THE SHAREHOLDER SERVICE OPTIMIZER

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

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ACTIVIST INVESTORS, THE PRESS…AND OTHER PROFESSIONAL "NOISEMAKERS" GANG UP AGAINST VIRTUAL SHAREHOLDER MEETINGS

Your editor has had the great fun of participating in three panels devoted to Virtual Shareholder Meetings over the past 40 days or so. The first was hosted by **Gary Lutin**, who has been running a Shareholder Forum on this subject. The second was hosted by the panel-builder, interlocutor and commenter *par excellence*, **Broc Romanek**, of the **Corporate Counsel** and the third panel was put on at the **Western Regional Conference of the Society of Corporate Secretaries and Governance Officers.**

Each panel included speakers from **Intel**, which hosted the very first Virtual Shareholder Meeting where shareholders could actually cast votes over the web; from **Broadridge Financial Solutions**, which provides technical, audio-visual and webcasting support, along with real-time voting capabilities for VMs…and which hosted its own *totally virtual* meeting this year…and from **BestBuy**, which used a "hybrid model" – a virtual meeting in addition to an in-person venue – as the springboard for a much broader communications and brand-building effort than most shareholder meetings strive for these days. Broc's panel, for the record, also included a panelist from **Charles Schwab**, which put a particular focus on reaching out to its employee shareholders through its V-M webcast.

Your editor opined along the way that Virtual Meetings are here to stay…that it's *inevitable* that they will continue to catch on big-time…and that they not only pass his own sniff test where new technologies are concerned, they meet his 18 year old mission statement – and his statement as to what public companies *should be doing* – to a tee: *"Helping to provide better, and more cost-effective services to investors"* who, after all, pay the not inconsiderable bills for shareholder meetings.

We've also had the great fun of debating the pros and cons of Virtual Meetings with the still very skeptical **Tim Smith** of **Walden Asset Management** – a much admired friend and colleague who has been an originator and presenter of shareholder proposals and a "good governance hawk" of the first order for many, many years…in the hope of finding some common ground that will enable VMs to move forward with vigor, as we believe they should:

"I don't want to seem like a Luddite here" Smith told us; ***"So Tim, you'll have to work a bit harder then"*** we couldn't resist responding…And we honestly believe that if we ALL work a bit harder, we can find a way to answer the open issues that stand in the way. So please read the article below, and please see our review of the Symantec virtual-only meeting too, and take time to listen to it yourselves, and form your own opinions…and please fire-back if you agree with us…or not. ■

OPTIMIZER TO ACTIVISTS AND NOISEMAKERS RE: VIRTUAL MEETINGS: YOU FOLKS ARE REALLY MISSING THE BOAT HERE!

Despite the many good things your editor, and other managers and consumers of Virtual Meetings have to say about them, they've been coming under heavy fire of late:

Activist Tim Smith of Walden Asset Management has presented Intel, Broadridge Financial Solutions and Proctor & Gamble with drafts of shareholder proposals he has folks ready to file if they proceed with "totally virtual" meetings. Even though these three companies are widely regarded for their good corporate governance programs, Smith fears that other companies, who are NOT so good, will use VMs to "hide" from public scrutiny…and, as he told your editor, will consign ordinary shareholders, and the activist investors among them, to a "cyber-ghetto."

P&G, signed a 5-year standstill agreement with members of a P&G founding-family once they saw the proposed proposal – though we ourselves could hardly imagine P&G successfully holding such a meeting under any circumstances, since they'd kill a cherished Cincinnati tradition and rile all their friends, neighbors, and consumers too, for no good purpose.

Intel, which would still LOVE to hold a virtual-only meeting, we think, has backed away, at least for now…but Broadridge says they'll forge ahead with a second virtual-only meeting in 2011.

Meanwhile, CalPERS and CalSTERS have gone on record as being totally against virtual-only meetings, and a bunch of activist investor websites (some of which we think have been launched primarily as "trolling opportunities" for sales of future banner-ads) have jumped on the bandwagon, looking to send virtual-only meetings to perdition.

Quickly jumping on the anti-VM bandwagon, NY Times columnist Gretchen Morgenson posted a lengthy rant in her Sunday, Sept. 28 column entitled "Fair Game" that focused on the recent Symantec Corporation virtual meeting; asserting in the headline that *"Questions, And Directors [were] Lost in the Ether"*…following a 9/27 story by reporter Ross Kerber of Reuters on the Symantec meeting headlined "Shareholder meetings via Web mute dissident voices."

Then, despite our own belief that Symantec had done a mostly fine job with their meeting, they agreed to hold a "hybrid meeting" next year…which may turn out to be the only way a Fortune 500 company can go-virtual anymore.

So let's take a few minutes to review some of the benefits of Virtual Meetings – then to try to debunk some of the objections to them that seem clearly misguided from our perspective – and then to address a few issues that do indeed need to be addressed…all of which CAN be addressed to the total satisfaction of investors – both the activists and us ordinary folk, we believe – who, as mentioned, foot the bills for shareholder meetings:

Here are some of the things we really like about Virtual Shareholder Meetings:

• At 90%+ of the roughly 13,800 Annual and Special Meetings of Shareholders that are expected to be held this year, there is absolutely no good *reason* for investors to attend…except maybe they live nearby… and think there will be free breakfast. Typically, over 99% of the votes that will actually be cast at such meetings have been cast and counted the night before – and there are no "voting issues" or "performance issues" whatsoever from an investor's perspective. Thus, a "virtual only meeting" can be a huge money-saver for corporations… when such circumstances prevail.

• Having virtual voting capability – right up until the time the polls officially close – is actually a governance *improvement* vs. having a physical location only, for the overwhelming majority of shareholders who can't possibly show up to vote or change their vote in person.

• More importantly, virtual meetings provide public companies with a very cost-effective way to reach out to the many investors who do NOT live nearby, or who do not have the time or budget to attend a shareholder meeting in person…or who may be employees, or customers, or suppliers, or prospective investors, who may want to gain a bit of perspective about the company. As recent statistics on VMs confirm, companies that have held virtual meetings to date cite attendance figures that are two to three to seven or more times the numbers of people who typically attended live meetings. And most have seen modest but welcome improvements in the number of people who actually cast votes.

• The biggest and best innovation here, we think, many of the companies that have conducted virtual meetings to date have established web-based investor forums that are open to receive and to post investor questions – and answers – for 20-30 days before the meeting. Clearly, this has the potential to create a dialogue that is much more robust than the dialogue that takes place these days at most of those 13,000+ in-person meetings. It also alerts the management team to issues they may not have been aware of otherwise, and it gives both sides significant new opportunities to prepare their Qs & As with added care.

• Another very nice good governance feature, the proceedings are typically archived for at least a year, so investors who miss the actual meeting, or who want to check out exactly what was said (as *we* did after reading the Morgenson column) can do so for themselves…and can usually scroll back and forth to hear the fine points over and over again if they wish.

• As someone who has attended 10 or more shareholder meetings a year for 40 years now, your editor feels obliged to note that he greatly *appreciates* the carefully scripted and businesslike conduct of the "business part" of the meeting, which a "virtual meeting" forces companies to have. And most meeting attendees appreciate this too. Meeting-goers generally do NOT appreciate the fuzzy-logic, the rambling comments and the often un-businesslike antics of so many meeting gadflies – who tend to waste the time of normal attendees, and to make a mockery of the real business of a shareholder meeting. And sometimes the behaviors of people who come to the meeting specifically to disrupt it or co-opt it or to attract the attention of the media create potentially dangerous crowd-control issues…We've had *many* scary meeting-moments.

Here are some areas where we feel the activist investors are totally missing the boat:

• Virtual Meetings – when properly conducted, that is – provide activist investors with unprecedented opportunities to present their viewpoints…and to present them to an infinitely larger audience than they could ever hope to reach in person.

• Activist investors actually tend to *benefit significantly* from being able to present their own case in a controlled and well-scripted manner – whether by reading their statement or, if they are reasonably telegenic, presenting it as part of a live or pre-recorded video-cast. (Here, your editor also feels obliged to note that in his long experience, most activists – and especially those pesky "gadflies" – tend to LOSE VOTES after making their case in person… But he has indeed witnessed cases where well-prepared activists DID influence the outcomes in their favor, to some degree, or sometimes set the table for a bigger and better campaign next year.

• The idea that virtual-only meetings provide an opportunity for companies to "hide" from investors is laughably and very demonstrably wrong – witness the recent flap over the Symantec VM. Let's start with the fact that VMs must be announced well in advance, and are broadcast to a potentially infinite number of listeners. Remember too that all the VMs that we're aware of have been archived on the web, where they are readily reviewable for at least a year. And, as we tried to convince our friend and valued colleague Tim Smith – who, by the way, is a *very* skilled and powerful presenter of shareholder proposals – perceived shortcomings, and especially any abuses that may occur are discovered in a flash…And they can and will be widely circulated and discussed both in the press and in cyberspace. Thus, from our perspective, VMs have a built-in and very powerful "self-correcting feature" if shareholders, or any other observers for that matter, feel that disclosures, or discussion, or the conduct of the meeting itself were to be deemed wanting.

Here, we say, is the one big issue with Virtual Meetings that needs to be resolved:

• **We totally agree with Tim Smith that sometimes, investors need to confront the management team *in person*…to observe the way they respond – or not – to a direct challenge. We ourselves have made many wise investment and disinvestment decisions based on an up-close and personal look at the way management, and directors too, react under pressure.**

And here, we say, is a reasonable way to resolve the issue, recognizing that the number of Shareholder Meetings where there are "issues" is a very small one; probably no more that 250 meetings a year, out of the 13,800-odd meetings that are projected for 2010…

• Taking a leaf from the way the Maryland legislature authorized "virtual meetings" we say that if even one shareholder of record asks to be present in person at a shareholder meeting, that shareholder, and any others of like mind, must be accommodated.

• Naturally, there must be a reasonable "notice period" for such requests…and we would suggest that 11 business days prior to the scheduled date is both a "reasonable last-date", and one that would allow companies to disseminate the new information – over the web, and even via mail if the shareholders involved should insist.

• Companies should be free to offer shareholders an open phone line to the meeting, or the opportunity to submit a pre-recorded question or statement if they wish to make one, or to offer would-be spokespeople a chance to appear via a "live video-cast" that could be beamed from anywhere the proponent wishes – should the company wish to do so. (The technology here is increasingly available, and affordable, and often would cost a lot less than the travel for many proponents.) But the company should not be *obliged* to do any of this; they should still be free to have wannabe shareholder attendees attend at their own expense, as at present, if they don't like the electronic alternatives. And, there should be two very important provisos; (1) the question(s) must pertain to the business that is officially before the meeting and (2) questions should be subject, as most are now, to "reasonable limits" on the time allowed for discussion of each matter before the meeting and on the number of questions a single proponent can ask – out of respect for the valuable time of other meeting attendees.

• We think that this proposal has some valuable self-policing aspects too – as a way of preventing frivolous demands for in-person meetings, when the requestor has no real business purpose in asking – OR if the proponent fails to show up, after asking a company to go to the additional expense of renting a hall just for them: If a requestor fails to show up after asking to attend in person, they should be barred from submitting any other shareholder-meeting proposal for at least three years.

So readers, we'd like to hear your thoughts on all this: email us at cthagberg@aol.com. ■

SOME NOTES ON THE MUCH-BASHED SYMANTEC VIRTUAL MEETING

As mentioned elsewhere in this issue, activist investors, the press, and assorted other "noisemakers" sure piled onto Symantec Corporation, following their first-ever totally virtual annual meeting.

We were kind of glad they did…first because it proved the point we tried to make to Tim Smith of Walden Asset Management in spades: That not only is there no place to hide in cyberspace, any real or perceived meeting missteps will surface and make the rounds in a cyber-second, so there is a built-in self-correction feature to VMs that can't be beat.

A second great thing about virtual meetings is that you can usually tune in the archived webcast, as we did here…and listen to any rough or questionable patches as often as you'd like…and make up your own mind about the overall fairness and effectiveness of the meeting, which we also did.

So here are a few observations which readers can check out for themselves – and a few suggestions for possible improvements next year:

When we logged on to the Symantec site, we were favorably impressed right off the bat – and a bit surprised in light of all the press coverage that made them sound like bad people – to note that they are on **Fortune's** Most Admired List and on **Ethisphere's** list of Most Ethical Companies.

We were a little disappointed that the pictures and names and business affiliations of the Directors were so small we couldn't see them clearly…and that we couldn't simply "click" on them, to enlarge them as they were "introduced"…but no big deal, really.

But oops! They did not really *get* introduced individually… and may or may not have been listening in…which was one of the major complaints. We were a bit surprised that Symantec either did not know, or simply forgot, that not having Directors attend the meeting is a major no-no with investors (remember the big flaps at **Home Depot, Johnson Controls** and **Morgan Stanley** when most directors failed to show a few years ago?) And it seemed particularly inexcusable to have no-shows at a *virtual meeting*, where all the Directors needed to do to "attend" was to boot up their computer or pick up the phone. We can be sure that like the three companies above, Symantec will not make *that* mistake again.

We're probably a bit biased here, but oops again…We were startled to hear that the Inspector of Election was the Corporate Secretary. While there appeared to be nothing at all that was controversial – until the noisemakers piped up, that is – not having a clearly neutral party as Inspector is hardly a best practice – especially when you're trying something new, like a VM.

The "business part" of the meeting – the election of directors, ratification of auditors and approval of increases in shares allocated to two equity incentive plans – was conducted briskly, efficiently and effectively, we thought… and over in a blessedly brief nine minutes, although they made a *minor misstep* by closing the polls before the question period officially opened: Please note, dear readers, that this is really the only part of the meeting where questions MUST be entertained. The "general discussion" and any "open Q&A period" is solely at the discretion of the Chair, and almost always takes place AFTER the official meeting is officially adjourned. But the "window" for entering questions was open the entire time, and there were NO questions on the items being voted on, so no harm, no foul.

We found the CEO's presentation on the business – and on their strategy going forward – to be very well articulated and very well done overall. The slides that appeared on the side of the screen were well written and very much on-point – and properly forward-looking too, we thought…and this part lasted about 16 minutes.

As we've said on many other occasions, we are big fans of live "video streaming" – mainly in the hope that it will force the management team to come up with something that will hold the audience's attention better than slides. We've long opined that watching ANY annual meeting is like watching paint dry…and watching only slides is like watching already dry paint get drier. And we DO like to check out the body language, quirks, tics and other potential "tells" of the management speakers – especially when being questioned – and ideally, the reactions of directors too, which makes the meeting moderately more interesting. But hey… this meeting was at least partly about saving money on the meeting itself, and there were *zero* riveting moments expected (or actual) with such a routine agenda…so we'd issue a "pass" here: The streaming video, while not a fortune, is a lot more expensive than audio only.

Now for the *really important questions* that were raised about the meeting:

Do we think that Symantec intentionally tried to forestall difficult questions, or to "game" the question period to "mute dissident voices"? Absolutely not: It does seem, based solely on assertions from people who say they tried to email Qs and failed to get through, that there may have been some delays in transmission times over the web. But if you listen to the replay, there was ample notice that the question period was set to open…and a statement that so far, only the two questions that were answered had been received – plus ample notice – and what we considered to be more than ample waiting time – about 10 seconds – before the question period was closed.

Do we think that Symantec rephrased or paraphrased the questions in a "softball" manner as some of the questioners seemed to assert? Not at all: The key question, asserting that Symantec "repeatedly failed to return shareholder value" and asking "what specifically does management intend to do to reverse losses over the years" seemed very clear and *very blunt*, at least to this listener. Interestingly, the answers to this question had actually been provided in the closing bullet-points of the CEO's prepared remarks, which did seem to us to throw the CEO off a tiny bit at first. But he re-stated the points he'd just made just fine, although perhaps not as neatly bulleted as earlier: The second question struck us as more of a *complaint* against the virtual-only format, and we at least, thought the answer was a decent one, and totally sincere; that as a technology company, they wanted to use technology, and that they would likely reach a much larger audience, as indeed they did. They certainly convinced US that they thought it would be a *good idea*, and that certainly, there was no malice aforethought, as many of the "noisemakers" implied.

One still-open issue for virtual meetings in general: There is a very real and very understandable concern on the part of investors that questions will intentionally be re-phrased as "softballs" or shut-off too early – or that the really tough questions will somehow, inexplicably, get lost in cyberspace. Intel, BestBuy and others have acknowledged that this is an issue that needs addressing: perhaps with a posted list of ALL the questions asked before and during the meeting…including the ones that were answered in the prepared remarks, questions that were duplicative of others to some extent and questions that were either not on point or just plain dopey.

Our own suggested best practice is that in addition to accepting questions over the web – both before and during the meeting – companies should also have an open phone line, where questioners can queue up – by hitting the star key – to ask a question on a first-come-first-served basis. This may actually *generate* a few "riveting moments" – some of which may need bleeping. But it seems well worth the effort – to achieve the desired "transparency" and to answer legitimate concerns about pre-screening – and to add a bit of suspense…and maybe a bit of drama too to a normally dull event. ■

HOW OFTEN SHOULD SHAREHOLDERS HAVE A SAY ON PAY? "GODDESSES OF GOVERNANCE" CONVINCE US THAT ANNUALLY IS BEST

It's not often that a panel discussion prompts us to change our mind on something like Say On Pay…especially after investor activist Ed Durkin of the Carpenters Union had persuaded us – and, apparently, the drafters of Dodd-Frank too – that a triennial Say On Pay was best. He argued, quite convincingly we thought, that it would allow investors to conduct much more high-quality analysis than they could possibly do with 13,000 or so annual SOP proposals to review, should an annual standard be mandated, and we thought it might give much-beleaguered proxy statement drafters a bit of a break too.

But at the Society's multi-chapter meeting in NYC on Sept. 30th, a panel of experts – whom moderator Bob Lamm of Pfizer aptly referred to as "goddesses of governance" – Hye-Won Choi, SVP Corporate Governance at TIAA-CREF, Suzanne Hopgood, Managing Director at the NACD, Polly Plimpton, Counsel at McDermott Will & Emery and Ann Yerger, Executive Director of the Council of Institutional Investors –managed to totally turn our thinking completely around.

First, as Hye-Won Choi pointed out, the annually required proxy statement disclosures are best aligned with an annual say on pay. And, as she also pointed out, companies make decisions about pay…not biennially… or triennially…but every single year.

Panelists also agreed with something we'd been pointing out since the SOP debate first began – that a thumbs-up on the Comp plan provides *protection* for the Comp Committee members, and for all the other directors too.

As Suzanne Hopgood noted, high Votes-No on pay serve as a very important warning sign to directors that *something is amiss*, *somewhere*, and needs addressing. (Interestingly, no one seemed to think that the old arguments that so many companies made, that Votes-No on pay are somehow too ambiguous to be useful, hold any water at all these days: Clearly, having seen three of them this season, an SOP thumbs-down sends a *totally unambiguous message*, just as we'd said all along.)

Ann Yerger, and Hye-Won as well, indicated that they would not automatically recommend a vote against a biennial or triennial SOP proposal – as long as the company had no governance issues – although both TIAA-CREF and the Council are officially in favor of annual SOP.

But panelists noted several other benefit of annual says on pay that are not immaterial ones: First, an annual say is much more likely to be treated routinely by voters, and more likely to get a "pass" from them they think, as do we. Second, biennial and triennial proposals leave the door open for counter-proposals from shareholders in subsequent years. Some activists are already thinking about proposals that would require companies to revert to annual SOP if the 2 or 3 year referendum yielded votes in excess of some percentage threshold. Last and far from least, as one panelist noted; why make the annual workload lighter for activists in the first place – especially if it means they may decide to scrutinize your pay proposal under a *microscope* in year two or three? An annual say on pay looks like the path to least resistance, for sure. ***P.S. Look for our practical tips for putting the Say When on Pay proposal(s) to a vote in our next issue…after the SEC regs are out.*** ■