THE SHAREHOLDER SERVICE
OPTIMIZER
HELPING PUBLIC COMPANIES - AND THEIR SUPPLIERS - DELIVER BETTER AND MORE COST-EFFECTIVE PROGRAMS
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THE 2009 PROXY SEASON OVERVIEW: MUCH BAD SAILING...BUT BATTEN DOWN THE HATCHES FOR WORSE WEATHER IN 2010

Last issue's lead article, "Look out below for falling directors" sure proved to be on the money: The season opened with a big loud bang, when **Bank of America's** chairman **Ken Lewis** was stripped of his chairmanship by a binding vote to separate the Chairman and CEO roles. Two B of A directors, including the former lead director, quickly joined the ranks of long-term directors who'd already stepped down, reportedly after failing to receive a majority vote without the "uninstructed broker votes". Lewis appears to have gotten fairly strong support for reelection as a director. But the bank has yet to publish the final results, about which, see more under Regulatory Notes in terms of "things to come" and "things to do" for next year.

Directors were ousted at Amylin Pharmaceuticals (two of them) in favor of candidates advanced by **Eastbourne Capital Management** and perennial activist **Carl Icahn**. Icahn also seated two of the four directors he sought to elect at **Biogen Idec**, following a totally bizarre meeting, where the Biogen chairman adjourned the meeting for three hours, "over shouted objections from Mr. Icahn's representatives" as the WSJ reported, "then retreated to a small patio… and phoned major shareholders to solicit support". (See more about this too, in our section about adjournments). **Three directors failed to achieve a majority vote at Pulte Homes**, but Michigan law allows them to retain their seats, since there is a plurality standard and they ran unopposed, and likely they will.

At least 32 other directors, and maybe as many as 40 by year end, will fail to receive majority votes this year: (About the same number as last year). But virtually all of them will likely retain their seats too – either because there is a plurality voting standard, or because their boards decide not to accept their resignations, or because the vote-no crowd fails to make a big enough stink about it. And we bet that most of them will be handily reelected next year, exactly as has happened in the past two years. But as we also warned last year, don't let these seemingly low numbers lull you into complacency: Since most people don't try to track the number of directors that achieved a majority only after the "uninstructed votes" cast by brokers - which won't be available to companies next year, let's remember - these numbers are almost certainly understated. Much more important to note, if this happens to one or more of YOUR directors, it's a different matter entirely, so be sure to do your homework, and handicap ALL your directors before finalizing your 2010 slate.

A much bigger development, we think, was the extent to which the Federal government stepped into the director "election" process…by hand-picking

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2009 PROXY OVERVIEW...*continued from page 1*

and/or vetting nominees at AIG, Citicorp and General Motors. As you'll also read below, we are in serious danger of totally federalizing the traditionally State-governed corporate governance regulatory scheme, exactly as we've been predicting would happen if corporations keep stiff-arming activist change agents. If you're not frightened by this, look at poor **Richard Parsons,** the newly elected Chairman at Citicorp, who had to scramble like mad to protect the CEO, who'd lost his temper on a conference call with the FDIC head, and who was now demanding HIS – along with those of several other executives who'd dissed the agency by calling it a "tertiary regulator".

"Say On Pay" proposals again failed to resonate strongly with actual voters: Of the 85 proposals that had come to a vote as we drafted this, only 18 of them received a majority vote, except that is, for another 15 where the company itself endorsed the proposal. **But who cares? Certainly not the federal government,** which will, almost certainly, legislate it into existence as

"S-O-P" this year, to take effect in 2010.

Very important to note, however, every single U.S. company that allowed a say on pay (plus the TARP recipients who were forced by the feds to have a say on pay provision) got a thumbs up on their pay plans…And, please note, as we've written before, allowing a say on pay is one thousand times better than having activists gang up on – and likely oust – the comp-committee directors if they don't like the pay schemata.

Nearly half of the proposals that would allow a mere 10% of the voting power to force a special shareholders meeting achieved a majority vote so far this year: We think this is way too low a threshold for forcing a vote on virtually any matter at all, but maybe there's a silver lining here: Since this seems to be a number that resonates with the more rabid activists (Risk Metrics thinks this is the right threshold, while Glass Lewis is OK with 20-25%) how about suggesting that THIS be the threshold for access to the director nomination machinery? And here's a good tip gleaned from **Georgeson's Rhonda Brauer:** Consider putting a 20% or maybe even a 25% threshold to a shareholder vote yourselves next year, thereby beating those activists to the punch and basically enshrining a more reasonable threshold.

Cumulative voting proposals – which, like those special meeting proposals, are basically put forward out of pique that there is no "proxy access" yet – achieved majority votes in virtually every case – even when the company had adopted the much more democratic majority voting standard. Ouch!

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A FEW NEW DEVELOPMENTS TO WATCH THAT CROSSED OUR PATH THIS SEASON:

A Delaware court ruled that a binding-bylaw proposal that would prohibit the company from seating any director who failed to achieve a majority vote in an uncontested election had to be included on the ballot at Trico Marine Corporation, despite the company's contention that it would improperly usurp the authority of directors and would be illegal under Delaware law. (The court ruled that that matter would be decided separately, if the proposal received the votes required to pass it.) The proposal received over 62% of the votes in favor…but fell short of the 66.6% required to pass. Watch for additional proposals like this one, we predict – especially at companies that DO 'hold over' failing directors.

Ed Durkin, who heads up the governance efforts for the Carpenters Union says he plans to file shareholder proposals for a triennial say-on-pay vote at 20 companies this Fall - even though it's late in the game…and maybe there will be Federal Say-On-Pay legislation no matter what. Actually, Ed makes some very good points: "Let's try to make something out of this while there's still time" he urged attendees at the Society's annual conference in June. "People don't have time to do an adequate analysis of corporate pay plans. We, for example, have 3700 companies in our portfolio." And maybe his best point of all, he doesn't want to make Risk Metrics even richer and more influential than ever – since voters will almost have to buy whatever check-the-box or black-box model they come up with in order to recommend an up or down vote on 8000 or so pay plans annually.

"Split votes" from co-fiduciaries crossed our path for the first time ever this year, and caused consternation at most tabulators, and for Inspectors of Election too, if they're on their toes: The idea of having co-fiduciaries – each with a say on the same vote – seems a mighty dumb one to us, and one that mostly seems confined to the State of Ohio. We guess it popped up so often this year because fiduciaries of every stripe are increasingly purchasing voting advice – and increasingly, the advisors are giving divergent advice. So one fiduciary will vote NO on some directors - and maybe on some proposals too - while the other fiduciary will vote YES. One vote per share should count for Quorum purposes in these instances…but the votes will fall short vs. the quorum where the votes have been split, effectively cancelling each other out. We say, the proper way to report these votes is to have a column called "No Vote"…and that this column should also be used to hold the votes now called "broker non-votes" – inaptly we say. See our tabulation and reporting tips – and our article on Apple for more info on this.

Three instance where Risk Metrics changed its voting recommendations shortly before the meeting date also came to our attention this season; the first instances of this that we can recall. See our section on adjournments for more...

INVESTOR ACCESS TO THE DIRECTOR NOMINATING AND VOTING MACHINERY: A CERTAINTY FOR 2010?

We came away from the Society's annual conference almost 100% certain that there would be "proxy access" in time for the 2010 meeting season. SEC Commissioner **Elisse Walter,** who gave the closing address, spoke passionately on the subject – and made it crystal clear that her long-term friend and colleague, **SEC Chairman Mary Schapiro,** was equally committed to the idea… AND that they had the votes in hand to make it happen.

We are on record as being a fan of the idea – solely on the basis of fairness: How can we let proponents submit so many immaterial and sometimes downright silly things for a vote, and NOT let them put forward a proposal on what is currently being recognized as the most important thing of all for shareholders to vote on?

But also, as we've been trying to point out – this is really something of a tempest in a teapot, IF, that is, the rules are written properly: Truly "serious investors" – who should be the only ones allowed to use the proxy machinery on the nickel of other shareholders – won't be nominating directors willy-nilly. Truly "serious candidates" could never be found to run in non-serious contests. And, we're almost 100% sure that if there IS a truly serious election contest, the dissidents will want to use their own proxy materials, and mount their own campaigns on their own…IF they seriously want to win, that is, and not just make noise.

On the other hand, we've also been warning for at least eight years now about the very serious dangers of "federalizing" corporate governance - and the all-important shareholder meeting process in particular - where state laws and many important precedents are incredibly well-developed and have evolved steadily, and in a mostly positive way, in response to new developments and to well-reasoned ideas. The biggest dangers we see in the latest SEC draft that's out for comment are the way-too-low thresholds for gaining access to the proxy machinery and the way-too-short holding period that has been proposed. Even the more "serious" activist and institutional investors seem to be realizing that these too-loose limits will allow a lot of non-serious troublemakers to potentially jump ahead of the serious folks…in a race to be the first to file, which is yet *another* bad criterion we say.

We plan to write our own comment letter - and readers, we'd urge you to file your own too – and a non-form-letter type, please. Meanwhile, we'd urge you to urge that the minimum threshold for share ownership be at least 5% - and ideally, we think, 10% - which, as we've noted above, seems to be a "reasonable threshold" for most activists in terms of calling a special meeting…which filing a competing slate is much akin to. We also think that requiring two years of prior ownership – plus a commitment to hold at least one more year following a proposal filing would go a long way to screening out proponents whose main agenda is to make noise…or make trouble…or make a quick buck, rather than to contribute to "good governance".

P.S. Right now, we'd still lay 60:40 odds that this WILL get done in time for the 2010 season. While some folks are saying they'll sue the SEC – and maybe they will – it seems pretty clear to us that the SEC does have the authority to set ground-rules here. In fact, the current state of affairs – where shareholders can make proposals "except pertaining to an election" – is an exception of the SEC's own making, to their own rules, which, accordingly, we think they can revoke on their own.

ADJOURNING YOUR ANNUAL MEETING: NOT HAVING THE AUTHORITY TO DO IT CAN BE A DEATH SENTENCE.

Another of our very favorite topics has jumped to the forefront this season: We've been warning year after year about the need to be sure that you have the proper authority to adjourn your annual or special meeting…if, that is, you have a legitimate need to do so: Once a quorum is present, adjourning a meeting simply because your side is losing is not a legitimate thing to do, in our opinion, absent clear-cut authority to do it. And for a Corporate Secretary or other Governance Officer – and for an Inspector of Election – it is, or should be your worst nightmare.

We've also been regularly warning that one can not realistically assume – as many companies seem to do – that somehow, you can act on the basis that the 'street name votes' automatically run to your own proxy committee: Unless you have included a box on the voting instruction form that permits an up and down vote on adjournment to be *tabulated,* there is simply no basis for an Inspector of Election to decide how many – if any – of the street name votes run to you on this matter. (A proxy card, btw, is a different matter altogether…since unless the voter strikes out the line appointing your proxy committee – which the Inspector CAN see, and can tabulate – the proxies DO run to you.)

This year, as noted elsewhere in this issue, there were at least four close or questionable calls about meeting adjournments this season – three where Risk Metrics changed its recommendations in eleventh hour, where "fairness" would seem to call for an adjournment to get the news out, and give people a chance to react – and the skuzzy Biogen case, where directors adjourned to desperately dial for votes from a patio adjacent to the meeting site.

At one of the companies, where two directors were failing to achieve a majority thanks to Risk Metrics's original recommendation - and where Risk Metrics switched their recommendation just before the meeting - we were directly involved. Thank goodness, the company's bylaws allowed the chairman to adjourn for any reason at all! At another meeting, one of our Inspectors took comfort in the fact that there was a voice-vote on an adjournment – and there were no objections – plus, there was really nothing really big to object about.

Now for the really bad news for corporate citizens…a 2008 case in Delaware which will surely become better known as "Portnoy's Complaint" – Portnoy v. Cryo-Cell: This was an out-and-out proxy fight (much like the Biogen case, btw) where the CEO called an unexplained three hour break in the meeting while the polls were held open. The court determined that the purpose of the delay was to give two large shareholders time to switch their votes to the management slate, while management dialed around for still more votes. The court found that the defen-

ADJOURNING YOUR ANNUAL MEETING... *continued from page 3*

dant directors failed to prove that they had acted in good faith…and noted in particular that the CEO failed to tell stockholders the true reason for the delay.

To fix this and other breaches of fiduciary duty by defendant directors, the court ordered them to hold a special meeting for the new election of directors…and require the defendant directors to fund the new meeting – including the solicitation costs – out of their own pockets.

It's a potential death sentence in itself to have to tell the Chairman that an important proposal is failing, and maybe you do not have the proper authority to adjourn the meeting. But just imagine their reaction if they have to foot the bill for a new meeting themselves!

So please remember our oft-repeated advice: Be sure you know for sure whatever authority you may have to adjourn a meeting – by reference to your own Charter & Bylaws. Regardless of what they might say, if there is the slightest chance that you'd have to adjourn a meeting, make it an official proposal on your proxy card and VIF.

A FIRST-HAND REPORT FROM THE INTEL "VIRTUAL ANNUAL MEETING"...AND A HEADS UP ON THE BROADRIDGE VIRTUAL MEETING IN NOVEMBER

Your editor had the honor to serve as the Inspector of Election at Intel's 2009 annual meeting, the first "virtual annual meeting" ever.

In an interesting twist of fate, he had testified a few years ago about why a "virtual annual meeting" that had been proposed by a group of vulture capitalists would not work – simply because the proper technology to allow "virtual voting" in a secure and auditable fashion could not then be put into place…at least by that group. So he was already 'on the record', under oath, as to what would really be required to pass muster. We're here to tell you not just that Broadridge has "cracked the code" technologically, but that the meeting - and the technology - was really cool.

Intel, of course, had provided a "live" webcast of its meeting in previous years. And they'd also solicited shareholder questions over the web in advance of the meeting. What was totally new, however, was the virtual, on-line, real-time voting feature.

Here's how it worked: Broadridge closed the voting sites in advance of the meeting in order to establish the quorum and arrive at firm "preliminary numbers". Then, they reopened the polls - for internet voting only - shortly before the meeting began. As shareholders registered for the live webcast they were asked to enter their identifying numbers (from the proxy card if they were registered holders, or from the VIF if they were street-name holders) if they wished to have the opportunity to vote "live" during the meeting.

While normally, your editor does not vote his own proxy if he's the Inspector…to be sort of "super-independent"…he logged on in this case, in order to see exactly how the system was working. A box popped up almost instantly on his computer screen, verifying that he was entitled to vote, and providing the spots he'd need to click on in order to make his selections.

As the live webcast began – with a few seconds delay that was also kind of cool to observe along with the "really live meeting" – the box remained open on the right-hand side of the screen. Since his vote was really immaterial in terms of the outcomes – and since he wanted to see exactly how things would work, he decided to cast his votes midway through.

A new screen popped up to tell him his votes had been recorded…and that he could click again if he wished to change his mind or keep his options open during the course of the meeting, which he did.

When the polls were declared closed, the voting screen instantly disappeared, and a message popped up to inform viewers that the voting period had closed. How cool could this possibly be!

Broadridge could not, of course, report the final votes at once: The votes cast at the meeting had to be "run" against the preliminary vote file, to be sure that any earlier votes were revoked by the online vote. And, as backup, Broadridge was able to print out all the details on the votes cast at the meeting…and yes, your editor's vote was among them, as he fully expected it to be. The final tabulation was ready by M+2.

In another twist of fate, we think, your editor had been advising companies who wished to have a totally virtual meeting that such a meeting would draw down the wrath of activist investors, who were then loudly proclaiming that they needed a chance to be there in person…or else. At this meeting, there were a few shareholder proponents and a few "live questioners" in attendance.
But did they really need to be there?

We're now inclined to think not. Certainly, with 5.5 billion shares outstanding, and with virtually all the votes that were going to be cast received well ahead of time, there was no opportunity at all for a shareholder proponent to somehow win over the electorate in the final moments. Clearly, their best shot was already taken in their supporting statements. (And, while not the case at this meeting, we've been to many meetings where poorly delivered statements, not to mention the sometimes outrageous antics of proponents has caused them to *lose* votes at the meeting that were previously in their column.)

Another concern your editor has expressed revolves around the good-governance aspect of allowing shareholders to ask questions…and the extra preparedness that most meeting chairmen engage in to be ready for them. But Intel's process assured that this worked fine too – and frankly, the technology is there to let shareholders type in their questions, or to record a statement in advance if they really want to. The meeting chairman alternated nicely between "live" questions and questions from the Internet. And, as **Kary**

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FIRST HAND REPORT…

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Klafter, Intel's Corporate Secretary told the Society at its annual conference, most of the Internet questions – and many of the live ones too – were about products, and had nothing at all to do with "governance" matters…although not every company can count on this, of course.

ON TO THE BROADRIDGE VIRTUAL MEETING, SCHEDULED FOR NOVEMBER 18TH …WHERE NO SHARHOLDERS, OTHER THAN MANAGEMENT AND STAFF, WILL BE ALLOWED TO ATTEND IN PERSON…

When we got this scoop, our first thought was to be glad that Broadridge was going to eat its own cooking – something we're firm believers in - and our second was to think, What a gutsy thing it is, to say "no shareholders can attend".

Then we decided to twit our good friend **MaryEllen Andersen**, the Broadridge corporate governance expert… since we ourselves are Broadridge shareholders, albeit modest ones:

"What if we decide WE want to file a shareholder proposal? And what about if we insist on presenting it "live" and "in person" – as some companies, despite our many comments on how dumb this actually is, still require proponents to do? Will you set me up with a camera and a microphone so I can broadcast "live on the web" as you guys will?"

"Shareholders could present in person if a company allows it" she cagily replied…"or they could be hooked in via telephone to present the proposal electronically" (probably a smart thing, if, like your editor, one is not particularly telegenic). "The company could" (as the editor suggested might satisfy him if he was really hot to trot to test the limits) "make a camera and mike available at another location…but a separate camera location would be very expensive."

Suddenly the ideal solution dawned on your cranky old editor: "Send these goofballs to Kinkos, and hook 'em up if they insist on "being there" in person! It's cheaper for them then flying in for the meeting…and it's still cheaper, even if YOU have to pay Kinkos, than hiring a big hall."

And here, by the way, are the two biggest and best reasons we can think of to have a completely virtual annual meeting: (1) to save all the time and money that's spent on so many meetings, only to have two or three retirees show up – or no one at all, as happens at many, many meetings every year, and (2) to keep those mostly obnoxious proponents out of one's hair.

Do we think that every company can or should adopt the strictly virtual annual meeting model? No.

But do we think that almost every U.S. company will ultimately "stream" their meeting live, over the Internet…even if relatively few people tune in…and archive it for a year? Yes.

And do we think that the online-voting feature is a good good-governance idea…even if relatively few people have used it to date? Absolutely yes, and besides, it's really cool.

Do we think that "virtual voting" will, in itself, significantly increase the number of people who cast their votes? Sadly, no.

But do we think that in a world where everybody who's everybody is texting… and tweeting -however much we may hate it - that live voting will become increasingly expected as de rigueur? Emphatically yes.

IN THE BLOOPER OF THE YEAR, APPLE GETS CAUGHT COUNTING ABSTENTIONS AS "VOTES NO" ON SAY ON PAY

It did not take a smart reporter very long to sniff out a problem with the way Apple reported its 2009 voting results – especially with regard to the "widely watched" Say on Pay proposal, which Apple reported had been defeated.

"The result was something of a surprise, given that a similar say-on-pay proposal had passed the previous year and the say-on-pay movement has been gaining strength" Troy Wolverton of the Mercury News reported on April 24th. Further, "shares voted in favor of the proposal increased by more than 20 million shares; shares voted against it increased by nearly 11 million and shares that abstained from voting fell by nearly 19 million".[vs. last year] "Which might lead you to wonder how the resolution passed last year and failed this year" Wolverton wrote.

Wolverton's article sought reactions from AFSCME spokesperson, Scott Adams, who alleged that "Clearly, Apple is trying to game an election. It's clear the Apple doesn't care what shareholders say [about] improving corporate governance at the company [they've] still got the iron fist of Steve Jobs and his belief that shareholders' voices are not important" he asserted.

Apple cleared up the mystery by filing an amendment to its 10-Q and issuing a press release on April 27th noting that "Last week's filing incorrectly reported the voting percentages for shareholder-submitted proposals because abstentions were counted as 'No' votes…due to human error, which Apple regrets. As a result of the corrected vote count, Shareholder Proposal No. 5 Regarding Advisory Vote on Compensation…was approved by a majority of the votes cast."

And, in an even bigger reversal, after apparently realizing what deaf-and-dumb klutzes they appeared to be, the release announced that "The Compensation Committee of Apple's Board of Directors has been closely following the Say on Pay issue [Duh!] and…Even if [anticipated legislation to mandate S-O-P] does not occur, Apple is committed to implementing an advisory Say on Pay next year."

Too bad that Apple [currently our best performing investment, and a company we actually love] did not read our article last year's big reporting snafu at Yahoo, and our advice to pay particular attention to voting outcomes that seem

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IN THE BLOOPERS...

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counterintuitive – especially when they are what you've been rooting for – as was the case in both situations.

Apple, and its Inspector of Election too, seem to have fallen victim to the legalistic lingo that many companies have been inserting in their proxy statements this year, to the effect that abstentions – and so called broker non-votes too – "are equivalent to votes against a proposal". This is true to a degree…to the extent that one needs votes to PASS a proposal. But this most certainly does not mean that you can count abstentions, or broker non-votes either, as votes no.

Another theory about counting votes seems to be circulating widely – especially among California based companies – that abstentions can be considered as "votes cast"…and that therefore, they should be included in the denominator (as Apple did) when calculating and reporting percentages. One proxy statement that just crossed our desk baldly asserted that since California law was "silent" on the matter, abstentions would be equivalent to votes against the matters at hand and would be treated as such when the percentages were calculated.

Forget California's alleged "silence"…and *maybe* forget for just a second that abstentions do not count as "votes cast" by the SEC in determining whether a proposal has received enough votes to be resubmitted…and maybe forget the fact that this wacky rationale can work against YOU, when YOU want to pass something…But please do not forget the plain English language: An "abstention" is an "abstention"; it is decidedly NOT a "vote" (otherwise, we would not need the word abstention in English)…And it is decidedly NOT a "vote cast" in our own understanding of the English language and in our own Inspector of Elections book. It is an intentional action to NOT "cast a vote", and to make a record of that fact. All this confusion on what should be "basics" prompted us to include a little primer on tabulating and reporting voting results, which follows.

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A FEW "PRACTICE POINTS" ON REPORTING RESULTS:

- When announcing results at the meeting, the best practice is to stick tightly to the numbers. To save time, it's fine, of course, to announce that "each director has achieved a majority (or a plurality if that's your standard) of the votes cast"…or "at least X votes …or X% in favor of election, and to recite the percentages of WHAT have been cast in favor of the proposals. But it should be up to the Meeting Chairman – and not the Inspector -- to announce that directors "have been elected" and whether each item has "been approved"…or not.

- If there is any doubt at all as to the actual outcomes – OR we say, if "a large number of votes have been received on the morning of the meeting" – consider reporting the "preliminary results"…and promise to report the final results on the company website "as soon as the Inspectors can complete the necessary due diligence" If it is crystal clear that the final results will not be significantly different from the preliminary numbers, it's fine to say that too.

- We HATE to hear people say the results are "too close to call". Just use the language immediately above…and forget, or limit the "preliminary numbers" to proposals that are clearly not in doubt.

- Always remember that many proposals are precatory; Thus, it is not appropriate to say that such proposals have "passed" or have "been adopted" as we've seen some companies and some Inspectors mistakenly report.

- If and when you decide to report percentages, be sure that you have calculated them correctly – and have used the right numbers in the denominator. AND, also be sure that you report exactly what they are percentages OF: For example, X% of the shares outstanding… Or present in person or by proxy…Or of the "votes cast"

.

- Pay attention to the "optics" of what you report: These days, the percentages in favor of each director - which you are not required to report - don't look nearly as nice as they used to in many cases. Pay attention to the rounding methodology and to the optics there: Normally, WE round up to one decimal place. But last week, in a hotly contested matter, the actual 72.25% looked a lot better to us – partly because it was more accurate than 72.3% - but also because 'a quarter of one percent' seemed easier to grasp in terms of the actual margin of victory. And please don't play games: Round all the numbers consistently.

A QUICK PRIMER ON TABULATING AND REPORTING VOTING RESULTS

- The first commandment when it comes to tabulating and reporting Meeting results is this: "Always prove every item to the Quorum" (Doing this, as we reminded last year, would immediately have uncovered the tens of millions of votes that went missing in last year's election of directors at Yahoo. We must also admit that we have broken this commandment ourselves…to our most grievous dismay.)

- What does this mean in practice? Add up (and ideally, have your tabulating system automatically add up) the For, Withheld, Against, Abstain and any "non-votes" and "no-votes" (in the case of offsetting split-votes by co-fiduciaries) for each director and each item on the ballot – to be sure that each of the totals you're reporting are the same as the total you're reporting as the Quorum.

- What is the Quorum? It is the sum-total of all the shares (or voting power, if there are classes of stock with more or less than one vote per share that are entitled to be part of the quorum) that are "present at the meeting in person or by proxy". (Thus, there may be a different quorum, please note, for different agenda items).

- Please note too that simply being present in the meeting hall – even if one does not cast one's vote on a single matter – is normally considered as being "present" for the purposes of determining whether or not there IS a quorum. But this is only important to consider where there is the possibility that some voters may try to postpone or prevent a meeting by preventing a quorum from being present. If this may be a potential issue, have every attendee sign in, and verify the shares they have.

- The second commandment of tabulating and reporting is to always know – and to always disclose in the proxy statement – exactly what it takes for a proposal to "pass". These facts should always be findable in a company's Articles of Incorporation or Bylaws. Typically they arise from the corporate code of the company's state of incorporation, but very often, the company, or its shareholders, have adopted special provisions (like a super-majority provision, for eg.) that supersede the "standard" state law provisions.

- A very important corollary to the second commandment - let's call it the third commandment - is to pay particular attention to all the "classes" of stock your company may have outstanding, since shareowners of such classes may or may not have a vote on particular matters, and often, the voting power is more, or less, than one vote per share. (Every single year we encounter dozens of cases where this critical information – on exactly what it takes to pass a proposal -- is not disclosed, or in some cases is disclosed on one page, but contradicted on another…or is contradicted by an "explanation" – like the wacky explanations of the effect of abstentions and of "broker non-votes" that are being gratuitously inserted like mad these days by eager-beaver lawyers).

- The most common standard for "passing" a proposal - and generally the easiest to meet - is "a majority of the shares present at the meeting in person or by proxy"…or, in other words, one-half the Quorum (once there IS a quorum of course) plus one vote. Thus, many proposals can "pass" with as little as 25% of the outstanding shares plus one vote.

- The next most common standard for passing a proposal is "a majority of the votes cast": Here is where it becomes important to recognize that "abstentions" – and so-called "broker-non-votes" are NOT "votes cast"…and thus, such votes and "non votes" make it harder for the proponent to get the needed Yes votes. Only the For and Against votes count – and they are the only votes to be included in the denominator if you feel obliged to report percentages.

- Many proposals – and typically, the most important ones to shareholders in terms of the economic implications – require "a majority of the shares outstanding" – and often of "the total voting power" to be cast in favor of the proposal if there are additional classes of stock outstanding.

- Some proposals – like proposals to change the Bylaws, oust directors or to merge the company - require a "super-majority" - often two-thirds or even more of the shares outstanding to be cast in favor, in order to pass.

- Several "standards" currently exist for electing directors, so it is critically important to know exactly what standard applies: The majority of public companies still have a "plurality standard", where votes may be "Withheld" from a director, but where there is no opportunity to cast an "Against" vote. Thus, as long as a director gets even one vote "For", he or she will be elected, unless there is a "proxy fight" with a competing slate. A rapidly growing number of companies have adopted a "majority voting standard" where shareholders get to vote "For", "Against" or to "Abstain" on the election of each director candidate. (We were also amazed this year to see how many companies that said they had majority voting failed to give shareholders the For, Against and Withheld choices!) While most such companies simply require more "For" votes than "Against" votes to get elected, some require directors to attain a majority of the Quorum, or even a majority of the shares outstanding.

ON THE SUPPLIER SCENE:

The Society of Corporate Secretaries and Governance Professionals is moving to address the top-two concerns of members, which were brought into high relief in the membership survey and subsequent strategic planning initiatives kicked off by the 2008-09 Chairman **Craig Mallick of U.S. Steel,** who has just completed his term of office: **Theresa Bartlett**, a lawyer with 17 years of experience with the **Direct Marketing Association** will come on board in July to jump-start the Society's critically important new membership initiatives. Darla Stuckey, formerly with the NYSE, and currently an Assistant Secretary at American Express, will start on Sept. 8th as the Society's Senior Vice President for Policy and Advocacy, a new and much desired role there. At the Society's annual conference, Paul Washington, SVP, Deputy General Counsel & Corporate Secretary, Time Warner, Inc., was elected Chairman for 2009-2010 and Katherine Combs, SVP and Corporate Secretary, Exelon Corporation, was elected as Chair-Elect; Society superstars both.

More consolidation in the industries serving publicly traded companies, as predicted: Towers Perrin Forster & Crosby and Watson Wyatt Worldwide – two of the country's biggest compensation consultants – are merging. The new company, Towers Watson & Co. will pass the Mercer unit of Marsh & McLennan as the world's largest H-R, employee benefits and comp-consulting company, and will be publicly traded, as Watson Wyatt was pre-merger.

On the Transfer Agency scene…

BNY-Mellon and Australia's **Pacific Equity Partners (PEP)**, were engaged in talks to have PEP buy the business for "around $1 billion" according to mid-June reports in the Australian press that were widely circulated here too. Meanwhile, we were hearing reports of renewed commitment to the business, so we placed a call to **Peter Duggan**, BNY-Mellon's head of client relationship management for the straight scoop: "Like all companies, we periodically reassess all our lines of business…and don't comment until the assessment is completed" he told us. "We concluded that the shareholder servicing business is a very good strategic fit with our other securities processing businesses, and with our approach to overall client relationships. We are committed to the business and recently injected strong new talent – including our CEO **Samir Pandiri,** who will be running the business on a global scale – and a new business manager, **Elizabeth Da Silva**, who ran our Corporate Trust Department's Americas Group – and we are investing in new technologies." Another major change, and something that was music to our ears; "Culturally, we are placing much greater emphasis on the role of our relationship managers" Duggan told us. "They will 'own' their clients…and we are empowering them to make servicing and pricing decisions. At a recent meeting of our Client Advisory Board in Chicago, Samir told the 80 or so clients in attendance that we will be 'singing and dancing to the tune of our R-Ms.'"

Computershare Limited received the 2009 NICE Customer Excellence Award for U.S. call center operations, based on "outstanding service levels, forecast accuracy, schedule adherence, staff attrition rates, customer retention rates, multiple contact rates, external customer satisfaction results, internal quality assurance results and others" according to NICE Systems, which provides call-center software. The jury was composed of experts from The Call Center School, the U.S. Society of Workforce Professional Planners and the U.S. Society of Quality Assurance and Training.

National City – which has been bought up by **PNC**, and which initially reported to us that the Stock Transfer business would be retained and expanded under the PNC umbrella - now has RFPs out, seeking bids on the T-A biz from potential purchasers…AND, JUST AS WE WERE READY TO GO TO PRESS, COMPUTERSHARE ANNOUNCED THAT THEY'D PURCHASED THE BUSINESS. The 155-customer portfolio, with roughly 500,000 holders of record – plus the fact that both entities had facilities in Cleveland, makes for a particularly nice fit.

MARK YOUR CALENDARS – AND REGISTER NOW

A CORRECTION:

In our last issue, we managed to simultaneously prove - and to break - our much-published proofreading rule; to "always proofread every proper name you publish with care…and to pay particular attention to the names you think you know well"…by repeatedly typing **Salli Marinov's** first name (she's the owner of **First American Stock Transfer)** as "Sallie". So sorry Salli: One of these days we hope to have an issue sally forth without a single typo…But another of our rules; "never rely solely on yourself to proofread your own work" is yet another rule we're sorry to say we repeatedly prove by breaking.

QUOTE OF THE QUARTER...

"Although there could be many ways to question this calculation, that the market would be at essentially the same real level [adjusted for inflation] as it was in 1966 when there were no PCs, no Internet, no flexible manufacturing, no software industry and when the workforce was half and net capital stock was a third of what it is today, may be regarded by some as the sale of the century."

Larry Summer, as quoted in the April 15th Wall Street Journal
From your lips to God, Larry!

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Cathy Conlon, Senior Director, Broadridge Financial Solutions
Michael Ellison, Executive Vice President, Corporate Insight
Irving Gomez, Senior Attorney in the Corporate Legal Group of Intel Corporation
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Attendees will also receive membership to a private networking site where the conference video, RFP templates and other tools will be posted.

2009 PROXY OVERVIEW...

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Proposals to separate the Chairman and CEO also failed to resonate big-time with voters (ex BofA), receiving only 38% support to date, on average. But the will of the voters hasn't deterred our federal legislators either, who will likely mandate this too.

At least 43 companies in the S&P 500 eliminated some or all tax gross-up provisions this year; some to avoid shareholder proposals and some because they simply smelled the coffee and realized they're really gross-outs with shareholders. This will, of course, put even more heat next year on companies and on their comp-committee directors where gross-ups still exist. **Rich Ferlauto,** the director of corporate governance and pension investment at **AFSCME** – who entered five anti-gross-up proposals this year, put it simply and succinctly: "There is no pay-for-performance connection at all. All Americans are subject to taxes except executives who have found a way [with gross-ups] to avoid them." Even the comp-committee advisors are beginning to realize that often, the cost of the gross-up is greater than the cost of the actual perks they're meant to cover.

Really big news about plane perks hit the press just as the slow summer-news season kicked in: "CEOs of Bailed-Out Banks Flew to Resorts on Firm's Jets" two big headlines in the June 19 Wall Street Journal screamed out.

But the really big news was just how closely WSJ reporters – and others, like deal-watchers, speculators and other arbs – monitor the whereabouts of corporate jets – and how close and how often and how long they park near resorts, and near executives' summer homes – and where else they go – and who's along for the ride, and who else's summerhouse is nearby. Now that's scary news….and good reason, we think, to re-think the mandatory use of company-owned planes.

Lest we relax our guard a bit, following what was basically a moderately choppy season, let's note that the weirdest development of the 2009 proxy season was the rage that raged through Europe: Voters said No-On-Pay at RBS, **Royal Dutch Shell** and **Valeo SA**. The **Fortis** meeting had to be adjourned a half hour after the management team was pelted with shoes, coins, etc. (Thanks to **Broc Romanek** for this news, and for forwarding the riveting Youtube video). And at **ArcelorMittal's** headquarters-based meeting in Luxembourg, 1000 steelworkers set of smoke bombs and smashed windows.

Shades of the 60'!s - And good reason to quote our own A-M motto: Always hope for the best…but always prepare for the worst!

PEOPLE:

All of the really interesting people this quarter are already in our news columns …or they're at the beach, we hope…

OUT OF OUR IN-BOX:

How's THIS for a new wrinkle: Don't vote; get escheated! A reader called us, and later forwarded copies of the correspondence he'd recently received as custodian for a minor in a Fortune-500 company.

The first letter, which he received in April from a major Transfer Agent, informed him that "your account is deemed to be abandoned and the shares and/or funds held in your account are eligible to be turned over to the state of New York based on recent changes made to their state unclaimed property laws…The New York Law indicates that shares of corporate stock held in an account with a New York residence are deemed to be abandoned if there has not been written/electronic communication with the shareholder for three consecutive years."

He called the TA - a qualifying "electronic communication" he and we would say - to say he's never moved…and that the address of record was and still is correct. He asked what kind of mail had been returned to them and when, "but she said she was unable to tell me, since no such records were maintained." To be doubly sure that the account would not be escheated, and not trusting the rep to reactivate his account, he signed and returned the form they'd sent him.

Nonetheless, come June, he receives another letter "on behalf of the Transfer Agent" from an abandoned property firm.

This one says, "Mail sent to this address has been returned undeliverable by the U.S. Post Office OR checks sent to this address have not been cashed." (Neither of which statements are true to the best of his knowledge, but we guess that no one can really vouch for the U.S.P.S. these days).

He calls the toll-free number, only to get a recorded announcement, referring him to the abandoned property firm, so he goes back to square one, with another call to the TA's main number. After much ado, he finally gets a supervisor: "So I asked her, 'if I get no checks to cash, and no 1099, and no written correspondence, and I have no reason to have electronic communication with the TA, proxy voting is the only thing to prevent escheatment?' Yes, that's it, she told me – 'in those circumstances you have to vote your proxy'."

COMING SOON...

OUR ANNUAL SPECIAL SUPPLEMENT; THIS YEAR ON "STAYING CONNECTED" WITH ALL YOUR IMPORTANT CONTITUENTS – INSTITUTIONAL AND INDIVIDUAL SHAREHOLDERS, ACTIVIST INVESTORS, POTENTIAL INVESTORS, CUSTOMERS AND KEY SUPPLIERS

REGULATORY NOTES...and comments

ON THE HILL...

Legislators, and even a few of the apparent "winners" in the regulatory reshuffling game, are having some second thoughts about the particulars…and that's a good thing. Better yet, no real action expected 'til Fall

We have a national "Pay Czar" now…or more politely, a "special master for compensation", Kenneth Feinberg… which probably isn't a good thing…even though his masterful ministrations are supposed to be confined to TARP recipients and each of their 100 highest paid employees.

Plans to oversee derivatives are shaping up…and ideally, to require that most of them be run through one or more "clearing houses" so maybe we'll have some idea of how many dollars worth have been issued, where they are… and maybe what they're worth…a very good thing, but naturally, the folks who make the most money in mostly-secret deals are balking.

A move we really like, and one we've agitated for on and off for 15 years now is taking shape...that would hold brokers to fiduciary standards…unless they are, very clearly, mere order-takers.

AT THE SEC...

The big news, as reported above, new "proxy access rules" are out for comment, incorporating some of the worst features of the old draft rules that were first issued in 2002 and widely debated, which debating seems to have been largely forgotten thereafter. Be sure to read some of the excellent comment letters – from the Delaware Bar Assn. and from the business community – and get your own comment letters in - adhering to the "KISS Principle" we urge…and being careful not to whine, or protest or "lawyer" overmuch.

New short-selling rules are also out…which may or may not fix the many problems associated with naked short selling…depending, as we've written before, on whether they'll actually be enforced.

The SEC is floating a proposal that would require issuers to disclose the voting results in a new Form 8-K … within four business days after the meeting is over…except where there's a proxy contest. Three cheers for the concept…but we say the close of business five business days after a "routine meeting" is much more realistic…plus there needs to be an exception for results that, in the opinion of the Inspector of Election, are so "close" as to require additional due diligence. Here – and in contests too – we say the deadline should be a maximum of 10 business days, not the 30+ that some folks take, and certainly not the nearly 90 days that some companies take…hoping that no one will notice the results, or care anymore, once the 10-Q comes out.

Meredith Cross is returning to the SEC from Wilmer-Hale LLP, to serve as the new Director of the Division of Corporation Finance. A wonderful pick, we say, in an area that needed much strengthening, after much lackluster, shilly-shallying 'leadership' in recent years.

IN THE COURTHOUSE...

A very important ruling we failed to note in our first-quarter issue; The Delaware Supreme Court overturned a ruling in favor of shareholder plaintiffs by the Court of Chancery that directors may have disregarded **fiduciary duties in approving a merger, giving much broader protection to directors.** "Instead of questioning whether disinterested, independent directors did everything they (arguably) should have done to obtain the best sales price, the inquiry should have been whether those directors utterly failed to attempt to obtain the best sale price" (italics ours).

WATCHING THE WEB:

 A major development, we think…the June 23rd launch of www.shareowners.org a social networking site, to begin "a major new nonpartisan and nonprofit online campaign to empower and educate American shareholders about their rights and duties". The site appears to be exceptionally well-funded, "from a court settlement and the **Lens Foundation for Corporate Governance**"…and with "key advisors" such as **Lynn Turner**, ex of the SEC, PCAOB & FASB, John Wilcox, ex of Georgeson and TIAA-CREF, now Chairman of Sodali Ltd. and **Teresa Ghilarducci,** director, Schwartz Center for Economic Policy Analysis, The New School for Social Research. Key speakers in the lead-off webcast included (what a surprise!) **Rich Ferlauto** of AFSCME, **Nell Minow**, editor in chief of The Corporate Library and **Barbara Roper**, director of investor protection, Consumer Federation of America.

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A technologically nifty feature – but one we think will actually backfire big-time, given one's normal reactions to mass receipts of such missals ¬¬¬¬¬¬– is a template one can fill in to send a chain letter to one's congressional reps (by name and title, filled in gratis) endorsing ShareOwners.org positions. We will certainly plan to watch this cite with regularity…and will plan to blog here ourselves from time to time, as we'd advise our readers to do as well.

 Dow Jones has been taking full-page ads in its own WSJ to flog its own, niftily-named "social media" monitoring tool, www.solutions.dowjones.com/antisocial.

 The Optimizer plans to take up the many pros and cons of using "social media" for corporate communications purposes in its annual Special Supplement issue…so stay tuned. Readers; if you have any experiences here – good, bad or indifferent that you'd like to share, or any issues you'd like us to address, please call or email the Ed. •

SAVING MONEY, EVEN WHILE IMPROVING SERVICE:

This perennially hot topic was the subject of a nearly two-hour discussion at the SSA Conference in July, moderated by Belinda Massafra, formerly the head of IR at BellSouth, now with Shareholder Services Consulting LLC, featuring Kathy Huston of Group Five Inc., Karen Danielson, Director of Shareholder Services at The Coca-Cola Company, your editor…and lots of excellent audience participation as well.

The discussion, which covered RFP drafting and evaluation tips, vendor selection tips, tips on odd-lot programs and on a long list of other practical moneysaving ideas, is available on the SSA website, www.shareholderservices.org and will be available to non-members too for a limited time, as a demonstration of the incredible value that comes from being a member.

REINING-IN THOSE PESKY GADFLIES

Most of the 170 or so Annual Meetings that we or members of our Team of Inspectors attended this year had slightly higher attendance and much better and better-informed questions than usual. And most were blessedly free of those pesky professional gadflies.

But at two meetings your editor attended in Chicago this year, five regular-Chicago-meeting-attendees took turns commenting on every matter presented, taxing the patience of normal attendees for well over an hour; to wit, long-term gadfly and sometimes proposal-presenter-by-proxy for John Chevedden, Marty Glotzer; a guy we call "the nutty professor" whose meandering musings are barely understandable thanks to his disjointed logic and mostly impenetrable Chinese accent and three local regulars we think of as "Duh Beahs", who make comments like "Dis proposal stinks". Another major Chicago company, whose meeting we missed, was attacked by "the pet people" – all of whom were either shareholders, or managed to obtain proxies from shareholders that entitled them to speak, and who queued-up at each microphone three-deep to stump for animal rights and their purported rights not to be eaten. "What can we do?" their meeting organizer asked at a recent conference.

So here's our checklist of tips:

- Draw up some strict, written ground-rules for would-be presenters. Hand them to attendees and read them out at the opening of the meeting: For example, speakers must be able to positively ID themselves as shareholders; they should state their names and approximate share-holdings; they should address all questions – and comments, if they feel compelled to make them – to the Chairman; speakers MUST confine their remarks to the business of the meeting that is at hand -- and they will be allowed only one question or comment per agenda item, with a brief follow-up question being OK – as long as their total time is one minute – or maybe two minutes if they are proposal proponents… And a new Optimizer suggestion, questions will be taken first, followed by comments if the time allotted to each item allows;

- Stop requiring proponents or their designated presenters to show up to introduce their proposals. Simply have the Chairman "move them", noting that the supporting statement is in the proxy materials, and maybe even announcing the preliminary voting, to disabuse people of the idea that any further discussion will matter to anyone.

- Make it crystal clear that general questions will be addressed after the formal business of the meeting is concluded, and write your script in a way that will basically clear the hall of all but the most determined gadflies – who will quickly lose steam when they have no audience.

- Try to meet ahead of time with all the proponents and all of your usual gadflies to apprise them of the guidelines – and to let them know that they have been written to be fair to ALL shareholders, and to respect their valuable time… and maybe to remind them that (a) their statement is already in the record and (b) they will make more points with attendees if they keep their remarks short, sweet and cogent. (If WE were a Chicago company, we would let some of them know in a kindly way but in no uncertain terms that they were hurting their own cause - and that other shareholders had complained about overlong remarks in prior years).

- Use a stopwatch, and give each speaker a 'time to wrap-up heads-up' when they're down to their last 20 or 30 seconds.

- Be a tiny bit flexible with the time clock, but basically, be strict about the time limits.

- Observe, and better, beat the time limits yourselves. The smartest thing is to say in response to statements – and to most questions too about proposals – is that "the company position is stated as clearly as we can state it in the proxy statement, but thank you for your comments".