THE SHAREHOLDER SERVICE

OPTIMIZER

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

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IN THIS ISSUE

Plan For A VSM - Or - For A "Stringently Limited In-Person Meeting" In 2021… Now

It's October 2020, and the chances that public companies will be able to responsibly host in-person Shareholder Meetings any time before October 2021 are virtually ZERO - unless in-person attendance can be strictly rationed to include only the most essential attendees.

So Lesson-One - if you decide a VSM is the right way to go for your company - which it almost certainly is: select a service provider and reserve your time-slot ASAP - since demand for VSMs - which greatly exceeded the supply of first-class providers in 2020 - will surely be higher in 2021.

Most important, perhaps, begin your Meeting Plan and Playbook now, we advise...to learn from the sometimes hard lessons of 2020 and avoid "hard knocks" from investors in 2021. Many investors, as reported in our last issue, felt totally disrespected in 2020 - and quite rightly so.

We guarantee that in 2021 the investors who DO tune in to these meetings will be cutting issuers little slack, and extending virtually no forgiveness to companies that serve up a thoughtlessly planned and poorly executed "slam-bam, thank you ma'am" Meeting of Shareholders.

There is little doubt in our minds that VSMs, with or without Covid-19 in the background, are indeed "the wave of the future." Quite simply, they are the best and most cost-effective way to make "Meetings of Shareholders" available to the biggest and widest number of interested parties...not just on the day of the Meeting, but throughout the year.

But this is true, please note, *ONLY IF* the proceedings are worth the time and effort of attending - to your Shareholders, and to prospective shareholders as well: If not, they are a total waste of time and money,

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we say...So please see the tips in our last issue - and the revised and expanded tips in this issue to make your Meeting of Shareholders an event worth visiting. Above all, bear in mind that this is supposed to be a "Meeting of Shareholders" - and make a decent effort to deliver on that premise.

Very important to note as you begin your own planning: The majority of publicly-traded companies have essentially NO items of business on the agenda - and no pressing issues in the wind that would impel a rational investor to tune in to the Meeting...much less to cast a vote on-line... or even to ask a question of the management team that could not be asked using the company's Investor-Page...at one's own convenience.

But if you are a large-cap or mega-cap company - or have history of large in-person attendance - OR - have "issues" that might draw a bigger than usual number of wannabe attendees, and questioners...be sure to plan accordingly.

Real-Time Voting At AGMs - The Peskiest - And The Stupidest Issue At VSMs - Plus… Our Own Suggested Workaround

As public companies have learned to their dismay and consternation this year, a "Virtual-Only" Meeting of Shareholders requires issuers - and the service suppliers they utilize - to give both registered and street-name holders the ability to cast their votes in "real-time" - while the meeting is in progress and until the time the polls are officially closed. This is true of every state that permits companies incorporated in their state to host a Virtual-Only Shareholder Meeting.

While most of the major service-suppliers have systems and procedures that allow *registered shareholders* to vote, Broadridge is the only provider that provides a relatively seamless process for street-name holders to vote online and in real-time.

To date, wannabe competitors are completely stymied where *street-name holders* are concerned, because brokers, banks, mutual funds and other professional "custodians" are understandably unwilling to release highly private personal information (PPI) like the names, addresses and share positions of their own customers - much less to reveal that they *are* customers of theirs - to providers other than Broadridge.

Aside from having a long and basically unblemished track record as a tabulating agent and strong internal and external control systems, Broadridge has written contracts with most of the major custodial institutions that regulate and legally permit them to act as the voting agent on their behalf.

Yes, there are four or five service providers that provide a "workaround" for street-name holders, but it requires them to get a Legal Proxy from Broadridge, then forward it to the service provider, then wait to receive a new "control number" they can use to dial-in and properly identify themselves and, if the stars are aligned, to cast a vote.

And there's yet another set of hurdles for wannabe competitors to overcome: Most companies insist that street-name holders who may want to ask a question at the meeting will need to prove their eligibility to do so, which can only be done online by entering a valid control number.

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Here, Dear Readers, Is The Stupidest Part Of The Requirement For Online, Real-time Voting:

Yes, we know the states had good intentions when they wrote their rules for Virtual-Only meetings, but since the mid-1960s your editor-in-chief has been attending, and monitoring and certifying meeting votes - both personally and via hundreds of employees and associates in his chain of command - where he has overseen more than 50,000 meetings in all.

In all that time, he can recall only THREE OCCASIONS where the outcomes were decided at the meeting itself - other than at official proxy fights, where both sides always "hide their cards" until the day of the meeting.

Very important to know, every institutional investor we've spoken with has said they would NEVER try to vote their positions while a meeting was in progress: They want to be absolutely sure that their votes are received - and counted - in ample time...and subject to end-to-end confirmation - and definitely NOT subject to last minute Internet outages or systems glitches. And, most important to note, they study the important issues carefully...and there really is NOTHING that a company, or another investor might say or do during the meeting itself that would change their minds on truly important matters that are up for a vote. In fact, if ever there were to BE a bombshell like that at a shareholder meeting, investors would have good grounds to force a re-run.

Here Is Our Suggested Work-Around If You Want To Use A Supplier Who Can't Solve The Control-number Issues: *Have A Hybrid-Meeting*, With Strong Keep-away Rules For The In-Person Component… As The Only Way To Satisfy The Real Time Voting Requirement

Let's review the list of potentially "essential attendees" at an in-person meeting with strict and stringently defined limits on the number of people who can attend - which, please note, will very likely be limited by state and local laws re: social distancing come your meeting date:

First, one would presume, someone must "preside" over the meeting...But wait! At several of the best meetings we attended or listened in on, the Chair opened the meeting with prerecorded remarks, then conducted the Q&A period over a conference line.

All Directors are expected to attend shareholder meetings these days, unless there are truly extenuating circumstances. But there is no need at all for them to be "present" except over a conference line - which certainly takes away most 'excuses' for non-attendance, and works just fine.

As we've noted in earlier issues, the old-time tradition of having not one, but two reps from the outside accounting firm has little usefulness these days - since questions are (rather sadly) so rarely asked of them...But they too can be easily answered via a conference line...

The same thing is true for the Inspectors of Election - although there does need to be something in the game-plan - and in the script - as to how the IOE will receive any proxies or ballots that in-person attendees may present.... just in case.

We suggest that the Corporate Secretary, Governance Officer or General Counsel be there in person at in-person meetings, to take charge of the "business portion" of the Meeting - and to take charge of any proxies or ballots that may be presented, scan the fronts and backs when the meeting is over and e-mail them to the IOE...And so far, note well, this is the only person who MUST be there in person - other than the "broadcast technician"...so we're up to two people at the meeting.

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There is one fairly new group to think about, and that's the tag-team of people who are needed to read and prioritize incoming questions and tee them up to be answered (more about them lower down.) But they too can be located basically anywhere, as long as they have a phone-line to present the questions to the presiding officer or to open the phone line for preselected questioners who have provided the "subject matter" - but not necessarily the question itself - and who have demonstrated that they have a right to ask their question or make a comment.

This situation would easily allow you to select an appropriate venue, and to invite up to 23 socially-distanced and properly masked shareholders to attend your in-person meeting if they so desire - AND to legally fulfill the vexing requirement to provide real-time voting - a requirement that would otherwise come with a Virtual-Only Meeting: In effect - if you are broadcasting the meeting over the Internet - but offering an in-person-only option to vote - you will be fulfilling the letter of the law - to permit real-time voting at the meeting - because you will be hosting a "Hybrid Meeting" - as opposed to a "Virtual-Only Meeting."

The only remaining issue to decide is how to award the coveted (?) in-person seats:

We would suggest that every shareholder proponent should be invited to attend in person - but not be required to do so to have their proposal legally introduced...and that few if any would come in person.

To be "100% pure" we would suggest that any shareholder who may WANT to present a question in person - to observe the reaction, and, we say, to ask a brief follow-up question - should be permitted to do so - and given priority, until all the legally permitted seats are spoken for - as long as the subject matter is a proper matter to raise at the meeting.

The rest of the seats (still 23, we'd bet) could be awarded on a first-come, first-served basis... or by lot.

Let's be realistic: Do we really think that shareholders will be putting in-person attendance at Shareholder Meetings high on their to-do lists...in the midst of a still life-threatening COVID environment?

The VSM Q&A Process: The Hottest And Most Important VSM Issue By Far… and How To Tackle It

The most troublesome issues at 2020 VSMs - by far - have revolved around the Question and Answer Period: Just as we had warned, many activist investors took pains to submit questions - both in advance, via an e-mail to the company's Investor-Page - or by typing into a "Question Box" on the VSM site while the meeting was in progress - to see if the "system" was working, and in a fair and impartial way. In far too many cases the "system" was simply not working, thanks to problems with those control numbers...and in a few cases the "system" seemed to have been intentionally rigged to cherry-pick the softball Qs - and to deliberately exclude tough ones.

But as the **Council of Institutional Investors** has been saying - and as **Glass Lewis** and **ISS** have been saying too - "Meetings of Shareholders" absolutely MUST provide the ability for shareholders to engage in "open and spontaneous interactions with management and the board."

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Many meeting participants, most notably **BlackRock**, have gone so far as to say that Virtual Meetings "should provide the same kind of opportunities for spontaneous and unscripted interactions that in-person meetings do." But let's face up to it folks: Asking stockholders to type their questions into an online "question box" as the only option - while the meeting is in progress, no less - is hardly a shareholder-friendly option and certainly not the equivalent of an "in-person experience."

We at the *OPTIMIZER* have been saying for many years that the Q&A period is not only the most important part of a Meeting of Shareholders - it is, in fact, its' very raison d'être. AND, more importantly, that it is, by far, the most valuable contributor to good corporate governance there is: It forces senior management to elicit info from the company at large, and to bone up on important issues - and on potentially important developing issues as well...

There is yet another good-governance aspect of a good Meeting of Shareholders, and that is the opportunity for shareholders to see as well as hear the management responses: We have been to dozens of meetings where we were so impressed by the quality of management, and the way they handled tough questions, that we bought the stock...and, almost always, did incredibly well.

But we have been to many meetings where a new CEO came across as so self-centered, and often so rude and crude and full of himself when faced with tough questions that we sold the stock that day...and saved ourselves from major losses. As we've mentioned here before, such folks almost always exhibit "body language" and a variety of "tells" when they are not telling the full truth - or not fully convinced of what they are saying - or maybe hiding some bad new info and fearing it might come out during the Q&A - that savvy observers can and do pick up on.

With that said...

HERE ARE OUR PRACTICAL SUGGESTIONS FOR HANDLING THE QUESTION AND ANSWER PERIOD IN A THOUGHTFUL, INVESTOR-FRIENDLY, TOTALLY FAIR AND THOROUGH MANNER:

Step-one should be to prominently *welcome* - and to *solicit* shareholder questions in your proxy materials - and to carefully explain exactly how they can be submitted, and how they will be answered.

A very good step-two: Invite shareholders to submit questions in advance, via an e-mail to your Investor Relations site. Some institutional investors have pooh-poohed this, as leading to cherry-picked questions and canned answers. But this is the *easiest* way, by far, for all concerned - and we have found this to be a very good indicator of the issues that are on the minds of the savviest and most interested shareholders. It's also a quick and easy way to "get the Q&A ball rolling...and it provides excellent opportunities to have the questions answered by the best-qualified person...which conveys a welcome "openness" to shareholder questions, helps to showcase the management team as a whole and adds much needed variety to the webcast. But this should definitely NOT be the only way you allow questions to be asked.

Make it clear that the question period will be in two parts - the first for questions that relate to 'the business of the meeting" - the items to be voted on - and a second period, following the voting, for general questions about the business itself or for any comments that a shareholder may wish to make about the conduct of the business. This will make it easy for you to sort out and address the questions that pertain to the election of directors, ratification of auditors and various compensation matters and those pertaining to the business of the company as a whole. It will also give you time to assess the number of questions that may be arriving in real-time from other sources - and to sort them all out and tee them up in a logical and fair fashion.

Shareholder proponents should be given a "reasonable time" to introduce their proposals, and a brief "seconding statement" should also be allowed, if another shareholder wishes to make one.

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Then it would only be fair to ask if there are any questions or comments on each proposal, and to wait a few seconds to see if there are any. (At most meetings there are few or no additional comments or questions on these matters.)

It is perfectly fair to expect shareholders who wish to ask a question at the meeting to identify themselves - and also to confirm themselves as shareholders in advance - just as one does at in-person meetings...But there are some potential difficulties you will need to think through to give all shareholders a "fair chance" to be heard: Please note carefully that if they are registered holders, you - or your service-provider, via its meeting app - should be able to confirm their share ownership with relative ease - but that not all service providers are able to do this.

If they are *not* registered holders - and you are using a service-provider other than Broadridge - there are some tricky logistical issues to sort out: To be "perfectly correct" prospective questioners have long been required to provide proof of share ownership in order to be recognized at a shareholder meeting. But at a non-Broadridge VSM this would have to be done in advance - and it requires quite a bit of extra time and effort by all concerned.

We suggest that if there are not a lot of questions in the queue, no real harm is done by simply "accepting" an *assertion* as to share ownership once a person has stated his or her name. And - if there are few or no questions in the queue - no real harm is done by taking a question from *any* interested party.

If questioners have identified themselves and asked to be recognized at the meeting in advance, it is not only perfectly proper, but smart to ask them to indicate what the general *subject matter* of their question is - to assure that it is a proper question or comment to come before the meeting as a whole and to tee it up at the proper time. But there is no need to ask what, exactly, the *question* is. This is a good way to assure "spontaneity" AND to guard against accusations of "cherry-picking."

If few questions are expected, consider allowing shareholders to preregister and to submit their question over a dial-in conference-number: For companies that are used to getting very few or even no questions, this is an excellent way to go: It will allow you to offer shareholders the ability to call in on the same conference line you use for Directors, and for other participants in the meeting, like shareholder proponents, Inspectors of Election and outside auditors - and will help you to manage the question period smoothly and cost-effectively.

If your company has had many questions asked at in-person meetings, however - or if there are issues that might generate a higher-than-usual number of shareholder questions - offer a toll-free, operator-assisted number that will allow questioners to "wait in a queue" on a first-come-first-served basis. Aside from being the "fairest way" - and one that eliminates the chance to "cherry pick" - and that guarantees "spontaneity" - it is essentially the same system that has been available forever at in-person meetings. Please bear in mind that every Board Chair worth his or her salt knows how to deal with questions that are not in order - and with "hard questions" too...smoothly and with dispatch...And actually, it gives them an opportunity to really "show their stuff." And please know that this is NOT an "expensive" option to offer - especially when compared to the expense of hosting a large in-person meeting.

Be sure to alternate questions in a fair and strictly impartial manner, starting, we'd suggest, with the first pertinent question received on your Investor Page, then moving to the first preregistered question, over a conference line, then to the first question in a phone-queue if you have one and then to the first person on line if you are hosting a Hybrid Meeting that has in-person attendees, then to the first valid question to come over a live internet site, then continuing in that order.

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Our top-tip here, recognizing how hard it is to Chair a meeting while juggling three or more separate queues of questions, is to have your Chief Corporate Governance or Investor Relations Officer - along with a trusted colleague - carefully sort-through, tee-up and ASK the questions that have been submitted via the IR page or via the "question box" on the meeting site.

If you really want to provide an experience that is as close as possible to an in-person meeting, plan to broadcast *live video* of the actual proceedings - and have the camera focus on the person who is answering each question. This may be a lot harder to do if you are having the questions answered by a variety of people - many of whom may not be in the meeting room - but it is certainly not rocket science to pull this off successfully. And, of course, it makes sense to weigh this against the possibility that, as is true of the majority of Shareholder Meetings, there are no questions at all.

Allow each questioner to ask one brief follow-up question if they wish to do so, to assure there is a true *dialogue* between the questioner and the management representative or director who answers each question.

Be sure that you have allowed a "reasonable" amount of time for each subject on the agenda to be covered - and for a "reasonably long" general Q&A period. This is where taking questions in advance can be particularly helpful.

And please remember that there is often no real need to impose an inflexible "hard stop" in the event that more questions than anticipated are still in the queue when the projected time has elapsed.

Be sure to commit - up-front - to answering all questions that were asked, prior to and during the meeting via the web-app, and then follow through promptly, by posting the answers on the Investor Page.

The Five Best VSMs To Review - And To Learn From…
The Most Noteworthy Feature Of The Very Best VSMs? Women!

A month or so ago we suddenly realized that a feature that made the best VSMs so special had gone totally unremarked. So we emailed a little preview of the article we intended to write in this issue to our great friends at TheCorporateCounsel.net.

"Here's another 'unusual observation' about three of the four best Virtual Meetings we encountered that did not occur to us until a week or so after we published our reviews in the second quarter *OPTIMIZER*: The three very best meetings all gave significant 'air time' to WOMEN. To us, this completely changed the tone - and the tenor - and the content of the meeting in quite an amazing way vs. the traditional meeting model - where, in the senior-editor's 50+ years of attending shareholder meetings, the proceedings were, almost always, completely dominated by 'old white men.'"

"At **Starbucks**, after a few opening remarks from the CEO, he turned the meeting over to **Rachel Gonzalez,** the GC, who briskly ran 'the official business of the meeting,' introduced the Shareholder Proponent, and, since the proponent's issue - on diversity and inclusion - was clearly in her wheelhouse, *she* gave the company's response in a very thorough and persuasive manner. Two other senior women officers, **Rossann Williams**, EVP and President of US and Canadian Operations, and **Rosalind Gates Brewer**, the COO, answered several Covid-19 related Qs from shareholders that were squarely in their wheelhouse.

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"At **UnitedHealth Group**, the Chairman and CEO followed a similar playbook - turning the 'official part' of the meeting over to Board Secretary **Dannette Smith**, who moved the meeting along briskly and introduced the Shareholder Proponent there too. The first shareholder question that was teed-up - on the director-selection process - was fielded in a wonderfully in-depth and highly articulate way by a Director, and Chair of the Governance and Nominating Committee, **Michelle Cooper**.

"The **United Parcel Service** meeting was marked by the elevation of the highly talented and successful **Carol Tomé** - a long term UPS Director - to become the CEO. And what a pleasure it was to hear this wonderfully accomplished woman answer several shareholder questions in her new capacity.

"All four of our original top-four meetings were also marked by another feature that we have long been advocating as a way to add interest and depth to shareholder meetings - and to showcase the strong governance - and the strong bench of talent (when there is one) - the practice of the CEO to call on the person who is really the best person to answer, rather than to feature "the old white guy" as the source of all knowledge.

"The dominance of "old white men" at shareholder meetings has long been an issue with your senior-editor - despite, or perhaps because of now being one himself. Here's an article about this from 2017...https://optimizeronline.com/diversity-and-the-prevalence-of-old-white-men-at-shareholder-meetings/ But the 2020 meeting season seems to us to be a game-changing one - and one that is long overdue."

But OOOPS - within a week of their publishing the little blurb, we realized with a start that ALL FOUR of or then four-best meetings we reviewed gave women a prominent role: We had been so impressed by the well-oiled progress of the Intel meeting, one of the first we listened to, that we hadn't remarked on the key role played by Intel's Corporate Secretary, Susie Giordano, who handled the official business of the meeting so smoothly and efficiently.

Readers; we urge you to go back and read the full reviews of the Intel, Starbucks, UnitedHealth and UPS Virtual Meetings in our second-quarter issue...or, better yet, to tune in a few via their website Investor pages.

But oops yet again ...and a REALLY BIG OMISSION ON OUR PART as it turned out... we heard from at least four sources that the 2020 GM meeting was also one of the very best...And we realized at once, to our chagrin, that a woman - the estimable Mary Barra - had presided in her role as Chairman at THAT meeting.

So Here Is Our Review Of The GM Meeting, Which Now Takes First-Place In Our Book, for reasons we will cite as we go:

The GM meeting, which ran just over an hour and seventeen minutes, began with a lively 10-minute product-oriented video for the early-arrivals. Then, in a prerecorded video - and the only one of our top-five picks to have any videos at all - Chairman and CEO Mary Barra opened the meeting and gave a brief preview of a video to come, starting with GMs actions and its future efforts to deal with racial injustice and 'inclusion,' a report on the COVID pandemic and a summary of "the state of the business."

Then she turned the formal part of the meeting over to **Rick Hansen**, the Corporate Secretary, where his script is well worth studying for its thoroughness and its scrupulous "correctness."

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There were nine items on the agenda; five management proposals plus a proposal by **John Chevedden** on his campaign to allow shareholders to act by written consent, one on Proxy Access, one on Human Rights from a group of religious orders and a proposal re: Lobbying Activities from the NYC Comptroller, where Chairman Barra called on each proponent in turn, and cut considerable slack when most of them went over their times limits, politely asking only the longest-winded one to please wrap up his remarks, which he did at once.

While we usually advise companies to simply say thanks, and state that their response is in the proxy materials, Barra commented briefly - and to very good effect - on three of the presentations to better clarify GM's actual record, which - on human rights and ambitious goals for zero-emissions - is a very impressive record indeed.

Then, a quick cut back to Rick, who announced that there were 180 shareholders and guests in attendance via the webcast, gave the preliminary report on the voting and teed up the video wherein Barra addressed racial injustice and GM's very pointed and elaborate action plan, GM's amazing - and inspiring response to COVID - with great footage to show how quickly they pivoted to turn out large numbers of ventilators and protective equipment - and an in-depth review of GM's progress on all-electric vehicles, its goals toward zero-emissions and the appointment of a Chief Sustainability Officer - and to note that GM is among the top-50 companies in the world for "diversity" and overall "good culture"...And WOW, she surely convinced and inspired US.

Then Rick opened up the Q&A period, and again provided the toll-free number that shareholders could call, and press 'star-one' to be placed in queue. As far as we know, GM was the only company to provide what was previously a fairly common facility to shareholders this season, and this alone would put them number-one with us.

The first question was from the phone line - and EEEK - the caller had dropped off the line! Rick invited the caller to try again and smoothly segued to a question that had come in via the Investor Page - on the fate (no surprise here) of the GM dividend, followed by a question from the meeting-app on electric vehicles. Then, four good questions in a row from the phone - three of them from analysts and investor advisors, mostly probing the 'disconnects' between GM's steady business progress, and leadership, accompanied by a still-lagging stock price... and a call from **Tim Smith**, a long-term leader in the socially-responsible investment business...and a final Q from the meeting portal on GM's charitable contributions, and on how to qualify for them...Then a strong closing statement from Mary, emphasizing again GM's focus on diversity and inclusion.

A brief personal note on shareholder meetings and brand loyalty: We have been GM-only customers for over 20 years...and we are currently on our tenth Suburban or Yukon where we are completely hooked. We switched to GM to continue to "buy American" after a very long and loyal run with Ford - when we went to a Ford shareholder meeting and were told that "defects are an unavoidable part of the auto business" - and we realized that we were seeing that ourselves as, thanks to that approach, we think, each year's Explorer was worse than last year's. We sold our Ford stock that very day and never had cause to regret it.

The content of this year's GM meeting - which reflected deep respect for customers, employees, society at large - and especially for stockholders, whom most VSM meeting hosts blew off badly this year - went a very long way to cement our loyalty more firmly than ever...and made us proud to be GM owners.

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A Few Notes On The Second Proxy Contest Conducted As A Virtual-Only Event… And On The Use Of A "Universal Ballot"

The *OPTIMIZER*'s sister-company, CT Hagberg LLC, provided the Independent Inspector of Election in September at what we believe was the second Virtual-Only proxy contest to date, at a small bank in the Midwest.

Three of the bank's investors, with roughly 30% of the stock - who had previously sought a merger with their larger nearby-neighbor - proposed a single candidate of their own for the three open board seats, and offered two proposed governance amendments, which the target company also opposed.

As we always advise potential clients before we are retained, *"Hope for the best, but prepare for the worst"* we told them. *"And never under-estimate the opposition in a proxy contest, since no one ever proceeds unless they believe they have a 'path to victory' that might come as a total surprise to the target company."*

As always, we engaged in elaborate due diligence drill with the subject company's Transfer Agent, Tabulating Agent and VSM-facilitator - **AST** - and with company counsel - carefully documenting what we needed to see, and exactly what we would need to have in hand from AST, and from both sides in the fight - to physically "inspect" before certifying the vote. And we virtually-attended both a rehearsal meeting and the actual one via a phone line and via the Voting app.

Even when the opposition acted surprised when they discovered their candidate was not included on the company's own proxy card (Duh!) we stood carefully on guard for something new and unexpected - like a last-minute drop-off of proxy cards collected in an 'exempt solicitation' - or maybe a bunch of last-minute votes via the VSM app.

We drafted - and insisted that there be - a "Universal Ballot" on the meeting-app; one that would allow all voters to mix and match among the four candidates, and that warned them prominently - on the ballot and also in the meeting script - to vote for no more than three candidates. (And actually, we don't think that any of the VSM apps that are out there are capable of posting two different ballots anyway - nor should anyone be trying to do so,)

After our due diligence drills we were quite certain that we could receive and review any and all hard-copy votes - and a detailed tabulation of all votes received by mail, phone, Internet or over the meeting-app - and to issue a Preliminary Report on the Voting within a day or two after the meeting. If either side were to have questions about any of the votes, we were certain that we could allow them to view any and all items they wished to see - over their own computer screens - to assure themselves that we had recorded the "winning votes" correctly.

Happy day for the target company…the opposition never drew down any Legal Proxies in time to vote in real-time - and never drummed up any proxies other than their own. They actually failed to cast any votes for their own candidate (!) merely marking the Abstain box on the target company's proxy cards they held, thereby handing the company 100% of the votes cast for Directors. The dissidents accounted for almost all of the votes in favor of their proposed bylaw amendments, giving the company a 70-30 victory on the proposed amendments… but not having spent a dime of their own money on legal advice or proxy solicitors…And, oh shucks, sparing the IOEs the fun and excitement of a formal challenge to the voting.

The big takeaway here is that with the right plan, proxy fights can be handled just as thoroughly in a virtual-only-mode as with an in-person review - with far less fuss and muss than there usually is in those often-overheated in-person events.

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Just For The History Books:
The Three Meetings In Our 55 Years Of Meeting-Going Where Minds Were Made Up And Outcomes Were Decided By Votes In-Person At The Meeting Itself: Three Of 50,000+ Times!

The first incident we saw was the ITT meeting of 1997 to approve what was then a mega-merger of Starwood Lodging and ITT. Over a dozen reps from big hedge funds came armed with their proxies - and didn't mark them, much less hand them in, until they had heard from and been personally reassured by the CEO's of both firms, whereupon the merger was handily approved.

The second was at a hotly contested election to "open up" a big NYC-based closed-end mutual fund, where a majority of the holders were present in person. But almost all of them had Voting Instruction Forms rather than actual proxies or Legal Proxies in hand. As a result, the Inspector (your editor-in-chief) had to declare that a quorum was not present, and, in the scramble that followed, it became clear that most of the attendees - whether pro or con - did not have the required paperwork to cast their votes, and hadn't the slightest idea how to lay hands on it! So the meeting adjourned until well after lunchtime, during which time, after a bit of coaching from the IOE on what to do, the shareholder reps made frantic phone calls, borrowed fax lines from the meeting-site host - and a few actually walked to local offices of their fund custodians to obtain Legal Proxies. THEN...when the preliminary results were announced, approving the open-ending, a lawyer who'd come from Delaware that morning - bearing his own fund's proxies, plus a dozen other proxies that had been entrusted to him by other investors...and more than enough to *sink the deal*... came steaming up, wild-eyed, to demand that the polls be reopened to count the votes he'd forgotten to hand in and swearing to sue the IOE if he failed to comply... "Fat chance" said we, "You will never win - and as to suing anyone - what will your buddies back in Delaware say when they find out you failed to vote their shares? It's YOU, not we, that would likely get sued over this!"

The third incident was at a contested meeting in Seattle, about ten years ago, where a dissident director-candidate seemed to have a tiny edge in gaining one of the two open board seats... Until, that is, he got up to speak...and did such a terrible job of expounding on his case that three attendees hurried to the Inspector's desk - while he was speaking - to revoke their earlier votes in his favor.

SEC Fines Transfer Agent VStock Transfer LLC For Numerous Violations; Sets Conditions For A Compliance Consultant To Audit, Report, Recommend And Followup On Remedial Actions

The SEC's August 27th Release institutes a Cease and Desist Order on a virtual kitchen-sink of violations, including failure to transfer and turn securities around within required time frames, failure to report their failures to do so, failures to properly safeguard securities and funds, to maintain master securities records and transfer agent/registrar journals - and lastly, for violations of the "first commandment" in the T-A world - failure to maintain the "control book." **

Founded in 2009, VStock has become one of the larger and more successful of the 'smaller transfer agents' by focusing on small and newly public companies, promising "best in class service with a cost savings situation." As of year-end 2019 they had an impressive 1,009 client companies on their books. And with only 140,000 shareholder records on the books, and a mere 7500 items received for transfer each year - and with only 10 dividend payers - there really is not much heavy-lifting to be done there. VStock's 25-33 employees produced $6 million in income in 2019, according to the 2019 TA-2 form filed with the SEC ...for a pretty respectable return of somewhere

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between $181,818 and $240,000 per employee. But with almost of the employees in the $35k - $55k/yr. salary range, we'd guess, the net to the owners is considerably higher -probably around $5 million a year.

The SEC fined VStock a mere $65,000 for the big list of failures. But, as the headline notes, they accepted VStock's offer to engage a disinterested Compliance Consultant to audit their systems and procedures from top to bottom, make recommendations for improvements and see that they were implemented - all within fairly tight deadlines.

** For the uninitiated, the control book is the key part of a 'double-entry bookkeeping" system that has been used from time immemorial, long before the SEC came on the scene, to assure that the shares shown as outstanding in the control book jibe with the shares on the master records, and with any and all properly authorized "reserves" of cash and securities. But, truth to tell, failures to observe this commandment have been breached with regularity in the industry - and by some of the major players - and they were at the root of both of the most recent departures from the scene of mid-sized transfer agents **Illinois Stock Transfer Company** (shut down by the SEC) and **Registrar and Transfer Company**, where a shotgun wedding with a big T-A saved the day for clients and their shareholders...and for the SEC too.

Readers, we fully expect VStock to ride this out and to get back on track just fine...But we urge you to read our article on Transfer Agent Liabilities on our website if you are searching for a Transfer Agent - and the article below on the tombstones for M&A activities and Cash Repurchases of stock before selecting an Information Agent, Paying Agent or Depository Cash Buyback Programs.

Information Agents: Everything You Need To Know… Except For The Really Important Stuff?

The *OPTIMIZER* editors - and other professional "Wall-Street-Watchers" too - are always avid watchers of the "tombstones" that describe the terms of newly proposed Mergers and Acquisitions - and especially those "Offers to Purchase for Cash" - in newspapers of record like the NY Times, Wall Street Journal and often both.

We always look to see who the Dealer Manager is, and which of the many contenders to be the Information Agents and Depositories have won the deal, and we bet that many of our readers do as well - or certainly should.

We also look to see how BIG the tombstones are...to get an idea of "Who's Who" among the many vendors involved in vying for these intensely contested and highly lucrative deals...and to see who the big spenders are in buying those tombstones, which, mysteriously but quite often, bear no relationship at all to the size and dollar value of the deal - seeming rather to be evidence of the salesmanship skills of the Information Agent, who arranges for the ads and ad placements.

We also look with special care to see which Transfer Agents are winning deals as the Depositories - typically racking up big fees, holding on to huge chunks of cash for long periods, and sometimes adding many new shareholder accounts - and which ones may be losing most or all of a big client's shareholder records forever.

Over the past few years, we have noted an increasing and disturbing trend: Tombstones that mention "the Depository" - and sketchily outline the major roles they play - but which completely fail to give the Depository's name, much less their address, or how best to contact them if they have a last minute need to tender, guarantee delivery, assure themselves that their deliveries have been received in good order or to revoke their tenders.

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In a September 23rd tombstone in the WSJ, for example, two-thirds of a page was taken up by teeny-tiny type outlining an Offer to Purchase for Cash by **Hilltop Holdings** of an eye-popping $350,000,000 of its shares, where "the Depository" was mentioned nine times in six of the tombstone's 15 paragraphs…but never once mentioned by name. ***"What sort of 'Information' is THIS?" one might well ask. Who IS the unknown entity that is being entrusted to hold, and to properly pay out $350,000,000 of shareholders' money???***

Readers: This is really important information for you to note when doing your due diligence before announcing a deal, and it has the potential to save Mega-Money for your company:

Are the proposed Information Agent and the proposed Depository proposing "reasonable fees" and commercially reasonable terms? Are they really earning their pay, or simply counting on you to be preoccupied with other matters and willing to go with the flow? A tiny bit of comparison shopping can, in many instances, save your company millions of dollars.

A much more important question to ask however; What if an employee of the Depository you select anonymously "wires out" a big chunk of the dollars to persons unknown, or simply absconds with the funds? Or, as outlined in our must-read article on Transfer Agent Liabilities, what if the T-A mismanages the payout process and comes up way short of funds…and has insufficient insurance and cash reserves of its own to cover the loss? Guess who is on the hook?" Your company.

Out of Our In-Box:

A note from Don Carter on "The Long and Checkered Past of the Proxy Solicitation Business": *"Read the 'Long and Sometimes Checkered Past' article today. Just to correct, I worked with Al Miller for only one year [and] started the proxy side of the business at Shareholder Communications. For the record, my guilty plea and conviction were overturned by an Appellate Court judge five years later, citing prosecutorial misconduct. It was irrefutable that I had nothing to do with "overbilling" and an exhaustive $500K audit by Arthur Young & Co. of TCO's billing practices showed that in the prior three years we had actually under billed clients by an average of 15%. To this day, in my older years, I am most proud of the survival and successes of many of my employees…not one of whom was ever hired from a competitor."*

And a P.S. from the *OPTIMIZER*: We must say that we were pleased to hear from Don after so many years, and to update the record here, and in our History section. We have long said that Proxy Solicitors should pass a hat and erect a statue of Don in downtown NYC: In our book, he took the old-fashioned "Proxy Chasing Business" to totally unforeseen heights by focusing on proxy fights. And yes, he hired, trained and mentored many of the best people in the proxy fight game, most of whom are still in the game.

The *OPTIMIZER*'s editor-in-chief will never forget the three or four days during which he introduced the Corporate Secretary of one of the old **Manufacturers Hanover Trust Company**'s Stock Transfer unit's most prestigious public companies to each of the leaders of then-leading proxy solicitation firms. After visiting with Don Carter, followed by a meeting with the grand-guru of the then *largest firm*, our client could not stop laughing about the contrast between the sharp and aggressive Don Carter and the pompous fustiness - and basic cluelessness - of the industry's "grand guru."

And it was Don Carter - and the leader of yet another proxy solicitation firm who shall be nameless - who impelled your editor to start a proxy solicitation business at Manny Hanny: We vowed we'd never be out-foxed again, after Carter baited a client, and its proxy solicitor, who should have known better - into closing the polls as soon as a vote to convert from a savings and loan association to a New York chartered commercial bank and trust company had, apparently, won the day. But what they did not know until Carter stood up to loudly contest

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the "win" - was that folks at the Carter Org had planted numerous duplicate votes in favor of the deal to lull the company into a premature closing of the polls - only to reveal the dupes - and to revoke many of the biggest votes in favor before the polls closed and vote NO - in order to thwart a deal that was certain to be approved if the meeting had been adjourned to solicit the many non-voters. In the end, the deal WAS handily approved - but only after MHT - whose IOE had not had a chance to examine any of the items delivered at the meeting, and at the last minute to our NYC office - had to fund a second meeting. And the company's solicitor, who was the real culprit here (we called him Rumpelstiltskin because of his famously hot temper, and whose company was famous for slipping new proxies under hotel doors of the IOEs in the wee hours of the morning) had to work for free.

Also in our in-box, a blog from Doug Chia, Chairman of Starboard Governance, has been getting a lot of well-deserved attention for its greatly sharpened attention to all STAKEHOLDERS. Here's an excerpt:

> For the past 18 years, the committee structure for public company boards has been dictated by the Sarbanes-Oxley Act of 2002 and the related rules and regulations promulgated thereunder. Those rules and regulations essentially mandated all public company boards to have the "big three" committees: audit, compensation, and nominating. Some boards also created (or already had) other specific committees for oversight of finance, risk, public affairs, technology, and sustainability, just to name a few.
>
> However, the big three committees largely address matters that directly relate to the interests of the company's shareholders with the other three stakeholders being indirect beneficiaries. This required structure was appropriately coming out of the corporate failures of the early 2000s and fitting when maximizing shareholder value was still seen as the end-all, be-all. However, it may not be well-suited to a new era when boards are committing to place firm value in the context of a broader set of constituencies.
>
> In an ideal world (where the current big three committees are not required), rethinking a board's committees would start with a blank slate. The board would write down each of its annual agenda items, both those discussed by the full board and those covered in committee. It would then map each item to one or more of the four key stakeholders. Based on that exercise, the board would assign each item to one or more of four new stakeholder-focused committees and/or the full board, and it would adopt charters for each reflecting the end result. One of the many outcomes of creating committees this way would look like this:
>
> **Customers Committee:** Focus on sales of products and services, go-to-market strategy, customer satisfaction, product safety, R&D, and innovation.
>
> **Employees Committee:** Focus on the company's overall workforce, health and benefits, compensation, labor relations, diversity and inclusion, talent development, recruitment and retention, training, employee engagement, and corporate culture.
>
> **Communities Committee:** Focus on regulation, legal, compliance, tax, government affairs, public policy, sustainability, corporate social responsibility, philanthropy, community relations, and corporate reputation.
>
> **Shareholders Committee:** Focus on financial and non-financial reporting, ESG disclosure, corporate finance, M&A, capital allocation, enterprise risk management, corporate governance, board composition, investor relations, and shareholder engagement.

As board members ourselves, your editors like this idea and this outline a lot. And we find it equally appropriate for non-profit boards, where the "Shareholders' Committee" would simply be the "Finance and Governance Committee(s)."

People: Interesting Moves In The Proxy Solicitation And Advisory Businesses Continue Apace

Tom Ball, who recently "retired" from **Morrow Sodali**, then, briefly, went on his own, has joined **Alliance Advisors** as a Senior VP in the Proxy Solicitation Group. Tom is one of the best known and best-liked people in the industry, with over 40 years of experience, and seems sure to be a major rainmaker for the always-growing Alliance Advisors.

Meanwhile, **Morrow Sodali** has added "Strategic Stock Surveillance capability to its M&A and activism practice to meet growing client demand for specialized expertise" by hiring **Jonathan D. Eyl**, formerly the co-head of Stock Surveillance at **MacKenzie Partners**. Jon, their press release noted, "is the latest addition to the firm's growing M&A and Activism practice, following the recent appointments of **Paul Schulman**, Managing Director" who joined from MacKenzie Partners in January "and **Harry van Dyke** as Executive Vice Chairman." Van Dyke is the former CEO and founder of **Teneo Capital,** an investment banking boutique.

Morrow Sodali also announced the formation of a Strategic Advisory Board in June, "comprising world-class executives and consultants from a wide range of disciplines. The eight newly appointed external Board members…will play an integral role in helping us achieve our growth objectives and build on our momentum in attracting and recruiting senior talent," said **Alvise Recchi**, Morrow Sodali's CEO. "We have assembled a talented team with a wide range of expertise in areas such as management consulting, executive leadership, legal, finance, corporate governance, international business and shareholder engagement. We look forward to working together and leveraging their collective knowledge to position Morrow Sodali for sustained success." The widely esteemed **John Wilcox,** who served as Chairman of Morrow Sodali from 2006 through June 2020 will be on the Advisory Board and has been named Chairman Emeritus of the firm. Detailed biographies of Morrow Sodali's Strategic Advisory Board can be found at https://morrowsodali.com/our-people/strategic-advisory-board.

Regulatory Notes… And Comment

ON THE HILL:

Political wrangling on top corporate governance issues continues…no surprise…as the Department of Labor issues proposed rules that will make it much harder for ERISA fiduciaries to cast proxy votes on ESG issues… requiring them to determine they add economic value - even while the evidence that they *do* has been increasing support for such initiatives by big investors and, as we all know, new ESG proposals have been increasing steadily. No surprise, the **CII** is calling on the **DOL** to withdraw the rules, and we would not be surprised to see them go to court, and to win on the merits, if the November elections fail to shift the political winds.

And Double-Ouch! In late September, the Commodities Futures Trading Commission released a report on "Managing Climate Change" - concluding that *"A world wracked by frequent and devastating shocks from climate change cannot sustain the fundamental conditions supporting our financial systems."* (Another tip of the hat to **Doug Chia**, who observed that the DOL "seems to have joined the Flat Earth Society.")

AT THE SEC:

The Commission approved, along strict party lines, the revised rules governing proxy advisors, which are no big deal really, but (great job, corporate citizens) are likely to raise the price of their advice. That'll fix those hated but indispensable advisors, for sure!

They also issued revised proxy proposal submission rules, and re-submission thresholds that are far less draconian than initially proposed - but which don't pass the required cost/benefit analysis test either in our book - to take effect in January 2022. We think the new rules are no big deal either: In fact, we bet that institutional investor support for *sensible proposals* will actually increase, as a way to keep them alive and in the mix.

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We were *very pleased*, however, to see that the staff finally figured out and fixed the big deficiency in the rules that allowed proponents to ignore the limits on the number of proposals allowed per-proponent by handing out "proxies" to friends, relatives and maybe paid strangers.

IN THE COURTHOUSE:

Big news in Delaware as the Chancery Court quashes - and trashes - the Delaware State Escheator's far-reaching subpoena of AT&T records going all the way back to 1992 - for holders in *all jurisdictions* - and shifting the burden to AT&T to prove that funds in question are not escheatable. **Chancellor Travis Laster**, who could have quashed the subpoena on any of these grounds, issued a stinging rebuke to the Escheator, and to its designated "auditor" **Kelmar**, noting that:

"[A] combination of factors supports a finding that to enforce the Subpoena would be an abuse of this court's process," noting that a subpoena can be abusive if its demands for information are "'so obviously pretextual or insatiable' as to extend 'beyond a legitimate inquiry… [or] if the agency appears to be 'pursuing a claim it knows it cannot win' on the merits."

Laster noted that the case is part of a much larger picture: *"[I]n recent years, state escheat laws have come under assault for being exploited to raise revenue rather than to safeguard abandoned property for the benefit of its owners … even as they more aggressively go about classifying property as abandoned…the preparation of the Subpoena in this case provides cause for concern. The Department delegated its investigation to Kelmar … There is no indication that the Department had any meaningful involvement in the investigation. The Department appears to have lent the State Escheator's investigatory authority to Kelmar to use as it sees fit.*

"Kelmar is compensated contingently… [This] potentially creates a pernicious incentive for Kelmar to serve broad information requests and engage in expansive audits that impose substantial burdens on companies, thereby inducing settlements that generate income for Kelmar. The breadth of the Subpoena in this case is suggestive of such tactics.

"The breadth of the Subpoena also suggests that Kelmar may be furthering its own interests in other ways … The fact that Kelmar works for multiple states supplies a potential motivation for Kelmar's insistence on obtaining records for all checks and rebates, regardless of whether or not the last-known address on AT&T's records indicates that the property would be escheatable to Delaware. Those records would be helpful to Kelmar in recovering property for other states, but helping other states recover property is not a purpose of the Escheat Law."

It is not clear yet whether Delaware will appeal the decision, reissue the Subpoena within the confines described the Court, or come to an agreement with AT&T on a more reasonable production of records.

But here are a few key take-aways from Jen Borden, of Borden Consulting Group, who has been instrumental in assembling and articulating the many arguments against the egregious actions of the Delaware State Escheator (and who, in the interest of full disclosure - and which we are very proud to note - is also an ace Inspector of Election with the firm of CT Hagberg LLC)

- **Holders should absolutely consider whether or not to provide records related to owners with addresses in jurisdictions that are not participating in the audit.**
- **Holders should reject a state's demand to prove that a check is not escheatable: It is the state's burden to prove that the check is escheatable (as the Court made clear.)**
- **The correct look-back period must be determined, based on the law in effect when the audit commenced.**
- **Finally, although there may be some efficiencies in one firm conducting a multi-state audit, the time has come to evaluate once and for all whether the inherent conflicts of this approach outweigh any potential benefits.**

We think that if Delaware fails to back off it will set the stage for a much-needed review of the constitutionality of their actions that may well end up in the Supreme Court, where we feel certain that their actions will be judged as clearly unconstitutional.

Watching the Web

Your editor-in-chief had an interesting - and a grueling experience in September when his LinkedIn account was apparently "hijacked by a squatter." People who looked him up on LinkedIn found instead an attractive Asian woman, holding herself out as a doctor, practicing medicine in Japan. All traces of Carl were gone, except for his schools, where an MD from NYU was tacked on to his BA by the squatter - which we still can't manage to erase.

Meanwhile, Carl began to get messages - some from people he knew, but others from people (mostly professional men) all over Asia - responding to a message that began, "How are you my dear?" Only ONE of Carl's many LinkedIn contacts realized that this salutation was "not your usual style" and tipped him off to the "squatter."

At first, LinkedIn was no help at all - flatly refusing to simply delete the new squatter's site and restore the 10+ year old one, as a very long-term LinkedIn member would expect, one would think. Despite the long-term history with LinkedIn, and the detailed description of the scam we provided, they wanted a special form to be filled out - with a scan of a government issued photo-ID attached. Finally, after a two-day delay, while he continued to get messages from old friends and totally new wannabe ones - which now seem to be permanently stuck to us - Carl was able to laboriously delete the "doctor's" info, line by line, and to re-create his own profile from scratch... although after 10 attempts, he still can't delete his purported MD.

Adding more insult to injury, due to their message-blocking 'technology' he is unable to inform a daily trickle of responders to the doctor's initial salutations that he - and they - have been scammed. Most infuriating of all - despite three written requests, LinkedIn is unwilling or unable to explain how this happened - and why - as well as any potential collateral damages there may be to the security of his account or those of both his long-term and unwittingly new contacts.

COMING SOON!

THE SHAREHOLDER SERVICE OPTIMIZER

- **Our annual year-end Special Supplement, where we will outline the many permanent changes to the public-company landscape the Covid-19 pandemic will engender…and what smart companies should be doing as a result.**
- **As always, we will also focus keenly on the service-provider universe - and on the HUGE impact that Covid-19 will have on them.**
- **Fellow service providers: Please feel free to contact us - to share your perspectives, and your approaches to the big challenges ahead…and to reserve your space in our full-color magazine, which will reach over 20,000 senior corporate managers.**

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