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The Outlook For 2023 AGMs: Our Tips To Assure A Smooth Event…That You Won't Find Anywhere Else

- The vast majority of companies that had virtual-only meetings last year are sticking to them, so demand will be high for the most desirable dates and times. Reserve your preferred date and time slot early – and be sure you have lined up a top Inspector of Elections too. Be sure you will get the "A-Team" from your AGM service suppliers.
- Make sure that no one on your Meeting Team agrees to accept "Floor Votes" as a way to head off a formal shareholder proposal: Please be sure to review our article on this crazy process, which a few naïve companies foolishly agree to every year - based on the often-mistaken notion that there will be too few voters to worry about. Brush up here: The Best, Worst and Weirdest Things We've Seen in the 2019 Meeting Season to Date
- Beware: Shareholder Proponents, and activists in general, will be monitoring VSMs and paying special attention to the Q&A period, and to whether shareholders are being given a fair chance to ask questions and sufficient time to cast or change their votes online. Here's a sample 'run of show' and tips for the Q&A to avoid being publicly named and shamed: A Sample "Run-Of-Show" For A Satisfying And Successful VSM & The Virtual Shareholder Meeting Q&A – and How to Tackle It
- Be sure to disclose the names of shareholder proponents (or the lead proponent, at a minimum) in your Proxy Statement. Glass Lewis has revised its voting guidelines for 2023 and will "will generally recommend voting against the governance committee chair" if the lead proponent is not disclosed. (Note too, as we have noted many times before, knowing the identity of the proponent - and their sometimes negligible share holdings or questionable motives – often yields bigger pro-management votes.)

"Pro-Life" Bullies with Bullhorns Are Set to Disrupt AGMs This Season...If They Can

Three "Pro-Life- Activists" who sneaked in and blended in by posing as 'backstage workers' at a private meeting venue managed to literally get behind the curtains at a recent Meeting of Shareholders and to pop out behind the company officers on the dais shouting "Shame, Shame" - to the utter terror of all concerned - just as the CEO was to begin her remarks. The distraction allowed another part of the group to crash into the back of the meeting room with Bullhorns - loudly blasting the same message - while a few more bull-horners managed to push in behind them. Fortunately, security officers managed to quickly get the officers off the stage - and the directors out the back way too - while other security officers provided by the venue managed to evict the bull-horners from the room.

A very carefully, cleverly - and truly terrifyingly-executed series of maneuvers for sure. Fortunately, no one was injured in the melee, and, since the polls closed just before it broke out, the official "business of the Meeting" had been concluded. Companies in the health-care industry - and any other company that might be a target for Anti-Abortion activists - would be wise to redouble their efforts to prevent intruders with malice aforethought this season - and to double their security squad too - and maybe to consider having local police on hand as well. Maybe, with their cover now blown, they will give up as the "Zombie Invaders" did a few years ago...

Disruption In The Proxy Solicitation Space: League Tables Tell Part Of The Tale - But Many Big Firms Seem To Be "Remaking Themselves" Or "Lost In A Sea Of Rivals" These Days

One-time upstart ***Okapi Partners*** has been ranked as the number-one activist proxy solicitor, both in the U.S. and globally in 2022 - *for the fourth year in a row* - in **Bloomberg**'s ***Global Activism Market Review***, below.

TOP ACTIVIST PROXY SOLICITORS

Region	Top Adviser FY 2022	#	Stake $b	Top Adviser 2021
Global	Okapi Partners	30	$11.1	Okapi Partners
US	Okapi Partners	27	$7.8	Okapi Partners
Canada	Carson Proxy Advisors	5	$0.1	Morrow Sodali
Europe	Georgeson	3	$8.2	Georgeson
Asia Pacific	Morrow Sodali	5	$1.9	Georgeson
Global ($1b+)	Okapi Partners	18	$10.8	Okapi Partners

We hasten to point out, as we always do, that the "activist" statistics do not include the many threatened actions that get resolved behind the scenes, where long-term stalwarts ***MacKenzie Partners*** and ***Innisfree M&A*** still hold a lot of sway - as Okapi does too in this space. But contested deals are where the big money is, where clients do extra due diligence - and where advisors really "show their stuff."

But 2022 also saw a major falloff in "deals" of *all types* - that left many other players - including many of the formerly "best-known names" - rather badly in the lurch. And 2023 is not looking much better for many of the 15 or more Proxy Solicitors and Advisors that are out there vying for deals – and money.

Our own revenue stream has taken a big hit in this environment – as many of our once most faithful advertisers have dropped off our list – and out of our Directory of Pre-Vetted Suppliers altogether - which to us, biased as we may be in favor of advertising, and of maintaining a strong "share-of-mind" – especially in crowded spaces – is akin to committing commercial suicide.

Some will come back, for sure. Two of the bigger firms seem to be trying to digest and rationalize a spate of recent acquisitions and geographic expansions, which almost always seem to boom before big lulls. Another seems to be looking to re-invent its business model altogether before 're-marketing." And, as always in tough times, there are and will be new entries. And - ouch for the sluggish big guys - smaller firms will get larger at the expense of the weakest marketers.

In this unsettled market, issuers would be very wise to renew relationships and/or shop for providers with special care. Check our tips for kicking the tires on internal control systems, although our top tip is still to bet the best jockeys before plunking money down.

Disruption In The Transfer Agency Space On The Horizon Too?

"Odyssey Transfer to disrupt the national transfer agent space, which has only a handful of full-service competitors" blared the headline of a January 12 press release, announcing that the SEC has cleared Canada-based Odyssey to begin operations in the U.S., effective immediately – "led by an experienced group of industry leaders" – mostly former Wells Fargo/Equiniti Trust Company execs.

"The US market is ripe for a competitor that prioritizes exceptional client service, has the industry expertise to be a valued partner to our clients, and is committed to innovation and execution," said Becky Paulson, President, Odyssey Transfer. "We're excited to be able to leverage the strength of Odyssey's Canadian brand and success as an existing company with over 1,000 clients, including hundreds of US based clients and hundreds of thousands of US shareholders. We'll be able to capitalize on existing infrastructure as we formally enter the US market, which our US-based team knows very well."

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Todd May, former CEO of **Equiniti Trust Company**, will serve as Chair of Odyssey Transfer's Board of Directors with Canada's **Becky Paulson** as President and with Wells Fargo/Equiniti veterans **Andrea Severson**, Vice President, Operations, **Chris Ward**, Vice President, Corporate Development, **Caitlyn Van Valin**, Vice President, Sales and **Angela Ponte**, Vice President, Risk and Compliance, all operating from St. Paul, Minnesota, to "provide a full-suite of transfer agent and corporate actions services to private and public issuers across the United States."

We hate to say this but with the largest U.S. Transfer Agent "sitting the bench" when it comes to advertising as the year begins – and as the industry copes with another likely bad year for new business, while saddled with huge infrastructure costs - the space is indeed ripe for disruption.

Corporate enthusiasm - and budgets - for a large number of the products and services TAs traditionally sold - have reached all-time lows. While there have been and will still be a few spinoffs each year, large companies continue to shrink – both in size, as registered ownership continues to decline – and in number, due to M&A activities. And new companies are invariably small ones, with few registered holders and even fewer product demands – and with super-tight budgets.

What the industry needs most, we think, are more players with much better, cleaner and more up-to-date automation – with much more streamlining, and much lower maintenance costs than the old "legacy systems" with their extensively cobbled-on "enhancements" tend to come with – plus a lower and more streamlined pricing model to match. Stay tuned for more disruption on this front, we feel certain.

Disruption On The Registered Agent, Business Admin And Compliance Fronts As CSC Completes Acquisition Of Intertrust Group, Solidifying Commanding Market Share

"CSC, a leading global provider of business, legal, tax, and digital brand services founded in 1899, bolstered its industry leading position with the acquisition of Intertrust Group in early November, 2022" its press release noted. "The acquisition marks an important milestone for CSC, which now will do business with more than 90% of the Fortune 500®, more than 90% of the 100 Best Global Brands®, and more than 70% of the PEI 300."

"**Rod Ward III**, who is a direct descendant of one of the company's two founders and has served as president and CEO of CSC for almost 13 years, will lead the combined organization which will be headquartered in Delaware. A highly experienced Enterprise Leadership Team, including Intertrust Group CEO **Shankar Iyer**, will support Ward.

"Our acquisition of Intertrust Group will allow us to navigate the ever-changing compliance and regulatory environment that our clients face, thanks to a world-class combination of people, processes, and technology solutions," adds Ward. "Our clients will also benefit from being served by a stable strategic partner that has been in business under common ownership for more than a century.

"As one company, CSC and Intertrust Group has the combined expertise of more than 7,500 dedicated employees with capabilities across more than 140 jurisdictions. "This means we can provide a "follow the sun" service, helping our clients wherever they need us to be," says Ward.

Elsewhere On The Supplier Scene: Are Fidelity And Other 401(k) Providers Ripping Off Retail Investors To The Tune Of $2 Billion A Year For Unwarranted "Transfer Fees"?

A recent blog from Alicia H. Munnell, a researcher at the Boston College Center for Retirement Research (BCCRR) says YES, they are:

According to Investment Company Institute there were $6 trillion in 401(k) Plans in mid-2022 and 63% of the assets - or $4 trillion - were in Mutual Funds.

Munnell looked at 43 Funds managed by Fidelity and Capital Group and found (in the teeny-tiny, deeply-buried small-print footnotes) that "transfer agent fees" accounted for 14% of total fund expenses - for a whopping five basis points - charged against the Fund assets on every individual account and totaling an eye-popping $2 billion annually – basically for doing nothing. Yes, most Mutual Funds increase and decrease some of their positions every business day, but the trades are "settled" (automatically) in the settlement process. No real "transfers" are needed – or made.

Let's agree, just for the sake of argument, that this arrangement dates from the "old days" when, maybe, "transfers" were actually made, and has somehow been overlooked until now. But let's HOPE that the SEC puts a stop to this totally unwarranted money-grab IMMEDIATELY.

People

James (Jim) Alden, long a widely-known and much-liked associate at **Group 5** has signed on with **Charles Schwab's Workplace Financial Services** group, focusing on Employee Stock Ownership Plans. Jim's expertise - and his special insights in the ESOP space - will serve Schwab - and its clients and prospects - very well indeed.

Mila Brogan, long a player in the Corporate Governance space at **Broadridge Issuer Solutions** has signed on with Proxy Solicitor and Advisor **Kingsdale Advisors** as Executive Vice President – U.S. While very much a powerhouse in Canada, where proxy fights are significantly more common than here (as of now, that is) we're betting that Mila – who has also worked at the **Millstein Center for Corporate Governance** and at the **Society for Corporate Governance** - will help to jumpstart Kingsdale's U.S. business significantly.

Sister Pat Daly, OP, a Dominican Sister whose 45 years of work "to hold companies accountable for their impacts on people and creation is the stuff of legends" passed away in December at age 66. As the **ICCR** press release also noted, "She was the Director Emeritus of the **Tri-State Coalition for Responsible Investment** (now **Investor Advocates for Social Justice**) after having served 23 years as Executive Director…Over the years Pat successfully addressed equality, health and tobacco, and international debt and capital flows. Pat played a [big] role in forcing **General Electric** to pay for the clean-up of the Hudson River." As the ***NY Times*** obituary noted, "In 1996 she helped persuade **William Clay Ford Jr** to leave the **Global Climate Coalition** [fighters against emissions controls, where] **General Motors** and **Chrysler** soon followed." The 1.4 billion votes her climate proposal racked up in 2017 (31% of the vote) led to board changes, and to the election of three climate-change experts nominated by **Engine No. 1** in 2021.

Your editor-in-chief first encountered Sister Pat in the late 1970s when he felt obliged to take her and her small group of sisters aside after a large company Shareholder Meeting to explain why most of the big pile of Voting Instruction cards they handed in could not be legally counted - which she took with her famously unflappable good grace - and thanks. Sister Pat was one of the most steadfast, best-prepared, charismatic and effective defenders of good governance practices – and good citizenship – ever to have graced the Corporate Governance scene.

Michael Manton, who has been the General Manager at **Refinitiv, Securities Information Center**, for all the SIC's 25+ years, has retired at year-end. For the uninitiated, the Securities Information Center was formed following an SEC mandate to assure that all stock certificate presented for transfer are checked against a central database to be sure the certificate numbers are those of real and still "open" certificates – that have not been "stopped" or replaced – before the transfer can proceed. Initially developed and owned by **Thomson Reuters**, the SIC is currently owned by the **London Stock Exchange** (!) and, somewhat to our surprise, is still validating more than a million U.S. stock certificates a year. Wonderful news for SIC users, Mike is being succeeded as General Manager by his long-term chief deputy, **Peter Nazzaro**.

Very good news, the wonderfully accomplished **Christina Maguire** will serve at the President and CEO of the **Society for Corporate Governance** effective January 1, 2023. Christina brings over 24 years of corporate governance experience to the CEO role, having most recently served as Managing Director at **BNY Mellon**, where she oversaw the policy, voting and operations functions for approximately $2 trillion in assets at over 12,000 issuers. Previously, Ms. Maguire held a similar role at **Fidelity Investments** for 15 years. Christina is well known to the Society as a speaker and participant at Society and other events - where she unfailingly impressed your editors with her toughness - and frankness - where truly "good governance" is concerned. *"Christina is a highly engaging leader with a demonstrated passion for the governance profession. Her strategic vision and business acumen will shape the Society of tomorrow and further enhance its value for governance professionals,"* said CEO Search Committee Chair Ginny Fogg - and we think she will be a very strong and much needed organization-rebuilder in today's incredibly challenging environment.

Tim Smith, "The lion of responsible investing" – who began his career in the early 1970s at the **Interfaith Center for Corporate Responsibility (ICCR)** – has retired from the **Boston Trust Walden Company** at year-end 2022, where he'd worked for over 20 years. But - great news, and no big surprise to us - in January 2023 he returned to work at ICCR to serve as a Senior Policy Advisor, where he will continue to work on issues related to corporate lobbying and political spending, among others.

Your editor-in-chief first met Tim in the early 1970s – when he formally proposed at all the big NYC bank Shareholder Meetings, year after year, that they not lend to companies based in or doing business with South Africa until the apartheid system was eliminated. He was and is a "gentle lion" – always a perfect gentleman, who listens patiently and politely to chairmen like ours at Manufacturers Hanover Trust, who felt that the proposal would seriously harm black workers if adopted, but always stood his ground effectively. We are convinced that his efforts hastened the end of apartheid by ten years or more. Like Sister Pat, it was and is impossible not to take notice – and to like and respect him whenever he takes a stand. Please take a few minutes to read the post below – which we will also post permanently in our History section. **See "Reflecting on the ESG Industry's Strong Foundation and Bright Future" @GreenMoney Journal**

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Worried About Pass-Through Voting?

- No real need to worry – at least this year, since in 2022 less than 2% of the votes cast were 'pass-throughs' – mainly from big BlackRock clients… unless, that is, you are involved in a proxy contest: BlackRock – and likely a few other big asset managers too – will allow retail investors to vote directly in proxy contests, so far as a pilot project - which, we think, can introduce a major wild card into the voting deck.
- Stay alert to developments on the pass-through-voting scene, however, an idea that is beginning to gain real traction. We were once big proponents of a total return to pass-through voting – which was SOP 15 years ago – but that was before the number of direct retail investors – and retail investors in Mutual Funds and EFTs skyrocketed. Talk about a potential budget-buster… Maybe coming your way soon…
- BlackRock is working on a project with a partner, Proxymity, that will allow investors to vote their share of stocks in BlackRock funds this year. Vanguard is also working on a plan to offer retail investors "a variety of choices" on voting their shares held in its mutual funds. Also, the "INDEX ACT," introduced in 2022 by Senate Republicans, would require passive funds owning more than 1% of a company's shares to "pass-through" the vote to all of the fund's underlying investors. Ouch!

Regulatory Notes ... and Comment

ON THE HILL:

Republican lawmakers Sen. Mike Braun, R-Ind., and Rep. Andy Barr, R-Ky introduced a second, joint resolution, in December, seeking to nullify the Department of Labor's new rule permitting retirement plan fiduciaries to consider climate change and other environmental, social and governance factors when selecting investments and exercising shareholder rights, saying that Congress "disapproves" of the Labor Department rule and "such rule shall have no force or effect." Sen. **Tom Cotton**, R-Ark., introduced an identical resolution in Dec.

AT THE SEC:

SEC CRACKS DOWN HARD WITH ALL-TIME-RECORD PENALTIES: The Nov. 15th press release is actually worth reviewing – for the detailed list of actions,fines, penalties and disgorgements covering every violation imaginable. They filed 760 total enforcement actions in fiscal year 2022 - a 9% increase over the prior year - including 462 new, or "stand alone," enforcement actions - a 6.5 percent increase over fiscal year 2021; 129 actions against issuers who were allegedly delinquent in making required filings with the SEC; and 169 "follow-on" administrative proceedings seeking to bar or suspend individuals from certain functions in the securities markets based on criminal convictions, civil injunctions, or other orders – featuring numerous first-time actions by the staff.

Most gratifying, the money ordered in SEC actions, comprising civil penalties, disgorgement, and pre-judgment interest, totaled $6.439 billion, the most on record in SEC history and up hugely from $3.852 billion in fiscal year 2021.

Of the total money ordered, civil penalties, at $4.194 billion, were also the highest on record, while disgorgements, at $2.245 billion, decreased by 6 percent from fiscal year 2021. Fiscal year 2022 was also the SEC's second highest year ever in whistleblower awards, in terms of both the number of individuals awarded and the total dollar amounts awarded.

Our favorite SEC case was a civil action against recidivists Manhattan Transfer Registrar Company, a registered transfer agent based in Port Jefferson, New York, and its former principal, John C. Ahearn, a resident of Erie, Colorado, for violations of a Commission order issued against them on May 17, 2018 – after which Ahearn acted as inspector of elections on behalf of Manhattan Transfer and participated in the conduct of Manhattan Transfer's transfer agent business while he was subject to a bar from association with any transfer agent. The complaint further alleged that Manhattan Transfer violated the Commission Order by not complying with its undertaking that it would retain an independent consultant and that, for a period of time, the independent consultant would not enter into any professional relationship with Manhattan Transfer other than its independent consultant work. Despite that undertaking, the complaint alleged that Manhattan Transfer retained the independent consultant to, among other things, revise Manhattan Transfer's written policies and procedures and participate in brokering the sale of Manhattan Transfer. What incredible nerve! We guess that both parties felt they were "too small" for the SEC to monitor – but happily, no… Ahearn paid a $25,000 fine while the T-A paid $75,000 plus modest disgorgement and interest penalties. A good reminder, dear readers, to choose your Transfer Agent with care!

New rules were proposed to regulate stock-market trading and payment for order flow, in a bid to lower commissions for retail investors, estimated to create $1.5 billion in savings a year. Heavy opposition from major Wall Street firms is expected. We find ourselves in rare agreement with Commissioner **Hester Pierce**, who, with her fellow-Republican colleague voted against two of the proposed rules as likely to have unintended consequences: "There is no emergency in our markets that demands a comprehensive revamping of how broker-dealers and market-makers handle order flows" she said. *Please see our article elsewhere in this issue on the $2 billion per year rip-off from individual retirement accounts by Mutual Funds via unwarranted "transfer fees" to see an SEC project that truly demands truly serious - and urgent attention.*