THE SHAREHOLDER SERVICE

OPTIMIZER

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IN THIS ISSUE:

MORE TIPS ON RESPONDING TO ACTIVIST “KNOCKS” ...‘TIS THE SEASON...

The subject of how to prepare for - and what, exactly to do - if an activist investor knocks on your door - has been a very hot one of late. These days, activists usually cold-call you, which is the most common way to knock on your door these days – or, maybe worse, begin by knocking your company soundly over the Internet, and in the press - with a highly detailed bill of particulars as to exactly how your strategy, your management, your board, and maybe some specific officers and directors too, are falling short in their view.

One concerned Governance Officer asked over the “Society Huddle” if anyone had a sample script for dealing with activist knocks – which generated quite a lively dialogue.

Your editor responded with a link to his own top-ten list of tips from our 2nd Quarter 2003 issue http://www.optimizeronline.com/files/Optimizer-V19N3.pdf (page 3) and there are many more insights, ideas and practical tips in that issue – and, especially, in this issue’s magazine.

But an important part of our response – and one of our best insights, we think – is that the kinds of actions you need to take in response to an activist’s ‘knock’ – are the very same actions you need to take in any crisis – like a product recall, a precipitous managerial or accounting ‘event’ or an environmental disaster, for example.

Accordingly, we think that one of the most important things to do is to assemble a formal crisis-management plan - that lists the names, titles and roles, telephone and cellphone numbers and ALL the contact info for all of the people with a critical need-to-know – and to designate one “captain” whose job it is to see that everyone in the chain does get notified, and told when and where the first “all-hands meeting” will be... asap

AND PLEASE TAKE SPECIAL NOTE: IT IS “THE SEASON” TO GET ON THIS RIGHT NOW…AS YOU BEGIN TO GEAR UP FOR YOUR ANNUAL MEETING …BECAUSE MOST OF THE PEOPLE WHO NEED TO BE ON THE CRISIS-MANAGEMENT LIST ARE ALSO ON THE MASTER LIST FOR THE A-M….

We also pointed out that in any crisis, you will almost certainly need crisis-specific “subject matter expertise” – legal and proxy-fighting advice if an activist calls – but technical, accounting or scientific advice, for example, in other kinds of crisis situations. Such advice needs to be aimed squarely and precisely at the issue(s) at hand. So a pre-scripted kind of thing can cause you to come up way short in your initial responses.

We constantly hark back to the massive B-P oil-spill, where the company's failure to handle the P-R issues quickly, and in detail – compounded by the series of increasingly grave reassessments of the disaster itself – caused literally billions of dollars to evaporate from the stock price, day after day.

There has also been a lot of talk lately about having "rehearsals" for senior management and the board as a whole on how to respond to activist approaches…And frankly, we are not big fans of this idea, mainly for fear it will result in responses that sound pre-canned and not very 'responsive" at all…or worse, maybe lead to the very disastrous conviction that you have everything "covered."

But then we noted a suggestion in Holly Gregory's blog that Boards should indeed rehearse what to do and say if they are approached by an activist investor…

And that led us to think that the entire top-management team should be part of this rehearsal…and that, for sure, there should be regularly scheduled reviews and updates of the Crisis Management Plan – and the list of the key participants too – sort of like a "fire drill."

Then we thought back on the many business crises that we ourselves have been through. In our old days of running what was arguably the largest transfer agency business in the world, dealing with crises – whether at a customer or in our own shop – was a nearly-weekly occurrence…

HERE ARE OUR OWN TRIED AND TRUE TOP-TIPS FOR DEALING WITH A CRISIS

- **Stay calm: Crises – and dealing with them - are a normal and basically inevitable fact of life: Breaking out in a panic is absolutely the worst thing you can do. And those who do not wish you well will, if they sense fear, be twice as likely to go into attack mode.**
- **At the same time, resist the natural urge to think, or heaven forbid to convey the thought that the crisis is maybe exaggerated, and that 'everything will quickly turn out to be rosy'.**
- **Get out your Crisis Management Plan and start notifying everyone on the list immediately. Carefully note where everyone is – and where they will be for the next few days – and tell them to stand by for news - and for further planning purposes.**
- **Designate one person – and maybe a few deputies if the crisis looks to be a big one – to field any and all inquiries from the press and from the investor community.**
- **Remind everyone on the master list to refer all inquiries to the official point-person.**
- **Prepare for your phones to ring off the hook: Make sure the point-person has lots of back-up phone capacity…plus the time and staff to get back to all callers promptly, or risk the perception that the crisis is 'out of control.'**
- **You must, of course, address the issue with the press, and probably with key investors as well, many of whom will be calling you – and do so as soon as possible. But the very best policy is simply to say as little as possible until the facts are in.**
- **Acknowledge that there is an 'issue' – and that it is being vigorously and thoroughly investigated – and that as soon as the facts are in, the news, and your response plan will be forthcoming promptly.**
- **Put all of the above information into a press release, vet it carefully with legal and operational staff – and with the appropriate subject-matter experts - and release it as soon as humanly possible.**
- **Do NOT, ever, try to quantify the damages before all the facts are in. You will blow your credibility and, in the worst-case situations, die the death of a thousand cuts.**

TOP 10 TIPS ON DEALING WITH ACTIVIST INVESTORS, SHAREHOLDER PROPONENTS, GADFLIES AND OTHER WOULD-BE SPEAKERS AT SHAREHOLDER MEETINGS

1. Be sure to greet and meet briefly with shareholder proponents or their proxy holders well before the Meeting begins – to set a good and courteous tone, to make sure they are aware of the Rules of Conduct – and any time limitations there may be, and the reasons for them – and to be sure they will be sitting near a microphone when it's time for them to introduce their proposals.

2. If you have regular "gadflies" – or repeat attendees who try to offer a comment on every item that comes up, you may want to bite the bullet, take them aside, remind them tactfully about the time and question limits – and advise them that they will be much more effective presenters by observing them. If shareholders have complained in prior years, which, often, they have, consider saying so.

3. Hand the Rules of Conduct to each attendee as they register, and ask them to be sure to review it before the Meeting begins.

4. Have some light refreshments available beforehand – and, ideally, have senior managers – and directors too, if at all possible – circulate among the attendees: It sets a welcoming and respectful "tone" – and very often, attendees will ask their questions then and there.

5. Have the Chairman of the Meeting briefly review the Rules of Conduct with the audience before the official business of the Meeting begins.

6. Be sure that the Rules are enforced uniformly – and that management observes them too. Please, we urge, do not show favoritism to gadflies... It ticks 'regular people' off big-time.

7. Above all, be prepared to enforce the Rules immeiately if the first "gentle warning" and a second, firmer warning from the Chairman is ignored.

8. There is no need for the Chairman to discuss the management position – and there is certainly no need to argue with shareholder proponents during the Meeting: All the proposals have been distributed to shareholders well in advance – along with the com- pany's own "best shot" as to why they are in favor, or against each one – and – except in the rarest of occasions – the voting will not change by a mean- ingful number during the Meeting. The easiest way to handle arguments – and comments – is to simply say "Thank you for your comments" and move on. (Please note, however, that formal proxy contests – where sometimes minds ARE made up at the Meeting – typically require a totally different approach.)

9. If you are the Chairman, remind yourself to never lose your cool: As the scriptures say, "A soft answer turneth away wrath."

10. Be prepared to conclude the Meeting summarily – if the fire alarm sounds or the power goes off – or if, heaven forbid, the Meeting threatens to get out of hand: Have an "emergency script" at the ready that allows the Chairman to declare that the Meeting is over, and that, based on the proxies in hand, the directors have been elected and that final results on all items on the ballot will be posted on the company website as soon as practicable.

ANNUAL MEETING SECURITY

OUR TOP–TEN TIPS FOR A SAFE AND ORDERLY MEETING

1 Start from scratch – assuming all the worst–case scenarios you can imagine – then work towards a happy medium for your company, in light of present–day realities. Most companies tend to dust off the same old plan every year. As a result, security measures at some companies are far in excess of what's required. Not only is this overly expensive, it makes a stockholder wonder "what are these guys afraid of?" But many other companies have been lulled into a false sense of security by years of uneventful meetings. In reality, they're the ones that are the most vulnerable of all.

2 Carefully assess all the areas of potential vulnerability you can think of: Labor/management issues are probably the number–one generator of unpleasant Annual Meeting "events", followed closely by anything that's received a lot of press attention. If you've been targeted, or even approached by any organized or ad–hoc group, or if you've had consumer problems of any kind, you should be paying more attention to security than usual. Remember that letters to top management are among the best indicators and early–warning systems around. And don't forget that problems outside your company – say at a major client, or involving an outside director – can "spill–over" into your meeting, even though they may not belong there.

3 Consider the meeting itself: Hotels, even though a lot more expensive than the company cafeteria, are often your best bargain if security is an issue. They're used to big meetings. They have security of their own. Meeting attendees tend to be on their best behavior. Picketers stay outside. Thus, while the company cafeteria or the school gym in a town where you have a factory might seem like a good deal, stockholders (in our experience at least) seem a lot more likely to act up – and to act–out – on turf they perceive to be "their own." And often, there are unanticipated problems with crowding, orderly egress, etc. in sites that are not really geared for large meetings. Accordingly, if you're scheduled for a new site – or if it doesn't come with the kind of "security infrastructure" that's usually built into a hotel or a big–city building, extra planning is in order.

4 Notify the police well in advance of your meeting and ask what other "events" that might somehow spill–over into your agenda are expected to be going on at the same date, time and place. Touch base with them early on the day of your meeting too. If special arrangements seem warranted they can help you ahead of time.

5 Decide how visible you want your security arrangements to be:Sometimes a uniformed security officer at the entrance and at each corner of the room is warranted, following your due diligence. But usually, the ideal situation is to have "security types" that someone who's up to no good would spot right away, but who'd be just another shareholder or employee to your average stockholder.

6 Remember that annual meeting "security" should encompass everyone at the meeting: At many of the meetings we attended, virtually all the "security" is – or appears to be – directed toward the Chairman and the Board. Not only does this send the wrong message, it is the wrong message. And it's a very dangerous approach to true Annual Meeting security.

7 At least 40 days before the meeting – and on a regular basis thereafter – step up your effort to monitor the press, letters, calls and complaints to the executive suite, and any comments or letters that may come to the transfer agent or proxy tabulator. (Here's where asking stockholders to request an admission card can help you, especially if you've done it for a few years. It's a poor predictor or how many folks actually show up, but an upsurge in requests can be an early sign of trouble.

8 Decide on your admission procedures well in advance and fine–tune them right up to the time the meeting is called to order: Most people we checked with cited the same set of best practices: Have an admission desk well apart from the actual meeting site. Have an adequate and diverse staff of friendly folks on hand – with badges to identify them as corporate hosts – at all the sites where attendees are free to roam. Don't be overly tough on admission criteria unless, of course, you feel you have real reason to be concerned. Have a few experts on general stockholder relations issue and on spotting and defusing potential problems on hand to oversee the admissions area. Reception space that's outside the meeting room is also a good idea. It allows you to spot, and deal appropriately with "potentially difficult people" before the meeting begins. Many folks who come loaded up for bear actually prefer to vent outside the meeting, if given a chance. And if stockholders can view a few exhibits, chat informally with management reps and have some coffee, it usually makes for a much more cordial, uneventful and therefore "safer" Annual Meeting.

9 Hand out the Agenda and clearcut Rules of Conduct to everyone who registers. Ask that they read them before the meeting begins. Make sure the Chairman summarizes the rules at the outset, that he or she is prepped to insist that attendees stick to them... and to enforce the rules after a fair warning.

10 Always have a script that will enable you to conclude the meeting and clear the room if need be. If you have the votes you need, have a signed proxy committee ballot in hand before the meeting convene... and, since they'll usually be the focus – and the locus – of any serious disturbance, make sure the Directors have a readily accessible back–door exit that, one hopes, will never, ever be needed.

OUT OF OUR IN-BOX:

SHOCKS FROM STOCKS

We opened our *New York Times* to the *Business Day* section on December 16th - as we do every day, first thing. And right up top, to our great joy, we saw that at long last, **"Economic Recovery Spreads to the Middle Class."** Lower down, we read **"Interest Rate Rises to 17% In Russia."** (Yippee- More joy! Take *that*, Putin!). Turning to page two we read, **"Factory Output Higher than Expected, Adding to Optimism"**…but then, on page 4, **"Oil Prices Are Falling, and So Are the Markets."**

What the devil is going on here? Hadn't we just read a few days ago that the drop in oil and gasoline prices was adding a whopping $80 per month to the cash-in-hand for the average American family… to spend on 'discretionary purchases'?… And just in time for the holidays? The market for US stocks should be booming! But that day and the next, the stock markets continued to be whipsawed throughout the trading day by massive volatility: On the 17th, the Dow was down roughly 700 points vs. its high for the month, or nearly 4% lower - and the S&P was off 4.6% vs. its high for the month. But then, over the next four days the Dow gained almost 1000 points – undoing the damage and soaring to new highs.

Who or what is pushing stock prices around like this? In a *rational world*, stock prices are set by buyers' and sellers' estimates of the "discounted rate-of-return on expected future earnings" – which, for most of the larger and more-seasoned US companies, is something that is fairly easy for savvy investors to estimate with a fair degree of confidence. But no…control over our stock markets now seems to be totally in the hands of fast-traders - whose big buying, selling and churning actions – and massive trades in options and other derivatives, instead of in real stocks – has turned the market into a giant gambling casino – where the odds of winning or losing are heavily stacked in favor of 'the house' – instead of being based on *rational economic* probabilities. ***Buying opportunities, of course, for investors with the stomachs – and the funds – to buy more at lows…But NOT a good thing in terms of keeping our half-billion or more individual investors interested in – and invested in our stock markets…***

OUR UNDER-INVESTING MILLENIALS

On a related subject, a recent *WSJ* UPSIDE column by Morgan Housel caught our eye with a revealing graph on how much less today's "millennials" are investing in the stock market vs. previous generations – and how much money they are leaving on the table as a result…And that the financial industry meltdown, and all those 'flash crashes' seem to be the root causes, just as we predicted would happen.

A 2013 survey by **Wells Fargo** revealed that 52% of the millennials (people born between 1980 and 2000) are "not very confident" or "not confident at all" about the stock market. A **UBS** study revealed that when we invest on our own, we are putting only 28% in stocks. Meanwhile, "since 1871, the stock market has earned an average annual return after inflation of 6.8%"…during which time "there were 29 recessions, a Great Depression, two world wars, a flu pandemic, various financial crises and market crashes' the article noted. On a brighter note, Housel noted, "Thanks in large part to companies automatically enrolling employees in 401(k) plans, 70% of employees born from 1979 to 1996 save in a retirement fund"…much of which is in 'target date' funds that invest heavily in equities early-on. ***But think how we could help our stock markets – and our children and grandchildren - if we could go back to the days when systematically investing in stocks was seen as a good, and safe thing to do…***

INTERESTING INTERACTIONS WITH BOARD-BOOKS PROVIDERS

A fascinating series of encounters with automated Board-Books providers filled our In-Box with interesting insights this month: Your editor is on a non-profit board that finally realized it needed to get up to speed in terms of having better, more timely, and more robust board communications tools. Our Board Chair – just retired as the Director of Administration at Weill-Cornell – another director, a former Corporate Secretary at a huge and complex financial institution with a big board and loads of subsidiary boards – and yours truly, volunteered to help the Executive Director's new A-A to find a good provider.

Six providers of the eight or nine your editor knows of popped up in the initial screening. Oddly, two of the four biggest and oldest providers were not on the AA's screen at all – testimony we say to the miserable marketing efforts put forth by most of the cash-starved providers in this space. No worries we figured, since we had two of the leaders on our list…and missing our screen is a bad sign, for sure…so why waste any time adding two new candidates? And also, we figured that we would likely end up with one of the lower-priced "plain vanilla" providers anyway – especially when one of the two biggies failed, we thought, to respond to the follow-up Qs that were posed.

Then came a series of big surprises: Here, quoting directly from our AA's emails, and with their identities concealed, is the way the leading candidates reacted to the Qs: "The top two that I thought would be best for the Board based on your interests, were "ABC" [a small company] and "DEF"" [one of the biggest] and ABC was where I was leaning for top choice. But a couple of things are making me think we should explore DEF as well. First, I didn't have all of the screenshots yesterday for DEF because the rep's email went to my spam folder. I just got it today and printed them out and the design/layout is very nice.

"Secondly, the rep from ABC has been a little difficult to deal with from the beginning. I emailed him our follow-up questions from yesterday and instead of answering them, he replied a little aggressively saying that he needs to know when a decision will be made because his training calendar is filling up fast and he needs to forecast for the year end. He answered none of the simple questions. He also said that he can't give me names of other clients until he gives them a heads-up so their time isn't abused. His approach is making me question the customer service a little bit. The rep from DEF is the opposite…Happy to answer any and all questions and not aggressive. Additionally, Carl, you did mention they are known as the best."

Here is Carl's answer, which is worth pondering, we think: "Hi...and thanks for the great input...and ya' know...one of the issues with all of these folks - which I forgot to mention - is who will be around for the long-term in this way over-crowded field...And frankly, I think the ABC salesperson seems kind of desperate to close a sale - your needs be damned - and has blotted his copybook in a very bad way, to my mind...I will feel very comfortable with whichever one you choose....but I DO think we might all sleep better with DEF"*****.....And guess what? When all the hidden "extras" were factored into the ABC bid – and the nice non-profit discount from DEF was taken into account…DEF looked like a shoo-in…And that's before taking into account a lot of added functionality, and much, much tighter data-security at DEF! Caveat Emptor in this slippery supplier space!***

THE $100 MILLION 'SPREADSHEET ERROR":

Readers of our last issue may, we hope, recall our sub-head, asking "Where were the advisors?" in a case where a company incorrectly reported that a proposal to increase the shares reserved for issuance has passed – when it did not – then proceeded to issue the shares anyway…and then to try to hold its annual meeting – based on the inflated number of shares supposedly outstanding.

The ink was barely dry when a similar case arose at **Tibco Software, Inc.** – which was being bought out by **Vista Equity Partners** – and where the consideration to be paid per-share (and that ***was*** ultimately paid-out) was understated by $100 million – because the shares outstanding were ***over-stated***… because someone double-counted the shares of restricted stock in calculating the fully-diluted value per share.

Advisor Goldman Sachs, which may or may not have made the error – issued a brand new fairness opinion, basically saying that the lower consideration was "fair" too. A Delaware judge allowed the merger to go through – pointing out that any shareholders who believe they were short-changed can go against the company or its 'advisors' to be made whole. Who were those 'advisors"? *Where* were those 'advisors"? And what *were* they thinking – and doing? Stay tuned.

PEOPLE:

Lydia Beebe – a true industry super-star – will retire as Corporate Secretary and Chief Governance officer of **Chevron**, after 37 years with the company, effective April 30, 2015. She will be succeeded by **Mary A. Francis**, who will act as interim secretary and governance officer until May 1. A former Chairman of the Society, a frequent speaker at Society events, and a wonderful role model in every way, Lydia, who was recognized as a Civil Rights Hero by the state of California for her service there, also serves on the advisory board of the **Rock Center for Corporate Governance at Stanford University**, the **Kansas University Endowment Association** and the **San Francisco Symphony** – and was recently named to the board of directors of **HCC Insurance Holdings, Inc.**

Jennifer Borden, Esq. – who your editor thinks is one of the brainiest and best experts on abandoned property issues anywhere, has formed her own firm, **Borden Consulting Group, LLC**, in Boston, MA, following the sale of **UPPR**, where she had been and EVP and General Counsel.

Howard Christensen, your editor's great friend and mentor, passed away in early December, as noted in this issue's 'magazine section.' We did not want to distract readers of that article from focusing on **Cancer Comfort Centers**, the amazing charitable organization he launched so brilliantly in the last year of his life, but we do want to point out that you can still hear Howard – and benefit from his wise counsel – by going to the webcast he hosted in 2009, **"Engaging Institutional Shareholders: Should Board Directors be Doing So, As Recommended by the NACD's Blue Ribbon Commission?... And if So, How?"** http://www.optimizeronline.com/files/0204cmbED.mp3 Still incredibly valuable – and precisely on-target for this year's magazine theme – five years later.

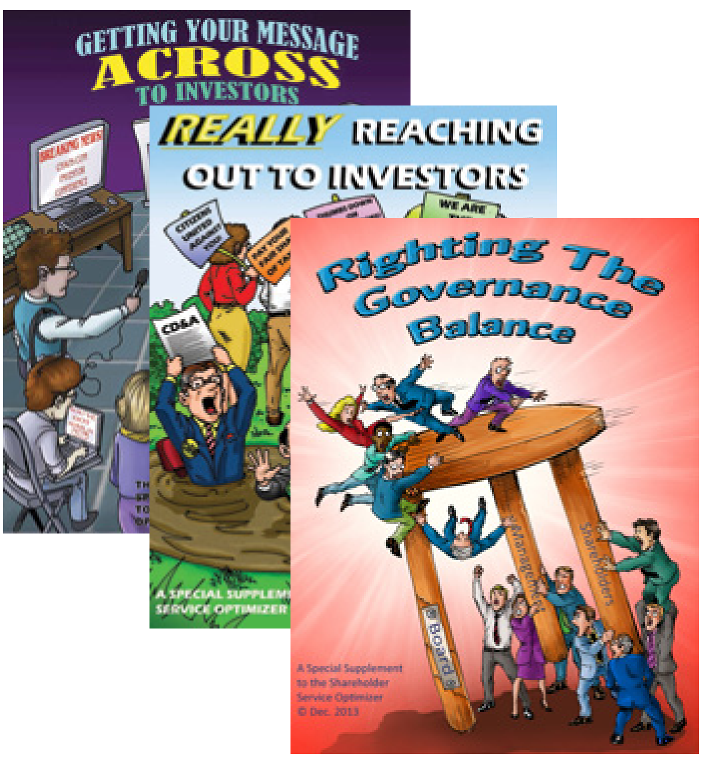
Tony Vecchio, a former managing partner at **Georgeson & Co.** signed on as a Managing Partner at steadily growing **Okapi Partners** in November, after nearly 30 years at "G" - where he will work with corporate clients involved in proxy contests, mergers, tender offers and other response campaigns.

ELSEWHERE ON THE SUPPLIER SCENE:

Very big news in December as abandoned property powerhouse Keane acquires Unclaimed Property Recovery and Reporting (UPRR) - creating a mega-powerhouse, we think, in an area that has been growing in visibility and in terms of its importance to revenue-hungry states….and to public companies that are interested in preventing their shareholders from escheatment…and minimizing liabilities for themselves. (see the Keane article in the magazine section for more…)

Good news from DTC – which withdrew its proposed rule that gave DTC the right to effectively "de-list" publicly-traded companies from DTC-eligibility…with no option to obtain an independent review, or to appeal …after the SEC appeared to signal that it would unanimously disapprove the incredibly high-handed DTC proposal. Several years ago, when dozens of small cap companies had proxies voted at their shareholder meetings that were significant in excess of the shares actually outstanding – and subsequently urged their shareholders to draw down all their shares, to force a correction of the clearly crooked bookkeeping that was going on – DTC threatened to de-list them altogether – which effectively makes all the shares non-negotiable: Few if any brokers will process trades in securities that are not DTC eligible…so de-listing is akin to dropping a nuclear bomb.. ***Three cheers for the STA – and for Steven Nelson, President & CEO of Continental Stock Transfer & Trust Company***, who successfully led the STA charge over several long years of regulatory and self-regulatory stonewalling.

The Society of Corporate Secretaries and Governance Professionals announced in early December that current EVP and General Counsel Darla Stuckey has been appointed as the Society's president on January 1, 2015, succeeding Stephen Brown, who is leaving to pursue other opportunities. We greatly admire them both, and extend our warmest wishes and best regards, knowing that great things will continue to be ahead for each of them.



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REGULATORY NOTES … and comments:

ON THE HILL:

- **The Fed takes major flak at a Senate hearing;** asks its Inspector General to review whether senior staff gets all the info it should, and whether staff dissent is being stifled, and to study whether the NY Fed is far too cozy with the banks it regulates. It will be interesting to see if the scrutiny continues in the NEW Congress…Any bets on Yes?
- **In the eleventh hour, once again, Congress approves a budget to keep the government running through September, 2015** – with a big gimmee for big-bank derivatives businesses and a budget increase for the SEC – slightly bigger than Repubs wanted and much smaller than the Obama wanna…

AT THE SEC:

TWO SELF-AWARDED HUZZAHS, THREE SHARP SLAPS IN THE FACE AND A 'BACK-AT-CHA' TO PEEKABOO:

- **"SEC Cases Climb for First Time Since 2011" a 9/30 *WSJ* article proclaimed**, in what appeared to be an SEC leaked preview of Chairman White's upcoming report to Congress. But as the reporter also reported, the tally included numerous cases of only marginal importance – like the 34 rocks thrown through corporate windows we noted in our last issue – for mostly negligible offenses that yielded negligible penalties. As one source said, "She's not going to have many of the really good cases the SEC made its reputation on".
- **"SEC's Brainy New Crime Fighters…SEC Adds Mathematical Firepower for Fight Against the Bad Guys"** another WSJ headline proclaimed, in what sure sounded to us like another Mary-Jo initiated blurb, for its newish Center for Risk and Quantitative Analysis." We actually love this concept - but here again, not much to report in the way of numbers – or actual results, And the reporter lobbed a few rocks of his own, noting the SEC's failure to note (much less react to) the evidence that Bernie Madoff's numbers were mathematically impossible to achieve – or to discover, as outsiders recently did, by 'figuring the odds' - that fast-traders were getting – and acting on – trade info that was ahead of the market as a whole…from the SEC's own reporting system!
- **And also in the quarter, three sharp slaps: "Get the SEC out of the PR Business"** a former SEC Assistant Director of Enforcement, Russell C. Ryan urged in the 12/1 WSJ Op-Ed page.: "Crowing about prosecution [in SEC press releases announcing new cases] is inappropriate when the agency is the one deciding guilt or innocence" adding, "you might think the agency would refrain from gratuitously stoking prehearing publicity against the accuses" as indeed we would…
- **And sharp words from two sitting SEC Commissioners, "Dissenting From an SEC Windfall for Lawyers"**…co-signed by Commissioners **Daniel Gallagher and Michael Piwowar**, protesting a $600 million 'fair fund'…where "The only guaranteed winners will be administrators who distribute the fair fund and class-action lawyers who will take a significant part of any funds paid to their clients'…to cite just a few of their objections to the fairness of 'fair funds'
- **And what would a quarter be without a sharp slap or two from the irrepressible Gretchen Morgenson of the *NY Times*,** noting the "Blank Page in the SEC Rule Book…Four Years Later" re: the Dodd-Frank-mandated rule that would force companies to claw-back 'unearned" executive pay following accounting irregularities, where she also noted, three of the eight still-unwritten D-F rules involved executive comp.
- **Three senior SEC staffers opined in mid-December that the PCAOB is dragging its feet on important rule-making initiatives, spending way too much time on theoretical issues and too little time on 'nuts and bolts; kinds of rules that would focus their many peekaboos on the actual problems at hand.** Pot to kettle: Take *that*, you jerks!

IN THE COURTHOUSE:

The SEC's grant of a no-action letter to Wal-Mart - allowing them to exclude a 2014 shareholder proposal asking for board oversight on gun sale policies under the 'ordinary business rule' – has been overturned by the US District Court in Delaware, because it had "significant social policy issue" and was not written in a way that rose to the level of 'micro-managing" ordinary business, and ordering it to be placed on the 2015 agenda if it's re-submitted. Look for more challenges to SEC no-action letters we say – especially on those "claim-jumping proposals" on proxy access, designed to trump similar shareholder proposals with difference thresholds. We understand that the Whole Foods no-action letter, that allowed their 9%/5-year holding threshold to trump the proponent's 3%/3-year proposal is already being appealed…and it sure seems to us that "fairness" would favor a vote on both proposals.

WATCHING THE WEB:

- The gigantic SONY data-hack has business people, show-biz fanatics, scandal-mongers and schadenfreude fans everywhere totally mesmerized this quarter, and waiting for each 'next shoe' to drop. Since it is New Year's Resolution time, we advise web-users to take note of the time-tested advice, never to put anything in writing that you would be embarrassed to have your mother see in the newspapers.
- On a happier note, here, as a holiday present, is a website worth tuning in: www.radiolovers.com/pages/allshows.html We like to send this to friends who are sick in bed – or maybe just blue – as something that will invariably cheer them up: Amos & Andy, Bob & Ray – and almost every other classic comic you can think of…and more…All free…