

OPTIMIZER

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

VOLUME 26, NUMBER 2

NOW IN OUR 28th YEAR!

SECOND QUARTER 2020

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Our "Insider's Summary" Of The Big Picture At Shareholder Meetings Through June - With A Special Focus On VSMs

From January through June, 2020, the CT Hagberg LLC Team of Inspectors of Elections will have served at 477 Shareholder Meetings - a pretty hefty sample, we'd say, that included a big number of Fortune 500 companies, lots of well-known large-cap companies and a great number of small and micro-cap companies...so we were able to observe a very good and representative cross-section.

In April, when the COVID crisis first began to be reflected in shareholder meeting proceedings, we served at three VSMs - or just 6% of the 47 companies where we served...

By the third week of May, which has now surpassed April as the biggest meeting month by far, the CTHLLC numbers jumped to 204 meetings, of which 43, or 21% were VSM

And suddenly, in just the last four business days in May, over 500 VSMs were hosted, according to data that was posted by our great friend **MaryEllen Andersen** of **Broadridge**, in the *Harvard Law School Forum on Corporate Governance*.

While our own share of VSM meetings rose significantly in terms of the percentage of VSMs we attended, it declined as a percentage of ALL VSMs in May - primarily, we think, because most of the 500 companies that swarmed the VSM field in the last six days of May were very small companies that appear to have decided to act as their own Inspectors. (More on that decidedly ill-informed decision later down.)

In June, the meetings we handled rose to 222 - with VSMs accounting for 77 of them, or 35% of the meetings we handled.

Here are some general observations from the 477 meetings our IOE Team Members attended between January and June:

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- As we had predicted earlier in the year, every single company we worked with that had a quorum last year had one this year, and was able to successfully complete “the business of the meeting.”
- This is no small feat, given the many challenges that were posed when it came to drafting materials with the Covid pandemic growing apace, then printing and mailing materials via suppliers that also were often over-stressed and sometimes under-staffed due to the virus - and typically making new arrangements for the meeting site and meeting logistics, literally ‘on the fly.’ So hats off to the top industry suppliers - and to the majority of public companies too, who came through with amazing grace under pressure...And boo on those second-raters who served up second-rate meetings - and to second-rate suppliers who fled the battlefield altogether.
- Roughly 354 of the 477 meetings we attended (75%) were “in-person meetings” that were held at a designated site, but with strong “keep-away provisions” that limited in-person attendance to three people or fewer - vs. 120 VSMs (25%) our team members attended as IOEs.
- Our Inspectors of Elections attended all but ten or so of the 477 meetings they served at “virtually” - via a dial-in conference line...whether they were VSMs or not. They were able to drive - and in a few cases, walk - to the few meetings they did attend in person, where the office buildings were largely empty and where only a handful of people were in attendance - all safely distanced and wearing masks, except while presenting.
- As best we can tell, there have been NO “Hybrid Meetings” this year, which is as one would expect given state and local rules that strictly limit in-person attendance at any meetings.
- At every meeting where our Inspectors served, the traditional representatives from the companies’ accounting firms attended by phone - AND - at each of these meetings, and in line with a long term trend, not a single question was asked of them (!) exactly in line with our prediction... and our experiences over the past 5-7 years.
- The most surprising thing to our IOEs was how *frightened* most company officials were by the idea of a Virtual-Only meeting. Some were fearful of technological glitches. But most were fearful of the Q&A period, and how best to handle it. (More on that later down too.)

Rather amazingly, our team observed only a few small “technical glitches” at VSMs - mostly where a few participants had difficulty dialing-in, or controlling that mute-button - and where we think the issues were mostly with the lack of tech-savviness of some of the officers, directors and individual investors who failed to carefully follow directions, or simply pushed the wrong buttons by mistake.

At one small company a recording of a shareholder proposal that the company expected would be played had to be read by the Corporate Secretary, but no big deal. At another meeting one of our IOEs observed, a shareholder with multiple “positions” was only able to vote one time... Then they’d need to sign out and log in again with another of their control numbers...with very limited time to do so...plus, they’d be missing part of the meeting. This needs fixing, for sure!

As you will read below, however, there were numerous reports from big investors - many of them regular investor-proponents - who were shut out of meetings due to a variety of log-in, authenticating and “permissioning” problems, or who felt badly ‘dissed’ with slam-bam Q&A practices.

Sad to say, many public companies disregarded our advice - not to diss their investors - and basically rammed through the business of the meeting at breakneck speed, with little or no attempt to make the meeting interesting or informative or to allow effective participation.

As To VSM Meeting Attendance, The Numbers Of Voters - And Of Votes Cast At The Meeting - And The Number Of Questions Asked And Answered...

The numbers are all over the lot...And frankly, the “averages” that were reported in the *Harvard Law Forum* are not terribly informative because of the widely varying shareholder demographics at companies with widely varied histories, sizes, businesses - and the presence or absence of individual company “issues.”

Here are a few statistics from the 120 VSMs our Team Members attended, and five others where we listened in:

- As to the number of meeting attendees, the numbers varied widely - from a reported 1,500 at much-in-the-news Wells Fargo (75% shareholders, 25% guests) - to 800 at Coca-Cola, 177 at United Parcel Service (a HUGE increase for them, where normal in-person attendance over 10+ years ranged between 2 and 5 people) and 62 at UnitedHealth Group, vs. their normal 1 or 2. But the statistical MODE (i.e., the most commonly occurring number) was somewhere between zero and five attendees tuning in, thanks to all the small-caps and micro-caps in the mix.
- As to the actual number of *VOTERS* while the meeting was in progress, the statistical “MODE” was close to ZERO, due, here too, to the large number of very small companies that adopted VSMs this season.
- As to the *VOTES*, we saw a few instances where a few hundred thousand votes occurred - but most of them had been recorded during the extra 12 or so hours the polls were left OPEN for VSMs, rather than cast at the VSM: Actual and valid on-line votes typically ranged between zero (the most common number by far) and a few thousand.
- There were no instances where we saw added VSM votes “moving the needle” by even one-hundredth of one percent.
- As to the number of questions asked, the statistical mode was ZERO, here too...again, because the vast majority of VSMs were held by small and micro-cap issuers, where there were no issues of consequence whatsoever...AND where no efforts were made to elicit questions in advance as many large-cap and mega-cap companies did. Most large-cap companies managed to take between six and a dozen questions during the Q&A periods, which, on average, was set by large-caps for 30 minutes.
- As to the duration of VSMs, the Broadridge-reported “average time” of 22 minutes is not very instructive as to what actually went on, because of the widely varying results by company-size. In our Team’s experience it would be:
 - Small and micro-cap companies; 5 - 15 minutes
 - Large and mega-cap companies; 1 hour on average - typically on the dot
 - A very few “companies with issues” - and/or many shareholder proposals and many more questions than ‘average’ - 90 minutes...which we feel is way too long for a VSM and certain to lose the audience except perhaps for rabble-rousers, who have no place at a business meeting to begin with.

A Word To The Wise: Big Brother Is Watching - And Listening To Your VSMs... Taking Notes... and Gearing Up To Push Back

Yes, a number of “Big Brothers” ARE listening in - some of them to offer constructive criticism and even a few words of praise - but some looking to name and shame - and even, in one extreme case, reported below, to actually threaten executives of companies they perceive to be bad actors:

Reuters was first out of the box in the naming and shaming game, with columnist **Ross Kerber** calling out **AT&T**'s decision not to allow shareholders to call in with questions - to a phone company, no less, and which, we believe they had done before - and for refusing to allow shareholder proponents to make their own presentations, reading them *themselves* at the VSM. What an unbelievably dumb decision this last one was - and what a terrible reflection on **AT&T**'s record where good governance is concerned.

A few days later, Reuters weighed in again with a column by **Imani Moise** headed “**U.S. bank investors put on mute as shareholder meetings go virtual**” - citing **Ben Cushing**, campaign representative of the environmental group **Sierra Club**, who “*was frustrated when a bank representative*” (at an unidentified big bank) “*summed up his 350-word-long question in fewer than 60 words during Wednesday’s virtual meeting*” and who said, “*It’s definitely a concern if shareholders aren’t given time and space on the agenda to ask about critical issues.*” **Another totally tone-deaf and unnecessary move, and deeply disrespectful of shareholders and shareholder rights we have to say.**

Further stirring the pot - and adding a big load of fuel to the fire to boot, Reuters quoted “fair housing advocate and activist financier Bruce Marks [who] said his organization, Neighborhood Assistance Corporation of America, is considering targeting executives at corporate conferences, social settings and even in their neighborhoods: “The banks’ move to virtual meetings forces activists to find other forums to address those questions where they’re not going to like it,” he was quoted as saying.

Activist investor and serial shareholder proponent John Chevedden weighed in with postings slamming some bad practices he encountered: **Bloomin’ Brands, Inc. (BLMN)**... “*5:00 am meeting in my time zone*” [Ouch! - Really heedless of investors.] “*Management created bureaucratic barriers if shareholders want to ask questions at this meeting. No management presentation...No questions.*” [No more Bloomin’ Onions for us!] Re: **Cognizant Technology Solutions Corporation (CTSH)**... “*289,000 employees, \$28 billion market capitalization, 14 shareholders logged into the annual meeting. No clue as how many of the 14 shareholders logged in late or logged out early.*”

Long-term shareholder proponent and corporate governance blogger James McRitchie re-posted a large number of comments on May 1 that had been reported to and reported on by the Council of Institutional Investors, detailing a variety of obstacles Council members encountered:

A very common problem - and a total surprise all around, we think - many Council members - and frequent shareholder proponents - like the **AFL-CIO**, **AFSCME** and the **Carpenters Union** - use custodians and/or voting agents who assign control numbers of their own that do not match up with anything on the Broadridge voting platforms. So they could not log-in as shareholders - and thus, were not eligible ask questions. In some cases, they could not even log-on as “guests” since many companies chose not to have guests.

Ouch! A previously unknown proxy-plumbing issue with control numbers at VSMs that will need to be addressed, for sure...plus, a clear need for companies planning to have VSMs to allow interested parties to attend as guests... And why, we would ask, would a public company want to refuse to allow guests at a VSM in the first place?

McRitchie’s post cited a variety of other issues reported by Council members, like Andrew Shapiro of Lawndale Capital Management, who encountered a round of difficulties receiving timely notice and

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complying in time with “registration requirements” when trying to participate in **National Cinemedia’s** annual meeting, **John Keenan** of **AFSCME** who highlighted log-in problems experienced by shareholder proponents at three companies, **Boeing** and **Pfizer** - where, usually, companies take special care to be sure proponents get kid-gloves treatment - and at **Honeywell** - where shame on them - they allotted a measly 10 minutes for Q&A and deep-sixed a co-filer’s question. **Stuart Dalheim** from **Calvert** reported (rather kindly, we’d say) that his experience with **PACCAR’s** April 21 meeting was ‘less than ideal.’ The company took questions in batches and did not refer to Climate Action 100+ and investors’ interest in climate, but stated a summary question ‘will the company maintain its environmental leadership?’ to which the answer was “of course we will.” **How’s THAT for a thoughtless and totally content-free answer?** **Kyle Seeley** of the **New York State Common Fund**, which amended its policy of voting against directors at companies with Virtual-Only meetings in light of CV-19 issues, and noted that the Fund supported directors at firms that followed “best practices” - withheld votes from **AT&T** directors this year, due to concerns with their meeting practices.

McRitchie concluded his report with a nice and much appreciated shout-out: *“The latest issue of Shareholder Service Optimizer provides advice to companies on how to host exemplary annual meetings. Stories cover: Practical Tips and Best Practices to Observe this Year - Starting from the Top of the House Down; Advice on Providing a Useful and Rewarding Experience for Attendees; Advice on Taking Shareholder Questions During the Meeting; An Update On Shareholder Meeting Readiness From Key Suppliers Broadridge and Computer-share and Learn From The Best: Check Out The Starbucks Webcast For A VSM How-To ‘Playbook.’”* All of these articles, and more, are on our website, we’d note: optimizeronline.com

Ed Durkin of the Carpenters Union replied to the Harvard Law posting with thanks - and in a nice “big-brotherly” way - offering some words to the wise and noting that “Carpenter pension funds have attended over 300 virtual shareholder meetings so far this season” and adding, in a preview of things to come, *“The one-way audio only nature of these meetings and the lack of spontaneous interaction with the chair, board members or audit firm representatives is a serious shortcoming. Clearly more work needs to be done in evolving the format of these meetings to allow appropriate levels of interaction.”*

Count on it, readers, this will be the most serious by far of the many issues that will need to be resolved as issuers, service providers and big institutional investors assess their approach to Virtual-Only Meetings in 2021 and beyond.

Bear in mind that many of the biggest Council members have taken the position that they will withhold votes from Directors at companies that hold “Virtual Meetings” that do not allow for personal and unscripted interactions with top managers - and directors.

As another blog-post from law firm Bass, Berry & Sims pointed out mid-season, “proxy advisory firms ISS and Glass Lewis have also weighed in on the conduct of virtual annual meetings. With respect to virtual stockholder meetings, ISS’ viewpoint is that *‘shareholders [must have] a meaningful opportunity to participate fully in the meeting, including the ability to engage in dialogue with and ask questions of directors and senior management’* and Glass Lewis’ policy requires that stockholders ‘be afforded the same rights and opportunities to participate as they would at an in-person meeting’ including ‘the ability of shareholders to ask questions during the meeting.’ Therefore, companies run the risk of ISS and Glass Lewis recommending a vote against members of a company’s governance committee [at a minimum, we’d opine] where the company is hosting a virtual-only stockholder meeting and a stockholder’s ability to participate is significantly curtailed, for example by eliminating or substantially reducing Q&A opportunities.

The OPTIMIZER would also opine that a meeting where shareholder rights to ‘engage in dialogue with and ask questions of senior management’ AND to have basically ‘the same ability to do so that they would have at an in-person meeting’ was very specifically expected to be the case when the model enabling-legislation was drafted and enacted in Delaware, and in other states as well.

There is one other, very vexing area that needs to be addressed before the 2021 season - and we are sorry to say it - but it is our belief, as we wrote earlier, and as this season amply demonstrated - that the Virtual-Only Meeting and Voting Procedures that were offered by AST, Computershare, EQ and Mediant do NOT meet either the letter or the spirit of existing state laws that permit Virtual-Only Meetings: The big problem revolves around the near universal inability of beneficial owners of securities to record their votes online, due to problems with the bank, broker and voting-agent “control numbers” - where, so far at least, the control number “owners” refuse to release them to any firm other than Broadridge. And who could really blame them from closely guarding the identities and the holdings of their most valuable asset...key info about their entire client base!

The non-Broadridge providers provided a cumbersome “workaround” - wherein street name holders need to request a Legal Proxy from Broadridge, which will, and correctly so, erase any votes they may have cast beforehand and disable their ability to vote on the Broadridge platform - to guard against double-voting. Then, the beneficial owner has to transmit the Legal Proxy to the VSM host, who would re-transmit a control number to the shareowner that would work on their system. And typically, by the time this all happens, the meeting is over! As illustrated above, these requirements prevented numerous street name shareowners from even listening to the meeting, much less sending in a question. Still further, we feel fairly certain that if one or more shareholders could show that they were unfairly denied access to a meeting - whether due to unclear or untimely instructions, or to undisclosed control-number incompatibilities, or to technical or other impediments that prohibited them from asking pertinent questions - they could make a very good case for a meeting do-over.

Investors cut the non-Broadridge agents a much needed break in 2020, but the “Legal Proxy Rigmarole” will not cut the mustard with investors in 2021, we feel certain.

Our Predictions On The Fate Of Virtual Meetings In 2021

First we should note the key assumption, and one we fervently wish for; that ‘the Covid coast will be sufficiently clear’ by year-end to allow people to plan for the possibility of in-person meetings. If not, all bets are off, and likely, there will be many more VSMs than ever.

That said, our bet is that a big majority of the small and micro-cap companies that held Virtual-Only meetings in 2020 will revert to the simpler and cheaper alternative of having the meeting at a local law firm - where, historically, few or no shareholders ever showed up and - importantly - where there are no shareholder proposals or important performance or governance issues in the press or potentially in the offing that might draw attention, much less a crowd.

We also bet that many of the large and mega-cap companies that had VSMs in 2020 will revert to in-person meetings....because they LIKE THEM - or, in a few cases, can’t risk shareholder and consumer backlash if they drop them.

On the other hand, a Virtual-Only Meeting - with no real live shareholders in attendance - has a great deal of appeal for a lot of large-cap and mega-cap company officers. So many companies will re-up and many newcomers may well sign up - IF the coast is clear with big investors, which is far from clear at this point. The many technical and logistical problems AND the demand for better and more “open” two-way communications can and will be solved...but it will take quite a bit of time and effort.

Always the optimists, we bet that there will be a big new uptake on so-called Hybrid Meetings - where folks can attend both virtually or in person. The 2020 season has shined a strong new spotlight on the true importance of shareholder meetings, and a Hybrid Meeting represents the best of all meeting models we say.

One last thing to note with care: Large shareholders will expect Directors to be intimately involved with any and all decisions concerning VSMs, going forward.

Our Short-List Of Must-Listen VSMs

Topping the list - and the very best VSM we listened to - is STARBUCKS - where we provided some background info and wrote up in detail in our last issue. They put “the shareholder experience” first and foremost, worked hard to make it engaging and informative, and upbeat - and not an experience ‘like watching paint dry’ at all.

Starbucks hit every single one of our own hot-buttons - well before we’d published many of them. They also deserve extra points for being the first really big company on the 2020 meeting calendar that had to confront the fact that Covid IS a pandemic - on very short notice - and they brought everything off to perfection. A visit to their website for the replay should be absolutely required for anyone thinking of having a VSM in 2021.

Do we think that Starbucks will have a VSM in 2021? Absolutely NOT, unless God forbid, the CV pandemic continues to require social distancing into 2021. They made it clear, during a Society panel where we served with Starbucks Corporate Secretary Sophie Hager Hume and others, that they consider their in-person meeting a highly important corporate, employee, shareholder and customer “event” - where they spend significant time and money to make it a special “experience.”

The INTEL meeting should also be on your list of required visits: They were the first mega-cap company to *have* a VSM and they now have this down to a science. The meeting ran like clockwork - and the time flew by amazingly fast, thanks to a great forward-looking intro and to a very engaging Q&A period, with probing and insightful questions from the many sophisticated Intel technology buffs - and fans - and competitors too, we’d bet - who probe hard for clues to new developments on the horizon. Only “static” visuals, but the layout, the content, and the nice graphics on their slides were worth careful attention, and certainly got ours, from start to finish.

Do we think that Intel will drop its VSM and revert to an in-person meeting - after what we think is 12 years of successful and informative VSMs? Absolutely NOT.

UNITED PARCEL SERVICE produced one of the best-planned, best scripted and best run meetings of the season - smoothly disposing of six items of business - including three shareholder proposals - while marking the retirement of the CEO, the handoff to new CEO Carol Tomé, and giving shareholders ample opportunities to ask a variety of good questions - all in 36 lively minutes!

The meeting opened precisely at 8:00 a.m. with an operator welcoming listeners and handing off immediately to Scott Childress, the chief IRO, who noted that “the meeting would be conducted solely through virtual means due to the unique circumstances presented as a result of the coronavirus pandemic,” and that he would be joined by David Abney, the Chairman and CEO, Board Member and soon-to-be CEO Carol Tomé, the General Counsel, and the CFO. He added that each of the Board Members, each of the senior executive officers, representatives from their audit firm and the Inspector of Election for this meeting (full disclosure again, your editor-in-chief, who has served as the IOE at every UPS shareholder meeting but two, since the company first went public) would

all be present on the phone. He noted that they would handle the business of the meeting first, that shareholders could pose questions on the proposals, and later of a general nature and that (brilliantly put we thought) “We will attempt to answer questions of a *long term strategic nature* and respond to as many as possible during our allotted time.”

The Chair and CEO presided over the business portion - in a pre-recorded speech - pausing after each management proposal and reminding holders that they could enter questions if desired. Then, the meeting went “live” and each of the three proponents introduced their proposals over a phone line. The Chairman called for questions, which were read by the IRO - and yes - and unlike so many meetings we go to - there were actually three good ones; two fielded by the CEO and one - on compensation - fielded by the GC. Then a pause for any last-minute voters, the polls were closed and the IOE gave the Preliminary Report on the voting outcomes, none of which were in doubt.

Then came the general Q&A period, where the IRO asked the questions, which Dabney, Tomé and CFO Brian Newman answered as appropriate...on things like liquidity, the company’s biggest CV-related challenges, a regulatory and a legal issue...and one on why, in an unprecedented move, the board chose a non-UPS employee to be CEO. Then, a pre-recorded farewell from Abney was played; then he formally adjourned the meeting...and - a very nice touch, we thought - a bouncy and cheerful baroque-style recessional was played to provide a smooth and happy-sounding sign-off.

Do we think that UPS will stick with the VSM - or revert to an in-person meeting in Wilmington’s Hotel DuPont as they did for 14 of the past 15 years? Hmm...Traditionally, the Board is super-busy with Board and Committee meetings the day before and the day of the meeting...and there is much to be said about the value of face-to-face meetings of boards and board committees...and at shareholder meetings too, which, at UPS, are typically over in just a half hour or so.

On the other hand, as noted earlier, the VSM attracted 177 attendees - many of them employees or retirees at this largely employee-owned company vs. 1 or 2 in-person attendees most years, and never more than 5 as best we can recall. So the VSM was far better attended, with far more questions than usual. It was also far more engaging and far more useful to shareholder attendees than any of the in-person meetings we’ve attended. We’d say, “If ever there was a good case to be made for a Hybrid-VSM - and we think there IS - this would be IT.” A five-star performance - and a super-useful way to spend 36 minutes of your time.

UNITEDHEALTH GROUP is yet another must-review VSM: After a few welcoming remarks from the CEO he turned the formal part of the meeting agenda over to Board Secretary and Chief Governance Officer Dannette Smith - a procedure that is very much worth considering, we’d advise, as a way to quickly and efficiently cut to the chase.

Dannette went through the formalities briskly - noting the record date and shares outstanding, the affidavit of distribution, the appointment of the Inspector of Elections (full disclosure, your editor-in-chief, who has been serving at this meeting for 10+ years) who was attending via a conference line, and who had confirmed the existence of a quorum and would certify the final results.

Then she proceeded to very briefly introduce the management proposals, and then to introduce shareholder proponent John Chevedden, who presented his proposal live, via a conference line, after which she opened the meeting for questions on the business before the meeting, where there were two good ones, we thought.

The first question was on the specific qualifications of one of the (newest) nominees - and about the selection and vetting process, which was answered by Michelle Cooper, Chair of the Governance and Nominating Committee.

She did an excellent job of answering - noting, among other things, that they have an “outside advisory committee” of experts to assist and advise the Board Committee in its searches.

The second shareholder question was about the 2020 Incentive Plan that was up for a vote - specifically, the number of employees who would be covered - which was answered by the EVP of Human Capital: 5,000.

The General Q&A period covered 10 questions - almost all of them very good questions to ask, we thought, which were answered by the logically appropriate persons to answer them, including the CFO, the CEO, the Chair of the Audit Committee and others. This made for a very interesting and lively presentation - with a great deal of credibility and a really great show of a governance structure - and a corporate culture - that has created such a great company. (We especially appreciated the fact that the meeting was not completely dominated by “old white men” as, historically, so many are: See the article on our website on the importance of avoiding this.) **We give this meeting a solid five-star, triple-A-plus rating for sure.**

Do we think that UnitedHealth will stick with a VSM in 2021 after this highly successful run? Hmm...we'd be inclined to bet yes...except for the fact that one year, both Fidelity and Vanguard sent small delegations to the meeting - simply to observe, and to briefly meet and thank the leadership for their truly awesome results. It will be interesting to see what happens, but another excellent candidate for a Hybrid Meeting, we think.

Our Hall Of Shame For VSM “Bounders”

Topping our 2020 Hall of Shame list is the Transfer Agent that advised all its clients to postpone their Annual Meetings until July at the earliest...simply because they were not able to handle the work involved...and shamelessly implying that this advice was pursuant to SEC guidance. No need to name them, even though they are also the winner of our 2020 “Ficklefinger Award” - since we are sure that every client with an ounce of common sense will turn that ficklefinger they got completely around on the flicker and realize that they need to have a better-prepared and more trustworthy transfer agent.

Number-two in our Hall of Shame is a prominent west-coast law firm that was advising clients that if they could not hold their in-person meeting as planned, they HAD TO HAVE a Virtual-Only meeting. No need to name them either, since if we add that if one says “generally considered to be the least knowledgeable big law firm on the west coast” 99% of west-coasters will immediately come up with their name.

The third winner is another big bi-coastal law firm that was advising clients in NY and CA that the on-line votes at VSMs needed to be recorded as “Votes in Person” rather than as “Votes by Proxy.” (To be fair, we thought so too, at first...but then took the trouble to review the actual process. The control number that ‘beneficial owners’ must enter authorizes their *bank or broker* to cast the votes, since they can not legally do so themselves... unless they get a Legal Proxy and vote by ballot.)

How To Be Your Own Inspector Of Elections

Busy as our related-company team of Independent Inspectors of Elections was this season, we were dismayed to see how many companies decided to use their own employees as Inspectors - to save a few dollars and/or to offset some of the costs of a VSM.

We have been telling anyone who'll listen that being your own company's IOE is like deciding to be your own brain surgeon, or maybe drilling and filling your own teeth.

Having a truly knowledgeable and independent IOE is even MORE IMPORTANT with a VSM - where everything takes place in "cyberspace" and where there is literally nothing for you, or interested shareholders for that matter, to be able to examine...unless they are experts.

And, hello...the votes on more and more items on the meeting agenda are getting closer than ever these days. And hello again; a seasoned IOE has spent more time at shareholder meetings than everyone on the corporate team put together. Having an expert IOE on the team is "the best and cheapest meeting-insurance a company could possibly buy" say we.

But we, of course, are biased, so we figured we would offer readers a little primer, which, we think, will make you think again:

- For starters, your would-be IOE has to swear and sign an Oath... *"To perform the duties of the Inspector to the best of his (or her) abilities and with strict impartiality."* Before we even get to the therein undefined "duties of the Inspector" let's note right off the bat that swearing the oath turns you in to a fiduciary - with fiduciary duties both to the company and to its shareholders. So taking on this job on the theory that knowing nothing much about the duties is somehow OK - since you can always say your abilities were "weak" but you "did your best" - won't really wash. And oops - fiduciaries are not supposed to have conflicts of interest - which would hardly wash either when you are an *employee*. Let's say you get past those inconvenient truths and set out to do your very, very best:
- The corporate codes of every state in the union set out a few minimum duties - the first being to ascertain the number of shares that are eligible to vote on the matters on the ballot. *Maybe*, if your legal staff has done a good job, you will discover all the classes of stock that can vote on the various matters in the proxy statement...But THEN, you need to verify the number of eligible issues for each item AND the number of shares - and of *votes* - that are 'entitled to vote.' *So where to go?* To the official list(s) of shareholders, certified by your Transfer Agent as being "complete and correct." Let's say you know where to find them, and can write down the appropriate numbers, after multiplying the number of *shares* by the number of *votes per share*, which are often different numbers.
- But then...oops again: These days, many companies have "voting agreements" - and often, some very specific restrictions on how many shares can be voted on key matters by "affiliated parties." Where does one find *that*? It ain't easy, as we've been routinely pointing out. And it's even harder to figure out exactly who the *people are* - and *where their shares are held*. And THEN, you will have to check all the math to be sure the tabulation (whether done by you, or by a tabulating agent) has been done correctly.
- Corporate codes also set out some guidelines as to the way proxies must be signed in order to be valid. You can pretty much trust your tabulating agent to figure this out - *IF* they are recognized professionals. But if anyone comes to the meeting - and hands you a proxy card - or a "VIF" (Do you even know what that is?) or a Legal Proxy...YOU are responsible for determining whether it is valid - or not - and if not, WHY not. As a fiduciary you can't just flip a coin, or bury any troublesome items in the paperwork, as some un-professional IOEs still do: You owe a DUTY - to the shareholder - and to your company - to see that shareholders are

properly enfranchised. (We consult our written Presumptions as to the Validity of Proxies - which every IOE should have, and which vary from one state to another in several seemingly small details...but which can sometimes make the difference in an election.)

- Most companies also promise, or at a minimum, wisely observe a degree of confidentiality with respect to shareholder votes - and almost-always where employee votes are concerned. So now you know that...and will need to be very carefully on guard. You should also know that not so long ago a former CEO went to jail for snooping, with the intention of retaliating against employees who didn't vote his way...AND that the poor schnook who was in charge of the voting records avoided a jail term only because the judge ruled he "had no choice" but to comply with the CEO's orders.
- And HEY, as they used to say on those TV infomercials - "There's more!" - What DO you do if the for and against votes are less than one-tenth of one-percent apart? Where to look? What to check? And what do you SAY, if someone says "Hey! Who counted those votes? And how do we know they're right?" ... And it turns out to be YOU, or another of your company employees.

Please take our advice - very much like the advice they offer at the Cirque du Soleil - and "Don't try this at home!"

On The Supplier Scene:

AST INTRODUCES ProxyIQ: A potential game-changer, in both the proxy solicitation and transfer agency spaces, we say: *"Superior analytics mean more cost-effective solicitations,"* their press release wisely notes. *"Our new block-chain-based proxy campaign platform ProxyIQ offers a built-in "propensity to vote" analysis; near real-time, omni-channel vote reconciliation for confident status updates; and seamless integration of current and historical campaign voting trends into projections based on over 120 million retail and institutional investor voting records..."* ***(We saw a quick demo, and were literally wowed. Every public company, large and small, should have info like this at their fingertips in today's day and age we say.)***

A NEW PHASE FOR ELLEN PHILIP ASSOCIATES; A MERGER WITH LONG-TERM PARTNER INTEGRATED SOFTWARE (IS)... As Ellen wrote to her hundreds of clients and friends in late May, *"Since the early days of electronic proxy voting more than twenty years ago, we have partnered closely with IS to bring our customers flexible, customizable products and technology solutions paired with the highest level of customer service possible. In addition to proxy services, our joint endeavors have included support of corporate actions such as tenders, mergers and reorganizations, mutual to stock conversions, employee stock purchase enrollments, health and financial benefits enrollments, a stock ownership customer rewards program, charitable donation sites, surveys and more.*

*"We will continue to operate under the Ellen Philip Associates name, and while we will now be headquartered in suburban Philadelphia, **Bill Baumann** and **Myrna Gutierrez** will retain our New York presence.*

*"We have always been committed to your success and to "pulling a rabbit out of a hat" for you when you need it most. We look forward to continuing to provide our unique product flexibility and customer service. **Kathy Witman**, whom many of you know, will manage the Proxy Services division, and Kathy and I look forward to working with you."*

What a happy way for Ellen and Cal to top off their 42+ year career, and to find a great home for their business, for their two most senior staffers, and for their many loyal clients. Ellen will serve on the IS board, and will, we know, remain on-call and deeply involved in the business. It's in her DNA. We wish all of them continued success and know that the "new" EPA will continue to grow and thrive.

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SAD NEWS RE: THE EQ PROXY VENTURE... **Rudy Muzik**, ex of **Georgeson**, who was hired a year ago to help EQ launch its venture into proxy solicitation and shareholder I-D has left the firm, in what may be the worst year ever in which to try a start-up... especially in an over-crowded field where most clients are fairly happy with their current providers and *way too busy - and far too risk averse* these days to try somebody new.

ALSO AT EQ - LONG-TERM DRP-DSPP PROMOTER... **Jim Volpe** - “MR DRP” according to his license plate, if we recall correctly - has been riffed after a decades-long run as a DRP-Guru, first at **Computershare**, then at **Wells Fargo’s Shareowner Service** unit.

(So much for the OPTIMIZER’s hoped-for goal of reviving the wildly successful “Own Your Share of America” campaign, we’re sad to say. EQ at least, seems to believe that this field is fully farmed out, at least for them.)

OKAPI PARTNERS CONTUINES ITS STRING OF FIRST-PLACE WINS IN THE ACTIVIST INVESTOR ADVISORY BUSINESS, ranking No. 1 in advising activist investors both in the U.S. and globally in the first half of 2020, according to new data from **Bloomberg LP.**, below:

TOP ACTIVIST ADVISERS

Region	By # Engagements		By Activist Stake Value (\$B)		#
Global	Okapi Partners	27	Georgeson	\$9.4	10
US	Okapi Partners	23	Okapi Partners	\$5.3	23
Canada	Kingsdale Advisors	3	Laurel Hill	\$0.1	1
Europe	Georgeson	8	Georgeson	\$8.9	8
Asia Pacific	Georgeson	2	Georgeson	\$0.5	2

GLOBAL PROXY SOLICITORS - ACTIVIST

ADVISOR	H1 2020			FY 2019	
	# Engagements	Stake (\$B)	Rank	Rank	Chg
Okapi Partners	27	\$6.0	1	1	
Investorcom	21	\$0.2	2	2	
Saratoga Proxy Consulting	11)	\$0.3	3	5	▲
Georgeson	10	\$9.4	4	4	
Innisfree M&A	8	\$0.7	5	6	▲
DF King	7	\$0.5	6	3	▼
Harkins Kovler	6	\$1.8	7	10	▲
Morrow Sodali Global	4	\$0.1	8	8	
MacKenzie Partners	3	\$0.1	9	14	▲
Kingsdale Advisors	3	\$0.1	10	7	▼

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Another interesting set of developments here is the surprising showings of smaller, lesser-known but also highly entrepreneurial firms like InvestorCom, Saratoga Proxy Consulting and Harkins Kovler in this very special niche, where clients tend to “bet the jockeys.”

WITH CV-19 STILL DISRUPTING, ARE RFPs A DEAD ISSUE THIS YEAR?

The first person we asked, a well-known and well-respected salesperson at a big transfer agent was mostly pessimistic: Most public companies were counting their blessings for having gotten through the meeting season safely, and most were grateful for the performance of both their TAs and their Proxy Solicitors and Advisors. So not much action expected, said he.

The second person - equally well-known and well-respected - was a lot more enthusiastic: “With Covid, many, many companies are coming under serious earnings pressures - and even more serious mandates to cut costs, said he... And actually, RFPs are relatively easy projects to manage from one’s home office.” Bingo! We’re betting with him.

APPROPOS - AS STATE TAX REVENUES FALL STEEPLY, WATCH FOR MORE “AUDITS” - AND FOR OTHER BAD ACTORS IN THE ABANDONED PROPERTY SPACE

Our grapevine had been telling us that State Abandoned Property Commissions - and their hired “auditors” - are on the hunt again, and in a big way. With all the turmoil in this industry of late - and with a lot of new entrants, given the low barriers to entry - and with a lot of them likely to be bad actors if history is any guide - we’d urge issuers to definitely go the RPF route - and to do their homework with care. (Please refer to the many articles on Abandoned Property scandals, scams and scamsters on our website, [optimizeronline.com](https://www.optimizeronline.com))

Out of Our In-Box:

Some great news: The number of women running America’s largest corporations has hit a new high: 37 of the companies on this year’s Fortune 500 are led by female CEOs, as noted in a recent Fortune web-posting.

“This year’s tally soundly beats last year’s 33, which was itself a new record. Yet the big picture is less encouraging: even with a record 37 female CEOs, women run just 7.4% of the 500 businesses on the ranking. (For perspective: Twenty years ago, women ran two.) Only in the past four years has the growth of women in these roles accelerated past 30—a general upwards trend, though there have been dips along the way.

“Some of this year’s new additions arrived on the list after taking over *Fortune 500* companies from male predecessors in the past year. **Carol Tomé**, a longtime **Home Depot** executive, will begin her run as CEO of **UPS** on June 1. After **Gap Inc.** scuttled a plan to spin off **Old Navy** into what would have been a standalone *Fortune 500* company, **Sonia Syngal**, who had been tapped to run that business, was instead promoted to run the entire corporation. **Kristin C. Peck** became chief executive of the \$6.3 billion animal health company **Zoetis** in January. And **Jennifer Johnson** took over her family business, the \$5.8 billion investment manager **Franklin Resources**, from her brother in February.”

Great news, yes, but the numbers are still shockingly small...And most big companies are way, way behind when it comes to developing a “pipeline” of highly qualified women, and systematically moving them upward in the organization. And lastly, women CEOs are very often standing on very shaky decks from day-one - brought in to right a badly listing ship, where previous attempts to change course after a long string of male CEOs have totally failed.

INTERESTING STATISTICS ON BOARD EVALUATIONS FROM THE CORPORATE COUNSEL.NET SURVEY

KEY QUESTIONS:

In conducting board evaluations, some boards use written questionnaires and some use oral interviews (or both). At our company, we use:

- Written questionnaires only – 39%
- Oral interviews only – 29%
- Both written questionnaires and oral interviews – 32%

Who manages the board evaluation process:

- Non-executive board chair or lead director – 11%
- Chair of governance/nominating committee – 25%
- All members of the governance/nominating committee – 7%
- General counsel/other in-house counsel – 34%
- Outside counsel/consultant – 21%
- CEO – 0%
- Other – 2%

(The OPTIMIZER thinks the use of “outside counsel/consultant” may be skewed a bit low by the use of the term “manages”...since 61% of the respondent are using oral interviews and written questionnaires, which greatly increases the burden on the “manager” and often requires the use of an outside ‘facilitator’ - whether outside counsel, or better, we think, a very savvy governance expert.

In our own experience, admittedly skewed by exposure to large and mega-cap companies, more and more companies are relying on outside interviewers, facilitators and “summarizers” which we think is a very good thing, that contributes enormously to the usefulness of the evaluation... Please see the articles on our website for more information on this very important subject.)

People:



Sandy Boss, a former senior partner at **McKinsey & Co.** and an external member of the **Bank of England**'s prudential risk committee has joined **BlackRock** as senior managing director and global head of investment stewardship. BlackRock CEO and Chairman Laurence D. Fink announced the move in an internal note to employees, as reported by Hazel Bradford in *Pension & Investments*, and excerpted here:

“The importance of investment stewardship in recent years has grown, Mr. Fink said in the memo. ‘Clients’ expectations have sharpened, and our stewardship has become central to how societies around the world judge our social contribution,’ he said.

“Mr. Fink credited Vice Chairwoman **Barbara Novick**, who is transitioning out of the stewardship role, for elevating BlackRock’s investment stewardship approach. Ms. Novick will continue to lead the global public policy group.



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“Ms. Boss, based in London, will join BlackRock’s global operating committee, the sustainability task force, the EMEA executive committee and the EMEA investment subcommittee.” She will report directly to Mr. Fink

Very sad news; Anthony DeNoyior, who served as the production manager at **Broadridge**’s vast enclosing and mailing operation in Edgewood NY lost his battle with Covid-19 on April 19th at the age of 55, leaving behind his wife Stacy, who also works at Broadridge, and two sons, ages 22 and 17. No one who met Tony - especially at one of his famous tours of the Broadridge operation - where he knew the details of every job in progress and in the queue, and could spot a problem from a mile away - will ever forget him or his amazing dedication, work ethic and enthusiasm. Anthony was also a voluntary first responder and an Auxiliary Police Captain with the Suffolk County Auxiliary Police.

The DeNoyior family has established a GoFundMe site and will decide on the charitable organizations that will be chosen to receive funds based on their family values and their collective decisions to carry on Anthony’s legacy by continuing to help others. Do please go there, and consider contributing to a community that has been especially hard-hit by CV-19.

With deepest sadness, we regret to inform our many readers who knew and loved her that Patricia (Pat) Hoffmann - a long time veteran in the shareholder servicing community - and one of the very first CTH LLC Inspectors of Elections - passed away peacefully on June 6th, following a 5+ year battle with ovarian cancer.

Born in 1952, Pat leaves behind her beloved husband - and our beloved friend, colleague and fellow Inspector, **Gary Wozniak** - two brothers, a sister, seven nieces and nephews, three grand nephews and a grandniece. Here is what Gary had to say about his “beloved wife, best friend and hero:

“Pat dearly loved and was very proud of her family; they were her reason for being. Close behind, though, were the friendships she developed and embraced over the years, from growing up in Hicksville and Our Lady of Mercy grammar school, to Holy Trinity High School and Oswego University and on into her professional career. Pat touched many lives in her journey and I would like to believe that every person was better off for having known her.”

All of us that came to know Pat - some of us from her earliest days at **Citibank**, or next at **Manufacturers Hanover Trust**, later at **Smith Barney**, and ultimately at **CT Hagberg LLC** - will agree that Pat was one of the finest people ever to have on a team: A smart, cheerful, dedicated and meticulous worker, a wonderful mentor, and friend - and always a delight to be with. Pat was also like “a canary in a coal mine” due to her uncanny ability to sniff out trouble - long before anyone else noticed there might *be* trouble - and then to unstintingly pursue the best interests of her clients above all else. In our 40+ years of working with Pat we never encountered a single client that did not truly adore her.

Aside from “Inspecting” - which Pat dearly loved - and bravely and successfully pursued through her entire 2020 meeting list - as we knew she would - Pat also served as an after school counselor at **Camp Avenue School** in North Merrick. And, as Gary noted, “she approached that job with as much vigor, attention and dedication as any other position she held.”

If you are so inclined, please direct contributions in Pat’s memory to Strength for Life (strengthforlifeny.org) or the National Ovarian Cancer Coalition (ovarian.org). Both organizations provided Pat with strong support in her long and courageous battle against this cruel disease.



Mike Ryan, SVP at **Georgeson** was honored by the **Unclaimed Property Professionals Organization (UPPO)** with the President's Award in April - a very well deserved honor, indeed. And shortly thereafter, he announced his retirement from **Computershare/Georgeson's Unclaimed Property Unit**. He says he wants to take at least six months off to smell the roses, and enjoy life, but meanwhile he's billing himself as "**Unclaimed Property Guru Freelance**." We would be very surprised to see Mike fully retired for very long.

Stanley (Stan) Siekierski, who, we think, holds the world-record for service in the transfer agency universe "got retired" by **AST** in late June after 55+ years in the T-A business.

Stan, who started at Marine Midland Bank, moved to "Old Manny Hanny" in 1983, then on to AST following the dissolution of the ill-fated but aptly named "Chemical Mellon" business was a frequent source of historical info for us. Amazingly, Stan served as the transfer agency relationship manager for Source Capital - one of his first assignments at MHT - from 1983, through his retirement date at AST... for 37+ years! How's THAT for "relationship management."!



Leo Strine, Jr., who resigned last fall as a judge in the **Delaware Supreme Court**, following a long and highly influential stint in Delaware's chief business court, has signed on with **Wachtell, Lipton, Rosen & Katz**, where he will advise clients on mergers, litigation and other matters. What a great "get" for them. We loved the 56 year old judge's comment in the *WSJ* on his intention to stay out of courtrooms: *"If I wanted to keep going to court all the time I'd just as soon come out in a robe and face the same direction I always did"*

Regulatory Notes... And Comment

ON THE HILL: SEC Chairman **Jay Clayton**, who, it turns out is a new golfing-buddy of President Trump of late, received a rough and tumble grilling over his pending nomination to replace the replacement for former U.S. Attorney for the Southern District of NY (aka "the Sovereign District") **Geoffrey Berman**...whom **U.S. Attorney General Barr** initially said had resigned...in one of the weirdest set of developments at the DOJ in memory. And oops...Republican Senator and Chair of the Judiciary Committee, **Lindsay Graham**, said he would respect the unwritten rule that nominees for the office would require an OK from the NY Senators where the vacancy is. Fat chance of that...and not really a great development for the SEC either.

AT THE SEC: A big defeat for their plan to run an "experiment" with stock exchange trading fees, handed down by a federal appeals court in June.

A very big win - The ex-Bank of New York Mellon exec who blew the whistle on the bank's systematic pattern of overcharges on foreign currency exchange trades was awarded an astonishing \$50 million...after BNY-MELLON paid \$714 million in fines and compensation in 2015 to settle charges of fraud.

IN THE COURTHOUSE: Two big decisions at the Supreme Court - A unanimous ruling in favor of an employee plaintiff vs. Intel, allowing a suit to go forward over excessive employee-plan fees, holding that an employee needs not just to have received the material, but to have read it, and understood it in order to start the clock running on the statute of limitations. This will almost certainly open the door to many more lawsuits on excessive employee plan fees, and further encourage companies to appoint independent plan fiduciaries, as we've been urging for 26+ years now.

In a 5-4 ruling the Supreme Court held that Congress overstepped its authority when creating the Consumer Financial Protection Bureau in 2010 when it provided for a single director who could not be replaced by the Executive Branch...”accountable to no one,” **Justice Gorsuch** noted in the majority opinion.

Watching the Web

Disturbing statistics from Audit Analytics, which recently issued a report analyzing cyber- breach disclosure trends from 2011 – 2019 ... and which also received notice in a Corporatecounsel.net blog-post: *“A chart on the first page of the report shows a dramatic increase in the number of breaches since 2011, with an increase of 54% in the last two years.* In terms of disclosure detail, here’s some of what the report found:

- 43% of firms that reported a cyber breach since 2011 didn’t disclose the type of attack – meaning whether it resulted from malware, phishing, unauthorized access, etc.
- For companies disclosing a data breach, since 2011, Audit Analytics found that it took an average of 108 days before companies discovered the breach – with a maximum of 1,625 days and a median of 30 days
- But, it took companies on average another 49 days before disclosing the breach – with a maximum of 456 days and a median of 30 days
- The report mentions, as most already know, that delays in discovering data breaches may raise red flags about internal controls and disclosure delays could lead to SEC action as was the case involving Yahoo! several years ago
- Shedding light on factors that may lead to delays in discovering data breaches and longer disclosure time, the report found companies in certain industries, the type of attack and type of information all impact time to discover a breach and delays in disclosure – the blog provides specifics on these findings.

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