T H E   S H A R E H O L D E R   S E R V I C E

OPTIMIZER

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

VOLUME 24, NUMBER 2 | NOW IN OUR 25th YEAR! | SECOND QUARTER 2018

IN THIS ISSUE

OUR PREDICTIONS RE: THE 2018 MEETING SEASON WERE SQUARELY ON THE MONEY: HERE'S OUR ANALYSIS OF TOP DEVELOPMENTS - AND OUR ADVICE TO ISSUERS ON PREPARING FOR 2019

Our 2017 prediction that 2018 would indeed turn out to be "the year of the women" - at long last - was happily proven true, at least in the USA:

By mid-year, the percentage of new directors who are female reached a record high of 35% in the Russell 3000 and close to 39% in the S&P 500, according to ISS Analytics, which also reported that by mid-year, approximately 90% of the S&P 500 and 58% of Russell 3000 companies have at least two female directors.

"As expected, board gender diversity practices differ significantly by company size" the report noted, "with smaller companies having fewer women on their boards despite recent improvements." ***But any way you slice it, 2018 was truly a major turning point where gender diversity is concerned…and there's a lot more action still to come, for sure.***

At typically all-old-boy REIT boards there were truly astonishing changes to in 2018 - "which named a record number of women to board positions in 2018" according to a 6/26 **WSJ** story…"a sign that this mostly male-dominated industry is reacting to pressure on American corporations to diversify. Of the 94 REIT directors newly elected during the spring proxy season, 49 - or 52% - are women, according to a study by **Ferguson Partners**, a professional services firm specializing in executive and board recruitment. It was the first time ever that men comprised less than the majority of the new directors [at REITS] Ferguson Partners said."

Board gender diversity was also a focal point in a proxy battle this season, as an excellent 6/25 report from Alliance Advisors noted, in one of the best of many summaries to cross our desk: At **Destination Maternity**, "for the first time in recent years a majority-female dissident slate prevailed."

Most interesting to note, for those of you who wrongly think that ISS and Glass Lewis call the shots on proxy voting… *"The dissident slate at Destination Maternity prevailed, despite the fact that neither proxy advisor supported the dissident candidates, which* ***ISS*** *faulted for their lack of public company board*

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experience. In response [the insurgents] pointed out that if such experience is pre-determinant to board membership, the gap between the number of male to female directors will never close."

***Some sobering news on gender diversity, however,* according to Equilar, [only] 16.9% of Russell 3000 board seats were occupied by women at the end of Q1 2018 and are not expected to reach gender parity until 2048." [This is a mighty long way off and, of course, presumes that current gains will continue at the same rate…But we are certain that the trend will continue to accelerate in 2019 and beyond.]**

Sexual misconduct scandals also spurred shareholder action - and lots of board action too this year: "The ongoing fallout at **Wynn** Resorts over allegations of sexual improprieties against founder and former Chairman/CEO **Steve Wynn** has exposed the considerable financial and reputational risks that can arise from toxic corporate cultures" the Alliance report noted. "The company's damage control—which included adding three women to the board in April—failed to placate the proxy advisors who sided with **Elaine Wynn**'s "vote no" campaign against legacy director **John Hagenbuch**, a close friend of Steve Wynn who also served on the special committee investigating the complaints against him. Avoiding a showdown with investors, Hagenbuch withdrew his name from reelection two days before the annual meeting and another longtime director—**Robert Miller**—resigned." ***A recent report on 2018 CEO turnover revealed that 10% was driven by #MeToo issues!***

OUR ADVICE TO ISSUERS:

The gender-genie is finally out of the bottle and flying high and wide. It can't be pushed back in or ignored by public companies and their current boards.

Expect even more pushback, a lot less patience and a lot more action from institutional investors than they exhibited in 2017 - or in 2018 for that matter. If you are one of those smaller companies - with no women - or only one on your board - you will be under the microscope in 2019.

Readers, we urge you to take another look at the article in our 2017 Special Supplement - "Board Diversity: What Are You Waiting For?" by Patricia Lenkov, founder and principal at Agility Executive Search. (It's not indexed separately yet.

Please note too that while the push for more ethnic diversity sort of took a back seat to gender diversity this year, the ethnic-genie is out of the bottle as well - as well it should be.

Surely, you don't want to end up as Amazon did this year… when, after it had its face slapped by the Congressional Black Caucus - and discovered that many employees were also angered by its stance on an ethnic diversity proposal - they announced to the Caucus, and in a supplemental SEC filing, that the company would adopt a policy whereby women and people of color are included in the pool of candidates for all board openings - essentially agreeing with a shareholder proposal it had initially opposed…just nine days before the meeting. As they wrote to the Caucus, in what seemed like a very candid statement: "*We reached this decision after listening to your feedback as well as that from Amazon employees, shareholders, and other stakeholders about the Board diversity proposal. These conversations led us to reconsider both our decision on the shareholder proposal and how we explained our initial recommendation.*" Amazon's 10 board members are all white, although three of the 10 are women. And OUCH! …Amazon got slapped yet again in the press, following their comment in the SEC filing that "This policy formalizes a practice already in place"…despite the fact they'd formally opposed it *and* the fact that if there was such a "policy" it has produced zero ethnic diversity to date!

OUR ADVICE:

You need to get ahead and stay ahead of the curve here: You sure don't want to be targeted with a shareholder resolution asking your company to formally adopt more inclusive and more aggressive policies and procedures for recruiting board members and "refreshing" and making your board more ethnically diverse.

And you sure don't want to see directors on the governance and nominating committees targeted for massive Votes-No because of weak board diversity.

As the OPTIMIZER also predicted last year, Environmental and Social proposals scored a record number of majority and high-double-digit votes - nine majority votes and 18 others got support in the 40% range - and lots of others scored approvals in the 30%+ range.

Very important to note, we'd say, as Alliance also noted, "On the heels of three successful proposals last year, companies have been more willing to reach agreements with proponents on climate risk reporting, resulting in two-thirds of this year's 2DS resolutions being withdrawn."

Topping the majority vote list on E&S proposals, as Alliance reported, "were resolutions at **Kinder Morgan** (59.7%) and **Anadarko Petroleum** (53%) to report on how they are preparing for a 2° Celsius limit on global warming pursuant to the 2015 Paris Accord (aka the "2-degree scenario" or "2DS")."

Five majority votes have been recorded on other environmental proposals, including reporting on coal ash risk (53.2% at **Ameren**), reporting on methane emissions management (50.3% at **Range Resources**), reporting on sustainability (60.4% at **Kinder Morgan** and 57.2% at **Middleby**), and setting goals for reducing greenhouse gas (GHG) emissions (57.2% at **Genessee & Wyoming**, where the board made no recommendation).

E&S proposals are continuing to gain traction FAST - not just with "professional investors" - who see clearly that "sustainability" and "good corporate citizenship/ stewardship" DO create economic value - while mitigating operational and reputational risks, but… hello…most of the very best public companies get it too. And so do ordinary "retail voters" these days - who are wisely concerned about the environment - and about the "political climate" as well.

As ***Morgan Stanley's Institute for Sustainable Investing*** pointed out in February, 2016

- 71% of individual investors are interested in sustainable investing
- Millennial investors are nearly 2x more likely to invest in companies or funds that target specific social or environmental outcomes
- Female investors are nearly 2x as likely as male investors to consider both rate of return and positive impact when making an investment
- 65% of individual investors expect sustainable investing to become more prevalent in the next five years 75% *of Americans feel that climate change and "sustainability issues" are highly important issues.*

OUR ADVICE TO ISSUERS

Pay attention to the big new trend in support of E&S proposals. Read the articles about best practices and procedures on easy-to-understand and *compelling* ESG disclosures in our last issue. Get hard copies, if you can, of the BofA and Pepsico 2018 proxy packages to see for yourselves the many things that made them among the very best 'explainers' of their positions on ES&G matters…and plan to adopt them as appropriate in your own 2019 materials. (While the web versions are OK in a pinch, the "look and feel" of the hard copy originals adds a lot of value for readers, we think.)

As we had predicted, the publication of this season's new comparisons of CEO pay to that of the median employee had no discernible impact on Say-On-Pay votes, since they were impossible to compare - even among companies in the same businesses - and thus, conveyed mostly meaningless information as far as ratifying a pay plan is concerned.

But "Watch Out Below, Issuers"…Say-On-Pay (SOP) failures were on the rise:

"Through May, average SOP support—at 91.2%—fell well behind the 2017 level for the same period (92.6%), while the failure rate more than doubled to 2%. Notably, there was a pronounced upswing in failures at S&P 500 firms, in most cases for the first time" the Alliance Advisors report noted.

"These included **Ameriprise Financial**, **Chesapeake Energy**, **Halliburton, Mattel**, **Mondelez International**, **Walt Disney** and **Wynn Resorts**. In contrast, investors rejected SOP proposals at only one S&P 500 company (**ConocoPhillips**) during the first five months of 2017."

OUR ADVICE TO READERS

Most of the S-O-P issues in 2018 revolved around insufficient "linkage" that large investors found between pay-programs and performance hurdles. Smart companies headed the se off at the pass via their early outreach efforts, and those with failed SOPs had to capitulate fast - after suffering public embarrassment.

There were a few instances where the sheer *magnitude* of the 2018 pay numbers prompted a rebuke to the comp committee, but the biggest worry for companies in 2019 should be instances where CEO pay is markedly higher than CEO pay at better-performing peer companies.

As the *OPTIMIZER* has been noting for more than 10 years, thanks to basically off-the-shelf databases and screening techniques, it's easier every year for investors to sort out and ID all of the outliers where "pay for performance" is concerned. Issuers, you should be doing the same searching on your own - early, and rigorously.

The bottom line: Early engagement actions - and early, math-oriented engagement on pay plans - and on gender and ethnic diversity - and on corporate culture and "workplace issues" - and on E&S issues too - should be the watchwords for 2019 - starting right now, we say.

An important P.S. on Written Consent Proposals: ***There were 30 proposals to adopt or lower the thresholds for shareholders to take action by written consent filed this season - mostly by John Chevedden and James McRitchie***

Issuers - and proxy advisors, solicitors and PR spinners/ drafters too - we urge you to read the article on our website by our great friend Merrill Stone, Esq. a partner at Kelley Drye & Warren and his associate, Matthew Kane:

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OUR ADVICE TO ISSUERS

While support for low thresholds for actions by written consent declined a bit in 2018, issuers have, by and large, done a *terrible job* of pushing back against them.

Please heed our oft-repeated warning, based on the many proxy-fight losses we've seen issuers suffer unjustifiably over many years to better organized, fast-talking, fast-buck-seeking insurgents:

"Consent Solicitations are like nuclear weapons in the hands of opportunistic 'investors' seeking to win control and make a fast buck at companies they deem vulnerable… And…they are a way to do so on the cheap!"

Also, please note, the right to call a special meeting is more than an enough ammunition for such insurgents to have…And a 25% threshold is the proper number in our book to slow down and often thwart the quick-buck artists - which every single long-term investor should want to guard against.

THE BIGGEST AND BEST THING WE SAW THIS SEASON: A 41% INCREASE IN RETAIL INVESTOR VOTING PARTICIPATION… FOLLOWING AN 8% INCREASE LAST YEAR… AT BANK OF AMERICA

Given the slow but steady falloff in individual investor voting that we have been witnessing since the 1970s, it's hard for us to overstate what a huge and important development this is.

We were mightily impressed with last year's addition of 50,000 new retail voters, driven by BofA's pledge to donate $1 to the Special Olympics for every individual account that voted a proxy: This produced an 8% increase in normally declining retail-voter participation, which increased the quorum - and, very importantly, the number of pro-management votes that individual shareholders typically cast when they bother to vote at all - by a whopping four percentage points.

But this year's results were truly eye-popping - although we must say we were pretty much on-the-money in our initial predictions:

This year's promise of a $1 donation to Habitat For Humanity - another nonprofit that BofA has long supported - drew 269,000 new voters - a 41% increase over last year… which resulted in roughly $919,000 being donated!

What made us bet on such a big increase? And how did it happen?

- **First and foremost is the marketing truism that to get results you need to "repeat, repeat and repeat" your message in order to generate awareness - and to succeed.**
- **Equally important, you need to position your messages prominently - so they will be noticed right off the bat. BofA did a masterful job of this last year, and this year, the message was even more prominently and frequently displayed; the very first, and very attention-getting thing that shareholders saw when they received and when they opened the proxy package.**
- **Of course, the message needs to be a compelling one. Here, BofA hit a bases-loaded home run. The choice of the charities were excellent ones in both years. (We ourselves have a pretty long list of charities we'd never donate to, as most people do, we think…But how many people could possibly quibble with, or fail to be moved by support for the Special Olympics or Habitat? Only the meanest of Scrooges we'd say.)**
- **Most compelling, however, were the attention-getting numbers: BofA was able to report that $650,000 had been donated last year - and that, we think, was a major motivating factor behind the huge number of new people who got on the bandwagon this year. (Next year, a $1 million goal will keep voters on the ranch - and will generate a lot more new participation, we feel certain.)**

BofA did another set of smart things to increase the always hard-to-get Employee Plan votes by using the Internet more effectively - with an educational video, and emailed reminders to get out the vote. The biggest and best thing, however; they were able to create a single "landing platform" for all Employee Plan accounts - and all of any other accounts employee owners had in its Merrill Lynch unit - so that one set of voting actions voted all the individual and employee owners' positions.

OUR ADVICE TO READERS

Take a very careful look at the 2018 BofA proxy materials - *and* at the many articles on our website under the Individual Investors tab.

Pay special attention to our Top-Ten Reasons to Grow - and to Guard Your Retail Investor Base, our Top-Tips on Motivating Investors to Vote - and our Top-Ten Ways to Disrespect Your Individual Investors, which, sadly, seem to be gaining new converts every day at penny-wise, pound foolish companies - and at misguided suppliers too.

THE NIFTIEST NEW THING WE SAW THIS SEASON: ONLINE - AND MOBILE - "MEET THE BOARD" FEATURES

It's been a while since we last reviewed EZOnlineDocuments web and mobile-optimized proxy statements...but we were absolutely bowled-over by the quick demo we saw at the Society conference this year…

EZOnline's reformatting of proxy statements specifically for web and mobile users - and for retail investors - makes it easier to read - and to search - and to *absorb* proxy statement information better than anything else we have seen.

We were especially happy to learn that their "Meet the Board" feature is the most-visited content page - since it bears out our own long-held view that director bios, photos and overall "profiles" are among *the most important influencers* when it comes to deciding whether to vote one's proxy - and how - if at all.

OUR ADVICE TO READERS

We urge you to visit www.ezonlinedocuments.com and to zero-in on the "Clients" tab for a quick and easy-to-absorb look at how it works for clients like Coca-Cola, Mastercard, Xcel Energy and others.

ON ANOTHER RELATED NOTE…Bank of America featured online *interviews* with all of its directors this year, which, we believe, also contributed to the enormous increase in retail investor voting noted above. Initially, the link was appended to all of the e-deliveries and employee-outreach materials, and was posted on the voting sites, but now, simply go to Bank of America's Investor Relations.

Aside from revealing how diverse the directors are - not just in terms of gender, ethnicity, business-backgrounds, and in their personal "styles" - all of the directors repeated and expanded on the same guiding philosophy - of "putting customers first and foremost" in everything they do (now) - and it was really impressive. When your senior editor started in the banking industry, back in the 1960s, this mantra was drummed into our heads every day of the week…until what he now calls "the noughties…and the naughtys" of the Y2K decade. What a refreshing return to the most important values of all - and thus, to long-term thinking… and *acting.*

WANT TO GET YOUR BLOOD A'BOILIN'? READ WHAT UK DIRECTORS HAD TO SAY ABOUT THE SHORTAGE OF WOMEN LEADERS ON BOARDS…AND IN THE WORKPLACE

- **"All the 'good' women have already been snapped up."**
- **"I don't think women fit comfortably into the board environment"**
- **"There aren't that many women with the right credentials and depth of experience to sit on the board—the issues covered are extremely complex"**
- **"Most women don't want the hassle or pressure of sitting on a board"**
- **"My other board colleagues wouldn't want to appoint a woman on our board."**

This according to a just out UK government-sponsored study, the Hampton-Alexander Review, that showed there were 15 women CEOs at FTSE 350 companies as of October 2017, compared with 18 women a year earlier, and that women made up 24.5% of the boards at the largest FTSE companies, up from 23% a year earlier and 9.5% in 2011, the first year of the analysis, and actually, not too bad a percentage at all.

But, while we can imagine some directors *thinking things like this*, it's shocking to discover that board directors would *say such things aloud* in this day and age…although you have to grudgingly award them some points for their honesty...

And do we think that a majority of US directors think otherwise? The current numbers on women CEOs and Directors, and especially the shortages at mid-cap and small companies, say absolutely NO.

AUDITOR RATIFICATION…THE NEXT BIG THING IN CORPORATE GOVERNANCE? WE HAVE A BETTER IDEA

We have been saying for five or more years now that treating the vote on ratifying the selection of auditors as a "routine matter" is increasingly absurd, in light of the seemingly never-improving and clearly unsatisfactory number of audit failures reported each year by the PCAOB.

This season, there were far too many straws in the wind and roilings-of-the-waters on the auditor scene to possibly ignore - starting with the 35.1% vote against ratifying the auditor at GE… *in light of the numerous re-statements, write-downs and earnings misses there, where their auditor failed to ring even the tiniest alarm bell.*

And then…in the U.K. - which is often miles ahead of us on governance issues (like required shareholder approval of buyback plans, for example) - a FTSE 250 company, construction group SIG, voted to oust Deloitte after SIG admitted to repeatedly overstating its profits in previous years.

And then…"Audit Analytics" came out with the news that the GE result didn't even manage to crack the 'Top-3 no-vote getters for the three years ended December 31, 2017. Their blog said that the biggest No-vote-getters were **Plymouth Industrial REIT** (2015) - 49% votes no, **Health Warehouse.com** (2016) - 45% and **Planet Fitness** (2018) - 37%: In 2017, they noted, 15 companies received more than 20% of votes against ratification and three companies - Planet Fitness, **Consolidated-Tomoka Land** and **Kulicke & Soffa Industries** - each received more than 36% of votes against auditor ratification. But, surprise, surprise? The old auditors are still serving at all three companies…and at GE too - amazingly - as we write this.

And then…came a blizzard of horror stories in the press about KPMG International, which licenses its name and oversees audit operations of its licensees on a global scale. KPMG's affiliate in Dubai investigated its own audits of once high-flying **Abraaj Group**, a 7/5 WSJ story revealed, following investor allegations that significant fund monies had been taken and used for inappropriate purposes. Surprise again? KPMG found they'd done nothing wrong. Concurrently, the former Abraaj founder is under an arrest warrant in the UAE for floating $48 million in bad checks!

So then…when Abraaj filed preliminary liquidation papers…the board hired Deloitte to investigate KPMG: Deloitte found that fund money had indeed been used for improper purposes, and that Abraaj "lacked proper governance" …***But then***… once again, Abraaj appointed another KPMG unit - KPMG Lower Gulf to investigate - which (surprise *again?*) found that the fund was "in line with proper procedures." ***And then…in an astonishingly flippant flip of the bird to investors…***the Abraaj board commented that it was not up to *them* to say if there was a conflict of interest in appointing KPMG Lower Gulf…

The WSJ article cited a raft of other KPMG horror stories - the fact that the US unit recently fired several employees following an information stealing scandal, as reported here earlier….and that the firm was "under fire" in South Africa for ties to issues involving a "politically connected family" - and OUCH AGAIN! - that UK regulators declared in June that the quality of its audits of a now-failed construction firm was "unacceptable."

Perhaps the most shocking thing of all…If you review the Audit Analytics statistics on auditor tenure, the number of companies that have retained the same audit firm for 25, 30, 40, 50, 75 and 100 years in a row make it intellectually and statistically impossible to believe that audit committees have been conducting rigorous and thorough reviews before asking for "shareholder ratification" of their recommendations.

We are not fans of mandatory auditor rotation, but, as mentioned, we no longer able to convince ourselves that treating auditor ratification as being a "routine matter" is justifiable under current conditions. We think we have a better - and an easy-to-implement idea: Amend Audit Committee Charters to require the Committee to formally put the audit assignment out for competitive bids at least once every ten years.

Your editor had an experience with this in his first year on a non-profit board, which had used the same audit firm for over 60 years, and that shows what a wonderful thing this can be:

The non-profit was very happy with the old firm - and with their top-to-bottom familiarity with the non-profit - and with the audit management and staff, where there were well-developed working relationships with all the key staffers…But they felt that after 60 years a fresh look was warranted.

They asked the current firm - and one other, of similar size, focus and reputation - to take a top-to-bottom look at the non-profit's *current environment*, to suggest ways to *tighten things up* and perhaps to *reduce activities* if they saw any such opportunities…and to propose their fees for going forward.

The non-profit got more than a half-dozen ideas for improvements from each firm - that were all put in place. They reduced the audit fees by 20%. But most important, the board felt that they had truly done their due diligence…and their *duty* as fiduciaries.

Two more straws in the wind on the auditor front blew by us this season… at two small biotech companies that a CTH LLC Inspector of Election attended:

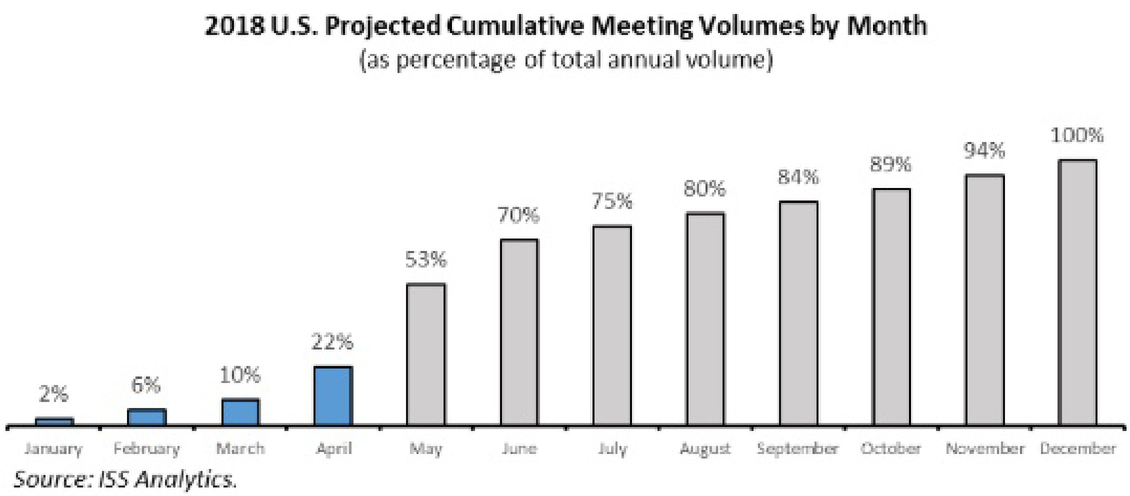
At the first meeting the incumbent accounting firm received approval from only 54% of the votes present ….and the audit partners were asked to stay afterwards to speak with the board. At another meeting, the very next morning, a second biotech company had decided not to put the ratification of auditors up for a vote this year because they are planning to initiate a bidding process shortly. Since there were no "routine proposals" to vote on, the quorum was a mere 54% which, fortunately for them was not an entire surprise, or a problem to the company.

The bottom line here: There seems to be a movement afoot among smaller and newer biotech companies - many of which have investors and often some directors in common - to question what are perceived as being unusually high audit fees for companies in this market segment. Straws in the wind indeed.

ONCE OVER IN APRIL, SHAREHOLDER MEETINGS ARE YEAR-ROUND EVENTS THESE DAYS

Ten years or so ago, when most public companies used the calendar-year as their fiscal year, virtually 100% of shareholder meetings were over by April 31st.

How things have changed, as the chart below, from ISS Analytics dramatically reveals; today, only 22% of meetings are over and done by the end of April….with 31% of the total meetings now moved into May…and another 17% in June. The big shift, we think, is mainly due to the huge amount of required disclosures these days, which simply can't be done in a month after the close of the first-quarter. But then, as the chart shows, about 5% of all meetings began to take place in summery July through wintry November, a trend we think that various proxy advisors fostered as a way to "get out of the crowd" - and probably, to better spread their own business around throughout the year. Most astonishingly to us, as long-term meeting-goers, 6% of all meetings now take place in December - which, historically, and from a "social-calendar perspective" were totally unthinkable ten years ago.



Also back in the Y-2Ks, Monday and Friday meetings were absolutely unheard of - to assure a peaceful weekend for corporate directors. And "never on Wednesdays" was a mostly unbroken rule - because these were the most convenient travel days for directors. Recently however, Mondays and Fridays have been steadily growing in popularity, despite the Sunday and late-night Friday travel-time that is so often involved - mainly we think, because shareholders will be less likely to attend…which, we feel sure, largely accounts for the growing popularity of December meetings too.

One last big trend, thanks to today's big M&A activity, a lot of companies are holding two shareholder meetings in the same year…and then none the next year for the entity that merged entity.

WATCH FOR NEW REGS, WE HOPE, AS INSIDERS TRADE AND MAKE MILLIONS ON SHARE BUYBACKS

In a series of speeches in June, SEC commissioner Robert M. Jackson, Jr. revealed a study he conducted of share-buybacks at 385 companies from 2017 through the first quarter of 2018, showing that company insiders were making big money by selling in advance of or shortly after new buyback programs were announced, and called for a new look at the regulations in force.

As reported prominently in the **WSJ** by **Gretchen Morgenson** and **Tom McGinty** on June 10, Jackson found "the percentage of insiders selling shares more than doubled immediately following their companies' buyback announcements as many of the stocks popped. Daily stock sales by the insiders rose from an average of $100,000 before the buyback announcements to $500,000 after them. The sellers received proceeds totaling $75 million more than had they sold before the announcement, the study concluded. At 32% of the companies, at least one insider sold in the first 10 days after the buyback announcement".

The study also indicated that insiders would likely be aware of the short-term effects of buyback programs, finding that in the days leading up to share repurchase announcements, the companies' stocks underperformed the broader market by an average of 1.4%, but during the 30 days after the announcement, the companies' stocks outperformed the overall market by an average of 2.5%. "If an executive believes a buyback is the right thing for the long term, they should put their money where their mouth is and keep their stock holdings," Jackson said. The WSJ story outlined insider trades at **Bloomin' Brands Inc.**, where three top execs executed sales netting roughly $8.9 million at prices that were, on average, 7% higher than the price on the day the buyback was announced.

In response to a question at the annual **Society** Conference. Commissioner Jackson noted that buyback rules were last reviewed over ten years ago - and that better and more frequent disclosures on the size of buyback programs - and their financial outcomes - also seems warranted to him.

STILL MORE PUSHBACK ON BUYBACKS FROM FINANCIAL ANALYSTS:

As a July 8 WSJ story noted, "S&P 500 companies are on track to repurchase as much as $800 billion in stock this year, a record that would eclipse 2007's buyback bonanza… But 57% of the more than 350 companies in the S&P 500 that bought back shares so far this year are trailing the index's 3.2% increase. That is the highest percentage of companies to fall short of the benchmark's gain since the onset of the financial crisis in 2008, according to a WSJ analysis of share buyback and performance data from **Factset**"

The article noted that **McDonald's** bought back $1.6 billion of shares in the first quarter, but the fast-food chain's stock is down 7.4% this year. **Bank of America** and **JPMorgan Chase** have both spent more than $4.5 billion to buy back their shares, which are down 5% and 2.7%, respectively. All three companies also spent multibillion-dollar sums on buybacks in 2017 as the stock market hit repeated highs.

"There has been less of a reward for companies engaging in new buybacks over the last 18 months," **Kate Moore**, chief equity strategist and a managing director at asset-management firm **BlackRock Inc.** told the WSJ "It's fair for investors to ask whether companies are buying at the right point."

An earlier (2/22) WSJ story on **GE** - which was dropped this year from the Dow Jones Index after 100 years - noted that "Over the past three years, GE spent more than $29 billion on share repurchases at an average price of almost $30, twice the current level. That includes billions of dollars spent less than a year before GE suddenly found itself strapped for cash last fall"

Time for more robust, and timelier disclosures, for sure… with required look-backs we say over one, five and ten-year periods, so investors can see how THEIR money fared when used for buyback programs.

OUT OF OUR IN-BOX:

Shocking, but sadly, not surprising news from the Conference Board re IROs: "Corporate communicators rank financial reporting and investor relations skills low among sought-after skills, despite indications that engagement with the investor community is an increasingly important part of their job description" according to their just out report on Corporate Communications Practices; 2018 Edition. According to survey, "nearly 30 percent of companies with $25 billion or more in revenue and a quarter of manufacturing companies claim that their communications teams are involved in investor relations…Yet, according to the survey, neither group ranked "investor relations experience" higher than 15th in the list of most sought-after skills for communicators, while "financial reporting experience" topped out at 13th for the largest companies - and ranked 15th among manufacturers. Investor Relations Officers: You have some very important relationship-building and "selling and marketing" to do…internally!

On a related note, your editor in chief was pleased to get a "Congrats on your work anniversary note" via LinkedIn [1992…Who knew?] from a former Manny Hanny colleague, Alan S. Michaels, who is now the owner of Industry Building Blocks, which provides objective line-of-business information for over 11,000 companies - including over 2,500 public companies, and over 8,000 private companies.

His ending P.S. really got our attention: "In 1992, Shareholder Services was industry #7.... now it is Industry #20,077 at **IndustryBuildingBlocks.com**"

On another related note, here's a quote from a June 17 report on the transfer agency scene from Morgan Stanley's Asia Pacific research team:

"We think the market is underestimating the revenue drag in the core registry business. Pricing is falling, market share bleed continues, and share register is in unremitting decline."

The report went on to note annual declines in the number of U.S. registered shareholders of 4%+ per annum (vs. our own 5% estimate) and declines in DRP participation of 7% (vs. our estimate of 8%)…and their top-takeaway, that "U.S. pricing remains high (about $1 per account higher they said) than other markets and continued fall is likely." Yikes!

ELSEWHERE ON THE SUPPLIER SCENE:

On a happier note, **Computershare** is set to purchase **Equatex** - "a Zurich based employee share plans administrator with a strong business across Europe [whose] 220+ employees provide a range of employee share plans administration solutions for over 160 clients, covering around 1.1 million plan participants in 168 countries and administering around USD 40 billion in assets. Equatex is an expert in managing deferred equity compensation plans for global businesses, with clients across all major industries including financial services, healthcare, industrial, pharmaceuticals, energy and IT," per **CPU**'s March 18 press release. A nice reminder that there are still major pockets of strength in the share-registry business, and that, as we have been long reminding, there are many more potential employee-shareowners out there than there are "ordinary individuals" who have the money - and the desire to own equities directly these days.

The Investor Responsibility Research Center Institute (IRRCi) announced in June that "it has selected the **John L. Weinberg Center for Corporate Governance** at the **University of Delaware** as its successor organization. The Weinberg Center will receive a grant from IRRCi in excess of $1 million as part of the successor transition. With these funds, the Weinberg Center will materially expand its environmental, social, corporate governance and capital market research, and also maintain the full IRRCi research library so that more than 75 research reports remain publicly available at no cost. The Weinberg Center also will continue to fund and manage the annual **IRRCi Investor Research Award** that recognizes outstanding practitioner and academic research." (For history buffs, IRRCi was formed following the 2005 sale of **IRRC** to **Institutional Shareholder Services** (now **MSCI**) in order to continue the academic research that the "old IRRC" formerly engaged in.)

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WHY ARE COMPANIES NO LONGER GOING PUBLIC? OUR "EXPERTS" ARE BEATING THE DRUMS FOR NAÏVE AND SELF-SERVING "SOLUTIONS" … WHILE TOTALLY IGNORING THE AGE-OLD AND NUMBER-ONE-PRINCIPLE ABOUT THE BUYING AND SELLING OF STOCKS

Following lengthy hearings, and testimony from various financial industry "experts," the Senate Committee on Appropriations advanced an SEC funding bill that was equal to the SEC's $1.7 billion request…but which directed the Commission to evaluate factors that are driving the decline in the number of public companies - including registration and reporting requirements, proxy rules, and the impact of proxy advisors (!)…all ideas and opinions that SEC Chairman Clayton seems to be much in agreement with.

But senators, SEC Commissioners and staffers - and most of the so-called experts are missing the real problem - and the real solution by a mile:

We agree that all the lawyers, accountants, SEC rules, and associated paper-pushing and filings that come with an IPO - plus all the pesky investors one would have to put up with - are indeed incentives to stay private. But hello…No successful and *sane* entrepreneur will ever pass up the opportunity for the eye-popping payouts that can be realized from a public offering at the right time and the right price.

With this in mind, however, we can also understand - as the Senate and the SEC should be able to understand too, though they don't seem to - that huge changes in our capital market structures now allow entrepreneurs to raise capital easily - and at low cost - from numerous *other sources* - and/or to give up just a tiny bit of control for a mountain of cash from a few "friendly, hand-picked investors."

But folks…the idea that reducing rules - and reducing public disclosures - and audits - to the barest minimums - will be good for capital formation in the long term is absolutely ridiculous.

Sure it will encourage some basically unready and unworthy companies to go public…but to what avail? Just look back at our last issue, where we reported, citing data from **Dealogic,** that of the (mere) ten JOBS ACT IPOs that have been listed on US stock exchanges to date, every single one has lost more than half of their initial market value…And at least one is set to go to zero.

"If anything" we wrote, ***"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...So far, the JOBS Act has a perfect ten-for-ten record of DESTROYING VALUE!"***

The idea that too many proxy proposals - and too many advisories form proxy advisors are somehow driving people away from going public - or from buying stocks - is also patently absurd!

Just take a look at the shareholder meeting results reported in this issue to see how fast individual investors have been voting in favor of Environmental and Social issues…and to see at least two high-profile issues where the recommendations of proxy advisors were totally ignored by investors, as so often they are…if one simply checks the facts!

SO WHAT IS THAT AGE-OLD and NUMBER-ONE-PRINCIPLE WHEN IT COMES TO THE BUYING AND SELLING OF STOCKS THAT IS TOTALLY MISSING IN THE ANALYSES WE'RE SEEING? "STOCKS ARE NOT BOUGHT - THEY ARE SOLD."

When's the last time you got a call from a reputable retail broker with a recommendation on an individual stock to buy? Today's "sell-side analysts" are nearly extinct. And "brokers" and "financial advisors" and "wealth managers" are working overtime to flog mutual funds, ETFs and "managed accounts" where they can make more money than ever they'd make from selling stocks to conservative "buy and hold investors."

Meanwhile, many public companies have been thinking of, and treating their individual investors as expensive nuisances - and looking to pare-down their spending on them, and the services provided to them, as close to zero as possible.

We can remember when, back in the late 1950s, Merrill Lynch launched their "Own Your Share In America" campaign - which set off the longest run of investments in stocks by individual citizens ever…Ultimately, well over 50% of all US households owned shares directly.

Today, thanks to the lack of marketing of the benefits of owning shares in companies you admire, and whose products and services you use and admire - and the flogging of generic and "synthetic" products instead - AND, of course, to the huge beating investors took during the dot-com crash and the 2008 financial industry crash and the flash-crash (all fostered, by the way, by lax regulation and supervision by the Congress - and by the SEC) - individual ownership of equities is in the mid-20% range…and it's mostly employee ownership we think.

Unless and until we revise our approach to the selling and the marketing of stocks, and yes, our faith in the appropriate regulation of stocks and stock markets - we will never see the return of a vigorous market for IPOs!

PEOPLE:

Abby Cowart has resigned as Executive Director of the **Shareholder Services Association (SSA)** as of June 13, 2018, after a highly successful three-year tenure, marked by the launch of a **Certification Program for Shareholder Relations Professionals** and vigorous new growth in the membership. The Board will fulfill the Executive Director responsibilities until a replacement is announced. Abby will join Computershare in Louisville, KY as a Project Manager. Warmest congratulations to Abby - and to **Computershare,** which has added a new and true industry star to its roster.

The New York Stock Exchange is being run by a woman for the first time in its 226-year history after **Stacey Cunningham**, who had been the exchange's chief operating officer, assumed the role in May. Cunningham, who started as a floor clerk at the exchange in 1996 clearly knows the ropes from the ground up, and we wish her every success at a very difficult time for traditional stock exchanges. (For you history buffs, **Catherine Kinney** became the NYSE's first woman co-president in 2002, but, as a ***CNNMoney*** article noted, that was at a time when the exchange's CEO or chairman, rather than the President, was the ultimate boss.)

Industry veteran **Robert Durham**, has signed on as a Financial Print/Communications Consultant at **RJD CONSULTING, LLC** in NYC - continuing an incredibly varied career in the constantly evolving financial printing business. Robert spent 13 years with **MICR Encoding**, back when the business of designing and printing custom dividend and interest checks and imprinting MICR numbers on them was a huge one… until suddenly it was not, thanks to new technologies that could create and print checks at the press of a button. (Back then, "custom dividend checks" often cost more than $.25 each!) Seeing the handwriting on the wall, he moved on to help start **Image Group** as a division of proxy solicitor **Corporate Investor Communications** aka **CIC** (not to be confused with ***"the other CIC"*** - a contemporaneous company that specialized in reorg jobs that the founders said stood, aptly we thought, for **"Catholics in Chaos."**) Then, following the sale of proxy solicitor CIC and its Image Group to **Computershare**, Robert moved on to **D.F. King** - to jumpstart their newly formed kcomm printing unit, and from there, when family-held DF King was sold, he moved on to jumpstart the **AST Document Solutions** unit. **A story for our History section, if ever there was one!**

Mark Kopelman joined **Computershare** in May as an EVP in the Mid-Market segment of their US Issuer Services Group, following an eight-month stint as CEO at and an investor in market research firm **Group Five**. Prior to that, Mark spent 5+ years at **Broadridge**, where he led their entry into the Transfer Agency Market, and prior to that, Mark spent 18 years at **RR Donnelley** where he held leadership positions in marketing, strategy, sales, strategic pricing and operations.

Ann Mule, Associate Director of the **Weinberg Center for Corporate Governance at University of Delaware**, and a former Corporate Secretary and Governance officer, was recognized as a **"Giant of the Business Bar"** in the field of corporate governance by the Business Law Section of the **Philadelphia Bar Association** in June. **Very well deserved!**

Anne Simpson, who oversees sustainable investments and investor initiatives at **CalPERS** and Tim Smith, the Director of ESG Shareowner Engagement at **Walden Asset Management** (whom your editor in chief has known since the 1970s when he led the world-changing anti-apartheid voting initiatives at U.S. shareholder meetings) have been named by ***Barron's*** magazine, and also reprinted as a special supplement in the ***WSJ***, as being among the **"Twenty Most Influential People in ESG"**…joining such notables as **Michael Bloomberg** and **Larry Fink** of **BlackRock**, "the world's largest asset manager." Heartiest congratulations on this well-deserved recognition!

Recently retired **Computershare** EVP, **Joe Spadaford** who earned Six Sigma Master Black Belt status, while at **AXA Equitable** is now the President of **J Francis Consulting** in Chester Springs, PA, where he will serve as an executive consultant to mid-to-large-scale firms in the areas of team development, optimizing efficiency and productivity, guiding cost effective organizational transformation, provide guidance in establishing a viable succession strategy for businesses that will achieve long-term business objectives and guide initiatives to identify, develop, and mentor new leadership talent. No surprise to us, or to anyone who knows Joe, the business is off to a very fast start.

Kristina Veaco, who, in 2006, founded the **Veaco Group** - a much-admired corporate governance consulting firm - and who also serves on the **CT Hagberg LLC Team of Inspectors of Election** - since 2007 - received a lifetime achievement award - the **"Wow Award"** - for her work in corporate governance at **Broc Romanek**'s **"Women's 100 Conference"** in Palo Alto in June.

REGULATORY NOTES….and comments

ON THE HILL:

The **House Financial Services Committee passed a bill in early July (HR #5756) that would raise the Rule 14a-8(i)(12) resubmission thresholds for shareholder proxy proposals from 3%, 6%, 10% - to 6%, 15%, 30%., which the SEC proposed way back in '97 to no avail.** The smart money is betting that even while it makes a *bit of sense* to raise the thresholds a *bit* - as the *OPTIMIZER* opined to the SEC in 1997, this will go nowhere - since it has seriously riled up institutional investors…and oops! …they, and those individual gadflies too, can easily submit new proposals - or move on to other companies when they miss the marks… likely producing a net result of ZERO CHANGE in the annual number of shareholder proposals - and possibly producing even MORE from miffed investors.

AT THE SEC:

The SEC announced that it has adopted amendments to expand the number of "smaller reporting companies" (SRCs) that qualify for scaled [reduced] **disclosure:** Companies with a public float of less than $250 million will qualify as SRCs. A company with no public float or with a public float of less than $700 million will qualify as a SRC if it had annual revenues of less than $100 million during its most recently completed fiscal year. Rule 3-05(b)(2)(iv) of Regulation S-X is amended to increase the net revenue threshold in that rule from $50 million to $100 million, so that more companies may be able to omit dated financial statements of acquired businesses.

The final amendments preserve the application of the current thresholds contained in the "accelerated filer" and "large accelerated filer" definitions in Exchange Act Rule 12b-2 however. As a result, companies with $75 million or more of public float that qualify as SRCs will remain subject to the requirements that apply to accelerated filers, including the timing of the filing of periodic reports and the requirement that accelerated filers provide the auditor's attestation of management's assessment of internal control over financial reporting required by Section 404(b) of the Sarbanes-Oxley Act of 2002.

But at the open meeting it was disclosed that Corp Fin has begun to formulate recommendations to the Commission for possible additional changes to the "accelerated filer" definition that, if adopted, would have the effect of further reducing the number of companies that qualify as accelerated filers and are subject to auditor attestation requirements.

Some observers, including several commissioners, believe this would promote capital formation by reducing compliance costs for those companies, while others, including the OPTIMIZER, believe it will further Jumpstart Our Bilking of Suckers. (See the article on JOBS Act offerings in our last issue, and in this one, for proof, we say.)

SEC announces amendments to require "Inline XBRL" for financial statement information: Public companies will have to embed XBRL data directly into Edgar filings instead of posting separate files – and the new data will be readable by both humans & machines. The amendments also eliminate the requirements for companies to post XBRL data on their websites. Large accelerated filers that use U.S. GAAP will be required to comply beginning with fiscal periods ending on or after June 15, 2019. Accelerated filers that use U.S. GAAP will be required to comply beginning with fiscal periods ending on or after June 15, 2020.

The SEC voted 3-2 to propose limiting whistleblower payouts after an $83 million award in March to three tipsters – the largest payday in the history of the SEC's whistleblower program—raised concerns that the jackpots may be getting "too large," according to the proposal.

"Too large relative to WHAT?" we'd ask. Way too subjective to be useful in the real world. And SEC Chairman Jay Clayton's remarks seem like topsy-turvy Alice in Wonderland reasoning to us: "The proposed rules are intended to help strengthen the whistleblower program by bolstering the Commission's ability to more appropriately and expeditiously reward those who provide critical information that leads to successful enforcement actions." Whaaat….?? "Strengthening" and "bolstering" the program by reducing the rewards for coming forward???

In further developments on what we have been calling "the biggest financial fraud ever" - and one where the whistleblower awards could ultimately be the biggest ever - the SEC announced in July that two U.S.-based subsidiaries of Deutsche Bank AG will pay nearly $75 million to settle charges of improper handling of "pre-released" American Depositary Receipts (ADRs). They found that **Deutsche Bank Trust Co. Americas**, a depositary bank, improperly provided thousands of pre-released ADRs over a more than five-year period when neither the bank nor its customers had the required shares in hand, and that **Deutsche Bank Securities Inc.**, a registered broker-dealer, failed to have policies, procedures, and supervision in place that should have allowed them to prevent and detect securities laws violations concerning borrowing and lending pre-released ADRs. The decision involved approximately 850 transactions over more than three years, including inappropriate short selling and inappropriate profiting around dividend payouts, which "left the markets for those ADRs ripe for potential abuse at the expense of ADR holders."

We were surprised by the very small fines and penalties - and by the lack of linkage to actual damages to ADR investors - by the very short look-back period for bad conduct that has been going on for 10+ years - and by the very easygoing treatment of the units' chief compliance officer, who received a fine of a mere $10,000, without admitting or denying the SEC's findings, which acknowledged her "cooperation" in the investigation (one that was already drowning in pages and pages of hard evidence) and the Bank's "remedial acts."…But this is only one aspect of the overall ADR schemes that are under investigation, and Deutsche Bank is the smallest ADR bank by far - with only 10% of the market vs. the 90% controlled by the three largest ADR banks…so there's a lot more still to come….

IN THE COURTHOUSE:

The Supreme Court, as expected, ruled that the SEC's appointment of administrative law judges to hear cases did not meet legal requirements, which the SEC then moved quickly to fix - as they could have done all along… Few if any decided cases are expected to be revisited.

The Labor Department's "Fiduciary Rule" - requiring financial firms to put retirees' best interests before their own - first proposed six years ago and widely implemented by many bank and brokerage firms in the meanwhile - died with whimper in a federal appeals court, which ruled the DOL had no authority to issue it. No further appeal by the DOL expected. The regulatory hot potato is now in the SEC's court, which tells *us*, "Don't expect much action anytime soon."

WATCHING THE WEB:

"Did you know there is a new EU regulation, GDPR (General Data Protection Regulation)" that went into effect on May 25, 2018? The **SSA**'s Advisory Statement to members, "Did You Know" was the only real heads-up we have seen anywhere…

"In part," the SSA notice states, "the GDPR requires a Privacy Notice to be sent to shareholders (within the EU) informing them of their rights. The obligation to provide this Notice is on the Issuer. If you are with a Commercial Transfer Agent, you may want to reach out and inquire about next steps needed, including any amendments to your agreement with them…The GDPR also requires that there be a written agreement between the Data Controller (the issuer) and the Data Processor (the transfer agent) for the Data Processor to do its job.

Data subjects have the right to:

- Control their Personal Data and the use of it
- Know who the Data Controller is and what is being collected
- Know what will be done with the data
- Know how their rights will be protected
- Know who they can contact about their data

"The EU regards Data Protection as a human right" the advisory goes on to note…Would that it will happen here, we say.