"Conduct of the Annual Meeting"

Thursday, March 30, 2023

Course Materials

“Conduct of the Annual Meeting”

Thursday, March 30, 2023

2 to 3 p.m. Eastern [archive and transcript to follow]

Companies preparing for their annual meetings have plenty to keep in mind again this year. In-person meetings are returning, but virtual and hybrid meetings have become a permanent part of the landscape, creating new shareholder expectations and new challenges for companies. With the Big 3 asset managers all implementing some form of "pass-through voting" initiatives, companies also face increased challenges in turning out the vote and engaging with shareholders. Join our panelists as they provide practice pointers for the current season on these issues as well as meeting format and logistics, rules of conduct and other matters companies will confront at their annual meetings.

- **Lauri Fischer**, Senior Deputy General Counsel, Grocery Outlet
- **Edward Greene**, Managing Director, Georgeson
- **Carl Hagberg**, Independent Inspector of Elections and Editor of *The Shareholder Service Optimizer*
- **David Hamm**, Vice President, Deputy General Counsel and Assistant Secretary, Summit Materials

Among other topics, this program will cover:

- Developments in Meeting Format
- Best Practices for In-Person Meeting Security
- Managing Meeting Attendees and Participants
- Proxy Voting Disclosures & Mechanics
- Getting Out the Vote
- Post-Mortems & Preparing for Next Year

“Conduct of the Annual Meeting”

Course Outline / Notes

1. Developments in meeting format for the 2023 season

2. Best practices for in-person meeting security

3. Managing meeting attendees and participants

4. Proxy voting disclosures and mechanics

5. Getting out the vote

6. Post-mortems and preparing for next year

“Conduct of the Annual Meeting”

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ARE ALL YOUR INTERNAL CONTROL SYSTEMS IN CONTROL?

THE 28TH SPECIAL SUPPLEMENT TO THE SHAREHOLDER SERVICE *OPTIMIZER*

COVER BY GUY DORIAN

1

Go further with your ESG strategy.

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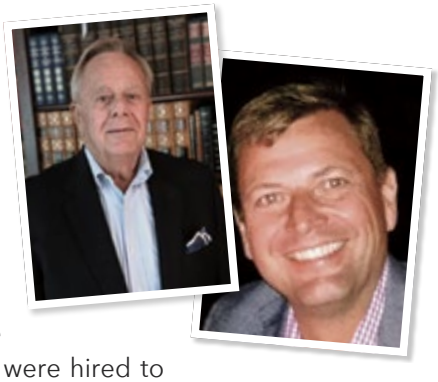
Are Your Own Internal Control Systems – and Those at Key Service Suppliers – "In Control"



Dear friends and colleagues,

In the 3rd quarter issue of our Advisory Letter, The Shareholder Service *OPTIMIZER*, we noted an alarmingly large number of major errors made by prominent banks, trust companies and assorted other financial service providers engaged by publicly traded companies.

Most alarming of all, all of them violated the most basic 'rules of the road' for what they were hired to do. And all of them had major financial consequences. (Please see COVID-Era Snafus Create A Spate Of Mighty Big Lawsuits | Optimizer Online for the truly shocking details.)

As a result, we resolved to focus our annual Special Supplement - our 28th to date - on the pressing need for much-heightened due diligence where a company's own internal control systems are concerned - and also - since this is the *OPTIMIZER*'s special area of focus - on the need to place a renewed emphasis on the internal control systems at key service suppliers.

Events in the fourth quarter proved our thesis that the big increase in internal-control failures at key financial institutions and other key service suppliers is more than a passing phase – and truly requires a close new look. (Please see the litany of prominent control failures in the fourth quarter at major players in the financial world on page 9)

Accordingly, we are featuring articles by several industry experts on the internal control stress-points at key suppliers to publicly traded companies – and we are including our own, product-by-product review of the stress points that buyers should check on thoroughly before hiring providers – and keep tabs on an ongoing basis… plus our tips on things to do - and the right questions to ask.

The financial risks to public companies in hiring trustees, agents and advisors can be enormous – since issuers themselves will be responsible for losses if their providers foul up and are unable to make good. But the "reputational risks" that service-provider snafus can create are often equally big ones.

We want especially to direct your attention to our Directory of Pre-Vetted Service Suppliers, which is in the back of this issue – and also online at OptimizerOnline.com - as a good starting-point for your own vetting. We also invite you to contact either of us directly if you have questions or issues where experienced and unbiased observers of the supplier-scene might be of help.

With all our best wishes for a peaceful, prosperous and 'uneventful' New Year as a public company…

Carl & Peder Hagberg

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The *OPTIMIZER*'s Top Tips For Vetting Key Suppliers

- Start with an overview of key players in their field: Who owns them? How long have they been in business? Where do they seem to rank vs. other players in terms of market share?

- For smaller players, be sure to pull a D&B report, which may surprise you big-time – and quickly shorten your list.

- For large and important assignments – and especially those that involve big financial and/or reputational risk (see our list below) run a five-year search of legal actions involving them - and the outcomes: Often another major shocker.

- Where financial and reputational risks are high, ask to see the audit reports. Expect some big surprises here too – where (big red flag) sometimes you're told there are none.

- Where potential losses due to errors, omissions and/or fraudulent conveyance of corporate and security-holder funds are big ones, be sure to check the financial condition of potential suppliers and their ability to make good – whether by absorbing losses due to their own errors or via insurance coverage that will be sufficient to cover them.

- Check client references with care: Do not rely solely on the contacts presented by the supplier. Concentrate on companies that are like your own - in terms of size, product usage - and with reputations as 'high-quality companies.'

- Reach out to your counterparts at those companies and be sure to ask for the name of the person who is most likely to know the real answers. We are often surprised by sharp differences between references from the sources provided and what we ourselves know about actual performance - perhaps because no one likes to admit they don't really know, or because they simply assume that "no news is good news." And we are constantly amazed at the number of companies that provide references that turn out to be lukewarm - or bad ones!

- Do not be overly influenced by outside surveys: Most of them are based on client *perceptions* – which smooth sales-folks and client reps are usually good at managing - but which are often very different than the reality where actual performance is concerned. At best, they have "directional validity" but little statistical validity, and they are often overweighted with companies that are not at all like yours.

- For assignments that are truly important in terms of size and relative riskiness, be sure to tour the main offices of all the finalists: Meet the top management team – and all the key people who will be assigned to your account – and be sure to 'walk the floor' while carefully observing the culture and the chemistry. (Another major shocker in the course of our own long careers has been the number of occasions where the "chemistry" between managers and workers was visibly bad! This too seems to be getting worse of late, rather than better.)

- Be sure to inquire about services that your supplier may be outsourcing to third-party providers. Be sure that they are good ones - AND that there are written agreements covering data-security and data privacy wherever YOUR provider shares your data with third-parties.

- For large and important assignments consider engaging an expert consultant to help you draft and review the RFP, check all the numbers, attend the tour with you, summarize the key findings, review the contract with care (especially the indemnification clauses) and contribute to the final negotiations. As George Bernard Shaw famously observed, "all professions are conspiracies against the laity" – which seems truer than ever in this day and age. A truly expert consultant will typically earn their fee twice over in the final round – and often by much more.

Key Risks - And Internal-Control Checkpoints To Check With Current And Potential Service Suppliers - Ranked By *Riskiness*

Here's our "Top 5" list of internal-control risks areas - ranked in order of "riskiness" - that deserve an extra level of scrutiny by public companies going into the 2023 proxy season:

1. ABANDONED PROPERTY SERVICES

Of all the services where a public company needs to stay compliant with complex and fast-changing regulations, avoid costly "audits" by cash-hungry states – with potentially big fines and penalties – and worst of all – deal with the possibilities of fraudulent conveyances and outright thefts by suppliers - and often by one's own employees – this is, statistically, the riskiest area on the corporate scene. The very label is akin to posting a sign that says, "steal me, since no one is looking."

Not surprisingly, there have been many bad actors in this field over the years – and many good corporate citizens have lost their own jobs because of bad hiring decisions. (See the OPTIMIZER's classic article for some frightening examples: Tales From The Crypt @ OptimizerOnline.com)

Currently, we count over 15 companies – all purporting to have extensive experience here (often by counting up the tenure of every employee, regardless of real experience) – AND to be the very best at what they do – most of which we would never list in our Directory of Service Providers. The barriers to entry are very low while the opportunities for flimflammery, conflicts of interest and outright thefts are infinitely high, so look carefully at all of our vetting tips before hiring anyone here.

2. CORPORATE TRUST AND AGENCY SERVICES

(Trustees, Depositories, Exchange, Tender and Redemption Agents and "Reorg Services" in general.)

The third-quarter OPTIMIZER, and now this issue too, details a truly frightening number of costly errors made by Corporate Trustees – and the trend seem certain to continue, due to a very serious brain-drain here. (Can you imagine a major bank Trustee distributing the entire $900,000,000 in principal instead of the interest that was due??? Or issuing hundreds of millions of bonds that were not "duly authorized for issuance"?)

If one were to cite the biggest financial losses arising from one-time mistakes, the once stodgy old Corporate Trusteeship business would be the number-one source these days, with "Corporate Agencies" (think "Reorg work") a close second.

And if we were to cite the field where Internal Control Systems are most seriously lacking these days, THIS would clearly be it.

3. TRANSFER AGENTS

As we often remind readers, Transfer Agents are the keepers of a public company's most critically important resource; its Shareholder Records.

Also, Transfer Agents are most often the chosen agents in corporate reorg deals – charged with disbursing tens and even hundreds of millions of dollars and/or securities – in an environment where single holders are often due payments in eight or even nine digit amounts. Accordingly, this is the area that requires the most serious vetting of all – at least if your company is a high-or-large-cap one.

4. PROXY DISTRIBUTORS AND TABULATORS

With more and more shareholder proposals than ever – and with more and more razor-thin margins than ever – and more proxy fights on the horizon as well - a review of the distributors of proxy materials and tabulators of votes - and their internal-control systems - is more important than ever, we say. Here, of course, the risks are largely reputational ones, but that makes the internal control environment no less important these days

How, exactly, does your agent assure that all of the required materials are delivered to all of the eligible voters? How, exactly, are incoming votes validated – and double-checked to assure the accuracy of the tabulation? (We see tabulators each year who check simply at random – regardless of the size of the vote – while other, better ones, have much more rigorous procedures.) Very important to ask these days, how auditable are the results, in the event of close calls - or official challenges?

5. INSPECTORS OF ELECTIONS

Today's environment has seen a major raising of the bars for the appointment of Inspectors of Elections considerably, year after year.

"Inspection" by sitting or retired corporate officers no longer passes the sniff test – nor does the appointment of someone from one's proxy solicitor, since there are clear conflicts of interest here too. Here are our own vetting tips, though, we hasten to note, we have a vested interest in this space:

- ✓ Review the bios of prospective Inspectors to be sure they have the relevant experience. Most candidates out there have fairly impressive bios, but often their experience with corporate elections at publicly-traded companies is essentially nil. Many retired "industry veterans" were used to simply showing up - and signing documents prepared by others. Make sure they can sniff-out trouble, early on.
- ✓ Make sure your Inspector of Elections has written Guidelines in place – and written Presumptions as to the Validity of Proxies too.
- ✓ Make sure you IOE has a strong back-up system – with other experts who can be consulted when unusual situations arise - as increasing they do.
- ✓ Make sure that your IOE can effectively 'stand up and be counted' if any challenges arise.

A Litany Of Control-System Failures In The 2022 Fourth Quarter

As the OPTIMIZER predicted in last quarter's issue, the litany of high-profile lawsuits related directly to severe deficiencies in internal control systems carried over to the fourth quarter of 2022 with even more big names making headlines.

At **Allianz SE,** parent of the giant mutual fund **PIMCO**, two fund managers pleaded guilty to falsifying documents "that hid the fact that they were secretly exposing pension funds to serious risks" (at the **Teamsters, Blue Cross Blue Shield** and numerous other city and state pension funds) where internal controls were insufficiently geared to detect the fraud. Alliance paid over $5 billion in restitution and $1 billion+ in fines and agreed to transfer management of over $120 billion of U.S. assets to a new partner. **Credit Suisse** – which pleaded guilty to helping Americans avoid taxes on investments in 2014 is now under investigation for continuing to do so, according to a November WSJ article, while another WSJ article detailed how "Switzerland's oldest bank" became a meme stock. **Danske Bank** reached a $2 billion settlement with the **DOJ** and the **SEC** over money laundering activities involving *hundreds of billions of dollars*. This, we believe, is related to "the biggest financial scandal ever" – where evildoers used "mirror trades" of ADRs to quickly and covertly convert Russian rubles to U.S. dollars, and where regulators have given scant details. In part it may be so as not to reveal how easy this can be done but in part, we think, it's to cover up how scandalously inept the SEC was at detecting the huge scale of the operation, despite numerous tips from whistleblowers.

The **FTX** multi-billion-dollar crypto meltdown in Q4 was due to a "complete failure of corporate controls," ending in an "unprecedented debacle" according to the new CEO - that is still playing out every day. And in late December, **Wells Fargo Bank** agreed to pay an all-time-record $3.7 billion to settle charges that it illegally charged fees and interest for over ten years on loans for homes and cars. And - double-ouch - **CFPB** chief **Rohit Chopra** took pains to note that the settlement "should not be viewed as a sign that Wells Fargo has moved past its longstanding problems."

Sweeping Regulatory Changes Affecting Director Elections, Executive Compensation and Climate Disclosures ... **What Can Go Wrong?**

BY RON SCHNEIDER
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A very active Securities and Exchange Commission (SEC) recently enacted new regulations affecting director elections and executive compensation and is on the brink of requiring significant new climate-related disclosures. Combined with intense investor interest in these topics, the regulatory changes that companies are facing need to be handled with care to avoid increasing vulnerability to activism and lawsuits-- or even heightening the risk of reputational damage.

CONTESTED DIRECTOR ELECTIONS: WHAT IS THE NEW REQUIREMENT?

For shareholder meetings after August 31, 2022, the SEC now requires the use of a "universal proxy card" in contested board elections. While all sides will still distribute their own proxies and ballots, provided the issuer has received requisite notice, universal proxies now must include all director nominees regardless of the nominating party. So instead of choosing between competing board slates, investors now can easily pick and choose among all individual director nominees.

This change, long sought by activist investors and others, is expected to make it easier and more cost effective to wage board election contests, and more likely that at least one dissident nominee will be elected. In the end, this new requirement may increase the frequency, as well as success, of contested board elections.

WHAT CAN GO WRONG?

Every board seat is now potentially at risk. Against a backdrop of intense investor scrutiny of boards, and the fact that directors are being assessed according to a wide range of criteria from diversity, experience and competencies, and the ability to oversee an increasing array of topics including those under the environmental, social, and governance (ESG) umbrella, clearly this is more than a theoretical risk.

For this reason, companies must further step up their games, and not just "tell your best board story," but also make the best case they can for each individual nominee based on their qualifications and unique contribution to the board. Since by necessity boards operate largely outside the public eye, investors may rely too heavily on easily available and knowable metrics, such as gender, race, ethnicity, geographic origin, tenure and meeting attendance records, unless they are told a more nuanced story.

Given these new realities, we recommend that companies immediately revisit and, if needed, refresh all publicly available information about directors, rather than waiting until an actual board challenge emerges. Included among the information to review and revisit are director bios; skills matrices highlighting each director's unique qualifications; descriptions of key board processes, such as oversight of risk and ESG; director and board evaluations or assessments; new director recruiting and board refreshment efforts, and the board's role in investor engagement.

As is true with other forms of activism, telling a great story could help you prevail in an election contest. More importantly, though, a compelling story may serve as a deterrent to being targeted in the first place. What you want is for potential dissidents to conclude, "This company is not a soft target on this issue. Let me look elsewhere."

EXECUTIVE COMPENSATION: WHAT ARE THE NEW REQUIREMENTS?

In late August, the SEC announced its new Pay versus Performance (PvP) disclosure rules, effective for US issuers with fiscal years ending on or after December 16, 2022; emerging growth companies are excepted from this deadline. To comply, companies will first have to calculate, and then disclose, the compensation actually paid to the CEO and other Named Executive Officers (NEOs) for the past five years, as well as explain the relationship of this pay to specified financial performance measures.

Notably, this is the first element of proxy disclosure that will require Inline XBRL (iXBRL) data tagging, which increases the accessibility, easy analysis and comparability of such data.

As of now, most investors and proxy advisors have not announced significant changes to their existing pay for performance (PfP) or Say-on-Pay analyses or voting guidelines based on this new data, but this may well change by Year Two of these new disclosures.

At this point in time, most companies are indicating that they plan to comply, and to locate the disclosures in the back of the proxy, among other tables near the pay-ratio disclosure, and not call significant attention to the new disclosures. A handful of companies, in contrast, are indicating plans to embrace the new data and incorporate it into their primary PfP discussion in the CD&A section of the proxy.

WHAT CAN GO WRONG?

For years, many companies have been telling their PfP story prominently in the CD&A, including using a range of graphs comparing different measures of pay, such as SEC pay and realized or realizable pay, to a range of financial or operating metrics. Now they will also be providing additional, more standardized compensation data that is less subject to spin.

These new disclosures may support a company's existing PfP narrative, but when they conflict, companies should expect scrutiny and questions. Similarly, if current short- and long-term pay metrics are not listed among a company's three to seven most important performance measures used to link compensation actually paid to company performance, expect questions about that, as well.

Also, because of the analytical ease of iXBRL data tagging, it is hardly inconceivable that activist investors, class action law firms, and others will use the new data to compile lists of positive and negative PvP outliers. This data may be used to identify targets for activism, as well as provide statistical support for activist campaigns of others.

ESG REPORTING: WHAT IS PROPOSED?

In March 2022, the SEC proposed new climate-related disclosure requirements that would mandate that public companies provide certain climate-related financial data and greenhouse gas emissions metrics within public disclosure filings. This proposal would accelerate the movement of ESG reporting from a primarily investor-driven, voluntary regime, to a more regulated environment.

Originally expected to be finalized in Q4 2022, the release has been pushed back to early 2023 following an unprecedentedly active public comment period, The proposed rule thankfully does not create yet another materiality or reporting standard. As with the new PvP rules, the anticipated requirement of iXBRL data tagging will promote ease of analysis and comparability among data being provided.

The proposed SEC climate-disclosure requirement is consistent with intensifying investor interest in ESG topics generally. Investors want to understand how a growing range of non-financial risks might impact the success and thus value of the companies they invest in. For them, ESG is a form of long-term risk management. These investors increasingly demand material, quantitative, comparable, decision-useful (and let me now add "verifiable") information.

In fact, over one third of US actively-managed investment funds now use some form of ESG-related screening as part of their investment selection process, often using data from a range of ESG "rater and ranker" firms, either in whole or as one input into their own analysis. On the other hand, indexed investors (which by definition have to own companies that are part of an index they track) increasingly incorporate ESG factors into their stewardship activities over their portfolio companies.

We recommend that companies immediately revisit and, if needed, refresh all publicly available information about directors.

Despite their awareness of this investor interest, many US companies have complained that the lack of harmonization between competing materiality standards and reporting languages was hindering their efforts to commence their ESG and reporting journeys. Others indicated they were awaiting clarity from the SEC and other regulators before taking action.

The good news here is that increasingly regulators and standard-setting organizations around the world are coordinating efforts to create unified, comparable reporting standards to help investors and other stakeholders assess risks and make capital allocation decisions across their portfolios.

Here's a brief history of how this coordination got started. The harmonization of ESG reporting standards and frameworks truly began in 2020 with the merger of the International Integrated Reporting Council (IIRC) and the Sustainability Accounting Standards Board (SASB) to form the Value Reporting Foundation (VRF). The merger was characterized by the groups as "a major advancement towards building a more comprehensive and coherent corporate reporting system."

This harmonization (and the related alphabet soup of acronyms) continued last year at COP26 in Glasgow, Scotland, when the International Financial Reporting Standards Foundation (IFRS) announced the creation of the International Sustainability Standards Board (ISSB). Around this time, further consolidation took place, including with the VRF, Climate Disclosure Standards Board (CDSB) standards and elements of The Task Force on Climate-Related Financial Disclosures (TCFD).

Most recently, at COP27 in Egypt, the ISSB announced its "ISSB Partnership Frameworks," which are designed to assist reporting companies, investors, and other stakeholders in using these increasingly harmonized disclosure standards.

No matter what standards are used, companies are clearly stepping up the frequency, depth, and quality of their reporting. Research by the Governance & Accountability Institute, Inc. (G&A), a leading consulting firm on corporate sustainability and ESG, revealed all-time highs across the board in sustainability reporting for the Russell 1000 companies in 2021.

OTHER G&A FINDINGS INCLUDE:

- 81% of Russell 1000 companies published a sustainability report in 2021, an impressive increase from 70% in 2020
- The smallest half by market cap of the Russell 1000 index saw the largest increase in ESG reporting, with 68% publishing a sustainability report in 2021, up substantially from 49% in 2020
- The largest half of the Russell 1000 index (i.e., the S&P 500 companies) is nearing full participation in sustainability reporting with 96% publishing a report in 2021, an increase from 92% in 2020
- For the first time in 2021, SASB was the most-used reporting standard among the Russell 1000, with 67% of sustainability reports aligning with SASB, compared to 54% aligning with the Global Reporting Initiative (GRI)
- The use of TCFD doubled among Russell 1000 companies in 2021, with 34% of sustainability reports aligning with TCFD, compared to 17% in 2020

WHAT CAN GO WRONG?

Historically, most of the initial ESG reporting was developed by company marketing, public relations and investor relations departments, and was distributed via relatively unregulated web-site disclosures and reports, and not SEC-filed documents. Some companies asserting their good citizenship found their early efforts derided as greenwashing (a term for corporate claims that do not match corporate practices). In any event, the reporting was faulted for not being decision useful.

This type of aspirational disclosure – including projections that a company may or may not achieve -- increasingly gets a company into trouble and damages both reputation and credibility with everyone from investors to gadflies, activists, regulators, and the courts (lawsuits).

A change has come as ESG disclosures increasingly find their way into regulatory documents. For example, based on investor requests, many companies are including ESG program highlights, and discussion of board oversight and any ESG-related compensation metrics, in their proxies.

In our experience, thoughtfully selected highlights in a regulatory document are highly likely to be picked up by investors and can help move the needle with some of the raters and rankers. That said, these proxy highlights, as well as 10-K reporting on human capital, are bringing ESG disclosures squarely into the line of sight of the SEC and other regulators. Of course, the anticipated new SEC requirements will further catalyze this movement.

As ESG becomes more data driven and increasingly subject to disclosure through SEC-regulated channels, such as the 10-K and proxy statement, the stakes get higher – and more parts of your organization will become involved.

We believe that the day is coming when ESG data should receive the same degree of legal and financial review and disclosure controls as traditional financial data.

Many are analogizing this heightened volume and scrutiny of ESG disclosure to the Sarbanes-Oxley Act 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. No question, Sarbanes-Oxley heightened the role of and discipline around financial reporting, and as a result companies expanded their disclosure teams to include attorneys, company management, auditors, and, ultimately, the board of directors. Many companies also established cross-functional disclosure committees that included the controller and a director of financial reporting, as well as representatives from finance, investor relations, and legal.

It's more important than ever to pay close attention to the potential liability that may arise from making ESG-related disclosures that are materially misleading or false. Such disclosures might include publicizing cybersecurity precautions, safety standards, and codes of conduct that subsequent events reveal are not as robust as advertised.

Companies should ensure statements in their ESG reports are supported by fact or data and should limit overly aspirational messages. Representations made in ESG reports may become actionable, so companies should disclose only what is accurate and relevant to their businesses.

THE FUTURE OF ESG DATA & REPORTING

Research by Diligent shows that most companies do not have the requisite data, processes, and technology in place to meet this new reality. They urge companies to start building an ESG infrastructure now, before the SEC acts and they are faced with the risks of mandated disclosures, in effect, leaving them at the starting gate relative to their better-prepared peers.

Once you figure out what information is material and what frameworks to report against, many other pieces fall into place. Knowing materiality and what constitutes strong reporting will clarify:

- the data you will need
- how and where you will obtain necessary data
- how you will validate this data
- where you will store, update, and make this data accessible while keeping it secure
- what software will be needed to help you succeed.

Once you have your ESG data management and reporting in place, remember that the end goal of the ESG journey is to make ESG part of the company culture. This means that attention to ESG should be imbued throughout all levels of the organization, placed at the center of business strategy, and integrated across company operations. Doing so can create a distinct competitive advantage for your company.

What these broad-ranging new developments, which are affecting board elections, executive compensation decisions, and ESG disclosures, mean for your company depends on the steps you take. If embraced and executed with care, these new regulatory requirements can elevate a company's reputation in the eyes of its investors and other stakeholders. On the other hand, if ignored or treated too lightly, they can expose a company, its executives and its board to additional scrutiny and risks.

Taking a Stakeholder View with ESG Storytelling

BY JOSEPH VICARI
MANAGING DIRECTOR, ESG PRACTICE LEAD
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Companies are under pressure to increase transparency around environmental, social and governance issues (ESG). This pressure is not only coming from investors, but increasingly from employees and prospective employees, supply-chain participants, customers, and communities... the list seems to grow by the day. In the past, failure to tell an effective ESG story and avoid shareholder proposals can impact capital access and the ability to attract new investors—which is why more than 90 percent of the largest companies now publish sustainability reports. But ESG storytelling goes beyond investor relations. Social media-driven consumer activists have put companies under public scrutiny for their human capital management, climate impact, political contributions, and corporate diversity. Likewise, employees are pushing leadership to adopt their values and interests.

ESG impacts talent, brand perception and long-term customer loyalty. Authenticity matters, so your ESG story needs to align with the values your company represents.

It is true that regulators have begun to look at ways to standardize company disclosures regarding ESG, but they often take a narrower view that is often piecemeal and scattered. In 2022 the SEC focused on climate change matters, while a few years ago, it was human capital. Some disclosures will end up in Form 10-K, while others will be in the Proxy, all oriented towards investors and not necessarily for other stakeholders. This makes it impossible to present a cohesive ESG program and narrative that is available for all stakeholders unless you choose to do so.

IT'S TIME TO OWN YOUR NARRATIVE.

First, it's important to gain familiarity with SASB (Sustainability Accountability Standards Board) and TCFD (Task force on Climate-related Financial Disclosures). Although there is much alignment, in general SASB focuses on a corporation's climate impact, while TCFD tends to focus on how environmental factors present long-term risk. Investors and stakeholders want to know how climate change will impact your corporation's ability to deliver durable financial returns.

Second, it's critical to hone your internal reporting, metrics, and measures. It's one thing to know what you need to measure, but it's another thing to know how to measure. Try to find a partner with the right expertise to expand and refine your measurement processes and infrastructure.

Finally, prioritize your ESG storytelling. Although hard data indicators and metrics matter, ultimately your ability to attract capital and satisfy all stakeholders will require meaningful engagement to proactively shape perceptions and expectations.

ESG messaging should showcase how you will navigate long- term risk and capitalize on new opportunities. In this respect, impactful ESG narratives go beyond mere facts and figures.

THE VALUE OF DESIGN

Bridging the gap between data and understanding. Communication design seeks to attract, inspire, and motivate an audience to respond to a message. Design elements of typography, infographics, color, charts, and graphs should all work together to communicate a holistic, strategic message that visually supports your brand. But design does more than make things look good.

DESIGN PLAYS AN OVERALL VITAL ROLE IN ENHANCING YOUR COMMUNICATIONS BY ADDING CREDIBILITY, PROFESSIONALISM, AND PURPOSE TO YOUR MESSAGE AND YOUR ORGANIZATION.

Even the best-prepared data may not achieve the desired response if the content is not presented in a way that engages the reader. Design is what bridges the gap between data and storytelling.

For many companies, their ESG presentment takes on a journey. Often companies begin with a highlight of their ESG activities that tend to be dense with metrics and facts. As their ESG programs begin to progress, they move from more general qualitative statements to a more refined narrative, usually enhanced through sophisticated design, leading to more:

- **Accessibility** through layout enhancements
- **Thoughtful** (clarity) with improved content flow
- **Understanding** through strategically designed charts, graphs, and iconography
- **Alignment** with the brand through implementation of your graphic standards and branded imagery

Sustainability Reports attract a variety of stakeholders that have specific needs and expectations about the information provided in these reports, all with varying levels of engagement and resources for interpretation and analysis. With that in mind you will want to consider:

- **How do I strike the right balance between disclosing the right metrics and incorporating an engaging story?**
- **What are the top stories my audience cares about?**
- **Is the content presented in a way that is engaging and easy to understand?**
- **Does it communicate professionalism and have a sense of purpose?**
- **How does it compare to peer companies?**
- **How does it reflect the brand?**

Then identify your priority goals and objectives to best determine where to focus your design efforts and how design can contribute towards your success. How you convey your ESG narrative can go a long way toward shaping stakeholder perceptions of your business.

Let Broadridge help. We deliver an end-to-end process that helps you identify milestones, benchmark your accomplishments, and own your ESG narrative. Whether you are just getting started or well into your ESG efforts, we've got the roadmap you need to advance your ESG capabilities.

Broadridge

Unclaimed Property Year-End Round Up

The *OPTIMIZER*'s Riskiest Internal Control Issue of All!

BY JENNIFER BORDEN, ESQ.
BORDEN CONSULTING GROUP

The unclaimed property ("UP") landscape over the last year has been excruciating for issuers, their vendors and their shareholders alike. Due to ever changing requirements, routine compliance is now exceedingly expensive. Multi-year audits and litigation are now the norm, whereas prompt payment to owners is not. Consider these actual occurrences from 2022:

- A corporation tried to claim its property from a state and was told it was "established that the claimant is the reported owner". Despite being the owner, the state continued that the corporation had not "established ownership" of the property the state recognized the corporation owned. The denial of the claim led to costly multi-year litigation, including an eventual appellate win in Ohio.
- Another owner attempted to claim shares that had been properly escheated in November of 2019, only to learn that the state liquidated in early 2020, just as the market crashed due to COVID fears. Having lost a quarter of a million dollars in value, the shareholder then sued the issuer and the transfer agent for restitution. The issuer sought indemnification from the state. The state declined to provide indemnification for the harm caused by its ill-advised sale, even though indemnification is specifically required by statute, thereby necessitating additional multi-party litigation to make the shareholder whole.
- In the face of the stringent requirements of the GDPR and CCPA, as well as numerous high profile data breaches at government agencies, an issuer under UP audit raised concerns about the security of the non-public personally identifiable financial information it was being told to transmit electronically to the states' contracted auditor. The state's reaction to these legitimate concerns was to accuse the issuer of raising data privacy and security merely to delay the audit, telling the court that since the state and its auditor had not previously had a significant security incident, there should be no worry about one in the future. The state then issued voluminous subpoenas to the issuer, its transfer agent, its escheat compliance vendors, its 17Ad-17 search vendor and even the TA's mail house, apparently in search of security lapses that might be used to discredit the issuer's well-founded concerns.

Multi-year audits and litigation are now the norm, whereas prompt payment to owners is not.

- In an attempt to escheat additional securities, several states have communicated that shares that are held in brokerage accounts are not securities and will not be afforded the protections of securities, such as SEC 17Ad-17 updates.
- Several states proposed legislation to trigger escheatment of securities based on "inactivity" instead of whether the owner is lost. This will result in the transfer of millions of shares owned by shareholders who continue to reside at the address where they are currently receiving their mail and tax statements.
- Several states continue to push for the immediate escheatment of shares of deceased owners, without regard for attempts to transfer shares to beneficiaries.
- Several states passed or proposed legislation that would not allow owners to be made whole when investments have been liquidated, restrict the owners' ability to have professionals assist with their claims and have reduced the time a state holds securities before liquidating.
- In a class action where the owners sued the state for not paying the owners interest earned on their property, the state's response to this potentially unconstitutional taking is to dismiss the owners' claims, saying that the owners' "negligence" in allowing the property to be escheated should not be "rewarded" with the interest their property actually earned while being held by the state.

Unclaimed property statutes were designed to prevent owners from losing forgotten property or facilitating transfer to the heirs who were not aware of their property interests. The theory is that holders should routinely review their records for accounts that appear to be abandoned; conduct outreach to owners and heirs; and in the absence of contact from the owner after due diligence, escheat the property to the state, to be held for the benefit of the rightful owners. As envisioned, well-implemented UP statutes absolutely benefit owners. Strict compliance is crucial and additional owner outreach is admirable. In my experience, issuers recognize the benefits of shareholder engagement and embrace outreach. Stellar compliance with UP statutes is a bonus.

Unfortunately, there has been a shift away from the true goals of UP statutes. Want to escheat more abandoned property? Simply change the definition of "abandoned" accounts (from "lost" accounts to "inactive" accounts, even though there is no requirement for the accounts to be "active"). What if this new definition does not jibe with state or federal securities laws? Simply say the property is not securities property. Too many "active" accounts? Eliminate the actions, such as direct deposit of dividends, that constitute "activity" sufficient to toll the dormancy period. Interested in escheating all of the shares that are newly-classified as "inactive", but don't like the associated custody expenses? Simply liquidate, even though the state is supposed hold the shares for the benefit of the owners. Want to have cash even more quickly? Shorten the statutory holding period required prior to liquidation. Want more cash? Charge the issuers interest using questionable methods and usurious rates, while enacting statutes that prohibit paying the owner interest, making them whole, or engaging with experienced professionals who can assist in their claims. After all, according to state filings, it is the owners' fault that the state had to escheat the property in the first instance.

Statutes designed to protect owners should actually protect owners, and any negative outcomes from the implementation of escheat statutes, inadvertent or otherwise, must be strictly scrutinized and promptly rectified.

When I was assigned to serve as counsel to the Massachusetts Unclaimed Property Fund in 1994, I cherished my part in assisting people in recovering property they had forgotten. The states are currently holding billions of dollars in property, most of which has been remitted via routine compliance. In my opinion, the emphasis must again be on facilitating compliance and returning property to rightful owners. Hopefully, the corporate community can engage with the states to implement UP statutes in a manner that prioritizes logical compliance and owner reunification, as opposed to the creative methods employed by some recently which have had the effect of complicating compliance, needlessly increasing expenses, creating financial, legal and reputational risk for issuers and destroying investments: all without any associated benefits to the owners. Statutes designed to protect owners should actually protect owners, and any negative outcomes from the implementation of escheat statutes, inadvertent or otherwise, must be strictly scrutinized and promptly rectified.

Investor Relations Officers Taking on More Strategic Roles

BY MATTHEW BRUSCH, CAE
PRESIDENT AND CEO
NIRI: THE ASSOCIATION FOR INVESTOR RELATIONS

Investor relations officers (IROs) of public companies have complex jobs. They serve multiple internal and external stakeholders including their primary Wall Street audiences on the buy side and sell side. All while complying with myriad SEC rules and providing strategic counsel to management teams and boards.

Since the pandemic, elements of their jobs evolved rapidly as IROs managed a sudden transition from in-person to virtual and hybrid annual meetings, investor days, and other events.

Throw in a volatile stock market, a dwindling number of sell-side analysts and research, and increasing activism (especially around ESG), and it adds up to even more change.

But IROs are up for the challenge.

In the near term, public companies need to reposition themselves for success in a world of slower growth, higher inflation, and more expensive capital. Because IROs wear many hats and understand all aspects of the business, they can help navigate these waters.

Overall, the investor relations role has been elevated within companies and on Wall Street. Investor relations is now more strategic and IROs are more sophisticated, articulating and guiding company strategy and capital allocation decisions versus just communicating and reporting information.

Investor relations is now more strategic and IROs are more sophisticated, articulating and guiding company strategy and capital allocation decisions versus just communicating and reporting information.

PROACTIVE OUTREACH TO THE BUY SIDE

More direct outreach to the buy side is also now required. IROs often previously worked through the sell side to coordinate with the buy side, but this is changing. The buy side often now wants to engage directly with IROs.

Virtual and hybrid meetings have also changed investor communications and increased access to management.

Through more virtual communications, proactive IROs are able to expand their targeting and outreach initiatives to new areas. There is also an opportunity to leverage more availability from the CEO and CFO through virtual meetings.

IROs manage this expanded outreach in a hybrid model, cultivating prospective investors and managing relations with current investors either in-person or virtually as best meets the needs of the investor and the company.

Strategically, it presents a pivot point for many IROs, where they can bring heightened executive-level knowledge of company operations to these meetings, and establish themselves with the investor as a source for broader industry insight.

ESG INTEREST GROWS

Large institutional investors are wielding more influence, especially related to Environmental, Social and Governance (ESG) matters. They expect IROs, management and boards to be more responsive as they demand detailed ESG information.

In response to increasing investor demands, many IROs are taking the lead on monitoring and reporting corporate ESG metrics. They are developing ESG processes and procedures so they are ready when the SEC finalizes its new proposed climate change disclosure rule, expected in early 2023.

ESG is a significant challenge as more investors expect companies to report these metrics and define how they are relevant.

The increase in ESG-related questions from the buy side is notable.

MORE CHANGES

We asked NIRI members to report what they see as the biggest changes to the IR profession. Here's what they had to say:

- When the pandemic hit, IROs had to quickly pivot from in-person investor meetings and conferences to virtual meetings, including earnings calls, shareholder meetings, and so forth. They demonstrated their value in doing those things.
- More investors now have access to management. There are also more investor days, because you can hold short, more frequent investor days virtually, without feeling like you need to wait to do one every two years and only do it in person.
- Management participation in investor conferences is even more critical. Conferences, one-on-one meetings, and non-deal roadshows are some of the most effective ways to explain a business, how it makes money, the drivers behind it, and why it's a good investment.
- Many investors say they will attend broker conferences in person, so IROs may find these to be the best form of targeting in the future.
- Investors, even though they recognize that virtual meetings benefitted them, want that in-person interaction again. They would rather have management teams come out to meet them.

Investors, even though they recognize that virtual meetings benefitted them, want that in-person interaction again.

- The distraction of outside stories such as the supply chain disruption has investors clamoring for color and context, making it harder to focus on company performance. These stories are all interconnected.
- Social media also has a bigger role today, and it is a reminder that IROs are talking to every stakeholder all the time. It's a bigger challenge than ever.
- There is more demand for dynamic storytelling. Virtual and hybrid meetings have created more requests for video tours of facilities, for example.
- Activists have an easier time now.
- IROs are "on" 24/7 even more than before.
- The universal proxy is going to change how activists present board slates. IROs are monitoring this and what it means for corporate governance.

NIRI
THE ASSOCIATION FOR INVESTOR RELATIONS

Why a CRM is Essential for Investor Relationship Management

Investor Relations Officers (IROs) need a CRM that's specifically designed with the investor relations workflow in mind. In fact, using an appropriate investor relationship management tool will make it easier to collaborate on your investor relations (IR) strategy, prevent data loss, generate ROI reports, and help maintain regulatory compliance.

Most importantly, having a dedicated investor relations CRM software provides IROs with increased access to critical and unique data that can inform investor targeting and outreach decisions. It also provides organizations with insight into the health and trends of their shareholders, competitors, and industry.

Here are six key reasons to invest in a CRM to better manage investor relationships.

1. BETTER INVESTOR DATA

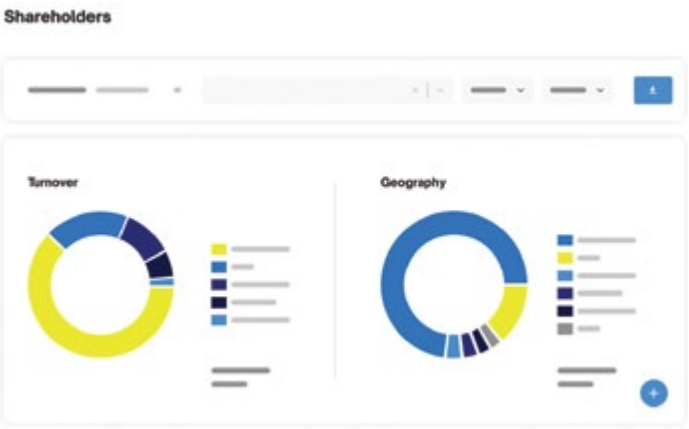
One of the most significant use cases of investing in a CRM built specifically for IR and capital markets is that from day one, you will access unique data that provides impactful insights into your strategy.

This data should inform various decisions—including investor targeting and outreach—while providing your team insight into the health and trends of your shareholder base and that of your competitors and industry. Remember that **an IR CRM should automatically be tailored to your company's unique characteristics.**

Opposite to a non-industry specific CRM, an IR CRM provides teams with a wealth of data across organizations, contacts, transactions and holdings. Without the constant flow of new insights, standard CRM users will waste valuable time and resources trying to find relevant information.

Another important benefit of implementing investor CRM software—in addition to information on viable new investors—is the ability to easily generate reports on the effectiveness of your IR program. An IR CRM will produce reports directly related to your investor activity, unlike a sales CRM that makes reports based on customer acquisition activity.

IR exclusive reports should include specific data points including (but not limited to) share price movements, holdings movements, and investor activity. These reports will also allow you to track the ROI of conferences and roadshows while demonstrating which marketing channels are effective. This level of reporting simply isn't available in standard CRMs.



One example of a report you can produce using Irwin is a shareholder composition report. This allows you to analyze the makeup of your company's shareholder base broken down by turnover, geography, type, and composition.

2. INCREASED COLLABORATION

Another key benefit of using a dedicated IR CRM is improving team collaboration. It makes it far easier to see who's speaking to whom, monitoring established relationships, and referring back to previous interactions.

Whether you're a one-person IR team or seven people strong, increased collaboration is beneficial because it streamlines communication between IROs and C-Level executives. High levels of transparency are also incredibly helpful when working with external consultants or managing turnover. **An investor CRM simply makes it easier to collaborate or hand off a relationship smoothly.**

3. HIGH LEVELS OF ORGANIZATION

Keeping tasks organized is another advantage users see when using an IR CRM. Without one, you're on your own when taking notes, scheduling and documenting meetings, recording calls, and creating follow-up tasks. **Your investor CRM software should allow you to do all these tasks from a single page.**

4. IMPROVED TIME SAVINGS

Additionally, using a dedicated IR CRM means you no longer have to rely on a sales CRM, an Excel sheet, an Outlook inbox, or a physical address book. Investor relations teams are often understaffed and time is incredibly precious. Copying information from spreadsheets is not a valuable use of your time. **A good CRM should already be integrated with your investor database to save time when reaching out to new contacts.**

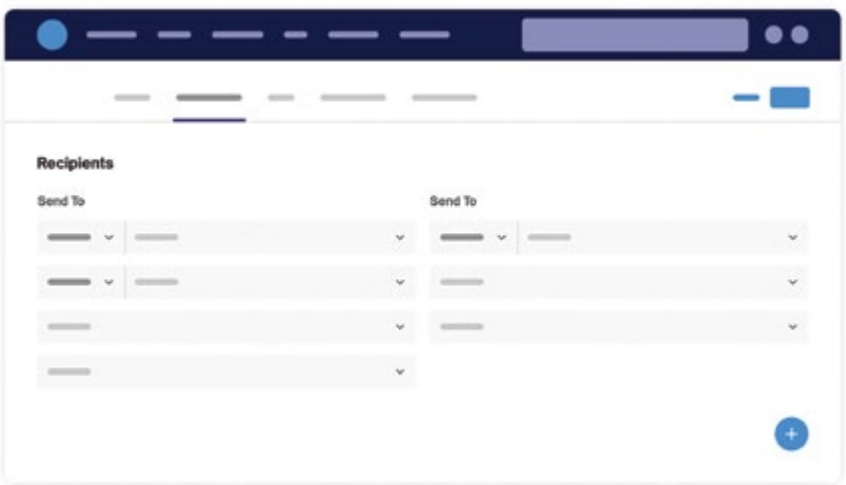
On top of this, an IR CRM helps executive teams save countless hours by making it easier to delegate and collaborate with IROs and advisors. And since 87% of C-level executives report spending up to 25% of their time on IR, as found in Irwin's State of Investor Relations (2023) report, having a central source of truth for all things IR can take administrative tasks away from management. Instead of relying on advisors or searching various documents and tools for data, **IR software can instantly deliver critical insights and reports, saving time and effort.**

And just when you thought the time savings couldn't increase, an IR CRM that integrates with your email can also help executives delegate specific conversations and tasks to IROs. Unsurprisingly, not every investor inquiry needs to be handled by the CEO or CFO—their time is better spent on other activities. Every email that your IR software redirects from executives to IROs represents minutes of time savings, and can swiftly add up to several hours saved each month.

5. QUANTITY AND QUALITY OF MEETINGS

One of the biggest challenges IROs face is getting in front of new investors. In fact, according to Irwin's State of Investor Relations (2023) report, 35% of IROs have indicated that their biggest challenge was driving new investor interest in their company, with 85% of IROs and 83% of C-level executives believing that finding new investors will be a challenge their company will face in 2023.

Additionally, dedicated investor relations software makes investor targeting significantly more efficient. And since 33% of IROs see new investor interest as their most significant opportunity going into 2023, effective outreach is critical.



Irwin's CRM provides you with integrated email functionality.

Unsurprisingly, said outreach takes time, especially when you have to search for investors and vet them yourself. An IR CRM will save you time and effort in the search and vetting process by cutting out the noise. For example, analyzing targeting criteria such as geography, peer holdings, and average investment size can help pre-qualify investors before you spend any time on outreach. This helps to ensure that any meetings booked are with investors that are a good fit for your business.

In turn, you might be able to measure these results with the number of new shareholders in a given period and the value of their investments. This can result in a tangible impact on the time spent researching and contacting investors.

6. ASSISTANCE WITH REGULATORY COMPLIANCE

Another important use case of a dedicated investor relationship management tool is ensuring that all IR activities are appropriately organized for privacy and compliance. You want to ensure that your investor contact data does not mix with your customer data and confirm that confidential information is kept secure. With an IR CRM, you can be confident that **your customer and investor data is as accurate as possible and that your aggregate data isn't affected by keeping both groups in the same system.**

Furthermore, you also want it to be as easy as possible to log all interactions and meeting notes with investors for regulatory compliance. Being able to send and track emails directly from your investor CRM allows you to maintain a historical account of all engagements.

THE ROI OF AN IR CRM

So, if you find yourself still using your email inbox, an Excel spreadsheet, or a clunky "empty house" CRM—it's time to leave these solutions in the past. The best investor relationship management tool will make it easier to collaborate on your IR strategy, communicate with shareholders and analysts, prevent data loss, save time, generate ROI reports, and maintain regulatory compliance—all while being generally more pleasant to use.

It's easier than ever to switch to a proper investor relations CRM. Head to www.getirwin.com to learn more about Irwin's powerful IR CRM and engagement tools and how you can get started today.

Irwin

Q4 2022

A Quick Look At The Outlook For 2023 AGMs: Top Tips To Prep

"Pro-Life" Bullies with Bullhorns Are Set to Disrupt AGMS This Season...If They Can

"Disruption" On The Transfer Agency Scene

Disruption On The Proxy Solicitation And Advisory Scene: League Tables Give Important Clues On Who's Really Who

Disruption In The Registered Agent, Biz-Admin & Compliance Space As CSC Achieves Massive Market Share

Are Fidelity And Other 401(K) Providers Ripping Off Retail Investors To The Tune Of $2 Billion A Year For "Transfer Fees"?

Pass-Through Voting: What's The Impact On Your Company?

SEC Cracks Down Hard With All-Time Record Penalties

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THE SHAREHOLDER SERVICE

OPTIMIZER

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

The Outlook For 2023 AGMs: Our Tips To Assure A Smooth Event… That You Won't Find Anywhere Else

- The vast majority of companies that had virtual-only meetings last year are sticking to them, so demand will be high for the most desirable dates and times. Reserve your preferred date and time slot early – and be sure you have lined up a top Inspector of Elections too. Be sure you will get the "A-Team" from your AGM service suppliers.
- Make sure that no one on your Meeting Team agrees to accept "Floor Votes" as a way to head off a formal shareholder proposal: Please be sure to review our article on this crazy process, which a few naïve companies foolishly agree to every year - based on the often-mistaken notion that there will be too few voters to worry about. Brush up here: The Best, Worst and Weirdest Things We've Seen in the 2019 Meeting Season to Date
- Beware: Shareholder Proponents, and activists in general, will be monitoring VSMs and paying special attention to the Q&A period, and to whether shareholders are being given a fair chance to ask questions and sufficient time to cast or change their votes online. Here's a sample 'run of show' and tips for the Q&A to avoid being publicly named and shamed: A Sample "Run-Of-Show" For A Satisfying And Successful VSM & The Virtual Shareholder Meeting Q&A – and How to Tackle It
- Be sure to disclose the names of shareholder proponents (or the lead proponent, at a minimum) in your Proxy Statement. Glass Lewis has revised its voting guidelines for 2023 and will "will generally recommend voting against the governance committee chair" if the lead proponent is not disclosed. (Note too, as we have noted many times before, knowing the identity of the proponent - and their sometimes negligible share holdings or questionable motives – often yields bigger pro-management votes.)

"Pro-Life" Bullies with Bullhorns Are Set to Disrupt AGMs This Season...If They Can

Three "Pro-Life- Activists" who sneaked in and blended in by posing as 'backstage workers' at a private meeting venue managed to literally get behind the curtains at a recent Meeting of Shareholders and to pop out behind the company officers on the dais shouting "Shame, Shame" - to the utter terror of all concerned - just as the CEO was to begin her remarks. The distraction allowed another part of the group to crash into the back of the meeting room with Bullhorns - loudly blasting the same message - while a few more bull-horners managed to push in behind them. Fortunately, security officers managed to quickly get the officers off the stage - and the directors out the back way too - while other security officers provided by the venue managed to evict the bull-horners from the room.

A very carefully, cleverly - and truly terrifyingly-executed series of maneuvers for sure. Fortunately, no one was injured in the melee, and, since the polls closed just before it broke out, the official "business of the Meeting" had been concluded. Companies in the health-care industry - and any other company that might be a target for Anti-Abortion activists - would be wise to redouble their efforts to prevent intruders with malice aforethought this season - and to double their security squad too - and maybe to consider having local police on hand as well. Maybe, with their cover now blown, they will give up as the "Zombie Invaders" did a few years ago...

23

Disruption In The Proxy Solicitation Space: League Tables Tell Part Of The Tale - But Many Big Firms Seem To Be "Remaking Themselves" Or "Lost In A Sea Of Rivals" These Days

One-time upstart ***Okapi Partners*** has been ranked as the number-one activist proxy solicitor, both in the U.S. and globally in 2022 - *for the fourth year in a row* - in **Bloomberg**'s ***Global Activism Market Review***, below.

TOP ACTIVIST PROXY SOLICITORS

Region	Top Adviser FY 2022	#	Stake $b	Top Adviser 2021
Global	Okapi Partners	30	$11.1	Okapi Partners
US	Okapi Partners	27	$7.8	Okapi Partners
Canada	Carson Proxy Advisors	5	$0.1	Morrow Sodali
Europe	Georgeson	3	$8.2	Georgeson
Asia Pacific	Morrow Sodali	5	$1.9	Georgeson
Global ($1b+)	Okapi Partners	18	$10.8	Okapi Partners

We hasten to point out, as we always do, that the "activist" statistics do not include the many threatened actions that get resolved behind the scenes, where long-term stalwarts ***MacKenzie Partners*** and ***Innisfree M&A*** still hold a lot of sway - as Okapi does too in this space. But contested deals are where the big money is, where clients do extra due diligence - and where advisors really "show their stuff."

But 2022 also saw a major falloff in "deals" of *all types* - that left many other players - including many of the formerly "best-known names" - rather badly in the lurch. And 2023 is not looking much better for many of the 15 or more Proxy Solicitors and Advisors that are out there vying for deals – and money.

Our own revenue stream has taken a big hit in this environment – as many of our once most faithful advertisers have dropped off our list – and out of our Directory of Pre-Vetted Suppliers altogether - which to us, biased as we may be in favor of advertising, and of maintaining a strong "share-of-mind" – especially in crowded spaces – is akin to committing commercial suicide.

Some will come back, for sure. Two of the bigger firms seem to be trying to digest and rationalize a spate of recent acquisitions and geographic expansions, which almost always seem to boom before big lulls. Another seems to be looking to re-invent its business model altogether before 're-marketing." And, as always in tough times, there are and will be new entries. And - ouch for the sluggish big guys - smaller firms will get larger at the expense of the weakest marketers.

In this unsettled market, issuers would be very wise to renew relationships and/or shop for providers with special care. Check our tips for kicking the tires on internal control systems, although our top tip is still to bet the best jockeys before plunking money down.

Disruption In The Transfer Agency Space On The Horizon Too?

"Odyssey Transfer to disrupt the national transfer agent space, which has only a handful of full-service competitors" blared the headline of a January 12 press release, announcing that the SEC has cleared Canada-based Odyssey to begin operations in the U.S., effective immediately – "led by an experienced group of industry leaders" – mostly former Wells Fargo/Equiniti Trust Company execs.

"The US market is ripe for a competitor that prioritizes exceptional client service, has the industry expertise to be a valued partner to our clients, and is committed to innovation and execution," said Becky Paulson, President, Odyssey Transfer. "We're excited to be able to leverage the strength of Odyssey's Canadian brand and success as an existing company with over 1,000 clients, including hundreds of US based clients and hundreds of thousands of US shareholders. We'll be able to capitalize on existing infrastructure as we formally enter the US market, which our US-based team knows very well."

CONT'D →

Todd May, former CEO of **Equiniti Trust Company**, will serve as Chair of Odyssey Transfer's Board of Directors with Canada's **Becky Paulson** as President and with Wells Fargo/Equiniti veterans **Andrea Severson**, Vice President, Operations, **Chris Ward**, Vice President, Corporate Development, **Caitlyn Van Valin**, Vice President, Sales and **Angela Ponte**, Vice President, Risk and Compliance, all operating from St. Paul, Minnesota, to "provide a full-suite of transfer agent and corporate actions services to private and public issuers across the United States."

We hate to say this but with the largest U.S. Transfer Agent "sitting the bench" when it comes to advertising as the year begins – and as the industry copes with another likely bad year for new business, while saddled with huge infrastructure costs - the space is indeed ripe for disruption.

Corporate enthusiasm - and budgets - for a large number of the products and services TAs traditionally sold - have reached all-time lows. While there have been and will still be a few spinoffs each year, large companies continue to shrink – both in size, as registered ownership continues to decline – and in number, due to M&A activities. And new companies are invariably small ones, with few registered holders and even fewer product demands – and with super-tight budgets.

What the industry needs most, we think, are more players with much better, cleaner and more up-to-date automation – with much more streamlining, and much lower maintenance costs than the old "legacy systems" with their extensively cobbled-on "enhancements" tend to come with – plus a lower and more streamlined pricing model to match. Stay tuned for more disruption on this front, we feel certain.

Disruption On The Registered Agent, Business Admin And Compliance Fronts As CSC Completes Acquisition Of Intertrust Group, Solidifying Commanding Market Share

"CSC, a leading global provider of business, legal, tax, and digital brand services founded in 1899, bolstered its industry leading position with the acquisition of Intertrust Group in early November, 2022" its press release noted. "The acquisition marks an important milestone for CSC, which now will do business with more than 90% of the Fortune 500®, more than 90% of the 100 Best Global Brands®, and more than 70% of the PEI 300."

"**Rod Ward III**, who is a direct descendant of one of the company's two founders and has served as president and CEO of CSC for almost 13 years, will lead the combined organization which will be headquartered in Delaware. A highly experienced Enterprise Leadership Team, including Intertrust Group CEO **Shankar Iyer**, will support Ward.

"Our acquisition of Intertrust Group will allow us to navigate the ever-changing compliance and regulatory environment that our clients face, thanks to a world-class combination of people, processes, and technology solutions," adds Ward. "Our clients will also benefit from being served by a stable strategic partner that has been in business under common ownership for more than a century.

"As one company, CSC and Intertrust Group has the combined expertise of more than 7,500 dedicated employees with capabilities across more than 140 jurisdictions. "This means we can provide a "follow the sun" service, helping our clients wherever they need us to be," says Ward.

Elsewhere On The Supplier Scene: Are Fidelity And Other 401(k) Providers Ripping Off Retail Investors To The Tune Of $2 Billion A Year For Unwarranted "Transfer Fees"?

A recent blog from Alicia H. Munnell, a researcher at the Boston College Center for Retirement Research (BCCRR) says YES, they are:

According to Investment Company Institute there were $6 trillion in 401(k) Plans in mid-2022 and 63% of the assets - or $4 trillion - were in Mutual Funds.

Munnell looked at 43 Funds managed by Fidelity and Capital Group and found (in the teeny-tiny, deeply-buried small-print footnotes) that "transfer agent fees" accounted for 14% of total fund expenses - for a whopping five basis points - charged against the Fund assets on every individual account and totaling an eye-popping $2 billion annually – basically for doing nothing. Yes, most Mutual Funds increase and decrease some of their positions every business day, but the trades are "settled" (automatically) in the settlement process. No real "transfers" are needed – or made.

Let's agree, just for the sake of argument, that this arrangement dates from the "old days" when, maybe, "transfers" were actually made, and has somehow been overlooked until now. But let's HOPE that the SEC puts a stop to this totally unwarranted money-grab IMMEDIATELY.

People

James (Jim) Alden, long a widely-known and much-liked associate at **Group 5** has signed on with **Charles Schwab's Workplace Financial Services** group, focusing on Employee Stock Ownership Plans. Jim's expertise - and his special insights in the ESOP space - will serve Schwab - and its clients and prospects - very well indeed.

Mila Brogan, long a player in the Corporate Governance space at **Broadridge Issuer Solutions** has signed on with Proxy Solicitor and Advisor **Kingsdale Advisors** as Executive Vice President – U.S. While very much a powerhouse in Canada, where proxy fights are significantly more common than here (as of now, that is) we're betting that Mila – who has also worked at the **Millstein Center for Corporate Governance** and at the **Society for Corporate Governance** - will help to jumpstart Kingsdale's U.S. business significantly.

Sister Pat Daly, OP, a Dominican Sister whose 45 years of work "to hold companies accountable for their impacts on people and creation is the stuff of legends" passed away in December at age 66. As the **ICCR** press release also noted, "She was the Director Emeritus of the **Tri-State Coalition for Responsible Investment** (now **Investor Advocates for Social Justice**) after having served 23 years as Executive Director…Over the years Pat successfully addressed equality, health and tobacco, and international debt and capital flows. Pat played a [big] role in forcing **General Electric** to pay for the clean-up of the Hudson River." As the ***NY Times*** obituary noted, "In 1996 she helped persuade **William Clay Ford Jr** to leave the **Global Climate Coalition** [fighters against emissions controls, where] **General Motors** and **Chrysler** soon followed." The 1.4 billion votes her climate proposal racked up in 2017 (31% of the vote) led to board changes, and to the election of three climate-change experts nominated by **Engine No. 1** in 2021.

Your editor-in-chief first encountered Sister Pat in the late 1970s when he felt obliged to take her and her small group of sisters aside after a large company Shareholder Meeting to explain why most of the big pile of Voting Instruction cards they handed in could not be legally counted - which she took with her famously unflappable good grace - and thanks. Sister Pat was one of the most steadfast, best-prepared, charismatic and effective defenders of good governance practices – and good citizenship – ever to have graced the Corporate Governance scene.

Michael Manton, who has been the General Manager at **Refinitiv, Securities Information Center**, for all the SIC's 25+ years, has retired at year-end. For the uninitiated, the Securities Information Center was formed following an SEC mandate to assure that all stock certificate presented for transfer are checked against a central database to be sure the certificate numbers are those of real and still "open" certificates – that have not been "stopped" or replaced – before the transfer can proceed. Initially developed and owned by **Thomson Reuters**, the SIC is currently owned by the **London Stock Exchange** (!) and, somewhat to our surprise, is still validating more than a million U.S. stock certificates a year. Wonderful news for SIC users, Mike is being succeeded as General Manager by his long-term chief deputy, **Peter Nazzaro**.

Very good news, the wonderfully accomplished **Christina Maguire** will serve at the President and CEO of the **Society for Corporate Governance** effective January 1, 2023. Christina brings over 24 years of corporate governance experience to the CEO role, having most recently served as Managing Director at **BNY Mellon**, where she oversaw the policy, voting and operations functions for approximately $2 trillion in assets at over 12,000 issuers. Previously, Ms. Maguire held a similar role at **Fidelity Investments** for 15 years. Christina is well known to the Society as a speaker and participant at Society and other events - where she unfailingly impressed your editors with her toughness - and frankness - where truly "good governance" is concerned. *"Christina is a highly engaging leader with a demonstrated passion for the governance profession. Her strategic vision and business acumen will shape the Society of tomorrow and further enhance its value for governance professionals,"* said CEO Search Committee Chair Ginny Fogg - and we think she will be a very strong and much needed organization-rebuilder in today's incredibly challenging environment.

Tim Smith, "The lion of responsible investing" – who began his career in the early 1970s at the **Interfaith Center for Corporate Responsibility (ICCR)** – has retired from the **Boston Trust Walden Company** at year-end 2022, where he'd worked for over 20 years. But - great news, and no big surprise to us - in January 2023 he returned to work at ICCR to serve as a Senior Policy Advisor, where he will continue to work on issues related to corporate lobbying and political spending, among others.

Your editor-in-chief first met Tim in the early 1970s – when he formally proposed at all the big NYC bank Shareholder Meetings, year after year, that they not lend to companies based in or doing business with South Africa until the apartheid system was eliminated. He was and is a "gentle lion" – always a perfect gentleman, who listens patiently and politely to chairmen like ours at Manufacturers Hanover Trust, who felt that the proposal would seriously harm black workers if adopted, but always stood his ground effectively. We are convinced that his efforts hastened the end of apartheid by ten years or more. Like Sister Pat, it was and is impossible not to take notice – and to like and respect him whenever he takes a stand. Please take a few minutes to read the post below – which we will also post permanently in our History section. **See "Reflecting on the ESG Industry's Strong Foundation and Bright Future" @GreenMoney Journal**

CONT'D →

Worried About Pass-Through Voting?

- No real need to worry – at least this year, since in 2022 less than 2% of the votes cast were 'pass-throughs' – mainly from big BlackRock clients… unless, that is, you are involved in a proxy contest: BlackRock – and likely a few other big asset managers too – will allow retail investors to vote directly in proxy contests, so far as a pilot project - which, we think, can introduce a major wild card into the voting deck.
- Stay alert to developments on the pass-through-voting scene, however, an idea that is beginning to gain real traction. We were once big proponents of a total return to pass-through voting – which was SOP 15 years ago – but that was before the number of direct retail investors – and retail investors in Mutual Funds and EFTs skyrocketed. Talk about a potential budget-buster… Maybe coming your way soon…
- BlackRock is working on a project with a partner, Proxymity, that will allow investors to vote their share of stocks in BlackRock funds this year. Vanguard is also working on a plan to offer retail investors "a variety of choices" on voting their shares held in its mutual funds. Also, the "INDEX ACT," introduced in 2022 by Senate Republicans, would require passive funds owning more than 1% of a company's shares to "pass-through" the vote to all of the fund's underlying investors. Ouch!

Regulatory Notes ... and Comment

ON THE HILL:

Republican lawmakers Sen. Mike Braun, R-Ind., and Rep. Andy Barr, R-Ky introduced a second, joint resolution, in December, seeking to nullify the Department of Labor's new rule permitting retirement plan fiduciaries to consider climate change and other environmental, social and governance factors when selecting investments and exercising shareholder rights, saying that Congress "disapproves" of the Labor Department rule and "such rule shall have no force or effect." Sen. **Tom Cotton**, R-Ark., introduced an identical resolution in Dec.

AT THE SEC:

SEC CRACKS DOWN HARD WITH ALL-TIME-RECORD PENALTIES: The Nov. 15th press release is actually worth reviewing – for the detailed list of actions,fines, penalties and disgorgements covering every violation imaginable. They filed 760 total enforcement actions in fiscal year 2022 - a 9% increase over the prior year - including 462 new, or "stand alone," enforcement actions - a 6.5 percent increase over fiscal year 2021; 129 actions against issuers who were allegedly delinquent in making required filings with the SEC; and 169 "follow-on" administrative proceedings seeking to bar or suspend individuals from certain functions in the securities markets based on criminal convictions, civil injunctions, or other orders – featuring numerous first-time actions by the staff.

Most gratifying, the money ordered in SEC actions, comprising civil penalties, disgorgement, and pre-judgment interest, totaled $6.439 billion, the most on record in SEC history and up hugely from $3.852 billion in fiscal year 2021.

Of the total money ordered, civil penalties, at $4.194 billion, were also the highest on record, while disgorgements, at $2.245 billion, decreased by 6 percent from fiscal year 2021. Fiscal year 2022 was also the SEC's second highest year ever in whistleblower awards, in terms of both the number of individuals awarded and the total dollar amounts awarded.

Our favorite SEC case was a civil action against recidivists Manhattan Transfer Registrar Company, a registered transfer agent based in Port Jefferson, New York, and its former principal, John C. Ahearn, a resident of Erie, Colorado, for violations of a Commission order issued against them on May 17, 2018 – after which Ahearn acted as inspector of elections on behalf of Manhattan Transfer and participated in the conduct of Manhattan Transfer's transfer agent business while he was subject to a bar from association with any transfer agent. The complaint further alleged that Manhattan Transfer violated the Commission Order by not complying with its undertaking that it would retain an independent consultant and that, for a period of time, the independent consultant would not enter into any professional relationship with Manhattan Transfer other than its independent consultant work. Despite that undertaking, the complaint alleged that Manhattan Transfer retained the independent consultant to, among other things, revise Manhattan Transfer's written policies and procedures and participate in brokering the sale of Manhattan Transfer. What incredible nerve! We guess that both parties felt they were "too small" for the SEC to monitor – but happily, no… Ahearn paid a $25,000 fine while the T-A paid $75,000 plus modest disgorgement and interest penalties. A good reminder, dear readers, to choose your Transfer Agent with care!

New rules were proposed to regulate stock-market trading and payment for order flow, in a bid to lower commissions for retail investors, estimated to create $1.5 billion in savings a year. Heavy opposition from major Wall Street firms is expected. We find ourselves in rare agreement with Commissioner **Hester Pierce**, who, with her fellow-Republican colleague voted against two of the proposed rules as likely to have unintended consequences: "There is no emergency in our markets that demands a comprehensive revamping of how broker-dealers and market-makers handle order flows" she said. *Please see our article elsewhere in this issue on the $2 billion per year rip-off from individual retirement accounts by Mutual Funds via unwarranted "transfer fees" to see an SEC project that truly demands truly serious - and urgent attention.*

ABANDONED PROPERTY

APA
Abandoned Property Advisors, LLC

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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:

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Borden Consulting Group, LLC's attorneys have specialized in all facets of unclaimed property law, including audit defense, litigation, compliance and consulting for more than twenty years. Due to the often conflicting demands of regulators and auditors, the practice has expanded to regulatory compliance for the securities, electronic payments and insurance industries. Counsel regularly develops strategies to communicate with lost owners, defends multi-state audits and advises clients on all elements of the complex area of escheat law, while bringing to bear significant experience in the proxy process which is used to protect shareholders and mitigate escheatment risk.

Broadridge

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.

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ANNUAL MEETING SERVICES

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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.

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.

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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.

CONT'D

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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.

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.

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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.

EQ + AST
Becoming EQ

EQ + AST has a long-standing history as a dependable, trusted provider of annual meeting services in the US. Our focus on quality and accuracy – along with our expertise – has earned us industry-leading performance rankings for the service we deliver to our clients and their shareholders.

EQ + AST offers a customizable technology solution for both you and your shareholders, with features designed to increase efficiency and engagement. Created to eliminate the expenses and logistical hurdles of bringing together all participants, a virtual annual meeting is a viable option for all companies.

Visit equiniti.com/us/services/proxy-and-annual-meetings/ for more information.

CORPORATE GOVERNANCE CONSULTING

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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.

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.

EQ D.F. KING

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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 80 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. Learn more at www.dfking.com.

CONT'D

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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

MACKENZIE PARTNERS, INC.

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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.

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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 a global corporate advisory firm that provides clients with comprehensive advice and services relating to corporate governance, ESG, sustainability, proxy solicitation, capital markets intelligence, shareholder and bondholder engagement, M&A, activism and contested situations.

From headquarters in New York and London and offices in global capital markets, Morrow Sodali serves over 1,000 clients in more than 80 countries, including many of the world's largest multinational corporations. Clients include listed and private companies, mutual fund groups, stock exchanges and membership associations.

In 2022, Morrow Sodali celebrated its 50th anniversary and also secured majority investment from TPG Growth, the middle market and growth equity platform of alternative asset firm TPG. This partnership will significantly advance the firm's mission of providing clients worldwide with unrivaled strategic advice and comprehensive support, enabling them to maximize value and expertly manage stakeholder relations.

OKAPI PARTNERS

Okapi Partners helps clients understand the ever-changing expectations of investors and how to address them appropriately through planning and managing Shareholder Engagement programs as well as Annual and Special meetings.

Through modeling various vote projection scenarios, Okapi assists corporate issuers in planning and executing strategy for successful solicitation programs for director elections, executive compensation plans, and dealing with shareholder proposals.

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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.

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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.

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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.

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Your trusted provider when it comes to equity awards and shareholder services, EQ + AST understands how important your employees are to you, because we feel the same about ours. Together, we'll help you reach your organizational goals, starting with taking care of your most important asset: your people.

When you work with us, we ensure that we aren't just meeting your basic needs, we're in touch with the desires and concerns that motivate your employees. And we're not a wealth manager, so we won't solicit your employees for extraneous services.

Our industry-leading software platform was designed from the ground up to eliminate complexities and streamline the day-to-day execution of transactions. Interactive dashboards and real-time reporting tools bring a new level of strategic insight to financial reporting. And when combined with our Transfer Agent services, we create efficiency that puts more time back in your control.

Visit equiniti.com/us/services/equity-compensation-services/Proxy Solicitors & Advisors for more information.

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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.

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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.

INSPECTORS OF ELECTION

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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.

DFIN

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
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INVESTOR RELATIONS NEW CATEGORY!

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Irwin provides over 1,500 global users from companies across all industries and market capitalizations with a better way to manage investor relations – proven by 100% of Irwin users reporting a positive impact on their IR program.

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- A global database of over two million investors and powerful investor targeting capabilities to access untapped global networks of capital;
- The most comprehensive shareholder monitoring on the market combining reported, non-reported and surveillance data into one dashboard;
- An intuitive and easy-to-use CRM with built-in email and engagement tools;
- Insight on investors, shareholders, potential activists, and peers visiting your IR website; and
- Timely research, estimates and transcripts.
- With Irwin, you'll uncover meaningful insights that matter, secure high-quality investor meetings, diversify your shareholder base, and lower your cost of capital.

NOTICE & ACCESS SUPPORT SERVICES

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.

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

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DIRECTOR,
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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.

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 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.

Our services include:

- 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.

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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.

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.

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- Proxy tabulation services require the use of the DFIN-style proxy card.

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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 80 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. Learn more at www.dfking.com.

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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

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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.

MORROW SODALI

DONNA CORSO
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MORROWSODALI.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 a global corporate advisory firm that provides clients with comprehensive advice and services relating to corporate governance, ESG, sustainability, proxy solicitation, capital markets intelligence, shareholder and bondholder engagement, M&A, activism and contested situations.

From headquarters in New York and London and offices in global capital markets, Morrow Sodali serves over 1,000 clients in more than 80 countries, including many of the world's largest multinational corporations. Clients include listed and private companies, mutual fund groups, stock exchanges and membership associations.

In 2022, Morrow Sodali celebrated its 50th anniversary and also secured majority investment from TPG Growth, the middle market and growth equity platform of alternative asset firm TPG. This partnership will significantly advance the firm's mission of providing clients worldwide with unrivaled strategic advice and comprehensive support, enabling them to maximize value and expertly manage stakeholder relations.

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For our clients' meeting preparation, we deliver counsel on forecasting and maximizing shareholder support. In addition, we provide guidance on how to effectively engage with the proxy voting advisory firms.

Increased shareholder activism, coupled with heightened awareness of ESG matters, have become more common obstacles as meetings approach. To address this new reality, we provide a year-round process for our clients to engage with their investors.

Our research, knowledge and analysis of our clients' shareholders combined with our best-in-class execution, enables us to deliver optimal results.

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Leading the way in Proxy Solicitation, Mutual Bank and Credit Union Conversions, and Proxy Fights

Always remember: "What works on Wall Street doesn't always work on Main Street" We are THE EXPERTS at what will work on Main Street.

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SHAREHOLDER INTELLIGENCE

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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**

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Okapi Partners Market Intelligence Group specializes in stock watch (equity and debt surveillance): identifying real-time institutional ownership on behalf of publicly traded companies globally. The OMIG Team can:

- Identify who really owns a company's shares
- Intelligently respond to senior management inquiries
- Quantify effects on institutional targeting programs
- Develop institutional support for an engagement campaign or shareholder meeting
- Monitor which investors are trading in and out of the stock on real-time basis

Okapi Partners' combination of proprietary databases and unparalleled knowledge of the institutional investment community allows us to deliver timely and accurate information to clients faced with an activist campaign, a merger or a De-SPAC transaction.

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Morrow Sodali has extensive experience providing Strategic Stock Surveillance for our corporate clients. Since our inception more than 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.

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TRANSFER AGENTS & AGENCY SERVICES

Broadridge

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.

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.

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As two of the most trusted and recommended transfer agencies, **EQ + AST** have come together and are now the transfer agent with the highest customer loyalty according to GroupFive's 2022 report. And with over 150 years of combined expertise in the industry, we can effectively handle any customer need regardless of the complexity.

Responsible for over 6.3 million shareholders in the U.S. and 23 million globally, we issue more than $320 billion in payments each year across the globe. Our purpose is to care for every customer and simplify each and every transaction, delivering the highest levels of service through an effortless and enjoyable experience.

EQ + AST is one provider that does it all, including delivery of payments, administration and technology services to organizations globally. With one point of contact, there's no need to transfer records or find and manage multiple vendors. You make one call – we make it happen.

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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.

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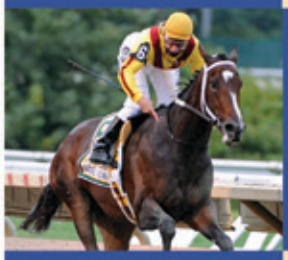
Annual Meetings



Special Meetings

Proxy Contests

Shareholder Vote Analysis

Corporate Governance Consulting

Tender and Exchange Offers

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Checklist: Annual Meetings - Virtual Meetings

By TheCorporateCounsel.net

1. Initial Viability Considerations

- Confirm state law permits a virtual-only meeting. Some states require either hybrid or in-person meetings – and although many gave special dispensation during Covid-19, it's unclear whether that relief will continue.

- Confirm company bylaws permit a virtual-only format.

- Confirm that the company will comply with all meeting notice requirements.

- For "virtual-only" meetings, consider shareholder views and proxy advisor policies.

  - ISS historically has favored in-person or hybrid meeting formats but recognizes that a virtual-only meeting may be necessary in certain circumstances, such as during Covid-19. ISS doesn't have a policy to recommend votes "against" companies who hold virtual-only meetings. ISS encourages companies to disclose the reasons for a virtual-only meeting format and to strive to provide shareholders with a meaningful opportunity to participate as fully as possible, including being able to ask questions of directors and management and to engage in dialogue if they wish. ISS encourages companies to commit to return to in-person or hybrid meetings as soon as practicable.

  - Glass Lewis will recommend a vote "against" the chair of the governance committee if the company doesn't provide detailed proxy disclosure to assure shareholders that they'll have the same rights & opportunities to participate that they would have at an in-person meeting, including – at a minimum – the rationale supporting the virtual meeting format. Examples of effective disclosure include:

- Addressing the ability of shareholders to ask questions during the meeting, including the time guidelines for shareholder questions, rules around the types of questions allowed and rules for how questions and comments will be recognized and disclosed to meeting participants;

- Procedures, if any, for posting appropriate questions received during the meeting and the company's answers, on the company's investor page as soon as is practical after the meeting;

- Addressing technical and logistical issues related to accessing the virtual meeting platform; and

- Procedures for accessing technical support to assist in the event of any difficulties accessing the virtual meeting.

- The Council of Institutional Investors doesn't favor virtual-only meetings and instead says virtual meetings should supplement, but not substitute for, in-person shareholder meetings. For virtual shareholder meetings, CII's policy says the virtual meeting should facilitate the opportunity for remote attendees to participate in the meeting to the same degree as in-person attendees. The policy also says that any shareholder who desires to be in the physical room from which the chair conducts a virtual-only meeting should have the choice to do so, provided the shareholder complies with reasonable admission requirements.

2. Pros & Cons of Virtual Meetings

The benefits of virtual meetings include:

– Acknowledges infeasibility for many shareholders to attend the annual meeting in person due to travel costs and scheduling considerations.

– Provides opportunity for increased shareholder & employee attendance and participation.

- Demonstrates commitment to transparency.

- When using a video component, it affords an opportunity for shareholders to view management and the board and gives an opportunity for management and board to present themselves – something not available via audio-only webcast.

- If using audio-only format, meeting likely will be less costly than hosting an in-person meeting.

- If properly structured, affords Regulation FD "protection."

Some primary drawbacks of virtual meetings include:

- Costs for video webcasting services. Although “virtual-only” meetings are often touted for their potential cost-savings, a “hybrid” meeting will still require costs for the physical location, plus the costs for video webcasting.

- Extra work involved with technical dry runs, board discussions and shareholder messaging.

- For “virtual-only” meetings, some states (including Delaware) require companies incorporated in those states to post a list of registered shareholders during the meeting. If Broadridge is the platform that you're using, they have multiple protections on how the list is displayed:

    - The link is only available on the meeting page which ensures only validated shareholders see it.

    - If a shareholder clicks on it, they must re-enter their control number and give a reason for why they want to see it.

    - Once they have access to the list, they can’t print or download the file. However, they could take screen shots, but Broadridge has paginated it in such a way that even that process would be cumbersome.

3. Planning for a Virtual-Only or Hybrid Meeting

A. Meeting Format

- Determine whether to host virtual-only, in-person only or a hybrid meeting.

- If you're considering a virtual-only meeting, discuss possible shareholder and media pushback with your board before making a final decision and discuss the annual meeting attendance policy with the board. Encourage the board to attend regardless of format if possible.

- If you're considering a virtual-only meeting, discuss possible shareholder and media pushback with your largest shareholders before making a final decision.

- For a virtual-only format, determine what experience you'll provide: live audio-only; live audio plus visual components like slides, photos or pre-recorded videos; or live audio plus live video.

- Determine which department has primary responsibility for coordinating a video or audio webcast.

- Determine whether to publicly webcast the meeting on the company's investor page, in addition to providing dedicated remote access & participation for shareholders.

- If you're gathering your presenters together in a single location for a video webcast, consider lighting and other production needs when selecting a venue.

B. Service Provider

- Determine whether to use an outside A/V provider (recommended particularly for those who lack expertise and experience in-house). If so, contact potential providers early on so that you can understand the service offerings and get your meeting date on their calendar. Many providers have

an "a la carte" menu that allows selection of a number of services beyond the basic package.

- Video webcasting costs can vary widely depending upon the outside provider and scope of services provided. Consider whether expected benefits justify the costs. Cost components may include pre-meeting planning and testing, video equipment and technicians, camera crew, PowerPoint support, synchronization of slides, projection screens, online Q&A portal, tech support for shareholders during the meeting, post-meeting archival.

- Ensure accessible technology that offers options to accommodate all shareholders and is ADA-compliant.

C. Meeting Accessibility and Rules

- Prepare clear instructions on how participants can attend a virtual-only or hybrid meeting. Post this information on the company website with other annual meeting materials – in addition to disclosing the information in the proxy statement. If there are different instructions on how shareholders of record and beneficial holders can attend, make this clear as well.

- If hosting a virtual-only or hybrid meeting, determine whether online participants will be permitted to ask questions in real-time, before the meeting and after the meeting, and explain the procedures for submitting questions on the company website and in the proxy statement. Consider whether the participants will be able to call in to ask a question, or whether the participants can only submit questions online.

- Prepare rules of conduct that clearly explain how the Q&A process will operate – e.g., whether there will be a limit on the number of questions taken during the meeting, whether the company will only take questions from verified shareholders, whether and how the company will select questions to answer, whether the company will combine similar questions or reserve the right to filter or edit questions that may have inappropriate

content, etc. – and post the rules of conduct online with other annual meeting materials.

- If online participants will be permitted to ask questions during the meeting, determine who will handle the intake and coordinate with the company's designated speakers.

- For hybrid meetings, determine how questions submitted from online participants will be coordinated with questions raised by on-site attendees.

- For questions submitted online during a virtual meeting, determine whether you will post the questions online for all participants to see (and ensure that the approach you take is consistent with your rules of conduct).

- For questions submitted online, consider whether additional sign-on and password protections are necessary to ensure shareholder security and privacy.
  |
- For questions submitted online before or during the meeting that you weren't able to answer, determine whether you will be answering the questions after the meeting and whether you will post those questions and answers online – some investors expect to see responses to non-trivial questions posted to the company's investor relations webpage within a reasonable time after the meeting (i.e., about three days).

D. Shareholder Outreach Considerations

- If a shareholder proposal is on the ballot, reach out to shareholder proponent to determine who will present the proposal and how they will access the meeting – to avoid technical hiccups, consider asking the proponent to pre-record a statement for the company to play if needed, or if the proponent prefers. Confirm the shareholder proponent is aware of the time allotted for his or her proposal, and any technical information for the virtual platform for their presentation.

- Give a courtesy call to your largest holders in advance of the meeting to make sure they know how to access the meeting. If you're hosting a virtual-only meeting, make sure they aren't planning to show up in person.

E. Additional Considerations and Planning Tips

- If you decide to go "virtual-only", shareholders increasingly prefer video in addition to audio, so consider asking company executives and the board to gather in one location, presuming it is feasible to do so. If nothing else, include visual components like photos or slides.

- Listen to some of your peer company meetings from the prior year to see what worked well and what didn't.

- If it's your first time webcasting the meeting, conduct a dry-run at least a week in advance to test the technology as well as the flow of the meeting. Use "actors" for your senior managers or anyone else who will participate in the meeting.

- The day before the meeting, conduct a dry-run to ensure that webcasting and sound equipment (including microphones) and lighting work. Have people like auditors, outside counsel or even some members of management and the board dial in and test their lines/technology to make sure there is no snafu if they are called upon during the meeting. Consider designating a back-up inspector of election in case the initial inspector loses connectivity.

- For a "virtual-only" meeting, reserve a backup location in case there's a last- minute decision to also conduct the meeting in-person (due to shareholder criticism or technical issues).

- Have a contingency plan for what to do if there's a major technical glitch or crash, such as a power or internet outage at the site the meeting is being broadcast from or where your shareholder proponent is located – confirm

your meeting service provider is able to post an immediate notice about the glitch or the shareholder proponent has a back-up plan.

4. Meeting Day Presentations and Technical Arrangements

- Post presentations for download, ideally at least one hour in advance.

- Consider use of visuals beyond PowerPoint slides – perhaps photos of directors and officers and other speakers. A live visual feed of the meeting is considered the "gold standard."

- Make sure that back-up equipment is available on the meeting premises just in case.

- Have a dedicated audio line for all participants in the meeting who are expected to speak – chairman, CEO, corporate secretary, etc.

- Have a separate dedicated and professionally attended audio line for directors and executives and consider using another dedicated audio line for other must-have attendees such as the inspector of elections, outside auditors and shareholder proponents (if any).

- Open Internet access (and telephone lines if applicable) in advance of meeting to allow shareholders to test access and ensure participation.

- Provide a technical support line/link that includes capability for real-time communication on each page of the meeting platform for shareholders to resolve issues during meeting.

- Arrange for real-time tech support for the company to alert company personnel at the meeting site of any technical problems being experienced by online audience.

- Ensure you have a list of contact telephone numbers for everyone expected to speak during the meeting, as well as for each of your directors, so you can contact them offline if needed. A back-channel chat feature is also

recommended for all people who will be expected to speak at the meeting or who may have to respond to questions.

5. Post-Meeting

- Make webcast and any presentations available for a period of time for access by interested parties. A 30-day period is common; some companies opt for a longer time period.

- If you said you would post Q&As to your website following the meeting, post them within a reasonable amount of time. Investors prefer to see this information within a few days following the meeting. Adhere to your rules of conduct if you edit or omit any questions – transparency is very important and you want to avoid any perception that you're cherry-picking.

- Archiving audio or video webcasts could alleviate the perceived need for a transcript of the annual meeting.

- Review all aspects of video webcasting experience in your post-mortem meeting. See our separate "Checklist: Annual Meetings – Post-Mortem Activities."

The Virtual Shareholder Meeting Q&A – and How to Tackle It

2020, 2020 Q3, ANNUAL MEETINGS, ISSUES, VIRTUAL MEETINGS

The most troublesome issues at 2020 VSMs - by far - have revolved around the Question and Answer Period: Just as we had warned, many activist investors took pains to submit questions - both in advance, via an e-mail to the company's Investor-Page - or by typing into a "Question Box" on the VSM site while the meeting was in progress - to see if the "system" was working, and in a fair and impartial way. In far too many cases the "system" was simply not working, thanks to problems with those control numbers...and in a few cases the "system" seemed to have been intentionally rigged to cherry-pick the softball Qs - and to deliberately exclude tough ones.

But as the **Council of Institutional Investors** has been saying - and as **Glass Lewis** and **ISS** have been saying too - "Meetings of Shareholders" absolutely MUST provide the ability for shareholders to engage in "open and spontaneous interactions with management and the board."
Many meeting participants, most notably **BlackRock**, have gone so far as to say that Virtual Meetings "should provide the same kind of opportunities for spontaneous and unscripted interactions that in-person meetings do." But let's face up to it folks: Asking stockholders to type their questions into an online "question box" as the only option - while the meeting is in progress, no less - is hardly a shareholder-friendly option and certainly not the equivalent of an "in-person experience."

We at the *OPTIMIZER* have been saying for many years that the Q&A period is not only the most important part of a Meeting of Shareholders - it is, in fact, its' very raison d'être. AND, more importantly, that it is, by far, the most valuable contributor to good corporate governance there is: It forces senior management to elicit info from the company at large, and to bone up on important issues - and on potentially important developing issues as well...

There is yet another good-governance aspect of a good Meeting of Shareholders, and that is the opportunity for shareholders to see as well as hear the management responses: We have been to dozens of meetings where we were so impressed by the quality of management, and the way they handled tough questions, that we bought the stock...and, almost always, did incredibly well.

But we have been to many meetings where a new CEO came across as so self-centered, and often so rude and crude and full of himself when faced with tough questions that we sold the stock that day...and saved ourselves from major losses. As we've mentioned here before, such folks almost always exhibit "body language" and a variety of "tells" when they are not telling the full truth - or not fully convinced of what they are saying - or maybe hiding some bad new info and fearing it might come out during the Q&A - that savvy observers can and do pick up on.

With that said...

HERE ARE OUR PRACTICAL SUGGESTIONS FOR HANDLING THE QUESTION AND ANSWER PERIOD IN A THOUGHTFUL, INVESTOR-FRIENDLY, TOTALLY FAIR AND THOROUGH MANNER:

Step-one should be to prominently *welcome* - and to *solicit* shareholder questions in your proxy materials - and to carefully explain exactly how they can be submitted, and how they will be answered.

A very good step-two: Invite shareholders to submit questions in advance, via an e-mail to your Investor Relations site. Some institutional investors have pooh-poohed this, as leading to cherry-picked questions and canned answers. But this is the easiest way, by far, for all concerned - and we have found this to be a very good indicator of the issues that are on the minds of the savviest and most interested shareholders. It's also a quick and easy way to "get the Q&A ball rolling...and it provides excellent opportunities to have the questions answered by the best-qualified person...which conveys a welcome "openness" to shareholder questions, helps to showcase the management team as a whole and adds much needed variety to the webcast. But this should definitely NOT be the only way you allow questions to be asked.

Make it clear that the question period will be in two parts - the first for questions that relate to 'the business of the meeting" - the items to be voted on - and a second period, following the voting, for general questions about the business itself or for any comments that a shareholder may wish to make about the conduct of the business. This will make it easy for you to sort out and address the questions that pertain to the election of directors, ratification of auditors and various compensation matters and those pertaining to the business of the company as a whole. It will also give you time to assess the number of questions that may be arriving in real-time from other sources - and to sort them all out and tee them up in a logical and fair fashion.

Shareholder proponents should be given a "reasonable time" to introduce their proposals, and a brief "seconding statement" should also be allowed, if another shareholder wishes to make one. Then it would only be fair to ask if there are any questions or comments on each proposal, and to wait a few seconds to see if there are any. (At most meetings there are few or no additional comments or questions on these matters.)

It is perfectly fair to expect shareholders who wish to ask a question at the meeting to identify themselves - and also to confirm themselves as shareholders in advance - just as one does at in-person meetings...But there are some potential difficulties you

will need to think through to give all shareholders a "fair chance" to be heard: Please note carefully that if they are registered holders, you - or your service-provider, via its meeting app - should be able to confirm their share ownership with relative ease - but that not all service providers are able to do this.

If they are *not* registered holders - and you are using a service-provider other than Broadridge - there are some tricky logistical issues to sort out: To be "perfectly correct" prospective questioners have long been required to provide proof of share ownership in order to be recognized at a shareholder meeting. But at a non-Broadridge VSM this would have to be done in advance - and it requires quite a bit of extra time and effort by all concerned.

We suggest that if there are not a lot of questions in the queue, no real harm is done by simply "accepting" an *assertion* as to share ownership once a person has stated his or her name. And - if there are few or no questions in the queue - no real harm is done by taking a question from *any* interested party.

If questioners have identified themselves and asked to be recognized at the meeting in advance, it is not only perfectly proper, but smart to ask them to indicate what the general *subject matter* of their question is - to assure that it is a proper question or comment to come before the meeting as a whole and to tee it up at the proper time. But there is no need to ask what, exactly, the question is. This is a good way to assure "spontaneity" AND to guard against accusations of "cherry-picking."

If few questions are expected, consider allowing shareholders to preregister and to submit their question over a dial-in conference-number: For companies that are used to getting very few or even no questions, this is an excellent way to go: It will allow you to offer shareholders the ability to call in on the same conference line you use for Directors, and for other participants in the meeting, like shareholder proponents, Inspectors of Election and outside auditors - and will help you to manage the question period smoothly and cost-effectively.

If your company has had many questions asked at in-person meetings, however - or if there are issues that might generate a higher-than-usual number of shareholder questions - offer a toll-free, operator-assisted number that will allow questioners to "wait in a queue" on a first-come-first-served basis. Aside from being the "fairest way" - and one that eliminates the chance to "cherry pick" - and that guarantees "spontaneity" - it is essentially the same system that has been available forever at in-person meetings. Please bear in mind that every Board Chair worth his or her salt knows how to deal with questions that are not in order - and with "hard questions" too… smoothly and with dispatch…And actually, it gives them an opportunity to really "show their stuff." And please know that this is NOT an "expensive" option to offer - especially when compared to the expense of hosting a large in-person meeting.

Be sure to alternate questions in a fair and strictly impartial manner, starting, we'd suggest, with the first pertinent question received on your Investor Page, then moving to the first preregistered question, over a conference line, then to the first question in a phone-queue if you have one and then to the first person on line if you are hosting a Hybrid Meeting that has in-person attendees, then to the first valid question to come over a live internet site, then continuing in that order. Our top-tip here, recognizing how hard it is to Chair a meeting while juggling three or more separate

queues of questions, is to have your Chief Corporate Governance or Investor Relations Officer - along with a trusted colleague - carefully sort-through, tee-up and ASK the questions that have been submitted via the IR page or via the "question box" on the meeting site.

If you really want to provide an experience that is as close as possible to an in-person meeting, plan to broadcast *live video* of the actual proceedings - and have the camera focus on the person who is answering each question. This may be a lot harder to do if you are having the questions answered by a variety of people - many of whom may not be in the meeting room - but it is certainly not rocket science to pull this off successfully. And, of course, it makes sense to weigh this against the possibility that, as is true of the majority of Shareholder Meetings, there are no questions at all.

Allow each questioner to ask one brief follow-up question if they wish to do so, to assure there is a true *dialogue* between the questioner and the management representative or director who answers each question.

Be sure that you have allowed a "reasonable" amount of time for each subject on the agenda to be covered - and for a "reasonably long" general Q&A period. This is where taking questions in advance can be particularly helpful.

And please remember that there is often no real need to impose an inflexible "hard stop" in the event that more questions than anticipated are still in the queue when the projected time has elapsed.

Be sure to commit - up-front - to answering all questions that were asked, prior to and during the meeting via the web-app, and then follow through promptly, by posting the answers on the Investor Page.

A Sample "Run-Of-Show" For A Satisfying And Successful VSM

2021, 2021 Q3, ANNUAL MEETINGS, ISSUES, VIRTUAL MEETINGS

With our comments on the most important best practices to adopt - and on bad and worst practices to avoid:

- Twenty minutes prior to the Meeting time there should be a welcoming message on the Meeting site - with a visually pleasing background, easy-to-read typefaces and your company name and logo, of course - since many attendees will need and want to tune in early. There should also be a reminder that the Meeting will begin at X o'clock - or in X minutes.
- It is a very good idea to have icons to click on to review the Agenda and the Official Rules of Conduct - and to type in a question in advance if attendees wish to do so - and even, *perhaps,* to review the proxy statement. But PLEASE - be absolutely sure that attendees will be able to toggle back and forth smoothly - without delay and without being disconnected, as so often happens with these apps... and which may, actually, be *unavoidable* with lengthy documents like a proxy statement that need time to load, and where the formatting may not be compatible with many attendees' laptops.
- Ideally, there will be some cheerful background music - not too loud or strident, please - that will be timed to end nicely - *non-abruptly* and on an upbeat note, we suggest - and at the very moment the Meeting "goes live" - which should be at precisely the appointed time.
- Best practice, we say, is to have the Chairman introduce herself or himself, welcome shareholders to the Meeting and provide a brief overview of the agenda and the Rules of Conduct - with particular emphasis on exactly when and how attendees will be able to submit questions - and receive the answers.
- The Chairman should introduce all of the directors and key officers in attendance, as well as the outside auditor rep(s) and the Inspector(s) of Election. The *very best practice* is to have Directors appear live, on Zoom or a similar app, and ideally to smile and say good morning or happy to be here, to confirm their attendance and provide a "human touch." Second-best would be to have photos of them as they are introduced, and - at a bare minimum - to have them un-mute to confirm they're there.

- We think that providing a brief overview of the prior year - and perhaps a brief overview of the outlook for the coming year - is a good and very appropriate way to set the stage for the business portion of the Meeting, and, of course, for the voting. But this should not preclude a more extensive review of the opportunities and the challenges ahead, later in the Meeting - as a prelude to the Q&A period - which it actually helps to introduce and to expedite nicely.
- The "Official Business of the Meeting" should begin next, however - and it is the best practice, we say, to make it clear that there will be an opportunity for questions and comments after each item of business is introduced - with time limits for each item that are appropriate to the subject matter and complexity of each item - and that, following the voting, there will be a separate *General Question and Answer Period* to cover all other matters. (*Note well:* Postponing the Q&A period for all of the items to be voted on until all items are introduced is decidedly NOT a best practice.)
- Having the Chief Governance Officer or Corporate Secretary to declare the polls open and conduct the official business portion is usually the most efficient and expeditious way to accomplish this. Please be sure to allow proponents, and any shareholders who may wish to be heard on a matter, ample time to do so. Usually, the Governance Officer will have spoken to proponents in advance, reviewed the guidelines with them, and agreed on time limits that will not force proponents to rush, or to have to be "warned" as to the time - or, worst of all - abruptly cut off. Failing to manage this smoothly - and especially failing to allow sufficient time, and a bit of slack for proponents to make their points, really sets a bad tone with shareholders, proponents, governance-watchers and "meeting reviewers" alike.
- Closing of the polls: We believe that the polls should be "officially closed" after all the proposals have been introduced and discussed - AND after a "fair warning" - AND, of course, after a reasonable period of time for in-person and online voters to record - or change their votes. (Two minutes is usually about right for this.) While a few companies keep the polls open until after the general Q&A period - and while that is "OK" - the polls MUST be "officially closed" - but only after fair warning and a fair chance to change one's vote. So closing them as the last official act is not the best time to do this in our view, and often tends to make the next item of business awkward, and sometimes a bit rushed.
- Announcement of the voting outcomes: The Inspector of Elections is the best person to report on and summarize the "preliminary" voting outcomes, we say, since the responsibility is clearly theirs, and that it is the Chairman's role to "declare" which items have been approved, and which have not been, based on the IOE's Final Report. (Sometimes, and especially if there are close or contested items, it IS better to have the IOE make the declaration.) Note well, that at VSMs, the Final Numbers will not usually be known until all the online votes are vetted and tallied, so the IOE should summarize the items that have clearly "been approved" - "not approved" - and any that are still "subject to final verification." If no items are in doubt, the Chair can and should "declare them" to have been approved - or not approved in accordance with the IOE's report - but if there are any uncertainties, to simply note that the final results will be posted to the company's website as soon as the final review is completed.
- The currently all-important Question and Answer Period is best moderated, we believe, by the company's chief Investor Relations Officer, since that person is likely to have the

best handle on current items of real importance to investors. They also have the most day-to-day experience with smoothly and diplomatically fielding questions - and directing them to the best person for the answers, or, on occasion, ruling a question as out of order. And, thanks to earnings calls, they are usually among the most tech-savvy candidates to run this session. This year, Meeting Managers will be held to particularly high standards here, so we urge readers to refer to the detailed tips on managing the Q&A period that are on our website - but, in a nutshell, to be scrupulously fair and even-handed in alternating questions received in advance, presented in person, if there is an in-person component, and received via the web-app - and to very seriously consider allowing shareholders to call-in questions live, via a dedicated toll-free, operator-attended phone line. The Moderator should work hard - and creatively - to generate a *dialog* rather than a series of monologs. This can be done by teeing-up related questions in a good sequence - and by having questions fielded by a variety of people - and by allowing for and facilitating follow-up questions. The Moderator should also mention how unanswered questions will be handled if time runs out, and whether (the best practice) all questions and answers will be posted to their website.

- Extremely important - Be sure to conduct a complete and thorough dress rehearsal - with all of the technologies to be used ON - and WORKING - well before the Meeting date. Pay special attention to sound-checks - and coach all phone and web attendees on how to unmute - and to "go on mute" when not speaking to minimize background noise and jarring "interference."
- Please be sure to have one or more people monitor the Meeting while it is in progress - to make adjustments to the volume as necessary - and to spring into action immediately if any of the systems develop glitches, go-down completely, or if presenters or questioners have sound-quality issues, or get disconnected.

Checklist: Annual Meetings - Security

By TheCorporateCounsel.net

A. Factors Impacting Security Arrangements

1. Venue Selection: While choice of venue is rarely driven solely by security considerations, the selected venue almost always factors into the security arrangements.

For example, hotels are accustomed to dealing with large groups and usually have their own security personnel. On the other hand, security may be just as robust and easier to manage (and less expensive) if the meeting is held on the company's own property - it tends to be easier to evict someone who is a disturbance on your own property. However, some believe that attendees are more likely to act up on turf they perceive to be "their own."

Regardless of company size, the corporate HQ and non-corporate sites are equally popular venues - with hotels being the most common type of non-corporate facility. See our separate "Checklist: Annual Meetings – Locations & Venues."

2. Expected Level of Attendance: Although it can be difficult to predict attendance, security considerations typically are more important for larger gatherings regardless of whether there are known controversies or anticipated disruptions. Larger groups tend to increase active participation and the potential for disagreement, "pile-ons," etc.

Some companies require that shareholders request admission cards/tickets in an attempt to gauge expected attendance and control admissions. Even though requiring shareholders to request an admission card/ticket can help you identify the potential for disruptions if the requests far exceed what you have experienced historically, it's typically a poor predictor of attendance.

See our separate "Checklist: Annual Meetings – Admission & Registration."

3. Anticipated Controversy or Disruption: Additional precautionary measures are warranted if disturbances are contemplated. Consider:

- Union or widespread employee issues - labor-management issues often are the cause of disruptions at meetings

- Company-specific circumstances, such as a corporate scandal, scandals involving your outside directors or your CEO in connection with their activities outside the company, substantial government investigation

- Industry, competitor, major customer or vendor (outside the context of the company-customer/vendor relationship) issues with potential for spillover

- Whether particularly contentious issues are likely to be discussed

- Whether the company has a high media profile that might attract outside attention

- Bad press, including ominous chatter online or in social media channels

- Poor performance results

- Attacks on the company by activists or others

- Letters, calls and complaints to management or the board. Before the meeting, ensure that any disturbing letters, calls and complaints to the executive suite come to your attention.

- An upsurge in attendance RSVPs can be an early sign of potential disruption at the meeting

- Local movements or protests (local to meeting location) with potential for spillover

- Monitoring transfer sheets for one-share purchases or transfers

If you anticipate a major disturbance, consider restricting admission to shareholders and their proxies who have the right to vote (i.e., based on record date).

4. <u>Desired Approach & Tone:</u> Determine whether you want your security to be visible, subtle or undetectable. If you expect disruption, you may want security to be highly visible because this may deter misbehavior. Otherwise, companies typically opt to have security measures (including security personnel) fade into the background so that shareholders don't become concerned about what may be going on at the company that would require such strong security measures.

5. Security Should Cover Attendees Too: Security should encompass everyone attending the meeting - not just management and the board.

6. Company Resources: As with most other annual meeting considerations, security arrangements may be budget-driven. Certain precautionary measures may appear justifiable - but not affordable. There are numerous "tools" available to bolster security regardless of budget, so consider alternatives to get the most "bang for the buck" within the confines of your budgetary constraints.

7. Start from Scratch Each Year Assuming Worst-Case Scenarios: Good advice from Carl Hagberg: "Most companies tend to dust off the same old plan every year. As a result, security measures at some companies are far in excess of what's required. Not only is this overly expensive, it makes a stockholder wonder "what are these guys afraid of?" But many other companies have been lulled into a false sense of security by years of uneventful meetings. In reality, they're the ones that are the most vulnerable of all."

8. Move to Safer Venue If Large Disruption Looms: From Carl: "Give some thought to moving the meeting to a bigger and/or potentially "safer" site if signs of previously unexpected troublemakers arise, or if your company might be in an activist's sweet spot in any way."

9. Prepare for Large Scale Evictions If Necessary: From Carl: "If you think you might be a target, be sure you have enough security *on hand* to evict 30 or 40 people. It isn't easy, even when they are in groups of four or five and relatively cooperative once instructed to leave…unless you have sufficient numbers of well-trained security staffers on hand."

10. Evict Disruptive Shareholders Gently: From Carl: "Use a "gentle touch" and a "gentle tone" as you do the evicting: We actually felt panicky when the very-beefy head-security-guy at one meeting we went to began to flail his arms and loudly and repeatedly yell "GET OUT!" as he followed the last of the "Pay Your Fair Share of Taxes People" out of the hall…all of whom forgot to vote their one-share holdings, by the way…"

B. Security Measures

1. Admissions & Registration: Determine and communicate the admission and registration procedures well in advance, including:

- **Remind Your Employees & Security Personnel to Be Friendly:** Perhaps there is no easier way to defuse a potential attendee disruption than being friendly and respectful to that attendee. Remember that these are your shareholders. They care about the company, too.

Having employees interact with shareholders is to be encouraged, not discouraged. Shareholders' interaction with company personnel typically furthers good will towards the company. In contrast, unfriendly and aloof behavior on the part of management and employees can generate undesirable negative perceptions and ill will among the company's shareholders. Everyone working the meeting associated with the company should wear a distinctive badge – with their name along with their title or role - so they are easy to spot as hosts.

- **Controlled Access:** Require registration, including proof of ID, for everyone. Don't be selective and apply the requirements to some attendees and not others. As a condition of admission, consider whether other physical security procedures, such as manual bag checks or metal detectors, are appropriate.

- **Expected Disturbances:** If you anticipate a major disturbance, consider restricting admission to shareholders and their proxies who have the right to vote (i.e., based on record date). Note that you likely have no grounds to keep a legitimate shareholder from attending the meeting – even if you have reason to believe that they will disrupt the meeting (eg. they disrupted the meeting last year) – you'll have to wait until there's a disruption at this meeting.

There is little instruction from the Delaware courts and statutes on how to handle the truly disruptive stockholder - one who is making a scene. We recommend that companies plan for this possibility – by having a script prepared, as well as a process.

Another practical approach is to have a "kill" switch or alternative strategy for the microphone that is already set up for shareholders to speak during the Q&A session. For example, if you have someone from the company who is walking around the room with the microphone, they should hold it rather than allow the shareholder to take control, so that if the shareholder won't sit down and/or discontinue their disruptive speaking, the microphone can just be walked away.

- **Separate Registration/Reception Areas:** Some companies use registration and reception areas that are separate from the meeting room to allow security to more easily identify and address anyone who creates a disturbance during the

admissions process. Many who come loaded for bear actually prefer to vent outside the meeting if given a chance.

- **Two-Step Admission Process:** Some companies have attendees flash their identification to gain admission to the building where the meeting is being held and then show proof of identification again at another checkpoint before entering the meeting room.

- **Create a "Watch List":** You might need to create a list of individuals or groups you have identified based on your pre-meeting diligence as likely to show up and cause problems, and who may need to be banned from attending or closely monitored. A few companies even Google (behind the scenes) the names of attendees as they come in to learn more about them – but we're not sure whether that is time well spent.

2. Prepare for Ingress/Egress Issues: Be familiar with ingress and egress - and alternate entrance and exit routes - if you need to sidestep protesters or evacuate unexpectedly and quickly.

3. Visibility Considerations: Depending on how visible you want security to be – and your budget constraints - consider use of company personnel (Security, Loss Prevention), hiring third party security personnel, using local uniformed officers, off-duty officers or plain-clothed security guards.

Whatever approach you choose, all security personnel should be informed in advance of anticipated security risks, visual or other cues to use or watch for in the event an issue arises and how strictly you intend to enforce the rules of conduct.

4. Coordinate Security Arrangements: If your meeting will be held at a public venue, understand what security is available through that venue and coordinate any additional company-provided or secured arrangements with them. Alert the local police department of the scheduled meeting and any anticipated disruption. Carl notes: "Notify the police well in advance of your meeting and ask what other "events" that might somehow spill–over into your agenda are expected to be going on at the same date, time and place. Touch base with them early on the day of your meeting too. If special arrangements seem warranted, they can help you ahead of time."

5. Ban on Electronic Devices: Some companies have rules of conduct that ban all electronic devices. These rules are designed to enhance security and diminish distractions. However, many companies don't have this type of rule or they don't

closely enforce it (e.g., through the use of metal detectors, which is a considerable expense and can set an undesirable tone), as strict enforcement has the potential itself to create a publicity crisis and result in safety concerns. For those companies that don't ban electronic devices, some request that electronic devices be turned off during the meeting.

6. <u>Venue Pre-Screening:</u> Depending on the circumstances, it may be appropriate to have security do a walk-through of the venue before the meeting to ensure that there is no evidence of tampering or other misconduct.

7. <u>Educate Board:</u> Explain your security procedures and potential anticipated issues to the board in advance to alleviate any concerns and confusion. Make sure the directors have a readily accessible back–door exit that, one hopes, will never be needed.

8. <u>Rules of Conduct:</u> Although not required by law, rules of conduct are strongly recommended, as they provide a basis for fair and orderly conduct. They should be handed out the meeting room entrance or placed on each chair in the room – and the Chair should summarize them at the outset. As Carl Hagberg has noted, safe, sane, sensible and scrupulously fair rules of conduct – with the Chair firmly in charge and ready to enforce the rules with fair warning - are the #1 tip for annual meeting security. See our separate "Checklist: Annual Meetings – Rules of Conduct."

9. <u>Use Script:</u> Prepare and rehearse a detailed meeting script that includes scenarios and suggested responses in the event of various types of potential disruptions. See our separate "Checklist: Annual Meetings - Scripts."

Checklist: Annual Meetings - Locations & Venues

By TheCorporateCounsel.net

The following considerations are not prioritized, may not apply to all companies and are not exhaustive:

1. Ensure compliance with governance documents, particularly the company's by-laws (e.g., procedures, limitations as to meeting location/venue)

2. Convenience for board, management, corporate secretary, auditors, inspector of election/transfer agent, and other company administrative and other staff who participate in the process (e.g., security, IR, IT or other staff that address sound and other technology requirements)

3. Costs and convenience to shareholders

4. Costs to company - while holding the meeting at company facilities may be the least expensive option, ensuring a pristine and controlled environment with adequate security at company facilities may be a challenge depending on the company's circumstances.

5. Adequacy of parking (ideally, free parking), access and transportation, and ability to post adequate signage

6. Adequacy of lighting, seating arrangements and handicap facilities

7. Ensure room conditions are otherwise acceptable or can be adjusted (e.g., climate control, room dividers, furnishings)

8. Security issues (if security is a potential issue, perhaps a location outside of the company's property should be considered.)

9. Ensure space can accommodate:

    a. Desired equipment and technology (e.g., mikes, projectors, videoconferencing facilities, PCs, internet access, fax, electrical outlets, phones, etc.)

    b. Expected number of shareholders - with potential for overflow or no shows (consider desire to minimize appearance of empty space)

c. Chairs, tables, podium, desired furnishings

d. Separate registration/admissions area and refreshment area

e. Security

10. Holding meeting locally within community may provide an opportunity to showcase the company's significant presence and role within the community

11. Negative activity occurring locally may warrant locating the meeting elsewhere

12. If the meeting is expected to be completely routine (nothing controversial on the agenda), but the meeting costs have been higher than anticipated or desired, consider scaling back and/or moving the meeting to a less expensive location. (Note that some smaller companies hold meetings at their law firm's offices.)

13. If there is a controversial issue, holding the meeting away from the company's property (and perhaps more remotely than would otherwise be considered) may help control the potential for disruption at the meeting and to the company, and mitigate security risks.

14. Meeting objectives (e.g., satisfaction of legal requirements or huge public relations opportunity) may influence venue selection

15. Advance booking and cancellation provisions for hotels and other public venues

16. Emergency facilities and accommodations

17. Moving the meeting to other parts of the country routinely or periodically has potential upsides (provides opportunity for attendance by different shareholders) and downsides (uncertainty with regard to potential issues that may arise in new location with different and potentially larger or smaller audience).

18. Coat check - and personal belongings - facilities

19. Press facilities (see our separate checklist addressing press considerations)

20. Adequacy of restroom facilities

21. Privacy for preparation and also the meeting itself. If in a hotel or other public venue with thin walls or sliding barriers, everyone around you may be privy to the meeting discussions, side-bar conversations, disruptions, etc.

22. Noise from rooms adjacent, above, below or outside (e.g., outside construction)

The Best, Worst and Weirdest Things We've Seen in the 2019 Meeting Season to Date

2019, 2019 Q2, ANNUAL MEETINGS, ISSUES

LET'S PUT THE WORST BEHIND US FIRST: The return of those perfectly awful "floor votes" - led this season by the equally awful "Burn More Coal" lobby at meetings of at least four electric utility companies. We've warned annually about the foolishness of allowing floor votes, since (a) they fly in the face of a company's invaluable Notice Provisions (b) companies are downright wrong about thinking they can automatically cast opposing votes for street-name voters - unless, that is, they have added a box to be checked (or not) that will allow such votes to be tallied, with actual numbers to be reported and (c) we have seen several instances where floor-vote sponsors were able to quietly generate enough votes from supporters via an "exempt solicitation" to actually oust company directors and take control of the company!

But this year's saga has had a pretty happy ending: At two companies - **Ameren** (which *had* added a box to check to give the company the authority to vote on "all other business") and at **Southern Company** - where there was no time to do so, but which prompted a fresh and careful new look at meeting admission criteria - the proponents failed to show up...so no votes were tailed for them. At **Exelon**, the proposal from Burn More Coal fans garnered a mere 1.6% of the votes cast. And Southern took our advice, we're happy to say - and was able to amend its bylaws to drop the ill-considered floor-vote provision - without the need for a shareholder vote to do so.

> ***Dear readers, please DO check your bylaws and if you have a provision to allow "floor votes," try to eliminate it ASAP...even if it does require a shareholder vote.***

NEXT, LET'S CELEBRATE AND LEARN FROM THE BEST THINGS WE'VE SEEN THIS SEASON... Bank of America is the hands-down winner again this year, continuing to grow its retail investor vote - and its quorum too - from largely pro-management voters - by donating $1 to charity for each shareholder account that casts its votes. Over three years, with gifts to the **Special Olympics**, **Habitat for Humanity**, and this year, the **American Red Cross**, BofA has increased the number of retail voters by well over 50% - a truly amazing feat. This year, its quorum of "actual voters" grew yet again - despite a move to reorganize and

simplify its Employee Plans, where they decided to eliminate proportional voting (more kudos for them!) This had the effect of reducing the number of votes that were formerly "represented" when Plan Trustees used proportional voting provisions to fully vote the shares in the Plan, even while the voters had, in many cases, chosen NOT to vote. But, happy day, new voters in 2019 more than made up the difference!

> ***Readers: Be sure to review the BofA Annual Report and Proxy Statement with special care as you start your own engines for 2020 to see how and why it is so effective at getting out the vote. As we did so ourselves, we realized that it was not just the charitable donations that did the trick - though WOW, BofA donated over $1 million this year: It was the way their materials "set the table" for voters to vote - and made them feel that it's a company that "gets it" - and made them feel that the strong and diverse management team and board - AND their values - and a strong social conscience - make it a company that deserves a vote of confidence. And, P.S. - BofA did another very smart thing this year: Within two minutes following adjournment of the meeting, Chairman Brian Moynihan e-mailed a 20-second video, thanking investors for their interest - and for voting in time for the meeting: An easy and inexpensive thing to do - and, as we have been advising for years, a fast and gracious Thank You is one of the best ways ever to acknowledge - and to reinforce desired behaviors…Take it to the bank!***

NOW FOR ONE OF THE WORST - AND THE WEIRDEST THINGS WE SAW THIS SEASON – A court-ordered vote at small-cap Harbor Diversified:

It's always a bad thing for a company when a shareholder goes to court and successfully petitions for a court-ordered meeting because the company has not had one within the state designated guidelines - often as little as 13 months. But here's the first weird part: Normally, the successful petitioner has the right to put any proposals he or she wishes to propose on the ballot - and the quorum is literally "whatever votes show up" - no matter how few they might be… But here, the Delaware Chancellor - normally one of the court's brightest lights - missed a beat in our opinion - maybe because he did not understand the many "proxy-plumbing" issues - and instead of allowing the proponent to put one or more candidates on the ballot, allowed them to have a "write-in line" om the proxy cards and VIFs where holders could not only write in a name (or names) but express a "vote" on a proposal to resume annual meetings. But Oops…it may have been because the proponent shied away from the costs of a full-blown proxy fight and thought they'd found a better, cheaper way forward. But then…and one of the weirdest things we've ever seen, the proponent's lawyer managed to garner a very significant number of votes by contacting a few large registered holders - and somehow gathering votes from clients of large "retail brokerage firms" - like Ameritrade, Charles Schwab and others! Four people wrote in their own names, but most took the time and the trouble to write in the name of the proponent's candidate! Interestingly, the proponent's lawyer may well have won at least one of the three open board seats, had she launched a "regular" proxy fight…and included the candidate's name on the card. After all, shareholders of companies that have "gone dark" - and where they have not issued updates for more than three years, - and where the business results were not terribly encouraging, it seemed - could easily be persuaded to vote for one new board member. But as we told her when she called to challenge the results, she had only herself to blame since (a) and largely because she did not understand the proxy plumbing system, she failed to win a

plurality, as she herself admitted, and (b) she failed to know and to understand and observe the "rules of proxy" in that (c) she failed to show up at the meeting to cast the votes that ran to her - a fatal breach - and (d) we, as the judge of elections considered that any rights she may have had to challenge the results were lost in our view, when she failed to show up at the meeting, or to send a "proxy" of her own.

> ***Readers; a very important set of points to note - especially if you have not held a shareholder meeting in 13 months or more - which can sometimes happen at solvent and otherwise compliant companies that have had technical or other delays in filing a 10-k. on time. Also, we felt sure that the proponent's lawyer - a very bright and charming lady - is bound and determined to learn more about the rules of proxy AND to make a career out of finding and pursuing and often taking full control companies whose meetings are way behind-times…. a fairly easy thing to determine…***

MORE WEIRDNESS: THE CASE OF THE NON-RESPONDING - THEN OVER-RESPONDING "RESPONDENT BANKS": At one of the meetings where a member of our team served as the Inspector of Election this season, the company - a fairly small-cap one - had a proposal to effect a reverse-split, and another for a name change - plus two other proposals deemed non-routine on the ballot - but no "routine proposal" at all. As a result, with no "broker votes" eligible to be cast, they were more than ten percentage points short of a quorum on the meeting date. So they adjourned the meeting and set another date for thirty days later. While their proxy solicitor was beating the bushes for more votes, the company remembered that they had a German investor with nearly half a million shares, so they reached out to him directly and asked him to contact his local bank or broker and instruct them to cast his votes, which he was perfectly willing to do. But his local custodian was unable to help him: They did not know where the shares were held, much less who to call for the answer. Brilliantly, we thought, the company asked the Inspector of Elections if he would consider accepting a sworn statement, with a power of attorney from the investor, swearing to his ownership and authorizing the company to cast his votes for the four proposals. And the investor promptly filed his statement in German and in English! And yes, why would an Inspector disenfranchise a sworn bona-fide owner? And then - in another helpful development - the NYSE agreed to rule that two proposals (but not the two critical ones) could be considered "routine" ones - so broker-votes came in that put the tally much closer to a quorum, but still not there. So another adjournment had to be teed up.

Meanwhile, the proxy solicitor reported that they had "votes in hand" that would put the proposals over the top…So, as the company, the tabulator and the IOE asked, "Where are they?" The independent tabulating agent had searched the un-voted accounts - but when they checked every one of the "respondent bank" positions, they were unable to identify a single un-voted position of that size. (What IS a "respondent bank"? one may well ask. It is a foreign banking or custodial institution that can't justify the expense of direct membership in DTCC - so they hire a US. entity - usually **Bank of New York** - but sometimes **State Street**, and sometimes a client of tiny **Mediant** - to hold their shares in the U.S. and to be their clearing agent and proxy distribution/voting agent.) But, as the unhappy issuer soon discovered, "respondent banks" - and their non-U.S. clients - who rarely if ever respond to anything as a rule - seem to have "over-responded" - i.e. over-voted - since no open positions could be found! Everyone accepted that the German

citizen owned the shares in question, but no account could be found from which to cast the votes! So yet another adjournment was needed.

Ten days or so later, more broker votes came in, and it was agreed to count the 400,000+ shares toward the quorum - but, from an excess of caution, to vote them for the two routine proposals only. It is also worth noting that votes against the two tough proposals were minimal - and - since only a majority of the quorum was required - the two main proposals squeaked by on the third try.

ANOTHER INCREASINGLY COMMON HURDLE FOR ISSUERS, PROXY TABULATORS and INSPECTORS IMPACTED OUR TEAM OF IOEs THIS SEASON: First, a meeting where 77 investors had signed voting agreements at the time of the IPO, but where proxy cards and VIFs had been mailed to them. How to tell if they'd honored the agreements or not? As we've written before, situations like this require a SWAT Team to spring into action pronto - to identify all the signers of such agreements - and how and where they hold their shares - and here, to back out the votes that were cast - and to have the owners execute ballots that conform to the voting requirements. A momentary panic ensued at the company when Broadridge backed out the restricted votes that had already been tallied - and the numbers dropped well below the quorum. But the IOE was able to assure everyone that she had enough votes in hand - on ballots - that would indeed be "present at the meeting" - and more than enough for a quorum.

> ***Readers; please note that when retail investors fail to vote, many proposals fall short of the required margins, and fail. And, despite the often sky-high fees for "emergency proxy solicitation efforts" many shareholder proposals, where companies recommend a Vote-No, often pass. This is especially true were there are a lot of Abstentions, and even more true when there are 30% or more "Broker Non-Votes" - and where a proposal needs a majority of the quorum - or harder yet to get - a majority of the outstanding shares. Do remember that institutional investors cast their votes 100% of the time … so if there are a lot of Abstentions - and Broker Non-Votes - retail investors will often be your only way to eke out a victory. Please re-read the second section, above, on how to cultivate your retail voters and get them to vote!***

At another meeting - where the company itself and any other holders of 5% or more - were limited by the Bylaws from voting more than 9.9% of their holdings, with the rest to be voted pro-rata, based on the final votes of all other investors. This required complex and *last-minute calculations* - by the tabulator, since all the votes needed to be in to do the pro-ration, and each director had different numbers of For, Against and Abstain votes - and the Inspector - who often has to do these calculations on his or her own - and, at a minimum, needs to double-check them, to honor his or her Oath. And YIKES! The first set of numbers appeared to be off! Turned out the company had handed the IOE an "evening-before-meeting" report instead of the Day of Meeting Report, so on the second go-round on the math, all the calculations were A-OK.

"PHANTOM VOTES" - ANOTHER SCARY FINDING FROM TWO OF THE MEETINGS MENTIONED ABOVE: At both of the meetings with "quorum concerns" the same proxy solicitor claimed to have "votes in hand" that the inspector should count in. But when pressed for the

source of the votes, and for the actual voting instruments, they "came up short." Shades of the bad old days! Readers beware!

Here's another weird development: At a Fortune-100 Company where we Inspected, Glass Lewis changed its recommendation at the very last minute, to endorse the company position. And quite a few vote-changes were filed the day of the meeting. But Oh, woe for Glass Lewis and its clients – By the time the changes were received, the polls had closed, and the meeting was over - at about 8:15 a.m. (No harm was done, since the company position was upheld handily without the late votes…but Glass Lewis really should have known and done better!)

ONE LAST LOUSY PRACTICE ONE OF OUR IOEs SAW THIS YEAR: A meeting where the required certified list of shareholders was not only out-of-balance with the numbers in the Proxy Statement, but where the list was neither officially signed - nor "certified" by the Transfer Agent! Just as bad, if not worse, some T-As - who lose the tabulating job to a rival firm - completely fail to deliver any list at all….unless the issuer specifically instructs them to do so! Stay alert, dear readers, since a certified list of holders is required to be at your meeting, - and available for inspection by shareholders!

> *Readers; if you have any voting agreements with specific investors - or if you have rules that call for vote-cutbacks - and/or proportional voting on certain types of proposals - start your engines early. And do NOT mail proxies or VIFs to these folks at all: Send them the info they need to honor the agreement(s) and a ballot, as we did in this case. Lastly, make sure your IOE knows what he or she is doing - and does it!*

HOW'S THIS FOR A GRAND FINALE - THE MAN WHO LOVES VOTING PROXIES: At the Verizon meeting, the IOEs were handed a proxy from a voter who "dances" while he "Raps his Palace of Peace" by voting on line - and who neatly printed the following poem, and laminated the entire form, front and back:

"Do not pervert my Mecca; my remaining Temple Wall/ I need to text some friendship & I need to make a call/ I step aside the chaos & connect with brotherhood/ A cyberspace to give me a true place of grace and good/ Escaping Helter-Skelter & the twisted life I face/ With silicon my shelter, I rebuild my carbon base/ Do not prevent my Mecca; my remaining Temple Wall/I need to text some friendship; I need to make a call".




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 theonly 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.

November 7, 2022

BlackRock Makes More Policies Available for "Voting Choice"

Late last week – one day after Vanguard announced a pilot program for retail investors in certain index funds to have a greater say in proxy voting – BlackRock issued this update on its "Voting Choice" program that was launched last year and expanded this summer.

The update – which was accompanied by a letter to clients & corporate CEOs from BlackRock CEO Larry Fink – says that about 25% of eligible assets are participating. That's consistent with the participation rate that I blogged about in June. Here's what else is new:

> **1. Extension of the voting policies clients can choose from:** Participating clients in global SMAs and eligible pooled vehicles can now select one of seven Glass Lewis proxy voting policies, including an upcoming global policy, the Glass Lewis Governance-Focused Policy. These options are in addition to seven Institutional Shareholder Services (ISS) policies that have been available since the launch of BlackRock Voting Choice on January 1, 2022. This broader array of policy choices enables clients to choose a policy that more closely aligns with their investment views and preferences.
>
> **2. An expansion of investment strategies eligible:** In addition to certain institutional pooled funds tracking index equity strategies, certain institutional pooled funds that implement Systematic Active Equity (SAE) strategies are now also eligible for BlackRock Voting Choice. Rather than tracking an index, SAE investment strategies use a forecasting model and an optimization process to select stocks. The expansion of BlackRock Voting Choice to institutional pooled funds using these SAE investment strategies includes eligible clients representing $90 billion as of September 30, 2022, in assets under management in both pooled funds and previously eligible SMAs.
>
> **3. Aiming to enable investors in select UK mutual funds to exercise choice in the upcoming 2023 proxy voting season:** BlackRock has agreed with Proxymity, a digital investor communications platform, to work together on building a solution that aims to offer pass-through technology to enable investors to exercise choice in how their portion of eligible shareholder votes are cast for the upcoming 2023 proxy voting season. BlackRock and Proxymity will share further details on the collaborative efforts in the coming months.
>
> **4. An update on continued client adoption; demonstrating desire for expanded proxy voting choices:** Since May of this year, the number of index equity clients newly committed to BlackRock Voting Choice has more than doubled. Despite market volatility, newly committed index equity AUM has increased more than 30% in the past six months to $157 billion as of September 30, 2022, from $120 billion as of March 31, 2022. In total, including SAE, BlackRock equity clients have committed $472 billion as of September 30, 2022 – or a quarter of eligible assets ($1.8 trillion) – to voting their own preferences through BlackRock Voting Choice.

The jury is still out on what this shift in the direction of "pass-through voting" could mean for companies, other than making voting outcomes less predictable and investor influence more dispersed. Over time, we'll get a better sense for whether this raises the importance of certain proxy

advisor policies and whether it calms concerns that the world's largest asset managers have too much sway.

– **Liz Dunshee**

Posted by Liz Dunshee
Permalink: https://www.thecorporatecounsel.net/blog/2022/11/blackrock-makes-more-policies-available-for-voting-choice.html

November 3, 2022

Proxy Voting: Vanguard Adopts Pilot Retail Voting Program

Speaking of proxy voting, Vanguard announced yesterday that is adopting a pilot program to allow retail investors in certain of its index funds greater say in how their shares are voted. Here's an excerpt from Bloomberg's report on the program:

> Vanguard Group is planning a trial to give retail clients more say over how their shares are voted at corporate meetings, as large money managers' influence over hot-button issues faces mounting scrutiny. Instead of making decisions exclusively on its own, Vanguard will give individual investors in several equity index funds more options about how their shares are voted, the Valley Forge, Pennsylvania-based company said Wednesday in a statement. It will begin testing the strategy early next year.

Under the program, Vanguard will offer investors in selected equity index fund a menu of voting options. These include following the board's recommendations, choosing to rely on third party guidance or opting not to vote. Vanguard's action follows on BlackRock's implementation of its "Voting Choice" program that allows institutional investors to vote the shares they own in BlackRock's index funds. BlackRock announced that program in the fall of 2021 and began its rollout earlier this year, but as Liz blogged back in June, that program is expanding rapidly. Whether Vanguard will move as quickly on the retail side remains to be seen.

– **John Jenkins**

Posted by John Jenkins
Permalink: https://www.thecorporatecounsel.net/blog/2022/11/proxy-voting-vanguard-adopts-pilot-retail-voting-program.html

Checklist: Annual Meetings – Post-Mortem Activities

By TheCorporateCounsel.net

1. Follow-On Board/Committee Meetings: Many companies hold a regular board meeting or board committee meetings immediately following their annual shareholder meeting. In connection with the annual meeting in particular, board meetings are more frequently becoming one day affairs, with committee meetings often held on the day before or day after, so the annual meeting may be paired with either a regular board meeting or the full scope of committee meetings (or neither one for companies that make their annual meetings a full day affair) - but usually not both because there is not enough time.

Meeting topics may include:

- Ordinary business
- Discussion of the immediately preceding annual meeting, including any shareholder questions or concerns raised
- Annual election of officers
- Designating executive officers who are also subject to Section 16 (see our "D&O Biographical/Director Qualifications & Skills Disclosure Handbook" for more)
- Annual meeting tasks (e.g., election of directors & officers) associated with wholly-owned subsidiaries

If board or committee meetings will be held after the annual meeting at another location, arrange and remind directors of the related transportation arrangements and other logistics.

2. Annual Meeting Minutes: The minutes of the annual meeting serve as the official, permanent record of actions taken at the meeting. Based on the company's bylaws or state law, the responsibility for the annual meeting minutes typically falls to the corporate secretary or another designated secretary of the meeting (often the assistant secretary).

Unlike most board meeting minutes, the annual meeting minutes can be largely drafted in advance based on the meeting agenda and script and include:

- Date, time and location of meeting
- Attendance of officers, directors, independent auditors and others
- Appointment of Inspector of Elections
- Record date
- Proxy materials distributed
- Relevant attendance numbers constituting a quorum
- Nominees and matters presented and voted upon
- When polls open and closed
- Preliminary voting report
- Meeting adjournment

Generally, the considerations applicable to board and committee meeting minutes apply. See our "Annual Shareholders' Meetings" Practice Area and our "Board Minutes" Practice Area for separate checklists & other resources.

Once approved by the board, the final minutes, along with, e.g., the Affidavit of Mailing, Oath of the Inspector of Election, Inspector of Election Report and voting results (which are typically identified, attached and incorporated into the minutes by reference), should be filed in the minute books.

3. <u>Post-Mortem Meeting Review:</u> Schedule a date and time soon after the annual meeting for the key company participants to review the meeting and potential changes for next year. Topics for review may include:

- Time & Responsibility schedule changes
- Meeting agenda
- Rules of Order/Conduct (see our separate checklist on this topic)

- Meeting script
- Proxy solicitation materials & campaign strategy
- Meeting venue, registration, security & related matters (see our separate checklists on these topics)
- Satisfaction with proxy solicitor
- Satisfaction with Inspector of Elections and transfer agent
- Adequacy of preparation
- Shareholder attendance and participation

4. <u>Follow-Up Tasks:</u> Follow up on anything that requires further action such as:

- Providing information to a particular shareholder (or journalist) per the meeting chair's commitment at the meeting
- Including a placeholder on a future committee/board meeting agenda to consider a shareholder resolution that passed or came close to passing
- Including a placeholder on a future compensation committee meeting agenda to consider the "say-on-pay" and "say-on-frequency" voting results
- Marking up the meeting script for the following year based on the post-mortem review and while the recollections are still fresh

5. <u>Disclose Final Voting Results:</u> Item 5.07 of Form 8-K requires that a Form 8-K disclosing the voting results be filed within 4 business days after the meeting, including:

- Name of each director elected at the meeting
- Brief description of each other matter voted on at the meeting
- Number of votes cast for, against or withheld - as well as the number of

abstentions and broker non-votes

- Separate tabulation for each director nominee

Companies are also required, at least once every six years, to provide for a separate shareholder advisory vote on whether their say-on-pay vote will occur every 1, 2 or 3 years. For this say-on-frequency vote, the company must disclose the number of votes cast for each of the choices and the number of abstentions. Item 5.07(d) requires the company to disclose its decision as to how frequently it will conduct say-on-pay votes following each say-on-frequency vote by filing an amendment to its prior Form 8-K (generally due within 150 calendar days after the date of the end of the annual meeting) that disclosed the say-on-frequency voting results. Alternatively, the company can disclose its decision in the Form 8-K filed right after the meeting that discloses the voting results. Learn more in our "Disclosure Deadlines Handbook" on TheCorporateCounsel.net.