

Step-One In Preparing For Your 2005 Annual Meeting: Make Sure Your Inspectors Of Election Are Independent... And That They Fully Understand The Voting And Tabulating Process

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When was the last time you were able to lean back in your chair, reflect on your company's upcoming Annual Meeting and feel confident that all the necessary policies and procedures for the proxy season are firmly in place and that all your bases are completely covered?

Not so long ago, the Corporate Secretary's office could simply bring out last year's checklist, conform the dates to the current year's calendar, copy all the people involved in the meeting - including all the external suppliers of goods and services - and check off all the "deliverables" as the team came through as usual.

When it came time to have the Board appoint the Independent Inspectors of Election, as most company bylaws and most state laws require, you simply asked your transfer agent - who usually served as the proxy tabulator - to provide the Inspectors. And maybe, just to have local backup, or if more than one Inspector was required, you'd have a company employee or retiree serve as well.

In the wake of Sarbanes-Oxley, which has put corporate governance under a new spotlight - and also in the wake of increasing shareholder activism - a trend

has been developing to retain totally independent third parties as the official "inspectors", instead of, or in addition to an employee of the proxy tabulator.

Here are some important factors to consider before you ask your Board to officially appoint the "Independent Inspectors of Election":

WHO should an Issuer select to serve as its Inspector? Maybe we should start with who should not be selected: employees or retirees of the Issuer, or of its outside counsel or accounting firm or, its Transfer Agent, since auditing one's own firm's work does not count as being "independent" these days. But, of course, you must have people who have experience with all the details that go into organizing and conducting an annual meeting and who are completely conversant with the "mechanics" of issuing, distributing, voting and tabulating proxies and ballots - both at ADP and at the transfer agent or other proxy tabulator. Accordingly, your transfer agent representative can often be an invaluable "second." Even more important these days, you must have Inspectors who can "think on their feet" if questions or problems arise, who won't get rattled,



and who have both the credentials - and the hands-on knowledge - to qualify both as independents and as experts.

WHAT should an Independent Inspector be able to offer an Issuer?

Inspectors should review the Issuer's charter, bylaws and proxy statement to independently verify the required vote for each proposal. Inspectors should review the proxy card - before it's printed - to make sure that all the "technical niceties and necessities" are in place and that there are no ambiguities created by the language or layout. They should also review the annual meeting script, the "emergency script", the admissions policy and any other documents, like sign-in sheets, the agenda, rules of conduct, and the ballots - including the proxy-committee ballot - to assure that the meeting will proceed smoothly, and to insure there will be no questions at all with respect to "fairness." Most important, the Inspectors must perform independent systems reviews and quality-tests that are appropriate for the circumstances. In other words, the closer the outcomes are, the more probing, testing and sampling before the results are certified.

WHY would an Issuer want to retain an unassailably independent

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Inspector? The importance of having Inspectors that not only provide the *appearance* of being independent but who *are* independent, and who *act independently*, to test and verify the results, can't be emphasized enough in today's environment. The ASCS *Guidebook For The Corporate Secretary* tells us, "In contested elections...it is advisable to have outside, independent inspectors...and where the proxy contains a shareholder proposal opposed by management, it may be advisable to appoint a wholly independent inspector. Several companies have been criticized by proponents from the floor of the meeting for failing to take this step, to avoid even the appearance of lack of objectivity in the tabulation of the proxy vote."

WHERE will an independent Inspector be able to benefit the Issuer? In pre-meeting preparation, at the Annual Meeting, and especially *after* the meeting, if proponents, or other shareholders have questions about the

final results.

WHEN does an Issuer need an independent Inspector? Any time a controversy might arise. But why should an Issuer wait to retain an independent Inspector until a crisis seems likely? Issuers are coming to the conclusion that having an unassailably independent Inspector in place before a controversy occurs is not only a "Best Practice" but one that provides additional assurances that a crisis may be prevented. It is taken for granted that Issuers will retain independent outside counsel and totally independent audit firms. The proxy voting process requires equally independent inspection.

HOW does an Issuer locate an independent Inspector? Network with other Issuers, discuss with the Issuer's Transfer Agent, and, of course, look to the American Society of Corporate Secretaries website for candidates.

ABOUT THE AUTHOR: Don Hager, currently Of Counsel to DeBee Gilchrist in Oklahoma City, is a former Assistant General Counsel and Assistant Secretary of Kerr-McGee Corporation, where he was responsible for the Annual Meeting of Shareholders and the company's transfer agency and shareholder relations matters. Don chaired the Public Company Affairs Committee of the American Society of Corporate Secretaries, served a specially-extended term as Chairman of the Society's Membership Committee and was chair of the 1993 National Conference Committee. In 2003, Don was awarded the Society's highest honor, the Bracebridge Young Award.

Editor's Note: Readers may wish to consider the nationwide team of Independent Inspectors of Election that operates under the umbrella of Carl T. Hagberg and Associates and where Don is a team member. See www.optimizeronline.com for pictures and bios of our team members.

ISSUERS.....IN CASE YOU HAVEN'T NOTICED:

- **INSTITUTIONAL INVESTORS - AND OTHER VOTERS WHO ARE MOSTLY "UNFRIENDLY" TO MANAGEMENT POSITIONS - ARE VOTING THEIR PROXIES 100% OF THE TIME**
- **INDIVIDUAL INVESTORS – WHO USED TO VOTE THEIR PROXIES FAITHFULLY, AND MOSTLY IN LINE WITH MANAGEMENT RECOMMENDATIONS – ARE VOTING LESS AND LESS OFTEN WITH EVERY PASSING YEAR... EXCEPT WHEN THEY'RE MAD, THAT IS, AND VOTING AGAINST YOU.**
- **THE ANGRICEST VOTERS AMONG YOUR EMPLOYEE-STOCKHOLDERS ARE ALSO CASTING THEIR VOTES RELIGIOUSLY, EVEN WHILE THE "SILENT MAJORITY" OF BASICALLY CONTENTED EMPLOYEEES HAS BEEN STAYING ON THE SIDELINES...GIVING ADDED WEIGHT – AND ADDED VOTES TO DISSIDENT POSITIONS IF YOU HAVE EMPLOYEE-OWNERSHIP PLANS WITH "PROPORTIONAL VOTING" POLICIES.**

IF YOU ARE CONCERNED ABOUT THESE TRENDS, AS WE THINK YOU SHOULD BE, THE OPTIMIZER HAS SOMETHING TO HELP YOU:

- **We have created an easy to read and inexpensive pamphlet – aimed, impartially, at all investors – entitled, "Shareholder Votes Have Value: Please Don't let Yours Go To Waste" ©**
- **It explains - simply and clearly - how and why proxy votes DO have value.**
- **It features "Strategies and tips to make the voting process as quick and easy as possible."**
- **And, in response to feedback from regular non-voters, it offers "Tips for reviewing annual meeting materials with a view toward deciding on your votes."**

ISN'T IT TIME TO START TELLING YOUR FRIENDLIER SHAREHOLDERS SOMETHING THAT ACTIVIST INVESTORS ALREADY KNOW... THAT "SHAREHOLDER VOTES HAVE VALUE"???

If you would like to review a copy of our booklet, just call the Optimizer at (732) 928-6133 to request one.