THE SHAREHOLDER SERVICE

OPTIMIZER

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

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A FEW EARLY WARNINGS AS WE BEGIN TO GEAR UP FOR THE 2012 ANNUAL MEETING SEASON:

FOR STARTERS; "SVEDES – GET SET TO CHASE DEM DRUNK NORVEGIANS TREW DE VEEDS!"

We hope you'll forgive our half-Swedish-descended editor for starting off with an offbeat sub-head, which, we hope, will snap you to attention. But the old Norwegian taunt, "Fifty Svedes vent running trew de veeds to catch vun drunk Norvegian" really seems to sum up job-one – at least for the six companies that are on the receiving end of shareholder access proposals from Norway's Sovereign Wealth fund.

It's no exaggeration to say the Norwegian funds are "well oiled" – thanks to the $98 billion of petroleum revenues they have in the U.S. stock market – and spoilin' for a fight – exactly as we predicted they'd ultimately be…way back in our 4th Q 2007 issue, when we singled them out as the likeliest and stubbornest fight-pickers on the scene. We are also betting big that the Norwegians will have lots of big, strong allies from the U.S. **Council of Institutional Investors** – looking to "send a message" in favor of proxy access – and a strong reminder about their clout.

Executives at the unlucky six Norwegian picks – CME Group, Pioneer Natural Resources, Charles Schwab, Staples, Well Fargo and Western Union Co. will really have to scramble to fend these folks off, and may well stumble and fall in the weeds come the end.

But how about this *next development* as an early wake-up call?

WILL ONE HUNDRED SMALL INVESTORS WITH FEWER THAN 70 SHARES APIECE BE ABLE TO MEET UP ON THE WEB AND NOMINATE DIRECTORS BY 2013 – SIMPLY TO STIR THE POT?

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EARLY WARNINGS
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If gadfly Ken Steiner has his way – and we bet that ultimately he will – the answer is a resounding YES. He's filed five shareholder proposals to date that would let any investor with 1% of the outstanding shares – OR – 100 people who have at least $2,000 worth of stock each (about 66.6 shares of a $30 stock apiece) band together to nominate directors. Could they do this over the web in 2013 if the proposals fly? Easily, we say. Can they round up candidates who'd agree to be nominated? A snap these days. We'd have to bet that, crazy as it may sound, any of the gadflies that currently support, or run, or blog the loudest on the increasingly aggressive populist websites would pass muster with their web-addicted aficionados, so yes, there would be plenty of "popularly nominated candidates" to run against the companies' own. Could any of them actually get elected? We wouldn't rule it out for a second.

So corporate execs at **Bank of America, Ferro, MEMC Electronic Materials, Sprint-Nextel** and **Textron** – and maybe more companies still to come – will also have to run through the weeds like mad to fend ***Steiner*** off this season.

The real problem for public companies – and one we warned about for over five years – is getting what they wished for in terms of "private ordering" vs. an SEC-brokered, and much more reasonable threshold of say a 3-5% ownership requirement – which was basically in the bag until the Chamber of Commerce bumbled into the fray.

The saddest part of all this – if the gadflies and webworms take over, as indeed they could – it will serve to trivialize rather than improve the director election process in our opinion: It will be interesting to see how many companies try to float their own proposals instead – or in addition to shareholder proposals – and to see how they fare, so stay tuned.

EXPECT SAYS ON PAY TO BE FAR FROM THE SLAM DUNKS THAT MOST COMPANIES RACKED UP LAST YEAR:

Institutional investors are already ticked off that most "says" were rubber-stamped decisions last year…akin to the mostly meaningless ratification of auditors. And of course, the **ISS**es and **Glass Lewis**es of the world can't make a living by issuing mostly free passes. Plus – in case you haven't noticed – there is an awful lot of pay awarded that does not seem tightly tied to actual performance, and the analytical tools to spot the outliers are improving every day…Plus – the real "frosting" on the pay-cake – ordinary citizens ARE increasingly concerned about the huge gap between executive pay and ordinary-citizens' pay…Plus… it's a Presidential election year, where this subject is getting daily attention in the debates.

AN INTERESTING POINT TO PONDER FROM POLITICAL POLSTER JOHN ZOGBY…

Zogby warned directors at the 2011 NACD Board Leadership Conference to be aware of a new generation – the "global citizens" – a generation that communicates and identifies themselves in a far different manner than their baby boomer predecessors. We already see this having an impact on annual meetings on the social and environmental fronts…and this year, we predict, on pay issues too.

ON A RELATED FRONT, WATCH FOR THE 99-PERCENTERS AND THE "OCCUPY" FOLKS TO STEP UP THEIR ACTIVITIES AT ANNUAL MEETINGS THIS YEAR: ▶

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We hope this won't happen at YOUR meeting, dear readers, but you'd be nuts, we say, not to step up your own crowd-control procedures – AND to buff-up your image, and your own ***messages*** as best you can before Meeting Season kicks in full-blast…

AND SPEAKING OF SENDING MESSAGES; BE SURE TO ALLOW EXTRA TIME FOR YOUR MESSAGES TO ARRIVE THIS YEAR – AND FOR RESPONSES TO COME BACK:

With or without the proposed cutbacks in postal distribution centers, local POs, and six-day per week deliveries, mailed items are taking longer than ever to arrive at their destinations *now* – and things are likely to get much worse. The latest word from the USPS is that the planned closings of 252 mail processing centers will begin in March. So be sure to build this into your printing and mailing schedules this year.

A TOTALLY PRACTICAL PRE-MEETING PRACTICE TIP: "INSIST ON THE LIST"…AND MAKE SURE IT'S A CERTIFIED ONE:

Yes, we've been warning for two years about this too: More and more companies show up at the meeting site each year without a certified list of shareholders. Part of the problem is due to TAs, and issuer staff too, who seem to have lost a lot of corporate memory as to what IS required at a shareholder meeting. And some seems to be due to pure spite – when the TA loses the tabulating job to another provider, and "forgets" to send a certified list unless specifically asked to do so.

"What's the problem here?" a reader called to ask. "I can't find anything in the SEC regs that require the presence of a certified shareholder list – or an uncertified one either, for that matter." Reason-one is that every state we know about has this provision in their model business code – entitling attendees to have a look if they want one. Second, you may not want to admit people to the meeting who are not shareholders, so you need a reliable list for yourselves. Third, the list MUST be certified, since model business codes typically charge the Inspector of Election with "determining the voting power present at the meeting and entitled to vote on each matter" – and he or she can't do that unless the list is certified by the transfer agent as being "complete and accurate."

THE BOTTOM LINE: PROCESS AND PROCEDURAL ISSUES WILL BE MUCH MORE UNDER THE SPOTLIGHT THIS YEAR THAT EVER BEFORE, WE PREDICT…SO BRUSH UP YOUR GAME NOW – WHILE YOU HAVE THE TIME TO DO SO…

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QUOTE OF THE QUARTER:

"…in the years leading up to Dodd-Frank, there was a feeling that the conversation between shareholders and boards regarding executive compensation was unsatisfactory. We heard complaints that the compensation disclosures provided investors were too dense to penetrate, too complex to analyze and too obtuse to persuade…

"I am pleased to report today, that it appears that say-on-pay regulation…is leading to improvements in communication in both directions. It has given shareholders a clear channel to communicate satisfaction – or lack of satisfaction – with executive compensation practices to their boards. And it is giving boards a powerful incentive to clarify disclosure to shareholders, and to make a clear, coherent case for the compensation plans they have approved – and to do this without the SEC adding another layer of disclosure regulation."

SEC Chairman Mary Shapiro, speaking at TheCorporateCounsel.Net Say-on-Pay Workshop Conference, December 11, 2011

A QUICK REVIEW OF THE 2011 FINANCIAL MARKETS – AND A QUICK LOOK AT THE POTENTIAL IMPACT, GOING FORWARD, ON A PUBLIC COMPANY'S KEY SERVICE PROVIDERS

The big news in 2011 was a level of stock-price volatility that was literally off the charts: a true roller-coaster ride for many of our most widely held – and previously most immune stocks. Volatility is *good*, of course – if you are a buyer at the lows – or if you are a seller at the highs… But it is basically a *bad thing* for long-term investors – who may have an urgent need to get more liquid just as stocks are at their low points. Employee and retiree investors, and 'affinity group investors' too are especially vulnerable here: They run the biggest risk of seeing years of profits, and reinvested dividends, go straight down the drain if they have to cash out in a hurry. So volatility is a major turnoff – that has contributed big-time to a loss of individual investor interest in *owning* stocks. We think it spells major trouble for everyone in the game, going forward, since, so far, Corporate America is doing *nothing* to counter the trend.

A very bad, and related development we think, is the way stocks moved together in 2011 – almost without regard to industry sector, or to relative performance – thanks to trading strategies on the part of large "investors" that treat stocks more like commodities, or baskets of assets than like individual stocks – and also, we say, to flash-trading strategies that create totally fictitious levels of supply and demand – with no real money behind the rapid-fire trades.

The craziest thing about 2011 is that all the trading and all the volatility essentially came to naught: The S&P and Nasdaq indices were basically flat at year end – and while the Dow gained a seemingly respectable 5.5% – it was basically due to two stocks with heavy weightings in the index – so if you did not own them, tough cheese.

Dividend paying stocks did way better than average – and helped to moderate stock-price volatility big-time in the bargain – as we've been pointing out in our recent rants about buybacks vs. dividends. Corporate cash reserves are still at record highs – and dividend payouts are currently at or near record lows. But suddenly, a lot of pundits are predicting that 2012 will be the "Year of the Dividend" – which we hope – and actually think will prove to be correct: A ray of hope for long-suffering long-term investors – and a chance for some decent and much needed economic stimulus too. And a tiny ray of hope for TAs and DRP/DSPP providers – at least the larger ones, who are have most of the big dividend payers as clients – even though we believe that many individual investors have been scared away from owning individual stocks by all the antics we've seen – many of them permanently so.

IPOs and "deals" started off strong, but basically fizzled by mid-year, thanks to uncertainties in Europe…but throttled in larger part, we think, by Congressional gridlock on the taxing, spending, 'stimulus' and deficit-funding fronts: More bad news for TAs, proxy solicitors, law firms and stock exchanges…But, good news for service providers, there are at least 200 US companies that are on standby to go public as markets improve, and reportedly, roughly 36% of public companies say they are looking to make acquisitions in 2012.

Some good news for all these fine folks – and for shareholders too – has been the upsurge of spin-offs, which in 2011 totaled over $280 billion worth – a whopping six times the value of 2010 deals – and brought us all some nice new companies – from **Conoco-Phillips, Fortune Brands, ITT, Kraft** and **Motorola** to name a few. Optimists think there will be more such deals to come in 2012, since most of this year's deals have fared well. But all in, we think the number of new companies in 2011 vs. the number that merged or went broke will turn out to be a wash at best for us service providers – and 2012 does not seem to be shaping up to be much better…unless, of course, the economy continues the slow but steady improvements we've seen of late.

THE STA SLAMS "INAPPROPRIATE PROXY FEES" – PETITIONS FOR REGULATORY RELIEF – AND OUTLINES A PROXY PROCESSING "FIELD OF DREAMS"

In what they called an "unprecedented action" the Securities Transfer Association (STA) sent letters to FINRA Chairman and CEO Richard Ketchum and NASDAQ CEO and President Robert Greifeld, requesting regulatory action to prohibit brokers from charging proxy processing fees on Separately Managed Accounts – where the owners have delegated their votes to the brokers, receive no proxy materials and have no ability to vote proxies.

These actions followed an STA cost study, which, the STA asserts, shows an average savings of 42% using Transfer Agent estimates vs. the fees that issuers currently pay.

Two problems seem to jump off the page here, initially:

First, it doesn't really seem that the STA has the *standing* to issue such a petition – especially when the folks who pay these bills seem happy as clams with the status-quo. (It was this fact, primarily, that initially led your editor to give up his own long-running objections to the status quo, but more on that in a bit.)

Second, the STA refused to share either its methodology or its math – except for its bottom-line conclusions. And any fool can figure that yes, it's a snap to beat the going price on *anything* if (a) you know what the price to beat IS – and (b) you haven't disclosed your own basic assumptions, much less the price list you used to calculate the "savings"…and (c) no one is asking you to put your money where your mouth is and lay your proposed procedures, your proposed price list and your proposed building plans and timetables on the table.

But there is a much bigger problem here: Any cost savings that *might* be achieved are based on what can only be described, we say, as a "field of dreams."

As outlined in earlier STA position papers filed with the SEC, *someone* would have to build a new playing field to compete with the existing Broadridge platforms. And that someone, they hinted broadly, should be DTCC… but not, please note, the STA or its members. And guess what? Despite all the time and money and risk that such an undertaking would involve – just in the building of it – and all the testing that would have to be done along the way, and on an ongoing basis too – it would operate on a non-profit basis! No wonder that DTCC – or anyone else – hasn't stepped up to the plate.

But let's suppose, just for a moment, that someone, out of the goodness of their heart, *would* build this field of dreams. Would anyone really come?

Would public companies step up as the test-marketers for an untried and unproven proxy distribution, voting and tabulation system – and risk the embarrassment, and the reputational costs – and almost certainly their jobs – should they end up with a bollixed-up shareholder meeting?

Would brokers flock to pass their beneficial owner names around to two or three or four – or more transfer agents via this new system – instead of having a single contact point for all annual and special meetings? Would this new multi-party system really save money for brokers in the end, which could and would be passed along to issuers?

Would institutional investors cheer on such a brave experiment – and decide to parcel their own voting activities out – among even a small and "elite" handful of transfer agents – instead of using the platforms they use now to cast their votes with a single and time-tested vote tabulator?

It also seems to us that the TA straw-man plans – and their numbers – have left out one of the largest and most important cost components: internal and external audits, which do not come cheap. And on that subject, let's face facts; transfer agents, much as we love them, and as much as we hate to say it, have not, on the whole, developed a great reputation for flawless execution. Sadly, as an ex-transfer agent – and as someone who LOVES competition – your editor does not see how this project could ever get off the ground.

The silliest part of all this debate is that it's mostly over low-margin enclosing and mailing operations – which most TAs by the way, have outsourced to others. And frankly, while

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the promised savings sound large, they're really peanuts in the bigger scheme of things – especially if one posits a system of ongoing, internal and external audits that are SOP at Broadridge but totally unheard of in the average TA operation. Only a fool would try to proceed without these audits – and only a bigger fool would buy in without them.

Yes, there do seem to be some issues with the "optics" when one looks at the way the various fees are assessed to cover the overall data collection, distribution, voting, tabulating and reporting processes. And yes, we do think that FINRA should, as we wrote in the last issue, audit brokers, to make sure that they are not treating proxy distribution as a profit center, which would clearly be against the current rules.

But finally, let's cut to the real bottom line – and note that Broadridge is a publicly traded company, with its financials are out there for all to see. Do their numbers reflect a firm that is feasting on monopoly profits – or on profit margins that are 42% higher than providers of similar services, as the STA calculations would imply? Check it out for yourselves; No huge margins here**.**

The saddest part of all this is that Transfer Agents missed the boat way back in 1984 when the STA endorsed the central-distribution system that was on the table and that was ultimately approved by the NYSE and blessed by the SEC.

Back then, registered holders were about 70% of all holders – but my then-and-now colleague Ray Riley, and I, begged our then boss – and the STA – and the "STANY" group too – not to sign off on the plan. We feared – correctly as it turned out – that registered ownership would continue to shrink, street name ownership would continue to grow, and TAs would find it very hard if not impossible to compete for street-name distribution and tabulation business under the system that was approved. That ship sailed long ago. And it's not likely to come back to take on more passengers at this late date.

We would like nothing better that to be wrong about this, since we love competition, we love transfer agents, and our own mission has been the same for 20 years now: "Helping public companies – and their suppliers – to provide better and more cost-effective services to investors." We offered to show up for a full day of interrogation at two of the biggest TAs – to share the insights above and to see if they could change our minds, but no takers. So sharpen those pencils, TAs: **IT'S TIME TO PUT UP OR SHUT UP, WE SAY…**

ELSEWHERE ON THE SUPPLIER SCENE:

Computershare got permission to move ahead with its acquisition of the **BNY-Mellon** shareholder servicing business, as we'd predicted they would. If there is any doubt about how difficult the current environment actually IS for transfer agents, the exit of the number-one market share leader speaks volumes. And, as we've been saying all along, the dealings are far from done on the T-A consolidation front, we guarantee.

Law firms are feeling the pain of the lousy public company and M&A environment too: A recent *WSJ* article noted that the 2011 bonus for the "senior-most associates" at **Cravath, Swaine & Moore** would be $37,500 vs. $110,000 in 2007. And an earlier WSJ article cited a survey by the **Association of Corporate Counsel** where 20% of the 366 in-house legal departments surveyed say they are refusing to pay for work done by first or second-year attorneys – at least on some matters.

ISS has issued a new white paper, detailing its newest two-step methodology for rating pay-for-performance, incorporating both Quantitative and Qualitative measurements. Required reading, for sure.

And, *mirabile dictu*, just in time to help you dance the ISS two-step, comes the New Pay Simulation Service…from ISS Corporate Services! Actually, this seems to be a useful, and very much needed service – but one can hardly blame issuers for feeling dragged around the dance floor one time too many…

More required reading from ISS – go to the ISS Policy Gateway, for a very well-written piece on what their policies ARE – and on how to contact ISS if you have a question, or God forbid, an "issue: with them.

OUT OF OUR IN-BOX

MORE ON "THE PROTECTORS BECOMING PREDATORS":

Our 2011 magazine – with the riveting article from **UPRR** on The Protectors of Abandoned Property Becoming Predators – was not even on-press when we got an email from a reader asking about "getting lost street-shareholder information from **Broadridge** and other street material distributors." "Is this in response to an audit?" we asked…and yes it was.

One week later, we got yet another, almost identical call from another issuer who had gotten similar demands. Interestingly, both were good-size electric utilities – which had made some acquisitions along the way – but as we told them both, utilities are usually among the most diligent compliers of all where rules and regs are concerned, and we'd bet a million that nothing could or would be found…but that they'd better read that article pronto.

What a disgrace to waste issuers' time and money on something that the auditors themselves must surely know is none of their business, as a landmark U.S. Supreme Court decision made crystal clear: Street-name holders are the responsibility of broker dealers or other custodians of street-name property – and *not* of issuers.

And how incredibly arrogant of the states and their hired bounty-hunters – not just to try to extract monetary fines from folks who may not know the arcane rules of the road – or who may be war-weary from the upsurge of general ledger audits, and willing to play the auditors' pay-to-go-away game – but to try to audit records going all the way back to 1981 that had been filed with the auditors' masters in timely fashion over all the years in question! And worse yet, to act as if their targets are guilty as charged – and to attempt to force them to re-prove the accuracy of the reports they had already filed…at their own considerable expense? ***Send them packing straightaway, we advised – as we'd advise all our readers – and don't pay them any go-away money either!***

HOW'S THIS FOR AN ONLINE DEMO OF VENDOR EXPERTISE?

"We are committed to quality and is uniquely positioned to provide a comprehensive set of transfer agent services in support of your fiduciary duties" crowed the **Island Stock Transfer** website, which an anonymous source tipped us off to as a holiday treat.

"No matter what services you require, you can be confident that Island Stock Transfer is able to provide innovative processing and a fresh prospective."

PEOPLE

Chuck (Charles W.) Garske – a 20 year proxy solicitation expert – with a wide following we'd note – has moved from **Georgeson** to become a Senior Managing Director at **Okapi Partners** where he will "continue to provide advice and insight to companies undergoing proxy solicitation campaigns related to mergers and acquisitions, contested director elections and corporate governance matters. In addition, he will provide information-agent services for debt transactions and tender offers" according to Okapi's December press release.

Steve Norman – who held and still holds the longevity record for serving as Corporate Secretary at a public company, we believe, when he retired from **American Express** last year – was the recipient of **Corporate Secretary Magazine's Lifetime Achievement Award** at their big awards-dinner-bash in NYC in November. Steve – another lifetime non-retiree – has his own consulting business now, and continues his always sharp focus on Annual Meetings and how to make them work better and more cost effectively.

Fran Wolf – formerly the RFP-responder *par excellence* at **BNY-Mellon**'s shareholder servicing business is now handling similar duties as a VP at **Wells Fargo Shareowner Services**, where he will continue to work from the greater NY area.

REGULATORY NOTES...and comment

ON THE HILL: **A House bill to prevent Congressmen from trading stock based on "insider info" they routinely glean from hearings, investigations and advance warning as to legislative actions is STILL kicking around** – unable to get the votes needed to correct the truly scandalous abuses here: This despite a host of studies that show Democratic Representatives outperforming the indices by 9%, with Republicans just a tad behind – and Senate members outperforming the market by 12% – and a recent 60 Minutes expose that drew attention to the issue. Worse yet, we say, is the news that members of Congress and their staff routinely brief elite business groups on pending legislation – who pay for the privilege – and clearly ACT on the advance info. Just another reason the Congressional approval rate is around 9% these days.

AT THE SEC: **In a major policy change, the SEC – stung by the stunning rebuke from US District Judge Jed Rakoff in a recently proposed Citigroup settlement – will no longer allow a defendant to settle a case without "admitting or denying" the allegations – if the defendant has admitted to or been convicted of criminal violations** – or has entered an agreement with criminal authorities not to be prosecuted as part of a settlement – or has signed a deferred prosecution agreement.

More good news, Chairman Shapiro has written the Congress asking them to propose much higher penalties – up to three-times the net profit from alleged wrongdoing, instead of mere disgorgement, and up to triple THAT for repeat offenders or for individuals and firms that have been the subject of another SEC enforcement action or a criminal conviction over the previous five years.

Still more good news – responding at last to widespread perceptions that all the big fish got away after the financial crisis – the SEC has filed civil lawsuits against six former top executives at Fannie Mae and Freddie Mac – accusing them of knowingly playing down the risks caused by their big sub-prime loan positions.

And wow – more good news – the SEC is using its recently developed "high tech system" to analyze and detect statistically aberrant results in hedge-fund returns as a way to spot fraudsters, has actually filed a few cases as a result, and is set to expand the system to cover private equity and mutual funds.

But oops…mere slaps on the wrist for staffers who missed the Madoff fraud: Of the 21 staffers who were investigated, only 10 were still on staff come judgment day, and nine of them were penalized. Two received "counseling memos," six were given suspensions ranging from three to 30 days, along with an undisclosed number of pay grade reductions and one staffer, who had been recommended for firing, according to a *New York Times* article, got a 30 day suspension and a pay cut after it was determined that firing him would "hurt the agency operations," according to SEC spokesman John Nester.

AT PCAOB: Inspectors for the Public Company Accounting Oversight Board – remember them? – who've been mostly in the woodwork 'til now – announced that their peek-a-boo into 2010 audits conducted by **Deloitte & Touche** revealed deficiencies in a whopping 26 of the 58 audits of audits they conducted. Earlier peek-a-boos into **KPMG** revealed 12 deficient audits out of 54 reviewed and peeks into **PriceWaterhouse-Coopers** audits found 28 deficient audits out of 75 reviewed. The **Ernst & Young** results are not out yet, but wow! Deloitte sticks out badly here. If we were an Annual Meeting gadfly, we'd be asking questions as to whether "OUR company" audit was one of the bummers that were singled out for criticism, and what the deficiencies were.

IN THE COURTHOUSE: A HUGE development, as noted above, when Judge Rakoff refused to approve the settlement the SEC had reached with Citigroup without its admitting or denying guilt – and without adding penalties for violations of earlier consent agreements not to engage in further bad behavior. Subsequently, Rakoff accused the SEC of misleading his court – and the US Court of Appeals (where the SEC WILL appeal his ruling) by misrepresenting the need for urgency and saying that they "held back from the court material information needed to do its job."

WATCHING THE WEB:

We've been watching two social-media sites that have been trying to drum up grass-roots support for a while now; **MOXIE Vote** and the **United States Proxy Exchange**, and we'd advise you to keep an eye out too as the A-M Season ramps up. So far there seems to be relatively little traction at either site – except for the US Proxy Exchange recruitment of and guidelines for proxy "Field Agents." Required reading here too, we say.