

## OPTIMIZER

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## Morrow Sodali Celebrates 50 Year Anniversary By "Building Together"

*The OPTIMIZER interviews Adam Frederick, Global President, Bill Ultan, Managing Director – Corporate Governance and Greg Reppucci, Senior Director– Sustainability & Corporate Governance*

MORROW  
SODALI50  
YEARS  
1972-2022

Through a combination of savvy strategic acquisitions and a continued focus on internal personnel growth and technological innovation, Morrow Sodali has been at the center of the most urgent and critical issues impacting corporations and the capital markets around the globe for the past 50 years.

And with the recent majority investment in March of 2022 from well-known private equity firm TPG Growth, Morrow Sodali is positioned better than ever to provide strategic advice and shareholder engagement services to clients around the globe and through all phases of the "Annual Corporate Cycle".

The OPTIMIZER interviews Adam Frederick, Global President to discuss 50 years of Morrow Sodali, the recent TPG Growth investment, what it means for clients, and where he sees the firm going from here.

**Q: Morrow Sodali is celebrating its 50th Anniversary in 2022; what is that you want clients to know most about the firm and the services you provide?**

**Adam Frederick:** I joined Morrow Sodali in July 2021 as Global President with the mandate to globalize the company and to provide our clients with the highest level of global expertise, but with a continued focus on local execution.

Our client roster has grown to over 1,000 corporate customers who look to Morrow Sodali as their holistic, trusted advisor for complex shareholder engagement issues. While proxy solicitation and annual meeting advisory

**Adam Frederick**  
GLOBAL PRESIDENT



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within the local markets remain core to what we do, we are seeing a growing number of global mandates from our corporate clients as well, particularly around issues like ESG consulting and activism preparedness.

With 14 offices around the world and active business in 83 countries, Morrow Sodali is ideally positioned to service clients on both a global and local level. Our goal is to be known as the leading “Tech-Enabled Global Advisory Firm for Shareholder Engagement”....and not just another data provider. We’re well on our way here and we continue to increase our market share, including being named number one in activism advisory in Refinitiv’s Activism Scorecard for 2021. Morrow Sodali is also ranked the number one global M&A advisor for 2021 and 2020 by Mergermarket and the number one U.S. M&A proxy solicitor for 2021 and 2020 by The Deal.

***Q: Please elaborate on the 50 year anniversary theme of “Building Together”***

**Frederick:** Our motto ‘Building Together’ carries two messages. First, it embodies a commitment to invest in the people, technology and services that will continue to promote innovative thinking and world-class advisory solutions. Second, it is a message to clients that Morrow Sodali provides a comprehensive, holistic solution for all the challenges companies face with respect to ESG (Environmental, Social and Governance), sustainability, corporate purpose and stakeholder engagement; and that our commitment to them is to enable a better understanding of the issues and trends most important to their stakeholders, in an effort to maximize value.”

***Q: What does the recent TPG Growth private equity investment mean for Morrow Sodali and its clients?***

**Frederick:** Morrow Sodali was already known as an industry leader in providing strategic advice and shareholder engagement services, but the recent investment from TPG Growth is a real “game changer” for our firm and our clients: Thanks to the breadth and depth of the TPG investment platform and their impressive roster of portfolio companies, Morrow Sodali is perfectly positioned to provide clients with a “bespoke” and holistic approach to their individual needs throughout the ongoing Annual Corporate Cycle. With the financial banking and support of a global leader like TPG, the sky’s the limit for what we can help our clients accomplish together.

***Q: Can you elaborate on the “Annual Corporate Cycle”?***

**Frederick:** For every publicly traded company, the Annual Corporate Cycle sets in motion a series of obligations that center on financial reporting, regulatory disclosures, shareholder communications, corporate governance, sustainability and board assessment. All of this prep work leads up to quarterly financial reporting and ultimately the annual shareholder meeting. But even further to that, there’s a never-ceasing narrative companies must work to communicate with their stakeholders throughout the entire year that goes above and beyond the compulsory financial reporting and board governance. We collaborate with our clients and advise them on these on-going issues, which is where we truly differentiate ourselves from others in the space.

The Annual Corporate Cycle resets the moment the annual meeting is over, so we stress the importance of “proactive preparedness” with our clients. We start preparing early to ensure a smooth and successful outcome to the following year’s annual meeting and take a 360 degree / 365 day a year holistic approach to be sure all bases are covered.



**Bill Ultan, Managing Director**  
**CORPORATE GOVERNANCE**

**Bill Ultan, Managing Director - Corporate Governance and Greg Reppucci, Senior Director - Sustainability and Corporate Governance, recap the 2022 annual meeting season and offer advice on how companies can best prepare for 2023 and beyond:**

***Q: Bill, it’s clear that managing relations with shareholders and the capital markets is a year-round job. What exactly are the services Morrow Sodali provides to clients?***

**Ultan:** Morrow Sodali has been advising its clients using the holistic 360 degree/365 day a year approach that Adam referenced for well over 20 years. To navigate the Annual Corporate Cycle successfully, Morrow Sodali has assembled a comprehensive set of integrated services that cover corporate governance, sustainability, shareholder communication and engagement.

We stress the importance of managing the process on a continuum versus as a crisis and spend activity. We work closely with our corporate clients to plan and prep in the “off-season” to ensure a smooth “in-season” which culminates with the annual shareholder meeting.

Our services complement and work in tandem with our clients’ financial communications, investor relations and board evaluation programs. We ensure that (1) our clients are connecting with the right contacts at key institutions, (2) proxy, governance, and sustainability disclosures are addressing specific concerns, and (3) boards are making the most informed decisions possible.

***Q: Bill, we saw well over 900 shareholder proposals in 2022, which is a huge number. What are your thoughts here, and any advice and expectations for companies as they prepare for the 2023 season?***

**Ultan:** 2022 certainly saw a major uptick in the volume of shareholder proposals, mainly as a result of the SEC’s far less restrictive stance on the types of proposals that are appropriate for annual meeting agendas as well as a more emboldened group of proponents, but I stress that it is the results that matter for companies and not the number of proposals. Despite the increase in submissions, average support for many resolutions declined from last year due to many more prescriptive proposals, and we saw improved stability and predictability in institutional voting on several shareholder proposals. In 2021, we observed that many companies were blindsided by votes in opposition to board recommendations from large institutions with whom they had recently spoken. We believe many of these votes were motivated by the reputational risks investors tied to voting with boards on sensitive environmental and social resolutions, instead of basing their votes on the actual merits of the particular proposals. I also note that many companies with good outcomes did a better job of effective disclosure and early shareholder engagement.

***Q: Greg, can you touch on some of the significant proposal trends you saw from the 2022 season?***

**Reppucci:** The Election of Directors and Say on Pay continued to be used as vehicles for shareholders to express concerns with specific board decisions. Concerns with director time commitments (i.e., overboarding) led to material opposition for several nominees, and one-time retention grants and changes to existing performance grants triggered opposition to several Say on Pay proposals. Back to the theme of a more stable 2022 season, we saw that asset managers were more pragmatic in their voting decisions versus in 2021, and companies seemed better prepared on the whole with more robust disclosures and more quality engagement with key investors earlier in the season.

Going forward, we expect climate and human-capital management proposals to continue to be prevalent, especially if pending disclosures are mandated by the SEC as expected.

***Q: Activism seems to be on the uptick and contested situations are growing as well. Any advice here for companies as they prep for 2023?***

**Reppucci:** A volatile stock market, coupled with areas of global unrest, make for a ripe environment for increased activist activity. Despite the lower levels of support on many shareholder proposals, activism was strong in 2022 and we expect similar levels, if not even more activism, next year - so proactive engagement with key shareholders is more important than ever.

Also, monitoring global current events has never been more important as many companies faced questions from investors during the 2022 annual meeting cycle concerning the war in Ukraine, foreign business activities, gun rights and other human rights issues. Many of these topics could turn into shareholder proposals for companies that do not address these issues head-on.

***Q: Any final advice for companies as they prep for 2023?***

**Ultan:** Develop a long-term strategy to connect with key voting decision-makers and ensure that public disclosures accurately and effectively present board thinking and decision-making as well as corporate practices and culture. We at Morrow Sodali are committed to “Building Together” - and we are widely recognized as the industry leader in providing outstanding strategic advice and highly successful shareholder engagement services for over 50 years.



**Greg Reppucci, Senior Director**  
SUSTAINABILITY & CORPORATE GOVERNANCE

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YEARS  
1972-2022



## 50 YEARS. YES 50.

We're celebrating our five decade track record of building industry leadership and generating value creation for our corporate clients. We're looking forward to the next 50.

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\*Morrow Sodali ranked #1 among proxy solicitors in Global Activism Advisor (Refinitiv 2021), in Global M&A transactions (Mergermarket) and in U.S. M&A transactions (The Deal) for 2021 and 2020



## Mid-Year Notes On Big 2022 Meeting Trends ...Straight From The Meeting Front

- **May used to be the “old April” for shareholder meetings - but June tied with May this year in our own count, with June meetings rising an astonishing 32.5% vs. 2021. Readers have been asking, “What’s going on here, and why?”** Ten years or so ago, the end of April marked the official end of the Annual Meeting Season. Most companies’ fiscal year was (and still is) the calendar year. And back then, everyone had time to close their books, write their Annual Report, file, print and mail proxy materials and conclude their AGM by the last business day in April, albeit with an all-hands effort and a fair amount of rushing. Those days are long gone and never to return we say. And why? Mostly, it’s because of the huge number of new proxy rules and regs that require much more detailed reporting across the board - coupled with the even bigger growth of so-called ESG matters that are floating around out there - every day - where even if you have no ESG proposals on your own ballot, you still have to make sure you are telling your story in excruciating detail to stay in the good graces of the Governance Gurus - who have multiplied like flies on a pie.

**There’s another little-remarked factor in the works here as well:** In the old days, as soon as the books were closed for the year, a relatively small team of seasoned veterans would assemble in a big conference room to do the scoping, drafting and pulling together of all to myriad “pieces” that go into a successful AGM. Today, however, the cast of characters tends to be much larger - and, ironically, the average level of experience - and subject-matter expertise - tends to be a lot lower...Making things tougher yet, many key players are working “remotely” from the old time “War Room” and thus, are a lot harder to round up in one place at one time.

- **Another big trend we see - and no big surprise in light of the foregoing: Issuers are enlisting more and more professional helpers in lieu of yesteryear’s totally do-it-yourself Meetings.** What we call the “**Old-School Masters of Shareholder Meeting Matters**” are fewer and further between by far - even as the complexity level has gone up hugely. No surprise that issuers are leaning more heavily than ever on outside counsel, proxy advisors, meeting-planners and technology suppliers - where in many cases, sad to say, the “helpers” are relative novices to AGMs themselves. (Most of the Meeting Bloopers that we’ll outline further down are essentially “rookie errors.”)
- **Proxy packages have been gaining major weight - at least in avoirdupois.** We were startled when we went to move a stack of proxy packages to make room for more by how much more *bulk* there was this year vs. last. Remember the old days (a mere 10 years or so ago) when the trend was to ditch the glossy AR - and maybe even have the 10-K and a Proxy Statement - all printed on tissue-thin paper - as the entire “proxy package”? Those days are gone too, thanks to the need to tell our ESG stories in excruciating detail, but in what we hope will be a more compelling way... ***But what we really should be asking, in our view, is whether all those “weighty pages” are really adding weight to the discussion - and to the understanding of the key issues at hand. We think not. And we think, as we have been writing for over ten years now that a complete re-thinking of the entire “proxy package” - with a view toward simplification - and shortening is long overdue.***
- **Despite what you may have heard or read elsewhere, VSMs are NOT “waning:”** As we write this in early July, our sister-company, CT Hagberg LLC, has 525 Meetings on its books where Team members have served or are scheduled to serve in 2022, to date, as Inspectors of Election. Only 84 meetings - or 16% - are in-person meetings. We DO expect the number of in-person meetings to creep up as Covid cases decline - especially at very small companies when no one usually comes anyway. We also note a smallish number of companies that feel - with more than a small degree of justification - that an in-person meeting, in a somewhat out-of-the way location, is much easier to keep “in control” in every way. We also see a fairly large number of companies where the Chairman actually LOVES the in-person experience, and who will likely revert to in-person meetings as soon as the Covid-coast is clearer.. But even the most skeptical governance gurus now recognize the huge cost savings that companies can achieve with a VSM - coupled with the potentially infinite “availability” of a VSM to shareholders and other interested parties vs. in-person-only attendance. Most interestingly, this season a shareholder proposal from an activist investor group - to *require* that there be a way for shareholders to attend Shareholder Meetings virtually, passed handily.
- **Here’s another myth that’s been making the rounds - maybe due to wishful thinking - that ESG - or, by some accounts, mainly the “E” is losing steam with investors. Here are a few excerpts from Boston Trust Walden’s nifty end-of-season report that should quickly set the record straight:**
- “According to ISS, among the more than 650 proposals filed this proxy season were a record breaking 531 environmental and social-related proposals, surpassing last year’s historic 416. Notably, the SEC approved the omission of just 9% of proposals from proxy ballots, a substantial decrease from the 17% omitted in 2021.

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- “Tying the record previously set in 2021, 34 resolutions to date have received majority shareholder support. The top issues garnering majority votes — climate change/environment, equality/human rights, and public policy influence — tell a story. As the country continues to navigate challenges posed by a changing climate, systemic racial injustice, and political gridlock, these ballot results make clear that investors increasingly recognize the connection between ESG issues and long-term economic and societal prosperity.
- “In 2022, more than 70% of the resolutions we filed were withdrawn based on negotiated corporate commitments.
- “Climate Lobbying Transparency: Companies continue to play an outsized role in influencing public policymaking, which is why we ask companies to increase transparency on climate lobbying, and align their direct and indirect policy advocacy with the goals of the Paris Agreement. We are not alone — last season there was a groundswell of shareholder support for climate lobbying proposals (averaging 61% majority support), sending a clear signal to companies that investors are increasingly interested in this issue. Companies appear to be listening — of the 17 climate lobbying proposals filed this year, more than 80% were withdrawn based on negotiated agreements.
- “One of the most significant trends this season was the increase in proposals focused on racial equity. Twenty-two resolutions called for an independent audit of the company’s broader impacts on civil rights and/or racial equity, more than doubling the number of proposals in 2021. Importantly, average support for these proposals rose to 45% (from 34% in 2021) and 11 proposals were withdrawn based on company commitments.
- “The Rise of “Anti-ESG” [Actually, we think this movement, plus SEC actions on “bogus” ESG fund claims may have fueled the mistaken idea that somehow ESG is losing steam. Please note, dear readers, that the climate is literally on fire these days, with absolutely no end in sight, so the focus here is much more likely to increase dramatically rather than fade away.] There was a dramatic increase in “anti-ESG” shareholder proposals this season filed by groups seeking to compel company action antithetical to the objectives of traditional shareholder proponents. While these proposals generally mirrored those of ESG-related investor requests, the accompanying rationales soliciting support often advocated for the exact opposite. For example, in a shareholder proposal seeking an audit of corporate diversity training materials, the rationale provided focused on assessing the perceived negative impact of these programs on “non-diverse” employees, rather than how they support greater diversity, equity, and inclusion. Nearly 50 “anti-ESG” proposals were filed this season, doubling the figure from 2021, yet these resolutions generally received less than 5% shareholder support.”
- **Still further re: ESG, the SEC has really toughened up its approach to issuing no action letters on ESG matters this year: *Responsible Investor*** recently reported that the SEC granted no-action relief on only 15% of shareholder proposals touching on environmental or social issues so far — a total of 24 out of 159 no action requests. The article, reported by the ever diligent **Corporate Counsel.net**, notes that “Under President Trump’s administration, the SEC increasingly allowed companies to exclude shareholder proposals on ESG issues — particularly emissions reduction targets — using appeals to the rules around ordinary business, micromanagement and substantial implementation” — and the tide has changed post-SLB 14L.... the proposals that are getting SEC no-action relief are those that clearly violate the technical rule requirements (*i.e.*, regarding proof of ownership) or “clearly did not comply” with SLB 14L’s micromanagement parameters. One of the major climate shareholder proponents, **As You Sow**, has seen a few recent wins at the no-action stage... their shareholder proposals requesting reports around companies’ Scope 3 financed emissions will make it to Travelers’ and Chubb Limited’s ballots. According to the release, **Chubb** and **Travelers** both argued that the proposals were already substantially implemented & that it was “impossible for the companies to measure, disclose, and begin addressing their financed emissions....The SEC was also unable to concur with **Amazon’s** no-action request regarding As You Sow’s shareholder proposal requesting a report on how Amazon’s 401(k) plan options align with its climate action goals — the proposal was deemed to transcend ordinary business matters.
- **Another major and welcome trend we have been noting over the past two years - The Rise of the IRO:** Thanks much to VSMs the Investor Relations Officer, and staff - who had pretty much dropped off the main Meeting Team as governance issues came so much to the fore - have been playing an increasingly important and increasingly valuable role at Shareholder Meetings. For one thing, IRO and staff - unlike most of their colleagues from the “legal department” - are usually very proficient, and completely comfortable where technology is concerned. Thanks to lots of practice during earnings calls, they are used to diplomatically handling “difficult” and sometimes hostile questions and questioners - where lawyers often “over-lawyer.” Most important, they are up-to-the-minute with facts and figures on the things that are on the minds of smart investors. So, while there are still lots of Corporate Secretaries and Governance Officers who are “Masters of the Art of the Q&A,” at most of the best VSMs we’ve attended it’s the chief IRO who moderates the Q&A period and thus, after a very long hiatus, has “reclaimed a seat” at the Shareholder Meeting table - and with the Board.

## A Few More Observations From The 2022 Meeting Battlefront - And Some “Problem Areas” To Note

- **The problem of “meeting congestion” on the busiest meeting dates continues to be a growing issue for issuers - and for their key suppliers:** We predict that issuers will increasingly have to vie for favorable meeting dates and times, since at best, there are only eight hours in a given day when companies can safely hold their meetings without riling up shareholders - and directors too. So start your engines early (like maybe now) if you want to assure your preferred dates and times, the availability of the best-in-class service providers and their Top-of-Team staffing too, we advise.
- **Best-in-class companies have been timing their meetings right down to the second - and will increasingly have to do so due to “congestion issues”:** As we have been advising regularly, careful and highly detailed scripting, careful timing of each meeting segment and one or more thorough dress rehearsals - with all hands on board - are absolutely essential to a smooth-running Meeting.
- **Despite repeated demands from institutional investors that there be a “dialogue” at VSMs - and ways for shareholders to “interact” with management at the Meeting - we could only find one company (GM) that not only allowed but encouraged shareholder to dial in with questions.**
- **A horrible trend - rushing VSMs to conclusion seems to have gone on “speed dial”:** Many companies are answering only pre-submitted questions - and failing to even mention the “question box” on the VSM app. Despite promises on the part of activist investors to be on guard against such bad practices - and to retaliate next year against some or all directors who allow them - so far this year we have seen basically nothing, and frankly, we don’t expect any real action in 2023 - although the risks to companies of being “named and shamed” is still theoretically high. Ultimately, however, we do not think that institutional investors will allow these practices to prevail.
- **Many companies have been allowing far too little time at VSMs for shareholders to vote online at all.** Could YOU vote your proxy in five seconds or less? (Please see our scripting tips to prevent issues here, lower down in this issue.)
- **Loss of connectivity during VSMs continues to be a problem:** While statistically, the number of incidents that we have observed has been extremely low (at slightly more than one per-cent of the Meetings our Team attended) this drives Directors - and the C-Suite officers WILD - even though THEY are often the cause of partial outages, by accidentally hanging up on conference lines instead of hitting the mute button. These, as noted elsewhere, are basically “rookie errors” that are almost always preventable with adequate scripting and rehearsals. In our experience, the number of outages due to unstable or totally lost Internet connections is extremely small, but readers, do be sure to check the strength and stability of the Internet connections, wherever your key-players plan to be. And here - especially - issuers need to have a well-defined game plan on what, exactly to do if the main site goes down. (Please see our notes on the Master Ballot, later down in this issue.)
- **The new-this-season policy of several large investment funds to delegate voting authority to downstream money-managers caused a flurry at several Meetings our team attended when the ISS vote-processing service transmitted a sometimes large number of client voting instructions after the polls were closed.** “Rookie errors” here too, we’d say - where newly empowered money managers had no clue as to the need to vote on time, much less what that time WAS. There was at least one “squeaker” where the margin of Yes vs. No votes narrowed down a lot - but not enough, thank goodness, to change any of the final outcomes. We expect that by next season the “rookies” will get up to speed, but readers, do stay on guard here.
- **Lastly, as we have been warning for the past year, we experienced multiple meeting-adjourning for lack of a quorum - thanks mainly to the number of brokers that no longer cast “uninstructed votes” on so-called routine matters. Several companies failed to pass one or more proposals at the third adjourned meeting for lack of a quorum. While one or more adjournments occurred at only a dozen or so of the 550+ companies where we served to date, please remember that the only meeting that really counts is your own. So make sure to carefully review your shareholder demographics as of the record date next year - and to have a plan in place to reach out to non-voters early - and often - to assure a quorum.**



## How And When To Properly Open And Close The Polls

*Over the last two years a mini-debate broke out sporadically over LinkedIn on how best to manage the opening and closing of the polls. Many activist investors felt that they should remain open until after the general Q&A period - and ideally, until the very end of the Meeting - so voters would have time to change their minds if something they heard rubbed them the wrong way. Quite a few well-meaning companies adopted this procedure, which, while nice, left an awkward pause at the end of the Meeting and a big question mark as to when to give 'fair warning' - and to actually shut the polls down.*

*Others felt that the polls should close immediately after all of the proposals on the agenda were introduced - and discussed, if there was indeed a "discussion" - after "a brief pause to allow voters to vote or change their votes." No big problem at in-person Meetings, where management could observe whether people were still trying to fill out ballots - but highly problematical at VSMs, where there is no way to know if people are still trying to vote.*

*Imagine our consternation when we reviewed the script for an upcoming Meeting at a major company - with eight proposals on the agenda - that said, "We will pause for five seconds to allow you to vote or change your vote online." Yikes! While yes, five seconds of silence can seem like an eternity, it is physically impossible to review and potentially change one's votes at a VSM in a mere five seconds. What to do???*

### Here's what we came up with - and what we'd recommend as the "best practice" for opening and closing the polls where there is online voting:

- Declare that "the polls are now open for voting" when the Meeting is called to order - or, at the very latest, when it is time to begin the introduction of all proposals on the ballot, i.e., "the official business of the meeting."
- Our own view is that the "best practice" is to introduce proposals one-by-one - and to ask if there is any discussion, which most of the time these days is no - but if so, to hear it then and there. If there is any discussion, allow a brief pause (a few seconds should be fine here) for voters to amend their votes if they wish to, before moving to the next item.
- When all the proposals have been introduced, move to the General Discussion Period - and announce that the polls will be open for 10 more minutes "to allow voters who have not yet voted or who wish to change their votes online to do so." Yes, a few holders may have to 'multi-task' but so be it, we say.
- At eight minutes into the Q&A provide "fair warning" that the polls will officially close in two minutes.
- If at 10 minutes into the Q&A there are still questions coming in you might consider a "last an final warning" that the polls will close - and perhaps allowing one or two extra minutes if your own schedule permits before closing the polls and making final remarks, thanking attendees and declaring the Meeting "concluded" ... But a ten-minute period for online voting, once all the proposals have been introduced, amply meets our own "Inspector's sniff-test" for fairness to attendees and should be fine with shareholders and shareholder proponents alike.

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## The All-Important Master Ballot: What Is It? Why Do You Need To Sign It In Advance? - And What It Should Say - And Do

*“Why do we need to have a Master Ballot for our Shareholder Meetings - and what exactly does it do?” This has been the most common question our Inspectors of Election have been hearing from clients by far - along with an intimately related and equally important one; “Why should we be asking our Proxy Committee members to sign it in advance - which they really hate to do?” Here, dear readers, are the answers:*

- Why do you need to have a Master Ballot - better known as the “Ballot of the Appointed Proxies”? Very simply, it’s because “Proxies are not votes” - as basically understood for scores of years in every state in the union, but as emphatically affirmed by a Washington State judge in a landmark case where your editor in chief and his partner in the Inspector of Election business were obliged not to count “proxies” as “votes” in the absence of a properly signed Ballot of the Appointed Proxies, and were subsequently sued by the losing party. Proxies are documents that designate someone - in this case the specific people designated by the subject company - to cast the votes that run to them as ‘proxies’ for the share owners - which they do by signing the Master Ballot and delivering it to the Inspector(s).
- What should the Master Ballot look like? Basically, it should include all of the information that a company should properly place on the Ballots that are traditionally handed out to shareholders who wish to vote in-person at the Meeting: The name of the company, the Meeting date, all of the items to be voted on - with boxes to check for Yes, No (or Withheld where there is plurality voting for directors) and Abstain - and a place to print, then sign the holders’ name(s). At the top, the form should be headed “Ballot of the Appointed Proxy” (or proxies) - and at the bottom, there should be spaces for the named corporate proxies to sign - to legally cast the votes that run to the company.
- Is there anything else the Master Ballot should say? Yes - emphatically so: Underneath the heading it should say: *“To the Inspectors of Election: We, as the duly appointed proxies for the 20XX Meeting of Shareholders, hereby instruct you to cast the votes that run to us as proxies in accordance with the instructions on the valid proxies on file with you.”* (Please be sure to point this language out to anyone who balks at “signing the form ‘in blank’ - since they are not issuing a ‘blank check’ at all.)
- Who needs to sign the Master Ballot? Only one member of a proxy committee really needs to sign to make it valid, but the signatures of each appointed proxy signifies a nice degree of due diligence on their part, so a “best practice” worth observing.
- Why do you ask companies to sign the Ballot in advance? The short answer is “For your own good.” But specifically, it’s (i) to make sure it is *there*, and *in the hands of the Inspector(s) as the Meeting begins* - and (ii) *properly signed, and not forgotten*, so the votes will be *legally cast* - and (iii) most important of all, so that if there should be a power outage, a bomb threat or the fire alarm goes off, you can quickly *conclude* - rather than “adjourn” - the Meeting - as long as a quorum is present - while you clear the room immediately. (Note well: *Every company* should have an “emergency script” that will allow you to quickly and safely clear the room - and declare that the Meeting is *concluded*.)
- Does the Inspector need to file a “Preliminary Master Ballot”? No, not really...the Ballot can stay blank until all the votes are in and the Meeting is concluded. Some companies seem to get this confused with the “Inspectors’ Preliminary Report on the Voting” - which *should be on file* - to certify that a quorum was present at the start of the Meeting.

- A few other practice points: (1) the Master Ballot should not include votes that are made in person - via a ballot they hand in at an in-person Meeting. Some companies try to turn the Ballot into a Proxy that runs to them, but this is NOT a good practice, much less a best practice. (2) Votes that are received from street-name holders via Meeting apps at Virtual Meetings are considered to be “proxies” rather than “votes in person” because it is the broker-assigned code that is used to validate the votes. (3) A great deal of time can be saved, and potential typos avoided, by simply printing “See Attached Report” on the Master Ballot - and attaching a copy of the Inspectors’ Final Report on the Voting.

## The 2022 AGM Hall Of Shame: Dollar General Denies Entry To Legal Proxies At Their Annual Meeting

*One positive thing you might say about Dollar General - they sure know how to cover their tracks when it comes to shareholder unfriendly behaviors. After accidentally coming across this story - reported by Eli Motycka in “The Scene” - a magazine based in Nashville, TN - we wondered first where the heck Goodlettsville City Hall actually was (Tennessee) - and where DG’s corporate headquarters are - which was not listed on any of the company websites (Illinois) - and whether anyone seemed to be following up on Dollar General’s outrageous, and potentially illegal behavior (apparently not.)... Here’s “the poop” - and poop it truly is - abridged from Motycka’s article of May 25, 2022:*

“Dollar General faced protests by store employees from across the South Wednesday morning at its annual shareholder meeting at Goodlettsville City Hall. Workers spoke out against what they describe as low wages, unsafe working conditions, poorly maintained stores and unreasonable, shifting worker expectations.

“The corporation refused to seat three legal proxies, including minister and civil rights leader William Barber II. Barber, along with labor organizer Gabriel Boldenshaw and Dollar General employee, Kenya Slaughter, were denied entrance to the meeting despite being legally designated to serve as shareholder proxies. When Barber, Boldenshaw and Slaughter entered the building (after a nine-hour bus ride from Louisiana, the article reported) Dollar General representatives packed up check-in materials and kept the meeting room’s doors locked, explaining that the three individuals had shown up four minutes late. The corporation has not given official comment’ “After being denied entry despite providing legal documentation that they had been designated as shareholder proxies - and after the three waited outside the closed doors of the shareholder meeting and addressed press and followers. “We have a right to be in there and be heard,” Barber told the room... “We come wanting fairness and justice,” said Barber. Based in North Carolina, the faith leader has organized for decades for health care rights, economic justice, climate justice and voting access. “We come here with the strength of nonviolence, simply to make a day’s living for a day’s work. We are tired of being offered up on the altar of greed”

*We have seen Shareholder Meetings declared null and void for lesser offenses than we see here - flatly refusing to admit accredited shareholder representatives to the Meeting room - people who have a fiduciary duty to the proxy-givers to legally cast their votes - on grounds that they were a mere four minutes “too late”... although we were at one large-company meeting where they came close to doing the same thing until cooler, wiser heads prevailed. If WE were the proxy holders, we’d be petitioning a court for a re-run, for sure.*

## The Universal Proxy Card Hits The Street: Much Ado About Nothing? Not Quite We Say

*The Universal Proxy Card rules become effective in August so do take note. And if you think your own company might be vulnerable to a proxy fight (and where you should always be assessing your company's potential vulnerability, and laying plans in advance to spring in to action immediately) do take special note of this development.*

*We tuned in a very nice overview of the rules - and an assessment of the potential effects - on Mike Levin's Activist Investor webinar [www.universalproxycard.com](http://www.universalproxycard.com) which was easy-to-watch and listen to - and easy to work your way through in much less than the hour it runs if you skip ahead and read the slides as the speakers elaborate, so you can focus on the most important points as they do.*

*We must say that we got quite a laugh at most of the purported "new issues" - since none of them are really new at all. The only new news here - and actually IS rather big news - is how many purported "experts" on proxy fights - including a surprising number of the major proxy solicitors and advisors, financial PR firms who supposedly "specialize" in fights - and many supposedly expert tabulators - and Inspectors of Election too - did not have a CLUE as to the real "deciders" in a proxy fight - or about "the math" - and how to "work the numbers" - which is the critical issue in winning or losing.*

**Point one - which the webinar made well - is that dissidents need to specifically target specific directors from the management slate if they expect to win, and urge "NO VOTES FOR THOSE TWO"** (usually two is the optimal number in our experience, where there are 10-12 seats up for grabs.)

**Then, they need to make a strong case for the ouster of the designated "bad guys"** - painting them bad in the most specific and vivid ways they can in their "fight letters" - which the management side needs to rebut, as effectively as it can, in its own fight letters.

**The dissidents need to make it as sure as they can that voters will not check the boxes of the 'bad guys' - but will instead check the boxes FOR the opposing directors.** We have been amazed - and you would be too, if we were to reveal names - which we won't - by the number of times that prominent solicitors, advisors and drafters of proxy materials have failed to do this. If you *don't do this* the votes For and Against on the management slate tended to be distributed fairly evenly - so that no single management director gets enough votes "unmarked" or voted NO to give a dissident director the needed mathematical edge to win

**Another good point that was made, and a corollary to point-one, was that if you think you are vulnerable to a proxy fight, get all of your "most vulnerable directors" to resign before you file your own slate** - which you should fill in with the strongest candidates you can find. Please note, however, that none of these points has anything to do with Universal Proxy Cards - and much more to do with communications strategies - and the ultimate math.

**But here's the biggest point about the UPC that was not made:** Under the old system of "dueling proxy cards" you really needed to have tabulators - and Inspectors of Election - and proxy-challengers too - who know what they are doing - and what they are supposed to do when there are potentially 'dueling cards.' Quite often shareholders send in the "gold card" with eight of ten boxes checked and a "blue card" with two boxes checked for two dissidents But every proxy tabulator - and every Inspector of Election firm except our own would automatically throw out cards with duplicate dates as "stand-offs" - without first checking to see if there was not actually an "over-vote" - and, if not, to consider each card as valid - as long as there were no more votes in total than there were open "seats."



**The Universal Card, of course, makes inadvertent “over-votes” much less likely to happen. But guess what? Proxy solicitors for both sides are still almost certain to send repeated UPCs - with their own colors and their own return addresses - and with updated “fight letters” focusing on how you ought to be voting. Note well that no “electioneering language” is allowed on the UPC itself. So this must be done in supplemental materials, sent separately, of course, by both sides.**

**Accordingly, “hiding one’s cards” until the last possible moment - and sending repeated cards to shareholders who have not voted for one’s own side - will continue to be two of the most important strategies in a proxy fight - other than the content of the “fight letters” themselves. Further, shareholders, being shareholders, will undoubtedly continue to fill in and mail back differing versions to both sides in a proxy fight - often changing their minds mid-stream, then, often changing yet again. (In one proxy fight we Inspected a few years ago, about 70% of the voters voted - but there were seven times as many cards received in the course of the fight as there were voters! And in the end, the management was thwarted because they thought all the votes they had were “in the bag” - while meanwhile, the other side was soliciting that group like mad, and stealthily but steadily gaining vote-switchers.)**

***The bottom line here, we say; the need for expert advisors, first-class tabulators and Inspectors of Election - and expert “challengers” too - is at least as important with the “Universal Card” as it should have been in the first place!***

## The Shareholder Servicing Industry Turns Out In Force For Mid-Season Celebration

# RISE

A truly gala event was held on June 9th in midtown Manhattan’s Metropolitan Pavilion, where leaders in the Shareholder Servicing Industry were able to gather in-person for the first time in three years to once again celebrate the End of Annual Meeting Season. This marked the 18th year since Ellen Philip first turned their company’s famous annual holiday party into “a party with a purpose” - to benefit Fountain House and Fountain Gallery. Both entities are the oldest and largest nonprofit organizations dedicated to helping members with serious mental illnesses return to the mainstream of life by engaging in meaningful work.

So first, a big shout out to the supporters from the Shareholder Servicing Community - many of whom have been supporting this event from its very beginnings, with many other supporters from their very beginnings:



Broadridge

Computershare

Georgeson

ELLEN PHILIP  
ASSOCIATES, INC.

CT HAGBERG LLC  
INSPECTORS  
OF ELECTION SINCE 1992

Carl T. Hagberg  
& ASSOCIATES

MORROW  
SODALI

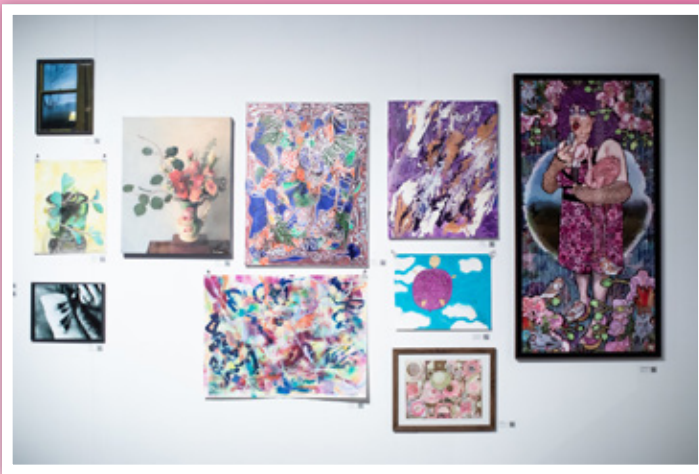
KAPI  
PARTNERS

CONT'D →

To date, the Industry Celebration (which has become embedded as part of the larger Gallery event - but still with celebratory space of its own) has raised just shy of \$2 million where, as a result, Gallery artists now have studio space of their own and benefit from professional art instruction, subsidized art supplies - and above all, the opportunity to collaborate with other member artists, both in-person and virtually - and to show - and sell - their works. This year's event was entitled "RISE" - a tribute to the amazing way that Gallery artists rose to new heights as artists during - and despite - the Covid epidemic - and also in tribute to Maya Angelou's beautiful poem. ***And Rise we did!***



*Gallery Director Karen Gormandy sums up the big challenges - and the bigger successes achieved during the pandemic*



*Fountain Gallery artists show their works and toast the event*



*A big turnout from Broadridge's Proxy Tabulating Group - where nearly 30 Fountain House Members have been employed each year for over 30 years during the big Proxy Season: (From left) Timothy Leung, Kelly Breneisen, Ramneek Kaur, Alfonso Willoughby, Bruce Weissman - Broadridge's Vice President Governance and Risk - and his daughter Alexa Weissman*

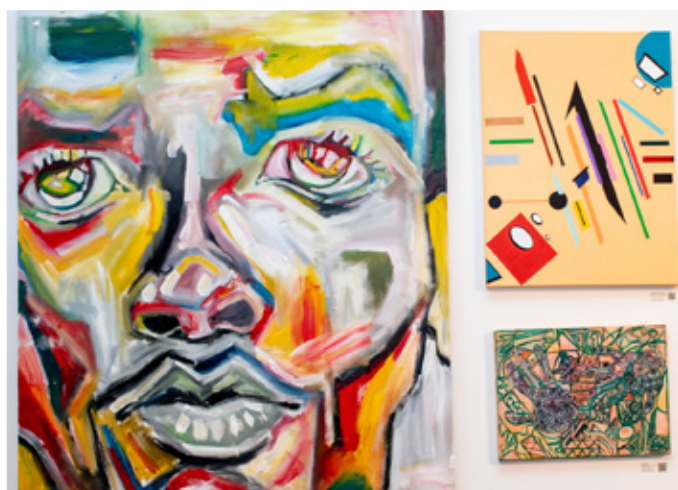




*Donna Corso, Managing Director, Morrow Sodali  
with Ellen Philip & Cal Donly*



*Ellen Philip and Cal Donly, seated, were recognized for founding  
the Annual Meeting Celebration and Benefit, 18 years ago - which  
has raised just shy of \$2 million to date*







*Kevin Tracy of Deloitte Touche's Governance group, MaryEllen Andersen, Director Corporate Governance, Broadridge Issuer Solutions, your editor in chief and wife Pat*



*Fountain Gallery Artists take the stage*



*We must also note, with great pride and pleasure, that Karen Gormandy - the Director of the Gallery, a former volunteer who led the Gallery to its biggest and best burst of creativity ever - was a former employee of "The Old Manny Hanny" - in NYC and later in California - and was, for too brief a period, a valued Inspector of Election with CTHagberg LLC.*

## People

The estimable **David Dixon** was honored by the Society for Corporate Governance with the 2020 Bracebridge H. Young Distinguished Service Award - the Society's highest honor - which was presented at the Covid-belated celebration of its 75th Anniversary in Chicago in June. Among other things, Dave was honored for "his near perfect attendance at every National Conference since the mid-1980s... his service on the Membership Committee, The Service Provider Task Force, as a moderator and speaker at numerous Society conferences and as a member of the 75th Anniversary Committee," his famously "magnetic personality" and his always active and constructive engagement with members, speakers and other attendees. After a long and successful career in the transfer agent community - and in the public company arena as a whole, Dave has a business venture of his own that is about to take off in a very big way, we think - and we are especially pleased and proud to have him as a member of our own team of Independent Inspectors of Election, where he brings his hands-on experience, his business and people skills, his enthusiasm and hard work to every meeting he attends.



David Dixon with wife Terri and Spencer Smul, SVP, Deputy General Counsel and Secretary of Estée Lauder Companies, Inc.



Another industry super-star, **Mary Beth Kissane** has joined **Peregrine's** New York office as EVP, Head of Client Services offering clients her considerable experience, combining both media and investor relations expertise most recently as Financial and Corporate Practice Group Managing Director with **Burson Cohn and Wolf (BCW)** in New York. Prior to that, she held senior roles with **Hill+Knowlton**, **Georgeson**, **Abernathy Macgregor** and **Walek Peppercom**. Commenting on Mary Beth's appointment, Peregrine Chief Executive Officer, **Anthony Payne** MCIPR said: "I am very excited that one of the sharpest and most experienced operators in our business is joining our multi-specialist team. Mary Beth's unique combination of deep domain expertise, charismatic leadership and strategic consulting experience is an extraordinary addition to the value we can bring to our clients." We could not agree more heartily.

**New Leadership at DTCC:** The deeply experienced **BNY Mellon** executive, **Frank La Salla**, announced that "As of August 13, 2022, I will become President and CEO of DTCC and its principal operating subsidiaries, The **Depository Trust Company (DTC)**, **Fixed Income Clearing Corporation (FICC)** and **National Securities Clearing Corporation (NSCC)** – all designated Systemically Important Financial Market Utilities (SIFMU) in the US. LaSalla holds a BA in Economics from City University of New York-College of Staten Island, an MS in Theology from **Fordham University** and an MBA in Finance from **Wagner College**.



One of our industry's most respected figures, and a long term leader and volunteer on numerous regulatory and operational issues, **Katie Sevcik**, retired in July after 40+ years in the securities industry, with **EQ**, **Wells Fargo**, and **US Bank**. Katie, former EQ Chief Operating Officer and Executive Strategy Officer, worked closely with the **SEC** to revise its regulations allowing workflow imaging, chaired the **SEC Proxy Working Group** focusing on OBO NOBO classification, and is a past Board Member of the **Securities Transfer Association (STA)** and the **Shareholder Services Association (SSA)**. *Katie's wisdom, practical knowledge and hard work will be greatly missed - but we expect she will continue to contribute to the transfer agent and issuer communities in the years ahead. (She is already on two panels at the SSA's National Conference in late July - and would be one of the best expert witnesses on securities transfer and ownership issues anywhere!)*



Yet another industry superstar, **Dannette Smith**, Secretary to the Board of **United Health Group** recently announced her retirement from UHG as follows: “After 18 years with UnitedHealth Group, it is time for me to move on, spend more time with my family and decompress a little. My last day with the company will be May 27. It has been an amazing, fun, challenging and innovative ride. UnitedHealth Group had \$37.2 billion in revenue and 40,000 employees when I started. It closed out 2021 with over \$287.6 billion in revenue and more than 300,000 employees. I am incredibly grateful for the opportunities I received over the years, the people with whom I worked, the relationships that were developed and the small part I played in the incredible growth story of the company. During my tenure at UHG, I was able to work with the best and the brightest in the country – internally and externally – and I consider myself extremely fortunate to be able to say so. I have learned so much from so many people – it isn’t possible to name everyone. I was blessed to lead incredibly strong teams of professionals who consistently went above and beyond, and achieved notable results. I am proud of what we accomplished as a team and am excited to see what unfolds for UnitedHealth Group as it continues to achieve its mission... This is the first time in my life I haven’t had a clear plan in mind, and it is both a little scary and really exciting.” *Dannette is one of the best known, smartest and most admired people in our industry - a former and highly successful Chair of the Society, whose image as a leader and innovator graced several of our annual magazine covers, and we too are excited to see what she does next.*



**The Society for Corporate Governance** President & CEO, **Darla Stuckey**, announced plans to retire on April 1, 2023, after a career in corporate governance spanning almost 35 years. Ms. Stuckey made her announcement to members attending the Society’s 2022 National Conference and 75th anniversary celebration in June. Ms. Stuckey will retire after thirteen years at the Society and twenty-one years in other key governance and legal roles. She has served as the Society’s President & CEO since 2015, and prior thereto as its EVP and General Counsel, and Senior VP, Policy and Advocacy. Prior to her employment at the Society, she was a longstanding Society member while

serving as Assistant Secretary at **American Express** from 2004 to 2009, and at the **NYSE** from 1998 to 2004, ultimately as the Corporate Secretary. She began her career at **Weil, Gotshal & Manges LLP** as a summer associate in 1987. The Society has formed a search committee and is partnering with **Russell Reynolds** to conduct a search for her replacement.

Our sister-company, **CT Hagberg LLC** is pleased and proud to announce the addition of two more superbly qualified professionals to our Team of Inspectors of election, bringing our Team of experts to 50 people throughout the U.S. (For bios and profiles of the entire Team, click here: [Our Team of Inspectors | Inspectors of Election](#))

Based in San Francisco, **Lisa Mertens** is a consultant with over 25 years of corporate governance experience, having served as a long tenured Assistant Corporate Secretary at **Gap, Inc.** and as **Corporate Secretary at non-profit Gap Foundation**, where she was responsible for corporate and non-profit governance, board support, and subsidiary governance. Lisa is a long-time member of the **Society for Corporate Governance**, having served in a number of officer positions with the Northern California Chapter. Lisa has a B.S. degree from the **University of San Francisco**.



Based in Los Angeles, CA, **Jean Wood, CPA** spent nearly 30 years on the finance team at publicly traded retail REIT, **Macerich**, one of the largest owners of regional shopping centers in the United States, where she held the title of Vice President of Investor Relations. Jean began her career as a certified public accountant on the audit team of **PricewaterhouseCoopers** in San Francisco. She holds a Bachelor of Science in Economics from **Stanford University**.



## REGULATORY NOTES - AND COMMENTS:

### At The SEC:

**Making good on the Director of Enforcement Gurbir S. Grewal's promise to get tough on ESG matters, the SEC's Climate and ESG Task Force charged Vale S.A. on April 28th - "a publicly traded Brazilian mining company and one of the world's largest iron ore producers, with making false and misleading claims about the safety of its dams prior to the January 2019 collapse of its Brumadinho dam.** The collapse killed 270 people, caused immeasurable environmental and social harm, and led to a loss of more than \$4 billion in Vale's market capitalization...beginning in 2016, Vale manipulated multiple dam safety audits; obtained numerous fraudulent stability certificates; and regularly misled local governments, communities, and investors about the safety of the Brumadinho dam through its environmental, social, and governance (ESG) disclosures...The complaint also alleges that, for years, Vale knew that the Brumadinho dam, which was built to contain potentially toxic byproducts from mining operations, did not meet internationally-recognized standards for dam safety. However, Vale's public Sustainability Reports and other public filings fraudulently assured investors that the company adhered to the "strictest international practices" in evaluating dam safety and that 100 percent of its dams were certified to be in stable condition.

"While allegedly concealing the environmental and economic risks posed by its dam, Vale misled investors and raised more than \$1 billion in our debt markets while its securities actively traded on the NYSE," said **Melissa Hodgman**, Associate Director of the Commission's Division of Enforcement. "Today's filing shows that we will aggressively protect our markets from wrongdoers, no matter where they are in the world."

The SEC's complaint, filed in U.S. District Court for the Eastern District of New York, charges Vale with violating antifraud and reporting provisions of the federal securities laws and seeks injunctive relief, disgorgement plus prejudgment interest, and civil penalties.

### IN THE COURTHOUSE:

**Elon Musk's attempt to get out of his agreement to purchase Twitter is on a fast track in the Delaware Chancery - despite Musk's attempts to slow-walk the case. It is fast shaping up to be the "mother of all such cases" going forward.** Time really should be of the essence here, because Twitter stock has dropped by roughly \$10 billion since Musk first made the offer - in large part, we'd say, due to Musk's repeated disparagements of the business, the departure of many key execs and the enormous uncertainties surrounding a deal - which risk leaving Twitter a hopeless mess. The \$1 billion breakup penalty looks like peanuts in the aftermath, but could a court really force Musk to buy the company at his original offer price? We think not. Stay tuned!

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