

THE SHAREHOLDER SERVICE OPTIMIZER

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

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★★★ NOW IN OUR 19th YEAR ★★★

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“NINETY-NINE-PERCENTERS” TRY TO TAKE OVER A DOZEN OR SO ANNUAL MEETINGS THIS YEAR: THUS; STILL MORE TIPS ON BEING WELL PREPARED

Just before the Spring 2012 Annual Meeting Season began, a loose coalition of unions, activist investors, “Occupy Movement” members, “local” activist groups and assorted others – warned that they intended to target more than 200 shareholder meetings for various kinds of “acting up.”

Your editor, for example, received an email urging him to add his voice to the protests - that came with a handy tool to locate sites within driving distance where he could “learn more” about the issues and how to be heard, in order to make a big impact. Oddly, the majority of sites within an hour's distance were Quaker Meetinghouses – “a good sign” your editor blithely thought, at first – But as he expanded his driving range toward bigger cities, the sites became a lot fringier – and much angrier sounding when we read more, as urged.

Sure enough, the Wells Fargo meeting soon became front-page news – with a full-color WSJ photo of activists waving WFB stock certificates for one share each, which did indeed entitle them to enter the meeting hall, divide into groups, whereupon they'd take turns shouting and chanting slogans as the Chairman tried to conduct the business of the meeting. And this pattern – to buy one share (which, please note, took quite a bit of organization – and time to accomplish) – or to get a proxy from a sympathetic holder of record – and then to divide into small groups throughout the hall who'd take turns chanting “We are the ninety-nine percent” – or “Pay your fair share of taxes” – until they were escorted out (largely without incident) but chanting loudly all the way, until the next group took its turn. Essentially the same drill was repeated at **GE**, where there were about 100 protesters and 30-40 chanters to evict, **Verizon** (five groups of five chanters we were told) and a half-dozen or so other companies, like **NextEra**, where 30 or so locals demanded that NextEra - which had benefitted from investment tax credits by improving plant and equipment, and thus paid no taxes in 2011 - write checks to the US and Florida Treasurers “to improve social services” – which one protester seemed sure would reduce her wait-time at the local health clinic.

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ANNUAL MEETINGS...

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On April 30th, the city of Charlotte, NC, which was gearing up to host the **BofA** and **Duke Energy** meetings, invoked the strict security measures that had been passed in January in anticipation of the Democratic National Convention – allowing police to search briefcases, backpacks, luggage and “messenger bags” – and that included a long list of items – like plastic pipe, lumber, spray paint, pepper spray...and permanent markers – that would be grounds for arrest if discovered.

Wow, thought we: Shades of the bad old days of shareholder activism! And good reason for us, and you, to review our “Tips on Annual Meeting Security” and “Annual Meeting Admission Criteria” that are on our website, www.optimizeronline.com

Our top-five new thoughts on “Annual Meeting Security”:

Be sure to monitor your transfer sheets for one-share purchases or transfers - especially in the 3-4 months before your meeting.

Monitor those social-networking, union and activist investor websites with extra care as your meeting date approaches.

Give some thought to moving the meeting to a bigger and/or potentially “safer” site if signs of previously unexpected troublemakers arise, or if your company might be in the 99%-ers’ sweet spot in any way.

If you think you might be a target, be sure you have enough security *on hand* to evict 30 or 40 people. It ain’t easy, even when they are in groups of four or five and relatively cooperative once instructed to leave...unless you have sufficient numbers of well-trained security staffers on hand.

Use a “gentle touch” and a “gentle tone” as you do the evicting: We actually felt panicky when the very-beefy head-security-guy at one meeting we went to began to flail his arms and loudly and repeatedly yell “GET OUT!” as he followed the last of the “Pay Your Fair Share of Taxes People” out of the hall...all of whom forgot to vote their one-share holdings, by the way...

Do we think these sorts of folks will be back for the “fall season” – and next year as well? Absolutely this fall, when “paying one’s fair share of taxes” has become a major political hot-button...and, almost certainly, this will be a hot issue next year too...

BIG MEETING CROWDS – AND SOME FRESH PROVISIONS WE SAW – PROMPT ANOTHER LOOK AT OUR MODEL “RULES OF CONDUCT” FOR A-Ms

Two Rules of Conduct we’d never seen before caught our attention this spring – and yes, they needed to be added to the Model Rules that are also on our website, to wit:

- *The distribution of written materials by any person other than the Company at or in physical proximity of the Annual Meeting is not allowed.*
- *No firearms or weapons, or other items that the Company believes could be dangerous or distracting to attendees – or banners, signs or packages will be allowed in the meeting room. The Company reserves the right to inspect, and prevent, items entering the meeting room.*

Please remember that not all of the Model Rules necessarily need to be on your list each year. Shorter IS often better here. But did you ever think you’d need to mention firearms in the context of appropriate meeting items?

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ON A HAPPIER NOTE, HAVING A PROACTIVE “SHAREHOLDER ENGAGEMENT” PLAN SEEMS TO BE THE TOP PRIORITY OF SMART COMPANIES GOING FORWARD: A GREAT JOB-BOOSTER – WHEN DONE RIGHT – SO START PREPARING NOW

Let's be sure to note that at many companies that sniffed potential trouble in the wings and reacted smartly, the Shareholder Meetings turned out to be close to “love feasts”...

Like at Goldman Sachs, for example, where they managed to negotiate away proposals from three usually formidable opponents, AFSCME (split the CEO and Chairman posts), NYC Comptroller John Liu (more clawbacks) and the inimitable Father Seamus Finn (a priest straight from Central Casting if ever there was one...calling for yet another Board Report). And they handily beat back calls from the \$5.7 billion Sequoia Fund to Vote No on director candidate James A. Johnson, a former Fannie Mae CEO, whom Barron's dubbed “Mr. Generosity” for his record on comp committees and “whose history” Sequoia Fund managers asserted, “should disqualify him from serving on the board of any public company.”

AOL managed to handily win an out-and-out proxy contest launched by Starboard Value, LP, by quickly launching a five-point program – including a big fat share-buyback plan. And rather amazingly, the Chesapeake A-M was a love feast too - after the board agreed to a near-total board overhaul – and to make majority voting effective immediately, effectively dooming two more directors to defeat – and to strip CEO Aubrye McClendon of the Chairman's role...and to strip away much of his sweetheart investment deals too. According to an eyewitness, the ever charming and charismatic McClendon carried on the meeting as if it was a total triumph for Chesapeake, and for him. The Oklahoma City crowd, at least, still loves the hell out of him.

But back to “shareholder engagement”; Yes, there have been 56 or so NOs on Pay so far...and many more com-

panies where the NO Votes on pay – and on some individual directors too – are at levels that should have company staff on high alert – and where more and better “engagement” with shareholders is clearly required.

The best guidance on effective engagement that we have read to date – with lots of specific tips on what to do...and NOT to do... comes from Stephen Brown, Associate General Counsel at TIAA-CREF – and it can be found on our website too – www.optimizeronline.com in the form of an interview he gave in our 2010 magazine.

Stephen also had some fresh new advice *this year*, on what *not to do* (i.e. file a lot of supplementary proxy materials, then lobby for them) when ISS advises a vote against the company position: “*Saying [the proxy advisors] calculated something wrong really irks us because we've just now read two more pages than we wanted to read*” he told a WSJ reporter, in a story that noted that ISS reversed its position in response to only four of the 106 supplemental filings on pay plans that were made so far this season.

This prompts us to offer our own number-one tip for effective shareholder engagement and that is to LISTEN about 90% of the time...and to TALK no more than 10% of the time when you try to “engage” a shareholder, whether in person or on the phone.

We also want to remind readers – for the umpteenth time – to review *this year's voting results* with care: We personally witnessed over 40 companies this season that could have improved their Say On Pay and/or FOR Director votes by double-digit numbers with just a tiny bit of effort to round up the votes of “friendly investors.”

OUR PRIMER ON THE “PROXY COMMITTEE BALLOT” – AND WHY YOU NEED TO HAVE ONE

We have been planning to write this article - and add it to our series on “The Basics” - for a very long time...But mid-proxy season a reader called to ask, “Do you have a sample of a Master Ballot? My client is engaged in a proxy contest, and I know we need one, but I can’t find a sample anywhere.”

And, by golly, just a few weeks later, one of our CTH&A Inspectors of Election was sued personally by the loser in a proxy contest who failed to vote the proxies that ran to him and/or his other “proxy committee” members...by executing and handing in such a ballot...which case is still pending. (More on this, we promise, when the case is resolved.)

So what IS a “Master Ballot” – or as we prefer to call it, the “Proxy Committee Ballot” or better yet, the “Ballot of the Appointed Proxies”? And why does a company need to have one? And what should it say...and do?

As my colleague said in response to the formal challenge that was raised by the Company in question when no Proxy Committee Ballot was handed in by the dissident group – and in response too, to the lawsuit that was filed when he disallowed the dissident votes for the lack thereof - which he had no choice but to do when challenged - “Proxies are simply what the dictionary says they are: ‘Proxy cards’ authorize a person or persons (i.e. the shareholder’s ‘proxy’ or ‘proxy holder’ or members of a ‘proxy committee’ to whom the proxy is given) to take a specific action. Specifically, in the case of a shareholder meeting, the action is to vote as the proxy-giver instructs on the proxy card.” And – as he also noted, “Proxies do not vote themselves.” The designated ‘proxy’ (i.e. a person or persons if there is a “proxy committee”) must execute a Ballot in order to actually cast the votes that ‘run to them’ as proxy holders.”

What should this Ballot look like? It should look exactly the same as the Ballots that should be available at every shareholder meeting to allow attendees to vote their shares – and/or the shares that ‘run to them’ as ‘proxy holders’ – in person. And no problem at all using the very same form of Ballot, as long as one types or writes on it

“Ballot of the Appointed Proxy” (or proxies) and one or more of the appointed proxies signs it.

Ideally, we say, in a proxy contest, both the “management choices” and the “dissident choices” should be placed on the same Ballot, along with clear instructions - as to the existence of two “slates” for example, and the extent to which they may be mutually exclusive - and as to how many votes can be cast for how many directors in total. But if each side agrees to supply its own Ballot, that is OK too – as long as the “rules of the road” are clear to meeting attendees, which is harder to assure, we think, with separate Ballots.

The best, and the only practical way to fill out a “Ballot of the Appointed Proxy” (or “Proxies”) – is to simply write on it, “Vote in accordance with the instructions received” – and then, of course, to have one or more of the designated proxy holders sign and date it. (This is because in a proxy fight – and even in uncontested meetings, where many proxy cards and ballots may be handed in before the polls close - it will usually take a while to figure out exactly how many of the proxy cards and ballots that are handed in are actually valid.)

So why should a company have a Proxy Committee Ballot? It seems mighty obvious in contested meetings, but even in routine meetings, votes by proxy are simply not OFFICIALLY CAST until a Ballot is executed by the proxy holder and handed in before the polls are officially closed.

An important postscript: We always like to have the Proxy Committee Ballot signed, dated, marked with instructions to “Vote in accordance with instructions received” IN HAND before the meeting even begins – unless there is a proxy fight, where the burden is on the two proxy committees themselves to hand one in. (At such meetings, Inspectors must be Judges and not Coaches.) That way, we know we have it, but also, if the meeting should be disrupted – say by a fire alarm or other emergency – the Inspector can almost always certify that based on the vote already in hand, the business of the meeting can be concluded in accordance with the “instructions received” prior to the emergency.

“GUIDELINES FOR PROTECTING AND ENHANCING ONLINE SHAREHOLDER PARTICIPATION IN ANNUAL MEETINGS” ARE OUT...

Drafted and agreed by a big cross-section of investors and other participants in the Annual Meeting arena, the guidelines are equally applicable to in-person and “online” meetings. We especially appreciate the guidelines that encourage companies to establish and enforce “reasonable limits” on the time allowed for shareholder questions, and the number of questions a given questioner can ask, and call for fair

methods to give as many shareholders as possible a chance to speak...so as not to allow gadflies and other meeting pests to hog the floor. Kudos to Janice Hester Amey of CALSTRS who served as Chair and who led a very disparate and opinionated group to such a fine and useful consensus on so many key issues.. (This document too is on our website, and well worth a careful reading.)

MOXIE VOTE CLOSES ITS DOORS

It was with decidedly mixed emotions that we read the emailed announcement from Moxie Vote co-founder Mark Schlegel that they were shutting Moxie Vote down on July 31.

On the one hand, we'd been frustrated by Moxie Vote's inflexible technology – since we would have used it *on occasion*, if that choice was available – and by most of their sponsors – who, by and large, were not the kind of special interest groups we typically root for – and most of all, by their decidedly anti-corporate approach to most proxy voting issues.

On the other hand, there really IS a need for a platform like the one Moxie Vote provided, albeit a much better balanced one – where activists, ordinary investors -- and corporations too – could share views, discuss and rebut - or refine their own positions -- and ideally influence voters. Such a platform could, we think, achieve a much bet-

ter level of informed shareholder participation in an environment where the *best arguments* would be much more likely to be the winning ones.

Moxie Vote is “not giving up the fight for individual investors” the letter said. “We plan to engage regulators and policy makers to assure that individual investors are given the same opportunities as institutional investors” – and therein, we think, lies the rub that rubbed Moxie Vote out. For a new platform to succeed – and we think that one ultimately will – it needs *corporate support* rather than a hand up or handout from regulators. And that support will require a neutral and totally evenhanded approach on the part of the platform “facilitator.” And actually, we think that the economics of a platform that is supported not just by union and social activists, “pet people” and mongers of causes du jour, but by corporations too, will work out just fine with the right recipe. Stay tuned...

BUYER OF PROXY VOTING SECRETS REVEALED, AS PREDICTED, WHILE THE SNITCH, SAYS THE NY POST, GETS “KICKED TO THE CURB”

Sure enough, as we predicted in our last issue, the buyer of proxy voting secrets – a mid-level employee at Georgeson – Michael Sedlak – who provided sporting event tickets and other perks to a mid-level employee of ISS (Brian Zentmyer, who was fired by ISS in March) in exchange for the info on the way ISS clients voted on various matters – was outed, and fired, within six months of the whistleblower's complaint to the SEC.

But in a surprising twist, the snitch turned out to be a fellow employee at Georgeson – Carl Clark – who, while jealous of Sedlak's success, perhaps, nonetheless admitted to using the info himself, for his own clients, and who was also fired.

“KICKED TO THE CURB” screamed the big NY

Post article that broke the news, following up on its own original story about the incident. “Whistleblower axed after exposing sale of secret data” read the sub-head, blithely ignoring the fact that, as reported way down toward the end of the article, the snitch was using the “boughten info” too.

No way for POST readers (and no, we are not ordinarily among them) to miss this scoop: The three-quarter-page article – with its 20+point headline – featured a flamboyantly pompadored Clark, shirt open, arms crossed, eyes glowering out beneath his brows in Clint Eastwood ‘make my day’ fashion - and flanked by a huge whistle that looked more like the holster for a giant six-shooter. The article did reveal one useful tip worth noting: Never fire anyone over the phone.

HIGHLIGHTS FROM THE SOCIETY AND SSA ANNUAL CONFERENCES

You may have noticed that this issue of the OPTIMIZER is way late, as our 2nd Quarter issue usually is – so we can report a few highlights of the industry’s two best conferences:

From the Society’s Conference in Washington, DC:

- A grand round of discussions on the state of corporate governance – and the role of regulators, activist investors and directors in the process – extended over several of the opening panels. We were especially impressed by Lynn Stout (whose book is briefly reviewed under “summer reading”) who warned that activists who hew to a short-term investing model – many of whom look to buy companies on the cheap, expecting to go public again later – may find no takers if long-term investors continue to be ignored - and, to a degree, one could argue that that day is already dawning.

- Delaware Vice Chancellor Travis Laster delivered a detailed case study, wherein several conflicted directors were successfully sued for over \$1.4 billion – and explained how “cognitive bias”, “group think” and “confirmation bias” – where directors “invest” in a decision too early -- and tend to evaluate information in ways that support the decision, rather than to challenge and probe more deeply – can lead to very bad decisions indeed. (We think this explains precisely why the vast majority of corporate acquisitions fail to generate shareholder value.) He urged Corporate Secretaries and others to bring the issues posed by unconscious biases to the attention of boards – and the NY Chapter will almost certainly find an expert to discuss this in more detail at its Fall Conference.

- SEC Commissioner Troy Paredes provided an overview of the over-full SEC case load, expressing his fear that Dodd-Frank was “distorting private-sector decision making”, confidence in their new cost-benefit methodologies and, when prodded from the audience, agreed that a move to greatly simplify corporate proxy disclosures “probably should be higher on the list than it is at present.”

- A panel on “Corporations and the Political Process: Why This Issue is Here to Stay” certainly proved its point by turning into a near hair-pulling match. Kudos to moderator Jake Amsbary for keeping order and for valiantly keeping panelists mostly on-task as they vied to talk over one another.

- Several of the concurrent panels were on topics that forced this attendee to hop from room to room, like “Managing

Roles and Resources” and “The Future of Director Elections.” Better, for sure than to have too few choices...

- The biggest “scoop” we think, was the disclosure by a big activist investor that they had banned two proxy solicitation firms from entering their premises...because of the way they consistently tried to take over discussions that were expected to be conducted and carried by *corporate spokespeople*... Who ARE those two, we wonder...Bet we’d all have the same short list of suspects!

At the SSA Conference in San Diego:

- Several great discussions, as always with this group, on how to manage supplier relationships and to get as much value as possible for the money spent. Exelon’s Manager of Shareholder Relations, Tom Boin, took a fresh new tack – and challenged the audience to consider whether some of their “cost-saving strategies” were turning out to be penny wise but pound foolish ones – and whether we are really treating shareholders with all the respect and care they deserve to have...More on this in our next issue, we promise.

- Some important issues on Cost Basis Reporting also came up – and just in the nick of time, we’d say: Most companies, and most TAs are using FIFO as the “default method” if sellers through the Direct Registration System and through Dividend Reinvestment and Direct Stock Purchase Plans fail to specify another one, like LIFO or the “specific lot” method. But for a very large number of large and long-running plans – where stock prices tend to rise over time, which is the driving idea – FIFO tends to maximize the tax hit to the selling investor. We urge companies – and their TAs – to take a fresh look at DRP transaction forms (which, in the old days, gave a choice to “sell all shares” or to “Sell X shares”) and to provide space for “specific lots.” Also - to review their websites and telephone sales scripts to be sure that sellers understand their choices – and their confirmation forms too to, to put holders on notice as to the method used...Otherwise, watch out issuers...say 3-5 years from now: If shareholders realize they’ve paid more taxes than necessary they will blame it on YOU! Also, it seems clear that even though cost-basis reporting applies only to shares purchased after the effective date of the law, it is driving investor demand for cost-basis info on ALL their holdings, back to the very beginning, so hold onto your hats here too...

PEOPLE

James H. (Jim) Conley – one of the all-time greats of the shareholder services community – passed away on July 19th in his 89th year. A veteran of the old **Bankers Trust** Stock Transfer Group, a revered factotum for years at the SSA and a mentor to many SSA members, Jim did a stint at **Bradford Trust**, then moved on to the old **GTE Corporation**, which ran its own transfer agency and shareholder relations group – and where he literally knew everybody who was anybody in the industry. Jim

managed his industry affairs the way he famously drove his car – which was great for business but hell on wheels for faint-hearted passengers or mere passers-by, not to mention all the people he left in the dust: Always knowing exactly where he was going, and how to get there as quickly and efficiently as possible; foot firmly on the accelerator (rarely if ever on the brake pedal), totally “unswerving” (that was for other folks, of lesser character and convictions) totally fearless when he knew he was

on the right path, and always a perfect gentleman, except perhaps, when he was passing a “bad driver.” (In business, Jim *always* knew who was nice – and who was naughty.) He leaves his wife Claire (3115 Ave. K, Brooklyn, NY 11210), four children, eight grandchildren and seven great grandchildren.

Mark Honigman, the founder and CEO of abandoned property firm **Milestone Corporate Services** - and another industry veteran (**SunGard**, **Bank of New York** and **AST** before founding Milestone) passed away on May 29 at 55. Mark was an unforgettable and totally indefatigable character. He was on the verge, he told the *OPTIMIZER* a few weeks before his death, of achieving a major milestone for Milestone – “a lifelong vision that would change the world of abandoned property.” We would opine that some of Mark’s earlier “whistle-blowing” had a MAJOR effect on the abandoned property business, for sure. He leaves his mother Eileen, wife Carol, who many in the industry will also know, and a daughter Leigh.

New leadership at DTCC as **Don Donahue**, who led DTCC with great distinction from 2006 - a period marked by challenges and crises too numerous to mention - steps down as CEO at the end of June and current President & COO **Michael Dodson**, who joined DTCC from **Morgan Stanley** in 2007, after a 20-year career there, will step up as CEO.

Dorothy Flynn, who briefly led her own consulting company following her exit from **Keane & Co.** is

now in charge of Shareholder Services at **The Walt Disney Company**.

The brilliant and innovative Lisa Beth Lentini – who made “virtual shareholder meeting history” with Best Buy’s 2010 shareholder meeting – is now the Senior Director of Global Compliance at **Carlson Wagonlit Travel**.

Rachel Posner, formerly General Counsel at **Georgeson Shareholder Services** has moved to **Phoenix Advisory Partners** as an SVP, to run their business development efforts.

Kathleen Shannon, Deputy General Counsel of **AIG** and head of its Corporate Securities and Corporate Finance practice group – a very long-term Society volunteer and former Committee Chair, Director, Treasurer – and Chair-Elect until AIG issues consumed all her available hours and then some – received the Society’s **Bracebridge Young Award** – its highest honor – to a huge and well-deserved Standing – O. As the citation says, Kathy is “selfless, generous, gracious and a humble servant to her fellow members – and to all those in the corporate governance and securities law professions.” It would be hard to imagine *anyone* more deserving of this honor.

Karri Van Dell, a former **Wells Fargo Shareowner Services** superstar, whose light shined briefly at **AST** as well, has been named Director of Sales and Marketing at **Continental Stock Transfer & Trust Company**...A really great hire for them, we say.

BEFORE THE SUMMER IS OVER... GIVE YOUR DIRECTORS SOME TOPICAL, EASY TO READ BUT THOUGHT-PROVOKING MATERIALS: OUR TOP-TWO PICKS

Number-one on our recommended summer reading list is from the Group of 30: “Toward Effective Governance of Financial Institutions.” Why? It’s a mere 70 pages - excluding credits, footnotes, bios of this august ‘group of 30’ etc. - and it’s very well organized and well written. It’s especially easy to skim – or to read with care as one chooses – and to take up and put down without losing the thread.

The main reason to offer it to your directors, however (other than the fact that directors *always* like a little, thoughtful *present*, as we all do) is the keen focus on Risk Management - and on finding the right strategies for each company and each board, at different stages of the corporate life cycle. This book – on the knottiest problem directors have to deal with – is just as useful for non-financial companies, please note, and maybe *more useful* for them, since this topic often gets especially short shrift at board meetings of non-financials.

Our number-two pick is another short and easy to read book; “The Shareholder Value Myth; How Putting Shareholders First Harms Investors, Corporations, and the Public”

by **Lynn Stout**, Distinguished Professor of Corporate and Business Law, **Clarke Business Law Institute, at Cornell Law School**. A mere 115 pages and a mere \$12.50 a copy, this is easy to skim too - or to read slowly and reflect upon - which is where the fun comes in.

Don’t be fooled by the title, which sets up something of a false dichotomy, designed to get our juices flowing and our brains in gear: The BIG point that Stout makes is that “putting shareholders first” in the *short term* (i.e. focusing mainly on current share price at the expense of longer-term thinking and doing...and sometimes getting muscled into doing things by short-term investors) IS bad for shareholders with long-term investing horizons. She also makes a wicked good case that focusing so much on stock price is how executive pay has gotten so out of hand – something the vast majority of directors agree with, but don’t seem to know how to grapple with, much less to fix: Very thought provoking indeed, and just about perfect for the average plane ride. Nice blurbs too, from luminaries like **Marty Lipton**, **Jay Lorsch** and **Ira Millstein** help to make it the perfect little gift for your corporate directors.

REGULATORY NOTES...and comment

ON THE HILL: Political brinksmanship on the Bush-era tax cuts that are due to expire at year end - and the big mandatory spending cuts that are set to kick in if no compromises can be reached on cutting the budget deficit - threaten a re-run of the “deficit crisis” that sent markets reeling not so long ago. How’s *this* as a recipe for stimulating the economy – and rallying consumer confidence? Gawd, we’d love to show all these folks the door!

AT THE SEC: Another bad quarter for them...

- **Ooops! The SEC managed to blow the cover of an SEC whistleblower** in the Pipeline PLC investigation.

- **Oops again...They’ve had to launch an “independent investigation” of their own watchdog**, the former head of the Office of Inspector General, by hiring an “independent inspector” from the outside just for this case, following allegations of sexual improprieties there. Forgive us for rudely saying, “Man on watchdog” really sounds BAD! The case has also been forwarded to the Council of Inspectors General on Integrity and Efficiency, which has the power to prosecute government “watchdogs.”

- **Ooops AGAIN: They will be reviewing executive comp at their designated “self-regulatory agency” FINRA**, following the findings of the non-partisan Project on Government Oversight that pay there is “excessive” for a non-profit regulatory org.

- **And oops yet again, the SEC backpedaled like mad from its former warm endorsements of international accounting standards**, saying they are “not supported by the vast majority of participants in the U.S. Capital markets” - blindsiding - and infuriating the IASB leadership.

- **On a more positive note, the head of the new SEC Office of Credit Ratings promised much tougher scrutiny of ratings firms**, which, inarguably, contributed mightily to the disastrous collapse of the housing bubble....But hey...haven’t we heard this before??

AT THE EXCHANGES:

- **How could we fail to note the spectacular collapse of the Facebook IPO, the reputational and financial disaster for NASDAQ...and for its CEO** who was “missing in action” when the SEC called for an emergency update...and for his “take it or leave it offer” of \$62 million (up from an initial \$40 million) on industry and shareholder losses that are in the hundreds of millions? How’s *this* for restoring confidence in our equities markets?

- **And how could we fail to note the NYSE’s brainstorm – approved by the SEC - to bring back trades lost to dark pools by allowing individual investors (!) to trade in less than one-cent intervals?** Much as we hate to quote Sara Palin, let’s remember to ask them next year, “How’s that hopey-changey thing workin’ out for ya?”

IN THE COURTHOUSE: Two interesting cases in Delaware...

- **Chancellor Strine sidelined, and may have totally derailed the pending takeover of Vulcan Materials by Martin Marietta**, ruling that “Rewarding a breaching party like Martin Marietta [who benefitted from confidential info he ruled, while discussions were going on] would encourage other parties to end-run contractual pre-disclosure procedures.”

- **The Court of Chancery upheld Carl Icahn’s motion to expedite proceedings to enjoin Amylyn Pharmaceuticals from enforcing its advance notice bylaw** after Icahn learned they had rejected a takeover by **Bristol-Myers Squibb** – finding that Icahn made a “colorable claim” of irreparable harm from the rejection AND from his attempt to nominate a board candidate when he belatedly found out. (As usual, Icahn settled this matter another way, but as a **Gibson Dunn** memo noted, it “is a sharp reminder that Delaware courts view stockholder voting rights as ‘sacrosanct’”.)

WATCHING THE WEB:

In the 2nd quarter, Yahoo had over 400,000 passwords to its site posted on the web...and LinkedIn had more than six million of its “lightly encrypted passwords” stolen. We bet that readers, like we, are already getting all kinds of ads - and maybe some malware too - emailed to them under the names of unsuspecting LinkedIn and Yahoo users whose passwords were swiped...so watch your incoming emails with special care. “If they [LinkedIn] had consulted with anyone who knows anything about password security, this would not have happened” the president of Cryptology Research, a S.F. based computer security firm. Really outrageous!

In case you missed it...the CFO of retailer Francesca’s Holdings Corp. was fired recently for his tweets about being a CFO, and notes like “Dinner with the Board...used to be fun”...and “Conference call completed. How do you like me now, Mr. Shorty?” (We went to the Investor page to see if, by chance, there WAS a Mr. Shorty: Maybe, but not under *that name*.)

Goldman Sachs proudly launched its own corporate-sponsored tweeting straight from its Annual Meeting this year, with much self-acclaim: “Like air freshener at a crime scene” said a panelist on CNBC’s “Closing Bell” TV show that day.