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 4 | NOW IN OUR 26th YEAR! | FOURTH QUARTER 2018

IN THIS ISSUE

THE HOTTEST NEW ISSUES ON ACTIVISTS' 2019 MEETING AGENDAS

The number-one new issue for issuers to focus on as they prepare for their 2019 proxy disclosures, and their all-important "early engagement" activities is - and we say this with very mixed emotions - your company's management of "Human Capital."

On the one hand, the fast-emerging recognition that a company's management of its human capital is as least as important as the management of its financial capital is a very good thing. And yes, in recent years we have seen way too many companies that are totally mismanaging their human capital - via massive but under-studied cost-cutting campaigns, sudden moves to other states or countries, "early-retirement programs" aimed as senior staffers, massive lay-offs, drastic cutbacks in staff-training and development efforts and a wide variety of other "financial-engineering moves" where long-term employees are concerned.

But on the other hand - and here's where things get scary - "Human Capital Management" can and does mean an awful lot of different things to different people:

How's this for starters: The impending publication of a new human capital reporting standard - ISO 30414 - by the **International Organization for Standardization**, which will, reportedly call for companies to publicly report on 23 specific metrics, grouped into nine different categories, and to report internally on an additional 36 (!) metrics such as "organizational culture" and "succession planning." The publicly reportable metrics are grouped into these nine categories:

- **Ethics** (number and type of employee grievances filed, number and type of concluded disciplinary actions, percentage of employees who have completed training on compliance and ethics)
- **Costs** (total workforce costs)
- **Workforce Diversity** (age, gender, disability, and "other indicators of diversity"- and diversity of the leadership team)
- **Leadership Trust** (to be determined by employee surveys)
- **Organizational Safety, Health, and Well-Being** (lost time for injuries, number of occupational accidents, number of fatalities during work)
- **Productivity** (human-capital ROI; revenue per employee)

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- **Recruitment, Mobility, and Turnover** (average time to fill vacant positions, average time to fill critical business positions, percentage of critical business positions filled internally, turnover rates)
- **Skills and Capabilities** (total development and training costs)
- **Workforce Availability** (number of employees and full-time equivalents)

Meanwhile, the Human Capital Management Coalition, led by the UAW Retiree Medical Benefits Trust and including 25 asset owners like CalPERS, CalSTRS, CtW, NYC Comptroller and the Teamsters, filed a rulemaking petition with the SEC on July 6th - calling for new rules on nine slightly different areas, to require qualitative, quantitative and principles-based disclosures by issuers on their human-capital-management policies, practices and performance measures, arguing they warrant disclosure because they are "fundamental to human capital analysis." Here are *their* nine areas:

1. **Workforce Demographics** (number of full-time and part-time workers, number of contingent workers, policies on and use of subcontracting and outsourcing)
2. **Workforce Stability** (voluntary and involuntary turnover, internal hire rate)
3. **Workforce Composition** (diversity, pay equity policies)
4. **Workforce Skills and Capabilities** (training, alignment with business strategy, skills-gaps)
5. **Workforce Culture and Empowerment** (employee engagement, union representation, "work-life initiatives")
6. **Workforce Health and Safety** (work-related injuries and fatalities, lost day rate)
7. **Workforce Productivity** (profit/revenue per full-time employee, ROI)
8. **Human Rights Commitments and their Implementation** (principles used to evaluate risk, constituency consultation processes, supplier due diligence)
9. **Workforce Compensation and Incentives** (bonus metrics used for employees below the NEO level, measures to counterbalance risks created by incentives)

Our advice, as you gear up for your 2019 engagement efforts, is to begin by reviewing BlackRock's commentary on engagement at the following link:

https://www.blackrock.com/corporate/literature/publication/blk-commentary-engagement-on-human-capital-march2018.pdf

One thing is for sure: we guarantee that human-capital management initiatives will produce a bottomless supply of new rules, disclosures and "engagement opportunities" - and longer and denser proxy statements every year.

THREE MORE HOT NEW ENGAGEMENT-ISSUES ARE EMERGING: PAY RATIOS, AUDIT TENURE…AND "*PLASTICS*"

Last year, we noted that the new pay ratio disclosures were largely a non-event…a yawn. Now, it seems we were wrong on this: A **Willis Towers Watson** blog disclosed that recently, Fortune 500 company compensation committees began receiving a letter from a group of 48 institutional investors, noting that "*disclosure of the median employee's pay provides a reference point for understanding the company's workforce*" and that companies should move "*to help investors put this pay information into the context of your company's overall approach to human capital management*" with more expansive disclosure.

Commenting separately, on behalf of the **New York State Common Retirement Fund**, and adding a few new angles, New York State Comptroller **Thomas DiNapoli** noted that *"We've seen a growing disparity in corporate income in the United States for years, with CEO pay rising dramatically while wages for most other company employees have remained flat. We are encouraging companies to adopt policies that take their entire workforce into consideration rather than setting CEO pay solely by benchmarking it against other CEOs. Overall employee compensation and executive pay has been and will continue to be a key factor for how we engage with companies going forward."*

As to Auditor Tenure, last year, following the disclosure of 75-100-year auditor tenures at audit-issue-plagued companies like GE, P&G and Wells Fargo - and given the impossibly long odds that careful comparison by audit committees would have yielded so few changes - we predicted we will see increasing challenges to companies that have used the same auditors for super-long periods. Here, we seem to have been right: The

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investment committee of the **California State Teachers' Retirement System (CalSTRS)** approved new corporate governance initiatives in November that will target companies that have continued to use the same auditor for many decades.

Aeisha Mastagni, a portfolio manager with the CalSTRS corporate governance unit, said CalSTRS investment staff will engage with approximately 40-50 companies with lengthy auditor tenure of 75 years or more in 2019. Issues related to auditor independence, audit reporting, and disclosure will be discussed. *"Currently, in the US, companies are not required to periodically rotate their auditors. As a result, many companies have established long relationships with their auditor, some extending for many decades, causing concerns of potential independence issues with the extended relationship."*

(Also, while their long list of older engagement topics is still alive and well, CalSTRS will also engage with - and, we think, will likely take some actions against - companies that hold virtual-only annual meetings, without the option of an in-person meeting. And. oh yes, they have their own new draft of new investment principles on human-capital management that they intend to adopt in April, in time for meeting-season.)

The hottest new engagement issue on the horizon, we think is *PLASTICS:*

First, a tip of the hat to **Liz Dunshee**, of **TheCorporateCounsel.net** who recently blogged that **Walden Asset Management**, in collaboration with **As You Sow**, wrote to the CEOs of nine companies - arguing that membership in trade association ***"PLASTICS"*** conflicts with their companies' publicly stated corporate values. The nine companies were **Becton Dickinson** (which then withdrew from PLASTICS) **Clorox**, **Coca-Cola**, **John Deere**, **ExxonMobil** (which, as a maker of key ingredients in plastic bags, dug-in its heels), **Ford**, **General Motors**, **ITW**, and **PepsiCo**.

Walden requested that each company leverage its industry standing in *PLASTICS* to demand that it cease lobbying for state preemption laws to get around local prohibitions of plastic bags, stating that "investors have a financial interest in maintaining strong share value and not alienating customers or employees through prohibition of the rights of local communities." A copy of the June 2018 edition of National Geographic magazine with the headline "Planet or Plastic" and a plastic bag iceberg on the cover was included with each letter.

"Several of the companies have public commitments to support the UN Sustainable Development Goals (SDGs), including **SDG 14 - Life Below Water**. Support of preemption laws on bag ordinances is not consistent with SDG 14 which calls for conservation of oceans, seas and marine resources. In the 2017 International Coastal Cleanup, more than 757,000 plastic grocery bags were collected from beaches around the world in a single day. Preemption of local bag ordinances prohibits local communities from enacting proven approaches to reduce bag litter." Based on the publicly available *PLASTICS* committee member lists 23 other major companies are also members.

Yet another tip of the hat to **Broc Romanek**, who prevailed on Liz to include his favorite movie quote, from **"The Graduate"** (1967)… when **Mr. McGuire** took young **Benjamin (Dustin Hoffmann)** out to the pool to offer career advice:

Mr. McGuire: I want to say one word to you. Just one word

Benjamin (Dustin Hoffman): Yes, sir.

Mr. McGuire: Are you listening?

Benjamin: Yes, I am.

Mr. McGuire: *Plastics*

Benjamin: Exactly how do you mean?

Mr. McGuire: There's a great future in plastics. Think about it. Will you think about it?

Right now, we think a great future absolutely requires us to clean up the millions of tons of plastics that are clogging our oceans, killing fish and other wildlife, and, reportedly filling our bodies with millions of "micro-plastics"…and to stop releasing tons of new plastics into the environment every day. (It might be possible that that those micro-plastics are "plasticizing" our heart valves and creaky joints in a way that may make "plastic surgery" unnecessary someday… though we think not.)

We think that PLASTICS will and should turn into one of the hottest "engagement topics" out there….Think about it… Will you think about it?

MAYBE THE BIGGEST BREAKTHROUGH EVER, WE SAY, TO INCREASE RETAIL INVESTOR VOTING

In mid-November, Broadridge Financial Solutions announced that big retail broker Raymond James Financial is all set to effect "mobile integration of shareholder voting…to enhance the investor experience…and simplify shareholder voting" for the upcoming meeting-season.

Does this mean what we think it means? Will this allow Raymond James - and Broadridge - to "push" voting information - along with an immediate way to vote - directly to voters…instead of relying on the current "pull-method" for e-delivery…that so rarely lures people to voting sites these days?

Our inquiry was quickly returned by Martin Koopman, President of Broadridge's Bank Broker Dealer unit, and the answer is YES. Even better, a second, "very large broker-dealer" is in the final testing stages and on-track to be ready this season too, he told us - and eight others want to do the same, and are in various stages of beta-testing, hoping to be ready for this season as well.

"Eureka" thought we: At long last, we are on the verge of solving the real problem with the "Notice and Access Model" - by serving-up everything a shareholder needs to have to cast a vote - along with a quick and easy way to do so.

When we first heard about mobile-voting, we were major skeptics. Who in the world would use their mobile device to review proxy materials - much less to cast votes? Guess what? Five years ago - when mobile voting was new - .07 percent of the votes cast were voted from mobile devices. By 2017 the numbers rose to 7 percent of all votes cast. And, as noted elsewhere in this issue, we believe that a major social change is underway in terms of the ways ordinary people access and act on information - even where members of the 'older generation' are concerned.

We also think that the "mobile-device" angle is only half the story here: Among the few real insights that came out of the two SEC "Roundtables" on proxy voting were the comments made by **Larry Conover** of **Fidelity Investments**, who made it clear that they are already serving up such information to their retail voters, and providing an easy-to-access internet portal that allows them to cast their votes then and there - and the comments of **Dannette Smith**, Board Secretary of **UnitedHealth** - who explained how the Fidelity brokerage site she uses automatically reminds her of upcoming shareholder meeting vote-deadlines whenever she logs-on - and makes it easy for her to vote right away over their voting-app. No need to have a proxy or Notice in front of your nose. No need to have a password, or worse, multiple passwords for each issue either, since the app knows it's you when you log in to your account.

There is still one big fly in the ointment however: Yes, you can push voting information to prospective voters - and give them a link straight to the voting site as well. But unless the information is delivered in a highly searchable and reader-friendly manner (which only a minority of issuers take the trouble to do these days) voters will lose patience, despite their best initial intentions, and drop off before taking action - as indeed they have been doing.

Issuers…the burden is on you to step up to the plate with reader-friendly materials if you really want to increase your retail investor vote!

BEST PRACTICES TO MAKE YOUR MEETING DAY RUN SMOOTHLY - AND SUCCESSFULLY

Your editor-in-chief has been commissioned by Broadridge to write a white-paper on this subject - based on his 50+ years of observing hundreds of smooth - and not-so-smooth shareholder meetings - and to help assemble an all-star cast of experts from the corporate and institutional Investor worlds to offer their comments and suggestions on the draft. The final version will include a host of practical and tactical tips and is expected to be published in February, so readers, watch your inboxes.

SECOND SEC PROXY ROUNTABLE GENERATES MODEST HEAT BUT LITTLE OR NO LIGHT: WHAT'S NEXT?

Except for the two speakers mentioned in our article on e-voting, above, we were disheartened - and rather shocked - but not surprised, by the lack of facts - and of focus - during the second SEC "Roundtable." Who but the SEC would ever think that almost four hours of twenty-odd televised "talking heads" - in a largely unstructured format - would ever produce a meaningful result?

And ouch again! The only major player to have followed up in writing to date, as best we can tell, has been **BlackRock** - which weighed-in with a few specific and sensible suggestions for moving forward - followed by a scathing summation of the largely fact-free session.

"We recognize that the technology space changes rapidly. Rather than advocating for blockchain or any specific solution at this time, we recommend the SEC host a multi-disciplinary working group to identify potential solutions.

"This group should include issuers, investors, custodians, broker-dealers, technologists, transfer agents, tabulators and existing and emerging intermediaries in the voting process to ensure multiple perspectives are reflected in the solutions.

"This working group would conclude by offering one or more recommendations for the Commission to consider for modernizing proxy plumbing regulation.

"In addition to technology, we recognize that a system-wide change will require direct regulatory involvement as no single market participant (nor even a small subset of participants) can independently solve this problem.

"Fact-Finding on the Current Process: As interest in the proxy process has increased, a number of misperceptions have emerged in the ongoing dialogue. Changes to the proxy process should be grounded in data, not based on speculative statements. A robust discussion would benefit from some basic fact finding and level setting in advance of contemplating changes."

But then, sad to say, a pretty weak conclusion: "We recommend further assessment of: (i) actual voting records, (ii) shareholder proposals, and (iii) registered fund processes"…which does not seem to be much help from our perspective:

What happened to the critical issues that were raised about over-voting? What became of the information about stock-lending, and about current "reconcilement procedures" that seem not to pass the sniff-test as currently performed? And what about "mirror voting" - and the clear potential it has had to influence outcomes - in totally unpredictable ways - when shares that are not cast by actual voters are voted instead by Employee Plan Trustees?

We hate to say it, but our initial optimism about solving these very real problems has largely evaporated.

PREDATOR ALERT: STATES PLAN TO GRAB "UNCLAIMED" IRAS/401-ks: HUGE NEW LIABILITIES FOR ISSUERS - AND THEIR AGENTS…

WHAT YOU NEED TO KNOW - AND DO

At a December seminar on unclaimed property hosted by Georgeson & Co., and featuring the top officers from Delaware and New York State's unclaimed property divisions, co-editor Peder Hagberg and our long-term colleague Ray Riley learned that beginning in 2020 state unclaimed property administrators would begin to demand that IRAs and 401-k accounts with invalid addresses. And probably, accounts with "no activity" are to be turned over too - because normal reinvesting and compounding of Plan income does not count as "activity" with most states - are to be turned over to them directly - where the assets will be quickly sold off.

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Equally startling, the IRS would be demanding that 10% of the value be turned over to them - as a penalty for "early withdrawal."

"Wait a minute!" Ray jumped up to note: ***"For one thing, what right does the IRS have to assume that an 'early withdrawal' has occurred? Maybe the owners are over 50 - or maybe they are disabled - where such penalties do not apply.***

"And what happens when the assets are sold-off by the states? Normally, a total sell-off would create "ordinary income" for the true owners! What happens if and when the true owner comes to light? Would the account suffer a loss of up to 45% - thanks to not-necessarily-so 'early withdrawal' penalties - plus a tax bite on the 'income' of, say, 35% more? Plus a loss of the compounded value as well?

"How, exactly, would owners be made whole if and when they come to light, as many owners, or their heirs, are likely to do? The dollar amounts at issue here can easily be a million dollars or more, per account! Someone needs to be working on this right now!"

Ray knows whereof he speaks: As a former STA president he worked tirelessly and for many years with the IRS - and, more importantly, he noted, with the Treasury Department - on "TEFRA" - and on early attempts to impose "backup withholding" on interest and dividend payments, which, fortunately, were ultimately imposed only on accounts without valid Taxpayer I-D numbers on file.

"Someone needs to get the Treasury Department on this case immediately," he warns.

One thing seems certain to us: Public companies will very likely be holding the bag here - if they, or their IRA and 401-k agents and Plan Trustees fail to locate the true owners of accounts that get escheated and sold off. (Also, several dozen large companies currently offer IRAs and 401-ks through their dividend reinvestment plans, where owners assume that their investments are quietly compounding along. Ouch!)

Issuers - and their agents - need to jump on this issue right away! Meanwhile, every holder of potentially "abandoned" IRAs and 401-ks - and every public company that offers IRA and 401-k-plan accounts - should spare no efforts to locate the owners of or heirs to such accounts - well before the 'official' escheatment dates kick in.

ANOTHER PREDATOR ALERT! MORE ON THE SCANDAL OF "MINI-TENDER-OFFERS" ISSUERS! ... WAKE UP! ... AND YOU TOO, SEC!!!

Back in our 2nd quarter 2017 issue we warned issuers about the dangers of giving up shareholder records to offerors of so-called Mini-Tender Offers, following a sudden upsurge in such requests, that we had discovered via the invaluable "Society Huddle."

At the time, we noted that such offers tend to crop up periodically, from little-known entities - and were (in our experience, as of then) "mostly confined to thinly-traded issues" where offerors could make a fast and easy buck by bidding low, capturing the dividend, then "selling high" - and at normal commission rates - vs. what they paid out to small and inexperienced holders. We were WRONG in several respects - as you will see in a moment:

Lo and behold, in October 2018, a so-called Mini-Tender-Offer cropped up right close to home - in the mail box of your editor's sister, who is also the ***OPTIMIZER***'s subscription manager. It was addressed to your editor's brother-in-law (and our co-subscription manager) from a firm none of us had ever heard of, **Baker Mills, LLC**, incorporated in Delaware, but with a business address in Australia: It was an offer to purchase his shares in a large and rather prominent and actively traded company - **Principal Financial Group** - at a discount of 20.14% from the closing price on the day of the offer.

This was NOT such a "mini-deal" at all - at least to them. He had received 201 shares of Principal stock when they de-mutualized several years ago, thanks to an insurance policy he had in force at the time. After a few years of cashing smallish dividend checks, he enrolled in the Dividend Reinvestment Plan, accumulating just shy of eight more shares. On the day the offer was made, Principal stock closed at $58.86 - so the shares were worth $12,300. But when he did the math, he would receive only $9,823 thanks to that 20.15% haircut - a whopping "effective commission" of $2,478. A few days later, we discovered, the stock had risen to $60.65 per share - so, as opposed to selling that day - on his own - he'd be

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forking over another $2.21 per share, or another $462 to the offeror - or nearly $3,000 in total. ***How did the company allow such an outrageous offer to be made to them, they wanted to know.***

Another thing worth noting, these "mini-tender-offers" are not made pursuant to the more common "odd-lot tender offers" that SEC rules and regs allow. And indeed, these shares would not qualify for such an offer. But current SEC rules make an exception to the normal rules for tender offers where the total shares being bid for are less than 5% of all the shares then outstanding.

S**o the first big question here is WHY the SEC allows offers like this to be made at all** - when its own website cautions investors that they are being made by entities "hoping that they will catch investors off guard if the investors do not compare the offer price to the current market price"? (The SEC's cautionary advice to investors on mini-tender offers is available at: https://www.sec.gov/investor/pubs/minitend.htm

But that brings up the second big question: ***How would unsophisticated investors even know to look there??***

And guess what? SEC rules do require companies to notify shareholders of such offers - and to render an opinion as to whether shareholders should be tendering - or not. And, sure enough, Principal did render its advice - NOT TO TENDER. But they did so in a press release, that few if any individual investors would ever see!

The biggest question of all in our book: What ever possessed a large, retail-investor-oriented company like Principal to fork over their shareholder records to an outfit like Baker Mills in the first place - then fail to notify their shareholders that it was a BAD DEAL for them, as the press release they never got did indeed note?

And, surprise again! The never-mailed press release noted that "This offer follows four similar offers by Baker Mills this year to purchase from certain PFG holders up to 50,000; 60,000; 125,000; and 110,000, respectively, PFG shares. These previous offers resulted in the purchase by Baker Mills a total of 222,566 PFG shares" - where, we estimate, Baker Mill netted a cool $2.6 million - essentially risk free - at the expense of small and naïve shareholders! Ouch!

But oh no…there's more! What ever possessed Principal's transfer agent - that manages an agent-sponsored dividend reinvestment and stock purchase plan - to release *those* records to these bounders? And far worse, in our book, to fail to disclose that those very same shares could be sold through *their* plan - with just a bit of effort on the shareholders' part - at the market price - then and there - for a mere $25, plus $.15 per share in brokerage commissions…or $56.35 in total, vs. the nearly $3,000 cost of selling via the Baker Mills offer that Principal and its T-A were facilitating!

And WOW! There's even more: When we dug further, we discovered that in 2018 Baker Mills had made numerous other offers to holders of other normally upstanding, consumer-oriented companies, at similarly deep discounts, to wit: **American Express** @ 20.4% less; **Colgate-Palmolive** @ 18% less; **Conoco Phillips** @ 17.9% less; **Emerson** @ 20.5% less; **Halliburton** @ 17.2% less

Issuers: Let us remind you yet again: You are under no obligation whatsoever to hand over shareholder records to companies like Baker Mills just because they ask you for them.

Doing so, in our opinion, is just not fair to your smaller and less-sophisticated shareholders, or to shareholders who may simply be "less-sharp" than they once were. Aside from being an unethical thing to do, it is an outright breach of duty to one's shareholders in our opinion. All just to save a few bucks a year on maintaining small shareholder accounts??? -

Principal Financial Group: Please read your own, never-sent press release again, and ask if your behavior with respect to investors - many of whom are customers of your as well - comports with your own mission statement repeated therein: "Principal helps people and companies around the world build, protect and advance their financial well-being.…Our employees are passionate about helping clients of all income and portfolio sizes achieve their goals – offering innovative ideas, investment expertise and real-life solutions to make financial progress possible." REALLY??

Transfer Agents…How stupid of you - and how immoral - to facilitate such outrageous offers… and at the expense of your very own sponsored Plans besides!

Dear friends at the SEC: You should move to strike the totally unwarranted exemptions from SEC rules, regulations and disclosure requirements that you currently allow for so-called mini-tenders… immediately!

PEOPLE:

Donna Ackerly, who had, for many years, been one of the busiest, most popular and most client-oriented people at Georgeson, has signed-on as a **Senior Vice President - Business Development at Laurel Hill Advisors. We are so happy for Donna, and for Laurel Hill as well, and we wish her all our best!**

Joseph B. (Jake) Amsbary, Jr. recently moved on from **UPS** in Atlanta to become the Vice President and Corporate Secretary of **Walgreens Boots Alliance, Inc.** in Deerfield, IL. A great move for Jake, who is also the current Chair-Elect of the **Society for Corporate Governance** - and a great move for Walgreens Boots!

Tom Cronin, who is one of the best-connected people anywhere in the realm of "community oriented" public companies where proxy fights tend to break out - like regional banks and family-founded companies where the "third generation" of owners often have their own ideas on how the firm should be run - has left proxy solicitor **Laurel Hill** for **EQ** - which plans to add "Information Agency" services - and likely, we'd guess, full-blown proxy solicitation services too, down the road - to its list of offerings.

Evelyn Y. Davis, gadfly extraordinaire and self-styled "Queen of the Corporate Jungle" passed away in November at the age of 89. For 50 years she was one of the most complex, contentious, self-centered - and in many ways one of the *saddest people* on the corporate scene. But ultimately, she became one of the most *highly successful people* on the corporate governance front, and something of a financial success to boot.

Your senior editor first encountered her at the very beginning of her long career, and regularly thereafter, until she retired from the scene a few years ago. He has written down some of the less-known, and a few never-before-printed EYD stories for the *OPTIMIZER*'s History section, which can be found in our 2019 special supplement.

Tom Kies, the popular and long-running industry veteran of firms like **Laurel Hill Advisors**, where he was a co-founder, **Georgeson**, **Computershare**, **D.F. King** and **Morrow & Co.** (and, full disclosure, **Manufacturers Hanover Trust**, where your senior-editor recruited him in 1987 to start the first ever T-A-run proxy solicitation and stock-watch unit) has left **AST**, where he will become an "industry consultant"…until his non-compete runs out, we'd guess. We're sure there is more to come here…so watch this space…

Ellen Philip, who founded **Ellen Philip Associates** 40 years ago - which we consider to be the nation's premiere provider of Employee Plan Voting Services - was presented with the **Tony Fireman Award** - the **Shareholder Services Association**'s highest honor - at their holiday luncheon in December. No one in the SSA is more deserving of this award than Ellen. She - and her firm - epitomize the ideals cited on the award: "Character, Integrity, Commitment, Leadership." In 1979 Ellen became one of the very first female members of the old **Corporate Transfer Agents Association**, or **CTA**, which evolved into today's **SSA**, and she has been a trusted advisor, mentor and friend to more SSA members than we can count. Well done! Three cheers!

In a wonderful related development, the SSA planned to donate its half of the traditional 50-50 raffle to NYC non-profit **Fountain House** - the world's leading provider of supportive services to people with serious mental illnesses - in Ellen's honor: Regular readers

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will recall that twenty years ago, Ellen and her partner **Cal Donly** decided to turn their famously well attended Christmas party into "A party with a purpose" - that would raise funds for Fountain House's Fountain Gallery. To date, the "End of Annual Meeting Celebration" has raised over $1 million from members of the financial services community to support member-artists who live with, and succeed in spite of serious mental health issues. Three years ago, Ellen and Cal were awarded the **Esther Montanez Leadership Award** for their support of Fountain House Gallery and its member artists. When the winner of the second 50% was drawn, winner **Brian Permenter** - who had attended the Celebration just a few weeks before, where he was among the donors, and where his company, **Computershare-Georgeson** has been among the sponsors for 20 years - immediately donated the other $510 to Fountain House as well. What a great guy! And…a holiday miracle…the $1,020 magically turned into $2,040 - thanks to an anonymous donor who matched every donation made to Fountain House in December dollar-for-dollar…up to $100,000.

On a sad note, **Pepper**, the **Ellen Philip Associates** mascot - and perhaps the most famous rabbit in the world, after Bugs Bunny - passed away peacefully at year-end, at the amazing age of 13. Pepper was better known in some ways than Ellen herself. Last year, we got a call from a reader in the U.K. who was looking for "someone who is an expert in employee-plan recordkeeping…I can't remember her name, but she had a rabbit." When it came to producing business, Pepper was not only a steady generator of inquiries, but she was an infallible predictor of the outcomes. "If people started asking about Pepper, and talking about their own pets, we knew we had the job," Ellen said. "And whenever we had a meeting at the office, people would ask, "What can we bring for Pepper? - and they would come with a bunch of parsley or some carrots with the tops still on." Your editors' most vivid memory of Pepper was the major crush she had on the **UPS** guy. The moment he came through the door, the normally shy Pepper would make a bee-line for him, and joyfully rub against his legs. RIP, Pepper…we will miss you.

Anne Sheehan, who recently retired as Director of Corporate Governance at the **California State Teachers' Retirement System (CalSTRS)** has joined **PJT Camberview**, a unit of **PJT Partners**, as a Senior Advisor. Anne, who is the current Chairman of the **SEC's Investor Advisory Committee**, is one of the most accomplished people in the corporate governance world: She served two terms as the Chair of the **Council of Institutional Investors**, was a board member of the **NASDAQ Listing Council** and as a member of the **International Corporate Governance Network**. She is a founder of the **Investor Stewardship Group**, serves on the Advisory Board of the **Weinberg Center for Corporate Governance** at the University of Delaware and has been named one of the 100 most influential people in corporate governance by ***Directorship*** magazine.

Patrick Tracey - one of the best-known and best-liked public figures in the transfer agency space, and a former president of **NIRI-NY** - has left **Computershare** to join **Carta** - a relative newcomer to the T-A world, but already a big provider of recordkeeping services to the very picky private-company universe, where founding families - and many times, an entire workforce of share-owners - still place a high value on having top-flight shareholder recordkeeping and related functions. (More full disclosure; your editor-in-chief hired Pat away from **Morrow & Co.** - way back in the 1970s - to help launch a "de-mutualization business" as mutual savings associations, and later, mutually owned insurance companies went public on a grand scale - granting stock to millions of depositors, borrowers and insurance policy owners in the process - and where we went from being very-late-entrants to becoming the market-leader in an incredibly short span of time.) A big win for Carta, for sure.

REGULATORY NOTES…AND COMMENTS

ON THE HILL:

A bill has been introduced in the Senate, with bi-partisan support, "To amend the Investment Advisers Act of 1940 to require proxy advisory firms to register as investment advisers under that Act, and for other purposes." Seems harmless enough at first glance, and we do think that something will eventually pass both houses, even though, as the smart money all agrees, the actual influence of proxy advisors is GREATLY exaggerated.

Our bet is that corporations will get what they wished for, and live to regret it, as so often happens to them where new regulatory matters are concerned. This will, we bet, cause proxy advisory firms to knock louder and more often on corporate doors - and to raise the prices on data that issuers need and want from them - to keep advisors' profit-pots on full-boil.

AT THE SEC:

Chairman Jay Clayton outlined his top priorities for 2019 in a December speech, as follows:

- **Reviewing ownership & resubmission thresholds for shareholder proposals** – including whether there are factors in addition to the amount of money invested and length of holding periods that would "reasonably demonstrate" the shareholders' interests are aligned with those of long-term investors

- **Proxy advisor reforms** – including transparency, conflicts of interest, whether certain matters should be analyzed on a company-specific basis, rather than market-wide, and investor access to issuer responses to reports (His work may well be cut out for him, or maybe mostly done for him by Congress)

- **Proxy plumbing** – focusing on improvements to the current system, rather than a major overhaul (Yah, sure… We'll believe it when we see it.)

- **Cybersecurity** – including disclosure controls & procedures, insider trading policies, risk factor disclosures, and the SEC's own cyber-risk profile

- **Brexit & LIBOR disclosures** – The SEC is monitoring these risks, Clayton says, and whether the impacts (assuming there will *be* a Brexit) are being adequately disclosed

- **Coin Offerings** – and continued efforts to protect (so-called) "investors."

- **Quarterly reporting & guidance** – studying the current regime to determine if it can be improved

- **Capital formation & access to investment opportunities** – expanded testings-of-the-waters - and making Regulation A available to public companies…and, we hope, recognizing that JOBS ACT I is hurting, rather than helping investors.

A very ambitious agenda, for a greatly over-burdened SEC….

On the day after Christmas, just in time to close out the 2018 penalty-books, the SEC announced that JPMorgan Chase Bank will pay more than $135 million to settle charges of improper handling of "pre-released" American Depositary Receipts (ADRs) - the last of the big-four ADR Depository Banks to settle, after a long-running investigation.

CONT'D →

The SEC's order found that JPMorgan improperly provided ADRs to brokers in thousands of pre-release transactions when neither the broker nor its customers had the foreign shares needed to support those new ADRs. Such practices resulted in inflating the total number of a foreign issuer's tradeable securities, which resulted in abusive practices like inappropriate short selling and dividend arbitrage that should not have been occurring. "With these charges against JPMorgan, the SEC has now held all four depositary banks accountable for their fraudulent issuances of ADRs into an unsuspecting market," said **Sanjay Wadhwa**, Senior Associate Director of the SEC's New York Regional Office. "Our investigation continues into brokerage firms that profited by making use of these improperly issued ADRs."

So far, the SEC has collected $375 million in fines, penalties and disgorgements from the four big ADR banks and four smallish brokers. While this is well below initial estimates - due to statutes of limitation that severely limited the expected recoveries -our whistleblower friend estimates that when the SEC is done, they will collect over $1 billion in total…but still, a mere "bag o'shells" vs. what ADR investors actually lost due to the scams.

As to ADRs themselves, we believe the market for them is essentially dead: For the past 30 years - where investors have been easily able to buy actual shares of non-US issuers - there has been no real need to have them at all - except as vehicles for Depository Banks - and brokers - to charge outrageously high fees, and to benefit from currency exchange rates that allow them extra and unwarranted bites at the investors apples. And once the whistle was blown on the pre-release scams, which were the major moneymakers here, the incentives for new ADR programs are pretty much nonexistent. Good riddance to them all!

WATCHING THE WEB

On October 17, 2018 the SEC issued a Section 21(a) Report on "CEO Impersonator Emails" which should be required reading for corporate officers everywhere.

The report covered nine unnamed public companies with "deficient internal controls" - that permitted "spoofers" to turn the companies into victims of cyber-fraud, called "business email compromises" - in response to fake e-mails that bore often-convincing "hallmarks" of legitimate business transactions from legitimate business partners and managers in what is known as "executive impersonation."

In response to e-mails that employees think have come from senior officers at the company - or from senior officers at legitimate suppliers - employees, typically lower-level ones, but who have often been contacted directly, by name - wired large sums of money and/or paid fake invoices, and, very often, wired money directly to foreign banks - to the tune of at least $1 million. Two of the nine companies lost more than $30 million. Losses for the nine companies totaled nearly $100 million, almost all of which has not been - nor is likely to be recovered. Many of the frauds lasted a long time - and were not discovered until real vendors complained they hadn't been paid yet.

This, we think, is fourth report we have published on these scams, and the interesting new thing here is how effectively the scamsters have been able to fool mid-level employees - by coming up with their names and e-mail addresses. Earlier scams were mostly directed to over-busy senior officers - who were notoriously susceptible to hitting the "approve" button, and forwarding the fake bills for payment.

QUOTE OF THE QUARTER

"Our own information - from the everyday to the deeply personal - is being weaponized against us with military efficiency. These scraps of data, each one harmless enough on its own, are carefully assembled, synthesized and sold. This is surveillance. And these stockpiles of personal data serve only to enrich the companies that collect them. This should make us very uncomfortable."

Tim Cook, CEO of Apple Inc., speaking at a European Union privacy conference in October, where he urged the U.S. to enact privacy rules similar to those of the E-U.