



THE TIME HAS COME, WE SAY, FOR COMPANIES TO EDUCATE THEIR SHAREHOLDERS ABOUT THE VALUE OF THEIR VOTES...AND HOW TO CAST THEM IN A WELL-INFORMED MANNER...AND TO DO SO ON TIME

Over the past ten years the *OPTIMIZER* has been reporting on the ever-increasing number of individual shareholders who fail to cast their votes in time for the Annual Meeting.

Ten years ago, roughly 74% of a company's individual shareholders returned a proxy in time for the meeting. Today, the percentage of shareholders who do so has fallen to an all-time low of 40% or so on average. At many companies it is even lower... despite the fact that it's easier to vote than ever before.

Recent statistics from ADP indicate that approximately 40% of the companies that held an Annual Meeting last year would not have had a quorum without the "ten-day rule" that permits brokers to cast their votes in favor of the management position on "routine matters" when their customers fail to vote on their own.

There are at least five reasons why publicly-traded companies should be concerned about this trend:

1. Shareholder activism, as we all know, is very much on the rise. And activist investors – who comprise almost 100% of a company's institutional investors these days – vote

almost 100% of the time. They, as we also know, are usually the least inclined to sympathize with the management position...while the individual investors, who are voting less and less often, are among the most inclined to vote with management.

2. New proxy rules that no longer allow ten-day-rule votes on stock-based compensation plans - coupled with the decline in individual investor votes and a difficult environment for compensation proposals in general - are making it increasingly difficult - and increasingly *expensive* - for companies to pass such proposals.

3. More proxy rules – to grant greater shareholder access to the director nomination process – are expected to take effect in time for the 2004 Annual Meeting Season. As the rules are currently proposed, activist investors will be looking to submit more proposals than ever in 2004, in an attempt to create a "triggering event" that will allow shareholders to nominate candidates to compete against management-nominated candidates in 2005. The imbalance that exists between institutional and individual voting patterns and preferences makes it ever more difficult and expensive for com-

panies to fend-off such "triggering proposals," no matter how unwarranted or unwise they may really be.

4. New challenges to the ten-day-rule are being raised, which make it distinctly possible that the rule will be applicable in only the most limited circumstances, or perhaps abolished altogether. Specifically, activist investors are saying that brokers shouldn't be able to cast ten-day-rule votes for directors when there is a shareholder-nominated candidate up for election. And currently, the new rules that are under consideration would abolish the ability of investors to cast their own vote "for all (management) directors" (which is what the overwhelming majority of individual voters currently do) whenever there is a competing candidate. Thus, aside from the risk of losing even more individual investor votes, there might be twelve or more individual "proposals" regarding directors, where currently, there is only one.

5. Most important to note, in the vast majority of "closely contested matters," it's the individual investor and employee-investor votes – or their failure to vote – that determines the outcome.

Continued on page 22

Why are so few individual investors casting their votes these days?

- **Clearly, we think, there is a "generational thing" at work:**

Quite obviously, younger and newer investors simply don't feel it's as *important* to cast their votes as their parents and grandparents do.

- **We also think there's a "paperwork issue":** All of us seem to have far too much paperwork these days. And younger investors, in our experience, are even more impatient with paperwork and much less inclined than ever to give it even the quickest glance, before tossing it in the trash.

- **A growing number of individual investors also seem to feel that their investment is "too small to matter."** Many investors, especially the older ones these days, tell us they "hate to waste the stamp on their little one-hundred-share investment."

- **Aside from the self-evident fact that proxy issues are "unimportant" to them, our fieldwork tells us that most young investors don't even know what a proxy is.**

- **The 20 and 30-something investors we've spoken with don't know where to find the information they'd need to cast a vote if they wanted to, much less how to evaluate it.** And, truth to tell, the information that companies put out is mighty hard to find, much less to understand, for the "uninitiated." Most proxy statements we review don't get down to the "business at hand" until their mid-point!

- **Another very significant development is that *employee-shareholders* are voting less and less often each year... even while the percentage of shares**

owned by employees and their families has been on the rise at most companies over the last decade. While some of this falloff is no doubt due to the factors cited above, a very significant factor, we believe, is the fear that if they cast any of their votes against the management positions their votes may be "discovered" by the management, and the employee might be branded as "disloyal."

What should companies who share our concerns be *doing* to improve the current situation?

We say it's time to consider an educational campaign. Accordingly, we have been working on and field-testing an educational pamphlet entitled "Shareholder Votes Have Value: Don't Let Yours Go to Waste!"

The pamphlet has several modules, the first of which is a letter from the company - which can be a generic or a customized piece - and which can be enclosed, as an introduction to the pamphlet, with the proxy package - or designed to go with an earlier mailing, like a dividend check, DRP or Employee-Plan statement or interim report.

A second module, for companies that share our concerns about the importance of confidential voting when it comes to "getting out the vote," is a section that can be sent to all shareholders - or only to employee-holders - to reassure them on this subject, and to explain more clearly, if the company so desires, exactly how their confidentiality systems actually work. (As an aside, our fieldwork has also shown us that a lot of the confidential voting procedures that companies think they have in place are woefully vague and/or lacking the stringent controls that need to be in place...and, very often, employees know it! See the past two issues of the *OPTIMIZER*

for some specifics.)

The educational pamphlet itself has three sections; a series of facts about the hard economic value of shareholder voting rights that most shareholders seem to be unaware of, a list of strategies and tips to make the voting process as quick and easy as possible and "A few tips for reviewing Annual Meeting Materials, with a view toward deciding on your votes." (This last section was added after many of our focus-group readers told us that yes, they could now see the *value* of voting, but they wouldn't know how to "get at" and decide upon the issues.)

Do we think the pamphlet will increase the number of people who will vote their proxies? Actually, we do...even though we recognize that the concepts are "new" - and will likely be "heavy sledding" for many readers, despite our numerous refining and re-drafting efforts.

The big strides that have been made in telephone and internet voting, and in electronic delivery and voting, are strong evidence, we think, that investors can and will change their behaviors... if they can see the *benefits*, and if it is *easy enough* to do as we invite them to do.

Two other points are especially worth considering, we think: First, investor education is a "good thing to do" in any event. And second, *doing nothing is NOT a good option in today's proxy-voting environment.*

We hope you will review the pamphlet with care, and that you'll give us a call, either to discuss or to go forward with a mailing package.

(The text of the pamphlet, which is copyrighted material, please note, is enclosed with this issue)