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EARLY RETURNS FROM THE 2015 MEETING SEASON: ACTIVISTS REV THEIR MOTORS AT FULL SPEED; MANY SEMINAL DEVELOPMENTS TO WATCH…AND OUR COMMENTS ON BAD ADVICE…AND GOOD

Barely a day has gone by this year when we haven't read about a new activist investor demand for a company to re-think strategy, spin-off a business unit, or two or three, pay a special dividend, buy back more shares than originally planned – and, as often as not, to demand one or more seats on the board.

As companies ramp up for their annual meetings this season, the demands have been escalating, day by day. Here's our review of the top new developments to watch – and to watch out for at your own company as the season progresses:

At least two of the world's biggest institutional investors have sent strong signals this quarter that they intend to use their votes to enforce their top governance objectives: BlackRock revised its voting guidelines dramatically, saying it might vote against at least one of a company's most tenured directors if there was "evidence of board entrenchment, insufficient attention to board diversity, and/or failure to promote adequate board succession planning" or if there are unspecified attendance issues…or if they change bylaws that change shareholder rights without seeking shareholder approval "within a reasonable period of time." Wow! This can sure encompass a lot of companies, and a lot of unsuspecting directors…and will take many by surprise this season we predict. **Vanguard** was a bit more 'guarded' – but strongly suggested that they too will use the ballot box to express disapproval this season – especially at companies they feel "fail to engage"…Ouch! More potential surprises here at companies that may feel that all is A-OK, and their doors are always open to "engagement."

Early in March, the $300 billion California Public Employees Retirement System (CALPers) revised its governance guidelines in a truly revolutionary way: deleting as its first principle that their governance decisions and practices "should focus the board's attention on optimizing the company's operating performance, profitability and returns to shareholders" – saying instead that companies they invest in are "expected to optimize operating performance, profitability and investment returns in a risk aware manner while conducting themselves with propriety and with a view toward responsible conduct." Wow! A sea-change indeed in terms of

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their understanding of their fiduciary duties to investors – and lots of room for subjective judgments here…with lots of possible voting surprises too!

Another seminal development we think – and a clear sign that activism has gone mainstream in a totally new way – was the formation in January of an activist hedge fund by JPMorgan's former CFO, Douglas Braunstein and James Woolery, the Chair-Elect at Cadwalader, Wickersham and Taft – one of the whitest of white-shoe firms…And, as a *NY Times* article reported, money has been pouring in from mainstream corporate leaders like senior officers of **Thermo-Fischer**, **United Healthcare** and retired CEOs like **Ivan Seidenberg** ex of **Verizon** and **Bill Harrison**, ex of **JPMC**.

A truly startling number to note as we enter the 'high season' for voting: Activist hedge funds now have $120 billion under management – up an eye-popping 30% vs. last year!

Recent figures from FactSet SharkWatch show the number of proxy fights rising from the low to mid 200s in the 2009 – 2013 period to 343 in 2014 - with the success rates for activists rising from the 50-60% range from 2008 through 2013 to a whopping 73% in 2014. (This last number partly reflects the fact that typically, nearly half of the fights that are launched end up settling before the meeting, which we are seeing this year too. But it also illustrates the high stakes of NOT trying to settle… much as we still love those fights!) Still, very scary news indeed for companies that come under attack.

And suddenly, on the corporate governance scene, it became pretty clear that the battles over proxy access proposals are basically over and done with – as big companies like Boston Properties, Prudential and roughly a dozen others so far adopt them voluntarily, while others, like **BofA** and **G-E** have adopted them as 'tradeoffs' for less savory proposals, and still others, like **Apache, Citi** et al have endorsed shareholder proposals for proxy access – all with the "3 and 3" percentage ownership and holding periods the SEC initially approved several years ago…before big companies sank the deal with a lawsuit they "won" against the SEC. We have been saying over and over that it's no big deal either way, since it's mighty rare for a company to flatly refuse to deal with big investor concerns about directors. But if they do, or if their efforts are seen as falling short, their opponents will opt for an out-and-out proxy fight, and run their OWN slate, on their own proxy card, rather than use 'proxy access'. But there IS a danger that companies that resist a proxy access proposal will get targeted for much bigger, bolder moves – like a Vote-No campaign that will cause them to lose directors…so institutions can "send a message" that can't be blithely ignored.

WE also say there's a good chance that the SEC's No-Action-Letter procedures may be dead too going forward, as we suggested they WERE, several issues ago: Why ask for no action letters at all, we said; just drop the proposals you feel don't meet the rules, and let the proponents suck it up, or sue. And now, with the SEC staff's ability to rule on proposals that were designed to trump a similar but not identical shareholder proposal on hold indefinitely, there's a danger the no-action-letter safety valve will become permanently unreliable or maybe shut down altogether.

As we warned issuers when they worked so hard to sink proxy access "be careful of getting what you wish for." And now, "private ordering" does not always seem to be the easiest or best option at all…unless the new 'order of the day' is for companies to adopt a proxy access rule with the original 3:3 hurdles asap…

Two meetings to watch in particular:

First, Bank of America's - and their plan to combine the CEO's and Chairman's roles: Watch for potential retaliation against a board that overrode a 2009 shareholder approved resolution to split the two offices, which BofA initially DID. BofA offered up two sops – agreeing to proxy access and to a disclosure agreement re claw-backs on executive pay…But will it be enough to elect all of their directors, given the wild cards noted above?

DuPont's annual meeting is not just an out-and-out proxy fight but a down-and-dirty one – against the activist Trian Fund and vs. Co-founder Norman Peltz in particular. This situation is unusual in several ways: First off, DuPont's financial performance over the past few years has been truly stellar. And normally, Trian, and Peltz himself, act more like "corporate squires" – as Peltz set out to do, or so it seemed. And Trian's record, at companies like **Heinz, P&G** and numerous others has produced mega-value for investors: Voting with Peltz has produced literal gushers of money. But lately, according to Yale prof **Jeffrey Sonnenfeld**, writing in a 4/2 WSJ op-ed article, Trian's performance has lagged DuPont's – and the S&P's – by a big margin - or so he alleged; 8.8% in 2014 or almost 5 percentage points lower than the S&P's ….and a paltry 0.9% vs. 5.9% in 2012. Oddest of all, perhaps (although we have been writing for years that "proxy fights are always 'personal'") this DOES seem to have devolved into a personal fight against Peltz himself – after DuPont agreed to add at least one Trian-nominated director, but flatly refused to add him to the board, as he'd asked. And both sides have been dredging up alleged 'dirty deeds' on a weekly basis. Peltz scored huge points in our book vs the diligence of the incumbent directors when he pointed out that a company that was sold for $4 billion in 2012 quickly increased its earnings by a whopping 140%. Then he took aim at the "governance provisions" DuPont had written in for the impending spin-off of **Chemours**, a 'performance chemicals' unit, that install a staggered board, do not permit any shareholder actions by written consent, call for a whopping 35% vote to call a special meeting and, worst of all, would require an impossible-to-achieve 80% vote to change the charter. Who dreamed this up??...Then, as we were still drafting this issue, Trian's co-founder **Ed Garden** fired back at Sonnenfeld's op-ed in a big way: "The fact is we have generated a return of approximately 137% net of fees since inception, outpacing the S&P 500 by approximately 2,900 basis points. Shareholder returns at Trian portfolio companies on which Nelson Peltz served or serves

on the board, from the day we invested until today, outperformed the S&P by an average of almost 900 basis points annually" he noted in a letter to WSJ editor on April 10th. "Mr. Sonnenfeld's selective use of data is blatant in citing Trian's returns for 2014 and 2012 – but not including 2013. Not only is his 2014 figure wrong (our return was actually 11% net of fees), but he omits 2013 when we were up 40% net of fees, significantly outperforming the S&P." ***Who advised Sonnenfeld, we'd ask…And who put him up to trashing Trian in such an ill-informed, numerically selective – and badly flawed manner?***

This prompts us to add a few notes that seem *particularly important* to note as we gear up for this season, on the subject of…BAD ADVICE…which seems to be dished out with alarming frequency, and with many potentially dangerous side effects of late…

What made BofA directors decide to unilaterally scrap the shareholder-approved bylaw calling for a separate Chairman… apparently without any consultation or so much as a heads-up to institutional investors who feel so strongly about this subject? What made **Dow** offer up three existing directors – hoping to pacify Nelson Peltz and co. – only to have to offer up yet another position, come the end? What made directors at **Amerada Hess** or **Sotheby's** think they could snatch a victory from the jaws of clearly impending defeats? And, while the whole DuPont vs. Peltz thing is riddled with bad advice in our book - in that no one seems to be working toward a 'happy ending' to what now seems like an entirely personal spat – it pales by comparison to the bad advice – and director consent, of course – at **Darden Restaurants**, where directors delivered even more, and sharper sticks in the eyes of investors by precipitously spinning off its Red Lobster chain when investors were calling for a broader restructuring of the entire business, ignoring pleas to consult with investors, and to add a few new directors…all of which culminated in the ouster of the entire board.

So here's some GOOD ADVICE as we go into the 2015 meeting season: Revisit and carefully consider the advice that activist Greg Taxin offered up in our year-end issue about bad advice and bad advisors: *"Where activist efforts are concerned, officers and directors need to steel themselves against what is basically a mercenary army of people, who like war. Make sure you do not get yourselves inextricably on this path because the people driving the train are 'built for war'." (It's on our website, www.OptimizerOnline.com – under "What's New.")*

SOME MAJOR SUPPLIERS…A MAJOR BANK…AND AN IMPORTANT REGULATOR RAISE THE ANTE BIG-TIME ON "CYBERSECURITY AT ONE'S SUPPLIERS"…BUT A SURPRISING NUMBER OF COMPANIES DIG-IN THEIR HEELS ABOUT REVIEWING AND EXPANDING THEIR INTERNAL CONTROL ENVIRONMENT..DO NOT BE ONE OF THEM…OR USE ONE OF THEM, WE WARN

A recent survey of 758 banks, insurers, money-managers and other, mostly large companies, conducted by **PricewaterhouseCoopers** indicates that most such companies have increased their spending on protecting their networks and on other cybersecurity measures significantly in the wake of the big **JPMC** data breach – and a PWC consultant predicted that spending will rise by 10% to 20% annually in coming years.

Not long after the survey was released, **Citigroup** seems to have accidentally leaked an internal memo taking aim at cyberattacks at law firms in particular - noting that it was "reasonable" to expect attacks on law firms by foreign governments and other hackers because they acquire so much sensitive data on corporate deals and business strategies….much as the *OPTIMIZER* pointed out a few issues ago. The report also said that Citigroup employees should be "mindful" of the fact that despite improvements of late, digital security at law firms remains below the standards for other industries: *"Due to the reluctance of most law firms to publicly discuss cyberintrusions and the lack of data breach reporting requirements in general… it is not possible to determine whether cyberattacks against law firms are on the rise"* the report noted.

Then, just as we were locking down this issue, the wonderfully named **Benjamin Lawsky**, New York State's top regulator of financial institutions said that a survey of 40 banks found that only about a third of them require their outside vendors to notify them of breaches to their own networks…fewer than half of them conduct regular on-site inspections of all their outside vendors… and only half of them require vendors to offer a warrantee that their services and products are secure – and virus free. A similar survey of major insurance companies is underway currently. (Sure wish we had more "Lawsky kinda' guys and gals" out there and on the beat!)

But no…and oh woe…a 3/3 WSJ article reported that although the original set of standards for internal control reviews that were published by the **Treadway Commission** ten years ago *lapsed* on December 15th of 2014 – and where the original five rules were replaced by 17 new ones – more than 300 companies have decided not to review their control environment much less get up to speed with the **Treadway Commission "COSO" standards**…much less, we'd presume, to get up to speed on cybercrime…And oops! No penalties are involved. An **SEC** spokesman indicated that they might step up their scrutiny of such companies – and we can guarantee that there will indeed be financial penalties due to both data and operational "losses." So, in addition to asking about **SAS standards** as we have been urging, we now urge readers to ask vendors about compliance with COSO standards too.

YIKES – THEY'RE BACK, AS WARNED: LAST-MINUTE PROXY FIGHTS…AND SUPPOSEDLY "IRREVOCABLE" PROXIES…AND THOSE DANGEROUS "FLOOR VOTES" TOO…VERY BADLY ADVISED!

It's early April as we write this, and so far this season we have seen three – count'em, three proxy fights that arose within three weeks of the scheduled meeting dates…and oops! A fourth came along before we were done – all four of them revolving around proposed mergers that dissidents either wanted to thwart – or in one case to go through over the wishes of the incumbent directors…So the predictions we made last year at this time look pretty good.

And in one case – just as we also warned a year ago – those so-called "irrevocable proxies" played a major role in frustrating the people who assumed they were the real holders of the votes – and where a flub in voting the shares could have decided the outcome: After the merger proposal had been made, and in order to guarantee that it would go forward smoothly we presume - but after the record date for the meeting - the acquirer acquired a substantial number of additional shares, along with the voting rights – or so they thought. (This is another situation we think we'll see more often in the future.) But the sellers gave their irrevocable proxies directly to the buyers of the shares – who suddenly realized they had no practical or legal way to VOTE their proxies: The actual voting authority rested with the custodial institutions – nine of them in all – that the 11 sellers were using. Fortunately, all of this came to light about 10 days before the meeting…so the company had time to go back to each seller, who went back to each of their custodians, who went back to their respective proxy experts…who went back to Broadridge to obtain individual Legal Proxies…to give to the company reps…so THEY could cast the votes in favor of the merger. And wouldn't you know, midway through all this, one mega custodian cast their big portion of the subject votes AGAINST the merger, probably following its 'standard practices' – and totally unaware of the fact that the firm itself had given an "irrevocable proxy" to someone else, so he could vote FOR. As we pointed out to the company – which until then was resting peacefully, with a big margin in favor of the merger, ALL of the votes that had been cast in favor of the merger to date – were "revocable proxies"…so resting easy was not a smart thing to do. So readers, forewarned is forearmed where irrevocable AND revocable proxies are concerned.

In the midst of all this drama came a call from an attorney friend in Seattle, asking about "floor votes" – another arcane subject we had written about extensively – and warned about, as being not only a "bad governance practice" but something that could backfire on an unwary company BIG-TIME. We learned from our caller that a growing number of companies have been amending their bylaws to ALLOW FOR this crazy practice – despite their existing "Notice Provisions" – that were initially designed to PREVENT any matters from coming to a vote where the company itself, and its stockholders, of course, had not been given timely notice.

Not only are a growing number of companies allowing matters to be introduced from the floor – and voted upon – they are actually writing the right into their bylaws! And some are actually shortening the notice provision for "floor votes" to as few as 30 days if the meeting has been postponed for any reason. Talk about BAD ADVICE! OUCH! All of them seem to be doing so under the illusion that these so-called "non-SEC proposals" are somehow different than proposals that appear on the proxy card - which they are NOT, as far as the voting rights are concerned – if the company is dumb enough to grant them that is. They also seem to be laboring under the illusion that the company's proxy committee automatically has the right to vote No if they wish – for some number of shares they THINK run to them. But most of them are from "street votes" - that are not at all the same as true proxies.

As we've said time and again, unless a company has a box to check regarding their authority on "all other business that may come before the meeting" – which will produce a firm set of NUMBERS - of the shares voting For, Against and Abstaining - there is simply no valid or even "knowable" set of numbers to write down in the Final Report. Scariest of all, as we have written and illustrated before, a dissident group that is allowed to introduce a proposal from the floor could very well have enough revocations of old votes – and a big pile of fresh new votes in hand – to actually carry the day these days!

People who think they are avoiding widespread discussion of proposals by excluding them from the official proxy statement – or think they can "make nice" to proponents without printing their proposals but 'graciously' allowing them to be introduced from the floor – and thinking that the company's proxy committee automatically has the right to cast some or all of the street-name proxies that are at the meeting as NO votes without an actual "tally"…are acting on INCREDIBLY BAD ADVICE!

TRANSFER AGENT LIABILITIES: UNDER-ESTIMATE THEM AT YOUR PERIL

One of the things on the transfer agency scene that has been surprising us of late is the number of companies that still act as their own transfer agent – and how little they seem to care – or know – about the very significant liabilities that come with this set of tasks.

Almost all of the biggest companies – and the vast majority of gas, electric and water utilities that used to serve as their own transfer agents - have outsourced all - or all of the most risky tasks, like making transfers – to full-time professionals over the past 10-15 years. But many smaller companies, and many mid-sized financial institutions too – who really ought to know better – still use the 'do it all yourself method' – some in the belief it will produce better service to investors, which often it does – and some who think it will be "cheaper" to do so, using easy to purchase off-the-shelf systems. We estimate that there are probably 750 - 1,000 companies that still do all their T-A work in-house. And none of them, in our first-hand experience, seem to have a clue about the monster-sized potential liabilities that come with the territory.

And guess what? Many of the signed transfer agency agreements we review in the course of an average year for large-cap companies contain provisions in the small type that severely limit or even cap the TA's liabilities – for the very things you hire them to do as the "expert professionals."

So we thought we should share a few horror stories about T-A liability – most from one of our side-careers as an expert witness in such matters…and then share our top tips on what to do to minimize YOUR liabilities...

One of the first expert witness engagements we had after departing the T-A biz involved a company that had served as its own transfer agent since its inception – then hired a professional T-A (in this case a pretty large bank back then) when their internal auditors raised a series of questions about their internal control environment …But without telling the TA, of course.

All went smoothly until the day the company merged with a larger one, and **DTC** came up "short" on the new shares that were delivered to it - to the tune of about $80 million-worth. The new company immediately filed suit against the T-A alleging negligence and demanding either a quick and plausible "fix" or the immediate buy-in of the missing shares.

Soon, it was discovered that an employee of the old company – who was serving as the company's official T-A until they outsourced – had pulled off an unbelievably clever scam: First, he manufactured a fake claim from DTC that a large number of shares had gone missing. Then he used his position to waive an indemnity bond, and to replace the supposedly "missing shares" in the name of a nominee that he himself formed and controlled. Then, he systematically sold-off all the shares in the nominee name – and reserved some of the proceeds to issue a check to DTC each quarter to cover the stolen shares - that were, of course, in DTC's vault all along. What started off as a $28 million theft soared to an $80 million one, when the new stock soared following the merger.

Nonetheless, the new company still tried to assert that the bank T-A was negligent – for not discovering and resolving the difference – and should be making the company whole.

Fortunately for the T-A – and unfortunately for the new company – that line of reasoning did not fly very far…So the company was out the entire $80 million. We never understood why they did not pursue the estate of the perpetrator – who shot himself to death once the jig was up: "No one can go through $28 million in three years… on boyfriends" we opined…But he'd given a lot of money to his church too…so we figured it was either worth $80-million to the company to keep the scandal under wraps…OR that they were getting very BAD ADVICE.

Another big source of T-A liability – where your editor has served as expert in over a dozen cases – revolves around the failure to promptly make a transfer of restricted stock because of some real or imagined deficiency in the paperwork – and where the value of the stock on question dropped precipitously while the owner, or his attorney, or his custodian – or sometimes the T-A – diddled and dawdled, and failed to return the stock promptly, along with a clear and accurate description of what needed to be done to MAKE the stock transferable. Two cases where we testified involved losses of $50-80 million.

Among the biggest and most common losses to T-As – or to their issuer customers if the Transfer Agent ends up broke – involve exchange and tender offers. Here too, the most common cases involve a failure to make the exchange in a correct or timely fashion while the stock is dropping…

The biggest case we were involved in however, in terms of dollars in dispute, was a roughly $80 million "difference" in the amount of cash the original T-A said needed to be set aside to satisfy an all-cash merger and the amount of "unexchanged stock" that still stood "on the books and records" some 10 years later. And OUCH! The original T-A had sold its business to another T-A – that foolishly agreed to assume all future liabilities as part of the deal. And ouch again….many of the key records were missing (like big sections of the daily transfer journals) …And ouch again…many of the records that were on the record indicated that some shares had apparently been "exchanged" - and paid for – TWICE. And, oh woe for them… the successor Transfer Agent/Exchange Agent could not produce the SEC required "Control Book" that is supposed to record the number of shares exchanged and retired from the records on a daily basis. ***(We don't want to brag - or to reveal the secret either – but the lawyers wanted this case to go on forever (BAD ADVICE). We suggested a way to resolve this issue that cut the T-A's liability - and the company's – to less than ten cents on the dollar...But it was peculiar to the particular circumstances here, so don't bank on pulling rabbits like this one out of a hat.)***

Interestingly, relatively little money is lost by issuers or their transfer agents due to fraudulent conveyances: Most of such cases involve relatives or close friends or caregivers of shareholders who are able to obtain enough information to successfully masquerade as the legal owner(s)…And that becomes a matter for the defrauded party to pursue – as long as the T-A has followed proper procedures, that is, as most do. ***But issuer-agents – and some smaller transfer agents – do not always know enough to tell a valid signature guarantee or an indemnity bond - backed by adequate insurance - from a fake or defective one. And if the value of an improperly transferred or replaced item is large, and the insurance in effect is small or zero, the issuer will be holding the bag here.***

One of the biggest losses we've seen a transfer agent have to absorb in our long career involved the theft of transfer agency and exchange agency records – when Bank of New York-Mellon had a dozen computer tapes, with 12.5 million shareholder records stolen from the truck that was transporting them to long-term storage. BNY-Mellon had to take a $22 million charge in the 2nd quarter of 2008 – and had to spend well over $10 million more, we estimated, to contact affected shareholders and to purchase 36 months of credit protection insurance for them – not to mention the loss of business and the loss of credibility and goodwill they suffered…which completely spoiled their taste for being in what they had formerly presumed to be a 'low risk business.' Please note that this was well before the folks looking to steal this valuable information became able to do it so much easier… in cyberspace…The risks of cybercrime are far, far greater today…so please read our tips, below...

OUR TOP TIPS ON PROTECTING YOUR COMPANY FROM TRANSFER AGENCY-RELATED LIABILITIES

- If your company serves as its own transfer agent and record-keeper, be 100% sure that you - and all of your employees who are involved in the day-to-day activities - understand the nature and the sources and the potential dollar amounts of the potential liabilities that are involved in such duties: Ask yourselves, "What are the largest amounts that could conceivably be lost on a given transaction, or in a given "event" where, let's say, the entire system goes awry?"… using the horror stories above as sample scenarios.
- Next, be sure to at least double or triple that amount, to allow for stock price appreciation, going forward. And please, we urge you, recognize that some stocks – like Berkshire Hathaway or Apple (which is up about 7,000% over the past ten years or so) can go much higher than a mere triple.
- Meet with your risk-management and internal insurance experts to be sure you have adequate insurance coverage – including resources from 'self-insurance' – to adequately cover the worst-case scenarios.
- Consider outsourcing the securities transfer, securities replacement and ALL exchange and tender processing functions to a professional transfer agent as a way to offload the biggest risks.
- It may sound silly to say this, but if you decide to explore the idea of outsourcing some or all transfer agency and related functions, make 100% sure that the transfer agents you look at fully understand the risks – and the financial liabilities of being IN the business. (In one case we were involved in, the owner lost his entire T-A business by filing an "interpleader" instead of merely rejecting a disputed transfer, because (a) he did not fully understand the risks involved and (b) he relied on BAD ADVICE.
- Make sure that YOU understand (1) all of the insurance coverage the prospective agents have in effect – including all limitations, exclusions and "caps" on losses per item and/or per-event that are imposed by their insurance policies – or by the agent itself, and (2) the overall financial ability of the agents under study to absorb any and all losses that are not covered by insurance.
- Make sure that you – and they - understand the full potential for cybercrime, including (1) the defenses each prospective agent has in place, (2) the extent and frequency of their testing and systems-challenging procedures.
- Make sure that the agents have the ability to absorb the THREE kinds of liabilities that can arise here: (1) The costs of notifying shareholders and buying insurance to protect them if key data is stolen; (2) The ability to make-good on fraudulent conveyances arising from the theft of data, and (3), as in our Exchange-Agency horror story, the potential to absorb any and all losses that may arise because the records to disprove the validity of shareholder claims for funds or stock can not be found, because they have been lost, stolen, erased or destroyed on the TA's watch.

SCRIPOPHILY: BACK WITH A VENGEANCE…DO YOU KNOW WHERE YOUR OLD STOCK CERTIFICATES REALLY ARE? SHOULD YOU CARE? PLUS…OUR ADVICE ON SHAREHOLDER RECORDS THAT SHOULD BE RETAINED FOREVER

It's been about ten years now since we last wrote about scripophily – the semi-secret, sometimes all-consuming and, all too often, totally illicit love for old stock certificates.

But two recent postings in the New York Times Store's full page ads for Historical and Collectible items grabbed our attention: One was a Feb. 20 sale on "Vintage Stock Certificates: $230 (**Standard Oil**), $995 (**American Express**) $220 (**Marconi Wireless**). Authentic documents more than 100 years old." And the other, on Jan 15th, which really caught our eye and spiked our interest - and the following series of questions - was for a "Scarce 1887 Standard Oil Stock Certificate Signed by **J.D. Rockefeller**…in black fountain pen" (sic) and nicely framed with a photo of the famously tight-fisted JDR….for an eye-popping $6500.

So…question number one: How did these items get into circulation in the first place?

Virtually all of them were, we are absolutely certain, *purloined* by once-trusted employees at ancient old-records-storage sites – or perhaps by simple passers-by, who spotted them, temporarily unattended, on their way to some other storage unit – or perhaps even to the crematorium when, prior to state and EPA clean-air standards, "cremation" was the universally prescribed way to dispose of such items - a process that also called for at least one, and sometimes two official witnesses to attest they personally observed their utter destruction. So much for *those* rules!

More important for corporate citizens to ask: What are the risks here?

Well, if you are **Exxon Mobil**, the main successor we think to Standard Oil, or your company is somehow an offshoot of Marconi Wireless – AND if the old certificates were routinely perforated, ideally with neat pinpricks that spell out "CANCELLED" – you can probably sleep comfortably. But a few years back we were approached by the holder of an old **Wells Fargo** stock certificate – which was once, and which was still theoretically exchangeable for **American Express** stock because it was NOT properly marked cancelled. Here, we encountered a horse of a different color: If deemed valid, as the holder insisted it should be (and American Express had no old records to prove it WAS exchanged, and cancelled on its books and records)…So OUCH! - American Express was theoretically on the hook to pay the holder several million dollars-worth of their greatly appreciated stock. Or alternatively, as the holder seemed to be hoping, to offer up a fat six-figure sum, so the holder would withdraw his lawsuit and go away. The holder asked for our expert opinion, and whether we would testify for him…but, much as we would have liked to have a nice fat check ourselves, based on a cut of the action, he was NOT a "holder in due course" in our opinion…but merely someone who'd gotten a nice flea-market item with fairly modest bit of value to a scripophilist. Clearly, the original shareholder, whose name was inscribed on the fetchingly collectible certificate had NOT assigned any security interest that they, or their heirs may have had, to our fleamarketeer.

So…should you think, "No worries"?

Sorry, but we'd have to say no: First off, it would be mighty embarrassing, for sure - and maybe even a career-ender - if you were the person in charge of the old stock certificates that suddenly appear in public marketplaces like the *Times Store*, or in flea-markets around the country. But on a much more serious note, IF any of the certificates appear to be in an un-cancelled state - and IF you can NOT lay hands on your old stock transfer journals, and/or written records of your "closed accounts" from your founding date forward, as many companies can not do - there IS a risk that a "finder" could trace the legal heir or heirs, make a demand for a replacement certificate, sell the new shares and agree to split the loot with the scripophilist.

What about having your company sell off old stock and bond certificates on its own?

Not entirely a bad idea in our book. The company would have to exercise some discretion - so as not to flood the market - and to cull out the oldest, most beautiful, best preserved and most grandly signed items, make sure they were indeed marked as cancelled, and then to certify that only X items remain in circulation in order to make the game worthwhile. And guess what? While we hesitate to reveal this little secret, many old certificates have even rarer and more beautiful "Stock Transfer Stamps" of assorted designs and denominations attached to their backs. We must confess that we often thought of detaching some, which had no value at all, other than as collectibles… for our own stamp collection …but we never did.

A VERY IMPORTANT SET OF PRACTICE POINTS ON OLD TRANSFER AGENCY RECORDS:

- **Your company's daily transfer journals should be retained forever.**
- **Also… a complete and ideally cumulative set of records of all the "closed accounts" that have ever been "purged" from your official shareholder list should be retained forever too. (The "best practice" here is for the transfer agent(s) to "post" each year's closed accounts to a cumulative "master list" – so one would not have to search for the names and account details of closed accounts year-by-year.)**
- **YOU should be the ultimate custodian of such records – unless you trust your transfer agent 100% to keep them permanently and safely on file for you.**
- **Whenever you change transfer agents – or if a transfer agent sells its business, or goes out of business – you should make sure that you have the originals - or complete and reliably readable copies of these old records - transferred to your new T-A or kept under your own company's control.**
- **The same procedures should apply to the official records of all exchange and tender offers - including the records of all companies that your company may acquire along the way. (See our story on Transfer Agent liabilities to illustrate the potential liabilities to your company if key records can't be found.)**

ON THE SUPPLIER SCENE:

ALLIANCE ADVISORS ENTERS THE MARKET SURVEILLANCE BUSINESS: Their January press release notes the successful business that Alliance owners had built in the past, the rising tide of shareholder activism… "a convergence taking place between investor relations and corporate governance like never before"… a "unique suite of tools"…and "The vast amount of institutional ownership intelligence Alliance continually gathers and maintains" – and seems to us to have all the earmarks of a very successful new product enhancement for them.

BROADRIDGE CRACKS THE CODE ON NONBO/ OBO COMMUNICATIONS: A "Eureka insight" – and a MAJOR new development we say: Public companies really don't need or want to know the names and addresses of all their OBO and NOBO owners, as for so long they said they did – They simply want to be able to communicate with them – and to do it promptly - and cost-effectively - in a smartly and precisely targeted – and, if they and their advisors are smart, in a highly "customized" manner. So if Broadridge has all of the registered owner files – and all the OBO/NOBO files, which last they always have – they can sort the combined files in all sorts of ways…by share range, by their precise location, and by their historic voting behaviors - like rarely, often or never voting, rarely supporting or rarely opposing certain kinds of proposals – which will enable a smart issuer to carefully target specific segments with specifically targeted messages…never really caring, much less knowing WHO they are or what their OBO/NOBO status is. With so many company-sponsored proposals barely squeaking by – and sometimes not – and with so many shareholder proposals garnering near or actual majorities, the retail investor vote has become more important than ever before – even while becoming harder and harder to get out with each passing year…Broadridge is on to something VERY BIG here, we say…And it's something we think proxy advisors and strategists will want to have in their toolkits too.

COMPUTERHARE ADDS TO ITS CANADIAN T-A BOOK: In a very nice move for them, extending their already dominant position considerably, Computershare has acquired the transfer agency, corporate trust and employee share business of **Valiant Trust Company** (VTC) – a unit of **Canadian Western Bank**, with about 450 issuer clients.

MEANWHILE, CPU'S GEORGESON UNIT EXITS CANADA, AFTER 12 YEARS: Sad to report this, given the big increases expected in shareholder activism in Canada, and the five fine folks who will have to find new employment, which we're sure they will - but with **Kingsdale Group** having an estimated 70% share of the Canadian market – and with strong competition from **Laurel Hill**, that has had some major strategic wins in Canadian proxy fights – and from **DF King** too – Computershare's decision seems hard to argue with.

THE SSA ANNOUNCES THE 13TH JAMES R. SMITH SCHOLARSHIP WINNER: Allison Bilkey, daughter of **Joe and Donna Bilkey**, both of **Ameren, Inc.**, has been selected by the SSA's independent advisory committee as the 12th winner of this award – a $2,500 scholarship to an accredited college that is open to the children and grandchildren of SSA members. It is renewable annually for four years as long as holders meet the eligibility requirements, as every winner has done to date. Allison is a freshman nursing student at **Truman State College** in Kirkville, MO – and a wonderfully accomplished and well-rounded student as all scholarship winners must be. What a tribute to their parents – and to the SSA – and to James R. (Jimmie) Smith himself, for whom the award is named.

REQUIRED READING:

BERKSHIRE HATHAWAY'S 50TH ANNIVERSARY A-R: For the Golden Anniversary, the famously frugal **Warren Buffett** has replaced the usual school-composition-notebook-style covers with golden ones – with an embossed seal to boot. And this year, he, as usual, and Vice-Chair **Charlie Munger** each look back, reminisce on their best and worst deals…and share their reflections on what has made Berkshire so incredibly successful. **Both point us to their original 13 Share-Owner Business Principles**, which are repeated beginning on p. 107 and which are "still alive and well today". In our book, they constitute the very best set of Corporate Governance Principles we have ever seen – and stand in stark contrast to the lengthy, legalistic and mostly mindless boilerplate that most companies are adopting and tinkering with and wordsmithing, mostly to satisfy gadflies these days. Another wonderful takeaway; both gents are not only cheerleaders for GOOD and VALUABLE (and money-making) Shareholder Meetings, the agenda they spell out really makes you WANT to attend. We promise to review this in more detail in our Annual Meeting Roundup issue in the third quarter. Meanwhile, try to lay hands on a copy for each of your directors, and one for YOU. It's on the web, of course, but if you can get hard-copy versions, you and your directors will be glad you did so. They allow you to read and reflect at one's leisure, and to go back and forth a lot, as we found ourselves doing – with ease.

RR DONNELLY REPORTS ON "WHAT MATTERS TO INVESTORS" – a survey of "64 asset managers and owners with a combined $17 trillion in assets to understand how institutional investors use the information in proxies to make voting and investment" – conducted in collaboration with **Equilar** and the **Rock Center for Corporate Governance at Stanford University**, it reveals pretty deep dissatisfaction on the part of major and highly sophisticated investors with the "typical proxy statement" and explains the whys and wherefores with a view toward doing better.

OUT OF OUR IN-BOX: AN EMPHASIS ON CASH DIVIDENDS

We are still fans of those Dividend Reinvestment Plans – especially the Direct Stock Purchase Plan varieties…with no or very low fees (despite the nearly unbearable piles of paperwork they generate for the custodians for our minor grandchildren) – **And we are still avid readers of Chuck Carlson**'s ***Drip Investor newsletter***… **And, as regular readers know, we are huge fans of cash dividends.** Accordingly, we were particularly happy to read his February issue that closed with **"The Millionaire Maker"** wherein Chuck points out that if you invest just $35 per month for each child or grandchild from birth until they reach 25 - and reinvest all the dividends - they will be able to retire at 65 as millionaires. And better yet, he points out, thanks to the magic of compounding, if you invest just $4,000 per child at birth, and continue reinvesting the divs, you can reach the same goal with no additional cash investment at all. (Long-term readers may recall we invested $5k in 5-6 DSPPs for each of our first three grandchildren – And even with a few individual stock blowouts – like **BP** – and **IndyMac**, a groundbreaking internet bank [great idea, but lousy investments in real estate loans] – but which were more than offset by big winners – like **Walt Disney** and **Merck** and **YUM** - all three kids look very much on-track to be DSPP millionaires before 65. We will try to marshal all the 16 statements their parents still get each quarter and report back next issue.) But for the sake of simplicity – and because we think there will ALWAYS be a **P&G** – and the yield is extremely attractive – we put all our next three grandkids into a single stock – where they are now 6th generation P&G investors, and in brokerage accounts – with free reinvesting, and a consolidated monthly statement of all their investments – so we will try to report on that too.

More great news for dividend lovers…which we think ALL investors should be…A March 24 *WSJ* article noted that 325 of the **S&P Small Cap 600 Index** paid a dividend last year – a 10% increase over the year before. And this year, at least 202 of them will pay out more than last year. Three cheers!

A March 27 WSJ article also noted that the S&P 500 paid out a record $350 billion in cash dividends last year – up a healthy 12% vs. 2013…. The same article also noted that borrowing to fund dividends or to buy back stock could start to hurt the bond market – and the long term credit ratings of companies that skimp on reinvestments in the business.

Apropos, our year-end magazine had a wonderful interview with activist investor Greg Taxin – who we think is one of the smartest folks we've ever met, outlining his mega-returns – and his basic activist game-plan. But when we read a March 10 *WSJ* article on share buybacks that cited one of his deals that flopped big-time, we felt obliged to note it here…As noted *there*, *"In early 2012…the Clinton Group Inc. took a stake in teen fashion retailer **Wet Seal Inc**. and began urging a share buyback. By February 2013, the company disclosed it was cutting jobs and expenses and would repurchase $25 million of stock after appointing four Clinton representatives to the board. This January, Wet Seal closed two-thirds of its stores and filed for bankruptcy protection."* A classic case, we have to say, of the kinds of short-sighted and over-zealous buybacks that so often lead to long-term under-investment in the business, and, as in this case it seems, to a death spiral…albeit an 'outlier" vs Taxin's record as a whole, of *re-building* companies that went astray.

PEOPLE:

A sad quarter in the transfer agent world: "They hardly make'em like this anymore" we say.

Nicholas (Nick) Baldino passed away in January at the age of 90. Nick was a SVP of **Chemical Bank**, where he managed the stock transfer department for many years, a former president of the **Securities Transfer Association**, where he served as the banking liaison to the **SEC** for more than ten years, a founding member of the **Securities Transfer Ass'n of New York (STANY)** and a long-term **Society of Corporate Secretaries** member, where he served for many years as the NY Membership Chair and as Chairman of the Society's Legal Committee. Nick was a totally-client-focused and an enormously popular guy - and an avid sport fan, who counted numerous star-players as friends. Nick attended 51 NCAA basketball Final Fours, 35 Super Bowls, several Olympic games, and in 2010 was honored at half-time by the **New York Giants** as a 64-year season ticket holder.

Rosanna Garofalo, who was a Senior Key-Account Coordinator at **Broadridge Financial Solutions** for the past six years, and who spent over 15 years as an Account Manager at the **Bank of Boston**'s stock transfer unit and at **Computershare**, passed away peacefully in March, at 57, after a long battle with cancer. The distribution list on the e-mail that announced the sad news noted that "When you die, it doesn't mean you lose to cancer. You beat cancer by how you live, why you live, and the manner in which you live." The long distro-list read like a literal "Who's Who" of the Transfer Agency client and client-service world.

William (Bill) Skinner - who retired as a SVP in the Stock Transfer unit of **Bank of New York** in 1999, where he was in charge both of operations and of marketing - passed away in February at the age of 75. Bill served on the **Stock Transfer Association** board from 1983 to 1995 and served as STA president from 1986-1987 and, even after his retirement from BONY, "traveled the country, and the world, speaking on stock transfer and on the securities industry." Your editor will always remember the many courtesies Bill extended to visiting delegations from Romania, Kyrgyzstan and elsewhere in the less-developed world – And he will NEVER forget the rollings-of-eyes and blissful looks of the visiting delegates upon first experiencing NYC-style Danish pastries and American-style coffee - which Bill always laid-on with style and grace before the tours and demos he was always glad to arrange in his T-A offices.

Two other giants of the corporate and regulatory worlds also passed away in the 1st quarter:

Bob Benmosche, "The Man Who Saved **AIG**", after he stepped in as President & CEO following the financial crash, died in February at 70. In an emailed note to colleagues, AIG's current CEO, **Peter Hancock** noted that Bob would always say *"it was the people of AIG who saved this company. He believed in you and got strength from you, when all the while it was the other way around."* Truly a leader for the ages.

Former SEC commissioner **Harvey Goldschmid**, one of the strongest and best advocates for individual investors ever, died in March at 74. A Democrat, appointed by **George W. Bush** in 2002, just after he's signed the **Sarbanes-Oxley** act, Goldschmid was instrumental in forming the SEC's response to the pre-Sox accounting scandals, was considered "the father" of Reg F-D and was a strong advocate for the rights of individual investors - and the right to proxy access in particular. He was among the first to call for a "Systemic Risk Council" - to which he was ultimately appointed. As former SEC chairman **Arthur Levitt** commented, "He will go down in history as one of the giants of the SEC."

On a much happier note, a good-sized crowd of industry stalwarts marched on to new and exciting pastures…

Champion proxy fighters **Tom Cronin** and **Joe Moran,** ex of **Phoenix Advisors,** signed on with proxy solicitor and advisor **Laurel Hill** in January, Tom as an SVP and Joe as a VP - beefing up the Laurel Hill fight-capabilities significantly.

Former **AST-Phoenix** SVP **David Bobker** left AST to join two former leaders at the once fast-growing financial printing & investor communications specialist **Labrador** - **Iain Poole** and **Nancy (Scheuneman) Mentasana** - at **Argyle**, a newly formed unit of financial printer and web-enabler **DG3**, where Poole is the now the Managing Director. Argyle's advisory services "integrate seamlessly into DG3's compliance solutions, including the Disclosure 2.0 (Word to Design) platform, which enables full, collaborative client control from drafting through to delivery of visually impactful documents in print, EDGAR and mobile" said Poole. **Bob Lamm** – who recently signed on with Boca Raton law firm **Gunster**, where he is of counsel - and who is also a busy Inspector of Election with **CT Hagberg LLC**, as well as an advisor on governance matters to **Deloitte** and as a Senior fellow to the **Conference Board**'s governance advisory group - also signed up recently as an Argyle Advisory Director.

And on an especially happy note re a star from the "former T-A" universe…One of your editor's oldest friends and colleagues, **Larry Dennedy**, was named as President of mega-proxy solicitor and advisor, **MacKenzie Partners** in March.. During his earlier stint at "The Old Manny Hanny" transfer agency, Larry was the first person that anyone – colleagues or clients - wanted to see or hear from whenever a customer-sensitive issue or problem arose… So much so that he was nicknamed "Boy Wonder" – partly for his youth back then, but largely for his ability to be first on the scene, ready to fight every fight and right every wrong…and get things fixed fast. Pretty good training, as it turned out, for a big-time proxy advisor!

QUOTE OF THE QUARTER

"These guys don't know a Manolo Blahnik from a …flip-flop."

Elaine Wynn on her fellow, all-male directors at Wynn Resorts, who voted not to re-nominate her, and where she is conducting a proxy fight to stay on the board…

As reported in the March 24th *Wall Street Journal*, which seems to have handled her *full* 'flip-flop' comment with a special and understated delicacy.

REGULATORY NOTES…AND COMMENT

ON THE HILL:

House representatives Jim Hines (D – CT) and Steve Womak (R – Ark.) have introduced a bill that would ban trading on 'material non-public information' – where Congressional action is clearly needed following the Appeals Court decision to uphold so narrow a definition of the circumstances that would support a charge as to make all prosecution of purported "insider-trading crimes" virtually impossible. There DOES need to be a resolution here, and it will be interesting to see if a bi-partisan agreement *can* be forged in this Congress.

Another bill is in the works – to circumscribe the SEC's current ability to grant "waivers" of penalties to big financial institutions who breach their promises to reform as promised under prior agreements: Fat chance in this Congress, we'd opine...although your editor says again, as a former banker, that the threat of a forced moratorium on adding new business – or, for big breaches, the withdrawal of the right to DO certain businesses - is the biggest and best recidivism-preventer there is…and should be used *much more often* than it is now.

AT THE SEC:

The big news this quarter was, of course, the SEC's order to the staff to stop issuing no-action letters where there were 'competing' shareholder and company proposals on the same matter…until the rule can be "reviewed and reconsidered." This produced the rather amusing spectacle of 11 national trade associations who normally favor "small government" protesting vociferously to all who would listen about the *lack of regulation* here.

On the heels of the above news came a staff decision that it was "unable to concur" with a Bank of America request to grant a no-action request to exclude Bart Naylor's "Public Citizen" group's proposal… for independent directors to "develop a plan for divesting all non-core banking business segments" as 'too vague'. (See our comments in the lead article on the potential DEATH of no-action letters, but let's also note the fact that the traditional grounds for no-action letters – like proposals being "substantially the same"… or "substantially implemented"…or pertaining to a company's "ordinary business"…or being "to vague" – are all *entirely subjective criteria*…AND also…that companies can simply say 'never mind your no-action letter, we will go ahead as we wish… and dissenters can sue us if they wish to do so'…It's something your editor kind of favors under many circumstances, given the explosion of shareholder proposals these days – often just to shake a stick in the face of companies that don't immediately knuckle under to the demands of special interest groups and publicity-seeking gadflies. Our bottom line here, however, once we cool down, is that the no-action-letter process DOES serve a valuable purpose for companies and activists alike – but that a "great debate" will have to take place before a lasting compromise can be forged. Meanwhile…more work, and bigger and better paydays for the growing crowd of proxy vetters and advisors…so Cheers!

A deal…of sorts…was reached on SEC actions to prevent the Chinese affiliates of four big accounting firms from auditing clients for six months because of their refusal to share audit work-papers on Chinese clients that were under SEC investigation. The affiliates agreed to pay $500,000 each and agreed to follow procedures to ensure the SEC will obtain audit documents in the future…although, as the SEC noted, success still depends on the willingness of Chinese regulators to act as a "conduit" for such work-papers. Semi-good news at best…and caveat emptor, we say, when it comes to investing serious money in mainland China.

And a victory… of sorts… for the SEC, where they and the attorneys general of NY and MA will split a $77 million penalty against Standard & Poors and where S&P admits to publishing a

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"false and misleading article" on triple-A bonds it issued pre-financial crisis – that it will retract and correct – and where the agreement also calls for a one year "time-out" for S&P from grading certain types of bonds.

IN THE COURTHOUSE:

The Supreme Court ruled in March on a fascinating and somewhat convoluted case, Omnicare v. Laborers District Council Construction Fund, that revolved around whether written 'opinions' in registration statements could be the basis for securities fraud cases - sending it back to the lower court for a re-hearing. Writing for the seven-judge majority, **Justice Kagan** opined that *"An investor, though recognizing that legal opinions can prove wrong in the end, still likely expects such an assertion to rest on some meaningful legal inquiry – rather than, say, on mere intuition, however sincere."* Good advice for registration statement drafters we'd say – regardless of how this messily constructed case fares in the lower court.

Great news for publicly traded companies who are currently being overwhelmed by greatly overreaching audits conducted by hired hands of the State of Delaware and assorted other allied states: A U.S. District Court Judge, while refusing to grant summary judgment, ruled in favor of **Temple Inland**, a subsidiary of **International Paper**, allowing their case against Delaware to proceed in federal court, rather than in a Delaware court, on claims that Delaware violated Temple Inland's constitutional rights and subjected them to arbitrary actions when it retroactively changed its abandoned property rules, then levied fines and penalties on the new definitions and took property without properly compensating them…something the *OPTIMIZER* has been railing about for years: Go to www.OptimizerOnline.com and look in particular at the article **"When The Protectors Become The Predators"** for details about the scandalous conduct of the Delaware Department of Revenue and their bounty-hunting "auditors"…and do stay tuned for more on this.

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COMING SOON

- OUR SPECIAL ISSUE ON ESSENTIAL PRODUCTS AND SERVICES FOR PUBLICLY-TRADED COMPANIES – FROM "A" TO "Z": "EVERYTHING YOU NEED TO KNOW ABOUT HOW THEY WORK, WHAT THEY CAN DO TO MAKE YOUR JOB SAFER, EASIER AND MORE PRODUCTIVE, THE CURRENT 'INDUSTRY LANDSCAPE'…AND WHAT YOU NEED TO THINK ABOUT WHEN SELECTING A PROVIDER"
- MORE NEWS FROM THE ANNUAL MEETING FRONT
- ALSO…OUR SPECIAL "HISTORY SECTION" ON GADFLIES JOHN AND LOUIS GILBERT, WILMA SOSS…AND OTHERS… WHO BASICALLY INVENTED THE CORPORATE GOVERNANCE MOVEMENT, BACK IN THE 1950s and 60s.