THE SHAREHOLDER SERVICE

OPTIMIZER

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

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IN THIS ISSUE:

SOME EARLY RETURNS FROM THE SHAREHOLDER MEETING SCENE: WHAT'S HOT - AND WHAT'S NOT

What's the hottest thing for corporate citizens to be worried about as we head into the big spring meeting season? It's making sure that all your directors get elected with comfortable margins, we opined in a recent webcast.

Last year, we pointed out, about 1% of all the directors running for election failed to get 50% or more of the votes in favor. Sounds like a small number - and it is, we guess. But if it's one of YOUR directors, hold on to your hats - and hope to hold onto your jobs, dear readers. Directors do not like surprises like this. And if they are not at 90% or better, they will want to know why…and yes, it *is* indicative of a problem *somewhere*.

Also, please know that the 1% failure rate does not take into account the number of directors who resign before the meeting, to save the embarrassment of losing. We saw this at three companies we follow last year…and we are sure there were many others.

We also expect that shareholders will raise the stakes even higher this year, as many have vowed to do: If you have very-long-tenured directors, a lot of 'old-timers' - like really *old* - or, heaven forbid, any directors who look "over-boarded" - and especially if your board lacks industry, ethnic, age and/or gender *diversity* - watch out. Institutional investors are looking harder than ever at such companies, and vowing to selectively withhold votes to take down the weakest-looking creatures in the herd…

Another hot item - almost a tie for top issue - is getting your say-on-pay ratified by 90% or more of the shares voted. Here too, directors don't want any surprises. This year, we have revised our old saying that 80% is like the old 50% when it comes to "passing percentages" on SOP proposals: The old 80% hurdle is now a 90%+ vote. Or else…

Hotter than hot, however, will be the outcomes at the numerous big-company meetings where activist investors are looking to

replace multiple directors - and sometimes the whole board - as currently being threatened at United Continental and Yahoo.

What's NOT SO HOT in our book? Those proxy access proposals, where, as we keep saying, the dealin's are essentially over, like it or not. Companies that push back too hard in their proxy statements - or foolishly look to put higher ownership thresholds in place - may find themselves in a heap of trouble with their top-20-to-50 holders…NOT a good place to be…

MORE "HOT ISSUES FOR YOUR ANNUAL MEETING"

There is still time to bone up - and maybe right now is the very best time to do so - to be sure you are up to snuff on what really IS hot on the shareholder meeting scene - and potentially dangerous to your careers - including topics like notice provisions and "floor votes," issues that may require a "majority of the minority" to safely approve them, how to deal with potentially disruptive attendees - and to put limits on their 'floor time' if not to exclude them altogether - plus a wide variety of "proxy plumbing issues" that can trip up the unprepared.

The full transcript of **TheCorporateCounsel.net**'s March 2nd webcast on **"What's Hot - and What's Not"** - with experts **Keith Bishop**, Partner, **Allen Matkins** LLP, **Roxanne Houtman**, Partner, **Potter Anderson Corroon** LLP, **Jill Whitney**, VP - Client Services, at **Broadridge**.**Financial Solutions** and yours truly, **Carl Hagberg**, Independent Inspector of Elections and Editor of **The Shareholder Service *Optimizer*** - moderated by **Randi Morrison**, *Associate Editor, TheCorporateCounsel.net* is up on the OPTIMIZER's home page at OptimizerOnline.com.

Readers, please do remember that a subscription to the OPTIMIZER comes with a guarantee of "some free consulting on any shareholder servicing or shareholder relations matter that ever crosses your desk" - AND, as we remind each year at this time, "There is no such thing as being over-prepared for your shareholder meeting."

BERKSHIRE HATHAWAY WILL STREAM IT'S ANNUAL MEETING VIA YAHOO… YAHOO! WE SAY… BUT ADD A TINY BOO OR TWO TOO

In last year's wrap-up of the 2015 shareholder meeting season we predicted that more and more companies would go back to actually trying to make the meetings more inviting - and more useful to shareholders. So we were happy when Yahoo announced it will host the first-ever live-stream of the annual shareholders meeting of Warren Buffett's Berkshire Hathaway.

The live-stream on April 30 from Omaha will appear exclusively on Yahoo Finance, across all devices, according to Yahoo. "We're just taking their broadcast," Yahoo Finance Editor-In-Chief **Andy Serwer** told CNBC's "Squawk Box." Berkshire already records and broadcasts the event to video screens at the convention center. "No money changes hands at all here."

Serwer described how this came about: "I got a call in December from Warren Buffett, asking me as head of Yahoo Finance, to do this." He added, "It was a one-sheet [contract], literally one page, 'You guys stream it; don't screw it up. We'll give you the wire. You plug it in. It goes to a satellite and you're done.' It was easy-peasy."

The event will be offered in English and translated into Mandarin for Chinese viewers, Serwer said, adding he's still working out the details on whether it will be a simultaneous translation or subtitles or a rebroadcast the next day.

"Over the past 50 years, we've seen a tremendous increase in the interest around our shareholders meeting," Buffett, chairman and CEO Berkshire Hathaway, said in a news release. "Partnering with Yahoo Finance provides us with the opportunity to reach more people than ever, in key financial centers around the world, from New York to China and beyond."

Yahoo Finance said live coverage will kick off at 10 a.m. ET on April 30, with on-the-ground reporting from the CenturyLink convention center in Omaha, 30 minutes before the shareholders meeting begins. Yahoo Finance said an exclusive video-on-demand replay will be available on its platform for 30 days following the meeting. Yahoo said it will offer video and display advertising, as well as sponsorships [presumably from Berkshire Hathaway companies only, we'd hope] alongside the live-stream.

But, as much as we love Berkshire Hathaway, and Buffett himself, we can't hold back a few boos here: First, why give all the glory to Yahoo? And let them put most of the "spin" on the deal? Our most important complaint; so far the Berkshire Hathaway shareholders are entirely unaware of the upcoming live feed, or the on-demand replays, unless they get Yahoo or Berkshire Hathaway press releases. There was no mention of this at all in the meeting and pre-registration materials we received in March, and there's been nothing since. We sure hope that the famously frugal Buffett will spring for a little follow-up note to shareholders…and will maybe think about streaming an edited version, or an indexed one, with fast-forward features, since the doors will open officially at 8:00 a.m. ET and the meeting won't be over 'til 4:30 or so…And one last thing, the traditional opening video - mainly made by Buffett friends and family members and overloaded with corny cornball "humor" - is quite a drag in our experience…But we will reserve judgment for now (and actually, it looks as if they may not screen the movie) and report back on the entire production in our next issue.

THE AUDITOR "BLOOPER OF THE YEAR"?

In mid-February our good buddy Broc Romanek, editor of The CorporateCounsel.net forwarded a question he got from one of his many avid readers, as follows:

"Our auditor, one of the Big 4 firms, didn't show up to our annual meeting of stockholders. In the past, the auditor was introduced and there was an opportunity to ask questions of the auditors towards the end of the meeting. That opportunity was obviously not available to stockholders (but stockholders in the past five years have not asked the auditor anything). One of the board proposals was a ratification of the auditor for the fiscal year ending 2016 and stockholders approved that proposal. Any issues here?"

"Shouldn't be any issues - other than optics - since it's merely a ratification, right?"… the always optimistic Broc ventured.

"Sorry to be so strait-laced and old-fashioned here," your editor replied, "but in my book, the failure of a Big-4 auditor (or ANY outside auditor) to show up for a client's annual meeting is a major breach of duty - and a capital offense...I would not make a big deal of it publicly, but MY auditor would be gone in a flash. Bottom line: I think this failure is an important "issue" for the Audit Committee to deal with...Totally unprecedented in my 40+ years of meeting-going."

"*Do* auditors ever get asked a question?" Broc asked in response. **"Yes occasionally they do - primarily when there are 'regular gadflies' in attendance - or if there have been restatements or other "issues" in the press or at peer companies... Interestingly, I have long been predicting that with the very high percentage of audits reported by PCAOB as "failed audits" at the Big-4 firms, this will increasingly become an issue for activists - and other investors too - And ultimately, I predict that "rubber-stamping" to ratify the appointments will no longer be treated as a "routine matter" upon which, 'brokers may vote' in the absence of client instructions... I'd bet $100 bucks on this in a flash!**

Readers; What do YOU think about the situation? (The closest to this I've ever seen is where the audit partner, who was sitting in the seat in front of me, on the aisle, nodded-off just before he was scheduled to be introduced...and I poked him in the nick of time... He clearly realized that he had been saved from the ultimate of embarrassments - AND from being fired on the spot…But that was THEN.

"RFP-LITE": GOODBYE AND GOOD RIDDANCE WE SAY, TO THOSE 20+ PAGE RFPS WITH THEIR 200-PAGE RESPONSES

Five years or so ago your editor was part of a panel on RFPs, and the subject of "RFP-LITE" came up. The idea was to do something a lot simpler - and a lot shorter than most "formal RFPs" tend to be - given the fact that more and more companies are requiring their staff members to test the market for all the products and services they buy every few years.

We must confess that we were not big fans of this idea at the time. Back then there were very significant differences in the capabilities, management and staff "sophistication" - and in the internal control systems and all-important financial resources of the top five or six transfer agents - and at most of the other industry service providers, like proxy solicitors, IR consultants and financial printers - and there still are, to some degree.

Your editor also agreed - and we still agree - with one panelist's observation, quoting George Bernard Shaw's play, The Doctor's Dilemma, that "all professions are [essentially] conspiracies against the laity" So there is no substitute for doing a very thorough job - *and* for using true experts, with insider expertise - to explore all of the truly important factors in making smart choices among service providers.

But recently, we received a challenge from a very large public company - with a very large shareholder base - that hadn't searched the provider universe for 15 years. Aside from a just-out corporate mandate to review and look to pare down every significant line item in their budget, they realized that the shareholder servicing world had changed dramatically since their last contract - which, with exhibits, amendments and the binder weighed-in at about five pounds.

They wanted to challenge a very few carefully selected providers to think from a 'zero-based perspective' - and to think very much outside the box - and to focus intensively on *new* and *better ways* to get things done - and to save both time and money, while, ideally, improving service overall… which is what *we* call *"optimizing."*

They liked our longstanding advice to get suppliers to "sing for their supper" by offering up their own very best ideas, which - guess what - led automatically to a *very short* RFP; less than two full pages, plus two pages of information the recipients needed to produce a fully responsive "indication of interest, plus indicative pricing, on which [the company] can rely."

Initially, they wanted to keep the responses to 20 pages max - with no marketing 'fluff' - and no exhibits. But in the end, they took our advice, to say no fluff, no 'stuff' - and to *suggest* 20 pages as the maximum - but to say they'd be open to a *few* more pages *if* there were more than 20 pages of compelling new ideas.

All of the responses came in well under the 20-page limit - and were *extremely responsive* to the requirement in the RFP to cut straight to the chase and to eliminate all but the most important things a prospective customer needed to know. So the responses, which were indeed light in volume, were heavily loaded with relevant info, and not "lite" at all.

It should be noted, of course, that a second round of careful due-diligence is still required if a change of providers falls out of the competition - and either way, all new contracts require careful vetting by "subject-matter experts." But here too, the company will be looking for a new contract that is written in plain English, and that cuts straight to the chase: No five-pound tomes allowed, or needed, we say: Many of them are, indeed, "traps" for the uninitiated and/or the unwary.

We think that the respondents were not only challenged, and stimulated by the shorter format - and the orders to cut to the chase - but were absolutely delighted to forego the usual, mostly canned and cut-and-pasted 200-page responses they were used to cranking out. Readers, do feel free to call us if you'd like to discuss the "lite but heavy" RFP methodology in more detail.

COMING SOON: THE 2016 *OPTIMIZER* SPECIAL SUPPLEMENT - OUR 22ND ISSUE: "UPDATING YOUR IR TOOLKIT"

An in-depth review of the products, services, and issues every INVESTOR RELATIONS professional must know. Publishes September 2016.

BEEFS ON BUYBACKS FINALLY GAIN SOME TRACTION:

At long last, the problems and perils of poorly-conceived and poorly executed share-buyback programs are starting to get the attention they deserve.

Leading experts, including many from the business community itself, like **Larry Fink** of **BlackRock**, are blaming excessive buyback programs for the sluggish economic recovery, for artificially hyping executive bonuses, for contributing to expanding income inequality and for causing U.S. companies to lose their competitive edge by underinvesting in things like R&D, in improving and expanding their basic infrastructure, and by failing to invest enough cash in regular employees themselves. The upcoming elections promises to throw these issues into even higher relief. Even the SEC has been quietly hinting that maybe buyback programs need more sunlight cast upon them - a sentiment we have been expressing for over five years now: "We're looking at our disclosure regime for buybacks…as part of our disclosure effectiveness review" Chairman **Mary Jo White** told an industry conference in March.

Apropos, a February 4th article on Marketwatch cited two big buyback flops in recent months, illustrating how much buyback money literally goes up in smoke these days - while failing to mention, we'd note, the historic propensity of U.S. companies to buy back at the highs and to sit the bench at the lows, which further exacerbates those buyback busts:

"In February, **GoPro** said that it spent $35.6 million to buy back stock during the fourth quarter, at an average price of $23.05, but to little avail. The company still reported a surprise fourth-quarter loss, and provided a dismal first-quarter sales outlook…the stock ended the fourth-quarter [at] $18.01, which was 22% below the average price the company paid to buy them back… On Thursday, it tumbled 8.5%, toward a record closing low, that was nearly 60% below what the company paid just a few months ago."

Apple Inc. came under the Marketwatch microscope too: "The technology giant repurchased 281.12 million shares in open-market transactions over the past five quarters, at a weighted average price of $117.48, according to an analysis of data provided in the company's latest quarterly filing. The stock was trading at $96.60 in afternoon trade Thursday, or 18% below the average price the company paid."

The inimitable **Gretchen Morgenson** of the ***New York Times*** also weighed-in in March with a column on **"Sacrificing the Future for a Mirage"** - which homed-in on buybacks at **Yahoo** and **McDonald's** and offered a very interesting way to look at the results, citing studies by **Corequity**, an equity valuation firm used by institutional investors. Since 2008 McDonald's spent almost $18 billion on buybacks…which "*helped* [emphasis ours] produce 4.4% increases in annual earnings per share over the period." But…"to equal that growth in overall earnings, the company would have had to generate just a 2.3 percent return on the money it spent buying back stock" according to the developer of the Corequity methodology, **Robert Colby**.

It's been five years now since the OPTIMIZER first predicted that "The Next Big Thing in Corporate Governance" will be "Activists holding Directors' feet to the fire over their stewardship of corporate assets"… And yes, while activists held their feet to the fire, for sure, many of them called first and foremost for big buyback programs, where increases in stock price were often fleeting, and benefitted only short-term investors who took the profits and ran off - and where a lot of the assets ultimately went up in smoke - yet again!

The time has come, we say, to focus on the STEWARDSHIP part - and to call for full and complete accountings of director stewardship of corporate assets - and especially the corporate cash register - on a quarterly, annual and five-year basis.

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HERE'S THE OPTIMIZER'S ROADMAP FOR BETTER GOVERNANCE OF THE CORPORATE CASH REGISTER - AND SHARE BUYBACK PROGRAMS IN PARTICULAR:

- First and foremost, public companies should develop, and disclose in plain English, their carefully-considered estimate of the "intrinsic value" of their stock: They should be forced to explain exactly how they calculated it - and how often they plan to review and revise if necessary. They should also be required to disclose revisions promptly - along with the impact the revisions will have, if any, on existing buyback programs.
- Second, companies should promise never to repurchase a single share of stock at a higher price per share than the intrinsic value - and keep that promise - as **Warren Buffett** has done at **Berkshire Hathaway**. While shareholder money may still go up in smoke, it will never do so because of a badly conceived and executed buyback program.
- Third, whenever shares are selling at or above their intrinsic value - and after all alternative investment opportunities have been considered by the board, as it always should when the stock is selling at a premium to intrinsic value - and after establishing prudent reserves for unexpected opportunities and contingencies, of course - public companies should adopt a policy to dividend all "excess cash" directly to shareholders - to whom the "extra cash" rightly belongs.
- Lastly, all public companies that have repurchased shares be required to report on their "stewardship" of the corporate cash-box in detail: They should clearly explain in plain English - on a quarterly basis, as well as on an annual basis, and over a five year period - exactly how well their "investment" of "excess capital" in share repurchases actually fared - in terms of (1) "total net returns on investment" of the buyback dollars and (2) how these returns compare to *other investments they made* - such as investments in new capacity, new product development and launch, advertising and marketing - and, of course, (3) vs. any and all acquisitions they made along the way.

This exercise requires deep thinking - and some somewhat elaborate math that needs to be 'made simple' for readers who are not professional economists. But shareholders truly deserve no less from the corporate directors they elect and from the senior officers and directors whose pay they are asked to approve….and honestly, it ain't rocket science to do it right.

We will make yet another prediction on this subject: Look for more and more analyses of buyback programs to be made - and to hit the news, as the Apple and GoPro buyback flops did - and look for this to result in more No votes on pay - and on Votes No against comp-committee directors too, as well there should be.

ADRmageddon…SEC ENFORCEMENT SUBPOENAS HIT THE TOP-FOUR ADR BANKS: MEGA-SCANDALS THREATEN ADR BANKS AND BANKERS - AND MAYBE ADRS THEMSELVES

The SEC's Enforcement Division has issued wide-ranging subpoenas to the four largest ADR banks - and to many of their top officials, we are told - demanding detailed information going all the way back to 1997, according to our source - the chief whistleblower, who, while wanting to be anonymous for now, knows the ADR business inside and out.

The Treasury Department and the FBI are also heavily involved - investigating the use of ADR programs to launder money on a huge, global scale according to our source, who has provided investigators with a detailed "roadmap" as to exactly how it's done. The Senate Banking Committee is following this closely too, with one staffer reportedly sending a message to regulators that *"We will not be looking for millions in fines and penalties, but billions."*

All four banks have 'lawyered up' with four of the country's biggest and best-known law firms, who are scrambling like mad to reach a settlement and avert disclosures that are likely to rock the banks in a major way.

More class action suits will be filed soon, according to our source, revolving around foreign exchange transactions that were systematically rigged in favor of the big-four players - and the big-four ADR banks recently settled massive IRS claims for back taxes on their ill-gotten, and we guess, previously concealed gains - "for pennies on the dollar."

And oh yes, a book - and a movie - entitled "ADRmageddon" are on the drawing boards as we write this.

For over 25 years we have been asking why there *are* ADRs anymore - since issuers of securities are perfectly capable of issuing 'ordinary shares' - and easily making any and all payouts in currency of the owners' choosing, based on current, and well-publicized exchange rates.

The answer is a simple one: ADR banks have been charging excessive fees for buying, selling and 'lending' ADRs, short-changing owners on the exchange rates and 'nicking' the proceeds a second and sometimes a third time with fees and surcharges…because they make tons of money this way and have been blithely getting away with it….until now.

We think the upcoming revelations may well turn out to be an Armageddon for ADRs…and may do serious harm to the already tarnished reputations of several major banks - which we used to expect would deal with clients fairly, and honestly…so do stay tuned.

OUT OF OUR INBOX:

CEO's who report to an independent chairman are paid about 20% less than their peers, according to a study by proxy advisory firm Institutional Investor Services. Should anyone really be surprised by this if one stops to think for even a second?

Here's another non-surprising but scary finding from a study conducted by the University of Notre Dame's Menzoza School of Business: Increasing the percentage of stock options in executive pay packages increases the number of product safety recalls: An increase from 25% to 75% increases the likelihood of subsequent recalls by a whopping 35%. *"Options generate this aggressiveness-over-thoroughness mentality. It causes you to swing for the fences without worrying about striking out"* the chief researcher, AdamWowak, told the WSJ in late September.

ELSEWHERE ON THE SUPPLIER SCENE:

The FBI and the U.S. District Attorney's office are investigating hacks into the records of two big NYC law firms, Cravath Swaine & Moore and Weil Gotshal & Manges, according to a March 30 WSJ article. Cravath said the incident involved a "limited breach" and that they were working closely with authorities, while Weil Gotshal declined to comment, the WSJ said.

Mega-transfer agent Computershare plans to increasingly consolidate its operations in Louisville, KY they told the *OPTIMIZER*: They expect to have about 250 people in a new call center there by June, and over time, have up to 800 employees in Louisville. Their major U.S. data center will remain in Canton for the foreseeable future, and they will continue to maintain relationship-management and other staff there, and in the greater NY/NJ area, and in Chicago.

NEW TRANSFER AGENT REGS AFTER 30 LONG YEARS OF SEC SILENCE? *EXCERPTS FROM THE EDITOR'S COMMENT LETTER RE: THE SEC'S SUPERSIZED CONCEPT RELEASE*

Dear ladies and gentlemen of the SEC,

Thank you and congratulations on your comprehensive and thoughtful review of the transfer agency regulatory scene and for your request for comments and fresh perspectives on transfer agency regulation in light of the many changes and challenges in the transfer agency arena that have occurred since 1977.

I am pleased to offer some comments and suggestions, based on a lifetime career in and around the transfer agency community, which I think may be helpful for me to briefly summarize, and which I will do as an Appendix to this letter, so I can cut straight to the chase, as I hope you will do too.

I. IN GENERAL…

- **Transfer agency rules and regulations are in need of a fairly wide variety of additions and enhancements in order to better protect publicly traded companies and their still very significant numbers of "registered" investors, most of whom are individual, rather than professional investors.**
- **The most urgent need, by far, is for transfer agents to have assets - and/or insurance policies in force - that are commensurate with the considerable liabilities that come with being in this business. These liabilities are, in**

my experience, directly related to the size, scope, dollar values and overall riskiness of all the stocks, bonds and cash for which their specific business portfolios make them responsible - both to shareholders themselves, and to the issuers of securities for whom they act as agents.

- **The SEC release is correct in placing the registration and disclosure issues at the top of the agenda: I believe that all registered transfer agents should be required to disclose the names, CUSIP numbers, shares outstanding and the current market values (i.e. the current "market-cap") for each and every securities issue for which they act as agent (perhaps after deducting or specifying the street-name positions held at CEDE & Co.) as of a given date each year, on an expanded TA-1 form.**
- **Transfer agents should also be required to itemize and disclose all of the cash accounts maintained, and the cash on hand for each issue, as of the same date, along with the purpose of each account - such as uncashed dividends, funds pending investment in DRPs and DSPPS and, especially, funds held pending the exchange or tender of securities for which they act as agent.**
- **Transfer agents should also be required to provide details on all threatened and pending litigation - much as publicly traded companies must do - including the dollar amounts at risk under a worst-case scenario. This will provide the SEC with an excellent window into potentially problematical situations at registered transfer agents that might require additional inspections, audits or other actions on the part of the SEC in order to protect investors, and issuing companies themselves.**
- **The SEC should use this information to very quickly develop requirements for all transfer agents to have capital (cash, investments and other relatively liquid assets) and/or insurance in force that would provide a high degree of assurance that any and all claims against them can and will be satisfied - whether for cash, securities, or for losses due to errors or omissions on their part, or for outright thefts - including cyber-thefts - of cash or securities that are on their books and in their care.**
- **One would imagine that there might, and probably should be, three or four "tiers" here - to separate T-As with significant liabilities from those with moderate or low or very low ones.**
- **It should be especially noted that transfer agents that provide "book-entry" forms of ownership have, as a result, moved far beyond the position of being simply "agents," but have become "custodians" - which makes them fiduciaries - which must be held to a much higher set of standards than agents are, under the law.**
- **In addition, it should be noted that whereas "certificated" investor positions create an independent record, and essentially a "proof" of ownership, transfer agents become the sole source of information about "de-materialized" ownership positions, so they must have very robust records retention systems, including backup, recovery and cyber-security systems in place.**
- **Even if a transfer agent acts only as an agent, every registered agent should indeed be required to submit audited financials annually - and also an annual certification from a reputable accounting firm as to the adequacy of the agent's internal control systems, as the staff has suggested.**
- **Transfer agents should be required to update their annual filings whenever there are material changes in their portfolio of business - and whenever there are adverse audit findings or adverse claims, or other circumstances (like the cancellation of one or more insurance policies or an unfavorable decision in a court case) that might have a material effect on their on their overall financial condition and/or their ability to satisfy potential or actual claims.**

II. OTHER AREAS DESERVING OF SEC ATTENTION AND ACTION

1. "REORG" ACTIVITIES:

All so-called 'reorg activities" - such as exchanges of securities, tender offers, merger processing and other activities involving capital reorganizations should be performed only by registered transfer agents that have demonstrated that they have adequate financial resources to satisfy a major loss of value on their watch - whether due to an error, omission or defalcation on their part, or on the part of an employee or sub-contractor. (DTCC seems as if they could and should be the logical gatekeeper here.)

Reorg transactions are, by far, the riskiest securities processing transactions an "agent" is appointed to handle. And actually, as noted above, once an "agent" becomes the *custodian* of corporate and/or shareholder funds - and/or "shares held pending exchange" - it becomes a "fiduciary" - which calls for a much higher standard of care and which results in a variety of much higher liabilities.

I would urge the staff to review the article on Transfer Agent Liabilities that is on my website, OptimizerOnline.com under "Articles/Transfer Agents": In today's highly interconnected and fast-moving technological environment, one can readily envision a worst-case scenario where the entire cash proceeds of an exchange or tender offer could be "hacked-away" by an outsider - or simply "wired away" by a rogue employee or business owner - or by a sub-contractor - and transported to persons and places unknown…in an instant. (Perhaps, the SEC - and DTCC - should consider making public companies - rather than an "agent" - pay the entire consideration due to street-name holders directly to DTCC as a way to significantly minimize the dollar value of the very considerable risks here.)

2. **"CONTRACTUAL ISSUES":**

Issuers of securities and their transfer agents should, *of course*, be required to have a written contract in place - and subject to inspection by SEC staff - that spells out or lists, in plain English, all of the duties the transfer agent agrees to undertake, the fees that have been agreed, and provides either a detailed statement as to the out-of-pocket expenses the agent expects to charge -or a written commitment to bill for them at cost - or a statement as to the markups they intend to charge for any and all kinds of expenses billed to customers.

The contract should also describe any and all charges the agent intends to pass on to shareholders themselves, so that issuers will be aware of them, and can be sure the charges are commercially reasonable ones - or perhaps decide to absorb some of these charges themselves.

Very important to note, the agreement should also spell out, in detail, as the Release suggests, any and all charges the agent would impose if the issuer decides to move to another agent.

It should be crystal clear in the agreement that the "shareholder register" - and all the associated records - are the property of the issuer - and should not be treated as property of the *agent*, as some transfer agents have done in order to generate added revenue for themselves, often surreptitiously.

3. **RECORDS RETENTION ISSUES:**

Both from my reading of the Release - and from my own experiences as an expert witness in numerous cases involving transfer agents - it seems clear that better clarification of the records a transfer agent is required to keep - and/or to hand-off officially to a successor agent - or to the issuer - is very much needed.

The "shareholder register" - the "control book" - and all of the daily "transfer journals" - which should independently record all debits and credits to the shareholder register…plus all of the associated backup information, like signature guarantees, affidavits of loss, bonds of indemnity, letters of instruction and opinions of counsel concerning "original issuances" and the removal of legends from restricted securities - should be preserved in perpetuity, as part of a company's basic corporate records, in order to answer any and all shareholder claims that may arise over time.

Special care should also be taken to preserve the same sets of records involving exchanges, tender offers and mergers - and to recognize that all such records are the property of the issuers themselves. All too often, these records go missing, or get discarded following sales or mergers at transfer agents, or simply get discarded by exchange agents, or transfer agents who think, wrongly, that they are too old to matter anymore. (The article on Transfer Agent Liabilities, mentioned above, cites numerous instances where the loss of such records has led to significant losses for transfer agents or, ultimately, if the agent is no longer solvent, for corporate issuers.)

4. **UNREGISTERED, "RESTRICTED" AND OTHER "LEGENDED" SECURITIES:**

To date, the brokerage and transfer agency communities have not been able to come up with a reliable system for identifying unregistered or otherwise restricted securities - except for placing "legends" on physical stock certificates. This step does indeed place all parties - potential buyers, sellers, transferees - and transfer agents - "on notice" that no transfers should be made unless and until the proper legal requirements have been met.

As more and more securities are being "de-materialized" however - and with the impending move to T+2 settlement - and with many companies believing that they can do away with stock certificates altogether - a reliable and well automated system to place all parties on notice as to unregistered and otherwise restricted securities is absolutely imperative to have.

I believe that the SEC should actively seek out bidders to develop the needed systems and procedures as quickly as possible. I also believe that this should not be a very daunting task: The need - and the "networking requirements" - are virtually identical to the systems and procedures that were developed many years ago by the Securities

Information Center (SIC) in response to earlier SEC actions with respect to securities that are "restricted from transfer" because they were reported lost or stolen - or ultimately replaced. And perhaps there would be other bidders - say at DTCC or some other clearing house, securities exchange or SRO.

5. ABANDONED PROPERTY ISSUES:

Actions by state governments to balance their budgets by seizing and selling-off securities they deem to be "abandoned" - then failing to give shareholders or their heirs the fully appreciated value if and when the do come forward to claim their assets - which only a very small number of then ever do - is a national scandal. Please see the article "When the Protectors Become the Predators" - and numerous other articles on the scandalous and I believe unconstitutional search and seizure methods that many states engage in - at OptimizerOnline.com

Unfortunately, when congress and the SEC last acted to require transfer agents to take reasonable methods to locate so-called "lost shareholders" - by reference to nationally recognized data bases - decedents and corporations - which represent two of the largest "pots" of so-called abandoned property - were exempted from the data-base searches. This has left these shareholders vulnerable - not just to seizures of property by state treasurers, but to numerous unscrupulous "finders" - and sometimes to employees of issuers or transfer agents or other service providers who "help themselves" to the property.

Even more unfortunately, as the SEC itself has noted on earlier occasions, several transfer agents have improperly treated the records of so-called "lost shareholders" as if they were *their own property* - and have systematically "mined them" to generate income for themselves - typically without proper notice to the true "holders" - the issuers themselves - and with no accountability or accounting for the very significant profits they generated. One large agent I know of (no longer in the business, thank goodness) actually had a computerized program to analyze "lost shareholder accounts" to determine whether they would make more money by finding people - and charging them fees to be "reunited" with their property - or by intentionally *not looking for them* - and/or using the worst data-bases available - then taking "commissions" from so-called "abandoned property clearinghouses" who would instantly sell off the securities deemed "lost" and, unbeknownst to issuers, who would share the "loot" with the transfer agent.

Quite aside from the potential conflicts of interest a transfer agent may have in offering various kinds of abandoned property services (which SEC staff has noted earlier, but with no actions taken as far as I know) - is the fact that issuers do indeed owe shareholders a duty of care, and a duty of loyalty, which many transfer agent programs have caused them to breach, and which often create expensive and long-drawn-out lawsuits against transfer agents and against issuers themselves when "found shareholders" fail to get full and fair value for shares that were escheated and sold off.

Recently, there have been other troublesome developments on the abandoned property front - the emergence of self-styled "Abandoned Property Audit Firms" - which are not at all like real audit firms in any respect. They are being hired by various states to conduct "audits" on their behalf - with compensation based primarily on the amounts of abandoned property that are turned over - who demand to examine highly sensitive shareholder data, and download it to their computers - and who threaten transfer agents and issuers with fines and penalties if they refuse to provide access to shareholder data to these typically thinly-capitalized and totally unregulated firms - or to agree to pay over amounts the "auditors" simply assert is due, based on their estimates.

One last factor worth mentioning, so-called abandoned property is especially ripe for being stolen away by employees of issuers, transfer agents and other suppliers: Please see the article "Tales from the Crypt" at OptimizerOnline.com for a variety of abandoned property horror stories, all from real life.

Accordingly, I believe that the SEC should thoroughly revisit this subject and develop more appropriate and much more robust rules and regulations that would govern issuers - and their transfer agents - and add significant, and sorely needed investor protections.

This becomes even more imperative, in my view, in light of rapidly increasing "dematerialization" - since stock certificates themselves were, and still are, quite often the only indication to shareholders, or their heirs, that there is valuable property that has become unattended.

6. "NON-ROUTINE ITEMS"

In my opinion, the current SEC definition of a "non-routine item" - as well as the need for an SEC-determined "outside date for proper turnaround time" - are both sorely in need of attention.

At a bare minimum, I believe the SEC should provide transfer agents with "guidance" - so that they promptly

return deficient items to the sender - with clear information about the deficiencies and how to cure them - in order to protect investors from sharp drops in market-value while the deficiencies are being cured, and to protect themselves against allegations that the losses were due to delayed action by transfer agents.

The Release asks for input on a very large number of matters where I have experiences, opinions and background information I would gladly share, but where I have very little time to type out detailed responses. I would, however, be more than willing to speak to the staff at any time - or to meet in person, -either in NYC or in DC - if ever it would be helpful

With all my best regards - and thanks - for the considerable effort that has been made to date - and all my best wishes for a fast and successful conclusion to this important project.

Sincerely,
Carl T. Hagberg

Visit OptimizerOnline.com for more from the Editor's letter to the SEC, including Proxy-Plumbing Issues and Transfer Agent Market Share.

PEOPLE

Man about town **David Bobker** - who's worked at **Georgeson**, **Laurel Hill** and **AST** over the past ten years or so, and most recently, at proxy-doc consultants, designers and printers, **Argyle**, has signed on as a VP, Business Development, Corporate Governance, at **Rivel Research Group.** Dave sure brings a lot of first-class schooling, and nicely varied industry experience to the table for Rivel…so three cheers all around!

Rhonda Brauer, who served nearly eight years as a "guiding light" at **Georgeson**, following a lengthy stint at the **New York Times** as the Corporate Secretary and Governance Officer, has signed on as the Manager of the Board and head of governance at the NYC-based **Girl Scouts of the U.S.A.** What a nifty place to land after all the governance whirlwinds Rhonda has seen up close and personal in the public company sector. Here's to relatively quiet times at the Girl Scouts… fingers crossed for good luck.

Stephen Brown, who followed up a very distinguished career as the Senior Director of Corporate Governance at **TIAA-CREF** with a very short stint as President of the **Society of Corporate Secretaries and Governance Professionals**, has joined **KPMG** to launch its new **Board Leadership Center**. KPMG is the last of the Big-Four accounting firms to create a governance advisory arm, and has made a great choice, we think. Stephen is one of the smartest, savviest, most insightful - and funniest people we know, with a very special knack of using humor to make his points pointedly but without being offensive or a smarty-pants, which is quite a knack. Three cheers for Stephen!

Doug Chia, formerly the Corporate Secretary of **Johnson & Johnson** - and a former chairman of the **Society** - has signed on as the Executive Director - Governance at **The Conference Board**. What a great hire for them!

Three noteworthy retirements at **Computershare** - of three of their longest-serving and best-loved reps: **Jeff Cohen**, a Senior Relationship Manager from CPU's large-client group, **John Keegan**, from their "Citicorp/ADR Unit" with 48 years in the business and still standing, and **Tom Ferrari, a** Manager in the Client Relationship Management unit, who will retire June 30th after 40+ years in the biz. They don't make too many managers like these, these days, much less really good ones who serve the same industry and client base for so many years. Three big pairs of shoes to fill, for sure.

David Martin, who many readers will remember for his stint as a super-hard-worker/fast learner at the **Society**, and who then served a term at **Willis Towers Watson**, has joined **CamberView Partners** as a principle.

Mark Preisinger, who heads up the corporate governance team at **Coca-Cola** - and another **Society** star - has been elected to the board of U.S. insurer **Atlantic America**. Three cheers for Mark too, and congrats! Let's hope there are many more opportunities like this one coming down the pike - to make use of the very considerable hands-on experience the governance space has been fostering.

THE SSA ANNOUNCES THIS YEAR'S JAMES R. SMITH SCHOLARSHIP WINNER - ITS 12TH!

An 18-year-old Connecticut high-school senior with his sights set on a career in nursing has been named the winner of the 2016 award under the James R. Smith Scholarship Program of the Shareholder Services Association.

The award - which was announced in March by **Scholarship Management Services**, the independent organization that administers the program and selects honorees on behalf of the SSA's board - is open to children and grandchildren of SSA members, and this year it goes to **Justin Mercugliano**, who lives in Cheshire CT and is an honors student at the town's high school. Justin, who is the 12th recipient of the annual award, is the grandson of shareholder services veteran and longtime SSA member **Peter Descovich**.

Justin balances academic excellence with a love of sports and outdoors activities, and plans to enter Pennsylvania's University of Scranton later this year. The treatment he received for a head injury sustained on the rugby field was a major factor in his decision to focus on nursing as a career. "I was fortunate enough to have a nurse who specialized in concussions," Justin told the SSA reporter. "I've always been a hands-on person, and I enjoy helping people. When I saw how this nurse was able to help me it opened up a wide set of possibilities, in terms of a career."

Justin, who learned to swim "almost before" he could walk, is a competitive swimmer and diver. He's also an Eagle Scout. And he serves his town as a junior volunteer firefighter - helping front-line firefighters with equipment care on which their effectiveness depends. He is also an accomplished carpenter. One project was building an Adirondack chair. Others were a shower and a deck. He also built the set for a school play.

And what does he most enjoy when he's not working? For relaxation he turns to a deep-seated love of fishing - just like his famous grandpa.

REGULATORY NOTES…AND COMMENTS

ON THE HILL:

Four Democrats on the Senate Banking Committee, including Sens. **Charles Schumer** of New York and **Robert Menendez** of New Jersey, said they would oppose both the Republican and Democratic nominees to fill the two vacancies on the SEC - unless the SEC agrees to adopt new rules forcing companies to disclose spending on political activities - an issue on which the commission's current chairman, along with the two nominees, have been noncommittal - after which, the panel postponed the vote. "The SEC needs commissioners who believe in and support campaign spending transparency, and unfortunately these nominees have yet to answer that call," Mr. Schumer said in a written statement, adding the two nominees were "fence-sitting" on the issue. Gosh, we thought it was *Republicans* who were obstructing the work of government agencies!

As predicted in our last issue, at a time when the congress has been in a do-nothing mode for several years now, Federal agencies have stepped up their regulatory activities big-time. In the first quarter, the **Treasury Department**, taking a much tougher stand than expected, has issued new rules that basically take all the money off the table in so-called "inversions" - immediately dooming the planned deal by **Pfizer** to leave the U.S. for Ireland, and making virtually any other such deals a no-go economically. **The Department of Labor** - at long last, but in a more moderate way than expected - issued new rules requiring financial intermediaries and advisors for individual retirement plans to adopt and adhere to fiduciary standards, rather than to propose investment options that are merely "suitable" ones for retirees.

ON THE HILL:

The SEC has intervened in a case involving **Vanguard Group** and a fired employee, filing a brief to support his status as a whistleblower even though he did not go to the SEC until after he was fired. Strange as it may seem, it is still not clear, based on varying court decisions, whether a whistleblower who reports to company officials first, or one who goes straight to the SEC, is entitled to whistleblower status and protections.

IN THE COURTHOUSE:

At last, the final 'nail in the coffin' we hope on those M&A class action suits that focus solely on "disclosure issues": The **Delaware Chancery**'s senior judge, **Andre Bouchard**, became the last Chancery judge to weigh in on such suits this January, finding the suit over the merger of Trulia and Zillow would do nothing for investors and would enrich only the lawyers who brought it…and noting that the Court would be "increasingly vigilant" in squashing such suits going forward.