THE SHAREHOLDER SERVICE

OPTIMIZER

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

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OUR FOUR TOP TAKEAWAYS FROM THE SPRING MEETING SEASON

This year's big-meeting-season brought two earthshaking changes in the overall corporate governance climate that will, we believe, alter the landscape forever. Also, there were developments on political disclosure and so-called diversity proposals that issuers should take note of as they plan for next year:

To lead off with the 'environmentally earthshaking' analogy, investor demand for much more robust disclosure of the likely effects of climate change on a public company's overall business model can no longer be ignored - or answered with empty promises to do more… followed with boilerplate rather than real substance:

At **Occidental Petroleum**, one of the first climate change disclosure proposals to come to a vote this season, an astonishing 67% of the votes cast favored the shareholder proposal, filed by **CalPers**. And shame on you, Oxy, for stating in your press release that the proposal received "over 50%" - with final numbers to be reported later, when no one much was looking anymore. In the corporate governance world, there's a mighty big difference between "over 50%" and 67% so you just looked stupid - and surely the real numbers were readily available when they spoke to the press. **BlackRock** noted that this was the first time they had ever voted for more climate change disclosures - and they issued a stinging rebuke, and a clear warning to issuers on their website: *"When we do not see progress despite ongoing engagement, or companies are insufficiently responsive to our efforts to protect the long-term economic interests of our clients, we will not hesitate to exercise our right to vote."*

Exxon Mobil bore the brunt of the headlines on this "hot subject" later in the month, where a big WSJ article led off with the statement that *"shareholders delivered a significant rebuke to the oil giant"* and noting that 62% of the votes cast were in favor. They added at the end that the Say On Pay got only 68% - down from 90% in previous years…so very much a red flag, and who knows, maybe even related to their stubbornness on climate change issues. The *NY Times* article reported a 62.3% yes vote - and noted that last year the proposal garnered only 38%.

cont'd →

Similar proposals were also approved at electrical giant **PPL** - and at **Royal Dutch Shell**, where we were surprised to discover on their website that Shell actually endorsed a shareholder resolution in 2015. Obviously, as at Oxy, investors decided that Shell had failed to deliver in a meaningful way.

So, this debate is over, we say - at least on the governance front. The official voting policies - and the actions of our largest institutional investors - have shifted markedly this year. Public companies would be wise to strive for much more robust and meaningful disclosure in their proxy statements rather than writing, or promising to write special one-off "reports."

Item-Two: Shock, awe and a previously unheard of number of sudden departures and dismissals in the C-Suite this season: Perhaps the most noteworthy and important takeaway for public companies - and it is a major game-changer - No CEO is safe from being ousted in a heartbeat these days if performance lags activist expectations;

The all-time record of sudden CEO departures started early in the year, at **AIG** when CEO **Peter Hancock** - who your editor thought had done a wonderful job of stabilizing, and growing the company again, rather than dismembering it, as activists had been calling for earlier - resigned from the board following an unexpectedly large 4th quarter loss, and reportedly under pressure from activists **Carl Icahn** and **John Paulson**. The strangest thing, however, were the AIG board communications: "[Hancock] tackled the company's most complex issues, including the repayment of AIG's obligations to the U.S. Treasury in full and with a profit, and is leaving AIG as a strong, focused and profitable insurance company," said chairman of the board **Douglas Steenland**. Then, the press release expressed the board's support for the very same strategic plans and programs he had forged!

Soon thereafter, at **Alliance Bernstein, AXA Financial** - the French insurance company that owns the money manager - ousted the Chairman - and eight other directors - and brought in six new ones, due to various "performance issues."

At aerospace parts maker **Arconic** (part of **Alcoa**, not so long ago) CEO **Klaus Kleinfeld** was ousted by the board about a month before their hotly-contested annual meeting was to take place, after sending a "bizarre" and vaguely threatening letter - and a soccer ball - to **Elliott Management** chief **Paul Singer**, without telling the Arconic board. (Worth a read, if only to speculate on what he thought he might accomplish with such a dumb letter. And, one has to ask, "How'd he get the CEO job in the first place?") After postponing the shareholder meeting - then learning a few days before the new D-day that they'd likely lose at least two seats - Arconic offered a truce, agreeing to give up three directorships, put an Elliott-named director on the CEO search committee and eliminate their staggered board. (P.S. Kleinfeld also stepped down as a director at **Morgan Stanley**, and we'd bet his **Hewlett Packard Enterprises** seat will be next.) …

At **Buffalo Wild Wings**, activist hedge fund **Marcato Capital Management** elected its founder and two other of their four candidates to the board, and the sitting CEO, **Sally Smith**, announced she would retire at year end. Actually, both the long-term performance of the company and the future outlook seemed pretty impressive. But recent growth just wasn't good enough - or fast enough - for anxious hedgies.

At **CSX**, a **Pershing Square** partner, **Paul Hilal**, whom the WSJ called "a rookie activist investor" scored what would be an unthinkable coup in ordinary times: He left Pershing in January to start his own **Mantle Ridge LP** - solely to replace the CSX CEO with 72 year old **Hunter Harrison**. And, in a blink of an eye, he did so. The CSX board - reportedly "pushed" by **Neuburger Berman** - and more notably, by **Fidelity** - agreed to appoint Harrison and named five new directors after watching the stock gain over $10 billion on Hilal's mere announcement of his plan. *"Shareholders took a much more active role than I have ever seen before"* Harrison said in an interview, adding, in what may be the understatement - and also the motto of the year - ***"They wanted change."*** Harrison, who resigned from **Canadian Pacific Railroad** as CEO to run for the CSX slot (actually, he walked, usually toting an oxygen bottle, which drew some belated investor concerns about his health, which were blithely brushed aside) will reportedly receive somewhere between $60 and $80 million to cover foregone benefits from his old job…That's a lot of "change" for sure.

In mid-June…another bombshell: "General Electric, Under Pressure From Its Investors, Changes Chief Executive" the *New York Times* headline blared. **Jeffrey Immelt**, who will remain as Chairman until year end was replaced immediately as CEO - following an all-day beauty pageant before the board in May of four internal candidates, where **John L. Flannery** was the unanimous choice. **Charles Elson**, the **University of Delaware**'s corporate governance guru summed up the long, slow, Immelt slog vs. peers precisely and succinctly; *"What took the GE board so long?"* Interestingly, in a move that did not get much press attention, if any at all, Flannery has also been named as Chair-Elect and will become Chairman too on January 1, 2018.

Then came news that the number-two and number-three people at Uber had been ousted for a different kind of "performance issue" - eerily like Kleinfeld's tone deaf social behaviors - this time due to a corporate culture that seemed to be pervasively hostile to women. And, oh yes,

co-founder and CEO **Travis Kalanick** might be asked to take an extensive leave of absence. Then, in a flash - while Kalanick was on the road, interviewing a potential new top lieutenant (!) he received a surprise visit from two investors, including one from **Fidelity**, which had, traditionally, stayed out of fracases like this one. They handed him a letter demanding his resignation at once. After a quick telephone huddle with the one board member he felt he could count on, he resigned that day.

Just a few nanoseconds later, came news that **Whole Foods** would shake up its board, after activist investors urged the company to explore a sale - with one (Neuberger Berman again, we think) hinting at calling for a second, mid-term shareholder election of directors before the regular AGM. They named a new Chairman, replaced five directors and noted that more would step down before the next shareholder meeting. *"Our competitors are not standing still,"* co-founder and CEO **John Mackey** said during the June earnings call, in maybe the second biggest understatement of the year. Indeed they weren't. Shazam! Out of the blue and in a flash came the deal - basically an irresistible bear hug - to merge with **Amazon**. Any bets on how the **Bezos/Mackey** integration efforts will play out? Actually, they seem to have many traits and quirks in common…Stay tuned for a real food-fight, come what may - and for lots more astonishing actions on the CEO front, for sure.

Two other sets of developments this season also give us reason to think hard as we plan for 2018:

First has been a very noticeable increase in the votes in favor of greater disclosures of spending on political and lobbying efforts: Where not so long ago the voting "mode" was in the mid-teens, we saw many companies getting votes-in-favor in the mid to the high 30s this season - and *many more than ever* in the mid-to-high 40s. Clearly these proposals have been gaining major traction. And issuers, as we've reminded many time before - any proposals that get 30% or more are sure signs of shareholder discontent - and likely of more trouble ahead. When **Citizens United** was decided it was Judge **Scalia** who insisted that the marketplace would assure that important information on these subjects would be widely revealed. And now, suddenly, it seems to be coming true.

The second big development to watch out for in 2018 is the "diversity issue": We had predicted that 2017 would be a "breakout year" so your editor was rather disappointed that S**tate Street, BlackRock, Fidelity,** and most of the big public pension funds made bold-faced statements about raising the bars here, while basically giving companies a full year's fair warning to get ready. But this season, a **Calsters** proposal at **Hudson Pacific Properties** got an astonishing 85% in favor. And at Philadelphia-based **Cognex**, a diversity proposal was approved with 63% of the votes cast. As with climate change, the scientific evidence is pretty compelling: Companies with "diverse boards" outperform "homogeneous boards" by very big margins. So issuers…check under the 'hood and start your engines now, if you have not already done so.

Also; check out the article on BofA's outstanding ESG disclosures in our last issue and the update below. Check the documents on their website - and, especially, read the "handwriting on the wall" as you gear up for next year.

MORE NEWS FROM THE MEETING FRONT:

BofA'S DONATIONS TO SPECIAL OLYMPICS PRODUCED BIG NEW-VOTER TURNOUT: ***In our last issue we singled out Bank of America's proxy package for special mention as "required viewing." With most of the 'big season' now behind us, it remains the best and most effective set of proxy documents to cross our desk this year.***

Following their meeting, we spoke with Ross Jeffries, BofA's Deputy General Counsel and Corporate Secretary and his colleague, Gale Chang, to learn more about their process - and, of course, we especially wanted to hear if their prominently featured plan to donate $1 to the Special Olympics on behalf of every individual investor who returned a voted proxy drew the big support we'd predicted.

"As to our process, it was really a top-down thing, starting with our Chairman, and our Board, and our entire Management Team" Jeffries told us. "We wanted to educate all of our shareholders about the many important things that are going on at BofA. We also wanted to think more creatively - and to focus on themes, and how they relate to one another, as a way to better tell our story.

"We used three different printers for the three main items, and, as you'd noted, we devoted a lot of time and attention to our 'by the numbers' highlights, and to the graphics, where we got excellent support from our financial printer" [RR Donnelley] "who produced the proxy statement. We were not looking for something pretty, or glitzy. Too much glitz can actually detract from the story. We wanted all the graphics, and all of the highlighted sections to be useful.

"We also spent a lot of time and effort on our separate ESG piece, as you'd noted. We hadn't seen anything like ours before, but we felt that investors do want to learn more about this, and we were right. We got a lot of positive feedback from investors, many of whom remarked 'Wow, we didn't know that' about ESG information that struck a chord with them.

"As to the Special Olympics incentive, it was not just about getting votes. It was a good organization for us to pick, as you noted, but a natural one for us. Our support for the Special Olympics goes back three decades.

"Our total accounts voted went up by 8%" [almost 50,000 more voters than last year] "and our quorum went up to 86% vs, the low 80s in previous years. It's hard to attribute all of the increase to our promised additional donations, because we made some other new efforts to get out the retail vote - which amounts to a third of our shares outstanding. We sent full proxy packages to every shareholder with 101 or more shares and we had our proxy solicitor make calls to the larger un-voted positions. We also paid more attention than usual to our employee plan votes, and, of course, we were very satisfied with the results."

Editor's note: As very long-term and up-close watchers of proxy voting, we at the OPTIMIZER would definitely attribute the lion's share of the increased voting directly to the appeal of the Special Olympics donations, since this year, as in the past 10 years, retail voting went down, again, at almost every meeting we studied.

So an increase of nearly 50,000 net new voters is something very special - as is a 4% or 5% increase in the quorum - thanks to shares that are actually voted, where, as we keep reminding, "Broker Non Votes" keep going up as a percentage of the quorum at most companies, effectively narrowing the margins between the For and Against votes. Accordingly, since virtually all of the retail votes keep on voting with the management positions, almost any increase can make a noticeable difference…

BROADRIDGE ALSO SUCCEEDS WITH 'SPECIAL OUTREACH' TO 'LOW-PROPENSITY VOTERS'…Their latest newsletter reported on a client that wisely cranked up its efforts to increase the retail investor vote (which represented a whopping 37% of the outstanding shares): "After failing to get 70% support for its Say On Pay proposal" they sent 'targeted communications' in advance of the mailing date for proxy materials, with "customized content, designed to better engage with retail investors with a 'low propensity to vote.'" Then, closer to the meeting date, they sent reminder letters, with a message to "GO VOTE" to the larger, still un-voted holders. The result: Recipients of the 'targeted communications' responded at a 50% greater rate than non-recipients.

GE FLUBS BIG in our book - and misses a big opportunity: Our last issue sent kudos to GE for promising to send the poor folks who simply got a "Notice of Internet Availability of Proxy Materials" - and therefore, who did not get a proxy statement - or a proxy card - *"a paper copy of their integrated summary report [that] combines in one concise document the most critical information from our annual report, proxy statement and sustainability website"…AND…"to make it easier for you to vote you will receive a proxy card or voting instruction form."*

Kudos turned out to be undeserved - and shame on you, GE…When the promised package arrived, it did include a VIF - but it did NOT contain all of the "most critical information" a reasonably diligent voter would need to cast a fully informed vote on important matters: On page 61 of its 63 page, old-fashioned and overcrowded "integrated summary report" the shareholder proposals were summarized in a single short sentence for each one. Then, to the right, they stated, in a single sentence of their own, "Why the Board recommends a vote **Against** the proposal" (bold-face theirs). ***In our book, this violates not only the spirit but the letter of the law where shareholder voting procedures are concerned: No proxy statement information provided? No proxy should be solicited. The really sad thing is that GE could easily have provided the information needed in the summary report - and could have broken important new ground in doing so.***

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