

# OPTIMIZER

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

VOLUME 22, NUMBER 3

NOW IN OUR 23<sup>rd</sup> YEAR!

THIRD QUARTER 2016

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## **NOW'S THE TIME TO START ON YOUR ANNUAL MEETING BRIEFING BOOK, AS ETHICS AND COMPLIANCE ISSUES JUMP TO THE TOP OF ACTIVIST AND ISSUER AGENDAS**

*Back when the Volkswagen scandals first began to break - which seems like ages ago now - we warned readers that ethics and compliance issues were certain to move to the top-of-mind where shareholders of every stripe are concerned.*

*And this quarter, we have seen unrelenting attention, including protracted governmental hearings and widespread consumer outrage over ethics and compliance breaches at Mylan NV and at Wells Fargo Bank, which in our book was the very model of a company with a strong ethics and compliance culture - and with a strong infrastructure in place to support and defend it. (Full disclosure; We bank with Wells Fargo, along with BofA and JP Morgan Chase too; we are stockholders in all three - and we keep, and intend to keep, our brokerage and retirement accounts with WFB, where we know - and value - and trust our Advisor, but where, to tell the whole truth, we make most of our own investment decisions on our own. )*

*As we go to press, we see an electorate that clearly distrusts 'big business' - and where many seem to think that big business, including the press - and political insiders - are literally in cahoots to "screw the average person." If this isn't a strong set of warning signs as we begin to gear up for the 2017 Annual Meeting Season, we can't imagine what would be.*

*Here's another observation that a good friend made over dinner that really resonated with us: "I really don't see how individual investors can consider owning individual stocks anymore. We used to think we knew who the good companies were - and who the great business leaders were. But today, how can we possibly know? And how can we possibly insulate ourselves, and our stock portfolios, from unpleasant surprises on the ethical and compliance fronts, except by avoiding individual stocks and buying 'funds' of some sort or other...which may not be so trustworthy either?"*

*So here are our top takeaways as we start thinking about 2017:*

*Now, as the headline says, is really the time to start on developing the questions that are likely to be asked at your 2017 Shareholder Meeting given the current, highly and rightly skeptical environment where corporate governance issues are concerned – and on fine-tuning the answers, entering them in your briefing book – then critiquing them carefully to be sure they are not just robust – but fully cover your entire business spectrum...and that they are fully “on the money.”*

*Pay special attention to executive compensation matters, and to your clawback policies, and philosophies, which we think will be the subject of many more probing questions than ever.*

*More important we think, is to use this exercise to shape the main corporate message your company wants to convey to its most important constituents in its Annual Meeting and*

*Proxy Solicitation and Voting materials – to instill a sense of confidence - and to make your top messages jump to the fore. This is definitely NOT going to be a good year for “bare bones disclosure” – or for low-budget productions that fail to appeal to “the human element” or to fully convey the corporate culture...if it is one to be proud of, that is.*

*If your company is one of the “most admired” – or has some of the most admired and/or best-selling brand names...you’re in luck – and should showcase it up front...highlighting your commitment to staying in the forefront.*

*If you are not, or are not perceived to be among the lucky leaders, you would be smart, we say, to stake out high goals here – and to rigorously explain your plans and programs to get there – and the milestones you intend to achieve. But do not grandstand – and do not make any of this up: We’ve seen enough of THAT this year on the political scene...and it will come back to bite you, we guarantee.*

## REMEMBER OUR PREDICTION THAT BOARD “DIVERSITY” WILL HAVE A BIG BREAKAWAY YEAR IN 2017?

*Just as we began this issue, we discovered, in a September 30 article on [TheStreet.com](#) by reporter Robert Orol that Diversity Measures on Corporate Boards had already had a “Breakout Year” – and that yes, 2017 will be a “Breakaway Year” for sure.*

*And it sure looks to us as if the few recalcitrant companies cited in the article – and especially those who failed to follow up on commitments made in order to forestall a shareholder proposal on diversity – will come in for a hellacious year.*

In the 2016 season to date, shareholder proposals that ask boards to disclose their plans and programs to foster gender and other kinds of diversity on their boards are polling big numbers: A measure introduced by the **New York State Common Retirement Fund at FleetCor Technologies Inc.** received the backing of 72% of the vote at a June annual meeting, according to ISS Voting Analytics. A proposal at **Joy Global Inc.**, in March, that was introduced by **Amalgamated Bank**, which is majority-owned by a labor union, gained the backing of 52% of the voting shares. “We have found of late that the companies have been incredibly responsive,” said **Gianna McCarthy**, co-director of corporate governance at the New York State Common Retirement Fund.

**Anne Sheehan**, chief of corporate governance at CalSTRS notes that they will send private letters to corporate boards with no women directors, urging them to increase board diversity. Recently, she said, CalSTRS sent 125 letters to boards at California corporations that have no women directors, with 35 companies appointing female board members in response to the campaign, including **Facebook Inc.** – that subsequently added a couple women directors. CalSTRS submitted, and later withdrew a proposal it had submitted at **Urban Outfitters Inc.** in 2015, seeking to have the clothing chain prepare an annual report describing what steps, if any, its board or nomination committees had taken to include women and racial minorities to its boards after Urban Outfitters moved to appoint a second woman to its board. “The first woman brought on Urban Outfitters board was the wife of CEO Richard Hayne,” Sheehan said. “Really? You couldn’t find someone else?...They finally got the message.” *Would we expect CalSTRS to expand the letter-writing to non-California-based companies in 2017? You betcha.*

Last year, **Wespath**, a pension fund representing the **United Methodist** denomination worldwide, submitted non-binding shareholder proposals seeking to increase the diversity of the board of directors at **Comcast**

**Corp, Equifax Inc. and Simon Property Group.** Comcast and Simon Property both added a second woman director to their boards after Wespath's engagement. Equifax made a commitment to nominate a woman to its board by the May annual meeting, the article reported, but didn't meet it. "The consumer credit reporting company committed to nominate a woman later in 2016 but in September, it nominated another male candidate," the article noted. *Do you think that someone will come after Equifax with guns blazing over being "stiffed"...or that Equifax would be*

*dumb enough to continue to renege on its commitment?*

*"Perhaps more significant" the article noted, "is that nine companies allowed diversity proposals on their ballot to go to a vote in 2016, up from five in 2015 and three in 2014, according to ISS Corporate Solutions." But really, we'd ask, "Why would a company not make a commitment to diversity – and act instead as if it is up for debate, and should really be put to a shareholder vote?"*

## **MORE MOVES OF KEY STAFFERS IN PROXY-LAND; MORE TO COME, WE PREDICT**

**September was a very busy month for key providers and several key staffers in Proxy-Land, starting with an announcement from Morrow Sodali** that they'd hired two prominent industry executives; **Steven Pantina**, a 14 year **Georgeson** veteran, who, among other things, oversaw the production of Georgeson's Annual Corporate Governance Review, who signed on as a Senior Managing Director and **Tom Margadona**, the former Senior Vice President of Marketing Intelligence at **D.F. King**, as a Managing Director. *"In the first 100 days since the creation of Morrow Sodali we have seen our global client base expand to more than 600 companies and our staff to more than 100. In response to escalating activist activities... we will continue to expand our services and our executive teams in the U.S. and globally"* Sodali Morrow's Chairman **John Wilcox** noted in the release.

**Days later, Okapi Partners announced that they had hired Jason Alexander**, an 18 year veteran of Georgeson as a Managing Director. Their Press release noted that Alexander, who is a member of the **Society for Corporate Governance**, and **NIRI**, *"worked on transactions involving more than 400 domestic, multinational and Canadian companies across all business sectors...on a wide variety of corporate governance and investor response issues" and, according to Bruce H. Goldfarb, Okapi's President and CEO, "We will continue to seek talented professionals at all levels as Okapi Partners continues to grow and serve our corporate and investor clients."*

**In yet another development, The Harkins Group, founded a while back by former D.F. King CEO Peter Harkins,**

and which had totally escaped our radar scans until our 2<sup>nd</sup> Q issue, has hired **Jordan Kovler**, formerly an SVP at D.F. King (now part of AST)... and has changed its name to **Harkins Kovler, LLC**. Smart move, we say: The press release notes that Kovler's experience *"encompasses numerous contentious M&A transactions and proxy contests occurring in the U.S. and Europe over the past ten years, along with corporate governance consulting for some of the world's largest publicly traded companies. In his final two years of employment at D.F. King, Mr. Kovler advised on over twenty announced transactions valued at over \$350 billion. He also advised some of the largest publicly traded companies in connection with corporate governance, investor relations and shareholder communications programs."* [How did AST/DFK lose this guy, we wonder.] The release also notes that "In its first year of existence, the [Harkins] firm has represented, among others, **Deutsche Börse AG** in a merger of equals with the **London Stock Exchange Group plc** and **Carl Icahn** in connection with his investment in American International Group, Inc. (AIG)."

*Our sources tell us that more moves of key staffers are still afoot in this increasingly hurley-burley industry, which may end up in some big changes in the leader boards because, one thing for sure, corporate clients often rank their longstanding ties to the specific people who are "on their account" as their number-one item when looking at proxy solicitors and advisors – and are often inclined to follow them when they move on... So watch this space for more news as we ramp up for the big 2017 Shareholder Meeting Season, where we foresee more big issues and more general unrest than ever before.*

## OUR TOP TIPS ON CHOOSING A PROXY SOLICITOR/ADVISOR

*It's been a long time since we last shared our top tips on choosing a proxy solicitation/proxy advisory firm... And wow...the industry has changed a lot since then... not least in terms of the specific "talent" that each firm has on board, as noted above...which, please note well, is the number-one thing that proxy firms have to offer.*

*Another thing that's changed big-time, it used to be that only about a third of U.S. public companies used a proxy solicitor in any given year. But with the explosive rise of shareholder activism, and the increasing likelihood that your company may suddenly find itself the object of activist attention, we have been urging readers to use a solicitor at least every other year, and to keep them 'on call' to you, in order to be sure that you - and they - are in fighting trim should an activist knock on your door..*

*Very important to note, most of the biggest companies have already adopted most of the activists' "governance hot-button provisions" - which means that more and more small companies are being targeted every year: Companies that are taken by surprise will always find themselves in a very tough spot if they are unprepared, and unready to spring into immediate action when activists knock.*

So we have been saying that every public company ought to have a solid relationship with a solid proxy solicitor - and noting too that the kind of industry you're in - and the kinds of activists that are likely to target your company - should be a major factors in choosing the right solicitor. And nowadays, we have been saying that even companies that have used the same solicitor for years would be smart to watch the Proxy-Land landscape with some care, and to *formally* survey the field from time to time. Our grapevine tells us that a lot of companies are doing that very thing these days.

Readers may not know that we have a lot of hands-on experience here - first as a founder of a proxy solicitation and stock-watch/shareholder ID business, back in the 1990s - but also as a regular participant in "closely contested election matters" - including dozens and dozens of knock-down, drag-out proxy fights - for over 40 years now, albeit as an officially "neutral observer and judge" as the Inspector of Election. Our required neutrality doesn't mean, of course, that one doesn't form opinions on the players as the fights progress - and especially after the dealin's are done. Quite the contrary: We Inspectors really need to watch our own backs, since the first rule of proxy fights is that "all's fair in love and war"...and proxy contests are exactly like war...and we do not want to be among the casualties because we were out-foxed by one side or the other.

The last time we wrote about this, we spent quite a bit of time on how to review the fine details on the specific services, fees, and out-of-pocket expenses on offer, which are, of course, important, and where most times we have discovered some pretty significant differences among providers upon close inspection. We'll say once again, it will usually pay you back many times over to get an expert to help you formally review the field. But while yes, the dollars are important, and sometimes are a pretty good indicator of the way some firms do business (hidden fees are a major red-flag in our book) we'd urge you to concentrate your efforts on...

### OUR TOP-FIVE TIPS FOR SELECTING A PROXY SOLICITOR AND ADVISOR

1. Who's at "the top of the house" - and what is the "tone at the top" *really* like? This, we think, is the number-one issue to explore when evaluating *any* business before 'investing' in them. And in our book, hiring a proxy advisory firm should truly be looked at as making a very important, long-term investment.
2. Meet the top-two or three officers, who, typically, are not just leaders, but *founders* of the business. They really do set the tone at the top, for better or sometimes, though rarely, for worse. The best of them will have deep contacts and deep insights into the kinds of people who follow your particular industry, lots of personal - and successful experience "in the trenches" - and inspire strong loyalties among their first lieutenants - and ideally, in all the staff. The presence of these qualities - or the lack thereof - is usually quite discoverable by careful observers, so visit them at their headquarters if possible, listen closely to what they say about what makes them a good fit for your company - and observe them, and their workers, and their workplace, with care.
3. Another of the most important qualities to think about, as we've noted many times before, is the "chemistry" that exists - not just between you and your selection team, but how well you think it will mesh with the chemistry of your senior management and the board as a whole if a tough issue or a major crisis were to arise. Our own preference is usually for very thoughtful, statesmanlike people, who try hard to avert, and then to quickly resolve a crisis should there be one, and who always stay cool, calm and collected. But sometimes, you and your board may prefer - and may actually *need* a "bomb-thrower", or, at the least, a fighter who will out-think and out-maneuver the opposition, and fight like hell to the finish. (A special note here: Ideally, the firm you pick will have top people who can

act and pivot comfortably in both kinds of roles.)

4. A very practical matter, but one that is often overlooked; be sure you are crystal clear about who is really “ON” your account – and exactly what you can count on each of them to do for you, both on a day-to-day level, but also in a crisis. Does your lead contact have the required clout with the top-two or three? Do they have adequate backup behind them? Most important perhaps, will the top-three *be* “on your account” and fully available to you if circumstances warrant?
5. Last but far from least, since most of the firms you investigate are equipped to do the job; apply our “lifeboat test” and the decision will almost always come clear. As we’ve reminded time and again, the “lifeboat

analogy” is a perfect one here: In a crisis - where there is often chaos on every front - everyone needs to work perfectly as a team, to fully pull their weight toward a common goal... and to add something indispensable to the team effort in order to be ON the boat.

**Readers, feel free to call us if you have questions, or wish to discuss further. Remember, a subscription to the *OPTIMIZER* comes with the promise of “some free consulting on any shareholder relations or shareholder servicing matter that ever crosses your desk.” It’s also been a great way for us to keep in touch with the things that are most on our readers’ minds.**

## ANOTHER LOOK AT TRANSFER AGENT MARKET SHARE; THE REAL DECIDER, WE SAY, OF TRANSFER AGENT SUCCESS... AND SURVIVAL

*Recently, a reader sent us a link to a web-posting from a firm called Auto Analytics, which has been tracking Transfer Agent market share since 2012, based on the number of companies that are active SEC registrants. This way of measuring market share produces very different results from our own method, which is based on the number of shareholder accounts maintained, which we have been tracking and reporting on for over 20 years now.*

We like the Auto Analytics info – because it is based on firm and easily verifiable numbers – whereas, as we’ve noted consistently, the number of ‘open accounts’ that T-As report often include shareholders of bankrupt companies, shareholder accounts that are technically closed but still maintained, sometimes double-count registered and DRP/ DSPP accounts, and often add more than a little marketing “windage” to the numbers besides.

On the other hand, our own longstanding method provides a much better estimate of the *relative gross revenues* of each agent, since we have always adjusted the T-A numbers in light of our own long-term scorekeeping measures, and because the number of shareholder accounts maintained is one of the major revenue drivers, although not, we’d remind again, the only factor....And that factor, of course, is the best indicator by far of a T-A’s size, strength and staying power. As such, it has increasingly become an important factor in a T-A’s ability to attract new clients.

So here are the market share percentages, based first on the number of SEC registered clients as of 9/30/2015, followed by our own shareholder-of-record percentages, also as of 9/30/2015:

AGENT	% of SEC registered companies	% of S/H accounts
Computershare	38.7%	53%
Wells Fargo Shareholder Services	4.3%	19%
American Stock Transfer (AST)	24.3%	12%
Broadridge	2.3%	8%
Continental Stock Transfer	3.0%	4%
All others	27.4%	4%

Both sets of numbers seem consistent to us with what we know about the industry as a whole – except, that is, for the high percentage of transfer agency relationships attributed to “all others” by the Auto Analytics survey: If we assume that the number of SEC-registered issues was somewhere between 4,500 and 5,000 on 9/30/15, that would mean there are over 1300 other transfer agents out there - which is a much higher number than the mere 393 the SEC cited in June as being “registered transfer agents” - or that we ourselves can identify these days. (We think the discrepancy may be because some companies may still list themselves as the transfer agent in order to be the primary point of contact for shareholders – and may still retain some of the common transfer agency functions – but which have largely outsourced most functions to - and spend most of their T-A budget on - full-time T-As.)

There’s also another interesting and related story making the rounds - that potential new SEC regs will drive business to the “top-five agents.” Good luck with that, we have been saying; first because we’re betting on yet another failed rulemaking attempt by the SEC. but largely because if our own numbers are right – as we are certain they are – the

revenue effect – even if every one of the ‘all other’ players were to lose ALL of their business - will be a basically immaterial number: Less than 4% of total industry revenues, we feel sure. Plus, most of the larger-dollar accounts would go to the top two to four players, which would not move the market-share needle much at all.

**MORE CHANGE TO COME, FOR SURE:** *Since our own 2015 study there have been at least six big T-A changes by six really large and shareholder-rich companies that will likely cause some noticeable shifts in the market-share percentages of shareholder accounts maintained...And our sources say there are ‘more to come.’ There’s also the potential sale of AST out there, which will likely re-shuffle the competitive deck come what may. Accordingly, we will plan to revisit this in the first-quarter 2017 issue, so do stay tuned...And OUCH! There’s another wild-card in the deck (see the following story) in that many of the “registered shareholder accounts” that reside on T-A records, and add, very considerably we think, to the revenues of some T-As, hold literally immaterial positions, and really need to be cleaned up and closed out.*

## **“STRANDED DRPS” ARE COSTING ISSUERS BIG BUCKS - LITERALLY “FOR NOTHING”**

*As we’ve noted in previous issues, your editors, and many of our savvier and busier friends, have been trying to clean up most of our smallish DRP and DSPP accounts. Why? Because of all the paperwork they generate - but also to be able to consolidate all our investments in a single place. And, quite aside from the fully consolidated ownership statements that all brokers have been offering, basically forever, and for free to customers like us, all of the bigger brokers offer totally free reinvestment of the dividends, upon request.*

*But we had three “nuisance accounts” that we can’t get rid of - and recently added a fourth - all of which arose when we transferred the full shares to our brokerage account, but where (a) the fractional shares cannot be transferred to the broker, due to a design flaw in the “DRS System” - and (b) where the transfer agent does not automatically liquidate the fractional share and send us a check to close the account completely, as some of the earlier and better written Plans wisely require the agent to do.*

A few weeks ago, we got a quarterly statement for just such a “stranded” account...so we figured we’d try again to get it closed. We will be nice, and not I-D the

company, or its transfer agent this time around, since, in our many earlier experiences, all the T-As we’ve contacted about this have been equally unhelpful... which really says to us, “It’s time for a fresh look – and for CHANGE here”... But here’s our story...unbelievably Kafkaesque as it may sound:

The statement we got, a “Summary of Account Holdings as of 16 September 2016” showed that we had just under a quarter of a share – 0.247984 shares to be exact - worth \$7.78 - on which the dividend was a whopping \$0.09.

And, oh joy! They reinvested the dividend...but not before deducting a fee of \$0.08...so that one single penny was reinvested !!!...which brought the new balance to 0.248930.

Year-to-date, it showed at the bottom that the agent earned three full cents from me...

But likely, the agent earned about \$6.00 or so from the issuer - for ‘account maintenance.’ Plus the issuer paid to print, enclose and mail three statements so far...plus another couple of bucks in postage, handling and stationery to send me the Annual Meeting materials...so let’s call it close to ten bucks per year, all in.

**What kind of jackass deal is this, for an 'investment' worth less than eight bucks???**

So we called the toll-free number, hoping against hope that maybe the agent could come up with a deal that made sense...to sell the fraction when other, bigger sales were being made - or maybe to bill the issuer for the seven bucks and change - plus maybe a little handling charge - as a way to call a halt to years and years of ten-buck-a-year expenditures they'd otherwise be on the hook to spend...

But NO...as the rep patiently but rather condescendingly explained, "The official Terms and Conditions of the Plan call for a fee of \$15 to sell any shares - even fractional ones - and also for a brokerage fee of \$0.15 per share."

"So are you telling me that I would owe YOU seven or maybe eight dollars if you sell the shares for me" I asked... "And that you would keep my seven-plus bucks besides?"

But no, it sounded as if they would settle for the \$7.76 or whatever the roughly one-quarter share was worth that day...and let it go at that...But why would WE agree to such a stupid deal?

"What if I call the IR officer at the firm, and ask if he or she might cut me a better, fairer-seeming deal?" I asked... "No again" said he. "The terms and conditions are ours, not the company's"...So no dice there either...so far. (We DO think that a corporate IRO would be as outraged as we are by this, and would demand a fix...so T-As, please wake up here!)

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## **TWO PROPOSED STEPS TOWARD A BETTER RESOLUTION OF THE "STRANDED DRP PROBLEM":**

*The first, and perhaps the most urgently needed step, we say, is for issuers to review the Terms and Conditions governing their own plan, and revise them so that any time the Plan balance is less than one full share, the Plan Agent will, henceforth, liquidate the fractional share, send a check, and close the account. And, by the way, your own plan may actually call for this now...but the agent is not following through, so do have a look. We have looked at lots and lots of shareholder records - and we have seen lots and lots of companies where a significant percentage of the registered holders have fractional shares only as a result of bad drafting and/or because no one watching...Please note that we are not expecting T-As to do this for nothing...But demanding an eight dollar fee to sell - plus keeping the sales proceeds besides...or in the alternative, charging the company ten bucks a year to maintain our seven-dollar "investment" does not make a bit of sense.*

**BUT, BECAUSE WE STILL LOVE THE IDEA OF DIVIDEND REINVESTMENT PLANS - AND BETTER, THOSE DIRECT STOCK PURCHASE PLANS THAT ALLOW ORDINARY PEOPLE TO INVEST IN COMPANIES THEY ADMIRE, WITHOUT NEEDING A BROKERAGE ACCOUNT - AND BECAUSE WE STILL LOVE TRANSFER AGENTS TOO - WE HAVE A BIGGER AND BETTER PLAN TO PUT ON THE TABLE:**

*Recently, we approached the Board of the **Shareholder Services Association**, to see if they would consider forming an advisory board that would oversee a service that would receive - and consolidate onto a single, quarterly e-mailed statement - a summary of each and every DRP and DSPP position held by "consenting participants" for all stock Plans where there are "consenting agents."*

*The key here, is that plan participants would have to consent to receiving ALL statements and ALL voting materials ONLY over the Internet. Aside from the added convenience to investors that a consolidated, easily accessible statement would bring to the table, this, of course, will have the added benefit of saving virtually all of the postage, stationery and handling costs - making these plans far more affordable to issuers - as well as to investors too, we would presume.*

*There is another plus for plan agents here - in that an association like the SSA would be able to 'market' the availability - and the benefits of these plans - something that issuers, or Plan agents, can not do on their own under SEC rules.*

*We offered to help the SSA manage the entire process - by drafting RFPs to potential service providers - and by helping to develop a new fee structure - and new marketing materials, aimed at issuers AND at investors - all of which would be developed via an open, competitive billing process.*

*The alternative, we firmly believe, is to watch today's Plans continue to wither and ultimately die...*

**READERS:** *We have not raised this yet with the top-four T-As, who manage the overwhelming majority of DRPs - but we will do so soon. If this makes sense to you, please contact your own best contact at your own Plan Agent - and ask them to seriously consider this proposal...And if anyone else thinks they can do a better job here, we will gladly step aside - and work with them in any way we can...*

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## ELSEWHERE ON THE SUPPLIER SCENE

### **BROADRIDGE BUYS TECH TO PUSH PROXY BLOCKCHAIN PLAN:**

Broadridge Financial Solutions, Inc. announced in September that it has acquired technology assets of **Inveshare, Inc.**, a small firm, based in Alpharetta, GA that distributes proxy materials and tabulates votes, much as Broadridge does, albeit on a tiny scale.

In connection with the transaction, “Broadridge has entered into a development agreement to use these technology assets to develop blockchain applications for Broadridge’s proxy business. The acquisition is expected to accelerate Broadridge’s ability to adapt distributed ledger technology capabilities to its proxy services. Broadridge granted Inveshare a perpetual license to the acquired technology assets and Inveshare will remain an independent provider of proxy communications services” the press release noted.

**Richard J. Daly**, Broadridge’s President and Chief Executive Officer noted that “Broadridge plays a critical role as a leader in proxy communications services. We are committed to staying at the forefront and bringing to market innovative new technologies and products that enhance corporate governance and reduce costs for all participants...Integrating blockchain technology into the proxy process has the potential to drive significant benefits for all participants, including institutional and retail investors, corporate issuers, mutual funds, regulators, and brokers by reducing complexity, increasing security and raising transparency. While lacking the extensive and critical functionality of Broadridge’s industry leading platforms (e.g. ProxyEdge® and other voting reconciliation and compliance tools), these technology assets provide Broadridge

*with a dynamic architecture that should enable us to more rapidly develop a streamlined distributed ledger platform to bring these benefits to our clients over the next several years.”*

Broadridge will pay \$95 million upfront to acquire the existing technology assets plus a deferred payment of \$40 million on delivery of the blockchain applications. The transaction is not expected to have a material impact on Broadridge’s financial result.

### **A WAY OUT FOR “STRANDED SHAREHOLDERS” WITH NO SIGNATURE GUARANTORS?**

A new venture, **eSignatureGuarantee.com** is offering registered shareholders an ‘e-guarantee’ that they can apply for, pay for and get over the web - for \$325 per signature guarantee - in the wake of the huge numbers of small banks that have dropped out of guaranteeing signatures altogether, and a recent move by big ole Bank of America to stop guaranteeing signatures, even for big, long-term customers... in the wake, we are sure, of huge losses caused by bank clerks who had no idea of exactly what they were “guaranteeing” when they applied the bank’s “medallion.” It will be interesting to see how this plays out...but we’d note that (a) the big price-tag will *literally* “strand” many small shareholders, where the dollar-value of their “stranded DRP” or their belatedly discovered “straggling one-share certificate” - after they thought they’d sold all shares - is often way less than \$325...and (b) because it was not clear to us how big or secure the “guarantee” actually IS - which would sure be the first question we’d ask if WE were T-As...



**AT THE EXCHANGES:** A major consolidation move in a very overcrowded field; **CBOE Holdings**, which owns the **Chicago Board of Options Exchange** – where the S&P stock index options and the S&P volatility options trade – is set to pay \$3.2 billion in cash and stock to acquire **BATS Global Markets**, which, as we predicted when they launched, just a few years ago, quickly became the second largest U.S. stock exchange operator by volume, behind the **NYSE**.

**On a very happy note, all of the major stock exchanges have agreed on a better way to restart trading after circuit-breakers are tripped**, providing five minute intervals whenever supply and demand are out of balance on a re-start, and lowering the minimum price band by 5% on each attempt until there is an equilibrium. SEC approval is needed, but the exchanges hope to have it by year end, and to implement immediately.

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## OUT OF OUR INBOX

**A large study of executive compensation at 429 large and midsize U.S. companies over ten years ending in 2014, conducted by governance research firm MSCI, showed an inverse ratio (!) between executive pay levels and total returns to shareholders!** (Bear this in mind and check your own company's status as you work on your shareholder meeting playbook, we advise

**Our long-term friend, former Georgeson Chairman Al Miller, sent us a nice reminder of the “good old**

**days”** when individual investors turned out in force for shareholder meetings that went out of the way to welcome them, and that featured a lot of marketing flash and dash, as **Revlon** still does: *“Was looking at obit for former Revlon CEO Michel Bergerac and was struck by this quote which I am sure will amuse you: ‘Remarking on his strong French accent and his Gallic charm in general it was said that “he could make the proposal for ratification of auditors sound like an invitation to the Casbah.”*

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## PEOPLE

**Valerie Haertel**, IRC, who serves as Global Head of Investor Relations for **BNY Mellon**, has been elected as the 2017 Board Chair of **NIRI - The National Investor Relations Institute**, effective December 7. It would be hard to imagine a more qualified candidate, at a time when NIRI is searching for a new CEO and, in her words, “on a journey to reimagine NIRI” – and at a time when we believe IROs are beginning to reacquire a lot of the prominence – and influence - and budget – they'd lost over the past five to seven years. *“She has over 20 years of investor relations experience across a variety of industries”* their press release noted; *“At BNY Mellon, she manages relationships with the company's shareholders and analysts, reports to the company's vice chairman and chief financial officer, and is a member of the company's Operating Committee, which is responsible for successfully executing BNY Mellon's corporate strategy and policies.”* Prior to that, she held a similar position at **State Street Corp.**...and prior to that, at **Medco Health Solutions** and **AllianceBernstein**. And prior to *that*, she worked on the service-provider side – at **NASDAQ** and at **Georgeson & Company**. She has served as Chair of both the NY and Boston NIRI Chapters and was a member of the inaugural class of NIRI's IRC™ credential program.

**Staff Changes at the Society for Corporate Governance:** Senior Vice President and Chief Operating Officer **Mila Brogan** has left the Society to take a senior leadership position at the **Central Park Conservancy**. Mila was instrumental in many positive changes at the Society, including the name change and internal governance oversight. She developed the first sponsorship brochure and took the critical first steps in developing and championing a potential certification program. We know that Mila will continue to be a star in her new position, and wish her all our best. **Luke Vander Linden** has joined the Society staff as Vice President, Membership and Business Development, responsible for growing membership and partner sponsorships. Luke has worked in membership development and non-profit fundraising for over 20 years, most recently at **The Academy of Management**, an association of organizational and management scholars and academics. In that position he oversaw an 8% increase in members in just 2 years...so go to it Luke! Luke is an Adjunct Instructor on integrated marketing and fundraising at **New York University**.

**Michael Karfunkel**, who with his brother George built an initially tiny transfer agency business in Brooklyn into **American Stock Transfer Company** (aka **AST**, aka **Amstock**) and sold it to Australia's **Pacific Equity Partners** for a stunning \$1+ billion in 2008 (which, as noted in our last issue, saw its gross revenues cut in half immediately thereafter, following the 2008 market crash) died in late April at 72. Described in the Brooklyn-based *Forward* as "an eye-poppingly rich Orthodox Brooklyn billionaire who was virtually unknown outside of the religious Jewish community" the article also noted that he and his family rank among the top hundred wealthiest families in the United States, according to *Forbes*, with a \$3.2 billion fortune. The article also noted that the brothers' two private foundations, where Michael's normally donated between \$1 million and \$6 million a year, mostly to Orthodox schools and other institutions, made \$478 million in grants in 2014, mostly to foundations that are controlled by family members and their spouses, and that an investigative report published by the **Southern Investigative Reporting Foundation** in 2014 raised questions about the intersection between the charities and the Karfunkel brothers' business interests. The report showed that the charities had made risky financial bets, and alleged that the brothers had overvalued shares of a company they controlled, called **AmTrust**, that they donated to the charities. Karfunkel also headed **National General Holdings Corp.**, an insurance company, "among a complex array of other business ventures." What an incredible record of business-building - and super-astute business selling - for two Hungarian-born brothers, whose father was described by the *Forward* as "a religious scholar and fishmonger."

**Barry Sullivan**, who left **Chase Bank** as an EVP and member of the management committee in 1980 to become Chairman and CEO of **First Chicago Corporation**, passed away on August 11<sup>th</sup> in Bronxville, NY at 85, after an 11 year struggle with Parkinson's disease. During his 11 years at First Chicago, he helped place the bank on a firm foundation in a very overcrowded marketplace by growing its credit card business into one of the world's largest portfolios. But the *OPTIMIZER* best remembers him for purchasing the Stock Transfer business from **J.P. Morgan & Co.** - where JPM held a commanding lead in market-share of Fortune-500 relationships - with the idea that it would help 1<sup>st</sup> Chi to cross-sell products, services and loans to JPM's big-company clientele...a strategy that never quite materialized. Sullivan, whose record at 1<sup>st</sup> Chi is viewed as "mixed" these days, thanks to the Latin American loan crisis that occurred on his watch, had a truly amazing career - academically, as an athlete, and as an incredibly dedicated public servant: A star player in NYC's intensely competitive Catholic basketball league, he played three years for the **Georgetown Hoyas**, where he held an academic scholarship and still holds the

record for the tenth highest career scoring average, which earned him an invitation from the **NY Knicks**. Instead, in his junior year, he enlisted in the **U.S. Army** and served in Korea, then finished college at **Columbia University**, then earned an MBA at night, at the **University of Chicago**, where he was a trustee for 16 years and Chairman for four. He also served as a trustee on the Georgetown board and held numerous positions as a top advisor to religious and educational institutions and with civic and governmental entities. He leaves five children and 17 grandchildren.

**Ralph Whitworth, one of the most influential, respected and successful shareholder activists of our generation died in September, at 60**, after a long battle with throat cancer. After working his way through college as a night-waiter in a Nevada gambling casino and completing law school, he became an aide to Republican Senator **Paul Laxalt**. Soon after, he began working for **T. Boone Pickens**, who used his **Mesa Petroleum Company** as a platform from which to initiate a host of hostile corporate-raiding expeditions against U.S. companies. In the early 90s Pickens put him in charge of **United Shareholders Association**, an advocacy organization Pickens founded - largely funded by wealthy business owners - but with significant support from corporate donors too, looking to keep up with his actions and to stay in Pickens's good-books. (We will never forget their gala opening fundraiser, in DC's Mayflower Hotel, where the grand ballroom was totally sold-out to millionaires from Texas, Oklahoma and parts north, east and west, their business friends, spouses and/or girlfriends in their fanciest finery - and a big but relatively rag-tag crowd of pension fund managers, bankers, lawyers and investment advisors whose tickets subsidized the lavish food and drink.) Among other things, Whitworth got the SEC to improve executive pay disclosures - and to make it easier for investors to communicate with one another and act in concert on governance matters. In 1996 Whitworth founded **Relational Investors** with a \$200 million investment from **CAL-PERS**, where the fund grew to \$6 billion when he began to liquidate it after his diagnosis in 2014. Whitworth, who was instrumental in the ouster of **Robert Nardelli** from **Home Depot**, and **Gary Forsee** of **Sprint Nextel**, among others, served on the boards of 11 U.S. companies, including a failed attempt to turn around scandal-ridden **Waste Management** and a *fairly successful* attempt to right the ship at **Hewlett Packard**. **Nell Minow**, another governance pioneer, who co-authored several books on corporate governance with Whitworth, summed up the secret of his success brilliantly in a Sept. *WSJ* article: "[**Directors**] willing to pull up the drawbridge and put dragons in the moat to keep him away ended up being his best friend." A "corporate squire" in the very best sense of the term, say we...

## REGULATORY NOTES ...AND COMMENTS

### ON THE HILL:

The “good news” is a new spirit of high-spirited, bi-partisan cooperation in both the House and Senate. The bad news, for corporate citizens, is that it’s been directed at Mylan NV - and their top management - and their board, that gave out mega-raises and huge “performance bonuses” based on what looks to all like scandalous and truly *heartless* price-gouging...on what is really a “patented” but indispensable drug - which should have been cheaper than a generic drug, and where, so far, \$425 million in overcharges to Medicare have been clawed back by the government. This was followed by another multi-day, all-hands and still ongoing bi-partisan beat-em-up on the management and board of Wells Fargo Bank, where 5,000-odd employees opened roughly two million accounts, unbeknownst to the account holders, in order to meet new business quotas...and to stay employed...and where management and the board, (unfathomably to most observers) seemed totally oblivious, despite a string of news stories on over-aggressive cross selling that dated back several years before the story boiled over. Do we think this will blow over? Frankly, no: As noted in our lead article, we think it will trigger a whole raft of new questions about ethics, compliance, executive pay levels and methodologies, claw-backs... and the need for truly meaningful *penalties*, especially in the higher ranks, when things go wrong: A truly staggering pile of fodder for governance gurus to chew on here.

### AT THE SEC:

The SEC is seeking, and will soon be evaluating public comment on disclosure requirements in subpart 400 of Reg S-K, “relating to management,

certain security holders and corporate governance matters.” The request for comment is part of the Disclosure Effectiveness Initiative they said, which is “a broad-based staff review of the disclosure requirements and the presentation and delivery of the disclosures, and that the request for comment will inform the Commission’s study on Regulation S-K, which is required by the **Fixing America’s Surface Transportation (FAST) Act!**” (exclamation point ours). The SEC has been promising to take up the generally admitted need for shorter, simpler and clearer disclosures to shareholders for almost a decade now. What a dumb-and-dumber way to tackle this could there possibly be, than to tie it to fixing surface transportation?

The staff is also trying to work its way through their own “think piece” - and the comments they received on transfer agent regulations, where the next step, according to two staffers who spoke at the SSA conference in July, is to ‘go back to the people who made comments’ - with a view toward publishing an update maybe in December. This commenter, for one, has not heard a peep so far...and our odds on seeing action by *any date* are currently about 99-to-one against.

The Commissioners announced, on September 28<sup>th</sup>, their approval of the proposed amendment to rule 15C6-1 under the Securities and Exchange Act of 1934 that would authorize the change from a T+3 to a T+2 settlement cycle. This change, it is widely agreed, will serve to “reduce credit, market, liquidity and counterparty risks as well as result in a more uniform global settlement cycle.” The

## QUOTE OF THE QUARTER

***“You should give people ‘human time’ to make an informed decision, not infinitesimally small machine time to establish an equilibrium price, and you should do it in a way that is transparent to the market.”***

**Paul Roland**, Associate Vice President for global equities at NASDAQ and chairman of the joint exchange committee on circuit-breaker rulemaking, as quoted in the WSJ

proposal currently reflects an industry target migration date of September 5th, 2017 and the comment period will be open for 60 days. Our own take is this is a good step, since, (a) as the saying goes, “nothing good can possibly happen between trade date and settlement date” – and (b) while T+1 would be better yet, it would cost more to implement than it would save...and (c) we really can and should move to same-day-settlement asap, which, it seems to us, will require blockchain processing to take the place of “clearinghouses” that spend their time, and huge amounts of money on “netting down” billions of trades per day in order to “settle” them.

## IN THE COURTHOUSE:

Close on the heels of the Delaware decision by Chancellor **Travis Laster** that **Dell** shareholders had been paid 22% too little in the \$24.9 billion buyout by **Michael Dell** and **Silver Lake Partners**, came a decision in July, by Chancellor **Andre Bouchard** that **DFC Global** underpaid too – by 7% of the \$9.50 paid, rather than by the \$17.50 per share that plaintiffs were looking for – and noting that while the sale process “appeared to be robust” buyer **Lone Star** believed it was buying the business in a ‘temporary trough’ and that it would soon be worth more...Look for many more investors to ask for dissenters’ rights in M&A transactions – and be sure your shareholder meeting logistics are in good shape with respect to them...like getting “majority of the minority” approval if it might apply, and keeping close tabs on who the dissenters are – and if they have “perfected” their rights, either by voting NO, or by not voting at all, if that is an OK criterion in the seller’s state of incorporation.

## WATCHING THE WEB

*Ye Gads! Nowadays, please note, the web is watching us...through the cameras in our PCs, smart-phones, smart TVs, nanny cams and remote-control devices to set the temp and maybe watch the doors at our vacation homes...then recruiting us unaware as part of “bot-nets” that capture, overwhelm and subvert our websites – and those we visit – with mal-ware...on a huge scale. Get out the masking tape, we say, which you can always peel back if you need the camera...And maybe ask, “Why do we need a “smart TV” anyway?”*

## THE SHAREHOLDER SERVICE **OPTIMIZER**

is published quarterly by

**CARL T. HAGBERG & ASSOCIATES**

**SUBSCRIPTION PRICE:**

**\$300 per year print/\$250 e-edition**

Questions, comments or letters to the editor about material in this newsletter are also most welcome.

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