

“Conduct of the Annual Meeting”

Tuesday, March 29, 2022

Course Materials

“Conduct of the Annual Meeting”

Tuesday, March 29, 2022

2:00 – 3:00 pm, Eastern [archive and transcript to follow]

Save This Webcast To Your Calendar: Outlook | iCalendar | Google Calendar

This year's annual shareholder meetings will be another unique experience. While the “virtual meeting” era continues – with new twists & turns in investor expectations and technology – other companies are returning to in-person or hybrid formats. In addition, there's a big “proxy plumbing” development, and retail holders that historically could be counted on to support management proposals are taking new approaches to voting. Join this webcast to get up to speed on the latest expectations and hear our panelists give practice pointers for the current season on meeting format & logistics, tricky vote tabulations, officer & director participation, and rules of conduct.

- **Ben Backberg**, Senior Counsel, Assistant Corporate Secretary, General Mills
- **Dorothy Flynn**, President – Corporate Issuer Solutions, Broadridge
- **Carl Hagberg**, Independent Inspector of Elections and Editor of The Shareholder Service Optimizer
- **Mary Catherine Malley**, Senior Corporate Counsel, Juniper Networks
- **Vernicka Shaw**, Associate General Counsel - Governance & Securities - and Assistant Corporate Secretary, Capital One

Among other topics, this program will cover:

- Developments in “Meeting Format” for 2022 Proxy Season
- Managing Meeting Participants & Attendees
- Freshening Up Your “Rules of Conduct”
- Getting Retail Investor Support
- Proxy Plumbing Update
- Other Voting & Tabulation Issues
- Post-Mortems

“Conduct of the Annual Meeting”

Course Outline / Notes

1. Developments in "meeting format" for the 2022 proxy season
2. Managing meeting participants & attendees
3. Freshening up your "Rules of Conduct"
4. Getting retail investor support
5. Proxy plumbing update
6. Other voting & tabulation issues
7. Post-mortems

“Conduct of the Annual Meeting”

Table of Contents – Course Materials

“Checklist: Voting Results – Tabulation”	1
“Virtual Meetings: Legal Landscape & Path Forward” – Baker & McKenzie (7/21)	4
“The Path to End-to-End Vote Confirmation” – Broadridge (10/19).....	21
“Q4 2021 Shareholder Service Optimizer Newsletter” Shareholder Service Optimizer (12/21)	49
“NYSE Proposes to Amend “Votes Cast” – Davis Polk (10/21)	66
“2022 Supplement: Dealing With Disruption” – Shareholder Service Optimizer (2/22)	68

Checklist: Voting Results - Tabulation

Carl Hagberg, Shareholder Service Optimizer

1. The first commandment when it comes to tabulating and reporting Meeting results is this: “Always prove every item to the Quorum” (Doing this would immediately have uncovered the tens of millions of votes that went missing in the 2008 election of directors at Yahoo. We must also admit that we have broken this commandment ourselves...to our most grievous dismay.)
2. What does this mean in practice? Add up (and ideally, have your tabulating system automatically add up) the For, Withheld, Against, Abstain and any “non-votes” and “no-votes” (in the case of offsetting split-votes by co-fiduciaries) for each director and each item on the ballot – to be sure that each of the totals you’re reporting are the same as the total you’re reporting as the Quorum.
3. What is the Quorum? It is the sum-total of all the shares (or voting power, if there are classes of stock with more or less than one vote per share that are entitled to be part of the quorum) that are “present at the meeting in person or by proxy”. (Thus, there may be a different quorum, please note, for different agenda items).
4. Please note too that simply being present in the meeting hall – even if one does not cast one’s vote on a single matter – is normally considered as being “present” for the purposes of determining whether or not there IS a quorum. But this is only important to consider where there is the possibility that some voters may try to postpone or prevent a meeting by preventing a quorum from being present. If this may be a potential issue, have every attendee sign in, and verify the shares they have.
5. The second commandment of tabulating and reporting is to always know – and to always disclose in the proxy statement – exactly what it takes for a proposal to “pass”. These facts should always be findable in a company’s Articles of Incorporation or Bylaws. Typically they arise from the corporate code of the company’s state of incorporation, but very often, the company, or its shareholders, have adopted special provisions (like a super-majority provision, for e.g.) that supersede the “standard” state law provisions.
6. A very important corollary to the second commandment - let’s call it the third commandment – is to pay particular attention to all the “classes” of stock

your company may have outstanding, since shareowners of such classes may or may not have a vote on particular matters, and often, the voting power is more, or less, than one vote per share. (Every single year we encounter dozens of cases where this critical information – on exactly what it takes to pass a proposal – is not disclosed, or in some cases is disclosed on one page, but contradicted on another...or is contradicted by an “explanation” – like the wacky explanations of the effect of abstentions and of “broker non-votes” that are being gratuitously inserted like mad these days by eager-beaver lawyers).

7. The most common standard for “passing” a proposal – and generally the easiest to meet - is “a majority of the shares present at the meeting in person or by proxy” ...or, in other words, one-half the Quorum (once there IS a quorum of course) plus one vote.
8. Thus, many proposals can “pass” with as little as 25% of the outstanding shares plus one vote.
9. The next most common standard for passing a proposal is “a majority of the votes cast”: Here is where it becomes important to recognize that “abstentions” – and so-called “broker-non-votes” are generally NOT “votes cast” ...and thus, such votes and “non-votes” make it harder for the proponent to get the needed Yes votes. Only the ‘For’ and ‘Against’ votes count – and they are the only votes to be included in the denominator if you feel obliged to report percentages. Note that NYSE previously considered abstentions as votes cast, but it has filed for an amended proposal with the SEC in September 2021 for companies to calculate votes cast in accordance with their governing documents and applicable state laws.
10. Many proposals – and typically, the most important ones to shareholders in terms of the economic implications – require “a majority of the shares outstanding” – and often of “the total voting power” to be cast in favor of the proposal if there are additional classes of stock outstanding.
11. Some proposals – like proposals to change the Bylaws, oust directors or to merge the company – require a “super-majority” – often two-thirds or even more of the shares outstanding to be cast in favor, in order to pass.
12. Several “standards” currently exist for electing directors, so it is critically important to know exactly what standard applies: Many public companies still have a “plurality standard”, where votes may be “Withheld” from a director, but where there is no opportunity to cast an “Against” vote. Thus, as long as a director gets even one vote “For”, he or she will be elected, unless there is a

“proxy fight” with a competing slate.

But, a significant number of companies have adopted a “majority voting standard” where shareholders get to vote “For”, “Against” or to “Abstain” on the election of each director candidate. (We have been amazed to see how many companies say they had majority voting but fail to give shareholders the For, Against and Abstain choices!) While most such companies simply require more “For” votes than “Against” votes to get elected, some require directors to attain a majority of the Quorum, or even a majority of the shares outstanding.

Public Company Virtual Annual Meetings: The 2020 Watershed and Path Forward

By Lisa Fontenot, Roger Bivans, and Jamie Nix*

Although “virtual-only meetings” of shareholders of public companies have been permissible since 2001, an explosion occurred in 2020 due to the COVID-19 pandemic when 80 percent of S&P 500 public companies held “virtual-only meetings” in April to May 2020 compared to only 12 percent in the first quarter of 2020. This article examines the legal landscape for virtual-only meetings, including various emergency orders and lawmaking implemented by certain state governors and legislatures, as well as the historical views of leading proxy advisory firms and institutional investors toward virtual-only meetings compared to the evolved views during the pandemic, and explores the pragmatic lessons learned and best practices for holding virtual-only and hybrid meetings going forward.

In recent years, significantly more public companies have chosen audio and video streaming of their annual shareholder meetings, whether as a supplement to a physical meeting, referred to as a “hybrid meeting,” or in lieu of a physical meeting, referred to as a “virtual-only meeting.” Driven by necessity during the 2020 pandemic, many more companies switched to virtual-only meetings, most for the first time. It remains to be seen as to whether hybrid and virtual-only meetings will continue at the same pace post-pandemic such that widespread use of virtual-only meetings will become the standard rather than the exception. This article discusses the 2021 legal landscape with a focus on 2020 proxy season developments and their potential impact on future shareholder meetings, potential benefits and detriments of hybrid and virtual-only meetings, guidelines for best practices for such meetings, and considerations regarding introduction and implementation of hybrid and virtual-only meetings.

VIRTUAL SHAREHOLDER MEETING EXPLOSION IN 2020

Prior to the pandemic in 2020, virtual shareholder meetings steadily grew in popularity since the first one held in 2001 following changes in the Delaware General Corporation Law expressly contemplating such meetings¹ as companies

* Fontenot and Bivans are partners, and Nix is an associate, at Baker & McKenzie LLP. This article was prepared with the assistance of Chaitu Jayanti, student at Columbia Law School. Information in this article is current as of January 21, 2021.

1. See 72 Del. Laws 619, 619–20 (2000); COMPUTERSHARE LTD., THE FUTURE OF SHAREHOLDER MEETINGS IS VIRTUALLY HERE 2 (2017), <https://www.computershare.com/News/Virtual-Meetings.pdf>.

increasingly elected to leverage new technology to communicate with shareholders. Between 2015 and 2019, the number of hybrid or virtual-only meetings hosted by the largest provider, Broadridge Financial Services, Inc., increased by approximately fifty meetings each year, with Broadridge hosting a total of fifty-three virtual-only meetings in 2014 and 326 hybrid or virtual-only meetings in 2019.² Until March 2020, the prevalence of virtual shareholder meetings appeared to be consistent with prior year trends. Between January 1, 2020, and March 31, 2020, 12 percent of the shareholder meetings hosted by S&P 500 companies were virtual.³

After the coronavirus was declared a pandemic by the World Health Organization on March 11, 2020,⁴ and most U.S. states imposed shelter-in-place orders,⁵ companies turned to virtual-only shareholder meetings.⁶ The percentage of shareholder meetings hosted in a virtual format by the S&P 500 jumped from 12 percent in the first quarter to 80 percent (including webcast meetings) between April 1, 2020, and mid-May 2020, the busiest period for annual shareholder meetings.⁷ The steady increase in hybrid and virtual-only shareholder meetings that Broadridge witnessed over the past five years exploded, with an increase of 1,168 meetings in 2020.⁸ By June 30, 2020, Broadridge had hosted a total of 1,494 hybrid or virtual-only meetings.⁹ Of those, 98 percent were virtual-only.¹⁰

The rising prevalence of virtual-only shareholder meetings in 2020 raises the question of whether such practice will continue in future years after social distancing and group event restrictions are no longer in effect. By May 2020, several large-cap companies, such as Cigna, Home Depot, ConocoPhillips, and Sempra Energy, announced plans to return to an in-person format for their annual shareholder meetings in 2021.¹¹ Without social distancing requirements, it seems unlikely that similar numbers of S&P 500 companies will continue to host virtual-only shareholder meetings after social distancing recommendations by U.S. health authorities lapse. However, a number of companies, having hosted their first virtual-only shareholder meetings in 2020 and now familiar with

2. See BROADRIDGE FIN. SOLUTIONS, INC., VIRTUAL SHAREHOLDER MEETINGS: 2020 MID-YEAR FACTS AND FIGURES 1 (2020), https://www.broadridge.com/_assets/pdf/broadridge-am_00315_br_20-203401-bfs-vsm_brochure_082520.pdf.

3. INTELLIGIZE, PROOF OF CONCEPT: AN INTELLIGIZE REPORT ON VIRTUAL ANNUAL SHAREHOLDER MEETINGS 4 (May 19, 2020), <https://www.intelligize.com/form-proof-of-concept-an-intelligize-report-on-virtual-annual-shareholder-meetings/>.

4. *Morbidity and Mortality Weekly Report (MMWR): Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19)—United States, February 12–March 16, 2020*, CTRS. DISEASE CONTROL & PREVENTION (Mar. 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm>.

5. Jorge L. Ortiz & Grace Hauck, *Coronavirus in the US: How All 50 States Are Responding—and Why Eight Still Refuse to Issue Stay-at-Home Orders*, USA TODAY (May 30, 2020, 10:34 PM), <https://www.usatoday.com/story/news/nation/2020/03/30/coronavirus-stay-home-shelter-in-place-orders-by-state/5092413002/>.

6. INTELLIGIZE, *supra* note 3, at 2.

7. INTELLIGIZE, *supra* note 3, at 4.

8. BROADRIDGE, VIRTUAL SHAREHOLDER MEETINGS, *supra* note 2, at 1.

9. *Id.*

10. *Id.* at 2.

11. INTELLIGIZE, *supra* note 3, at 14.

the process and the advantages of virtual-only meetings, are likely to continue the practice in the future post-2021.¹²

LEGAL LANDSCAPE

Whether or not a corporation is permitted to conduct a virtual-only meeting depends on the relevant state corporation law. Until the 2020 pandemic, some states had not updated their corporation laws to reflect modern advances in communications. This article will examine the state corporation laws of the three leading jurisdictions of incorporation for public companies—Delaware, New York, and California—as applied to virtual-only shareholder meetings.

DELAWARE

Delaware has expressly permitted companies to hold virtual-only and hybrid shareholder meetings, subject to certain conditions, since 2000.¹³ Under Delaware law, companies may hold virtual-only shareholder meetings whether or not such meetings are explicitly permitted in the certificate of incorporation or bylaws.¹⁴ As long as the bylaws do not require the annual meeting to be held at a physical location, a bylaw provision allowing the board to choose the meeting location at its discretion is sufficient for the use of remote communications for a shareholder meeting.¹⁵ In practice, many companies amend their bylaws to specifically permit annual meetings held by remote communication to address any ambiguity or potential questions regarding the board's authority to make such a determination.¹⁶ A company that would like to amend its bylaws to specifically address virtual shareholder meetings should do so prior to the record date for the next annual meeting for which it contemplates a virtual meeting.¹⁷

Although Delaware law has long permitted virtual-only shareholder meetings, following the outbreak of the coronavirus in the United States, Delaware issued an emergency order addressing notice requirements for public companies seeking to change the date, time, or location of shareholder meetings to be held in the state, including changing to a virtual-only shareholder meeting, to assist companies that had already mailed notices for physical shareholder meetings.¹⁸ Under the emergency order, SEC reporting companies incorporated in Delaware that had provided notice in proxy materials for shareholder meetings to be held in

12. INTELLIGIZE, *supra* note 3, at 4.

13. See DEL. CODE ANN. tit. 8, § 211(a)(2) (2020); 72 Del. Laws 619, 619–20 (2000).

14. See DEL. CODE ANN. tit. 8, § 211 (2020).

15. See *id.*

16. Lisa A. Fontenot, *Public Company Virtual-Only Annual Meetings*, 73 BUS. LAW. 35, 40–41 (2017); see also Colin Diamond & Irina Yevmenenko, *Certain Considerations Relating to Virtual Shareholder Meetings*, WHITE & CASE ALERT (Mar. 28, 2018), <https://www.whitecase.com/publications/alert/certain-considerations-relating-virtual-shareholder-meetings>.

17. *Id.*

18. Tenth Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat, State of Delaware: Executive Department: Dover (Apr. 6, 2020), <https://governor.delaware.gov/health-soe/tenth-state-of-emergency/>.

a physical location and subsequently sought to conduct a virtual-only meeting or change the date, time, or location of the meeting, could do so through a document publicly filed with the SEC and a press release, to be promptly posted on the corporation's website after release, rather than printing and mailing a new notice to shareholders.¹⁹

One unique logistics issue for Delaware companies holding a virtual-only shareholder meeting is the provision of a shareholder list. Delaware law requires corporations to prepare, at least ten days before a shareholder meeting, a complete list of the shareholders entitled to vote, including each shareholder's address and the number of shares registered in the shareholder's name.²⁰ The list must be open to the examination of any shareholder for purposes germane to the meeting for at least ten days prior to the meeting, either on a reasonably accessible electronic network or at the principal place of business of the corporation.²¹ For shareholder lists made available on electronic networks, corporations must take reasonable steps to ensure that such information is available only to shareholders.²² In the context of a virtual-only shareholder meeting, the shareholder list must also be open to the examination of any shareholder during the entirety of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided to shareholders with the notice of the meeting.²³ As a practical matter, Broadridge and Computershare provide companies with an option to post their shareholder lists on their virtual meeting platforms with access limited to attendees who have accessed the platform as shareholders and not as guests. Some virtual meeting platforms may require shareholders to submit a separate request to view the shareholder list, adding an extra layer of protection for shareholder data.

The ability to host virtual shareholder meetings proved invaluable to Delaware companies in 2020, with 70 percent of the S&P 500 companies incorporated in Delaware holding virtual-only shareholder meetings instead of in-person meetings.²⁴ Given Delaware's longstanding permissibility of virtual-only shareholder meetings, companies incorporated in that state have a greater level of certainty about feasibility of such meetings going forward than do companies domiciled in some other states.

NEW YORK

Until recently, New York did not permit virtual-only or even hybrid shareholder meetings until the New York Business Corporation Law was amended in October 2019 to permit hybrid meetings provided that:

19. *Id.*

20. DEL. CODE ANN. tit. 8, § 219 (2020).

21. *Id.*

22. *Id.*

23. *Id.*

24. INTELLIGIZE, *supra* note 3, at 7.

- (1) The corporation implements reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of electronic communication is a shareholder of record; and
- (2) A record is kept of any vote or other action taken by a shareholder participating and voting by means of electronic communications at a shareholders' meeting.²⁵

In response to the coronavirus, New York's governor issued Executive Order No. 202, which further relaxed restrictions on virtual shareholder meetings by suspending the application of certain subsections of the New York Business Corporation Law to the extent they require meetings of shareholders to be noticed and held at a physical location.²⁶ The New York Legislature later confirmed this action through a temporary amendment to section 602(a) of the New York Business Corporation Law, effective through December 31, 2021.²⁷ As a result of this temporary amendment, so long as Executive Order No. 202 remains in effect, New York companies are permitted to hold virtual-only shareholder meetings, regardless of whether the virtual meeting format is expressly permitted in their bylaws, and in the sole discretion of the board of directors.²⁸

After the expiration of Executive Order No. 202 or the temporary amendment, whichever comes first, virtual-only shareholder meetings are unlikely to be permitted in New York again following termination of social distancing measures; the New York City Comptroller has strongly opposed virtual shareholder meetings and is unlikely to express support for the recent statutory change on a permanent basis.²⁹ In its Corporate Governance Principles and Proxy Voting Guidelines, the New York City Comptroller has expressed its view that virtual shareholder meetings may disenfranchise shareholders or limit their participation.³⁰ The New York City Comptroller provides that companies should hold virtual shareholder meetings only as a supplement to physical meetings, and not as a substitute.³¹

CALIFORNIA

In California, virtual shareholder meetings are technically permitted under the law, but only with the consent of each shareholder participating remotely, which creates a standard too high to implement in practice.³² In response to the

25. N.Y. BUS. CORP. LAW § 602(b) (Consol. 2020).

26. See Exec. Order No. 202.8: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency, Governor of the State of New York (Mar. 20, 2020), <https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>; INTELLIGIZE, *supra* note 3, at 6.

27. See *id.*; S.B. 8412, 243d Ann. Leg. Sess. (N.Y. 2020).

28. N.Y. BUS. CORP. LAW § 602(a) (Consol. 2020); INTELLIGIZE, *supra* note 3, at 6.

29. INTELLIGIZE, *supra* note 3, at 6.

30. See OFF. OF THE N.Y.C. COMPTROLLER, CORPORATE GOVERNANCE PRINCIPLES AND PROXY VOTING GUIDELINES 14, 20 (last amended Feb. 2019), https://comptroller.nyc.gov/wp-content/uploads/documents/NYCRS-Corporate-Governance-Principles-and-Proxy-Voting-Guidelines_2019-Revised-February-2019.pdf.

31. See *id.* at 20.

32. CAL. CORP. CODE §§ 20, 600(a), 600(e) (Deering 2020).

coronavirus, however, California's governor initially issued an executive order affecting shareholder meetings previously scheduled for or required to occur before June 30, 2020.³³ The executive order suspended the rule requiring shareholder consent, and stated that companies that had previously provided written notice of a physical meeting to their shareholders would be permitted to notify shareholders of the change to a virtual-only meeting by a press release, website posting, and other means reasonably designed to inform shareholders of the change.³⁴ In September 2020, the governor issued a new executive order relating to meetings held after June 30, 2020.³⁵ Again, the executive order suspended the rule requiring shareholder consent, but the relaxed notification requirements were replaced with a requirement for corporations to afford shareholders "a reasonable opportunity to participate in the meeting."³⁶ Specifically, the executive order requires a corporation to (1) not impose unreasonable obligations on shareholders seeking to participate in the shareholder meeting and (2) provide shareholders, as closely as reasonably possible, with an opportunity to participate equivalent to the ability of in-person attendees at the corporation's last-in person meeting, including any ability to vote, ask questions, be heard by other shareholders, or advance proposals.³⁷ If a significant business transaction, controversial proposal, counter-solicitation, or other matter of a sort not considered at the last in-person meeting is to be considered at the virtual meeting, the corporation must provide as closely as reasonably possible an equivalent ability to participate as in-person attendees at the last in-person meeting to consider such a matter.³⁸ The most recent California executive order did not mention an expiration date for the relaxed requirements for virtual shareholder meetings.³⁹

As in New York, restrictions surrounding virtual-only shareholder meetings are unlikely to be removed long term in California, as opposition against such practice is strong, with institutions such as CalPERS being vigorously opposed to virtual-only meetings and unlikely to approve of a change to relevant legislation.⁴⁰ Similar to the New York City Comptroller, CalPERS has expressed in its Governance and Sustainability Principles that virtual meetings may limit shareholder meeting participation, and that such meetings should only be held as a supplement to, and not a substitute for, physical meetings.⁴¹

33. See Exec. Order No. N-40-20, Executive Department: State of California (Mar. 30, 2020), <https://www.lcwlegal.com/uploaded/3.30.20-N-40-20.pdf>.

34. See *id.*

35. See Exec. Order No. N-80-20, Executive Department: State of California (Sept. 23, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-80-20-COVID-19-signed.pdf>.

36. See *id.*

37. See *id.*

38. See *id.*

39. See *id.*

40. INTELLIGIZE, *supra* note 3, at 6.

41. See CALPERS, CALPERS' GOVERNANCE & SUSTAINABILITY PRINCIPLES 32 (last rev. Sept. 2019), <https://www.calpers.ca.gov/docs/forms-publications/governance-and-sustainability-principles.pdf>.

OTHER STATES

Outside of the context of the pandemic, at least thirty-one states permit virtual-only shareholder meetings, and forty-three permit hybrid shareholder meetings.⁴² As in Delaware, New York, and California, several states responded to the coronavirus by temporarily permitting or further relaxing restrictions on such meetings.⁴³ Notably, at least eighteen states issued orders regarding virtual-only or hybrid shareholder meetings, eleven of which do not usually permit virtual-only shareholder meetings, and four of which also do not typically permit hybrid shareholder meetings.⁴⁴

FEDERAL LAW⁴⁵

As shareholder meetings are primarily governed by state law, federal law's impact on shareholder meetings is largely limited to the proxy solicitation and disclosure rules;⁴⁶ however, the U.S. Securities and Exchange Commission (the "SEC") has previously made statements advocating for use of technology to promote shareholder engagement, access, and transparency. In 2015, SEC Commissioner Luis Aguilar stated that technological advances, including virtual meetings, should be used to promote greater shareholder participation.⁴⁷ In 2017, SEC Commissioner Kara Stein also made a statement regarding the SEC's focus on technology's ability to improve shareholder engagement and the transmission of information to shareholders.⁴⁸

STOCK EXCHANGE LISTING RULES

Although stock exchanges require listed companies to hold annual meetings of shareholders, they do not require that the meetings be held in a physical

42. See PRAC. L. CORPORATE & SEC., VIRTUAL SHAREHOLDER MEETING STATE LAW COMPARISON CHART (May 12, 2020), <https://us.practicallaw.thomsonreuters.com/w-025-1400>.

43. *Id.*

44. *Id.*

45. In 2020, as companies shifted from in-person to virtual-only shareholder meetings in response to the coronavirus pandemic, the Division of Corporate Finance and the Division of Investment Management of the SEC issued guidance regarding notification requirements to shareholders. See *Staff Guidance for Conducting Shareholder Meetings in Light of COVID-19 Concerns*, U.S. SEC. & EXCHANGE COMMISSION (Apr. 7, 2020), <https://www.sec.gov/ocr/staff-guidance-conducting-annual-meetings-light-covid-19-concerns>. Companies conducting virtual-only or hybrid shareholder meetings were instructed to timely notify shareholders, intermediaries in the proxy process, and other market participants, and to provide clear directions on how shareholders could remotely access, participate in, and vote at virtual shareholder meetings. See *id.* With respect to communications to shareholders, the SEC instructed companies that had not yet filed proxy materials to include virtual meeting disclosures in their proxy statements. See *id.* Companies that had already filed proxy materials were instructed to announce a change to a virtual shareholder meeting in a press release and to file the announcement as definitive additional soliciting materials. See *id.*

46. Fontenot, *supra* note 16, at 38.

47. See Luis A. Aguilar, *Ensuring the Proxy Process Works for Shareholders*, U.S. SEC. & EXCHANGE COMMISSION (Feb. 19, 2015), <https://www.sec.gov/news/statement/021915-psclaa.html>.

48. See Kara M. Stein, *The Markets in 2017: What's at Stake?*, U.S. SEC. & EXCHANGE COMMISSION (Feb. 24, 2017), <https://www.sec.gov/news/speech/stein-sec-speaks-whats-at-stake.html>.

location. The New York Stock Exchange (the “NYSE”) Listing Rules are silent as to the permissibility of virtual-only shareholder meetings, but market practice indicates that the NYSE accepts the practice. Nasdaq, on the other hand, expressly states in its Listing Center Reference Library that companies listed on its exchange may hold virtual-only shareholder meetings, provided the relevant state law allows those meetings.⁴⁹ Nasdaq has also emphasized that it is important in the context of virtual-only shareholder meetings that shareholders have the opportunity to ask questions of management.⁵⁰

FORMAT FOR VIRTUAL SHAREHOLDER MEETINGS

Among the thousands of companies hosting virtual shareholder meetings in 2020, a consensus emerged as to certain aspects of the format of these meetings. The vast majority of meetings were hosted by providers such as Broadridge, Computershare, or Mediant. In the past, the audio-only format had generally been most popular among companies, with Broadridge reporting that 90 percent of the virtual-only shareholder meetings hosted on its platform were audio-only.⁵¹ The prevailing use of the audio-only format continued in 2020, as most companies opted for this format for their virtual-only shareholder meetings.⁵² The audio-only format is generally similar to an earnings call, with the added capabilities of shareholder authentication and voting. By contrast, the video format is more comparable to an in-person meeting experience, allowing shareholders to view the board chairperson, the secretary, and other presenters during the meeting, although participating shareholders are not physically present.⁵³

Virtual shareholder meetings share many features with physical meetings. For example, virtual shareholder meetings typically feature a question-and-answer session in which shareholders are permitted to ask questions.⁵⁴ As in physical meetings, companies may permit non-shareholder guests to attend. Shareholders may go through a verification process allowing them to attend the meeting as shareholders, which usually allows them to vote live during the meeting (instead

49. See *Can an Annual Shareholder Meeting Be Held via the Web?*, NASDAQ LISTING CTR., <https://listingcenter.nasdaq.com/MaterialHome.aspx?mcd=LQ> (follow “Advanced Search” hyperlink; then filter “Find” field for “Material with this Identification Number(s)” and search for “84”).

50. See *id.*

51. *Hold Your Annual Shareholder Meeting Online*, BROADRIDGE, https://www.broadridge.com/financial-services/corporate-issuer/issuer/simplify-the-annual-meeting-process/virtual-shareholder-meeting?id=ICSCIC20ma5e7b77f000ab8bef3d999be35c750ffd&so=se&po=&di=&ct=&ot=pp&mt=ma&yr=20&rg=gl&on=01&rep=pd&gclid=EAlaIqobChMIyNvRiMyQ7AIVmal3Ch2nGgB1EAYASAAEgKQSFd_BwE (last visited Sept. 30, 2020).

52. Douglas K. Chia, *Key Takeaways and Best Practices from Virtual Shareholder Meetings in 2020*, HARV. L. SCH. F. ON CORP. GOVERNANCE (July 2, 2020), <https://corpgov.law.harvard.edu/2020/07/02/key-takeaways-and-best-practices-from-virtual-shareholders-meetings-in-2020/>.

53. See *id.*

54. RUTGERS CTR. FOR CORPORATE LAW & GOVERNANCE COUNCIL OF INSTITUTIONAL INVER’S SOC’Y FOR CORPORATE GOVERNANCE, REPORT OF THE 2020 MULTI-STAKEHOLDER WORKING GROUP ON PRACTICES FOR VIRTUAL SHAREHOLDER MEETINGS 5 (2020), https://cclg.rutgers.edu/wp-content/uploads/VSM-Working-Group-Report-12_10_2020.pdf.

of via proxy beforehand) and ask questions during the question-and-answer session.⁵⁵ Alternatively, shareholders who do not wish to go through the verification process may attend as guests.⁵⁶ Most companies do not allow guests to submit questions, and guests do not count toward a quorum or have voting rights during the meeting.⁵⁷

Nearly all companies chose to allow live questions during their 2020 virtual shareholder meetings, with Broadridge reporting that 97 percent of the companies using its platform permitted live questions.⁵⁸ On Broadridge's platform, shareholders could submit questions live through a text box or a moderated question-and-answer phone line.⁵⁹ On average, companies allowing live questions during their virtual shareholder meetings received five questions from shareholders, although one company received 316 shareholder questions during its virtual-only shareholder meeting.⁶⁰ Another option for shareholder questions used by a minority of companies was to permit submission of questions in advance of the meeting to be answered during the meeting.⁶¹ This option could also be used in conjunction with the ability to answer shareholder questions live.⁶²

Companies hosting virtual-only shareholder meetings in 2020 also faced the question of how to handle shareholder proposals. SEC Rule 14a-8(h) provides that a shareholder proponent or its representative must attend the meeting to present the proposal.⁶³ Options for presenting shareholder proposals in the context of a virtual-only meeting include (i) providing the proponent with a dedicated dial-in phone number so that the proponent or its representative can present the proposal; (ii) allowing the proponent to provide a recording of the presentation of the proposal, which the company can play during the meeting; or (iii) the company designating a company representative to read the proposal on behalf of the proponent (which may incur shareholder criticism). In most virtual-only shareholder meetings involving a proposal hosted by Broadridge during 2020, the proposals were presented live by the shareholder during the meeting.⁶⁴ As compared with virtual-only shareholder meetings without shareholder proposals, virtual-only shareholder meetings with shareholder proposals saw greater participation among shareholders, with higher average attendance, more questions, and longer meetings.⁶⁵

55. *Id.*

56. *Id.*

57. *Id.* at 5–6.

58. BROADRIDGE, VIRTUAL SHAREHOLDER MEETINGS, *supra* note 2, at 3.

59. *Id.*

60. *Id.*

61. *Id.*

62. *See id.*

63. 17 C.F.R. § 14a-8(h) (2020).

64. Maryellen Andresen, *Broadridge Virtual Shareholder Meetings (“VSMs”): Preliminary Statistics*, HARV. L. SCH. F. ON CORP. GOVERNANCE (June 3, 2020), <https://corpgov.law.harvard.edu/2020/06/03/broadridge-virtual-shareholder-meetings-vsms-preliminary-statistics/>.

65. BROADRIDGE, VIRTUAL SHAREHOLDER MEETINGS, *supra* note 2, at 3.

ADVANTAGES AND DISADVANTAGES OF VIRTUAL SHAREHOLDER MEETINGS

Although the pandemic was the compelling force for most virtual-only shareholder meetings in 2020, the virtual meeting format provided benefits beyond protecting the health and safety of participants and preventing the spread of the coronavirus. Commentators reported that virtual shareholder meetings generally strengthen shareholder engagement and reduce costs of shareholder meetings.⁶⁶ A virtual shareholder meeting makes it easier for a greater number of participants to attend due to a reduction in travel expenses and travel-related scheduling conflicts.⁶⁷ These benefits facilitate increased attendance by directors serving on multiple boards and by retail and institutional investors alike.⁶⁸ In 2020, average meeting attendance for virtual shareholder meetings proved to be higher than for typical in-person meetings.⁶⁹ On an individual level, one investor who held shares in about 150 U.S. companies reported that he was able to attend more than thirty shareholder meetings in 2020, as compared to about ten in 2019.⁷⁰ Virtual shareholder meetings may be particularly advantageous to retail investors who may not otherwise be able to attend or to engage with the company year-round, providing a convenient and affordable platform for such investors to interact with management and the board directly.⁷¹

The virtual format may also encourage shareholder participation during the meeting.⁷² Shareholders may be more inclined to ask questions through a virtual question-and-answer forum than live during an in-person meeting.⁷³ The virtual platform also permits management to thoughtfully review questions as they are submitted and to organize the questions topically to facilitate a more orderly question-and-answer session, permitting more shareholder questions and responses.⁷⁴

In addition, holding shareholder meetings virtually results in increased efficiency and may achieve cost savings for companies.⁷⁵ Virtual meeting platforms may include features such as attendance tracking, identity verification, automatic post-meeting summaries, and an audio or webcast record that a company can make accessible after the meeting.⁷⁶ In the context of a physical shareholder

66. Fontenot, *supra* note 16, at 42.

67. Dorothy Flynn, *Opinion: Virtual AGMs Bringing Increased Engagement*, CORPORATE SEC'Y (Sept. 24, 2020), https://www.corporatesecretary.com/articles/technology-social-media/32270/opinion-virtual-agms-bringing-increased-engagement?utm_source=CS250920&utm_medium=email&utm_campaign=op_agms.

68. Fontenot, *supra* note 16, at 42.

69. See BROADRIDGE, *VIRTUAL SHAREHOLDER MEETINGS*, *supra* note 2, at 3.

70. Nina Trentmann, *Shareholders Feel Muted as Companies Switch to Virtual Annual Meetings*, WALL ST. J. (Aug. 23, 2020), <https://www.wsj.com/articles/shareholders-feel-muted-as-companies-switch-to-virtual-annual-meetings-11598187600>.

71. Fontenot, *supra* note 16, at 42–43.

72. *Id.* at 43.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

meeting, a company may expend resources on planning logistics such as the venue, refreshments, decorations, attendee materials, security, and even medical personnel.⁷⁷ The time, effort, and expense of planning such details is spared in the context of a virtual meeting.⁷⁸ Companies holding virtual-only meetings have also highlighted that such meetings are environmentally friendly.⁷⁹

Finally, virtual shareholder meetings provide increased security for attendees, in an environment in which physical safety can be a significant concern.⁸⁰ The need for on-site security is obviated in the context of a virtual shareholder meeting.⁸¹ On-site protests, which may occur at a physical meeting, are not an issue where meetings are held virtually, and the ability of shareholders to disrupt a meeting is limited on a virtual platform.⁸²

While virtual shareholder meetings offer several benefits to companies and shareholders, the prevalence of virtual shareholder meetings in 2020 also revealed certain disadvantages inherent to the format. Skeptics of virtual-only meetings point out that just as technology can improve shareholder engagement, it can also impede it, insulating management from the level of shareholder dialogue achievable at in-person meetings.⁸³ The virtual format permits management to select which questions to answer, which in 2020, as in years prior to the widespread adoption of virtual-only meetings, resulted in shareholder accusations that companies were leveraging the opportunity to avoid difficult questions.⁸⁴ In some cases, shareholders were even suspicious that companies generated the questions that were asked and answered during the question-and-answer sessions themselves, as opposed to accepting questions from verified shareholders, in order to avoid difficult questions and fill the allotted time for questions.⁸⁵ Certain activists that were focused on environmental, social, and governance issues asserted that they found the virtual format to present an additional challenge in holding management accountable.⁸⁶ Shareholders also noted that audio-only virtual meetings eliminated the ability of shareholders to interact with eye contact, both formally and informally, with board members and executives.⁸⁷ In addition, shareholders stated that by its nature, the virtual format eliminated the ability of shareholders to interact with each other, because

77. *Id.*

78. *Id.*

79. RUTGERS, *supra* note 54, at 8.

80. Fontenot, *supra* note 16, at 43.

81. *Id.*

82. *Id.*

83. Rosemary Lally, *Shareholders Face Obstacles to Participation in Virtual Annual Meetings*, COUNCIL INSTITUTIONAL INVS. (Apr. 30, 2020), <https://www.cii.org/files/April%2030,%202020%20-%20Shareholders%20Face%20Obstacles%20to%20Participation%20in%20Virtual%20Annual%20Meetings.pdf>.

84. Jessica DiNapoli & Ross Kerber, *U.S. Activists Complain that Virtual Shareholder Meetings Let Companies Silence Them*, REUTERS (Aug. 18, 2020), <https://www.reuters.com/article/us-health-corona-virus-shareholdermeeting/u-s-activists-complain-that-virtual-shareholder-meetings-let-companies-silence-them-idUSKCN25E1FD>.

85. RUTGERS, *supra* note 54, at 7.

86. DiNapoli & Kerber, *supra* note 84.

87. RUTGERS, *supra* note 54, at 7.

the primary virtual shareholder meeting platforms do not include functionality for sidebar conversations among shareholders.⁸⁸

While some shareholders complained in 2020 that management ignored shareholder questions, in some cases, the root of the problem may have been technological issues caused by companies adjusting to the virtual format on short notice.⁸⁹ In fact, shareholders and companies alike appear to have encountered various difficulties in transitioning to virtual-only meetings. In a publicly available letter to the Investor Advisory Committee of the Securities and Exchange Commission, the Council of Institutional Investors noted that shareholders had reported several problems, including difficulty logging into meetings, inability to ask questions in some cases if the shareholder had voted in advance by proxy (on one virtual meeting platform in particular), inability to ask questions during the meeting rather than in advance, lack of transparency as to which questions had been submitted by shareholders, restrictions on the presentation of shareholder proposals, and conflicting channels for shareholder participation with shareholder resolution proponents required to participate from a line separate from that used for general questions and answers.⁹⁰ The unanticipated rapid change to virtual-only meetings required for companies in 2020 may have exacerbated technology-related issues, but with additional time to gain familiarity with the platform and to plan for ways to address shareholder concerns, companies may be better equipped to resolve issues like those described above in the future. A working group of public companies and investors hosted by the Rutgers Center for Corporate Law and Governance found that even though companies were concerned about technological issues during their first virtual meetings in 2020, for the most part, glitches were minimal.⁹¹

PRACTICAL PERSPECTIVE ON VIRTUAL SHAREHOLDER MEETINGS

The authors of this article engaged in conversations with corporate counsel for a small number of public companies to gain a practical perspective on virtual shareholder meetings. Nearly all of the attorneys that the authors spoke with said that they would prefer to hold virtual meetings instead of physical meetings going forward, with the caveat that their future plans would depend in part on how Institutional Shareholder Services (“ISS”) and Glass Lewis respond to the virtual meeting trend. Corporate counsel emphasized the convenience of the virtual meeting format, noting that directors and other meeting participants could go about their day-to-day activities before and after the meeting rather than losing a day to travel to a physical meeting location. Eliminating travel to a physical location also provided cost benefits, and some corporate counsel remarked that

88. Lally, *supra* note 83.

89. DiNapoli & Kerber, *supra* note 84.

90. Letter from Kenneth A. Bertsch, Exec. Dir. & Jeffrey P. Mahoney, Gen. Counsel, Council of Institutional Invs., to Anne Sheehan, Chair, Inv'r Advisory Comm., U.S. Sec. & Exch. Comm'n (May 3, 2020), https://www.cii.org/files/issues_and_advocacy/correspondence/2020/2020%2005%2003%20IAC%20letter.pdf.

91. RUTGERS, *supra* note 54, at 8.

their companies were able to eliminate expenses associated with items like hotels and flights.

In such corporate counsels' experience, shareholder attendance was generally consistent with prior years, although this year's meetings were marked by increased attendance from non-shareholder guests, including analysts, employees, clients, competitors, and business counterparties. Corporate counsel for larger companies were more likely to report increased guest attendance.

The attorneys were pleased that they were able to rehearse the virtual meeting format ahead of time. Representatives from the virtual meeting platforms conducted "dry runs" to allow meeting participants to practice dialing in, using and muting their microphones, and responding to shareholder questions. None of the attorneys with whom the authors spoke experienced any technical issues themselves, although one noted that a shareholder reported difficulties gaining access to the meeting as a shareholder. Overall, corporate counsel who spoke with the authors viewed their experience with virtual shareholder meetings positively and felt that the advantages outweighed the disadvantages.

BEST PRACTICES FOR VIRTUAL SHAREHOLDER MEETINGS

Prominent and vocal players in the corporate community have issued views, guidance, and recommendations on virtual-only meetings that companies can use to maximize shareholder participation in virtual-only meetings and minimize any chilling effect produced by the format.⁹² Though enthusiasm for virtual-only meetings ranges broadly, the guidelines are thematically aligned as to the importance of clearly communicating the rationale for conducting a virtual-only meeting and organizing open yet efficient question-and-answer sessions.

Entering the 2020 annual meeting season, the primary set of guidelines for virtual shareholder meetings was the *Principles and Best Practices for Virtual Annual Shareowner Meetings* published by Broadridge.⁹³ These guidelines were authored by a "committee of interested constituents, comprised of retail and institutional investors, public company representatives, and proxy and legal service providers."⁹⁴ The committee also included representatives from CalSTRS, the Society for Corporate Governance, the Council of Institutional Investors, and the AFL-CIO, among others, many of whom were involved in the creation of the prior iteration of guidelines in 2012.⁹⁵ The core purpose of the committee was to ensure "that when companies do opt for virtual participation in shareowner

92. See, e.g., BROADRIDGE FIN. SOLUTIONS, INC., PRINCIPLES AND BEST PRACTICES FOR VIRTUAL ANNUAL SHAREOWNER MEETINGS (2018), https://www.broadridge.com/_assets/pdf/broadridge-vasm-guide.pdf; INSTITUTIONAL S'HOLDER SERVS., IMPACTS OF THE COVID-19 PANDEMIC: ISS POLICY GUIDANCE (2020), <https://www.issgovernance.com/file/policy/active/americas/ISS-Policy-Guidance-for-Impacts-of-the-Corona-virus-Pandemic.pdf>; Pallavi Sharma, *Immediate Glass Lewis Guidelines Update on Virtual-Only Meetings Due to COVID-19 (Coronavirus)*, GLASS LEWIS (Mar. 19, 2020), <https://www.glasslewis.com/immediate-glass-lewis-guidelines-update-on-virtual-only-meetings-due-to-covid-19-coronavirus/>.

93. See BROADRIDGE, PRINCIPLES AND BEST PRACTICES, *supra* note 92.

94. *Id.* at 3.

95. *Id.*

meetings, they are accessible, transparent, and efficiently and cost-effectively managed, while meeting the important business and corporate governance needs of shareowners, boards, and management.”⁹⁶ Of the twelve best practices the committee identified to achieve this purpose, the longest and most detailed one concerns creating formal rules of conduct governing the meeting.⁹⁷ The committee emphasized that the rules should “allow sufficient opportunities” to ask questions “while being respectful” of others’ time.⁹⁸ It also stressed that the rules should be made available in advance and during the meeting and should “promote both the reality and perception” of fairness.⁹⁹ Concrete examples of such rules include establishing mechanisms for shareholders to “present questions in advance of the meeting, e.g., via their investor relations website or a shareowner discussion group or bulletin board,” and to “submit questions over the internet during the live meeting.”¹⁰⁰ Companies may also consider creating a toll-free number for shareholders to call during meeting, where their questions are answered on a first-come, first-served basis.¹⁰¹ To avoid time-consuming questions, companies may establish time limits for each question that are communicated upfront to shareholders.¹⁰² The committee recommended that companies be transparent with their question-and-answer sessions by establishing rules about how questions will be recognized and answered and strongly considering posting all appropriate questions and their answers online after the meeting.¹⁰³ The guidelines also recommended that the meeting be archived on a publicly available website for future viewing for a specific and reasonable time (ideally at least a year) after the meeting.¹⁰⁴

One salient departure from the 2012 guidelines was the 2018 report’s emphasis on the threshold decision of whether a company should hold virtual-only meetings and the clear communication of that decision. The report suggested that companies should “be fully aware of prospective investor reactions before deciding” their format and the decision and “participation instructions should be clearly disclosed in the proxy statement.”¹⁰⁵ The committee suggested several factors that companies may consider in their decision, such as whether they have the required technological capabilities to successfully achieve such a virtual-only meeting, whether their investor bases are informed and in support of virtual-only meetings, what items are up for voting at the meeting, and whether a plan is in place to successfully hold the virtual-only meeting.¹⁰⁶ The 2018 guidelines also stressed the importance of having technical support available throughout the

96. *Id.*

97. *Id.* at 5–6.

98. *Id.* at 5.

99. *Id.*

100. *Id.*

101. *Id.* at 6.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* at 5.

106. *Id.* at 4–5.

meeting to address any glitches in real time, a need perhaps unforeseen by the authors in 2012.¹⁰⁷ In a similar vein, the guidelines suggested that video, web lines, and telephone lines should be open before the meeting begins to allow shareholders to test their access and ensure their ability to participate in the meeting.¹⁰⁸

In response to the “tidal wave” of virtual shareholder meetings in 2020, the Rutgers Center for Corporate Law and Governance convened a working group of public companies and investors in August 2020 to review and update the 2018 guidelines based on the experiences and learnings of 2020.¹⁰⁹ The working group found that a number of the best practices outlined in the 2018 report became standard practices in 2020.¹¹⁰ In addition, the 2020 working group found that certain emerging practices should be more strongly encouraged or viewed as standard practice going forward.¹¹¹ Among other best practices, the 2020 working group emphasized the importance of providing clear instructions to shareholders, both with respect to how to attend and participate, and how to submit questions.¹¹² To the extent a virtual shareholder meeting is not a company’s standard practice, the company should disclose the reasons for the virtual format instead of a traditional in-person format.¹¹³ In preparation for the virtual meeting, companies should train meeting participants and rehearse the meeting.¹¹⁴ The 2020 working group also noted the importance of communicating with any shareholders who have proposals to be voted on at the meeting during the course of preparations for the meeting.¹¹⁵ With respect to the format of the meeting, the working group expressed its hope that companies would increasingly use a video, rather than an audio-only, format.¹¹⁶ Noting the importance of shareholders’ ability to vote and ask questions, the 2020 working group directed companies to provide prominently visible and simple mechanisms for voting and submitting questions on the main page of the virtual shareholder meeting platform.¹¹⁷ The working group also recommended that companies post all relevant materials for the meeting, including the meeting agenda, rules of order, proxy materials, and, if required by state law, a registered shareholder list.¹¹⁸

With respect to the proceedings of the meeting, the 2020 working group expressed its view that a virtual meeting should replicate the experience of an in-person shareholder meeting as closely as possible.¹¹⁹ At a high level, a virtual

107. *Id.* at 6.

108. *Id.* at 5.

109. RUTGERS, *supra* note 54, at 2.

110. *Id.* at 9.

111. *Id.* at 9–10.

112. *See id.* at 10–11.

113. *Id.* at 11.

114. *Id.* at 11–12.

115. *See id.* at 12.

116. *See id.* at 13.

117. *See id.* at 13–14.

118. *See id.* at 14.

119. *See id.* at 15–17.

shareholder meeting should include the typical components of a physical meeting, such as announcements, shareholder proposals, and a question-and-answer session.¹²⁰ In its report, the 2020 working group provided specific guidelines as to how each of these components of the meeting (announcements, shareholder proposals, and a question-and-answer session) should be structured so as to most closely replicate the in-person meeting experience.¹²¹ Employing practices such as those enumerated in the guidelines would address many of the common concerns relating to the virtual meeting format that investors raised following the 2020 annual shareholder meetings.¹²²

Reactions from proxy advisory firms and other institutional investors underscore the importance for companies holding virtual-only meetings to communicate their reasons for doing so.¹²³ The *Immediate Glass Lewis Guidelines Update on Virtual-Only Meetings Due to COVID-19 (Coronavirus)*, published on March 19, 2020, indicates that Glass Lewis intends to “generally refrain from recommending to vote against members of the governance committee on the basis of holding a virtual-only meeting, *provided that the company discloses, at minimum, its rationale for doing so.*”¹²⁴ Glass Lewis also states it would “note whether companies state their intention to resume holding in-person or hybrid meetings under normal circumstances.”¹²⁵ Similarly, the proxy advisory firm ISS published guidance on April 8, 2020, encouraging companies opting to hold virtual-only meetings to “disclose clearly the reason for their decision (i.e., that it is related to the COVID-19 pandemic) and to strive to provide shareholders with a meaningful opportunity” to participate.¹²⁶ Echoing Glass Lewis, ISS also suggests boards “commit to return to in-person or ‘hybrid’ meetings (or to put that matter to shareholders to decide) as soon as practicable.”¹²⁷ Other institutional investors, such as the New York City Comptroller, indicated that the fund “will not take action against boards holding virtual-only annual meetings due to the coronavirus that disclose their rationale and affirm their commitment to holding in-person meetings in the future.”¹²⁸ Whether proxy advisory firms and institutional investment managers continue to support virtual-only meetings post-2021 proxy season after the pandemic subsides remains to be seen.

While the prevalence of virtual shareholder meetings in 2020 revealed several areas for improvement for companies holding such meetings, the implementation of the guidelines enumerated above may assist companies in addressing

120. See *id.* at 15–17.

121. See *id.* at 15–17.

122. For further discussion of the recommendations set forth by the 2020 working group, see RUTGERS, *supra* note 54.

123. See INSTITUTIONAL S’HOLDER SERVS., *supra* note 93; Sharma, *supra* note 92.

124. See Sharma, *supra* note 92 (emphasis added).

125. *Id.*

126. See INSTITUTIONAL S’HOLDER SERVS., *supra* note 92.

127. *Id.*

128. *After the Market’s Worst Day in Decades, Where Do We Go from Here?*, N.Y. TIMES (Mar. 13, 2020), <https://www.nytimes.com/2020/03/13/business/dealbook/coronavirus-markets-stocks.html>.

the concerns of institutional investment managers and shareholders, which may lead to an improved shareholder response in the future.

CONCLUSION

Prior to 2020, the trend toward virtual-only meetings increased as companies made greater use of technology to engage with shareholders and facilitate access to annual meetings, while managing the costs of hosting an annual meeting by eschewing a physical component. As technology evolves to permit a more enhanced user experience, companies increasingly rely on it for shareholder participation. The year 2020 presented circumstances mandating adoption of the virtual-only annual meeting during pandemic-driven restrictions on in-person events. The experience of many companies may lead to a jump in continued adoption, and in parallel, continued institutional investor challenges to practices that do not appear to maximize similarity of the experience to in-person attendance.

October 28, 2019

The Path to End-to-End Vote Confirmation



REFERENCE DOCUMENT

Validating Proxy Voting Entitlements and Confirming Votes





Background

The Path to End-to-End Vote Confirmation

- **July, 2010:** The SEC issued a *Concept Release on the U.S. Proxy System*. The Release requested comments on end-to-end vote confirmation.
- **August, 2011:** The Weinberg Center for Corporate Governance convened a Roundtable to make recommendations. Refer to *“Report of the Roundtable on Proxy Governance: Recommendations for Providing End-to-End Vote Confirmation, August, 2011.”*
- **2014 – 2015:** The Roundtable’s recommendations were validated by a Steering Committee in pilots with 50+ issuers.
- **May, 2016:** The Steering Committee concluded, “There are no impediments to issuers in providing the added assurance.” Refer to *Announcement of the Securities Industry End to End Vote Confirmation Steering Committee, May, 2016.*
- **2018 – 2019:** Representatives of various participant groups voiced support:
 - Participants in the SEC’s November 15, 2018 panel on proxy voting mechanics
 - Signatories to a *February 14, 2019 letter to SEC Chair Jay Clayton* (Society for Corporate Governance, SIFMA, Council of Institutional Investors, and Broadridge)
 - SEC Investor Advisory Committee, recommendations made on September 5, 2019.
- **March, 2019:** Based on discussions with issuers, institutional investors, broker-dealers, and others, Broadridge identified five key activities to make end-to-end vote confirmation a reality for all shareholders. The activities are consistent with recommendations of the Roundtable. Refer to *Broadridge letter to SEC Chair Jay Clayton, March 27, 2019.*
- **October, 2019:** With encouragement from the SEC, a Working Group was formed to move it forward. It is co-chaired by Darla Stuckey (Society for Corporate Governance) and Ken Bertsch (Council of Institutional Investors).



Overview

Processing Shares Held Beneficially in “Street” Name

- In this document, we provide answers to frequently asked questions about processing and reporting votes for shares held beneficially in street name, including:
 - What are the differences between how *proxies* are processed and how *securities* are processed?
 - What issues can arise from complexities in *securities transaction* processing and in the communication of *omnibus proxy information*?
 - How are voting entitlements managed and reconciled *in practice*?
 - Why is it that the *dividend* process and the *proxy* process are not interchangeable?
- The system for processing shares held in street name is governed by a patchwork of rules and regulations (federal, state, self-regulatory organizations, etc.).
 - The technologies, intellectual capital, and processing details necessary to make the rules and regulations work *in practice* may contribute to a perception that the proxy system is “unnecessarily” complex.
- As we illustrate below, there is an inextricable connection between the proxy system and the securities processing system.
 - The proxy system reflects and interfaces with the complexities and robust features of the clearance and settlement system. It does not and cannot operate as a freestanding voting system apart from securities processing.

Note: Although less complex in theory, the proxy system for “registered” shareholders (i.e., whose shares are held through transfer agents) has other challenges, as discussed below.



Overview

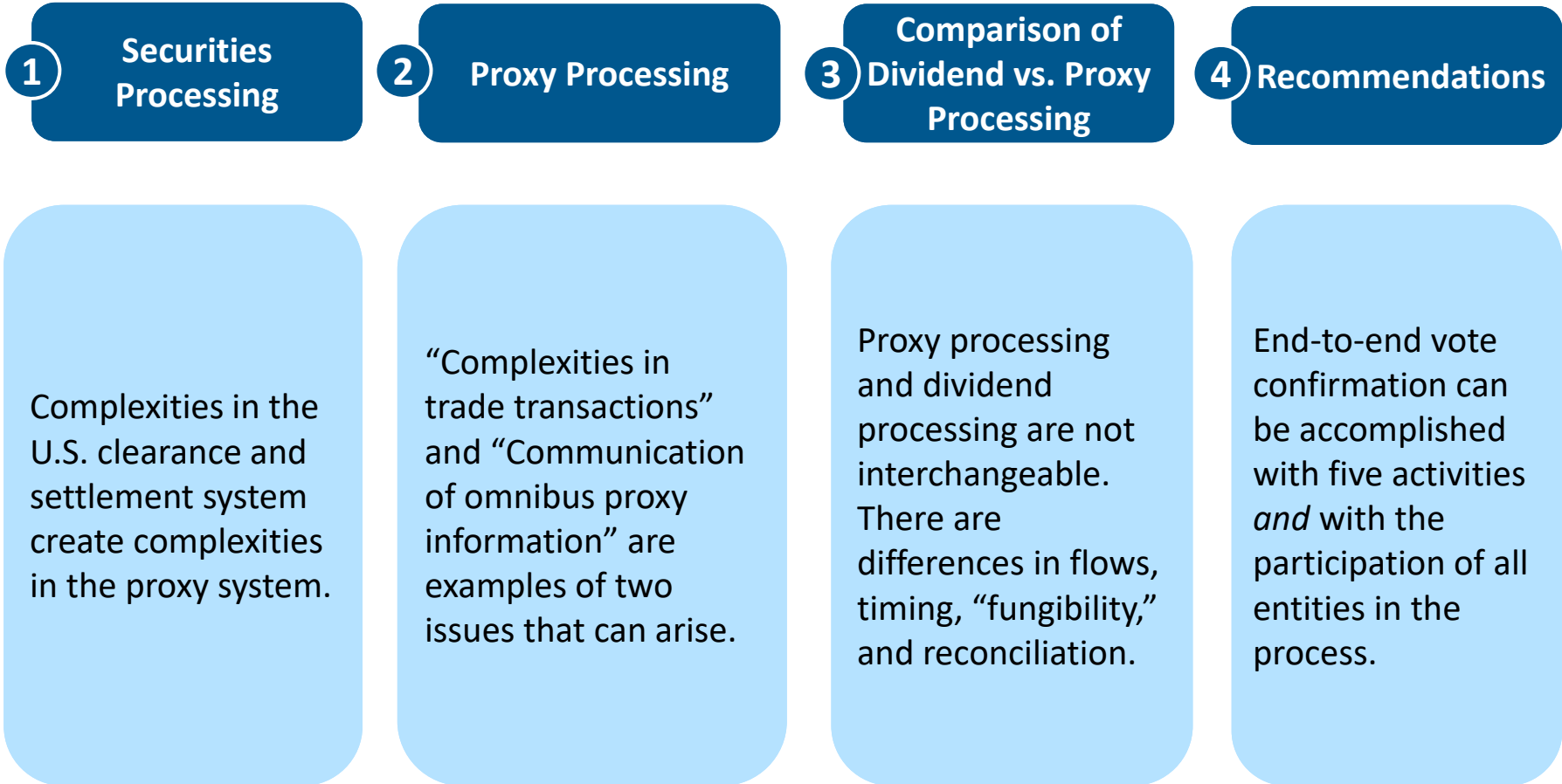
Validating Proxy Voting Entitlements and Confirming Votes

- As we illustrate below, there can be isolated voting discrepancies when there is a disconnect between a stock record and a voting entitlement. The discrepancies often go unaddressed in uncontested meetings when majorities of votes in favor of directors' recommendations are attained and there is no opposition party. (The Appendix to this document provides a list of examples.)
- Tracking and ensuring proper entitlements -- and reconciling the various accounts -- are the threads that tie securities processing and proxy processing together.
- The five essential steps for end-to-end vote confirmation are outlined below. These include such activities as: improving the process by which issuers request and receive securities position reports and omnibus proxy information; communicating and reconciling discrepancies soon after Record Date; and, confirming votes back to nominees and shareholders.
- While custodian banks and broker-dealers (together "nominees") and their processing services agents play an important role, other industry participants such as central securities depositories, issuers, funds, transfer agents, and solicitors are also involved in end-to-end vote confirmation.
- Broadridge is committed to supporting the Working Group in moving forward.

"Vote confirmation will enhance the integrity of the proxy process by providing investors assurance that their votes have been timely counted and voted as instructed." *Announcement of the Securities Industry End to End Vote Confirmation Steering Committee , May, 2016.*



Outline of this document: Four sections (with additional details in the Appendix)

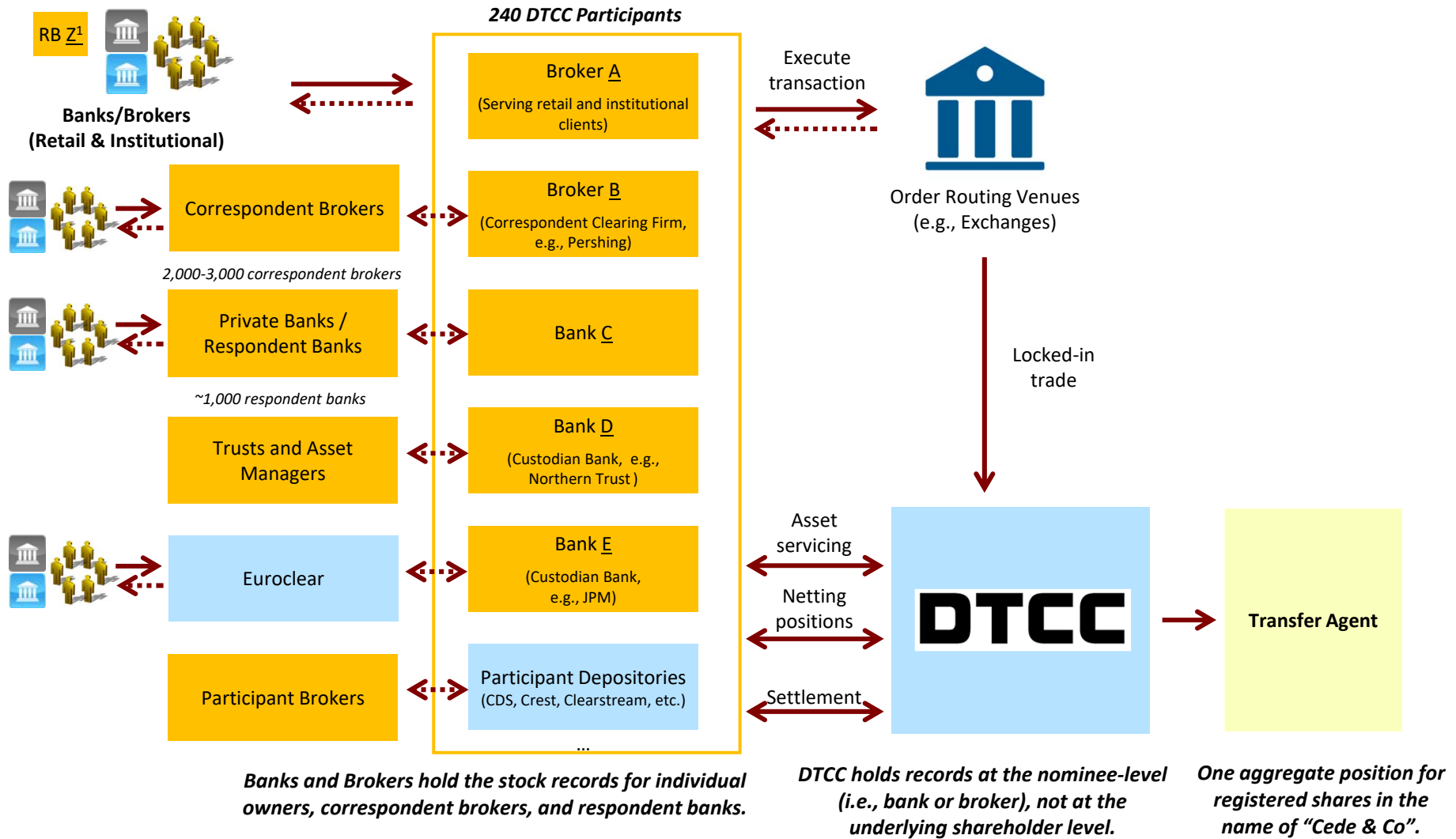
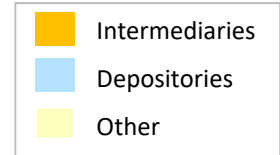


1. Securities Processing



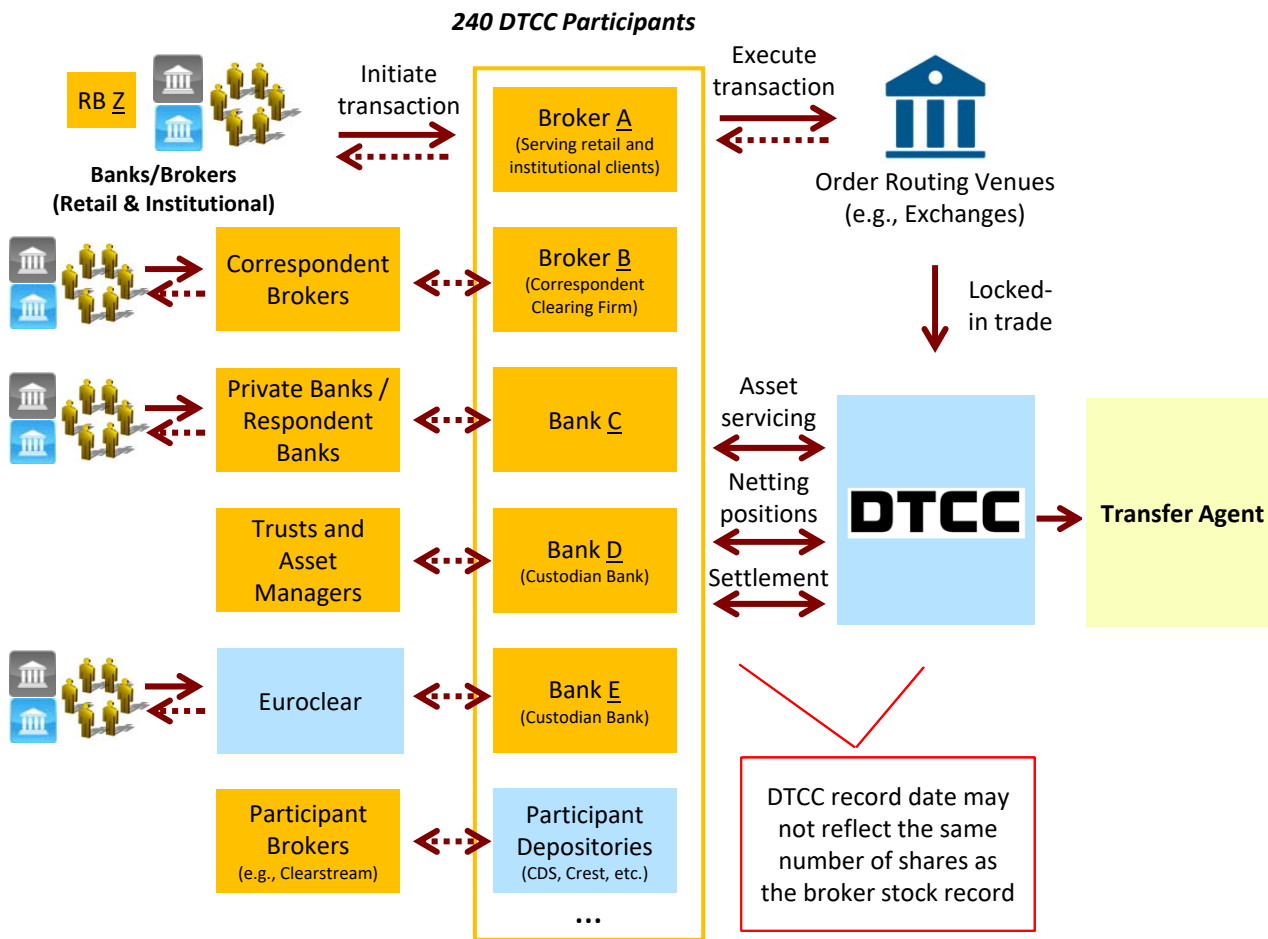
Securities processing

High-level, conceptual depiction of the process (not all participants and steps are shown).



1. Respondent Bank Z to be used in examples found below.

Issue 1: Complexities due to timing, exceptions, and normal course of transactions that require firms to reconcile positions.



The example on the following page illustrates the complexity.

- The right to participate in a proxy event is based upon settlement date.
 - DTCC establishes the nominee-level entitlement based on the number of shares held on Record Date.
 - Nominees are currently not required to identify where all of their shares are held for a given registrant as of Record Date, e.g., in the Canadian Depository for Securities (CDS), Euroclear, or safekeeping certificates,¹ etc.
 - The process overall is well managed and highly automated...
 - ...however, there are three broad reasons for disconnects between stock records and voting entitlements:
 1. **Normal course of transactions:** Stock lending, short selling, stock hypothecation²
 2. **Timing:** Securities in transit (from ACAT, vault, re-registration), items in suspense
 3. **Exceptions:** Failed settlements, failed recalls from securities loan
- (Refer to the Appendix for details)

1. Client can hold certificated shares themselves, at the agent (DRS), or in the bank-broker's vault. 2. Securities pledged to collateralize bank loans

Example: Complexities in securities processing illustrated by an example of Broker A's entitlements.

For a given Broker A, the stock record reflects 100,000 shares, the DTCC entitlement is 75,000 shares, and the actual voting entitlement is 71,000 shares. Proxy materials and VIFs are sent to clients holding 97,000 shares.

I Stock record shows 100,000 shares vs. voting entitlements of 75,000 shares (DTCC) and 71,000 shares (actual)

100,000 shares in Stock Record for Broker A

50,000 shs	Cash accounts for 54 customers ¹
(-) 5,000 shs	Failed to receive from Bank C
50,000 shs	Margin accounts for 40 (retail) customers ²
(-) 20,000 shs	Loaned to Broker B

= 75,000 shares shown as DTCC voting entitlement available to Broker A

(-) 3,000 shs	Omnibus shares at Respondent Bank Z
(-) 1,000 shs	Legal proxy for meeting attendance in person ³

= 71,000 shares represent the true adjusted voting entitlement for Broker A.

Reconciling items to the broker's stock record reduce the voting entitlement. Total vote cannot exceed 71,000 shares.

II Voting instruction forms are distributed to holders of 97K shares.

- Broker A provides an Omnibus Proxy to the Issuer transferring the voting rights to the 3,000 shares to Respondent Bank Z.

100,000

Broker A stock record

(-) 3,000 shs	Omnibus shares at Respondent Bank Z
---------------	-------------------------------------

= 97,000 shares for Voting Instruction Forms (VIFs) sent to owners in Broker A.

(-) 1,000 shs	Legal proxy attended in person
---------------	--------------------------------

= 96,000 potential shares to be returned after legal proxy issued for voting in person

Voted by Respondent Bank Z, by and for underlying beneficial shareholders.

Further details on proxy/voting are provided below.

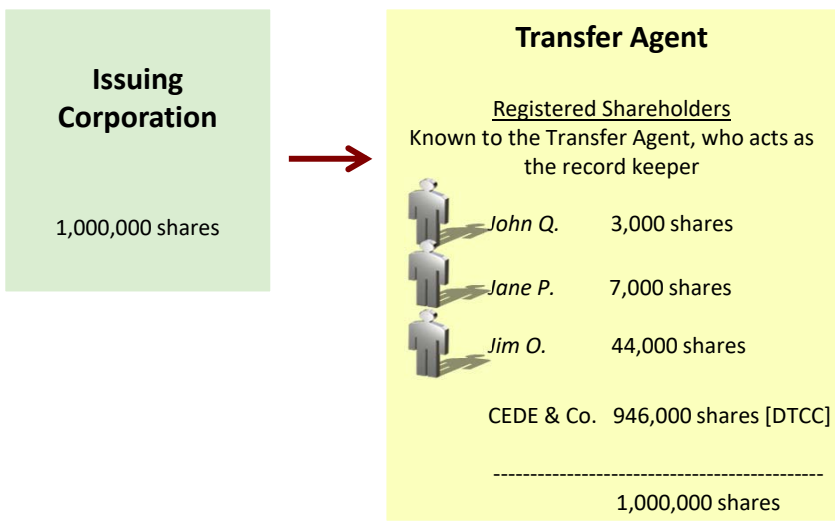
Total vote cannot exceed 71,000 shares.

2. Proxy Processing



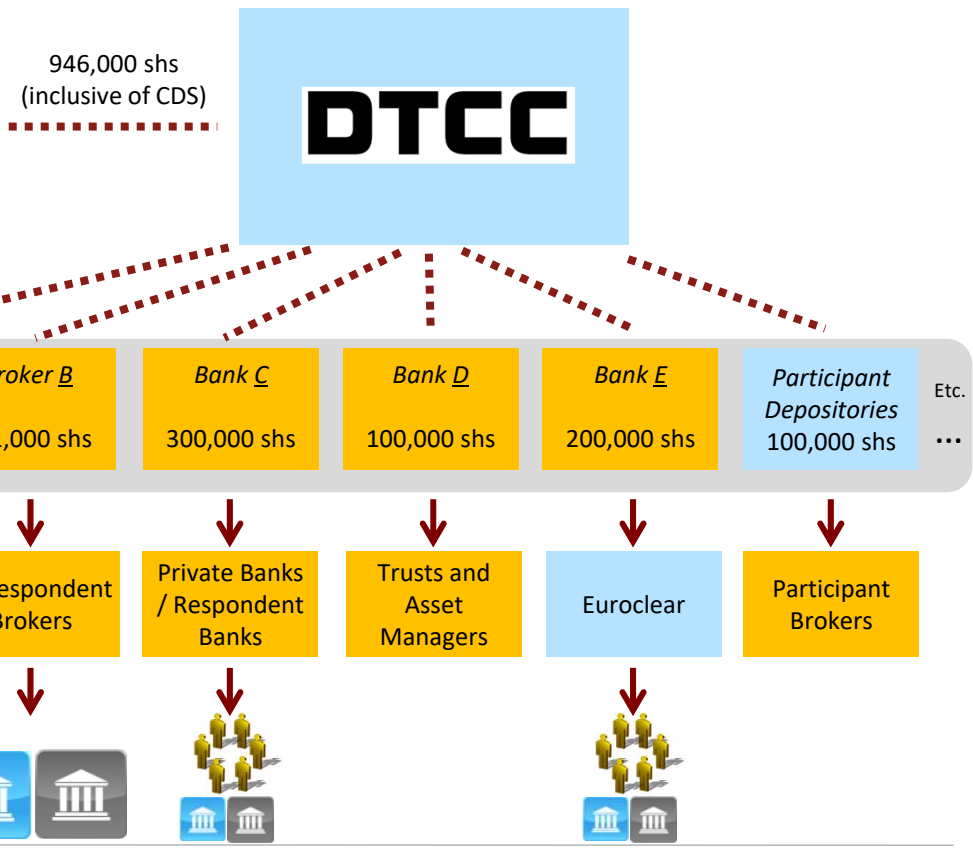
Proxy processing: a. Entitlement

The owner of the shares on Record Date has the right to vote.



Chain of Entitlement

- DTCC provides an Omnibus Proxy to their Participants (banks and brokers)
- DTCC has ~240 Participants.
- Through this process, the Participants receive the voting entitlement for the shares held as of the Record Date.



Entitlement Overview

- Beneficial shareholders are known to their Bank or Broker, who acts as the record keeper.
- The account positions as of the Record Date are entitled to vote and receive proxy information electronically or via paper.
- Shares held by a broker for the beneficial shareholder are fungible.
- Lending from margin accounts is not visible to retail shareholders¹.
- Votes go with the shares.

1. Differences between retail margin account holders and institutional lending

Example: Entitlement vs. voting

Distributing VIFs

Broker A

- 1 Voting instruction forms are sent to 54 cash account holders that represent 47,000 shares.
- 2 Voting instruction forms are sent to 40 margin account holders that represent 50,000 shares.

VIFs are distributed to a total of 94 account holders representing 97,000 shares.

Less the Legal Proxy for the holder of 1,000 shares (subsequently backed out.)¹

RB Z



Voting

Issuing Corporation

- 1 The maximum number of votes from Broker A's beneficial shareholders is 71,000 shares.
- 2 1,000 shares are voted with a Legal Proxy.
- 3 3,000 shares are voted by Respondent Bank Z by or for underlying beneficial owners.

Voting total maximum of 75,000 shares (held at DTCC).

Further details are found below.

RB Z



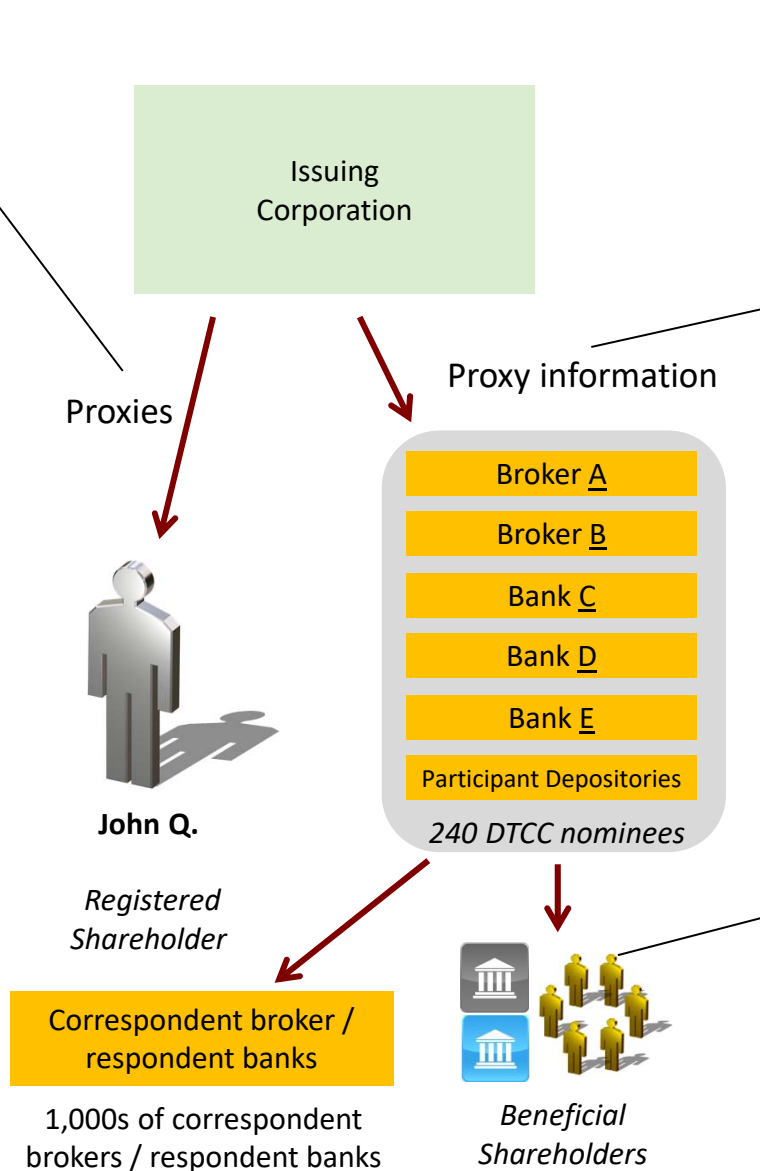
Proxy processing: b. Communication to shareholders

- Issuing corporation sends proxies to registered shareholders.
- Registered shareholders are able to vote by proxy or at the meeting.

! Background to enable process efficiency

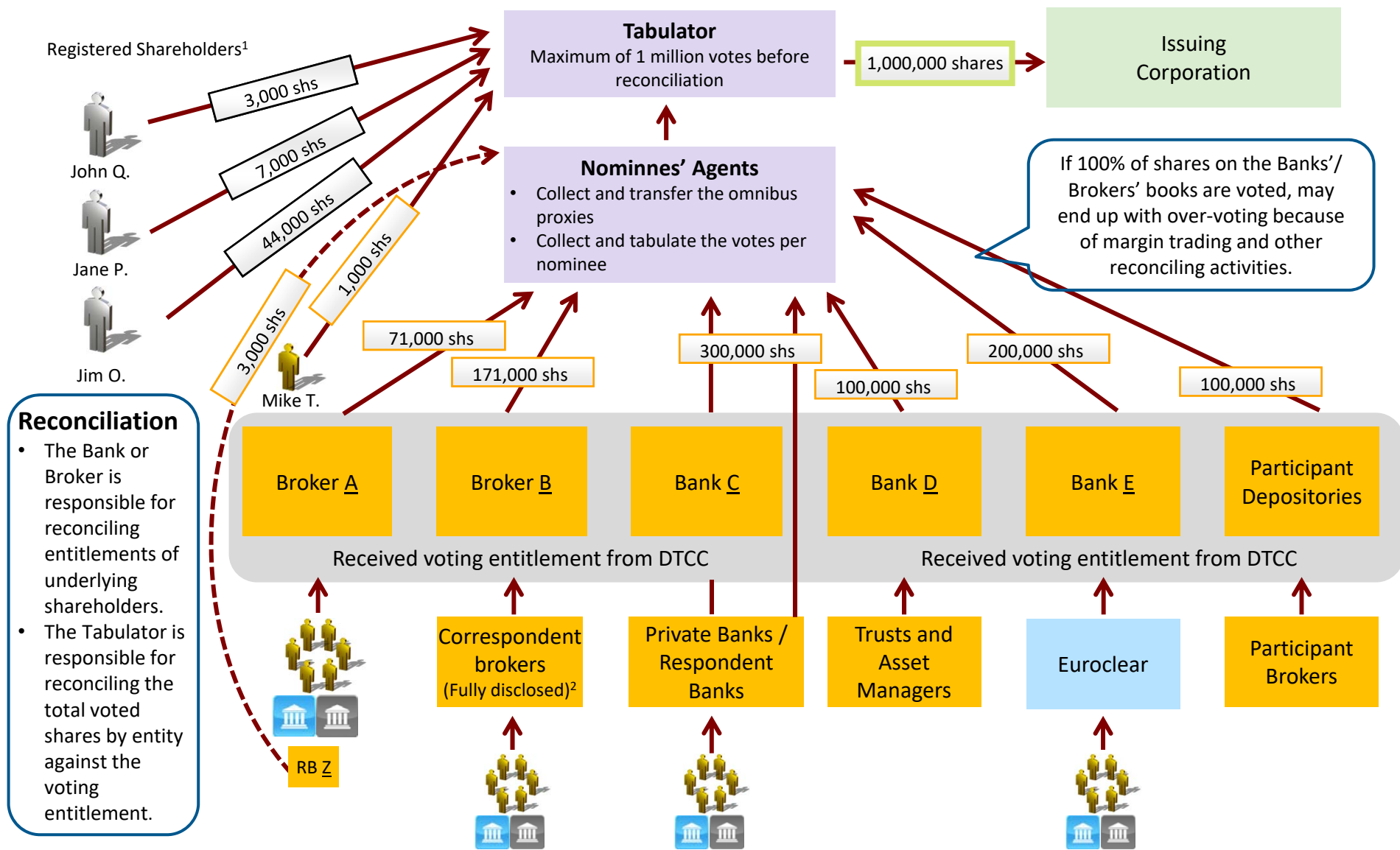
Consents/delivery preferences and email addresses of shareholders are collected by the intermediaries – i.e., shareholders can sign up once with a broker and all issuers’ materials are then delivered electronically to that account.

Agent of the broker solicits consents, collects consents as well as email addresses for email delivery, and creates websites to host proxy information as required by Rule 14a-16.



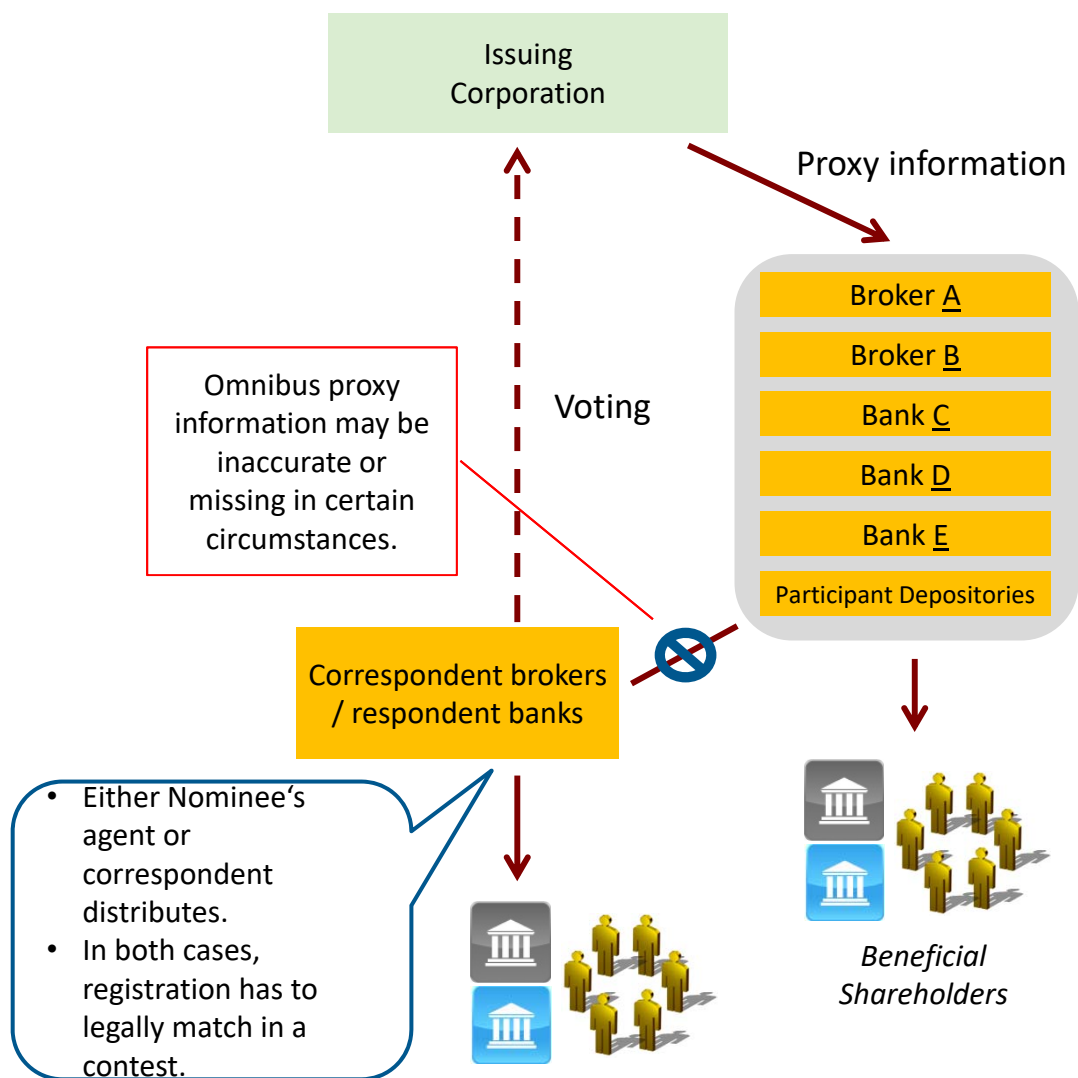
- Issuing corporation disseminates proxy solicitation information to the DTCC participant banks, brokers, and other Nominees (identified in the Omnibus Proxy) or their agents.
- DTCC participant banks and brokers, or their agents distribute information.
- In FY18, at the retail investor level, Broadridge delivered (after householding and managed account consolidations):
 - 56% by e-delivery
 - 31% by mailed notices
 - 13% by full packages
- Institutional investors receive all communications electronically.
- Banks or Brokers or their agents distribute the proxy information and Voting Instruction Forms (VIFs) to individual beneficial shareholders.
- Beneficial shareholders provide their voting instructions to their Bank or Broker or can vote at the meeting by obtaining a Legal Proxy.

Proxy processing: c. Share voting



1. Certificated shareholders are treated in most circumstances like registered shareholders 2. "Fully disclosed" brokers use clearing firms to process accounts whereas a small number of "undisclosed" brokers are managed like respondent banks.

Issue 2: Omnibus proxies are not always communicated correctly to the processor, resulting in rejection of votes.



- Rule 14b-2 drives the identification of respondent banks and the issuance of omnibus proxies.
- Non-DTCC participants require an omnibus proxy from the record bank to identify the shares held by the non-DTCC participant.
 - Non-DTCC participants include trust banks and correspondent brokers that have beneficial shareholders not serviced by the record bank.
- **Problem #1:** A record bank may fail to update the file with a new respondent bank, and this may result in the issuer or its agent not accepting votes from fully entitled nominee accounts (in a contest).
 - Example: "Bank of Cayman" switches record banks from record bank X to record bank Y, and record bank Y fails to indicate need for an Omnibus Proxy.
- **Problem #2:** In certain instances, there may be a clerical error or failure to update a name change that will result in a name that does not match and that can be challenged in a contest.
 - Example: "Bank of Cayman" appears on the Record Bank's book *and* "Cayman Bank" appears on the Tabulator's records.

Example: Continuing the Broker A example -- three scenarios for how “post-reconciliation” can be applied in proxy processing.

Three scenarios for Broker A post-reconciliation

Recap of the example

- Broker A stock record is 100,000 shares:
 - ❖ 50,000 shares are in 54 cash accounts.
 - ❖ 50,000 shares are in 40 margin accounts.
- DTCC voting entitlement is 75,000 shares.
- Maximum vote from Broker A is 71,000 shares.

Scenarios

Scenario 1	29,000 shares voted	No additional action required.
Scenario 2	80,000 shares voted	Proportionately reduce 9,000 shares across the 40 margin accounts, conduct lottery, etc.
Scenario 3	96,000 shares voted	Proportionately reduce 20,000 shares across margin accounts less further 5,000 shares (for ‘Receive vs. Payment’ account fail from cash accounts). ³

Reconciling votes to DTCC entitlements

In the example, if more shares were voted than are available and Broker A did not perform pre-reconciliation, it would need to work with its agent to perform post-reconciliation. Broadridge provides a service to prevent over-voting when post-reconciliation is the practice.

Alternatively, the broker can:

1. Contact those who hold the borrowed shares to obtain entitled proxies;
2. Ask proxy processor to increase their position by shares held at CDS, etc.

Reconciling votes

Adoption of a particular reconciliation process is generally based on the type of business the broker-dealer conducts (e.g., retail, high net worth clients, or institutional) and its philosophy as to which beneficial owners should be entitled to vote in the event of an imbalance.

Two methods for reconciliation: pre- and post-reconciliation:

1. Institutional firms generally use pre-reconciliation – identification of which investors are entitled to vote happens prior to sending the VIFs.¹
2. Some retail firms use post-reconciliation – done after the broker-dealer’s customers have submitted their votes. The broker-dealer will adjust the number of votes to correspond to its DTCC position. This process enables the retail broker to reflect the maximum number of beneficial owner votes.²

SEC perspective on reconciliation practices: In a 2007 SEC staff speech to the SIFMA Proxy Symposium, Erik Sirri, Director of Market Regulation, noted that there are several ways by which firms reconcile and allocate voting entitlements, based on their business model and customer base. He stated that the choice of which methodology to use is up to each firm, with the preferred solution being the disclosure of the methodology and consistent application of it. He noted that any regulatory initiative designed to address over-voting should be careful not to exacerbate the problem of diminished retail voting.

1. Many firms adjust records to reflect securities on loan. Fully-paid securities are given first priority and allocated a vote. To allocate any remaining votes among their margin account customers, the firms generally use a pro rata method. 2. In the rare situation when a retail firm needs to reduce the number of votes cast from the firm’s position, they generally apply formulas to pro-rate margin shares on loan. 3. For the fail to receive.

3. Comparison of Dividend Processing and Proxy Processing



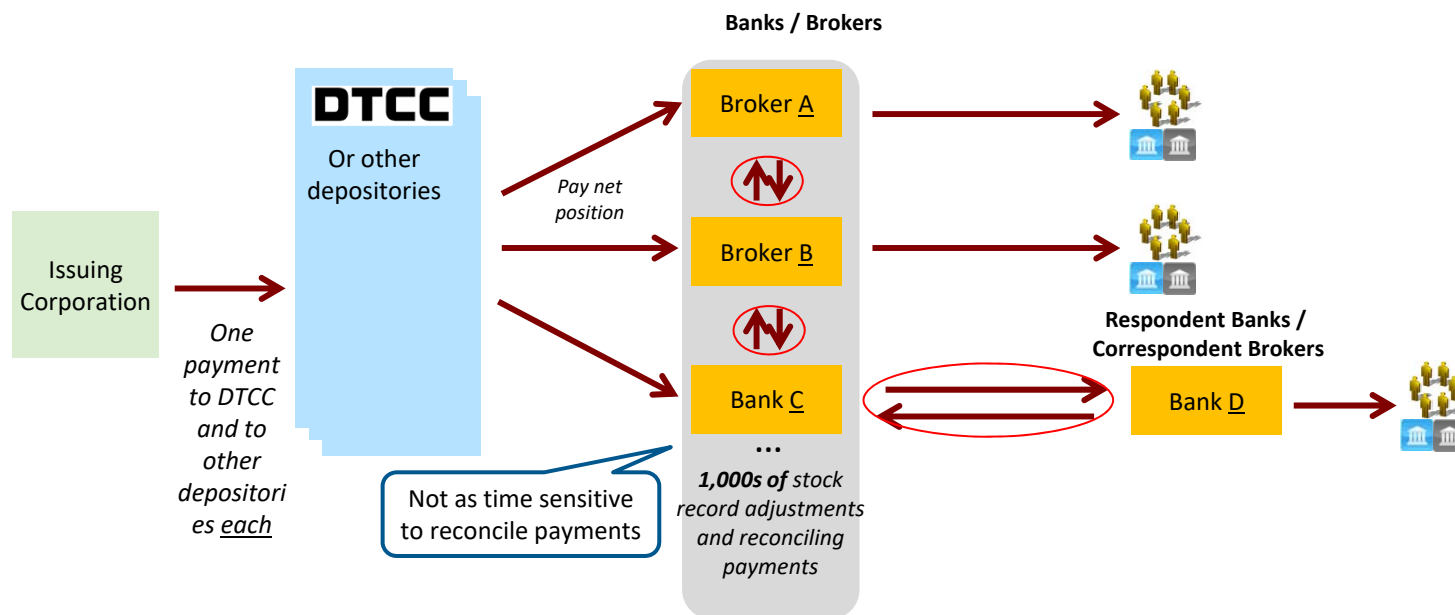
Complexities of dividend processing compared to proxy processing:

Dividend processing

Proxies need to be reconciled to actual shares available. Dividends are paid in cash on payable date and can be reconciled subsequent to payment.

Dividend processing

- One-way flow
- Cash is fungible.
- Timing is not critical because parties are compensated, or made whole, and have the ability to settle claims over months.
- Broker stock record is accurate but claims will be made against dividends paid for failure to receive and other reconciling activities.



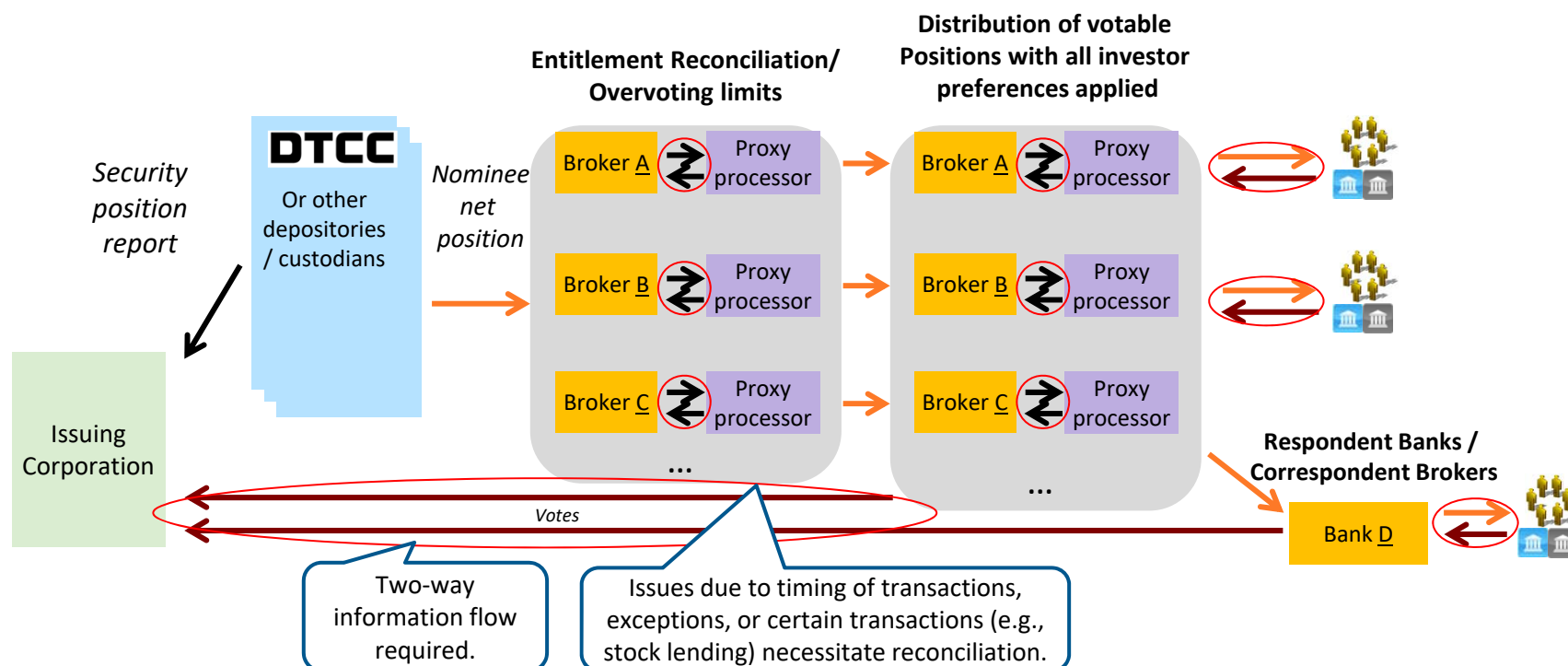
Complexities of dividend processing compared to proxy processing:

Proxy processing

Proxies need to be reconciled to actual shares available. Dividends are paid in cash on payable date and can be reconciled subsequent to payment.

Proxy processing

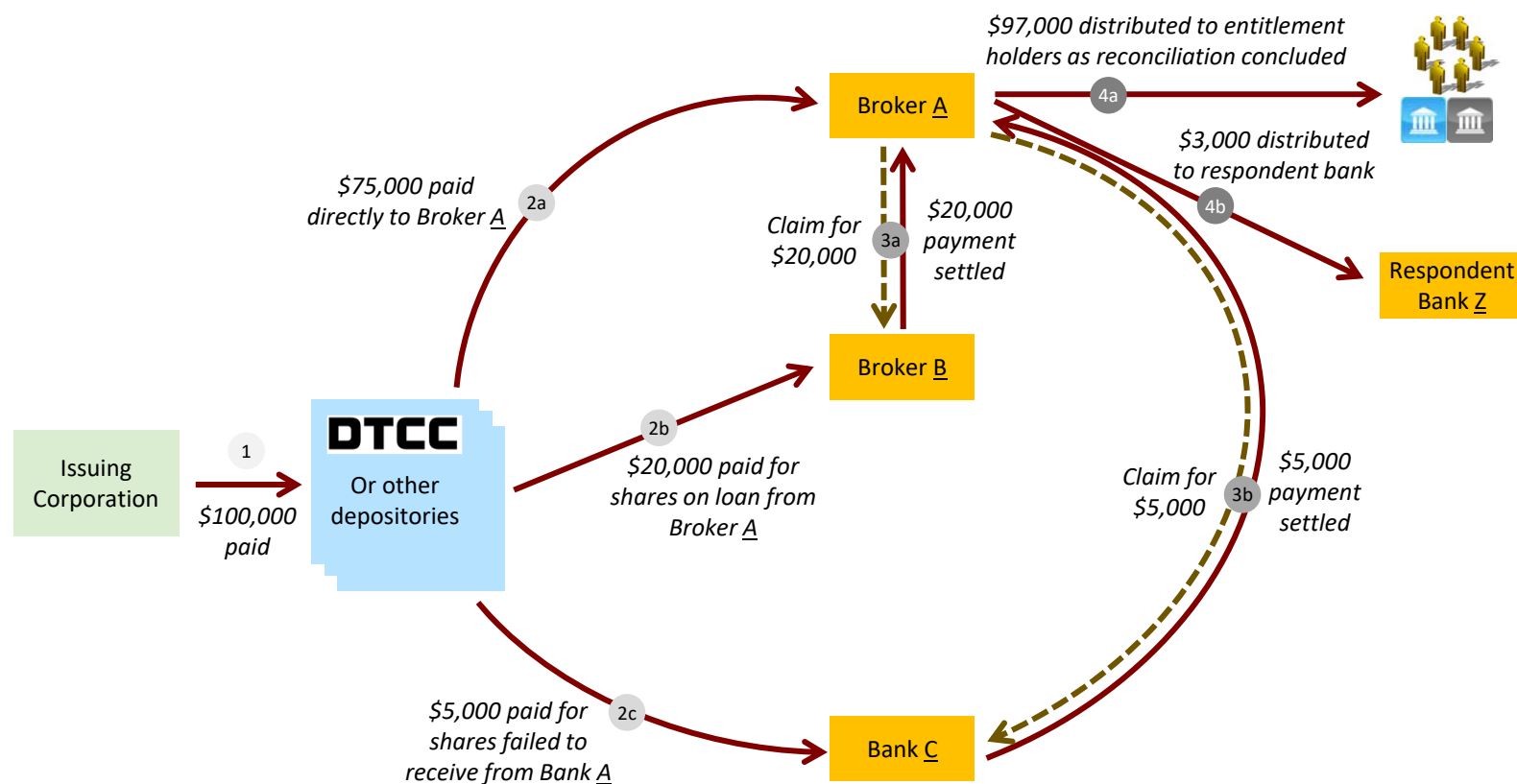
- Two-way flow
- Time sensitive; reconciliation process must be done and the votes reported as of the record date.
- Banks and brokers are required to remain within their voting entitlement.
- Retail investors do not typically vote 100% of their shares.



Example: Dividend processing for Broker A

Example from prior section
– continued --

- DTCC entitlement is 75,000 shares vs. Broker A stock record of 100,000 shares.
- Only the money flows related to the 100,000 shares are shown.
- Each share pays \$1 dividend.
- Currently, dividend processing is a highly manual process.
- Payments to shareholders are made timely, but claims between brokers can take days, weeks, or months to resolve.



4. Recommendations to Enable End-to-End Vote Confirmation for All Shareholders



Five key activities

Steps 1 – 3: *Validating Entitlements*

Recommendation	Description	Who	Rule	SEC Action
1. Improve the process by which Issuers request and receive Securities Positions Reports from Securities Depositories	<ul style="list-style-type: none"> • Issuers and their agents should insure that they request and receive reports not only from the Depository Trust and Clearing Corporation (“DTCC”) but also from the Canadian Depository for Securities (“CDS”). • There is evidence that these reports are not always included in tabulator entitlement files. 	Issuers	None specifically	Guidance
2. Improve the process by which Issuers request and receive Omnibus Proxy reports from Nominees – AND improve the process by which Nominees report their Omnibus Proxies	<ul style="list-style-type: none"> • In addition to the reports issued by Securities Depositories, Nominees also issue Omnibus Proxy reports for their respondents. Under SEC Rule 14b-2, custodian banks and broker-dealers are required to issue Omnibus Proxies for their respondent banks and/or brokers. • The reports must be forwarded to Issuers (or their agents) within five business days of a record date. • Broadridge and other agents for Nominees can facilitate the issuance of Omnibus Proxies on behalf of their clients. • The pilots underscored the importance of developing functionality to identify and communicate discrepancies early on in the process. 	Nominees	Rule 14b-2	Educational Alert reminding banks and brokers of the requirement
3. Nominees must be timely notified by Issuers of discrepancies between the Issuer’s entitlement records and those reported by Nominees (within 5 days of their receipt of the information).	<ul style="list-style-type: none"> • Issuers need to confirm vote entitlements with Nominees and notify them of discrepancies within five business days of their receipt of Record Date Position and Share Confirmation by Nominees. This step would flag reconciliation gaps well in advance of shareholder meetings so that they can be remediated. • Toward this end, the SEC might evaluate whether to amend its rules to facilitate this step. For example, the SEC might amend the instructions to Item 5.07 of Form 8-K to require a statement that reconciliation and inclusion of all shares received from Nominees was in fact, carried out -- or, if such reconciliation including all shares reported by Nominees was not carried out, an explanation as to why not. 	Issuers	None specifically	Interpretive Guidance (of what’s required to be disclosed in Form 8-K filings), or new rule

Five key activities -- continued

Steps 4 – 5: *Confirming Votes*

Recommendation	Description	Who	Rule	SEC Action
4. Issuers must confirm to Nominees that their votes are included, as cast, in the final tabulation.	<ul style="list-style-type: none"> • Issuers (and/or their agents) must affirmatively confirm receipt from Nominees (and/or their agents) of votes of shares held in street name. • They should indicate to Nominees (and/or their agents) that the votes were received and reported, as cast, at the shareholder meeting. 	Issuers	None specifically	Interpretive Guidance (of what's required to be disclosed in Form 8-K filings), or new rule
5. Nominees must confirm votes of their beneficial account owners; Issuers must confirm votes of their registered shareholders.	<ul style="list-style-type: none"> • Nominees must make confirmation available to their beneficial account owners. • After having received confirmation (as noted in step 4 above), Nominees (and/or their agents), should be required to make online confirmation available to their beneficial account holders. • Similarly, Issuers (and/or their agents) should be required to make online confirmation available to their registered shareholders. 	Nominees and Issuers	None specifically	Interpretive Guidance or new rule

Proxy contests require steps to address shares held directly in registered form.

The five steps are essential building blocks for achieving end-to-end vote confirmation for *uncontested* shareholder meetings. *Contested* meetings require additional measures, given the roles opposing parties play in soliciting votes for their respective sides.

- Fostering greater confidence in the outcomes of voting by registered shareholders in contested solicitations requires additional measures by the SEC. That is because when “snake pits” are involved, the votes of registered shareholders are tabulated separately by opposing sides, *i.e.*, by an agent for management, and by another agent for opposition – both of whom want to win for their side.
- In the P&G / Trian proxy contest (2017), a “snake pit” was necessary to address the tabulation of registered shares (which represented approximately 6% of the shares outstanding).
- To advance vote confirmation with registered shareholders in contested solicitations, the SEC might consider requiring verification of the registered shareholder tabulation process by an independent third-party firm, *e.g.*, a major independent public accounting firm.
- The SEC could also require Inspectors of Elections (“IOE”) to be involved at the beginning of the solicitation, instead of simply after the polls close. To be specific, currently in proxy contests, the IOE has no visibility into the handling of proxies of registered shareholder before the polls close.

Appendix: Further details and clarifications



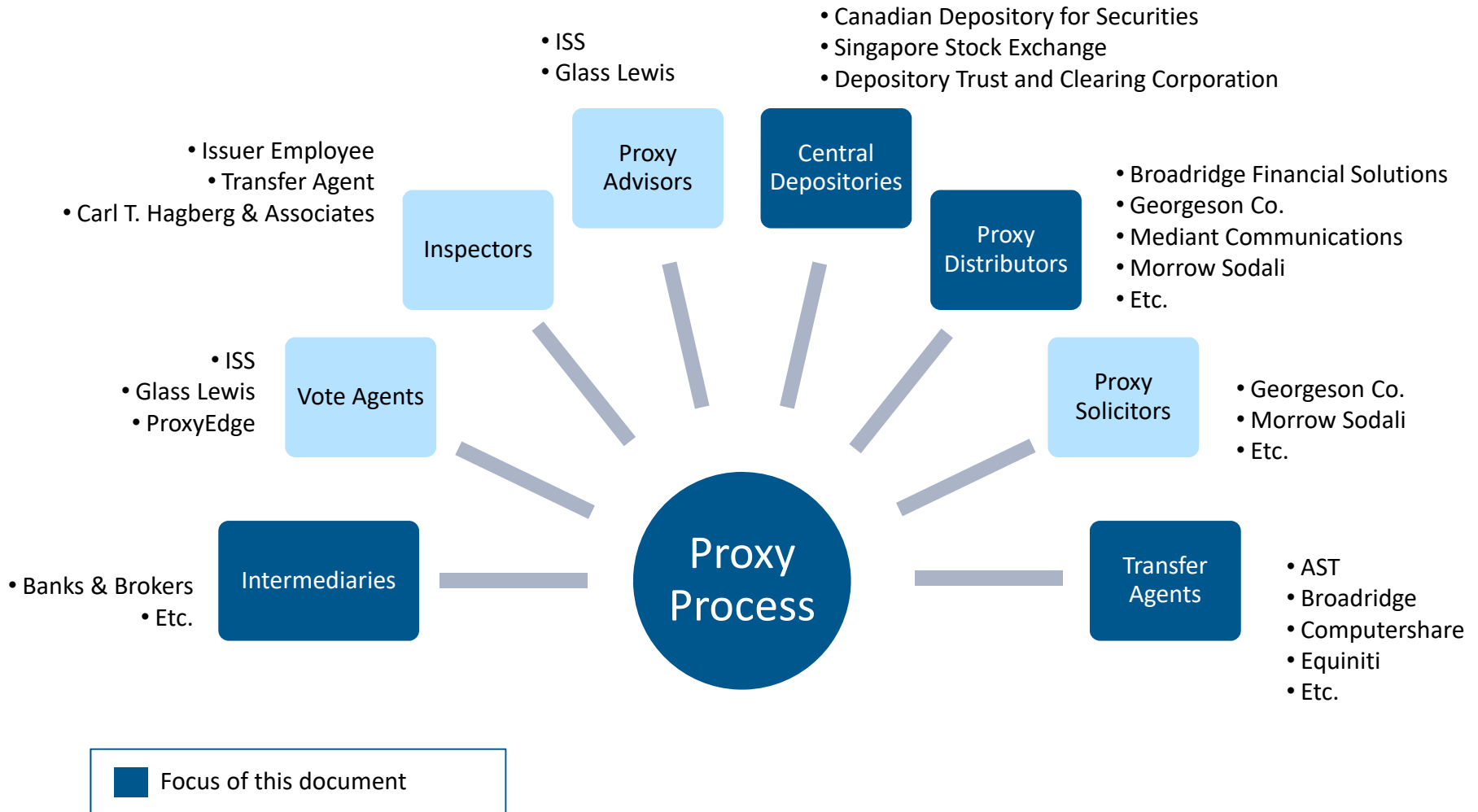
Further details on the potential reasons for a disconnect between stock records and voting entitlements

Potential reasons for disconnect	Description	
Normal course of transactions	Stock lending	Brokers may reflect a client as entitled to vote even if the shares are on-loan to a counterparty or the loan recall failed -- as long as there is no over-vote.
	Short selling	To support short selling, brokers may need to borrow from retail investors / institutions to cover a settlement, thus impacting vote entitlements.
	Stock hypothecation	Brokers or dealers may hypothecate or lend collateral from margin customers and the position may not be reflected at DTCC. Clients retain the right to the vote even though shares may be located at another entity.
Timing	Securities in transit (from ACAT, vault, re-registration)	Shares that are in transit may not be reflected in the DTCC's entitled nominee position, even though the bank / broker and their client expect to have the right to vote (similar to a failed settlement).
	Items in suspense	On rare occasions, brokerage firms may have an out-of-balance condition on their stock record vs. the client entitled position – e.g., lost certificate.
Exceptions	Failed settlements	Clients who have purchased shares are entitled to vote even though their broker-dealer may not have received the shares from the counterparty, meaning this position is not reflected at DTCC.
	Failed recalls from securities loan (with no voting rights if overvote)	Similar to a failed settlement, a stock record will show entitlement based on what was supposed to happen as this allows the broker to follow up and 'claim' the market for what the client did not receive.
Omnibus	Omnibus proxy missing	Record bank may fail to update the file to the issuer with new respondent bank information – or record bank / broker may fail to update a name change, resulting in rejected votes.

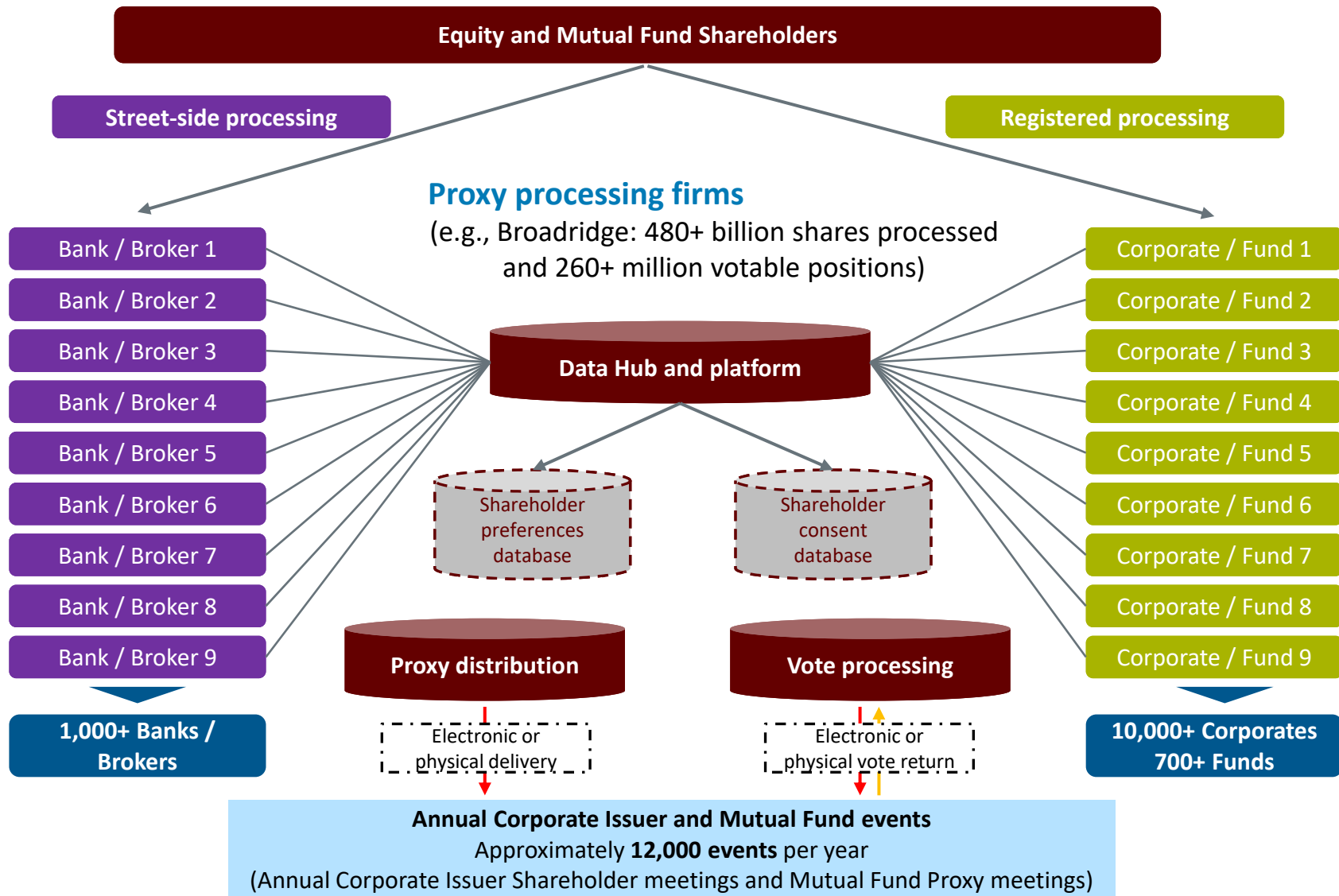


Proxy Ecosystem

Examples of key players in the Proxy Voting process



Proxy & Non-proxy (“Interims”) communications Processing overview -- “The Plumbing”



OPTIMIZER

PROVIDING STRATEGIC AND PRACTICAL ADVICE - AND MONEY-SAVING TIPS...SINCE 1994

VOLUME 27, NUMBER 4

NOW IN OUR 31ST YEAR!

FOURTH QUARTER 2021

IN THIS ISSUE

The Outlook For In-Person, VSM And Hybrid Meetings - Straight From The Frontlines

In 2022 Issuers Will Have To Fight Harder Than Ever For The More-important-Than-Ever Retail Vote: A Quick Look At Retail Investor Loyalty Programs

Covid Boosts "Virtual Inspections Of Elections" - A Big Potential Money-Saver

The Badly Mis-Named And Imperfectly Understood "Universal Proxy Rule" - Three Important Practice-tips

Revised Transfer Agent Market Share Numbers And What They Mean

Will The AST-EQ Combination Mark The End-Game In The Fragmented TA Business?

Out Of Our In-Box: The Craziest Shareholder Meeting Events In 2021...and Our Annual "Ficklefinger Award" For "Barking Orders" To A Prominent Investor

On The Supplier Scene: Numerous Moves To Expand Horizontally In Already Overcrowded Fields

**People: Many Industry Stars Move On
Regulatory Notes...and Comment
Watching The Web**

The Outlook - And Our Advice - For In-Person, VSM And Hybrid Meetings In 2022... Straight From The Frontlines

The number-one question we're being asked as readers gear up for the 2022 Meeting Season, and as Covid cases began rising again, is "What are most companies planning to do this year?"

So far, as our sister-company, that will provide Inspectors of Election at over 500 companies of every size, shape and description is seeing - the vast majority are opting for VSMs, which seems smart to us.

And - equally smart, we think - an unusually large number of companies are booking them extra early - to get first-dibs on their preferred dates and times - and on the VSM A-Team too, we think - and, very important to smart companies - to be sure they will have the Inspector of their choice. In our 50+ years of involvement with scheduling and staffing shareholder meetings, we have never seen so many companies book so early.

Here's our own analysis of the "Covid-Climate" for meetings in 2022:

- Companies with historically low or no meeting attendance will be mostly safe, we think, to schedule small-scale in-person meetings in mid-April through August - with no more than 25 or so attendees in total, but in a big and airy space, and with pre-registration, proof of vaccination and mandatory masking required.
- Nonetheless, if it were *our own meeting*, we would stick to the most prudent course and go virtual only - which is what most companies are doing so far.
- To date, we have been hearing that quite a few companies really miss their in-person meetings, and are still keeping options open. But we ourselves would opt for the most prudent course, rather than risk hosting a "spreader event" or having to scramble if the Covid-climate turns worse.

CONT'D →

- Note well: We have seen two cases in the past two months where the in-person option had to be abandoned on very short notice - and where it was too late to give adequate notice to retail investors. Both companies had to send staffers to the original site to meet, greet and explain to retail investors - and to collect any proxies or ballots.
- So far, we'd noted only one mega-cap-company that has announced an in-person meeting - in mid-May - and in a warm climate. But they have a well-developed contingency plan to go virtual-only, just in case. And oops! Just as we were going to press, **Berkshire Hathaway** announced that they would hold an in-person meeting in Omaha on April 30 - drawing speculation from the *NY Times* reporter on how they planned to protect the health of Warren Buffett (91) and Charlie Munger (98.) Nice news for the tens of thousands of Berkshire Hathaway meeting fans, the meeting will again be streamed "live" with details on the in-person admission provisions to come in late February or early March.
- Our own bet is that Covid cases will decline as the weather warms up - and some folks are saying that we are "past the peak" now - but we are betting on an upswing right after the Labor Day holiday, and as the weather cools off again. So companies with meetings in the increasingly busy September through December period would be well advised to hold their horses for now, we say, where in-person meetings are concerned - and maybe to book your dates and times for a virtual meeting well in advance...just in case.
- Another trend we have been noting is the rise in interest in having a Hybrid-Meeting. This idea has been particularly popular with smallish and *newer public companies* that have a real desire to reach out to - and to "engage" their brand new investors - including retail investor owners and fans. We ourselves are big fans of hybrid-meetings - in principle - but we still have concerns about the ability of most companies to pull in the required technologies - and to work on the "playbook" - and on the needed dress rehearsals to pull one off in a good way. Currently, in our experience, smaller and *tech-savvy companies* have a much better chance of doing so than large and mega-cap companies, where both the cast of characters involved and the number of issues to be addressed tend to be so much larger.
- **Please remember our warnings in the last issue that institutional investors - and shareholder proponents - and the press - will be tuning in and critiquing shareholder meetings with special care - and promising to withhold votes for some or all directors at companies next year that fail to insure adequate "engagement" and a real "dialogue" with investors.**
- **Our best advice of all is to go to our website to review our [Virtual Meeting Playbook](#), our sample [Run of Show](#) and our easily modified [Rules of Conduct](#) for virtual-only and hybrid meetings, which we have posted on our website - to make sure your meeting will pass muster with flying colors.**

In 2022 Issuers Will Have To Fight Harder Than Ever For The More-Important-Than-Ever Retail Vote:

This year, The OPTIMIZER believes that the battle for the management-friendly retail investor vote will be harder to win than ever before - even while the retail vote will be a bigger decider than ever before. Here's why:

- As noted elsewhere in this issue - by several of the most knowledgeable firms out there - there has been a huge surge in retail investment in individual stocks: Over the past 18 months more than 22 million individual investors have entered, or belatedly re-entered the stock market - and two-thirds of them are in the Millennial and Gen-Z cadre of voters. We'd also bet, based on our longtime observations of retail shareholder records, that they hold at least three stocks each, on average.

- This big and growing cadre of people have very different ideas about making their voices heard - and on the issues themselves - than their overwhelmingly management-friendly but mostly ‘passive voters’ their parents and grandparents mostly were in the past.
- A very high percentage of Millennial and Gen-Z voters identify social and environmental issues as being “very important” to them as investors - and in making investment decisions - witness the enormous growth in so-called “socially-conscious” funds and EFTs we’ve seen over the past two years.
- While yes, the old estimate that retail investors as a group hold roughly 30% of common stocks - on average - is still mostly correct - at many companies, and particularly at companies that have special appeal for retail investors, the actual percentage of shares held by them has grown dramatically higher. (This development has also been exacerbated, as noted elsewhere in this issue, by big share-repurchases at many of the companies that have high appeal to individual investors.)
- And oops! In case you failed to note it - in 2021 more retail investors than ever before are voting FOR social and environmental proposals - and for “governance proposals” too....and they are increasingly passing.

WHAT ISSUERS SHOULD BE DOING NOW...

1. Make sure you know exactly how many retail investors you really have in 2022 - and exactly what percentage of the total vote they represent.
2. Carefully consider every “ESG” proposal you receive in light of today’s voter demographics, and try to work out a reasonable compromise, rather than to rack up a loss.
3. If you decide to recommend Votes NO on ESG or other shareholder proposals, work especially hard on making your case to retail investors - in language they can understand - and in an investor-friendly format that will motivate them to read carefully - and act on.

A Quick Look At Retail Investor Loyalty Programs - And Other Incentives To Get Out The Retail Vote

In the last few weeks of 2021 we had inquiries from three readers on this subject - one of our favorite ones - so we placed calls to a few colleagues who’ve had success here, and reviewed some of our own past articles for other ideas:

Peggy Foran, who pioneered the program of “tree-plantings or totes for votes” at **Prudential** many years ago promptly wrote back...”Bags and trees still on and have been a hit!”

Our friends at **Bank of America** are still *very satisfied* with the charitable donations of \$1 for every retail account that votes a proxy and will continue again this year (no charity determined yet.) They also mentioned a very interesting thing - that with their continuing share-buyback programs, the retail base is actually increasing noticeably as a factor in their Meeting quorum - something all companies with buyback programs need to be alert to this year.

IBM has also been very satisfied with its similar program - \$1 to a designated charity per retail position voted - and they noted yet another important factor to pay attention to - a big surge in the numbers of their retail investor accounts, where there have been over 22 million first-time retail investors added to the ‘pool’ (on a nationwide basis) over the past 18 months or so. Many of these newcomers LOVE brand-name companies...but are new and naive re: proxy voting, and need some education - and some encouragement!

CONT'D →

We have been telling one mega-cap company that asked about voting incentives that we'd bet \$1000 they can raise their Quorum at the shareholder meeting by 4-5 percentage points if they can motivate their non-voting retail owners... and with "mostly company-friendly votes" so we are hoping they will give it a try this season. (This is a company that has had a lot of "squeakers" on shareholder proposals over the years...but, ouch - in the end, a tight-budget nixed the idea for this year.)

Here's a [link to the BofA success story](#), from 2018 (The Biggest And Best Thing We Saw This Season: A 41% Increase In Retail Investor Voting Participation...following An 8% Increase Last Year... At Bank Of America) and a [link to a 2011 article](#) that still has good ideas for incenting retail investors to vote proxies - and warnings about major turnoffs (A Short-List Of Incentives That Might Get More Folks To Vote Their Proxies)

Some of the very best tips for winning-over the big and fast growing "new investor" vote, please note, can be found in this very issue - and they revolve around using modern technologies - and also, more compellingly written and 'engaging materials' to truly "engage" - and convince - and motivate shareholders - and to make it fast - and easy for retail investor voters to cast their votes.

Covid Boosts "Virtual Inspections Of Elections" A Big Potential Money-Saver... Our Tips On Acting Smartly

In 2021 - thanks largely to sensible Covid-era precautions - U.S. companies overwhelmingly relied on "Virtual" attendance of Inspectors of Election - and auditor representatives too - at their shareholder meetings. Our sister-company, CT Hagberg LLC, logged fewer than two dozen in-person appearances out of the 560 meetings handled by Team members. In many cases this generated significant dollar-savings in IOE travel and lodging expense over the cost of in-person appearances. So far this year, the ratio of "virtual" vs. in-person appearances being scheduled seems to be running at the same high rate.

Our Inspectors still love to attend shareholder meetings in person - but if the meeting is to be virtual only - or if few or no outside shareholders are expected - and nothing new or controversial is on the agenda - the savings in "virtual attendance" by the IOE can often be considerable. Here are a few tips on thinking this through:

- First, of course, is to estimate how many outside attendees are likely to show up, and likely to bring proxies or want to vote in person. If it's more than a handful, you will likely want the IOE to be there in person too, to collect and take charge of the votes.
- Next, think about the meeting location - and the location of your Inspector: At many meetings, the IOE is only a short drive away - and sometimes, literally within walking distance to your meeting site. So no big deal for the IOE to come - and no big expenses at stake either way.
- Very important, we suggest, is to think for a second about your senior management team: At most meetings the Inspector of Election is the only outside person in the room that your management team actually knows by sight. And many meeting chairmen - and their senior staff too - really appreciate having that one 'friendly face' and 'meeting-seasoned person' in the room - and feel comforted to know, at an always tense time, that the IOE is a meeting-veteran who can smartly step up to the plate if something unexpected arises "from the floor."
- As we have been noting, the advent of virtual and hybrid meetings has made the know-how - and the

involvement of Inspectors in the planning and delivery phases more important than ever. So if you are new to the Shareholder Meeting game - and/or new to the VSM and Hybrid-Meeting game - be sure that your Inspector thoroughly knows the ropes and will be appropriately proactive - both in sharing info gleaned from other meetings AND in rising to the occasion quickly and expertly if unexpected circumstances should arise.

- If you decide to have the IOE attend virtually, as so many companies are planning to do this year, be sure to have a brief written script you can read in the event proxies or ballots ARE handed in at the meeting... to assure voters that you will transmit the forms to the IOE for validation and tabulation right away, for inclusion in the Final Report on the Voting.

Readers: Please take a few seconds to review the truly outstanding group of IOEs on our Team - at Inspectors-of-Election.com. Please note too that we are ready, willing and able to work with any reputable tabulator you may use.

The Badly Mis-Named And Imperfectly Understood “Universal Proxy Rule” Three Little-Noted Practice Tips To Observe This Season

On November 18, 2021 the SEC mandated the use of “Universal Proxy Cards” in contested elections of directors and made at least one change that will effect ALL proxy cards for elections that will be held after August 1, 2022: All proxy cards will have to provide Against and Abstain options where such options have “legal effect under state law” - instead of the old For and Withheld options that companies with “plurality voting provisions” have traditionally used, since time immemorial...So readers - **Practice Tip 1:** Note this detail well if you still have plurality rather than majority voting, as roughly half of all US companies still do.

The new rules also require disclosure in the proxy statement as to the effect of all voting options that are provided: **Practice Tip 2:** Be super-careful in drafting these disclosures. Double-check your own Bylaw provisions re; each proposal and be careful to avoid statements that confuse folks into thinking that Abstentions are somehow ‘the same’ as Votes-No.

Another big, and ill-considered change in our view, is the SEC’s calling them “Universal Proxy Rules”: A terribly bad and totally incorrect name, we say, since the vast majority of Proxy Rules are -and should properly BE - tried and tested State Law Rules, and related case law. **Practice Tip 3:** how about insisting on a hyphen, to correctly label them as Universal-Proxy Rules, or much better, Universal Proxy-Card Rules!

In any event, as a Sidley Austin memo notes, they do “confer substantially more significant rights to shareholders without any minimum ownership requirements (i.e., owning only one share for one minute will be sufficient they say.) But we’d note that this feckless provision only applies where there is an official proxy fight - where there are more candidates than there are “seats.”

Sidley, and numerous other firms have been warning (or more correctly perhaps, simply licking their chops for more fights) that the new rules will somehow generate more proxy fights, though we don’t think there is a logical nexus here at all. But they will - almost certainly - make it somewhat easier for opposition directors to obtain votes...although, at the end of the day, as we always say, “The best fighter, with the best advisors - and with the most convincing and compelling arguments will win in the end” - Universal Proxy-Card rule or no.

Revised Transfer Agent Market Share Numbers... And What They Mean

On December 21, data-gathering experts at AuditAnalytics posted new and very interesting data on transfer agent market share, covering all SEC-registered issuers and noting changes in the most recent period, which covered Dec. 1, 2020 through Nov. 1, 2021 - vs. the year-earlier period. The numbers have particular importance in light of the dramatic changes in the competitive dynamics that will arise from the consolidation of the number-two and number three of the top-four agents - when measured, please note, by the number of shareholders served and by their gross revenues, which is, we believe, the proper way to measure T-A market share:

TRANSFER AGENT MARKET SHARE ALL SEC REGISTERED ISSUES		
AGENT	% SHARE - 2021	% SHARE IN 2020
Computershare U.S.	32.4	37.4
American Stock Transfer & Trust	17.6	21.2
Continental Stock Transfer & Trust	11.9	5.6
EQ (formerly Wells Fargo Shareowner Services)	4.5	4.5
Broadridge	3.2	3.2
ALL OTHERS	30.4	30.4

What a shocker at first glance to see Computershare lose 5 points of share and AST lose 3.6 points - with Continental gaining 6.3 points - until one reads down a bit and discovers that Continental has been winning a big chunk of the record number of IPO accounts in 2021 (where there were 956 in 2021 - a 22-year record - vs. only 124 in 2020) and continues to hold a near lock on SPACs, where they won 86.75% of the 2021 deals. Taking all 2021 IPOs into account, Continental won a whopping 55.75% of them, with AST at 17.25% and Computershare at 14.85% - for a total of 87% of all IPOs in 2021.

But bear in mind that most of the IPOs (and of Continental's entire portfolio) are very small companies, with minimal TA servicing needs, so the numbers above are not indicative of total revenues - and have not moved that needle much at all where the share of total market revenue is concerned. The AuditAnalytics scorecard of agents for the S&P 500 companies, below - where the lion's share of TA revenues reside - presents a very different view of the marketplace and a much better idea of "who's really who" where the dollars are concerned.

*Also, please note that the 30.4% market share attributed to all others does not seem right to the OPTIMIZER: AutoAnalytics notes elsewhere in its study that "there are an additional 40 transfer agents that have at least 20 clients in our database" - and there are still a fair number of companies that maintain their own shareholder records as well - but we have a very hard time coming even close to having nearly a third of all publicly traded issues, much less of SEC registered ones, served by "all others." And, as we will see in the next chart, the top-four agents (and the top-three in 2022) control over 98% of all the largest U.S. public company accounts. We ourselves put the share of "all other agents" at "around 10% at best...and probably less.

SUBSCRIBE TODAY!

\$245 Per Year

Visit OptimizerOnline.com/subscribe

is published quarterly by
CARL T. HAGBERG & ASSOCIATES
 P.O. Box 531, Jackson NJ 08527-0531
 E-mail: carl@optimizeronline.com

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

ALL RIGHTS RESERVED: Reproduction or transmission of this newsletter, in part or whole, by any means whatsoever, is prohibited unless the permission of the editor is first obtained. Such requests are welcome and permission will be liberally granted.

CONT'D →

TRANSFER AGENT MARKET SHARE S&P 500 COMPANIES

AGENT	% SHARE - 2021	PROJECTED 2022*
Comptershare U.S.	56.4	56.4
“New EQ” (AST + EQ)	-	34.8
EQ (formerly Wells Fargo Shareowner Services)	19.2	-
American Stock Transfer & Trust	15.6	-
Broadridge	7.0	7.0
Continental Stock Transfer & Tust	0.8	0.8
ALL OTHERS	1.0	-

Source: AutoAnalytics December 21, 2021 report... *Projected 2022 share, The Shareholder Service OPTIMIZER **Note also that projected “Transfer Agent Market Share” significantly understates their projected share of revenues derived from shareholder meeting activities, where approximately 2000 public companies now use Broadridge rather than their transfer agent to handle these activities.

Why Should Public Companies Care About Transfer Agent Market Share? And What Measures Should They Care Most About?

Well, dear readers, take it from a 32 year TA industry veteran: It is really the gross share of industry revenues that counts in the ongoing struggle for dominance - and for that matter, for long term survival and stability in what is still a very fast-changing, demanding - and very risky environment. So we say, the number of shareholder records maintained is the most important metric by far, since this is still the main driver of industry revenue - along with the amount of revenue derived from the much higher-value-added services that Fortune 500 and S&P 500 companies need to have.

We say again, as we so often do, that “Everyone wants to be with a winner” - and with good reason. The biggest and most successful public companies tend to follow the “lead steers” when it comes to selecting a Transfer Agent - and pay particular attention to which agents are losing, and gaining big-company clients...to again, follow the lead steers as the safest path.

That said, here is our own chart ranking TAs by shareholders of record maintained:

TRANSFER AGENT MARKET SHARE Ranked by shareholder records maintained (millions)		
AGENT	AS OF YEAR-END 2017	AS OF YEAR-END 2019
COMPUTERSHARE	16.6mm (51%)	16.6mm (53.5%)
EQ (Formerly Wells Fargo)	7.7mm (24%)	7.3mm (23.5%)
AST	3.7mm (11%)	3.6mm (11.6%)
BROADRIDGE	1.6mm (5%)	750m (2.4%)
ALL OTHERS	2.9mm (9%)	2.74mm (8.9%)
TOTALS:	32.5mm	31mm

Source: Transfer Agent TA-2 filings, with adjustments for “secular roll-off” by the Shareholder Service OPTIMIZER

Note that movements of public companies from one transfer agent to another were minimal in 2021, but we will publish updated numbers in mid-year 2022 when new SEC filings are in.

Will The AST-EQ Deal Mark The End-Game In The Fragmented TA Business?

We sure would like to say yes. But as former “players” in the business for 32 years ourselves - and as avid “industry watchers and reporters” for 30+ years more - we have to say the game is far from over - although the broad outcomes seem increasingly clear:

The “new EQ” is facing formidable challenges in the near term to merge operating systems and staff, widely scattered operating locations - and three - count’em, *three* - “corporate cultures” - all distinctively different, we’d note. And, perhaps the biggest challenge of all, they need to articulate a clear and compelling message - both to current clients and to prospective ones - that they should be their “agent of choice” But to date, they seem to us to be alarmingly late out of the gate on that last score - but wise, perhaps, to hold their peace until they have their overall plans firmly in place.

Meanwhile, even after the merger of the number-two and number-three agencies, **Computershare** maintains a formidable 56.4% to 34.8% lead where the “lead steers” - and most of the money too - are currently lodged. But so far, they have had relatively little luck in “dynamiting away” new clients from their traditional rivals, due, we say, in no small part to the reluctance of clients to move in what has been an unstable environment for some years... plus the fact that most corporate stewards have been over-busy with far more pressing matters than evaluating, and maybe changing T-As. This last factor will certainly change over the coming year since corporate purchasing policies alone make this way overdue for a look-see, but currently, CPU seems to be spending a lot more of its sales and marketing time - and money - on flogging brand new products and services.

Also, as noted elsewhere, **Broadridge**, which *looks* like a small player by some measures, continues to gain share where the high-profile, high-value-added and, consequently, high-margin Shareholder Meeting services are concerned - making year-over-year growth in the proxy distribution and tabulation areas and where, currently, they seem to have a near lock on providing Virtual Meeting services to investment-worthy companies.

On the ‘small T-A scene’ one has to note the current dominance of **Continental Stock Transfer** in the small-IPO and SPAC world - but also to note the stats from AutoAnalytics that reveal some recent cracks in their lock on SPACs - plus the existence of 40 small T-As with 20 or more clients - and to note, as we have been doing, a sudden upsurge in new entrants to the TA biz...with more to come, we guarantee.

For now, we say, “The current environment presents a once-in-a-lifetime - and a very much long overdue opportunity - for public companies to take a careful look at the TA scene - and to benefit from what will surely be a buyer’s market” over the next two years or so. Readers: “Don’t sleep through it!”

The Craziest Shareholder Meeting Events We Saw In 2021...Starting With...

THIS YEAR’S “FICKLEFINGER AWARD”- FOR THE MOST OUTRAGEOUS RULE IMPOSED ON A SHAREHOLDER PROPONENT WE’VE EVER SEEN... “The barking orders from Cintas Corporation” - issued in writing to shareholder proponent John Chevedden, who circulated to the world at large what he aptly described as ‘barking orders’ ... sent to him with “Best Regards” (!!??) by the Cintas SVP, Corporate Secretary and General Counsel, who wrote,

“Attached please find the Rules of Conduct and Procedures for the upcoming Cintas Shareholders Meeting. When prompted by the Chairman, you will read your shareholder proposal exactly as it is included in the proxy materials. No deviations from the statement in the proxy materials is permitted.” Please use the following number to dial into the shareholders meeting:

What in the world prompted a Corporate Secretary and GC to insist on such an odd and restrictive rule - and to deliver it in such a rude and peremptory manner to a well-known shareholder proponent? Most companies reach out early - and personally - to shareholder proponents to discuss the way their proposal will be presented (pre-recorded, over a phone line or in person) and by whom.

CONT'D →

At the overwhelming majority of the hundreds and hundreds of Shareholder Meetings your Editor in Chief has been to over 50+ years, proponents are reminded that they do not need to read their entire (and needlessly time-consuming) resolution, and invited to offer a brief, and usually time-delimited summary statement instead. Was it fear that the typically mild-mannered and polite Chevedden would offer up a fiery and convincing speech...that would somehow win the day? Or just a need to assert authority, and to rudely bark at a well-known shareholder - about what is widely known, after all, as “The Annual Meeting of Shareholders”? Was it to let him know who the real boss is...in the GC’s ill-informed opinion?

We call it the *Ficklefinger Award* for a very good reason: When someone flicks the finger to a shareholder as this guy did, the finger of fate immediately turns it around and raises it squarely in the face of the flicker...much to his or her own embarrassment and dismay, as a rule. And what a bad reflection on the company as a whole!

More Craziess - Two Sets Of Dissident Shareholders Fail To Observe The Rules Regarding Director Nominations - Then Expect Companies To Give Them A Free Pass!

In December, a good friend forwarded a memo seeking advice re: a call with a client about the universal proxy rules, and “came away with an interesting question” – should companies be amending their advance notice bylaws to address whether a director nomination can be properly brought if the shareholder indicates that they will comply with Rule 14a-19(a) but then does not meet all of the requirements? Specifically:

The new Universal Proxy rules:

- Require that the dissident send its solicitation materials at least 67% of the voting power of the company (either through the mail or notice and access).
- Require that the dissident file their proxy materials by the later of 25 calendar days before the meeting date or 5 calendar days after the registrant files its materials
- Require that the company include disclosure in its proxy statement advising shareholders how it intends to treat proxy authority granted in favor of a dissident’s nominees in the event the dissident abandons its solicitation or fails to comply with Regulation 14A.
- The adopting release notes that the dissident might be subject to liability for violation of proxy rules and material misstatements if it failed to file on time or complete its solicitation.

Question:

What if the dissident represents to the company that it will meet these requirements and the company therefore mails its proxy materials with a universal proxy card, but then the dissident does not file its materials on time, does not actually send materials to at least 67% of the voting power, or otherwise abandons its campaign. Under state law and most company advance notice bylaws, how should a company treat proxy cards it receives with votes for the dissident’s nominees if the dissident fails to comply with Regulation 14A? If they otherwise complied with the company’s advance notice bylaw, would they be able to not count those votes? Should companies be updating their advance notice bylaws to address this issue specifically?

Here was our answer: “This is a good one and, believe it or not, we are dealing with this very issue in yet another pending fight now! As the Inspector of Elections I would absolutely NOT count dissident votes if the subject company demonstrates that they have failed to comply with any of the above mentioned rules. No need I’d say to amend bylaws to deal with such failures on the part of the insurgents.”

Cheers. And Happy New Year! And please, dear readers, also remember our advice to NEVER waive your own Notice Provisions and allow anyone - no matter how ‘innocent’ they may seem to be, or how many votes of your own you may think you “have in the bag” - to submit a proposal from the floor! Check out our website for the scary details of doing so...

More From Our In-Box

NYSE finally fixes its mixed-up vote tabulating rule: In late November, **John Jenkins** of the **CorporateCounsel.net** blogged re the NYSE: “SEC approves amendment clarifying ‘votes cast’: Last week, the SEC approved an [amendment](#) clarifying the definition of “votes cast” in Section 312.07 of the NYSE’s Listed Company Manual...The amendment eliminates a disparity that previously existed in the treatment of abstentions under the laws of many states and the NYSE’s treatment of them in determining whether a particular action has been authorized by a majority of the votes cast by shareholders. This excerpt from [Arnold & Porter’s memo](#) on the amendment explains the NYSE’s action and its consequences:

“The NYSE has historically advised companies that abstentions should be treated as votes cast for purposes of Section 312.07, such that a proposal would be deemed approved only if the votes in favor exceed the aggregate of the votes cast against plus abstentions (i.e., giving abstentions the effect of a vote against). The corporate laws of many states, however, including Delaware, allow companies to specify in their governing documents that votes cast for purposes of a shareholder vote include yes and no votes (but not abstentions), such that a proposal succeeds if the votes in favor exceed the votes against. Consistent with those state laws, many public companies have bylaws indicating that abstentions are not treated as votes cast.

“The NYSE has amended Section 312.07 to provide that a company must determine whether a proposal has been approved by a majority of the votes cast for purposes of Section 312.07 in accordance with its own governing documents and any applicable state law, which would permit a company to disregard abstentions if its governing documents and any applicable state law so provide. In its proposal, the NYSE noted that this is consistent with Nasdaq’s approach. The NYSE also noted that the amendment will help ensure that shareholders properly understand the implications of choosing to abstain on a proposal subject to approval under NYSE rules.”

We can’t resist adding an historical footnote of our own - that the old NYSE rule was also in contravention of the SEC rule - and clear SEC guidance - which should always have been obvious to educated readers of English...that “abstentions” are absolutely NOT “votes cast.” THEY are “abstentions” (from voting)...Duhh!! Over the years we’ve encountered the pesky NYSE rule several times in our work as Inspectors of Election, and we would simply advise clients to follow the SEC guidance and to tell the NYSE that they could threaten to de-list them if they thought there was a big issue... and they’d promptly go elsewhere; whereupon, ‘case closed.’... So glad to have this properly resolved however, after so many years of deafness and dumbness.

HOW THE MIGHTY HAVE FALLEN: A few months ago we received a little note from a good friend and former Manny-Hanny colleague, **Alan S. Michaels**, the founder and owner of **Industry Building Blocks**, a firm that tracks U.S. businesses according to “category” and ranks them, which follows: “**In 1992, Shareholder Services was industry #7.... Now it’s Industry #20,077** at [IndustryBuildingBlocks.com](#)”

On The Supplier Scene:

Computershare goes on a diversification “tear” - with **Computershare Limited** announcing that “it has completed the acquisition of the assets of **Wells Fargo Corporate Trust Services** (“CTS”), originally announced on March 23, 2021. The business, which will now be known as **Computershare Corporate Trust**, includes around 2,000 employees based across the U.S. who have transferred to Computershare as part of the acquisition. The US corporate trust business line will operate as a standalone business within the overall Computershare organization, and provides a wide variety of trust and agency services in connection with debt securities issued by public and private corporations, government entities, and the banking and securities industries. The business is annually ranked among the top service providers in most league tables by deal count and dollars serviced and has a best-in-class reputation built on its high-touch approach to client service. In the United States, the Computershare Corporate Trust business serves more than 14,000 clients and has significant market and product-level expertise that has been built over 85 years of U.S. corporate trust experience. Computershare’s **Frank Madonna** will lead the migration of and integration of the Computershare Corporate Trust business into the company.

CONT'D →

Readers: We have been meaning to do an update on the little-followed Corporate Trust industry for some time now, because of its access to senior financial officers and thus, the potential to extend financial services across many similar product lines...We will do this in our next issue, so watch for it.

In October, Computershare’s Georgeson unit launched a very ambitious-sounding “Global ESG Advisory Service” - “to help companies manage risk, improve their environmental, social and governance (ESG) strategies and improve engagement...The 2021 proxy season in the US and Europe highlighted how focused investors have become on ESG concerns – and how companies must increasingly focus on aligning their ESG strategies with shareholder demands and expectations,” said **Cas Sydorowitz**, Global CEO of Georgeson. Their new ESG Advisory Service offers: Strategy, implementation and shareholder engagement programs, Peer analysis and benchmarking against ESG standards and frameworks such as TCFD and SASB, Guidance with rating agencies and ESG scores such as MSCI and Sustainalytics, ESG reporting, education and training for directors and management and Investor profiling and roadshows specifically focused on ESG *And, in what seems to us to be something of a major stretch, the press release notes that “Georgeson has expanded its global team to include expertise in supply chain management, equity research and asset stewardship to cover the spectrum of Environmental, Social and Governance issues.”*

And wow - in yet another horizontal-extension move, Computershare Governance Services announced the acquisition of Worldwide Incorporators, “a highly respected provider of Delaware filing and retrieval services to over 4,000 global clients. This builds upon our commitment to disrupt the status quo and provide new ways to address long standing process inefficiencies across the Registered Agent landscape.”

Not to be left behind in the ESG expansion game, “Glass Lewis Expands ESG Capabilities,” as **David Lynn** noted in his blog on October 21, 2021...via “a strategic partnership with Arabesque, a provider of ESG data and insights” where “The partnership will see Arabesque provide company ESG profiles for Glass Lewis’ Proxy Paper research reports, enabling clients to gain the latest ESG data and insights on over 8,000 companies worldwide...”

And close on the heels of the October announcement, Glass Lewis Launches an Equity Plan Advisory Service, which as David Lynn noted in his blog, “appears to be similar to that provided by ISS Corporate Solutions,”

Group Five released its 2021 Equity Compensation Administration Benchmarking Study in October, measuring value for the first time - “giving study participants both the opportunity to assess the value they receive from their service provider and to explain in detail, from their perspective, how service providers can add greater value. These additional measurements help service providers identify opportunities to improve their offering and better meet the needs of plan sponsors. Now in its 23rd year, Group Five’s annual study includes responses from 961 U.S. public companies who use a third party to manage equity compensation award recordkeeping and execution of plan participant transactions. The study is the only independent forum for plan sponsors to confidentially make their opinions and priorities known to service providers.

No big surprise, we’d guess, “The study reveals that plan sponsors find the greatest value in a provider who continually invests in technology that is easy to use, provides client support personnel who proactively engage with clients when issues arise, and provides responsive service to both the company and their plan participants at a fair price.”

But some heartburn among the many service providers in this space, for sure, we’d opine: “Value is measured in the study using a 0-to-10 scale, with 10 labeled “extremely valuable” and 0 labeled “not at all valuable,” and results are reported as an average score. **Equity Edge Online** received the highest value rating at 8.80, followed by Charles Schwab at 8.67 and UBS at 8.58. In addition, Equity Edge Online achieved the highest overall satisfaction rating at 95% favorable, followed by **Fidelity** at 92% and **Charles Schwab** at 90%. A favorable response is a 4 or 5 on a 1-to-5 scale. “With this added measurement of value, we are able to bring the full picture of service delivery and decision-making into focus for service providers and plan sponsors, so the quality of service and technology solutions can continue to rise,” says **Kathy Huston**, President of **Group Five**. A complimentary summary of the study results is available for download on Group Five’s website.

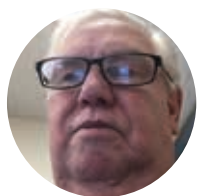
In another flurry of activity, in late October Institutional Shareholder Services (ISS) “announced a definitive agreement to acquire **Discovery Data Holdings, Inc.**...a globally recognized and trusted provider of data and analytics to the financial services industry. The acquisition is expected to close later this year... Discovery Data’s platform empowers asset and wealth management firms, insurance companies, financial technology companies, and service providers to understand their target markets and to identify, assess, and seize new opportunities...[and] brings market-leading solutions that will help our clients better support the firms and people directing the flow of assets into investment products across major distribution channels.”

Fast on the heels of their previous announcement, ISS ESG - “the responsible investment arm of **Institutional Shareholder Services Inc.**...today announced the forthcoming launch of its suite of dedicated **Net Zero Solutions** with automated portfolio reporting which will go live in Q1 2022.” As the release explains, “Ahead of COP26, a significant number of global institutional investors have pledged commitments to reduce their investment portfolios’ CO2 emissions to Net Zero by 2050. Those investors will now need to track the alignment of their portfolios beyond the Paris Agreement’s aim of limiting global temperature rise to below 2°C, to a further science-based Net Zero target of limiting it to no more than 1.5°C. Investors are sharpening their focus on implementation and will need to monitor companies’ specific, substantive plans to reduce their carbon footprints with short, medium and long-term targets...supports investors in identifying the most suitable KPIs, analysis, and data to transition portfolios and set relevant net zero targets in accordance with their net zero initiatives, and will enable them to provide meaningful Net Zero statements through a data driven approach with automated portfolio reporting...When launched in Q1 2022, ISS ESG Net Zero Solutions coverage will include 29,000 issuers for Climate data, 23,000 issuers for Energy and Extractives data and 8,000 issuers for EU Taxonomy eligibility data, powered by data and insights from a broad range of high-quality research products within the ISS ESG universe.

PEOPLE: As 2021 came to a close, many industry super-stars moved on...



“I thought you should know that **Charlotte Brown** has retired!” former boss **Michael Mackey**, recently ‘retired’ wrote us: “This after a 42 year career in the proxy biz – a great operations person providing invaluable support to the proxy solicitors. First at **CIC** for 20+ years [where Michael’s dad was a founder] as head of Corporate Services – then a stint at the **Altman Group** in the same capacity and for the last 11 years at **Alliance Advisors** [CIC-redux, we used to call it] “even expanding her role into proxy logistics and virtual shareholder meetings. She has to be one of the most dedicated, knowledgeable and loyal operations people to ever work in the proxy industry.” We would add that Charlotte is also one of the best-known and best-liked people in the entire proxy world - who had many clients that followed her as she moved along in the industry - thanks in small part to the big assortment of candy she’d hand around during breaks at NIRI conventions, but mostly because she was always cheerful - and smiling - and never forgot a face - or a client’s name and company name.



The peripatetic proxy-fight expert, **Tom Cronin** - who’s worked at nearly half the proxy solicitation firms out there over the years - has left the **EQ** proxy start-up venture, where he served a brief stint - to become Senior Vice President - Proxy at **Alliance Advisors**...bringing with him a proxy fight in progress and another scheduled for April. More fights to come, for sure, from Tom’s large and very loyal cadre of financial institution clients - which are usually among the most common proxy-fight targets. And Tom is highly valued by their outside legal experts as well: In our own experience, unlike a surprising number of solicitors we see at fights, he always “knows his numbers to a tee” going into every meeting he is involved in.

The unforgettable **David Epstein** - who literally invented abandoned property “clearinghouses” - and initiated forced “audits” by state bounty-hunters too - passed away on Dec. 8th at the age of 82.



As **Richard J. Chivaro**, former Chief Counsel, **California State Controller’s Office** and **Lyndon Lyman** of “*Unclaimed Advisor*” reported to David’s many followers, “In the early 1980s, David left a successful sports and entertainment legal practice and the opportunity to be appointed to the California judiciary to focus exclusively on unclaimed property. He helped to re-establish **NAUPA** (the National Association of Unclaimed Property Administrators...whose own bank account had fallen inactive in the 1960s, with its business account reported as unclaimed to the State of Florida) [!!!] ... acted as co-reporter for the 1981 Uniform Unclaimed Property Act, authored the legal treatise *Unclaimed Property Law and Reporting Forms* ...testified before Congress about bank service charges on dormant accounts, wrote numerous amicus briefs as NAUPA special counsel, and acted as an advisor to the **World Jewish Congress** on abandoned accounts in Swiss banks arising from the Holocaust—along with undertaking numerous other activities....Forty years ago, he crisscrossed the country as consultant to more than 30 states. In this capacity... created unclaimed property compliance and outreach programs, testified for the adoption of stronger and more modern legislation, and participated in litigation that resulted in significant holdings that established important public policies still functioning today... The forerunner to modern contract audit firms, the Clearinghouse collected hundreds of millions [actually many *billions*] of dollars on behalf of all states [where David earned a significant percentage of the reported proceeds right off the top, and was, understandably, but to our own dismay, not a fan of “finding” lost shareholders]...and launched or expanded the careers of many talented men and women...In 2007, David endowed the David J. Epstein Program in Public Interest Law and Policy at his alma mater, the UCLA School of Law [which] has since had over 500 graduates, who serve in government, nonprofits, the judiciary, and the private sector.”

Michael J. Foley, who for many years was the Senior Relationship Manager in **Chemical Bank’s** stock transfer division - and an active and involved participant in the **Securities Transfer Association** - passed away on Dec. 14, 2021 at the age of 77, leaving behind his beloved wife Nancy, sons Matthew and grandsons Owen, Patrick and Jack. Michael was “widely known and admired as a speaker of eloquence” - an art he enjoyed enormously - and also as “a gentleman, chivalrous to his last day...and a ‘gentle man’” his obituary noted. He also had a delightful sense of humor and, we would add, not a mean or petty bone in his body - at a time when competition within the business was often crude and cutthroat.



Michael (Mike) Nespoli - another of the very best people ever in the stock transfer business - who for many years was the Executive Director and chief Relationship Manager at **AST** - retired from the stock transfer business at year-end after 41 amazing years. Mike started out in the early 1970s with “**The Old Manny Hanny**” where he rose rapidly in the ranks. Then he soldiered on through the **Chemical Bank/Manny Hanny** merger, the aptly-named “**Chemical Mellon**” deal...then **BONY-Mellon** (whose industry nickname is unprintable) and, briefly, at **Computershare**, before joining **AST**. We never met a client who did not literally love Mike. He always remained cool, calm and totally unflappable, no matter what - and he was always able to help clients - and his own team - to navigate the way through the knottiest of issues and bring them to a good conclusion. Mike plans to pursue a life-long desire to be an Emergency Medical Responder...and we say he sure has had lots of preparation - as one of the stock transfer industry’s most experienced and successful “Emergency Responders in Chief.”

SEC Commissioner Elad L. Roisman wrote to **President Biden** in December that he will resign his position by the end of January. “Serving the American people as a Commissioner and an Acting Chairman of this agency has been the greatest privilege of my professional life” he wrote in his statement. “It has been the utmost honor to work alongside my extraordinary SEC colleagues, who care deeply about investors and our markets. Over the next several



CONT'D →

weeks, I remain committed to working with my fellow Commissioners and the SEC’s incredible staff to further our mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation” We have to give Roisman a solid A for volunteering to head-up a detailed review of aptly-named, creaky, leaky and sometimes smelly “proxy plumbing” issues - and also to spearhead the SEC’s long-promised updating of Transfer Agency regulations, which have not been overhauled in over 30 years, despite many promises to do so...But sad to say, no real progress has been made on either front. The SEC is simply not sufficiently staffed - and funded - for such complex work in our view, and the political slant that seems to infect a lot of the work of the SEC of late does not further progress either. We guess it would take a major disaster in one or both arenas to move the needle even a little.

We were very sad to see the announcement on LinkedIn that **Michael A. Smith**, an “experienced Corporate Trust Professional – specializing in Default Administration (Bankruptcy & Restructuring)” has been riffed:



“After seven terrific years with **Computershare**, their acquisition of **Wells Fargo Corporate Trust Business** has left me seeking a new position in the corporate trust world. This newly merged business is in a great position to continue its course of providing outstanding service for its customers and their investors and I wish the new team all the best in their business endeavors” he graciously informed us. Your editor in chief has known Michael since he started in the Corporate Trust Division at the “Old Manny Hanny” - when it was the consistent new-business leader, year after year, and we have followed his career for more than 30 years. We can attest that he would be an asset to any Corporate Trust unit, and we would recommend him wholeheartedly. We feel certain that he will soon land in a good spot.



Patrick Tracey - another of the most talented people anywhere in the Stock Transfer and Proxy Solicitation arenas - whom your editor-in-chief hired away from the old **Morrow & Co.** over 30 years ago - and who has consistently excelled at bridging the usually unbridgeable gulf between “sales” and product delivery, customer service and product innovation too, at a variety of industry-leading firms since then - was also riffed in December by Morrow Sodali. (What were they *thinking*???) He is now a “free agent,” he recently posted. But not for long, we are certain.

On a happier note, **Nicole Mauney** of **Duke Energy** and **Larry Karp** of **Brighthouse Financial** move into President and Vice President Roles at the **SSA** as Shareholder Service Association’s most recent president **Kim Hanlon** enters retirement.



Nicole is manager of shareholder operations within Duke Energy Corporation’s Investor Relations Department. She began her career in shareholder services on the telephone, answering shareholder inquiries. Since then, she has served multiple roles within Shareholder Servicers, providing support to Duke Energy’s in-house transfer agent function. During her 20-year tenure, Duke Energy underwent several significant corporate actions, including three mergers, a reverse stock split, and a spin-off.

Larry is the vice president and head of shareholder services at Brighthouse Financial. He is responsible for defining the strategy, providing oversight and managing shareholder services, in addition to leading high-profile initiatives within Treasury. Before his current role at Brighthouse, Larry was responsible for working on the spin-off of Brighthouse Financial from MetLife. Before joining the insurance industry, he had a 25-year banking career at HSBC, National Australia Bank and J.P. Morgan Chase, primarily focused on developing financial solutions for global insurers.



Regulatory Notes...and Comments

ON THE HILL:

BIG NEWS FROM THE DOJ - Starting with a roll-out of tough new enforcement policies for business entities, execs and recidivists: “Deputy Attorney General **Lisa Monaco** delivered an exacting message to the white-collar defense bar at the **ABA’s** 36th National Institute on White Collar Crime” as reported by **Jamie Schafer & Gina LaMonica** on Nov. 8th in QUICK ALERTS, and excerpted here : “The DOJ is stepping up its enforcement of corporate crime... through several new initiatives that will roll back more lenient enforcement policies adopted during the prior administration. This increase in enforcement will be buoyed by a surge of resources provided to DOJ prosecutors, including a new squad of FBI agents embedded in the DOJ’s Criminal Fraud Section—placing “agents and prosecutors in the same foxhole,” as DAG Monaco described it” with four major prongs:

“Focus on Individual Accountability...the DOJ is renewing its focus on holding individual actors responsible for corporate wrongdoing...Monaco announced that the DOJ is reviving its policy that companies will only be eligible for cooperation credit in resolutions with the DOJ if they provide prosecutors with non-privileged information about all individuals involved in or responsible for the misconduct at issue—regardless of the individual’s position, status, or seniority. This pronouncement reverses the DOJ’s prior guidance, which allowed companies to receive cooperation credit for disclosing only those individuals “substantially involved” in the misconduct.

“An Expansive View of Corporate Recidivism....Monaco announced a significant change in how historical misconduct will factor into corporate resolutions. Under new DOJ guidance, prosecutors will evaluate a company’s full criminal, civil, and/or regulatory record in evaluating the appropriate resolution for a subject or target of a criminal investigation, not just similar violations. This broader vantage of historical misconduct—including whether a company has been targeted by another regulatory agency or even another country—brings in a host of additional, potentially relevant, misconduct...Monaco explained that this policy change will usher in an amendment to the DOJ’s “Principles of Federal Prosecution of Business Organizations,” which should provide further detail on how prosecutors will weigh a corporation’s criminal and regulatory record in determining an appropriate resolution to corporate misconduct...Monaco also suggested that the DOJ will be considering data on corporate recidivism with an eye toward guidance as to whether pretrial diversionary avenues—including declinations, non-prosecution agreements (NPAs), and deferred prosecution agreements (DPAs)—should be available to recidivist companies.

“Corporate Monitorship Comeback...Monaco advised that, where appropriate, the DOJ will deploy corporate monitors to verify compliance and disclosure obligations imposed by the terms of NPAs and DPAs entered into between companies and the DOJ. Monaco’s pronouncement explicitly revoked 2018 guidance issued by then-Assistant Attorney General Brian Benczkowski. The “Benczkowski memo” was generally viewed as a more “business-friendly” approach to the DOJ’s practice of imposing corporate monitorships as a condition of settlement, setting a presumption against monitorships except in extenuating circumstances. However, in her recent remarks, DAG Monaco suggested the DOJ may more frequently utilize monitorships to ensure that companies live up to their end of requirements imposed through corporate resolutions.

“More broadly, the DOJ will also evaluate corporate criminal enforcement through the newly-formed “**Corporate Crime Advisory Group**,” which will be comprised of representatives from every department involved in corporate criminal enforcement, which will have a broad mandate to study corporate resolutions, recidivism, monitorships, and benchmarks for cooperation credit in enforcement penalties, and make recommendations to DOJ leadership on potential enhancements to the enforcement of corporate crime. For companies negotiating resolutions, there is no default presumption against corporate monitors, as there was before. Corporate monitors will be imposed on a case-by-case basis...As DAG Monaco alluded, these recently announced policy shifts are just “a start” to this administration’s corporate compliance mission.”

DOJ also launches a large scale investigation of short sellers, hedge funds and so-called “research firms” that fuel the marketplace for short sales, according to a recent [Bloomberg report](#):

“The U.S. Justice Department has launched an expansive criminal investigation into short selling by hedge funds and research firms, scrutinizing their symbiotic relationships and hunting for signs that they improperly coordinated trades or broke other laws to profit, according to people familiar with the matter. The probe, run

CONT'D →

by the department's fraud section with federal prosecutors in Los Angeles, is digging into how hedge funds tap into research and set up their bets, especially in the run-up to publication of reports that move stocks.

“Authorities are prying into financial relationships between hedge funds and researchers, and hunting for signs that money managers sought to engineer startling stock drops or engaged in other abuses, such as insider trading, said two of the people, asking not to be named because the inquiries are confidential.

*“Underscoring the inquiry's sweep, federal investigators are examining trading in at least several dozen stocks, including well-known short targets such as **Luckin Coffee Inc., Banc of California Inc., Mallinckrodt Plc and GSX Techedu Inc.** And they're scrutinizing the involvement of about a dozen or more firms — though it's not clear which ones, if any, may emerge as targets of the probe. Toronto-based **Anson Funds** and anonymous researcher **Marcus Aurelius Value** are among firms involved in the inquiry, the people said. Other prominent firms that circulated research on stocks under scrutiny include **Carson Block's Muddy Waters Capital** and **Andrew Left's Citron Research.**”*

Three cheers for this long overdue review, we say.

AT THE SEC - A FLURRY OF ACTIONS TO END THE YEAR:

The SEC appointed four new PCAOB Board Members on Nov. 8th, - naming **Erica Y. Williams** as Chairperson and **Christina Ho, Kara M. Stein, and Anthony (Tony) C. Thompson** as Board members and stating that **Duane DesParte** - who was named Chair after the SEC fired former chair **William Duhnke** earlier in the year - will continue to serve as a Board member and will remain Acting Chairperson until Erica Williams is sworn in. Williams is a partner at Kirkland & Ellis LLP, previously served in various roles at the SEC and as Special Assistant and Associate Counsel to President Obama. Ho has held positions with the Treasury Department, University of Maryland, Deloitte & Touche LLP and Elder Research. Stein served as a Commissioner of the SEC from 2013 to 2019, and has also had roles at the University of Pennsylvania Carey Law School, the Center on Innovation at University of California Hastings Law and on the Hill. Thompson currently serves as the Executive Director and Chief Administrative Officer of the CFTC, has served in other federal government positions and is an Air Force veteran. Commissioners **Peirce** and **Roisman**, who had expressed concern with the firing of the PCAOB Board back in June, issued a statement expressing support for the new Board.

Three BIG cheers, we say, for this sweeping and long overdue housecleaning at the notoriously deaf, dumb, blind and totally clueless PCAOB.

On November 15, 2021, the SEC released its FY 2021 annual report on the SEC Whistleblower Program (covering October 1, 2020 through September 30, 2021.) In FY 2021 the SEC awarded about \$564 million (about \$2 million more than all the money awarded in the past 10 years!) to 108 individuals - vs 106 in the ten years since the program began. Two awards in FY 2021 amounted to nearly 40% of the year's total amount awarded — \$114 million to one whistleblower on October 22, 2020 and \$110 million to one whistleblower on September 15, 2021, the two largest awards to date.

It sure looks like plans to “cap” awards are a dead issue these days, and WOW - good thing, we'd say yet again: In FY 2021 the SEC received over 12,200 whistleblower tips — a 76% increase from the previous fiscal year, and a more than 300% increase since the program began. “Money talks.”

In perhaps the biggest move in 2021 where issuers are concerned, the SEC proposes real-time reporting of company buybacks: 3 Things to Know...from Andrew Moore & Allison Handy of Perkins Coie in their Dec. 16th *QUICK ALERTS*:

1. “Real-Time” Reporting on Form SR – The proposed rule would require “real-time” reporting of share repurchase activity via a new Form SR required to be filed on Edgar within one business day after the company executes a share purchase. A single business day. For companies that regularly engage in regular share repurchase programs, this would significantly increase the reporting burden – essentially “Section 16” reporting for share repurchase programs. Form SR would require reporting a range of information in tabular format, including total number of shares repurchased, average price paid, total shares purchased in open market transactions, total shares purchased in reliance on Rule 10b-18, and total shares purchased under a Rule 10b5-1 plan.

2. Additional Periodic Disclosures – In addition, disclosures in periodic reports would be updated to require disclosure of the rationale for the share repurchases and the process or criteria used to determine the amount of repurchases; any policies and procedures relating to purchases and sales of the company's securities by its

CONT'D →

directors and officers during a repurchase program; whether the repurchases were intended to qualify for Rule 10b5-1 safe harbor; and whether the repurchases were made in reliance on Rule 10b-18.

3. What's This All About? – The press release and proposal state that the proposed amendments are intended to improve quality, relevance and timeliness of information about company share repurchases. The proposal notes that many company share repurchase programs are: "...aligned with shareholder value maximization, such as to offset share dilution after new stock is issued, to facilitate stock- and stock option-based employee compensation programs, to help signal the issuer's view that its stock is undervalued, or because the issuer's board has otherwise determined that a repurchase program is a prudent use of the issuer's excess cash."

"But the proposal goes on to indicate a view that increased, and more timely disclosure is needed due to concerns about companies using share repurchase programs as an earnings management tool (such as decreasing the denominator of EPS calculations) or using announcements of share repurchase programs to effect short-term upward price pressure on the stock."

While the OPTIMIZER sees this as basically good news for investors - we must also note that the proposals fail to require clear disclosures of what intelligent shareholders should most want to know: "How much of the money spent on repurchases over, say, 1, 3 and 5 year periods has 'gone up in smoke - to 'money heaven' - instead of producing long-lasting increases in share prices?" The historical record at a great number of companies has been truly abysmal.

Let's never forget that if shareholders had been "rewarded" with cash dividends instead of share buybacks - where most retail investors never sell into such deals, but where they do indeed live with the consequences for better or for worse - they would have had the money in their very own hands - to spend or to reinvest elsewhere - or even to reinvest in more shares of the company itself - as they themselves decided to do! We feel strongly that directors have a duty to see exactly how their "rationales" worked out over 1, 2 and 5 year periods - AND to report it to shareholders - who have a right to know - when they stand for re-election.

Watching the Web:

More stolen data from Electronic Filing Services triggers illegal trading gains - and great advice from Dave Lynn of the CorporateCounsel.net:

"The SEC [announced](#) in mid-December that it had brought charges against yet another hacking ring accused of accessing earnings releases prior to issuance and trading based on the information obtained through the hack. The earnings announcements were accessed by hacking into the systems of two filing agent companies before the announcements were made public. In the complaint, the SEC alleges that the insider trading scheme yielded \$82 million in profits during a period from February through August 2020. As has been the case with many of the Division of Enforcement's recent cases, the Staff credits powerful analytical tools for helping to make the case against the defendants. The [complaint](#) notes:

The trades by the Trader Defendants were disproportionately focused around the earnings announcements of publicly-traded companies that used the Servicers to make their EDGAR filings, as compared to earnings announcements where the required EDGAR filings were not made through the Servicers. Indeed, statistical analysis shows that there is a less than one-in-one-trillion chance that the Trader Defendants' choice to trade so frequently on earnings events tied to the EDGAR filings of the Servicers' public company clients would occur at random.

"This latest hacking scheme points to the vulnerability of material nonpublic information when it is stored in the cloud prior to making the EDGAR filing," Dave noted. "Despite all of the efforts to maintain the security of the systems used to process and store this information, sophisticated hackers can often find a way in. Unfortunately, there is not much that companies can do to protect themselves in this situation, other than to **try to minimize the time that the submission is on the filing agent's system**" (emphasis ours.)

Davis Polk

NYSE proposes to amend “votes cast”

October 4, 2021 | Client Update | 2-minute read

A proposed NYSE amendment would eliminate the requirement to include abstentions as “votes cast” against a company's proposal. Instead, companies would be able to follow their own governing documents and state law.

Under current New York Stock Exchange rules requiring shareholder approval under certain circumstances for listing additional securities or adopting equity compensation plans, the NYSE Listed Company Manual mandates that the company's proposal is deemed approved only if it received a majority of “votes cast.” While the rule does not explicitly state which votes should be counted as cast, NYSE has historically advised companies that abstentions should be treated as votes cast for purposes of the rule – effectively treating them as votes cast *against* the proposal. As a result, in calculating the minimum votes required for shareholder approval, the number of votes cast in favor of a proposal must exceed the aggregate number of votes cast against the proposal *plus* abstentions. (Broker non-votes are not considered “votes cast” and therefore have no effect on voting outcomes.)

NYSE's proposal would amend the Listed Company Manual to provide that a company should determine whether a proposal has received a sufficient number of votes cast in accordance with its own governing documents and applicable state law. NYSE's explanation for the amendment notes that this is consistent with Nasdaq guidance on the treatment of abstentions.

Under Delaware law, abstentions are not considered “votes cast,” although companies may elect to alter voting standards in their governing documents.

The proposal, if approved by the SEC, would apply to shareholder votes required for stock issuances in related party transactions, 20% or more issuances and changes of control, as well as for equity compensation plans. It does not affect any votes required by state law.

NYSE-listed companies may wish to review their charter and bylaws in light of this anticipated rule change.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Maurice Blanco

+55 11 4871 8402

+1 212 450 4086

maurice.blanco@davispolk.com

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

Joseph A. Hall

+1 212 450 4565

joseph.hall@davispolk.com

Michael Kaplan

+1 212 450 4111

michael.kaplan@davispolk.com

James C. Lin

+852 2533 3368

james.lin@davispolk.com

Emily Roberts

+1 650 752 2085

emily.roberts@davispolk.com

Richard D. Truesdell Jr.

+1 212 450 4674

richard.truesdell@davispolk.com

Elizabeth S. Weinstein

+1 212 450 3889

elizabeth.weinstein@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's [privacy notice](#) for further details.

DEALING WITH DISRUPTION



THE 27TH SPECIAL SUPPLEMENT TO THE SHAREHOLDER SERVICE **OPTIMIZER**



Accelerate shareholder engagement and value



Strategic, world-class & compliant proxy communications

info@dfinsolutions.com
+1 866 863 0028



Digital disruption is just beginning.

What you do next matters most.

We can help. Mobile apps, QR codes and enhanced virtual experiences lead to more engaged shareholders.

Financial disclosure and SEC filing solutions

Proxy and annual meeting services

Transfer agent services

Ready for Next

Cathy Conlon
Head of Corporate Issuer
Strategy & Product Management

CONNECT WITH US
+1 844 794 0399
[broadridge.com](https://www.broadridge.com)

You deserve to have the Winning Team on your side!

Victory in a thoroughbred race requires a talented jockey, an experienced trainer, a strong, sound horse and sometimes a little luck. Don't rely on luck in your proxy campaign, governance battle, tender offer, merger or restructuring. Call on MACKENZIE PARTNERS and ask us to join your team so that you too will cross the finish line first.

With the experience, resourcefulness and tenacity of MacKenzie Partners on your side, you can be sure to get to the finish line first every time. Find out for yourself why our firm is recommended by more leading attorneys, investment bankers and public relations advisors to provide counseling and solicitation services to their clients in crucial proxy campaigns, corporate governance matters, proxy fights, mergers and tender offer battles.



MACKENZIE PARTNERS, INC.
1407 Broadway
27th Floor
New York, NY 10016
(212) 929-5500

Daniel Burch, *Chief Executive Officer*
Bob Marese, *President*
Jeanne Carr, *Managing Director*
Laurie Connell, *Managing Director*
Email: proxy@mackenziepartners.com

Annual Meetings	
	Special Meetings
Proxy Contests	
	Shareholder Vote Analysis
Corporate Governance Consulting	
	Tender and Exchange Offers

Dear readers,

This is the 27th annual Special Supplement to the Shareholder Service *OPTIMIZER*, and we must say that the title, **Dealing With Disruption**,



can hardly be more appropriate

in light of the current environment. But it's even more appropriate in light of the content - where numerous experts provide expert analysis and highly practical advice on how to deal with disruption effectively - and how to avoid more - as we go into the 2022 Shareholder Meeting Season.

Peder came up with the title three or four months ago - and our cover-artist, Guy Dorian, had sketched in a Larry Fink lookalike for us months before Fink came out with his 2022 letter to CEOs, where he points out how disruptive the current environment is - and how to cope. And Fink's comments, excerpted on page 24 as our "Quote of the Quarter", are surely on-the-money, whether you are with a public company or with an industry supplier.

This issue illustrates the ups and downs of "destructive and disruptive capitalism" in a number of ways - and especially the way that innovative newcomers - and innovative incumbent companies too - rise to the top, and stay there, while so many others fall by the wayside. A special shout-out is due in this respect to companies that have been in our magazine since its very first issue in January, 1998: Computershare (then known as First Chicago) Ellen Philip Associates and MacKenzie Partners - all of them industry leaders still. Another shout-out is due to companies that have been in the magazine since their founding: Alliance Advisors, Broadridge Financial Solutions, DFIN and Okapi Partners - all of whom also continue to grow stronger, year after year. Meanwhile, over a dozen transfer agents, dozens of financial printers and several once innovative tech-providers, whose products became obsolete, literally overnight, have disappeared from the scene entirely.

Another important point to note - disruption can be a very good thing - when it gives rise to innovation, and to new ways of thinking about and doing all sorts of new things - and to being far more efficient in the end. Think about Virtual Meetings for staff members - and for shareholders too - which, while still not perfect substitutes for some kinds of in-person meetings - can save enormous amounts of expensive and basically unproductive travel time, and allow attendees to attend from anywhere in the world.

We hope that you - and your key staff members too - will benefit from the information, and from the many practical - and time and money-saving tips you will find here. And please be sure to review our Directory of Pre-Vetted Service Suppliers in the back of the magazine - and use it as your guide to finding innovative, thoroughly reliable and "best in class" service providers - especially during these "disruptive times."

Carl & Peder Hagberg

WWW.OPTIMIZERONLINE.COM

Dealing with Disruption

- 6 **THE RISE OF RETAIL SHAREHOLDER ENGAGEMENT: FOUR WAYS TO ELEVATE YOUR OWN RETAIL INVESTOR GAME**
Cathy Conlon, Head of Issuer Strategy & Product Management, Broadridge
 - 10 **ALLIANCE ADVANCES:**
Interview with Joseph Caruso, CEO Alliance Advisors
 - 12 **THE "TOP 3" THEMES FROM THE "BIG 3" ASSET MANAGERS**
Liz Dunshee, Managing Editor, CCRcorp
 - 14 **LEADING THE WAY WITH INDUSTRY BENCHMARKING AND SHAREHOLDER SATISFACTION RESEARCH**
Interview with Jim Alden, Managing Partner of Group Five
 - 16 **ESG REPORTING EVOLUTION: WILL YOU BE READY?**
Ron Schneider Director, Corporate Governance Services, Donnelley Financial Solutions (DFIN)
 - 20 **TRENDS & INSIGHTS IN 2022**
From the Okapi Partners' Team
 - 22 **A BETTER WAY TO CONDUCT A PROXY FIGHT:**
Save Time & Money...and Get The Results Right the First Time
 - 24 **QUOTE OF THE QUARTER**
On Capitalism - And "Disruption" ...From Larry Fink's 2022 Letter To CEOs:
 - 25 **NO TIME LIKE THE PRESENT TO EVALUATE YOUR MAJOR SERVICE SUPPLIERS**
- NEWS FROM THE OPTIMIZER:**
- 26 **THE OUTLOOK - AND OUR ADVICE - FOR IN-PERSON, VSM AND HYBRID MEETINGS IN 2022**
 - 27 **IN 2022 ISSUERS WILL HAVE TO FIGHT HARDER THAN EVER FOR THE MORE-IMPORTANT-THAN-EVER RETAIL VOTE**
 - 28 **A QUICK LOOK AT RETAIL INVESTOR LOYALTY PROGRAMS AND OTHER INCENTIVES TO GET OUT THE RETAIL VOTE**
 - 29 **COVID BOOSTS "VIRTUAL INSPECTIONS OF ELECTIONS"**
A BIG POTENTIAL MONEY-SAVER... OUR TIPS ON ACTING SMARTLY
 - 30 **THE BADLY MIS-NAMED AND IMPERFECTLY UNDERSTOOD "UNIVERSAL PROXY RULE": THREE LITTLE-NOTED PRACTICE TIPS TO OBSERVE THIS SEASON**
 - 31 **REVISED TRANSFER AGENT MARKET SHARE NUMBERS... AND WHAT THEY MEAN**
 - 33 **WILL THE AST-EQ DEAL MARK THE END-GAME IN THE FRAGMENTED TA BUSINESS?**
 - 33 **THE CRAZIEST SHAREHOLDER MEETING EVENTS WE SAW IN 2021**
 - 35 **ON THE SUPPLIER SCENE**
 - 37 **PEOPLE: AS 2021 CAME TO A CLOSE, MANY INDUSTRY SUPER-STARS MOVED ON**
 - 40 **REGULATORY NOTES... AND COMMENTS**
 - 43 **THE OPTIMIZER'S 2021 DIRECTORY OF PRE-VETTED SERVICE SUPPLIERS**

The rise of retail shareholder engagement

Four ways to elevate your own retail investor engagement game.



Cathy Conlon,
Head of Corporate Issuer
Strategy & Product
Management, Broadridge

With the 2022 proxy season shaping up to be an all-time record year for shareholder proposals, corporate issuers are facing a perfect storm of proxy risk:

Over the past 18 months more than 20 million first-time individual investors have purchased individual stocks. A recent study by Charles Schwab notes that 15% of all U.S. investors got their start in 2020! It calls them “Generation Investors” because they span every generation - but more than two-thirds of them are from Gen-Z (16%) and Millennials (51%.) Especially important to note, we think, Millennial and Gen-Z investors are fast benefitting from the largest transfer of wealth in history. And 94% of all “Generation Investors” in the study say they want access to tools and technologies that will help them do their own research. These investors are informed, engaged and are more likely to respond to issuer communications.

Another thing to note as the 2022 season looms, well more than two-thirds of all new investors are second and third-generation Web users, who literally live their business lives online. They have little or no patience with paper-based communications and many of them actually mark-down companies that are not up-to-speed technologically where corporate communications are concerned.

And suddenly, due to the surge in first-time retail investor ownership (and also in many cases due in part to corporate buy-back programs) some companies are discovering that retail investors now own 30% or more of the outstanding shares. So “Generation Investors” are very much like ‘wild cards’ in the new proxy voting deck. While they are newcomers to the proxy-voting

game, a high percentage of them say they are actually eager to “engage” with the companies they own. Surveys also show that the new generation of investors place even more importance on ‘good corporate citizenship’ than older investors formerly did - although they too have been paying much more attention to these issues than ever before.

Against this background, it has never been more important to engage and mobilize your retail shareholder base: Retail shareholders are more likely to vote with management but, as we know, many of them fail to vote at all. And as we saw in 2021, many brokers, including Charles Schwab and TD Ameritrade, are no longer voting for management positions on behalf of retail shareholders. The bottom line? The big new contingent of retail investors will need convincing arguments -compellingly made - in order to win the increasingly important battle for the retail vote.

The big new contingent of retail investors will need convincing arguments - compellingly made - in order to win the increasingly important battle for the retail vote.

The risks of doing nothing extra to engage with retail investors? Some companies will fail to advance their own voting agendas...Some may see their own corporate action plans fail to win the required levels of approval. Others, as many companies did in 2021, may fail to even reach quorum. And, of course, if fewer and fewer retail shareholders take the trouble to vote, institutional shareholders and activist investors will continue to consolidate their influence.

The good news is there are proven strategies that can help create a more compelling narrative and achieve the outcomes you want. Here are four ways Broadridge can empower you to elevate retail investor engagement.

1. Create a consumer-centric proxy experience

In the past, it was standard practice for corporations to send plain proxy statements that look like dense legal documents. These proxies met basic regulatory requirements but did very little to meaningfully engage shareholders.

Today, however, expectations have changed. Consider that last year 97% of all shares were voted electronically and more than 3 million shares were voted on mobile platforms.

Given evolving behaviors, issuers need to go beyond paper proxies to engage investors across multiple channels and deliver simpler, clearer messaging that inspires participation.

Broadridge helps issuers deliver an engaging proxy experience by executing a print-to-digital journey. First, it starts with our Enhanced Proxies. Your investors receive a professionally designed proxy statement with your branding and colors, photos, key financial information, and a teaser to your ESG story. A QR code then links the shareholder to an optional Broadridge hosted digital proxy microsite. There they'll find interactive content, including charts, graphs, data and even video messages that help humanize your board. From this digital proxy experience, they can easily access our ProxyVote.com platform to vote their shares.

It's a seamless, connected experience from start to finish.

2. Use shareholder data to engage year-round

To be sure, proxy season is your best opportunity to engage shareholders, but building investor loyalty requires year-round engagement. You can't connect with investors once a year and then ignore them the rest of the time. Shareholders are more likely to respond when it counts if you stay in touch all year round.

Broadridge enables meaningful year-round engagement because of our vast data network. We manage over five billion investor and consumer communications each year, and we maintain a comprehensive database of shareholder data. Our clients gain unprecedented insight into their

shareholder base, voting habits, demographics, and communication delivery preferences. We also provide visibility into key industry trends along with granular data down to specific shareholder segments.

Taken together, our data network empowers issuers to execute best practices and deliver the right message at the right time—in the right channel.

3. Harness social media

Comprehensive shareholder data also enables you to cultivate a strong social media presence, which can strengthen your proxy solicitation strategy.

For example, combining social media ads with paid display ads lets you create a persistent digital presence when it matters most. Ads may feature management-friendly messaging and CTAs that solicit proxy participation.

When shareholders click the ads, it drives directly to the proxy voting site where they can enter their control number and immediately vote their shares. This simplified approach helps maximize conversion by taking friction out of the proxy voting experience and by getting the message in front of shareholders wherever they are.

Social media is often especially effective for non-listed and smaller issuers that can't rely so heavily on brand recognition or who have a large proportion of retail shareholders.

4. Leverage the technological innovations of virtual shareholder meetings (VSMs)

In the past decade, the use of VSMs has grown exponentially. Consider that in 2009 only four companies in the country held VSMs. But last year, pandemic-related challenges propelled adoption. Nearly 2,000 companies held VSMs on the Broadridge platform. And now 43 states permit the entirely remote VSM format.

Momentum behind VSMs continues to build. Shareholders value the accessible forum to meaningfully engage the board and management. Issuers value the cost savings and the reduced strain on event planning resources. All stakeholders appreciate that VSMs limit carbon impact, as virtual meetings don't require event space or travel.

Broadridge remains committed to VSM innovation. This year we unveiled new platform enhancements that simplify the experience for both issuers and attendees. Each client also enjoys a dedicated Broadridge event consultant who provide hands-on support and helps with strategic planning.

It's never been easier to host a VSM with Broadridge.

NEXT NEVER WAITS.

Whether you need to navigate new regulations or drive proxy outcomes, you're expected to do more with less. We understand. That's why our solutions are specifically designed to maximize engagement and your ROI.

For nearly six decades, we've been providing the critical infrastructure that powers corporate governance and empowers issuers to drive the outcomes they want. Our technology, solutions and data help you get ahead of today's challenges while preparing for what's next.

Go further. With Broadridge

An integrated approach to shareholder communications and regulatory disclosures, driven by innovation and accountability.

Corporate Issuers and law firms rely on us for their investor and shareholder communications and regulatory disclosures. Our end-to-end, integrated solutions simplify their workload, provide budget clarity and deliver results.



Discover more ways to transform shareholder engagement at [Broadridge.com](https://www.broadridge.com)

ALLIANCE ADVISORS

DATA-DRIVEN CORPORATE ADVISORS

Alliance Advisors, a premier corporate governance advisory and proxy solicitation firm representing over 700 corporate clients worldwide.

- /// Providing our clients with year-round strategic guidance backed by global proprietary shareholder intelligence and technology
- /// Global Corporate Advisory Services
 - Shareholder Engagement
 - ESG and Compensation Analysis
 - Investor Intelligence & Market Surveillance Services
- /// Global Proxy Solicitation Services
 - Vote Identification
 - Retail Investor Campaigns
 - Print, mail and tabulation services

*Get in Touch with
Alliance Advisors
Today*

LOU VEGA

Senior Vice President –
Business Development
Alliance Advisors

P: 973-873-7752 | M: 201-668-1118
lvega@allianceadvisors.com
www.allianceadvisors.com



200 Broadacres Drive, 3rd Floor,
Bloomfield, NJ 07003



FOCUS FORWARD

From managing evolving corporate governance needs and dynamic stakeholder audiences, Computershare can help you Focus Forward.

computershare.com/FocusForward



Alliance Advances



An Interview with Joseph Caruso

Chief Executive Officer, Alliance Advisors

The *OPTIMIZER* has been following Alliance Advisors since its founding, 15 years ago - where each year was marked by year-over-year growth in the number of clients served.

Recently, Alliance announced a significant management shift, so we reached out to the recently appointed Chief Executive Officer, Joseph Caruso to get an update - and a better understanding of what to expect from Alliance going forward:

Joe, please give us an idea of what prompted this move, and where you plan to expand your focus in 2022 and beyond - and, in particular, what will change at Alliance and what will stay pretty much the same:

The recent changes at Alliance were driven by a sole decision: It was time for Alliance to scale – and to scale in a big way. The great foundation which took many thoughtful years to build, including a well-trained and agile management team, a deep bench of industry experts, superior thought leadership, best-in-class systems and technology, and all the necessary support functions, were ready for this move.

Our focus is simple: To provide best-in-class advice and intelligence to companies across the globe - advice on corporate governance, compensation, shareholder intelligence and engagement. The expansion plan is well underway and Alliance will continue to focus on new client acquisition in our current markets, as we add new geographic markets, offer new synergistic services, and place real-time meaningful intelligence at our client's fingertips.

What remains the same is our dedication to our stakeholders, our employees, our clients and our business partners. When you take good care of your people, your clients will receive better service...and when that happens, business flows. Alliance Advisors was built on this business philosophy 15 years ago and it continues today - and it will be the catalyst to our growth and market leadership.

Our focus is simple: To provide best-in-class advice and intelligence to companies across the globe - advice on corporate governance, compensation, shareholder intelligence and engagement

We notice that you have been making a number of new-hires - some here in the US - and quite a few elsewhere. Can you tell us a bit more on both your domestic and your non-U.S. expansion plans...and how it has been working out so far?

Business has been good to us, and we are at the right stage to reinvest significantly towards enhancing our service offerings by retaining quality talent and adding to our roster of professionals internationally. We are duplicating our successful US model in other markets, and we're up and running in Taiwan and Hong Kong and Alliance is soon to be in many others markets globally. Firsthand institutional intelligence only strengthens our position in the United States and vice versa. It has been an absolute success so far and I am certain that our strategic expansion plans will continue to be as successful.

Does it seem to you, as it does to us, that more and more publicly-traded companies - and their major service-suppliers too - are "Dealing With Disruption" these days? Is this part of your new focus? And if so, what are the major opportunities - and threats - that you foresee as you look at the public company universe as a whole?

Helping our clients deal with disruption has always been in our corporate fabric and core to our service model. Adapting quickly is something that Alliance has always excelled in. But, the increased frequency of disruption is a trend most companies aren't used to.

We're more focused than ever on staying ahead of the curve, with a laser focus of how we can serve our clients more effectively. Investors are demanding more

and changes in what investors are seeking is in a continuous state of evolution. What drives and affects institutional voting is now equally as important as how social media influencers affect retail voting on platforms like Stocktwits. Predicting and addressing voting patterns for both institutional and retail shareholders is of utmost importance to companies and Alliance remains ahead of that curve in offering the intelligence solutions to do just that.

As disruption continues, we see major opportunities to provide our clients with proactive advice in the area of ESG and compensation... especially as these two issues are more and more intertwined. Threats are everywhere but here's an interesting observation that highlights the current level of disruption companies are facing: Today I would be more concerned with either the rising cost of capital due to falling environmental scores, or the fallout of an angry blogger in a heavily retail held company, more than an activist hedge fund seeking board seats. Talk about disruption from every angle!

Another trend we have been noticing - and a major one, we think - is the sudden and very strong return of the self-directed retail investor. How do you see this working out over the next five or so years? And what do you see as the major opportunities - and threats - both to public companies and to their key service providers?

Companies that have a significant portion of their stock in retail ownership need to pay attention. With virtually every proposal as non-routine, the loss of almost all proportionally voting brokers, and the rapid growth of individual retail investors, companies need to be prepared to engage in a different manner and in a much bigger way. This trend has been growing for years and COVID just added fuel to the fire. The new generation of video-game-type investing amplified by influencers on social media platforms like Stocktwits and Reddit is the new norm and it isn't going away. These investors are not just in the US - they are everywhere, and they are mobile. Before engaging, these investors need to be mapped out, and social media research should be conducted and virtual engagements need to take place. Management needs to get involved in a hands-on way. Think of this as a mass marketing campaign with a political approach. There are opportunities for companies here as well: The retail universe can be used to counterbalance negative institutional voting, block a hedge fund in a proxy fight or it could turn the other way if not managed properly. Key service providers need to be ahead of the curve, have a social media apparatus, and know how to engage properly or they will get pushed to the side.

A very-much related set of developments in our minds revolves around the need for public companies and their key service suppliers to re-think their communications strategies - and, in particular, to make much greater use of newer and better systems to improve communications - both to "optimize" spending and to meet the expectations - and the demands of Gen-Z investors. Any thoughts here you'd like to share?

Companies need to engage with more graphic images both in print and in digital formats and fewer words if possible. Gen-Z, Millennials and Xers (like myself) have less time or willingness to read a proxy statement. Cut to the chase in your messaging, tell them what you need them to do and why in ten seconds or less. It will save you time, money and aggravation in the long run. Also, take the time to understand your investors: Order lists, research them, look for trends. It may be costly upfront but will lead to better and more holistic engagement overall.

Another major trend we see is that every supplier to publicly-traded companies seems to be jumping on the ESG bandwagon: Every week we get invited to three or more webinars on ESG - hosted by law firms, public accountants, management consultants, transfer agents and systems and "advice providers" of every size and description. What do you foresee as the end-game here - especially with regard to the "proxy world"?

In 2021, the three fastest things on earth are the speed of light, the speed of the Large Hadron Collider and the speed at which people added ESG to their LinkedIn profile. Environmental, Social and Governance matters should be all part of a company's overall Governance efforts inclusive of compensation practices. Services providers like Alliance need to focus their advising on these matters by utilizing professionals with a real background in governance - and not just a title change in 2021. There is an end game for the proxy industry: Transform your company's ability to provide the right advice to your clients - with the right people - or fall behind. Alliance is leading the way here.

ALLIANCE ADVISORS

(973) 873-7703 | ALLIANCEADVISORS.COM

The “Top 3” From The “Big 3”

The “Big 3” asset managers – BlackRock, State Street Global Advisors, and Vanguard – have been busy sharing their priorities for 2022.



Liz Dunshee

Managing Editor,
CCRcorp

TheCorporateCounsel.net

Here are three common themes that tie these updates together:

1. “Human Capital” Gains New Importance. BlackRock wants to understand how portfolio companies are affected by changing workforce dynamics, and what they’re doing to reduce turnover. Similarly, SSGA expects enhanced disclosure about human capital management – including employee diversity – and human rights issues. Heading into Year 2 of “principles-based” human capital disclosure requirements under SEC rules, asset managers want to know:

- **Oversight:** How the board identifies and oversees human capital risks & opportunities.
- **Strategy:** How the company’s approach to human capital advances its overall long-term strategy.
- **Compensation:** How pay strategies throughout the organization help attract & retain employees and incentivize contributions.
- **Employee Engagement:** How concerns and ideas from employees are solicited (and if appropriate, acted upon), and how the workforce is engaged in the organization, in order to strengthen their loyalty and reduce turnover.
- **Diversity, Equity & Inclusion:** How the company advances workforce DEI and ensures that employees of all backgrounds feel safe to maximize their creativity, innovation and productivity.
- **Workforce Metrics:** BlackRock and SSGA expect US companies to disclose EEO-1 demographics for all full-time employees – and may vote against the applicable committee chair if that disclosure is lacking.
- **Culture:** How company culture is adapting to a rapidly changing environment.
- **Human Rights Risks:** How the company identifies whether human rights issues create material operations and supply chain risks– and if so, how those risks are managed.

SSGA expressly said that it will continue to shift its focus to workforce diversity and engagement in coming years, so companies should prepare now through recruiting, promoting and retaining talent from underrepresented groups at all levels of the organization. Its new voting policy for compensation committee chairs is the first step in that direction.

2. “Climate Transition” Comes Into Focus. All three asset managers continue to beat the “climate risk” drum. In particular, BlackRock and State Street want to know how companies are preparing for and participating in the net zero transition. They want companies to disclose short-, medium- and long-term targets for reducing greenhouse gas emissions and provide TCFD-aligned reports. BlackRock will apparently be assessing the quality of companies’ plans to meet the targets they disclose. When it comes to voting:

- For all portfolio companies, in the absence of TCFD disclosure - including information about board oversight of climate risks and opportunities, total Scope 1 and Scope 2 GHG emissions, and targets for reducing GHG emissions - SSGA will now vote against the lead independent director at companies in the S&P 500 and other large indices.
- For “significant emitters,” SSGA will begin an engagement campaign this year – and in 2023, it will hold directors of those companies accountable if they don’t show progress on climate transition disclosures, including carbon pricing information.
- Vanguard will vote against applicable committee chair(s) for risk oversight failures, which includes E&S risk. When assessing a climate risk oversight failure, the fund will look at the materiality of the risk, effectiveness of disclosure, whether the company has disclosed business strategies and risk mitigation plans, and consider company-specific context.

3. Board Composition & Commitments Get Another Look. SSGA and Vanguard both want nominating committees to adopt an “overboarding” policy – and disclose it. They’re looking for good governance practices around director commitments. With adequate disclosure, SSGA will give some leeway on its standard policy for non-NEO directors.

The asset managers also tightened their policies on board diversity disclosures and practices. They want companies to:

- Disclose self-identified director demographics (can be on an aggregate basis).
- Have boards with racial, gender, and ethnic diversity – and disclose progress on board diversity.
 - BlackRock believes boards should aspire to 30% diversity, have at least two directors who identify as female, and at least one director from an underrepresented racial or ethnic group. BlackRock voted against the re-election of nearly 2,000 directors last year because of a lack of board diversity.
 - SSGA will vote against the chair of the nominating committee for inadequate disclosure or if the board doesn’t have at least one director from an underrepresented racial or ethnic community (S&P 500 or FTSE 1000) and at least one woman director (all markets and indices). Beginning in 2023, SSGA will expect Russell 3000 companies to have at least 30% women directors.
 - Vanguard will generally vote against the nominating committee chair if the board is making “insufficient progress” on board composition or disclosure (last year’s policy said these votes would be “case-by-case”).

While the voting records of BlackRock, SSGA and Vanguard continue to be management-friendly overall – and engagement discussions remain their “first resort” – their support is no longer a “sure thing.” BlackRock and SSGA continue to emphasize that they will also express views through votes on director elections and shareholder proposals. Vanguard still takes a case-by-case approach on most shareholder proposals, but its policies identify factors that make it more likely to support a proponent. As exhausting as it can be to keep up with the “Big 3,” it remains important to be familiar with their policies and priorities – and to understand how their holdings could impact your ballot items. These commonalities can also guide corporate ESG priorities.

Good Board Governance Results in Increased Shareholder Value

Increase Effectiveness & Demonstrate Accountability

- ✓ Improve Board Performance Reviews
- ✓ Appraise Board Composition
- ✓ Discuss Board Operations and Education
- ✓ Review The Board’s Committee Framework



Denise Kupronis



Helping Directors Enhance Board Effectiveness
GSGBOARDS.COM | 513.272.8500 | DENISE@GSGBOARDS.COM

Leading the Way with Industry Benchmarking and Shareholder Satisfaction Research



Interview with Jim Alden

Managing Partner of Group Five

The **OPTIMIZER** has been following Group Five since its very beginning, 32 years ago, and over all these years, we've noted regularly that Group Five has continually upgraded the size and scope of its research efforts where customer and shareholder satisfaction with service providers are concerned. And, most importantly - Group Five research has continually served to raise the bar on day-to-day service-provider performance in all the categories they cover.

Recently, we learned that Group Five has greatly broadened the size and scope of its suite of surveys of issuer and shareholder satisfaction with shareholder services, so we reached out to Jim Alden, Managing Partner of Group Five.

Q: Jim, please tell us exactly what's new these days at Group Five...

As you point out, Group Five is proud of its 32-year history and our contributions to improving service levels for both corporate issuers and their shareholders via our independent industry benchmarking and shareholder satisfaction research. Although we are best known for our research on transfer agents, we have watched the governance world continue to evolve, and in response, created new opportunities to serve multiple stakeholders (providers, issuers, and investors) in new exciting ways.

We find that many of the corporate issuers we speak with are partnering with several service providers to address their complete set of needs. Virtual shareholder meetings, for example, became a new service that we wanted to account for, leading us to expand our research in 2021 to align with the growing marketplace. As a result, our Shareholder Services Benchmarking Study is now called Group Five's *Investor Communications and Engagement Services Study*. For this new, expanded study, we developed a

Always remember that if you don't measure it, you can never really manage it.

suite of research programs designed to support transfer agents, virtual shareholder meeting providers, proxy/governance firms, and ESG consulting firms - by providing them with client feedback so they can better understand customers' needs and challenges and improve their experiences accordingly. Additionally, Group Five grants corporate issuers who participate in our research studies access to additional data for use in their role as governance, shareholder services, IR or HR professionals - helping them to understand the broader market and key differences across the various providers of services.

Q: Employee ownership services is another key area of focus for companies looking to offer "best in class" reporting and services to key stakeholders. Please share what Group Five is working on in this important area...

Yes, equity compensation and employee ownership services in general represent another significant area of research focus and expertise for Group Five. For over 20 years, we have conducted an annual benchmarking study of equity compensation administration and financial reporting services. I am pleased to say that we have had the same impact as we have in the transfer agent industry, where this research has also helped raise the level of service to plan sponsors and to employee stock owners. Although we continually revise our surveys to reflect current industry issues and provide new insights into the relationship between service providers and their corporate clients, one of our objectives is expanding our research under the broader umbrella of Group Five's *Workplace Benefits and Employee Engagement Services*.

Currently, we are expanding our research in the areas of Financial Wellness and Plan Participant Satisfaction. Our “Best Practices in Financial Wellness” study will be released in Q1 of this year, and we are in the process of designing customized plan participant research for plan sponsors interested in gathering perspectives from their employees. We will continue to serve both corporate issuers and service providers with objective industry-wide data, designed to enhance business-to-business partnerships.

Q. How do issuers access the survey results and what are the benefits for issuers and plan sponsors for participating in your survey research?

Issuers that participate in any of our research studies receive the following benefits:

- Regular opportunities to share their opinions and provide confidential feedback that service providers will use to improve service delivery to the company, its shareholders, and employees.
- Access to complimentary summary reports that summarize our findings and offer insights into provider performance, enabling issuers to make informed decisions when evaluating potential service partners.
- Access to more data and customized research: Group Five will work directly with issuers to develop custom reports that present a detailed view of service delivery models, industry trends, best practices, and provider strengths. These reports and industry presentations are tailored and priced to meet each individual issuer’s needs.
- Additionally, Group Five will continue to serve as a complimentary resource for issuers by answering questions or offering industry updates focused on the current provider landscape and market trends.

Q: How does a company enroll in one of more of your surveys?

Issuers wishing to participate in any of our research studies can add their names to our database by visiting [Study Registration - GroupFiveInc.com](https://www.groupfiveinc.com/study-registration)

Q. Tell us a bit more about your long-standing shareholder research and why a company might want to consider Group Five shareholder surveys?

Our “Best Practices in Financial Wellness” study will be released in Q1 of this year, and we are in the process of designing customized plan participant research for plan sponsors interested in gathering perspectives from their employees.

Group Five’s benchmarking studies on transfer agent services consistently reveal the greatest challenge that issuers face is service to shareholders. Since our founding, our custom shareholder feedback programs have strived to meet this challenge by incorporating the shareholders’ voice and measuring various aspects of their experience, so that issuers and their transfer agents have the necessary insights to improve service to shareholders. Despite most shares being held at brokerages, the registered shareholder is still highly valued by many companies today, and we have continued to evolve our survey and reporting tools for both issuers and transfer agents who value excellent shareholder service.

A recent upgrade to our shareholder research was made possible through our investment in online dashboard reporting along with AI-driven text analytics software that allows us to better understand what matters most to shareholders. Both issuers and transfer agents are finding additional insights from this immediate on-line feedback and analysis of shareholder comments, so we are now offering both plan sponsors and third-party equity administrators the benefits of our tools, techniques, and experience to increase satisfaction with the participant experience. Any issuer who values registered and employee shareholders and cares to ensure that high quality service is consistently provided to their company’s shareholders should consider implementing a voice of the shareholder program. Always remember that if you don’t measure it, you can never really manage it.

Our research experience coupled with our in-depth knowledge of the industries we serve is unique to Group Five. We welcome every opportunity to support issuers and service providers who have research needs beyond our well-known benchmarking studies.

Please contact me at jim@groupfiveinc.com for further questions or information.

ESG Reporting Evolution: Will You Be Ready?



By Ron Schneider

*Director, Corporate Governance Services,
Donnelley Financial Solutions (DFIN)*

Overview

By now, you have probably heard of Environmental, Social & Governance (ESG), and perhaps have some understanding of its principal elements (the “E”, “S”, and “G”). If so, you’re at least on par with most US employees and citizens. You may also be familiar with terms like “corporate social responsibility” (CSR), “sustainability”, and “human capital management”.

That said, here’s a refresher:

Environmental topics include:

Climate impact, carbon emissions, energy efficiency, air and water quality, and waste management/recycling.

Social topics include:

Human rights, human capital/workforce development, employee health & safety, diversity, equity & inclusion (DE&I), labor standards, and community relations.

Governance topics include:

Board composition and diversity, risk and ESG program oversight, shareholder rights, executive compensation, and lobbying and political contributions.

You may also be aware that investor interest in ESG has, over the past two decades, extended from a small but vocal group of “socially responsible” investors to now include many of the largest, long-term, mainstream investors. For the past few years, these investors have requested material, quantitative, decision-useful (and let me now add “auditable”) information.

Research shows that most companies aren’t yet prepared for this new reality.

In fact, over one third of actively managed dollars in the US today use some form of ESG-related screening as part of their investment selection process, often by relying on data from a range of ESG “rater and ranker” firms, of which the Big Five are:

- Bloomberg
- Institutional Shareholder Services (ISS)
- MSCI
- Refinitiv
- Sustainalytics

These firms employ a range of methodologies to secure data and formulate their rankings, often establishing a rating/ranking for companies that don’t yet publish formal ESG reports or respond to their surveys. This unfortunately means that investors may wind up relying on incomplete, outdated, or factually incorrect information. Companies can mitigate these problems by providing “care and feeding” to a carefully selected subset of these firms.

Covid-19 Catalyzes Action

The pandemic and its many impacts on companies, employees, customers, and supply chains have further galvanized investor resolve that their pre-existing focus on ESG, climate, and human capital were correct. For this reason, these stakeholders have re-doubled their expectations that portfolio companies identify and report on their ESG risks and opportunities, and future progress toward these objectives.

Faced with intensifying interest by investors and other stakeholders, more companies are either a) initiating their ESG reporting journey, or b) accelerating their progress on this journey.

If you are involved in this effort, you may share the widespread frustration that there is no one definitive set of “materiality standards” or “reporting language” to be followed. Rather, there are multiple competing and overlapping standards, including (in alphabetical order):

- CDP (formerly the Carbon Disclosure Project)
- CDSB (Climate Disclosure Standards Board)
- GRI (Global Reporting Initiative)
- IIRC (International Integrated Reporting Council)
- SASB (Sustainability Accounting Standards Board)
- TCFD (Task Force on Climate-Related Financial Disclosures)

The good news: there is now tangible movement toward harmonizing these various standards.

- In mid-2021, the IIRC and SASB merged to create the Value Reporting Foundation, describing this action as “a major advancement towards building a more comprehensive and coherent corporate reporting system.”
- On November 3rd at the recent COP26 UN global climate conference, the International Accounting Standards Board (IASB) announced the formation of the International Sustainability Standards Board (ISSB), which will continue the harmonization of ESG standards and frameworks by combining the CDP and the Value Reporting Foundation. The ISSB is expected to be operating by mid-2022, and will further align with the TCFD.

If you already are involved in your company’s ESG efforts, you will recognize the steps companies take in this journey, which include:

1. Identifying what materiality factors are relevant to your company (often using a hybrid approach involving multiple materiality standards). Engaging directly with your investors (current and prospective) can confirm the topics of greatest interest to them.
2. Reviewing peer company disclosures to further identify relevant industry issues.

3. Examining your company’s existing practices and programs around environmental impact, community, customer and supplier relationships, and DE&I. Many companies already have sound practices or programs that deserve more visibility to ensure credit is given where credit is due. This can become the start of their ESG reporting (i.e., “telling the story you have”).
4. Identifying gaps in relevant material topics to prioritize and close.
5. Reporting your identified ESG risks and opportunities. This reporting can take the form of information, or more formal ESG, social responsibility, or sustainability reports. Fact sheets that map to the above materiality standards can also be a useful and achievable step.

Disclosures Migrate to Regulatory Documents

ESG reporting today is largely voluntary, with most companies using relatively unregulated web-site disclosures and reports, not SEC-filed documents. But investors are watching, and they have found some company assertions of their good citizenship to not be decision-useful, or worse, “green-washing” (i.e., an example of deeds not matching words).

These disclosures increasingly are finding their way into regulatory documents: The SEC now requires companies to include a disclosure of material human capital resources in the 10-K, and investors are pressuring US companies to include ESG highlights – such as, board oversight – in the proxy. The good news, in our experience, is that thoughtfully selected highlights in a regulatory document are highly likely to be noticed by investors and often “move the needle” on some ratings and rankings. That said, proxy highlights, as well as 10-K reporting on human capital, bring these disclosures squarely into the crosshairs of regulators, including the SEC. Companies are advised to have appropriate legal review of proxy and 10-K ESG disclosures, as they would of other material matters.

A More Regulated ESG Reporting System?

According to SEC Chair Gary Gensler, the SEC will propose rules requiring climate-related disclosures in public filings. Hopefully this will bring clarity to issues such as appropriate reporting standards, emissions reporting, and other relevant benchmarking criteria.

As ESG becomes more data driven and increasingly disclosed through SEC-regulated channels like the 10-K and proxy statement, the stakes get higher – and more parts of your organization will become involved!

Many analogize the likelihood of a heightened volume and scrutiny of ESG disclosure to the Sarbanes-Oxley Act (Sox) of 2002, which required public companies to have disclosure controls and procedures (to ensure that information required by Exchange Act filings be recorded, processed, summarized, and reported in accordance with SEC rules). Sox heightened the role and discipline around financial reporting, with financial reporting teams expanding to include attorneys, corporate management, auditors, and ultimately, the board. Many companies also established disclosure committees, often including members of finance and investor relations, legal, the controller and director of financial reporting.

It's important to be very aware of the potential liability that may arise from making ESG-related disclosures that are materially misleading or false. Examples might include publicizing cybersecurity, safety standards, and codes of conduct that subsequent events reveal are less robust than advertised. Companies should ensure statements in ESG reports are supported by fact or data and should limit overly aspirational statements.

In September 2021, the SEC released a [sample letter to companies](#) about climate change disclosure, stating that companies may be required to disclose climate change data based on its 2010 climate disclosure guidance. The sample letter includes this general statement:

“We note that you provided more expansive disclosure in your corporate social responsibility report (CSR report) than you provided in your SEC filings. Please advise us what consideration you gave to providing the same type of climate-related disclosure in your SEC filings as you provided in your CSR report.”

With the SEC increasingly looking at all corporate disclosures, the need for controls and oversight of the publication of all ESG data becomes even more apparent. Companies that have not established clear oversight of ESG at the board level, and accountability for the controls around ESG reporting at the management level, may need to step up their games in advance of the upcoming 10-K, proxy, and annual meeting season.

The Future of ESG Data and Reporting

In discussing the SEC movement toward mandatory disclosures of corporate risks of climate change, Diligent Insights states: “these measures have big implications for boards, executives, legal and investor relations teams. Accessible and auditable metrics are fast moving from nice-to-haves to must-haves.”

Furthermore, Diligent’s research shows that most companies aren’t yet prepared for this new reality and don’t have the requisite data, processes, and technology in place. They urge companies to “start building an ESG infrastructure now,” before the SEC acts and they are left at the starting gate.

Figuring out what’s material and what frameworks to report against will reveal the data you need, as well as:

- how you will obtain it
- how you will validate it
- where you will store, update, and make this data secure yet accessible, and
- what (new?) software will be needed

Call to Action

Once you have your data management and reporting in place, keep in mind that the end goal of the ESG journey is to make ESG part of the company culture, imbued through all levels of the organization, central to business strategy, and integrated across company operations. This creates a competitive advantage relative to less prepared companies.

Will you – and your company – be ready? We can help.

For further information, please contact ronald.m.schneider@dfinsolutions.com Or visit our [ESG site](#).



RON SCHNEIDER DIRECTOR - CORPORATE GOVERNANCE SERVICES
RONALD.M.SCHNEIDER@DFINSOLUTIONS.COM



- Shareholder Services Check-Up[®]**
- Stock Transfer "RFP" Facilitation**
- Corporate Action Pricing & Contract Terms**
- IPO Transfer Agent Search**
- Other Contract Negotiations**

We make the stock transfer service RFP process smooth and efficient for companies. Clients also like our Shareholder Services Check-Up[®], which achieves market-competitive pricing and contract terms without the time, distraction and cost of an RFP. No wonder a significant percentage of the Fortune 1000 has already benefited from our decades of experience, and are avid client references.



For more information call **Andrew Wilcox** at **415-246-7243** or e-mail **awilcox@shareholderservicesolutions.com**
Visit ShareholderServiceSolutions.com



APA

Abandoned Property Advisors, LLC

APA offers end-to-end solutions for all your abandoned property needs.



ANNUAL COMPLIANCE

- SEC 17Ad-17
- DMF Requirements
- Abandoned Property Reporting



OWNER LOCATION

- Unmatched Capabilities
- Proven Approach
- Reduces Escheat



ADVISORY SERVICES

- Initial Compliance
- Audit Support



CORPORATE ASSET RECOVERY

- Broad-based Searches
- Streamlined Process
- Dedicated Staff

TO LEARN MORE, CONTACT US:

Carol Irvine, Principle **Robert Irvine, Principle**
Direct | 610.232.0646 **Direct | 917.841.3479**

Abandoned Property Advisors, LLC | www.ap-advisors.com





Trends & Insights in 2022 From the Okapi Partners' Team



Alexandra Higgins - ESG

Last year, the SEC indicated that it was focusing on increasing ESG-related disclosures but was vague on which ESG metrics and forms of disclosure would be mandatory. In 2022, the SEC is expected to propose some mandatory ESG disclosure including, potentially: measures and metrics related to disclosure of emissions; human capital management; and diversity, equity, and inclusion.

Companies need to begin preparing for these disclosures now. The demand from investors is already here and we've been helping clients for the last 12 months understand exactly what these investors are looking for. Those that wait risk turning away investors, many of which clamor for greater ESG transparency for themselves or for those on whose behalf they invest. Proactive companies will seize the opportunity not just for voluntary disclosure, but for long-term goal setting as well. Big changes take time, and that sometimes means getting ahead of the ball and working along long timelines. What's certain is that a lot is going to change.

Email: ahiggins@okapipartners.com

Phone: 212.297.1884



Chuck Garske - SPACs

While capital raising for SPACs took a breather for a few months last year, the market has again picked up. As SPAC sponsors find and sign deals, many have faced rough seas when trying to obtain shareholder approval. The turnover in the shareholder base that occurs once a deal is announced, coupled with the arduous task of getting retail shareholders to vote and the details of the voting process, means that not all of these deals will get approved.

To avoid losing an acquisition approval vote, SPAC sponsors and target companies need to pay careful attention to planning and executing the solicitation of shareholder support. Obtaining shareholder lists can be difficult, but needs to be done early in the process, especially when significant amounts of retail investors own shares. Proxy advisors including ISS and Glass Lewis are extremely important in this process, especially because they have been known to recommend against approval of a SPAC acquisition. Sponsors and companies also need to focus on maintaining shareholder support after the vote since investors can vote for a deal but still redeem their shares.

Email: cgarske@okapipartners.com

Phone: 212.297.0724



Mark Harnett - Shareholder Activism

With Covid no longer new, companies that underperformed again were targets for activism in 2021 and we expect that to continue this year. M&A activism was also hot. Activists are gearing up for campaigns this year as the director nomination windows are open or soon to open for many companies. Many of these investors have identified targets based on lagging operational performance, sub-par relative market performance or both.

The universal proxy card will inevitably upend the traditional dynamic between corporations and activists. We're already seeing companies amend their bylaws to prepare for it.

This rule allows shareholders to "mix and match" candidates from the competing slates. Whether universal cards will unleash a wave of new proxy fights is still not clear, but it certainly could help activists gain minority representation on a board if they make a compelling case for change to shareholders. (The rule change may make it more difficult for any activist to sweep an entire board from a company.) The threat of some board change through the universal card should make regular shareholder engagement about company strategy more critical than ever this year. As management typically has better access to its shareholders, they can be in a better position to engage and convince shareholders to vote for them.

Proxy advisory firms will also be able to recommend specific candidates from both sides in a contested election. It will be interesting to see if investors make more use of the recommendations to help determine which candidates to support under this new regime.

The playbook and strategy for voting in proxy fights is going to change in nuanced ways, which makes our role as a proxy solicitor and investor response firm even more important this year.

Email: mharnett@okapipartners.com Phone: [646.556.9350](tel:646.556.9350)



Anthony Vecchio - Stock Surveillance

One thing we've seen over the last two years is a huge uptick in demand for our real-time StockWatch intelligence and analysis as companies try to understand their changing shareholder base. It's well known that retail ownership of stocks has surged since Covid-19 hit in early 2020 and that has caused a shakeup in the ownership structures of many big companies.

In order to respond effectively to shareholder opposition, it is important to know the composition of the company's investors. A breakdown of institutional investors is critical, as is an understanding of the balance between institutional and retail shareholders. Retail investors have become a larger proportion of some companies' shareholder bases; their reaction to an M&A transaction may be much different from that of an institutional holder and may call for different engagement and communication tactics.

Email: tvecchio@okapipartners.com Phone: [212.897.9787](tel:212.897.9787)



Jason Alexander - M&A

Global M&A activity surged to a record of over \$3.6 trillion last year, and is likely to maintain a blistering pace in 2022. Curiously, many of last year's transactions were opposed – in many cases successfully – by activist investors who questioned the valuations, sales processes, and/or strategic logic of several highly visible deals.

If this trend continues, members of corporate management seeking support for a proposed deal – as well as activists who oppose the combination – will need to assess the composition and motivations of the shareholder base, develop and execute well thought-out strategies for engaging investors and proxy advisors, and be able to articulate sound reasons for their positions with regard to any deal.

Email: jalexander@okapipartners.com Phone: [212.897.9785](tel:212.897.9785)

A Better Way To Conduct a Proxy Fight

Save Time and Money...and Get The Results Right the *First Time*

An open letter to issuers, proxy solicitors and advisors and their legal counsel:

Dear friends and colleagues;

We are pleased and excited to announce that CT Hagberg LLC is now prepared to offer an outstanding roster of Independent Inspectors of Election who stand ready, willing and highly able to serve in proxy fights involving large and mega-cap companies - along a new way of Inspecting in contested elections.

As you will note from our logo, we have been providing Independent Inspectors of Elections since 1992. And actually, my business partner Ray Riley, and I - and several of our IOEs - have been regularly serving in contested meetings since the 1970s. While we regularly handled six to a dozen high-profile contests a year, we were not keen about finding temporary work space, and mobilizing a large force of sufficiently skilled clerical workers to handle large and mega-cap fights.

Today, however, the actual work that needs to be done by Inspectors of Elections is radically different in a great many ways...and the stakes are high:

- **The once overwhelming numbers of paper proxies that need to be examined in a proxy fight are now only a tiny fraction of what we were seeing five or more years ago.**
- **Very important to note, at most shareholder meetings, contested or not, well over 95% of the total votes cast have been cast “electronically “ - by the pre-authenticated voters themselves.**
- **A huge change; at more and more meetings every year - contested or not - the “margins of victory” have been getting smaller and smaller. Accordingly, a much higher and more sophisticated level of due diligence on the part of the Inspector of Elections is required - along with a much greater understanding of the many systems and procedures that are employed by the various kinds of voters - and their many agents and intermediaries.**
- **Currently, other teams of Inspectors typically re-post the entire tabulation from scratch. This adds an extraordinary amount of time and expense to the process, and runs the risk that errors of the Inspectors’ own making may distort or even misreport the legally final results. (think Proctor & Gamble – the most expensive and prolonged proxy fight adjudication of all time)**

Over the past few years, we have developed a much better automated - and far more auditable method of managing and conducting the Proxy Inspection process. Our systems and procedures greatly reduce both the huge amounts of labor and expenses that were formerly the norm and the long timeframes between closing the polls and issuing a Final Report on the Voting.

We will be reaching out individually to all of the thought-leaders in the industry. But in the meanwhile, we hope that all of you who read this will reach out to us for a written proposal if a proxy fight looms. We are certain that you will be impressed with the service, with our people, and especially with the potential savings in time and money.

With all our best regards, and best wishes for the New Year!



Carl Hagberg

MANAGING PARTNER

CTHagberg@cthagbergllc.com





laurehill.com

BEWARE!

Shareholder Activism is showing its teeth
We'll make sure you don't get bit



ELLEN PHILIP
ASSOCIATES, INC.

EMPLOYEE PLAN VOTING SERVICES

INTERNET MOBILE PHONE MAIL

www.ellenphilip.com
info@ellenphilip.com
Serving the Industry since 1978



InvestorCom

WE GET THE VOTE

Are You Ready for Proxy Season?

Shareholder accountability is a fast paced business. Activism and the ever evolving world of governance standards are just the beginning of what is expected to be the most active proxy season on record.

Let InvestorCom guide you through this challenging new world.

PROXY SOLICITATION
ANNUAL AND SPECIAL MEETINGS
PROXY CONTESTS
INFORMATION AGENT SERVICES
SHAREHOLDER SURVEILLANCE AND ANALYSIS

T 203.972.9300

info@investor-com.com

www.investor-com.com



Quote Of The Quarter...

On Capitalism - And “Disruption” ...From Larry Fink’s 2022 Letter To CEOs:

“Stakeholder capitalism is not about politics. It is not a social or ideological agenda. It is not “woke.” *It is capitalism*, driven by mutually beneficial relationships between you and the employees, customers, suppliers, and communities your company relies on to *prosper*. This is the power of capitalism....

“The pandemic has turbocharged an evolution in the operating environment for virtually every company. It’s changing how people work and how consumers buy. It’s creating new businesses and destroying others. Most notably, it’s dramatically accelerating how technology is reshaping life and business.

“New sources of capital fueling market disruption...Young, innovative companies have never had easier access to capital. Never has there been more money available for new ideas to become reality. This is fueling a dynamic landscape of innovation. It means that virtually every sector has an abundance of disruptive startups trying to topple market leaders.

“And it’s not just startups that can and will disrupt industries. Bold incumbents can and must do it too. Indeed, many incumbents have an advantage in capital, market knowledge, and technical expertise on the global scale required for the disruption ahead.

“Our question to these companies is: what are you doing to disrupt your business? How are you preparing for and participating in the net zero transition? As your industry gets transformed...will you go the way of the dodo, or will you be a phoenix?”

NO TIME LIKE THE PRESENT TO EVALUATE YOUR MAJOR SERVICE SUPPLIERS

As you peruse this magazine, you will notice, we hope, that the shareholder-servicing universe is experiencing a host of unprecedented changes:

- A massive consolidation is underway in the transfer agency universe - along with a sudden burst of growth in the small TA world.
- There is big “excess capacity” in the proxy solicitation and advisory business - and also in the abandoned property recovery and reporting world.
- Many industry players seem to have fallen by the wayside competitively...hunkering down and under-investing in talent.

Please take a moment to answer these questions:

1. When was the last time you benchmarked the services, fees, out-of-pocket expenses - and - most importantly - the readiness of your major service suppliers to spring into action quickly and expertly - against the top two or three providers in their field?
2. Do you - like managers at so many companies - suspect you might be paying high 20TH century prices for low-tech 21ST century products and services... and for things you don't need?
3. Are you being told to issue RFPs for all shareholder services your company purchases, above some minimal number?

Have you seen [our article on “RFP-LITE”](#)?
See page XX or [search “RFP-LITE” on OptimizerOnline.com](#)



We say, “the current environment presents a once-in-a-lifetime and very much long-overdue opportunity for public companies to take a careful look at the transfer agent scene, the proxy solicitation and advisory scene, and the abandoned property scene - and to benefit from what is very much a ‘buyer’s market. Don’t sleep through it!”

If you answered **YES** to any of these questions, we invite you to give us a call for some complimentary consultation.

Carl T. Hagberg
& ASSOCIATES

Carl - 732-778-5971
cthagberg@cthagbergllc.com

Peder - 917-848-6772
phagberg@cthagbergllc.com

cthagberg.com

Helping public companies - and their key suppliers - to provide better - and more cost-effective services to investors since 1992

OPTIMIZER

PROVIDING STRATEGIC AND PRACTICAL ADVICE - AND MONEY-SAVING TIPS...SINCE 1994

VOLUME 27, NUMBER 4

NOW IN OUR 31ST YEAR!

FOURTH QUARTER 2021

IN THIS ISSUE

The Outlook For In-Person, VSM And Hybrid Meetings - Straight From The Frontlines

In 2022 Issuers Will Have To Fight Harder Than Ever For The More-important-Than-Ever Retail Vote: A Quick Look At Retail Investor Loyalty Programs

Covid Boosts "Virtual Inspections Of Elections" - A Big Potential Money-Saver

The Badly Mis-Named And Imperfectly Understood "Universal Proxy Rule" - Three Important Practice-tips

Revised Transfer Agent Market Share Numbers And What They Mean

Will The AST-EQ Combination Mark The End-Game In The Fragmented TA Business?

Out Of Our In-Box: The Craziest Shareholder Meeting Events In 2021 ...and Our Annual "Ficklefinger Award" For "Barking Orders" To A Prominent Investor

On The Supplier Scene: Numerous Moves To Expand Horizontally In Already Overcrowded Fields

People: Many Industry Stars Move On Regulatory Notes...and Comment

Watching The Web

The Outlook - And Our Advice - For In-Person, VSM And Hybrid Meetings In 2022... Straight From The Frontlines

The number-one question we're being asked as readers gear up for the 2022 Meeting Season, and as Covid cases began rising again, is "What are most companies planning to do this year?"

So far, as our sister-company, that will provide Inspectors of Election at over 500 companies of every size, shape and description is seeing - the vast majority are opting for VSMs, which seems smart to us.

And - equally smart, we think - an unusually large number of companies are booking them extra early - to get first-dibs on their preferred dates and times - and on the VSM A-Team too, we think - and, very important to smart companies - to be sure they will have the Inspector of their choice. In our 50+ years of involvement with scheduling and staffing shareholder meetings, we have never seen so many companies book so early.

Here's our own analysis of the "Covid-Climate" for meetings in 2022:

- Companies with historically low or no meeting attendance will be mostly safe, we think, to schedule small-scale in-person meetings in mid-April through August - with no more than 25 or so attendees in total, but in a big and airy space, and with pre-registration, proof of vaccination and mandatory masking required.
- Nonetheless, if it were *our own meeting*, we would stick to the most prudent course and go virtual only - which is what most companies are doing so far.
- To date, we have been hearing that quite a few companies really miss their in-person meetings, and are still keeping options open. But we ourselves would opt for the most prudent course, rather than risk hosting a "spreader event" or having to scramble if the Covid-climate turns worse.

CONT'D →

- Note well: We have seen two cases in the past two months where the in-person option had to be abandoned on very short notice - and where it was too late to give adequate notice to retail investors. Both companies had to send staffers to the original site to meet, greet and explain to retail investors - and to collect any proxies or ballots.
- So far, we'd noted only one mega-cap-company that has announced an in-person meeting - in mid-May - and in a warm climate. But they have a well-developed contingency plan to go virtual-only, just in case. And oops! Just as we were going to press, **Berkshire Hathaway** announced that they would hold an in-person meeting in Omaha on April 30 - drawing speculation from the *NY Times* reporter on how they planned to protect the health of Warren Buffett (91) and Charlie Munger (98.) Nice news for the tens of thousands of Berkshire Hathaway meeting fans, the meeting will again be streamed "live" with details on the in-person admission provisions to come in late February or early March.
- Our own bet is that Covid cases will decline as the weather warms up - and some folks are saying that we are "past the peak" now - but we are betting on an upswing right after the Labor Day holiday, and as the weather cools off again. So companies with meetings in the increasingly busy September through December period would be well advised to hold their horses for now, we say, where in-person meetings are concerned - and maybe to book your dates and times for a virtual meeting well in advance...just in case.
- Another trend we have been noting is the rise in interest in having a Hybrid-Meeting. This idea has been particularly popular with smallish and *newer public companies* that have a real desire to reach out to - and to "engage" their brand new investors - including retail investor owners and fans. We ourselves are big fans of hybrid-meetings - in principle - but we still have concerns about the ability of most companies to pull in the required technologies - and to work on the "playbook" - and on the needed dress rehearsals to pull one off in a good way. Currently, in our experience, smaller and *tech-savvy companies* have a much better chance of doing so than large and mega-cap companies, where both the cast of characters involved and the number of issues to be addressed tend to be so much larger.
- **Please remember our warnings in the last issue that institutional investors - and shareholder proponents - and the press - will be tuning in and critiquing shareholder meetings with special care - and promising to withhold votes for some or all directors at companies next year that fail to insure adequate "engagement" and a real "dialogue" with investors.**
- **Our best advice of all is to go to our website to review our [Virtual Meeting Playbook](#), our sample [Run of Show](#) and our easily modified [Rules of Conduct](#) for virtual-only and hybrid meetings, which we have posted on our website - to make sure your meeting will pass muster with flying colors.**

In 2022 Issuers Will Have To Fight Harder Than Ever For The More-Important-Than-Ever Retail Vote:

This year, The OPTIMIZER believes that the battle for the management-friendly retail investor vote will be harder to win than ever before - even while the retail vote will be a bigger decider than ever before. Here's why:

- As noted elsewhere in this issue - by several of the most knowledgeable firms out there - there has been a huge surge in retail investment in individual stocks: Over the past 18 months more than 22 million individual investors have entered, or belatedly re-entered the stock market - and two-thirds of them are in the Millennial and Gen-Z cadre of voters. We'd also bet, based on our longtime observations of retail shareholder records, that they hold at least three stocks each, on average.

CONT'D →

- This big and growing cadre of people have very different ideas about making their voices heard - and on the issues themselves - than their overwhelmingly management-friendly but mostly ‘passive voters’ their parents and grandparents mostly were in the past.
- A very high percentage of Millennial and Gen-Z voters identify social and environmental issues as being “very important” to them as investors - and in making investment decisions - witness the enormous growth in so-called “socially-conscious” funds and EFTs we’ve seen over the past two years.
- While yes, the old estimate that retail investors as a group hold roughly 30% of common stocks - on average - is still mostly correct - at many companies, and particularly at companies that have special appeal for retail investors, the actual percentage of shares held by them has grown dramatically higher. (This development has also been exacerbated, as noted elsewhere in this issue, by big share-repurchases at many of the companies that have high appeal to individual investors.)
- And oops! In case you failed to note it - in 2021 more retail investors than ever before are voting FOR social and environmental proposals - and for “governance proposals” too....and they are increasingly passing.

WHAT ISSUERS SHOULD BE DOING NOW...

1. Make sure you know exactly how many retail investors you really have in 2022 - and exactly what percentage of the total vote they represent.
2. Carefully consider every “ESG” proposal you receive in light of today’s voter demographics, and try to work out a reasonable compromise, rather than to rack up a loss.
3. If you decide to recommend Votes NO on ESG or other shareholder proposals, work especially hard on making your case to retail investors - in language they can understand - and in an investor-friendly format that will motivate them to read carefully - and act on.

A Quick Look At Retail Investor Loyalty Programs - And Other Incentives To Get Out The Retail Vote

In the last few weeks of 2021 we had inquiries from three readers on this subject - one of our favorite ones - so we placed calls to a few colleagues who’ve had success here, and reviewed some of our own past articles for other ideas:

Peggy Foran, who pioneered the program of “tree-plantings or totes for votes” at **Prudential** many years ago promptly wrote back...”Bags and trees still on and have been a hit!”

Our friends at **Bank of America** are still *very satisfied* with the charitable donations of \$1 for every retail account that votes a proxy and will continue again this year (no charity determined yet.) They also mentioned a very interesting thing - that with their continuing share-buyback programs, the retail base is actually increasing noticeably as a factor in their Meeting quorum - something all companies with buyback programs need to be alert to this year.

IBM has also been very satisfied with its similar program - \$1 to a designated charity per retail position voted - and they noted yet another important factor to pay attention to - a big surge in the numbers of their retail investor accounts, where there have been over 22 million first-time retail investors added to the ‘pool’ (on a nationwide basis) over the past 18 months or so. Many of these newcomers LOVE brand-name companies...but are new and naive re: proxy voting, and need some education - and some encouragement!

CONT'D →

We have been telling one mega-cap company that asked about voting incentives that we'd bet \$1000 they can raise their Quorum at the shareholder meeting by 4-5 percentage points if they can motivate their non-voting retail owners... and with "mostly company-friendly votes" so we are hoping they will give it a try this season. (This is a company that has had a lot of "squeakers" on shareholder proposals over the years...but, ouch - in the end, a tight-budget nixed the idea for this year.)

Here's a [link to the BofA success story](#), from 2018 (The Biggest And Best Thing We Saw This Season: A 41% Increase In Retail Investor Voting Participation...following An 8% Increase Last Year... At Bank Of America) and a [link to a 2011 article](#) that still has good ideas for incenting retail investors to vote proxies - and warnings about major turnoffs (A Short-List Of Incentives That Might Get More Folks To Vote Their Proxies)

Some of the very best tips for winning-over the big and fast growing "new investor" vote, please note, can be found in this very issue - and they revolve around using modern technologies - and also, more compellingly written and 'engaging materials' to truly "engage" - and convince - and motivate shareholders - and to make it fast - and easy for retail investor voters to cast their votes.

Covid Boosts "Virtual Inspections Of Elections" A Big Potential Money-Saver... Our Tips On Acting Smartly

In 2021 - thanks largely to sensible Covid-era precautions - U.S. companies overwhelmingly relied on "Virtual" attendance of Inspectors of Election - and auditor representatives too - at their shareholder meetings. Our sister-company, CT Hagberg LLC, logged fewer than two dozen in-person appearances out of the 560 meetings handled by Team members. In many cases this generated significant dollar-savings in IOE travel and lodging expense over the cost of in-person appearances. So far this year, the ratio of "virtual" vs. in-person appearances being scheduled seems to be running at the same high rate.

Our Inspectors still love to attend shareholder meetings in person - but if the meeting is to be virtual only - or if few or no outside shareholders are expected - and nothing new or controversial is on the agenda - the savings in "virtual attendance" by the IOE can often be considerable. Here are a few tips on thinking this through:

- First, of course, is to estimate how many outside attendees are likely to show up, and likely to bring proxies or want to vote in person. If it's more than a handful, you will likely want the IOE to be there in person too, to collect and take charge of the votes.
- Next, think about the meeting location - and the location of your Inspector: At many meetings, the IOE is only a short drive away - and sometimes, literally within walking distance to your meeting site. So no big deal for the IOE to come - and no big expenses at stake either way.
- Very important, we suggest, is to think for a second about your senior management team: At most meetings the Inspector of Election is the only outside person in the room that your management team actually knows by sight. And many meeting chairmen - and their senior staff too - really appreciate having that one 'friendly face' and 'meeting-seasoned person' in the room - and feel comforted to know, at an always tense time, that the IOE is a meeting-veteran who can smartly step up to the plate if something unexpected arises "from the floor."
- As we have been noting, the advent of virtual and hybrid meetings has made the know-how - and the

CONT'D →

involvement of Inspectors in the planning and delivery phases more important than ever. So if you are new to the Shareholder Meeting game - and/or new to the VSM and Hybrid-Meeting game - be sure that your Inspector thoroughly knows the ropes and will be appropriately proactive - both in sharing info gleaned from other meetings AND in rising to the occasion quickly and expertly if unexpected circumstances should arise.

- If you decide to have the IOE attend virtually, as so many companies are planning to do this year, be sure to have a brief written script you can read in the event proxies or ballots ARE handed in at the meeting... to assure voters that you will transmit the forms to the IOE for validation and tabulation right away, for inclusion in the Final Report on the Voting.

Readers: Please take a few seconds to review the truly outstanding group of IOEs on our Team - at Inspectors-of-Election.com. Please note too that we are ready, willing and able to work with any reputable tabulator you may use.

The Badly Mis-Named And Imperfectly Understood “Universal Proxy Rule” Three Little-Noted Practice Tips To Observe This Season

On November 18, 2021 the SEC mandated the use of “Universal Proxy Cards” in contested elections of directors and made at least one change that will effect ALL proxy cards for elections that will be held after August 1, 2022: All proxy cards will have to provide Against and Abstain options where such options have “legal effect under state law” - instead of the old For and Withheld options that companies with “plurality voting provisions” have traditionally used, since time immemorial...So readers - **Practice Tip 1:** Note this detail well if you still have plurality rather than majority voting, as roughly half of all US companies still do.

The new rules also require disclosure in the proxy statement as to the effect of all voting options that are provided: **Practice Tip 2:** Be super-careful in drafting these disclosures. Double-check your own Bylaw provisions re; each proposal and be careful to avoid statements that confuse folks into thinking that Abstentions are somehow ‘the same’ as Votes-No.

Another big, and ill-considered change in our view, is the SEC’s calling them “Universal Proxy Rules”: A terribly bad and totally incorrect name, we say, since the vast majority of Proxy Rules are -and should properly BE - tried and tested State Law Rules, and related case law. **Practice Tip 3:** how about insisting on a hyphen, to correctly label them as Universal-Proxy Rules, or much better, Universal Proxy-Card Rules!

In any event, as a Sidley Austin memo notes, they do “confer substantially more significant rights to shareholders without any minimum ownership requirements (i.e., owning only one share for one minute will be sufficient they say.) But we’d note that this feckless provision only applies where there is an official proxy fight - where there are more candidates than there are “seats.”

Sidley, and numerous other firms have been warning (or more correctly perhaps, simply licking their chops for more fights) that the new rules will somehow generate more proxy fights, though we don’t think there is a logical nexus here at all. But they will - almost certainly - make it somewhat easier for opposition directors to obtain votes...although, at the end of the day, as we always say, “The best fighter, with the best advisors - and with the most convincing and compelling arguments will win in the end” - Universal Proxy-Card rule or no.

Revised Transfer Agent Market Share Numbers... And What They Mean

On December 21, data-gathering experts at AuditAnalytics posted new and very interesting data on transfer agent market share, covering all SEC-registered issuers and noting changes in the most recent period, which covered Dec. 1, 2020 through Nov. 1, 2021 - vs. the year-earlier period. The numbers have particular importance in light of the dramatic changes in the competitive dynamics that will arise from the consolidation of the number-two and number three of the top-four agents - when measured, please note, by the number of shareholders served and by their gross revenues, which is, we believe, the proper way to measure T-A market share:

TRANSFER AGENT MARKET SHARE ALL SEC REGISTERED ISSUES		
AGENT	% SHARE - 2021	% SHARE IN 2020
Computershare U.S.	32.4	37.4
American Stock Transfer & Trust	17.6	21.2
Continental Stock Transfer & Trust	11.9	5.6
EQ (formerly Wells Fargo Shareowner Services)	4.5	4.5
Broadridge	3.2	3.2
ALL OTHERS	30.4	30.4

What a shocker at first glance to see Computershare lose 5 points of share and AST lose 3.6 points - with Continental gaining 6.3 points - until one reads down a bit and discovers that Continental has been winning a big chunk of the record number of IPO accounts in 2021 (where there were 956 in 2021 - a 22-year record - vs. only 124 in 2020) and continues to hold a near lock on SPACs, where they won 86.75% of the 2021 deals. Taking all 2021 IPOs into account, Continental won a whopping 55.75% of them, with AST at 17.25% and Computershare at 14.85% - for a total of 87% of all IPOs in 2021.

But bear in mind that most of the IPOs (and of Continental's entire portfolio) are very small companies, with minimal TA servicing needs, so the numbers above are not indicative of total revenues - and have not moved that needle much at all where the share of total market revenue is concerned. The AuditAnalytics scorecard of agents for the S&P 500 companies, below - where the lion's share of TA revenues reside - presents a very different view of the marketplace and a much better idea of "who's really who" where the dollars are concerned..

*Also, please note that the 30.4% market share attributed to all others does not seem right to the OPTIMIZER: AutoAnalytics notes elsewhere in its study that "there are an additional 40 transfer agents that have at least 20 clients in our database" - and there are still a fair number of companies that maintain their own shareholder records as well - but we have a very hard time coming even close to having nearly a third of all publicly traded issues, much less of SEC registered ones, served by "all others." And, as we will see in the next chart, the top-four agents (and the top-three in 2022) control over 98% of all the largest U.S. public company accounts. We ourselves put the share of "all other agents" at "around 10% at best...and probably less.

SUBSCRIBE TODAY!

\$245 Per Year

Visit OptimizerOnline.com/subscribe

is published quarterly by

CARL T. HAGBERG & ASSOCIATES
P.O. Box 531, Jackson NJ 08527-0531
E-mail: carl@optimizeronline.com

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

ALL RIGHTS RESERVED: Reproduction or transmission of this newsletter, in part or whole, by any means whatsoever, is prohibited unless the permission of the editor is first obtained. Such requests are welcome and permission will be liberally granted.

CONT'D →

TRANSFER AGENT MARKET SHARE S&P 500 COMPANIES

AGENT	% SHARE - 2021	PROJECTED 2022*
Computershare U.S.	56.4	56.4
“New EQ” (AST + EQ)	-	34.8
EQ (formerly Wells Fargo Shareowner Services)	19.2	-
American Stock Transfer & Trust	15.6	-
Broadridge	7.0	7.0
Continental Stock Transfer & Trust	0.8	0.8
ALL OTHERS	1.0	-

Source: AutoAnalytics December 21, 2021 report... *Projected 2022 share, The Shareholder Service OPTIMIZER **Note also that projected “Transfer Agent Market Share” significantly understates their projected share of revenues derived from shareholder meeting activities, where approximately 2000 public companies now use Broadridge rather than their transfer agent to handle these activities.

Why Should Public Companies Care About Transfer Agent Market Share? And What Measures Should They Care Most About?

Well, dear readers, take it from a 32 year TA industry veteran: It is really the gross share of industry revenues that counts in the ongoing struggle for dominance - and for that matter, for long term survival and stability in what is still a very fast-changing, demanding - and very risky environment. So we say, the number of shareholder records maintained is the most important metric by far, since this is still the main driver of industry revenue - along with the amount of revenue derived from the much higher-value-added services that Fortune 500 and S&P 500 companies need to have.

We say again, as we so often do, that “Everyone wants to be with a winner” - and with good reason. The biggest and most successful public companies tend to follow the “lead steers” when it comes to selecting a Transfer Agent - and pay particular attention to which agents are losing, and gaining big-company clients...to again, follow the lead steers as the safest path.

That said, here is our own chart ranking TAs by shareholders of record maintained:

TRANSFER AGENT MARKET SHARE Ranked by shareholder records maintained (millions)		
AGENT	AS OF YEAR-END 2017	AS OF YEAR-END 2019
COMPUTERSHARE	16.6mm (51%)	16.6mm (53.5%)
EQ (Formerly Wells Fargo)	7.7mm (24%)	7.3mm (23.5%)
AST	3.7mm (11%)	3.6mm (11.6%)
BROADRIDGE	1.6mm (5%)	750m (2.4%)
ALL OTHERS	2.9mm (9%)	2.74mm (8.9%)
TOTALS:	32.5mm	31mm

Source: Transfer Agent TA-2 filings, with adjustments for “secular roll-off” by the Shareholder Service OPTIMIZER

Note that movements of public companies from one transfer agent to another were minimal in 2021, but we will publish updated numbers in mid-year 2022 when new SEC filings are in.

Will The AST-EQ Deal Mark The End-Game In The Fragmented TA Business?

We sure would like to say yes. But as former “players” in the business for 32 years ourselves - and as avid “industry watchers and reporters” for 30+ years more - we have to say the game is far from over - although the broad outcomes seem increasingly clear:

The “new EQ” is facing formidable challenges in the near term to merge operating systems and staff, widely scattered operating locations - and three - count'em, *three* - “corporate cultures” - all distinctively different, we'd note. And, perhaps the biggest challenge of all, they need to articulate a clear and compelling message - both to current clients and to prospective ones - that they should be their “agent of choice” But to date, they seem to us to be alarmingly late out of the gate on that last score - but wise, perhaps, to hold their peace until they have their overall plans firmly in place.

Meanwhile, even after the merger of the number-two and number-three agencies, **Computershare** maintains a formidable 56.4% to 34.8% lead where the “lead steers” - and most of the money too - are currently lodged. But so far, they have had relatively little luck in “dynamiting away” new clients from their traditional rivals, due, we say, in no small part to the reluctance of clients to move in what has been an unstable environment for some years... plus the fact that most corporate stewards have been over-busy with far more pressing matters than evaluating, and maybe changing T-As. This last factor will certainly change over the coming year since corporate purchasing policies alone make this way overdue for a look-see, but currently, CPU seems to be spending a lot more of its sales and marketing time - and money - on flogging brand new products and services.

Also, as noted elsewhere, **Broadridge**, which *looks* like a small player by some measures, continues to gain share where the high-profile, high-value-added and, consequently, high-margin Shareholder Meeting services are concerned - making year-over-year growth in the proxy distribution and tabulation areas and where, currently, they seem to have a near lock on providing Virtual Meeting services to investment-worthy companies.

On the ‘small T-A scene’ one has to note the current dominance of **Continental Stock Transfer** in the small-IPO and SPAC world - but also to note the stats from AutoAnalytics that reveal some recent cracks in their lock on SPACs - plus the existence of 40 small T-As with 20 or more clients - and to note, as we have been doing, a sudden upsurge in new entrants to the TA biz...with more to come, we guarantee.

For now, we say, “The current environment presents a once-in-a-lifetime - and a very much long overdue opportunity - for public companies to take a careful look at the TA scene - and to benefit from what will surely be a buyer’s market” over the next two years or so. Readers: “Don’t sleep through it!”

The Craziest Shareholder Meeting Events We Saw In 2021...Starting With...

THIS YEAR’S “FICKLEFINGER AWARD”- FOR THE MOST OUTRAGEOUS RULE IMPOSED ON A SHAREHOLDER PROPONENT WE’VE EVER SEEN... *“The barking orders from Cintas Corporation” - issued in writing to shareholder proponent John Chevedden, who circulated to the world at large what he aptly described as ‘barking orders’... sent to him with “Best Regards” (!!?) by the Cintas SVP, Corporate Secretary and General Counsel, who wrote,*

“Attached please find the Rules of Conduct and Procedures for the upcoming Cintas Shareholders Meeting. When prompted by the Chairman, you will read your shareholder proposal exactly as it is included in the proxy materials. No deviations from the statement in the proxy materials is permitted.” Please use the following number to dial into the shareholders meeting:

What in the world prompted a Corporate Secretary and GC to insist on such an odd and restrictive rule - and to deliver it in such a rude and peremptory manner to a well-known shareholder proponent? Most companies reach out early - and personally - to shareholder proponents to discuss the way their proposal will be presented (pre-recorded, over a phone line or in person) and by whom.

CONT'D →

At the overwhelming majority of the hundreds and hundreds of Shareholder Meetings your Editor in Chief has been to over 50+ years, proponents are reminded that they do not need to read their entire (and needlessly time-consuming) resolution, and invited to offer a brief, and usually time-delimited summary statement instead. Was it fear that the typically mild-mannered and polite Chevedden would offer up a fiery and convincing speech...that would somehow win the day? Or just a need to assert authority, and to rudely bark at a well-known shareholder - about what is widely known, after all, as “The Annual Meeting of Shareholders”? Was it to let him know who the real boss is...in the GC’s ill-informed opinion?

We call it the *Ficklefinger Award* for a very good reason: When someone flicks the finger to a shareholder as this guy did, the finger of fate immediately turns it around and raises it squarely in the face of the flicker...much to his or her own embarrassment and dismay, as a rule. And what a bad reflection on the company as a whole!

More Crazyiness - Two Sets Of Dissident Shareholders Fail To Observe The Rules Regarding Director Nominations - Then Expect Companies To Give Them A Free Pass!

In December, a good friend forwarded a memo seeking advice re: a call with a client about the universal proxy rules, and “came away with an interesting question” – should companies be amending their advance notice bylaws to address whether a director nomination can be properly brought if the shareholder indicates that they will comply with Rule 14a-19(a) but then does not meet all of the requirements? Specifically:

The new Universal Proxy rules:

- Require that the dissident send its solicitation materials at least 67% of the voting power of the company (either through the mail or notice and access).
- Require that the dissident file their proxy materials by the later of 25 calendar days before the meeting date or 5 calendar days after the registrant files its materials
- Require that the company include disclosure in its proxy statement advising shareholders how it intends to treat proxy authority granted in favor of a dissident’s nominees in the event the dissident abandons its solicitation or fails to comply with Regulation 14A.
- The adopting release notes that the dissident might be subject to liability for violation of proxy rules and material misstatements if it failed to file on time or complete its solicitation.

Question:

What if the dissident represents to the company that it will meet these requirements and the company therefore mails its proxy materials with a universal proxy card, but then the dissident does not file its materials on time, does not actually send materials to at least 67% of the voting power, or otherwise abandons its campaign. Under state law and most company advance notice bylaws, how should a company treat proxy cards it receives with votes for the dissident’s nominees if the dissident fails to comply with Regulation 14A? If they otherwise complied with the company’s advance notice bylaw, would they be able to not count those votes? Should companies be updating their advance notice bylaws to address this issue specifically?

Here was our answer: “This is a good one and, believe it or not, we are dealing with this very issue in yet another pending fight now! As the Inspector of Elections I would absolutely NOT count dissident votes if the subject company demonstrates that they have failed to comply with any of the above mentioned rules. No need I’d say to amend bylaws to deal with such failures on the part of the insurgents.”

Cheers. And Happy New Year! And please, dear readers, also remember our advice to NEVER waive your own Notice Provisions and allow anyone - no matter how ‘innocent’ they may seem to be, or how many votes of your own you may think you “have in the bag” - to submit a proposal from the floor! Check out our website for the scary details of doing so...

More From Our In-Box

NYSE finally fixes its mixed-up vote tabulating rule: In late November, **John Jenkins** of the **CorporateCounsel.net** blogged re the NYSE: “SEC approves amendment clarifying ‘votes cast’: Last week, the SEC approved an [amendment](#) clarifying the definition of “votes cast” in Section 312.07 of the NYSE’s Listed Company Manual...The amendment eliminates a disparity that previously existed in the treatment of abstentions under the laws of many states and the NYSE’s treatment of them in determining whether a particular action has been authorized by a majority of the votes cast by shareholders. This excerpt from [Arnold & Porter’s memo](#) on the amendment explains the NYSE’s action and its consequences:

“The NYSE has historically advised companies that abstentions should be treated as votes cast for purposes of Section 312.07, such that a proposal would be deemed approved only if the votes in favor exceed the aggregate of the votes cast against plus abstentions (i.e., giving abstentions the effect of a vote against). The corporate laws of many states, however, including Delaware, allow companies to specify in their governing documents that votes cast for purposes of a shareholder vote include yes and no votes (but not abstentions), such that a proposal succeeds if the votes in favor exceed the votes against. Consistent with those state laws, many public companies have bylaws indicating that abstentions are not treated as votes cast.

“The NYSE has amended Section 312.07 to provide that a company must determine whether a proposal has been approved by a majority of the votes cast for purposes of Section 312.07 in accordance with its own governing documents and any applicable state law, which would permit a company to disregard abstentions if its governing documents and any applicable state law so provide. In its proposal, the NYSE noted that this is consistent with Nasdaq’s approach. The NYSE also noted that the amendment will help ensure that shareholders properly understand the implications of choosing to abstain on a proposal subject to approval under NYSE rules.”

We can’t resist adding an historical footnote of our own - that the old NYSE rule was also in contravention of the SEC rule - and clear SEC guidance - which should always have been obvious to educated readers of English...that “abstentions” are absolutely NOT “votes cast.” THEY are “abstentions” (from voting)...Duhh!! Over the years we’ve encountered the pesky NYSE rule several times in our work as Inspectors of Election, and we would simply advise clients to follow the SEC guidance and to tell the NYSE that they could threaten to de-list them if they thought there was a big issue... and they’d promptly go elsewhere; whereupon, ‘case closed.’... So glad to have this properly resolved however, after so many years of deafness and dumbness.

HOW THE MIGHTY HAVE FALLEN: A few months ago we received a little note from a good friend and former Manny-Hanny colleague, **Alan S. Michaels**, the founder and owner of **Industry Building Blocks**, a firm that tracks U.S. businesses according to “category” and ranks them, which follows: “**In 1992, Shareholder Services was industry #7.... Now it’s Industry #20,077** at [IndustryBuildingBlocks.com](#)”

On The Supplier Scene:

Computershare goes on a diversification “tear” - with **Computershare Limited** announcing that “it has completed the acquisition of the assets of **Wells Fargo Corporate Trust Services** (“CTS”), originally announced on March 23, 2021. The business, which will now be known as **Computershare Corporate Trust**, includes around 2,000 employees based across the U.S. who have transferred to Computershare as part of the acquisition. The US corporate trust business line will operate as a standalone business within the overall Computershare organization, and provides a wide variety of trust and agency services in connection with debt securities issued by public and private corporations, government entities, and the banking and securities industries. The business is annually ranked among the top service providers in most league tables by deal count and dollars serviced and has a best-in-class reputation built on its high-touch approach to client service. In the United States, the Computershare Corporate Trust business serves more than 14,000 clients and has significant market and product-level expertise that has been built over 85 years of U.S. corporate trust experience. Computershare’s **Frank Madonna** will lead the migration of and integration of the Computershare Corporate Trust business into the company.

CONT'D →

Readers: We have been meaning to do an update on the little-followed Corporate Trust industry for some time now, because of its access to senior financial officers and thus, the potential to extend financial services across many similar product lines...We will do this in our next issue, so watch for it.

In October, Computershare’s Georgeson unit launched a very ambitious-sounding “Global ESG Advisory Service” - “to help companies manage risk, improve their environmental, social and governance (ESG) strategies and improve engagement...The 2021 proxy season in the US and Europe highlighted how focused investors have become on ESG concerns – and how companies must increasingly focus on aligning their ESG strategies with shareholder demands and expectations,” said **Cas Sydorowitz**, Global CEO of Georgeson. Their new ESG Advisory Service offers: Strategy, implementation and shareholder engagement programs, Peer analysis and benchmarking against ESG standards and frameworks such as TCFD and SASB, Guidance with rating agencies and ESG scores such as MSCI and Sustainalytics, ESG reporting, education and training for directors and management and Investor profiling and roadshows specifically focused on ESG *And, in what seems to us to be something of a major stretch, the press release notes that “Georgeson has expanded its global team to include expertise in supply chain management, equity research and asset stewardship to cover the spectrum of Environmental, Social and Governance issues.”*

And wow - in yet another horizontal-extension move, Computershare Governance Services announced the acquisition of Worldwide Incorporators, “a highly respected provider of Delaware filing and retrieval services to over 4,000 global clients. This builds upon our commitment to disrupt the status quo and provide new ways to address long standing process inefficiencies across the Registered Agent landscape.”

Not to be left behind in the ESG expansion game, “Glass Lewis Expands ESG Capabilities,” as **David Lynn** noted in his blog on October 21, 2021...via “a strategic partnership with Arabesque, a provider of ESG data and insights” where “The partnership will see Arabesque provide company ESG profiles for Glass Lewis’ Proxy Paper research reports, enabling clients to gain the latest ESG data and insights on over 8,000 companies worldwide...”

And close on the heels of the October announcement, Glass Lewis Launches an Equity Plan Advisory Service, which as David Lynn noted in his blog, “appears to be similar to that provided by ISS Corporate Solutions,”

Group Five released its 2021 Equity Compensation Administration Benchmarking Study in October, measuring value for the first time - “giving study participants both the opportunity to assess the value they receive from their service provider and to explain in detail, from their perspective, how service providers can add greater value. These additional measurements help service providers identify opportunities to improve their offering and better meet the needs of plan sponsors. Now in its 23rd year, Group Five’s annual study includes responses from 961 U.S. public companies who use a third party to manage equity compensation award recordkeeping and execution of plan participant transactions. The study is the only independent forum for plan sponsors to confidentially make their opinions and priorities known to service providers.

No big surprise, we’d guess, “The study reveals that plan sponsors find the greatest value in a provider who continually invests in technology that is easy to use, provides client support personnel who proactively engage with clients when issues arise, and provides responsive service to both the company and their plan participants at a fair price.”

But some heartburn among the many service providers in this space, for sure, we’d opine: “Value is measured in the study using a 0-to-10 scale, with 10 labeled “extremely valuable” and 0 labeled “not at all valuable,” and results are reported as an average score. **Equity Edge Online** received the highest value rating at 8.80, followed by Charles Schwab at 8.67 and UBS at 8.58. In addition, Equity Edge Online achieved the highest overall satisfaction rating at 95% favorable, followed by **Fidelity** at 92% and **Charles Schwab** at 90%. A favorable response is a 4 or 5 on a 1-to-5 scale. “With this added measurement of value, we are able to bring the full picture of service delivery and decision-making into focus for service providers and plan sponsors, so the quality of service and technology solutions can continue to rise,” says **Kathy Huston**, President of **Group Five**. A complimentary summary of the study results is available for download on Group Five’s website.

CONT'D →

In another flurry of activity, in late October Institutional Shareholder Services (ISS) “announced a definitive agreement to acquire **Discovery Data Holdings, Inc.**...a globally recognized and trusted provider of data and analytics to the financial services industry. The acquisition is expected to close later this year... Discovery Data’s platform empowers asset and wealth management firms, insurance companies, financial technology companies, and service providers to understand their target markets and to identify, assess, and seize new opportunities...[and] brings market-leading solutions that will help our clients better support the firms and people directing the flow of assets into investment products across major distribution channels.”

Fast on the heels of their previous announcement, ISS ESG - “the responsible investment arm of **Institutional Shareholder Services Inc.**...today announced the forthcoming launch of its suite of dedicated **Net Zero Solutions** with automated portfolio reporting which will go live in Q1 2022.” As the release explains, “Ahead of COP26, a significant number of global institutional investors have pledged commitments to reduce their investment portfolios’ CO2 emissions to Net Zero by 2050. Those investors will now need to track the alignment of their portfolios beyond the Paris Agreement’s aim of limiting global temperature rise to below 2°C, to a further science-based Net Zero target of limiting it to no more than 1.5°C. Investors are sharpening their focus on implementation and will need to monitor companies’ specific, substantive plans to reduce their carbon footprints with short, medium and long-term targets...supports investors in identifying the most suitable KPIs, analysis, and data to transition portfolios and set relevant net zero targets in accordance with their net zero initiatives, and will enable them to provide meaningful Net Zero statements through a data driven approach with automated portfolio reporting...When launched in Q1 2022, ISS ESG Net Zero Solutions coverage will include 29,000 issuers for Climate data, 23,000 issuers for Energy and Extractives data and 8,000 issuers for EU Taxonomy eligibility data, powered by data and insights from a broad range of high-quality research products within the ISS ESG universe.

PEOPLE: As 2021 came to a close, many industry super-stars moved on...



“I thought you should know that **Charlotte Brown** has retired!” former boss **Michael Mackey**, recently ‘retired’ wrote us: “This after a 42 year career in the proxy biz – a great operations person providing invaluable support to the proxy solicitors. First at **CIC** for 20+ years [where Michael’s dad was a founder] as head of Corporate Services – then a stint at the **Altman Group** in the same capacity and for the last 11 years at **Alliance Advisors** [CIC-redux, we used to call it] “even expanding her role into proxy logistics and virtual shareholder meetings. She has to be one of the most dedicated, knowledgeable and loyal operations people to ever work in the proxy industry.” We would add that Charlotte is also one of the best-known and best-liked people in the entire proxy world - who had many clients that followed her as she moved along in the industry - thanks in small part to the big assortment of candy she’d hand around during breaks at NIRI conventions, but mostly because she was always cheerful - and smiling - and never forgot a face - or a client’s name and company name.



The peripatetic proxy-fight expert, **Tom Cronin** - who’s worked at nearly half the proxy solicitation firms out there over the years - has left the **EQ** proxy start-up venture, where he served a brief stint - to become Senior Vice President - Proxy at **Alliance Advisors**...bringing with him a proxy fight in progress and another scheduled for April. More fights to come, for sure, from Tom’s large and very loyal cadre of financial institution clients - which are usually among the most common proxy-fight targets. And Tom is highly valued by their outside legal experts as well: In our own experience, unlike a surprising number of solicitors we see at fights, he always “knows his numbers to a tee” going into every meeting he is involved in.

CONT'D →

The unforgettable **David Epstein** - who literally invented abandoned property “clearinghouses” - and initiated forced “audits” by state bounty-hunters too - passed away on Dec. 8th at the age of 82.



As **Richard J. Chivaro**, former Chief Counsel, **California State Controller’s Office** and **Lyndon Lyman** of “*Unclaimed Advisor*” reported to David’s many followers, “In the early 1980s, David left a successful sports and entertainment legal practice and the opportunity to be appointed to the California judiciary to focus exclusively on unclaimed property. He helped to re-establish **NAUPA** (the National Association of Unclaimed Property Administrators...whose own bank account had fallen inactive in the 1960s, with its business account reported as unclaimed to the State of Florida) [!!!] ... acted as co-reporter for the 1981 Uniform Unclaimed Property Act, authored the legal treatise *Unclaimed Property Law and Reporting Forms* ...testified before Congress about bank service charges on dormant accounts, wrote numerous amicus briefs as NAUPA special counsel, and acted as an advisor to the **World Jewish Congress** on abandoned accounts in Swiss banks arising from the Holocaust—along with undertaking numerous other activities....Forty years ago, he crisscrossed the country as consultant to more than 30 states. In this capacity... created unclaimed property compliance and outreach programs, testified for the adoption of stronger and more modern legislation, and participated in litigation that resulted in significant holdings that established important public policies still functioning today... The forerunner to modern contract audit firms, the Clearinghouse collected hundreds of millions [actually many *billions*] of dollars on behalf of all states [where David earned a significant percentage of the reported proceeds right off the top, and was, understandably, but to our own dismay, not a fan of “finding” lost shareholders]...and launched or expanded the careers of many talented men and women...In 2007, David endowed the David J. Epstein Program in Public Interest Law and Policy at his alma mater, the UCLA School of Law [which] has since had over 500 graduates, who serve in government, nonprofits, the judiciary, and the private sector.”

Michael J. Foley, who for many years was the Senior Relationship Manager in **Chemical Bank’s** stock transfer division - and an active and involved participant in the **Securities Transfer Association** - passed away on Dec. 14, 2021 at the age of 77, leaving behind his beloved wife Nancy, sons Matthew and grandsons Owen, Patrick and Jack. Michael was “widely known and admired as a speaker of eloquence” - an art he enjoyed enormously - and also as “a gentleman, chivalrous to his last day...and a ‘gentle man’” his obituary noted. He also had a delightful sense of humor and, we would add, not a mean or petty bone in his body - at a time when competition within the business was often crude and cutthroat.



Michael (Mike) Nespoli - another of the very best people ever in the stock transfer business - who for many years was the Executive Director and chief Relationship Manager at **AST** - retired from the stock transfer business at year-end after 41 amazing years. Mike started out in the early 1970s with “**The Old Manny Hanny**” where he rose rapidly in the ranks. Then he soldiered on through the **Chemical Bank/Manny Hanny** merger, the aptly-named “**Chemical Mellon**” deal...then **BONY-Mellon** (whose industry nickname is unprintable) and, briefly, at **Computershare**, before joining **AST**. We never met a client who did not literally love Mike. He always remained cool, calm and totally unflappable, no matter what - and he was always able to help clients - and his own team - to navigate the way through the knottiest of issues and bring them to a good conclusion. Mike plans to pursue a life-long desire to be an Emergency Medical Responder...and we say he sure has had lots of preparation - as one of the stock transfer industry’s most experienced and successful “Emergency Responders in Chief.”

SEC Commissioner Elad L. Roisman wrote to **President Biden** in December that he will resign his position by the end of January. “Serving the American people as a Commissioner and an Acting Chairman of this agency has been the greatest privilege of my professional life” he wrote in his statement. “It has been the utmost honor to work alongside my extraordinary SEC colleagues, who care deeply about investors and our markets. Over the next several



CONT'D →

weeks, I remain committed to working with my fellow Commissioners and the SEC’s incredible staff to further our mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation” We have to give Roisman a solid A for volunteering to head-up a detailed review of aptly-named, creaky, leaky and sometimes smelly “proxy plumbing” issues - and also to spearhead the SEC’s long-promised updating of Transfer Agency regulations, which have not been overhauled in over 30 years, despite many promises to do so...But sad to say, no real progress has been made on either front. The SEC is simply not sufficiently staffed - and funded - for such complex work in our view, and the political slant that seems to infect a lot of the work of the SEC of late does not further progress either. We guess it would take a major disaster in one or both arenas to move the needle even a little.

We were very sad to see the announcement on LinkedIn that **Michael A. Smith**, an “experienced Corporate Trust Professional – specializing in Default Administration (Bankruptcy & Restructuring)” has been riffed:



“After seven terrific years with **Computershare**, their acquisition of **Wells Fargo Corporate Trust Business** has left me seeking a new position in the corporate trust world. This newly merged business is in a great position to continue its course of providing outstanding service for its customers and their investors and I wish the new team all the best in their business endeavors” he graciously informed us. Your editor in chief has known Michael since he started in the Corporate Trust Division at the “Old Manny Hanny” - when it was the consistent new-business leader, year after year, and we have followed his career for more than 30 years. We can attest that he would be an asset to any Corporate Trust unit, and we would recommend him wholeheartedly. We feel certain that he will soon land in a good spot.



Patrick Tracey - another of the most talented people anywhere in the Stock Transfer and Proxy Solicitation arenas - whom your editor-in-chief hired away from the old **Morrow & Co.** over 30 years ago - and who has consistently excelled at bridging the usually unbridgeable gulf between “sales” and product delivery, customer service and product innovation too, at a variety of industry-leading firms since then - was also riffed in December by Morrow Sodali. (What were they *thinking*???) He is now a “free agent,” he recently posted. But not for long, we are certain.

On a happier note, **Nicole Mauney** of **Duke Energy** and **Larry Karp** of **Brighthouse Financial** move into President and Vice President Roles at the **SSA** as Shareholder Service Association’s most recent president **Kim Hanlon** enters retirement.



Nicole is manager of shareholder operations within Duke Energy Corporation’s Investor Relations Department. She began her career in shareholder services on the telephone, answering shareholder inquiries. Since then, she has served multiple roles within Shareholder Servicers, providing support to Duke Energy’s in-house transfer agent function. During her 20-year tenure, Duke Energy underwent several significant corporate actions, including three mergers, a reverse stock split, and a spin-off.

Larry is the vice president and head of shareholder services at Brighthouse Financial. He is responsible for defining the strategy, providing oversight and managing shareholder services, in addition to leading high-profile initiatives within Treasury. Before his current role at Brighthouse, Larry was responsible for working on the spin-off of Brighthouse Financial from MetLife. Before joining the insurance industry, he had a 25-year banking career at HSBC, National Australia Bank and J.P. Morgan Chase, primarily focused on developing financial solutions for global insurers.



Regulatory Notes...and Comments

ON THE HILL:

BIG NEWS FROM THE DOJ - Starting with a roll-out of tough new enforcement policies for business entities, execs and recidivists: “Deputy Attorney General **Lisa Monaco** delivered an exacting message to the white-collar defense bar at the ABA’s 36th National Institute on White Collar Crime” as reported by **Jamie Schafer & Gina LaMonica** on Nov. 8th in QUICK ALERTS, and excerpted here : “The DOJ is stepping up its enforcement of corporate crime... through several new initiatives that will roll back more lenient enforcement policies adopted during the prior administration. This increase in enforcement will be buoyed by a surge of resources provided to DOJ prosecutors, including a new squad of FBI agents embedded in the DOJ’s Criminal Fraud Section—placing “agents and prosecutors in the same foxhole,” as DAG Monaco described it” with four major prongs:

“Focus on Individual Accountability...the DOJ is renewing its focus on holding individual actors responsible for corporate wrongdoing...Monaco announced that the DOJ is reviving its policy that companies will only be eligible for cooperation credit in resolutions with the DOJ if they provide prosecutors with non-privileged information about all individuals involved in or responsible for the misconduct at issue—regardless of the individual’s position, status, or seniority. This pronouncement reverses the DOJ’s prior guidance, which allowed companies to receive cooperation credit for disclosing only those individuals “substantially involved” in the misconduct.

“An Expansive View of Corporate Recidivism....Monaco announced a significant change in how historical misconduct will factor into corporate resolutions. Under new DOJ guidance, prosecutors will evaluate a company’s full criminal, civil, and/or regulatory record in evaluating the appropriate resolution for a subject or target of a criminal investigation, not just similar violations. This broader vantage of historical misconduct—including whether a company has been targeted by another regulatory agency or even another country—brings in a host of additional, potentially relevant, misconduct...Monaco explained that this policy change will usher in an amendment to the DOJ’s “Principles of Federal Prosecution of Business Organizations,” which should provide further detail on how prosecutors will weigh a corporation’s criminal and regulatory record in determining an appropriate resolution to corporate misconduct...Monaco also suggested that the DOJ will be considering data on corporate recidivism with an eye toward guidance as to whether pretrial diversionary avenues—including declinations, non-prosecution agreements (NPAs), and deferred prosecution agreements (DPAs)—should be available to recidivist companies.

“Corporate Monitorship Comeback...Monaco advised that, where appropriate, the DOJ will deploy corporate monitors to verify compliance and disclosure obligations imposed by the terms of NPAs and DPAs entered into between companies and the DOJ. Monaco’s pronouncement explicitly revoked 2018 guidance issued by then-Assistant Attorney General Brian Benczkowski. The “Benczkowski memo” was generally viewed as a more “business-friendly” approach to the DOJ’s practice of imposing corporate monitorships as a condition of settlement, setting a presumption against monitorships except in extenuating circumstances. However, in her recent remarks, DAG Monaco suggested the DOJ may more frequently utilize monitorships to ensure that companies live up to their end of requirements imposed through corporate resolutions.

“More broadly, the DOJ will also evaluate corporate criminal enforcement through the newly-formed “**Corporate Crime Advisory Group**,” which will be comprised of representatives from every department involved in corporate criminal enforcement, which will have a broad mandate to study corporate resolutions, recidivism, monitorships, and benchmarks for cooperation credit in enforcement penalties, and make recommendations to DOJ leadership on potential enhancements to the enforcement of corporate crime. For companies negotiating resolutions, there is no default presumption against corporate monitors, as there was before. Corporate monitors will be imposed on a case-by-case basis...As DAG Monaco alluded, these recently announced policy shifts are just “a start” to this administration’s corporate compliance mission.”

DOJ also launches a large scale investigation of short sellers, hedge funds and so-called “research firms” that fuel the marketplace for short sales, according to a recent [Bloomberg report](#):

“The U.S. Justice Department has launched an expansive criminal investigation into short selling by hedge funds and research firms, scrutinizing their symbiotic relationships and hunting for signs that they improperly coordinated trades or broke other laws to profit, according to people familiar with the matter. The probe, run

CONT'D →

by the department's fraud section with federal prosecutors in Los Angeles, is digging into how hedge funds tap into research and set up their bets, especially in the run-up to publication of reports that move stocks.

“Authorities are prying into financial relationships between hedge funds and researchers, and hunting for signs that money managers sought to engineer startling stock drops or engaged in other abuses, such as insider trading, said two of the people, asking not to be named because the inquiries are confidential.

*“Underscoring the inquiry's sweep, federal investigators are examining trading in at least several dozen stocks, including well-known short targets such as **Luckin Coffee Inc.**, **Banc of California Inc.**, **Mallinckrodt Plc** and **GSX Techedu Inc.** And they're scrutinizing the involvement of about a dozen or more firms — though it's not clear which ones, if any, may emerge as targets of the probe. Toronto-based **Anson Funds** and anonymous researcher **Marcus Aurelius Value** are among firms involved in the inquiry, the people said. Other prominent firms that circulated research on stocks under scrutiny include **Carson Block's Muddy Waters Capital** and **Andrew Left's Citron Research.**”*

Three cheers for this long overdue review, we say.

AT THE SEC - A FLURRY OF ACTIONS TO END THE YEAR:

The SEC appointed four new PCAOB Board Members on Nov. 8th, - naming **Erica Y. Williams** as Chairperson and **Christina Ho, Kara M. Stein**, and **Anthony (Tony) C. Thompson** as Board members and stating that **Duane DesParte** - who was named Chair after the SEC fired former chair **William Duhnke** earlier in the year - will continue to serve as a Board member and will remain Acting Chairperson until Erica Williams is sworn in. Williams is a partner at Kirkland & Ellis LLP, previously served in various roles at the SEC and as Special Assistant and Associate Counsel to President Obama. Ho has held positions with the Treasury Department, University of Maryland, Deloitte & Touche LLP and Elder Research. Stein served as a Commissioner of the SEC from 2013 to 2019, and has also had roles at the University of Pennsylvania Carey Law School, the Center on Innovation at University of California Hastings Law and on the Hill. Thompson currently serves as the Executive Director and Chief Administrative Officer of the CFTC, has served in other federal government positions and is an Air Force veteran. Commissioners **Peirce** and **Roisman**, who had expressed concern with the firing of the PCAOB Board back in June, issued a statement expressing support for the new Board.

Three BIG cheers, we say, for this sweeping and long overdue housecleaning at the notoriously deaf, dumb, blind and totally clueless PCAOB.

On November 15, 2021, the SEC released its FY 2021 annual report on the SEC Whistleblower Program (covering October 1, 2020 through September 30, 2021.) In FY 2021 the SEC awarded about \$564 million (about \$2 million more than all the money awarded in the past 10 years!) to 108 individuals - vs 106 in the ten years since the program began. Two awards in FY 2021 amounted to nearly 40% of the year's total amount awarded — \$114 million to one whistleblower on October 22, 2020 and \$110 million to one whistleblower on September 15, 2021, the two largest awards to date.

It sure looks like plans to “cap” awards are a dead issue these days, and WOW - good thing, we'd say yet again: In FY 2021 the SEC received over 12,200 whistleblower tips — a 76% increase from the previous fiscal year, and a more than 300% increase since the program began. “Money talks.”

In perhaps the biggest move in 2021 where issuers are concerned, the SEC proposes real-time reporting of company buybacks: 3 Things to Know...from Andrew Moore & Allison Handy of Perkins Coie in their Dec. 16th *QUICK ALERTS*:

1. “Real-Time” Reporting on Form SR – The proposed rule would require “real-time” reporting of share repurchase activity via a new Form SR required to be filed on Edgar within one business day after the company executes a share purchase. A single business day. For companies that regularly engage in regular share repurchase programs, this would significantly increase the reporting burden – essentially “Section 16” reporting for share repurchase programs. Form SR would require reporting a range of information in tabular format, including total number of shares repurchased, average price paid, total shares purchased in open market transactions, total shares purchased in reliance on Rule 10b-18, and total shares purchased under a Rule 10b5-1 plan.

2. Additional Periodic Disclosures – In addition, disclosures in periodic reports would be updated to require disclosure of the rationale for the share repurchases and the process or criteria used to determine the amount of repurchases; any policies and procedures relating to purchases and sales of the company's securities by its

CONT'D →

directors and officers during a repurchase program; whether the repurchases were intended to qualify for Rule 10b5-1 safe harbor; and whether the repurchases were made in reliance on Rule 10b-18.

3. What's This All About? – The press release and proposal state that the proposed amendments are intended to improve quality, relevance and timeliness of information about company share repurchases. The proposal notes that many company share repurchase programs are: "...aligned with shareholder value maximization, such as to offset share dilution after new stock is issued, to facilitate stock- and stock option-based employee compensation programs, to help signal the issuer's view that its stock is undervalued, or because the issuer's board has otherwise determined that a repurchase program is a prudent use of the issuer's excess cash."

"But the proposal goes on to indicate a view that increased, and more timely disclosure is needed due to concerns about companies using share repurchase programs as an earnings management tool (such as decreasing the denominator of EPS calculations) or using announcements of share repurchase programs to effect short-term upward price pressure on the stock."

While the OPTIMIZER sees this as basically good news for investors - we must also note that the proposals fail to require clear disclosures of what intelligent shareholders should most want to know: "How much of the money spent on repurchases over, say, 1, 3 and 5 year periods has 'gone up in smoke - to 'money heaven' - instead of producing long-lasting increases in share prices?" The historical record at a great number of companies has been truly abysmal.

Let's never forget that if shareholders had been "rewarded" with cash dividends instead of share buybacks - where most retail investors never sell into such deals, but where they do indeed live with the consequences for better or for worse - they would have had the money in their very own hands - to spend or to reinvest elsewhere - or even to reinvest in more shares of the company itself - as they themselves decided to do! We feel strongly that directors have a duty to see exactly how their "rationales" worked out over 1, 2 and 5 year periods - AND to report it to shareholders - who have a right to know - when they stand for re-election.

Watching the Web:

More stolen data from Electronic Filing Services triggers illegal trading gains - and great advice from Dave Lynn of the CorporateCounsel.net:

"The SEC [announced](#) in mid-December that it had brought charges against yet another hacking ring accused of accessing earnings releases prior to issuance and trading based on the information obtained through the hack. The earnings announcements were accessed by hacking into the systems of two filing agent companies before the announcements were made public. In the complaint, the SEC alleges that the insider trading scheme yielded \$82 million in profits during a period from February through August 2020. As has been the case with many of the Division of Enforcement's recent cases, the Staff credits powerful analytical tools for helping to make the case against the defendants. The [complaint](#) notes:

The trades by the Trader Defendants were disproportionately focused around the earnings announcements of publicly-traded companies that used the Servicers to make their EDGAR filings, as compared to earnings announcements where the required EDGAR filings were not made through the Servicers. Indeed, statistical analysis shows that there is a less than one-in-one-trillion chance that the Trader Defendants' choice to trade so frequently on earnings events tied to the EDGAR filings of the Servicers' public company clients would occur at random.

"This latest hacking scheme points to the vulnerability of material nonpublic information when it is stored in the cloud prior to making the EDGAR filing," Dave noted. "Despite all of the efforts to maintain the security of the systems used to process and store this information, sophisticated hackers can often find a way in. Unfortunately, there is not much that companies can do to protect themselves in this situation, other than to **try to minimize the time that the submission is on the filing agent's system**" (emphasis ours.)

THE OPTIMIZER'S 2022 DIRECTORY OF PRE-VETTED SERVICE SUPPLIERS

View the entire directory online at OptimizerOnline.com/Supplier-Index

ABANDONED PROPERTY

In just the past two years we have been seeing a truly extraordinary explosion in the number of new entrants in the universe of unclaimed property service providers - spawned by greatly increased efforts by state governments to generate funds from this source. Just be sure that you have vetted prospective providers with care – and that they will search for all shareholders, large and small – and that the fees they propose to charge the ‘found shareholders’ are fair and reasonable ones. The providers you choose should also have strong financial, privacy and data-security controls - plus the wherewithal to sustain a big employee defalcation, should a bad-apple come along, since you will often be looking at surprisingly large sums.



Abandoned Property Advisors, LLC

[Ap-advisors.com](https://ap-advisors.com)

866-950-9229

Abandoned property compliance is complex. And, in today's highly regulated business and consumer environment, corporations and financial institutions need a partner *they can trust*.

The **Abandoned Property Advisors (APA)** team brings decades of experience combined with unparalleled resources to help thousands of corporations conduct due diligence to locate owners and ensure accurate annual state filings.

Our goals are simple—minimize risk and maximize results through **proven methodologies** and **cost-effective end-to-end compliance services**:

- SEC 17Ad-17 and DMF Requirements
- Due Diligence and In-Depth Search
- Annual Reporting and Advisory

Contact Carol Irvine to learn how APA can help your company with an integrated approach to all aspects of abandoned property compliance.



An Equiniti Company

(877) 814-9687

newbusiness@astfinancial.com

astfinancial.com

From the birth of a new company to an IPO – from specialized transactions and activist investors to M&A support - **AST**, an Equiniti Company, is a leading provider of ownership data management, analytics and advisory services to public and private companies as well as mutual funds. We offer a comprehensive product set including transfer agency services, employee stock plan administration services, proxy solicitation and advisory services, and bankruptcy claims administration services. Our innovative Issuer Central® platform consolidates registered, street, treasury stock, and insider data into a single solution for a complete view of ownership. AST affiliates include, D.F. King & Co, Inc., AST Private Company Solutions, Inc. and Donlin, Recano & Company, Inc. D.F. King is the market leader in corporate proxy solicitation and advisory solutions, corporate governance, shareholder identification, and information services.



broadridge.com/corporateissuer

Broadridge, a full-service provider of unclaimed property solutions, helps clients manage ongoing reporting and regulatory requirements related to unclaimed property. We help our clients simplify the process and execute an effective compliance strategy by developing best practices for each reporting cycle, ensuring full compliance with state unclaimed property and escheatment laws. Our Abandoned Property Management Platform is easy to use and provides efficient compliance.



georgeson.com

Georgeson is the world's foremost provider of shareholder services to public and private companies. Our team offers global expertise, responsive client service and innovative technology, as well as a comprehensive suite of products and services designed to help our issuer clients achieve their corporate objectives. Trusted by more than 6,000 U.S. companies representing 19 million shareholder accounts, our proven solutions put our clients' and their stakeholders' needs first.



laurelhill.com

(516) 933-3100

The **Laurel Hill Advisory Group** is North America's only independent cross border Shareholder Communications Advisory Firm.

Cross border operations allows us to effectively reach shareholders regardless of their location – Canada, the US or globally. We have offices throughout North America, giving our clients first rate cross border capabilities that specialize in contested or annual meeting solicitation, information agent services, Mergers and Acquisitions, special meeting solicitation and shareholder asset recovery programs. We also provide Depository and Escrow services.

Our state of the art Asset Recovery Center provides the ability to reach retail shareholders in an efficient and controlled manner. We believe that public issuers need to be proactive rather than reactive. If you agree, give us a call.

ANNUAL MEETING SERVICES

Of all the money spent by public companies on the care and feeding of shareholders, the Annual Meeting consumes by far the lion's share. Just about every supplier represented in this issue is involved in some way – whether it's your printer, mailer, transfer agent, plan agent, data-handler, tabulator, proxy solicitor, strategic advisor or inspector of election. And, please note, this area represents not only your biggest spending area, but your biggest opportunity to save money by rethinking and revamping your usual drill, in order to “optimize” your spending....



An Equiniti Company

(877) 814-9687

newbusiness@astfinancial.com

astfinancial.com

From the birth of a new company to an IPO – from specialized transactions and activist investors to M&A support - **AST** is a leading provider of ownership data management, analytics and advisory services to public and private companies as well as mutual funds. We offer a comprehensive product set including transfer agency services, employee stock plan administration services, proxy solicitation and advisory services, and bankruptcy claims administration services. Our innovative Issuer Central® platform consolidates registered, street, treasury stock, and insider data into a single solution for a complete view of ownership. AST affiliates include AST Trust Company (Canada), D.F. King & Co, Inc. and Donlin, Recano & Company, Inc. D.F. King is the market leader in corporate proxy solicitation and advisory solutions, corporate governance, shareholder identification, and information services.

ANNUAL MEETING SERVICES (CONT'D)



No more struggles to coordinate multiple vendors. No missed deadlines or budget surprises. Save time and cut costs by consolidating all steps of the annual meeting process—from planning and distribution to vote tabulation and reporting—across all shareholders. Virtual, in-person, and hybrid meeting options engage shareholders and offer a full range of voting methods.

broadridge.com/corporateissuer

- A secure campaign management portal provides guidelines, timeline requirements, pricing tools, job status, and more.
- Print and electronic delivery options speed turnaround and reduce printing and postage costs. Shareholders can view materials online and vote from the mobile device of their choosing. Targeted reminders increase participation and stimulate voting.
- Shareholder Data Services provides a complete, actionable view of shareholder ownership, voting behavior and results at critical milestones throughout the proxy campaign. It offers the ability to segment and identify critical unvoted accounts for timely reminders.
- Broadridge Virtual Shareholder Meeting service allows validated shareholders to participate fully in online annual meetings—hearing or watching the proceedings, voting and asking questions.

Transfer Agent Services. Broadridge offers a simplified approach to shareholder management, more flexibility based on your unique needs, and more insight into your shareholder base.

Shareholder Communications. Proxy, annual report, and corporate actions and solutions help you communicate effectively with shareholders and efficiently manage the complexities of corporate governance.

Shareholder Data Services. To gain a complete, actionable view of shareholder ownership, voting behavior and results at critical milestones throughout the proxy campaign, Broadridge now offers Shareholder Data Services, a comprehensive reporting package. It uniquely provides a multi-dimensional view of data to deliver an “early warning” detection of potential issues during the campaign; a vote projection analysis based on ownership and voting trends; and historical voting results, including benchmarking data.

Annual Meeting Services. We provide the resources to help you manage the entire annual meeting process -- from planning and distribution to vote tabulation and reporting—across all shareholders Virtual, in-person, and hybrid meeting options engage shareholders and offer a full range of voting methods.

A Seamless Proxy Process. Our Registered and Beneficial Shareholder Proxy Solutions remove the burden from you to coordinate multiple vendors. There are no budget surprises, and we help you save time and cut costs by consolidating all steps of the process—from planning and distribution to vote tabulation and reporting—across all shareholders.



Computershare is the world's foremost provider of shareholder services to public and private companies. Our team offers global expertise, responsive client service and innovative technology, as well as a comprehensive suite of products and services designed to help our issuer clients achieve their corporate objectives. Trusted by more than 6,000 U.S. companies representing 19 million shareholder accounts, our proven solutions put our clients' and their stakeholders' needs first.



DFIN can help streamline your annual meeting and proxy events, thanks to our broker-search capabilities, real-time online vote results, final tabulation and inspector-of-election services through 8-K filing of tabulation results. We support in-person, virtual, digital as well as hybrid meetings. We can also manage and centralize communications for all parties, fulfill and distribute proxy materials.

Ron Schneider
 Director, Corporate Governance Services
 212.341.7593
Ronald.m.schneider@dfsco.com
dfsco.com

Cut through the annual meeting complexity

Rely on DFIN to help you understand the fast-changing regulatory environment, get shareholders relevant information on time, manage the logistics of printing and proxy distribution to both registered and beneficial shareholders and proactively monitor voting results in the days leading up to your meeting.

Dedicated, expert project manager

An experienced project manager serves as a single point of contact to streamline and build accountability into your annual-report process, freeing your resources for other priorities.

Regulatory expertise

Our experts are well versed in the ever-changing SEC, NYSE and FINRA rules. At every step in the process, you can feel confident that your regulatory requirements will be met.

State-of-the-art systems

Stay informed and in control with real-time tabulation reporting.

Comprehensive service

Our skilled, accountable and responsive team is available 24/7/365.



Ellen Philip Associates has been a specialty player in the shareholder services community for close to 40 years. Our focus is on situations that can't be readily accommodated in routine processes, frequently because time is short. Flexibility is our stock in trade. We specialize in state of the art tools for collecting, presenting and distributing data by means of the Internet and telephone. We welcome challenges that oblige us to reach out for new skills and to use old skills in innovative ways. We're independent tabulators and have a broad array of services related to corporate actions and the proxy process. Speak to us if you start wondering how you'll get something done.



MacKenzie Partners, Inc. is a full-service proxy solicitation, investor relations and corporate governance consulting firm specializing in mergers-and-acquisitions related transactions. Our extensive work and experience in corporate control contests keeps us at the forefront of the leading issues in corporate governance and how they affect both management and the investment community. We provide background research and analyses on shareholder proposals covering a broad area of governance issues, including but not limited to, cumulative voting, director compensation, classified boards, shareholder rights plans and how various institutions tend to vote in these situations. We also counsel management and the Board as to whether a proposal is likely to pass and develop vote projections to support our views.

ANNUAL MEETING SERVICES (CONT'D)

MORROW SODALI Shareholder meetings, both annual and special, are a mainstay at **Morrow Sodali**. Our seasoned staff has extensive experience which enables us to devise and implement customized solutions for your organization's unique requirements. Our dedicated teams handle all aspects of your solicitation beginning with an analysis of your shareholder profile, a thorough review your preliminary proxy statement focusing on identifying potential issues with proxy advisory firms, full logistical support, and continual updates throughout the solicitation.

William Ultan | (203) 658 9449 | w.ultan@morrowsodali.com | morrowsodali.com



Okapi Partners LLC is a strategic proxy solicitation and investor response firm providing a full range of solicitation and information agent services. Okapi Partners represents clients including activist investors, corporations and mutual funds and provides expert consultation and advice as well as superior service, top intellectual capital, established industry relationships and outstanding execution capabilities.

Headquartered in New York City, the experience of our senior management team working with clients on both sides of mergers, proxy fights, hostile tenders and rights offerings gives us unrivaled insight into how investors respond to formulate a successful campaign.

BENCHMARKING PROGRAMS

The smartest public companies always benchmark their most important programs against their peers – and also against the “best in class”. Smart companies also monitor the performance of their most important suppliers, and periodically comparison-shop for the best services and price-to-value levels they can find. Most corporate people don’t have the expertise – or the time to do it these days – hence the need for benchmarking services and for expert service providers who can manage them!



Group Five is the industry leader for empowering financial services firms and their corporate clients with data for improving organizational performance. Within the financial services industry we seek to serve the investor communications and workplace benefits sectors of the market. With over 30 years of industry knowledge and experience, we deliver exceptional value to the service provider community, corporate issuers, investors, plan sponsors, and plan participants through our independent research and strategic consulting services.

Group Five's services include process quality and service measurements, customer satisfaction and loyalty studies, user experience research, custom studies, training in analytical techniques and best practices, and strategic consulting engagements. We independently fund and administer annual industry benchmarking studies for transfer agent, proxy solicitation, equity plan administration, retirement plan administration, financial reporting, and financial wellness services.



We make the stock transfer service RFP process smooth and efficient for companies. Clients also like our Shareholder Services Check-Up®, which achieves market-competitive pricing and contract terms without the time, distraction and cost of an RFP. No wonder a significant percentage of the Fortune 1000 has already benefited from our decades of experience, and are avid client references.

For more information call Andrew Wilcox at 415-246-7243, or e-mail awilcox@shareholderservicesolutions.com

BOARD, COMMITTEE & DIRECTOR EVALUATION SERVICES

In our book, the need to get some expert, outside assistance when it comes to evaluating the effectiveness of board committees – and of directors themselves – is an urgent matter: Not so long ago, most such programs were administered internally – maybe with the assistance of outside counsel – and mostly in a very general, ‘check-the-box’ kind of way, but these days, the stakes are way too high to “do this on your own.”



A Board evaluation is a tool that allows directors to be compliant with listing standards, demonstrate leadership to company stakeholders, and affirm its effectiveness. Choosing the right approach for your board is critical to an effective review. At GSG, we use a unique process that allows directors to develop an assessment focus that fits their board and fosters accountability. Call Denise Kuprionis at The Governance Solutions Group and use her 20 years of C-suite and in-boardroom experience to give your board a credibility advantage.

Denise Kuprionis • GSG: The Governance Solutions Group • 513.272.8500 • www.gsgboards.com

MORROW SODALI Board composition, structure and effectiveness are at the top the list of issues that institutional investors and shareholders consider in evaluating portfolio companies. As institutions probe more deeply into corporate culture and purpose, the board of directors is increasingly on the front lines together with management in explaining their standards and how their policies are integral to the company's business strategy.

William Ultan
(203) 658 9449
w.ultan@morrowsodali.com
morrowsodali.com

Morrow Sodali's strategic services help companies evaluate how the board's attributes and policies are perceived by shareholders and proxy advisory firms. To bring greater transparency to board-related issues, Morrow Sodali provides a host of data and insights relating to shareholder voting at the annual meeting, responses from outreach and engagement campaigns, global perspectives from the different countries in which the firm operates, survey results and specific feedback that result from our continuous networking with key institutional investor contacts.

CORPORATE GOVERNANCE CONSULTING

This has been the fastest growing service on the supplier scene these days – both in terms of the number and variety of would-be providers and in terms of the total dollars being spent. The biggest dollars are being spent where there are real, or imagined, or simply theoretically-possible threats from activist investors. Here, the top three or four law firms and investment banking firms are raking in mega-millions - and the sky seems to be the limit when it comes to winning the day if an activist knocks on the door.



AllianceAdvisorsllc.com

Alliance Advisors' Governance Advisory Group includes 3 former ISS professionals together with a senior staff of proxy executives who counsel corporations on all governance related matters. Our annual roster of over 400 proxy solicitation clients allows Alliance to stay ahead of the current governance trends along with the ability to maintain up-to-date databases on management and shareholder proposals. We provide research, strategy and consultation on issues including executive and director compensation, board composition, environmental and social proposals, cumulative voting, staggered boards and other takeover defenses.

Our extensive governance consulting work is enhanced by our knowledge of the voting practices of the major institutional investors, the voting returns from retail holders and the policies of the proxy advisory firms. All of this intelligence and our ability to project the vote can serve as a blueprint for an effective proxy solicitation campaign.



An Equiniti Company

(877) 814-9687

newbusiness@astfinancial.com
astfinancial.com

From the birth of a new company to an IPO – from specialized transactions and activist investors to M&A support - **AST** is a leading provider of ownership data management, analytics and advisory services to public and private companies as well as mutual funds. We offer a comprehensive product set including transfer agency services, employee stock plan administration services, proxy solicitation and advisory services, and bankruptcy claims administration services. Our innovative Issuer Central® platform consolidates registered, street, treasury stock, and insider data into a single solution for a complete view of ownership. AST affiliates include AST Trust Company (Canada), D.F. King & Co, Inc. and Donlin, Recano & Company, Inc. D.F. King is the market leader in corporate proxy solicitation and advisory solutions, corporate governance, shareholder identification, and information services.



Each year, **DFIN** helps more than one-third of the publicly held companies in North America produce and distribute their proxy materials. This assistance includes content advisory and management, message development, writing and editing, design, web hosting, regulatory filing, printing, and distribution, as well as end-to-end annual meeting services. We deliver thought leadership, best practices and primary research about key audiences, asking the questions that challenge traditional assumptions and enable us to distill the issues about which investors care most.

Ron Schneider
Director, Corporate Governance Services
212.341.7593
Ronald.m.schneider@dfsco.com
dfsco.com

Strategic discussions with DFIN's director of corporate governance services help develop a tailored approach to reach shareholders more effectively. During these strategy sessions, we review:

- Past voting results and recent performance
- Goals and objectives for the proxy statement
- Best practices on content, structure, format, design, and document navigation to support the company's goals and objectives

Based on this assessment, we recommend high-impact changes in content, structure, language and design to highlight your company's strengths, achievements and executive compensation alignment and to demonstrate your commitment to good governance and shareholder engagement. Additionally, our designers find solutions that are visually appealing, functionally resilient and strategically sophisticated.

Our financial writers and editors are experts in clarifying core messages and in helping clients articulate their vision, their practices and their performance in plain English. Whether crafting a narrative from scratch or editing existing prose, we work with your executives and legal and compliance professionals to ensure the language in the proxy statement is clear, accessible and useful to the investment community – as it satisfies compliance obligations. Particular focus is given to explaining the relevance of items subject to voting decisions.

ESG, pay ratio disclosures, Say on Pay, record levels of investor activism, unprecedented focus on company boards and executive compensation are but a few of the issues you face. A well-structured, reader-friendly proxy statement is your most effective tool for constructively engaging shareholders and engendering goodwill from the investor community. Our comprehensive proxy services will help you achieve this goal.



Board governance doesn't come in a one-size fits all package. "Best practices" must be adopted in a manner that fits your board's needs and culture. Whether it's gaining an independent perspective on your board's governance practices, learning how to adopt new rules effectively, obtaining a governance "tune-up," or receiving counsel on a difficult issue, GSG will help your board become more effective. Call Denise Kuprionis at The Governance Solutions Group and use her 20 years of C-suite and in-boardroom experience to give your board a credibility advantage.

Denise Kuprionis • GSG: The Governance Solutions Group • 513.272.8500 • www.gsgboards.com



John Glenn Grau
investor-com.com

The significance of a sound corporate governance policy is unprecedented in today's environment of shareholder activism. In particular, institutions are becoming increasingly active, aggressive and influential shareholders.

Until recently, most institutions were content to remain on the sidelines during annual meeting season, often deferring their vote to management. However, these institutional investors today are now becoming increasingly concerned with the corporate structure and practices of their investments. Moreover, many institutions have established their own proxy guidelines and committees, effectively taking the matter out of the hands of the portfolio manager.

The following is a brief list of what InvestorCom offers clients with our Corporate Governance Consulting service:

- Review of Corporate Governance Practices
- Institutional Shareholder Activism Profiling
- Proxy Voting Recommendation Agency Policy Review

CORPORATE GOVERNANCE CONSULTING (CONT'D)



1407 Broadway
27th Floor
New York, NY 10016
mackenziepartners.com
800-322-2885

MacKenzie Partners, Inc. is a full-service proxy solicitation, investor relations and corporate governance consulting firm specializing in mergers-and-acquisitions related transactions. Our extensive work and experience in corporate control contests keeps us at the forefront of the leading issues in corporate governance and how they affect both management and the investment community.

We provide background research and analyses on shareholder proposals covering a broad area of governance issues, including but not limited to, cumulative voting, director compensation, classified boards, shareholder rights plans and how various institutions tend to vote in these situations. We also counsel management and the Board as to whether a proposal is likely to pass and develop vote projections to support our views.

MORROW SODALI

William Ultan
(203) 658 9449
w.ultan@morrow sodali.com
morrow sodali.com

Through our ESG Advisory and Corporate Governance Consulting, **Morrow Sodali** provides our clients with insights and updates on environmental, social and governance-related matters on an ongoing basis, including the assessment of best practices and emerging trends as they relate specifically to our client's circumstances. As part of our year-round consulting engagement, we analyze each client's shareholder profile, provide guidance on the full range of ESG matters, and most importantly, anticipate potential ESG challenges to minimize the risk of shareholder activism. As we assess potential risks from emerging trends or changes in ownership position, we provide strategic, practical and insightful advice to help clients make informed decisions. Our subject matter expertise covers the full spectrum of ESG matters, including sustainability, executive compensation, and board composition and evaluation, to name a few. In addition to proxy solicitation, our team members have expertise in stock surveillance and executive compensation.

Morrow Sodali is the leading global consultancy providing comprehensive governance and shareholder services to corporate clients around the world. We provide companies and their board of directors with strategic advice and services in corporate governance, capital markets intelligence, shareholder communication and engagement, proxy solicitation, activism and related ownership issues.

With headquarters in New York and London and local offices and partners in ten countries, Morrow Sodali serves more than 700 corporate clients in 80 countries, including many of the world's largest multinational corporations. In addition to listed and private companies, its clients include mutual funds, stock exchanges, membership associations and activist investors.

DATE MANAGEMENT, DOCUMENT DESIGN & CONVERSION SERVICES



Ron Schneider
Director,
Corporate Governance Services
212.341.7593
Ronald.m.schneider@dfscoco.com
dfscoco.com

Let **DFIN** transform your proxy from a traditional, SEC compliance document into a visually inviting, compelling communications showpiece that effectively tells your story to your investors. We work with you to identify a style and format that matches your company's unique corporate culture and proxy-related objectives. Financial writers and editors expertly craft narrative from scratch or work with you to edit your existing prose, enhancing readability and satisfying compliance obligations. This is an excellent way to ensure that your proxy statement clearly communicates your unique corporate culture, objectives, and goals to the investment community. Our state-of-the-art hosting platform is mobile ready and SEC-compliant—and unlike many IR sites, our hosted sites have no cookie tracking. We help you simplify communications with investors and tell a better story via images, text, video and graphics.

Our ActiveDisclosure solution helps you collaborate across teams and simplify your reporting process. Our web-based document management tools enable legal, investor relations, and finance teams to create and edit critical sections of the proxy statement, while fully utilizing Microsoft Word and Excel tools for formatting efficiency and version flexibility. With ActiveDisclosure, you can even create a more stylized proxy that delivers greater visual impact.



(212) 461-4328
ellenphilip.com

If your data's in one format and you need it in another we'll build a quick bridge to get you from A to B. Data conversion has always been one of our specialties. We've had hands-on experience with files from every major shareholder record-keeping system in the U.S., and many smaller ones as well. Tell us what you've got, explain where you need to be, and we'll let you know quickly whether we can devise a way to get you there. The route we take might be purely programmatic, or it might include classic, heads-down data entry – a handy and versatile capability that we've preserved carefully for special occasions.

EMPLOYEE STOCK OWNERSHIP/PLAN RECORDKEEPING SERVICES

Ten or fifteen years ago, the vast majority of stock option plans covered only the top five or ten people in the firm. And, for that matter, most of the money in 'regular employee' stock ownership plans belonged to the top tier too. Then came the technology boom, and soon, the dot-com boom - and a mad scramble to attract the 'best and brightest' with stock options and awards...and with it, a huge boom in "Global Plans" – where options were issued to all employees – including employees that, increasingly, are located all over the globe. Given the fact that so many of these plans are truly 'global' - you need a provider that has a truly global presence...and the ability to ACT LOCALLY.



An Equiniti Company
(877) 814-9687
newbusiness@astfinancial.com
astfinancial.com

From the birth of a new company to an IPO – from specialized transactions and activist investors to M&A support - **AST**, an Equiniti Company, is a leading provider of ownership data management, analytics and advisory services to public and private companies as well as mutual funds. We offer a comprehensive product set including transfer agency services, employee stock plan administration services, proxy solicitation and advisory services, and bankruptcy claims administration services. Our innovative Issuer Central® platform consolidates registered, street, treasury stock, and insider data into a single solution for a complete view of ownership. AST affiliates include, D.F. King & Co, Inc., AST Private Company Solutions, Inc. and Donlin, Recano & Company, Inc. D.F. King is the market leader in corporate proxy solicitation and advisory solutions, corporate governance, shareholder identification, and information services.

EMPLOYEE STOCK OWNERSHIP/PLAN RECORDKEEPING SERVICES (CONT'D)



(212) 461-4328
ellenphilip.com

We're a valuable resource to have in your corner. As independent tabulators we've been part of the shareholder services community for close to 40 years. Our principal focus is on employee plans, not only on regular pass-through voting but on the processes associated with non-routine situations such as proxy contests, tender offers and other corporate actions.

You'll find that we have a blue-chip reputation, that we're flexible and responsive, and that our practices are set to the highest standards.

We work hand in glove with plan trustees, administrators, record keepers, transfer agents and proxy solicitors. We've been through the mill. We understand the detail of the process and we're quick off the mark. We help in planning. Our procedures have withstood challenges over time and meet the highest standards of corporate governance. Ours is a flexible, tailored to your situation service that includes whatever you need in document development and printing and mailing, also a state of the art system for Internet and telephone collection of voting instructions, together with online, real-time tabulations and reports.

ENTITY MANAGEMENT SYSTEMS

Every public company has some sort of subsidiary or entity "management system" - even if it's like one of those marked-up, paper-bound notebooks - or maybe a box of file-folders - that many colleagues have sheepishly admitted to using as their only system. If you are one of those companies - or even if you have what you think is a good system, but you haven't made a careful assessment of all the records you may have on file - and how many may be "dead" or "dirty" data elements, it's high time for a checkup, we'd advise.



CSC

cscglobal.com
1-800-927-9800

We are the business behind business.®

CSC is the preferred solutions provider for 90% of the Fortune 500®, half of the Best Global Brands (Interbrand®), nearly 10,000 law firms, and more than 3,000 financial organizations.

Effective entity management requires service and software; the right technology is vital. CSC Entity ManagementSM is a secure, powerful, and user-friendly software solution for all your entity compliance needs.

Named Best Entity Management System by readers of the New York Law Journal for the last 10 years, CSC Entity Management is the industry's most reliable entity management software for corporate legal departments, compliance professionals, and business owners. You'll get a clear view of your company-wide governance and compliance activities, as well as valuable insight into the health and status of all your entities.

CSC Entity Management makes it easy to:

- Organize your unique corporate data
- Generate strategic reports for auditing, entity tracking, and decision-making purposes
- Control access to sensitive information and allow for unlimited collaboration
- Create electronic minute books and manage unlimited documents with automated full-text searching
- Maintain sensitive officer and director information by entity
- Automate the creation of organization charts
- Manage stock and shareholder information
- Manage your "Doing Business As" portfolio at all jurisdiction levels
- Improve transparency for compliance activities through automated compliance reminders
- Leverage complete data and document integration with CSC's Registered Agent service

FINANCIAL PRINTING

Since we did our first review of products, services and service-providers in 2007 the universe of financial printers has shrunk by more than half. This has been mostly due to a dramatic drop in demand for printed matter, thanks to the growing use of Notice and Access - but also to an ever-growing belief that the web is the best - and certainly the fastest and the cheapest place from which to disseminate important corporate info...And, of course, you can't not be there. The corporate imperative to constantly reduce costs has been yet another major driver of shrinking demand.



broadridge.com/corporateissuuer

Capitalize on true end-to-end service, from disclosure composition, EDGAR and SEC filing to document design and virtual data room. One vendor provides for greater accountability, transparency and cost savings. Plus, hands-on delivery gives you maximum control at every step.

Let us help you prepare and file SEC documents quickly and accurately with our lightning-fast composition platform. Our proprietary system processes routine tasks at the click of a mouse and seamlessly exports into HTML, EDGAR, print and web ready PDFs and Word. Automatic blacklining, repagination and TOC updates accelerate execution and eliminate associated per-page costs. Alternatively, leverage our self-service filing software solution to generate, complete, review and file financial statements and other SEC forms securely in minutes.

Select our advanced EDGAR filing software or outsource everything to Broadridge experts. You decide how much or how little of the process to manage on your own.



Ron Schneider
Director Corporate Governance Services
212.341.7593
Ronald.m.schneider@dfsco.com
dfsco.com

DFIN is dedicated to service. Our global, 24/7/365 customer-service team is available whenever and wherever you need help. Each client is assigned an experienced deal manager to serve as your "go-to" person for all questions and concerns, ensuring there are no surprises around document specifications, costs, or deadlines. Our EDGAR filing experts are unmatched in their regulatory knowledge and sustained record of filing accuracy. In fact, DFIN handles more than 160,000 EDGAR filings each year—more than any other filing agent. Leverage our global network of manufacturing locations, including digital presses, for quick-turnaround projects, premium color services, state-of-the-art technology, and expansive logistics services. We own our facilities, and our service team ensures your documents are produced accurately and delivered on time.

FOREIGN SUBSIDIARY MANAGEMENT



We are the business behind business.®

CSC is the preferred solutions provider for 90% of the Fortune 500®, half of the Best Global Brands (Interbrand®), nearly 10,000 law firms, and more than 3,000 financial organizations.

Partner with CSC® to simplify and centralize the complexities associated with global corporate governance. CSC Global Subsidiary Management combines corporate secretarial services in 140 global jurisdictions and the award-winning CSC Entity ManagementSM platform into one solution for managing your compliance globally.

CSC takes a proactive approach to managing your subsidiaries' compliance obligations effectively, efficiently, and centrally from our U.S. headquarters.

CSC can help you:

- Proactively manage your corporate secretarial responsibilities for your company's global registrations and renewals
- Prepare dual-language annual general meeting documents
- Conduct annual statutory filings with company registries (excluding tax returns)
- Maintain your company shareholder register and minute books
- Track your many compliance deadlines
- Support ad hoc transactions, including but not limited to, officer and director changes, powers of attorney, board and shareholder resolutions, entity formations and dissolutions, and more

INSPECTORS OF ELECTION

Virtually every public company is required by their State charter, or by their bylaws, to have one or more Inspectors of Election to oversee and certify the voting at their annual meetings. The majority of companies still tend to use their transfer agents to do this - but over the past five years, more and more companies are looking for Inspectors who are completely independent: Who can serve as a reliable check-and-balancing system with respect to a company's proxy tabulators, who are often not the transfer agent these days.



If you think you may have matters on your shareholder meeting ballot where the outcomes could turn out to be close or contentious... If investors are voting on one or more "material items" – like a merger, recapitalization or a bylaw change that requires shareholder approval... If you simply want to follow "best practices" when it comes to 'inspecting the election' and certifying the final results... If you want to be sure that any firm or individual inspector that you and your board appoint has rigorous procedures in place – and actually follows them – and that the inspector(s) can stand up and be effectively counted themselves if challenged...

Please think about having one or more expert and truly independent Inspectors as a part of your company's official shareholder meeting team.



We provide inspector-of-election services and final vote certification, as well as on-site support for any needs that may arise during your meeting from quorum monitoring to in-person voting. You can rely on us to determine that ballots were properly cast, and announce the results at the appropriate time.

Ron Schneider - Director Corporate Governance Services
212.341.7593 • Ronald.m.schneider@dfsco.com • dfsco.com

NOTICE & ACCESS SUPPORT SERVICES

The "Notice and Access system" has saved literally billions of dollars for public companies to date, by eliminating hundreds of thousands of tons of printed shareholder meeting materials and millions of dollars in postage each year. Approved by the SEC in 2007 the amended proxy rules allow companies to provide proxy materials to most of its shareholders over the Internet. (Please note that some employee-plan trustees insist that some kinds of plan participants still need to receive paper documents, but most plans are OK with N&A.)



Broadridge supports all proxy communications options, including Notice and Access. We will work with you to determine which distribution model offers the greatest combination of benefits for your particular situation. Many issuers will choose a hybrid approach, sending full packages to certain shareowners, while sending the Notice to others.

broadridge.com/corporateissuer

In addition to creating an individualized project plan, timeline analysis and notice design, print and mailing, your Broadridge representative will help you determine the breadth of services you require for implementing Notice and Access, which may include:

- Annual Report and Proxy Statement conversions with enhanced interactive navigation for an improved user experience
- Customized shareowner landing page and portal
- Web hosting
- Inventory management, warehousing and fulfillment
- Online options to collect shareowner future delivery preferences; paper or electronic

- Cost benefit analysis
- Customizable Notice templates and forms
- Windowed notice envelopes that can showcase colorful, double-sided inserts with messaging customized to your needs
- Voting through proxyvote@.com for beneficial, registered and employee shareowners
- Shareowner stratification analysis based on shares, geographic region and voting criteria
- Pre-record date shareowner mailing

NOTICE & ACCESS SUPPORT SERVICES (CONT'D)


**Notice & Access
MADE EASY**

Harness the DFIN's regulatory expertise, service excellence and online toolset to simplify your annual meeting process, help you better connect with your shareholders, and take full advantage of the SEC's Notice & Access rule.

Ron Schneider
 Director, Corporate Governance Services
 212.341.7593
Ronald.m.schneider@dfsco.com
dfsco.com

A single point of contact throughout your proxy event streamlines the process.

- A dedicated project manager partners with all members of the working group to expertly manage every aspect of the issuer's event, and determine quantities and requirements under the Notice & Access rule
- Comprehensive checklists, calendar and project plans are in place to manage each task through completion, provide clear communication throughout the process, and help you meet required deadlines
- Assistance composing the Notice of Internet Availability, mailing and merging shareholder records, printing personalized copies and hosting the materials, along with providing the platform for fulfilling full-set proxy requests from shareholders

Custom-branded electronic voting and document-hosting sites enhance your shareholder communications

- Branded sites reflect an issuer's image and corporate profile and complement the stylized proxy
- Custom-hosting sites are SEC-compliant, touch/tablet enabled, and designed to auto-fit wide screens, and link to social media and voting sites; they also include interactive components, such as visual image sliders, tabbed panels, reminder/info fly-outs, embedded video, and Google maps
- Telephone voting services include a dedicated 1-800 number with a customized greeting

Real-time, online reporting provides up-to-the-minute updates and an evaluation of voting results

- Master tabulator services included
- Choice to log in to the online tabulation tool or receive scheduled reports via email
- Online system reflects both voted and un-voted results

PROXY DISTRIBUTION & VOTE TABULATION SERVICES



broadridge.com/corporateissuer

Broadridge provides companies with the strategic approach they need to effectively reach both registered and beneficial shareowners. We uniquely have the capabilities to cover all of the details of your proxy distribution - from initial planning through proxy mailing to vote tabulation and reporting of your annual meeting -- while you focus on increasing investor confidence and reducing your bottom line.

Simplify your experience by letting Broadridge manage your proxy process. One point of contact advises you from start to finish.

Move your communications quickly and get them into the hands of shareowners efficiently and accurately. Our complete distribution/ mailing services include duplicate proxy card detection, and high-speed insertion technology.

Reduce processing and mailing expenses by combining ballots that are mailed to a common address into one envelope, or by merging several accounts onto one document to one address.

Save money with Broadridge's electronic delivery technology. Broadridge can gather and maintain your shareowner consents for both householding and electronic delivery.

As the largest processor of beneficial proxies for publicly traded companies in the U.S., Broadridge process over 2 billion in investor communications annually -- more than 80% of all outstanding shares voted in the United States.

For those issuers utilizing Broadridge for both the registered and the beneficial shareholders for their proxy mailings, we provide complete vote tabulation and reporting services. Using Broadridge as your tabulator will ensure that you have fully reconciled and audited vote reports delivered on time, on a daily basis, covering the registered, beneficial and employee shareholder segments



Ron Schneider
 Director,
 Corporate Governance Services
 212.341.7593
Ronald.m.schneider@dfsco.com
dfsco.com

DFIN provides an unrivaled, networked print platform, delivering world-class service across the globe with distribution capabilities to match. We are also committed to meeting your proxy statement needs, including color printing, separate covers and the utilization of special paper stock, in a timely, accurate and efficient manner.

We assemble financial reports, deliver consultative and expedited document management services, and handle the logistics for hard copy and electronic content that must be delivered to stakeholders. We can meet all your shareholder communication needs in a timely, accurate and efficient manner. As part of our process, each client is assigned an experienced account manager who serves as the "go-to" for all questions and concerns and ensures there are no surprises when it comes to document specifications, costs or deadlines.

PROXY SOLICITORS & ADVISORS

Not so many years ago we were almost ready to declare this a dying industry: The last thing that anyone wanted – whether they were a big institutional investor or a nice Mom or Pop, sitting down to dinner or the TV – was to have their proxy “solicited” by an old-time proxy chaser.

But oh how times have changed – thanks to a huge upsurge in the successes of shareholder proposals and other sorts of ‘approaches’ from activist investors, ‘vote no’ campaigns and out and out proxy fights, which have been breaking previous records year after year. And oh how the smarter solicitors have changed their business models to suit the times.



AllianceAdvisorsllc.com

Alliance Advisors™ is a multi-faceted shareholder communications and governance advisory firm specializing in proxy solicitation, corporate governance consulting, proxy contests, market surveillance and proxy management. We are an independent, management-owned firm that provides our clientele with year-round consultation and analysis of institutional investors, the proxy advisory firms as well as the ever-changing governance and activist landscape.

Founded in 2005, Alliance has an extensive client roster of more than 400 corporate clients, which includes some of the most prestigious names in American business. We distinguish our firm by having a staff of senior proxy executives, former professionals from ISS and a complimentary suite of products and services. Alliance has vast expertise in dealing with all proxy issues and corporate transactions including: executive compensation, contested elections, mergers, shareholder proposals and corporate governance. Our success is based on a combination of our dedicated professionals, sophisticated databases, unmatched service and the firm's collective commitment to flawless execution.

D.F. KING

An Equiniti Company

(212) 269-5550

newbusiness@astfinancial.com
astfinancial.com

D.F. King, an **Equiniti** company, is a globally-recognized leader in proxy solicitation, financial communications and corporate governance consulting. With unparalleled experience in merger votes, proxy contests and tender/ exchange offers for corporate control, the firm has advised corporations, shareholder groups, investment bankers and securities attorneys for over 70 years. Internationally and domestically, from cross-border acquisitions to bankruptcy reorganizations, D.F. King has played a role in many of the highest-profile corporate transformations. As best practices and regulations evolve, D.F. King supports companies by providing critical information to stay informed and mitigate potential concerns. D.F. King offers a full suite of proxy solutions to help deliver favorable vote outcomes and keep your board apprised of the latest trends and changes to the corporate governance landscape so that positive momentum stays intact.

InvestorCom

SHAREHOLDER INTELLIGENCE

John Glenn Grau
investor-com.com

There are now virtually dozens of crucial steps that need to be performed in order to maximize voter response at even the most “routine” Annual Meeting. InvestorCom is well positioned to address each of its client's particular needs given the direct involvement of its senior management team in every solicitation and the aggressive, “hands-on” approach it employs. InvestorCom's Proxy Solicitation division combines forces with its Stock Surveillance and Corporate Governance Advisory divisions to identify institutional investors, analyze each institution's voting tendencies based on management's proposals, and develop and implement a strategy that will maximize shareholder voting and provide the best opportunity for passage of all management sponsored proposals.

The following is a brief list of what we offer with our Proxy Solicitation service:

- Corporate Proxy Solicitation and Consulting
- Shareholder Proposal Analysis and Management Proposal Development
- Proxy Fights
- Logistical Support

LH LAUREL HILL

laurelhill.com
(516) 933-3100

The **Laurel Hill Advisory Group** is North America's only independent cross border Shareholder Communications Advisory Firm. When a response from a shareholder base is required - whether as simple as a routine meeting or as complex as a hostile take-over or addressing escheatment matters, Laurel Hill makes certain the required response is attained.

On both sides of the border we are regularly engaged in high profile, complex and contentious situations involving M&A, restructuring, and corporate governance issues.

Our team's experience includes the best proxy fight win record of any firm since our inception eight years ago. Our independence means we focus solely on serving our clients interests as we are not subject to the conflicts that arise within other proxy firms, which have transfer agent ownership.

Cross border operations allow us to effectively reach shareholders regardless of their location – Canada, the US or globally. We have offices throughout North America, giving our clients first rate cross border capabilities that specialize in contested or annual meeting solicitation, information agent services, Mergers and Acquisitions, special meeting solicitation and shareholder asset recovery programs.

We also provide Depository and Escrow services. Our state of the art Asset Recovery Center provides the ability to reach retail shareholders in an efficient and controlled manner. We believe that public issuers need to be proactive rather than reactive. If you agree, give us a call.

MACKENZIE PARTNERS, INC.

1407 Broadway
27th Floor
New York, NY 10016
mackenziepartners.com
800-322-2885

MacKenzie Partners, Inc. is a full-service proxy solicitation, investor relations and corporate governance consulting firm specializing in mergers-and-acquisitions related transactions. MacKenzie's Proxy Solicitation and Mergers & Acquisitions Services Group provides advisory and execution services for annual and special meetings and in corporate control contests - such as unsolicited tender offers, proxy fights and consent contests.

Annual & Special Meetings - In our work with annual and special meeting proxy solicitation clients, MacKenzie Partners is often asked for an analysis and recommendation regarding the probability of passing specific proposals, and for the development of the most cost effective solicitation campaign that ensures a successful outcome.

Proxy Contests - Whether we advise a dissident shareholder or incumbent management, one of our key strategic roles is to frame the issues and shape the message to be delivered to a company's shareholders. The goal is to convince shareholders to vote their proxies in favor of our client and against the opponent.

We also provide advice regarding the timing of proxy material mailings, press releases and advertising to receive maximum impact, to respond to the oppositions' communications with counter-arguments, and to try to “get in the last word” before the annual meeting takes place.

PROXY SOLICITORS & ADVISORS (CONT'D)

MORROW SODALI

William Ultan
(203) 658 9449
w.ultan@morrow sodali.com
morrow sodali.com

The cornerstone of a successful solicitation is viewing it as a year-round commitment. Our seasoned staff has extensive experience which enables us to devise and implement customized solutions for your organization's unique requirements. Our dedicated teams handle all aspects of your solicitation for annual and special meetings. We begin with an analysis of your shareholder profile and follow that with a thorough review of your preliminary proxy statement with a particular focus on identifying potential issues with proxy advisory firms. We provide full logistical support as well as continual updates throughout the solicitation. Combining our global reach and years of experience, we furnish our clients with information on corporate governance, SEC and SRO rule changes, and emerging environmental, social and governance issues in real-time.

Morrow Sodali is the leading global consultancy providing comprehensive governance and shareholder services to corporate clients around the world. We provide companies and their board of directors with strategic advice and services in corporate governance, capital markets intelligence, shareholder communication and engagement, proxy solicitation, activism and related ownership issues.

With headquarters in New York and London and local offices and partners in ten countries, Morrow Sodali serves more than 700 corporate clients in 80 countries, including many of the world's largest multinational corporations. In addition to listed and private companies, its clients include mutual funds, stock exchanges, membership associations and activist investors.



PARTNERS

(212) 297-0723
OkapiPartners.com

Okapi Partners LLC is a strategic proxy solicitation and investor response firm providing a full range of solicitation and information agent services. Okapi Partners represents clients including activist investors, corporations and mutual funds and provides expert consultation and advice as well as superior service, top intellectual capital, established industry relationships and outstanding execution capabilities.

Headquartered in New York City, the experience of our senior management team working with clients on both sides of mergers, proxy fights, hostile tenders and rights offerings gives us unrivaled insight into how investors respond to formulate a successful campaign.

SHAREHOLDER ID & STOCK WATCH

We have been a consistent booster of shareholder identification programs from our very first issue: It's simple: You cannot possibly communicate with investors effectively if you don't know who they are...and what their top issues are.

We are much less enamored with those so-called "investor targeting programs" however, mainly because where large and/or sophisticated investors who don't own your stock are concerned, there is usually a reason for it - and THAT is what you really need to know - way before you try to treat them as "targets."



AllianceAdvisorsllc.com

Market Surveillance by **Alliance Advisors** provides corporations with a clear grasp of the capital markets, in-depth knowledge of the investment community and enhances their overall investor relations efforts. This program provides our clients with a thorough understanding of who owns their stock and the institutional investors that are buying and selling on a real-time basis. Our Senior Analysts possess the knowledge and resources to uncover major position changes by utilizing our comprehensive database of institutional and custodian data, investor profiles and proxy process methodology.

Alliance also offers a cost-effective Ownership Insight program which is a weekly reporting service for the investor relations officer to keep track of the ownership changes within the shareholder base. Rather than depending on stale 13F data, the report provides institutional positions changes, stock performance, share flow analysis, activist warning and the influence of the proxy advisory firms.



An Equiniti Company

(877) 814-9687
newbusiness@astfinancial.com
astfinancial.com

From the birth of a new company to an IPO - from specialized transactions and activist investors to M&A support - **AST**, an Equiniti Company, is a leading provider of ownership data management, analytics and advisory services to public and private companies as well as mutual funds. We offer a comprehensive product set including transfer agency services, employee stock plan administration services, proxy solicitation and advisory services, and bankruptcy claims administration services. Our innovative Issuer Central® platform consolidates registered, street, treasury stock, and insider data into a single solution for a complete view of ownership. AST affiliates include, D.F. King & Co, Inc., AST Private Company Solutions, Inc. and Donlin, Recano & Company, Inc. D.F. King is the market leader in corporate proxy solicitation and advisory solutions, corporate governance, shareholder identification, and information services.



SHAREHOLDER INTELLIGENCE

John Glenn Grau
investor-com.com

InvestorCom recognizes the link between the knowledge of shareholders and their trading behavior, and the effectiveness in being able to communicate with them. Our ability to timely and accurately identify "who" owns stock and "why" trading activity is occurring allows InvestorCom to provide clients with the highest level of market insight and the ability to look far beyond the mask of shares held in "street" name. At InvestorCom this is what we call "Shareholder Intelligence." Simply stated, it's the knowledge of who currently owns your stock, what their motivation is for trading in your stock, and, of equal importance, how to act on this information.

The following is a brief list of what we offer with our Stock Surveillance service:

- Daily Monitoring and Reporting
- Weekly Trading Memos
- Executive Monthly Summary
- Shareholder Profiles
- Institutional Targeting



PARTNERS

(212) 297-0723
OkapiPartners.com

Okapi Partners LLC is a strategic proxy solicitation and investor response firm providing a full range of solicitation and information agent services. Okapi Partners represents clients including activist investors, corporations and mutual funds and provides expert consultation and advice as well as superior service, top intellectual capital, established industry relationships and outstanding execution capabilities.

Headquartered in New York City, the experience of our senior management team working with clients on both sides of mergers, proxy fights, hostile tenders and rights offerings gives us unrivaled insight into how investors respond to formulate a successful campaign.

SHAREHOLDER ID & STOCK WATCH (CONT'D)

M O R R O W
S O D A L I

GERRY DAVIS
(203) 658 9377
g.davis@morrow sodali.com
morrow sodali.com

Morrow Sodali has extensive experience providing Strategic Stock Surveillance for our corporate clients. Since our inception 50 years ago, Morrow Sodali has been helping clients by combining superior data analysis and technology with strategic consulting to assess institutional ownership. Our stock surveillance experts monitor your stock, all day, every day, and track critical movements with real-time trading analytics. With emphasis on block trades and an intimate knowledge of trading activity, we provide a deep level of insight backed by years of experience tracking and analyzing stock movements, including activist accumulations, institutional sell-offs, short selling as well as other unique and often nuanced situations that result in stock price fluctuations. We monitor stock trading activity for companies of all sizes – from nano-cap to mega-cap – and take into account the trading patterns and context of companies within certain market capitalization parameters.

Morrow Sodali is the leading global consultancy providing comprehensive governance and shareholder services to corporate clients around the world. We provide companies and their board of directors with strategic advice and services in corporate governance, capital markets intelligence, shareholder communication and engagement, proxy solicitation, activism and related ownership issues.

With headquarters in New York and London and local offices and partners in ten countries, Morrow Sodali serves more than 700 corporate clients in 80 countries, including many of the world's largest multinational corporations. In addition to listed and private companies, our clients include mutual funds, stock exchanges, membership associations and activist investors.

STOCK TRANSFER AGENTS & AGENCY SERVICES

Transfer agents take a lot of heat – from shareholders – and from their clients too (though, after all, that's what you really pay them to do) – and sometimes from the Optimizer as well. But if you stop to think about it, you'll realize that they probably wield more tools on your behalf than any other supplier you have.



From the birth of a new company to an IPO – from specialized transactions and activist investors to M&A support – **AST**, an Equiniti Company, is a leading provider of ownership data management, analytics and advisory services to public and private companies as well as mutual funds. We offer a comprehensive product set including transfer agency services, employee stock plan administration services, proxy solicitation and advisory services, and bankruptcy claims administration services. Our innovative Issuer Central® platform consolidates registered, street, treasury stock, and insider data into a single solution for a complete view of ownership. AST affiliates include, D.F. King & Co, Inc., AST Private Company Solutions, Inc. and Donlin, Recano & Company, Inc. D.F. King is the market leader in corporate proxy solicitation and



It's time to take a fresh look at your Transfer Agency program and make sure you're getting the most out of it. You want a partner that can handle all your shareholder communication needs. One that taps into opportunities to create efficiencies and increase engagement with your shareholders. One that offers you a more simplified approach, more flexibility based on your needs, and more insight into your shareholder base. That partner is Broadridge.

broadridge.com/corporateissuer

Get the most out of a Transfer Agent relationship with Broadridge:

- A single source solution tailored to your needs from the only Transfer Agent that can support both beneficial and registered shareholders.
- Superior shareholder and client service with a dedicated Relationship Management Team, Broadridge-staffed and US-based Call Center, and a secure, easy-to-use portal that offers unique features such as client alerts.
- A customizable Shareholder Portal that offers everything your shareholders need to access and manage their accounts – personalized with your branding to differentiate your company and enhance loyalty.
- A secure, proven onboarding process that provides a smooth transition and creates opportunities for long-term improvement.
- Timely data and analysis that reveal insights and opportunities to gain efficiencies, reduce your costs and tailor your communication strategies.
- Fully transparent contracts with no hidden clauses and no costly penalties. Just a clear, easy-to-understand contract.



Computershare is the world's foremost provider of shareholder services to public and private companies. Our team offers global expertise, responsive client service and innovative technology, as well as a comprehensive suite of products and services designed to help our issuer clients achieve their corporate objectives. Trusted by more than 6,000 U.S. companies representing 19 million shareholder accounts, our proven solutions put our clients' and their stakeholders' needs first.



We are the business behind business.®

CSC is the preferred solutions provider for 90% of the Fortune 500®, half of the Best Global Brands (Interbrand®), nearly 10,000 law firms, and more than 3,000 financial organizations.

With CSC® as your registered agent, you can expect:

- **Reliability:** Same-day scanning and electronic delivery of service of process (SOP) documents, with online tracking and proof of delivery. We guarantee a quick and reliable delivery every time, no matter where you're located.
- **Technology:** We offer unmatched technology to support your registered agent and corporate services needs. Our SOP ManagerSM solution will open up a new world of efficiencies, cost savings, and reduced risk. All SOP is optimized for full-text searching. Our CSCNavigator® platform provides the power of integration between your day-to-day transactions and your entity data.
- **Service:** CSC delivers a customized service and support structure designed specifically to meet the needs of your legal team and reduce the complexities associated with conducting business. Plus—we never outsource to a third party.
- **Security:** All applications and data maintained on CSC servers, networks, and data storage systems are located within an ISO 27001-certified and Service Organization Control (SOC)-audited co-location hosting facility in Ashburn, Virginia, with a secondary CSC-owned facility in Springfield, Illinois.
- **Savings:** We offer no-hassle, no-charge change-of-agent services to all of our clients.

STOCK TRANSFER AGENTS & AGENCY SERVICES (CONT'D)



jim@groupfiveinc.com
groupfiveinc.com

Group Five is the industry leader for empowering financial services firms and their corporate clients with data for improving organizational performance. Within the financial services industry we seek to serve the investor communications and workplace benefits sectors of the market. With over 30 years of industry knowledge and experience, we deliver exceptional value to the service provider community, corporate issuers, investors, plan sponsors, and plan participants through our independent research and strategic consulting services.

Group Five's services include process quality and service measurements, customer satisfaction and loyalty studies, user experience research, custom studies, training in analytical techniques and best practices, and strategic consulting engagements. We independently fund and administer annual industry benchmarking studies for transfer agent, proxy solicitation, equity plan administration, retirement plan administration, financial reporting, and financial wellness services.



We make the stock transfer service RFP process smooth and efficient for companies. Clients also like our Shareholder Services Check-Up®, which achieves market-competitive pricing and contract terms without the time, distraction and cost of an RFP. No wonder a significant percentage of the Fortune 1000 has already benefited from our decades of experience, and are avid client references.

For more information call Andrew Wilcox at 415-246-7243, or e-mail awilcox@shareholderservicesolutions.com

SUSTAINABILITY INITIATIVES



DFIN does our part to reduce, reuse and recycle. Our FSC- (Forest Stewardship Council-) certified plants help companies easily execute eco-friendly plans without having to trade cost effectiveness for being environmentally friendly.

Ron Schneider
 Director, Corporate Governance Services
 212.341.7593
Ronald.m.schneider@dfsco.com
dfsco.com

Custom-branded electronic voting and document-hosting sites enhance your shareholder communications

- Branded sites reflect an issuer's image and corporate profile and complement the stylized proxy
- Custom-hosting sites are SEC-compliant, touch/tablet enabled, and designed to auto-fit wide screens and link to social media and voting sites. These sites include interactive components, such as visual image sliders, tabbed panels, reminder/info fly-outs, embedded video, and Google maps
- Interactive documents have enhanced functionality for easy navigation, full-search capabilities and access on all devices for download, email and print
- Telephone voting services include a dedicated 1-800 number with a customized greeting

Real-time, online reporting provides up-to-the-minute updates and an evaluation of voting results:

- Master tabulator services included
- The Meeting Information Center, which is our fully-integrated voting platform, immediately consolidates Internet, telephone and paper votes into a single database, including outside feeds from proxy solicitors
- Capability to log in to the online tabulation tool or receive scheduled reports via email
- Online system reflects both voted and un-voted results
- Proxy tabulation services require the use of the DFIN-style proxy card.

VENDOR EVALUATION



jim@groupfiveinc.com
groupfiveinc.com

Group Five is the industry leader for empowering financial services firms and their corporate clients with data for improving organizational performance. Within the financial services industry we seek to serve the investor communications and workplace benefits sectors of the market. With over 30 years of industry knowledge and experience, we deliver exceptional value to the service provider community, corporate issuers, investors, plan sponsors, and plan participants through our independent research and strategic consulting services.

Group Five's services include process quality and service measurements, customer satisfaction and loyalty studies, user experience research, custom studies, training in analytical techniques and best practices, and strategic consulting engagements. We independently fund and administer annual industry benchmarking studies for transfer agent, proxy solicitation, equity plan administration, retirement plan administration, financial reporting, and financial wellness services.



We make the stock transfer service RFP process smooth and efficient for companies. Clients also like our Shareholder Services Check-Up®, which achieves market-competitive pricing and contract terms without the time, distraction and cost of an RFP. No wonder a significant percentage of the Fortune 1000 has already benefited from our decades of experience, and are avid client references.

For more information call Andrew Wilcox at 415-246-7243, or e-mail awilcox@shareholderservicesolutions.com

LIST YOUR SERVICE & GET OPTIMIZED!

LIST YOUR COMPANY IN THE OPTIMIZER'S INDEX OF PRE-VETTED SUPPLIERS OF ESSENTIAL PRODUCTS AND SERVICES TO PUBLICLY-TRADED COMPANIES

Visit OptimizerOnline.com/advertise to learn more

A SPECIAL OFFER TO READERS OF THIS ISSUE FROM THE SHAREHOLDER SERVICE *OPTIMIZER*

“Helping public-companies – and their suppliers – to deliver better, and more cost-effective services to investors...since 1994”



27TH ANNIVERSARY SPECIAL

SUBSCRIBE TO THE SHAREHOLDER SERVICE *OPTIMIZER* BY MARCH 30TH, 2022 & RECEIVE OUR QUARTERLY ADVISORY LETTER & PRINTED ANNUAL SUPPLEMENT FOR ONLY \$245 PER YEAR.

Plus, your subscription to the *OPTIMIZER* comes with the promise of “some free consulting on any shareholder relations or shareholder servicing matter to ever cross your desk.”

Why Subscribe to the *OPTIMIZER*?

The Shareholder Service *Optimizer*, first published in 1994, is dedicated to helping public companies – and their suppliers – deliver better and more cost-effective shareholder services.

The *Optimizer* shows readers how to “optimize” their spending on investor relations and investor servicing programs to improve plans and programs, get better results for the same money, and often for less - and take advantage of technology. The *Optimizer* also covers regulatory developments, corporate governance developments, the vendor scene, notable websites of interest and highlights the best and worst practices in shareholder relations and beyond.

HERE'S WHAT READERS HAVE TO SAY ABOUT THE *OPTIMIZER*

“A MUST-READ for Corporate Secretaries/IR Officers/Shareholder Relations Professionals.”

“Articles are better than timely; they are farsighted and good for advance planning.”

*“We cut our subscriptions to the bone, but the *OPTIMIZER* was an automatic save, because of the money it’s saved us.”*

“The ‘missing link’ between what the vendors tell us and what we really need to know.” “The BEST source for really useful information on shareholder services.”

“Practical hands-on information on topics that are not followed well elsewhere.”

“We would recommend it to all publicly-traded companies as a reliable source of timely and practical advice”

“The best reference I know of to learn how to efficiently manage the ‘administrative’ side of investor relations”

“Never fails to provide something I can use to update service and/or reduce cost”

“Has given me a lot of insight as to what is going on in the proxy world and the ‘scoop’ on all the transfer agents. I also appreciate all the money-saving ideas”

SUBSCRIBE TODAY AT OptimizerOnline.com/Subscribe

Unrivaled Insight



OKAPI PARTNERS provides proxy solicitation, information agent, stock surveillance and corporate governance advisory services with **UNRIVALED INSIGHT** into how investors respond and make voting decisions. We design and execute thoughtful, results-oriented strategies that ensure our clients succeed in any scenario requiring an **INVESTOR RESPONSE**. We offer clients superior intellectual capital, extensive industry relationships and unmatched execution capabilities.



okapipartners.com

1212 Avenue of the Americas, 24th Floor
New York, NY 10036
+1.212.297.0720