

OPTIMIZER

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

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IN THIS ISSUE

EARLY RETURNS FROM THE
SHAREHOLDER MEETING FRONTACTIVISTS RAISE THE ANTE ON BOARD
DIVERSITY - BIG TIMEPROXY ADVISORS URGE THE OUSTER
OF KPMG AT GE - AND AT WFBPAY RATIOS REVEALED FOR THE FIRST
TIME: MUCH ADO ABOUT NOTHING?BLUE-RIBBON PANEL ISSUES
SHAREHOLDER MEETING
"BEST PRACTICES"SHAREHOLDER MEETINGS
"BY THE NUMBERS"BEST AND WORST MEETING
MATERIALS WE'VE SEEN TO DATE"FAKE-NEWS" FROM THE
WALT DISNEY MEETING

ON THE SUPPLIER SCENE

OUT OF OUR IN-BOX

PEOPLE

REGULATORY NOTES...
AND COMMENTSHAS THE SEC'S REG A+
JUMPSTARTED OUR BILKING
OF SUCKERS?

WATCHING THE WEB

A LETTER FROM THE EDITORS AS THE
OPTIMIZER GOES (MOSTLY) E-ONLYHISTORY: A 22-YEAR OVERVIEW OF
THE GOVERNANCE MOVEMENTEARLY RETURNS FROM THE
SHAREHOLDER MEETINGS FRONT

The 2018 Proxy Season promises to be one of the bumpiest seasons ever: It started off with ominous rumblings - when investors demanded a total overhaul of the board at General Electric - and the Federal Reserve Board, in a totally unprecedented move, demanded a near-total overhaul of the board at Wells Fargo Bank, where the actions are now well underway.

Concurrently, despite our earlier belief that proxy fights might abate a bit, following the brief Pyrrhic victory at P&G, where P&G gave in anyway, come the end, we are looking at actual or threatened proxy fights at a whole host of companies, like **Avis**, **BHP**, **Natus**, **Newell**, **Outback**, **Qualcomm** and **Supervalu** to name a few.

Meanwhile, at least 1,100 companies can expect to see significant numbers of votes withheld from members of the Governance and Nominating Committees due to shortcomings in the gender and ethnic diversity of their boards vs. the standards demanded by some of our largest professional investors.

Lastly, in yet another threatening movement as the season progresses, proxy advisors are, for the first time ever, calling for votes-no against the ratification of auditors at two big companies, with more to come, we bet, along the way. So please read down for developments to watch...

ACTIVIST INVESTORS RAISE THE ANTE ON
BOARD DIVERSITY - BIG TIME.

Last year, we predicted that 2017 would mark a major tipping-point where activist efforts to improve board diversity were concerned. As the year went on, while most efforts seemed more like 'noisemaking' than 'action' to us - at least on the voting front - we noted that it might be a tipping-point after all, in that much bigger and bolder actions were being teed-up for 2018.

Now, these moves are staring more than 1,100 public companies in the face as they get set to face their shareholders at their 2018 meetings.

In perhaps the most dramatic and potentially impactful move, the **New York State Common Retirement Fund** - the third largest US *cont'd →*

public pension fund, with \$209 billion under management - announced in late March (Ouch!) that they will vote against all directors at companies with no women on their boards, and will vote against Nominating and/or Governance Committee members at companies with just one woman. The fund reportedly holds stock in 400 companies with no women and 700 with just one woman on the board. [Reportedly, they recently withdrew shareholder proposals at four companies - **Bristol-Meyers Squibb**, **Leucadia National**, **Packaging Corp. of America** and **Pulte Group** - following their commitment to consider gender and racial diversity in their new director recruitment processes.]

In another big move by a big state pension fund, **Massachusetts Pension Reserves Investment Management (PRIM)** - which in 2015 began to vote against all, or withhold their votes from all directors at companies that did not have 25% board representation by women and 'people of color' - has raised their threshold for a passing grade on gender and racial diversity to 30%. This leaves a lot of additional companies - almost certainly more than 1,100 of them - vulnerable to votes against *all* of their directors.

State Street Global Advisors, with more than \$2.5 trillion in assets under management, failed miserably in last year's action to get their 468 portfolio companies that had zero women on boards to take remedial actions. They concluded that 400 of them failed to address gender diversity in any meaningful way and voted against the directors who were charged with board recruitment - and will, almost certainly, do so again this year. And they *may* raise the ante to vote against all directors at these clearly recalcitrant companies in 2018 (We know *we would*.)

In a more modest measure, **CALSTRS** - the **California State Teachers' Retirement System** - announced in November that they will target portfolio companies with no women on their boards by voting against all directors. A Calstrs spokesperson recently announced (leaving the door open, we imagine, to last-minute deals) that they "may" oppose the re-election of all directors this year at 27 companies.

In a still more modest measure, giant fund manager **BlackRock** recently said they "want to see" diverse boards at their portfolio companies and that "we would normally expect to see at least two women directors on their boards." They have written to 300 companies in the Russell 1000 that have fewer than two women on their board, asking them to set a time frame to improve diversity and to explain their plan - but they have been pretty cagey so far about what they will do if they're unsatisfied... So they are something of a wild card here if one tries to calculate a company's vulnerability to very low votes for some or all directors. But so far, the usually

formidable "head of global stewardship" - **Michelle Edkins** - impresses us as someone who, while speaking loudly, is brandishing only a small or non-existent stick in this year's battles for change.

Bottom line: *Do your homework on diversity early, consider engaging with investors to promise and to deliver on improvements - or prepare to see one or more director candidates to get votes that are way under those of their colleagues - and maybe less than a needed majority vote.*

PROXY ADVISORS URGE THE OUSTER OF KPMG AT GE... AND AT WFB

In what we are certain will prove to be a major tipping point in the proxy-voting world, both ISS and Glass Lewis are urging voters to reject the board recommendation to reappoint KPMG as the independent auditors for General Electric - after 109 years in the job - following their announcement of a totally unexpected \$6.2 billion insurance loss and earlier news that the SEC is investigating accounting irregularities, and looking into "revenue recognition and controls" for the company's long-term service agreements.

And as we write this, Glass Lewis is also recommending against KPMG at Wells Fargo Bank, where they have served for 88 years, and where, just a few days before the meeting, WFB was hit by a new \$1 billion fine - and ISS is expected to announce its decision momentarily.

No one expects that the KPMG appointments will not be "ratified" this year - and frankly, even if this were to happen, the boards could, and would, almost certainly, keep them on anyway. But we say that KPMG is doomed at both companies in any case, and likely within the year: How could a board fail to conclude that it is time for some fresh eyes and ears and audit approaches after 109 or 88-year terms for the same firm - *and* where the firm undeniably failed to spot a staggering number of serious accounting and control deficiencies at *two* major companies? And how could a board justify failing to *punish* its accountants appropriately for such deficiencies - and for the ensuing losses to investors in terms of the ensuing stock price plunges - by firing them flat out, as would quickly happen in every other business we know - and instead, to actually *reward* them by continuing their engagement?

About seven years or so ago we predicted that before long, the ratification of auditors could no longer be considered a "routine matter" in light of the repeatedly high number of audit failures found each year by the PCAOB. Now, in light of the truly massive audit failures at GE and WFB we would be amazed if institutional investors don't start to ask more questions, gather more statistics on audit

failures, push hard for periodic “auditor refreshment” - AND to make auditor appointments and re-appointments a “non-routine matter” where voting is concerned. Please remember: You read it here first!

PAY RATIOS REVEALED FOR THE FIRST TIME: MUCH ADO ABOUT NOTHING?

This proxy season ushers in the publication of corporate pay ratios comparing CEO pay to that of the “average worker” - after many years of corporate whining, wailing and gnashing of teeth over the methodologies, costs and much-feared backlash once the numbers hit the streets.

So far, while the ratios have elicited a lot of chit-chat from media and governance pundits (currently being renamed “pundints” by an amazing number of people in politics and the media who really should know better) the major factor is basically how many lower-skilled and non-US workers a given company has relative to the single CEO...and the whole megillah has mostly generated one big yawn.

Rather an embarrassment, we think, for all the corporate folks who insisted, as they so often do when changes to the status-quo are proposed, that the sky would fall. And an embarrassment to advocates too, given the mostly-meaningless numbers being produced by the prescribed methodologies, the widely varying “particulars” among companies in the same businesses and the widely varying presentations.

BLUE-RIBBON PANEL ISSUES UPDATED “PRINCIPLES AND BEST PRACTICES FOR VIRTUAL SHAREHOLDER MEETINGS”

The “Best Practices Committee for Shareowner Participation in Virtual Annual Meetings” - a “committee of interested constituents, comprised of retail and institutional investors, public company representatives, and proxy and legal service providers who have been discussing best practices for virtual shareowner participation in annual meetings...with a view toward ensuring that the needs of all constituents are met in a fair and well-balanced manner” has just released its updated guidance for issuers. Must-Reading we say, for everyone with responsibilities for planning and helping to conduct shareholder meetings. Full text at:

<https://www.broadridge.com/white-paper/principles-and-best-practices-for-virtual-annual-shareowner-meetings>

Organized by Broadridge Shareholder Solutions and Chaired by Anne Sheehan, who recently retired from

Calstrs and Darla Stuckey, President of the Society for Corporate Governance - and where your editor in chief was happy to have been a member - the Committee’s latest white paper provides an expanded and very important primer on “Principles” - along with numerous practice-tips on assuring both the perception and the *reality* of fairness to all investors. It also provides a lot of highly practical advice, and numerous recommendations on meeting logistics to improve fairness that are applicable to every shareholder meeting - whether there is a “virtual component” or not.

While several members of the committee and their parent organizations are strongly opposed to “Virtual-Only” Meetings, the white paper goes to great lengths, we think, to stay on the high road and to encourage companies to do likewise - and sets a very high bar indeed where the use of “virtual technology” is concerned:

“Broad investor participation in annual meetings should be valued and encouraged. The Committee endorses the view that companies incorporating virtual technology into their shareowner meeting should use it as a tool for broadening, not limiting, shareowner meeting participation. (That is the reason some members of the Committee only support virtual technology as an addition to in-person meetings, not a replacement.) With this objective, a virtual option, if used, should facilitate the opportunity for remote attendees to participate in the meeting to the same degree as in-person attendees.”

Editor’s note: As we have been writing for several years now, companies that opt for a “Virtual-Only” meeting - and do not adopt “best practices” that will allow virtual attendees the same opportunities for participation and engagement that physical meeting do - are doing so at the peril of being pilloried in the press. And now, they are in danger of having many large and powerful institutional investors retaliate against them directly, by withholding votes from some or all directors...so there is a very strong self-governing factor in play.

That said, at more than two thirds of all shareholder meetings there are few or no shareholders in attendance...there is nothing controversial on the ballot, or on the business scene or in the press...and the meetings are typically over in 25 minutes or less. So there is really nothing to complain about, dear friends on the Council of Institutional Investors, if such companies opt for a virtual meeting without all the expensive and unnecessary “trimmings.” Please see the next article “Shareholder Meetings By the Numbers” for more insight into the likely future of Virtual Meetings...

SHAREHOLDER MEETINGS - “BY THE NUMBERS” - AND WHAT THEY TELL US ABOUT VSMS GOING FORWARD...

A very long-term reader, Michael Mackey, President of Alliance Advisors LLC recently emailed us with some information about a subject close to all our hearts:

I know you have brought this subject up before, but a recent WSJ article (2/22/18) by Jason Zweig confirmed your statements - pointing to the shrinking number of US public companies - from 7400 in 1997 to less than 3600 today! Not great for transfer agents, solicitors, law firms, investment banks etc. The best breakdown I can come up with by market-cap [using FactSet] is:

Mega Cap – (over \$50B)	80 companies.....2.0%
Large Cap – (over \$10B)	300 companies.....8.3%
Mid Cap – (\$2B-\$10B)	770 companies.....21.3%
Small Cap – (under \$2B)	1350 companies.....37.5%
Micro/Nano Cap	1100 companies.....30.5%

Wow, thought we; this really sheds a lot of light on the future of Virtual Shareholder Meetings - a subject that is on the front burner at a lot of companies, and that has generated a lot more heat than light with several large investors and investor organizations! Here's what these numbers tell us...

For starters, the 80 Mega-Cap companies - all of which can easily afford to produce a robust “Hybrid Meeting” if they want to “go virtual” - will almost never be able to have a Virtual-Only meeting without bringing down the wrath of their biggest institutional investors who are opposed on principle. They are also among the most likely shareholders to have a shareholder proposal on the ballot, and thus, to be required by a totally outmoded SEC rule to show up in person to present it, and if not, to have the voting on their proposal cancelled altogether and their ability to submit new proposals at that company suspended for three years.

If we look at the 1,070 Large-Cap and Medium-Cap companies - which constitute 29.6% of all shareholder meetings - a substantial majority of them actually *like* their in-person meetings...and their shareholders... and their important stakeholders...and the opportunity the meeting presents to build good will, and brand-loyalty - and maybe even to sell a lot of products too - as **Berkshire Hathaway** and many other companies with strong “affinity group investors” do each year. So we do not expect a big rush by these folks to have Virtual-Only meetings in the foreseeable future.

But when we look at those 2,450 small, mid and nano-cap companies - which account for a whopping 68% of all meetings these days - and where your editor and his team of Inspectors of Election observe about 500 of them each year in person - and where the majority last less than twelve minutes - the opportunities for cost savings are huge - and the downside risks of backlash from shareholders is negligible, as indeed it should be for “totally routine” meetings.

Nonetheless, your editor continues to think that the so-called Hybrid Meeting is “*the gold standard*” for meeting excellence...and will ultimately become the most common way to host shareholder meetings. Right now, the vast majority of companies are not quite ready to spend that extra “gold” for live audio-video feed, live telephone lines and on-line voting capabilities - but will be, we feel sure, as the costs for the added technologies that are needed continue to drop - and as the advantages of better and broader communications with investors become clearer to them. Very much worth noting, we think, a large number of companies are already broadcasting their meetings live - but many of them don't really need or want online voting or live telephone calls into the meeting, which, as we've pointed out before, could result in some unwanted surprises at the very last minute.

One thing is for certain, we say: The use of virtual technologies at shareholder meetings will continue to increase, as will the use of Virtual-Only meetings at companies where no real “issues” are likely to arise. One last tip “to grow on”: If you miscalculate a bit, and a small handful of shareholders make a good case for coming to a Virtual-Only meeting in person - find them “a few seats against the wall”...and be sure to hand them your Rules of Conduct.

THE BEST AND WORST MEETING MATERIALS WE'VE SEEN TO DATE

For the second year in a row, the Bank of America proxy statement jumps out from the pack from the moment you open it.

The first thing you notice is the 8 ½ x 11 notice on sturdy, glossy stock that “Every Vote Counts” - with an eye-catching graphic of a human hand placing a vote into a ballot box and this message, set off with a red checkmark: “To express our appreciation for your participation, Bank of America will donate \$1 to Habitat for Humanity on behalf of every stockholder account that votes”...followed by the HFH logo and a footnote to “Please see our 2018 proxy statement for additional information.” At long last, *thought we: A good reason for individual shareholders to take a look at the damned thing!*

Readers will recall, we feel sure, that last year BofA launched a similar effort to get out the retail investor vote by donating a dollar per voting account to the Special Olympics, which, we opined, increased their quorum by 4-5 percentage points...almost all of which came from management-friendly voters - so we were not at all surprised to see this effort again.

Dutifully opening the proxy statement, the first thing we saw were letters from the Chairman and CEO and from the Lead Independent Director on facing pages, where Brian Moynihan's letter mentioned the donation program and this year's charity [another great choice we thought] and that *"Habitat for Humanity [is] an organization we have partnered with for more than 30 years."* Then, the really big news that last year, *"Your voting participation ...resulted in our contributing \$655,000 to the Special Olympics."* That, dear readers, is a LOT of retail voting!

Turning to the "meat" of the proxy statement, the first thing we noted were the bar-charts showing Total Shareholder Returns" handsomely beating their Primary Competitor Peer Group (although, as long-term investors, we knew they had been way back in the pack for many years and now, are happily catching up) but also handsomely beating the S&P 500 Index. So off to a great start with us.

Next, we noted as we did last year, neat and attention grabbing graphics to illustrate and nicely summarize the text, like these numbers on Director Nominees: 6.1 years average tenure, below the S&P 500 average (another consequence of those bad years but another great starting point), 14 of 15 are independent; 33% are women; 47% [!] are diverse; 60% have CEO experience; 33% have senior executive experience at financial institutions.

The ESG Ratings and Indices were equally impressive... "One of 120 companies on the Environmental A list...Ranked #5 of top 100 largest green power purchasers" for example. Best of all, however, the overall proxy statement had a nice look, a nice flow...and was written in Plain English - so A+ in our book.

Edging BofA out for the first-place proxy statement so far this year, however, is PepsiCo's - with a cover that shows off its brands in full color and that has the most wonderful opening statement from Chairman of the Board and CEO Indra Nooyi: *"In the 21st century, being a great company means being a good company...we are focused not only on the coming quarters, but on the coming years, considering not only the level, but the duration of returns, while being responsive to the world around us."*

PepsiCo's slightly larger format - a full 8 ½ x 11 - makes for a much more spacious and easy-to-read page and one that

also sets off the graphics, which are similar to BofA's, in a noticeably better way to our eye.

We especially like the presentation - and the *information* on Director Nominee Highlights, like...Nearly 40% female or ethnically diverse - with 1 African American, 2 Hispanic/Latino and 1 Asian...3 women and 6 citizens of countries other than the United States [Wow!] ...Average Tenure of Independent Directors of only 6.3 years [!] and 69% of Directors younger than 65 [!!] Another easy-to-scan chart at the bottom of the page highlights the "Balanced Mix of Skills, Qualifications and Experience" in 10 categories, with 12 of 13 Directors having significant global experience, as a majority of PepsiCo's directors surely should have. Nice Plain English here too...with Pepsi's being a bit more inviting and easier to read thanks to the larger format.

Both BofA and PepsiCo also included classic "glossy Annual Reports" - with lots of photos, articles, etc. that an investor will actually want to peruse...so three cheers for them both! And actually, given BofA's proxy voting incentive, we'd call it a dead heat for best-in-show so far. But it's also a case where, we'd bet the ranch, BofA will definitely win a lot more retail investor interest - and votes - than mega-cap peers. Early returns reportedly have BofA beating last year's retail voting in a pretty big way, so stay tuned for an update in our next issue...We are betting that BofA will donate \$925,000 this year.

OUR AWARD FOR THE WORST WASTE OF MONEY so far this year goes to a very big company with a retail voting population at least as large as BofA's and Pepsi's and which we will allow to go nameless, since normally we love them...But, shame on them, they sent us three full sets of proxy materials - all with full, glossy ARs too - when they easily could and should have sent only one.

One set was for an "orphan DRP" account that arose when we moved our DRP shares to our broker, where we also transferred the shares from single to joint-tenancy...only to discover that a tiny fraction was left behind at the Transfer Agent, as so often happens. So we got a big, bulky set of proxy materials for a position that grew surprisingly, thanks to the magic of compounding, - but which, nonetheless, is worth only a tad over \$1,000.

Then we got a second set for the joint account - but that one amounted to about \$8,000 in value - and really, should also have been "stratified out" too. But, alternatively, please note, it could easily have been "householded" with our main account, which is in a Sep-IRA and where the holding does have material value

We are absolutely certain that the company in question has many thousands of shareholder accounts that are just like

our two “orphan investments.” At most mega-cap companies we look at, 95% of the shareholder accounts comprise less than 2% of the voting power. So lots of money could have been saved with just a little extra attention to detail. But these days, hardly anyone in corporate America seems to have the time and/or the know-how to go about it...And, sad to say - but understandable - most suppliers are happy to sit tight and quietly pocket the extra mailing and handling fees.

FAKE NEWS FROM THE DISNEY MEETING...

The Walt Disney shareholder meeting was barely over when your editors received the following e-mail and a four-page Press Release which appears pretty much as received, but in vastly shortened form. “Fake News” we say, but the press release is readily available, with links to the audio tape of the Meeting itself, so you can judge for yourselves:

From: National Center for Public Policy
Research [mailto:press@nationalcenter.org]
Sent: Thursday, March 08, 2018 12:20 PM
To: xxxxxxxxxxxxxxxxxxxxxxxxx
Subject: [SPAM] Disney Stages Sham Shareholder Meeting

FOR RELEASE: March 8, 2018

Contact: Judy Kent at (703) 759-0269 or cell (703) 477-7476 or jkent@nationalcenter.org and David W. Almasi at (703) 568-4727 or DAlmasi@nationalcenter.org

Disney Stages Sham Shareholder Meeting – Investors Shunned in Favor of Planted Praise

Adoring Fans and Disney Employees Placed Near Microphones In Order to Attempt to Block Critical Shareholder Questions

CEO Bob Iger, the Head of 24/7 Trump-Bashing ABC News and ESPN, Apparently Can’t Handle Criticism

Free-Market Activist Investor Crashes Iger- Adoration Party to Slam Disney’s =Attacks on Christians and Conservatives

Houston, TX/Washington, DC - A veteran of more than 100 corporate shareholder meetings, National Center for Public Policy Research Free Enterprise Project Director Justin Danhof, Esq. is calling out the Walt Disney Company for its shameful manipulation of its annual shareholder meeting held today. Danhof says the company planted adoring fans and company employees in strategic positions in the meeting room so they could praise Disney CEO Bob Iger while blocking investors with serious issues from participating.

“...Bob Iger has been called the most powerful person in Hollywood. What a joke that is. Today, he proved he couldn’t even handle a few critical questions from investors.”

...in an obvious effort to ensure those questions and comments were complimentary, they allowed members of a specific Disney fan club to enter the arena ahead of regular shareholders. Once inside, these fans occupied nearly all of the designated question-and-answer seats.

Danhof and other investors lodged numerous complaints about this tactic to Disney staff throughout the shareholder meeting to no avail. When Iger indicated he was planning to end the meeting, Danhof convinced one of the select attendees to give him his place in line for questions. Iger stopped taking questions after Danhof finally got the microphone and asked the first critical question of the day.

...In his question, Danhof asked Iger whether Disney’s media platforms are truly committed to honesty in light of high-profile attacks on President Trump and religious Americans. Danhof noted:

ESPN has seemingly become a 24/7 anti-Trump tirade which reached its pinnacle last fall when host Jemele Hill called President Donald Trump a white supremacist.

Also consider the February 13th broadcast of ABC’s “The View.” Co-hosts Joy Behar and Sunny Hostin – in an effort to bash Vice President Mike Pence – suggested that Christianity is “dangerous” and that faithful Christians suffer from a “mental illness.” In response, the show’s advertisers have come under tremendous pressure to sever ties with these anti-Christian bigots.

Then Danhof asked:

This pattern shows the company is willing to take a reputational and financial hit, just so long as it is in service to bashing conservative or religious Americans. That’s shameful.

What do you have to say to the tens of millions of Christians and supporters of President Trump your networks have so blatantly offended and ascribed hateful labels?

Specifically, do you think, like Ms. Hostin and Ms. Behar, that having a Christian faith is akin to a dangerous mental illness? And do you believe, like Ms. Hill, that President Trump and his supporters are white supremacists?

Iger gave a very muted response in which he agreed Behar’s comments were out of line. He also revealed she had apologized to Vice President Pence. He didn’t want to comment further on the Jemele Hill saga.

[Click here to see the video of Danhof’s exchange with Iger is \(sic\) is available....](#)

“...Disney’s shareholder meeting was fake news. The Free Enterprise Project stood alone in being able to pose tough questions to CEO Bob Iger amidst the self-congratulatory statements and fluff questions delivered by a string of kids and Disney cast members designed to keep the meeting conflict-free,” added National Center Vice President David W. Almasi.

Launched in 2007, the National Center’s Free Enterprise Project focuses on shareholder activism and the confluence of big government and big business. Over the past four years alone, FEP representatives have participated in over 100 shareholder meetings – advancing free-market ideals about health care, energy, taxes, subsidies, regulations, religious freedom, food policies, media bias, gun rights, workers’ rights and other important public policy issues. As the leading voice for conservative-minded investors, FEP annually files more than 90 percent of all right-of-center shareholder resolutions. Dozens of liberal organizations, however, annually file more than 95 percent of all policy-oriented shareholder resolutions and continue to exert undue influence over corporate America.

The National Center for Public Policy Research, founded in 1982, is a non-partisan, free-market, independent conservative think-tank. Ninety-four percent of its support comes from individuals, less than four percent from foundations and less than two percent from corporations. It receives over 350,000 individual contributions a year from over 60,000 active recent contributors. Contributions are tax-deductible and may be earmarked for the Free Enterprise Project....

SO HERE’S THE REAL NEWS...STRAIGHT FROM A FRIEND WHO WAS AT THE MEETING - AND FROM THE AUDIO-TAPES THEMSELVES:

Immediately after getting the e-mail, your editor spoke to a long-term friend and colleague who had been at the Disney meeting - and listened to the audio snippets that could be accessed directly from the press release. There sure seems to be a lot of “FAKE NEWS!” in that web-posting!

As the audio reveals quite nicely, the author of the article is well known to Iger from previous encounters - and WAS allowed to speak. And his hostile harangue was justifiably booed by the audience. Listening to the audio we thought that Iger handled an aggressively hostile questioner respectfully... and well.

More importantly, the very idea that Disney - or Iger himself - would somehow engage in, or foster, or tolerate anti-Christian sentiments is patently absurd! Until he realized that the questioner has engaged in speech like this before, your editor actually thought the web posting might be a product of Russian operatives...looking to sow dissent and discord, as they’ve clearly done with bots and fake-news blasts on the political scene.

A post-script and a few important take-aways: Your editor does think that the meeting managers may have tried to fill a lot of the seats with “friendlies” - a tactic he has advised himself when hostile questioners are expected. But... hello... the Disney meeting is ALWAYS packed with “friendlies” - many of whom have been coming religiously for years! Further, my source told me that Iger himself cut the fan-generated comments short, to cut to the chase with Danhof - who was not new to Iger but who was “new to me” on the shareholder meeting gadfly scene.

Our advice, dear readers: Put Justin Danhof, the National Center for Public Policy and VP David Almasi - and the Free Enterprise Project (FEP) on your corporate watch list...

ON THE SUPPLIER SCENE

Fast growing proxy solicitation and investor response firm Okapi Partners announced in February that it has acquired **Market Intelligence Group LLC**, “a sophisticated stock surveillance and shareholder intelligence firm.” **Walt Schuplak**, Founder and Managing Partner of Market Intelligence Group, will become a Managing Director of Okapi Partners and head of its new subsidiary, **Okapi Market Intelligence Group**.

*“Investor monitoring and market intelligence have always been part of Okapi Partners’ services to clients, but we are now formalizing this offering under Okapi Market Intelligence Group and adding Walt’s analytical expertise and keen eye for determining changes in share ownership,” said **Bruce H. Goldfarb**, President and CEO of Okapi Partners.*

Okapi, which celebrated its 10th anniversary this quarter,

was recently recognized, the press release noted, “as the top proxy solicitor by **Activist Insight** magazine for the second year in a row. The firm represented both issuers and activists in 26 campaigns in 2017 in what was, Okapi noted, one of its most successful years since its founding in 2008.

Another happy development on the supplier front; EQ - which recently purchased **Wells Fargo’s** Shareowner Service business - has been advertising widely for some very nice middle and upper-middle management positions. A very nice development indeed in this the mostly fast-shrinking and, we think, seriously talent-starved space.

At the Exchanges, the big battles for market-share continue, even as new entrants continue to skim off trades: **The Intercontinental Exchange (ICE)** - which owns the NYSE - is set to acquire the once prominent **Chicago Stock Exchange**, after Chinese investors were shooed away by U.S. regulators. And **NASDAQ** filed suit against **IEX** - an alternate trading platform that aims to rein in high-speed traders - accusing IEX of infringing seven NASDAQ patents in its own electronic trading systems.

The SPOTIFY IPO - which was launched as a “Direct Listing” on the NYSE, instead of via the traditional underwriting process - has drawn mixed reviews, and the jury does not yet seem to be fully in yet: It was a huge win for the NYSE, of course,

albeit an embarrassment that they could not come up with an opening price until 12:43 p.m. - when, initially, the price soared way over the opening, then closed at \$16.89 per share lower than the opening price. The three “advisers” - **Goldman Sachs, Morgan Stanley** and **Allen & Co.** drew fees totaling \$36 million - vs. the \$100 million the underwriters got in the traditionally-launched **Snap** IPO, which was similar in size...so not a win for “the street.” More to come here, for sure...

On a sad note, just as the three-week trial of four former Georgeson employees charged with participating in a scheme to pay bribes to learn how a proxy adviser’s clients voted (and with illegally billing clients for the bribes) was wrapping up in Boston in late March, the illness of a juror’s wife caused the judge to declare a mistrial because only three of the four defendants agreed to proceed with 11 jurors, and prosecutors would not agree to go forward without unanimous consent. We think the four have already paid a very high and a very painful price, and we’re hoping the prosecutors will drop the case - where Georgeson settled for \$4.5 million, but left mid-level ex-employees holding the bag for legal fees that are, already, far in excess of their former annual salaries we’d guess. A fifth employee, however, had agreed to plead guilty and testified at the trial...so we’ll likely have to wait a bit to see how the double-jeopardy angle or, ideally, a sense that “enough is really enough” for the remaining defendants turns out.

OUT OF OUR IN-BOX

We absolutely loved the column posted by Stephen Davis on Thursday, March 8, 2018 by **Stephen Davis**, a senior fellow in corporate governance at **Harvard Law School** headed “*So Long Stockholder*” and telling us that...

“now might be a good time to reveal a simple, one-word ‘tell’ anyone can use to test which US company might have a better chance of gliding unscathed through the [proxy] season, and which might be a more likely target for attack. Scan the language a firm uses to refer to its investors in those forthcoming proxy statements. If it favors the term ‘stockholder’ over ‘shareholder,’ watch out...”

“We find that no fewer than 60% of top US companies drawing highest votes against directors in 2017 used ‘stockholder’ rather than ‘shareholder’, according to data provided by MSCI. It’s not a perfect ‘tell’: Proctor & Gamble management used ‘shareholder’ though in 2017 it waged a titanic board battle with activist Trian. But last year blue chips such as Wells Fargo, Netflix, CVS Health, and Hewlett Packard Enterprise were among firms sticking to outdated language, and drawing high director ‘no’ votes.”

While noting that the term ‘stockholder’ has long been deeply embedded in Delaware law, and opining that the term is “outmoded,” Davis expressed no opinion as to why it is, apparently, such an unlucky term to use these days.

But as we mulled this over, we concluded that “stock” implies kind of a prosaic and somewhat static thing - like livestock - maybe multiplying and moving around a bit - while what we shareholders really want is *SHARING*... And this, we think, is what accounts - in a very subtle way - for the bad-joss of failing to convey this effectively in “shareholder” communications.

A summary of 2017 and 1st Q 2018 M&A activity published by Mergermarket also caught our eye in the first quarter: “The extraordinary surge in dealmaking seen at the end of 2017 has carried through into 2018 as global M&A hit its highest Q1 value on Mergermarket record as pressure from investors and the search for innovation continue to push corporates towards M&A [where] 1st quarter M&A activity totaled \$890.0 in U.S. dollars [the biggest ever since 2001 they noted] Average Deal size was \$506 million (also highest since 2001) and Private Equity deals totaled \$113.6 billion - the highest since 2007. Oh shoot, thought we: More public companies and individual investors gone away...again...and mostly for good, we fear.

PEOPLE:

Silvio (Joe) Conte, who, we'd bet, is known to nearly every reader from his 18+ years of service as Head of Corporate Actions at the NYSE, has signed on as Head of the Corporate Actions Product at **EQ by Equinity**. Nice add, EQ!

Lori Lauber, a former **Wells Fargo Shareowner Services** super-salesperson, who was able to retire from WFB prior to the sale to **EQ**, has joined the sales team as a Senior Director, Transfer Agent Services at **Broadridge Investor Communication Solutions** - a great add for *them*.

Anne Sheehan, Director of Corporate Governance at **California State Teachers' Retirement System** retired from **Calstrs** in March. We are certain that we will hear a lot more from and about her. What a wonderful corporate director *she* would be!

Brendan Sheehan, (no relation to Anne) has been appointed as VP-Senior Analyst: Environmental, Social and Governance by **Moody's Investors Service**. Brendan, whom most readers will know from his prior stint at **Corporate Secretary Magazine**, was most recently Managing Director, Corporate Governance & Board Evaluation at **Rivel Research Group**. The Moody's job will be a great fit for him, we think.

REGULATORY NOTES....and comments

ON THE HILL:

A bill to roll back several Dodd-Frank provisions relating to the banking industry - and to reduce the number of banks subject to extra Fed scrutiny from 38 to 12 - passed the Senate with a 67 - 31 vote in March - "one of the Senate's few bipartisan accomplishments in recent memory" as the WSJ noted. It is currently being pored over and massaged by a much more cantankerous and divided House. Some easing is sure to come, to the relief of banks both large and small...someday.

AT THE SEC:

The biggest whistleblower award in history was announced by the SEC in March: \$83 million - where two tipsters will divide \$50 million and a third will get \$33 million for helping the SEC to reach a settlement of \$415 million with BofA in 2016 for allegedly misusing customer cash and securities for its own benefit.

But wait....an even bigger set of awards is yet to come, our sources tell us - from the major ADR banks, and for a variety of offenses too long to mention here just now, but which we have been calling "the biggest financial fraud - and the biggest cover-up ever" in financial history.

The SEC released its own answer to the long-debated/ long-awaited "fiduciary rule" - drawing praise from the regulated and howls of protest from consumer protection groups over "vague language" as to the "suitability" of brokers' advice vs the Labor Department's much brighter "best interest" line - and the fact that parties who allege breaches of duty would still be forced into arbitration under the SEC rules. As usual, the SEC is over a year late and well over a dollar short here, in that most of the biggest and best financial firms have already adopted a strict fiduciary standard of care for most retail investor accounts - and have made money and gained market-share by doing so!

IN THE COURTHOUSE:

The Supreme Court - as widely expected - ruled that whistleblowers need to report wrongdoing to the SEC first, in order to qualify for protection and awards under the "plain language" of the Dodd-Frank provision - shooting down previous broader interpretations of the rule by the SEC.

Still more woe for KPMG: former KPMG executives who worked for the PCAOB were charged with conspiracy and wire fraud for giving KPMG advance info as to the audits that PCAOB would look at so they could better prepare themselves - after the SEC had already summoned top KPMG officers to express concerns about poor audit quality there.

And lest you think that KPMG is the only audit firm with troubles over audit quality, Deloitte Touche settled a Justice Dept. suit in March, asserting that Deloitte "knowingly deviated" from auditing standards, allowing a fraud at client **Taylor Beane & Whitaker Mortgage Company** that ended in its bankruptcy, and that of its bank, **Alabama Colonial** too...for \$149.5 million.

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HAS THE SEC'S REG A+ JUMPSTARTED OUR BILKING OF SUCKERS?

The "Jumpstarting Our Business Startup Act of 2013" - which allows small companies to go public with scanty track-records and even scantier disclosure documents - and which was very cleverly branded by Congress as the "JOBS Act" - and which is still being widely touted, by the current SEC Chairman no less - as a way to create more IPOs - and more JOBS - suddenly seems instead to be living up to the nickname that skeptics initially proffered: The "Jumpstarting Our Bilkings of Suckers Act."

A recent **WSJ** article, reporting on the likely inability of **Longfin Corp.** to continue as a going concern - following the stock's rapid thirteen-fold rise in price that was based entirely on fraudulent statements it seems - and citing **Dealogic** data - revealed that of the nine other JOBS ACT IPOs that have been listed to date on U.S. stock exchanges, every one of them has since lost more than half of their initial market

value. With the likely bankruptcy of Longfin, it will be "O-for 10" in terms of creating value for investors - and "10 for 10" in terms of actually *destroying value*...

And as to creating jobs? It's something that failing companies rarely do - except where bankruptcy and work-out lawyers are concerned...

And as to the idea that Reg-A+ offerings will jumpstart IPOs - and bring public companies and retail investors back into the market on more than a momentary basis? Strong evidence to the contrary we say...and much more evidence of "Jumpstarting Our Bilkings of Suckers" as we predicted here from the get-go. If anything, the JOBS ACT will frighten retail investors away from small-cap companies - even while sending the hard-earned investment dollars they so foolishly invested in Reg-A+ companies up in smoke!

WATCHING THE WEB

The biggest story of the quarter - and maybe of the year - has been the revelation that detailed data on as many as 87 million U.S. citizens has been hacked or "scraped" from Facebook's incredibly detailed database of information about its users and shared with a "political consulting group" - and also used in Russia-based attempts to influence our elections with Fake News that was meticulously "targeted" to specific audiences based on Facebook data... and co-opted by God knows who else. Who knew, until now, the extent to which the web was really watching US - and how much the watchers could learn about us?

Almost as astonishing to us was CEO Mark Zuckerberg's promise that they will use "European standards" (which

are incredibly stricter than ours) for their information gathering - and sharing programs - soon...But not possibly soon enough, we say...And it seems as if we will have to specifically ask for that "privilege" on an account-by-account basis.

Congressmen in both houses and on both sides of the aisle seemed to believe that more regulation is warranted and will be forthcoming...but we remain as skeptical here as we are about the prospects for better self-regulation on Facebook's part. Readers, we DO need to very diligently "watch this space" - and we should insist on taking back our priceless First Amendment rights to PRIVACY in our financial affairs.

HISTORY: A 22-YEAR OVERVIEW OF THE GOVERNANCE MOVEMENT

As part of our program to continuously update the OPTIMIZER's website, and to celebrate our 25th year of publication, we are posting "A 22-Year History of the Corporate Governance Movement" - as illustrated - beautifully, we think - by the colorful trademark covers to our annual Special Supplements.

They are now posted on the web, under our [History tab](#) so the images can be better appreciated. We think you will enjoy the look-back - and the covers themselves - and will gather a few important insights into the often crazy but always fun and exciting world of corporate governance.

A LETTER FROM THE EDITORS

Dear readers,

As The *OPTIMIZER* enters its 25th year, we want to thank you so much for being a subscriber and to inform you of a change that we think will come as good news to you:

We are finding that so few of our valued subscribers want the hard copy vs our E-edition these days that it no longer makes economic sense to print and mail hard copies every quarter. And frankly, this method is not nearly as timely a way to deliver news, commentary and advice in this fast-moving day and age as we ourselves would like it to be.

Accordingly, effective with the first-quarter 2018 issue, we will deliver the *OPTIMIZER only* via e-mail.

The good news - to reflect the saving to us, we are lowering the posted subscription price to \$245 per year. We also plan to issue alerts and advisory bulletins in between the quarterly issues on items that we feel will be of particular interest to our readership, and to increase the posting of new materials directly on our website.

All currently paid-up subscribers who have paid more than \$245 per year will receive five issues if they have paid for one year, and two extra issues if they have paid for a two year subscriptions before they will receive another bill from us. We will continue to send our annual full-color magazine - with its many articles and tips and its handy directory of pre-vetted service suppliers via hard-copy.

Please remember that the OPTIMIZER also comes with a promise of “some free consulting on any shareholder relations or shareholder servicing matter that ever crosses your desk.”

We hope you will think of, and use the *OPTIMIZER* as an “Advisory and Consulting Service” rather than as simply a “newsletter” - which so many companies forbid employees to subscribe to these days.

We look forward to serving you for many years to come, and to hearing from you if you have interesting experiences to share - and whenever we might be of help. Thanks again for being a subscriber!

~ Carl and Peder Hagberg