THE SHAREHOLDER SERVICE

OPTIMIZER

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

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IN THIS ISSUE

It's Time To Smell The Coffee, Do Your Math - And To Very Carefully Count The House On Upcoming Proxy Votes

Every year around this time we remind readers that they should get an extra-early "jump" on planning for their Annual Meeting. And we offer our top-three tips on avoiding unexpected - and unwanted - and career-threatening meeting outcomes. Here they are:

1. **Never be lulled into complacency by "statistics" that indicate, for example, that 95% of all directors - and/or Say-On-Pay proposals - got 95% favorable votes *on average*: The only statistic that should count, from your perspective, is HOW *YOUR OWN* COMPANY IS LIKELY TO FARE!**
2. **Never start your planning by marking up last year's "playbook": Begin by rigorously assessing every area of vulnerability to potential voter "backlash" that you can think of - including potential vulnerabilities of all your directors - at any and all boards they may be serving on, or where they may have served in the past.**
3. **Resolve to closely monitor the voting from the very first votes that come in: If something seems amiss, it will take TIME to get things on track - say with a special mailing or some other special "outreach efforts" - and "time is of the essence" here.**

But this year - as we ourselves "smell the coffee" - there are some major shifts in investor sentiment that warrant extra attention:

- **In the first six months of 2019, 478 public company directors failed to achieve a majority of the shares voted - up a whopping 39% from 2015,** according to Broadridge's Proxy Pulse report on 4,000 U.S. companies that had meetings between Jan. 1 and June 30, 2019. Yes, this was only a tiny fraction

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of the 22,520 directors who stood for re-election, 95% of whom, indeed, got 95% Yes-votes…But if any of the losers are on YOUR board….prepare yourself for a *major* fall from grace.

- **There were 1,726 directors who achieved less than 70% support - which, we can assure you, did not make any of them happy with the company efforts on their behalf.** And each year, we see a half-dozen or so directors who are not in these numbers, because they step-down before the meeting, rather than suffer the embarrassment of a low, or worse, a failing vote…and we bet there are a lot more. Not a career-builder for you, for sure!
- **Another startling statistic from the Proxy Pulse report, Votes-No against directors at the 500 largest U.S. companies are rising at a much faster than average rate:** In 2019, 50 large-company directors failed to win a majority vs. only 15 in 2015. For 2020, we are betting that there will be even more cases where investors will decide to make much stronger statements by singling out much bigger targets.
- **Very important to note this year, virtually every large investment firm - and all of the proxy advisory firms too - have tightened up their guidelines to Vote-No on directors who, in their view, have failed to "engage" - and to *take action* on areas of concern to them** - like calls for boards that are more diverse in terms of gender and ethnicity, age and board tenure - and areas of specific director expertise…or who have otherwise "fallen short" in their view: The prime candidates for votes-No are members of the Governance or Nominating committees - or of the Audit committee if there have been any audit or 'reporting issues' - on the Comp-committee if there have been "performance issues" or if pay-for-performance looks weakly-structured to them - and sometimes against the Chairperson, to hammer home a point or two with a big bang.
- **Voter-support support for ESG proposals reached many all-time highs in 2019**: With proposals to eliminate super-majority voting at 65.4%, adopt majority voting at 43.4% - and to make it easier for shareholders to call special meetings (43.9%) and to act by written consent (39.4%). Social proposals also scored big, with proposals on lobbying, political contributions and human rights scoring in the low 30%s and 14 proposals on employment diversity coming in at 38.6% on average, with two of them passing. On the environmental proposal scene - where activist investors are looking to up the ante big time this year by pressuring the biggest U.S. investors - climate change issues got 31% support, sustainability reporting averaged 28.6% support and proposals re: recycling "PLASTICS" - a newly hot issue - averaged 28.5% support.
- **The voting scales promises to tip even further in favor of activist proposals in 2020, as the usually pro-management retail investor vote continues to decline, year after year…**
- **And this year, a new worry:** According to a recent poll by deVere Group, one of the world's largest independent financial services and advisory organizations, almost eight out of 10 millennials now prioritize "socially responsible and impactful" investing: Some 77% of millennials - people who were born in the time period ranging from the early 1980s to the mid-1990s and early 2000s – cite Environmental, Social and Governance (ESG) investing as their top priority when considering investment opportunities. Very serious food for thought when deciding whether to recommend votes-No on ESG proposals, or to seek a middle-ground instead.

So NOW, we say. Is the time to do the math - and to very carefully handicap the odds that the votes on one or more of your directors - or on one or more of the proposals on your ballot - will not go the way you want them to go…and then - if you decide not to seek some compromises - to buckle down early - and to work hard to improve the odds in your favor.

Here's our three-step process:

- **Step-one is to be sure you completely understand the numbers behind your own shareholder demographics:** how many shares are owned by active and by passive institutional investors, by retail investors - both of-record and in street name, where many companies get their math all wrong - in employee ownership plans, which very often can be as high as 10% of the outstanding shares - and ooops…by officers

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and directors, who often own a double-digit percentage of the total shares outstanding but forget to VOTE their shares without some special prodding.

- **Step-two is to look closely at *last year's numbers:*** So many companies are so happy to have a quorum of 80% or better that they fail to note that 30% or more of the total numbers come from "broker non-votes" - i.e. votes that can be cast for "routine proposals" but can not be cast for directors and other non-routine proposals unless the owners themselves take the steps to do so…Often, 30% or more of the votes cast 'for quorum' are broker non-votes - and as a result, with an 80% quorum, this leaves 50% of the votes cast by actual voters "up for grabs" - which greatly increases the odds of a 50:50 split between voters who are "friendly" to management and those who are not-so-friendly on some matters on the ballot.
- **Thus, step-three should be to have a plan to systematically round up the votes from your "friendlies"**: Officers and Directors should be a slam dunk. Smart companies, as we have reported before in detail, have been able to improve friendly retail investor voting by up to 50% - with good marketing, packaging, outreach and reward programs. Employee Plan owners require a bit more work - and work that has to be done early in the game…

Readers: It is a surprisingly easy thing to improve your number of actual VOTERS by five percentage points or better, and thus to turn a 50:50 proposition into a 55-45% vote in your favor if you start early, follow-up early to prod the laggards, and to simply WORK HARDER - and SMARTER on getting out the vote. Here's to a successful meeting season in 2020!

A Quick Look At VSMs - A Shout-Out To Microsoft - And An Oddball Non-VSM Event To Avoid

Virtual Shareholder Meetings (VSMs) continue to gain traction - perhaps a tiny bit slower than in previous years - but this year, a seminal event we say; the successful adoption by Microsoft of a Virtual-Only Shareholder Meeting.

We were skeptical about their ability to do this without incurring the wrath of a few big investors…but Hey! They are Microsoft - which clearly wants to be on the cutting edge of "all things tech." And Hey again…the stock has had a truly awesome year, thank you very much…And Hey again, the meeting ran pretty much like clockwork…with several kudos from "virtual attendees" and no blow-back from key constituents as far as we can tell.

Here's an oddball story from an In-Person-Only Meeting we came across late in 2019 that would ordinarily cause an A-M planner to panic: A week before the meeting the Inspector of Election - a big-company meeting veteran and one of the longest-serving members of the CTH LLC Team - called to say…

"Guess what? I just reviewed the Rules of Conduct the company intends to hand out, and it says at the bottom, 'Business Attire Will Be Required for Admittance.' But there's no mention of this in the proxy statement. What do you think here??"

Hmmm…What would YOU advise, dear reader? We said, "Get on the horn to your contact at the company real quick…and tell her that ooops… rejecting someone at the door (of a very swanky private club, on a main street in a big city) could turn into page-one news…But sending a notice to shareholders seems like overkill…and likely to raise a ruckus on its own …And it's mighty late in the game besides. So how about getting the club to make an 'exception' to its usual rule… then promising to post a corporate 'host' at the door, to very quietly escort anyone who might not pass the dress code into the meeting room…and out again when the meeting was over? All good, thank goodness. Only one non-company shareholder showed up - and he was wearing "business casual" - without the normally required collared shirt and tie - but who passed muster just fine. Whew!

How Is Your "Statement Of Corporate Purpose" Shaping Up? Two Good Sources To Check Into For Guidance…

You would not be doing all of your 2020 homework without thinking about incorporating some kind of statement about your **"Corporate Purpose"** into your Annual Report, following all the publicity the Business Roundtable got with its statement on the importance of having one.

No surprise, two of the governance world's biggest superstars have jumped quickly out of the box, as they always do:

For starters, go to this link to read "A Common Sense Approach to Corporate Purpose, ESG and Sustainability" written by Morrow Sodali's esteemed chairman, John Wilcox.

Then, check out this very nifty summary from Prudential, below - where Pru's Peggy Foran is always sure to be way ahead of the curve on governance matters - to tell us that "Prudential's multi-stakeholder framework reinforces board commitment to investors, employees, customers and society" - and to make sure we get the message often, and early, visit this link or search for a *"common sense approach of corporate purpose"* on the Prudential website.

Prudential Stakeholder Commitment (Graphic: Business Wire)

Major Shifts In Transfer Agency Market Share: Many More Developments To Come

As you will see from the chart below, we estimate that the transfer agency market - measured by shareholder records maintained - dropped by roughly 5% between our last estimates in 2017 vs. year-end 2019… producing some very interesting shifts in market share at several agents.

In step-one, we took the 2017 per-agent numbers down by 5%, due to “secular attrition” - namely the loss of registered investors whose shares are sold or transferred to street-name each year, in what is currently an unrelenting and seemingly irreversible trend - plus the continued loss of publicly-traded companies and their registered shareholders due to M&A activities and bankruptcies.

We also assumed that most of the shareholder accounts that closed during 2018 and 2019 will stay active on T-A records and be fully “billable” for one full year; so only a 5% decline vs. an actual 10% decline over the two-year period.

In step-two, we adjusted the numbers for significant changes of agent that happened in 2019, where Computershare gained a whopping 2 ½ points of market share, in a shrinking marketplace - by acquiring both The Walt Disney Company (850k records) and the Microsoft business (93k) while ending up even, in terms of accounts maintained, after their two huge wins.

TRANSFER AGENT MARKET SHARE
Ranked by shareholder records maintained (millions)

AGENT	AS OF YEAR-END 2017	AS OF YEAR-END 2019
COMPUTERSHARE	16.6mm (51%)	16.6mm (53.5%)
EQ (Formerly Wells Fargo)	7.7mm (24%)	7.3mm (23.5%)
AST	3.7mm (11%)	3.6mm (11.6%)
BROADRIDGE	1.6mm (5%)	750m (2.4%)
ALL OTHERS	2.9mm (9%)	2.74mm (8.9%)
TOTALS:	**32.5mm**	**31mm**

Source: Transfer Agent TA-2 filings, with adjustments for “secular roll-off” by the Shareholder Service OPTIMIZER

Please bear in mind as you look at the chart that market share based on total revenue - i.e. the real bottom line - is a different thing entirely. Here are a few additional comments:

AST actually saw their share of total records maintained rise in a business where, overall, as noted, five percent of total shareholder records rolled off…And they have a new product on the launching pad that we think has the potential to be a major game-changer in the industry. They have the largest number of *client relationships* by a fairly large margin, we estimate - which gives them much better than average opportunities to cross-sell a variety of related services with higher margins, albeit to clients with smaller than average budgets. And, good news for them going forward, the number of registered shareholder accounts per client tends to be “mostly small but very sticky”…and they continue to do well in the IPO space - and maybe even enjoy a competitive *advantage* by serving so many small companies

Broadridge saw its market share - in terms of “shareholder records maintained” - drop by half, But, very important to note, they retained all of the revenues associated with proxy-processing services at both Disney and Microsoft where a great deal of the “value” and a lot of the cash from ‘shareholder servicing’ resides these days. And they continue to add registered proxy tabulation clients at the expense of the other T-As. Note too, that the annual and special-meeting services they provide for street-name holders is a multi-billion-dollar “shareholder servicing business” on its own.

Computershare has a huge and GLOBAL stock transfer business - and, thanks to its super-large base of super-large clients, it continues to have the lion's share of high-ticket and highly profitable "reorg business" in the U.S. - and of the gross industry revenues too - though as we always note, reorg work is something of a double-edged sword, in that, very often, they lose long-term clients - typically with very large shareholder bases - once the reorg dealin's are done.

EQ's shareholder base dropped by 5% - in sync with 'secular roll-off" - although a smallish acquisition they made before 2019 was over may bring them back a tiny bit in 2020. EQ is actually the heaviest on mega-cap clients as a percentage of its total business, so they tend to have the most to lose, percentage wise, in the aftermath of M&A activities. Following their acquisition of the shareowner servicing business from **Wells Fargo Bank**, there has been a huge flurry of attempts to beef-up and better diversify their portfolio of U.S. business - in already crowded spaces, we're forced to note: They've launched a proxy solicitation business, an Employee Ownership Plan business, bought a smallish Colorado-based transfer agent that specializes in micro-cap companies - and they have ditched their longstanding strategic partnership with abandoned property experts **Keane** - arguably the best-known and most widely regarded firm in the industry - to take the work fully in-house. Recently, they have engaged in a fairly major housecleaning, along with some simultaneous staffing-up efforts, by bringing in a very senior client relationship manager from Wells Fargo's banking division, making small but telling cuts in the sales and R-M team and appointing a new sales manager…so we will be watching all this with special care.

As we look ahead to 2020, a host of "reorg deals" were done in 2019 and many others are in the offing …like the expected merger of Tiffany & Co. (founded 150 years ago, and a truly iconic brand name) into LVMH; Zerox's attaempt to acquire HP - and the "new-DuPont's" deal to acquire International Flavors and Fragrances - yet another iconic name. And Ouch again! - there's a possible going-private deal in the offing for widely-held Walgreens Boots, and a bankruptcy proceeding at PSE&G that could largely decimate its large base of retail shareholders. Mostly bad news, we're sorry to say, for keepers of registered shareholder records.

A few mergers each year still involve the issuance of stock, but on the whole, net losses of registered investors in the 5%+ range per year are, as we noted, inevitable…unless a way is found to reverse the loss of individual investors in individual stocks.

Fascinating Data About Proxy Solicitors And Legal Advisors In Contested Situations

Activist Insight Monthly, which regularly tracks info on contested situations, named Okapi Partners as the "Top Proxy Solicitor of 2019" - for the fourth consecutive year - based, we hasten to note, on the number of "deals" handled. The survey also named the leading superstars at each firm.

Here are the raw numbers:

SOLICITOR	ISSUERS	ACTIVISTS	TOTAL DEALS
OKAPI PARTNERS	21	32	53
INNIFREE	30	6	36
GEORGESON	22	12	34
MORROW SODALI	22	4	26
MACKENZIE PARTNERS	23	3	26
SARATOGA PROXY	0	14	14
INVESTORCOM, INC.	0	14	14
DF KING	0	12	12

If we were to rank the solicitors by gross revenues derived from proxy fights, the rankings would look a little different, with Innisfree & MacKenzie partners being in the lead, thanks to the high number of large and deep-pocketed issuers that flock to them when there are serious "troubles" on the horizon, but with Okapi coming on very strongly indeed, as they have done consistently, from their get-go - both in terms of issuers who hire them and especially because of their big lead with the biggest activists.

Morrow Sodali has been coming on strongly too, much as we'd predicted following Morrow & Co's purchase by Sodali and the very much beefed-up bench of talent that followed. Georgeson has done especially well in the EU and UK of late, where their main point-person is very widely regarded.

DF King's gross revenues are greatly under-stated by the fight statistics alone: We believe they have to biggest slice of the "standard" annuity-like proxy solicitation revenues by far, thanks to a very large, loyal and longstanding base of large-company clients, and a large base of mutual fund clients.

Another major-player in the proxy world is missing from the list - because of its focus on proxy fights - and that is Alliance Advisors: Now in its ninth year, they have grown strongly and steadily, every year - not just with small and mid-cap companies but with a growing stable of large and mega-cap companies, and with a strong mutual fund business as well. They have a very special niche when it comes to "saves" - where every year there are companies that suddenly find they are short of achieving a guaranteed quorum - or of having a proposal they want to pass - or want NOT to pass - missing the necessary margins. Here, Alliance's well-oiled telephone-vote-getting machinery can spring into action overnight, to very often save the day.

The biggest surprise is to see Saratoga Proxy - which took a few excellent clients with them when the principal partners broke away from DFK a few years ago - and small but feisty InvestorCom - actually tied for second place in terms of the number of fights where activists were represented.

But as you scan the numbers, bear in mind especially that the biggest chunk of the total industry revenue comes from advisory work these days - and from behind the scenes work that ends up with negotiated settlements rather than with actual fights. Here, Innisfree, MacKenzie, Okapi ...and lately Morrow Sodali are always among the top "picks" as advisors where larger-cap companies are concerned.

Activist Investor's List Of The Top Law Firms In Proxy Fights Was Equally Interesting:

FIRM	# OF CAMPAIGNS	ACTIVISTS	ISSUERS
OLSHAN FROME WOLOSKY	105	105	0
SCHULTE, FURTH & ZABEL	45	45	0
VINSON & ELKINS	41	3	38
SIDLEY AUSTIN	30	6	24
LATHAM & WATKINS	14	0	14
KIRKLAND & ELLIS	14	0	14

We were rather surprised to see so many of the "big-name, old-line firms" that once dominated the biggest deals - and one prominent 'noisemaker' that has been flooding the market with webinars on prepping for proxy fights - totally among the missing.

Readers may want to study up on the principle advisors on the Activist Insight lists by name, since, as we always advise, and as the numbers show, we think, this is a business where the people on your team make all the difference.

Efforts To Pressure Institutions To Vote In Line With Their Official ESG "Principles": The Next Big Thing In Corporate Governance, We Say

The dirtiest little secret on the Corporate Governance scene has been the extent to which big investors fail to cast their own votes on ESG matters in line with their own published, and usually high-minded principles.

But a few months ago, Norges Bank - and shortly thereafter, CalPERS - announced that they would post their voting intentions on their websites - in a move, we figured, to shame other institutions into disclosing their voting records…and the extent to which their votes failed to match their published Principles.

Then, a December 15 article in the Sunday New York Times, by columnist Jeff Sommer, was headed,"Want a Bigger Say? Move Your Money." Sommer noted the incredibly high concentration of voting power among Vanguard, BlackRock and State Street: "Together [in 2018] they held more than 20% of the voting shares in the S&P 500."

How did they vote in favor of corporate governance proposals that management opposed? BlackRock 19%, Vanguard 24%, State Street 31%….vs. Fidelity index funds at 53%. On social and environmental issues, BlackRock and Vanguard supported proponents only 7% of the time, with State Street at 27% vs. Fidelity index funds at 53%.

Fat chance that folks will actually move their money, thought we - especially because big-fund voting info so hard to come by, and usually so late in coming. But now, just in time for 2020, the dirty secrets are out there for all to see: A December 23rd letter from **Tim Smith**, of **Boston Trust Walden** shared "some timely information on shareholder engagements on proxy voting related to climate change.

"This season a suite of shareholder proposals have been filed with major asset managers requesting a review of each firm's 2019 proxy voting record with respect to proposals related to climate change. While many global asset managers such as Allianz, DWS, and Wells Fargo have supported a strong majority of climate-related shareholder proposals in recent years, others still lag far behind. In 2019, T Rowe Price supported just 15% of climate-related proposals. Vanguard and BlackRock supported just 12%. JP Morgan brought up the rear with support for just 4%. [Only 2 of 52 resolutions, as reported elsewhere in the letter.] A comprehensive chart detailing the voting records of major asset managers for 2018 and 2019 is attached. Also enclosed is a chart provided by Ceres providing a snapshot of voting records by large firms on climate resolutions.

"Boston Trust Walden is leading shareholder resolutions filed with JP Morgan and Vanguard Funds, Mercy Investment Services with BlackRock, and Zevin Asset Management with T Rowe Price. Together, we are seeking to hold some of the largest global asset managers accountable for seeming major contradictions in positions compared to their numerous climate-risk white papers, Asset Stewardship Reports, and letters to shareholders issued by these firms. These papers and reports all stress the urgency of the climate crisis and the risks to our economies and companies. Some question whether regular votes against shareholder resolutions highlighting these risks is a dereliction of fiduciary duty…

"The apparent contradictions between the public statements by such major asset managers and their proxy voting record on environmental and social shareholder proposals have received significant press coverage in publications such as **Bloomberg**, **The New York Times**, **Morningstar**, and **The Guardian**, among others" Smith's letter concluded.

Yes, we do think this is the next big thing in Corporate Governance…And the new data from Ceres, and others - and the naming and shaming factor - will surely ramp up the pressure on big voters big-time…And it WILL, we feel certain, prompt more than a few investors, large and small, to move their money to firms with better ESG voting records.

CII Takes Aim And Slaps Back Hard At Sec's Proposed Proxy Advisor Regs

While ISS has filed suit against the SEC to block the proposed regs, the Council of Institutional Investors (CII) is hopping mad too…and demanding, in a letter co-signed by 74 investors, that the comment period on the proposed new regulations governing proxy advisors be extended from 60 to 120 days…

And it is making a very persuasive case that "Evidence on Pervasive Errors is Lacking."

"As we indicated in our October 15 letter, the Commission appears to be acting to create new regulatory requirements for proxy advisory firms based in significant part on the view that there is a market failure as evidenced by claims of pervasive (or endemic or systematic) factual inaccuracies in proxy advisors' reports.

"However, as we wrote in our earlier letter, 'the paucity of evidence of systematic factual errors by proxy advisors suggests that, in fact, the opposite is true'

"While most assertions of pervasive proxy advisor inaccuracy are mere assertions and entirely undocumented, we have seen some attempts to provide evidence. But that evidence on accuracy is extraordinarily weak, and clearly an insufficient basis for rulemaking.

"We believe that the SEC should not regulate proxy advisors in the absence of good evidence. The SEC itself should develop reliable, meaningful evidence on this question before moving forward with any additional new regulation.

"We submit that advocates of proxy advisor regulation base their case importantly on allegations of pervasive inaccuracy in proxy advisor reports. But they have not provided evidence that stands up to any scrutiny, as we detail below…

"Misinformation from American Council on Capital Formation Study, an October 2018 study by the American Council on Capital Formation (ACCF) is the only study on alleged inaccuracies we see cited in recent letters to the SEC.

"We believe the ACCF study is highly inaccurate and otherwise flawed, and is not a reliable basis on which to impose new regulation. The study summarized 139 purported "proxy advisor errors" as documented in 107 supplemental proxy filings by U.S. companies in 2016, 2017 and most of 2018….

"ACCF says it identified 39 "factual errors," 51 "analytical errors,", and 49 "material disputes," the latter defined as disputes "over the appropriateness of 'one-size-fits-all' and other methodologies used by the proxy advisor."

"For perspective, during this period, ISS reported on 15,646 shareholder meetings at U.S. operating companies, and Glass Lewis reported on 16,184 U.S. company shareholder meetings. All or virtually all reports involved multiple issues, and some are fairly detailed and lengthy. So even if the claim that 139 reports (0.4%) contained one or even a handful of errors was accurate, the number is small.

"And from our review of the filings that ACCF references, it is clear that most of the claimed "errors" actually are disagreements on analysis and methodologies, and that some other alleged proxy advisory firm errors derive from errors in the company proxy statements. Finally, in some cases, ACCF simply misstates what the company said.

"We think ACCF has documented no more than 18 reports with factual inaccuracies that can be blamed on proxy advisory firms, not the 39 that it claims….The ACCF research is based on public filings by companies, and

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we would expect that there are other undocumented errors. But for the SEC to impose a costly new regulatory structure that will constrain competition based either on (1) claims of error utterly lacking in documentation; or (2) a factual error rate on a report basis of 0.057% to 0.123% (18 to 39 reports with one or more factual errors in 31,830 reports) is completely unsupportable.

"ACCF is overstating the proxy advisor "error" rate due to its own mistakes and those of companies alleging proxy advisor errors. We should note that while ACCF characterizes its report as summarizing and counting proxy advisor errors, the report actually counts reports with errors, and then counts whether there are any "factual errors" and/or "analytical errors" and/or "material disputes". One report then can count as many as three times...

"To summarize, evidence of pervasive proxy advisor inaccuracy is extraordinarily weak. Executives who see negative recommendations on their pay or other matters can be expected to be unhappy, and in that context it is surprising that company managers and their lobbyists have produced so little evidence of inaccuracy.

"If the SEC intends to impose a new regulatory structure on proxy advisory firms, it needs to develop evidence, not just leave it to assertions by the subjects of proxy advisor analysis."

OUCH! And who could disagree with the two last points, based on the evidence presented by the CII?

Issuers: Beware Of What You Wish For In Newly Proposed "Proxy Submission" And "Re-Submission" Thresholds!

As most readers probably know, the SEC has proposed new rules to raise the bars for submitting shareholder proposals - AND for re-submitting them.

Comments are due by Feb. 3rd 2020...but the Council of Institutional Investors - and a host of 'social and religious investors' are demanding that the 60-day comment period be extended to 120 days, which the SEC would be smart to do...Especially after their last attempt to revise these rules - in a much more modest way, we'd note - was overturned by a court ruling that the SEC had not shown sufficient reasoning to justify the proposals.

Ironically, at the time, the proposed guidelines were largely considered to be a "reasonable compromise" by most participants in the proxy proposing and voting worlds. But these guidelines are another thing altogether...And frankly, we are betting that they too will likely be challenged in court for their lack of rational economic justification, and cast aside again - unless they are modified significantly.

We will, as usual, submit comments of our own - based on our 50+ years of observing and participating in the proxy voting world - in due course.

But here, as food for thought, is our own initial "take" on the rules:

(a) The SEC's over-wrought and ponderously long, dense and maddeningly-meandering release breaks the first rule of business in a big way: *"If it ain't broke, don't fix it!"*

The *facts of of the matter* indicate to real-world observers that the current system is not only working reasonably well, but, of late, has been working to *very noticeably reduce*, rather than to increase the number of shareholder proposals that companies would otherwise have to deal with....exactly as desired:

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- In 2019, 69% of the governance proposals initially submitted went to a vote (191 of the original 275) - down eight percentage points, vs. 77% that made it to a vote in 2018 - with 11% of them withdrawn by proponents after negotiations with the subject companies and 18% excluded via the no-action process.
- Half of all "social" proposals (137) went to a vote in 2019 - up from 40% in 2018 -but still, only *half* of the 274 proposals originally submitted, as companies and shareholder proponents continue to reach mutual agreements to address the issues raised without a vote.
- Only 26 of the 100 environmental proposals originally submitted made it to a vote, Overall, 40% of the total E&S proposals submitted were eliminated; 28% withdrawn and 12% via the no-action process.
- We also saw two very active individual proponents decide to join with As You Sow, to utilize their resources more efficiently, and we expect to see more moves like this - which will undoubtedly lead to fewer, but much better targeted proposals…and ultimately, to more "settlements"… and thus, almost certainly, to fewer shareholder proposals up for a vote with every passing year than there would otherwise be.
- Recently, we saw two "new proposals" - regarding the so-called "Palestine Principles" - and proposals from the "Burn More Coal" group - disappear from the scene *entirely*, following six or eight "outings" over the past three years that failed to gain traction with voters.

(b) The release grossly exaggerates the actual expenses in connection with responding to and tabulating votes on shareholder proposals, in our view…although it does seem certain that expenses are often "piled high" by over-eager, over-excited corporate staffers…who, very clearly, are spending *way too much* time and money on matters they now complain are immaterial nuisance issues!

It should be especially noted that the expense of drafting responses to proposals is almost entirely under the control of companies themselves.

Very important to note, with respect to the re-submission thresholds, the incremental expenses of re-running the same proposals - with essentially the same responses in subsequent years - are essentially *zero*.

And the incremental cost of *tabulating* an *added proposal of any kind* - thanks to the high degree of automation employed, with virtually all votes either being automatically scanned - or entered by the voters themselves - is also *zero*!

(c) Almost certainly, however, the costs of responding to shareholder proposals are often being piled *extra* high in many cases - by the use of outside lawyers, "proxy-advisors" and PR firms - whose tender but expensive ministrations could easily be dispensed with entirely, please note - simply by allowing shareholder proposals that pass a sniff-test as to their reasonableness and relevance to run in the proxy statement with a bare minimum of corporate commentary…Or - to simply run them regardless - with the briefest of statements as to their lack of reasonableness and relevance…as a few enlightened companies actually do!

(d) The multi-tiered thresholds proposed for submitting proposals are needless and useless complications: expensive to administer and a total waste of time and money to even *consider*: They are totally arbitrary - and have no rational economic justification that we can see…except to make it much more difficult for would-be proponents.

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(e) The proposals for *re-submitting proposals* are also totally arbitrary - lacking any rational economic justification…except, that is, to shut-down small shareholder proponents.

(f) Much more important to note, however, the resubmission thresholds are way too high when one considers how long so many proposals that have now been widely adopted languished for so many years before catching on:

The addition of women directors was first raised as an issue at Shareholder Meetings by "small shareholders" Wilma Soss, and the Gilbert brothers - over 50 years ago…and it has only gained real traction over the past five years.

Currently, "plurality voting" for directors - where small shareholders were incensed for 50+ years that they could only "withhold" votes from given directors rather than vote NO - and where a director could be seated with a single vote in favor - is being rapidly replaced, at long last, by majority voting standards.

So-called staggered boards are also being rapidly replaced - a movement that was also started by "small shareholders" who were angered by "entrenched directors" - who could readily turn away offers that would cost them their jobs, but which might well be the best way to maximize value to shareholders at large - although many companies that have super-majority provisions to revoke the "stagger system" currently find it mathematically impossible to do so.

Calls for provisions to let shareholders nominate directors were first made by "small shareholders" over 50 years ago too - and are only now being implemented, in quite a major way, we'd note - in many cases without an argument - or a vote.

All of these proposals would have been shut down in three years or less with the proposed new thresholds.

(g) There is a huge farce that is being perpetuated in the proposed rules that needs to be noted here too: The fact that any proponents that are shut-down by higher re-submission thresholds can simply move on to another public company under the current and proposed rules…which is precisely what they have been doing since the 1940s!

So all the sound and fury is likely to end up signifying….nothing - except, perhaps, for treating small shareholders as nuisances, and worse, as nonentities.

(h) Our biggest takeaway, however - and our advice to issuers - is to note yet another tried and true old-saw: "Beware of what you wish for." We *guarantee* that higher hurdles, if enacted, will result in institutional investors casting way more Yes-votes for shareholder proposals than they otherwise would - simply to give proponents a decent shot at a 3-year trial-run in the polls.

So How About Reviving That "Own Your Share Of America" Campaign? Any Hope For T-As There?

We reached out to the leadership of the Securities Transfer Association, the Shareholder Relations Association - and to the senior leaders of the top-four transfer agents - and here's where the idea, and our offer to help, and, in fact, to pull the leading oar on a pro-bono basis stands… "Sounds good, but the current SEC proxy system initiatives have taken all the available air out of the room right now.

So look for more than five percent of individual investors to disappear from the transfer agent marketplace … year after year… for the foreseeable future.

Elsewhere On The Supplier Scene:

EQ, part of **Equiniti Group plc**, announced in November that it has completed the acquisition of **Corporate Stock Transfer, Inc.** ("CST"), a Denver Colorado based transfer agent, founded in 1985, that specializes in micro-cap companies, i.e., companies with $50 million and $300 million in market cap…some 700 companies, they claim.

In December, EQ announced the formation of **EQ Unify** - most interestingly, an "affiliate company" - to "combine Lost Shareholder SEC Search, Enhanced Asset Location and Unexchanged Shareholder Program[s]….into a single service, Enhanced Asset Location"…perhaps abandoning a la carte servicing altogether? "EQ Unify is located in Pennsylvania and staffed by a group of subject matter exerts in the field of unclaimed property. Operational support is provided by a dedicated team at EQ's Milwaukee Customer Care Center" according to their press release.

JP Morgan Chase announced in December that it is totally revamping its wealth-management brokerage, branch-banking and online businesses to better compete with rivals like **BofA**'s **Merrill Lynch** unit, **Morgan Stanley**, **Charles Schwab**…and others. (Its existing unit for the "ultra-wealthy" - more than $25 million - will remain separate.)

KPMG announced in early December that they'd agreed to sell its U.K. pension advisory practice - with 20 partners and about 500 staff employed by KPMG's pension advisory practice - to **NewCo**., a newly formed company backed by private equity firm **Exponent** and its current partners. An interesting development, as newcomers seem to be flooding *into* this space, "The transaction enables KPMG to focus on its core offering, a spokeswoman said in an email. KPMG Partner and U.K. head of pensions Andrew Coles will be named NewCo.'s CEO.

Exactly as we predicted in our early reports on Blockchain - stock-clearing operations, where **Depository Trust Company** has held an iron-fisted monopoly since the 1970s - are coming under direct attack, because of Blockchain's huge potential to completely cut out a huge number of costly, time consuming and error-prone steps in the current "clearing and settling" operations. Extensive reconcilements - both within DTCC and with its many participants - all of whom have internal systems of their own. **Paxos** - a new startup company, that also has a crypto-currency system, received clearance from the SEC for a pilot Blockchain project involving approximately 140 very large and liquid companies. Credit Suisse and Société Genérale quickly signed up. Participants will have the ability to agree on the settlement dates, where most will opt for instantaneous settlement, we feel sure. DTC says it "welcomes" the competition…but time will tell, we say. `

PricewaterhouseCoopers received some mighty bad publicity in the WSJ and elsewhere this quarter, following a study by **Audit Analytics**, showing that since 2018 PwC was involved in 17 so-called 'Big-R' earnings restatements… *"more than the combined total of 11 for companies audited by **Deloitte**, **Ernst & Young** and **KPMG** …In the last three months alone, serious accounting problems disclosed by PwC clients include **Mattel, Baxter International**…and a federal investigation of sports-ware maker **Under Armour, Inc**."* the WSJ reported. With the 2020 Meeting Season fast approaching, we can't help wondering if this might become an issue for public company boards - that typically rubber-stamp audit firm renewals - and maybe for the **SEC** and **NYSE** too, which continue to treat auditor re-ups as "routine matters" for proxy voting purposes.

People:

Rhonda Brauer, one of the best known and most highly regarded people in the Corporate Governance space, has joined the **Sustainalytics Engagement Services** team - which the firm has been rapidly building out since its acquisition of **GES** in January 2019. She will work out of the firm's New York office as the Director of Engagement Services for North America.

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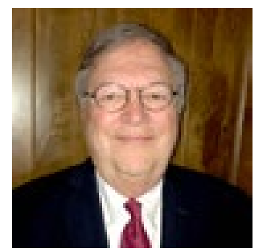
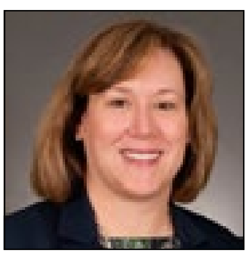
Karen Danielson, Manager of Shareowner Services at **The Coca-Cola Company**, and one of the hardest working, most innovative - and most totally delightful people we know, was honored by the **Shareholder Services Association** with the **Tony Fireman Award** - the SSA's highest honor, at the SSA's holiday luncheon in NYC on Dec. 5th. Karen is scheduled to retire from Coke in mid-2020…and what a loss to them - AND to the SSA. Although we hear that she has well-developed plans for travel, and for a very exciting and totally different second-career, we are hoping that some ways will be found to keep her "engaged" with our industry…

The totally delightful **Liz Dunshee** has been officially named as the Editor of **TheCorporateCounsel.net**, following the "early" but long-planned retirement of the founding editor, **Broc Romanek**. And what a wonderful choice! Liz has the same quick grasp for 'new and truly newsworthy news' that Broc always had, a great way of cutting straight to the chase, as he always did - and wow - a keen and slightly off-beat sense of humor…much like Broc's own brand. Welcome, Liz, and readers, do note that we will let Broc speak for himself in his fond farewell toward the end of this column.

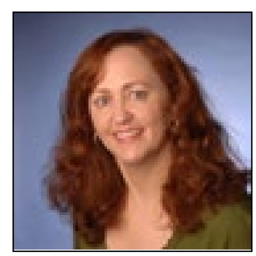
CT Hagberg LLC has added five new, and incredibly experienced members to its team of Independent Inspectors of Election;



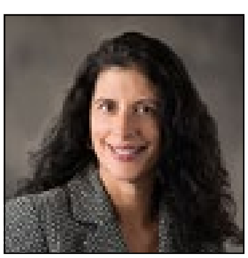
Phillip Allbritten, Esq., who recently retired after a 30-year legal career from **Atmos Energy** in Dallas as Assistant General Counsel and Assistant Secretary, where he managed their shareholder meeting, and who is now based in his native Oklahoma. Phil is also a Certified Public Accountant.



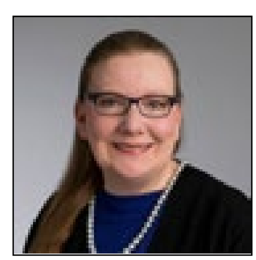
Anne Bruner, Esq., - based in Houston, recently retired as the former senior counsel and the primary legal advisor to the Financial Reporting, Investor Relations and Executive Compensation groups at **Anadarko Petroleum**, where she was also responsible for the company's shareholder meetings - to stay in Houston following Anadarko's merger with **Occidental**.



Suzan (Sam) Miller, Esq., - a 12-year veteran and former Corporate Secretary of **Intel,** who now has her own governance and strategic consulting practice, **Miller Consulting Services**, a firm she founded in 2018, to work with startups, later-stage companies, and nonprofits as a business, governance and legal consultant, executive coach, and strategic partner, Sam is based in the heart of Silicon Valley.



Maria Rizzuti, a former Assistant Secretary at now merged-away **Aetna**, who smoothly and brilliantly managed their big shareholder meetings for over 10 years, Maria is based in Hartford, Connecticut.



Carol J. Ward, Esq., a former Corporate Secretary at **Cigna**, **Kraft Foods**, and most recently, at **Mondelez** - a former Chair of the **Society for Corporate Governance** and the recent, and most deserving recipient of **Corporate Secretary Magazine's Lifetime Achievement Award**. Carol is based in Chicago.

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Many Interesting Developments On The Activist Advisory Front:

Tom Ball retired from **Morrow Sodali** after 39 years and ten months as a Morrow & Co veteran, to start **Vanderbilt Consulting**, where he is the President & CEO.

Charlie Koons has left **Morrow Sodali** to become a partner at **Brunswick Group**, a "Strategic advisory firm" with "1100 people, 150 partners, 30+ years and 23 offices in 14 countries," following 2 ½ years at Morrow Sodali and 22 years at **MacKenzie Partners**.

Paul Schulman, another long-term industry veteran in the proxy-contest arena, has left **MacKenzie Partners** after 9+ years to become Co-Head of M&A, Activism and Contested Situations at **Morrow Sodali**.

Di Costa Partners, a strategic advisory and proxy solicitation company focused exclusively on mutual funds, ETFs & closed-end funds and a subsidiary of **Morrow Sodali** announced the addition of **Nicholas Nichols** as Managing Director. Nick will be responsible for developing new business opportunities and creating customized solutions for customers in the registered funds space. Prior to joining DCP, Nick was Vice President of the Risk and Compliance Intelligence Group at **DST** (now **SS&C**). Previously, he was Chief Operating Officer at **KEANE**, a leading provider of unclaimed property communications, compliance and consulting services. He spent over a decade working at **Andersen Consulting** (now **Accenture**) where his focus was mergers, acquisitions and process reengineering activities.

David Dixon, long one of the top salespeople at **Wells Fargo Shareowner Services** - and one of the best known, most admired and best-connected people in the shareholder servicing community - and at **EQ** - departed in late January to search for greener pastures elsewhere. A huge loss to EQ, we have to say, and we will be very much looking forward to Dave's next move.

Editor's Note: A Fond Farewell From Broc Romanek: "This is the hardest blog I've written in my 17 years of blogging. My love letter to you. After pouring my heart & soul into our community for 17 years, I'm heeding the many signs that it's time for a change. My last day in this job will be the end of this month. So as hard as it is to leave y'all, I know in my 'heart of hearts' that it's time to go. And that change starts with a nice, long break before I decide where my journey takes me next. The next few months are what I'm calling my "Epic Time of Yes."

What will I miss the most? You. I will miss the daily dialogue – mainly by email – with so many of you. I cherish our friendship, our kinship, our love for securities law & corporate governance.

Anyway, after my extended holiday, I'm sure I will be wide-eyed & primed for a new adventure. I'm not sure yet whether that will be something that falls within our community – it might, it might not. Luckily, my wife & I recently cut our last tuition check so I'm in no rush to figure that out. I know that I bring passion and a yeoman's effort to whatever I put my mind to – so hopefully I'll find a situation that can help bring out the best in me.

In every end, there is a new beginning. Namaste.

Editor's Note: As we noted elsewhere, we are giving 100-to-one odds that Broc will be back before we know it… In some surprising but major way…Meanwhile, let's hope he fully enjoys his sabbatical.

Another career landmark worth celebrating - Bruce Weisman, who has served as the **Vice President of Audit and Control** of **Broadridge Investor Solutions** from their very get-go, has been promoted to **Vice President Governance and Risk**. There's no one we know that we would rather see in charge of "governance and risk" at this enormous, and enormously time-sensitive and always *potentially "risky business"* than Bruce.

Regulatory Notes And Comment:

ON THE HILL: Surprising bi-partisanship - even as the House impeaches the President - and a Senate trial looms - where strict partisanship will likely determine the outcome…

- Both houses passed and Trump signed a $1.4 trillion spending package that will keep the government open for a year. (No real surprise here, given what another shut-down would likely have done in the 2021 election.)

- The House passed the North American Trade Pact (after adopting Democratic Party amendments) with a 385-41 vote - which the Senate is expected to approve and Trump is expected to sign in early 2020

- Legislation to rein-in robo-calls passed both houses by wide margins, although robo-callers seem likely to find loopholes and robo-workarounds for years to come.

- On Dec. 10th, the House passed the "Insider Trading Prohibition Act" by a vote of 410-13. Very importantly, aside from doing a much more thorough job of defining insider trading, the legislation would also require only that a defendant was "aware of, or recklessly disregarded" the fact that the inside information was wrongfully obtained – rather than requiring specific knowledge as to how it was obtained, or whether there was a "personal benefit" involved. As Broc Romanek noted in one of his final columns, the bill appears to have 'bipartisan support' – it's also been floating around in some form since 2015…and hasn't made it to the finish line yet.

AT THE SEC: **Great news - SEC fines for the fiscal year ending Sept. 30 rose to $4.3 billion - a 30-year record high.** Much of the increase came from actions against investment funds and advisors that pushed high-price products to unwary investors - and the SEC also racked up a $67 million fine against **Tower Research Capital** - the largest penalty ever imposed for "spoofing." **The bad news: Only 57% of the fines ever get collected because the assets have disappeared in financial frauds.**

On other fronts, the SEC has been targeting high-priced investments sold to teachers (three cheers for that) and is moving to make it easier for ordinary individuals to participate in private-market deals, where our civil-rights sentiments say great - but where our real-world experiences predict more "JOBS" - i.e. more "Jumpstarting Of Bilkings of Suckers." **Another big initiative will be to question the marketing of and the investments in fast-growing "socially responsible investment portfolios"** - which have grown from $2.83 billion in 2015 to $17.67 billion in November, according to **Morningstar**, and where there has been evidence that some portfolio holdings do not pass socially responsible sniff-tests.

IN THE COURTHOUSE: The Biggest News Ever for Public Company Issuers - ATT v. DE

Here are some excerpts from a Dec. 18 article, written by **Jennifer C. Borden** and **Jenna L. Bentley of** Borden Consulting Group both of whom, we are very proud to note, are members of the **CT Hagberg LLC Team of Independent Inspectors of Election,** entitled "Hello, Delaware? The Constitution is Calling."

"On December 6, 2019, **AT&T** filed a complaint in the United States District Court for the District of Delaware alleging violations of its rights under the Fourth and Fourteenth Amendments, and violations of the Ex Post Facto Clause of the U.S. Constitution. The constitutional issues raised by AT&T are similar to those most recently raised by Univar, Inc. in the complaint it filed last December. These issues continue to plague holders undergoing unclaimed property audits by the State of Delaware. Without much needed precedential guidance from the courts as yet, the AT&T complaint highlights the fact that holders are often without meaningful recourse during these “limitless, irrational and arbitrary” audits.

Background: Please visit the Borden Consulting Group website for the truly shocking details of actions by Delaware and their so-called “auditors,” **Kelmar**, where, among other things, they demanded approximately 60 million transaction records.

Constitutional Issues: “AT&T is seeking a declaration from the court that Delaware impermissibly selected AT&T for an audit based on its perceived profitability; that the use of a self-interested party to conduct the audit is unconstitutional; that the document requests in this instance violate the Fourth Amendment’s right to be free from such unreasonable searches and seizures; that Delaware’s estimation methodology is both unconstitutional and preempted by federal common law; that the retroactive application of the State’s estimation procedure is unconstitutional; that the presumption of the existence of an unclaimed property liability where records are incomplete is unconstitutional; and that Delaware’s election to terminate AT&T’s participation in the expedited audit program violates the Due Process Clause of the Constitution. In a case of déjà vu all over again, Delaware responded by filing an action in Chancery Court, seeking enforcement of its subpoena.

“As noted above, the majority of these constitutional issues have been raised by other holders in the past but remain unresolved for various reasons including that the State settled with other holders; the issues were previously deemed not ripe; and litigation on similar issues is still pending at both the state and federal level. The AT&T complaint is, however, notably distinct from those previously filed because of the decision made by the Secretary of Finance to terminate AT&T’s participation in the expedited audit program. As such, there can be no question regarding the ripeness of the dispute.[13] The Due Process Clause of the Fourteenth Amendment of the federal Constitution provides that no state shall “deprive any person of life, liberty, or property without due process of law.”[14] The demands of procedural due process require “that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case.”[15] This right to be heard was denied AT&T because the company was not provided an opportunity to state its objections prior to receipt of the October 31 letter terminating its participation in the program. Pursuant to the statute, the decision to terminate a holder from the program is subject only to review by the Secretary of Finance and there is no subsequent process or ability to challenge the termination decision…”

CONCLUSION: ”While AT&T looks forward to relief for the circumstance-specific procedural due process issue that it is facing, holders in general will benefit greatly from conclusive direction by the federal court with respect to the other constitutional issues raised. Until then, holders are faced with the excessive and burdensome document requests routinely issued by Delaware through its contingent fee auditors; concerns regarding confidentiality and data privacy issues; juggling competing state laws on multi-state audits; an estimation procedure that has already been determined to yield seriously misleading results; and confusion over which, if any, provisions of the 2017 law apply retroactively. When viewed in conjunction with recent filings in the Univar matter, it is very clear that numerous questions remain regarding the execution of Delaware’s audit program. Here’s hoping that these cases will finally provide the answers.”