THE SHAREHOLDER SERVICE
OPTIMIZER
HELPING PUBLIC COMPANIES - AND THEIR SUPPLIERS - DELIVER BETTER AND MORE COST - EFFECTIVE PROGRAMS
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COMING SOON:

THE SPRING 2007 ANNUAL MEETING SEASON...AND WHAT IT PORTENDS FOR 2008

The really big development in the 2007 Season was, of course, the big number of big votes in favor of 'say on pay' - exactly as we'd predicted there would be. Blockbuster started off the season with a blockbusting 57% of the vote in favor…soon to be followed by Apple (46%) Bank of New York (47%) Boeing (40%) Citigroup (43%) Merck (49%) Occidental (48%) and Verizon (50.1%). At the New York Times Co. investors withheld 42% of their shares from the directors up for re-election – which amounts to 54% of the stock held by investors other than the Ochs-Sulzberger family.

Clearly, with big votes like these, many more high-profile companies will be targeted for say on pay proposals in 2008…And the dozen or so companies that drew a free pass by joining one of those 'study groups' will have to move to the music…or face a near certain campaign, with even bigger than average consequences we predict, for failing to adopt some sort of say on pay measure after going to school on the topic. **AFLAC**, as we noted in our last issue, has already adopted a 'say on pay' policy voluntarily – beginning in 2009, after investors have had the benefit of the added SEC-mandated disclosures on executive pay – and we bet that there will be more such 'volunteers'. As we've said before, we're convinced that say on pay will inevitably become the norm – exactly as majority voting is fast becoming the norm at US companies.

The other big development this Spring was the big number of "vote no campaigns" against directors of companies that were perceived as awarding 'too-high pay' – or where directors failed to act on shareholder proposals that received big numbers last year – or where directors were otherwise perceived as not acting in the best interests of shareholders.

But even more significant were the big numbers of votes that were withheld from directors in vote-no campaigns. At **CVS Caremark**, for example, where a union-based coalition, **CtW** [Change to Win] **Investment Group** urged voters to withhold votes from two directors because of a 'flawed process' that led to the CVS/Caremark merger, one director had 44% of the votes withheld. And, exactly as we'd been predicting would happen in such cases, the savvy investors concluded that without the "phantom votes" cast by brokers under the "ten day rule", he would not have won a majority at all. CVS/Caremark refused to con-

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firm or deny CtW's assertion that without the 264 million broker votes, the director would have received only 43% of the votes, saying that not all the broker votes went for the director, but refusing to give the exact breakdown…even while acknowledging that CtW's conclusion was 'potentially correct'. How dumb could they be? This absolutely guarantees even more election issues next year, with even bigger totals going against them, since almost every single institutional investor votes-no against companies that fail to act on matters that receive widespread backing from "real shareholders". At **International Paper**, for example, one director – who was targeted because the board failed to act on a proposal to end the staggered board that got 65% of the vote – saw 38% of the vote withheld from him. We bet that he too would have gone over 50% against without the broker vote. The other targeted director had 25% withheld, illustrating another important thing to note – that some voters still do a fair amount of due diligence, and don't accept the recommendations of advisory firms automatically.

At **Yahoo**, where some or all of the three comp-committee directors who had been targeted in vote-no campaigns had one-third of the votes withheld (and where Yahoo too refused to release the exact numbers) there were even bigger consequences, when the CEO resigned shortly thereafter. Although there were other issues on directors' minds, for sure - like sagging returns and massive defections of key staffers - one can be fairly sure that the desire to save themselves - and their already tarnished reputations - weighed heavily on directors' minds as they pondered the election returns. Further to this point, a recent study by **Booz Allen** showed that boards are almost three times as likely to force out a CEO, compared to ten years ago: Nearly one in three CEOs who departed in 2006 were fired or forced out, the survey showed.

The big takeaway here where Annual Meetings are concerned, is to note that vote-no campaigns are turning into a very big, and a very effective stick indeed – also as we predicted – and that's *before*, please note, there's been any SEC action on the NYSE's pending proposal to do away with automatic broker votes for directors…and before the new "Notice and Access" rules have given activist investors the chance to run very low-cost, web-based and web-enhanced campaigns to 'vote no' – or maybe to vote for a new slate entirely…which is already shaping up as a fast growing trend.

But the biggest and hottest emerging issue, we think – and something of a 'sleeper' so far, to judge by the small amount of commentary we've seen on the subject elsewhere – are proposals that would allow individual holders – or shareholder groups with 10% of the outstanding shares - to call a special meeting of shareholders. Such proposals have passed at **AMR** (where proponent **John Chevedden** noted that **Fidelity**, **Vanguard** and numerous public pension funds support such proposals), and at **Citigroup**, **Electronic Data Systems**, **JPMorgan Chase** and **Time Warner**.

Yet another "unintended consequence" of corporate opposition to "shareholder access to the nominating process" we say…and one with very far reaching consequences, since "special meetings" can be called for all sorts of things.

# # #

SEC MAKES NOTICE AND ACCESS MODEL MANDATORY

Building on the "voluntary model" released in January, "accelerated filers" will have to follow the mandatory model for Annual and Special Meetings on or after Jan. 1, 2008 – except where business combinations are involved – where paper materials will still have to be sent. Other issuers, including registered investment companies and solicitors other than the issuer will have to follow the model effective Jan. 1, 2009.

As with the voluntary model, issuers have two options – the "notice only" option and the "full set delivery option" and, as before, issuers can use one option for some shareholders and the other for different shareholders if they wish to do so. Under the "notice only option" issuers will have to send a Notice of Internet Availability of Proxy Materials to shareholders at least 40 days before the meeting…post the proxy materials on an Internet website, in such a way that shareholders can readily search the documents and print them out if they so desire...and stand ready to send printed copies of the proxy materials if shareholders request them, free of charge.

The only real change with the "mandatory model" is that issuers MUST post their proxy materials on an Internet website - 40 days before the meeting – which for many companies will represent "greatly accelerated filing" indeed. At least a half-dozen companies are planning to use the model for Fall 2007 meetings, so stay tuned.

Almost everything **you need to know about Notice and Access can be found at www.thecorporatecounsel.net,** where a webcast of experts, moderated by **Broc Romanek**, and where your editor also offered 'color commentary' and some practical, practice tips can be found, both in text and audio versions. But please see the next article for some additional practical tips, and feel free to call us if you have other issues or questions to kick around.

SOME PRACTICAL PRACTICE-TIPS ON USING THE NOTICE AND ACCESS MODEL – WITH PARTICULAR EMPHASIS ON THINGS TO THINK ABOUT IF OTHER ENTITIES USE IT AGAINST YOU

The ink was barely dry on the SEC release when our phone began to ring, with questions on practical issues. The first was from a company that was already gearing up for next season – in light of their gut feel that they would be the subject of Internet solicitations to vote no on some directors – and perhaps on other matters too – and maybe to be faced with an opposing short-slate - but in any event, wanting to be fully prepared, well in advance, come what may.

The number-one question, should such a counter-solicitation occur - and one the full SEC release sort of points readers to - is whether, and to what extent, a proxy vote for the dissident group might totally invalidate an earlier dated vote for the full management slate. "A very good question indeed" we told our caller, "one you're very wise to be asking about NOW – the right answer to which is 'it's all in the doing, and in the fine details…And there are some tactical issues to think about too'."

Let's say a dissident group is soliciting votes "against" particular directors at a company that has a majority voting standard. Unless they are total dummies, they will also be offering an equal number of candidates of their own as substitutes since, with the better-designed majority voting provisions, a director simply needs more 'for votes' than 'against votes' in order to be elected. (But readers, DO check your own standards, since some companies with "majority voting" require a majority of the 'votes cast' - or of the quorum, where 'abstain' votes would also amount to votes-no – in order to get seated…which are different standards altogether).

Now let's say you have a 'routine proposal' on your ballot; one that simply requires a majority of the quorum to pass. If a shareholder executes your proxy…then decides to 'vote no' on certain directors, using an opponent's ballot – and that item is not ON the opposition ballot, most Inspectors of Election will rule that the latest ballot overrides the earlier one *completely*. Thus, NO VOTES for your routine proposal. Proxies presented by two sides that bear the same date will normally be treated as 'stand-offs' with no vote recorded for either side. Thus, you might want to ask the dissident group to include ALL the items on your ballot on theirs…Or you may want to consider adding language to your proxy card that *might* allow the Inspector to count the votes on your proxies on matters that are not on opposition proxies…but this seems to us to be a mighty tricky task. Or you may simply lay in the weeds, and hope that the dissident group, whose own proxy probably allows them to vote AS THEY WISH on 'all other business' will vote for you on truly 'routine matters'…But don't count on it, we say. So, unless you approach the dissident group to discuss the "other matters" that may be on your ballot, you run a very real risk that they won't pass at all, even though they're "routine". Our advice is to do it - unless you're really sure they'll end up with an immaterial number of votes - since, in our experience, dissident groups will generally go along where truly routine matters are concerned, and if they want to spite you by voting no on everything, they'll do it anyway.

Perhaps the biggest question is whether to use the 'notice only option' yourself, and here, our advice is quite straightforward: If you expect there will be organized opposition to anything at all that's on your slate…or have *potentially contentious* issues on you ballot, for that matter…go for the "full set delivery option" – and do the best possible job you can do of positioning your company well in the AR…and positioning your positions well in the Proxy Statement. But…since you will have to post your materials on the Internet anyway…and since you should assume that dissident groups can and will post some counter-soliciting materials on their sites, or in chat rooms…make sure that your own Internet site is also as robust as it can possibly be. ***One of the biggest and most important takeaways from Broc's webcast, we think, is that companies need to become much more proactive when it comes to their own proxy-oriented websites: The worst thing that can possibly happen to you is to be in a position where you're constantly rebutting what's on the dissident sites, blogs or chatrooms – and where you're 'protesting' and basically making your case belatedly. Always remember; the best defense is a strong offense.***

But let's say that all you will have on your ballot are totally routine matters: Here we say, go for the big savings that Notice and Access has to offer. For starters, however, make absolutely sure that you'll get enough votes from institutional investors, corporate insiders and employee plans to make your quorum…Otherwise you'll blow all your savings, and more, on extra proxy solicitation costs, and maybe on a second or third adjournment. If there's any doubt at all, simply go for the 'mixed system' we say, by delivering printed materials to your bigger individual holders, at the very least.

So how does one calculate the potential cost savings, assuming Notice and Access to the max? Our model, we should note, is quite different than the one that's outlined on Broc's webcast - and it's a lot simpler too, we think. Let's say that your company, like many of the larger US companies, is 65% (or more) held by institutional investors…with maybe 10% in various employee plans…with the rest held by thousands of individual holders, some 'of record' and some in street name: Under these circumstances - and

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IMPORTANT PRACTICAL TIPS...

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assuming no contentious issues – we wouldn't mail printed materials at all…but we would print 10% - 20% as many sets of plain paper ARs and proxy statements as we have individual investors, 'just in case'. Our 'bet' would be that no more than 5% of your individual investors – including employee owners too – would ask for printed matter…so do the math and book the savings…with two caveats, neither of them any big deal, dollar-wise, we'd say: (1) Make sure you know ahead of time exactly what it will cost to restart the presses and print more sets, if need be…and (2) Make sure you know what you'll be charged, all-in, both for 'set-up' and for fulfillment charges, per set… "just in case". ***Our own "worst case prediction" if one follows this scenario? Savings of at least 50% - and likely a lot more – on printing and postage.***

# # #

THE BEST...AND THE WORST MATERIALS AND PRACTICES FROM THE SPRING 2007 ANNUAL MEETING SEASON

BEST AND MOST COST-EFFECTIVE ANNUAL MEETING 'PACKAGE': PFIZER INC…Absolutely required reading, we say, for designers, writers and editors of Annual Reports and Proxy Statements – even if your company doesn't seem to be under the microscope more than usual, as Pfizer still is…but especially so if you want to prepare against such an eventuality. The "Annual Review" is candid...("Strong Medicine…Our Prescription for Change" is the title)…Crystal clear…(with five "Immediate Priorities" carefully and clearly described…as are each of the five matching "Action Plans"…that also focus readers' attention on current and future products, brands and business strategies… and how it all 'fits together')…Visually engaging (it actually makes you want to look, and to read on with a bit of care!)…and amazingly brief: A mere 42 reader-friendly pages. The "'Notice of Annual Meeting…Proxy Statement, 2006 Financial Report and Peer Group Performance Chart" is required reading too, for its format, 'openness', shareholder friendliness and overall clarity… and transparency. We especially like the way the Governance Principles are positioned "up front", the crystal clear, investor-friendly and well-thought-through section on Communications with Directors…and it's the first time we've ever seen the Performance Chart, which is one of the first things *we* tend to look at, as investors, highlighted in such an open and investor friendly way…an even bolder thing to have done, since Pfizer underperformed peers over the last five years.

BEST-WRITTEN ANNUAL REPORT: BERKSHIRE HATHAWAY…as always, and by a country mile: Talk about openness…transparency…clarity…a document that is truly engaging (despite, or maybe because of its trademark 'school notebook style' cover, but mainly because of its informative, folksy and plain-English English)! If that isn't enough, we guarantee it will give you at least three good belly laughs besides. (It's still on the web, of course: Go there to see what really good writing is like…And please note that you don't really have to be Warren Buffet to write this way. Just pretend, as he's said he does, that you're writing to a favorite aunt.)

BEST WEB PRESENTATION: G.E.: If you're looking for 'the gold standard' here, look no further: Go to www.g.e.com and start with the video introduction/overview from CEO Jeff Immelt. This, as we've also been advising for three years now, is one of the best and most powerful ways ever devised to communicate effectively – and cost-effectively – with ones' shareholders…When done right, that is. (We can see exactly why Joe Nocera liked him so much. He comes across as a 'real person'…who's not been prepped and over-rehearsed by 'handlers' as so many wannabe 'video-stars' seem to be…which is something to watch out for if you're ready to try this at your own company). Then go to the report itself and note how the index, along the left side, allows you to toggle back and forth with relative ease. Now if only they tie this in to the voting site next year…and give us a clear roadmap for voting over the web, we'll be ready to give up the paper copies!

BEST ANNUAL REPORT COVER: IBM…which started the letter to shareholders right on the front page, thereby cutting straight to the chase, grabbing the readers' attention right off the bat – and effectively using the costly cover in a highly cost-effective way…exactly as we've been advocating since we started this column over ten years ago. (Hey IBM…how about using the inside and back-outside cover for something useful too next year?) **RUNNER UP: COMCAST**…for one of the very few A-R covers of almost 100 we looked at that made you look twice…and made you want to look inside.

BEST USE OF 'BRANDING' AND 'BRAND RECOGNITION': EASTMAN KODAK and **TIFFANY** (tie): We've been writing about 'brand equity' and about how much it's really worth to stockholders for 13 years now…And perhaps the best proof we might offer of how *powerful* good branding can be is right on the cover of these two annual reports. And maybe the most amazing thing is how their brand identity is *instantly conveyed* by one seemingly simple thing…color. Take a look for yourselves, we urge, and resolve to work harder on your own branding strategies next year. (Also, check out our In-Box column for a dramatic update on our last blurb about brand equity).

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THE BEST AND WORST MATERIALS...
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BEST DISCUSSION OF EXECUTIVE COMPENSATION: MICROSOFT…hands down. It helps, of course, that "No stock options were granted to any of the Named Executive Officers" in '06… and that none of them have change of control arrangements, and that "all other compensation" for the top guns is negligible, so text and footnotes are especially short - and sweet. What really makes this the winner, however, is the carefully articulated and very strategically designed comp *strategy* piece…plus the claw-back provision, should any hanky panky in making one's numbers be discovered post-facto.

BEST SENTENCE WE READ, IN WHAT'S USUALLY A MINDLESSLY WRITTEN BOILERPLATE SECTION: DUKE REALTY…in their Notice of Meeting: *"As in past years, we believe that both the shareholders and management of Duke Realty Corporation can gain much through participation in this meeting. Our objective is to make it as informative and interesting as possible."* WOW! Would that every company - and every Annual Meeting planner - were to adopt this as their mantra, and as their mission.

OUR HALL OF FAME AWARDS FOR USEFUL, INVITING AND *MONEY-MAKING* SHAREHOLDER OFFERS: GEICO (a Berkshire Hathaway co…for its 8% Shareholder Discount, humorously and compellingly proffered by - who else? - the Geico gecko)…**IBM** (which offered "Two words about shareholder discounts…Employee Pricing" on **lenovo** laptops: "You pay what we pay") and **TIME WARNER**, who, God knows, owes shareholders a *big break* these days, for really steep discounts on up to four of their magazines. Why don't more companies try to build a bit of added shareholder goodwill – and build up their sales too – by offering similar perks to their share owners? Darned if WE know, since the cost to make and to honor such offers is darn near zero!

NIFTIEST INNOVATION: ELI LILLY...which included a Complimentary Parking sign, in big red type, on the back of their map. "Please place this identifier on the dashboard of your car as you enter Lilly Corporate Center so it can be clearly seen by security and parking personnel" it said. WOW AGAIN! Whoever put this idea into the suggestion box deserves an extra week off with pay, we say.

WORST ANNUAL REPORT COVER (ALSO, BIGGEST WASTE OF SHAREHOLDER MONEY): RANGE RESOURCES…which, sad to say, has won these two awards several times before. All we can think is that whoever the IRO or Corporate Communications guy or gal is – who wastes so much money year after year on fancifully-fabricated A-Rs – must have a brother in the printing business. This one has a "double cover" that's been embossed, expensively "machine pierced" to create four see-thru bars, revealing photo-snippets of sky, trees and oil rigs, then folded back on itself and glued together, at the top and bottom to form an 'empty pocket'. (What irony here!) . **FIRST RUNNER-UP: DIAMOND OFFSHORE DRILLING**…for it's oversized, coffee-table format - printed on super-heavy art-book quality paper…And FOR WHAT? we want to know! This kind of reckless abandon when it comes to spending shareholders' money seems to be a regular thing with "wildcatters" and really oughta stop.

WORST PROXY CARD LAYOUT: MATTEL…What in the world were they thinking at Mattel…and at Computershare…for designing and actually approving this hideous and confusing layout job? Perhaps the worst looking form we've ever seen…And a form with big governance flaws too, with a too-small "box" in which to "specify instructions with regard to cumulative voting" and no room for the shareholder signatures on the face of the card itself.

WORST ADMISSION CARD: MATTEL…What's UP at Mattel? you want to ask when you look at this big pink thing, printed on stiff 8 1/2x 11" stock, headed "ADMISSION POLICY". Both sides of the document are filled with lists of the kinds of documents you need to bring in order to be admitted - depending on when you bought your stock and where you hold it. Are they expecting record-breaking crowds, for some reason we don't know about? Are they expecting a riot? What an unsettling and unwelcoming welcome mat this is!

MOST MOURNFUL NOTE SOUNDED AT AN ANNUAL MEETING: FORD…which tolled a ship's bell to signal to speakers that 'their time was up'…sounding for all the world like a series of burials at sea.

AND FINALLY...OUR ANNUAL FICKLEFINGER AWARD…TO AT&T…for
once again describing its own proposals on the proxy card, while designating the five shareholder proposals as proposals 4 through 8. What outrageous disrespect, we say – not just for the proponents, but for voters in general – and certainly not at all in line with the impartial treatment of proponents that the SEC normally expects of registrants. We've been awarding the Ficklefinger Award for about ten years now - to companies that 'show the finger' to stockholders (last year's winner was, of course, **Home Depot**) and the 'fickle' part of the award is that the finger has had a long history of pointing back at the owners and fingering *them,* usually in a deservedly humiliating way, as BAD ACTORS. We'll be writing AT&T – and copying the SEC – and if we don't hear that this will be fixed for next year, they can count on us for "proposal 9" at next year's meeting.

# # #

SURE, YOUR 10-K IS DONE, BUT DO YOU REALLY KNOW HOW MANY TREASURY SHARES YOU REALLY HAVE...AND WHERE THEY ARE?

In our little sideline as Inspector of Election we get to look at a lot of corporate shareholder records. And, because we handle a lot of close – and/or closely contested matters, we often need to look at such records intensively.

At a recent shareholder meeting, we noted that roughly 10% of the 'outstanding shares' were described in the Proxy Statement as being Treasury shares – which *we* know are non-voting – but a fact the opposing slate either had not taken note of, or failed to understand - because it gave them a much higher percentage of the quorum than they seemed to know they had in hand. "Where the heck *are* these shares?" we asked the Corporate Secretary… who said he'd have to ask the CFO.

It took a full week for them to figure out where, exactly, their Treasury shares were and how, exactly, they were registered. As it turned out, they were in 13 different places! Only one position - and a distinct minority of the total - was registered in the name of the company – as one would ordinarily have expected all the Treasury shares to be. Other positions were parked at various brokers - and a few banks too - that had been involved either as the 'agent' and/or as the custodian for the agent in various share repurchase operations. Still other positions were registered in the names of subsidiaries of the parent company (!) and effectively 'buried' in the shareholder records, thanks to the rules of alphabetizing; rules which, by the way, many transfer agents seem to observe more in the breaking than in the observing these days.

So what's a smart public company to do with their Treasury Shares, we asked ourselves - especially with all the buyback programs that seem to be the rage these days?

The easy answer – if you're the Corporate Secretary that is – is to leave it up to the Treasurer, who, after all, is in charge of those buyback programs. But frankly, this usually doesn't help to solve the shareholder-recordkeeping issue in our experience – since Treasurers and Treasury Departments only rarely seem to know how brokers, banks and transfer agents actually work, once the 'buy' is made.

Another *seemingly easy answer* is to tell everyone involved that the shares must be transferred ASAP to the Company name. But frankly, this doesn't work too well either, since, depending on the broker one uses – and on exactly what you tell him to do – and on his own back-office procedures – and on whether they clear their own trades or use a clearing agent – it can take *weeks* for the transfer to take place and for the shares to end up where you want them to be, and where you can finally know with certainty that they're there.

Our advice, which is really a lot easier than it may sound at first, is to have your transfer agent keep ALL of your Treasury shares. Further, they should keep them in a "book entry account" (no stock certificates at all, we say) - where all the shares will be "registered" in your Company's name; clearly labeled as Treasury Shares too - and where the Direct Registration System will be used, with no exceptions, to have your T-A receive book-entry deliveries - on T+3, with no exceptions - for any and all shares your agents or their agents may handle in connection with a share repurchase program.

One last bit of advice - advice that seems especially important at a time when so many companies are initiating or increasing the size of share buyback programs, and where many companies seem to be using multiple brokers - is to insist that your Treasury Department reconciles to the T-A's number on a weekly basis; otherwise, if there's a 'difference' it will take forever to figure it out.

AND WHILE WE'RE ON THE SUBJECT, DO YOU KNOW WHERE ALL THE SHARES IN YOUR VARIOUS EMPLOYEE PLANS REALLY ARE... AND WHAT THE 'VOTING POWER' ACTUALLY IS... AND WHO, EXACTLY, HAS THE RIGHT – AND THE DUTY – TO EXECUTE THE PROXY CARD, BALLOT OR VIF?

These questions are also among the top-ten questions we ask when serving as Inspector of Election…and we rarely find a company that has any of these answers readily at hand!

And these questions – and the right answers too, of course – are becoming increasingly important as election results on so many matters are getting closer and closer – and will get closer yet, when it comes to electing directors – or not – if and when there's no 'broker vote' to count on.

As we've been saying for thirteen years now, employee plan votes are typically the single largest identifiable 'block' of votes a company has. And they ought to be among your *friendliest votes*. And they ought to be the easiest and cheapest votes to round up too…if, that is, you know what you're doing, as so few companies do!

Every single year over the past 13, we see company sponsored proposals that fail to pass - that *would pass* - if only the employee plan turnout was bigger. And we see activist proposals that sometimes pass by a hair, or that

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HOW MANY TREASURY SHARES...

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often get much bigger percentages of the 'votes cast' than they otherwise would, if employee voting participation were bigger. And we still dread the day – which we know will come to some hapless company before too long – when a big chunk of the employee plan vote will be deemed invalid, because the Plan Trustee failed to execute the proxy card correctly. So please, dear readers, bone up on these questions – and on the answers – before your next Annual Meeting rolls around.

# # #

TIME TO TAKE A FRESH LOOK AT ALL YOUR MEETING LOGISTICS

Now is the perfect time to do this, we say – with your own meeting, and those meeting headlines still fresh in your mind…and while you have, we hope, a tiny bit of free time.

A humorous article in the WSJ remarking on "Beefy Greeters"…plus the perfectly awful Admission Procedures we received from Mattel…plus our own perception that we hadn't looked at this ourselves in many a year prompted us to look back at what we've printed in the past. Much to our pleasant surprise, we discovered that the article on our website, **www.optimizeronline.com** on Annual Meeting Security; Our Top-Ten Tips for a Safe and Orderly Meeting is still very much on the money…and that a few intervening articles – such as our much-heightened warnings about security issues that followed 9-11 and anthrax at the Post Office – are not nearly as urgent, though still worth reading if you think you may have extra grounds for concern.

A few fresh tips we'd add in light of present day realities:

DO Google your company up, to see what others are saying about you…but

DO NOT over-do your follow-up "investigations", as Wal-Mart did, much to its public chagrin when it got found-out by shareholder proponents (Ouch!)

Give some fresh thought to making your Annual Meetings a lot more inviting and informative than usual (see the remarks about the Pfizer, Duke Realty and Mattel materials in our Best and Worst section of this issue)…and maybe…

Re-read our article on getting the most value possible for the big dollars you spend on the A-M.

WATCHING THE WEB:

Investor activist and PR maestro Gary Lutin has teamed up with the **Association of BellTel Retirees, Inc.**, which claims over 110,000 members, to host an ongoing "Investor Forum"… "to provide shareholders with access to and a free exchange of views on issues relating to their evaluation of alternatives". Required watching, we say. We've got it bookmarked: **www.shareholderforum.com/vz** . More such forums sure to come we'd predict from the moniker…as we've been predicting for years.

How could we possibly fail to note the incredible stupidity of John P. Mackey - the otherwise incredibly smart founder and CEO of Whole Foods Market - for praising himself and his company, and dissing rival **Wild Oats** - anonymously, or so he dopily thought - using an anagram of his wife's first name to create his own 'sock puppet' on the WWW. Quite aside from other non-anonymous - but he thought 'private' emails - that queered his bid to buy Wild Oats, once the FTC read them, he's now reportedly under investigation by the SEC…No doubt for Reg. F-D (remember "Fair Disclosure"?) violations. We think it was former SEC commissioner **Grundfest** who first reminded us that **"The E in E-mail really stands for 'Eternal-evidence"…**but it's still something that so many otherwise savvy people still fail to note. (It's called *hubris,* and it's been biting people in the arse…reminder to oneself…) since the days of Agamemnon)

# # #

QUOTE OF THE QUARTER...

"There is no better way to deal with a mistake than to acknowledge it, fix it and move forward. We apologize for last year's meeting. It was a mistake, and we won't do it again."

Home Depot's new CEO, Frank Blake…at the 2007 Annual Meeting

COURT PROHIBITS STATE OF CALIFORNIA FROM ACCEPTING ABANDONED PROPERTY INCLUDING, BUT NOT LIMITED TO SECURITIES. SHOULD *YOU* BE CONCERNED?

The US District Court order, effective June 1, arises, at least in part, from a claim made by an Intel shareholder (a case reported here earlier) whose shares were escheated to California, a state that made no attempts whatsoever to locate 'lost shareholders' and which refused to pay the 'found holder' the appreciated value when she came forward…which fast turned into a Class Action.

The preliminary injunction creates a $300 million dollar hole in the state's annual budget, we're told, which the State Controller is anxious to fix with new legislation that would repeal restrictions on the Controller's office that made them "unable to notify more than 80% of unclaimed property owners that the State has received their property" and "prohibits spending more than $50,000 to notify the general public that their property may have been turned over…"

The proposed law, SB 919, would require an effort to contact some 800,000 people whose property has been sold off and "is available for them to claim" according to the Controller's press release; something that will, almost certainly, shake a lot of your old and formerly lost shareholders out of the woodwork, we'd imagine.

It would also provide that if the Controller sells securities within 18 months of receiving them, and the owner comes forward within another 18 months, the claimant will receive either the full value at the time of sale or the appreciated value, whichever is greater. But if the sale is made after the 18-month period, the claimant will receive the actual value at the time of sale: Two giant and easily-exploited loopholes, we'd say…that increase the liabilities of corporations who may be found to have "not done the right things" by holders, and by other Courts…in light of the fiduciary duties that corporations owe their holders in the first place.

We've been writing about abandoned property – and about the major potential for serious mischief on the part of corporate employees …and corporate vendors, agents, and assorted other "heirfinders", fast-buck experts and some outright fraudsters – since our very first issue – AND about what a good, and smart corporate citizen should be doing in self-defense…but the scandals keep breaking. (Just last week we heard about a Fortune-10 company that hired an 'expert firm' to help them with their abandoned property compliance problems, only to discover later that the firm had masqueraded as 'found holders', making off with the dough…One of the oldest tricks in the book, by the way!).

So here, for the umpteeumpth time, are our top tips on dealing with abandoned property if you are a publicly-owned company:

First and foremost, recognize that your company has a fiduciary duty to its investors to "do right by them"…and that it's very easy for investors to allege and for Courts to decide that you have breached this duty - and to hold your company liable for actual and *punitive damages*.

Recognize too that even if YOU have done right, the reputational damage to your company – and to you – can be enormous if someone on your staff, or at one of your vendors is found to have 'done wrong'.

With this in mind, make sure that any actions you take – or decide not to take – or decide to outsource to an agent or other vendor who is NOT a fiduciary – will stand up in a Court as being reasonable and appropriate ones under the circumstances – And especially, we say, in light of both the actual and potential monetary amounts involved.

If you delegate *any* searching, tracing, recordkeeping or escheating duties to third parties – as almost all public companies do – make sure that (a) you check their references, their officers and directors and their financial and regulatory history and 'condition' with extreme care…and (b) that they have similarly tight controls in place to check on their *own* employees.

Be aware that in many instances where you delegate the searching, tracing and escheating functions to third parties there are inherent conflicts of interest that you should be guarding against; for example, as reported here before…companies that use the worst possible database they can buy to do the 'required searches', so they can make more money by taking a big cut later, from ultimately 'found holders'…or by splitting the money with fellow finders, agents, or with 'clearing houses'…or, God forbid, by stealing the money outright. You, as the fiduciary, could well be found liable for any shareowner losses here…as, frankly, we think that companies that don't do their duty should be.

Thus, before you turn over your corporate records on abandoned property to anyone, be sure that you know exactly what kind of property it is, and how much it's actually worth…and exactly what your vendors intend to do to find the legitimate owners…and exactly where the vendors' money will come from…and how much it's likely to be.

# # #

ELSEWHERE ON THE SUPPLIER SCENE…

The amazing Howard Christensen – a former top-audit-firm partner, Corporate CFO and IRO, Corporate Secretary, founder of one of the first really big IR firms, and one of the smartest and savviest advisors one could possibly find, then and now – is back in the saddle again, after a brief try at retirement. The Chairman of the Advisory Board of **Capital Markets Board**, he's now the founder and managing director of **Directors Intelligence Resource Center**, where he oversees board director education and development programs and executive coaching services. His latest article on "The Smart Board", which he co-authored with **Marilyn Seymann**, Associate Dean of the **Sandra Day O'Connor College of Law at Arizona State U**, and a faculty member of **NACD**'s **Directors Institute** was featured in the May 2007 issue of the NACD's *Directors Monthly*. Required reading, we say. If you've got a really knotty issue you'd like to talk through, or if you or someone on your board needs a truly seasoned advisor, contact him at **hchristensen@capitalmarketsboard.com**

Deloitte & Touche LLP had to perform additional audit work at six public company clients, following the 2007 inspection report issued by **PCAOB**…although none of the work led to a change in Deloitte's overall conclusions on the firms, they said.

Moody's Investors Service says it will begin to take the differences in pay within an executive team into account when it sets it bond ratings…And **Morningstar says their new rating system for Mutual Funds will double the weight assigned to "stewardship"** including "corporate culture" and the percentage of independent directors. We love it!

NASDAQ is launching a "recruiting site" to match-up wannabe directors with listed companies that could use them. Companies that sign up will pay $10k – 15k to use the site; wannabe directors will pay $250-$300 to list their profiles, and NASDAQ will get a $20k finders fee from companies that find a director on the site. Worth watching….

NASDAQ is also rolling out "Pinpoint Market Intelligence" – a stock surveillance service: The "muscle behind Pinpoint is **John Voght** from **Technimetrics** via **Thomson Financial**" said the **Cross Border** *Breaking News* posting, "who another Technimetrics veteran here at the [NIRI] conference calls a 'genius'" the article added.

Thomson Financial made big news by snapping up Reuters Group, in a $17 billion deal…greatly strengthening its total portfolio – and its already strong position in the public-company world…and prompting breathless speculation in a WSJ column that the merged entity "Has a Shot at Challenging Big Rival"…**Bloomberg**.

Thomson Financial also has the results of a major survey on its website – showing a MAJOR DISCONNECT between the big weights that professional investors place on "corporate responsibility" vs. what US executives THINK they place on such measures. The survey – and Thomson's suggested action plan - are also REQUIRED READING…and very much worth passing up the ladder too.

Does anyone remember the "Socks and Stocks" experiment at Sears Roebuck? Not Wal-Mart, we'd guess…which recently announced they'd teamed up with low-priced broker **Sharebuilder Corp**. to offer **"Wal-Mart Easy Investing by Sharebuilder"** via a link on its website. According to the WSJ, they "will begin promoting the service in its stores too." Since WE still love individual investors – and we sure love low fees - we wish them the best. But readers, whadda'ya *really think* about the demographics here?

# # #

OUT OF OUR IN-BOX:

The **Eastman Kodak** and **Tiffany** A-R covers prompted us to look back at our Fourth Quarter 2006 issue, where we advised readers to help their companies build brand equity…as a way to increase both their stock price and their own value as corporate citizens…and where we'd cited **United Technologies**, which was gearing up to spend $20 million on such an effort in 2007 to fix the fact that their stock price was underperforming big vs. peers, while they were substantially outperforming them business-wise. Taking our own advice about the value of brand equity, we bought some United Technologies at $66. As we write this, less than four months later, the stock was hitting an all-time high of $76 and change. Brand equity, by the way, probably accounts for at least 70% of the stock market value of Eastman Kodak these days (*not* such a good thing in their case, but a lot better than the stock would be without it)…while the huge cachet of the incomparable Tiffany brand has been powering its stock to record highs.

Last issue's "Tax Season Stress-Test" of Transfer Agent call centers prompted a lot of comments ("the yearly fee was worth it just for the article alone" one reader emailed) …but not a lot of remedial action that we could notice. Just wait 'til you read about out efforts to sell shares with calls to their call centers….coming soon.

# # #

PEOPLE:

Thirty-seven-year securities industry veteran **John Bambach** - who's probably been on the scene of more Reorg jobs than anyone else in America, and who 'retired' in 2005 - has joined **Equisearch Services**, formerly a Choicepoint Company but recently acquired by a private-equity firm. Just in time, we'd say, to catch the big new wave of abandoned property arising from the buyout, merger and spin-off booms we're witnessing.

Laura Berry has been named Executive Director of the **Interfaith Center for Corporate Responsibility**, succeeding **Sister Patricia Wolf**, who resigned last year to become President of **St. Catherine Academy and Our Lady of Victory Academy**. Berry, 49, was formerly an SVP with the **Community Foundation for Greater New Haven.**

Jill Considine will retire as Chairman of **DTCC** in July, when she'll be succeeded by **Don Donahue**, the current CEO, who'll be Chairman and CEO. **Bill Aimetti**, who was elected COO last year, will become the President and COO.

Mike Deleray, President, US Equity Services for **Computershare North America**, has left the firm to pursue other interests.

G.E. CEO **Jeff Immelt** got truly royal treatment - a full color picture and over two full columns of adulatory prose – from the normally hard-hitting, Imperial-CEO-bashing ***New York Times*** columnist **Joe Nocera**, in his June 9 column. What a smart move on Immelt's part to give so much "quality time" to Nocera - who's long argued, as he notes, natch, that CEOs need "softer skills"… "to be good listeners, consensus builders, ambassadors to the larger world…to be able to do really hard things" and to have "Charisma…Empathy…authenticity"…like Immelt. Nocera, whose gushing prose *twice* washed over and softly brushed aside the inconvenient fact that GE's shares had failed to budge since he took over in September '01 (and who, it should be remembered, is the guy whose *reportage* on last year's **Home Depot** A-M - and on the failure of H-D stock to respond to Bob Nardelli's ministrations, despite, or perhaps because of his outsized pay for non-performance - made news in itself) clearly had the pants charmed right off him…which is…exactly…the point. Hats off to Immelt (whose stock *has* now budged a bit since the interview, for the first time in five long years)…and to his "corporate governance advisors", who no doubt helped him prep… and to Nocera too, for seeking out such a good example of someone who practices what Nocera preaches…and for showing off his *own* "softer skills", which are normally not that apparent to readers and observers of the famously crusty Nocera.

Marty Lipton, "the legendary mergers-and-acquisitions lawyer" got *his pants* soundly kicked around in a big July 6 ***Wall Street Journal*** column noting that "the behavior of some of his clients has raised questions about whether the legal ace is always giving such good advice – especially in the field of corporate activism." Among the many patented Marty Lipton *pronunciamentos* singled out by columnist **Rob Cox** was Lipton's recent derision of the seemingly *sensible* decision of **Pfizer Inc.** (a non-client, the column noted) to meet with corporate governance activists, which Lipton described (perhaps because it 'wasn't invented here', or perhaps because of Lipton's Pavlovian predilection for sucking up only to the Alpha-males of corporate top-dog-dom) as "corporate governance run amuck." (Or did he really mean 'amok'?) Then there's his famous "just say no" advice, which, Cox noted, has served Lipton clients rather poorly; to wit, former Imperial CEOs like **Disney**'s **Michael Eisner**, **Morgan Stanley**'s **Philip Purcell** and **Home Depot**'s **Robert Nardelli**…not to mention the totally weird, and we'd say badly conflicted advice he gave to his chum **Dick Grasso** – the recipient – and, contemporaneously, to the **NYSE** – the donor – of Dick's rich compensation, which Cox forgot to mention, but which led to Dick's humiliating downfall too. Next, Cox speculated about the advice Lipton may have given **Dow Jones**'s **Bancroft family**…who, a month after saying no to **Rupert Murdoch**'s offer, changed its mind; then, "rather than mandating the board to conduct an auction…wasted more weeks haggling directly with Mr. Murdoch" by which time, Cox concluded, "there was little chance of getting an auction going" and where the other wannabe bidders (those nobodies from **G.E.** and **Pearson**) withdrew. As a final kick in the pants, Cox noted that Lipton's "legacy as the father of the poison pill" (an invention that actually works in favor of long term investors, your editor thinks…even though we can't remember anyone actually downing one) is fast facing extinction… and that at their current going away rate, poison pills will be gone in four years, as Lipton turns 80. Ouch!

Milberg Weiss & Bershad shortened its name…again…as ex-partner **David Bershad** pleaded guilty to doling-out illegal kickbacks to plaintiffs and agreed to help the government's case against the firm…and against "**Partner A and Partner B**"…who are generally assumed to be **Melvyn Weiss** and former Milberg Weiss partner **William Lerach**…whose name disappeared from the door in 2004 when he left to form his own firm, which he now says he'll be retiring from at year end.

Tom Newton, **Computershare**'s DSPP guru, who was diagnosed a year or so ago with ALS, has been keeping mighty busy, we're glad to report. His recent ALS "Ride for Life" outing raised over $8,000 from his site alone. Meanwhile, the ALS campaign he's hitched to placed in the top fifty finalists for a special donation – up to $5million

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PEOPLE...
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from **American Express**, to be decided by card-member voters, where, unfortunately, the deadline is up before ours is. It's never too late to donate tho; http://2007alsride.kintera.org/tomnewton

John Stein, of **US Stock Transfer Company**, emailed us to say that contrary to what we reported earlier in connection with the acquisition of USST by **Computershare**, the client relations people at USST and **Jim Hunter**, the SVP Operations, will be staying on at the Glendale CA location 'til at least December 2009. John, who served 35 years at USST "and another seven between **Bank of America**, where I started, and **The Signal Companies**" will retire on August 31 and will move to his home in Koloa, on the South side of Kauai…proving, as we've said before, that there IS life after Stock Transfer!

Lynn Turner - the former **SEC** chief accountant who went on to become the managing director of research at proxy advisor **Glass Lewis** - and **Jonathan Weil**, its managing director and editor of financial research – quit the firm within days of one another in May, five months after its buyout by **Xinhua Finance Media**. Interestingly, Weil made a much noisier withdrawal than did Turner, telling friends and business contacts in an email, "To protect my reputation, I can no longer be associated with Glass Lewis or Xinhua Finance". Turner seems to be maintaining 'radio silence' about the disclosure omissions in the Xinhua prospectus concerning their former CFO, the potential for conflicts of interest where other Xinhua clients are concerned, and his own reasons for leaving – whatever they may be. Meanwhile, his critics wonder why Turner stayed on as long as he did, since, according to the WSJ, he first heard about the sale from his former boss and mentor **Arthur Levitt** - who was serving as a paid advisor to Glass Lewis - when Levitt called to blast him for not telling him what was happening! So far, big Glass Lewis clients seem set to stick with them: "We're satisfied with the services and products we've received" a spokesperson for **CALPERS** told the WSJ, and as to the governance and conflict of interest issues, "it isn't really something that we're focused on" she said.

# # #

REGULATORY NOTES...and comment

ON THE HILL...

Lots of big doin's as Democrats feel their oats…

A House committee is looking into the role of consulting firms that specialize in executive pay, and the potential for conflicts of interest that might prompt consultants to be overly generous in the pay schemes they recommend. (Who ever would suspect such a thing?) Consultant **Towers Perrin** got served with a subpoena when they failed to respond promptly with requested info, while three other big firms met the deadline.

New focus too on conflicts at pension plan consultants, following a GAO report, commissioned by Reps. Markey (D-MA) and Miller (D-CA) showing that consultants with undisclosed conflicts of interest, due to other services they render to pension plans, have results that are 1.3 percentage points lower than consultants that have no significant conflicts. Wow! Another big surprise!

Senator Carl Levin say's he's working on a bill to change the favorable tax treatment on some kinds of options, both to raise revenues and to rein in what he calls "excessive executive pay". He's asked nine companies to calculate the difference in what they would have expensed for stock options from 2002-6 vs, what they actually took in tax deductions, and claims that an "overly generous stock-option tax rule produces tax deductions that often far exceed companies' reported expenses."

Sen. Charles Grassley (R-IO) is introducing a bill that will require hedge fund advisors to register with the SEC, after a federal court threw out the SEC's plan to make them register as exceeding the agency's authority. And still another surprise (unless you're an Optimizer reader, that is) hedge fund scandals have been making the paper most every day of late, just as we'd predicted.

For the first time in ten years, all five SEC commissioners were called to testify – before **Barney Frank**'s (D-MA) **House Financial Services Committee**, where, among other things, Chairman Cox emphatically denied that the SEC was leaning too heavily in favor of business and said that a shareholder-access proposal would be coming…soon.

The Labor Dept. is asking for comment on the "administrative and investment-related fee and expense information participants should consider when investing their retirement savings" prior to drafting new disclosure rules for 401-k and similar retirement plans.

AT THE SEC...

Commissioner Cox has asked the Congress to repeal protective arrangements that allow money managers to pay "soft dollars" in the form of higher-than-average brokerage commissions, in exchange for research and other services.

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REGULATORY NOTES...

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New SOX guidance is out – which "enables companies of all sizes to focus on what truly matter to the integrity of the financial statements – risk and materiality" the press release states.

The SEC voted unanimously to allow non-US companies to file their financial reports using International Accounting Standards, without having to covert them to GAAP…signaling to many observers the eventual END of GAAP.

Two days of "Roundtables" were held on Proxy Voting Mechanics and on Shareholder Proposals, where a huge cast of vendors and a few industry luminaries fielded mostly meandering questions and made mostly meandering remarks rather than prepared statements, at the request of the Commissioners and staff. What a totally ineffectual way to get to the bottom of incredibly complex issues…and what a near total waste of time. The mostly useless and mostly embarrassing transcripts are on the SEC website if you have time weighing heavily on your hands.

On a happier note, a new Advisory Committee – headed by the brilliant and articulate Robert Pozen, Chairman of MFS Investment Management, a former Vice Chairman at Fidelity and a frequent commenter-in-plain English on complex financial issues – will work to make US financial reporting "more user friendly to investors". Members - 13-17 additional folks with 'varied backgrounds' - to be named soon.

AT THE EXCHANGES...

Listed companies that switch from the NYSE to NASDAQ will be allowed to keep their three-letter symbols now, if they want to, thanks to an SEC ruling…But no good for companies with one or two letter symbols…and NASDAQ can't give out three-letter symbols of their own to newly listed companies.

The NYSE exempted Mutual Funds from its proposed repeal of the rule that lets brokers treat the election of directors as a "routine matter" and to vote investors' proxies as they wish if no specific instructions are received…perhaps clearing the way for the SEC to approve the proposal before the 2008 proxy season. (Funds need the exemption – since they'd almost never get a quorum otherwise – and probably deserve it, at least for now, since so far no one seems to care who's on a fund board, and most of them, at most funds, seem to be mere 'placeholders' anyway). Many industry gurus are still whining about the prospective loss of the ten-day-rule vote – and calling for 'proportional voting schemes'…But beware of getting what you wish for, we warn yet again, when angry investors are voting 100% of the time.

"New York" may soon be gone from the NYSE Euronext name, Chairman Marsh Carter said at their A-M, although "for today" it's still the "strongest name".

The new, consolidated Securities Industry Regulatory Authority…originally slated to be known as SIRA…has had to change its name to the Financial Industry Regulatory Authority ("**FINRA**"…NOT **FIRA**, please note, since that acronym was taken) after Muslims complained the acronym sounded too much like the name of an Islamic religious text…giving **SIFMA** - the new acronym for the former Securities Industry Assn (SIA) and Bond Market Assn. (BMA) after they merged - something to sniff at and the last laugh…even though members themselves liken it to the name of a 'disgusting disease'. (Our vote would have been for **SIN-BAD**).

IN THE COURTHOUSE...

The Supreme Court went on a pre-vacation tear, with a series of landmark rulings that raise the bar considerably for filing class action suits against companies for securities fraud…toss out an antitrust suit that would have prevented underwriter cooperation in IPO syndicates…make it harder for plaintiffs to win punitive damages…and a ruling that strongly shores up the presumption that the US Sentencing Guidelines should be considered 'reasonable' by courts reviewing sentences on appeal.

In Delaware…not one but two back-to-back opinions written by Vice Chancellor Leo Strine, Jr. express concerns that Topps Co. and Lear Corp. did not disclose enough information to shareholders about incentives for top managers to sell the firms in private-equity deals. More info will be required before a shareholder vote can be held, he ruled - potentially slowing down the current pace of slam-bam, thank you ma'am deals, which, while fun for investors, for a quick and exciting moment, seem to leave a lot of their money on the table once the dealin's done.

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