THE SHAREHOLDER SERVICE

OPTIMIZER

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

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CUT COSTS/REDUCE RISKS: TOO GOOD TO BE TRUE?

OUR TOP-TWO MEGA-MONEY-SAVING/RISK REDUCTION TIPS FOR 2014…BOTH OF THEM EASY TO IMPLEMENT TO BOOT!

Definitely sounds counter-intuitive, we know…since in our own long experience, cost cutting strategies tend to create a host of new risks - many of which can lead to actual losses short-term:

Fewer people to handle required tasks and get them right the first time; suppliers having a field day – quietly but quickly moving to ratchet up fees and expenses while undertrained and over-stretched newbies are still blissfully ignorant: Workers fretting about their futures – constantly looking over their shoulders, sharing worries at the water cooler – and taking their eyes and their minds off the tasks at hand.

And yes, in our long-experience, across-the-board staff cuts sometimes lead to subtle and not-so-subtle sabotage – and sometimes to outright thefts, both of tangible and intellectual corporate property.

But there's nothing like that here: Our top two tips for 2014 are simple, easy to act on and yes; acting on them WILL reduce both the costs – and the risks associated with having shareholders.

And most companies will be astounded by the size of the potential savings that will be revealed…So here goes:

1. Ask your transfer agent to produce a list of all your registered shareholders – with any and all dividend reinvestment plan positions consolidated for each holder on the list – beginning with the smallest holdings, please, right on down to the very end.

   Transfer agents should also be able to show the totals – and the cumulative totals – and the percentages and cumulative percentages of the shares outstanding that are held by all of the sub-groups; say in the less-than one share group, the 1-5 share group, 6-9 share and ten share group, etc., etc. Thus, you will see at a glance the percentage of your

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total spending budget that is spent on people with "immaterial investments" in your company.

2. Make sure that "lost shareholders" – i.e. where any of their property has been, or might be deemed "abandoned" will be prominently indicated on the list…so you can deal effectively with the "risk reduction" part.

HERE'S WHAT YOU ARE LIKELY TO DISCOVER: ***If you are like most of the many public companies whose shareholder lists your editor gets to review each year, up to 80% of all the money you spend on registered shareholders is spent on people who hold less than 4% of your shares! And guess what? Your street-name shareholder profile will often look exactly the same.***

HOW DID THIS TOTALLY WACKY SCENARIO COME TO PASS? The most common cause is when long-term shareholders go to sell and can't come up with some tiny portion of their position – usually a stock certificate issued as a stock dividend, way back when…Another common thing – especially in DRP and DSPP accounts – is when the holder sells all their shares – but Ooops – right after a record date. (Who knew??) So the dividend gets automatically reinvested by the TA – and often by brokers too, who offer "automatic dividend reinvestment" to their retail investor clients. And one last thing – a dirty little secret at some TAs – many of them quietly dropped – or simply fail to enforce the old-time clause in traditional DRPs and DSPPs – that when a participant sells all their full shares, the fractional shares will be automatically liquidated, so the account will be fully "off the corporate books."

NOW FOR THE "RISK REDUCTION" PART: ***As we have been warning over and over, over the past 20 years, having "abandoned property" on your books is an inherently risky thing – in not just one but two important respects:***

First, the label alone is like waving a welcome flag in front of thieves. Not only will all sorts of bad people (including some unscrupulous vendors, outside 'heir-finders' – and yes, maybe even your own employees) try to steal it away, many of them think they're doing nothing wrong…since, after all, it was 'abandoned.'

Second, and this risk is becoming bigger every day, state Treasurers have been ramping up their efforts to declare shareholdings "abandoned" – so they can seize them – and sell the underlying shares - to balance their budgets. At least 30 states are asserting that unless the issuer can prove there has been recent "contact" with a shareholder, the assets can be presumed "abandoned." So all those folks who are in DRPs or DSPPS, which they think are running on "automatic" are at risk of losing their investments for lack of "contact" with your company. Same deal for shareholders at non-dividend paying companies – who have no reason at all to "contact" you. Same for non-US shareholders – many of them employees of yours – who don't want to cash smallish checks and/or pay big fees to do so: Delaware, for example, asserts that these "abandoned funds" – plus the underlying shares – belong to THEM!

Worst of all, the vast majority of states will only return the sales proceeds – regardless of how many dividends may have accrued – and how much the stock may have appreciated if and when the rightful owners come forward.

This leaves your company, dear readers, ripe for lawsuits – since some fraction of these people – or their heirs – WILL come forward each year. And here, given the high costs of dealing with them, coupled with the fact that the issuer IS required to 'do right' by its shareholders, there is simply no way for an issuer to 'win.'

NOW FOR THE "IMPLEMENTATION" OF OUR TOP-TWO TIPS:

First, deal quickly and effectively with all those "cling-ons" who do not have a material investment in your company. Do it NOW – in time to book all of the savings that will arise in TA and related Annual Meeting fees and expenses.

For starters, go to our website, **www.optimizeronline.com** and look under "The Basics" for our discussion and top-ten tips on conducting successful small shareholder buyback offers. Please be sure that any deal you strike with any of the many potential suppliers out there represent a good deal for YOUR COMPANY – and for your shareholders.

Second, engage a truly excellent firm to find as many of the so-called "lost shareholders" as you possibly can. We used to say "don't spend $10 to find someone with $.10" but NOW…we see that the dime's worth can actually grow into a big number over time – especially when you consider the underlying value of the shares themselves – and who wants a lawsuit over it? Plus, it's easier and cheaper than ever to FIND lost people, who will mostly sell their forgotten stakes and get off your books and records anyway.

But the biggest reason to find lost people – instead of simply escheating the shares - is to totally deprive those greedy states of the money – so that when they come in for one of their totally over-the-top, all-consuming and expensive "surprise audits"...Surprise! There will be nothing to audit, and thus, no reason for them to ever return!

ANNUAL MEETING SITE SELECTION

Yes, we know that by now, most every company in America has chosen the site of its 2014 Annual Shareholder Meeting. Most companies pick the spot and sign any contracts that are needed almost a full year in advance, and sometimes even further ahead.

But over the past two or three years we've seen many companies decide to make a last-minute change – in light of breaking events or the potential for 'unusual" attendance or activities – or to change up their usual meeting "drill" – which requires a fair amount of frantic scrambling. And we've also wanted to collect the many tips we've published about site selection into a single document…so here we go:

For starters, and as we've said before, we heartily agree with Danette Smith, Secretary to the Board of UnitedHealth Group, that "a corporate site, where the company can be in complete control, is the best choice." This is also an excellent choice for smallish and medium size meetings, where there will usually be a nice "down home" feel, plus a sense of prudent frugality. But sometimes–and typically where there may be potential space constraints, or other potentially more serious "crowd control issues" - there are situations where the company can not easily be in total control of the event on its own, nor should it want to be.

In situations like this, a large hotel tends to be the best fallback provision, since they are used to, and are usually well-staffed for such events. They are also used to working with their clients' security staff – and with local police, and, as we've also noted, they can enforce strict rules about picketing – and where and where not potential meeting-goers can go on their premises. And, maybe best of all, they – and not you and your company - get to be seen as the "bad guys" if really strict enforcement measures are needed. Yet another good thing about using a hotel is that they can usually make some quick adjustments in the space – to shrink it if fewer than expected show up, or supply an "overflow room" – with A-V feed – if you have way more people than expected. And finally, in your editor's long experience, people tend to be on much better behavior in a nice hotel that they might be in a facility they think of as "theirs."

Another of our top tips is to pick a "nice city" – one that is nice to go to, and that is noted for being "hospitable" – and ideally, for being particularly "polite" and maybe even a bit "proper." Another big plus as a rule, is a city where you have many happy employees – and clients – and investors – and local fans. Some of the nicest shareholder meetings we have attended have been in cities like Louisville, KY, where we saw more hats

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REQUIRED READING: Kristina Veaco and Cheryl Sorokin, The Role of the Corporate Secretary: Facilitating Corporate Governance and the Work of Corporate Boards, 96 Corporate Practice Series (BNA)

Quite literally, everything you need to know about the above-captioned subject matter – written in a very clear and engaging style – with a thorough and easy to scan index right up front.

It provides a wonderful and up-to-date overview of the role of the corporate secretary - including a discussion of the necessary skills and personal characteristics needed for the position, practical advice on working with the board - and with shareholders - a discussion of the secretary's role in entity management, supporting subsidiaries and other legal entities – and guidance on many other management, board and administrative functions a corporate secretary is typically engaged in these days.

The text has lots of helpful headings, sub-headings, comments and footnotes…and maybe best of all, a host of Practice Tools – with templates for most every document a corporate secretary is ever likely to need.

Full disclosure: Your editor has known both authors for many years – and thinks they are absolutely tops at what they do, and at what they have done with this invaluable portfolio of information. And he did volunteer to read several sections and provide a bit of input on a few technical and operational issues. But judge for yourselves: We say, "An absolute 'must have' desk reference"…and feel sure you will agree.

on men and ladies alike than we've seen in 30 years, Omaha, NB – a pretty close runner-up in the hat & glove and politeness department, Vancouver, BC… Princeton, NJ and New York City itself, which really is one of the great destinations and one of the most hospitable cities anywhere…unless your company gets creamed that month in the local papers, that is.

A very important consideration in picking a venue – and especially a "nice city" – is to check with the Chamber of Commerce – and with the police etc. - to know exactly what other big events will be taking place in that city the week of your meeting. No way to even *be* in Omaha the week of the Berkshire Hathaway meeting; No need to be caught up in the Earth Day Parade going by your hotel if you might have "environmental issues" for example.

Many companies still try to pick "nice venues" in nice cities – like concert halls, art museums or other local attractions. Interestingly, a "cultural venue" rarely increases meeting attendance vs. last year's "average meeting hall." But do think twice on this – especially if it is an *"especially nice"* venue. Despite the fact that such venues have given your editor the opportunity to say that he has "sung on the stage at Carnegie Hall, the Metropolitan Museum's Grace Rainey Rogers Auditorium, Symphony Hall in St. Louis… and Philadelphia" and many other famous places (way before the meetings began, of course) he is not a big fan of such places IF there are any serious "security concerns": Most museums and concert halls – and most corporate headquarters buildings too – are simply not well designed to deal with potentially *unruly* crowds.

A really great site if you have a "medium-size" meeting is a university or university hospital teaching center. The best part is that all the otherwise expensive A-V setup you need tends to be built into the auditorium… And here too, people tend to be on their very best behavior.

For many companies that have "smallish attendance" the number-one best site is often a conference room at their outside counsel's headquarters. Typically, building security is tight as a tick (though not really geared, please note, for a crowd.) Also, the price is right (often a total freebie) and the coffee pot is always on. Usually, it's easy to schedule Committee meetings before and after – and for Directors to make quick ins and outs.

And let's not forget CYBERSPACE: More and more companies each year are choosing to have "virtual only shareholder meetings" – which can be especially nice if you have many out-of-town and/or out-of-USA directors. They also leave a neat, permanent and public record of the proceedings, right there on the web.

As a long-term and still frequent Shareholder Meeting-go-er – and still a big believer in the major shareholder value that a well-run shareholder meeting can create (and which, by the way, a badly run meeting can *destroy*, so stay alert) your editor loves the idea of "Hybrid Meetings" where people can come in person if they wish – but where any interested party can tune in to see and hear the proceedings – and check out the management – and yes, hear from shareholder proponents too – and get a good sense of what kind of company you ARE.

ON THE SUPPLIER SCENE:

Index provider MSCI will "review strategic options" for its **ISS** unit - looking to sell or spin it off - they announced in late October. Founded in 1985 and acquired by MSCI in 2010, along with its parent **Risk Metrics** for a whopping $1.55 billion, ISS has more than 1,700 clients and over 500 employees. The total third quarter revenue for MSCI's overall governance business was $29.6 million, accounting for 11% of MSCI revenues. No further info will be released "unless and until a decision is reached on a specific deal or the review is terminated" their press release stated.

Big-Four accounting firm PricewaterhouseCoopers, with some $32.1 in global annual revenue, is set to acquire **Booz & Co.** – the management consulting company – with approximately $1 billion in annual revenue in 2012, according to a 10/31 WSJ article. (Booz is no longer related to **Booz Allen Hamilton**, the corporate governance consulting company that peeled off in 2008.) It will be interesting to see how this big new bet on management consulting plays out at PwC – and for its many audit clients – and at their audit committees - since SOX bars many kinds of consulting arrangements with audit clients.

ANOTHER FUN STORY FOR OUR "HISTORY" SECTION:
HOW *INDEPENDENT* INSPECTORS OF ELECTION CAME TO BE...WITH SPECIAL THANKS TO MISTER SMITH ...AND MISTER JONES

We've been wanting to tell this story for some time, since there are several important lessons here – plus an interesting bit of 'historic trivia' – since state laws require that there be Inspectors of Election but are silent on the "Independent" part, assuming, we assume, that the Inspector's Oath to exercise the duties "with strict impartiality and to the best of my ability" should adequately serve the purpose.

It is an especially funny story, we think if you ever saw any of the colorful cast of characters in action – and one that features the Shareholder Services Association's beloved mainstay Jim Smith, in whose honor the SSA's now fully-funded college scholarships for especially deserving children and grandchildren of SSA members is named.

Let's start with Jim Smith's version:

The move to having *Independent* Inspectors began either in 1968 or 1969, he recalled, at an ITT annual meeting where the inimitable Evelyn Y. Davis needed 3% of the votes in favor of her proposal to resubmit it the following year.

Up until then, most Inspectors were employees, or sometimes retirees of the company itself. We, at the Old Manny Hanny, used to use our most recently retired Corporate Secretary, assisted by a priest, a nun, a rabbi and a Baptist minister: Can you believe it? They'd come in for a little tour to review and admire the process, after which they would adjourn for a nice lunch. Then, after the meeting - where they'd all been brought up on stage, to be solemnly introduced - there would be a little stipend to take away as a thank you. Let's also remember that back in those good old days, the typical results were Company: 99%; Proponents: 1%...but we digress…

From left: Jim Smith, Charlie Garske, Hank Beloin of ITT, Ed Maher of Manufacturers Hanover Trust, Kay Hurley, Larry Lyons (ITT) and Joe Unger, also of MHT, who served as Inspector of Election with Eddie at the 1978 Annual Meeting in Oklahoma City.

Here's the way your editor's mentor and friend, the late, great Bob Byrne of the "Old Manny Hanny's" Corporate Trust and Agency Group recounted what came next:

When the votes were announced, Jimmy recalled, the percentage of the votes in favor of Evelyn Y. Davis's proposal worked out to be 2.99%.

"Who counted those votes, Mr. Chairman?" she shrieked. "I want to know right now! This has never happened to me at a single other meeting this year!"

Robert A. (Bob) Byrne and wife Lynn ca. 1992.

"Immediately, there was a huge flurry of activity around the dais – kind of like a football huddle with only seconds to go. In less than a minute, a note was handed up to the famously fierce ITT Chairman, Harold Geneen. He unfolded it, and – what great stage presence he had – a seemingly genuine smile slowly began to form on his usually scowling face:

"Well, Mrs. Davis, this may sound kind of funny to you at first…but the votes were counted by two employees of our Treasurer's Office who manage our stock transfer and recordkeeping operation… Mr. George Jones and Mr. James R. Smith." Even

Evelyn Davis had to laugh" Bob recalled…"Though not in a really nice way."

But Geneen was totally prepared, before Evelyn could say a single word: "*I can assure you, Mrs. Davis, that even though I feel certain that Mr. Smith and Mr. Jones have done a completely thorough and accurate job, we will double check everything, and will publish the final results in our first-quarter report.*"

And indeed, anyone would bet their own life that Messrs Smith and Jones – who had the legendary Harold Geneen to answer to directly – had done a better and more careful job than any outside TA was doing back then, when the millions and millions of proxy cards that were mailed back were sorted into piles - according to the various 'vote patterns' - totally with human eyeballs and totally by hand - before being tabulated.

Of course, no correction was necessary. And Evelyn Y. Davis did what she had to do – and simply submitted a *different* proposal at ITT the following year.

And *that* year, Bob Byrne came back with another Manny Hanny colleague, to serve as ITT's *Independent* Inspectors of Election - a role they continued to play for many, many years.

And gradually, more and more of the Inspectors of Election at annual meetings were selected to be "Independent" of the company too - although a lot of them are still "inspecting" their own work – which is not really a best practice or a smart one, we say…

And most of them lived happily ever after, except for the few cases each year when something goes wrong – maybe a number is transposed – or even dropped – or the percentage is calculated using the wrong denominator…and nobody notices until it's too late to fix the "Final Report" – which is still a hanging offense in the corporate world…

Quotes of the Quarter:

"Who's going to invest knowing they're set up to lose? If investors don't have confidence in the essential equity of the markets, there will be no markets…A lot of us here are probably part of the 'dumb money' because that includes everyone who doesn't have a supercomputer capable of flipping tens of thousands of shares in a nanosecond and access to market-moving information just a tiny bit ahead of everyone else."

Eric Schneiderman, New York Attorney General in the September 28th Wall Street Journal, commenting on the early release of market-moving data to paying customers by Thomson-Reuters and a trader's characterization in the WSJ of average investors as being the "dumb money."

"There's a sense that things are not fair…I think the secondary market that takes advantage of people that have to trade or have poorer information is not particularly warranted or helpful or sustainable. I think the market model is going to change. I think people in the business want the change…"

Jeffrey Sprecher, chief executive of the **IntercontinentalExchage** Inc. on the eve of its takeover of **NYSE Euronext**, as quoted in the November 6, 2013 *Wall Street Journal*

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Telephone (732) 928-6133 Fax: (732) 928-6136
e-mail: cthagberg@aol.com | www.optimizeronline.com

PEOPLE:

The inimitable, unflappable and mostly indefatigable **Charlie Rossi** has decided to retire from **Computershare** – and as President of the **Securities Transfer Association** - after 30 years of truly outstanding service to the securities industry. Charlie is currently being feted in a series of five or six "retirement parties" around the country this holiday season, and in December, he was honored by the Shareholder Services Association with the Tony Firemen Award, named for one of the SSA's most devoted contributors and volunteers, and the SSA's highest honor. And, more good news, the indefatigable Charlie promises to continue to volunteer his efforts on behalf of the shareholder servicing and transfer agency communities from his new home-base in Florida

Several changes involving key personnel at Continental Stock Transfer and Trust…**Les DeLuca** is leaving the stock transfer industry to return to Citibank; industry veteran **Jeanne Schaffer**, formerly of **BNY-Mellon**, joined Continental in December as a Senior Account Manager; **John Ulla**, a former Chair of the **STA Operations Committee**, and a veteran of **Computershare** and **BNY-Mellon** has signed on as a Senior Operations Manager; sales whiz **Karri Van Dell** has been appointed President of our favorite regional group, **MSTA** (the Mid-West Stock Transfer Association and the sole survivor, we think, of the once many regional STA sub-chapters) and another of our favorite people, industry veteran **Margaret (Maggie) Villani** has been promoted to Director of Account Management, reporting to one-time **Manny Hanny** veteran and Reorg wunderkind, **Mark Zimkind**.

Sad news for long-term **Shareholder Services Association** members and meeting-goers – **Vincent (Vinnie) Cianfaglione**, who accompanied his spouse and long-term **BNY-Mellon** employee **Norma** at so many SSA conferences, passed away suddenly, in late October. Everyone we've spoken to said basically the same thing about Vinnie: Always smiling, no matter what - Vinnie served as a one-man welcoming committee at every event he attended. He will be greatly missed.

OUT OF OUR IN-BOX: "DELAWARE, DEN OF THIEVES?"

The eyecatching headline of a November 2 NY Times Op-Ed article by former Treasury Dept. special agent John A. Cassara, asserts that "the money trail" for financial crimes like money laundering, terrorism financing and tax evasion by organized criminals and corrupt politicians worldwide "leads to the American state of Delaware" (and, to a lesser extent to Nevada and Wyoming) where anonymous companies with anonymous beneficial owners are creating a "race to the bottom" as Delaware and other states "try to attract incorporation fees" from criminal shell companies.

"It's no surprise that officials in Dover and in Wilmington want to protect their state's status as a corporate registry" the author says – and business incorporation fees amount to roughly 1/4th of the Delaware state budget…"but if that means facilitating criminal activity, their stance is a form of willful blindness. America must require uniform corporate-registration practices if it is to persuade other nations to cooperate in the fight against financial crimes."

***We say* that articles like this - when coupled with the truly scandalous behaviors of the Delaware Treasury Dept. to lay claim to purportedly "unclaimed property" – and to seize it and sell it to balance their budgets – and then to refuse to replace the assets in full – despite the fact that less than 2% of all "lost holders" ever come forward…not to mention Delaware's four-year scam to drum up new businesses via "closed arbitration forums" – finally declared to be unconstitutional – are seriously impacting Delaware's claim to be the forum of choice for companies that believe in "good governance." Let's hope that Delaware wakes up fast, because their vast trove of case law is a national treasure that they - and we - would hate to lose.**

THINK YOU HOLD "IRREVOCABLE PROXIES" TO BACK UP VOTING AGREEMENTS WITH LARGE INVESTORS AND/OR DISSIDENTS? THINK AGAIN!

Three times is always the charm for us with respect to potentially troublesome issues – and sure enough, three times in the past four months we encountered "issues" with shareholder meetings where management had trouble perfecting what they thought were "irrevocable proxies" that ran to them.

Yes, you can have a legally binding voting agreement, where one or more voters agrees to vote as management directs on some or all issues, and typically the agreement grants an "irrevocable proxy" to a designated officer of the company, as it should .

But major problems can arise because of the mostly-paperless way that proxy systems work these days: Where IS that "irrevocable proxy" you think you are "holding"? How, exactly, do you go about executing it? And sometimes, dissident shareholders – whether by accident or by design – can breach their agreements undetected!

The first instance we saw this season – at a large-cap company's first shareholder meeting – set off a mad scramble to straighten out the paperwork and to avoid potentially big double-voting, since all of roughly two-dozen large shareholders who had executed voting agreements held their shares in street-name. And Oops! In the scramble to mail materials, who thought of this? They had all been sent proxy materials and Voting Instruction Forms.

The main task here was to quickly draft something simple to all of these power-hitters that reminded them of the voting agreement – and that, while they were most welcome to attend the meeting, the CEO of the company would be voting their shares, so please don't bother to vote on the web, or by phone - or mail anything back. Next year, we advised, work with your Broadridge rep – and with your insiders' bank and broker custodians – to assure that no VIFs are issued for the shares that are covered by voting agreements. The best practice, we say, is to send the Notice of Meeting and Proxy Statement – with a "Form of Proxy" (a copy of an actual proxy card marked "Form of Proxy" works fine) and with a nice note, reminding them that their votes will be cast by someone from management, per the voting agreement.

There is another potential wrinkle to note here, however – when the agreements allow shareholders to vote on certain kinds of items as they wish – which is fairly common. So if there should be proposals like that on the agenda, a bit of extra communication – and a bit of extra work on your part will be involved – to be sure the voting gets done pursuant to the agreement.

Soon thereafter we encountered another somewhat unusual situation – a shareholder vote to ratify voting restrictions on "control shares" – where there were specific "caps" on the percentage of shares that certain large shareholders could vote on certain kinds of transactions at a shareholder meeting - with the proposal itself being one such example. Here, the "name of the game" was (a) to be sure that all such shareholders were properly identified and (b) to be sure that the votes of all of such shares that were held their bank or broker custodians were properly "capped" - which required much the same drill by the company, the various bank and broker clients of Broadridge, the proxy tabulator and by the Inspector as the "voting agreements" as the earlier case did.

But fast on the heels of cases one and two…check this one: In early December we received a call from an attorney we'd worked with in a proxy fight two years ago, which ended with a 'standstill agreement' from the dissident that included a written agreement to vote as management recommended for a period of several years.

"We are pretty certain that the holder has breached the agreement. We noted a vote against two of the management positions that exactly matched the position the dissident holds" he told us. "What do you think we should do?"

"If it were us, we'd send a letter to the holder informing him of what appears to be the case, with a copy of the standstill agreement enclosed. At the same time, we'd send a letter to Broadridge, with the two documents enclosed – and copy the shareholder too - demanding that the tabulation be immediately adjusted to conform to the agreement." Broadridge, of course, acts only on instructions from its bank and broker clients, but promptly put the company in touch with the proper person at the shareholder's custodian…so "case closed"…sort of… Actually, as our attorney friend pointed out, the dissident shareholder – whether by accident (??) or by design – was acting in contempt of court – so, at a minimum, a nice "hole card" to have should the shareholder return again, once the standstill agreement lapses.

Something new - and important, we'd say - to add to your Shareholder Meeting Checklists.

REGULATORY NOTES ... and comment

ON THE HILL: Congress acted to avert another government shut-down this year, with related losses of wages and of public access to national parks, monuments and government services – and yet another death-defying market swoon – by passing a two-year budget plan…just in the nick of time, before adjourning for the holidays. The surprisingly large margin in the Republican-dominated House was dampened by last-minute stalling in the Democrat-controlled Senate, where the vote went right down to the wire.

Five – count'em, five government agencies – the Federal Reserve, the FDIC, the SEC, the CFTC and the Office of the Comptroller of the Currency -- signed off at long last on the "Volcker Rule" which prohibits banks from trading in securities, derivatives or futures for their own potential gain, but allows them to trade in order to truly hedge their own positions and to act as a 'middleman' on behalf of clients. Two healthy 'teeth' were added come the end, to require bank CEOs to attest each year that they have in place "processes to establish, maintain, enforce, review, test and modify" a program to comply with the rule, and that compensation plans be shaped so as not to "reward" proprietary trading.

AT THE SEC: The new proxy fee schedule – proposed by the NYSE's Proxy Advisory Committee (PFAC) – and opposed by the **STA** and **NIRI** in favor of a fresh new top-to-bottom look before changing anything – was approved by the SEC on October 20th. Overall proxy fees are expected to drop by 4% although fees will likely increase for companies with less than 300,000 beneficial holders in total, according to estimates made by the Securities Transfer Association. This, as we've noted before, seems pretty much the way it should be – since enclosing, mailing and tabulating operations are subject to very significant economies of scale…while truly small jobs are subject to very significant diseconomies of scale. So really small companies get a bit of a break, we think, with the new cut-off point.

AT THE CFTC: Remember when Congress was seriously proposing to replace the SEC with an expanded Commodity Futures Trading Commission, supplemented, maybe, by more Fed scrutiny of financial institutions? Well, the agency's enforcement chief **David Meister** stepped down in early November – with a mighty impressive record of prosecutions and fines under his belt, where he'd nearly doubled the enforcement actions and tripled the sanctions over the past three years (how about LIBOR rigging–related fines of almost $1.8 billion or about nine times the agency's $195 million annual budget?) but with a warning that the agency is "absolutely undersized" relative to the tasks at hand, according to an 11/1 WSJ report on his tenure. The enforcement staff is now down 10% to about 155 officials – vs. 1,200 at the SEC. Meanwhile, the agency is just starting to try to enforce the 62 new rules required by Dodd-Frank…and at least one Republican commissioner is flatly opposed to the request for a $315 million budget increase. Somebody needs to do the math here…and remember where we were, and how much taxpayer money went totally down the tubes pre-Dodd-Frank…and how much of THAT was due to undersized oversight of financial instruments… and institutions.

AT the PCAOB: Deloitte & Touche got named and shamed again this quarter – as they were last quarter too – and censured – and fined $2 million this time around, for allowing a partner that had been barred in 2008 from being "an associated person" at any accounting firm for one year to stay on – not as a partner, but as an "expert employee" on "Fair Value/Use of Specialists and Fraud." These "specialties", as a 10/25 NY Times article by **Floyd Norris** pointed out, "were the very areas in which the board had found it [both the firm – and the auditor in question, please note] deficient." So far, **KPMG** has been the only Big Four firm that has not been cited for failure to fix defects.

IN NEW YORK STATE – HOME OF THE FINACIAL INDUSTRY'S POWERFUL "SHADOW REGULATORS": Citing Detroit's bankruptcy as a "wake up call" state regulators, led by state financial services superintendant Benjamin Lawsky, have issued subpoenas to "about 20 companies that help New York's pension trustees decide how to invest the billions of dollars under their control to determine whether any outside advice is clouded by undisclosed financial incentives or other conflicts of interest: according to a November 6th *NY Times* story reported by **Mary Williams Walsh.**

On another front, subpoenas have been issued to two big consulting firms – PricewaterhouseCoopers and Promontory Financial Group, recently prominent for hiring-up lots of former SEC staff – including former SEC Chairman **Mary Shapiro** – "as part of a broader investigation into the industry's perceived coziness with Wall Street" according to a September 13th *NY Times* story.

And not to be outdone, NY Attorney General Eric Schneiderman, speaking at the Bloomberg Markets 50 Summit, called on Congress to take "comprehensive action" to rein in high-speed traders who have early access to financial info. (See the Quotes of the Quarter for particulars)

IN THE COURTHOUSE: The Supreme Court has agreed to consider whether a 1988 decision, Basic Inc. v Levinson, should be overturned – a case the original victors described as "the cornerstone for modern securities litigation" – and where the Court held - absurdly, and demonstrably untrue, it seems to us - that stock prices will somehow reflect misleading statements by management – so that investors do not have to prove they relied on such statements when they invested. Overturning the Basic ruling "would make it much more difficult, and potentially impossible to certify a class and maintain a class action" **Bruce Ericson**, an attorney with **Pillsbury Winthrop** told the *NY Times*, which also reported that between 1997 and 2012 more than 3,000 class actions alleging securities fraud have been filed, generating more than $73 billion in legal settlements – a disproportionately large amount of which, we say, have been scarfed up by law firms, class-action managers and financial printers and mailers. A decision is expected in June.

A wild and crazy case in Delaware – Red Oak Fund, LP v. Digirad Corp. – that illustrates the perils of soliciting proxies, carelessly sharing voting info and tabulating and 'inspecting' one's work …incorrectly: Fortunately for the issuer, Digirad, the Court of Chancery held that their board did not breach its fiduciary duties or create an unfair election process after (1) the company's proxy solicitor, thinking they were sharing with the client, inadvertently disclosed preliminary voting results to an analyst, who shared it with the opposition, and (2) the results inaccurately reflected a large lead by the company, because the non-vote-able Treasury shares had been incorrectly voted for the management position… Ouch! And double ouch! Both the accidental disclosure and the mistaken disclosure – which plaintiff alleged would have caused it to change its strategy had they known of the mistake – were held to be "immaterial" to "a reasonable stockholder." Two other interesting issues here: Failure to warn early of declining results – since there is no legal requirement to do so - and the board's consideration of a poison pill – "inner workings…that are not the proper subject of disclosure" - did not need to be disclosed either to have a fair election.

The Delaware Chancery's four-year "experiment" with confidential, state-sponsored arbitration proceedings – a nice little money-maker for the state and for the judges – has, at long last, been struck down as unconstitutional by the Third US Circuit Court of Appeals, which noted, "the [First Amendment] right of access to government-sponsored arbitrations is deeply rooted in the way the judiciary functions."

WATCHING THE WEB: HORRORS! WHAT ONE FAT FINGER CAN DO ON LINKED-IN…

We still love LinkedIn – mainly because it focuses strictly on professional profiles. And we still hate Facebook, since we think it fosters the sharing – and indeed the over-sharing of a lot of stuff that should not properly - much less usefully - be shared with the world at large.

But OUCH! What a wrenching and time consuming experience we went through when we accidentally hit a key or maybe grazed our touch-screen when a list of "people you may know" popped up on our screen: Almost instantly we discovered that we'd accidentally "invited" over 1,000 people to Link-In with us – virtually everyone we've ever emailed – or who emailed us!

Among the acceptances that suddenly flooded our in-box – a lawyer who had recently sued my firm, and me, and my good buddy – was suddenly Linking-in. Also, way more than a few people who'd dissed your editor along the way and where, accordingly, he had previously pounded the "ignore" button with a vengeance – sometimes more than once. Also, many people your editor did not know at all, to the best of his knowledge and belief… like 'executive coaches' publicists, graphic designers and administrative assistants galore!

On the good side, however, we heard from a score of old friends – many with nice updates on their doings – and quite a few people we were happy to LinkIn with, based on their profiles, even though we didn't know them. Also, the numbers of viewers of our profile and visitors to our website soared off the charts…and a bit of fame is good, we guess.

But fat-fingered readers beware: The potential to accidentally "go viral" on LinkedIn is a big one… and we are still hitting delete buttons months after our slipup.