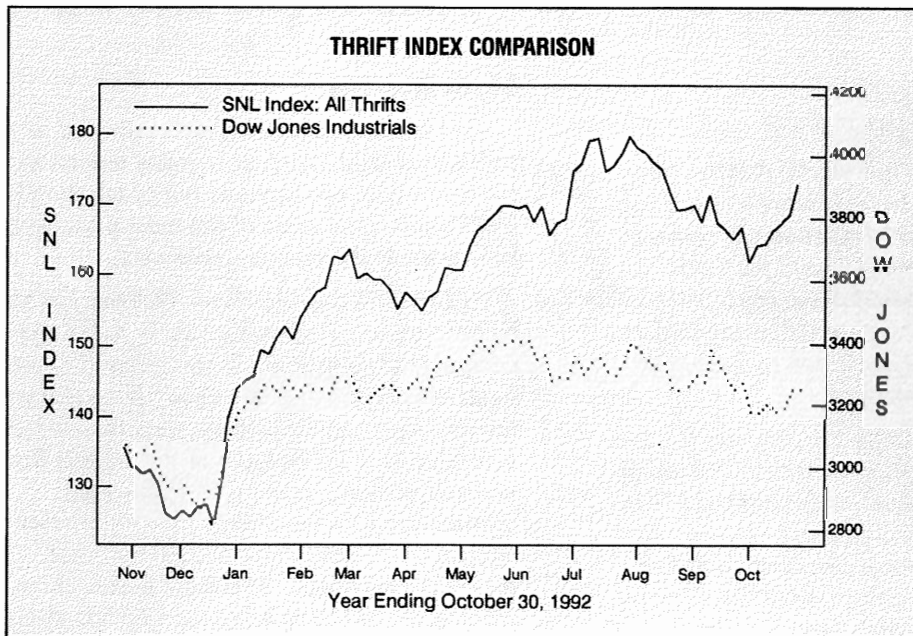




# Monthly Market R E P O R T

11  
NOVEMBER  
1992



*THIS MONTH:*

## ANATOMY OF A CONVERSION

Executives of converting institutions have a variety of options available to maintain control over future takeovers, friendly or otherwise. Thacher Proffitt & Wood explains how to plan a conversion to achieve the goals established for the institution and its shareholders.

## PROXY SOLICITORS

Artie Regan of Regan & Associates exposes the good, the bad and the ugly of the proxy solicitation business, including when to use one, how much to pay, and how to bargain for the services.

## PRIVATE SECTOR THRIFT DEALS

Eleven publicly traded savings institutions with assets totalling nearly \$8 billion announced agreements to be acquired in the third quarter.



SNL Securities . . . The Banking Information Experts

# Proxy Solicitors: Overpaid Delivery Boys or Underpaid Corporate Champions?

By Artie Regan

Many of us live in a world of false reality. People used to believe that money center banks would never cut their dividends, big commercial banks would never fail and passbook savings accounts would always pay 5 3/4% interest. In this same, unreal world, many bankers found themselves either loving or hating the ever elusive proxy solicitor.

"I can't see paying all that money to someone just to deliver proxy material." "I couldn't even imagine an annual meeting without 'em." Not only have I heard different bankers utter these exact words about the same firm; I've heard these words spoken about the same individual within the same firm.

Who's right?? They both can't be. But, they can both be wrong. You see, the world of proxy solicitors, like the rest of the real world, is neither black nor white, but shades of gray. There are no absolutes here. No such thing as an all good *or* all honest solicitor exists — that would amount to a contradiction in terms. However, there is equally no such thing as a perfectly useless solicitor, if used properly.

The key is neither to love them as indispensable nor hate them as gougers; after all, they can be both. Instead, the serious banker should try to understand them: how they operate, what exactly they do and how they do it, who else is out there, what motivates them and how to get the most out of them.

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*Artie Regan is the President of Regan & Associates, Inc., New York, NY, the only solicitation firm currently specializing in the banking industry. He was formerly the president of David Francis & Co., Inc. and a vice president at Morrow & Co., Inc.*

## Myth Busting

As in many industries, myths abound in the solicitation field. And, as in many industries, the myths here are similarly full of falsehoods. I will touch upon some of the most popular and let you know the real deal with each.

**FLIGHT TO SAFETY.** — This one has to be my favorite. It goes like this — when something actually important comes along (i.e. proxy fight, merger, etc . . .) somebody (typically your lawyer) pipes up, "You know what they say, it's always good to go with one of the biggest firms when these things come up." First of all, anyone who uses the phrase "*You know what they say, . . .*", can't know a lot about what *they're* talking about. This logic makes about as much sense as telling someone who has always taken their car to a trusted local mechanic, to take it to SEARS if anything major goes wrong with it. Good Luck!

The bottom line here is that **the size of the solicitor has absolutely NO correlation to the level of service you will receive from them.** Regardless of firm size, there will be exactly one "Button Pusher" (hereinafter referred to affectionately as a "BP") calling the shots on your account. You'll know who this person is; it'll be the one you speak with nine times out of 10 when you call with a question. If you have a competent and experienced BP whom you trust, stick with him. Then, if something hairy comes up, ASK him if he can handle it; after all, you *do* supposedly trust him. *Don't you?* His answer, provided he is in fact trustworthy, will let you know if a move is necessary.

Interestingly enough, a quick check of personnel records would easily confirm that the largest solicitors have a much higher rate of

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employee turnover than their smaller counterparts.

## **THE HIGHER UP THE LADDER YOU GO, THE BETTER ANSWERS YOU GET. —**

The reverse here is closer to the truth. The same way a teller has a better handle on how much cash is currently in the drawer than the branch manager does, a low-level line grunt will know more about what is really going on with your solicitation than the CEO of his firm will. Knowing who backs up the BP can save you a lot of time waiting for return calls.

**YOU GET WHAT YOU PAY FOR; THE HIGHER THE FEE, THE BETTER THE SERVICE. —** This reminds me of a "Flight to Safety." All that getting stuck with a high fee actually means is that you agreed to it and your shareholders will pay for it. I often wonder how many bankers would sign off on an excessive fee if the money was coming directly out of their own pockets.

BPs at the biggest solicitors can be responsible for as many as 50 jobs in some stage of evolution, simultaneously, during the April/May busy season. This is a good point to remember as you consider vendors. There is a real possibility of ending up as additional, unwanted work for an already overworked BP at a big firm, or as intensely desired work for a seasoned BP at a small firm with excess capacity. Many banks, typically the smaller ones, find themselves on the losing end of this equation when they subsequently discover that their big fee solicitor has precious little time for them due to their huge client base and a currently finite number of hours in a day.

**WIN/LOSE, YOU PAY THE SAME. —** This is not necessarily true anymore. As good luck would have it, there are now actually solicitors that tie and/or stagger their fees to specific performance on a given job. This is still a fairly new concept to this bunch, though, so you may have to do a little looking (and haggling) before you actually find someone willing to sign a contract with an escape clause that benefits you.

Picture this: You have a difficult vote coming up, let's say a two-thirds merger vote with a tight mailing window and a 9.9% holder whom you know is going to vote against the deal. This would be a perfect situation to get your chosen solicitor to guarantee the vote, *on time*. Few mistakes are made when an entire fee is

riding on the solicitor's bottom line performance; *trust me on this one*.

Debbie Metzger, a vice president with First American BanCorp in Canton, Ohio, did some comparison shopping before choosing a solicitor this past June to handle the special meeting to approve their recent merger into Charter One Financial. "We chose a solicitor willing to contractually guarantee our two-thirds vote by the scheduled meeting date, or their solicitation and delivery fees would be completely surrendered," Metzger said. "They also put a reasonable cap on their expenses, in writing, in their contract. The larger solicitors I spoke with weren't volunteering that."

**BLUE COLLAR GRUNT OF THE WALL STREET COMMUNITY. —** I take personal offense to this one. It seems that there are a lot of lawyers and investment bankers out there that look down their higher paid noses at solicitors as if they were a caste of occasionally useful, second class professionals who belong in a back office somewhere out of sight until they are next needed. While the significantly lower pay *is* true, the level of sophistication is not.

In any important vote or tender offer situation, it is the lowly solicitor who bears the lion's share of both the actual work and the responsibility if something should go wrong with the deal. The solicitor serves as the very crossroad for the shareholders' ultimate reaction to a given deal. A dedicated, intelligent solicitor can pick up a great deal of legal and investment banking know-how over the years just by doing his job. Many of you would be truly appalled if you *really* knew how little many of these other so-called experts know about what solicitors do and how much solicitors can know about what their higher paid counterparts are supposed to.

**HIRE A FIRM, NOT AN INDIVIDUAL. —** This goes back to the one BP rule. The only way this myth could make sense would be if each account rep within a large solicitor was equally well versed in what was going on with each and every client. While this is a nice ideal, it simply does not exist in reality.

As long as a solicitor has the capability to receive and turn your material around quickly and has access to an expandable phone bank, it doesn't matter how many bodies surround the BP. Oh yeah, you're going to ask me what happens if the BP in a small firm dies? The

answer is the exact same thing as if a BIG plane crashes into the building where a BIG solicitor is located and kills all of their account reps; *you have a problem.*

Not to fear, though. Our industry is not known for executives keeling over at their desks with still untabulated proxy cards clenched firmly in their hands. Besides, even a small solicitor, if properly managed, has contingency plans in place so that your job can get completed even in the face of this type of calamity.

**FEES AREN'T NEGOTIABLE. —**  
Everything is negotiable!

## When To Use Proxy Solicitors

### Mergers

Let's face it, the banking industry is going to have a lot of these within the next five years. Personally, I believe, with few exceptions, that banks will have to build themselves up to a level of about \$5 billion in assets to have the critical mass necessary to compete in the year 2000. If this is even *partly* true, you're most probably either going to buy or be bought.

With all of the money spent on lawyers and auditors during a bank's merger proceedings, few CEOs want to risk screwing up a merger vote, especially when you consider that proxy statements often get delayed with this type of shareholder meeting. Another consideration is not wanting to look unprofessional or careless to the acquiror, and your potential new employer, if you are the merger target.

Rick Ahl, currently CFO of Evergreen Bancorp in Glens Falls, New York, was the executive vice president of Home & City Savings Bank of Albany, NY, during HCSB's merger with TrustCo Bank of Schenectady, NY. "We had two large holders with almost 20% of our outstanding shares that we knew were going to oppose the merger *and* we needed a two-thirds affirmative vote." Ahl added, "We wouldn't have even *considered* going into that meeting without the best solicitor available."

### Proxy Fights

Here is the true solicitor's "raison d'etre." In the same way that war has a way of separating heroes from cowards, proxy contests tend to reveal the zenith of a BP's ability. We must remember that it is immaterial how many fights a particular firm has been in, *or* won for that

matter. What really matters here is how much experience your BP has in the fight arena and how far he will go for you.

Rules come into existence and are soon broken; in this industry they are shattered. It is unconscionable what can and does go on during a full-blown battle. Everything from exposing self-dealing to charges of marital infidelity can be used with scalpel-like precision to get a director's resignation during a fight for board control. If the financier backing the opposition group will stop at nothing, you should assume that his mercenary solicitor will be equally bloodthirsty.

A point to remember: Many threatened fights 'dissolve' before the opposition actually mails its cleared proxy material. Solicitors love to sock their clients with **much** higher fight fees that are binding even if the contest "walks." Their consolation speech goes like this, "You should consider yourself lucky. You saved a lot of money on out-of-pocket expenses **and** don't have to worry now about losing." Do your shareholders a favor. Get your solicitor to agree to a two-tier fee, in writing, so that if the fight dissolves, its fee goes back down to a much lower level. If they are unwilling to do this, find someone who will.

### Stock/Shark Watch Services

Shark watching as a regular product/service is now more than 10 years old. Many banks pay a variety of vendors some rather stiff annual fees to closely monitor their trading activity, identify ALL of the beneficial owners behind all the depository broker/bank positions **and** inform them immediately if a potential acquiror is accumulating a toe-hold position well before any formal filings/announcements would be legally required. Interestingly enough, you can now pay to get a ton of shareholder information about a target that you have in your sights, *without them even knowing it.*

Here again, expertise is omnipotent; the size and age of the firm is inconsequential. John McCormick co-founded McCormick & Pryor Ltd. in 1985. "The big solicitors try to suggest that we're too small to provide a superior product. They seem to forget that we're the same individuals that were producing their products a couple of years before," McCormick said. "I guess they think we forgot everything we knew about this business the moment we walked out their doors."

## Special Meetings, Consents, and Non-Routine Issues

There are numerous proposals that do not receive discretionary voting privileges. That is, on non-routine items, brokers are not permitted to vote 100% of their shares in favor of management less only those that have already been returned voting against or abstain. Instead, they are only permitted to issue a vote representing the *actual* returns on the item(s) in question. This reality can be confusing to CEOs who are used to getting 90% quorums due to 'boiler plate' agendas: the election of directors and the appointment of auditors and/or a clerk. Some examples of non-discretionary proposals are: creating a staggered/classified board, a super majority/fair price provision, reincorporating in Delaware with carry over shark repellents, creating a holding company with shark repellents, putting more than 5% of your outstanding shares into a stock option plan, etc. . . .

As a rule, if you are going to have a special meeting or a consent, the need for utilizing a solicitor greatly increases. Director and officer liability/indemnification plans are also popular proposals to over-solicit. An argument can be made that a mandate from the shareholders supporting this policy can be a very good thing to have, *from a legal point of view*, IF your board and management should happen to get sued down the road.

## Shareholders' Rights Agent

Want to save some money? Then start right here. If your bank has a shareholders' rights plan then you have a shareholders' rights agent. Chances are it is a solicitor or your transfer agent, and, chances are *you are paying them thousands a year to do absolutely nothing*. There may be a bigger rip-off in the solicitation industry that I'm unaware of, but for my money, this one is the biggest.

Shareholders' rights agents do nothing — EVER — plain and simple. If you are paying a firm an annual fee for this 'service' then that firm is taking you for a ride as sure as daybreak. *Recommendation:* Since there is responsibility/liability here for the named agent, indemnify them, agree in writing to absorb all their expenses IF a distribution is ever required (it won't be), and pay them a small (\$1,000.00 or so), one-time fee for their "effort."

## Tender/exchange and Rights Offers

These can get tricky. With few exceptions, hostile, friendly and self tenders, oddlot buybacks, rights offers, etc... are handled by the 'reorg' departments of the broker/bank community. This ultimately means that ADP & The Independent Election Corp. of America (IECA) have greatly diminished roles and that the street distribution required is totally different than what you would normally do for a proxy job or quarterly report mailing. Do yourself a favor here — unless you have the in-house sophistication of a full-service solicitor, bring in a reasonably priced expert for these situations.

## Routine Annual Meetings and Quarterly Distributions

Many banks continue to use solicitors only in special situations (scared off mainly by the high fees, I guess) while handling routine annuals and quarterly mailings on their own. Although I can appreciate the frugality of this approach, there are three points to remember here. First, when you *only* do a NOBO (Non Objecting Beneficial Owner) mailing, by definition you are missing every OBO or objecting street holder. These are usually many of the most important, sophisticated *and most dangerous* holders out there. Second, there are presently about 50 bogus mailing operations across the country that both request material and bill for the forwarding of it at inflated rates. The material is received, never forwarded to *anyone* and typically sold in bulk to paper recyclers, to add insult to injury. A good solicitor knows which requests are legit and which aren't. Finally, there is a tremendous amount of good intelligence that can be gathered by a dedicated solicitor and relayed to you even during a routine annual meeting or interim delivery. For example, he might point out that a particular broker now has you on a 'sell' list due to a dramatic decrease in its depository position and material requirements or he might let you know the real beneficial owner behind a new big bank position that you couldn't find out on your own.

## How To Get The Most For Your (Shareholders') \$\$\$

- Get the right BP.

Get the right BP. I'll even say it a third time, **GET THE RIGHT BP**. This can't be

stressed enough. What good does it do you to hire a 50-year-old firm if you end up with a BP who has only a year's experience? Conversely, a new, small solicitor might provide you a BP with more than 20 years experience in the industry. Experience, sophistication and competence vary greatly in the solicitation field; if your contact is lacking, ask for a different one.

Also, be very careful not to overlook, or underestimate, the possibility of a personality clash and its potential overall effect. Let's face it, the service you *actually* receive will be dependent on how well you get along with your BP, *whether you like it or not*. If you have a great relationship with your solicitor, the service will follow. On the other hand, if the two of you have a rough time communicating, the best you can hope for is adequate service. Find the right personality for you; if that means another firm entirely, so be it.

- Ask questions.

Sounds simple, right? Still, you'd be amazed at how many bankers look upon their solicitor/BP as a one-dimensional search, delivery and solicitation agent, incapable of answering even a slightly more sophisticated question. For shame! Unless you're already dead, it's pretty impossible to handle dozens of bank mergers, hundreds of shareholders' meetings, dozens of tender offers and proxy fights, etc., without learning a good deal about lots of things. I wouldn't even be surprised if there is a solicitor or two walking around with more general knowledge about the banking industry than half of the outside directors across the country.

Carl Querino was a senior vice president at Workingmens Co-operative Bank in Boston, MA, and served as its liaison between the bank and its solicitor. "Occasionally I would notice some unusual share movements on our transfer sheets and depository listings," Querino said. "I couldn't always count on perfect information from our solicitor, but I did always come away knowing more about the position than I did before asking them."

- Collect bids.

Even if you're totally satisfied with your solicitor and not planning on switching anytime soon, it *still* can't hurt to know what the competition charges and how hungry they are for your business. Receiving a bid or two doesn't

cost your bank a thing, and you might actually discover you've been overpaying. At the very least you could use a lower bid as leverage if your present solicitor tries to raise its fees. Who knows, you may even get a fee reduction . . . *it does happen!*

- Discount your lawyer's opinion.

Most bankers wouldn't think of asking an SEC lawyer to recommend a good baby-sitter, yet for some reason a good many believe that outside counsel know a great deal about proxy solicitors. The truth of the matter is that lawyers have *extremely* limited dealings with solicitors and they have a tendency to be insensitive to fee levels.

A much better source for referrals is your transfer agent or a customer service rep at IECA or ADP — Proxy Services. By job description they are forced to constantly interact with all of the solicitors on a work/work level and have a superior 'feel' for who the best ones are. In addition, kickbacks or other forms of "thank-yous" (when given) tend to be smaller to these groups, which translates into lower fees for their referrals as well.

- Negotiate fees if necessary.

There may come a time when your CEO issues an ultimatum; either the shareholder relations budget gets cut *or you do!* Given this choice, you should have no problem speaking some "English" to your solicitor. No solicitor wants to lose a client to budgetary constraints; if your BP doesn't have the authority to lower your fee, go over his head to someone who does.

- Be wary of the out-of-pocket expense game.

The padding of expenses is not only an expected practice in this field but has evolved over the years into an 'if, then' statement, *if expenses, then padded*. You can hold your breath until you're blue in the face, but it's going to happen *to you*, PERIOD. The key here is to find a solicitor that pads its expenses less than the other guys do.

Do your shareholders a favor; in routine situations get your solicitor to put a cap on its expenses in the contract. A solicitor's routine fees should be based on the number of street holders that you have, and its out-of-pocket expenses should not exceed 50% of stated fees. If its expenses are higher, either the fees are too low or the expenses are too padded.

**Proxy Solicitors**

*The following is a listing of the most active proxy solicitors in the thrift industry.*

**Bank of Boston Corp.**

Craig Alie  
(617) 575-2553

**The Carson Group**

David Geliebter  
(212) 581-4000

**The Carter Organization**

Mike Brinn  
(212) 725-5959

**Chemical Bank**

Declan Denehan  
(212) 613-7026

**Corporate Investor Communications, Inc.**

Don Gundry  
(201) 896-1900

**D.F. King & Co., Inc.**

John Gavin  
(212) 269-5550

**Georgeson & Company, Inc.**

Bill Crane  
(212) 440-9800

**Hill & Knowlton, Inc.**

Jane Sullivan  
(212) 210-8850

**Kissel-Blake, Inc.**

Bill Willis  
(212) 344-6733

**McCormick & Pryor Ltd.**

John McCormick  
(212) 968-9090

**Morrow & Co., Inc.**

Joe Morrow  
(212) 741-5511

**Regan & Associates, Inc.**

Artie Regan  
(212) 587-3005

**Shareholder Communications Corporation**

Al Miller  
(212) 809-3600

**Tritech Services**

Brian Byrne  
(908) 878-6434

- Watch out for high BP turnover.

As previously mentioned, your BP is going to determine the actual level of service you're going to receive regardless of the fee paid or the firm hired. If you notice that you keep getting handed-off to a new BP every year or two without requesting it, then you have a problem.

Due to the learning curve associated with working on a new account, it is ideal to stick with a competent, seasoned BP who knows your shareholder base. This may mean following your BP from one firm to another. Truly GREAT solicitors (like stock brokers) are few and far between; if you've been lucky enough to find one, *follow him*.

- Treat your BP like an investment banker.

Although proxy solicitors are on the low end of the Wall Street earnings totem pole, this should have no bearing on how they *should* be treated. By treating your BP like a respected professional, you will earn his respect and get superior service in return, *regardless of what you're paying his firm*. There's also a real possibility that he may know more about what he's doing than your investment bankers or lawyers.

- NEVER pay for nothing.

This probably sounds like stating the obvious, but it does occur. Solicitors have been known to charge fees for 1) NOT soliciting against you, 2) annual retainers that guarantee that they will represent you and then charge you *again* to actually do it, 3) acting as a shareholders' rights agent (*Ugh!*), etc . . .

If you feel compelled to give your shareholders' money away, *do the right thing* and donate it to a charitable organization that feeds starving people or something. Banks that are overly concerned about their solicitor going against them in the future should force their solicitor to put a perpetual non-compete clause in the language of its annual meeting contract. Your solicitor can refuse; you can walk!

**Till We Meet Again**

Like it or not, in tight money times, proxy fights are cheaper vehicles for taking over banks than hostile tender offers are. You *will* find yourself dealing with these firms in the future; at least now you'll be better prepared for it. And do not think that ADP's recent purchase of IECA is going to eliminate the need for the professional solicitor's services. In fact, I expect the mailing and tabulating problems

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arising from their merger to actually create a new surge in solicitation business.

Just four more *quick* points and then I'll let you go.

- Owner/CEO's ethics will govern.

In terms of fee gouging, overstating expenses, etc... , remember that *the owner's personal ethics will govern his solicitation firm's practices*. If it's rotten at the top, don't expect it to be perfect at the bottom.

Bob DeLay, President and CEO of Conservative Savings Corporation in Omaha, Nebraska, recalls a solicitor related experience from a couple of years back where ethics played a crucial role. "We had a serious threat of a full-blown, formal proxy fight and found ourselves in a fairly expensive contract with a new solicitor. The fight dissolved late in the game but the owner of the firm was good enough to still waive their fight fee. That single act got him a case of Omaha steaks and a regular client."

- Use them to the fullest.

Overpaid delivery boys or underpaid corporate champions? *They CAN be either!* You

will get exactly what you command. The choice is yours, and has always been. If you forget how to *use* them, reread this article.

- Don't over-negotiate fee and expense reductions.

One caveat to the general "wheel and deal" rule — do not force your BP to work for perceived peanuts. It undermines his attitude and service. You'll be better off having a lower priced solicitor working content at 'full fee,' than a high end BP merely trudging along with a puss on his face.

- Always remember whose money you're spending.

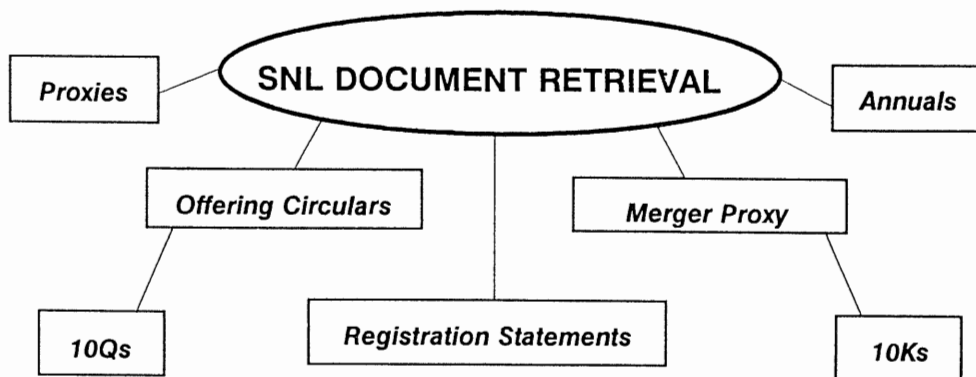
I'm a shareholder in a number of banks myself. Please remember that even though it's coming out of the corporate coffers, you're also spending other people's money. Treat it like your own, and *do the right thing!*

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*PLEASE NOTE: The opinions herein are exclusively those of the author and not necessarily those of SNL Securities, its management, or its staff. Responses to Mr. Regan's discussion of proxy solicitors are welcome.*

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