



# INSPECTORS OF ELECTION: SOME QUESTIONS AND ANSWERS ON “THE BASICS”

## WHY DOES MY COMPANY NEED TO HAVE ONE OR MORE INSPECTORS OF ELECTION?

The model business code in every state of the union we’ve ever looked at calls for a publicly traded company to have one, two or three – or sometime more – Inspector(s) of Election to oversee and certify the vote – whenever there is an Annual or Special Meeting of Shareholders. Most non-US companies also require Inspectors, or as they are sometimes called, “Judges of Election” or, in Canada, “Scrutiners”. The Articles of Incorporation and/or the By Laws of most publicly held companies also spell out the role of the Inspector(s) ...and how many there should be...who should appoint them...and what is to happen at that company if an Inspector should unexpectedly become unable to serve.

### WHAT, EXACTLY, ARE INSPECTORS OF ELECTION SUPPOSED TO DO?

Inspectors of Election are typically charged by state law, and in the Corporate Charter documents, with four sets of duties, and sometimes a fifth:

- ✓ Determining whether a quorum is present, sufficient to allow the transaction of the business that is to come before the meeting
- ✓ Tabulating, or overseeing the tabulation of all validly executed shareholder votes – whether cast in person or by proxy
- ✓ Hearing and ruling on any challenges that may be made as to the validity of one or more proxies or ballots present at the meeting
- ✓ Certifying the final results. In the U.S. the Inspectors’ final report is binding, and can only be reversed in a court of law.
- ✓ In some states, it is the Inspector, and not the Chair of the meeting who announces when the polls are open and when they are officially closed.

In addition, each Inspector of Election is required to swear and file an oath to “faithfully execute the duties of Inspector of Election to the best of my ability, and to act with strict impartiality.”

## WHO CAN SERVE AS INSPECTORS OF ELECTION?

Any individual person can serve as an Inspector of Election. And, please note, while they may be acting as representatives of a company, Inspectors swear their oaths and serve as individual persons.

## DOES THIS MEAN THAT A COMPANY EMPLOYEE - OR A RETIREE CAN SERVE AS INSPECTOR?

Yes, company employees and retirees can and often do serve as Inspectors at “routine” Annual and Special Meetings. As long as they swear their oath to “faithfully execute the duties of Inspector” – and do so, we would add...and can pass the “sniff test” in terms of their ability to carry out such duties in a totally impartial manner...and provided, we would remind again, that the meeting will indeed be a totally “routine” one, this can be a perfectly fine and a highly cost-effective solution. If any of the outcomes might be “close” however – or worse, subject to challenge by parties who want to have different outcomes – an employee or retiree would probably not be a good choice as Inspector.

## WHAT ABOUT A HIRED “AGENT” OF THE COMPANY? SAY AN ATTORNEY, OR THE OUTSIDE AUDITOR, OR A REPRESENTATIVE OF MY TRANSFER AGENT OR PROXY SOLICITOR?

People who work for your outside law firm, auditing firm, transfer agent, and even your proxy solicitor can, and often do serve as Inspectors of Election. Given today’s environment, however – the closeness of many shareholder votes and the increasing scrutiny that the outcomes are receiving from activist investors – it is wise to pay attention both to the qualifications of Inspectors and to investor perceptions about the independence and the impartiality of your designated Inspectors.

## A CHECKLIST OF QUALIFICATIONS A COMPANY SHOULD CONSIDER BEFORE APPOINTING ONE OR MORE INSPECTORS OF ELECTION:

Inspectors need, of course, to be persons who will appear to be well-qualified – and who are well-qualified. Their resumes, and the way Inspectors present themselves, should bespeak them as persons with impeccable experience.

Inspectors must be persons who completely understand “the duties of Inspector”. Ideally, they will also have well documented procedures as to what, exactly, they do to “inspect”. Very important, Inspectors’ actual due diligence efforts should be commensurate with the types of issues that are up for a vote, and commensurate with the likelihood that the outcomes may be “close” or otherwise subject to challenge.

Increasingly, it is important for Inspectors to be – and to be perceived as being – totally independent persons. As with corporate directors, persons who are or were employees of the company are not generally considered to be independent where governance matters are concerned. Persons who are affiliated with companies that derive material income from the company appointing them are often not wise choices either – IF any of the Meeting outcomes could potentially be close or ultimately challenged. In today’s environment, it also seems very wise to use totally independent parties to “look over the shoulders” of proxy tabulators as a “double-check” of their work, and to receive and review the work of “submitters of proxies” like proxy solicitors, activist investors and any other bearers of proxies who may show up at the meeting.

Inspectors of Election need to be able to stand up to any challenges that may be made – and to explain exactly what they have done to “inspect.” They also need to be able to “push back” – firmly but politely – not only to outside challengers, but to company representatives – and their various agents, all of whom, have a keen interest in “winning.” The worst possible outcome for a corporate annual meeting is not losing, we can assure you: It’s declaring a win and having to retract it later.

Inspectors should be prepared to deal expeditiously and professionally with proxies and ballots submitted at the meeting, and to certify the final results without delay. While added due diligence steps are often required these days, corporations, and their investors, have a need for speed as well as certainty as to the meeting outcomes.

**“WHO COUNTED THOSE PROXY VOTES, MADAM CHAIRMAN?  
 “WHAT ARE THEIR QUALIFICATIONS, WE WANT TO KNOW...  
 “WHAT DID THEY ACTUALLY DO TO ‘INSPECT’?  
 “AND HOW DO WE KNOW THEY GOT IT RIGHT?”**

**INTRODUCING “OUR 2010 TEAM” OF INDEPENDENT INSPECTORS OF ELECTION...**

For well over five years, the *OPTIMIZER* has been warning companies to expect questions like the ones in our headline to pop up from the floor of their Annual and Special Shareholder Meetings - and to be prepared... with some very good answers to all of them.

In 2008 and 2009 we saw questions like these make front-page news...at companies like Apple, CSX, WAMU and YAHOO, to name just a few...and to pop up at virtually every meeting where the final results were “close”.

In 2010 we expect even more questions like these to arise - thanks in part to majority voting rather than plurality voting for directors - coupled with increasing shareholder pressures for greater individual

director ‘accountability’ - coupled with a huge increase in investor skepticism about everything a public company does and says these days.

THE 2010 Team of INDEPENDENT INSPECTORS OF ELECTION has grown from five, to ten, to twenty-five...and we expect it will continue to grow over the next decade.

Please take a minute to review the truly exceptional qualifications of our IIOE Team. We think you will agree that having one or more of our members on YOUR team will provide you with strong support - and with a strong and much needed feeling of confidence - during the planning stage, at the meeting itself, and all the way through the Inspectors’ Final Report and Certification.



**Carl Hagberg** serves as general manager for the Independent Inspectors Team. He has served as Inspector of Election at over 400 Annual and Special Meetings and in numerous proxy contests. Carl is considered to be one of the country’s leading authorities on Annual Meeting matters and on automating - and auditing - the proxy voting and tabulating processes.

*Give us a call at 732-928-6133 to discuss our services, to learn more about how we might help you, and to secure the kind of coverage you really need to have on your all-important Annual Meeting date.*



**Raymond (Ray) Riley**, a Brooklyn-based consultant specializing in systems and procedures, serves as co-manager of the IIOE Team. Ray has acted as Inspector of Election at well over 100 routine and contested meetings. While serving as the chief technology officer for the Corporate and Institutional Trust and Agency group of Manufacturers Hanover Trust Company, Ray developed the securities industry’s first fully-online proxy tabulation and reporting system. Ray is a former president of the Securities Transfer Association.



**Rhoda Anderson**, based in Cranbury, NJ, guided two of the world’s largest companies to record voting levels - first as Director, Corporate Secretary’s Dept. at AT&T, then as an Assistant Secretary at Lucent Technologies - before founding her own company, which helps companies automate the *delivery* of annual reports and proxies and to better automate their voting processes.



**Francis G. (Frank) Arren** has over 40 years of experience in the financial service industry. In the late 1960s, through 1989, he served as a Vice President in the Mutual Funds Services Group of BankBoston, followed by a stint at Chase Global Funds Service Company, before moving to Equiserve, L.P. where he served as Director, Client Administration until 2002. From 2002-2009 Frank was a Client Service Manager and Chief Compliance Officer at Strategic Planning Group, an investment advisory firm in Needham, MA, where he currently resides. Frank has served as Inspector at numerous shareholder meetings, including Eastman Kodak, General Motors, Gillette and Xerox. He is a graduate of the Stonier School of Banking at Rutgers, the New England School of Banking at Williams College and holds an MA from Burdett College in Boston.



**Debra Baker**, who divides her time between Atlanta, GA and Birmingham, AL, served from 2002-2006 as the Executive Director of Ethics and Compliance and Assistant Corporate Secretary at BellSouth Corporation. She was responsible for all the company’s Ethics and Compliance programs, for the Board and Committee sections of the proxy statement, for meeting logistics, materials and minutes, for the annual Board and Committee evaluation process and for monitoring the company’s governance ratings. Currently, she is affiliated with Arcapita, a private international investment bank headquartered in Bahrain, with offices in Atlanta, London, and Singapore that sources investment opportunities in asset-based corporate investments.



**Keith Berkheimer, MBA**, is an independent consultant based in Palm City, FL. Keith recently retired from Public Service Enterprise Group after 39 years there, where he held various management positions as an Assistant Treasurer, including responsibility for PSEG's in-house Shareholder Services unit, and for overseeing the annual proxy solicitation effort. Keith is a former President and Board Member of the Shareholder Services Association, formerly known as the Corporate Transfer Agents Association.



**Michael Dzieciolowski**, based in Santa Clarita, CA, has over 35 years experience in brokerage and banking operations and in client services. As a former Assistant Vice President and Relationship Manager for BNY Mellon and its predecessors, Mike coordinated transfer agent activities and served as Inspector of Election for over 400 annual and special meetings of shareholders of small, medium and large companies. Clients included Rockwell International, Fluor Corporation, Computer Sciences Corporation, Hilton Hotels Corporation, Harman International Industries, Imagine Films Entertainment and Corporate Express among many others.



**Susan Edwards, MBA**, based in Boca Raton, FL is a former Stock Transfer Operations V.P. and Department Head of Manufacturers Hanover Trust Company. Where she managed over 500 employees in multiple departments, in multiple locations and on multiple shifts. She attended numerous annual meetings and served as Inspector of Election at meetings of small, medium and large cap companies throughout the U.S. Puerto Rico. After relocating to Florida, Susan founded Rockwell Communications, an international telecommunications business which was subsequently sold to a publicly traded company.



**James D. Gaughan, Esq.**, based in Houston, TX, is an independent consultant in corporate governance. He has over 25 years experience with Fortune 500 companies serving in corporate governance positions, where he supervised the preparation and distribution of proxy solicitation materials and coordinated shareholder meetings from solicitation to vote tabulation. Jim is a long-time active member of the Society of Corporate Secretaries and Governance Professionals, having served in a number of officer and supervisory committee positions with the New York and Houston Chapters. He also served as a member of the Society's Securities Law Committee and Corporate Practices Committee.



**Iris Glaze**, who is based in Seattle WA, served as Shareholder Services Manager with Washington Mutual Bank's Investor Relations department from 2000 to 2009. Iris managed the annual and special shareholder meetings, including proxy distribution and the final vote tabulation. She also oversaw the successful integration of over 75,000 shareholders into WAMU, arising from more than 20 mergers and acquisitions during her tenure. Iris was an active member of the Broadridge Financial Solutions Issuer Client Advisory Board and the BNY-Mellon Shareowner Services Client Advisory Board.



**James E. Hagan**, based in Atlanta, GA, spent more than 45 years with BNY-Mellon and its predecessor companies, most recently in the position of Vice President & Senior Relationship Manager in the Atlanta office, from which he recently retired. During the course of his career he has served as Inspector of Election at more than 300 Annual Meetings including Harris Corporation, The Hershey Company, Loews Corporation, and Mirant Corporation. Jim is a graduate of New York University.



**Don Hager, Esq.**, based in Oklahoma City, OK, and currently Of Counsel to DeBee Gilchrist, is a former Assistant General Counsel and Assistant Secretary of Kerr-McGee Corporation. Don served as Chairman of the American Society of Corporate Secretaries Public Company Affairs Committee, as Chairman of the Membership Committee, and in 2003 received the Bracebridge Young Award, the Society's highest honor.



**Patricia Hoffmann** has spent 30+ years in management and senior customer relations positions in various areas of the financial services and shareholder servicing industry. Prior to joining our team, Pat managed a team of Stock-Option and Employee Ownership Plan Professionals at Citigroup's Smith Barney unit. Prior to that, she served as a senior relationship management officer in the Stock Transfer divisions of Citibank, Manufacturers Hanover Trust Company and Mellon Investor Services. Pat has been responsible for coordinating annual meeting services and for serving as an Inspector of Election at well over 200 annual and special meetings. She is a graduate of The State University of New York at Oswego.



**Jane Ludlow, MBA, CPA**, based in Dresher, PA, is an independent consultant specializing in corporate governance and compliance. From 1984-98 she was Executive Director - Corporate Governance at Bell Atlantic, where she supervised the creation of materials and the logistical and voting arrangements for the Annual Meeting, where typically, over 500 of the company's 2 million investors attended.



**Thomas Ludlow, CPA, CFA**, is currently an independent consultant based in Dresher, PA. Tom recently retired from Verizon, Inc., after 33 years of experience in a broad range of financial management disciplines. Tom's 23+ years at Verizon was spent primarily in their Treasury division, where his assignments included oversight responsibility for a portfolio of leveraged lease investments and, prior to that, for the banks that had custody of both the Master Pension Trust and various other Employee Benefit Trust assets. Tom is married to Jane Ludlow, one of the original members of our Team of Inspectors.



**Joseph MacLelland**, based in South Yarmouth MA, retired in late 2009 as the Operations Manager for the Computershare Proxy Group, which he had been managing since 1985. During his career there, Joe was responsible for all the activities necessary to design, produce, mail and tabulate proxies and to certify the vote at over 1,500 Annual and Special Meetings a year. He led or assisted on projects designed to implement developments such as Householding, Notice & Access and IVR and Web-based proxy voting. Until his retirement, Joe was a member of the STA Proxy Committee. He holds an Associate degree from Cambridge School of Business and attended Williams School of Banking.



**Gregory Malatia**, who is based in the Chicago area, retired from LaSalle Bank in 2008 after managing Shareholder Services there for 11 years, where he was responsible for interfacing with the Bank's corporate clients, coordinating annual meeting requirements and acting as Inspector of Election at numerous annual and special meetings. Earlier, Greg spent 26 years at Harris Bank, ultimately becoming the operations manager for stock transfer, reorg, tax reporting, dividend disbursement and proxy production, mailing and tabulation activities. Greg has been a director of the Securities Transfer Association and a director and past president of the Midwest Securities Transfer Association.



**Belinda Massafra, MPA, CPA**, based in Atlanta, Georgia, is president of Shareholder Services Consulting LLC. Prior to starting her own company, she served as Director of Shareholder Services for BellSouth Corporation from 1998 - 2007. Her responsibilities included coordinating BellSouth's annual and special shareholder meeting process - from proxy statement creation and delivery, to final vote tabulation covering BellSouth's 1.4 million shareholders. Belinda is an active member of the Society of Corporate Secretaries and Governance Officers and the Shareholder Services Association..



**Sarah Mc Daniel** is an investor relations manager, based in Mountain Ranch, CA. She has served as Inspector of Election at over 100 Annual Meetings - as a representative of Bank of America, Wells Fargo Bank and Manufacturers Hanover Trust Company of California - prior to signing-on to our Team in 2003. In 2009, Sarah served as the inspector from our team at more than a dozen Annual Meetings.



**Ray Poplasky**, based in Jupiter, Florida, recently retired as an Assistant Vice President and Senior Relationship Manager at BNY-Mellon Shareholder Services. Ray has more than 35 years experience in the Stock Transfer and Shareholder Relations industries - starting at U.S. Trust Company, where he managed the U.S. Trust account, among others, then at Bankers Trust, Manufacturers Hanover Trust and BNY-Mellon. He has served as Inspector of Election at over 300 Annual meetings, including companies such as Hess Corporation, Honeywell Corporation, Sallie Mae and U.S.Air.



**Tod Shafer** is located just outside of Chicago, IL. Recently retired from Computershare Investor Services, Tod is a seasoned securities professional, having spent over 39 years in the stock transfer industry. His first 15 years were spent in stock transfer operations with the last 24 years in relationship management. In this latter capacity, among his various duties, he was responsible for managing stockholder meeting duties for his clients. This included acting as Inspector of Election at over 100 stockholder meetings, including meetings for FPL Group, Maytag, PNC Financial Services and US Cellular.



**Barry Shapiro**, the founder of Applied Consulting & Logistics, a shareholder relations consulting firm, spent more than 30 years with Mellon Investor Services and its predecessors as a Vice President & Senior Relationship Manager. He has served as Inspector of Election at more than 200 Annual Meetings, including those for BellSouth, Fannie Mae, The McGraw-Hill Companies, and Yale University Trustee Elections.



**Kristina Veaco**, founder of Veaco Group in San Francisco, has been advising public companies on securities law compliance and corporate governance for over 20 years. Kris ran the Office of the Corporate Secretary at McKesson Corp. for seven years, where she was also responsible for securities law, SOX compliance, stock plan administration and subsidiary records management. Earlier, Kris had similar responsibilities at AirTouch Communications and at Pacific Telesis. A former Board Member of the Society of Corporate Secretaries and Governance Professionals, Kris is the current President of its Northern California Chapter and is active in the National Association of Corporate Directors.



**Thomas Watt**, who is based in Staten Island, NY, is a former Vice President and Senior Relationship Manager with BNY Mellon and its predecessor companies, a career that began with Manufacturers Hanover Trust Co. in NYC in the late 1960s. Over the past 25 years, Tom has attended meetings and acted as Inspector of Election for many of the Banks' most important clients. Tom holds the record on our Team, we believe, for the most-miles-traveled to annual meetings and for most meetings attended.



**Gary Wozniak** is a Long Island, NY based consultant to the shareowner services industry. Gary brings four decades of financial services industry experience in all phases of Corporate Trust Group Services, with an emphasis on managing large complex clients and transactions. He has helped organize numerous annual meetings and has acted as an Inspector of Election at over 250 routine and contested meetings. Most recently a First Vice President at The Bank of New York Mellon, Gary has also built his experience with stints at Marine Midland Bank, Manufacturers Hanover Trust Company and Harris Trust Company. Gary is a graduate of Pace University.