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COMING SOON – OUR 32nd ANNUAL OPTIMIZER MAGAZINE

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THE SHAREHOLDER SERVICE **OPTIMIZER**

PROVIDING STRATEGIC AND PRACTICAL ADVICE - AND MONEY-SAVING TIPS...SINCE 1994

Exxon Mobil Launches Program Allowing Retail Shareholders To Issue “Standing Voting Instructions.” A Potential Game-Changer... Or A Major Flop Ahead?

It seems that every law firm in the country has been summarizing Exxon Mobil’s attempted vote-getting effort, speculating that others will follow suit and offering pointers on what to watch for and what to do.

*We, however, as 60+ year observers of actual U.S. proxy voting behaviors, are expecting this to become an expensive and totally embarrassing flop... unless a robust **Investor Education Program on the VALUE of shareholder votes – and on voting itself – becomes part of the solicitation process.***

First off - with respect to claims from many activist investors who’ve been threatening lawsuits – it’s worth noting that Proxy Voting - and the Validity of Proxies - is determined by State rather than Federal laws. It is clearly permissible to honor such “standing proxies” in Delaware - and, as far as we know, having reviewed the Bylaws of hundreds of public companies as part of our Inspector of Elections business, is not prohibited by any State we know of - nor should it be.

But as investors - who firmly believe that “*Shareholder Votes Have Value*” - and that this is clearly and empirically demonstrable - we feel certain that soliciting revocable proxies that would authorize the *transfer of value* to the company's proxy committee - without including a thoughtful, thorough and totally impartial educational

program in place - fails to fulfill a company's duty to properly and fully inform its investors when asking them to take action.

Equally important to note, the basic premise behind the effort - that it is somehow "rational" for investors to be "indifferent" to the many items that come before them for a vote is not only WRONG – it will doom the effort to utter failure: Exxon is hoping to motivate the huge majority of their individual investors who are NOT VOTING NOW – to sign and return a new kind of Voting Instruction Form??? And asking them to give them a "blank check" in the bargain???... Fat chance, we say.

We hate to say this, since we are still hoping to win Exxon over, but their recent record of dealing with corporate governance and related voting matters has not resonated well with investors to say the least: Just three years ago, activists at **Engine Number One** literally rammed them head-on – ousting three directors in the polls. Shortly thereafter Exxon sued two smallish activist funds who tried to offer shareholder proposals - where Exxon was slapped down again, in court. And now, the activist community is mostly up-in-arms about this proposal, which will almost certainly generate even *lower* pro-management votes in subsequent elections.

So what WOULD motivate investors to take action on this program – or much better yet, we say - to actually vote their shares?

Our Step-By-Step Roadmap To Success

We have been working since 2003 – when the big and unrelenting falloff in retail voting began – on a Plain English educational program explaining the value of voting and offering tips on how to make it as easy as possible.

Our educational booklet "*Shareholder Votes Have Value: Don't Let Your Votes Go To Waste*" – opens with a short cover letter, continues with clear evidence that votes DO have value, then offers simple tips on how to make up one's mind – and how to pick a method of voting that's easiest for them. It can be delivered as a light-weight, compact, 8 ½ x 11 sheet of paper, folded into a small four-page booklet that "rides free" with any mailings – or it can - and should - be delivered essentially "free" via emailed proxy materials.

Most readers say, yes, it is easy to understand, and yes, it makes sense to them. And it is especially written to make investors aware that not voting costs the companies they own serious money – which is really *their money* that is going to waste when they don't vote.

How Do We Motivate Busy Investors to Vote — and Make the Message Stick?

Answer: Show them their vote matters - and make the message personal, meaningful and *compelling*.

THE PLAYBOOK

- **Send the "*Shareholder Votes Have Value*" booklet to every shareholder who receives a "Notice" via the Notice and Access model.**
- **Include a branded cover letter as the first page:** it always draws attention and, with SEC approval, can be included with the Notice and mailed at virtually **no extra cost.** (If you are soliciting "standing instructions" be sure to note that most years, voting as Directors recommend is a "rational choice" - and if you are a mutual fund, spell out all the choices you're offering - and clearly explain that investors can override the instructions by voting themselves at any given meeting.)

- **The booklet itself costs less than what most companies spend now on generic inserts - over 90% of which are currently ignored by individual investors, as your own results are certain to show.**
- **Send the booklet to all registered shareholders and to any and all accounts that still receive hard-copy materials.** The extra cost is minimal - and hard-copy recipients have the highest propensity to pay attention - and to vote.
- **Reach employee shareholders, too: Email the booklet and a personalized letter to Employee Stock Ownership Plan (ESOP) participants — with a clear note that voting is confidential.** Employees often own **10%+ of your shares, but vote less than 6% of them** - largely due to fear of management retaliation if they vote against a single management recommendation..
- **Make the booklet, and the message, easy to see:**
 - **Summarize the message in the Notice of Meeting.**
 - **Put the booklet on top of hard-copy mailings.**
 - **Post both the letter and booklet on your Investor Relations Page, and feature them as the opening section of all online voting platforms.**
- **Add a proven incentive to emphasize that votes DO have value: We know of three companies that have increased their meeting quorums by 6% or more by donating \$1 to charity for every account that votes.** That 6% of mostly-friendly votes will do away with embarrassing “squeakers.”
- **PLEASE, we urge you: review the booklet: [“Shareholder Votes Have Value: Don’t Let Your Votes Go To Waste”](#) (Click here to read it now, while this is fresh in your mind.)**

We’ll be happy to help you customize the letter - and the text, if you have a better way to explain the value of voting - to ensure you will make the strongest possible impression with investors.

The cost of doing this is minimal compared to what’s already spent on preparing, distributing, tabulating, and soliciting votes — much of which often goes to waste.

Bottom line: This is a low-cost, *proven way* to boost retail voting.

We Know This Approach Works:

Three years ago, our Editor in Chief successfully launched an “outreach and education program” at a 70+ year-old private club — where 40% of the founding members couldn’t be located, let alone encouraged to vote. This made achieving a quorum difficult — and in some years, impossible.

We introduced a campaign encouraging members to donate shares to a Trust to Preserve and Protect the Club, and asked those who wished to keep their shares to sign **Revocable Proxies** to the Trustees. Roughly half of the non-voting members quickly and willingly did so — once they understood the importance of voting.

- If you’re considering launching an **Investor Education Program** around the value of shareholder votes — as we hope you will — please contact **Peder Hagberg** at phagberg@cthagbergllc.com or call him at **917-848-6772**.

Why Is An Investor Education Program So Important?

- Back in the 1970s and early ’80s, individual investors—who then owned 80% of all stocks at the peak—religiously voted nearly 75% of their shares. Today, at most companies, individual investors

return proxies less than 10% of the time—and typically vote less than 6% of the shares they own as a group.

- Voting numbers have been dropping every year since “Notice and Access” was introduced over 25 years ago. (Most of the figures you see floating around are flat-out wrong because they count “Broker Non-Votes”—which can’t be cast for most proposals on the ballot—as “present.”)
- As a result of voter apathy, publicly traded companies are literally wasting billions of dollars each year on pumping out proxy materials that fail to induce individual investors to vote—even though voting is easier than ever before!
- Every year, more and more companies fail to achieve a quorum on the first or second attempt—forcing them to spend even more money on additional solicitations and to reschedule and reconvene shareholder meetings—often to no avail!
- In short, doing nothing to educate investors on the economic value of their votes—or worse, acting as if they have NO intrinsic value—is ABSOLUTELY NOT A GOOD STRATEGY in today’s environment.
- A well-delivered and strictly impartial Investor Education Program on the value of voting will surely be seen as an exercise in good corporate governance, earning the issuer some well-deserved “brownie points” with individual and institutional investors alike.
- The program should also be viewed as a smart and worthy exercise in “good corporate stewardship”—since currently, as noted, more than 90% of the billions of dollars spent on printing, postage, emailing, soliciting, and processing voting materials each year are, quite literally, going totally to waste!
- As most observers know, individual investors who do vote tend to support management’s positions—as long as the issuer is a reasonably good performer and is considered a “good corporate citizen.”
- This is a perfectly rational behavior—even when the company is going through a rough patch. But as noted below, there is a huge new generation of investors on the horizon for whom environmental and social issues loom large—and who don’t “simply respect and defer to authority” the way their elders tended to do. Ignore this at your peril.

More Good Reasons For Issuers To Spring Into Action:

- Quite suddenly—although we have long predicted this would happen—individual investors have been increasing in both numbers and shares owned at an astounding rate: A recent Gallup poll shows that 62% of all U.S. households own shares of stock—an all-time record.
- At many companies—especially small, mid-cap, and micro-cap ones, which tend to have a large population of insider and employee owners and superfans—individuals own a majority of the shares! Many of the largest, strongest, and best-established companies also have unusually large retail populations, who can clearly make a big difference in close calls, especially during proxy fights.

- Especially important to note, an even bigger demographic trend is looming: the historically unprecedented transfer of wealth from Baby Boomers and Gen X—estimated to be around \$30 trillion over the next ten years.
- Another demographic trend has been gathering steam fast: The entry of “working class” investors. “Among Americans with incomes between \$30,000 and \$80,000, 54% now have taxable investment accounts. Half of them have entered the market in the past five years,” according to a new survey conducted by nonprofits Commonwealth and the Black Rock Foundation. And none of them, we are sure, haven’t a clue about the Proxy Voting Process.
- *We are confident these trends will soon make individual investors the largest voting class of all... And please note: today’s investors tend to be very self-directed, tech-savvy, receptive to receiving and sharing information over social media, and highly engaged on social and environmental issues. Unlike their parents and grandparents, they don’t simply defer to “authority” - but they are very much in need of education about how proxy systems work—and about the real VALUE of their votes.*

Just In Time For Folks Who Think That Shareholder Votes Have No Value... “Mercury Vote” Also Begg To Differ

Thanks much to our colleagues and friends Pat Tracey and Andy Wilcox, who alerted us to the Mercury Vote website, advising that:

"We are an auction marketplace that empowers shareholders to generate extra revenue by selling their unused proxy voting rights, enabling investors to obtain these aggregated proxy votes to reduce costs."

There’s not much info on the website yet, other than the callout message and photos of the Management Team, led by **Spencer Huckleberry Hurst** (how’s that for a moniker that makes you look twice? - which led some folks to suspect a prank) who is a recent Cornell grad, and who is already well-along with this project. And the timing sure is perfect if you think, wrongly, that “Shareholder Votes Have No Value” – OR who *know* they DO but try to grab them up for nothing.

There is, we can assure you, an already active “dark marketplace” that allows investors to buy and sell votes, as we believe they should be allowed to do, But only with proper disclosures we say, and with a foolproof way to deliver legally binding votes to the buyers. There’s a group of people who regularly borrow money to buy blocks of stocks before the record date for upcoming proxy fights they’ve often launched themselves. Then, typically, they sell them as soon as the fight is announced, and laugh all the way to the bank.

And there are many other ways to capture voting rights on the Q-T besides. Selling votes on the QT is a huge moneymaker for retail brokers, whose margin agreements allow them to sell client’s votes - with no notice to them, and without a penny of compensation - even if they have never had a margin balance.

There really is a lot of work to do “behind the scenes” to actually capture peoples’ voting rights and conduct an “auction” to arrive at the price. In short, you really need to get a legally binding “Irrevocable Proxy” that’s good until the Meeting is officially concluded, then to get bidders for the votes themselves. But when we look at the big money spent by both sides to round up votes in a proxy contest – and when one looks at the stakes – which

often decide the FATE of the targeted companies - and their Directors - one can easily imagine that both sides will be tempted to outbid – or outfox the other to eke out a victory at the polls, whatever the costs may be.

We wish every success to Mercury Vote – although we also need to note that an earlier venture like this – **Shareholder Vote Exchange** – was successfully launched in 2021 – but folded shortly thereafter.

[Sell Your Proxy Votes? Good Idea, We Say, But Lots Of Practical Problems | Optimizer Online](#)

This article also contained even more info to prove that Shareholder Votes Have Value (like the big stock-price premiums that accrue to shares with supermajority votes in a proxy fight) – which Exxon Mobil and its advisors would be wise to bone up on. How about a 32.7% premium (\$7.05 per share) on a super-voting class of stock in the runup to a threatened proxy fight at Paramount Global?

And Speaking Of Proxy Fights...

Through September, there have been 17 proxy contests in 2025 “that went as far as an actual shareholder vote under universal proxy” rules, according to the Oct. 6 posting by The Activist Investor, which avidly tracks proxy fights. Of the 17, seven – or a very robust 41% of the contests - saw the activists winning one or more seats.

TAI also looked at the costs involved, noting “It’s not cheap to exercise your rights... Activists, both very experienced and new, have started to spend some serious money on them.”

“On average across the seventeen contests, activists spent an average of \$3.2 million. Companies spent an average of \$5.3 million. We see an enormous variance in spending, though... The most expensive contest was at APD, where [the contenders] spent a combined \$34 million.

Company	Investor	Activist BoD Seats	AGM date	cost	
				investor	company
Masimo (MASI)	Politan	2/2/2	9/19/24	6,000	15,000
Cracker Barrel (CBRL)	Biglari	3/10/0	11/21/24	1,300	8,000
Carver Bancorp (CARV)	Dream Chasers	2/2/0	12/12/24	350	350
AIM ImmunoTech (AIM)	Kellner	4/4/1	12/17/24	750	1,500
Techprecision (TPCS)	Wynnefield	2/6/2	12/19/24	600	45
Air Products (APD)	Mantle Ridge	4/9/3	1/23/25	8,000	28,000
Matthews (MATW)	Barington	3/3/0	2/20/25	650	1,000
Peoples Financial (PFBX)	Joseph Stillwell	1/6/0	4/23/25	300	350
Tejon Ranch (TRC)	Bulldog	3/10/1	5/13/25	80	3,350
AEye (LIDR)	Wuller	2/2/0	5/15/25	60	150
Phillips 66 (PSX)	Elliott	4/4/2	5/21/25	18,000	15,000
National Health Inv (NHI)	Land & Buildings	2/2/0	5/21/25	800	750
Zevra Pharma (ZVRA)	Daniel Mangless	2/2/0	5/29/25	250	750
Dynavax (DVAX)	Deep Track	4/4/0	6/11/25	5,000	13,000
PENN Entertainment (PENN)	HG Vora	3/3/2	6/17/25	12,000	150
Brookdale Senior Living (BKD)	Orteilus	6/8/0	7/11/25	1,100	8,000
Sonim (SONM)	AJP/Orbic	5/5/0	7/18/25	1,600	350
Barnwell (BRN)	Ned Sherwood	5/5/0	9/19/25	200	200

Source: The Activist Investor

“We must note these figures are at least kind of rough,” TAI observed. “Companies and activists disclose an estimated ‘cost of solicitation’ in a definitive proxy statement, following SEC guidelines. The SEC does not audit or even review this figure, though. Companies and activists alike set forth figures that in part reflect strategic moves. Some say they plan to spend a considerable amount [“hoping” we’d say] to intimidate the other or draw them into spending even more. Others might say they plan to spend a minimal amount to encourage complacency.”

In most fights, the company side spends a great deal more than they report – on things like opposition research, legal “consulting,” “outside advisory bills” and public relations efforts that are not counted as “solicitation expenses” by the SEC. All grist for the mill, we say in terms of Shareholder Votes having very significant VALUE. The proxy fight tally is pretty much done for 2025 – with another five fights still “in the hopper” – all of them where the activist is looking to win a majority of the open seats – for a grand total of 22 Fights in all.

SEC Chair Drops Three Bombshells: Questions Precatory Proposals and Defers to State Laws Like Texas’s \$1M Threshold — The End of Proxy Regulation as We Know It?

In his Keynote Address at the John L. Weinberg Center for Corporate Governance’s 25th Anniversary Gala on Oct. 9, 2025. SEC Chairman Paul S. Atkins started off on a high note:

“I am delighted to discuss one of my top priorities as Chairman, which is to make being a public company an attractive proposition for more firms... There are approximately 4,700 exchange-listed companies today, compared to a high point of approximately 7,800 in 2007.

“My goal is to reverse this trend—to “Make IPOs Great Again” —and it involves three pillars. First, we must simplify and scale the SEC’s disclosure requirements to reduce the costs of preparing SEC filings and, at the same time, make them more comprehensible.

“Second, we must de-politicize shareholder meetings and return their focus to voting on director elections and significant corporate matters.

“Finally, we must reform the litigation landscape for securities lawsuits to eliminate frivolous complaints, while maintaining an avenue for shareholders to continue to bring meritorious claims.”

But then, Atkins waded into much deeper waters, where, in many respects he is seriously uninformed – and in the case of costs, he’s been seriously *mis-informed* in our view:

“In the past few proxy seasons, perhaps nothing has epitomized the politicization of shareholder meetings more than shareholder proposals focused on environmental and social issues.” This, we agree, is largely true.

“These proposals, which reflect views from both sides of the political aisle, generally call for actions that are not binding on the company—referred to as “precatory proposals”—and frequently involve issues not

material to the company's business." We say, the "frequently" part is true – but to most investors, many of them DO involve issues like climate change, sustainability, child labor practices and corporate reputation that, undeniably, we say ARE "material issues" to investors.

"When voted on at meetings, they almost always receive even lower support than shareholder proposals do generally." Atkins cited a jumble of "averages" that include "anti-governance proposals" in the numerator - which draw less than 3% support - that totally masks the fact that MANY proposals DO draw big votes. And he ignored the fact that, historically, hundreds of precatory proposals that drew smallish votes for many years suddenly came into fashion - and were ultimately adopted.

"Nonetheless, these proposals consume a significant amount of management's time and impose costs on the company." Here, his written speech provides a footnote alleging that it can cost a company "up to \$150,000" to deal with each proposal – which, as the *OPTIMIZER* has noted before, (a) has no empirical basis whatsoever and (b) fails to recognize that the amount spent to rebut a precatory proposal is entirely up to the corporation itself and (c) that after the first year there are literally NO COSTS to run them again – unless the issuer decides to hire outside help to re-write their rebuttal. We were *astonished* at his naivete in assuming that regulatory expenses and shareholder meetings somehow account for the big drop in publicly traded companies. What business founders would pass up the huge paybacks from a successful IPO because they have to hire a few more accountants, attorneys and auditors - all of whom will be paid for by the new investors? *The current imbalance is due entirely to the efforts of hedge funds and venture capitalists who've been scooping up public companies faster than new ones can be formed.*

Then, Atkins drops his first bombshell: *"However, is a company actually required to include these precatory shareholder proposals in its proxy materials? The answer to this question lies at the intersection of the Commission's Rule 14a-8 and state corporate law. While Rule 14a-8 provides a mechanism for a shareholder to include its proposal in the company's proxy statement, the rule can only be used for proposals that can properly be brought before a shareholder meeting under state law"* he asserts.

Then, after a meandering commentary on the long and winding history of Rule 14-a-8 – which fails badly we think, to recognize the role of the SEC as mostly-fair and reasonable "mediator" as to whether a proposal is "material" - or not - Atkins drops a second bombshell:

"State law governs whether a proposal is a "proper subject... So, are precatory proposals a "proper subject" for action by shareholders under Delaware law? The expertise and domain of the Commission and its staff is in the federal securities laws. Accordingly, it is appropriate for the agency to defer to those who practice Delaware law, including many of you in the room this evening, to answer this question..."

Then, he drops his third and biggest bombshell... *"I also want to discuss recent developments in Texas. Last month, the state's shareholder proposal law went into effect and added a new section to the Texas Business Organizations Code ("TBOC") If a company opts into this section, then a shareholder must own at least \$1 million in market value or three percent of the company's voting shares, among other requirements, to submit a shareholder proposal. These thresholds are obviously significantly higher than those in Rule 14a-8.*

Then after a bit more meandering on the Rule, he hammers his point home: *"So, if a company has opted into the Texas law, or has otherwise properly established conditions in its governing documents, and receives*

a shareholder proposal from a proponent that does not satisfy the requirements in the Texas law or the governing documents, then the proposal should be excludable under paragraph (i)(1) of Rule 14a-8.” - after which he calls for a “fundamental reassessment” of the Rule. So readers, put on your thinking caps and start your engines now!

From our perspective, as 60+ year ‘watchers’ and active participants in the proxy voting process, we foresee terrible consequences if the SEC fails to realize, and deal with the following points:

- **Atkins, and the staff, need to get their noses out of the Rule-Book and into the real world, as he did indeed promise they will do: First, they absolutely need to recognize that quite aside from Rule 14 a- 8, most “precatory proposals” ask the company to *provide more information to investors* about subjects that they consider to be “material” to the Election of Directors. This is surely at the core of the SEC’s mandate to protect investors, by assuring they have the information they need, and that the information is complete and correct.**
- **Next, they need to reckon with the serious economic consequences of ditching “precatory proxies” in favor of Binding Bylaw Resolutions. This will make it harder and more expensive for investors to introduce shareholder proposals - and for issuers to fight them. It will not only tick investors off, and rightly so, it will generate even *more “activism”* – and will raise the costs to issuers significantly, by turning every proposal into a Proxy Fight!**
- **Activist Investors are not going to go away. Dealing with shareholder activism is a multi-billion-dollar business now... and is certain to get bigger, more expensive and more divisive yet, if the SEC fumbles the ball here.**
- ***Issuers – and the SEC too – need to be aware that activists have a “Nuclear Option” in their pockets that could send intransigent issuers reeling: Just imagine what would happen if the major State and Union Pension Funds, and maybe College Endowment Funds too, were to completely divest their Exxon shares and move the money to a ‘better governed peer company,’ for example. Ten years ago, this would have been unthinkable. But not today, we say. Ironically, for as long as we can remember issuers have been saying that if investors don’t like management positions, they should “Vote with their feet.” Heaven help them if they do.***

QUOTE OF THE QUARTER

“The difference [between our two companies] is in the culture of the companies. We put a real premium on partnership. We put a premium on diversity and inclusion. We put a premium on getting the best out of our work force and using that to deliver solutions for communities, governments, and customers.

“In our industry, strategies are easy to copy. Assets you can buy, technologies you can license. Cultures are harder to build, and they are a differentiator.”

Chevron CEO Mike Worth, in a full-page interview in the August 31 Sunday New York Times – in response to a question, “What does Chevron do better than Exxon?”

A Huge Year For Transfer Agents And Proxy Solicitors, As M&A And Self-Tender Activities Increase. But Are The “Old Sows” Eating Their Farrow?

Hardly a day went by this quarter without seeing three or four Tender Offers, Share Buybacks and Mergers in the financial pages, which has been a bonanza for T-As and Proxy Solicitors. But it does seem to us that as James Joyce famously said, “the old sows are eating their farrow.” There have been a few spinoffs, and a recent surge in IPOs, but, bottom line, there are fewer and fewer publicly traded companies – mostly with mini market-caps and mini-shareholder populations, so it will be harder and harder to keep the party going strong – for long – but maybe not..

A recent WSJ update on consolidation in the Banking industry, following a string of multi-billion-dollar acquisitions, noted that “In 2005 there were nearly 9,000 banks insured by the FDIC. Now, there are fewer than 5000. And just three banks represented about 30% of all U.S. domestic deposits.” *But still, probably more than 4,500 banks still to go.*

Big News: The *Optimizer* Is Now Completely Free

Regular subscribers may have noticed they weren’t billed this year. After some strategic rethinking, we’ve decided to make The *OPTIMIZER* completely free.

If you’re already a subscriber, no action is needed. But if you’d like to receive The *OPTIMIZER* every quarter via email, please [CLICK HERE](#) to subscribe for FREE.

We’ve noticed significant changes in the ways our readers prefer to receive and engage with information. Going forward, we’ll focus more on “flash updates” — but only for truly important issues — and on more interactive and engaging content to keep you informed and connected.

Additionally, we plan to support our carefully pre-vetted service providers by producing live, interactive podcasts featuring panels of top experts on key topics, which we will moderate and help to assemble.

We’re still big fans of printed materials — especially when they’re concise, focused, and cover “cutting-edge” topics. We’ll continue producing the *OPTIMIZER’s Annual Magazine* and work hard to expand its coverage and depth.

With the expanded circulation we anticipate, combined with high-quality production values, strong visuals, and real-time Q&A, our magazine will be more accessible year-round. Our advertisers will also be featured much more prominently on our popular website and in our Index.

A special thanks to the many readers who have subscribed for 31+ years — an incredible group of leading public companies and top service providers!

People

We were delighted to see that **Donna M. Corso**, whom we have watched, worked with and admired throughout her long and successful career in the proxy solicitation world, has been appointed as Senior Managing Director, Proxy Solicitation at **Alliance Advisors**.

Donna brings over 35 years of experience, including leading proxy teams, and advising on major transactions for Fortune 100 and mid-cap companies. She's also a recognized leader in the SPAC space, having handled 850+ business combination and extension meetings. We are certain that Donna will make a huge mark at Alliance.

We were deeply saddened to learn that **Cal Donly** - the life-and-business partner of **Ellen Philip**, who survives him - passed away on October 18th. Everyone who was anyone in the Shareholder Servicing world over the past 60 years knows Cal and Ellen - two of the finest, most reliable and most generous people we've ever met. Both of them were 60+ year members of the **Corporate Transfer Agents Association** - that evolved with their help into the indispensable **Shareholder Services Association**. Perhaps their most notable contribution came when they turned their huge, annual holiday party into an annual "Party With a Purpose" - turning their beautiful office spaces into an art gallery for an evening to showcase and benefit the work of **Fountain Gallery** - a groundbreaking arm of **Fountain House** that literally works miracles for people suffering with Serious Mental Illnesses. [Click here](#) to see an inspiring review of one of the ten benefits they ran, raising more than \$1.3 million and please consider making a donation to Fountain House, earmarked for the Gallery, in Cal's honor. www.fountainhouse.org

We are also sad to note the death of **Richard - Rich - Koppes** in October - an incredibly influential attorney who was widely regarded as a pioneer of corporate governance. He was the former Deputy Executive Officer and General Counsel of the **California Public Employees' Retirement System (CalPERS)** and worked for the State of California for 25 years. Upon retiring from the state, he was of counsel at **Jones Day** law firm. He was the founder, past President, and former Administrative Officer of the **National Association of Public Pension Attorneys (NAPPA)**. He served on the board of the **National Association of Corporate Directors (NACD)**, as an Advisory Board Member of the **Rock Center for Corporate Governance at Stanford University**, as well as a professor, and a member of the **PJT Camberview Advisory Council**. *The most important things to know about Rich are that he was a man of great faith, who had the utmost integrity, patience, wisdom, humility - and likeability - that made him a guiding light and an inspiration to the Corporate Governance movement - and to all of its members.*

REQUIRED READING: [DFIN's 13th ANNUAL "GUIDE TO EFFECTIVE PROXIES"](#)

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Texy-Mania: Pure Crazyiness, We Say

The Texas Stock Exchange - TXSE or "Texie" for short – got SEC approval in September to act as an Exchange and is gearing up to list companies early next year. As someone who has seen the rapid collapse of the American, Boston, Philadelphia, Chicago and San Francisco Stock Exchanges some 40+ years ago, your EIC has a hard time seeing why a Texie is needed - apart, we'd say, from the "wild west appeal" to far right-wing Texy-Maniacs. But so be it, and good luck to them.

Texas has also been going hammer and tongs to induce big companies to exchange their Delaware Charters for Texas ones, promising fewer and lighter regulations, lower fees and its very own, new version of the Delaware Chancery Courts, still very much under construction.

In the biggest move of all, Texas has passed a bill allowing issuers to "opt in" to provisions that would raise the threshold for introducing shareholder proposals to \$1 million – or 3% of the shares outstanding – completely shutting out "ordinary investors." (See the article above on the potential for mayhem here.)

Still More Crazyiness... Texas Ag Probes ISS And Glass Lewis:

As **Broc Romanek** reported in his **Cooley** post of Sept. 29, **Texas Attorney General Ken Paxton** put out a press release to brag that he is investigating **ISS and Glass Lewis** "for potentially misleading institutional investors and public companies by issuing voting recommendations that advance radical political agendas rather than sound financial principles."

The press release notes his office has issued civil investigative demands to both firms to determine whether they violated Texas consumer protection laws, including rules on disclosing material facts. As noted in [a] [Reuters article](#), those proxy advisors have issued statements that they are confident they have complied with all applicable laws.

And confident they should be, we say: In August, a federal judge [issued](#) a preliminary injunction blocking Texas from enforcing its first-of-its-kind law restricting Glass Lewis and ISS from advising shareholders on ESG practices.

Quite aside from the fact that both ISS and Glass Lewis recommend a vote for management positions over 90% of the time, what businessman in his right mind would think that striving for, and bragging on having the very lowest regulatory and performance standards anywhere, and getting publicly slapped down in federal court, and ticking off big activist investors in a major way is a good way to attract good companies to your venue???

Still further, swapping out Delaware, which has over 100 years of precedents that lawyers and corporations everywhere are smart to rely on, and can save big money by doing so, for a still unfinished Tex-Mex stew of who-knows-what doesn't seem that smart either. And, P.S., many of the biggest and smartest investors will not like this either, and may well drop the "Texies" from their portfolios as a not at all stupid "risk management" decision.

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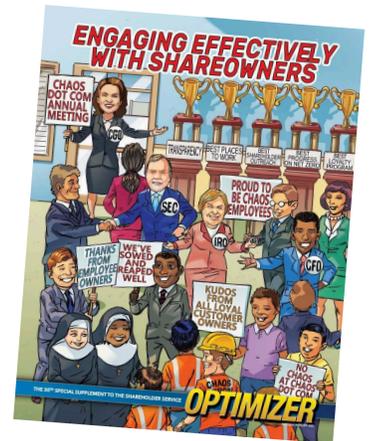
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