

# THE SHAREHOLDER SERVICE OPTIMIZER

HELPING PUBLIC COMPANIES – AND THEIR SUPPLIERS – DELIVER BETTER AND MORE COST-EFFECTIVE PROGRAMS

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★★★ NOW IN OUR 18th YEAR ★★★

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## AS THE 2012 ANNUAL MEETING SEASON LOOMS...

### MORE TIPS FOR GETTING READY...AND FOR SAVING REALLY BIG MONEY IN THE BARGAIN...

#### FOR STARTERS, PLEASE NOTE THAT ON PROXY VOTING MATTERS... “EIGHTY IS THE NEW FIFTY”

*Once upon a time, if a shareholder proposal got even the tiniest tad over 50% of the votes-cast AGAINST it, companies would declare victory and move on with alacrity.*

*As to votes on directors, companies that had a plurality standard didn't pay much heed at all to the Withheld votes, since a single vote FOR was all it took to get elected. Even companies with a majority election standard – which will soon be the overwhelming majority of all companies – paid little attention to the votes NO... unless they crept over 20% for a given director.*

These days, however, we say that eighty percent in favor of a company proposal – or against a shareholder proposal – is the absolute *minimum amount* you need to see. And even then, it's no longer safe to rest easy: A 20% vote against your Say On Pay - or against a given director - or against *anything* you favor - or in support of a shareholder proposal you do not favor – should trigger alarm bells at your company, along with a clear-cut plan to assess the sources of discontent, identify and reach-out to important allies – as well as to the “dissident voters” – with a goal of doing better – and not worse – come the next election.

If you do nothing, the chances of doing much worse in 2012 are becoming way too big to risk: Many activist investors are saying they're ticked-off about the way Says On Pay sailed by...and are looking to use high Votes-No – on ANY company-supported item – as a screen to trigger higher scrutiny in 2012...and a higher level of calls to Vote NO...not just on pay, but on a wide variety of matters. One can expect the proxy advisory firms to raise the ante in similar fashion.

Several thoughtful leaders - including the Society of Corporate Secretaries and Governance Professionals president **Ken Bertsch** - have called attention to the very large number of companies whose Says On Pay passed...but with

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## 2012 ANNUAL MEETING

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scanty – and we say scary margins – and also to the large number of such companies that actually got OKs from the proxy advisory firms: Roughly 300 companies had Yes votes between 51% and 80% *despite* a “pass” from ISS. Results like these clearly indicate that there are significant “pockets of discontent” that smart companies will want to investigate and address with vigor before the 2011 season kicks in.

**A hot new topic these days – both in the corporate and activist investor communities – is the level of Says-No that ought to trigger a specific, written response from management, or**

**from the Compensation or Governance Committee in the 2012 proxy statement on their own assessment, and on what, if anything they have done in response.** In the just-released annual ISS survey on governance issues, half of the investor respondents said that a 20% level of opposition should trigger a written response, while – no big surprise – only 13% of issuers said the same.

**Whether or not you decide to address low levels of voting support in your proxy statement or, much better, we think, in one-on-one conversations with the naysayers, it really does seem that a 20% Vote No on *anything* you support – as well as a 20% Yes vote on anything you do not support – ought to be the number that rings the alarm bell.**

## AND WHILE YOU'RE AT IT, BETTER DO SOME THINKING ABOUT WHAT YOUR COMPANY WILL DO IF ACTIVISTS COME KNOCKING WITH A PROPOSAL FOR PROXY ACCESS

Last month we were part of a small group of issuers - and some very savvy proxy-fight lawyers - who were brainstorming on what might be coming down the pike regarding “access” and what kind of strategies to have in mind, and on the shelf.

Midway through, someone said, “Hey! I bet that lots of activist investors are having the same kind of brainstorming and strategy sessions we’re having!” Indeed they are.

Another wake-up call that seems to have gone largely unremarked is that several companies have previously adopted bylaw changes that allow for “proxy access”...like AIG...thanks to some arm-twisting when they were on the mat...and Apria, thanks to activist Ralph Whitworth, who ended up chairing the company. Disney, Exxon Mobil and UnitedHealth Group, along with several smaller companies, also received access proposals in the past. So there are precedents...and roadmaps...and templates already out there to bone up on – which we think will resonate big with investors at a lot of companies in the news.

Most issuers, and their outside counsel, seem to agree that making bylaw changes to grant access before being asked is probably not the best strategy. But having at least a sketch of something on the drawing board – that your own board could live with – and

maybe offer up on your own if activists come knocking, as a way to knock them out – or maybe to use as the basis for a negotiated deal – sure seems like good insurance to us. As we mentioned last issue, it’s also smart to look at your director qualification and selection criteria, and maybe look to raise the bars.

With all of these developments lurking in the background, rounding up the votes of individual investors is more important than ever...so please read on...

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## **A SHORT-LIST OF INCENTIVES...THAT MIGHT GET MORE FOLKS TO VOTE THEIR PROXIES...AND SAVE MONEY ON EXPENSIVE - AND MOSTLY-ANNOYING PROXY SOLICITATION EFFORTS**

*With individual investor votes increasingly being the “swing votes” in close corporate election outcomes, we’ve been wracking our brains hard...to come up with incentives that really WILL incentivize over-busy investors to cast their votes.*

*Individual investors, as we’ve noted over and over again – are voting their proxies less and less often with every passing year – But when they DO vote, please note well, they are typically 90%+ in favor of the management position:*

**The easiest-to-implement tip on our list – with a payback that’s virtually guaranteed to boot – is using “stratified mailings” to mail full-sets of your printed proxy package to individual investors who will have, in the aggregate, a meaningful percentage of your votable shares:** The most recent Broadridge study shows that a whopping 42% of the voters who receive a full-package through stratification cast their votes in 2011: This is more than *twice* the voting rate of folks who receive e-delivery or “Notices” that materials are available if they want to take the extra trouble to get them.

Amazingly, Broadridge reports that only 10% of their clients used the stratified mailing technique in 2011. So DO plan to do a careful share-range analysis in 2012 we urge – and decide where your own company’s sweet-spot for mailing full-sets is likely to be – with special attention paid to the specific items to be voted on: For some companies, the optimal number is 1,000 or maybe even 1,500 shares. For other companies – or if a vote is expected to be really close – it may be as low as 200 shares. The closer the expected outcomes, the more you should lower your stratification thresholds. At most companies we’ve seen, raising the number of shares that vote with management by a full 6 percentage points is a very achievable number to shoot for.

**An equally compelling strategy – and another proven one – is to come up an actual reward for voting one’s proxy:** Prudential Financial’s “trees or totes for votes” giveaways have incentivized additional holders to cast their votes by double-digit numbers for two years running...And, it also seems clear, they have helped to assure that the *previously habitual voters* would *continue to vote*. But the 120,000 folks who chose the totes (another 112,000 chose trees in 2009) present a rather daunting logistical issue – just to send all those totes – and a rather daunting expense too, for most companies to deal with...unless you have over a million registered holders like Pru – and where your proxy-solicitation expense would be a much costlier expenditure...which turns the trees or totes thing into a financially winning deal.

*Here’s our brainstorm for a really cost-effective incentive for producers of goods and services to offer: How about a sheet of coupons, or a ‘dollars off’ offer...prominently designated as being for shareholder voters only...that web voters can click on after they’ve voted, print out and cash in? Sending identical coupons to paper and telephone voters should be easy and inexpensive to do as well, and will generate a double-benefit, please note, since you’ve*

*certain to get more votes... and move more products too!*

**Don’t make or sell anything you could offer to individual investors? How about a cash donation to a non-profit dedicated to financial literacy, on behalf of every investor who casts a vote?** Lord knows, our country is sorely in need of financial literacy these days. We especially like programs that are developed for high-school students – like those from the National Endowment for Financial Education ([www.nefe.org](http://www.nefe.org)) and the Institute for Financial Literacy ([www.financiallit.org](http://www.financiallit.org))

*Maybe even more compelling; how about promising an added donation to a cause that’s near to your own corporate heart for every shareholder who casts a vote...like the Ronald McDonald Foundation...or Wendy’s adoption promotion activities, to cite two easy ones that tug at the heartstrings?*

**But speaking of financial literacy – the lack of which we consider to be the root cause of voter apathy – how about delivering some to your investors with the proxy materials?** Yes, we’re still flogging our little pamphlet, “*Shareholder Votes Have Value... Please Don’t Let Your Votes Go To Waste!*” We have spoken to hundreds and hundreds of investors who all say the same basic things about proxy voting: “We don’t understand a lot of these issues... We don’t have the time to focus on this... We are not sure how to find the info we need to make up our minds... Many of these things do not seem to be that important... and... the really big vote killer, “Our small shareholdings don’t really matter, do they?” Our little booklet tries to explain exactly HOW votes have value for investors...and to offer very simple strategies for deciding on proxy issues, based on what IS important to them... and on making a habit of voting...and on choosing and using the method that is quickest and easiest for each individual voter. Call or email us for a copy... And, to put our own money where our mouth is, we’ll donate our copyright fee to charity for the first two companies to use both the print and web versions.

**Consider a “personalized pitch” from your Chairman or CEO about the importance of voting even seemingly “small” positions.** In our experience, a personal touch gets results like magic: Append a hotlink to a short and sweet video clip on all your e-deliveries. Print the link prominently in the Chairman’s letter, or, better yet, feature it in an insert of its own, to the folks who get hard-copy. Print the link – and a QR code that will automatically link to the video – and to the voting site too – on the Notice. Consider a special video – and a unique QR code – designed to motivate employee owners to visit...and to vote.

*Think about saying a sincere “thank you” to the folks who DO vote...if only on the voting screen or in the telephone script, or in a thank-you letter - or better, as we said, with a tangible reward...if indeed you DO care, as we think you should. This can be the most powerful motivator and habit-builder of all... to set you up nicely – and inexpensively – for next year.*

## A SHORT LIST OF VOTING DIS-INCENTIVES TO AVOID

- **The number-one disincentive in our book is a proxy package where the info one NEEDS to cast one's vote is buried somewhere in the middle of a big fat booklet.** Time is scarce, folks. PLEASE take our oft-repeated advice to put the voting items way up front – where they belong...and where folks can find them... Explain why you want folks to vote your way – but don't "protest too much": Keep your reasons – and your arguments against proposals you don't want to pass – as short and as simple as you possibly can!
- **A very close second in the disincentive department is a poorly timed, poorly targeted and poorly-delivered phone call from a proxy solicitor:** Sometimes these calls are needed...and can be helpful to potential voters...and will be worth the money spent. But a badly introduced and badly delivered call – especially during the dinner hour, when yes, that's when we're home – will make folks so mad they'll not vote, or worse, vote against you...out of pure pique. Make sure you know exactly what kind of people will get

such calls...and when...And issuers; read the script yourselves, or maybe have it read to you by one of the callers before authorizing such campaigns.

- **A relatively new – but MAJOR disincentive – arises from way-over-long telephone voting drills:** This used to be the quickest and easiest way to cast one's vote. But today, companies that have adopted majority voting now need to have the list of directors - and the three voting choices - read out one by one...unless the voter opts to vote as management recommends, which fewer and fewer voters opt to do each year. Couple this with the new and now mostly annual Say-On-Pay vote at most companies...and a long list of shareholder proposals at most of our most widely held companies...and you're in for a 15 minute siege. Telephone voting now needs to come with a warning to consumers...or better, to flog our little booklet yet again...with a discussion of the many ways to vote... and how each voter can decide on the quickest and easiest way for them.

## OUR NUMBER-ONE MONEYSAVING TIP FOR THIS QUARTER... HELP YOUR REALLY SMALL SHAREHOLDERS TO CASH OUT...NOW; BEFORE YOUR A-M RECORD DATE:

*Times have changed a lot since we last visited this topic, and it's way past time for some fresh advice:*

*Used to be that transfer agents were always peddling "odd-lot buyback/roundup programs": These days, however, a successful program for issuers tends to cut mighty deep into the TA's revenue stream...so most TAs have gone to radio silence.*

*Proxy solicitors were big on selling "turn-key programs" too – many of which, as we've pointed out earlier, were great for THEM – but they were not always so good for issuers: Many of these programs wiped out lots of middlin' investors ('cause that's where the money was, for the vendors) who, most times, actually earned their keep as part of the shareholder profile – without putting much of a dent in the teensy tiny folks...who keep on coming back anyway.*

**But these days, a huge number of the companies whose records we look at have hundreds – and sometimes many thousands of shareholders with a truly immaterial number of shares...with no prospect at all of them ever acquiring a "material" position in your stock.**

The vast majority of the really small investors are there by

*accident:* Typically, they sold a "round lot" way back when – leaving behind a few odd stock split or stock dividend shares, simply because they'd mislaid them, or couldn't lay hands on them on the day they wanted to sell. Another, very common cause: they sold shares from their DRP or DSPP just after the record date for a dividend...inadvertently creating a *really tiny* fractional-share position. Yes...occasionally – and your editor has been guilty of this too – some very small shareholders intentionally left a small balance in the Plan as their "readmission ticket" – thinking (wrongly, as we can see if we take a careful look) that they'd buy again...someday.

**These tiny hangers-on cost you a ton of money – without producing any material benefits at all:** More than half of them tend to be registered holders, so you're paying Transfer Agency fees that effectively buy you zilch. Adding insult to injury, most of these cling-ons – and most of the really small street-name holders too – who generate handling fees of their own – cling on to paper deliveries: So there goes *more money* out the window for paper, postage, enclosing, mailing and processing fees – which also, typically, produce *zilch* for your company. Get rid of them, we say, before your Annual Meeting record date rolls around, and use the money for something useful!

## OUR TOP-TEN TIPS ON CONDUCTING A SUCCESSFUL SMALL-SHAREHOLDER CASH-OUT PROGRAM

1. Years ago, we advised; “Stop calling these programs - and thinking about them - as “odd-lot programs: Focus instead on what constitutes an ‘OK investor’ for your company – based on dollars invested – and set your target audience accordingly.” It’s still good advice.
2. Don’t buy into a totally off-the-shelf program: Definitely, one-size and one shape may be good for the vendors - but it does not suit all companies well, as we think you’ll see as you read on.
3. Get a statistical breakdown of both your registered and street-name holders by size of holding - with the *number of holders* in each sub-group and the *actual and cumulative percentage of ownership* represented by each group as you go up the ownership ladder; say from less-than-one to 1 share, 2-5 shares, 6-10...on up to say, \$500 worth or \$1000 worth...or whatever level seems to constitute a “good” or “OK investor” from your company’s perspective. Then target the groups that will allow you to “optimize” your program – by taking out the folks who create the biggest percentage of the expense – while creating the least amount of *value* for you. It’s not at all unusual to find that 80% of the odd-lotters by number hold less than 15 shares each – and less than 4% of the shares held by ALL individual investors combined!
4. Do some mathematical modeling to see if you won’t have the best results by charging your target-class NOTHING: If you can save a “blended” \$6 to \$10 a year per holder eliminated - on TA fees, Broadridge fees, printed matter, envelopes, postage and “miscellaneous charges” – you’d be smart to design a program – and find a provider to manage it – that will cost the shareholders in this class *nothing* to cash out. Pay the agent’s fee yourself...and you’ll generally get your money back in year-one, or no later that year-two – if you target correctly. Participation is *bound* to be high, since *everybody* likes a free service. And guess what? We’ve seen lots of companies that could afford to give a cash *bonus* for cashing out, or maybe to match or even double each donation to charity - in light of the savings going forward.
5. Keep the program as simple as possible: Years back we used to advise; “Never conduct an odd-lot buyback program without a rounding-up feature.” Today, sad to say, we’ve got to advise; “Don’t waste your time.” In today’s environment, the fewer choices you give people, the likelier they are to pick one, and act on it.
6. So today, we say - in a tip we learned from ShareGift USA – “If you want really small shareholders to do take action, offer three simple choices: (1) Do nothing...(2) Check the charity check-off box and donate...or (3) Sell all shares and send a check.
7. Make the program as *hassle-free* as possible: A huge number of really small shareholders simply can’t find the certificates – OR...they’re too busy to look...OR to fill out a lot of forms. Get an insurance policy to cover really small amounts that MAY show up one day – or get your agent to get one – and let people simply check a box to say they’re “lost” – then cash’em out.
8. Consider developing a separate strategy for small shareholders who are in a DRP or DSPP – or in a “book-entry plan” because of an old spin-off. This class alone may be big enough to take a big bite out of your really small-owner population – WITHOUT the need to make an offer to all the street and registered holders in the share range you select. Most such plans are written so that participants can cash out at ANY TIME: If they have some certificated shares at home, they’d have to send them in of course...or check that box to say they’re “lost.” But often, a simple letter from you to them, outlining the cost and bother of managing immaterial holdings, and explaining what they need to do to cash out, and enclosing the form and a return envelope, is all that’s needed to get them to do so. Here too, consider waiving the usual sales fees for the littlest accounts.
9. In any event, do not close off the ability to sell through the DRP while the offer is in progress – as some providers have talked issuers into doing: Allowing vendors to sell a service to shareholders that they can get for free – or at a much lower fee through a DRP or DSPP – is immoral, and a major breach of the duty of fairness an issuer OWES its investors.
10. Whether you are launching a broad-based program – or simply targeting Plan participants – stress that it’s a “limited time offer” – and issue no more than one reminder...while there’s still ample time to act on it.