Q1 2024 VOLUME 30 #1

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Our Take On The Disney Contest: Much To Ponder And To Learn From We Say

The Walt Disney Company released the official vote counts on April 4th from its 2024 meeting of shareholders held April 3rd - much faster than it usually takes to do so, we were happy to note - where they said "investors decisively defeated" the campaign by activist investor Nelson Peltz to win two seats on its board.

Here are our own "key takeaways" from the contest, ranked roughly in order of importance... except for the last three and most important points:

Most notably, the two truly outstanding directors that were added to the board in November, well before the proxy materials went out, were a major factor in the victory, we think. Morgan Stanley Executive Chairman **James Gorman** got 98% approval and former Sky CEO **Jeremy Darroch** clocked in at 96% of the shares voted for directors.

Chairman Bob Iger – who was not one of the directors "targeted" for votes-no by the activists - and wisely so - logged a very hefty 94% approval rating – with almost all of the votes-no coming from Peltz himself it seems - indicating clearly that investors are basically happy with the job he has been doing of late – not only in significantly strengthening the board but in beginning to turn the ship around – and the stock price too – and promising to prioritize a succession plan - although some would argue that the improvements to date have been very much due to Peltz's pugnaciousness. (The stock lost 3% on the day following the release of results, indicating to us that many stockholders were kind of sorry in the end to see Peltz not seated.)

Peltz himself received a surprisingly small 31% of shares voted in his favor, while Jay Rasulo, the former Disney CFO whom Trian had nominated for a board seat – and who did not receive an endorsement from any of the major vote-rating agents - won a mere 12% of votes cast in his favor. (We ourselves think that had the Disney Employee Ownership Plan Trustee NOT voted the unvoted Plan shares proportionately, as we believe they did, Peltz's margin would have been significantly bigger, although still short of a winning one. We feel that while the Trustee was 'entitled' to do so, they should ***not do so*** in a contested election, (a) because normally, it puts a thumb heavily on the Management's side of the scale, as we're sure it did here and (b) because the handsomely-paid Plan Trustee has a clear "conflict of interest" we think, as former fiduciaries ourselves, when the proportionally allocated votes – which we believe they are not *obliged* to vote - favor the management slate, and (c) it's simply not RIGHT for a Trustee to vote the shares of investors who have chosen not to exercise their franchise on an important matter such as a contested election of directors.)

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A MAJOR TAKEAWAY, we say - the vote clearly puts to death the myth that ISS - which recommended a vote for Peltz - somehow, singlehandedly "controls" proxy voting results because big investors slavishly follow their advice.

The three Disney nominees with the lowest vote totals for their reelection were the two incumbent directors targeted by Peltz's group for removal — **Maria Elena Lagomasino** who received only 63% of the shares voted – and even fewer without the ESOP's proportional vote in favor, we bet. But either way, a clear vote of no-confidence, we'd say, and nothing to crow about. **Michael Froman**, who had also been targeted by Trian came in with 88%of the votes cast, as did Disney's Independent Chairman **Mark Parker**, which was something of a surprise, and which took some of the heat off Froman.

Speaking of dumb things to do, as we noted in our last issue too, the three candidates nominated by Blackwells Capital, received only 2% of votes cast in their favor. What in the world were they hoping to accomplish?

As to the day-to-day proxy-war tactics, the Disney camp totally outclassed Peltz & Co in our book: Every day as we looked at the news headlines on our iPhone there were several items of news from Disney, touting their turnaround and their bold-sounding new plans, and slamming Peltz – rather unfairly we thought. (Our youngest son, for example, used his profits from Trian's **Snapple** deal to finance about 12 years of exploration and an aquaculture business in the Pacific Islands. Our entire family benefitted big-time from his activism at **Heinz** – and even bigger from his proxy fight at **P&G** which galvanized them to action after years of sleepiness and where the stock went up by 50% during his years on the board.) Disney focused on Peltz activities that have not (yet) paid off – but no investor bats 1000 100 percent of the time.

Normally, ad hominem attacks tend to backfire. But Peltz's rejoinders in the press were surprisingly weak from our perspective. And, although we thought his slogan "Restore the Magic" would resonate well with many retail investors, he did a poor job when it came to explaining how he'd do so and getting his story out there. Not so stupidly, as it turned out, Peltz seems to have spent most of his time on one-on-one meetings with the major investors.

We also can't help mentioning that we found Disney's frenetic cartoon, featuring Donald Duck's supposed uncle, "Professor Ludvig Von Drake" telling us over and over, in a wackily-delivered German accent, to "vote the white card" and "rip up the opposition cards" to be a rather demeaningly-dumbed-down thing to aim at retail shareholders. Totally stupid, we thought, to think shareholders would take advice from a carton duck…But knowing Disney's marketing savviness, and looking at the outcomes, maybe it helped their cause after all.

The most surprising thing, however, is that the massive PR campaigns by both sides (where Disney spent an estimated $40 million, Trian an estimated $25 million and Blackwells, whose entire stake was worth only $15 million, spent $6 million) – and the many predictions all around that retail voters would be critical to the outcomes – and the monstrous piles of money spent on "retail outreach" efforts - came, literally, to naught!

Compared to last year, where the Quorum clocked in at 76.55% of the shares outstanding, this year's Quorum went DOWN – significantly – to a mere 68.95% - a drop in voting of a whopping 124,712,724 votes vs. last year – where, by the way, Peltz had withdrawn his proxy fight plan well before the meeting. Actually, retail voters may indeed have been critical to the outcomes here – by being "totally turned off" by the fight, and by the barrage of mailings and phone calls, as they appear to have been – and deciding, it seems, to 'leave it to the big investors to fight it out.'

Readers should take note of the fact that virtually all of the 31% of the shares that were not voted belong to 'retail investors' who, as we have been warning, have been voting less and less frequently year after year – proxy fight or no.

Another key takeaway - one could easily argue that Peltz WON the fight – having racked up over $300 million in stock-price appreciation since he began his quest – net of his $25 million investment in the fight. And clearly, Disney shareholders have been winners too, even after the $40 million Disney spent on the fighting.

Lastly, we all need to note that Disney stock-price is still a far way away from its all-time high of three years ago - and Peltz has promised to stay on the case: "We will watch like we did last time," Peltz said in an April 4 interview on CNBC. "We've got a new set of promises, and I hope they keep them… but if they don't, you'll see me again."

Holy Moley! Exxon's Suit Vs. Former Proponents, Followed By A Three-Page Screed In Their Proxy Statement, Draws Anger – And Two Exempt Solicitations As The AGM Ramps Up.

Who'll Stop The Madness Here?

Initially, we were sort of on board with the lawsuits Exxon filed against two shareholder proponents to 'teach them a lesson' to be more thoughtful about filing shareholder proposals.

And yes, we are very much in sympathy with the idea that there are way too many shareholder proposals these days that have little chance of passing and that will not make any material difference in the day-to- day success of the company.

But when EXXON failed to withdraw the lawsuits after the proponents withdrew their resolutions, we thought "Whoa! This is going too far for anyone's good."

And THEN… in the 2024 Proxy Statement, came a scorching three-page screed against shareholder proposals in general, that seemed to us "intemperate" at best – misleading, and flat-out wrong in several respects. The call-out quote, in a prominent box: ***"The recent surge in ESG-related proposals adds unnecessary pressure on corporate boards, wastes corporate resources, and hinders informed decision making by retail investors, who must spend valuable time reading and evaluating these proposals." - ESG Working Group, House Committee on Financial Services*** - seemed to be the 'judgment of the Working Group'. Instead, this was almost word for word, Jim Jordan's standard stump-speech on the supposed evils of proxy advisors.

As to the assertions that shareholder proposals had caused the company to incur *"Total estimated cost to the Company Up to $21,000,000 in direct costs** ** Based on SEC estimates of up to $150,000 per proposal"*. These **were not** the estimates of the SEC, and they have no factual basis behind them whatsoever that we can find. But if indeed there are companies that spend this kind of money, they have only themselves to blame. As we wrote to the SEC re: the costs of proxy solicitation, companies are fully in charge of the costs here - and actually might fare a lot better if, instead of protesting way too much, they'd simply print proposals as submitted and answer with a few brief sentences to say that in the opinion of the board, they would add nothing of value to what they are already doing. Was this intemperate language vetted and approved by the entire board, we wondered? Have they forgotten the lessons they should have learned two Meetings ago from **Engine Number One**, which replaced three board members, and where Exxon subsequently, and rightly touted major steps forward in terms of corporate governance? Didn't anyone realize that posting this in their Proxy Statement was *guaranteed* to generate even more hostility when a bit of peacemaking on all sides would have been the smarter thing to do?

Within days, two prominent investors, **Westpath Investors** and **Mercy Investment Services** filed an Exempt Solicitation with the SEC – to solicit votes against Exxon's Chairman – and its Independent Lead Director and, ouch, also the Governance Chair. A few days later **ICCR** posted an Open Letter to the Exxon Board and filed for an Exempt Solicitation of its own, presumably to do the same.

It's time for Exxon Mobil to hit the re-set button for sure, we say. Let's ALL go back to being 'the grownups in the room' and work towards fostering a civil discourse that reflects respect – and not disdain – for shareholders who are acting in good faith, as they have a right to do.

But activists, please re-think your strategies - and count to one hundred before filing Proposals with so few real benefits to companies and their shareholders, as most calls for additional reports, and for expensive new cost-benefit studies that are often false-fronts for what Anti-Good Governance actions really are.

Lastly, as faithful proxy voters and close observers of the voting scene, we are absolutely convinced that one of the major factors that is causing fewer and fewer retail investors to vote their proxies is the big rise in the number - and the lack of usefulness - of shareholder proposals on the ballot – so SEC, please take note too.

Another Holy-Moley Moment – Tesla Directors Ask Shareholders To Approve Musk's 2023 Pay-Plan After A Delaware Court Rejects It!

We are betting that shareholders will reject the plan, where, as more than one analyst noted, the stock, its earnings and its operating margins are at the lowest levels in years and Tesla is laying off people like mad. But if it should be approved, it's back to court, we'd bet.

The 'Biggest New Thing?'- A Double-Binding Bylaw Proposal

Activist investor Michael Levin and the editor of The Activist Investor (TAI) - inspired by the Tesla-proposed settlement of Musk's comp-case to allow a (non-binding) vote on DIRECTOR COMPENSATION has since filed binding bylaw proposals to require shareholder approval of Director pay at 12 companies.

Of the twelve companies, five will include it on the AGM agenda and in the proxy materials: **NiSource** (NI) AGM on May 13, **PayPal** (PYP) AGM on May 22 – while **Fortiv** (FTV), **Alphabet** (GOOG) and **Devon Energy** (DVN) indicated they will also include the proposal.

Six other companies sought no-action relief, which the SEC granted, based on a potential technical violation of Delaware law, because the proposals called for directors to not vote their own shares on the matter, a "potential" violation of their civil rights, a Delaware law firm opined, which swayed the SEC, and a detail that Levin will not miss, going forward.

As Levin points out, the idea that Directors should be able to determine their own pay – without any outside scrutiny or regulation - seems like a totally unacceptable idea to most people. We are betting that this new proposal will have very long legs, but time will tell – shortly.

Directors Resign To Escape (And Facilitate) Merger Talks

Two other interesting developments on the Corporate Governance and Activist Investor fronts this quarter; several directors at Macy's and at Paramount resigned as a way to open-up and "uncomplicate" potential conflicts of interest and resolve existing stalemates in determining which if any of the pending acquisition attempts are to prevail.

Drops In Retail Investor Voting Continue: A Four-Alarm Fire, We Say - Start Now On Plans To Do Better

We have been writing about the drop in retail investor voting ever since the Notice and Access model went into effect. We have no beef with the IDEA behind the "model" – which has saved literally billions of dollars for issuers – but we can see that it has become a major contributor to the now scarily low levels of proxy voting by ordinary investors, who once voted over 70% of their shares. Now, at many companies the percentage is under 10% - and, as noted above, at the Disney meeting – despite all the hoopla – and the fact that individuals hold over 30% of the shares outstanding - they voted close to zero percent!

What Should Public Companies And Their Service Suppliers Be Doing Now To Get Better Retail Engagement Next Season?

- **First and foremost, we need to recognize that the money spent on preparing and mailing "Notices" to retail investors is going almost totally to waste – and, by the way, that the postage alone has been rising year after year.**
- **It's time for the SEC to recognize that the Notice can and should contain a brief, impartial summary of the items up for a vote that would allow holders to take action at once – either by signing and returning a completed card or allowing them to go straight to the Voting Site and vote there, after studying up as much or as little as they themselves decide to do.**
- **The Notice is also the perfect place to provide retail investors with the background and education they need as to the importance of their vote - AND on how to make up their minds as to the issues on the ballot (or to simply abstain where they can't make up their minds or are simply indifferent) – AND on the various ways they have to CAST THEIR VOTES.**
- **Better shareholder education is sorely needed – both by recipients of Notices and by those who get e-delivery of proxy materials - and "full sets" of hard-copy materials too, as shown by the steady declines in retail-voting activity.**
- **NOW is the time to plan on sending educational information to all shareholders prior to the 2025 Proxy Season – whether or not the SEC takes action on the Notice provisions.**
- **Issuers - and shareholder proponents - and the SEC staff too - need to recognize that the number and complexity of shareholder proposals on the ballot ARE contributing significantly to the declines we are seeing in retail investor voting.**

CONT'D →

- **Issuers and would-be proponents need to do a better job of reaching reasonable compromises rather than to put fresh items to a vote. And both sides should try to add data-points to existing studies, rather than to agree on still *more studies* and 'reports to investors' which are making Proxy Materials more complex, and bulkier, more "forbidding" – and "off-putting" to individual investors.**
- **The SEC needs to do a much better job in our opinion, of rejecting shareholder proposals that do not make a case for adding materially to the creation of shareholder value – and, especially, for proposals that, however "nice" they may sound, amount to trying to micro-manage the work that is clearly entrusted to the board.**

Our Top-Two Tips To Get Off To A Fast Start Next Season On Increasing Your Retail Vote

1. **Read our educational booklet, *"Shareholder Votes Have Value…Do Not Let Your Votes Go to Waste"* and resolve to make this information available to all of your individual investors next year – in time for them to take action. (We are open to customizing the booklet with a brief message from your company and to making any "tweaks" to the text that would improve it in your view, and we are ready to work with any of the service providers you may use to prepare and distribute voting materials, to do so in a timely and cost-effective manner.)**
2. **If individual investor votes are important to your company, resolve to follow this proven tactic: Promise to donate $1 to one or more charities of your choosing for every account that casts a vote.**

Please see the articles here:

The Biggest And Best Thing We Saw This Season: A 41% Increase In Retail Investor Voting Participation…following An 8% Increase Last Year… At Bank Of America (First published in 2019 but still great advice)

A Short-List Of Incentives That Might Get More Folks To Vote Their Proxies

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The Optimizer's "Retail Investor Builders Hall Of Fame"

- **AMAZON (new this season)**
- **BANK OF AMERICA**
- **BROADRIDGE FINANCIAL SERVICES (new this season)**
- **IBM**
- **PEPSICO (new this season)**
- **PRUDENTIAL**

Readers would be very well advised, we'd say, to "follow the leaders" here – major brand-leaders and "highly admired companies" who have all successfully increased the shares voted by individual investors - continuing to build and maintain the important retail vote by significant numbers. It works! It's easy! And most companies are making charitable donations anyway. So make them do double-duty!

QUOTE OF THE QUARTER - BUT SMART TO RECALL YEAR-ROUND BY CORPORATE GOVERNANCE PROVIDERS… AND CONSUMERS

"If you have contempt for governments, you will have contemptible government."

- Alexander Hamilton – b. 1755 or 1757, d. July 1804

On The Supplier Scene

Shareholder Vote Exchange Closes Down: We were sad, but not surprised to see this when, on the heels of the Disney meeting, where the concept seemed like a potential fit if ever there was one, the service failed to gain meaningful traction. *"There's clearly a market opportunity here, but we weren't in a strong position to achieve its full potential," its CEO told Matthew Levine of Bloomberg.*

We ourselves had softened our original negative opinion – having been convinced that there was a decent workaround that could be built in to guarantee that purchased votes would indeed get voted – and also, not cancelled out in the convoluted and largely unsupervised and unaudited proxy voting systems in brokerage back-offices that allow both borrowers and lenders of votes to vote. Also, we have long been incensed that the votes on shares that are owned through brokers by retail investors are indeed being "sold" – with all of the money going to the brokers. Even more infuriating, many retail investors are having their shares lent to short-sellers – with nary a penny of the proceeds going to them, while – meanwhile – the short sellers are using the shares to fuel deep drops in the market price of the shares that are lent from the retail investors' very own portfolios!

But – as we told SVE execs, and noted here last quarter - SVE was trying to compete with a cartel of major banks and brokers who are earning multi-billions of dollars a year by "lending" and/or "brokering" the lending of shares and, unethically – and illegally we say - allowing both owners and borrowers to vote their shares in many cases, thanks to intentional defects and deficiencies in their "vote reconciliation" processes.

We sure hope that the whip-smart leadership at Shareholder Vote Exchange will come back as a "Stock-lending and Vote-lending Exchange" - specifically for retail owners - with, of course, stringent rules – and stringent controls over which party has the RIGHT to vote. But OH! That big cartel will surely fight to the death to defeat (and cheat) "the little folks."

Out Of Our Inbox

- **A portent of things to come, we think - the European Court of Human Rights, the largest human rights court in Europe, ruled that Switzerland - which failed to meet its target to reduce carbon emissions - has made a breach of human rights and ordered remedial actions, The first ruling of its kind, and certain to have global repercussions.**
- **We were pleased to see BlackRock's Chairman and CEO Larry Fink make a pitch to expand retirement plans in his March 26 letter to investors, where he noted that four in ten Americans do not have even $400 in savings, much less a reasonable retirement plan. But while he had some "suggestions" – like encouraging more employers to offer incentives like matching funds, and creating systems that provide pension-like predictable income streams to reverse the shift "from financial certainty to financial uncertainty" that came when so many companies dropped their defined benefit plans, he stopped short of endorsing what a too-small-number of employers are actually doing these days to better compete for qualified workers.**
- **While Fink reiterated the fact that while the transition to green energy is inevitable, he re-defined his view as favoring "energy pragmatism," noting that "Nobody will support de-carbonization if it means giving up heating their home in winter or cooling it off in the summer."**

People

Many true "industry icons" passed away in the first quarter, we are sad to note:

Donald F. Gress (July 22, 1946 – February 17, 2024)

As a March posting from **Continental Stock Transfer and Trust** rightly noted, "Don was an industry icon… a beacon of integrity, dedication, and leadership at Continental for over 55 years, whose passing leaves an irreplaceable void in our hearts and our company. Don's unwavering dedication, unparalleled leadership, and boundless generosity have left an indelible mark on the entire Continental family and the broader stock transfer industry."

Ira M. Millstein, revered Corporate Lawyer, thinker, mentor, advisor and innovator - and the father and guiding light of the Corporate Governance Movement, we say – died in March at 97. One of the most brilliant – and nicest and unassuming icons we have ever met – Ira, a senior partner at **Weil Gotshal & Manges** for 70+ years, founded and led **The Millstein Center for Corporate Markets and Corporate Ownership at Columbia University,** where he taught – and he also served as the Senior Associate Dean of Corporate Governance at the **Yale School of Management**, where he also taught. He advised public companies and served as a Director at a literal "Who's Who in Corporate Amerca" - and helped the **Business Roundtable** draft its groundbreaking *Statement on Corporate Responsibility* 1981. He was also instrumental in gently nudging **"The American Society of Corporate Secretaries"** to broaden and change its name and mission to ultimately become The Society for Corporate Governance. We can't imagine that there will ever be an equal on the Corporate Governance scene – but here's hoping.

Roberta Karmel, another greatly esteemed lawyer, thinker - and an important groundbreaker - passed away in March at the age of 86. She was the first female Commissioner to be appointed to the NYSE board – and the first female **SEC Commissioner**. Although she considered herself a Liberal Democrat, she was highly conservative when it came to SEC rules and regulations – insisting that they should be firmly grounded by legislation.

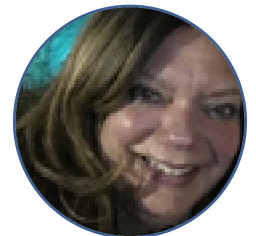
She practiced law in New York City at **Willkie Farr & Gallagher** (1969–72), **Rogers & Wells** (1972–77; 1980–86), and **Kelley Drye & Warren** (1987–2002). She taught, and was Centennial Professor of Law, and Co-Director of the Center for the Study of International Business Law, at **Brooklyn Law School**. She was a Fulbright Scholar, a trustee and Chair of the **Practising Law Institute**, a Co-Chair of the International Coordinating Committee of the Section of Business Law of the **American Bar Association** and Chair of the ***AALS*** Section on Securities Regulation, a member of the American Law Institute, and a Fellow of the American Bar Foundation. A surprising fact about Roberta, she appears to have had a rather good success as a ballerina before choosing law school and moving on to the SEC!

Peter (Pete) Sablich – yet another icon in the shareholder servicing community, passed away peacefully at his home on March 27, 2024, after a short illness. Born in Chicago, Pete was a proud alum of De La Salle Institute ("The D" as he called it anytime he met a fellow South-Sider) and North Central College – and a passionate White Sox fan.

Pete began his long and fulfilling "Grand Tour" of the transfer agent universe in 1968 at **Continental Illinois Bank and Trust Company,** and later at **First Chicago Trust Company**, **EquiServe**, **BNY-Mellon** and **Computershare** - where he was truly beloved by colleagues, clients and industry competitors too. Subsequently he served with distinction as a much sought-after Inspector of Election at **CT Hagberg LLC** – for over 15 years – where clients always wanted him back. Peter was a long-term, highly esteemed, and very active member of the "Society," where he chaired the Midwest Chapter twice, the **Securities Transfer Association**, where he fought to keep the Midwest Chapter – and the Midwest Chapter of the **Shareholder Services Association** too - alive and well for so many years. His skills at attracting corporate issuers, compelling speakers, and, especially, his skill of picking family-friendly venues (like lakeside resorts, Chicago River cruises and the Chapter Annual Meetings at unforgettable roof-top restaurants/White Sox game-viewing sites that attracted clients, colleagues and their families too to turn out in force.

Pete is survived by his wife Mary Kay, their three children, Peter, Patrick, and Elizabeth and seven grandchildren. The family asks that if anyone would like to make a donation in his memory to please consider the **De La Salle Institute** or the **Chicago White Sox Charities**.

Happily, many new and exciting roles for industry experts this quarter:



Long-term proxy industry veteran **Donna Ackerly** has announced the official launch of her own firm, **Lioness Consulting LLC**, specializing in proxy solicitation and information agent services for public/private companies and SPACs and corporate governance advisory. Donna IS a "lioness" when it comes to such matters - long known for her deep knowledge and expertise - and for her strong and fiercely loyal defense of client interests.

Ryan Wade, a long-term strategy-specialist at Computershare's **Georgeson** unit has been appointed General Manager, of **Broadridge Corporate Issuer Solutions** -"to drive strategic growth for **Corporate Issuer Services**" - succeeding **Dorothy Flynn**, who retired at year-end.

One of the smartest people we know, **Paul F. Washington** has been appointed as President & CEO for the **Society for Corporate Governance**, effective April 15th.

As the press release noted, quoting Society Chair and Search Committee Chair **Keir Gumbs**, "Paul brings a wealth of experience and expertise to the CEO position by way of a distinguished career in corporate governance, having most recently served as Executive Director, ESG Center, at **The Conference Board** [where] Paul led a preeminent non-profit think tank addressing a spectrum of corporate governance, sustainability, and corporate citizenship priorities, significantly increasing membership, and heightening the ESG Center's profile. Previously, Paul was Senior Vice President, Deputy General Counsel and Corporate Secretary at **Time Warner** from 2006 to 2018, having also held several other senior roles in the corporate legal department and supporting the company's CEO. Prior to joining Time Warner, Paul was an Associate at the law firm of **Sidley Austin LLP**, and formerly Vice President and Corporate Secretary at **Dime Savings Bank**…He also knows us well, having been a long-term active Society member and a former Board member and Board Chair. Paul will offer a strong and unified strategic vision for the Society as we move forward, respecting the Society's history and capitalizing on future opportunities for the benefit of our members,"

The Nuvo Group has announced the addition of **Joseph Contorno**, most recently of **Laurel Hill Advisors**, as NUVO's Vice President of Sales. Joe "is a highly qualified professional with a proven record of success in sales, management and new business development. He is joining our New York sales team to expand our sales force, develop new business and continue to ensure we deliver the highest level of client satisfaction [and will] focus on our capital market printing industry which offers SEC filing, printing and technology services to private and public issuers, law firms and investment banks.

ALSO at Nuvo – Industry veteran **Scott Lam** (ex **Broadridge**, **Alliance Advisors**, et al.) has been appointed as Senior Vice President and Sales Leader to drive growth and to capitalize on Nuvo's unique business model.

Regulatory Notes…And Comments

ON THE HILL:

At the FTC - in a most unusual development - "Biden's Trustbuster" [FTC Chairman Lina Khan] "Draws New Allies; The Khanservatives" as described in a lengthy WSJ story on March 26, noting "Growing Republican skepticism toward big business" and what we see as basically "automatic attempts" to block corporate mergers of late.

The Supreme Court, in another surprising but welcome development - involving UBS and a whistleblower it fired - ruled unanimously that a whistleblower does not have to prove that a firing subsequent to the whistleblowing was "discriminatory" in order to qualify for damages.

At PCAOB, a series of baby-steps will finally give the public a slightly better "peekaboo" into auditor performance with the issuance of 11 "metrics" that will reveal a bit more about senior partners workload, personal involvement in audits where there are significant risks, turnover, and how audit performance affects their compensation – all of which were initially proposed in 2015! Other proposals will require firms to file notices of "significant events" (like lawsuits and enforcement cases) in 14 days rather than the old 30-day period and, for the first time ever, to disclose policies and procedures to spot and deal with cybersecurity risks. The new metrics are "not guaranteed predictors of audit quality," the PCAOB chair noted, but "They do provide an important window into how a firm manages its resources and conducts its audits that, with context, will empower audit committees, boards, and others to hold firms accountable," she said.

AT THE SEC:

A surprising order in early April to stay the effectiveness of the SEC's Climate Change Disclosure Rule, issued in March, until the appeal of the rule has been decided in court.

IN THE COURTHOUSE:

A big setback for the SEC – and for public company groups that support regulation of proxy advisors – and a big win for ISS as a court rules that the SEC "acted contrary to law and in excess of statutory authority when it amended the proxy rules' definition of 'solicit' and 'solicitation' to include proxy voting advice for a fee" in 2020 - AND that the 2022 SEC repeal of some proxy firm requirements under the rule was insufficient. ***Institutional S'holder Servs. Inc. v. SEC***, Two other cases brought by the **National Association of Manufacturers** and **US Chamber of Commerce** – claiming that the SEC exceeded its authority in 2022 by reversing 2020 regulations are pending in federal appeals courts – seem moot now.

Out Of Our Archive: Our Top-Ten Reasons To Grow—And To Guard—Your Company's Retail Investor Base

We first published this article in 2012 and we think it is one of the most important articles we've ever published, It is equally applicable – and maybe especially applicable today, where so many companies are foolishly treating retail investors like pesky and expensive nuisances - so here it is...

1. **Individual Investors are LONG-TERM INVESTORS:** Seven years is about the average for all companies, with 16-20 years for "better than average companies." And many investors in companies with the best-known brands—or among the "most admired companies"—are second, third, or even fifth generation investors, as your editor's grandkids are, in P&G. What's the big deal about this? A hard core of long– term investors is a ***must*** if your company is to have the time it needs to successfully execute its long–term strategies...so please read on.

2. **Individual Investors WILL continue to follow the "Buffett Principle"**—and to buy—and hold stocks—in companies they know and admire; with products and services that they know and admire... despite short-term buffetings in your stock price, and the blandish- ments of brokers (who only make money when you buy and sell and buy again) to take profits now, in order to buy the next-big-thing. But they will only do so if you continue to *cultivate* them, and to treat them, and communicate with them, as valued, long-term partners in your success.

3. **Smaller-cap companies take note: If you do NOT have a fairly large and solid core of long-term owners, or foolishly blow them off, you will NEVER get on, or back on the radar screens of Institutional Investors:** None of them can AFFORD to buy and hold your stock if making a "meaningful investment" will cause the price to spike—and if an attempted withdrawal will cause it to tank.

4. **A solid core of individual investors automatically moderates stock price volatility.** *This is good for all investors: Some degree of volatility* is good for your stock—especially those upticks —and no volatility is no good—because you'll fall off, or never get on, the traders' radar screens. But let's face it; all investors—or their heirs—will have to sell some day. And usually, it's because they need the cash now. And, when that day comes—whether you're a regular stockholder—or an employee stockholder—or the Chairman of the Board— you don't want to see the stock off 20% that day because earnings fell one cent short of institutional "expectations."

5. **Individual investors provide a mighty floor to support your stock price**—*especially in distressing times:* It's not just because they continue to "buy on the dips," because their modest buying power can usually be outgunned big–time by bearish institutions... who can always re-buy later and lower. *It's because most individual investors have a "floor" of their own; lower than which they simply won't sell.*

6. **A strong and loyal base of retail investors grows—and preserves—a company's all-important Brand Equity:** This represents *REALLY BIG MONEY*: Experts on "brand equity" estimate that a company's brand accounts for at least 5% of its total stock price—and often more (think **Apple**—or **Coca-Cola**, or **Hershey**—or **Merck**, or **Pepsi**). Strong brand equity also helps to ***preserve*** shareholder value when troubles strike. It's no cure all, for sure (look, for example, at the way **BP** stock tanked after the big oil-spill—or what's happened to **BofA**'s stock after the financial crisis) but think where they'd be if their individual investors gave up and moved on... and took their business with them.

7. **If you have 38% or more of your stock in "safe hands" (and please note that virtually all these hands belong to founders and other long– term individual investors) it is virtually impossible for impatient institutions or vulture capitalists to wrest control of your company strategy - or your company as a whole - away from your board:** Will it make your company takeover proof? Of course not. Long–term investors will disinvest, and even the most patient will tender to a raider if they ultimately lose faith in your long–term vision. But note well; typically, it's the walking away of long–termers that gives "investors" both the idea, and the critical mass to "take your company out" at a consequently distressed valuation.

8. **Companies with the right mix of individual investors have a lower cost of capital than companies that are thinly held or over– loaded with impatient investors. This represents BIG MONEY too:** Lower volatility and strong brand equity (i.e., much less risk to investors) translates to a "premium price" for your stock—and to lower borrowing costs too—vs. your peers. As in any auction market, the bigger and the happier the crowd of bidders you have, the higher your market premium will be.

9. **Without a really solid core individual investors, your company's stock can become constantly whipsawed by volatility or, just as bad, can get permanently stuck in the mud:** As noted above, "good" institutions won't touch it if a meaningful investment on their part will send your price soaring—or if a sell decision will drive your price down by five or ten percent. But speculators will have a field day when your stock is too thinly owned, or over–owned by short–termers.

10. **Individual investors will provide your company with huge amounts of extremely low cost long-term capital DIRECTLY—if you let them:** Savvy electric utilities, for example, have been using DRPs and ESOPs to raise half or more the total equity capital they've needed for the past 35 years. And, they've raised it for pennies per share, vs. the 6–7% they'd have to pay over to the underwriters in a public offering. When major U.S. banks needed to dramatically boost their capital base in the eighties, they did the same. We are constantly amazed by the number of companies who could use 'free money'—but fail to tap into this easy and cheap to tap pipeline.