tote bag or of having a tree planted in their honor by American Forests. The voting incentive program achieved its goal, helping the company record an increase of 23 percent in registered shares voted compared to 2009. In addition, 68,000 shareholders who did not participate in 2009 voted in Prudential's 2010 proxy process. Nearly 120,000 shareholders opted for the eco-friendly Prudential tote bag, while more than 112,000 chose to have a tree planted. We should note that while we are being creative and innovative in our efforts to engage our shareholders, this program is less costly to the Company than other, more traditional, proxy solicitation methods. Many shareholders commented that our incentive program was the impetus for them voting in 2010. To quote one shareholder, "The "free" tote bag worked as the incentive I needed to vote this time – thanks!"

Reaching Out To Institutional Investors...

Some thoughts – and lots of practical tips – from Steven L. Brown, Director of Corporate Governance, TIAA-CREF



For starters, Steven, will you please give us a bit of an idea about the size and scope of TIAA-CREF Corporate Governance activities?

We have equity positions in 8,000 companies around the globe, with assets under management of \$451 billion. As my boss likes to say, we own about 10% of Corporate America. We vote our shares faithfully; In fact, as we speak, we've voted on \$432 billion of them so far this year, so we're nearly done... until 2011.

What are your thoughts in general about reaching out to investors... and especially to reaching out to TIAA-CREF?

Reaching out to investors has always been a good practice. But post Dodd-Frank it has clearly become a "best practice." Since the end of summer many more companies have been reaching out to us than ever before.

In general, they fall into three groups: First are what I call the "Best Practice Adopters." They get it...and they have been doing it for some time, as a matter of routine. Sometimes they may have a few new items to discuss, but generally, a brief catch up call or visit is all that's needed.

Then, there are the "New to the Practice Folks." Most of them are reaching out to their top ten to twenty or

so holders, pretty much for the first time. I love these folks. Most of them are very sincere: "We're new" they tend to say..."so please don't hurt us." We appreciate their honesty, and their openness, and we assure them that we are long-term owners, which we are, and that we want to have a long-term partnership where governance issues are concerned. Typically, we'll spend 45 minutes to an hour with them, but we'll gladly spend 90 minutes or more if it will help them understand the way we, and other institutional investors tend to think and act.

Then, there are what I call the "Cave-men and Women." It's really remarkable how many people just don't get it. A lot of them seem to have been forced to reach out by their Boards, and that attitude comes through loud and clear. They are just not sincere about it. Many of them have service providers do most or all of the reaching out. And actually, there's nothing wrong with this, necessarily, as long as the service providers speak intelligently...and the corporate people seem to be fully on board. But the Cave People often do themselves a lot more harm than good when they try to reach out and do it badly.

When, exactly, is the best time for a company to reach out to an investor like TIAA-CREF? And are there times or circumstances where it may NOT be advisable to reach out?

We always appreciate the reaching out when it's not during the proxy season. We're very strained then – voting proxies. We like it when companies where we have a fairly large position reach out to us every year. Sometimes just a simple phone call is all that's needed by either side. I'll always remember a fellow who called on short notice to say he was nearby and to ask if he might stop in for five minutes. We had a really nice visit. It was a major confidence builder, and we knew that if either of us ever had issues, we could call directly and get them squared away.

Naturally, we focus most on companies where we have a fairly large stake. But if there are issues at smaller companies, we absolutely want to hear from them. We always say that "everyone becomes a governance expert when things go wrong." And that brings up your question about when not to reach out: Make sure that you and all your representatives are well prepared. As Peggy Foran always says about this, "Never put somebody out front who's not camera ready." But we are always perplexed that so many companies don't reach out: If you are proactive, you always get the benefit of the doubt if a problem arises along the way.

Who are the best people, in your experience, to do the reaching out?

We like it, of course, when the Corporate Governance Officer is accompanied ►

by the Lead Director, or Chair of the Comp-Committee, or another committee chair, depending on the issues. We have seen a big upsurge in the number of Comp-Committee Directors who want to be involved here, along with a big increase in the number of companies who bring the head of H-R or their Employee Rewards group. Increasingly, companies are bringing their IR officers, which is generally a good thing. Often, when companies come to visit, a number of our equity analysts and portfolio managers will drop in for a few minutes too. This, I think, gives all of us the biggest bang for the buck.

What about your preferred venues? Is the telephone OK with you vs. an in-person visit? How about teleconferences?

As I mentioned, we are often fine with just a quick call, when we've had a dialogue all along, and when there are no issues. But we do expect to have more interaction where our holdings are large. Teleconferences are OK too, but mainly, the nature of the meeting should be determined by the kinds of issues that are out there.

What about group sessions – where maybe a dozen other investors might be invited to attend, or to tune in?

This is a good question, since there has been a lot of talk lately about a “fifth call” – in addition to the quarterly earnings calls – one that would allow management to focus on governance matters. We like having our own meetings. We think we're important, based on our size alone. We might tune in, though mostly, we'd rather not. There are issues of control...and who gets invited...We think that most companies will figure out what's best for themselves.

Can you give us your short-list of things NOT to do when reaching out?

First, as I mentioned earlier, don't come

unprepared and don't put anyone up front who's not “camera ready.” We look hard at the “soft skills”...and at the competence of the people in attendance...and at their attitude, which invariably shows through. Recently, we had a telephone meeting that was led by the company's comp consultant. She was very good – and very articulate...but all of us were looking at each other and chuckling...and waiting for at least one director to chime in...with something... and it never happened. So while there was nothing negative about the comp-plan, or the presentation, we wondered about the directors: “Where was their pride?” It made quite an impression.

On the flip side, we withheld our vote on a comp-plan one year, because we thought the disclosure was seriously lacking, and we wrote to say so. Soon, we had a conference call with them – where the Comp-Committee Chair, the head of H-R, the General Counsel and a big crowd of lawyers were present – but the Comp-Committee Chair did all the talking. It was very impressive and it gave us a good window into the operations of the entire Board. We are pretty forgiving, by the way, and mostly very “middle of the road.” I was on the drafting side myself, so I understand how hard it can be to put positions across clearly where there are complex issues. Actually, I think that this is an area where service providers can really gain a big competitive advantage.

Not knowing “Who's who” can leave a very bad impression. We've seen a fair number of cases where the IR Officer tried to be the on-the-spot Governance Officer without having the right background or preparation on the issues; Also very bad. And let's go back to those “Cave People” again, who can leave an indelible impression, even if they don't say a word...and do much more harm than good.

Are there any governance flash points, or things you are watching especially as we go into 2011?

Say-on-pay, for sure, although we think that most companies will get high approval numbers. The compensation world has changed a lot, and for the better over the past few years. Social and environmental issues seem to be drawing a lot more attention of late – especially if you are in an extractive industry, post B-P. But our own preferred approach on these issues is for more and better disclosure.

Any thoughts on Proxy Access? Last year, Ed Durkin of the Carpenters Union described it as “A lot of very smart people talking about a very stupid thing.” But now that it seems possible to become the law of the land, do you think that investors will say “Use it or lose it” – and decide to flex their muscles on a few test-cases each year?

We are set to file an amicus brief – in favor of proxy access – and we think there will be proxy access. And yes, we do think that some investors will flex their muscles, and go on the hunt for test cases. But it won't be us.

What about “Vote No” campaigns against specific Directors? It seems to us that a lot of these campaigns are mostly muscle-flexing things, mainly designed to “send a message.”

We think of this as the “nuclear option” and a very serious thing. With majority voting at many companies, you absolutely must be prepared for the Director to go if you vote “no.” These campaigns should be reserved for the most egregious circumstances only.

We also expect to see outright proxy fights every year that revolve around replacing some or all of the Board members. And here, companies should always reach out to us. We want to hear from both sides, and we almost always do – unless the directors are true Cave-People, or know in advance that they'll go down to defeat in a big way. ■

Reaching Out To Investors Via The Proxy Statement...

THE OPTIMIZER interviews Dannette Smith, Secretary to the Board of UnitedHealth Group, Incorporated, the winner of Corporate Secretary Magazine's 2010 award for Best Proxy Statement



Dannette, we really were impressed by the UnitedHealth Group proxy statement this year – and especially by the Compensation Disclosure and Analysis sections. Tell us something about the process here; how and when you got started on the drafting, the kind of team you assembled, and maybe give us a feel for the way things moved along.

We start on the proxy early and build in lots of time for review and revision of the drafts. Our annual meeting tends to be at the end of the annual meeting cycle. It usually occurs in late May or early June. That means we file the proxy towards the end of April. We officially kick off the proxy in November. At that time we have an initial working group meeting and we circulate a timeline that has key dates for when pieces of the proxy are due. The key internal team that prepares the proxy statement includes personnel from legal, human capital, finance, investor relations, communications and internal audit. The purpose of the meeting is to make sure everyone buys into the timeline and makes sufficient time on their calendar for the work that they need to accomplish.

The narrative cites a lot of principles and practices that certainly seem like best practices from an investor's perspective. Were most of these in place, or were some of them adopted in the course of the drafting?

For 2010, the principles and practices were generally in place, although there

may have been some refinements. We started the more robust proxy process that we use today in 2006 and have been receiving investor feedback on both disclosure and compensation practices since that time. Our compensation committee considered investor feedback and has made changes that were informed at least in part by that feedback.

Advance planning helps to ensure that the compensation committee materials address the points that you want to make in your CD&A.

What sort of involvement did the Comp-Committee and the other directors have? Were they involved early-on, or did you wait until you had a fairly complete first draft?

We involve them at numerous stages in the process. We discuss general approach with them at a meeting in the fall. We provide initial drafts of certain pieces of the proxy statement at a meeting in early February. Comments that they have at that point are reflected in a final draft that is sent to them in April. We have a meeting a week before we plan to file to review the draft proxy, so that we have time to respond to their comments.

What about the comp-consultants and their involvement?

Our compensation consultant is very involved in reviewing early drafts of the proxy statement. To get the most value,

they should be involved in reviewing early drafts.

Perhaps the two most impressive elements from a reader's perspective are the very consistent "conversational tone" and the "plain English" that make some very complicated subject matter so easy to read – and to understand... Did you have a special "plain English policeman"...or maybe a single person who focused on these aspects in particular? Do you have some special tips on making sure that these elements stand out?

Make sure that a person who is not a lawyer or a financial person reads the entire proxy. We use both senior investor relations and communications personnel from the company. They give us feedback as to how analysts and the media are likely to view the proxy statement. They also remove the legalese and rewrite as necessary.

Another very helpful feature was the way the charts and tables were laid out. Usually these are really off-putting in appearance, and mighty hard for anyone, much less an "ordinary reader" with only "ordinary patience" for complex stuff to understand. How did you arrive at the final layout? And do you have some special tips, or maybe some important dos and don'ts to offer here?

Have someone who isn't a lawyer or a finance person read the draft tables to see ►

if they can understand them. If not, make revisions as necessary. We use both a senior communications person and an investor relations person. After the proxy is filed and mailed we ask our investors for feedback. In the 2009 proxy statement, one of our large institutional investors specifically commented on how a couple of our tables were confusing. We took that feedback into account in 2010 and made changes to the tables. We also added some more headings to the CD&A to make it clearer.

During the second half of the year, we reach out to a number of our institutional investors. We ask for comments/reaction to the proxy statement – if there were items that they liked or items that they didn't like. We also ask about hot topics for the next year. We use those conversations to start considering changes for the proxy statement for the next year and give a report about those conversations to our Nominating and Corporate Governance Committee at their fall meeting.

It's just about time to start drafting

again: Anything you plan to add this year, or maybe to do differently?

We are considering ways to make the proxy statement more understandable and usable for retail and individual investors. This involves the whole layout of the proxy statement. We are also looking at ways to address the say on pay vote. We haven't decided whether to move the CD&A executive summary to be a supporting statement for the say on pay vote. We want to make sure that this information is readily available but minimize redundancy in the proxy statement.

We also look at other companies' proxy statements for presentations that are better than ours. We review all of the finalists for best proxy statement named by Corporate Secretary magazine and we also monitor various blogs and newsletters and review companies cited as best practice examples.

Any closing thoughts or words of advice for CD&A drafters this year?

It is a mistake to view the proxy as a legal compliance document. It has to comply with applicable SEC rules, but that doesn't mean it needs to be incomprehensible. It is important to view the entire proxy, and the CD&A, as a vehicle to communicate your company's story. Use subheadings and tables to increase readability.

You should not assume that the readers of your proxy have an in-depth understanding of your company. Explain why and how you have good governance processes and procedures and why your directors are well-qualified to be on your board. Provide context as to how your compensation performance measures support achievement of your long-term strategic plan. If there are items of financial performance that are important to understand this point, summarize them in the proxy and refer people to the 10-K for more information as necessary.

The final point is that there is always room to improve. ■



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everyone a Happy
Holiday Season and
Successful 2011.***

Reaching Out To Investors...

when time is of the essence...
and there's no quick
solution on your shelf

*The Optimizer editor's annual interview with Ellen Philip
and Cal Donly of Ellen Philip Associates*



Carl: Where might Ellen Philip Associates fit into the picture when a company reaches out to its investors? We've touched on this topic on a number of occasions over the years, and I know your company has a reputation for handling what's known as "special situations." Still, I must admit I find it difficult to give someone a general summary of what you do – you do so many different things.

Ellen: I know what you mean. In the 31 years we've been in shareholder services one of our biggest challenges has been to develop an "elevator speech" – a description that would sum us up in a meaningful way, to someone who'd never heard of us, in no more than about 30 seconds. I don't believe we've ever been able to do what I'd consider an adequate job of that.

Carl: Why do you think that is?

Ellen: It's because, as you say, we do so many different things. Sometimes we wish the reality were such that we could simply say, "Oh, we're proxy solicitors" or a T-A, or a financial printer or whatever – a label that would give someone a quick idea of where we fit in. As it is, we fill a niche that defies a quick label. No player in the shareholder services community comes closer to justifying the label "general utility". But say that to someone in an elevator, or anywhere else for that matter, and all you'd get is a blank stare.

We usually wind up defining ourselves in terms of one or two of the readily recognizable services we offer, such as independent tabulation or electronic proxy voting. This isn't fully descriptive, but at least it's quickly understandable.

Carl: So, if I'm in charge of shareholder relations, and I have my TA and my proxy solicitor and my internal IT department and relationships with a number of out-of-house service providers, when do I know that it's time to contact Ellen Philip Associates?

Ellen: I'd have to say it's when, suddenly one day, you find yourself in a situation you haven't planned for – some corporate action or unusual event such as a proxy contest, for example. It's when you find yourself with an unusual processing challenge or no ready answer for how to get some project or element of a project accomplished. In all probability it would not be something you could figure out in advance, in the abstract. I think it would help fill in the picture if I described what we actually did in a few recent situations.

In one of them we were independent tabulator for an employee plan during a corporate action that involved, at the same time, a merger vote and a cash/stock election – both with separate cutoff dates. First, we were able to avoid the danger of a matched mailing and the expense and confusion of two mailings, by designing two side by

side forms that could be printed in a single pass. Each form was fully personalized with name, address and control number – the same control number for both purposes, incidentally. Participants were able to separate the forms along a perforation and act on them individually, and they had the option of submitting their instructions by mail, telephone, Internet or fax.

Another situation, also involving plan participants, posed some complex tabulation issues, including a proration. It started as a hostile tender offer – mail responses only. The target company then added a Dutch auction to the mix – mail, telephone and Internet responses. Eventually, at the direction of the plan trustee, participants were given three options on a single form and could respond by mail, telephone or Internet: Tender all or some in the original hostile tender; all or some in the Dutch auction; or some in each of the two.

Yet another situation sticks in my mind, a vote on an important issue, which eventually passed, but came right down to the wire. For the proxy solicitor, who was brought into the picture only five days before the deadline, we began by providing un-voted reports three times a day, then four times a day, then every hour in 24 – including a weekend. It was a cliff-hanger that enhanced the value of real-time, online tabulation reports. ►

Carl: What do you think it is that makes your company so effective in certain circumstances? What's your secret?

Cal: We don't really have a secret – some arcane, proprietary knowledge. There's nothing we do on a routine basis that others couldn't also do – in theory – if it made economic sense for them to invest in the effort – and if they could do it in time. It is a fact, though, that we deal fairly frequently with situations that many managers have to face only once in a professional lifetime – maybe twice if they're unlucky. The experience we've gained makes us quick off the mark, and timing is vital in practically everything we do.

As we see it, our key strength – in getting tasks accomplished – lies in flexibility – flexibility not only in program-

We deal fairly frequently with situations that many managers have to face only once in a professional lifetime – maybe twice if they're unlucky. The experience we've gained makes us quick off the mark, and timing is vital in practically everything we do.

ming and processing systems but in the administrative procedures we've set up around these systems. We're a niche player – we make no bones about it. We don't have to try to fit everyone into the same template.

As a niche player we don't run the type of highly regimented systems our clients use to generate their bread and butter. But we understand what those systems do and how they are organized: That's why we can so readily fill gaps and provide an interface between them. We can modify what we do without impacting the entire universe. We certainly can't do all the things that they do, and they, at times, can do what we do – but only with great difficulty, and at an increased cost, and often with the risk that the effort would distract them from their normal day-to-day operations.

Carl: Over the years I've often told people that one of your specialties is in dealing with messy files. Are you often involved in that sort of thing?

Ellen: Very much so. In fact I'd go so far as to say that file handling and data reconciliation is a thread that runs through practically everything we do. Without sound data you're absolutely nowhere, especially in a tabulation. Sometimes what we're called on to do amounts to a minor tweak only. At other times, though, we really are involved in bringing order out of chaos – even to the extent of writing programs to track down and identify discrepancies, in order to eliminate them one by one.

Carl: What do you think makes for what most people would consider good service?

Ellen: There are many factors, of course. You certainly need to know what you're doing, and do it well. But

there's something deeper, it seems to me – something more intrinsic. It comes down to attitude. To provide good service you first have to bite a very big bullet. You have to say to yourself, and mean it: "My client's convenience takes precedence over mine. My responsibility is to be as accommodating as I possibly can. I have to make myself as accessible and responsive as I can."

This isn't rocket science – everyone hears about the idea in Business 101. As you look around you, though, and see the number of organizations that seem to be hiding away from their clients, behind e-mail, voice mail and dead-end IVR systems, you begin to doubt whether the lesson had any real meaning.

It all comes down to the hard fact that accommodating a client very often adds up to inconvenience. But it's an inconvenience you have to accept if you're in any way serious about the idea of good service. ■



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Reactions to the Proxy Plumbing Comment Letters...

An interview with Chuck Callan, Senior Vice President, Regulatory Affairs, Broadridge Financial Solutions



What is your overall reaction, Chuck, to the comment letters that were filed with the SEC on so-called “proxy plumbing” issues?

Everyone wants a system that functions smoothly and transparently and, most of all, reliably. And I think there was widespread recognition that current systems do just that, and that any potential changes have to be made with the greatest of care.

That said, several constructive improvements were suggested. There was a very strong consensus about the desirability of having end-to-end confirmation of proxy votes. Broadridge currently provides end-to-end confirmation to ProxyEdge users for the 1,600+ meetings for which Broadridge serves as tabulator. There is growing understanding among participants that end-to-end confirmation can be provided across the industry at little or no cost to issuers and without changing an investor's NOBO/OBO status. This, however, requires that tabulators confirm back that the vote reports we submit on behalf of banks and brokers are included in the final tabulation. It also requires that banks and brokers provide confirmation back to their client accounts. From a systems and technology standpoint, the solutions already exist.

Another area in which there was broad interest and consensus was in finding efficient ways to increase retail investor participation. This is also an area that can be further enabled by technology.

What about the idea of a new “hub” to collect and disseminate the names, addresses and positions of all a company's eligible voters – as proposed by some transfer agents?

Compass Lexecon, a firm comprised of leading economists, evaluated the idea and concluded that it was “economically incoherent” and would likely result in higher costs to issuers and shareholders. The devil is always in the details, isn't it? Think about what's involved. In 2010, Broadridge processed approximately 14,000 annual and special shareholder meetings. This involves processing approximately 100 million unique investor accounts for multiple functions, including several searches, information requests, vote status updates and the like. Each account is profiled on its preference for how it wants to receive proxy voting information. Considering all of the votes processed by Broadridge, now over 93% of the shares are voted electronically. The process is highly efficient,

timely, and “straight through.” This system was built over the course of many years and at the cost of hundreds of millions of dollars and it is continually evolving to reflect the needs of participants and new regulations. It works and it works well. Some vendors have suggested that if there were a non-profit data hub they could gain a larger share of physical mailings.

We were one of the comment filers who said, “Bid the name-collection business out – to make it easier for other providers to compete for the mailing and tabulation business”... mainly because it seems to us that competition is a good thing. But since then, it struck us that we don't really need to have the SEC or the NYSE do anything in particular to stimulate competition here, do we?

Not at all. There's nothing I can think of that would prevent a serious would-be competitor from putting a business plan on the table – with a complete menu of the services they propose to offer, a projected fee schedule and a projected timetable for being ready.

The reality is that brokers have a choice of servicing agents. And some

intermediaries have chosen to do it themselves. The same holds true for the many trust companies that use providers other than Broadridge as their agents.

Broadridge also competes, as you know, for registered-shareholder servicing. In 2010, many issuers chose us to process their registered shareholder communications and voting. In fact, over the past five years, the number of issuers choosing us directly has increased over four fold. Interestingly, the Compass Lexecon study – which examined over 12,000 invoices – observed that issuers pay less in fees and costs for a beneficial shareholder proxy delivery than they do for a registered shareholder proxy. This speaks to the question of efficiency.

Earlier, you alluded to commodity mail house vendors as being a driver of calls for more competition. But aren't there other areas involved, with a much bigger value-add?

Absolutely. Since the hub idea was originally proposed, the proxy process has become even more technologically-sophisticated and advanced. Broadridge's ProxyEdge platform, for example, now accounts for 80% of all shares we process. It provides institutional investors with proxy information, workflow management, voting, and compliance. It is a time-tested and proven process.

At the end of the day, many commenters indicated that the hub idea is difficult to evaluate because it lacks sufficient detail. For example, little detail was provided on how issuers would obtain quorum without the broker vote on routine proposals which accounted for 17 percent-age points, on average, of the average quorum of 84% that companies achieved in 2010.

There is also substantial value added in the extensive auditing procedures and independent reviews Broadridge provides. No other proxy processor comes close. We have quarterly reviews of vote accuracy, annual reviews of compliance with applicable NYSE/SEC proxy performance criteria, annual attestation to the integrity of the process in a SAS 70 Type 2 report, and many other controls and reviews. In addition, this year, for the first time, there is independent review of the end-to-end process when Broadridge serves as tabulator. This is unique in the industry.

Another very important area to be aware of is the significant investments in technology necessary to support changing regulations. We estimate that implementation of the "say-on-pay" frequency vote will require over 18,400 hours for systems development alone. And that's before counting in all the customer service requests and client questions we've fielded so far.

So from your perspective, what are the biggest takeaways from the proxy plumbing comment letter process?

A smoothly functioning, accurate, and reliable proxy distribution and tabulation system is of the utmost importance to issuers – and to voters.

Issuers and investors alike have come to expect excellence – and rightly so.

They also expect the highest possible levels of data security, understandably, for sensitive data such as the names, addresses and share positions of securities owners.

And clearly, cost-controls and cost

savings opportunities are of very high importance to all participants.

Broadridge technologies have reduced the stream of paper mail by a record 54% in the 2010 proxy season – and a significant and growing portion of mail is now processed by Notice & Access.

All in, using NIRI's estimates of the printing costs of proxy materials and USPS actual postage rates, we calculate that the 2010 savings to issuers for postage and paper exceeds \$1 billion.

One last comment, and something that you and your readers will find very interesting I'm sure: This year, as a group, companies using Notice & Access received votes from 31% of their total retail shares. In contrast, companies that chose not to use Notice & Access received votes representing only 27% of their total retail shares.

The technologies Broadridge provides for processing investor preferences and implementing stratified mailing strategies are helping issuers realize increasing levels of participation with significant process efficiencies.

Contact Chuck Callan at Chuck.Callan@broadridge.com



Broadridge®

For more information about Broadridge and our complete suite of solutions for the issuer community, call **John Dunn at 631-254-1620** or visit www.broadridge.com ■



Richard J. Daly
Chief Executive Officer
richdaly@broadridge.com

October 20, 2010

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Concept Release on the U.S. Proxy System, File No. S7-14-10

Dear Ms. Murphy:

We appreciate the opportunity to submit comments on the Concept Release on the U.S. Proxy System (July 14, 2010, hereafter, the "Concept Release"). As highlighted below, we submitted a letter on each of three substantive topics contained in the Concept Release. Those letters contained a wide-range of in-depth information, including statistical data, analysis by leading economists, and the results of independent reviews. We believe that the information in these letters demonstrates that the U.S. proxy system functions well and achieves the primary purposes of the proxy rules – to ensure that companies are able to distribute proxy materials to shareholders in a cost-efficient and timely manner, shareholders are given information that is material to their voting decisions in a timely manner, and proxies are timely and accurately collected and tabulated. Although we believe that the current system works well, we support periodic evaluation of the system with a view towards appropriate enhancements.

Any efforts to revise the system should keep the following key principles in mind:

- **Vote Accuracy:** Accuracy is critical to the U.S. proxy system. The aspects of the system administered by Broadridge have helped achieve goals of vote accuracy, process integrity and transparency, and consistently have been found to be reliable by a variety of constituencies and independent parties.
- **Process Efficiency:** The U.S. proxy system was not designed in isolation. It supports the needs of the most efficient and liquid markets in the world and ever-evolving and expanding regulatory requirements. Broadridge's systems, technologies, and scale create significant efficiencies for all of the constituencies involved in the proxy distribution process, including corporate issuers, shareholders, brokers and banks. The recurring savings on printing and postage alone exceed the service fees paid by several orders of magnitude. These savings result largely from significant ongoing levels of private-sector investment by Broadridge and our technology innovations. Recently, Broadridge began costly development efforts to implement new rules for 'say-on-pay' and 'proxy access' with no guaranty of return on investment or of profitability levels associated with ongoing service delivery.
- **Voting Participation:** A core principle of the U.S. proxy system involves the provision of communications in ways that reflect beneficial shareholders' preferences and choices. Issuers are afforded a variety of methods to communicate; shareholders are provided a variety of methods to vote without sacrificing privacy preferences. Overall voting rates among beneficial shareholders are high. However, voting participation among retail shareholders remains a concern. Technologies are providing opportunities to efficiently increase participation.

Stepping back, it is evident that a range of ideas is being discussed by various commentators and interested parties. These ideas can generally be grouped among three categories:

- First, several ideas would potentially reverse decades of progress on accuracy, transparency, efficiency and participation. *For example*, a conceptual "proxy reform plan" is vigorously promoted by some service providers who want a bigger piece of the pie, notwithstanding the fact that leading economists rigorously it as "flawed and economically incoherent," and indicate that it would result in higher costs to issuers, shareholders, and nominees.
- Second, other ideas recognize that the U.S. proxy system is fundamentally sound, and that the system as a whole may benefit from certain "tweaks" or incremental improvements. These ideas reflect the facts as are known today: issuers can effect timely and efficient communications with beneficial shareholders; materials are timely delivered; shareholders have multiple means to vote; their preferences are captured and applied to proxy communications; the costs associated with physical mailings are being reduced; and, there is sufficient flexibility for capabilities to evolve with a changing regulatory landscape.
- Finally, some ideas recognize that the U.S. proxy system is on the cusp of vast changes in the world around us – in demography and in technology. Technologies that address the needs of a highly mobile society -- and that create appropriate environments for social networking -- hold transformative potential. These can make possible levels of participation, transparency, and efficiency beyond what is viewed as attainable today. Broadridge is confident that it can make these possibilities a reality and, as always, will verify its success and accuracy through leading independent audit firm reviews.

Going forward, we appreciate the opportunity to work with the SEC and others to achieve the constructive goals found in the Concept Release.

Sincerely,

cc: Honorable Mary L. Schapiro, *Chairman*
Honorable Luis A. Aguilar, *Commissioner*
Honorable Kathleen L. Casey, *Commissioner*

Honorable Troy A. Paredes, *Commissioner*
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The Shareholder Services Association (SSA) is a professional organization whose purpose is to support corporate issuers in effectively meeting their responsibilities for shareholder record-keeping and service.

Dear Industry Colleague:

As I begin my Presidency of the SSA, I can't help but look back on how I got started in the shareholder services industry. When I accepted a position in the Office of the Secretary of The Coca-Cola Company years ago, the job seemed interesting but I knew very little, if anything, about shareholder services. I had no idea what a transfer agent was, or did, and I surely wasn't familiar with a proxy card, proxy statement or the purpose of a proxy solicitor. Back then, my staff consisted of me, myself and I.

Just when I thought I had a handle on things, someone dropped some files on my desk and told me I may have to look at them from time to time. Those files turned out to be unexchanged shareholder files, hence, my first experience with unclaimed property and all that comes along with it.

I handled whatever came my way on my own until, while attending my transfer agent's client conference, someone mentioned this organization to me – it was the CTA at that time – and simply said “you might want to become a member.” As the story goes, the rest is history. I started out attending the annual conferences then moved on to attending monthly meetings. The topics were, and continue to be, fitting and timely. The networking alone is worth the membership.

I cannot imagine doing my job effectively or efficiently without the resources available through the SSA. The SSA is a close-knit group always willing to share experiences and recommendations.

If you or any members of your staff are new to the industry, our e-Learning courses, free to members, are available 24/7. If you are looking for help choosing a vendor who services the shareholder services industry or need help with an RFP, the SSA has the resources to assist you.

Now more than ever, with Cost Basis, Dodd-Frank, and the SEC Concept Release, we need to **Stay** in touch – **Stay** informed – **Always** connected with the issues. Please visit our newly updated web site at www.shareholderservices.org and see what the SSA has to offer.

Regardless if you are new to shareholder services or a veteran, who can share your expertise, membership in the SSA is a must and a true bargain at \$495. By the way, my staff has grown to two and my Assistant Manager is also a member of SSA!

I hope to see you at an SSA function soon, and be sure to mark your calendar now for the SSA 2011 Annual Conference, July 12 - July 15 in Newport, Rhode Island.

Sincerely,

Karen V. Danielson

Society Of Corporate Secretaries & Governance Professionals

*Kathy Combs, Society Chair, introduces the Society's newly elected President and CEO,
Kenneth A. Bertsch, who gives us some insights into his key agenda items going forward...*



Dear colleagues,

On behalf of the Society's Board of Directors, I am very pleased to inform you that the Board has elected Kenneth A. Bertsch as the Society's new President and Chief Executive Officer. Ken assumed his new role on December 6, 2010 and

the Board is very enthusiastic about having such a widely respected corporate governance expert lead the Society.

Ken has more than 30 years of corporate governance experience. Most recently, he served as Executive Director, Corporate Governance, at Morgan Stanley Investment Management, Inc. where he advised more than 20 portfolio groups around the world on corporate governance. His team developed governance and proxy voting policies for two mutual fund families and multiple institutional clients and voted shares held in over 5,000 companies in 40+ countries.

Prior to that, at Moody's Investors Service, Ken developed a qualitative approach to incorporating corporate governance analysis into fundamental credit ratings. Earlier, Ken served as Director of Corporate Governance at TIAA-CREF and prior to that, Ken worked at Investor Responsibility Research Center (IRRC), where he started his career, ultimately serving as IRRC's Director of Communications.

Ken's work has included research, analysis, writing, speaking, policy development, advocacy, education and counseling on governance issues. He brings to the Society a deep understanding of what matters to corporations, investors and regulators, and he is known for his constructive and pragmatic approach to corporate governance.

Many of you know Ken. He is eager to meet those of you he does not already know and to hear your ideas. You can reach him at kenbertsch@gmail.com



A few words from Ken:

I have worked with Society members for many years and I have always found them to be extraordinarily cordial, smart, and very engaged and involved in governance matters. Especially impressive is the great sense of ownership Society mem-

bers have where this great organization is concerned and how much they care about its future direction – and I have been incredibly impressed by the wonderful Board we have.

Over the past few years the Board has laid out six broad goals – which they have been working on with vigor – all of which will be very exciting and very gratifying for me to work on too:

We want to make continual improvements in our educational programs – which have long been widely recognized, but which are more important than ever these days – and in the resources we have available for members, in our communications with members and with the world at large, and in terms of our advocacy efforts. We also want to work more closely with our Chapters, to strengthen them, and to grow them. We know that corporate people are very busy these days, and that travel budgets are tight, and we have been steadily increasing our web-based programs – but we think that face-to-face contact is more important than ever. We also want to strengthen our working relationships with other industry organizations, like the NACD and NIRI.

We have our Essentials program coming up – the 26th - 28th of January, in Florida – and a great National Conference coming up in Colorado Springs, June 22-25. Both of these programs get consistently high marks – both from first-time attendees and from our long-term members, so I hope to see you there. And, as Kathy said earlier, please do not hesitate to contact me if I can be of assistance in any way. ■

With best wishes for a wonderful New Year, from all of us at the Society!

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FOURTH QUARTER, 2010

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A FEW HOT ISSUES TO WATCH AS ANNUAL MEETING SEASON APPROACHES

Great news for public companies, though bad news for most proxy solicitors, the 2011 Proxy Season seems to be shaping up as the least contentious one in a decade or more:

Early returns indicate that the number of shareholder proposals – and management proposals too – will be down significantly. And this after a big downturn in 2010 – due in large part to the number of companies that have basically gotten the message about “good governance” and which now have pretty good governance practices in place..

Says-on-pay will largely sail by with decent margins, if we can believe all the usually-activist investors we’ve heard at meetings and webcasts this year, and elsewhere in this issue, which we think we can.

Compensation proposals will be down big-time for sure – partly because corporations have fixed most of the areas where they were most vulnerable to shareholder proposals – and partly because they are not about to tempt fate with proposals of their own that require shareholder approval...And if they do, they’ll do their homework.

But as we always warn, the only company that you have to worry about is your own...and there are still some hot issues out there – along with some worrisome straws in the wind:

A large group of social investors – like **Walden Asset Management**, **Domini Social Investment**, **Green Century Balanced** fund and a host of Catholic orders – has targeted companies that sit on the Board of the **Chamber of Commerce** with resolutions asking Independent Directors for a “Review and disclosure of any direct and indirect expenditures supporting or opposing candidates, or for issue ads designed to affect political races, including dues and special payments made to trade associations, such as the U.S. Chamber of Commerce...or other organizations that can hide any contributions...” We think that the topic of political contributions – whether made by companies, trade associations, labor unions or other special interest groups – will resonate big with voters this year...witness the disillusionment with government in general we’re seeing...and may generate a lot more votes – and much more noise than usual at 2011 shareholder meetings.

cont'd on page 2

A FEW HOT ISSUES...

cont'd from page 1

Calpers has targeted 58 of its largest portfolio companies that don't have a majority standard for Director elections...and while so far, at least 20 "have done the right thing" by agreeing to change, they say, they've filed proposals at **Apple, BB&T Corp, Capital Management Inc.** and **VF Corp.**...and will likely file more.

Calsters, which in 2010 filed NO proposals, will file 25 this year – mostly at small companies – calling for a majority voting standard. We say these proposals will draw big yes votes...and we bet a majority will pass.

A bit scarier, perhaps, Calpers says they've changed the way they decide on companies to focus on...to put much more weight on short-term financial performance "that will be more reactive to market developments"...and to focus on their top 500 companies rather than the top 1000... and to drop governance issues from their initial screening entirely! But once you're on their radar screen, they will place a "greater emphasis on board quality, skill sets and diversity"...So look for a few totally unexpected, last minute developments at meetings – and much bigger numbers for Calpers proposals we predict – thanks to a smaller and more carefully selected universe of targeted companies.

Stay especially alert for both formal and ad-hoc Vote-No campaigns against Directors we advise: In 2010 we saw more Directors with Votes No and Withhold Votes in the 30% – 48% range than we've seen *in total*...in 40+ years of watching. Often, it's hard to figure out what, exactly, triggered the big NO votes...We think that many of the same factors that are affecting attitudes toward the governmental sector are at work here too. If you smell trouble, ramp up your efforts to get out the normally pro-management individual investor and employee plan votes. At a minimum, make sure that no director gets surprised in the 11th hour.

One new flash point, where savvy corporate citizens are already doing damage control, we hope, are "relocation subsidies" for new or moved execs: We can see why it would be a "hot button" for all the ordinary investors with underwater real estate, but we have a hard time seeing why such payments – including outright buyouts of the old homes to forestall big monetary losses – are NOT warranted given the rotten housing market – where a company believes the relocation will produce better results for the business as a whole.

It looks as if the number of proposals to lower the threshold for calling a special shareholder meeting will be down a bit this year, which is a good thing. We think that companies should push back harder on proposals that seek to lower the threshold to a mere 10% and give shareholders a

better idea of the extent to which low thresholds simply encourage mischief-makers to waste the valuable time and money of serious long-term investors.

Another relatively new development – and a bad one, we say – are proposals that would allow investors to take action by written consent: Twenty years or so ago – when consent solicitations to oust the board were being used routinely as a powerful extra "club" in bear-hugs and other low-ball tender offers – the trend was to *eliminate* the right to act by written consent, which was a good thing for most investors, we think. And such attempts were quite successful, back in the days of frequent "shark attacks." Consent solicitations are like a "nuclear action": They can be launched quickly and inexpensively – and with no warning at all: No need to wait for an annual meeting. And they tend to be unusually "dirty" bombs too – where pointed attacks on the character, reputation and performance of the incumbent directors, along with any and all juicy tidbits that can be dredged up – are standard operating procedures. And, of course, the outcome is final...and effective immediately.

Scariest of all, however, the right to act by written consent is like giving a blank check to any malcontent that comes along...with almost any proposal that strikes his or her fancy. (Wow! The last time we wrote about this was in December of 1999, when we counted nine mostly-successful consent situations in a matter of months... including companies like **Birmingham Steel & the Pfizer/Warner Lambert/American Home Products** deals. We also ran a special supplement on Consent Solicitations – and potential defense measures, written by our good friend **Merrill Stone, Esq. of Kelly Drye & Warren**. Call or email us if you'd like copies, to bone up on the issues here.)

cont'd on page 3

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The scariest development of all to watch for in 2011? “Big Investors Appear From Thin Air”...as a recent article by NY Times reporter Ross Sorkin described this new phenomenon...where investors like hedge fund manager **Bill Ackman** used the 10-day disclosure “window” to quickly exceed the SEC’s 5% disclosure requirement and buy up nearly 27% of **J. C. Penney**... and where **Bernard Arnault** of LVMH bought “equity swaps” on **Hermès** in 2008, then, “through subsidiaries, entered amendments to these contracts” to get

physical securities later...and Voila! Surprise! A 17% stake in 2010!

We predict that a LOT of “investors” (read ‘short-term speculators’) will pop up this season out of thin air with moves like this...and probably with some short-slates to put companies into play. Plus, stocks are cheap...cash is king... and record breaking amounts are in hand. Bear hugs are back...So, as we always say about Annual Meetings, “Hope for the best...but prepare for the worst.”

MORE ON VIRTUAL MEETINGS: WE COME UP WITH A SIMPLE SOLUTION TO ACTIVIST OBJECTIONS TO “VIRTUAL ONLY” FORMATS

Regular readers know that we have been following developments on the “Virtual Only” Annual and Special Meeting front from the get-go, and that we are big fans of the concept – and especially of the big potential money-savings that can be realized.

Yes, we still love the many well-attended meetings we go to – and we know that literally hundreds of companies *want to have them*, and *will continue to have them* for years and years to come. And yes, we also know that there are many annual and special meetings each year where investors will want to ask questions, and to “look the management and the directors in the eye.” And we can attest that this opportunity is often a very important and a very effective governance-improving one – and one that can keep the management, and the board, very much on their toes.

But we also know that at well over 12,000 of the roughly 14,000 Annual and Special Meetings that take place each year, nothing significant happens, and there is no earthly reason for even a single investor to attend in person...and most of the time, none do. So for companies like these, the Virtual-Only option can be a big time and money saver – which benefits investors too, who foot the bills.

Several activist investors – and **Tim Smith** of **Walden Asset Management** has been in the forefront here – have been saying that Virtual-Only Meetings can enable companies that do have governance issues to hide from investors – or worse, consign them to a “cyber-ghetto” where their concerns will go unheard... which would, of course, be a bad thing.

We tried to convince Tim that getting caught out in such shenanigans is inevitable in today’s E-connected world...and the consequences to a company’s reputation would be so severe they actually serve as a strong self-policing system, but he was not convinced. We also pointed out that Virtual Meetings not only open the proceedings up to an infinitely large number of people – both live and via archived versions – they offer a huge new opportunity to activist investors to reach out to and engage a huge new audience. But he was still not ready to concede that Virtual-Only Meetings were ready for “prime time.”

After much more head-scratching, we emailed Smith with the proposition that “*Smaller companies – and even big ones, acting at their own risk of guessing wrong about shareholder enthusiasm for attending in person – and that have only routine matters on the agenda – and that also have a “notice provision” in place, so that no new business can be considered – and that ask shareholders who may want to attend in person to give 3-5 days notice, at a minimum, so arrangements can be made to accommodate them – ought to be able to feel that they can safely proceed to have a Virtual-Only meeting.*”

Hard to argue with, we’d say...and Tim emailed back that “Certainly, if an investor could ‘register’ that they were attending (many companies do that as you know) a company gets the lay of the land clarified. If you leave the door open for walk-ins, you solve the ‘exclusion problem’ of course.” Case closed, we think.

MORE ON VIRTUAL FORUMS: MAYBE THE BEST GOOD GOVERNANCE IDEA EVER

While Virtual Meetings have been getting lots of notice of late, we think that Virtual Investor Forums have the potential to transform the corporate governance landscape in an even bigger and better way:

We like the idea of making the discussion of important governance issues a 24/365 process rather than a once a year event – where at one extreme, thousands of meetings last 15 minutes or less, and not a single question is asked – and at the other extreme, like at **Citicorp**, for example, gadflies and assorted other no-nothings yammer on for six hours or more about basically trivial concerns.

We also like the idea of allowing the dialogue to take place on a central, company-sponsored site – to be sure the company IS tuning in – and can respond if they feel some factual info or a broader perspective is warranted – and if they want to offer it. We very much *dislike* the special interest group chat rooms that have sprung up – and there are several of them out there – where basically malcontented and typically ill-informed people share opinions and egg each other on to

vote their proxies against management. Company-sponsored forums will quickly put these sites out of business – at least with respect to the sponsoring company's affairs.

We especially like the fact that company-sponsored forums can surface, and often solve problems, before they can become big ones; A great thing for companies and investors alike. And, while we think there may be some value in allowing current investors to self-identify themselves as such if they wish to, and for the Forum's "system" to validate the fact that they *are* investors, we think it doesn't matter all that much and that smart companies will want to keep their Forums open to anyone who wants to participate.

Finally, while we noted with interest that Broadridge petitioned the SEC to mandate such Forums, we feel confident that market forces alone will provide sufficient impetus for them to take off, and to flourish...And who knows? Maybe one day all the governance issues will have been resolved... though we doubt it.

ON THE SUPPLIER FRONT:

COST BASIS COST ROLLOUTS BEGIN TO ROIL THE T-A INDUSTRY:

Our phones rang off the hook in October as Transfer Agents began to roll-out their cost-recovery plans for their cost-basis programming efforts. The first wave of calls came from folks who felt they'd been "sandbagged" at the 11th hour – by the size of the increases, the lack of well-reasoned and well-explained cost-justification and/or by a feeling that the announcement was timed so they had no time to look for a better deal and maybe leave. The angriest callers were folks who were taken by surprise while on various client-advisory panels. Ouch!

A lot of last minute 'splainin' – and some last minute negotiations too – seem to have mostly calmed the waters...for now. But some callers sounded like they will be harboring a grudge, and some, as predicted

here over a year ago, will be prompted to start shopping around where otherwise they wouldn'ta. Hats off to AST for telling clients they were absorbing it as a cost of doing business...although earlier, let's note, they had very cleverly initiated a cost-of-living adjustment – mostly well-warranted, most clients felt – which went down smooth as silk...and raised a lot more money we'd bet than a cost-basis surcharge could or would.

But the dealin's far from done, we say: Watch for more roiling, and we bet, a lot more unbudgeted cost increases as individual investors react to the cost-basis info they'll be getting from TAs ...a year from now. We predict that phones will really ring off the hook at TAs when cost basis reporting becomes *reality*.

GROUP FIVE ROLLS OUT NEW SURVEY

RESULTS: By early November, our phones were ringing off the hook again – as news of the 2010 Group Five surveys of 1,006 clients of the four largest Transfer Agents began to leak out: First came some early bragging from the highest-scorers, saying “Watch for those results: We did great!” Then came a flurry of calls, mainly from sales folks at the “runners up” – looking to put the best possible spin on their own results...and a few calls from folks who were looking for advice on doing “damage control.” God bless **Jack Sunday** and **Kathy Huston**: their 2010 surveys generated more buzz than ever ...and lots of healthy soul-searching among the suppliers. This year, Group Five also did a high-level overview of issuer satisfaction with their abandoned property search firm and their proxy solicitor – where one firm in each category stood out significantly from the average scorers. (Readers, you will be hearing this from all the suppliers directly, no doubt, so we won’t spill any of the beans here.) Another interesting finding – and something of an odd one, in light of the steady gains **Broadridge** has been making on the registered-shareholder servicing front – issuers that were surveyed expressed significantly higher satisfaction with annual meeting services provided by their transfer agents as compared to Broadridge, which is, we think, largely a “perception-management” issue... But hey, the *perception of satisfaction* is what actual satisfaction boils down to for most people.

POOR LITTLE PGI TURNS OVER ITS CLIENTS TO GLASS LEWIS:

PROXY Governance, Inc. – which began providing proxy voting advice and analysis in 2004 – and which had been shopping itself around, as reported in our last issue, has entered into an agreement with proxy advisor **Glass Lewis & Co.** “which provides for a seamless transfer of customer contracts to Glass Lewis.” No information as to the number of clients or the value of the deal was provided in the 12/20 Glass Lewis press release. We liked little PGI – which was the first to give credit for financial performance in formulating its voting recommendations on governance matters – and we are sad to see them go.

SSA’s James R. Smith Scholarship Fund Hits \$120k: The 2010 annual golf outing and dinner raised over \$20,000 and brought the Fund balance to

\$120,000, which should make it fully self-sustaining. We love this fund for a lot of reasons; First because it was set up by the SSA to honor an SSA stalwart and man of all work, Jimmy Smith, ex of **ITT** and one of the hardest working but most modest and self-effacing guys one will ever meet...and one of the nicest too. And just as much, we love the fact that the Fund benefits high-achieving kids of our own industry colleagues; kids who often don’t qualify for financial assistance thanks to hard-working parents, but who sure deserve the recognition, and the few extra bucks they get every year they’re in college - as long as their grades continue to measure up. And it should come as no real surprise that every winner over the 6-year history of the fund has qualified for four full years. So hats off to Jimmy...and hats off to the Fund donors, who seem to have made the fund a self-sustaining one...and to the SSA Board, which has increased the annual stipend from \$1,000 a year to \$1,500...And hats off to those hard working students...and their proud parents!

The STA TURNS 100: A truly historic event; The **Securities Transfer Association**, originally called the Stock Transfer Association, is certainly the oldest trade association in our industry (**The Society of Corporate Secretaries**, for example, is a mere babe of 64)...And it is undoubtedly one of the oldest trade associations *anywhere* in our country. Much as we sometimes pick on them, and as endangered as the industry sometimes seems to be, fact is; you’ve gotta’ have a TA if you are a publicly traded company. So cheers! And here’s to the next 100 years!

UNCLAIMED PROPERTY RECOVERY and REPORTING, LLC (UPRR) opened a new office in Boston in December, staffed with two prominent industry experts – **Jennifer Borden**, a former partner at **Holland & Knight**, tax-practice leader at **Ernst & Young**, and former General Counsel for Abandoned Property for the **Commonwealth of Massachusetts**, who will serve as General Counsel & EVP – and **Charles “Chuck” Booth**, SVP Sales & Business Development, formerly of **Affiliated Computer Services**, a **Xerox** company.

VENIO, as reported more extensively in our 2010 annual Special Supplement, has acquired abandoned property service-provider **KEANE**...and will adopt the Keane name.

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OUT OF OUR INBOX:

VIRTUAL MEETING VIRGIN POSTS ENTIRE SHAREHOLDER LIST ON THE WEB:

Ouch! And ouch again! What WERE they thinking? Yes, Delaware law, and the laws of most states we've looked at, require that the shareholder records be "open for inspection by shareholders" – always at the offices of the company, usually for 10 days or so before the Meeting – and *sometimes* at the Annual Meeting itself – but *always*, if one reads the Delaware law with care, and if one has drafted one's own bylaws with care – strictly for "a proper purpose." We can hardly imagine a greater corporate impropriety than posting such sensitive information on the web, for any browser, human or otherwise, to see and to copy out, virtually at will.

We've mentioned this sometime-dilemma on several webcasts we've spoken at, and opined that "public companies should do everything in their power to avoid posting this information on the web."

A few practical tips we offered were these:

- Amend the bylaws if possible, to specify the availability of such info at a physical-site only...

- Insist that shareholders who ask to look demonstrate a "proper purpose"
- If you still feel you must comply...offer a one-off, company-supervised private viewing only, via a fast scroll-down capability...and don't be flummoxed if you are not ready right then and there, since one can not imagine any legitimate reason for a shareholder to demand immediate gratification here, except, perhaps to see his or her own account.

We went so far as to say that if it were US, we'd make the list available to requestors in their own home town, or even at their house, if absolutely necessary...and under company-provided supervision, rather than to post it on the web. After all, how many people really want to look at this list for a "proper purpose" – absent a proxy fight – where the wannabe lookers will all be there in person anyway or will kook later, during a formal challenge process?

So we'll say yet again, even though it should really go without saying: NEVER POST YOUR SHAREHOLDER RECORDS ON THE WEB!

PEOPLE

Alliance Advisors hired two more proxy industry veterans in November; widely regarded **Shirley Westcott**, who spent 14 years at **PROXY Governance** and **ISS** and **Richard Ward**, a 15 year specialist in proxy solicitation, mutual holding company conversions, M&A transactions, tender offerings and rights offerings.

BNY-Mellon's west-coast stock transfer sales specialist, **Mike Goedecke** has moved on to a new job at **NASDAQ OMX** in LA.

FASBI has named **Leslie F. Seidman**, a former **JPMorgan** accountant and auditor and a current **FASBI** board member as chairwoman of the board, to replace **Robert H. Hertz**, who retired unexpectedly in September. Her top priority will be to reconcile U.S. Financial Accounting Standards with those of the International Accounting Standards Board by June of 2011, where mark-to-market rules for bank loans and the much more detailed and industry-specific U.S. revenue recognition rules are still being hotly debated.

FINRA has tapped **J. Bradley Bennett**, a **Baker Botts** LLP partner, as its enforcement chief, effective Jan. 1st

Scott Gallagher, a long-term **Georgeson** exec has moved to **Venio** – now to be known as **Keane**, fol-

lowing a recent purchase – as an Executive Vice President, Sales.

Henry Hu is no longer on first as the **SEC's** first Director of Risk, Strategy and Financial Innovation. He's returned to the **University of Texas**, to take his seat again as the Allan Shivers Chair in the Law of Banking and Finance, from which he will continue to agitate, we hope, against the crimes of over-voting and vote-napping.

Keith Meister, widely considered to be **Carl Icahn's** "right hand man" in proxy fights is starting an "event-driven hedge fund" of his own...starting with \$250 million in seed capital provided by financier **George Soros**.

NIRI has named four new directors, **John Chevalier**, IR Director at **Proctor & Gamble**, **Ruth Cotter**, VP-IR at **Advanced Micro Devices**, **Jane Okun Bomba**, SVP & Chief Customer Process Officer at **IHS** and **William Walkowiak**, VP Finance & IR for **Novatel Wireless, Inc.**

Former **Wells Fargo** shareholder-service-sales-star **Karri Van Dell** has moved to **AST** where she will work from a new **AST** office in Minneapolis/St. Paul.

REGULATORY NOTES...and comment

ON THE HILL: The chronically crisis-ridden Congressional panel to investigate and report on the causes of the financial crisis has delayed the report, which was due on Dec. 15, to the end of January “to make sure we can appropriately complete our ongoing investigations” said **Phil Angelides**, the panel chairman. The four Republicans on the 10 member panel – What a surprise! – voted unanimously against the delay...

AT THE SEC: Good news – the Commissioners voted unanimously to ban “Naked Access” to securities trading platforms by flash traders...closing a big loophole in the original plan that would have let traders who are not registered and regulated as brokers (and have negligible capital to back their huge flash-trades, we’d note) continue to have naked access to “alternative trading systems.”

Bad news – at least to people who believe that securities markets DO need regulation...many of the new SEC programs that arose from the financial crisis are largely “on hold” due to congressional funding delays and the possibility that the 12% budget increase proposed by the administration may not pass at all, the Dec. 15 WSJ reported.

But meanwhile, the SEC investigation of hedge funds that were trading on inside information seems to be moving along briskly, thanks to assistance from federal and state prosecutors...and has, in fact, expanded to so-called “expert networking firms” – many of which were allegedly providing market-moving info based on *insider info*.

The biggest news – revised whistleblower-reward guidelines are out for comment...and the comments are coming thick and fast...with many corporate commenters saying that the rules as proposed will seriously weaken existing corporate compliance programs. While some tweaking of the proposed rules seems

necessary, we think – as we wrote in the **Conference Board’s Governance Center blog** – that ex-SEC chairman **Harvey Pitt** went straight to the heart of the real issue – albeit by accident, as so often happens with him – when he told the New York Times: “*Compliance departments will now be competing with the S.E.C. for who gets the tip first.*” It sure strikes us that this is exactly what compliance departments SHOULD be doing – with or without cash whistleblower awards. And let’s please note that big cash awards will only be doled out when there have been even bigger cash frauds....As an example, see the cautionary tale immediately below...

IN THE COURTHOUSE: GlaxoSmithKline agreed to pay a \$750 million fine and plead guilty to a criminal charge of releasing adulterated drugs into interstate commerce...with the whistleblower – a former employee, who had been sent by Glaxo to investigate the renegade plant, and who had blown the whistle twice – and who was fired for her trouble...now scheduled to receive a \$96 million bounty.

A federal appeals court reversed the fraud conviction of former Hollinger International chairman **Conrad Black** on two counts, relying on the recent Supreme Court ruling against “honest services” provisions but it upheld his conviction on one count of fraud and one for obstruction of justice.

The board and management of **Citadel Broadcasting, Inc.** agreed to reverse the \$110 million in stock grants they awarded as the firm exited bankruptcy – \$55 million of which went to the CEO and \$1.35 million of which went to each of the directors – awarding stock options instead, after activist investor **R-2 Investments** petitioned the court “to prevent one of the most egregious frauds by a company emerging from bankruptcy under Chapter 11.”

WATCHING THE WEB:

A Holiday for Holliday: Bank of America deprived the world of 439 websites the *WSJ* reported in December, using a company called **MarkMonitor** to buy up domain names like **BrianMoynihanBlows.com** and **BrianTMoynihanSucks.net** - and twelve variations with the name of Chairman **Charles O. Holliday, Jr.** But domain names like **BrianMoynihanREALLYBlows.com** and **BofAisEvil.com** were still available – the last for a mere \$9.95 the *WSJ* reported.

We guide our clients through the complexities of regulatory reform.

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Keeping up with new regulations has added additional layers of cost and complexity for all public companies. BNY Mellon can help you navigate these issues. As a leading provider of integrated corporate equity solutions including transfer agency, mergers and acquisition processing, and employee stock plan administration, we are committed to helping clients stay ahead in a rapidly changing world.



For more information about
BNY Mellon Shareowner Services,
please contact,
Peter Breen 201 680 3479



Transfer Agents: Gotta Have'em...Gotta Love'em

Sometimes it seems that the *OPTIMIZER* picks on transfer agents a lot – as lots of public companies seem to do too these days. Partly it's because it's such a tough business to run well in the best of times. But mainly, as TAs and corporate citizens well know, the slightest real or perceived miss-step tends to draw loud and rapid fire from the affected parties – and from “the top of the house” in public companies too, where – more often than not – the top execs are at the top of the “affected list.”

But there are a few very *good things* about the TA business that seem much worth noting:

First, and maybe best of all if you are in the TA business, every single public company has to have one...So as long as public companies are around, TAs will be too...like forever

Another thing about the TA biz – and something we *sometimes miss* – is that every day is different than the last: There's always something new... that's really a challenge... and usually it's some sort of emergency...that gets the old adrenalin flowing.

Another thing, we *truly miss* is the sense of closure you get every single day: You simply **MUST** make the mailing dates, and the turnaround times... no excuses accepted...But when you're done, you know you've “wrapped the fish”...and you're done for the day... and happy...and proud of it.

Best of all; if you're really good at this business you will develop a lot of deep and long-lasting and very satisfying relationships with lots of interesting and high-power people.

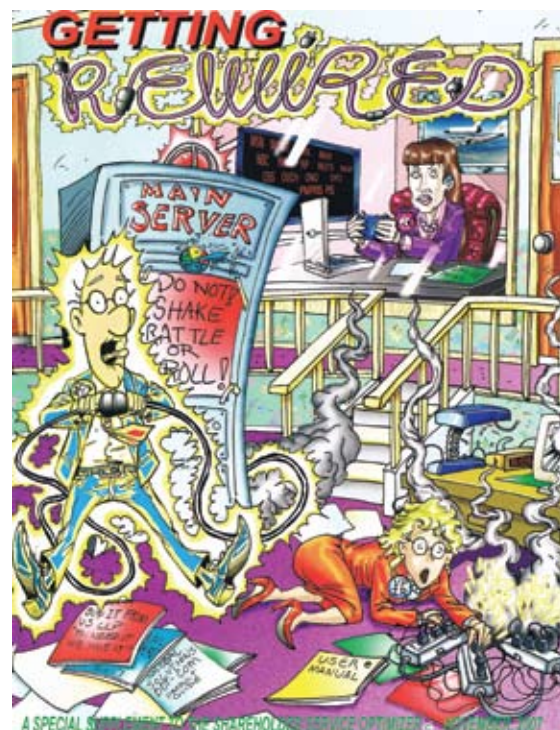
Half or more of the CEOs we know, we know from their days as Assistant Treasurers or Assistant Secretaries,

although to tell the entire truth, we came to know quite a few CEOs and Chairmen up close and personal when some major snafu arose...some-where... in the error-prone and somewhat crazy shareholder-servicing universe. (And happily, we should also note, most of today's TAs have overcome the once-daunting technological issues that used to create so many “moments” like those depicted in one of our old covers, shown here.)

So smart issuers will really want to love their TAs – and to think about them as critically important, long-term partners. And smart TAs will want them to think that way too.

But every year, for as long as we can remember, a lot of public companies go shopping for a new TA. Sometimes it's part of a corporate mandate to bid out most everything every five years or so. Sometimes it's in response to the very keen competition for this business, and to the steady stream of nice salespeople who show up regularly at the door, full of enthusiasm and with ideas that seem fresh and new. Sometimes it's because ones' old TA has sold its business, so a look at the field seems in order. Most often, the search is sparked by some snafu, or maybe a series of them, since lightening *does* tend to strike in the same place.

We think we have a lot of very good advice for issuers who decide they need to shop their TA business around. Most of it has been on our website, **www.optimizeronline** for quite a while: Our article on what to do if you are not satisfied with your TA, for example, argues that for starters, trying to work things out with ones' current



TA is the best first-step, and provides a roadmap. But if this step fails to cut the mustard, go straight to our Top-Ten Tips on Selecting a Transfer Agent... under “The Basics”...where we think you will discover that there's a lot more to making a smart decision that first meets the eye.

We are pleased to have so many Transfer Agents represented in this issue, and we think that their ads and articles DO give one at least a hint as to how different they actually are.

Our own *very-top-tip* for TA shoppers is to focus on “the chemistry”: On who's in charge...and who will be in charge of *your* account...and on the “tone at the top” – in short, on the culture, style, and overall environment at each TA...and how it meshes with your own corporate style and culture – and, of course, with your own particular needs and corporate “hot buttons.” Make sure you **DO** love your Transfer Agent: It is kind of like a marriage: You want it to be a very long-term and loving relationship...quite aside from the very inconvenient fact that you need to get Board approval to divorce and remarry. ■



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Dear colleagues,

We all face the same industry challenges. How we choose to face them is what makes all the difference. This year, AST celebrates its 40th year in business as a proud industry service leader. Our breadth of offering, service quality and experienced associate base have never been stronger.

As the committed market leader, we support 25% of all public companies in North America. To that end, we have made a number of strategic acquisitions, invested heavily in new proprietary technology and brought in a leadership team of respected industry veterans.

It's not our style to sit on the sidelines. We are continuing to lead through the development of cost-effective, technologically advanced and client-based services—with a sharp focus on providing superior products and investor solutions.

Our approach to business is straightforward:

- We provide exceptional execution of our transfer agent responsibilities for the shareholders and employees of our clients;
- We are dedicated to providing clients with responsive and personal service;
- We treat every client relationship as a partnership;
- We invest in the success of our partners; including mitigating risks and satisfying critical regulatory industry requirements.

This approach is the foundation of AST—we are continually committed to providing the highest level of value, service and industry-leading capabilities for your organization.

To our clients, I thank you for trusting us with your business. For prospective clients, I welcome you to come take a look at AST—our business philosophy, breadth of offering, service strength and most importantly our associates.

Sincerely,

Mark C. Healy

President & CEO

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Full Service Under One Roof

*An interview with Jay McHale, President,
US Equity Services, Computershare*



With transfer agency as its core business, Computershare has built a suite of complementary products and services that can enhance a company's equity services management at any point in its corporate lifecycle. Jay McHale has led Computershare's equity services division since 2007. Here he shares his thoughts on the past year and what's to come in 2011.

Transfer agency is Computershare's core business. How does that enable you to provide full-spectrum equity services?

Because transfer agency is the center of our business – as opposed to an ancillary service – we are able to truly understand the equity service needs of our clients, from the early planning of an IPO through to corporate maturity and every step in between. Issuer services are the primary driver of our business and we invest heavily in developing solutions that meet the needs of issuers and their shareholders.

I firmly believe that we go far beyond other transfer agents in the array of equity service solutions we offer, across the entire corporate lifecycle. Our goal is to be easy to do business with – and through Computershare, and Computershare companies such as Georgeson and KCC – we make it easy for our clients to meet all of their equity services needs through a unified, industry-leading provider.

A few recent developments include a virtual meeting solution for annual meetings, interactive “transfer wizard” and “virtual agent” features on our Investor Centre™ shareholder website, and new compliance solutions for our employee equity plan clients. In addition, we're currently piloting a new annual meeting management solution for issuers, which coordinates services and vendors across both registered and street holders, all through a single point of contact at Georgeson.

What is the product development process that supports this full-service offering?

We actively reach out and listen to our clients to identify the issues and challenges they face, and then we work to create solutions. Computershare continually invests in new services based on our clients' needs, ranging from packaged offerings of essential transfer agent and annual meeting services, to solutions for complex corporate actions, and to advanced proxy solicitation and corporate governance consulting through Georgeson. And our philosophy of in-sourcing core business processes – including call centers, transaction processing and print/mail – gives us tighter control over service quality and data security.

What do your clients say about your service approach?

Looking at the latest data, two things are clear: First, our clients are extremely satisfied with the quality of service they receive; and second, as a company, Computershare continues to improve in client service.

Just recently, Group Five Inc. published its annual survey of transfer agent customer satisfaction. Issuer satisfaction with Computershare was consistently above 90% in several major categories – including industry-best rankings for annual meeting services, technology investment and accuracy of work – and overall client satisfaction reached 90%. While we take pride in these numbers, we continue to strive for improvement.

Just as important, our levels for shareholder satisfaction remain the best in the industry. Computershare received a 90% favorable rating for telephone service, and 92% favorable rating for transaction services, according to recent independent surveys of shareholders also conducted by Group Five Inc.

There has been a great deal of regulatory activity this year. How has Computershare adapted to the changes, and what role has Computershare played?

We are an advocate for our clients and their shareholders. As the industry leader in equity services, Computershare ►

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Services

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Ongoing Operations Registered shareholder records management and servicing Shareholder meetings and proxy Regulatory reporting & communication Print, mail and electronic holder communication Equity compensation			

compliance, proxy access, proxy reform and the corporate governance elements of the Dodd-Frank legislation.

We have been quick to implement the system modifications necessary to support the new requirements, including the massive changes needed to support cost basis reporting and the capability to handle the four-choice voting structure for “say-when-on-pay.” Our proprietary, industry-leading technology and expert staff have been a huge advantage for our clients during this turbulent period.

Any closing thoughts you'd like to share?

Computershare really has something unique to offer – an unmatched product suite, high-quality issuer and shareholder service, a deep pool of experienced talent, the best technology in the industry, global resources – and our core business is equity services.

As a result, we continuously develop new, innovative products that make equity management easier for our clients and allow them to focus more time and energy on their core business – whatever that may be.

stays ahead of the curve on any regulatory action that will affect our clients and their shareholders, and we leverage our industry expertise and strength to advocate for policies that benefit them.

In addition to meeting with regulators and providing them feedback, we've kept our clients informed about the myriad changes and proposed changes that we've seen over the past year – including cost basis reporting, 6039

To learn more and find out how Computershare's best-in-class equity solutions can support your company's objectives, contact us today at: **888-404-6333** or visit **www.computershare.com** ■

2010 End of Annual Meeting Season Celebration and Benefit

*Honors Coca Cola's Manager Of Shareholder Relations and
SSA President-Elect Karen V. Danielson – Drawing Record Crowds*



Benefit honoree Karen Danielson receives a citation from Benefit Co-chairmen Cal Donly, Ellen Philip and Carl Hagberg

Well over 200 industry leaders turned out for the June 4th 2010 Celebration and Benefit – to reconnect with colleagues and friends – to celebrate – and to honor a leading industry citizen, Karen Danielson.

The Benefit raised over \$100,000 to support the work of Fountain House and Fountain Gallery – two amazingly effective non-profit organizations that help over 1,000 people each year who suffer from major mental illnesses; two organizations that the Shareholder Servicing Community has taken very much to heart. Thirty-four Fountain Gallery artists were also on hand to show their works, helping the art sales to break previous records as well.

Here are some excerpts from the citation that Karen received at the Benefit:

“When one thinks about the Annual Meeting Season, and about celebrating,

and honoring all the hard work it takes to make a corporate annual meeting a success, it is hard to imagine a more deserving honoree than Karen Danielson. As the Manager of Shareowner Services for The Coca-Cola Company, in Atlanta, Karen is responsible for providing day-to-day service to nearly 1.5 million shareowners of The Coca-Cola Company, as part of the Office of the Secretary; a huge challenge in and of itself.

“It is Karen’s amazing record as an industry leader and volunteer however, that makes her so worthy of being honored by those of us in the huge and diverse and constantly changing ‘shareowner servicing world.’

“Karen was one of the earliest and most articulate advocates for electronic delivery of annual meeting materials and other shareholder-oriented communications. Through her efforts, The Coca-Cola Corporation became a Foundation Member of e-Tree.

“In addition, Karen was the first to implement Notice and Access stratification using voter preference and was a member of the National Investor Relations Institute Working Group on Notice and Access which introduced NIRI’s Standards of Practice – Implementing ‘Notice and Access.’

“A long-term member of the Society of Corporate Secretaries and Governance Professionals, Karen has long been a ‘star presenter’ on Annual Meeting Preparation and on ‘the care and feeding of investors’ at the Society’s annual Essentials programs.

“Karen recently co-authored the Shareholder Services Association’s e-learning module on Preparing for the Annual Meeting. And Karen, who has long been an active volunteer, and a Board Member of the SSA, is the SSA’s President-Elect, whose term will begin in December of 2010.” ▶



Fountain House staffers Robyn Marks and Andrea Roy welcome sponsors and guests



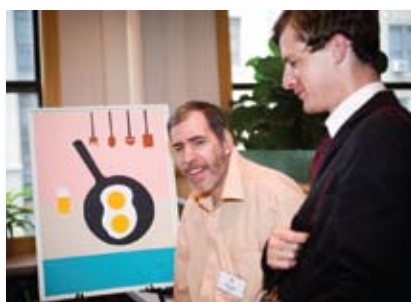
Fountain Gallery artist, Dr. Leonard Aschenbrand, with two of his digital photos



Artist/photographer Bradford Stringfield with several of his works



2010 honoree Karen Danielson with some of her many fans from sponsors Computershare and Georgeson



Member Artist Barry Senft with Fountain Gallery intern Nathan Fitch



Member artist Mercedes Kelly with her cats

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Member Artist Justine Hall with one of her paintings and her proud Mom



Member Artist Anthony Newton with two of his works

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What's Behind the Continental Difference?

Steve Nelson is Chairman and President of Continental Stock Transfer & Trust Company, an organization well known as a leader in the business of stock transfer.



First, Steve, I understand that you are excited about the 2010 Stockholder Consulting Services results.

Absolutely! The survey results placed Continental as the #1 rated agent in the country. Everyone in the organization deserves credit for this achievement. It's especially gratifying when you realize that it's our clients speaking, folks who evaluate our work every day and recognize the effort that goes into providing service at a consistently high level. And, we provide this high level of service at a very reasonable fee. For 8 years in a row the same Stockholder Consulting Services' industry-wide survey has named Continental the value leader and overall lowest cost agent.

I'm proud that this recognition comes at this time. As you know, the stock transfer business has been going through a period of consolidation. We remained independent, kept our focus on what we do best, and we were able to grow internally and by acquiring 5 stock transfer companies over 15 years. Today, by most measures, we are the 5th largest agent in the country.

We keep hearing about "The Continental Difference." What's that all about and how does it translate into tangible client benefits?

Some people say all stock transfer agents are alike, and in some ways that's true. We're all highly regulated,

and we all work with DTC (Depository Trust Company). But that's where the similarities end.

Continental is different and, we believe, better in servicing our unique niche. We're not like the other top 5 agents. Although we've grown consistently over our 45 plus years in business, we've never wanted to be the biggest agent or all things to all people. Instead, we've worked very hard to become the agent of choice for companies with mid-sized and smaller shareholder bases. Our success comes from our ability to marry our excellent technology with the most responsive and knowledgeable service. We've always believed that ours is a service first business and we were right. It's this service first approach that's really spurred our growth and has led to the Stockholder Consulting Services survey recognition.

We're different in that we want to grow, but never to the point that we sacrifice service. We are the only top 5 agent catering exclusively to mid-size and smaller issuers, eschewing the mega accounts that sap resources and lead to unhappy customers that are lower in the pecking order.

People are one of our strengths. The other agents simply don't have the experience we have. Our key people have been with us for decades. They really know this business and will go out of their way to do the job or resolve an

unusual or troublesome situation. And, not only do we have the experience, but we also have the depth needed to get our clients and their shareholders through every situation, routine or otherwise. We offer tailored, flexible service that is not offered elsewhere – and we answer the phone – here in the United States – with a courteous, knowledgeable person actually sitting here in our New York City offices.

But what about the big agents? The bank agents? Wouldn't they be a better choice for most companies?

Not necessarily. Continental focuses on medium-sized and smaller companies. We leave the companies with huge shareholder bases to the mega-agents. We know what we do best, and we stick to it. So while a mega-agent probably is the right choice for the largest companies, any other company would find us to be a much better fit – and, they'll pay a lot less. We offer services and resources to midsize and smaller companies in a way and at a price that the mega agents just can't match. That's why we continue to lead in servicing IPOs and SPACs and it explains why we are recommended by virtually every bulge bracket underwriter. It explains, as well, why we have even experienced such significant growth in servicing Asian companies, especially those in China.

Don't get me wrong. The big agents do ►

a fine job for the largest companies that need hundreds of thousands of pieces put through the machine and out the door, but most companies need and prefer tailored, flexible service. This is a big part of "The Continental Difference." Because we are smaller, we can move a lot faster and are more willing and able when a customer wants something just a little bit out of the ordinary and they need it right away.

You haven't spoken a lot about technology yet. How does that fit into "The Continental Difference"? Is your technology up to the task?

We value our long and close relationship with SunGard, the leader in stock transfer technology. So our technology is superb. It's second to none. We were the first agent to offer online services to all our clients. We're always upgrading our ContinentalLink suite of web-based services, adding more options, and doing everything we can to make the experience better and easier for our clients and their shareholders. Now we even have an Internet capability that allows stock options to be issued and tracked from request to delivery.

But this doesn't mean we're so locked into our technology that we can't function in any other way. When we start with a new client, one of the first things we do is determine what that client really needs. We've found that many smaller companies don't want to do everything on a "self-serve" basis. They often want more personalized help, even with all the high-tech options available.

This is another "Continental Difference," an area where our knowledgeable people come into play. The Internet is great, but people still need help, want to speak with a person, and unlike so many of the other agents, we are happy to provide that help in a personalized and friendly way over the telephone or in person.

Well, how does your telephone service differ from others?

The biggest difference is that we actually answer the phone with a person, not an automated response system based in Asia. Clients and shareholders can speak directly to us. And, recently, we've upgraded our telephone capability to give our clients more choices and control over every aspect of telephone service. Our upgraded system allows for automated call tracking and metrics and provides customized messaging and other client-specific features. Still the same personalized service, but now it comes with cutting edge, helpful options that our clients will value greatly.

So, let's see. You're right-sized. Your people are not only friendly and helpful, but they're some of the best and most experienced in the business. Your technology is right up there at the top. Surveys and clients rate you as #1 in the country and say you are the best value. And you've been around for a long time. What else is there?

It's important for people to know that we're in this for the long haul. As consolidation in the industry continues,

Continental will be an acquirer, not a seller. I'm the Chairman and President of Continental, a business started by my father over 45 years ago.

We've spurned scores of potential acquirers, choosing instead to grow our business internally and through multiple acquisitions. While all of the other top 5 agents have either been sold or reportedly been for sale in the recent past, Continental will remain independent – period.

Moreover, industry surveys continually point to the fact that our customers have the most direct access to senior management of any major agent. This is because we don't have multiple layers of bureaucracy. My Senior Account Administrators report directly to me to ensure that our customers' needs always come first. Today's technologies require that we be available to our customers 24/7, and, believe me, we are. Tailored, flexible and responsive service is indeed "The Continental Difference."

Thanks, Steve. I'll be looking forward to chatting again sometime soon. ■



#1

**Continental named the Number One
Stock Transfer Agent in North America
Winner of the 2010 Talon Award***

WWW.CONTINENTALSTOCK.COM

***SCS 2010 Survey: The only industry-wide survey of transfer agents.**



9TH ANNUAL "CELEBRATION OF LIFE"

CELEBRATES TWO OF THE MOST IMPORTANT PEOPLE IN FOUNTAIN HOUSE HISTORY...AND THE 10TH ANNIVERSARY OF FOUNTAIN GALLERY

The November 15th event, at the Citi Executive Center, honored Richard J. Daly, Chief Executive Officer of Broadridge Financial Solutions, Inc., and Dario Gristina, Chief Executive Officer of Genergy

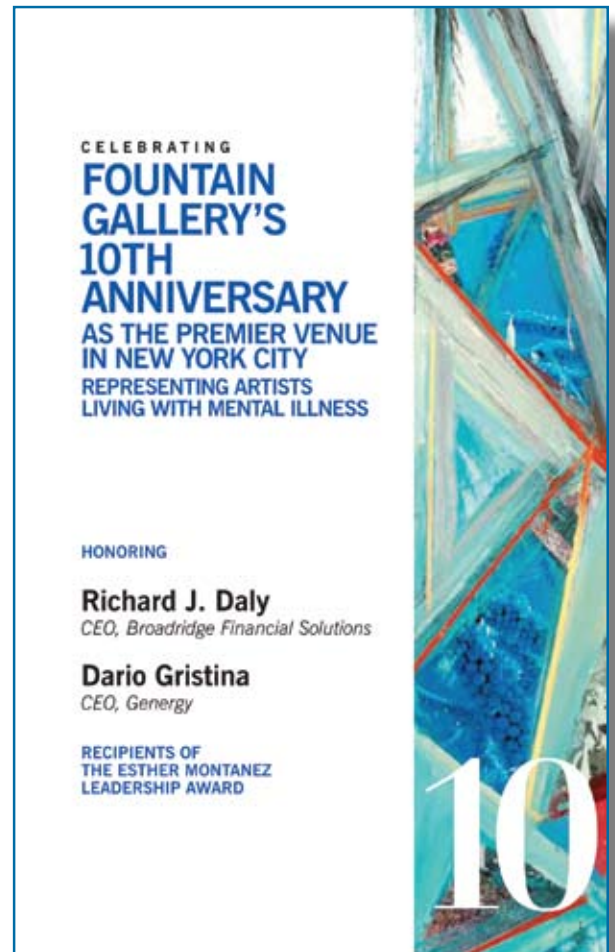
The benefit, where both executives were honored with the Esther Montanez Leadership Award, drew over 600 people from the financial services and real estate industries:

Fountain House Executive Director Kenn Dudek described their contributions as follows:

"For more than 17 years Rich has been providing meaningful work for hundreds and hundreds of Fountain House Members coping with mental illnesses – in an incredibly welcoming and supportive environment. And Rich has also been a major supporter of Fountain Gallery from its very beginning, in the year 2000.

"Dario is almost a 'co-founder' of Fountain Gallery – providing advice, support – and funding – from the Gallery's very first weeks of operation. And Dario, like his fellow honoree Rich Daly, is also a dedicated Employer of Fountain House Members via the groundbreaking Transitional Employment Program.

"This is Leadership at its best...Providing meaningful work for hundreds and hundreds of men and women who struggle with mental illness – in caring and supportive workplaces...Helping literally hundreds of Fountain House Members and Member Artists to reconnect with the world of work, and to lead fulfilling lives...Showing the way...to other employers."



Fountain Gallery Director Jason Bowman presents honorees Rich Daly (l) and Dario Gristina (r) with books that were hand made to mark the 10th Anniversary by Fountain Gallery artists.

Each of the ten limited-edition books contained ten signed original art works; each book was bound in artist-designed and executed covers, with hand made end-papers, and each book came in its own artist-designed and executed box.



Fountain Gallery Member Artist Nelia Gibbs talks about her work with Broadridge's Chuck Callan, on the right. Center; a Benefit attendee sizes up his purchase, while the artist, Marty Cohen (over Callan's shoulder) looks on. Member artists sold 57 works at the show, and several more were sold later, from the website, www.fountaingallerynyc.com

FOUNTAIN GALLERY CELEBRATES ITS 10TH ANNIVERSARY



ESTHER MONTANEZ
1936-2006

It's hard to believe that 10 years have passed since the inimitable Esther Montanez, whose spirit still lives on at Fountain Gallery, first reached out to her circle of friends and supporters to say, "I need you... My boss (Fountain House President Kenn Dudek) wants to turn the Thrift Shop into an art gallery... I really need your help!"

What a startling concept—and what a long shot—this seemed at the time! Kenn's outside-the-box thinking coupled with Esther's tireless "pitching"—to donors, to art patrons and to the artists

themselves, ensured that this seemingly impossible endeavor would succeed. People who knew Esther use the same words to describe her: "An irresistible force" ... "One of the most memorable people I've ever met" ... "No one could say no to Esther."

Here we are, 10 years later, during which time Fountain Gallery has become not only the world's premier venue for artists living with severe mental illnesses to show and sell their work, but also a renowned destination for the art world at large.

Ultimately, the amazing success of Fountain Gallery comes down to the member-artists themselves. It is the members who run the Gallery, just as they did originally, thanks to the vision and leadership of Esther's successor, Jason Bowman.

"Esther was my mentor, my partner, and my friend. Her spirit will always be with me in the work that I do here and I happily refer to her wisdom whenever I am overwhelmed or puzzled. I promise that I will continue to make her proud, as she often told me she was, as the Gallery and its members continue to reach new levels of success."

Jason Bowman
Fountain Gallery Director



"Esther was a good friend, an advisor, and someone I greatly admired. She was a compassionate and courageous person who dedicated her life to giving dignity and independence to the mentally ill through Fountain House."

Rudolph W. Giuliani
Former Mayor of NYC

Fountain Gallery is a cooperative. Members not only must hone their craft, but also commit to helping staff the Gallery, move the artwork, put out the flowers, greet the visitors, and do whatever is necessary to make the Gallery the wonderful place it is for art lovers to visit.

The **Esther Montanez Leadership Award** is given in recognition of outstanding leadership and service to the community she served. In addition to her work in establishing the Gallery, Esther spent her 40-year career at Fountain House encouraging men and women living with mental illness to recover their lives through employment, education, and wellness activities. With passion and relentless tenacity, Esther persuaded businesses to employ Fountain House members, thereby creating new opportunities and changing the world's perception of what people with mental illness can contribute to society.

The workplace offers another important arena in the fight against stigma. The success of our members proves that a job is a stabilizing factor for their mental health - building confidence, motivation, and interest.

This year's recipients of the Esther Montanez Leadership Award exemplify the essence of the Award. Not only have they been supporters of Fountain Gallery since its inception 10 years ago, they also employ Fountain House members as part of its Transitional Employment program.

"Esther showed me a lot. She lived by three rules: Give and you shall receive; Knock and the door shall open; Seek and you shall find. That was her simple mantra of life."

Jonathan Glass
Fountain Gallery Artist





Wells Fargo Shareowner Services

An interview with Todd May



1 in 3 households in the U.S. trusts a Wells Fargo product today...a portion of virtually any issuer's shareowners will already be familiar with the functionality and navigation of the new Shareowner Online.

Tell us, how is Wells Fargo Shareowner Services doing this year?

This has been a very exciting year for us. We've launched our new websites, and are partnering with the rest of Wells Fargo better than ever.

By using the bank's check printing and mailing facilities, for example, we are delivering dividend checks with the industry's most advanced security features. From a group that creates nearly 4 billion impressions annually, only the most precise mailing procedures and technology are used.

For our clients and shareowners, this means even more refined processes and controls. And for us, it means a virtually limitless scale and capacity.

Over the past couple of years, we have realized fabulous growth as we have successfully married a specialized, service-oriented business with the resources of the larger Wells Fargo enterprise.

How will your technology be different or better?

Perhaps the most exciting, an impressive 1 in 3 households in the U.S. trusts a Wells Fargo product today. Because we teamed up with Wells Fargo's online banking group, we know that a portion of virtually any issuer's shareowners will *already* be familiar with the functionality and navigation of the new Shareowner Online.

Our *Shareowner Client Connect*® site is

all about increased usability and rapid delivery of information to issuers. For example, users can save defaults for reports they frequently run, so they are able to refresh data with just a click. We've also added an ExpressView feature that allows an issuer to flag accounts they frequently view. This list of accounts will be available to see at any time without needing to perform a search.

Wells Fargo is a pioneer in developing intuitive and innovative online tools – for banking customers and corporate clients. In fact, this year we've again been named the best consumer and commercial internet bank by *Global Finance*. Lucky to have access to this expertise, we were careful to develop these new sites in partnership with our retail and commercial internet banking leaders.

We are so pleased with the additional features and increased usability of our new Shareowner Online as well as our *Shareowner Client Connect*® portal. Already, we're hearing many great things from both clients and shareowners.

How will this new technology impact your service delivery to issuers and shareowners?

The technology we added will only enhance the leading service we deliver today. In no way do we believe our technology will replace the need for an expert and personal approach.

I truly believe we won both of this year's large agent surveys because of our

staff's commitment to our clients and their shareowners.

While our sites will ease day to day challenges and provide additional functionality, no technology can replace experience.

The average industry tenure of our entire team is over nine years. Across account management, it's an even more impressive 15 years.

Our clients value the team's accessibility, responsiveness and expertise – and have responded by being the most loyal customer base in the industry.

At a time when the industry is so focused on cost basis, what is your team doing to prepare?

The strength of our team is invaluable when it comes to preparing for cost basis regulation. With a leadership team averaging over 20 years of industry experience, we really understand – and are preparing for – downstream impacts caused by this regulation.

Our operations manager, Katie Sevcik, and her team have been deeply involved in industry committees and she even presented to the IRS.

Training and clarity are key here as well. We have already held multiple training sessions for nearly every member of our team. In addition, we are focused on clearly communicating with issuers and their shareowners. ►

Information sharing with issuers has been taking place for months and will continue throughout 2011.

From our Shareowner Online site to mailings, we are developing materials to take the mystery out of this complex regulation for shareowners.

How is your group changing to meet the new demands of shareowners, clients and regulation?

For over a decade we've been known for providing exceptional service. Now, we are focused on finding ways to simplify things for shareowners and issuers and provide them with even more value.

In the case of regulation, we are one of the industry's most active participants – both from a transfer agent perspective and the Wells Fargo enterprise as a whole. We have advocated on behalf of our clients and are now keeping their best interests at heart as we move forward with implementation.

As no two companies are alike, we are customizing our offerings more to best fit an issuer's needs. To name a couple, we are adding additional services to our investment plan offerings and delivering seamless corporate action services that combine escrow and paying agent services.

What we are not changing is our focus on service. One of the mottos of the Wells Fargo enterprise is, "serving clients when, where and how." Serving customers when, where and how they wish to be served translates exceptionally well to our business.

Most obvious to achieving that goal is the construction of our new websites. But we also maintain a walk-up counter that still receives thousands of shareowners each year.

How is your group "customizing" services for corporate actions?

We know that our part of a corporate action is relatively small, when compared with the scope of the entire operation. However, it is one that if not well-performed, could slow down the transaction. This is true for both public and private transactions.

As I said earlier, we truly do understand that no two companies are alike. Similarly, no two corporate events are the same. Our team really works hard to understand the client's needs and objectives. Then, we can help with the right solution.

A one-stop paying agent and escrow combination combined with in-house investment capabilities is paramount.

Our focus is on providing the highest level of service to offer a seamless process with the client and a smooth transaction to the shareowners.

Because of this, we are often appointed as paying agent even if neither side of an M&A transaction is a client.

Back to regulation, what changes do you anticipate on proxy and annual meetings?

Trite as it may be, the only constant these days is change. While we cannot predict exactly what it will look like, we believe changes will continue to accelerate in this area and that it will continue to evolve.

To ensure we are ready for whatever comes our way, we are working with industry groups to prepare. Just one example is our focus and industry involvement around the "say when on pay" proposal.

We are very concerned about fees being charged to issuers for the street side of the voting and believe that having meaningful competition for this issue would be best for the industry.

Also, concerns around overvoting are continued as we still experience large instances each year. Overvoting trends are being reviewed with applicable brokers/banks.

Any suggestions on continuing to attract registered owners?

With shareowners having more of a voice than ever before, maintaining a registered shareowner base has never been more important.

It allows issuers to have direct communication to shareowners. And it is believed that registered owners tend to

hold shares for a longer period of time and will be more loyal to the board.

Investment plan services can help companies who wish to attract a registered investor base. Plans such as direct stock purchase plans and employee stock purchase plans make it easy and attractive for individuals to become holders in your company.

With our new Shareowner Online, shareowners can easily monitor, manage their accounts and make additional investments as your customized plan would allow.

What is your group looking forward to in 2011?

Many things, actually! In some ways, 2010 was a year of building a strong foundation and we will see the results of our labor in 2011.

Effective cost basis implementation. We will be well-prepared. While we expect this change will come with many questions from issuers and shareowners, we are confident in our ability to serve them better than anyone else.

Additional technology rollouts. Important but subtle enhancements will continue to be made to our online portals, with increased features and functionality. Also, we will be rolling out what we call our Customer Service Workstation. By making vital information more accessible to our shareowner relations contact center and account managers, we will more effectively and efficiently care for our shareowners and issuers.

Continued partnership with our issuers. This industry, perhaps more so than others, really values issuer feedback. We were fortunate to have won both of this year's industry surveys in the large agent category – as based on the feedback of our clients.

As always, working with an amazing team. This is something I personally am looking forward to. I truly believe I have the best team in the industry. The way they partner with issuers, serve shareowners and navigate sweeping changes such as cost basis and proxy reform, only make their skill that much more apparent. ■

Wells Fargo Shareowner ServicesSM

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STRENGTH is...

...about **CHARACTER**

When faced with adversity, look to those who remain professional.

...about **RESILIENCY**

When let down by others, look to those who focus on the road ahead and move forward.

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“We have built a company with a very strong culture. It is based on integrity... And it comes with a keen focus on business discipline... and on really understanding the needs of clients...and, most important, of putting the needs of clients – and of their investors – first and foremost.”



US Office (l-r): Theresa Matteri, Dr. William J. Catacosinos, Michael Maiolo, Sam Berrios, Francis Byrd, Wilton Davila, Karen Oppenberg, John O’Grady Jr., Marion Bertaud, Jason Montgomery, Frank Valenzuela, Bill Catacosinos, Sylvia Hermina, Bernard Lopez

US offices not pictured: James Catacosinos, Tracie M. Bollander, Richard Cruz, Kris Evans, Michael Gallagher, Mark G. Kutch, Kathleen Marion, Marie Pina, James Winkelmann

Canadian offices not pictured: Brad Allen, Der Allen, Christine Carson, Elyas Felfoul, Giovanni Martinez, Cyrille Morin, Hazel Perfinian, Meghan Power, Penny Rice, Jim Webster

An interview with Dr. William J. Catacosinos, Chairman of Laurel Hill Advisory Group, LLC and his senior colleagues

THE OPTIMIZER: You probably don’t know this, but we’ve been watching your career as a businessman for a very long time...But for starters, how did you go from a career in nuclear physics to the proxy advisory business? And can we call you “Dr. C”?

Dr. C: Yes, let me start, if you don’t mind, by telling you a little bit about my background...and then loop back to how it has helped to form the culture here – a culture that is important to know about if you really want to

know what The Laurel Hill Advisory Group is all about.

I come from an immigrant family that settled in New York City where my father ran a small grocery store on the edge of Harlem. I started helping out there when I was about six – arriving before the sun came up to wash the cigarette butts out of the deposit bottles, count deliveries to be sure the egg and milk cartons and loaves of bread were all there and stock shelves. A typical New York story: public schools – P.S.

173 – then George Washington High School...then NYU, where I got my bachelors and then a Masters degree. I worked as a reporter for a while to put myself through – great experience. Then the U.S. Navy. Then Officer Candidate School. Navy Discipline was a big formative factor for me. In four months of OCS you had to cram in about four years worth of learning. Then, I worked in a shipyard, building big ships...and soon ended up on a project team at Brookhaven National Laboratory where they were building ►

the largest nuclear accelerator in the world. We had a team of over 800 PhDs – in everything from basic physics to the life sciences. I had a great boss who enforced the same Navy-type discipline; Get in early, watch every penny, check every detail, work as a team; the gigantic project came in ahead of time and under budget.

One day a colleague showed us an invention he was working on his spare time – a device to monitor the functioning of unborn babies. A few of us started developing it at night and on weekends – scrambling for seed capital and eventually, an IPO – when we launched the first commercially successful fetal-heart monitor. Shortly thereafter, we sold out to American Home Products. At the same time, we started another company, replacing teletype terminals with smart ones. After an attempted bear-hug from a Canadian company, we sold that business too, to our biggest customer, NCR. Meanwhile, I had gone on the board of the Long Island Lighting Co. – where I soon discovered that while it looked OK on paper, LILCO was on the brink of bankruptcy. Drafted as chairman, I had to get the Board's OK to file for bankruptcy – but I was determined not to do so. We had over a million Mom and Pop investors to think about. We sold a nuclear facility that was 100% complete to New York State. With State help we refinanced our debt, we lowered rates, merged with Brooklyn Union Gas and sold off all our transmission and distribution businesses to New York State.

THE OPTIMIZER: And as I well recall you had a major proxy fight along the way. Is this what jump-started your interest in the proxy solicitation and advisory business?

Dr. C: Not yet...Soon after LILCO an investment banker friend called to ask if I thought it would be possible for a private investor group to take over a public utility. I was intrigued. A senior banker I knew bought into the idea, and sold his big New York City bank

on it; We bought Texas-New Mexico Power, fixed it up, and a few years later sold it to Public Service of New Mexico. But after that, I did get interested in the proxy solicitation and proxy advisory business: My son Bill was working for the legendary Artie Long, of the old DF King – and Artie and I had worked closely together too over many years, and were good friends. We'd seen it all: bear hugs, underpriced takeover proposals, proxy fights, corporate restructurings, unhappy shareholders; the works.

I'd been the CEO of four NYSE listed companies – and I have to add that at every one, any investor who stuck with us made money. There were a lot of common threads here in terms of succeeding: Discipline, determination, getting to work early, digging into and sticking tightly to the business details, teamwork, toughness when times were tough, a deep network of smart and trustworthy friends and associates that one could really rely on, a culture of service excellence...and of always trying to put shareholders first.

So this brings us back to where we start at Laurel Hill. We have built a company with a very strong culture. It is based on integrity...and it comes with a keen focus on business discipline...and on really understanding the needs of clients...and, most important, of putting the needs of clients – and of their investors – first and foremost." Let me turn the discussion over now to the president of Laurel Hill Securities, our broker dealer, John O'Grady.

THE OPTIMIZER: John, tell us a bit about your background.

O'Grady: I go back in this business about 14 years. I started Georgeson Securities back then and I led the M&A Advisory Team. I also specialized in reorganizing companies and in pre and post-bankruptcy activities. Right now, Laurel Hill Securities is ready to go live in all 50 states and the U.S. territories. This lets us cover Blue Sky Laws as a sponsoring broker/dealer and Infor-

mation Agent in smallish tender offers where companies can achieve a very quick and a very good Return On Investment – without the need to hire an investment banker.

THE OPTIMIZER: We have been predicting that there will be a lot of quick and "smallish deals" going down in this economic environment. Any tips for readers here?

O'Grady: Lawyers, please don't take this the wrong way, but attorneys should never speak to ordinary shareholders. This is an art – and a science – all in itself. And for an awful lot of deals, both big and small, retail investors – and retail brokers too – can provide the winning edge. The same thought holds true for drafting the fight-letters, and for mapping out the campaign down to the smallest, practical details...like targeting and making the calls. Our top goal here is to time the calls as precisely as possible to the arrival of the written materials, so shareholders will have a decent idea of why you're calling...and why it might be worth their while to listen.

Let me add something else, on proxy fights: We expect to see plenty of them going forward, including a lot of cross-border deals. They don't call them fights for nothing. In just the past few months we were involved in two very high profile fights in Canada. At Augen Capital, where we represented the dissidents, the judge of election essentially threw out all our client's votes. We said, "We need to go to court" – and at the end of the day, our client prevailed and installed his entire slate. The judge, who ruled that withholding a vote is not the same as casting a vote, specifically cited the expert testimony of our SVP, Penny Rice of Laurel Hill Canada in his ruling. At Live Current Media – incorporated in Nevada, but headquartered in Canada – and where insiders held 23% of the shares – and where ISS had recommended the management nominees – our client replaced the entire slate of incumbents...And with a 35% margin of victory.

THE OPTIMIZER: Let me turn to you Francis, to get your take on all this. Maybe you should start by outlining your background, which is a rather unique one, I think.

Byrd: As you know, I spent 10 years with the New York City Pension System, working on proxy issues and other corporate governance matters. This was during the very beginnings of the governance movement, and NYCERS was very much in the forefront. Then I moved to another spot altogether at the oddly-shaped “governance conference table” when I went to Moody’s. There, the main focus was on credit risk: a totally different perspective, for sure. We spoke with over 1000 companies, and published over 500 research papers. And this gave me the chance to speak with numerous CFOs – and lead-directors – and audit committee chairmen – and do some real deep-dives on risk assessment and risk management practices.

Dr. C: Francis can’t say this, but I can: He knows everybody who is anybody on the corporate governance scene. He knows who to call. And they will take his call. They may not always end up agreeing with him, but that’s OK too: They will have a good and meaningful dialogue, and they know that Francis will listen – and be a fair-dealer.

THE OPTIMIZER: These are two of my favorite points about calling people: First, if you DO call, investors want you to listen, rather than talk. And second, no one will ever tell you that they are not really the decision maker. You have to figure that out for yourself...otherwise you waste an awful lot of time and money. Do you put yourselves out there as people who can initiate meaningful discussions with investors, some of whom may have serious issues or gripes? And do you do a pre-assessment of a client’s own strengths and weaknesses before engaging in such discussions?

Byrd: You’re right; no one ever says “it’s not my job” – unless they know you really well, or figure you’ll find out some other way. A good contact will always direct you to the right place. And yes, we can and do want to serve both as “sounding boards” and as “fair dealers” to get candid comments from and initiate candid discussions with investors. And yes, we need and want to do our own homework first, and not to be surprised if people we call bring up what they think may be serious governance shortcomings.

And yes, we can bring a lot of value to CEOs – and to Lead Directors – and to Audit Committee and Risk Management Committee Chairmen, just by doing a high-level strategic assessment. Say we ask each of them to list the top-five strategic priorities; or maybe the five things that worry them the most...or the top-five strategic risks...or the top-five governance priorities. If we get widely divergent answers here, clearly, there are some problems that need addressing before we start “reaching out” to investors.

This kind of assessment does not have to be a “big deal” – nor should it be seen as one, ordinarily. We can do these kinds of assessments one-on-one, in person – or often, on the phone. But I think you’ve put your finger on something that is very important: CEOs and Directors – and activist investors too, for that matter – will really open up only to people they perceive as having the right background and the right kind of shared experiences – and shared goals – to make the discussion worth their time and effort. Here’s where our team really stands out from the pack.

THE OPTIMIZER: Fair disclosure before we ask Sam Berrios a few questions; The Optimizers’s editor first met Sam in a class he taught as a last minute “sub” when Sam was brand new to the industry. So Sam, what have you learned in all the years since then?

Berrios: Like Dr. Catacosinos, I still think that retail investors are very, very important to most public companies. As John said earlier, very often they are the “edge” that provides the margin of victory a company needs. And not just in a close proxy vote: many times a company’s retail investors are customers, or employees, or key suppliers... or maybe just friends and relatives of such people. But they are much more inclined to listen to management, and to vote their way.

On the flip side, way too many retail investors have too small a stake to really pay their way, so I am a great believer in programs that help people to either increase their stake, or cash out. On another important front, a lot of retail investors turn into “lost shareholders” if no one pays attention to them. So we are great believers in “asset reunification programs” – and we know how to make them work well for everyone.

THE OPTIMIZER: Let me ask very candidly about one last subject; your team: As you know, we reported recently on all the “talent” that took the elevator down one day, and rode another elevator up the next day. But first, who was responsible for the great ad you ran – which, we opined back then, was one of the best ads, and one of the best crisis-management pieces we’ve ever seen.

Dr. C: My son, Jamie, came up with the ad, I’m proud to say. After that elevator incident, he stayed up all night, tossing and turning, as I did too. The ad really does convey the kind of culture we’re so proud to have here...And I think it also illustrates a very important trait an organization has to have to succeed in this business over the long term: Resilience. You really do have to be something of a “prize fighter” to do well in this business. And you have to know that you won’t win every match. But you have to get up off the mat, stand up for what you do, and for what you believe in and fight again the next day with everything you have. That sums up our culture – and our team. ■



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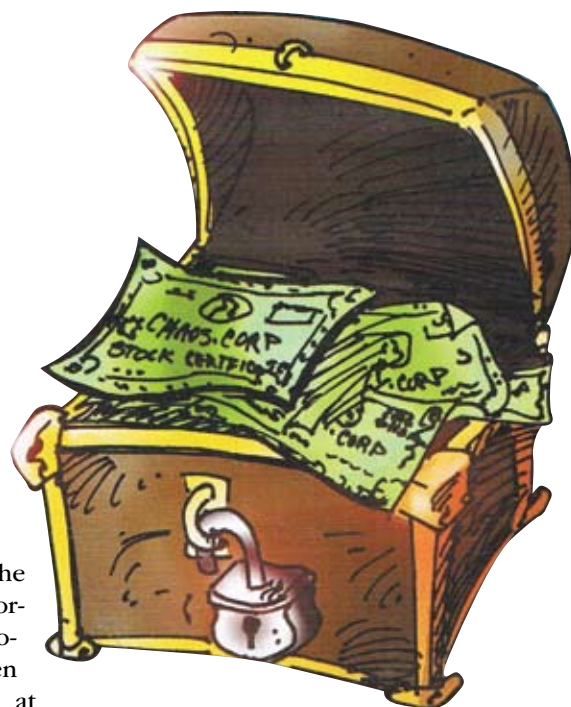
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Tales from the Crypt

HORROR STORIES ABOUT THE PERILS OF HOLDING ABANDONED PROPERTY from the **OPTIMIZER's** story vault... all of them absolutely true.



We've been warning readers about the many perils of holding abandoned property since our very second issue of the Optimizer, in 1994...and on a regular basis ever since. Its label alone is like posting a "steal me" sign. Fraudulent conveyances and outright thefts, come with regularity, year after year – from ones own employees, from ones vendors, if not chosen with particular care, and from a wide variety of outside moles and masqueraders, as the stories below will amply illustrate. And scariest of all, dear readers, if YOU are found guilty of being lax, or remiss in any way – you are at risk for the corporate death penalty.

Most frustrating to us is the fact that three simple things will completely prevent these kinds of horror stories from happening to you. Or, at the very least, they will demonstrate that YOU are not the one at fault if a bad apple does make off with abandoned funds, as ultimately, someone will if they are left lying around. We will save our three simple tips for the end...as the "morals" of our scary little stories. And readers, please note too, that there are a large number of firms represented in this issue that can keep you fully up to snuff here.

DANCING WITH THE STARS...circa 1975-80: Harry Evans was a truly wonderful guy, and a wonderful dancer. A former Arthur Murray dance instructor – in fact, an instructor of their instruc-

tors – he showed up at all the Corporate Secretary and Corporate Transfer Agent Association events – back when there was always dancing at such events – and he wined, dined and danced his way to fame and fortune as the representative of what was then the largest and best-known firm of professional "heir-finders." Everyone loved and trusted Harry, and felt that when they turned over the records of their lost shareholders to him, all would be well. Unfortunately for Harry – and for many of his admirers too – David, the heir-finder's owner's own heir apparent, was NOT such a good egg. In fact, he had a major drug habit. To finance it, he learned he could very easily "fill in" for the real heirs all by himself. Most of the time he'd simply forge powers of attorney in favor of his Dad's firm, (Markham, for you history buffs) have them notarized by an accomplice, present them to the transfer agent, collect the funds or shares and convert them to a nice "commission check" for himself...One fine day, the FBI finally came a 'callin' and David went directly to jail. Sadly, many of Harry's best customers had some serious dancing around and 'splainin' to do, back at corporate headquarters. And sadly, more than a few of them lost their own jobs in the end.

The next five short stories, all completely true, though with the names disguised, come from the second

issue of the Shareholder Service OPTIMIZER – in the Fall 1994 edition.

THE CALIFORNIA CON...ca. 1980:

Even though he was one of the lowest-paid employees of the State of California he really loved his work. "I love the feeling of power I have," he mused. "I love calling those big corporations and demanding, 'Give me the names of your top-ten holders of unclaimed property PRONTO! You'll be hearing from my office...and getting fined BIG if you don't comply right now!' This sure beats banging out license plates," he chuckled. "And it's a lot more lucrative. How I'd love to see their expressions if ever they find out I swiped their abandoned property while doing time at the California State Penitentiary!" *How many people fell victim to the legendary "California Con" by sending the names and last known addresses of their biggest lost holders to the P.O. Box of this State of California 'employee'? No one will ever know for sure, because, for sure, no one will ever tell.*

MR. BIGGIE GOES TO TOWN: "Mr. Biggie" was having a very bad day. Here he was, a "Politically Important Gentleman" – or maybe we should pass on that epithet and simply say a ►

former U.S. Congressman, which he was, who'd been hired to settle the estate of a very rich and very prominent former constituent. And some dumb cluck had fouled up BIG TIME! Two of the estate's largest holdings had been the subject of two-tier tender offers... and Biggie's own back office had failed to update the decedent's address of record. By the time they woke up, the stock had dropped more than 80% – for a loss of several hundred thousand dollars. The two companies were no help at all: in fact, they tried to blame HIM and his firm for failing to note that the estate hadn't been getting checks or other mail for over two years. But Mr. Biggie knew just what to do. He'd 'go to town' on those banks that handled the deals! They have plenty of money, and they hate bad publicity. He'd demand full compensation...with interest! He'd expose them in the press! He'd threaten a lawsuit! He'd write his congressman...in fact, he'd pay a visit, and demand legislation! *Do you think that Mr. Biggie had his way? Sadly, your edi-*

tor's boss back then caved in...and paid what Biggie asked...instead of turning him in to the State Bar Association as your editor-to-be was urging. And Mr. Biggie got the legislation he demanded too...which – ironically – specifically exempted property belonging to decedents – and corporate property too – two of the richest treasure chests of all, please note – from mandatory "search procedures."

LIFE IS UNFAIR: "A year to live, the doctor said. And here I am...a smart guy like me...stuck in a dead-end job. No money. No future. Not even a girlfriend to hold my hand. Life is really unfair" Joe thought as he prepared the weekly bond redemptions and initialed the check stubs. "But this week will be a lot more fun." It was laughably easy to punch in a few thousand extra bucks, and type up some extra checks, with the names and amounts drawn from the files marked "Returned by P.O. – Do Not Mail"...and to use the address of the nice looking lady next

door, who'd agreed to help him with a series of "very confidential financial transactions." No one even looked to see if there was a security for every redemption check that needed a signature. And most of the bondholders were already dead and gone, so the money would only end up with the State of New York. A mere drop in the bucket, and it would be mostly squandered anyway, he figured.

MR. BANKERBOTTOM MEETS THE LIQUIDATOR: "How humiliating" Mr. Bankerbottom fumed. "Here I am, a Senior Vice President of a major bank...dealing with THIS? Old Joe, wherever he is, has had the last laugh on me for sure: A fifteen thousand dollar diamond for 'the girl next door' appraised at \$3,000! A coin collection that brought twenty-cents on the dollar! A 700-pound coffee table! What did he care? It wasn't his money...and he thought his days were numbered. The \$5,000 parrot! That was the worst...until today. What a vocabulary! Totally

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unsalable...and it still hurts where it bit me. But now...the final indignity...liquidating Joe's \$100,000 library of porn films, all purchased with abandoned property." *Do you think this was the final indignity for Mr. Bankerbottom? It wasn't; he was fired shortly thereafter for this and other oversights that occurred on his watch...And "old Joe," when last anyone heard, miraculously recovered...except for the girlfriend, that is, who split as soon as she found out he was cured.*

NO GOOD DEED GOES UNPUNISHED: "What are you folks up to down there?" the normally unflappable Chairman of Manny Hanny barked into the phone. "I was on the ninth hole at my club the other day and this lawyer guy charged onto the green, complaining that someone in our Corporate Trust Department tracked him down, basically accused him of doing a bad job of looking after client assets, sent him reams of unrequested paperwork to fill out – including a gigantic bill, he said, for insurance to replace some lost bonds. He says we owe his client tens of thousands in interest." *Fortunately for us, and for our then new service to locate "lost holders" and return their property to them, our Chairman well knew two truisms about shareholder relations that are still very well-worth remembering: First, of course, is that no good deed goes totally unpunished... But next, and far more important, is the truism that "the noise-level – and the threat-level of a shareholder complaint – and the size and nature of the compensation they're demanding – are directly related to the degree of negligence on the part of the complainer.*

HERE ARE A FEW MORE HORROR STORIES INVOLVING ABANDONED PROPERTY FROM THE PAGES OF THE OPTIMIZER FROM 1998 TO MID 2010:

"Bankers Trust 'Trust-Bankers' Use Abandoned Property to fund their Christmas parties"...a story that broke just as their acquisition by buttoned-down Deutsche Bank hit the streets...

Then, worse yet, "Bankers Trust admits to converting \$19.1 million of abandoned funds to income"... and pays an additional \$60 million federal fine and a \$3.5 million fine or New York State. Meanwhile, **BofA settles charges that it diverted State & Muni Bond monies to income; pays \$187.5 million, of which the whistleblower, a former VP, gets \$22 million.** (May/June 1999)

THE OPTIMIZER cites an article by attorney Gerald Tishler **"Corporations May be Liable for Releasing Shareholder Lists to Search Firms"** warning that a "tracer's conduct is attributable to the corporation by virtue of the actual or apparent authority which the corporation or its transfer agent grants to the tracer"... and the possibility of lawsuits for "deceptive practices" under the Federal Trade Commission Act...or rulings that the fees were "unconscionable...wholly out of proportion to the reasonable cost of the search performed"...and that "any sharing of tracer fees directly or indirectly with the transfer agent or the issuer raises serious questions concerning the fiduciary obligations of the corporation or its agent to its shareholders." (January/February 2001)

"Ex-employee shareholders of Intel and Hewlett-Packard sue to recover the difference between the market value of shares sold as "abandoned" without adequate search procedures and the sales-prices that California received upon making the sales..." Where were those Plan Trustees, who could and should have found them with ease, we ask.

"Fortune-50 Company hands over abandoned property records to a 'finder' based on the finder's web-postings boasting 'hundreds of years of experience'; Finders abscond with the loot." (Second Q. 2007) Yikes!

"Transfer Agent promises to obtain 'forgiveness' from fines and penalties if a client allows them to hand over \$20 million in abandoned

property without doing any search and recovery efforts." What the T-A failed to tell its client is that said T-A will get a \$1 million+ finder's fee... while the corporate entity may be liable for shareholder claims that the company breached a duty to them, to track them down. (Second Q. 2010)

"The State of California is in the news again for abandoned property high-jinks...this time for demanding penalties and interest for 'late filings' that, after investigation, prove to have no basis at all." (Second Q. 2010)

So here, dear readers, are three simple things to keep in mind when dealing with so-called abandoned property:

1. Heed the judge in the landmark **Badger v. Tandy** case: **"A corporation should be cautious in handing around its record of missing stockholders. When a stockholder does not know what shares he owns in what company or the value thereof, the circumstances are ripe for overreaching...A company has an interest in protecting its shareholders from abuse."**
2. Heed the advice THE OPTIMIZER first offered in 1994, on investigating the track record of would-be vendors. (E-mail cthagberg@aol.com for a copy of the complete article...which is still precisely 'on the money')
3. Most important of all: Heed THE OPTIMIZER's advice to find lost holders as soon as they become "lost": Unlike the world of 1994, virtually every single shareholder, or their legal heirs if they are deceased, CAN be located today – with relative ease and efficiency – and reunited with the property that belongs to them. There is simply no need to HAVE a file labeled 'abandoned property' in this day and age...much less to turn shareholder assets over to State Agencies! ■

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From States “Reaching Out” to Shareowner “Out Reach”

By Karen Anderson

Unclaimed Property Recovery & Reporting, LLC

“To reverse the detrimental effects of these state ‘reach out’ initiatives, issuers and transfer agents must be proactive in maintaining shareowner contact to curtail securities escheatment.”



Augmentation of state revenues plus the desire to avoid liability from unclaimed property owners/shareholders are the motives for three major, relatively recent “reaching out” initiatives by state governments. The repercussions of these initiatives have been costly and time-consuming for issuers and transfer agents, but may be the catalyst to enhance procedures to “reach out” to shareowners to prevent property from becoming escheatable. This article outlines the three major state initiatives, and discusses some potential reactions and adaptations that issuers and/or transfer agents may consider.

THE STATES “REACH OUT”

1. Changing Unclaimed Property Requirements

Arizona, Michigan, and Indiana are examples of states that enacted laws in 2009 or 2010 that shortened unclaimed property dormancy periods and/or reporting dates in order to increase state revenues due to a poor state and national economy. When dormancy periods are reduced, the state receives a one year windfall of additional cash for the years that are caught in the dormancy period reduction.

For example, when a state reduces the dormancy period for uncashed dividend checks from 5 years to 3 years, the property that is 4 or 3 years old, which would not be reportable yet if the reduction hadn’t occurred, is now reportable along with the property that

is 5 years old. This gives the state 2 years worth of extra property that year. This trend of “reaching out” to businesses for increased unclaimed property remittances is the “IN” solution for many states to supplement sagging state revenues.

In addition, note that many states are stepping up imposition of penalties for inaccurate or untimely reporting of unclaimed property. Florida and Montana now routinely charge penalties for late filing. Both states have begun to send notices if reports have not been received, and if property appears to have been reported late, they assess penalties and interest for late filing.

2. More Audits – and Unclaimed Property Law Enforcement

Another measure designed to increase state revenues is the expansion in the number, scope, and complexity of unclaimed property audits. During the past few years, states have “reached out” to more businesses (including financial institutions, brokerages, insurance companies, mutual fund companies, etc.) by initiating unclaimed property audits, asserting novel theories of escheatment, and assessing interest and penalties when compliance does not comport with the new theories. As many states are subject to hiring freezes, the states utilize third party contract auditors. In most instances, these auditors are paid a percentage of the unclaimed property they discover,

thereby incenting thorough, and frequently burdensome reviews

In addition, some states have changed how they handle businesses that reach out to them in an attempt to become compliant voluntarily. For example, Florida previously limited the “look-back” period to 5 years for those businesses that initiated voluntary compliance, as opposed to state mandated audits, which require 10 year “look-backs”. Recently, Florida eliminated the limited “lookback” incentive for holders who voluntarily become compliant, and now requires 10 years of reports.

Similarly, consider that in 2010 Indiana and Pennsylvania reached out to businesses by providing amnesty windows to permit businesses that had failed to comply to come forward voluntarily with make-up filings, without the imposition interest, penalties, or costs. The amnesty period for both of these states expired on November 1, 2010. An Indiana state government official who spoke at the July, 2010 regional conference of the Unclaimed Property Professionals Organization (UPPO) indicated that the amnesty period was a chance for businesses to come into compliance before the state began taking more aggressive enforcement measures.

As noted, the states are continuing to “reach out” by strengthening enforcement, and it is anticipated that these ►

efforts will accelerate and become more contentious.

3. Due Diligence Requirements Amplified

Another trend in unclaimed property laws has been to tighten state requirements for performance of due diligence. A recent federal court case in California has spawned concern that the states may be held liable for violations of the United States Constitution if insufficient attempts are made to contact owners prior to escheatment to the state. In reaction, the state changed the California Unclaimed Property Law to require that a business must take reasonable due diligence measures. Holders who do not comply will not be afforded the statutory release of liability provision for property remitted to the state.

Further evidence of the states' renewed emphasis on due diligence is the new language on some states' report cover sheets. At least 12 states now require the holder's representative to attest that the business has complied with the due diligence requirements of the pertinent state statute. One of the most stringent requirements is that of the Virgin Islands, wherein the holder must provide an affidavit attesting that the holder has complied with the due diligence requirements of the law.

ANALYSIS

The state initiatives described above are pressuring businesses to re-evaluate their policies and processes with the objective of reducing their risk by minimizing the existence of unclaimed property. Minimizing unclaimed property permits the business to curtail time consuming and costly compliance requirements. In addition, mini-

mization permits the business to avoid penalties and interest for incomplete or inaccurate compliance, and limits the time involved and possible findings in a possible future unclaimed property audit.

For transfer agents and securities issuers this means turning the tables on the state "reaching out" initiatives by creating proactive shareowner "outreach" designed to establish contact with shareowners or, in some cases, their beneficiaries. Maintaining contact is a best practice resulting in business retention, and it prevents the running of the unclaimed property dormancy period and the triggering of state unclaimed property provisions. Suggested practices include:

1. Expedient telephone, email or subsequent mailing follow-up with shareholders after one mailed or emailed item (i.e., dividend check, proxy statement, etc.) is unresolved or returned as undeliverable. Such follow-up may include database searches for a better address, or possibly linking of active accounts to the inactive account of the shareowner. Reaching out to shareowners soon after one returned item will result in a greater number of "reconnections" with shareholders as the tracking trail will be warmer.
2. Collaboration between the issuer and its transfer agent to confirm the address information of shareowners such as those who are current and former employees of the issuer.
3. Consistent procedures for the capture of changes in shareowner address including the cross referencing of address information in multiple accounts, recording forwarding address

information listed on mail returned from the post office, and address confirmation when a shareowner contacts the issuer or transfer agent via telephone or the internet, etc.

4. Address update reminders should be included in all shareowner mailings and emails.

5. Periodic requests to shareowners for review and update of beneficiary contact information.

CONCLUSION

To reverse the detrimental effects of these state "reach out" initiatives, issuers and transfer agents must be proactive in maintaining shareowner contact to curtail securities escheatment.

The unclaimed property regulatory climate and the desire to minimize risk should be motivation for issuers and transfer agents to create or enhance their shareowner outreach procedures. ■

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For information about developing a comprehensive shareowner outreach program, "reach out" to:

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kanderson@uprrinc.com

Jennifer Borden, Boston
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¹Florida Administrative Rule – FAC 69I-20.011, .021 through .031, .034 through .036, .038, .040, .050OAC 735:80-7. Notice of rulemaking occurred on 2/20/09. Rule adopted 4/7/2009. In this administrative rule modification, Florida removed language that shortened the "lookback" period to 5 years from 10 years for businesses that enter into a voluntary disclosure arrangement.

²Taylor v. Westly, No. Civ. S-01-2407 WBS GCH (U.S.Dist.Ct.E.D.Cal. June 1, 2007). This decision was based on a decision and remand by the United States Court of Appeals for the Ninth Circuit.

³California Assembly Bill 1291, signed into law 10/11/09, modified Section 1560 of the California Unclaimed Property law as stated. (See also Azure Limited v. I-Flow Corporation, California Supreme Court, Slip Opinion No. 164884 (July 16, 2009)).

⁴Virgin Islands Code, Title 28, Chapter 29, Section 658 paragraphs (e)(3) and (g), respectively.

New Team, New Keane

Venio LLC, has purchased The Keane Organization's Investor Communication and Retention Solutions and Unclaimed Property Services Divisions.

The combined company joins the two largest and most recognized forces in unclaimed property, compliance, and consulting. The new firm will continue forward in the market under the name Keane.



(l-r) Nick Nichols, David McCrystal, Debbie Zumoff, Mike O'Donnell & Scott Gallagher

We interviewed CEO Mike O'Donnell, CCO Debbie Zumoff, COO Nick Nichols, EVP of Sales Scott Gallagher and EVP of Marketing Dave McCrystal to learn more about their new company and their plans for Keane in the future.

Why does combining Venio and Keane make sense now?

O'Donnell: There are really several reasons. First, both companies have experienced strong growth and are at their historical peaks. Second, the businesses are complementary as they each have strengths in different niches of the unclaimed property market. Finally, with clients and pros-

pects of all types facing heightened unclaimed property pressures, we believe that there is an opportunity to take the lead and provide clients with a clear, comprehensive suite of solutions.

Zumoff: The environment we're in is a big driver. With the growth of unclaimed property regulation and audit intensity, companies are look-

ing for a single-provider that can help them address any situation. We provide companies with the peace of mind, that if it is unclaimed property related, Keane is the right choice.

Nichols: Also, looking at it from a customer perspective, our service level is unmatched. From communications, to consulting, to compliance, we have the operational skill and ►

professional expertise to do it all, and do it in-house. We won't be outsourcing jobs and sending client records to other service providers to get things done. We are a one-stop solution.

How will the “new” Keane be different and better than the original Keane and Venio?

O'Donnell: As Nick said, Keane is the perfect choice for companies who want a single partner who can reduce the cost and burden of managing unclaimed property and compliance issues across their organization. From shareholder services and investor relations issues to finance, accounting and tax department issues, when it comes to unclaimed property, Keane does it all.

McCrystal: Collectively, we have a set of core competencies in the unclaimed property space that makes us unique. With the team and infrastructure we have in place, we can address any need with the highest level of expertise and service – from communications programs and data analysis to consulting, audit defense, and annual compliance reporting.

Gallagher: The best news is that the impact will be almost immediate. By expanding our range of service offerings we will bring greater value to our existing clients as well as to new clients, whether they're corporations, mutual funds, banks, brokerages or transfer agents.

What is the number one reason why companies should choose Keane as a service provider?

O'Donnell: Customer service is first. That's my commitment to all of our clients. Obviously, both companies have built a remarkable list of satisfied, long-term clients because we both have high stan-

dards. But we're going to preserve the very best aspects of each firm and invest in making our service levels and our range of services even more extensive.

Nichols: To add to what Mike said, we were recently rated first in customer satisfaction and loyalty in Group Five's 2010 Shareholder Services Industry Satisfaction Report. We're excited to now build on that leadership position with the combined teams. The new Keane will be able to provide service levels that are unmatched industry-wide. A key component of that service level is results. One reason we offer clients the best results in the industry is because we have the largest and most experienced team of researchers and genealogists, with over 50 specialists dedicated to helping clients reconnect with their shareholders and customers. There are many members of the team with more than 10 years of experience in this specialized field. It's a capability that clearly differentiates us in the marketplace.

McCrystal: Another important part of that service level will be the flexibility and innovation we offer clients. We really put the client in control. After all, it's your shareholders, your data, and your customers that we're handling.

Gallagher: Yes, and we have a transparent process that lets clients choose the service options that are most appropriate for them. We start with great analysis and insight into their shareholder or customer records and then give clear service choices. Then we follow our communication programs and consulting projects with reports and deliverables that clearly demonstrate the retention statistics, cost reduction and risk mitigation so that the value will be understood by upper management.

Zumoff: A desire to follow best practices is another big reason to choose Keane. Beyond the team of consultants that we have in the field, we have a team of legal and compliance experts that are constantly reviewing on-going legislation and researching the impact of new state and federal regulations. This helps us ensure that we are providing the best, most up-to-the-moment information to our clients. This not only ensures compliance but helps our clients stay ahead of the curve and to anticipate any operational impacts early.

What immediate changes will we see in the marketplace?

O'Donnell: Clients won't see much immediately because we expect a seamless integration with minimal or no impact on our clients' operations. Moving forward, our clients can expect to receive greater levels of customer service, and over time, a broader and deeper selection of compliance, communication, and consulting solutions. Our goal is to provide clients with a customer experience and range of solutions that is truly unique in the marketplace. ■



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