THE SHAREHOLDER SERVICE

OPTIMIZER

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

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IN THIS ISSUE

A FOCUS ON PRE-MEETING PREP

WITH "DIVERSITY" AND ESG ISSUES, AND MAYBE SAYS-ON-PAY COMING TO THE FOREFRONT AT SHAREHOLDER MEETINGS IN 2018, WE PREDICT MORE "RAZOR-THIN VOTING MARGINS" THAN EVER
WE EXPLAIN WHY - AND WHAT YOU NEED TO BE DOING NOW

The 2017 Annual Meeting Season saw an unprecedented number of elections that were decided by razor-thin margins. *In mid-2017, for example, we reported that at one of the shareholder meetings your editor and his business partner inspected, one of the six shareholder proposals received 49.85% of the votes cast while the company-favored votes against garnered 50.15% - a difference of just 8-million-odd votes out of 2.75 billion that were cast on the matter - or a mere three-tenths of one-percent of the votes cast. Put the way a smart Inspector should put it, if just 4-million-odd votes were erroneously recorded as against instead of for, the vote would go the other way.*

Then came the P&G fiasco, where first, P&G claimed victory over the dissident director candidate, Nelson Peltz by a 6.15 million vote margin, or a mere 0.2% of the votes cast. But then, after a "recount," the Inspectors of Election proclaimed that Peltz was the winner - by an unbelievably small 42,780 votes - an astonishing margin of 0.0016% out of roughly 2 billion votes cast!

But then, after a recount of the recounted proxies (!) some 500,000 votes for the management slate turned up - somehow, somewhere - leaving Peltz behind again, the Inspectors said, by a bigger but still miniscule margin of 0.02%.

Given the earlier vote counting and reporting efforts, the three sets of numbers reported, and using a "reasonable" margin of error - where, clearly there were more than a few errors, this was statistically a tie, any way you slice it. And, come the end, P&G decided to seat Peltz after all - after spending over $100 million, Peltz estimated, to deny him a seat! What a mess!

cont'd →

IN 2018 WE ARE PREDICTING THAT MORE VOTES THAN EVER WILL BE DECIDED BY RAZOR-THIN MARGINS LIKE THESE: HERE'S WHY…

The biggest factor is that the pool of actual voters has been shrinking steadily, every year: While most companies still report quorums of 80% or more, very often there are 30% or more "Broker Non Votes" in the number - i.e., votes that brokers cast for non-routine items, like the ratification of auditors, but are not allowed to cast for the election of directors - or for Say On Pay ratification - or on shareholder proposals - without specific customer instructions.

The number of BNVs has been creeping steadily higher each year, as individual investors have clearly lost interest in most corporate elections. But even more noticeable has been a slow but steady increase in abstentions - where retail investors either do not have time to study non-routine proposals - or, in many cases, simply don't give a hoot.

So, bottom line, your 80% quorum often drops to 50-60% of the actual voting power thanks to BNVs and Abstentions… And…hello…when you're at 50%, a very close 50:50 split on non-routine items is often a near certainty. (If you're at 60% you are typically in deep doo-doo, since the majority of voters will likely be institutions - who *always vote* - and who are a lot more likely than retail investors to vote for proposals the company opposes.)

There is another big factor at work these days, and that is what we perceive to be a steady and inexorable shift in retail-shareholder *demographics* - that bodes ill both for company-sponsored and company-opposed measures: Those old-fashioned Moms and Pops of yesteryear, who used to vote faithfully, and exclusively with management, are fast being supplanted by more modern-thinking folk - all of whom are much more skeptical of big business, much more favorably disposed to ESG issues - and much more skeptical about big Executive Comp too.

So what's a smart corporate citizen to do these days to 'prepare for the worst?'

First, of course, is to very carefully try to 'handicap' the results as far in advance as possible -and to use experts to help you do it - AND to help you craft your corporate "story" and execute your investor outreach programs successfully. Treating this as a "do it yourself project" rarely produces the results you want to have.

Next, as we've said again and again…more often than not, these days, the retail investor vote is your only way, statistically, to turn the tide in your favor. That will take careful planning and messaging - fresh and more creative efforts - and ample time to execute.

Corporate citizens also need to be paying a lot of added attention to who, exactly, is tabulating the vote; how good, and how auditable their systems are - how good they are at helping you track voting, and to spot potentially troublesome trends early on - and allow you to take quick and effective follow-up actions if needed. Most important perhaps, is whether their systems are designed to make it quick and easy for investors - and especially those employee plan and retail folks - to cast their votes.

Last but far from least, corporate citizens need to be paying a lot more attention to their Inspectors of Election these days: Do they have good and well-documented, well-designed systems and procedures in place to "inspect," double-check and certify the final results? Do they have adequate backup resources at their disposal? Can they, as individuals, stand up to challenges - and respond to them quickly, effectively… and accurately? And, following the P&G fiasco, "Do they know what they are doing…and do they have the methods and the tools to do it right?"

OUR TOP FIVE PRACTICAL TIPS TO WIDEN THE MARGIN OF VICTORY IN CLOSE CONTESTS

1. **Start with a rigorous, numbers-oriented analysis of your company's shareholder base - ninety days before the record date, and again, as of the record date. Very often, after reviewing only your top 20 shareholders - and their traditional voting habits on the items on your agenda - you will be shocked to realize how very hard you may have to work to get your own proposals to pass - or to defeat proposals you oppose - and how important it will be to start reaching-out to institutional investors ASAP.**
2. **Make sure you have accurately accounted for your "retail investor base." Many companies mistakenly think the entire CEDE position is composed of "institutional investors" when, in reality, virtually all of the positions at brokers**

represent retail investors. The larger your company is, the larger your institutional investor population tends to be - but roughly half of all companies still have 50% or more shares held by retail investors. And even mega-cap companies that are in "retail businesses" - like consumer products companies, and gas and electric utilities - typically have 30% - 40% or more of their shares held by retail investors. Be especially sure that your mailing programs do not "stratify out" the bigger and the steadier voters.

3. Recognize early that if you have 30% or more of your shares held by retail investors, you will almost always have to make "special efforts" to get them to cast their votes - but that "at the margins" they can make a very appreciable 4%-6% difference in your favor. In many cases this is your only shot at turning the tide! There are several articles on our website that describe things that work well to increase the retail vote - and things that don't work, or worse, that can backfire if executed poorly - like those last-minute, mid-evening calls from high-pressure proxy-chasers…And please note well; all of the effective "special efforts" take careful planning, effort, and TIME in order to work.

4. Accordingly, start tracking the retail and institutional investor voting patterns as soon as Broadridge issues its first report on the voting: Ask yourself every day if any unexpected trends are apparent. Most times, if you have done step-one correctly, you can pretty much predict the institutional vote, even though most such votes won't be cast until the evening before your meeting. But if any of the unfavorable votes are higher than expected in the "early returns" you need to raise your awareness level at once. Most of the individual investors who actually vote, please note, tend to cast their votes in the first 15 days after the mailing date. So if the retail vote looks lower than usual - or if there is an unexpectedly high percentage of unfavorable votes on one or more items - you need to spring into action right away. Sometimes you may find that mailings to employee investors, or to classes of stock that have voting rights on some or all matters were not made. Other times a "reminder mailing" may be urgently needed. Either way, time is of the essence.

5. Most important to note, it is almost never too late to reach out to institutional investors who you fear may be voting against you on some matters, or that still might be on the fence - and, as noted above, the earlier the better. Every year we see a half-dozen companies who handle this successfully: Tell them about your concerns, and ask if they would consider, or reconsider voting in your favor - and give them a decent rationale for doing so, of course. But only do this if you have reached out to them and developed some kind of relationship with them earlier: If not, you will anger them big-time, and harden rather than soften their resolve.

EVER THINK ABOUT A TIED VOTE? OR OF WHAT TO SAY AND DO IF SOME RESULTS SEEM "TOO CLOSE TO CALL?"…VERY SMART TO DO SO THESE DAYS

Your editor and his team of Inspectors of Elections had another interesting experience in 2017 - an election at a Professional Association where there were 28 candidates, all very prominent in their profession, for thirteen open seats.

Three days before the meeting, there were three votes separating the 13th and 14th candidates, and the fifteenth biggest vote-getter was just six votes behind number 13. Although we had raised the possibility of a tie vote early on, the GC assured us that "it will never happen." Now, even he was not so sure.

"So what is your plan in the event of a tie?" we asked him. *"In that event I will be right up there on stage with you,"* he replied. "But what will you say?" we prodded… *"I'll let you know tomorrow,"* he said, clearly hoping that the problem would resolve itself in the last minute voting.

We ourselves could come up with only three possible solutions: Ideally, the Board could be expanded by one member, to accommodate the 14th candidate…But no, a change in the Bylaws would be required, and that would require a vote of its own. There was a possibility, we offered,

that one of the members in attendance might be able to break a tie before the meeting convened - by revoking his or her vote on the 14th vote-getter. But this made us all uncomfortable from a good-governance perspective, and it would be a very "sticky" thing to engineer indeed. So a run-off election seemed to be the only viable alternative - and that would take a lot more money - and time - to accomplish… And, ouch again, it would be very uncomfortable, for sure, for the two tied candidates who would likely be in the room.

Fortunately, on the very day of the meeting, the tie was broken and the number-15 vote getter fell even further behind, so problem solved for the time being.

Shortly thereafter, as noted above, after much thrashing about, the P&G election resulted in what could only be described as a statistical tie. And here, the only reasonable option was to seat the dissident director, where fortunately, there was room to expand the board to accommodate both him and the candidate he'd statistically tied with.

Soon after, came an election in Virginia, where first, after a formal review and challenge period, the winning candidate, who'd been behind in the count beforehand, was declared the winner by one vote! Then, a vote that had been judged invalid because boxes for both candidates had been marked, was ruled to be valid after all, by a three-judge panel - which interpreted a slash mark through one name as a vote-no - turning it back into a tie again. The winner's name was then scheduled to be drawn from a bowl…and went against the original winner. Hmmm, thought we; perhaps that would have been a good solution at the Association Meeting if it ended in a tie…but given the horrible "optics" we thought not. And guess what... an appeal of the lottery-drawing in Virginia will likely be appealed.

Unless there is a proxy contest, votes for Directors will rarely if ever end in a true tie. But clearly, all the stories above indicate an increasing and increasingly narrow "polarization" of voters on many subjects - and how hard it is to predict many of the outcomes these days -and how likely it is these days for proposals to end in what seems to be a "statistical tie.".

So readers, what is your plan if there is a literally tied - or a "statistically tied" vote? What, if anything, should you do and say if the voting is a 51:49 split - or a 55:45 split?

For starters, make sure that you are reporting the numbers - and the percentages correctly before saying a thing. You might also wish to bone-up now - by reviewing our Primer on Tabulating and Reporting the Vote - which has a few pointers on what to say at the meeting if voting outcomes are uncomfortably close - and our article on a 2017 close call that explains what to do next.

One last thing…many companies have been noting that "80% is the old 50%" on proxy voting items…and that if you do not have a 20% or 30% margin in your favor, you may have to meet the minority voters at least halfway, if not more.

Check out www.OptimizerOnline.com articles "Our Newly Revised Primer on Tabulation and Reporting Shareholder Meeting Votes" and "An 8-Million-Vote Margin on 2.75 Billion Votes Cast".

MISGUIDED SEC "GUIDANCE" ON NO-ACTION LETTERS - AND ON ALLOWING NON-SHAREHOLDERS TO SUBMIT SHAREHOLDER PROPOSALS AS "PROXIES": TIME FOR SOME TOUGH TALK, WE SAY

Your editors seem to be the only people on earth who feel that the recent SEC staff "Guidance" on No-Action letters - and on the ability of non-shareholders to submit "shareholder proposals" by proxy, is totally misguided.

For as long as anyone can remember, public companies have been free, under SEC rules, to exclude any shareholder proposals that bear on "the ordinary business of the company" - or that are "immaterial" to the overall business of the company in the big scheme of things.

But now - out of the blue, and at a time when corporate directors, and many governance experts too, are bemoaning the ever-increasing workload of being a director - which has only been exacerbated by fears that a failure to micro-manage sufficiently will bring criticism, and maybe even new liabilities - here's the SEC staff calling on Boards to form committees, or subcommittees, to study, and pass upon proposals that most sensible people would consider to be "ordinary business matters" - or - "immaterial" - on their face!

And lots of lawyers, and outside advisors are publishing guidance of their own, on how best to cope with this sudden raising of the bar when it comes to getting a no-action letter. But the real problem, in our book, is with the misguided SEC guidance.

Sure, there are some cases where there may be "a difficult judgment call" as SEC staff noted. But most corporate people, and their legal advisors too, are well aware of several landmark cases, where shareholder proposals were deemed to transcend the ordinary-business and economic materiality aspects. And they are smart enough, and politically savvy enough, in our book, to run "difficult proposals" by the board if they want to exclude them from the ballot. But to run each and every shareholder proposal by the Board - or a Board committee in order to get a No Action letter is just plain stupid - and a wasteful use of Board members' time and attention.

We like the way that Apple jumped right on the issue - and placed it in proper perspective - neatly finessing it, and providing a very good "template" for all responses…But what a waste of valuable time and talent, it seems to us, to cater to this crazy new guidance:

"The Board recognized that it had already considered the issues raised by the Proposal when setting the strategic direction of the Company and performing its duties as a Board. Additionally, the Board determined that senior executives' focus on reviewing, improving, and implementing policies designed to promote human rights make these matters an integral part of the ordinary business operations of the Company, and the issues presented in the Proposal as a whole fit squarely within the Company's ordinary business mission to safeguard and uphold human rights wherever it does business. The Board also considered the Company's existing policies, practices, and disclosures and concluded that the Proposal, even if submitted to shareholders and approved, would not call for the Company to consider facts, issues or policies that the Company does not regularly consider in the course of its day-to-day operations, and therefore does not transcend the Company's ordinary business The Board considered the fact that it, along with management, is regularly and actively involved in the consideration, oversight and re-assessment of the Company's human rights policies.

It also seems to us that with discussion and analysis like this, there is no need to ask for a No Action letter at all! Just drop the proposal, say why, and let the proponents and/or the SEC take whatever "action" is available to them.

The staff's simultaneously issued "guidance" on allowing non-shareholders to file "shareholder proposals" via a "proxy" is, to put it bluntly, a travesty: *"While Rule 14a-8 does not address shareholders' ability to submit proposals through a representative," the SEC 'guidance' notes, "shareholders frequently elect to do so, a practice commonly referred to as 'proposal by proxy.' The Division has been, and continues to be, of the view that a shareholder's submission by proxy is consistent with Rule 14a-8.[10]"*

Whatever gives them this crazy idea? The SEC has numerous rules on the books to describe how many shares a would-be-proponent needs to have, the number of proposals they can file at a given company and the voting levels they need to get in order to re-submit the proposal in succeeding years. All of these rules were specifically designed to deter serial-proponents, attention-seeking gadflies - and outright nuts - from overrunning companies with proposals - which is currently happening at many companies *without* the use of "proxies."

Quite aside from the obvious fact that proposals made by a "proxy" are NOT "shareholder proposals" - and that they are clearly designed to short-circuit existing SEC rules - there is hardly a corporate citizen alive - nor an acting or retired SEC commissioner either - who does not agree that the bar for submitting and re-submitting shareholder proposals needs to be raised, rather than lowered - which is what proposal by proxies undeniably do. It is way past time for the SEC to tackle this entire issue in a serious way. Meanwhile, allowing "proposals by proxy" should be stopped at once!

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AN UPDATE ON VIRTUAL SHAREHOLDER MEETINGS: A GREAT THING, BUT LOOK CAREFULLY BEFORE YOU LEAP

We love Virtual Shareholder Meetings. They make it easier and a lot less expensive for Directors, key employees and shareholders of every description to "attend" from anywhere in the world - or to visit the meeting later if they'd like, over the Internet. They can save significant sums on the costs of booking a meeting hall, installing proper A-V equipment, hiring security and staffing up to vet and admit attendees, who generally, are attending fewer and fewer shareholder meetings each year. And, maybe best of all, in our book, VSMs create a complete and permanent record of the proceedings, which most companies make available on the web for a year or more.

We are OK with "Virtual-Only Meetings" too - as long as they have not been designed to "hide from shareholders" - or to evade or stifle discussion of potentially controversial issues. When there are no controversial issues on the ballot - or in the press - and where few if any shareholders have historically attended - they can cut meeting costs dramatically. And actually, we fear that if all Virtual-Only Meetings are banned - or will generate retaliatory actions, as some activists have been threatening - the move to adopt any kind of Virtual Meeting may fall by the wayside, which would not be a good thing. Many meetings of shareholders - particularly at small-cap and newly public companies - and at companies of all sizes where there is "nothing much new or controversial" - are over in five minutes or less these days!

But if you have been paying attention to the VSM scene, you will know that Virtual-Only meetings - where no in-person attendance is permitted - have come under attack from the **Council of Institutional Investors**, the **Comptroller of the City of New York** - who says the City pension funds will vote against directors at companies with Virtual-Only meetings - and the normally gentle Sisters of **St Francis of Philadelphia** - plus gadflies **John Chevedden** and **James McRitchie**, who plan to introduce shareholder proposals to thwart the movement. So far this year, a number of companies that held Virtual-Only meetings last year - like **Conoco Phillips** and **Union Pacific** - have agreed to revert to in-person meetings, with more companies likely to do the same later this year.

Very good things have come out of this debate however: Broadridge Financial Solutions, which facilitates most of the VSMs - and which is the only entity that can facilitate truly Virtual meetings, which require a way for all shareholders to cast their votes online - has been sponsoring an Advisory Committee of institutional investors and advisors, public company representatives and shareholder meeting and proxy voting experts, where your editor is pleased and proud to have played a part: The mission; to develop written ***Principles and Best Practices for Electronic Meetings of Shareholders***, the latest version of which will be out within a few weeks.

The discussion, and the guidelines themselves, provide a robust, and very rigorous set of Principles and Best Practices that are Best Practices at all kinds of shareholder meetings - virtual and otherwise. Most important, they provide a long list of things to consider - and to do - and not to do - at any shareholder meeting.

The *OPTIMIZER* believes that a so-called Hybrid Virtual Meeting - where shareholders can attend virtually, or in person, as they choose - and will be able to access the proceedings for at least a year - is the *gold-standard* for shareholder meetings. Ultimately, we believe that they will become standard practice for all shareholder meetings.

Many companies seem to be put off by what they see as potentially added costs of producing a first-class Virtual Meeting. But, as a very frequent meeting attendee, your editor has been amazed by how many companies are video-taping the meeting now - and transmitting it over the Internet in real-time - without calling it a "Virtual Meeting." Compared to the cost of hiring an old-time Court Stenographer - and to the old-time practice of mailing out "Post Meeting Reports" - and the costs of flying officers and directors around the country, and often now, around the world - and housing them - and feeding everyone - the costs to produce a VSM are often peanuts, we say…and produce a far bigger and better "bang" for the dollars spent.

Two last cautions in terms of 'looking before leaping': Broadridge, very prudently, will not host a Virtual-Only meeting if there is a proxy contest…Also - and make no mistake about it - a company would be *very unwise* to host a Virtual-Only meeting if there are closely contested matters on the agenda or "investor issues" in the air, or worse, in the press. Howls of protest and bad press will ensue, we guarantee. We also guarantee that one day, folks with a bone to pick will "network" with like-minded voters - and will spring a total surprise - with votes submitted via the Internet that will totally overturn a company-expected win.

DOES YOUR COMPANY PROVIDE FOR "CONFIDENTIAL VOTING?" TIME FOR A LOOK UNDER THE HOOD, WE SAY

Way back in the 1970s, thanks to constant agitation by the famous Gilbert brothers, "Confidential Voting" was being adopted by virtually every major company. While many large companies continue to faithfully mention this in their proxy statements, a surprising number do not…which makes us wonder if they simply forgot they have them…or think that maybe the commitment lapsed.

Another important thing to note…most Confidential Voting policies were pretty vague, as were most of the Gilbert proposals, and some, we're sure, were never written down anywhere with any specificity.

So it really is time, as the headline says, to "look under the hood" - to see if you have ever committed to such a policy - and what, exactly it entails - and maybe even to quietly adopt one if you can't find one in your record books…and also to lay out actual procedures.

The better proxy statement disclosures we see typically say that "We have adopted confidential voting policies and procedures to assure that the votes of all investors will be treated as confidential, and will not be available for review by company employees or members of management." (Many older versions added an exception for proxy contests - which we feel it is both unnecessary and unwise to apply to company officers and staff: Far better to specifically delegate the task of examining proxies in a contest to outside counsel and/or to the Inspectors of Elections, who can examine, and challenge individual proxy votes, but who will promise to preserve the promised confidentiality. In fact, the biggest abuses of confidentiality provisions have occurred when there IS a proxy fight - or a very closely-contested matter on the ballot. And sadly, we have seen more than one company that not only abused this provision, but "took notes" - and took retaliatory actions against employees who voted "the wrong way" - and a few got caught at it.)

Thus, the better confidential voting disclosures mention that "Independent tabulating agents, and Independent Inspectors of Election, all of whom have executed written confidentiality agreements, have been appointed to examine and tabulate shareholder votes, and to certify the final results."

These provisions are particularly important to have with respect to your employee investors, who, of course, are most susceptible to possible intimidation, possible retaliation - and simple but totally inappropriate nosey-ness from management employees. If your company serves as its own transfer agent, and/or as an agent for one or more employee stock ownership plans, the tabulation and inspection duties should always be outsourced to independent third parties. And all of *them* should be made aware of the need to screen-out any access that company employees may have to the voting systems, and should formally agree to do so.

It is particularly important to make robust disclosures about confidential voting arrangements to employee and employee-plan voters…if you want them to vote, that is. Fear of being discovered as "voting the wrong way" is, in our long experience, the number-one reason why employee-plan voting is, typically, so abysmally low. Almost every employee we know has had some one - or some "thing" - they just don't want to vote for, so they simply take a pass.

Special attention to confidential voting procedures, if you have them, should also be paid during the meeting itself. While most individual investors are not at all concerned about management knowing how they voted - in fact, many are quite vocal about it - some individuals are…employees in particular, but also many retirees and "local folks" too - who just want to preserve their personal privacy. And, after all, if you have promised confidentiality, you should be careful to preserve it. So it is best, we say, to have proxies and ballots collected by the Inspector(s) of Election or, if there are a very large number of voters in attendance, placed into ballot-boxes by the voters themselves.

Company officers - and some directors too - often have a keen interest in the overall numbers, and sometimes hover-over the Inspectors. (Not a best practice, since this is one of the top ways that math-mistakes are made, but often it's unavoidable.) So the Inspectors need to guard individual proxy cards and ballots from view if there is confidential voting - and they should also use 'privacy screens' on their laptops, to be sure that individual votes are not accidentally revealed.

Part of the final cleanup should be for the Inspector to place all proxies and ballots in a sealed and labeled envelope, which the company can keep, sealed, with its own final meeting records… unless, of course, there is a proxy fight, or a threatened challenge to the results, in which case the Inspector needs to retain control of the records.

There's one last area here where corporate officers need to be circumspect - and savvy - and that is with respect to institutional investor votes. In your editor's view, there is nothing improper for corporate staffers - or their proxy solicitors and advisors - to try to determine, or to deduce the way institutional investors have voted, with or without "confidential voting" - as long as they do not try to threaten a mutual fund, let's say, with retaliation - or to bribe an investor employee to reveal the info - as once, back in the bad-old days, was fairly standard procedure in close or contested elections. Most professional investors are only too happy to tell you how they have voted, or intend to vote - and why…as long as you approach them professionally, and keep everything on the up and up.

OUT OF OUR IN-BOX:

THE SCARIEST IN-BOX ITEM SO FAR THIS YEAR - one of our fellow Inspectors of Election left a message to say that a client just learned that protestors at their upcoming shareholder meeting would be coming dressed as ZOMBIES. ***"Have you ever heard of costumes at shareholder meetings? Any ideas on what to do?"*** he asked.

"Guess what? Coming to shareholder meetings in costumes is a very old tradition!" Check out the History tab on our website for photos of old-time gadfly **Wilma Soss** dressed as Molly Pitcher - and as a "Cleaning Lady" following the TV Game Show scandals - and one year, she came to the **General Motors** meeting in a wheelchair, wrapped head-to-toe in fake-blood-smeared bandages to dramatize a steering-defect scandal.

But zombies??? Yes, indeed, that could create quite a scare: Quite by coincidence, your editor had just participated in a lengthy in-box/out-box exchange of info on the Society's "Huddle" site about Rules of Conduct for Shareholder Meetings - and this, we told our colleague, was the first thing to work on, ASAP.

While the sample rules that we and another member shared did not cover costumes - or zombies - we suggested that the client draft an amended rule immediately that would stress, maybe as Rule 1, that ***"This is a legally required and important Meeting of Shareholders, with important business to be conducted. Accordingly, the Rules of Conduct will be very strictly observed and enforced: There will be no demonstrations permitted in the meeting spaces; no signs, no costumes, no chanting or shouting-out of comments or slogans - and any violators of these rules will be removed from the room immediately."***

The Huddle discussion and sample rules did not cover guns either - and here, whether the meeting is in an 'open carry state' or not, we would add a strict no-gun rule to the more usual *no recording device/no-cell-phone rule* if people dressed like zombies are expected to be prowling around.

We also stressed another good point that came out in the Huddle discussion: The very best practice with Rules of Conduct is to place them directly into the hands of shareholders once they are registered and OK'd to enter the meeting site - and to ask shareholders to read them before they do so. (One Huddle commenter requires attendees to sign a roster to acknowledge receipt of the Rules - which we find to be a *very good idea* if trouble is expected.)

Another very important thing to do ASAP, we said, is to contact the manager of the resort location where the meeting would be held, since most such venues will typically prohibit signs, demonstrations and inappropriate costumes too - and will require demonstrators to stay X yards away from the venue itself. The venue's management team will also know how to coordinate appropriately with law enforcement officials, who will, almost certainly, keep any Zombie-Apocalypse-invaders in line - and well away from the meeting site.

This "zombie invasion" sounds to us like a rather well-coordinated thing that so far appears to be aimed primarily at makers and sellers of tobacco products. But maybe other products that might be deemed unhealthy ones might come under zombie invasions too…So readers, keep your eyes and ears to the ground as the meeting season ramps up.

OH THOSE TRANSFER AGENTS! WHO COULD MAKE THIS STUFF UP?

Just as your editor was sitting down to begin this issue, he received a call from a lawyer, asking if he might be able to serve as an expert witness in a case involving a transfer agent. His client recently called a major transfer agent to see if her late brother might still have shares of a very large and very well-known company standing in his name, where she was his executrix and sole heir. She gave the rep his name and TIN, and lo and behold, she was told that he had a fairly substantial position in that stock - about $250,000 worth. "Could you check to see if he may have holdings in other companies you work for?" she asked…and yes, there were several other positions, the eager-to-please rep replied. He issued replacement checks for all such issues and sent them off to her post-haste. The first big check had barely cleared when she got a letter from the T-A explaining that the rep had looked at the wrong "John Smith" - so would she please return the money ASAP. *"Can you help us clear this up?" the lawyer asked. "There is far too much money at stake for us to simply accept the agent's word, following what they now say was a mistake"* - and we agreed.

"There are important privacy issues here," said we, "but I do think the agent could and should ask you, or me, or both of us to sign a privacy agreement so we could review the records and satisfy ourselves completely as to the claimed snafu. And, please note carefully, the rep really never answered the question as to whether there was unclaimed property outstanding under the name of your client's brother's account. Or maybe, the T-A had escheated his property, which they should be able to tell you, and which your client would be able to reclaim."

A rather shocking example of good-will and client friendliness butting up against rank ignorance - which does seem to be rampant at some T-As these days - and a truly mind-boggling and scary mistake. More to come on this, maybe, in future updates.

Here's another pip from our in-box: "STA Pushes for New TA Rules" read the headline in a T-A newsletter - written by the T-A's CEO and designed for clients and prospects that crossed our desk in December. *"In August, I and the other members of the STA Executive Committee met in Washington with the current SEC commissioners. We met with Commissioner Kara Stein, and the senior staff of the Chairman Jay Clayton, as well as the senior staff of Commissioner Michael Piwowar. We urged the Commission to fast track certain key issues highlighted in its Proposed Rules and Concept release regarding the Transfer Agent rulemaking. Because it is expected that final rules for all areas noted in the Concept release are unlikely in 2017, or even 2018, we urged the Commission to fast track rules for: cyber security, disaster recovery, business continuity, segregation of funds, capital / insurance requirements for Transfer Agents, issuer contracts, restricted transfers and original issuances. All of these are long-overdue since transfer agent rules have not been materially changed in over 30 years! The STA is tasked with providing the skeleton for these proposed fast track rules to the Commission staff."*

Wow! Great news, it seems…a tiny bit of progress on the horizon after 30 years of diddling. But isn't this the very same outline of top issues that your editor proposed to the SEC in July of 2015 - that drew a blistering response from this very author - claiming that your editor had "gone to the dark side" and was "adversarial to the transfer agent industry" for expounding on why new and better rules and regs were needed?

We're waiting for an apology - and maybe even a thank you for our original, and we think well-fleshed out "skeleton" - but we won't hold our breath where that guy is concerned…

Readers should note well, however, that the lack of clear-cut rules and regs on all of these subjects puts not only transfer agents - but issuers too - at constant risk of being sued by disaffected, but often confused and/or careless shareholders, but who sometimes turn out to be in the right! Here are two links - to our original SEC comments - and to our article on T-A liabilities…and what issuers should be doing to protect themselves…which, maybe, is what ticked that TA guy off so much:

https://www.sec.gov/comments/s7-27-15/s72715-19.pdf

http://www.optimizeronline.com/search/article/101138/transfer-agent-liabilities-under-estimate-them-at-your-peril

SOME SHOCKING FINDINGS FROM PWC'S 2017 SURVEY OF 856 PUBLIC COMPANY DIRECTORS:

- ***A startling 46% of directors surveyed say that at least one member of the board they served on should be replaced. On a slightly more encouraging note, 68% said that some sort of actions were taken following a board assessment…but not necessarily a rehabilitation, or the ouster of a deficient board member: Only 15 percent said that a member of their board was provided with counseling or was not re-nominated as a result of a board assessment process.***
- ***A whopping 70% of directors say US executives are overpaid. And 66% say executive pay promotes income inequality.***

These two sets of findings really make us wonder about the basic credibility of proxy statement disclosures about directors - and the always self-satisfied and self-congratulatory Say on Pay disclosures too. Maybe this is a major factor in the constantly diminishing number of votes cast by individual investors; one that we've failed to note before - a belief that "the fix is already in" so why bother.

AN INTERESTING INNOVATION HIT OUR IN-BOX IN EARLY JANUARY - an e-mailed invitation from PR firm ComPro to "Become A Shareholder in iPic Entertainment's IPO - and to join an Investor Webinar to learn more:

"Join iPic Entertainment Founder and CEO Hamid Hashemi as he discusses the iPic investment opportunity. iPic® Entertainment, one of the largest combined movie theater and restaurant entertainment destinations in the United States, is seeking to raise up to $40 million during its Reg A+ IPO, and invites fans, members, and supporters to invest in the company's planned NASDAQ listing. A pioneer of the concept of polished-casual dining in a luxury theater auditorium, iPic® Entertainment's mission is to provide visionary entertainment escapes, presenting high-quality, chef-driven culinary and farm-to-glass mixology in architecturally unique destinations that include premium movie theaters and bar/restaurants. During this webinar, Hamid Hashemi will cover iPic's key investment highlights, provide an overview of the business and outline the company's significant growth opportunities ahead.

We are huge fans of direct stock offerings to "affinity-group investors" - many of which have been huge investment successes and all of which start a company off with a strong, and loyal, and very stable investor base…who also use the company products a lot - and talk them up to friends and colleagues. We'll keep you posted.

ELSEWHERE ON THE SUPPLIER SCENE:

We predicted in our last issue that thanks to new ownership, there'd soon be big new products coming down the pike from ISS…And sure enough, in early January they announced the launch of *"corporate due diligence profiles for investment professionals seeking to better lever extra-financial data, analytics, insights and research…which represent a unique, composite look at company level governance, provide deep insight across board, director, compensation, and other crucial governance factors benchmarked against peers.*

"Analytics within each profile include: historical voting results for management and shareholder resolutions; board-level data spanning refreshment and entrenchment, diversity, independence, and compensation; the prevalence of takeover defenses; executive compensation risks such as pay-for-performance disconnects and historical adverse ISS recommendations on advisory pay vote resolutions; and director track records, including Total Shareholder Return performance compared with the industry average and a history of key corporate actions for each board seat held."

Sample reports, and "case studies" are available at the ISS site…and they sure look like a quick and scarily easy-to-use tool when deciding how to vote - and maybe even whether to invest at all.

Closure, it seems, on an old and ugly case: Comptershare's Georgeson unit paid $4.5 million to prosecutors late in 2017 - admitting that employees improperly paid bribes to an ISS employee to obtain information about corporate voting that they improperly shared with clients, agreeing to beef-up security procedures and to hire an independent monitor, and signing a deferred prosecution agreement providing that further charges will be dropped after three years of good behavior. While it was not totally clear from the ***Reuters*** report, we assume, and certainly hope, that the settlement covers the five employees involved, who were scheduled to go to trial in February.

What a blow to the NYSE! Pepsico is moving its listing to NASADQ - a move that would have been totally unthinkable ten years ago. Time for a major re-think and re-set, NYSE, for sure. Who's minding that store? This never would'a happened on **Dick Grasso**'s watch!

PEOPLE

Daniel Dixon - the son of **Dave Dixon** - currently one of **Wells Fargo Bank**'s top sales-stars in its Shareowner Service Group, who will surely be a super-nova for **Equiniti** too - recently signed with the **Boston Celtics** top development team, the **Maine Red Claws**. All of Dave's many fans are rooting for imminent stardom for Daniel - a recent **William & Mary** grad who has been averaging 13 points per game. So if you get **NBA TV**, tune in the **Maine Red Claws**, enjoy the action, and root like mad for Daniel….

Martin Glotzer, a very long-term and sometimes long-winded but always genial and polite serial-shareholder meeting-attender - aka "gadfly," as he was OK, and even proud of being called - died in February, in Chicago, at 89. His devoted wife **Pearl**, a truly *delightful* gadfly with an unforgettable "show-business-like" persona, passed away a few months later, in July, at 88 - leaving two children and three grandchildren. Marty was especially proud of being one of the first "corporate raiders" - the very first, he claimed - having wrested away the management and control of the **Cincinnati Union Stockyards Corporation** in a proxy fight, way back in the 1970s. For some early photos of the Glotzers in action, go to www.OptimizerOnline.com and search the HISTORY tab.

White-collar crime watchers who feared for the worst after Trump's summary dismissals of U.S. prosecutors - were surprised and delighted to see that **Robert Khuzami** has been appointed deputy U.S. Attorney in Manhattan. Khuzami had been a former U.S. District Attorney for the Southern District of N.Y., and later a star-reformer in the SEC's enforcement agency, following the **Bernie Madoff** scandal that the SEC had entirely missed. As the *New York Times* observed, *"Manhattan has traditionally been one of the most aggressive pursuers of cases involving white-collar and Wall Street crime, and Mr. Khuzami's background means he could become one of the country's top financial watchdogs."*

Gretchen Morgenson, the inimitable, Pulitzer Prize-winning business reporter, has left the *New York Times,* after a 20-year stint. For a quick review of her past efforts to report much-needed corrections of marketplace practices - including her prize-winning coverage of the 2001 period of bubble investing - see the January 9, 2009 interview in *Columbia Journalism Review*'s The Audit; "*You've got to keep hammering"* and her farewell column in the Dec. 12th *New York Times*, *"Reflections of a Truth Seeker."* Happily, for fans of Ms. Morgenson's rock'em sock'em reporting style, she will be continuing her work as senior special writer on the *Wall Street Journal*'s investigative team.

David Smith, who served nearly 20 years (1991 - 2001) as President & CEO of the **Society of Corporate Secretaries (…and Governance Professionals**, as its name was amended later in his career) passed away peacefully and surrounded by his family in early December, his youngest son **Jenner** reported, following an 18 month illness. David was a wonderful friend and mentor to many Society members, and a truly kind, caring and collegial man - who was an active leader at the Church of St. James the Less in Scarsdale NY for many years and who led the Society with distinction. Most important to note, David was one of the very first people to realize that the corporate governance movement was not just a threat to the "old Society" - but also presented the biggest opportunity ever in terms of new opportunities for career advancement, much greater visibility and importance, where Society members were concerned. David was the 2011 honoree at the annual End of Annual Meeting Celebration and Benefit for Fountain House and Fountain Gallery, sponsored annually by the greater NY financial services industry. Here's a link to the video, where David's gracious and typically modest comments begin about minute 6.3 or so: https://youtu.be/zHb7gqlPox4?t=6m42s

Renee Walton, who most recently served as Publisher & Director of Sales at **IR Media Group**, the publisher of ***Corporate Secretary Magazine***, joined the **Society for Corporate Governance** in January as Director, Sponsorship and Strategic Relationships. She will "support [the Society's] sponsorship efforts while developing new ways to partner with our service providers to benefit our Society members…. Renee's expertise and extensive industry relationships make her well-positioned for the exciting challenges of this new role," the Society noted, and we could not agree more wholeheartedly.

The **Society** release also announced the appointment of **Andrew Fitzsimons**, "who joins as Senior Director, Administration & Human Resources…and who comes to the Society with over twenty years of legal administration management experience - first at **Prudential Financial** and then at **Bank of New York Mellon**. Andrew most recently served as Chief of Staff/CAO to BNY Mellon's legal department [and] will be responsible for the human resources and financial functions, audit committee support, certification project management and other strategic initiatives. He started his career at Her Majesty's Treasury and the Crown Prosecution Service in the U.K., following his graduation from Harlington College in England."

"As the Society welcomes Andrew and Renee, we say goodbye to Olga Holmes, the Society's Human Resources and Operations Director, who will retire in January after serving the Society for 21 years in several capacities." Olga supported a total of five Society Presidents, according to their year-end release, and most ably so. We wish her the very best in her retirement.

REGULATORY NOTES…AND COMMENT

ON THE HILL: Wonder of wonders! Glimmers of bi-partisanship in the Senate - with agreements to roll-back regulations on small and medium-size banks and credit unions, rejection of Trump's proposed nominee to head the Export-Import Bank (who had pushed to abolish the bank as a Republican congressman) harsh criticism of the data breach at the SEC by both sides, and approval of two nominees by unanimous consent to fill the long-vacant SEC Commissioner seats.

AT THE SEC: Some good news here too, with indications that the old "broken windows strategy" of bringing lots of small cases for every conceivable violation would shift, to focus on intentional wrongdoing that affects investors and "to send a broader message rather than to sweep the entire field" as **Steven Pelkin**, co-director of the enforcement division put it.

And wow, Chairman Jay Clayton offered some kind words for important Dodd-Frank provisions!

And, happy day, the Commission itself ratified the appointment of existing in-house judges and will appoint them directly going forward, rather than having the H-R department do it. This after the Justice Department switched positions and decided that the H-R appointments were likely unconstitutional - as most savvy people had been saying for three years now, even while pointing out what a fast and easy-fix there actually *was*! (Ultimately, the Supreme Court will rule on this issue, and eight or so cases decided by in-house judges may end up being reversed.)

Five new commissioners were also appointed to the PCAOB in a complete overhaul of the board, which has always seemed mostly dysfunctional to us. While we applaud the recent audit disclosure moves, we agree with critics that the PCAOB needs to focus more on the "nitty gritty" - and we have been totally disgusted with the consistently high percentages of "failed audits" by major accounting firms that their "peekaboos" disclose year after year, and we remain doubtful that things will improve under the new regime.

A big move to watch, Brett Redfern, the former head of JP Morgan Chase's electronic trading group, has been named as the SEC's director of trading and markets, "signaling an appetite for shaking up rules that are blamed for fragmenting trading across dozens of venues and fomenting the rise of high-frequency trading" as the *Wall Street Journal* put it… And we hope they are right. Among many other things, the so-called National Market System (Regulation NMS) which, after ten years, is a totally dis-functional mess.

IN THE COURTHOUSE: Bad news for NASDAQ and the NYSE: A federal appeals court has ruled that a lawsuit accusing them of favoring high-speed traders over smaller investors can go forward, which will likely produce some interesting fodder for the SEC's Brett Redfern to chew on.

Bad news for lots of high-profile folks from Wells Fargo Bank - where a California appeals court ruled that derivative actions against 15 current or former directors and four current or former officers could go forward, despite defendants' claims that there were not enough specifics as to what they had done wrong - so that plaintiffs will have an opportunity to prove their case.

Very bad news for whistleblowers who loyally blew their whistles to the management team rather than to the SEC…only to encounter retaliation - not to mention no whistleblower rewards. Several justices on the Supreme Court have expressed the view that they can not find justification for "expansionist protections" of whistleblowers in view of the plain language of **Sarbanes-Oxley** where the SEC was the only place mentioned as the place to go.

WATCHING THE WEB

Oddly enough, we think that "watching the web" may well have been the driving force behind Pepsico's move to NASDAQ. Aside from the aura of being more modern, and more "tech savvy" than the stereotypically stodgy NYSE, maybe the wide array of higher-tech products and services that NASDAQ offers its listed companies is starting to generate some traction these days.