

# OPTIMIZER

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

VOLUME 21, NUMBER 3

NOW IN OUR 22<sup>nd</sup> YEAR

THIRD QUARTER 2015

©CARL T. HAGBERG & ASSOCIATES • P.O. BOX 531, JACKSON, NJ 08527-0531 ISSN:1091-4811 ALL RIGHTS RESERVED

## IN THIS ISSUE:

**WHAT'S THE "NEXT BIG THING" IN THE GOVERNANCE WORLD? COMPLIANCE AND ETHICS ISSUES WE SAY, AS MAJOR SHOCKERS ROCK THE GOVERNANCE WORLD - AND AN OVERALL "RAISING OF THE BARS"**

**BofA ACES THE REFERENDUM ON COMBINED CHAIRMAN/CEO: A FEW IMPORTANT TAKE-AWAYS FOR ISSUERS**

**OUR PROMISED CHECKLIST OF BEST PRACTICES TO WORK ON AND TICK-OFF, SIX MONTHS BEFORE YOUR SHAREHOLDER MEETING**

**SHARE BUYBACK PROGRAMS COME UNDER NEW FIRE - FROM POLITICOS AND CEOS ALIKE**

**THE SSA AND STA FILE JOINT AMICUS BRIEF WITH THE US SUPREME COURT RE: ABANDONED PROPERTY**

**TRANSFER AGENT MARKET STATS SHOW MAJOR SHRINKAGE IN THE REGISTERED HOLDER UNIVERSE: MORE TO COME, WE SAY**

**ELSEWHERE ON THE SUPPLIER SCENE**

**OUT OF OUR IN-BOX**

**PEOPLE**

**REGULATORY NOTES... AND COMMENT**

**WATCHING THE WEB**

## MAJOR SHOCKERS ROCK THE GOVERNANCE WORLD: BIG AFTER-SHOCKS TO COME, AND A MAJOR "RAISING OF THE BARS" ACROSS THE BOARD, WE PREDICT...SO GET READY

*We love to crow about our long record of predicting "the next big thing in the corporate governance world" - but you sure don't need a crystal ball this fall to know what it will be, following the disclosures about Volkswagen and their multi-year scheme to dupe the E.P.A. - and thousands upon thousands of consumers about VW emission standards.*

*"Problems at VW Start at the Boardroom" the NY Times headline screamed. "The governance at VW was a breeding ground for scandal" the apparently all-seeing professor Charles Elson opined below. "An Industry with an Outlaw Streak Against Regulation" another big NY Times headline read, outlining similar results-rigging and cover-up actions at Ford, Chrysler and GM, going back to 1972.*

So how do we see this playing out in the actual world of corporate governance?

First, expect investors to take much deeper dives into ethical and compliance issues at companies of every description - with many more questions - and much more *probing questions* - into what, exactly the codes of ethics look like, how they are promulgated and reviewed - and enforced - and, more importantly, what the overall corporate culture is really like...So add this to your Shareholder Meeting playbook, for sure, regardless of the business you're in...and seriously consider being a lot more proactive here than usual.

Expect the number of shareholder proposals asking for better disclosure and discussion of ethics and compliance issues in proxy materials to **increase** - along with requests for even more of those written reports on ethics, compliance and social issues, codes of conduct, whistleblower protections, etc., etc. - all of which, sorry to say, seem warranted these days.

Expect to see a new wave of "governance standards" being promulgated by paid advisors - like Glass Lewis and ISS - the Council of Institutional Investors and others, including labor unions, union pension funds and

*continued on page 2*

“social investors” we bet...and who could blame them.

Look for a relatively new group, The Human Capital Management Group, currently with 24 members, mostly from union and public pension funds - to come very much more to the fore. Human Capital Management - and workforce culture in general - was a big emerging issue before the latest compliance and ethics scandals - and this really plays straight to their sweet-spots.

The biggest change we foresee? An overall “raising of the bars” where corporate governance, and corporate behaviors in general are concerned.

*And guess what? We were ready to predict an overall raising of bars BEFORE all these scandals broke. Why? Because, as we’ve said many times before, corporate governance has become really big business. And now, the scandals are making it bigger yet...And oh shoot.... What could really BE more important?*

*One final thought: The “overall raising of bars” will apply to all of your service suppliers too - as well it should - So be sure that all of your suppliers are up to the tasks at hand as you head into the 2016 Shareholder Meeting Season...*

---

## **BofA ACES THE REFERENDUM ON A COMBINED CHAIRMAN/CEO: A FEW IMPORTANT TAKE-AWAYS FOR ISSUERS - AND A FEW “SHADES OF THE BAD OLD DAYS” WORTH NOTING**

*While the Special Shareholder Meeting - to ratify or reject the BofA board’s decision to ignore a binding bylaw proposal to separate the roles, and award the Chairman’s role to the CEO - generated daily attention in the financial press, the outcome - which both sides had been predicting to be a “squeaker” turned out to be something of a runaway victory for BofA - where they won 63% of the votes. Not as big as Jamie Dimon’s big 70% win at JPMC last year, but still impressive.*

*Here are a few observations on the “top take-aways”:*

- First and foremost, as we noted following the recent dust-up at DuPont, the biggest institutional investors are still very much inclined to let boards do their duties as they themselves decide - unless, of course there have been truly egregious behaviors.*
- While many activists felt that ignoring a binding bylaw without prior ‘reaching out’ WAS an egregious slap in the face, the re-vitalized BofA reaching-out team was able to reassure the biggest investors - and a lot of the small and middling ones too.*
- As a 9/17 NY Times story noted, “Top bank executives and one of its board members have pounded the pavement from London to Houston, lobbying dozens of investors” - and cutting at least one “deal, to mollify one outspoken critic” - promising activist Father Seamus Finn - a consummate Irish-American politician if ever there was one - that they’d issue a report he wanted on the Financial Crash if he’d vote their way.*
- They even won over crusty old hardliner and former corporate-basher Barney Frank...who now is a bank director himself. (Is anyone really surprised by this?*

*Or by the fact that now he tells the Times that “People expect too much of boards”?)*

- The same pre-meeting article noted that “As many as 40% of shareholders were expected to vote against Mr. Moynihan from the outset” - which proved to be way, way off-base. But one small take-away; thinking that one is way behind is way better than thinking it’ll be a cake-walk: For sure, it’s a great way to get energized.*
- The article also opined that with ISS and Glass Lewis both recommending a vote no, “the bank most likely lost as much as 30% of the vote because certain shareholders vote automatically with the proxy firms” - according to people “briefed on the matter.” Well this should put that absurd idea entirely to rest - an idea that panicky corporate folks have been the main spreaders of by the way.*
- The biggest take-away, we think, is that having someone who is perceived as being a strong and independent Lead Director is at least as good - and should be essentially the equivalent of - having a “totally independent Chairman.” While the newly designated lead director Jack Bovender (a former healthcare exec and a current trustee of Duke University, and ‘a perfect southern gentleman’ the author opined), had to catch up fast and come from way behind in this race, he ran like hell - and ultimately passed the big-investors’ sniff-tests.*
- The biggest surprise... to this very long-term observer of shareholder meetings...was not just how hard the anti-BofA activists fought against ratification, but how much their lobbying efforts resembled the hard-ball tactics that shareholder activists used to protest about so loudly (and correctly so) when corporate issuers approached and leaned hard on their own key customers. If the NY*

*Times article is to be believed, activists were “calling and writing to the largest shareholders - including some they may pay to manage money on behalf of California pensioners - urging them to vote against the combined role.” Shades of the bad old days!*

- *Do we think this dust-up is over now? No we don't. This was not so much about combining or separating the Chair and CEO roles as it was about the process - and about the mindset and the composition of the board - and about how little they knew, much less thought about the likely investor reactions.*
- *And, sorry to say this, BofA still seems to be a little tone-deaf here, to put it kindly: According to a NY Times DealB%k article after the meeting, ISS, “which favored separating the chairman role, pointed out that only*

*four of the bank's 13 board members had significant experience in financial services. The firm also noted that some board members served before the financial crisis when the bank made epic stumbles, including the acquisition of Countrywide Financial in 2008... Shrugging off suggestions that the board needed a shake-up, Mr. Moynihan said the bank had asked Charles K. Gifford, the former chief executive of FleetBoston, to remain on the board even though he had reached retirement age... The bank made an exception for Mr. Gifford to continue beyond the age of 72 because of his extensive expertise, Mr. Moynihan said. Mr. Gifford is seen by some as a key supporter of Mr. Moynihan.”*

- *Round-two we predict, will involve some serious efforts on the part of institutional investors of every stripe to see some serious “board refreshment” at BofA.*

---

## **A QUICK P.S. ON THE MUCH-WATCHED DUST-UP WITH ACTIVIST INVESTORS AT DUPONT: ANOTHER OF THE OPTIMIZER'S GOVERNANCE PREDICTIONS COMES THROUGH... IN A FLASH**

*As we predicted in our last issue (which we labeled our “Bad Advice Issue” in light of the many such examples described therein) “The incumbent directors - and most especially the CEO ...won't be allowed to survive a failure to turn the rapidly receding economic tides mighty fast.”*

*In one short quarter following her reelection - and her much heralded ‘big win’ - both in her adamant refusal to consider Trian's Nelson Peltz as a nominee AND vs. the three Trian nominees that were ultimately on the ballot - CEO Ellen Kullman was gone in a flash, when DuPont lowered projected profits from \$3.10 a share to \$2.75. To totally ice the cake, the spun-off Chemours company - where we and many other investors were already incensed*

*by the impossible 80% threshold that was required in the bylaws to change the bylaws - had to slash the dividend DuPont had assigned to it and saw its stock price fall by 64% in the quarter. DuPont stock - which was down 27% for the year (after losing 7% when Trian lost the vote) - rose 5.6% on the news. More news on the director front still to come, we predict.*

*We asked a good friend - who we know was in the thick of the DuPont/Trian negotiations - how such an intelligent, seemingly savvy and previously successful CEO could have been so intransigent about refusing to add Peltz to the board, which, we both agreed, would have saved the day for her, at least for a while. “Incredibly bad advice” said he...*

---

## **VISIT THE NEW OPTIMIZERONLINE.COM WEBSITE! THE GO-TO RESOURCE FOR THE SHAREHOLDER SERVICES COMMUNITY JUST GOT BETTER**

Cataloging and providing search-friendly access to over twenty-two years of quarterly Optimizer Newsletter articles, plus an additional nineteen years of Optimizer Magazine content was no small task.

Thanks to the help of Erwin Groenendal and the development team at Tangelo Software, we're proud to introduce the new and improved OptimizerOnline.com website. The site's simple navigation and advanced search feature help users find articles by

topic or term (ie, annual meetings, transfer agents) and our Supplier Index tab features a pre-vetted list of suppliers of essential products and services to publicly-traded companies.

We'll be adding exclusive online-only articles and interviews, covering breaking news, and introducing a new webcast series with industry experts so be certain to subscribe now to continue to get full access to all OPTIMIZER content after January 1, 2016.

# OUR PROMISED CHECKLIST OF BEST PRACTICES TO GEAR UP EARLY FOR YOUR ANNUAL MEETING OF SHAREHOLDERS

*For the majority of our readers, their annual meetings are six months or more away as we write this...But these days, six months beforehand is exactly the right time to start the planning process, and to swing into action as well.*

*Here are our top-tips on things to do...at least six months before the meeting date itself:*

- ✓ Six months beforehand is actually THE time to launch your shareholder outreach programs. You should try to contact your 20 - 50 largest shareholders - to cover 60-80% of the institutional investor voting power - and to do so way in advance of *their* busiest season.
  - ✓ While the number of investors and the approaches to use will vary widely from one company to the next, a simple phone call (best, we say, to add a nice personal touch) or an email is usually the best way to make the initial contact. Most times, all you need to do is to tell them the kinds of proposals that you expect to have on the ballot and ask if they have any questions, or potential 'issues' or any 'hot buttons' about them, or about the company in general that they would like to share - and go from there. Most times there will be no issues - and often, many of your top holders may not need or want to engage at all just then. But at least you'll know. And this way, if you should get some shareholder proposals that you may want to lobby against later on, you have opened the door way in advance for a second conversation, if it seems warranted by either side.
  - ✓ Six months beforehand is also the best time to circulate the first draft of your Task and Responsibility Schedule to everyone who will be on the meeting team, and ideally, to schedule an all-hands kick-off meeting to be sure that everyone is and stays totally 'on task' as events unfold.
  - ✓ This year, as always, we think that companies should be paying special attention to enhancing the tone - and shortening and tightening the text as best they can. But they should also be looking to enhance the overall "look and feel" of the meeting materials this year: Many of the best and brightest companies have been working much harder on this - and raising the bar significantly. You really need a 6-month head start if you want to be sure you stand out well against your peer companies, as you should. So discuss this at the kick-off meeting - and plan to look at peer-company materials - and to bring in one or two well-regarded financial printers to hear their thoughts and to review a few examples of materials that exhibit best and "leading" practices. (And do check our online index of articles on this subject too.)
  - ✓ Six months before the meeting date is also the right time to increase your overall scanning efforts with regard to developments in your industry, and at peer-companies, and at companies where any of your director candidates may also serve - to be on the watch for potential issues that may spill over onto your own meeting agenda.
  - ✓ If you haven't already done so, "handicap" the ability of all your director candidates to get 90%+ of the votes in favor of their election. And keep your eyes and ears open wide as the meeting date approaches. Potential red-flags include things like age, tenure, membership in key committees (like nominating, governance, comp or audit - if there have been any "issues") membership on other boards - and especially on boards where there may have been "issues" totally unrelated to your own company's. If there may be "issues" - deal with them at once. No director wants to - or can afford to - get less than a 90%+ approval these days. And, for sure, you would not want the blame to fall on you, or your team.
  - ✓ This is also the time to start asking if the venue you have chosen may need a re-think in light of potential new issues. Might a bigger - or a smaller venue - be in order? Might you need to beef up security - or maybe consider moving to a venue with tighter security? We have been amazed to see how many companies have made relatively last-minute changes in the meeting venue over the past few years in response to breaking developments.
  - ✓ A related effort should be to dust off your official Rules of Conduct for the meeting, to see if they may need to cover more issues in more detail than last year - or maybe (and wouldn't that be nice?) could be shortened up.
  - ✓ Once the deadline for submitting shareholder proposals has passed - usually 90 days before your record date - top priority needs to be given, of course, on how best to respond. We would note the increasing numbers of shareholder proposals that are "negotiated out" or simply allowed in without argument these days...and remind our readers that "protesting too much" often produces results that are not really the best ones, all things considered...So save your rhetoric, and your money, and your image as a company too, by rolling out the big guns only for issues that are truly important ones.
- Just a reminder - there are numerous articles about Annual Meeting Planning issues on our website, [OptimizerOnline.com](http://OptimizerOnline.com) like Admission Criteria, Codes of Conduct, Security, Site-Selection, Dealing with Shareholder Proponents, Gadflies and other would-be meeting speakers, etc. Here's to safe, sane and productive meetings!

## STOCK BUYBACKS COME UNDER NEW FIRE - FROM POLITICOS AND CEOS ALIKE

*Long-term readers know that badly designed and executed stock-buyback programs - and especially those programs where buyback money goes straight to “money heaven” instead of into the pockets of shareholders - are one of our top bugaboos.*

Lately - huzzah! - a lot of attention is being paid to these very subjects, starting, most notably, with BlackRock founder Larry Fink, who's been telling top execs that big buybacks send “a discouraging message about a company's ability to use its resources wisely and develop a coherent plan to create value over the long term.” Right on, brother!

*More recently, and we gotta give her credit for it, Hillary Clinton has been saying that big buybacks don't “leave much money to build a new factory or a research lab, or to train workers or to give them a raise.”* We have to be in the Amen Corner here, as we expect The Human Capital Management Coalition to be too...like it or not.

And Hillary struck a note we tried to bang on several years ago (maybe she reads the OPTIMIZER): “Investors and regulators alike need more information about these transactions” - noting, as we did, that non-US markets require

much earlier notice (and many require advance approval of the amounts from shareholders). And oops, let's hope she calls for published info as to price levels, or other measures of intrinsic value above which the company will NOT engage in buybacks - and also for better disclosure of the actual effects on long-term stock prices, which right now would show that a majority of past buyback programs *wasted stockholder money*, even while enriching managers in the short-term by making it easier for them to make their bonus numbers.

*And wow! The Wall Street Journal's own political columnist William Galston told us in his July 29 column that “Hillary Gets It Right on Short-Termism” - adding several good suggestions of his own.*

*Let's hope that more truly conservative economists come forward to talk up what should be plain old “common sense.”*

---

## THE SSA AND STA FILE JOINT AMICUS BRIEF WITH THE US SUPREME COURT RE: STATE “TAKINGS” OF ABANDONED PROPERTY

*Three cheers for the Shareholder Services Association and the Securities Transfer Association for taking the initiative here!*

*And three more cheers for well-known attorneys William Palmer and Lawrence Tribe for taking up the fight!*

The joint Amicus Brief is in support of a petition for certiorari docketed with the U.S. Supreme Court on August 5, 2015 - filed by William Palmer, Esq., an expert and highly successful crusader for the property rights of so-called “lost shareholders” and Harvard Law School Professor Laurence Tribe in re: *Taylor v. Yee*, No. 15-169, concerning California's Unclaimed Property Law and its application. Tribe is widely considered to be the preeminent Constitutional law professor in the world:

The Amicus Brief, submitted by the estimable **Jennifer C. Borden**, formerly the General Counsel of UPPR and now of **Borden Consulting Group, LLC**, is written in support of Petitioners *Chris Lusby Taylor, et al., v. Betty Yee, individually and in her official capacity as State Controller of the State of California*.

It asks the Supreme Court to “reverse the decision of the Ninth Circuit and provide clear standards to the states regarding (1) what constitutes constitutionally adequate notice before

*a state may seize and liquidate an owner's property under the state's unclaimed property laws and whether additional notice is required to be given to the securities owner after seizure and prior to liquidation of the securities, and (2) [and the most important issue by far, we say] what constitutes just compensation that must be paid to owners of escheated and liquidated property. At a minimum, the Ninth Circuit's judgment in this case should be GVR'd [remanded to the 9<sup>th</sup> Circuit] to address the Takings Clause, particularly in light of Horne” [v. US Department of Agriculture - a recent SCOTUS decision re: unconstitutional “takings.”]*

The brief points out - as we too have been pointing out to readers regularly - that “states and their contract auditors rely upon ambiguous escheat statutes or disingenuous interpretations...and demand shares to be turned over... even when the shareholders are not lost and they have not abandoned their shares [based on] a vague failure of the owner” to generate “activity” in their account...even where no activity is warranted. As the brief also points out, “The

*privilege of ownership includes the right to do nothing with the shares."*

It notes that *"disenfranchised holders frequently are forced to file costly litigation naming the issuer, its transfer agent, and the state as defendants"* - which, as the OPTIMIZER has been pointing out for years, is *always* a losing proposition for issuers.

The brief makes a clear case, we think, that *"The actions of California and other states which choose to liquidate securities [and then pay over only the proceeds of sale when owners come forward] result in impermissible takings without just compensation"*...citing the recent *Horne* decision, and *US v. Miller (1943)* which defined "just compensation" as *"the full and perfect equivalent in money*

*or property taken. The owner is put in as good position pecuniarily as he would have occupied if his property had not been taken."*

*Let's hope the Supreme Court takes this case, which we will know in November - or at a minimum, remands it to the 9th Circuit for reconsideration.*

*Meanwhile, since issuers are still ultimately responsible - and still have a fiduciary duty to "do right" by its shareholders, please bone up on our many articles about abandoned property - and what smart issuers should be doing to minimize their very significant liabilities when states seize and liquidate shares without just compensation to the owners, as they have been doing at ever-increasing rates.*

---

## THINK THAT ABANDONED PROPERTY IS NOT A BIG DEAL FOR YOU OR YOUR COMPANY? THINK AGAIN

*In March of this year, plaintiffs JLI INVEST S.A., and LIN INVEST S.A., filed suit in Massachusetts against Computershare Trust Company and related subsids, Idenix Pharmaceuticals, Merck and Co. and a Merck subsid - to recover \$13 million of value the two Belgian owners of JLI and LIN Invest lost because their Idenix shares had been escheated to Delaware - under Delaware's new definition of lost shareholders as being anyone who has not "made contact" with the company's recordkeeping agent. Delaware sold the shares for cash, almost immediately thereafter, as they typically do - and shortly before a merger that would have produced \$13 million more in value, that Delaware was, as always under such circumstances, unwilling to give back.*

Let's forget the fact for a moment that Delaware has no legal authority whatsoever to expropriate the property of shareholders in Belgium - except for a legal theory it seems to have cooked up on its own. And let's reveal the fact that the two Belgians were, in fact, in *frequent contact* with Idenix - both as major investors and also as regularly paid consultants. But Delaware's own narrow and self-serving definition about "contact" with shareholders doesn't apply here...or so they say...And let's note the fact that the "holder" of the property - Computershare in this case - would have had no way of knowing about any such "contact."

Let's also focus for a second on the fact that after Delaware went from a "lost standard" to an "inactivity standard" for escheatment their revenue from this source jumped by 77.3% - from \$319,500,000 in 2012 to \$566,500,000 in 2013. AND, above all, let's note that only the tiniest fraction of the so-called 'lost shareholders' who have 'abandoned' their property under Delaware's definition ever come forward to

reclaim their property. So for Delaware, the \$13 million is like a rounding error.

The most important fact to note, we think, is that the two shareholders, Computershare and Merck itself are already "losers" here - since they have had to hire expert attorneys, and waste lots of valuable time and energy to boot. So as mentioned above, let's hope and pray the Supreme Court takes up the other pending case, this one re: California law - and does the right thing, as it did in the *Horne* case, to end unconstitutional "takings" of private property by money-grubbing government agencies.

*And readers...these two cases are only the tip of the iceberg where the risks of being a "holder" of abandoned property are concerned. Please go to the Articles section on our website to bone up - and to learn how you can protect yourself and your company from damages here.*

# TRANSFER AGENT MARKET SHARE UPDATES SHOW MAJOR SHRINKAGE IN THE REGISTERED HOLDER UNIVERSE: MUCH MORE SHRINKAGE STILL TO COME, WE SAY

*Our last update on T-A market share - which we call a “major decider” of who will survive long-term - was back in the first quarter of 2013. We were surprised and startled to note the big shrinkage in just over two years - from an estimated 41.9 million registered shareholder records in 2013 to a mere 36 million today.*

*Computershare, the biggest T-A by far, now says it has roughly the same 6,000 clients it had in 2013 - but that shareholder accounts have fallen from 25.7 million to 19 million. And this is after the acquisition of Registrar & Transfer Company, which in 2013 was the number-six agent and which had roughly a million shareholder records when they were acquired by CPU last year. (See the chart below)*

TRANSFER AGENT MARKET SHARE AS OF SEPT 30, 2015 (Based on Shareholder Records - Millions)								
AGENT	A/O 1-01	%	A/O 1-09	%	A/O 3-13	%	A/O 9-15	%
BNY-MELLON	29	44%	32	48%	0	0%	0	0%
COMPUTERSHARE	22.5	34%	19	29%	25.7	61%	19	53%
WELLS FARGO	1.3	2%	3.4	5%	6.5	16%	6.7	19%
AST	4.5	7%	6	9%	3.5	8%	4.2	12%
CONTINENTAL	0.9	1%	1.5	2%	1.7	4%	1.7	4%
BROADRIDGE	0	0%	0	0%	1.6	4%	2.8	8%
R & T	0.7	1%	1	1%	0.8	2%	0	0%
NATL CITY	0.7	1%	1	1%	0	0%	0	0%
NEXT 4 AGENTS	0.5	0.75%	0.5	0.75%	0.03	0.07%	0.25	0%
ALL OTHERS	5.3	8.80%	2	2%	1.8	4%	1.5	4%
TOTAL	65.4		66.4		41.9		36	100%
Source: Carl T. Hagberg and Associates								

Some of this shrinkage, as we opined back then, is probably due to a long overdue cleanup of closed accounts. Some is due to what we call “secular attrition” - which is a polite way to say that the grim-reaper continues to take a toll on older investors, who tend to love their stock certificates - and (mostly) hate brokers. But we’re sad to note that as the numbers clearly show, the attrition rate has accelerated dramatically vs. previous periods - in just the past two years.

**We think that an even bigger secular trend is afoot** - not just where the last of what we call the “post-WW-II savers and investors” are handing off to the big-spending, low investing baby-boomers - but where most of the boomers are now in their mid to upper 60s - and starting to use up or pass-on much of whatever stocks they have that survived the market meltdown of 2008, that drove so many individual investors away from the stock market altogether.

From the early 1970s - through 1999 - just over 50% of all U.S. households owned one or more stocks directly. Beginning with the infamous Y2K, and for the rest of the decade that we called “the noughties” - because stocks

showed zero-returns after inflation for all of the 2000s - individual investors left the stock market in droves. (We also called the 2000 - 2009 period the years of the “naughties” - who took so many big companies down altogether). The upshot? Before the financial crisis of 2008, ownership of equities had plummeted to a mere 18% of U.S. households. And after the crash, the number plunged to a mere 13.8%.

Currently, people from “Gen-X” - and “the millennials” - still stand to inherit the biggest pile of assets ever. But most of them don’t even know what a registered holder IS. Recently, my good buddy and former STA President **Ray Riley** began to do the same thing your editor has begun to do - cleaning out the safe-deposit box and drawing down most of those DRP and DSPP accounts, in order to consolidate everything in one place. And guess what that place is...When Ray sent a handful of stock certificates to his broker, it caused quite a stir: The broker told Ray that the clerks wanted to send them out for “authentication” (not realizing that that’s exactly what happens when you send them to the T-A) because none of them had even seen a stock certificate before this!

### **And yet another big hit to the registered shareholder base is in the works thanks to record breaking M&A activities this year:**

So far this year there have been 37 deals announced that were valued at \$10 billion or more. And 28 of them involved a U.S. target, where all, or virtually all of the target companies' registered shareholders will disappear. Yes, some shareholders will get stock in the new companies, and yes, there have been a few spinoffs, and a fair number of IPOs too - but the number of new registered accounts created is literally dwarfed by the number of registered accounts that will disappear for good.

**Recently, an industry colleague asked when we thought the last transfer agent would fold its doors.** He was genuinely surprised to learn that (a) every public company is required by law to have a T-A, and that (b) the fact they were no longer very busy was not necessarily a bad thing for public companies - or for TAs themselves. But for sure, Transfer Agents need to rethink their business models, sharpen their pricing models to rely less on pushing piles of paper, and on "earnings on balances" - which currently are earning zero - and to better articulate their "value-added propositions."

Transfer Agents also need to rethink their basic operating and sales models, we think, if they want to replenish those fast-vanishing registered shareholder accounts, and avoid dropping off the radar screens altogether. The smarter agents have been trying to revitalize their Direct Stock Purchase Plan offerings (mostly with poor success, due in part to bad pricing vs. discount

brokers, and in part to public-company indifference to attracting individual investors...which *really* needs a re-boot.) Also, as we have been saying for 22+ years, while shareholders of record have been going away year after year, employee investors are (mostly) here to stay - and easy to grow if one has a mind to do it - and a plan. But here too, most of the old-line TAs have failed to invest in systems, procedures - and in sales and marketing plans too, that would better articulate the potential for big value being added by bigger employee ownership.

To end on a much happier note, since 2009 the number of U.S. households has grown from 117 million to 123 million+ today. If transfer agents could get just 10% of them to become direct share-owners - whether through DRPs, DSPPs, 401-ks or Employee Plans - they'd add 12 million more records - and the percentage of household ownership would still be less than half of what it was during most of the second half of the twentieth century. So, theoretically, the T-As could do even better.

Always the optimist, The OPTIMIZER thinks that T-As could really catch a big wave here: Wider share ownership would go a long way toward "democratizing" business ownership - and control too. And, at a time when income inequality is beginning to trouble many of our top business people, it would also contribute to a much better and arguably fairer sharing of the tremendous wealth our public companies create. More to come on this in our next issue...

## **ELSEWHERE ON THE SUPPLIER SCENE:**

**Can you believe it? Another entrant to the already overcrowded U.S. proxy solicitation business?** Yep...**Kingsdale Shareholder Services**, Canada's largest proxy solicitor, set up shop in New York in March, and according to a recent article by **Reuters**, Toronto, it *"still plans to expand in the United States after merger and acquisition talks with rivals there failed to produce a deal."* The Toronto-based firm, majority-owned by **MDC Partners Inc.**, "was close to finalizing a deal with one potential target this year but the two sides could not reach an agreement" according to Chief Executive Wes Hall, "who declined to specify which company it was"

**At first blush, Kingsdale's aspirations don't seem all that far-fetched:** U.S. customers include **Citigroup**, as well as activist hedge funds **Pershing Square**, where Hall said he advised **Bill Ackman** on the big **Canadian Pacific** proxy battle, and **Jana Partners**, where he advised in the **Agrium** and the \$39 billion **BHP Biliton** bid for **Potash Corp.**

**And yes, our sources tell us that there is a fairly big U.S. firm looking to sell...**And Kingsdale's majority owner, U.S. listed **MDC Partners**, a Toronto-based ad conglomerate, seems like it might have the ability to finance a fairly big deal.

**But MDC has had some press of its own of late**, where, following a whistleblower complaint to the SEC about revenue

recognition and reporting issues, the high-living CEO - who drew \$70 million since 2011, while MDC made money in only one of ten years, resigned in mid-year, returning \$12.5 million in comp, \$8.6 million in expenses and forfeiting a multi-million dollar severance package, according to **Globe And Mail** stories in July.

**And yes, you gotta' admire their spunk:** "Kingsdale is now aiming to pick up market share and hire talent from some of its U.S. peers" according to Hall. "We can't just sit around and wait for an acquisition to show up. We have to start organically," Hall said. "Even though we're not necessarily going out there and buying a company, we're certainly out there actively seeking to acquire talent. That's where we're going to spend most of our time."

While admitting that "It is taking time for U.S. companies to recognize that the conditions for shareholder activism and other corporate governance situations are similar in the United States and Canada" (hardly a compelling sales proposition, we'd say) - and basically ignoring the overcrowded field - and engaging in some mostly wishful thinking, we think - he told the **Reuters** reporters, "I would love to buy the **Georgeson** U.S. business if it comes on the block."

**One thing we can say for sure: there WILL be further**

*consolidation in this seriously overcrowded arena, so stay tuned.*

**In a blockbuster deal - that may also have some major implications for the shareholder servicing business - Fidelity National Information Services bought SunGard,** a financial software maker and service provider, for a whopping \$9 billion in August, which a *NY Times DealB%* article said yielded the VC owners “a modest return for their efforts” - signaling to us that some major shakeups in the SunGard portfolio are likely down the road.

*SunGard has long been an important provider of a variety of shareholder recordkeeping services,* which, sadly, have not been high-growth/high-margin businesses that acquirers like to buy. So clients will have to stay alert here, we think. SunGard systems are the major engines behind the Wells

Fargo and Continental shareholder recordkeeping systems - and they remain the major supplier of systems and support to the steadily shrinking universe of public companies that keep the shareholder records themselves - and ouch! - The much vaunted “new and improved system” that SunGard announced a few years ago has been something of a long and bumpy ride for all concerned.

*If we were a SunGard client, or a user of SunGard systems, we would not be too worried: SunGard is a seller of many high-margin services to public company clients, and likely, will not “leave anyone flat” come what may. In fact, we wonder if another industry-player that wants to get bigger in a hurry might be smart to buy out the shareholder-servicing unit - which might be a great deal for all concerned. So stay tuned here too, we say.*

## OUT OF OUR IN-BOX:

*Over the past quarter, our personal in-box contained one of the best examples we’ve ever seen of dealing effectively with an embarrassing “governance flap”...plus one of the biggest missed-opportunities ever... plus one of the stupidest “governance ideas” we’ve seen in a very long time... from one of the country’s smartest people, no less...*

The best...was the August 20th WSJ op-ed piece signed by Muhtar Kent, the chairman & CEO of Coca-Cola Co., admitting up-front that “the way we have engaged the public health and scientific communities to tackle the global obesity epidemic...is not working.” He confessed his personal disappointment and acknowledged that “our company can do a better job of engaging both the scientific and the public-health communities - and we will.” He cited three bulleted action items to assure that “best practices will be implemented internationally... We want to get focused on real change.” And his closing statement that “We are determined to get this right” left us convinced that indeed they are.

Just a few days later, blowing a major chance to get ahead of a major set of governance flaps re assault-type rifles, Wal-Mart announced that they would stop selling any weapons that accept high-capacity ammunition magazines, but saying that “It was done purely based on customer demand.” The fact that the spokesman’s CEO said on CNN in June that “Our focus as it relates to firearms should be hunters and people who shoot sporting clays and things like that” was seemingly forgotten - which the *NY Times* reporter was quick to zero-in on in his August 27th article. This might have been a big chance to lay down the guns and make peace with the Trinity Church investment group, which so far

has missed the target in its bid to force the Walmart board to address the company’s sale of firearms. While, to date, the board has prevailed in its contention that (a) this is an ordinary business decision and (b) that it is not, nor should it be considered as being a “social policy issue” that transcends the “ordinary business rule” the court decision that allowed Walmart to exclude the Trinity proposal is on appeal. And, given the almost weekly shootings we’ve been witnessing - not to mention the weak and wavering language of the initial decision re: the “social policy” issue - we think that Walmart missed a huge opportunity here. We’d give 50%+ odds that Trinity will end up prevailing...meanwhile prolonging a debate where now, there really should be NONE.

**The stupidest thing we read last quarter was the Wachtell, Lipton letter, calling on the SEC to do away with quarterly reports: What could Marty Lipton be thinking??** First off - and while, OK, law firms do not need to think this way - for companies that actually make stuff, and try to sell stuff...the real point of QRs is what master conglomerateur Harold Geneen used to say: “The only way to make your year, earnings-wise, is to make your quarters.” Secondly, does Wachtell really believe that analysts, reporters, activist investors, governance-gurus and even ordinary Aunt Jane investors will blithely agree to forego 10-Qs in “the information age”?? And that the SEC will passively go along with the wisdom of Marty?? Lastly, we must confess that the arguments sound exactly like ‘Trumped-up’ ones - coming from people who, like our nutsy far-right congressmen, suffer from binary thinking - a total incapacity to see nuances and seek, or even admit that there may be a middle ground, hewing stubbornly and fruitlessly to blatantly “bi-polar” positions.

## PEOPLE

**Jim Alden** (the younger) has left the sales and client-service team at **Keane**, to sign-on as the Director of Business Development at **Group Five**. *A great move all around, we say.*

**Lydia Beebe**, former corporate secretary and chief governance officer of **Chevron, Inc.** - and a former Chair of the **Society of Corporate Secretaries and Governance Professionals** is now Senior Of Counsel in the San Francisco office of **Wilson Sonsini Goodrich & Rosati**, where her practice focuses on - what else? - Corporate law and governance. *Three cheers for Lydia...and especially for Wilson Sonsini, which has broadened its knowledge base big-time!*

**Rob Buckley** has left **Computershare**, where he served as a Senior Vice President and Director in charge of relationship management teams in Chicago, Dallas, Missouri and San Francisco for many years. *Rob is a talented and very well-liked guy, who will show up in a new role soon, we feel sure.*

**Ty Francis** who served for three years as the NYSE's V.P. and Publisher in their **Governance Services** group has left to become Executive Vice President and Group Publisher at the **Ethisphere Institute** with responsibility for long-term strategy and revenue production across Ethisphere's suite of global events, research and magazine business dedicated to the General Counsel, Chief Legal Officer and the Ethics and Compliance space. Among its several moving parts, it claims to be "the global leader in defining and advancing the standards of ethical business practices that fuel corporate character, marketplace trust and business [with] a deep expertise in measuring and defining core ethics standards using data-driven insights that help companies enhance corporate character." **The World's Most Ethical Companies** honors superior achievements in transparency, integrity, ethics and compliance. The **Business Ethics Leadership Alliance (BELA)** is an international community of industry professionals committed to influencing business leaders and advancing business ethics as an essential element of company performance. *What a great move for Ty - just before the tsunami of ethical, compliance and shockingly*

*bad-governance issues we saw in September - which ought to - and we predict will - make this one of the hottest new spaces ever.*

**Former NYSE Chairman Dick Grasso**, who chaired the Exchange from 1995 to 2003, when he stepped aside following controversy over his pay package, and who has been mostly quiet since then, got lots of press coverage - and great TV time too on "*Wall Street Week*" - where he ripped into the current scary state of stock exchanges. "*A fast market is not necessarily a fair market*" he said, noting the extreme volatility we've been seeing of late - and zeroing-in especially on the wild and crazy first few hours of trading on August 28<sup>th</sup>, where many large stocks saw huge percentage moves in both directions - for no apparent reason - and where there were nearly 1300 trading halts. He called the SEC's **Regulation NMS** - which was supposed to link stock exchanges into a fast and seamless "National Market System" - where investors would always get "the best price" - a "*sad, sad experiment*" - which indeed it is. *We were sure happy to see Dick back in action again - and since then, at least a dozen other old friends have remarked on what a great champion he was for stock exchange fairness and reliability - and what a champion he was for public companies.*

**Mark Hartzell**, who served with distinction as **Computershare's** EVP and Head of Sales and Marketing has left CPU, to become the **Chief Administrative Officer** of **Anne Arundle County, MD**. *Congrats to Mark: What a great place to be, and what a great new gig!*

**Michael Ryan**, a very long-term player on the abandoned property scene, has left **Keane** to sign on as Senior Vice President for Unclaimed Property at **Georgeson** where, in addition to asset reunification programs, they are planning to increase their focus on abandoned property reporting. *Mike's bio on LinkedIn notes that during his long career, he has turned over \$1 billion in abandoned property to states - and an equal amount to shareholders themselves.*

## QUOTE OF THE QUARTER

*"We mean it when we say, 'You have to cough up the individuals.' We're not going to be accepting a company's cooperation when they just offer up the vice president in charge of going to jail... imposing unprecedented financial penalties on the institutions whose conduct led to the financial crisis is not a substitute for holding individuals within those institutions personally accountable."*

*U.S. Attorney General Loretta E. Lynch, as quoted in the September 10th New York Times.*

# REGULATORY NOTES... AND COMMENT

## ON THE HILL:

**Our mostly non-legislating legislators managed in September to keep the government running through December**, where they seem set to kick the can down the road yet again, with temporary actions instead of a real budget, or maybe, God forbid, to engineer another shutdown unless (go figure) Planned Parenthood is somehow de-funded.

**Meanwhile, thanks to their failure to reauthorize the Export Import Bank charter - which the same far-right loony-fringe refers to as a “corporate welfare scheme” - companies like Boeing, GM and Lockheed** either have to pass on bidding opportunities where export financing is a required element, or send work that would have been done here in the USA to their client's countries, where financing is readily available. In September alone, GE announced it would stop making gas engines in Waukesha, Wis, and move the 350 jobs to Canada; create 500 new jobs in France, Hungary and China - and 1,000 new jobs in the UK - all in exchange for necessary export financing. (Just as we were going to press, a bipartisan vote in the House passed a “discharge petition” to force a bill to the floor for the first time since 2002. The Senate had earlier approved the same language as a rider to another bill...but Senate Majority Leader **Mc Connell**, who opposes the re-chartering, said “The Senate is not going to spend a week on a bill that the leader does not support.” The betting right now is that it will go through nonetheless, so stay tuned.

**As reported in our last issue, while the Congress is basically gridlocked, federal agencies seem to be making big regulatory moves on their own.** The big news-getter was the announcement from the **Justice Department** that they will give top priority to identifying and prosecuting individual employees from the outset - and will not give any credit for cooperation (a word that was underlined in **Attorney General Loretta Lynch's** press release - and in her speech to the press) to companies who do not “cough up the names.”

**The IRS has issued new guidance and has ceased to pre-approve the spinoff of corporate real estate assets into REITS**, as **Darden Restaurants** proposes to do, and as activist investors have been agitating for companies like **Macy's, McDonalds** and others to do by including an “active trade or business” in the spin-off, regardless of its size, in order to qualify for tax breaks.

## AT THE SEC:

**Bowing to pressures from federal judges, from the U.S. Chamber of Congress and from harsh criticisms from**

**many former, high-ranking SEC officials about the fairness of its in-house tribunals, the SEC has proposed new rules allowing many more of the protections of federal courts** - like more time to prepare than former SEC “rocket dockets” allowed - and the right to obtain sworn testimony from witnesses in advance of the trial. (Wow! Thanks, SEC) But, rather astonishingly, the actions fail to address the most serious complaints about the overall fairness of the SEC bringing cases in its own tribunals, then hearing appeals on them as well... and the fact that so far, four federal judges have questioned the constitutionality of the way the in-house judges are appointed. Stay tuned for more here too, we feel sure.

**In a rare unanimous decision the SEC voted to propose new rules designed to reduce the risks of mutual funds and other big asset managers being unable to liquidate assets quickly enough to avert a panic in a financial crisis.** In addition to having written plans, funds will have to classify all of their financial holdings in terms of the time in which they can be converted to cash, in anticipation of meeting all shareholder redemptions in three days instead of the present seven. Sounds good at first blush, but Hey! How does a fund account for what *other funds* have on hand - and how *their liquidations* are likely to effect the estimates a firm makes, based solely on its own holdings?

**On a very positive note, the SEC has been looking harder, and taking a few actions with respect to the “marketing” and other fees that private equity funds have been awarding themselves at the expense of investors.** A September filing against \$100 billion **First Eagle Investment Management** alleged that between Jan. 2008 and Mar. 2014 they billed investors \$25 million to brokers for “marketing” shares - all the while saying that they were absorbing the fees themselves. First Eagle quickly settled, agreeing to pay back \$27 million in disgorgement plus interest, plus a fine of \$12.5 million... without admitting or denying the allegations. Sounds like a mighty cheap deal for 6+ years of lying to investors in disclosure docs...but a start, however small. **Barbara Roper**, director of investor protection for the **Consumer Federation of America** quickly jumped in with a reminder that “the problem is much bigger than this one case” - and that the SEC has been promising to revisit those totally inappropriate 12b-1 “marketing fees” for more years than we can count.

## IN THE COURTHOUSE:

**Big news as the Supreme Court, without comment, allows a lower court ruling to stand on insider trading cases** - upholding the ruling that the government must prove that insider tipsters received a “consequential” and tangible benefit in order for it to qualify as an illegal insider tip.

The Supremes will begin to hear several cases regarding the ability of the plaintiff's bar to bring Class Action cases this quarter...which many observers feel will significantly rein in the number of Class Action cases that can be brought.

More big news on the Class Action front, as Boeing - which was being sued for letting 401-k agents charge excessive fees and for choosing high-priced funds when comparable funds were available for less - settled on the very evening before trial. No terms disclosed yet, but

in December, Lockheed reached a settlement of similar charges for \$67 million.

**A major breakthrough in the mostly still unregulated cyber-security space:** The 3rd Circuit Court of Appeals (Phila.) ruled in August that the Federal Trade Commission can sue companies (hotel chain Wyndham Worldwide Corp. in this case) who fail to provide consumers with "reasonable protections" against thefts of online data.

## WATCHING THE WEB

Good news, for a change, on the Cyber-Crime front; the NYC District Attorney's Office and the City of London Police have joined forces to share information via a newly formed non-profit entity, the Global Cyber Alliance, which will have its own staff in both cities to work on emergency incident response, information sharing and research.

The effort is being funded initially with \$15 million of the \$448.7 million the NY DA's office was awarded in the BNP Paribas settlement for violating U.S. sanctions against Iran, Sudan & Cuba, and for falsifying business records. DA Cyrus Vance said that Aetna, American Express, Citigroup, U.S. Bancorp and other large companies have already signed on, and the Alliance is hoping to raise an additional \$25 million from member companies. The DA's office also has the right to invest another \$10 million after three years. A drop in the bucket, we'd have to say - relative to the monster costs of cyber-crimes AND vs the DA's huge pot of penalty money - but at least a start.

## THE SHAREHOLDER SERVICE OPTIMIZER

is published quarterly by

CARL T. HAGBERG & ASSOCIATES

P.O. Box 531, Jackson New Jersey 08527-0531

SUBSCRIPTION PRICE: \$300 per year

E-Only Edition: \$275 per year

Questions, comments or letters to the editor about material in this newsletter are also most welcome.

Telephone (732) 928-6133 Fax: (732) 928-6136

E-mail: [cthagberg@aol.com](mailto:cthagberg@aol.com)

[www.OptimizerOnline.com](http://www.OptimizerOnline.com)

ALL RIGHTS RESERVED: Reproduction or transmission of this newsletter, in part or whole, by any means whatsoever, is prohibited unless the permission of the editor is first obtained. Such requests are welcome and permission will be liberally granted.

## COMING SOON

**"RAISING THE BAR" - AN UPDATE ON HOW THE BARS ARE BEING RAISED ON THE CORPORATE GOVERNANCE AND COMPLIANCE SCENES - BUT ALSO ON SUPPLIERS OF PRODUCTS AND SERVICE TO PUBLIC COMPANIES.**

**READERS: IF YOU ARE WITH A PUBLIC COMPANY THAT HAS DONE SOMETHING THAT YOU THINK "RAISES THE BAR" IN THE COMPLIANCE, ETHICS AND/OR SHAREHOLDER COMMUNICATIONS SPACES - OR IF YOU ARE A SERVICE SUPPLIER WITH A GREAT STORY TO TELL ABOUT "RAISING THE BAR" - CONTACT THE EDITORS...**

**CARL HAGBERG, [CTHAGBERG@AOL.COM](mailto:CTHAGBERG@AOL.COM) OR PEDER HAGBERG, [PHAGBERG75@GMAIL.COM](mailto:PHAGBERG75@GMAIL.COM)**