

OPTIMIZER

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

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NOW IN OUR 29th YEAR!

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Issuers: Big Investors Are Raising The Bar On Their Expectations For VSMs Big-time: We Predict A Potential Shortage Of Top-quality VSM Providers Vs. Expected Demand... Start Your Engines Now!

Glass Lewis's late November release of its [2021 policy guidelines](#) pretty much summed up what every major investor says they will be looking for in Shareholder Meetings in 2021:

- We look for robust disclosure in a company's proxy statement which assures shareholders that they will be afforded ***the same rights and opportunities to participate as they would at an in-person meeting.*** [Emphasis ours.] Examples of effective disclosure include:
- addressing the ability of shareholders to ask questions during the meeting, including time guidelines for shareholder questions, rules around what types of questions are allowed, and rules for how questions and comments will be recognized and disclosed to meeting participants;
- procedures, if any, for posting appropriate questions received during the meeting and the company's answers, on the investor page of their website as soon as is practical after the meeting;
- ***addressing technical and logistical issues related to accessing the virtual meeting platform;*** and
- ***procedures for accessing technical support to assist in the event of any difficulties accessing the virtual meeting.*** [Emphasis ours]

As we have been reporting, more and more institutional investors - who rarely if ever attended such meetings - are tuning in - and loudly criticizing companies they perceive as falling short of the guidelines above. And this season, you can bet that they will also be scanning your Proxy Statements for info on your VSM plans - and withholding votes if plans are weak and their demands are not met to their satisfaction.

And, as our headline notes, we expect to see a shortage of top-quality service providers relative to the demand for top-quality VSMs who

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will be able to offer, and smoothly integrate the kinds of technologies that are needed to provide **the same rights and opportunities to participate as they would at an in-person meeting**. To help set the stage, here are several sections that address the technological issues we bolded in the Glass Lewis guidelines...

Several Serious “Bloopers” In The 2020 Q&A And Voting Periods That Are Very Easy To Fix For 2021

Our good-friend and fellow VSM-reporter Doug Chia recently posted the following, from widely-followed shareholder proponent Jim McRitchie:

“Here’s one for you. I just got off the virtual meeting of [XYZ company - name redacted by the OPTIMIZER since they were far from alone here.] Voting was cut off the second I concluded my presentation requesting better disclosure of political contributions. I submitted a question asking: ‘Why was voting concluded the second I finished presenting proposal #4, leaving no time for shareholders to vote?’ Their response was that it was a “good question” but it “goes to the mechanisms of what we’re trying to do here.” What kind of answer is that? Of course, the impact of leaving people no time to vote is to invalidate the purpose of presenting a proposal. The SEC penalizes proponents if we don’t present our proposal but presenting the proposal is an otherwise meaningless exercise if no one can vote or change their vote based on what is presented. People will listen to you...Talk some sense into them. Why are so many people so complacent about things that make no sense?

Activist hedge fund manager Andrew Shapiro of Lawndale Capital Management quickly chimed in: *“I hope you [Doug] are effective at exposing this abuse to more people.”*

Calling this an “abuse” is somewhat of an exaggeration in the OPTIMIZER’s opinion: We’d call it a “rookie error” or a “careless error” - most likely due to sloppy cutting and pasting of the script during the 2020 prep period - and of not carefully reviewing the entire “run of show” before finalizing the script. And actually, there were two serious errors here in our book - errors that several other companies made in 2020. And sorry, Doug, your answer, *“The fact is that most (almost all?) companies close the polls right after all items of business have been presented”* was not on the money either:

- Common sense - and common decency - requires the Chair to ask if there are any questions or comments after each proposal has been presented, to assure a “fair” and open procedure, before moving on to the next item of business - and especially a significant one, like closing the polls. So (1) making sure to ask if there are any questions or comments after each and every proposal is introduced and (2) giving shareholders ‘fair warning’ - and allowing a few, stated number of minutes where holders can change their votes is a *hallmark* of good governance - especially at VSMs where online voting takes a bit of extra time.
- *The fact is* that this is by far the most common practice at Meetings of Shareholders, and is, indeed, the “Best Practice.”
- The best part of all this, however, is that these are very simple things to address when you finalize your Meeting script, and it takes only a few seconds to observe.

Doug also mentioned that some companies {like **Intel**, he noted} keep the polls open until the end of the second, general Q&A period. While we respect the *idea* - we do NOT consider this to be a best practice - or even a good one. As we have been saying, writing and explaining to activists for years, the most important order of business at a Meeting of Shareholders is to conclude the “business of the meeting” - and especially the election of directors. This should be the first order of business - so that the Meeting can legally be concluded if the power goes off or the fire alarms suddenly start to shriek. Readers:

We urge you to review our detailed suggestions for managing the Q&A periods in our previous issue: Go to...<https://optimizeronline.com/the-virtual-shareholder-meeting-qa-and-how-to-tackle-it/> ... and also to review the article below as well.

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The Biggest VSM Blooper To Avoid: Lost Connectivity

Here's How To Get Set For 2021 - And To Prepare For The Worst Things That Can Happen With Your Meeting Technology

We have had many decidedly up and down experiences listening to the all-too-numerous webinars on VSMs of late where the guidance was flatly wrong, or important facts were omitted: Most notably on what to do if you lose “connectivity” during the course of your company’s VSM. Here are our Top-Tips, straight from the meeting-front, on how to prepare:

- Step-one is to inventory all of your “points of connectivity” - and what could go wrong at each one.
- Let’s start with the dial-in number for Directors and Officers - which is usually used for Shareholder Proponents, and the Inspector of Elections and the Auditors too if there are questions for *them*. This, as an ‘operator attended line’ - and always a ‘hard-wired line’ in our experience - is the least likely ‘point of connectivity’ to go down...at least where the service provider is concerned. But here, as happened fairly often in 2020, some of the parties accidentally hung up - or couldn’t find the un-mute button, or seem to have wandered off, or nodded off, and missed their cue to chime in - or maybe had a bad cell-phone connection on their end.
- The same sorts of problems can arise when some or all of the key attendees are visible on a Zoom or other platform. And the odds of glitches are a bit higher due to sometimes-weak or shaky Internet connectivity. Here, the Chair, or the Meeting Secretary simply needs to say, as we hear so often on national newscasts of late, “We seem to have lost our connection” and quickly move on. If there is an absent shareholder proponent, be prepared to quickly introduce the proposal on your own. One last but very important take-away: Test these, and all other meeting apps, well in advance with a live dress-rehearsal – to test the strength and stability of each participant’s ‘connectivity,’ to be sure that everyone involved is familiar with “the buttons” – and will know what to expect - and who will do what - if glitches do arise.
- Next comes the dedicated dial-in line for shareholders to call in with questions - which we feel you MUST have this season, if you are used to getting, or expecting questions at your Meeting. This too is an “operator-attended line” - where the risks of disconnects are also low - unless the caller fouls up. But - while we are at it - be sure to have clear rules of the road - like requiring callers (or the operator) to announce their names, and an affirmation that they are shareholders - and to provide ‘fair warning’ when they get close to their allotted time - AND to be *fairly lenient*, but firm in the end with regard to disconnecting *them* if they go way over - and to be VERY FIRM - and VERY FAST if callers venture into things that are improper under the rules of conduct.
- The most likely point of failure in our own long experience arises at the meeting site itself - most often due to a power outage, but sometimes due to screeching fire alarms, where everyone at the site needs to leave at once. Here, you need to be sure that your VSM service provider will post a sign on the webcast screen about the “technical difficulty” and a message to “please stay tuned for further information.” Then, of course, you, and your VSM service provider, will need to devise a plan for what to do next as quickly as you can, and post THAT on the screen if at all possible.
- This takes us to our main “payoff point” - which all the “*webinaristos*” we’ve heard failed to address - and which we have been publishing regularly for 27+ years: Be sure you have a plan to officially CONCLUDE (not ‘adjourn’) the Meeting if you possibly can. You can almost-always do this - as long as you have a quorum. Then, you need to have a short “Emergency Script” - and you need to have signed the Ballot of the Appointed Proxy prior to convening the Meeting, instructing the IOE to “cast the votes in accordance with the proxies on file.” Even if you need to leave the room immediately it takes only a few seconds to say, that “Based on the votes in hand, the business of the Meeting can be and has been concluded” - and that you will report on the voting ASAP.
- Two final points; Just in case the VSM service provider’s App drops dead in the course of your meeting, be 100% sure that your provider can reach out to everyone who registered for the meeting, and who was in attendance, to fill them in on the outcomes ASAP...and, heaven forbid, on any “next steps.” ALSO, we have it on good authority that at several 2020 VSMs someone accidentally hit the “CANCEL MEETING BUTTON” and shut down the whole show...So be 100% sure that only one person has access to this button, and will not push it until all the business of the meeting has been concluded.

Here's Another Useful Development To Smooth The Way At Your VSM: IROs Finally Get A Prime Seat At The AGM Table

One of the most interesting - and encouraging - and useful developments with regard to VSMs - has been the fast-growing importance of the corporate Investor Relations staff - both in terms of preparing for the Meeting, and often, in playing a significant on-air role at the Meeting itself. Here's why we think this is, and why your company should take note:

- IROs tend to be far more tech-savvy, and much more comfortable with “virtual” events than most legal and corporate-secretarial department staffers are, thanks to the increasing use of the Internet for earnings calls - where a growing number of public companies, by the way, have been allowing ordinary investors to tune in too.
- IROs, as a rule, have the best sense of anyone in the company about what really is - and really *should* be on the minds of investors of every stripe. Accordingly, they can help hugely in terms of prepping the on-air management team for the kinds of questions to expect...and especially, the toughest ones that might come in.
- A few very savvy IROs seem clearly to have invited questions from investment managers, as a way to ‘get the Q&A ball rolling’ - AND as a way for management to be seen as proactive - and more open and articulate in their answers to Qs that *should* be top-of-mind where investors of all stripes are concerned. This is exceptionally helpful in allowing Directors, or Senior Managers to answer questions, which makes the Meeting more interesting, and provides for a much nicer “flow.”
- IROs tend to have a lot of practice when it comes to dealing with deeply probing, and sometimes rather hostile questions and comments from investors...and with introducing and handling them, or handing them off smoothly and diplomatically.
- IROs are, we think, the very best people to screen incoming questions - and to tee-them up - and read them, if they have been sent in advance or typed in during the Meeting. Aside from the fact that the Corporate Secretary needs to focus on the flow of the Meeting as it progresses, many of them, we are sorry to note, tend to evaluate, decide on - and maybe rule out - questions through a strictly “legal lens,” which can often be off-putting to questioners - and to listeners.
- We hasten to add that most Chief Governance Officers and MANY Corporate Secretaries are total pros at all of this, witness their roles in all five of our “Top-Five VSMs.” But quite frankly, the IRO *usually* comes across as a much more “neutral referee” than someone from the “legal world” – and this job clearly requires undivided attention.

Inspectors Of Election: More Important Than Ever With VSMs

Since the very first VSM hit the airwaves the OPTIMIZER has been advising that the Inspector of Elections should be playing a key role - mainly because, with everything taking place in cyberspace, investors really need some added assurances that all of the voting is taking place, and being recorded completely, and strictly “according to Hoyle.”

For 2021, given the likelihood that almost all Meetings of Shareholders will be VSMs, and in light of some oddball 2020 developments, we are urging issuers to be sure that the eyes, ears, brains – and experiences of their IOEs will be fully engaged, and fully up to the tasks at hand. Here are our top-tips:

- Be sure to select an Inspector of Elections that truly knows what he or she is supposed to do – AND who can stand up and confidently address any questions – or challenges that may arise with respect to the voting process, and the final results.
- Be sure to introduce the Inspector at the Meeting – and, ideally, we say, mention the Inspector’s Oath – and have the *Inspector* certify that a quorum is present.
- Be sure to have the Inspector(s) review the proposed Meeting Script well in advance – and invite their comments and suggestions. (Most expert IOEs have attended dozens, and often *hundreds* and sometimes

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thousands of Shareholder Meetings, and are well-versed in scripts that work smoothly and well – as well as spots that might cause bumps in the road. (We are 99.9% sure, for example, that none of the CT Hagberg LLC Inspectors would have failed to review the script, or would fail to point out the too-abrupt closings of the polls, or the failures to give fair-warning – and to allow ample time to vote online - that we saw in 2020... but that were so easily fixable.)

- Be sure to have the Inspector attend the all-important dress rehearsal we advise, to test all of the technology – and connectivity. Again, an IOE who has attended many meetings will often have useful suggestions to make on how to best manage the Q&A – and on the overall “run of show.”
- Consider having the IOE, rather than the Meeting Chair, briefly summarize the voting outcomes: No need to read all of the numbers, as once was the custom, but simply to say that the directors were elected, the appointment of auditors was ratified and that each proposal was either “approved” or “not approved” – being sure to avoid terms like “passed” or “failed” or the decidedly non-neutral phrase, “was defeated.”
- Be sure that the IOE will know what to say and do if any of the outcomes may require a bit of extra due diligence, and time, before certifying the final voting.
- Be sure your IOE will be able to view most if not all of the information the Management Team is able to see via the Meeting App: Typically, the number of shareholders and the number of guests in attendance, the number of *voters* or, more precisely, ‘attempted votes’ – just to be sure the final results will pass both the “sniff-test” and the “sanity test” with the IOE – and with the reported outcomes.
- Be sure the IOE will be able to observe the number of questions in the on-line question queue, we advise...so he or she could verify, if required, that all questions were indeed answered... if the company asserts it’s true.

Our Warning - And Our Advice - On The Huge Increase In Individual Investors We’re Seeing - And On “The Robinhood Effect”

Liz Dunshee, star blogger and editor of thecorporatecounsel.net blog contacted us in November, in response to a reader’s question about the effect “The Robinhood Effect” might have on her 2021 budget. We scooped ourselves to get the news out on her site fast - but OUCH! There has been even more disturbing budgetary info since then, so here’s the latest:

Initially we wrote: “Given the upsurge in commission-free stock purchase and sales fees, the recent upsurge in buying stocks directly by small retail-investors - and the growing number of opportunities for small investors to purchase “fractions” - or small “slices” of individual stocks - there should indeed be a growing concern about the potential for providers of such services to make money by collecting fees from issuers for distributing proxy materials to people with “immaterial” investments. (We have been calling it “fee harvesting.”)

Here’s some good news for issuers: A year or two ago the NYSE fee guidelines were amended to address what had been serious abuses by some providers - to bill for distributing proxy materials to participants in so-called “managed accounts” - which are more like mutual funds than specifically selected stocks - and also to provide that no fees should be collected for distributing materials to shareholders with less than one full share.

But here’s some fresh new bad news that issuers need to be alert to: Since our first heads-up on small shareholder accounts, the numbers have continued to soar: **JMP Securities** estimated that 10 million new brokerage accounts were opened in 2020. And the CEO of **Robinhood** reported in May that they had over 13 million users – a number that has certainly grown significantly since then. To make it even worse for issuers, these accounts are opened by very new kinds of holders – fast-traders who are more like ‘gamers’ and who buy and sell and sometimes hold small amounts of many different stocks. Years ago, we used to estimate that the average retail investor had, maybe two and a half stocks in their brokerage account on average. Today, we bet the number is many times that amount.

Here’s even worse news: Robinhood awards small amounts of “free stock” in companies it selects to people who open new accounts or recommend Robinhood to others...which clearly helps their fee harvesting big-time. So if your company has been a hot-stock – or a very volatile stock – or maybe a “cheap stock” for Robinhood to give away – and also – if those “fractional shares” or “slices” now add up to a full share, your 2021 proxy fees

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might be major budget busters. A glimmer of hope, the NYSE recently petitioned the **SEC** to allow it to prohibit the collection of proxy fees on shares issued as “free promotions” but we don’t see how this will be enforceable in practice – and we doubt that, even if accepted, it would be in time for the 2021 proxy season. The “Robinhood Effect,” by the way, is very much a misnomer, because, while yes, they seem to steal from the rich where proxy fees are concerned - all the money goes to Robinhood alone, to subsidize those free trades.)

There’s one last thing that issuers need to watch for in 2021 as they review their proxy fees: Over many years a number of companies would spring up that would usually (but not always) order up a few hundred copies of annual reports and proxy materials for their “library” - or “for distribution to clients” - and then, whether they had received materials or not, submit bills for payment. Many of them would slip through the approval process and get paid.

So as we look forward to the 2021 proxy season, issuers will be wise to be on high alert for such dubious scams - and for other efforts to skirt the rules by “proxy-distribution entities” that are not bound by current NYSE rules.

Our Top Money-Saving Tips As You Plan Your AGM

Given the huge upswing in retail-broker clients - and in their stock-buying habits in 2020 - plus the expected “Robinhood Effect” in 2021 – we have been wracking our brains to come up with fresh money-saving ideas for 2021, which has many truly budget-breaking aspects on the horizon. Here’s our list, and our advice to “start your engines right away.”

- The Notice and Access system still has huge potential for issuers who do their homework, and we urge you to bone-up on the details ASAP. We got a call from a big company client who asked if they could invoke it across the board, but had sort of forgotten how N&A is meant to work – and the fact that they likely had a large number of stockholders, including many employee and retiree owners who had signed up for hard-copies early-on, and later, by contacting their brokers. Our advice was to do a very careful count of registered holders, employee owners and retail-broker accounts to see exactly how the numbers look – but also to carefully weigh the much greater propensity of voters who get hard-copy to actually VOTE...as we advise you to do ASAP.
- Because this company has a huge number of employee and retiree ownership – big enough to be big “swing voters” – we also advised them to consider treating them as a separate voting class altogether, as a way to potentially generate big savings in postage and paper. (See the article in this year’s Special Supplement for details.)
- Printing and mailing costs will still be the largest budgetary items by far for most large companies. So here, our advice is to carefully consider consolidating all the printing with a single firm (this company actually used three different firms for the A-R, Proxy Statement & 10-k...and at least one of those firms was, we knew, farming out much of the real work to others.)
- So bidding out all your printing work has HUGE potential for savings – although here too, we would caution about the bad effects on voting that a cheesy-looking presentation can produce – AND to note the fact that many times, the winner-on-price fails to produce the level of attention to detail – and to overall quality that was promised.
- Moneywise, our top-tip– although it is easier said than done – is to reduce the number of pages you print and mail. Our client asked about a “Wrap” – a name we hate, because it sort of implies a cheesy doc – which it can be if not done carefully. But two documents are a lot better, and usually far less expensive than three – or four. AND...please note, there are some really excellent ones out there to serve as models.
- So get your printers – and mailers too - to sing for their supper – and to give you their very best ideas. The “best of the best” these days are experts in using charts and graphics to convey complicated subjects with far fewer words – which can help you to rack up big savings.

Carl Hagberg's Big Moment of Fame:

If anyone wants to have a laugh at your senior-editor’s expense, click this link to a video made by his grandson William (Peder’s eldest son) that made it to super-blogger PewDiePie’s website...and drew over 7 million viewers.

<https://youtu.be/zvpVRTobCCo?t=536>

Mental Health: Fast Becoming A Top ESG Issue

The need for greater attention to mental health has long been an important issue for both of the OPTIMIZER's editors. Here are a few quick facts: In the United States, almost half of adults (46.4 percent) will experience a mental illness during their lifetime, Five percent of adults (18 or older) experience a mental illness in any given year - equivalent to 43.8 million people. Only 41 percent of the American people who had a mental disorder in the past year received professional health care or other services (due in part to economic issues but also, very largely to the stigma associated with having a mental illness.) Lastly, despite the huge size and scope of the problem, U.S. expenditures on mental health comprise less than 3% of the total spending on health in general.

But suddenly, due in large part to the way the COVID pandemic has literally brought the issue home to so many people, Mental Health is fast becoming a major ESG issue. A recent **Kaiser Family Foundation** poll, revealed that 56% of Americans reported that worry or stress related to the outbreak has led to at least one negative mental health effect. Those include anxiety, severe stress, depression, trouble eating or sleeping, increased use of alcohol, frequent headaches or stomachaches, shorter tempers, and other health problems. Among frontline health care workers and their families, 64% reported worsened mental health, as did 65% of those who had lost income.

Great news, and required reading, from the mega-investors and analysts at Janus Henderson on the positive correlation between mental health and corporate health and wellbeing, excerpted here, with a few powerful economic points at the end:

"Our corporate engagement has affirmed our belief that companies with wellbeing and mental health policies generally have better employee retention, a favourable work culture and a more resilient workforce. We as investors recognize the importance of continuing to engage with companies on this topic based on our view that a healthy and beneficial culture within the businesses that we invest in is vital to success. It is clear to see that good businesses have moved with the times and address mental health within their organizations. According to the WHO, studies have shown that every US\$1 spent on evidence-based care for depression and anxiety can return US \$5."

*"According to the **WHO** the global economy loses more than US\$1 trillion per year due to depression and anxiety...In addition, work carried out by the **Lancet Commission** states that mental disorders are on the rise in all countries and are due to cost the global economy US\$16 trillion by 2030."*
<https://www.janushenderson.com/en-dk/investor/article/covid-19-analysing-approaches-to-mental-health-emea/>

Even more great news from Wachtell, Lipton, Rosen & Katz, excerpted here and more required reading, for sure:

"Employee mental health and well-being are now shifting up the priority chain and becoming matters of external interest. Effective corporate initiatives on emotional wellness are now valued by shareholders, as well as other stakeholders, who are recognizing how these issues affect personal and professional lives, productivity, morale, recruitment, retention, and ultimately influence a business's ability to generate long-term sustainable value as it prioritizes employees.

"Companies are beginning to highlight these matters in external disclosures. For example, in its inaugural fall 2020 ESG report, **Uber** emphasizes how it has "amplified our focus on mental health and well-being and identified systemic ways to normalize the conversation... **Eaton's** latest sustainability report spotlights "Supporting mental health"; and **AstraZeneca** now discloses in its sustainability reporting a formal **"Workforce Wellbeing Model"**, how its employees are driving action on mental health generally, global strategies for integrating mental and physical health in the workplace and 2025 performance targets relating to a "healthy workforce," including as to workplace pressure management.

"From the investor perspective, what is new—and accelerating—is how institutional investors and asset owners globally are asking to understand corporate approaches to supporting the mental health of employees. Shareholder engagement and dialogue is occurring in the context of investor assessments of public companies, corporate leadership and board oversight as to human capital management

("HCM"), corporate culture and resiliency, compensation and employee benefits, and broader community impacts. In the U.S., especially in the COVID-19 context, shareholders have begun reviewing corporate disclosures and engaging on measures taken to support the physical and mental health of the workforce.

"In the U.K., an investor-led mental health engagement program begun by CCLA Investment Management has been seeking to "build a substantial coalition of investors" to push for progress, "drive workplace mental health to the top of the corporate agenda" and "boost the mental resilience and wellbeing of workers across all sectors and industries."

<https://www.wlrk.com/webdocs/wlrknew/WLRKMemos/WLRK/WLRK.27152.20.pdf>

Industry Notes:

Abandoned Property Advisors, LLC announced the acquisition in late December of **Keane UP's** Location Services Division, Keane Financial Legal Claimant Services, and National Claimant Services. - with industry veterans **Bob Irvine**, formerly of **UPRR** until its merger into Keane, back in the industry as Principal - and wife **Carol Irvine** as President & CEO. The memo implies that APA and Keane will have some sort of relationship going forward, but no details were forthcoming, despite our many calls.

Our great friend Broc Romanek has launched a new and exciting web site – [ZippyPoint.com](https://www.zippy.com) – which consists mainly of free instructional videos that cover both hot topics for sophisticated practitioners and has tons and tons of content for newbies. He has posted over 530 videos so far – including 30 panels as part of a **"Proxy Season Spectacular"** conference Your senior editor has three or four videos on Shareholder Meetings there too. (See his tutorial on proxy fights at <https://www.youtube.com/watch?v=ZHTq9yYgTs>) for essential facts and some hair-raising stories on traps to avoid. Broc also has a monthly newsletter entitled **"The Five."** Don't miss this, we say: So much better than the constant chatter we get from others.

A bombshell development, we think, as 120-year-old registered agent CSC enters the Transfer Agency business: The **OPTIMIZER** has long been predicting that there would be a few more new entrants in this highly troubled businesses - simply because troubled businesses always attract new entrants. But when we first learned about CSC's entry, in an exclusive interview in this year's Special Supplement, we thought, *"What are they thinking?? This business is shrinking faster - and more dramatically - than a cheap cotton t-shirt."* But then, we heard their rationale: The fact that CSC is present, literally at the conception of maybe half or more of all the U.S. companies that are formed each year - both publicly-owned and closely-held corporations, please note. AND...they are a highly-tested, widely-regarded and highly *solvent* company...that specializes in helping companies manage their liabilities. We think they are in a position to sweep up a giant chunk of the new-company business, where currently, a lot of the small-company Transfer Agents are Mom and Pop - or Mom-and-daughter outfits operating out of their kitchens...without a buck to spare, much less decent liability insurance. So we also think they can scoop up the market for smallish existing companies that wake up to the fact that having a big snafu, or defalcation at one's transfer agent can imperil the client company's very existence as a company. Watch this space for more news here - for sure.

Deutsche Börse announced in November that it will acquire an approximately 80% stake in frequently bought-and-sold **Institutional Shareholder Services (ISS)** - in partnership with current management and **Genstar Capital**, based on an ISS valuation of USD 2,275 million (EUR 1,925 million) for 100%. Current ISS CEO **Gary Retelny**, who will co-invest with other senior managers, and with Genstar, will continue to lead ISS.

It will be interesting to watch this play out, but do check out the economics here, readers, and the huge ISS margins: *"As a leading ESG-focused provider of high-quality data, analytics and insight, ISS has attractive growth rates. In 2020, ISS is expected to generate net revenue of more than USD 280 million... and an adjusted EBITDA margin of approximately 35% pre-transaction effects, which has further operating leverage potential. Net revenue of ISS is expected to grow organically at a rate of more than 5% on average per annum until 2023.*

Major changes at Equiniti, the global financial services company, headquartered in the U.K. and owner of **U.S. Transfer Agent EQ:** CEO **Guy Wakeley** "stepped down with immediate effect after six tears in post" on Jan.

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15 - following an 11%+ decline in 2020 revenues and major shortfalls vs. expectations for recent U.S. acquisitions and new ventures, as the U.S. head of the new U.S. “Digital Businesses” departed after a short nine month stint.

The **International Integrated Reporting Council (IIRC)** and the **Sustainability Accounting Standards Board (SASB)** announced their intention in late November to merge into a unified organization, the **Value Reporting Foundation**, “providing investors and corporates with a comprehensive corporate reporting framework across the full range of enterprise value drivers and standards to drive global sustainability performance.” This sure sounds like good news to us, as a way to integrate - and to simplify the reporting of the ESG factors that are most important to investors, and, ideally, to create a single point of reference for issuers.

Major Turmoil In The Proxy Solicitation Business

Last year, the OPTIMIZER’s Special Supplement ran seven pages of ads from seven proxy solicitation firms: three full page ads, three pages of advertorials and two half-page ads.

This year - even as all the pundits are predicting that 2021 will be a banner year for mergers and acquisitions - including many unfriendly attempts - as well as proxy fights to oust directors and seize control on the cheap - and probably a bunch of sales or spin-offs of business units as well - we will run only two and a half-pages of ads!

Meanwhile, a recent chart from Bloomberg revealed some huge shifts in market share of “activist-driven deals” - but where more questions than answers came to the fore:

GLOBAL ACTIVISM ADVISORY RANKINGS U.S. and GLOBAL DEALS COMBINED*						
FY 2020					FY 2019	
Adviser	Total	Comp	Activist	Rank	Rank	Total
Okapi Partners	62	15	47	1	1	70
Innisfree M&A	58	48	19	2	2	64
DF King	51	41	10	3	3	47
Georgeson	46	31	15	4	4	44
Morrow Sodali	45	39	6	5 ▲	6	35
TOTALS:	262	174	88			260

* SOURCE: BLOOMBERG GLOBAL ACTIVISM REVIEW

What is really going on in this industry?

While **Okapi Partners** was once again number-one in the proxy solicitor/advisor on the global activism scene, again by a fairly wide margin in the **Bloomberg** charts, the rankings are by number of deals, and not by dollars earned. On *that* all-important score, we’d place **Innisfree** miles ahead, even though they lost six deals vs. 2020 - with them and Okapi the only firms on the chart to lose deals in 2021 - and we’d place **DF King** as the likely number three. Interestingly, **Morrow Sodali** made the biggest jump in the chart, by far – adding 10 more engagements in 2020 – a 28% increase – raising them from 6th to 5th place...and knocking **MacKenzie Partners** off the chart entirely. But, as we always remind, the figures are not at all indicative of total industry revenues, or revenues per advisor, since many of the biggest advisory assignments are carried out and settled before fights break out - and also because the size of all the deals in the pot is another important determinant as to “who’s who.” MacKenzie - which for the past ten years had been on one side of the other of almost every big deal to come down the pike - is, most likely, we think, the number-two firm, based on revenues from actual or settled deals. But any way you slice it, the knockdown-drag-out competition that’s evident here has surely served to lower revenues all around.

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So what we think we are really seeing here is a greatly over-crowded field of players - a few of which had been raking in huge fees as Proxy Advisors over the past ten years - but where a major revenue-driver - the Advisory part of the fees - seems to have collapsed. And, sad to say to our good friends in the business, we think things will continue to get worse for most of them.

Most of the big deals have traditionally been steered to a relatively small group of favored solicitors by a smallish group of elite law firms - which didn't fully understand, or *want* to understand or deal with the 'proxy plumbing issues,' and didn't care to spend their time in the low-tech proxy-chasing world, much less in the 'snake pits.' But that was *then*. Let's face it; if you are a corporate director, you'd rather take advice from a top-tier law firm than from a professional proxy chaser - unless of course, the lead advisor is an industry super-star. But nowadays, the superstars are few and far between. And, by the way, there is no need to "chase proxies" at all these days, since in every real proxy battle, every investor has both a legal and a financial need to vote - and will do so, without the need to get reminders, or dunning calls.

But Oh! Woe! Even stronger competition on the advisory front has been coming from several other elite sectors - like the major investment banks, financial PR firms and 'elite advisors' like **Camberview**, with their big roster of once highly-placed pros from the public company world and elsewhere in high finance, all of whom, with the lawyers, seem to us to be sucking up most of the advisory money in deals these days. One other factoid that seems germane here: Only four of the seven or so firms on our radar screen - DF King, Georgeson, Morrow Sodali - and **Alliance Advisors** - which isn't even on the Bloomberg list - have a significant "annuity revenue stream" to survive the new proxy-wars for survival, we fear... in the form of the old, but steady and reliable proxy-chasing biz.

Readers: Please note well: As we've written many times before, in a real proxy fight the party with the savviest and hardest-working Proxy Solicitor/Advisor goes in with a HUGE edge. So choose carefully and well, we say, given today's fast-moving environment. And stay tuned for much more action on this front.

Big Shifts on the Legal Side of Deals

GLOBAL LEGAL ADVISERS - COMPANY			
Adviser	FY 2020		
	# Engagements	Stake \$B	Rank
Sidley Austin	33	\$4.1	1 ▲
Wachtell Lipton Rosen & Katz	31	\$10.4	2
Vinson & Elkins	27	\$1.1	3 ▼
Kirkland & Ellis	19	\$2.4	4 ▲
Latham & Watkins	19	\$1.1	5 ▼
Skadden Arps Slate Meagher & Flom	18	\$2.7	6 ▼
Gibson Dunn & Crutcher	13	\$0.5	7 ▲
Cravath Swaine & Moore	9	\$4.3	8 ▲
Paul Weiss Rifkind Wharton & Garrison	9	\$1.8	9 ▼
Wilson Sonsini Goodrich & Rosati	9	\$1.4	10 ▼

Sidley Austin's 33 deals booted last year's number-one, Vinson & Elkins, to third place. But Wachtell Lipton enjoyed an enormous lead overall, in terms of the value of activist stakes in Bloomberg's 2020 top-ten list.

Legal Advisors on the Activist Side...

Olshan Frome Wolosky LLP led the leaderboard with 119 engagements in 2020, according to Bloomberg data, followed, very distantly in terms of the number of engagements by **Schulte Roth & Zabel LLP** with 42 and **White & Case LLP** with 16.

Kudos To The Optimizer Re: Naming Depositories In Tombstones? We do think we deserve a small pat on the back, because since our article on this subject was published in the 3rdQ issue, we have not seen a single tombstone that failed to mention the Depository...the most important info for a shareholder to know.

The Fossilized State Of The Securities Transfer Association: We can't resist a note here, after reporting on the huge surge in individual investor interest in buying stocks in individual companies of their choosing in 2020 – *exactly* as we had been predicting would happen. And...after offering to work with the STA pro-bono to re-launch the **Own Your Share of America** campaign, where TAs are *theoretically* able to modernize and market an effective and profitable program...only to be dismissed out of hand. Once again, the STA has missed the wave...just as they did when they enjoyed a near monopoly on proxy voting...but failed to see the future, and the much bigger potential of “beneficial” vs. “registered” ownership when it came to writing, adopting and actually *approving* the proxy voting rules, back in the 1980s.

Out of Our In-Box:

More Evidence That Unbusy Attorneys Are Horning In On VSMs As Billing-ops...and Often Offering Bad Advice: One of the CTH LLC Inspectors sent us an alert in early January on a potential “issue” at an upcoming VSM: The issuer's attorney – from a very prominent firm - rejected our standard, and self-proving template for the Final Report on the Voting, saying he'd drafted his own version...which he wanted us to use instead, and which included the following attestation as item 2: ***“That I inspected the signed proxies used at the Meeting and found the same to be in proper order.”*** Yes, there once was a time - before machine-scannable proxies and telephone and internet voting - when Inspectors (actually, their assigned team of clerical workers) actually DID this...But that was then, as ultimately the attorney understood. A week later, another attorney said he “needed to research whether the Inspector had to be physically present at AGMs for Delaware Co's.” (The correct answer, rookie lawyer, is clearly, NO!)

Do VSMs Turn A Shareholder Meeting Into “a Shell Of The Deliberative Convocation It Once Was”? An otherwise excellent white paper on VSMs – and on the long and colorful history of Shareholder Meetings that was posted in the Harvard Review gave your senior-editor a giant belly laugh when he read the dire-sounding warning in the headline above. He has been attending AGMs since the 1960s - and studying hundreds of historical cases for guidance as to the proper conduct of a Meeting and the proper validity of proxies, where the most wild and wooly proxy fights were decided along the way...And he can assure you that while there were hundreds upon hundreds of raucous caucuses, where often the police needed to be called in, Shareholder Meetings never were, and never will be (nor are they legally *designed* to be) “deliberative convocations.”

How's This For A Super-close Vote: A 195,661 Margin On 1+ Billion Votes Cast! And No One Really Cared

A reader e-mailed the 8-k for the May 2020 shareholder meeting at HP Inc., asking “What do you think of this? Did one of your Inspectors Inspect?”

The vote on a shareholder proposal to allow shareholders of HP Inc. to act by written consent was reported as 535,776,744 Against and 535,581,083 For - a difference of a mere 195,561 votes out of 1,061,357,827 votes cast. The IOE was not from our Team, but the oddest thing; no one seems to have cared all that much about the result.

So what do we think? We did not try to compute the standard deviation here, but clearly, since no tabulating system can guarantee zero-mistakes, this amounts to a flat-out “statistical tie.”

And, while the IOE was not part of the CTH LLC Team, there would not be much point in double checking every item with the potential to tip the vote the other way because HP Inc. had actually lost the vote on this in 2017 - and the board did not adopt the shareholder proposal. While normally we - and many big voters would

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be scandalized by the failure to act, the proxy materials pointed out both times that shareholders already had the ability to call a Special Meeting - with quite a low threshold for doing so. So the potential to force a Consent Solicitation - with less than a year to go before the next regularly scheduled meeting - and with a Special Meeting a perfectly viable and far more “transparent” and better-governed an option - seems totally absurd in our book. What could possibly happen in less than a year to justify such an urgent need for action? If one looks with care at Consent Solicitations, one will discover that they are almost always used as a low-cost, “down and dirty way” to take control of the business by ousting the incumbent board...and without the usual “takeover premium” please note.

Someone should arrange a sit-down with serial proponent John Chevedden, to try to patiently explain the lack of any real need here... PLUS the fact that historically, Consent Solicitations have worked to the advantage of raiders and quick-sale artists - and to the disadvantage of long-term shareholders.

People: Many New Developments Re: Industry Super-Stars...and A Few Very Sad Developments To Report



David Dixon, a long-time super-salesperson in the shareholder-servicing marketplace (CPU, WFB, EQ) - now committed to a career as an individual entrepreneur - has signed on as an Associate with **CT Hagberg LLC**, to serve as an Independent Inspector of Elections on the CTH LLC Team. We are certain that many of Dave’s former clients and close industry friends will be thrilled to see him back in action as a highly experienced, steady-handed and knowledgeable resource at Shareholder Meetings.

Industry veteran and much-loved client service rep **Susan Hogan** (**Chicago Stock Exchange** (3 years), **Harris Trust** (3), **BNY-Mellon** (12 ½) and **Computershare** (9+years when she was recently rified) and a long-term pillar of the sadly defunct **Mid-West Securities Transfer Assn.** has signed on as a client service rep with **AST**. What a great win for them - and for AST clients!



Barbara Howland – another industry veteran – has joined the **CT Hagberg LLC Team of Inspectors of Election**, we are pleased to announce. Barbara served in various roles with **Chiquita Brands International Inc.** for more than 30 years and as its Corporate Secretary and Assistant Corporate Secretary for more than 20 years, until it was acquired, where she was responsible for corporate governance and compliance matters as well as activities related to the company’s quarterly board meetings, annual shareholder meetings and the drafting and filing of Chiquita’s annual proxy statement. Barbara also managed proxy distribution, the planning

and logistics of shareholder meetings and shareholder communications, managed the company’s incentive stock option and restricted stock award programs and oversaw due diligence and closing activities associated with acquisitions, divestitures and financial transactions. Barbara – a thorough Meeting-Pro - currently serves on the board of directors and as an officer of several non-profit corporations.

Yet another industry veteran, the peripatetic **Tom Kies**, has left Transfer Agent and start-up proxy solicitor **EQ** and the ill-starred proxy solicitation business he was hired to jump start, to become the SVP of Strategic Accounts at **FusionIQ**. He will be “*managing Client Services, inclusive of the Sales, Marketing and Customer Experience teams.*” This follows a strategic investment in the company by NASDAQ-listed **B. Riley Financial** which has similar lines of business. Interestingly, Tom’s new boss will be one of his *old* bosses, **Mark Healy**, formerly the CEO of **AST** during its earlier and much rockier times, following the sale of AST to Australia’s **PEP** - who will now be the new CEO at FusionIQ. What is FusionIQ? It is “*committed to providing an eCommerce platform that has everything Broker Dealers, Banks, Credit Unions, Wealth Managers and RIAs need to create a revolutionary digital wealth investing experience for their end consumer. [It takes] great pride in offering a digital investing platform that integrates directly into your existing offering; creating operational efficiencies, cost savings, compliance support and new revenue sources for your business. This comprehensive offering*



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reiterates our company's values to deliver, support, and expand our best-in-class digital solution to help our partners grow their wealth management businesses."



Jeff Seadschlag, who has been a Southern-California-based star-salesperson in the Transfer Agency world for several decades was riffed by **EQ** at year-end, in what has, by and large, been an *annus horribilis* for the transfer agency business. We feel certain we will see Jeff somewhere in the securities industry before too long...so stay tuned.

CalPERS announced in November that another industry super-star, **Anne Simpson**, became the full-time Managing Investment Director of Board Governance & Sustainability, effective immediately, a role where she'd been serving on an interim basis. Anne has been with CalPERS for more than 11 years, and among other honors, she was recognized last year by **Time Magazine** as one of 15 women globally leading the fight on climate change.



Very Sad News:

Thomas A. (Tom) Ferrari, who retired from **Computershare** two years ago, after a very long career there, passed way at 73 on November 21, 2020. Tom was one of the best-known, best-liked, most-knowledgeable and most unflappable people in the industry. He leaves behind his wife Adelaide, children Thomas, Renee, Lauren and Dana and three grandchildren.

Terence (Terry) Gallagher - a true giant in the corporate governance space and a friend, wise counselor and beloved mentor to so many people in our industry - passed away on November 22, 2020 at the age of 86. A graduate of **Manhattan College**, **Harvard Law School** and **NYU**, Terry served in the U.S. Air Force as an Assistant Judge Advocate and was awarded the Air Force Commendation Medal. He practiced corporate law, principally with **Pfizer, Inc.**, where he rose to the position of Vice President of Corporate Governance - the very first person in the U.S. to hold that title. His board service included **The Interfaith Center on Corporate Responsibility**, **The Pfizer Foundation**, the **Conference Board**, **Global Corporate Governance Network**, the **IIRC** and **El Museo del Barrio**. He was co-chair of the **Council of Institutional Investors** and Chair of the groundbreaking Committee of the Corporate Governance Task Force of the **Business Roundtable**, served as a corporate governance advisor to the United States House of Representatives Committee on Financial Services, and in 1985 was invested into the **Order of Malta**. Besides his wife of 59 years, Barbara, he is survived by his four children and ten grandchildren.

William (Bill) Jaenike, the second Chairman & CEO of **Depository Trust & Clearing Corporation - DTCC** - and your senior-editor's cherished friend and colleague for over 50 years - passed away from COVID on Jan. 1st at the age of 83, after a five-day illness. Bill and your editor first met in 1970 as members of the **Banking and Securities Industry Task Force (BASIC)** - where they, and four other young strivers from various parts of the securities industry served as fact finders and staff to the blue-ribbon panel of senior industry executives that joined forces on an emergency basis to solve the "Paperwork Crisis" of the late 1960s, where staggering volumes of paperwork forced the Stock Exchanges to severely limit weekly trading hours to allow back-offices to catch up. Bill went from the Task Force to soon become the Depository's chief operating officer and then it's Chairman, from 1994 to 1999. Be sure to read Bill's account of the crisis - and how the industry managed to dig out of it in the **OPTIMIZER's** History section....Bill also authored a truly fascinating book, "**Black Robes in Paraguay**" which describes how Jesuit missionaries established 30 huge and financially successful Utopian communities in central South America, then were slandered and driven out by other, jealous missionary orders - and where ultimately the Pope revoked their charter...until wiser heads finally prevailed. Bill is survived by sons Christopher and Eric and his beloved grandchildren Mia and Max.

Joseph J. Morrow, who founded proxy solicitation firm **Morrow & Co.** in 1972, where he served as CEO for 44 years before selling the firm to create **Morrow Sodali**, passed away on December 8, 2020. Joe leaves his wife of 59 years, Claire Leahy Morrow - one of the most gracious 'corporate spouses' ever - four children: Joseph, Donna, Kim Morrow Laguzza, Tracy Morrow Bundy and six grandchildren. Joe graduated from **St. John's University** where he earned a BBA. He also served as Chairman of the Board of **North American Galvanizing**, served as Trustee for the **Greenwich Historical Society**, and was a **Knight of the Order of Malta**. He is also survived by his sister, Rosemary Walsh of Massachusetts and his brother, **Edmund Morrow** of Colorado - who many readers will remember with fondness as the unofficial chaplain of the **STA**, where for many years he opened every

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meeting with a beautiful non-denominational prayer. Joe was a true “original” and your senior-editor, who often butted heads with him, could tell dozens of stories about his many creative efforts to win votes and his famous temper (like the fiery “Dear John letter” he wrote to the Manny Hanny Chairman, **John McGillicuddy**, whom he’d never met, threatening to sue the bank and call in the Federal Reserve when we became the first bank ever to enter the proxy solicitation business.) But in a proxy fight, or in any battle to win votes, Joe was one of the toughest, most determined - and craftiest people - one could possibly have in one’s corporate corner.

Regulatory Notes... And Comment

ON THE HILL:

A grim warning from the Commodities Futures Trading Commission as the ‘climate-change deniers’ leave the stage and an official report is released: “A world wracked by frequent and devastating shocks from climate change cannot sustain the fundamental conditions supporting our financial system.”

Happier news: The US Department of Labor (DOL) released its final rule on the application of ERISA fiduciary duties regarding proxy voting, basically nullifying the original and widely unpopular release they published in September – to take effect on January 15, 2021, with delayed applicability dates for a few provisions. It adds a new subsection to the DOL’s final “financial factors” regulation where much of the criticism focused, rightly so, on rules that would have required fiduciaries to undertake and document a specific cost-benefit analysis before voting any proxies or exercising shareholder rights.

AT THE SEC:

Just before the holidays, the NYSE filed two petitions for changes in the proxy fee reimbursement rules - both with very short, and now expired comment periods: SR-NYSE-2020-98, seeks to eliminate the fee imposed on issuers for communicating with beneficial investor accounts consisting of shares received in an account opening promotion...like at **Robinhood**, which, should the rule be adopted, would be required to bear the costs on its own. The second filing, SR-NYSE-2020-96, will, if adopted, remove the NYSE from the fee-setting process entirely, where they propose to pass the role to **FINRA**.

IN THE COURTHOUSE:

The dollar amount of securities class action cases rose to \$5.84 billion in 2020 - an increase of 61% over the \$3.62 billion in settlements during 2019. The number of worldwide settlements in 2020 where a monetary amount was agreed to totaled 133 (with 117 of them U.S. companies) - an increase of 13% above the 118 settlements finalized during 2019, according to an **ISS INSIGHTS** report. The largest settlements in 2020 were “incredibly higher” in dollar amounts. The two largest settlements in 2019 were Cobalt International Energy at \$389.6 million and Alibaba Group Holding at \$250 million... while the top 2020 settlements were the following; Valeant Pharmaceuticals – \$1,210,000,000, American Realty Capital – \$1,025,000,000, First Solar – \$350,000,000, Signet Jewelers – \$240,000,000 and SCANA Corporation – \$192,500,000

WATCHING THE WEB

Frightening news, as FireEye – the company the U.S. government relies on to spot and root-out cyber-intruders – reported that its entire tool-kit was stolen – by “a nation with top-tier offensive capabilities” – and, shortly thereafter, it seems that virtually every U.S. agency has been hacked. No response at all from the outgoing Administration, and so far at least, no bombshell developments...but somehow or other, this has gotta stop!