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# OPTIMIZER

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

## Highlights Of The 2023 Meeting Season Through June

*The 2023 Shareholder Meeting Season to date has been "one for the books" for sure - and we are happy to report that most of the predictions and early warnings we posted in late 2022 and early 2023 were very much on the money:*

While there has been a modest return to in-person meetings, as we expected - notably at **Berkshire Hathaway**, which drew an all-time attendance record of 44,000 happy investors, with the A-shares now over the \$500,000 mark - and a few upward blips in Texas, Georgia and parts of the Mid-West where what we call the "Y'all come tradition" is still strong, **Virtual Shareholder Meetings have become the clear method of choice for most companies, with no end in sight.** Of the 506 Meetings where our Team of Inspectors served through June 30 only 86 - or 17% were in- person-only, up a bit from the 15% last year. And most of them were at very small companies, with no shareholder proposal or "pressing issues" and no history of shareholder attendance, so a small in-person meeting - in a small conference room - made complete sense, economically.

**VSMs got a very big boost, we think, from the top Meeting horror-story of the year** - the scary disruption at the Walgreens Meeting by a devilishly clever invasion of hooligans with bullhorns who hid in a closet overnight and jumped out of the curtains - right behind the Chairman, CFO and the GC.

**Sadly, there's been only a tiny interest in Hybrid Meetings - which will ultimately catch on, we still predict, since they really do offer issuers - and shareholders too - the "best of both worlds."**

An interesting tidbit from **Broadridge** - only two states that prohibit Virtual-only Meetings remain - South Carolina and New Mexico - neither of them Meeting Meccas.

**Our warnings on "Meeting Congestion" were borne out in spades:** According to ISS Corporate Solutions, Inc. (ICS), an astonishing 41 percent of all Russell 3,000 companies held their annual meetings in May. There were 124 Meetings on Wednesday, May 17th, another 124 on Thursday May 25 - which ICS said marked the "peak" of the season - following 120 Meetings on Thursday, May 18, 102 Meetings on Wednesday, May 24 - followed by 95 Meetings on Thursday, June 8 - not to mention the remaining 760 May Meetings that occurred mostly on the nine Mondays and Tuesdays - averaging almost 80 Meetings per day - so yes, meeting congestion in spades.

**We are especially pleased to report that almost all of the 506 Meetings our Team of Inspectors handled in May and June - and the smaller numbers we handled in the earlier months as well - went down smoothly, and without incident - and that the few glitches we encountered were quickly put on the right track:** Evidence, we say, that issuers did listen to our advice to start planning early - and to be sure they got the "A-Team" for their companies in terms of printers, mailers, tabulators, solicitors and advisors, VSM support managers - and savvy Inspectors.

**Equally cheering, the number of companies we inspected that had to have a second, and sometimes a third Meeting adjournment for lack of a quorum dropped from over a dozen re-runs last year to a mere handful in 2023.** (See our tips on avoiding this, and dealing with it effectively, should the worst befall you, further down.)

**On the shareholder proposal front,** the number of proposals submitted to a vote in 2023 rose slightly – from 959 to 962 according to **Proxy Analytics**. E&S proposals jumped from 288 in 2022 to 333 in 2023 to date. **But Anti-E&S proposals rose from 55 last year to 96 in the first half 2023: Without the surge in Anti-E&S proposals the total number would have dropped – from 962 to 921 – well below the 2022 number.**

**Meanwhile, and in another notable trend thus far in 2023, dissent over executive pay appears to be decreasing, after reaching historic highs in 2022:** An **ICS** analysis of say-on-pay voting outcomes January 1 to May 17 found just 43 instances, or 4.5 percent of the overall total, where voting support was less than 70 percent, “a generally accepted key measure of significant investor dissent.” By comparison, the figure during the same period last year stood at 72 proposals and 7 percent of the overall total, respectively, and 66 and 6 percent in 2021. Moreover, through May 17, ISS-ICS is tracking just 15 failed say-on-pay votes compared with 27 in the same period last year and 31 in 2021.

**Oddly - and wrongly, we think - the ISS-ICS analysis noted that “The trends we’re seeing thus far in 2023 [a big drop-off on failed says on pay and fewer proponent wins on ESG and Anti-ESG matters] suggest a tapering of scrutiny from shareholders that has, as our numbers show, been very pronounced over the past two years.”**

Rather, we would say, and as we predicted in 2022-23 - and as the report actually noted in passing - **“It is also likely indicative of companies positively responding to recent concerns by actively engaging with their shareholder base and incorporating meaningful changes to their compensation programs”** – rather than seeing shareholder proposals succeed or get embarrassingly high numbers – while some of their own proposals, and recommendations to vote NO, go down to defeat.

**Also, we’d note, many companies did a much better job than usual in explaining their reasons for opposing shareholder proposals when they were unwilling to “settle” (usually by agreeing to issue yet another set of “special reports”) - AND - in clarifying, and debunking Anti-ESG initiatives, most of which, we were happy to note, did indeed fall under the thresholds for resubmissions.** (See some tips on this further down.)

**Lastly, we’d note again that the biggest - and smartest institutional investors have been paying added attention to shareholder proposals that are “over-prescriptive” considering corporate actions to date on the issues at hand and voting NO with this in mind.**

**On the Activist Investor scene, “campaigns” were up by 13% - from 178 to 196 in mid-year 2023. Settlements were also at an all-time high, however, with As You Sow reporting over 200 on their end.**

**Notably, there were NO really big-company proxy fights that did not settle before the Meeting dates.** Campaigns of all kinds, involving companies valued at \$1 billion or more, fell by almost 4% globally. But note well - campaigns against smaller companies jumped 47%, the **Bloomberg** data show. And, a surprise, the jump was largely driven by hostile actions in Canada, which saw a surge in campaigns to 42 from nine last year, **Without the jump in Canada, activist campaigns would be down, globally, year-over-year,**

**Also on the Activist Investor scene, many commentators are generating more heat than light, we think, about the effects of the Universal Proxy Card (UPC):** “Some companies and boards are more eager to wrap things up or make change proactively to avoid the cost and distraction of a fight, but also because of a perception that with universal proxy, more cards are stacked against you,” **Elizabeth Morgan**, a partner at law firm **King & Spalding** said, in a recent interview with Bloomberg reporter **Crystal Tse** – two statements that are undeniably true. But please note - it is the *perception* that has been driving the decision - AND, that while yes - “more cards are likely to be stacked against you” with UPC than otherwise – that does not necessarily mean that management will lose.

**Our friends at TAI (publishers of The Activist Investor newsletter) seem to be making a similar mistake in tracking what they call “Wins Under UPC.”** Here too, as we’ve written before, it is the *strength of the arguments that are the key to winning or losing* – and not the UPC itself.

**Perhaps the most notable, and potentially threatening new trend has been the big increase in “swarming” by Activist Investors:** As the Bloomberg article noted without further comment, **“Salesforce Inc.**, with a market value of \$204 billion, had to deal with a swarm including **Elliott Investment Management**, **Starboard Value LP**, Jeff Ubben’s **Inclusive Capital** and **Third Point LLC** – before **taking steps** to avoid a board fight. Salesforce appointed three new independent directors, including **ValueAct Capital Management** Chief Executive Officer Mason Morfit.” And in Canada, **“Algonquin Power & Utilities Corp.** and the contested takeover by **Ritchie Bros Holdings Inc.** of **IAA Inc.** attracted more than half a dozen activists.”

# Best Statements In Opposition To Shareholder Proposals

In our last issue we recommended that readers take time to review what we found to be the [“Most Engaging” Shareholder Meeting Materials](#) of the 70-odd sets we reviewed with care - and we promised to disclose the MOST CONVINCING EXAMPLES OF CORPORATE RESPONSES to SHAREHOLDER PROPOSALS - so here they are: [AMAZON](#) and [UNITEDHEALTH GROUP](#).

We urge you to have a look at them, to be well prepared for next year - and to give us readers of proxy materials a break as well... by (1) not protesting too much - and (2) by sticking to PLAIN ENGLISH - and (3) as Amazon and UHG did exceptionally well, by very clearly presenting what they are already doing on the issues at hand with clear facts and figures.

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## No Quorums At Meetings Because Directors Failed To Vote: Our Tips To Fix

As noted here earlier, there was a very noticeable decline in the number of companies that had to adjourn their Shareholder Meetings in first-half 2023 for lack of a quorum on the appointed date and time.

At two of the Meetings where our Inspectors of Election served, the shortage was due entirely by the complete lack of voting by Directors - who controlled roughly 30% of the shares outstanding! In both cases, their custodian banks said they'd shut off their voting apps and neither the company, the Directors nor their contacts at their custodians could find anyone who knew HOW to get their votes into the hopper.

Happily for them, our IOEs were able to accept an emailed statement from each custodian that (a) voting had indeed closed and (b) that the Directors were indeed entitled to vote a specific number of shares, which, the Directors averred - and as the numbers showed they had not voted - which the IOEs were willing to take in the absence of the unattainable Legal Proxy - basically saving the day. Here are our tips to avoid this ever happening to you:

- The very first thing you should do when gearing up for your Meeting is to understand the composition of your shareholder base - and to look at all large concentrations of voting power - INCLUDING the holdings of your Directors - which, especially in smaller and newer companies but sometimes in mega-caps too - are often considerable.
- ALWAYS remind Directors by the mailing date - ideally with a follow-up in writing - to be sure to vote their proxies - not just to help assure a quorum, but to minimize “close calls” on items that you want to see approved - or disapproved.
- Make sure that you - and the Directors too - know exactly where their shares ARE: How many shares may be in registered form and how many custodial accounts they may have - and with whom. Then review exactly what they need to DO (promptly sign and return a proxy for registered shares and/or promptly vote the Voting Instruction Forms they receive from custodians, with online voting being the ideal way.)
- You MAY want to remind them how costly it can be to have to adjourn and reconvene the Shareholder Meeting if there is a chance you'll miss your marks without their votes.

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## Many Big Surprises In The Bloomberg “League Tables” Covering A Wide Variety Of Advisors Where There Is Activist Activity

**SOME SURPRISES IN THE FIRST-HALF ACTIVIST-SOLICITOR RANKINGS:** For the second year in a row, **OKAPI Partners** led the list of proxy solicitors and advisors in Bloomberg's summary of first-half proxy activism - both in the number and dollar-value of deals. (No surprise to us, we'd note.)

But, very surprising to proxy watchers, **GEORGESON** vaulted from seventh to second place in the half, largely driven by the non-U.S. side of their business. Even more surprising, **INVESTORCOM**'s 15 deals tied with Georgeson's for second place, although the dollar stakes were smaller. (Yes, Investorcom - and others - it DOES pay to advertise!)

As always, we want to mention that many of the biggest advisory assignments end in settlements, which are not reflected in the charts and will never be reported. Also, that there is always a degree of variability due to “bluebirds” that can skew the advisor numbers from quarter to quarter.

We should also point out that many of the Bloomberg tables can be sliced and diced in various ways to make many advisors be number-one in *something*. But for sure, **OKAPI** has been a consistent, major standout in the Activist Investor space ever since its founding. Notably, they are equally favored both by activist investors - where many solicitors take a pass or are conflicted out - and by companies under siege.

Also quite noteworthy, once-little INVESTORCOM has gone from nowhere to somewhere quite prominent in just a few years, where they have carved out a strong niche in "small-cap deals" as has **SARASOTA PARTNERS** (also suddenly and surprisingly) - thanks to their popularity with Activist Investors - and *their other advisors* - specializing in small and micro-cap companies.

When one looks at ALL engagements on "Deals" - both routine and contested - and on a *Global scale* - a somewhat different picture emerges - with Innisfree in first place by "deal stakes" - with 46 deals and \$11.8b in deal stake, followed by Georgeson, with more deals (49) but with \$8.5b in value, followed by OKAPI with 32 deals at \$7.3b. Do note that the contested deals bring in the biggest dollars, by far - especially where large-cap companies are concerned - and that this, in our view, is the best indicator of true "market share" although, of course, the actual revenues are and likely will remain largely secret.

**ANOTHER ASTONSHING SURPRISE ON THE ACTIVIST-ADVISOR SCENE:** Halfway through 2023, **SPOTLIGHT ADVISORS** has beaten all the "Titans of Banking" in the Activist Advisory league tables - at least in North America. Again, no surprise to us in the least: Managing Member Greg Taxin is, without a doubt, one of the smartest and savviest guys anywhere when it comes to activist investor strategies and tactics - but WOW! What an amazing romp here.

Top Activist Proxy Solicitors				
Region	Top Adviser H1 2023	#	Stake \$b	Top Adviser 2022
Global	Okapi Partners	22	\$6.5	Okapi Partners
US	Okapi Partners	19	\$4.1	Okapi Partners
Canada	Carson Proxy Advisors	6	\$0.2	Carson Proxy
Europe	Georgeson	2	\$1.3	Georgeson
Asia Pacific	Georgeson	11	\$0.5	Morrow Sodali
Global (\$1b+)	Okapi Partners	13	\$6.2	Okapi Partners

#### Global Proxy Solicitors - Activist

Adviser	H1 2023			2022	
	# Engagements	Stake \$b	Rank	Rank	#
Okapi Partners	22	\$6.5	1	1	30
Georgeson	15	\$2.2	2 ▲	7	6
Investorcom	15	\$0.4	3 ▲	4	16
Saratoga Proxy Consulting	11	\$0.7	4 ▼	2	24
Morrow Sodali	10	\$0.3	5 ▼	3	16
Innisfree M&A	8	\$2.9	6	6	11
DF King	7	\$1.2	7 ▼	5	14
Carson Proxy Advisors	6	\$0.2	8 ▲	10	5
Shorecrest Group	3	\$0.2	9 ▲	15	1

But to keep things in perspective, when one looks at ALL DEALS - Globally (not just in North America) and including both company and activist campaigns for shareholder approval - **Goldman Sachs** is tied with Spotlight on Advisory deals, with 26 each, but with \$16.9b in value, while Spotlight drops to number 6 by deal value - with \$2.6b.

**MORE BIG SURPRISES IN THE IR/PR ADVISORY SPACE:** **LONGACRE SQUARE PARTNERS** - a firm we'd never before heard of - posted on LinkedIn that they were the number-one Adviser in this space in the second half of 2023 - with a whopping 67 deals. A few days later, however, we noticed a LinkedIn post from Charlie Koons - ex of **Mackenzie Partners** and **Morrow Sodali** and now a partner at BRUNSWICK GROUP - that **BRUNSWICK** was the number-one firm - with 13 deals, but with \$258b in deal stake.

Whatever happened to **JOELE FRANK**, we wondered - long the leader in this space by a country mile and whose website cited a number-one position since 2003? So off to the Bloomberg details for a look. They were down for 49 deals, so number 2 by that measure and number 2 in deal stake - behind Brunswick, at \$200b.

Interestingly, just as we went to press a **WSJ** article noted that "Several executives" just left Joele Frank "...as well as former **Bloomberg** reporter **Ed Hammond** [who] are forming a new strategic public relations firm, called **COLLECTED STRATEGIES**, based in New York

Bloomberg			
H1 2023 Global Activism			
NORTH AMERICA ACTIVIST CAMPAIGNS			
	Advisor	# Campaigns	Rank
1	Spotlight Advisors	24	1
	JP Morgan	20	2
	Goldman Sachs	17	3
	Morgan Stanley	13	4
	BofA Securities	13	5



[which] aims to bring fresh eyes to the field, including navigating the fast pace of news.” Also joining the new firm from Joele Frank are **Scott Bisang**, **Jim Golden** and **Jude Gorman**, who’d been the Chief Operating Officer at Joelle Frank.

WHAT IS GOING ON HERE WITH ALL THE CHANGES IN THE LEADERBOARDS?

**First, it’s clear that the level of competition across the entire Advisory Universe has increased in a major way.** Some of this is due to the very large numbers of firms in each space – and to the often surprisingly large number of professionals they have on staff – coupled with the relative shortage of BIG DEALS and BIG FIGHTS so far this year.

One also needs to note the enormous profit margins on such deals - since the major cost elements are purely for skilled and specialized LABOR on the part of people already on staff, deals or no.

**Also worth noting**, and rather surprising at first, competition on PRICE is not especially keen in contested deals. Despite the overcrowded fields, most companies – and their other advisors too – want to secure their most-favored staffers right away. And often, “high price” – rather than being a negative – tends to validate and reinforce their recommendations in the eyes of clients.

**Another major factor** on the competitive scene these days is “generational” in nature – with many of the longstanding stars and boldfaced names retiring – or just cutting back on their previous 24x7 availability to enjoy the fruits of their hard-earned work – while the “next generation” is clearly itching to run things on their own.

**Also**, almost every firm in this space has been undergoing a strategic re-thinking and reordering – with many of them re-focusing on their highest margin activities, shedding losers, filling in gaps in subject-matter expertise and recruiting new experts accordingly, merging, acquiring new investors and/or new partners, and sometimes selling out altogether.

**Another big factor** - as we’ve noted here many times before - almost every firm in these spaces has been increasingly trying to fish in the ponds of previous allies – and especially, to urge clients to decrease the number and nature of their other advisors – and rely more heavily on *them*.

**As a result**, we see a major re-ordering underway in the Advisor world – and with it, major changes in the *influence* of specific Advisors in recommending (or not) other kinds of Advisors: Here, for example, are Bloomberg’s rankings of Global Legal Advisers to Companies - and to Activists - where there was Activist activity in the first half – ranked by DEALS. Do note the changes in rankings by deal stakes and note too that the major law firms have been, and still are, major *influencers* – especially in the choice of Proxy Solicitors and IR/PR Advisors.

Advisor - Companies	# Deals	Deal Stakes
1 - Sidley Ausin	32	\$2.6
2 - Vinson & Elkins	30	\$1.7
3 - Latham & Watkins	19	\$4.7
4 - Wachtell Lipton	13	\$2.8
5 - Skadden Arps	12	\$2.5

Advisor - Activists	# Deals	Deal Stakes
1 - Olsham	89	\$8.1
2 - Schulte Roth	28	\$6.8
3 - Wilson Sonsini	13	\$0.9
4 - White & Case	12	\$2.6
5 - Cadwalader	11	\$6.0

***Lastly - and sorry to say it big players - we have been thinking that the age of knock-down-drag-out fights at mega-cap companies may be entirely over, given the stratospheric costs and Pyrrhic victories we’ve witnessed at companies like P&G - which gave the dissident a seat, after they asserted he’d lost the vote! Look for much more turmoil to come in these overcrowded spaces - and even more if big deals continue to be scarce.***

# Holders Coalition Fights Threats By Unclaimed Property “Auditors” To Change State Laws At The Expense Of Share-Owners

*Here’s an email we got recently from Jen Borden - whom we consider to be the world’s top expert on all things concerning unclaimed property. It updates the article she did for our year-end magazine, [2022 Unclaimed Property Year-End Round Up](#), and provides some truly disturbing news about the increasingly predatory practices of so-called UP “auditors” and their lobbying efforts to change existing state laws to the detriment of shareholders in order to enrich themselves:*

*“I think I hit it in the piece I did for the year-end *Optimizer*, but everything I have been warning about is coming true with these audits. I have been holding the line on audits [where Jen consults with affected issuers] refusing to give in to the auditor’s “interpretations” of when securities are escheatable. So, the auditors have very effectively marshaled their resources and are getting the laws changed. Nevada is a perfect example. See the letter the SSA wrote to the NV governor. We got back a NASTY note from the Treasurer. If the Governor does not veto AB 55 [which he did not] most securities accounts in NV will be escheatable unless the issuer is a dividend payer, the securities are directly held, and the issuer is old school sending a check which the s/h cashes. Clearly not the way the majority of the industry currently works. Brokerage accounts - gone. DRPS - gone. Divs via ACH - gone. Voted your proxy? Too bad, we don’t track that as activity. Oh - California even said that they will take book entry securities that are directly held, because their stock provisions only apply when held in certificated form. Absolutely backwards and IMO unconstitutional.*

*“Corporate Secretaries would lose their minds to learn their shareholder base is so at risk, but they are not [yet] in the fight at all. Not to be dramatic, but this situation is precarious. It should not be left to one issuer or one holder to fight this battle. It is an industry issue, and we need experienced voices speaking up. We were very effective recently in Montana in getting a bill similar to Nevada’s quashed. Unfortunately, there are at least a dozen other states that are in the bag for the contingent fee auditors.”*

***Issuers need to know how dangerous the current over-reaching by so-called “auditors” and by a growing number of ruthlessly predatory states really IS: If a shareowners property is escheated, unbeknownst to the owner or the legal heirs - and sold off, as many states do almost immediately - and THEN the owner or heirs come forward to claim it - virtually every state that is “coached” by the so-called auditors will only pay the proceeds of sale. Dividends and stock appreciation - often representing huge amounts? GONE.***

***What comes next? A lawsuit against the issuer - and usually against the Transfer Agent too, alleging that they had breached their fiduciary duties by failing to “do right” by the share owner, to whom they do indeed owe a “duty of care.” Very often, the plaintiff wins - State laws bedamned. But even when they do not, the issuer, and usually the T-A too, is stuck with the costs of litigation and a major diversion of management time and attention.***

## FIVE THINGS ISSUERS NEED TO DO NOW:

- **Most important of all - make sure that a thorough, highly rigorous and well-documented search for so-called “lost shareholders” is conducted before any escheatment takes place. These days, a competent search firm can find literally every single one - or their legal heirs if they are deceased. Aside from providing you with evidence that you have met your fiduciary duty to share owners, this will prevent escheatment (and future lawsuits too, please note) and will ultimately put the “abandoned property audit firms” out of business - which is where they belong.**
- **Read the [STA/SSA joint letter](#) sent to Nevada legislators, which outlines the issues in detail.**
- **If you are incorporated in one of the “bad states” that allows so-called auditors to run rampant (currently, NY, NJ & DE are not among them) - and that flatly refuses to make subsequently found owners whole - and especially if your state that is being coached to re-write the laws governing unclaimed property - you should contact the State Treasurer to say you are seriously considering reincorporating elsewhere. (Delaware actually made many useful changes to its escheatment and reimbursement practices after hearing from a large number of issuers, though they are still not nearly as good to “found holders” as NY & NJ)**
- **If you are incorporated in a “bad state” you should seriously consider joining the Holders Coalition and allowing your company to be included in their letters to state legislators. Go to [www.uppo.org](http://www.uppo.org) for more information on this vital subject.**
- **Do not make the mistake of thinking that this is an issue mainly affecting large companies - OR that your company is too small to matter. Some of the biggest lawsuits we have seen - in terms of dollar value AND in terms of damages awarded, were against “small companies” whose stock prices had risen stratospherically over time. (N. B.: Many states have provisions for double and even triple indemnity for cases involving breach of fiduciary duty.)**

## On The Service Provider Scene:

**At long last - with the long delay due to the fact that both firms had Trust Company Charters, as we understand things - AST has finally merged into EQ.** It appears to us that dividend-paying clients will continue to run on their “legacy” operational platforms for the foreseeable future but will ultimately end up on a new, U.S.-capable and compliant system based on a modified EQ (U.K.) system. But for now, no new news.

**Financial Printing design firms Labrador and Argyle have merged:** In a statement on LinkedIn from the U.S. Team Leader **Ian Poole**, his career “began when I joined Labrador, and learned the science of transparency from our passionate Founder **Laurent Rouyrès**. In 2010, I was thrilled to expand Labrador to the US, at a time when [only] 18 S&P 100 companies published an ESG Report, and most proxy statements were dense compliance documents. Argyle was created (by Poole) in 2014... As we sought investment for our next chapter, Labrador was the most exciting option.” *Both Labrador and Argyle were among the first firms to increase readability - and transparency - by helping issuers to add graphics to normally dull and dismal Shareholder Meeting docs. We wish them well.*

**Robinhood is now offering traditional and Roth IRAs and 401(k)s to its millions of users - and also offering to add a 1% match to any deposit into the account - including transfers of existing ones from other firms.** A big WSJ article noted that this could be a “transformational expansion for Robinhood” - and we would add that it might be a transformational experience for other retirement fund providers as well - not only because of their old-fogey-like images with today’s new generation of new investors, but in light of increasing complaints with sluggish old-time technologies, a big rise in “customer service issues” and recently (see our last issue and this one too) some major problems with statement errors...and too-high FEES...and image-damaging regulatory actions,,, and a pending high-profile lawsuit. - all things that would encourage a careful shopper to shop around, and maybe change providers - whether they are public companies or individual shareholders.

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## ISS Enhances Product To Rate Corporate Vulnerabilities To Cyberthreats - Posing Threats Of Its Own, We Think

**ISS ESG**, “the sustainable investment arm of **Institutional Shareholder Services Inc. (ISS)**” announced in July a number of upcoming enhancements to its **ISS ESG Cyber Risk Score** “which provides users with a forward-looking view of cyber risk based on an assessment of an organization’s internet-exposed assets.”

“The ISS ESG Cyber Risk Score rank-orders organizations on a 300 to 850 scale” its lengthy press release says, “based on the assessed likelihood that an organization will suffer a material cybersecurity incident within the next 12 months...The score is bolstered with other details and explanatory tools that help users interpret and action the score for multiple use-cases, including investment risk assessment, cyber breach insurance underwriting, third-party risk management, as well as corporate-level self-assessment.

“In the enhanced ISS ESG Cyber Risk Score model 5.0, the difference in relative odds across the score band has been improved so that it now yields a dynamic range of 31x, meaning organizations that score 300 are 31 times more likely to suffer a material breach incident over the subsequent twelve-month period than organizations scoring 850. The objective of any predictive model is to help users make better decisions by more accurately forecasting future outcomes. **The ability for this model to differentiate ‘goods’ from ‘bads’ by discerning forward-looking risk, is a key differentiator in the market. (Emphasis ours)**

“...The augmented Incident Type Likelihood 2.0 model rank-orders four incident type categories that any organization may find itself facing, namely: social engineering and phishing, ransomware or malware, vulnerability exploit, and third-party breach. The model works by comparing the firmographic characteristics of the subject organization with a deep pool of breach exemplars to gain an understanding of the common firmographic features of organizations by incident type. The resulting rank-ordered list is generated each time the Cyber Risk Score is refreshed and is included for users accessing the score via the user interface or via downloadable reports. ...Along with the enhanced Cyber Risk Score itself, the augmented Incident Type Likelihood feature provides a new level of granularity and performance over the previous model.”

*While there’s an awful lot of marketing mumbo-jumbo here to our eyes and ears (“firmographic characteristics???...a new level of granularity???) and it is not entirely clear exactly how ISS will acquire all this sensitive internal info - any service that promises to separate “the goods from the bads” sounds mighty scary to us - and scarier yet if you are publicly traded. Keep a sharp eye out, we say.*

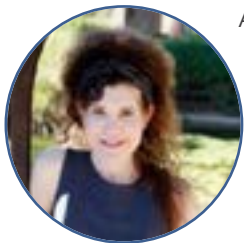
# People

*In our last issue we lamented the total lack of noteworthy people who'd gotten promoted, changed jobs, got riffed or started new careers in the 1st quarter. For the first time ever in the OPTIMIZER's 29-year history no one was on our radar screen, though we expected things would change. And WOW! - They did indeed - with the biggest crop of noteworthy names ever, both in the PEOPLE column, and in the SERVICE PROVIDER sections:*

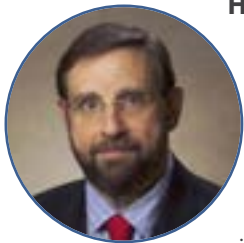


**John Buonomo** - a long-term industry veteran - and one of the top experts on "all things at Transfer Agents" anywhere - has signed on as the Senior Director of Transfer Agent Operations at **Securitize, formerly Pacific Stock Transfer**. Securitize appears to us to have a very new and unique vision on how to deliver shareholder services to modern-day shareholders in what we think is a very cost-effective way. We plan to do some digging and to report back shortly.

The estimable **Keir Gumbs**, the Chief Legal Officer at **Broadridge Financial Solutions, Inc.**, an ex-Board Member at **Uber** and a former senior staffer at the **SEC** has been elected to a two-year term as **Chair of the Society for Corporate Governance**. *Talk about finding exactly the right person at exactly the right time - where the Society itself is much in need of "righting." We are confident that Keir will draw on his keen mind, invaluable business experience and strong people-skills to help right the ship quickly, and with style.*



Another unique, widely-known and deeply experienced superstar, **Randi Morrison** will leave the staff as SVP for Communications, Member Engagement, and as the General Counsel at **Society for Corporate Governance** and will join **VMI and Greenspoon Marder** as a principal on August 1. Her **"New Governance Newsletter"** - a weekly, that will focus on Corporate Secretary duties - and issues - and **"Governance Today"** - a bi-weekly aimed at corporate directors - will launch on August 8th. Readers can also subscribe to **"Ask the Expert"** to get expert answers to difficult questions on Corporate Secretarial, Corporate Governance and ESG topics. VMI - which stands for **"Value(s) Management and Investing"** is a governance consulting business, led by **Sarah Teslik** (ANOTHER widely known, deeply experienced governance superstar and a former head of the **Council of Institutional Investors** - who is literally revered by companies and investors alike) is sponsored by law firm Greenspoon Marder. *We expect to see great things from them: While the world of Corporate Governance Consulting is seriously overcrowded these days, who in our world, we ask, would fail to take a call or turn down a visit from Sarah Teslik - or Randi Morrison?*



**Harvey Pitt**, "a legal-wunderkind who lasted just 18 months as chairman of the SEC under President George W. Bush," as his **NY Times** obit detailed, passed away in late May at the age of 78. Appointed General Counsel of the **SEC** at 30 - the youngest ever to hold the office - he left after three years to join "the powerful law firm **Fried Frank** [where] rising to managing partner in the firm's Washington office, he helped it become hugely profitable." After returning to the SEC as Chairman in 2001 with a unanimous vote, "his popularity dipped" [almost immediately] "amid a series of accounting scandals...that drew attention to his prior corporate work. Representatives of both parties questioned his interest in investigating private-sector wrongdoing" - and indeed, Pitt was always decidedly pro-big-business. "The final straw came," the NYT reported, "when it emerged

that he had failed to tell the White House or his fellow SEC commissioners" that the person he nominated to chair the newly formed, SOX-mandated **Public Company Accounting Board [William Webster]** "had headed the audit committee of a company accused of fraud. Under pressure, Pitt resigned on election night 2002." *Pitt continued to weigh-in regularly with comment letters on newly proposed SEC regulations and Op-Ed pieces in the Wall Street Journal - all of them basically asserting that new regulations were bad for business and should not be adopted - so we were not big fans, and often felt he missed the points entirely. But for indefatigability one must give him a solid A+. May he rest in peace.*

**Talk about being widely known, widely regarded and truly indefatigable in the best of ways, our great friend Broc Romanek has taken up the mantle as "Transparency Champion"** and is regularly blogging on a new site **"RealTransparentDisclosure.com"** providing good disclosure examples and other practical guidance. Partnering with **Labrador** to serve in an independent capacity, Broc is leading a team of independent committee members to apply 241 objective criteria to proxies, 10-Ks, ESG reports and IR websites to determine which companies are leading the charge to build trust in their business. More good news, Broc still serves as editor for **Perkins Coie's** popular **PublicChatter.com**. Here is a link to his newest website: [RealTransparentDisclosure.com](https://RealTransparentDisclosure.com).

As usual, Broc got off to a fantastic start with an example from **Pepsico's** 10-k that shows a brilliant and easy to absorb summary of the Pepsico board and their impressively varied skills, roles, backgrounds and tenure. Go there NOW, we say.



**Several major changings of the guard this quarter on the Activist Investor front - with Trian co-founder and Chief Investment officer Edward Garden stepping down at age 62**, with the current heads of research, Josh Frank and **Matt Peltz**, the son of co-founder **Nelson Peltz**, becoming co-investment chiefs. The two other founding partners - Nelson Peltz and **Peter May** - both 80 - will remain as CEO and President, respectively.

*(We can't help wondering if the blistering review of Trian's performance vs. Disney's that Disney oppo-advisors issued during Garden's super-expensive quest for a seat on the board - which he actually GOT - despite being over the official age limit - was a deciding factor in Garden's stepping down at Trian. Sure should'a been.)*

**Yet another major development on the activist investor scene, Carl Icahn** - one of the most famous and active activists of all time - who has been gradually handing-off duties to his son Brett - **got a near overdose of his own medicine in the second quarter, but fought off a major attack by short-seller Hindenburg Resources** - successfully renegotiating his big debt and de-coupling the new loans from the stock price - which caused an immediate, \$1 billion rebound in his net worth. *(We hate short sellers - especially the naked-shorts - so we hope that the Hindenburg short blew up like the original oversized blimp did.)*

**In a third major generational change, George Soros** - whose activism has been mostly on the social and political scene - **has handed over the management of his \$25 billion Open Society Foundation, the Soros Super-PAC and Soros Fund Management, the family investment arm to his second-youngest child, Alex, 37**. (Right wing Soros haters likely flipped out when they read "We are a lot alike....[but] I'm more political than my father" - unless they read to the very end of the lengthy 1+ page WSJ article about him, where the **ACLU** executive director concluded, **"Alex is unlikely to be the bogeyman that George Soros was for the right."**)

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## Regulatory Notes... and Comment

**ON THE HILL: In the most unusual pairing-up on a bi-partisan action one could imagine, Democrat Alexandria Ocasio-Cortez and Republican Matt Gaetz co-sponsored a bill in the House, "The Bipartisan Restoring Faith in Government Act"** - that would prohibit members of Congress, their spouses, and their dependents, from trading individual stocks. If it passes, as it seems likely to do, members of Congress would have 90 days either to divest, or to place their holdings in individual stocks in a blind trust. Members would still be allowed to buy and sell baskets of stocks via mutual funds or ETFs, as well as Treasury securities. *About time, we'd say. This idea has been proposed, widely endorsed and never passed at least three times before...but with never an alluring duo like Gaetz and Occasion-Cortez (Yech!) as sponsors.*

**The Department of Labor has approved a one-year exemption from ERISA rules, allowing UBS and Credit Suisse Group to continue providing asset management services to U.S. retirement plans.** The exemption was required because both firms have been convicted of financial wrongdoing over the past decade.

It will be in effect for one year beginning on the closing date of the merger and was granted as being "protective of the rights of the participants and beneficiaries of the plans serviced by both entities" and, more important to note, served the DOL's "primary objective in granting this time-limited exemption...to ensure that covered plans can terminate their relationships with one of these QPAMs [Qualified Professional Asset Managers] in an orderly and cost-effective fashion in the event the fiduciary of a covered plan determines that it is prudent to do so." *Let's hope that U.S. fiduciaries will take the hint and go elsewhere, we say - and that at the end of year-one the DOL will live up to its promise to get tough on crime and revoke the UBS charter to do "Trust business" here.*

**AT THE SEC: Chairman Gary Gensler has launched a major "crypto crackdown" - suing the two largest platforms, Binance and Coinbase Global, for failing to register as securities exchanges.** While busted Binance is in desperate straits, Coinbase CEO **Brian Armstrong** vows to fight to the finish.

**In a dreadfully embarrassing moment, the SEC has dropped 42 enforcement actions in their controversial in-house courts** because staffers improperly accessed documents that should have been walled-off from them.

**AT FINRA: In a most unusual move, FINRA has censured - and fined Vanguard \$800,000 - for errors in reported valuations - and for overstating yields - and projected income in nine money-market funds that appeared in more than eight million customer statements from 2019 to 2021.** *(A paltry fine, and hardly an incentive to improve one's systems - AND one's internal controls, we'd have to say - although Vanguard began to self-report other, similar errors once FINRA caught on, a WSJ story noted. As you will read elsewhere in this issue, we believe that the big Mutual Fund providers will be undergoing increasing scrutiny, and new competition too. Way overdue, we say.)*

**IN THE COURTHOUSE: The Supreme Court will rule on the long-running disputes over the SEC's use of in-house courts,** which, critics say, make the SEC both judges and jurors, after the Biden administration's appeal to uphold their use was overruled by another appeals court as unconstitutional. *(We are betting that the Supremes will favor the lower court opinion, and likely will ditch the whole idea on in-house courts, except, perhaps, for minor spats.)*

**Current and former participants in a 401(k) plan offered by AmerisourceBergen have sued the drug wholesaler alleging ERISA violations in the plan's record keeping.** Plan executives are accused of allowing excessive record-keeping fees, failing to compare the plan's record keepers to those in similar 401(k) plans and failing to conduct RFPs to test the market for better prices and terms.

*"Prudent plan fiduciaries can easily receive a quote from other record keepers" to assess fees and services, said the complaint filed in a U.S. District Court in Louisville, Ky. "It is not a cumbersome or expensive process." The plaintiffs allege that defendants "failed to regularly solicit quotes and/or competitive bids [and] followed a fiduciary process that was ineffective," said the lawsuit, which is seeking class-action status.*

Plaintiffs alleged that fees charged by **Fidelity Investments** were "objectively unreasonable" and that services provided by Fidelity were "materially similar" to record keepers and other plans. Fidelity, which the lawsuit said has been the plan's record keeper for at least 15 years, is not a defendant in the case. *(Many thanks to fellow Service-Provider-Watcher, expert evaluator and RFP manager Andy Wilcox for the heads-up here on a matter that's very much deserving of careful issuer attention. Let's hope these 'words to the wise' will be a wakeup call to issuers.)*

**Lawsuits at Twitter provide some fascinating insights into the Activist Advisory world - and to Musk himself: Innisfree M&A** sued Twitter for \$1.9 million in February and **Joele Frank** sued for \$830,498 in May for unpaid fees. Now, Twitter is suing **Wachtell Lipton** for a whopping \$90 million they'd paid out to advise on Musk's buyout - a deal Musk later sued, unsuccessfully, to wiggle out of - in what they now say represented "unjust enrichment." *(Fat chance we say that Twitter will get any money back from Wachtell.)*

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## Watching The Web

**CalPers - the California Public Employee's Retirement System** - has had its files hacked, exposing the names, birth dates and SSNs of its 760,000 retirees and possibly those of current and former employees and their spouses, children and domestic partners. The breach occurred at a third-party provider employed by the Pension Manager,

***It's time, we say, to remind readers once again to be sure that all of your own providers will be required by contract to inform you of any and all "third-party providers" they might hire - and get your OK. This, in our experience, might cause both sides to step back - although, as we have also been reminding regularly, data breaches have become an increasingly common "fact of life."***