THE CORPORATE GOVERNANCE ALLIANCE DIGEST

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This 2005 edition of the DIGEST has 5 major sections:

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II. COMPENSATION TRENDS & ISSUES
III. AUDIT COMMITTEE ALERTS
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V. OTHER REGULATORY AND LEGAL UPDATES

I. BOARDS: NOMINATIONS, SUCCESSION, COMPOSITION, CONFLICTS

Linda Killian, portfolio manager for the IPO Plus fund reports that 51% of the companies that went public last year had poor to very poor governance practices vs 37% in 1999. One of the most common governance issues is a lack of truly independent directors. (NYT 1/23)

The Cleveland Clinic says it is overhauling its ethics policies, and will present them to the board for approval, to ensure that corporate connections do not lead to bias in patient care or academic research. Some of the rules may only address disclosure rather than eliminate conflicts. Currently, many researches opining on medical issues are starting companies and serving as consultants and board members. In some cases, they may use their patients in clinical trials to test new treatments in which they have a financial stake. (NYT 1/25)

According to a DT study, recently, 1/4 of companies had policies limiting the number of boards their CEOs served on; today 1/2 do. According to Tom Neff, chair of Spencer Stuart US, 8 years ago, the CEOs of S&P 500 companies served, on average, on 2 outside boards compared to 0.9 today. In addition to company bans, governance concerns about interlocking directorates, the greater work and liabilities are also credited with these trends. (WSJ 1/28)

The agreement by Worldcom directors to pay $18m to plaintiffs fell apart when the judge overseeing the case ruled that one aspect of the deal was illegal because it would have limited the directors' potential liability and exposed the investment banks, that are also defendants in the case, to greater damages. (In December, the judge had ruled that it was not enough for banks selling securities to investors to rely on so-called comfort letters from companies' accounting firms stating that unaudited financial statements, like quarterly results, were accurate) Now that the plaintiffs intend to withdraw from the settlement, the directors will have to stand trial starting Feb. 28, along with the other defendants, unless another settlement is reached. (NYT, WSJ 2/3)

In a board shake-up, Daniel Bernard will resign as chair and CEO of Carrefour and be replaced as chair of a new supervisory board, by Luc Vandevelde, former head of Marks & Spencer. His departure follows months of negotiations between the chair and his largest shareholder, the Halley family who owns 13% and had demanded significant management changes in light of Carrefour's performance (FT 2/3, WSJ 2/4)

Kenneth Langone is stepping down from GE's board amid turmoil over his prior role as a NYSE director in the Dick Grasso pay matter. (NYT, WSJ 2/8)

The SEC told Verizon, Qwest and Halliburton that they could rebuff requests by institutional shareholders seeking the opportunity to nominate a small number of directors for board seats. In a rule proposed in October 2003, the SEC had included a footnote stating that henceforth, SEC staff would begin allowing shareholder-access proposals to be placed on proxies but the SEC staff reversed that opinion and said too much time had passed to require companies to include the proposals. (NYT, WP 2/8)

SEC chief Donaldson believes the proposed proxy access rule, which has been stalled for over a year, should be re-written. The U.S. Chamber of Commerce and the Business Roundtable, have fought against the proposal, saying it would allow special-interest groups to hijack boards and push narrow agendas. "Reforms are dying and the agency is clearly backsliding," said Lynn Turner, chief accountant at the SEC from 1998 to 2001. "Donaldson has largely backed off or watered down many important proposals." (NYT, WP 2/10)

Disney directors were re-elected by 92% of the shareholders while former directors Roy Disney and Stanley Gold withheld their votes at this week's annual meeting because Disney still hasn't interviewed external candidates to compete against Disney President Bob Iger for the job. Disney has said it will announce a successor to Michael Eisner no later than June. (NYT, WSJ 2/9, NYT 2/13)

The NYSE is preparing to nominate 3 new directors using a procedure instituted to allow the public to nominate candidates. Although possible last year, the NYSE chose against it. (WSJ 2/11)

Numerous "lessons" for boards have been drawn from the ouster of Carly Fiorini as head of HP. Here are 5 related to CEO succession planning, corporate culture, and communications. 1 - Having a plan: The board of HP is now choosing a search firm and will begin a search for a new CEO while Robert Wayman, current CFO now appointed to the board, will act as interim CEO while also retaining his CFO responsibilities. Patricia Dunn, a board member, was appointed non-executive chair. 2 - Hiring and supporting the CEO: Board recognition of the importance of strong operating experience and ensuring CEOs either get that experience or are supported by a strong COO is important. 3 - Implementing appropriate management development programs. According to Catalyst, women make up 1/2 the managerial ranks in Corporate America, only 16% of corporate officers and, of those, fewer than 1/3 were line officers, or ones with direct operational responsibility; the large majority were in staff jobs. 4- Plans to handle corporate cultural biases and recognition of biased leadership expectations: Women are still expected to be nurturers, not strong leaders comments Sheila Wellington. 5 - Managing crisis communications: Ms. Fiorina "was asked to resign due to differences in strategies between Carly and the board" said a company spokesman. Carly Fiorini said she was leaving because of strategic differences; Ms. Dunn said there was no triggering event and no strategic differences and the new management did not anticipate any immediate changes in strategy; Mr. Wayman said a "leader that challenges us and leads us to do better is what this is all about." (FT, NYT, USA, WP, WSJ 2/9, 2/10, BW 2/11, NYT 2/13)

Scheduled to report at the end of March, a working group, convened by the American Bar Association could give investors more say over who gets elected to company boards by abolishing voting which allows uncontested management nominees to be elected to the board with just a single "yes" vote. Shareholders in US companies cannot vote "no" in company board elections. (FT 2/14)

A report by the Center for Political Accountability rates the decision-making and disclosure policies of 120 large companies that donated soft money in 2002 to the independent political groups known as 527 committees. Companies that didn't disclose their gifts were more likely to have management scandals or reputation risk issues than those who did. This analysis could bolster support for shareholder resolutions seeking greater disclosure and accountability of corporate political donations. A dozen big institutional investors have submitted more than 30 such resolutions at companies including GE, Verizon, and Eli Lilly. (BW 2/21)

II. COMPENSATION TRENDS AND ISSUES

New rules require compensation reporting for funds that launch after 2/28 and for existing funds in annual prospectus updates. Manager salaries aren't required; rather funds must give details about how they structure pay, including whether compensation is tied to performance and if bonuses are paid and to reveal managers' investments in the funds they oversee. (WSJ 2/7)

About 70% of companies offer some type of deferred compensation, and the average base salary of participants is $136k according to a 2004 survey by Hewitt Associates of 500 large employers. Due to new deferred compensation rules, changes may need to be made to salary or bonus agreements that could require negotiation, board and/or shareholder approval. The rules make it harder for executives to take an early payout, and require specific provisions for when money can be distributed. A big change is that payments can be made only for specific events, such as departure from the company, disability or death. Previously, executives could request payments for any number of reasons, such as a child attending college. The new tax laws also eliminate the "haircut" provision which allowed executives to take their compensation early if they paid a small penalty. Under the rules, executives who defer their compensation face potentially stiff fines if the new standards aren't met, including an immediate payment of taxes, interest and a 20% penalty. The changes were put in place after executives at some firms received large sums, leaving employees and creditors with little. (WSJ 2/8)

The SEC plans to push for more transparent and understandable compensation disclosure. But beyond better disclosure, there is also concern about the performance measures some companies use to reward executives. In some cases, officials may be getting paid to simply hit Wall Street estimates rather than actually improve a company's long-term performance. (WSJ 2/10)

SPECIFIC PAY PACKAGES

Siebel Systems has taken a step toward tying pay to performance. After more than 1 year of discussions with Calpers, Siebel's "performance stock plan" requires the use of individual performance goals based on the company's 2005 revenue, operating margin, and customer satisfaction, or on other company performance goals to be determined by Siebel's compensation committee. Some of the stock options granted to directors, executives, and other employees will vest earlier than scheduled if the company achieves certain goals, such as those based on revenues and operating margins. Any cash bonuses to executives and senior managers will be awarded based on similar criteria. (CFO 1/24)

The board of Fruehauf never received a copy of a special pension plan for management, but approved it after being told the matter was an "administrative formality," That plan has been cancelled by a federal bankruptcy court, faulting management for not disclosing the plan to the board and finding that the pension bonus was excessive. The effect of the court decision will save the PBGC from having to pay an additional $4.5m under the salaried bonus plan -- which had grown in value from the original $2.4m. (WSJ 1/25)

SBC, which converted its management pension plan to a cash-balance plan in 1997, said it is moving back to a traditional pension because it wants to reward longer-service workers. The company said unless workers remain until normal retirement age -- a combination of years on the job plus age -- they could see a reduction in benefits.

The cash-balance pensions will be frozen, which means a pension won't grow with additional years on the job, though under law it still earns interest. Existing and new hires will be covered by the new traditional pension. (WSJ 1/26)

While Wall Street bonuses are up, on average, 20%, annual bonuses for 2004 were down as much as 30% from 2003 levels at JP Morgan due to bond trading and interest rate bets in its investment bank. (WSJ 1/26)

AT&T said it adjusted standards for awarding bonuses so executives did not suffer due to its full year loss of $6.1b (due primarily to $11.4b in asset write-offs). CEO Dorman's bonus was down 26% to $1.97m. He also received 146k shares of restricted stock and a performance-based stock grant of 341k shares for 2005 (WSJ 1/26)

"Are top executives sometimes motivated to do mergers, at least in part, by personal gain? And is it right for the top people to walk away with megamillions while thousands lose their jobs in post-merger downsizing?" P&G and Gillette said 6,000 jobs are likely to be cut in the combined company." James Kilts, former Gillette CEO and soon to be P&G vice-chair, will likely personally gain more than $185m, $95m tied to when the deal is consummated. His new compensation in the new combined firm is estimated to be about $8m. This and other similar arrangements have been cited to raise concern about why deals are done and question the fairness of fairness opinions, (WSJ 1/31, 2/3, USA 2/8)

In the just released Webb report, NYSE compensation-committee members told investigators that "they were not aware of Grasso having any direct involvement in his own compensation or discussing it with any ... board members." The Webb report says rather that he had "unfettered authority to select which board members served on the compensation committee and, likewise, to select the committee chair." As a result, "Grasso hand-selected the members of the committee charged with reviewing and recommending his yearly compensation." The report said the peer groups used by the NYSE to set Mr. Grasso's pay inappropriately compared his responsibilities to CEOs at much larger for-profit companies. The result was compensation and retirement benefits -- including amounts approved but not paid as of 2003 -- that totaled well over $200m and, by Mr. Webb's estimates, were between $144.5 m and $156.7 m more than Mr. Grasso should have gotten. (FT, NYT, WSJ 2/3, Fortune 2/21)

New York hedge fund, Copper Arch Capital, run by a former Morgan exec, questions the pay decision-making at Morgan Stanley based on recent board decisions to use Mr. Purcell's 2004 compensation as "a floor" for calculating future pay increases, and basing future raises to the 2004 number on an increase or decrease in pretax earnings, leading to a disincentive to sell off underperforming businesses and potentially leading to pursuit of an ill-conceived acquisition. Philip Purcell earned $22m last year and, in addition, realized roughly $18m in profit from the exercise of options on Morgan Stanley stock during the year ended Nov. 30. His base salary remained at $775k, but his cash bonus and company stock awards increased. (WSJ 2/5, 2/8)

CEO Hank Paulson at Goldman Sachs earned $29.6m and CEO Stanley O'Neal at Merrill Lynch earned $31m last year. (NYT 2/8)

An amendment to Franklin Raines's contract on Sept. 17 -- the same date that appears on OFHEO's report accusing Fannie Mae of accounting violations -- eliminated a provision that would have reduced Raines's pension if he were terminated for cause, Fannie Mae said in court papers. OFHEO approved that amendment in November, along with language that would make it easier to fire Raines for cause. Now OFHEO has given Fannie Mae permission to begin releasing pension and deferred-compensation payments to its former CEO and CFO who stepped down in December after the company agreed to make accounting corrections that could eliminate $9b of previously reported profit. Raines and Howard are entitled to monthly pensions of $114k and $36k, respectively. The payments were to continue for the rest of their lives or the lives of their spouses, Fannie Mae said. Raines was owed $8.7m of deferred compensation and Howard was owed $4m, payable in installments over several years. The deferred pay being released could include incentive pay linked to financial results now subject to correction. The permission to initiate payments does not extend to stock options, 2004 bonuses or other incentive payouts. (WP 2/9)

Delta Air Lines, with a $2.2b 4th qtr loss, said it wouldn't pay bonuses and incentive awards to top and mid-level executives because of the company's poor financial condition. In a memo to employees, Gerald Grinstein, Delta's CEO, said that given the company's ongoing job cuts of up to 6,900 workers, a recently imposed 10% wage cut for US employees, and overall cost-cutting efforts, "our Board of Directors recently accepted management's recommendation to continue to embrace the principles of shared sacrifice and the close alignment of executive pay to financial performance." (WSJ 2/11)

Under the terms of the severance package, HP agreed to pay Carly Fiorina $14m in cash, payable 6 months after her Feb. 8 termination with interest at an annual rate of 2.78%. The $14m represents 2.5 x her annual salary and target bonus. Ms. Fiorina also will get nearly $7.4m as part of a payout from HP's performance-incentive program. She received a bonus of $1.57m last year. (WSJ 2/10, FT, WSJ 2/14)

In a recent court case involving Dexsil Corp., the court developed five criteria for evaluating and establishing the reasonableness of compensation: Employee's role; Rate of pay for a similar position in the external market; Fiscal integrity of the company; Conflicts of interest in determining pay (such as Eisner and Ovitz's friendship); The historical way in which compensation had been applied throughout the company. (FEI 2)

III. AUDIT COMMITTEE ALERTS

The new FAS 123, Share-Based Statement encompasses the range of share-based payments to employees: options, restricted shares, performance-based awards, share appreciation rights, and employee share purchase plans and requires companies to account for stock option expenses in their income statements starting in the 3rd quarter of 2005. It replaces FASB Statement 123, Accounting for Stock-Based Compensation, and supercedes APB Opinion 25, Accounting for Stock Issued to Employees. An important part of the new statement 123 is the requirement of companies to report any plans to buy back shares, give the approximate number and reason for the repurchase, providing investors with the ability to calculate the cost of repurchasing shares, including the impacts on cash flow or debt. The fair value method required standardizes the method for all public entities and makes the accounting requirements for entities that report financial statements under both U.S. GAAP and international accounting standards less burdensome. (Valuation Issues 1/25)

582 companies disclosed material weaknesses or significant deficiencies in internal controls (Compliance Week 1/28)

The number of amended filings for financial restatements rose 28% ,according to Huron, to a record 414 in 2004 from 323 a year earlier. (CFO 1/28)

According to PWC', they expect 10% of public companies in the U.S. to have to report to their shareholders that they either couldn't comply with 404 in 18 months, or they had a material weakness of a scale that could cause a misstatement. (CFO 1/28)

The average one-day premium for US takeovers since 2001: 26 cents per share. (FT 1/29)

The IASB has formed a working party of outside professionals in collaboration with its US counterpart, FASB, to consider the faults of net income, its huge popularity and its potential replacement with a measure of comprehensive income that would pull balance sheet impacts into the income measure. (FT 1/31)

7,000 listed European companies are scheduled to start using a single set of international financial-reporting standards—whether they are ready or not. The new IFRS rules must be adopted by year-end, including those related to hedge accounting and fair value that met fierce opposition. Share price volatility is expected if companies delay results or fail to explain swings in income statements or balance sheets caused by the implementation of the IFRS. Investors are also liable to misinterpret certain changes. A lack of guidance from most of the 7,000+ listed companies switching to IFRS is not a positive signal about corporate preparedness and creates opportunities for short sellers. On the positive, the IFRS allows Vodafone to swap an after-tax loss of more than £8bn in 2003-04 for a profit of more than £6bn benefiting from the abolition of goodwill amortization under IFRS3 similar to the US standard FAS141, introduced in 2001 (CFO 1/28, FT 2/3, 2/14)

A PwC survey of more than 100 deals since 2001 found that, on average, the target's purchase price broke down into: 26% net assets, 22% separately identifiable intangibles and 52% goodwill. The separate intangibles are amortized over their useful lives - often less than the typical 20 years that used to apply. In other words, this category of intangibles - the ones that wear out - are treated like tangible plant or equipment. The items - including licenses, contracts, patents - "can be pinned down and measured, which is what accountants love doing". (FT 2/3)

Another standard, IAS 36 on the impairment of assets, has been updated by the IASB. It weighs in on how to measure goodwill and other intangible assets with an indefinite life. Where there is insufficient market information to arrive at their "fair value" - the amount they could be sold for - their "value in use" must be calculated. IAS 36 encourages them to disclose key assumptions and limits the growth rates that can be used beyond five years. (FT 2/3)

The SEC plans to hold a roundtable to review the impacts of 404 in April. SEC staff will consider recommending an "appropriate delay" in implementing 404 at smaller U.S. companies and non-U.S. firms slated to come under the requirement this summer. (FT, WSJ 2/8, NYT 2/10)

Moody's says they are less concerned about material weaknesses that relate to controls over specific account balances or transactions than material weaknesses that relate to company-level controls, such as the control environment or financial reporting process because it's harder for auditors to audit around a pervasive control problem. (FEI 2)

Reliance by boards on fairness opinions to protect themselves against lawsuits and investor criticism of a deal's terms is under fire due to Issues of conflict of interest. Requirements for additional disclosure are being considered by the NASD with respect to fairness opinions. The NASD is also considering requiring investment bankers issuing fairness opinions on deals disclose their relationships including publicly stating whether the company executives they are working for might be biased toward a deal because they will receive post-merger bonuses. In addition, the NASD is considering policing how bankers settle on valuation methods in their fairness opinions. Typically, bankers rely on data provided by company executives and say they don't independently verify it. The 17 Wall Street firms involved in almost every U.S. corporate restructuring told the NASD that state law and the SEC already govern deal making disclosures. The value of these opinion letters is disputed because the banks that structure the deals usually provide the opinions supporting their fairness and arrangements include fees that can be earned if the transaction goes through. (USA, WSJ 2/8)

It is estimated that thousands of companies are unaware of the new reporting requirements in the 2003 UK Finance Act that asks employers to report all share movements of employees' shares in the company. Failure to comply could lead to fines of thousands of pounds for businesses that don't report. This requirement also applies when shares are issued on incorporation to directors of new companies. (FT 2/14)

AUDITORS and AUDIT FEES

A former E&Y partner was sentenced to one year in jail and two years of supervised release for destroying documents related to an SEC investigation of NextCard. (CFO 1/31)

Audit Analytics said the Big 4 were shedding clients at almost 3 x the rate they did in 2002, the year Sarbanes-Oxley took effect. The companies that are most likely to be dropped by accounting firms are those considered too small to be worth the extra work now required, as well as those judged too risky to work with under the new accounting rules. BDO Seidman said the firm added about 100 new clients last year but shed around 80, for a net total of around 400. Some firms do not have the staff to handle larger clients, leaving those clients with few choices. Of the 200 or so publicly traded companies shed by Big 4 auditors last year, Grant Thornton, the 6th largest firm, picked up only 17. (NYT 2/6)

PwC has violated independence rules related to a number of clients including providing cash-handling services that a PwC affiliate in China performed for some clients, In January, Apollo Group said in a regulatory filing that PwC informed the company that the auditor had provided "certain non-audit services related to property taxes on a 'success-based' fee arrangement to Peter Sperling," who is the company's senior vice president and a member of its board. The services were provided in 2002 and 2003. (WSJ 2/4, 2/5. CFO 2/8)

A Corporate Executive Board survey of 43 companies (40 in the Fortune 500) shows PwC audit fees increased 134% in 2004, 109% at KPMG, 96% at E&Y and 78% at Deloitte. (FT 2/9)

ACCOUNTING AND CONTROL ISSUES

An SEC inquiry may require DirecTV to increase its depreciation and amortization expenses associated with acquisitions of customers and assets from 4 other firms. (WP 1/23. WSJ 1/24)

Following an internal investigation, Brocade Communications said it will reduce net income by $304m for the years prior to 2002 in an effort to rectify improper accounting related to stock-option grants. From May 1999 to July of 2000, it incorrectly accounted for option grants for new hires who were awarded on an employee's offer acceptance date, rather than on their first day of employment. Brocade also said that from August 2000 to October 2002, it similarly accounted for option grants to part-time employees. (WSJ 1/25)

TXU is the latest of a growing number of companies that have agreed to significant governance changes as part of securities litigation settlements. Usually shareholders launch the suits following a drop in the company’s stock price caused by unexpected losses, accounting restatements, or fraud. In the TXU case, shareholders charged that senior executives failed to disclose significant financial problems between the spring of 2001 and fall of 2002. TXU will replace 2 board members, create a lead independent director, reconfigure the current board so 70% of its members qualify as independent directors, require shareholder approval of executive stock option plans prior to implementation, adopt new policies relating to contracting, executive compensation, and auditing practices, create 2 new positions -- chief governance officer and director of corporate governance -- and implement restrictions on insider trading. Similar cases at Applied Micro resulted in a more independent board and at Broadcom and Hanover: shareholders allowed to directly nominate a director. TXU, which has a market cap of $19b, also agreed to pay $150m to the class members. TXU will receive $66m from several D & O insurance carriers, and expect to recover more from other carriers. (CFO 1/26)

The SEC has begun a formal investigation into how Interstate Bakeries Corp. managed its workers' compensation reserves. (WSJ 1/28)

Similar to a wave of restatements at restaurant chains that include Applebee's, Darden, Ruby Tuesday, Brinker, Jack In The Box, CKE and Wendy's, Emertitus will also restate due to lease-related accounting policies. (CFO 2/2)

Ceridian stated that it has material weaknesses that include deficiencies in its internally developed software capitalization guidelines, the commencement of amortization of its capitalized software development costs, its month-end close process, its cost and expense accrual process, its entity-level control process, and policies and practices relating to revenue recognition and the classification of costs and expenses in the company's consolidated financial statements.
The company also announced that it will change its accounting treatment for its interest-rate and fuel-price derivative securities. Ceridian noted that interest-rate hedges have been highly successful components of its risk management strategy since 1992. A fuel-price hedging strategy was introduced in 2003 to mitigate the company's exposure to price variability in its Comdata operation. As a result of the change, Ceridian increased its total pretax earnings from 2001 through 2004 by about $28million. In addition to the change in accounting for derivative securities, the company said that it adjusted expenses for the years 2001 through 2004 and changed revenue recognition, which reduced revenue and earnings before income taxes for 2003 and the first 3 quarters of 2004. (CFO 2/2)

The former CEO and 3 other executives of Mercury Finance are under federal prosecution for manipulating earnings reports and failing to account for bad loans in an effort to deceive shareholders and creditors. (WSJ 2/3)

Merrill Lynch restated its results for prior years caused by incorrectly recognizing certain retail account fees when the fees were received, instead of recognizing them over the contract period. (WSJ 2/3)

Shell cut its proved oil and gas reserves by another 10%, meaning it has now cut reserves by almost a 1/3 in 12 months. Shell says it has about 600m barrels of petroleum reserves held at its Athabasca oil sands project in Canada. The heavy oil is trapped in a complex mixture of sand, water and clay. But because Shell must use open pit mining rather than drilling to extract the oil from the sands, the SEC forbids the inclusion of the 600m barrels in its proved reserves figure. This means that Shell is in the position of producing 80k barrels of oil a day from Athabasca but is unable to book the reserves. The company was also forced to remove bitumen production from its Peace River site in Canada, which cut its reserve replacement ratio by 14 basis points. (FT 2/4)

The SEC inquiry related to Citigroup's 1999 decision to set up an internal-transfer agent to service its mutual-fund unit may be settled soon except for one issue: Thomas Jones, who was asked to leave Citigroup last October, is unwilling to agree to any settlement that suggests he acted improperly. According to the case, Citigroup hired First Data to provide technology, but only after First Data agreed to direct investment-banking and asset-management business to Citigroup. The SEC staff has concluded that Citigroup's asset-management unit "failed to properly disclose the reciprocal business arrangement and revenue guarantee" to the funds' boards, and that "such failure evidences fraudulent intent." (WSJ 2/7)

Donald Nicolaisen, chief accountant at the SEC told Congress that Fannie Mae violated accounting requirements that are "clear" and "not overly complex." (WP 2/10)

OfficeMax said its CEO was resigning after just 4 months related to an internal accounting probe in which it overstated operating income for first quarter fiscal 2004 by $5 -$10m by failing to record certain rebates and payments to vendors. The company also announced that 6 employees had been fired over the probe, which it said had revealed "the fabrication of supporting documents for claims billed to a vendor to its retail business" and other irregularities. (FT, USA, WSJ 2/14)

IV. CUSTOMER, EMPLOYEE, AND SHAREHOLDER RELATIONS

CUSTOMERS

As many as 2m patients at U.S. hospitals may develop infections each year, the CDC estimates. It says these may lead to nearly 90k deaths annually -- more than the toll from breast cancer or car crashes. Hospital-acquired infections add roughly $5b a year to the cost of patient care in the U.S. The CDC, Consumers Union, the American Hospital Association and other groups will meet in Atlanta to discuss a national approach to reporting and disclosure. State officials are looking to the CDC, especially, for guidance (WSJ 2/1)

Overall, the FTC took in 635k fraud and identity theft complaints last year, an increase of 17% from 2003 and 57% from 2002. Those filing the complaints estimated that fraud cost them $548m. (WP 2/2)

Jeff Immelt, CEO of GE said that 60% of the company's growth over the next decade will come from the developing world, whereas 80% presently comes from the developed world. Mr. Immelt saw "massive opportunities" in China and India, but said India needs to fix its infrastructure and China needs to develop its microeconomic system. (WSJ 2/4)

According to Edelman's annual "trust barometer," a survey of 1,500 opinion leaders throughout the world, 32% of Europeans polled in January said they were less likely to purchase products made by companies in the United States because of disagreements with American culture. The Coca-Cola brand, for example, was "trusted" by 69% of US respondents vs 45% in Europe and 46% in Canada. P&G was trusted by 74% in the US but only 44% of Europeans. (NYT 2/14)

EMPLOYEES

Last summer, following 5 incidents, U.S. Steel shut down all facilities world-wide for 1-hour meetings on safety in all departments. It revamped all safe-job procedures and launched a hotline to report safety violations. U.S. Steel had 1 fatality in 2003, and 2 in 2004. The United Steelworkers of America says at least 15 deaths, compared with four deaths in 2003, were reported for 2004 in union and nonunion steel-related operations. Another safety gauge -- injuries per hour worked -- also increased last year after a 4-year decline. (WSJ 1/26)

" Meat packing is the most dangerous factory job in America." according to a study that Mr. Compa, professor of industrial and labor relations at Cornell University, conducted over a 3 year period using interviews with workers, company responses, regulatory reports, judicial rulings and court testimony. and focusing on three companies: Tyson, Smithfield and Nebraska Beef. The industry's injury rate was 3 times that of private industry over all. "Nearly every worker interviewed for this report bore physical signs of a serious injury suffered from working in a meat or poultry plant...plants where exhausted employees slice into carcasses at a frenzied pace hour after hour, often suffering injuries from a slip of the knife or from repeating the same motion more than 10,000 times a day, workers being asphyxiated by fumes and having their legs cut off and hands crushed, packing companies violating human and labor rights by suppressing their employees' efforts to organize by, for example, often firing employees who support a union, and asserting that slaughterhouse and packing plants also flouted international rules by taking advantage of workers' immigration status - in some plants 2/3 of the workers are illegal immigrants – and subjected them to inferior treatment." Industry officials say the report is inaccurate. Human Rights Watch called on federal safety officials to increase enforcement and to slow the line speed in packing plants to reduce the number of repetitive stress injuries and state officials to enforce worker compensation laws more vigorously, and it urged companies not to fire and intimidate workers seeking to unionize. (NYT 1/26)

In January, Wal-Mart issued a new 26 page code of ethics that toughens company guidelines dealing with internal accounting issues, vendor relationships and personal conduct. For the first time, the policy extends beyond Wal-Mart's 1.5m employees and their families to include same-sex partners and close non-marital relations. (USA 1/31)

As part of the "American Jobs Creation Act', Congress passed a 1-time tax break on foreign profits last fall to encourage American companies to build new operations and hire more workers at home. Instead, some companies say they might end up cutting their work forces; others will use the funds for acquisitions. (NYT 2/1)

A lawsuit filed last week alleges that Citigroup's cash-balance pension plan violates a long-established pension law.

While most of the roughly 20 lawsuits against cash-balance pension plans have involved allegations of age discrimination or the underpayment of lump sums, the suit against Citigroup alleges that its cash-balance pension plan violates backloading rules. These are minimum accrual rules that make it illegal for an employer to use a pension formula that provides a disproportionately higher benefit in the later years. (WSJ 2/7)

Wal-Mart plans to close a Canadian store where workers are on the verge of becoming the first ever to win a union contract from the world's biggest retailer. (USA 2/10)

SHAREHOLDERS/CREDITORS

China Construction Bank, one of the country's Big 4 state lenders, is considering shunning New York and listing its shares only in Hong Kong because of the high cost and strict requirements of US corporate governance rules. A CCB decision not to list in New York because of the Sarbanes-Oxley Act would fuel investors' concerns over corporate governance at Chinese banks. State-owned lenders have been plagued by scandals which have compounded investor fears over the soundness of their finances. The offerings by CCB and Bank of China have already been delayed while investment banks and accountancy firms struggle to restructure the banks' businesses and audit their accounts. The BOC which plans to go public this year, acknowledged in January that a branch manager in northeastern China had embezzled $102m before fleeing the country. The China Banking Regulatory Commission proposed rules that, if approved, would require the nonperforming loans of individual banks to make up no more than 5% of total lending - a sizable cut from official levels of 16% for most banks - and to maintain a return on assets of at least 11% percent. The commission also published an account of a meeting at which regulators strongly criticized China's state-owned banks for recent fraud and mismanagement. (FT 1/25, NY 2/8)

In 1975, the SEC ruled that the laws relating to debt carried by banks and financial institutions refer only to ratings provided by agencies that it recognizes called a Nationally Recognized Statistical Rating Organization. Right now, these are S&P, Moody's, Fitch and Dominion Bond Rating Service of Canada. Ratings agencies practices are under review by the SEC and Congress for lack of accuracy and potential conflicts of interest. A recent academic study by U of Michigan and Stanford professors compared ratings by Moody's with those of Egan-Jones on 800 companies made by both services from 1997 to 2002 and found Egan-Jones's ratings changes were more timely than those of Moody's, coming up to six months sooner. Egan has applied to the SEC for status as an NRSRO to no avail. The big three credit-rating companies said in a congressional hearing that they welcome more competition, but stopped short of agreeing to more federal oversight, (NYT 2/6, WP 2/9)

V. OTHER REGULATORY AND LEGAL UPDATES

William Donaldson, SEC chair, said he has asked the SEC’s staff “to consider whether to recommend a delay of the effective date of the internal control on financial reporting requirements for non-US companies. (FT 1/25, NYT 1/26)

Concluding an SEC inquiry, Morgan Stanley and Goldman Sachs have agreed to pay $40m each to settle federal charges that they awarded IPO shares in a manner that may have inflated stock prices during the late 1990s by offering customers a chance to buy IPO shares in exchange for pledges that the customers would buy more of the shares later during the first day of trading. (WP, WSJ 1/26)

The EU's new competition commissioner will recommend a shift of aid bailouts from large companies and make aid available to innovative smaller and medium sized businesses. (FT 1/26)

The NASD is considering a requirement that investor arbitration panels against Wall Street firms may have to provide written reasons for their decisions, if asked. To get the written reasons, customers will have to request a written explanation before the arbitration panel holds its first hearing. After hearings end, the panel will provide a written decision detailing why each claim was granted or denied. Arbitrators will receive $200 for each requested decision, with the NASD paying half and the brokerage firm and customer picking up the rest. (WSJ 1/28)

The US Committee on Foreign Investment, interagency regulators, will extend a routine 30-day review of the $1.75bn sale of IBM's personal computer division to Lenovo, China's biggest PC maker. The concern, is that R&D work at IBM's PC operations in the US in areas like battery technology, encryption and product integration could be used to advance China's military capabilities. (FT, WSJ 1/29, NYT 1/31)

Marsh & McLennan will pay $850m in restitution over 4 years to policyholders hurt by its conflicts of interest to end an investigation into bid rigging, price fixing and the use of hidden incentive fees. The amount is tax deductible. The company also issued a public apology calling its conduct "unlawful" and "shameful." (FT, USA, WSJ 1/31, NYT, WP 2/1. WSJ 2/8)

The costs to investors of short-term trading at Putnam are now estimated at $100m rather than the $7-10m the company estimated last March, which may cause Putnam to set aside $75m more for investor restitution. (WSJ 2/2)

The European commissioner in charge of financial regulation has called for the EU to have a bigger role in steering the IASB. (FT 2/3)

With the Kyoto Protocol, the treaty limiting global-warming emissions in most industrialized nations, set to enter into force Feb. 16, companies that will have to curb their emissions in compliance with their countries' caps are scrambling to figure out how to do so without killing their bottom lines. Even in the U.S., which has rejected the treaty, companies are looking for a solution, figuring it's only a matter of time before they face caps, too. At a new natural-gas processing plant in the Sahara, BP and two partners have spent $100m to take CO_2, that otherwise would be sent into the air, and put it back where it came from: a mile underground. Underground formations that scientists believe could hold large amounts of CO_2 are strewn across vast stretches of the Earth, including coal-dependent regions such as the U.S. Midwest. The Paris-based International Energy Agency estimates there's enough capacity in these formations to hold twice as much CO_2 as the world is likely to emit over the next half century. Lured by this prospect, the U.S. government has helped pay to drill a two-mile-deep hole in the parking lot of a West Virginia coal-fired power plant owned by AEP, the nation's largest utility and one of its biggest CO_2 emitters. The government and AEP are looking at the underground rock to see if it could store CO_2 from the plant. (WSJ 2/4)

Jean-Claude Trichet, president of the European Central Bank, called for a "thorough and deep" investigation into Citigroup's controversial eurozone bond trades last August. The trades, part of a strategy dubbed "Dr Evil" have prompted a criminal investigation in Germany. Consob, the Italian market watchdog, is understood to be close to concluding its investigation of the trades, which are also being examined by regulators in the UK, Spain and Portugal. Citigroup has apologized for the "inappropriate, unrealistic and . . . juvenile" behavior of some of the traders involved, but said the deal "did not violate any applicable rules or regulations". The Citigroup trades have sparked a call for EU regulation. (FT 2/4, 2/8)

In a friend of the court brief related to Siebel, the U.S. Chamber of Commerce says that Regulation FD (the equal access requirement to information on the part of investors) is a threat to "a free, robust, orderly and democratic society." (NYT 2/4)

In a possible conflict of interest, Lazard has received a memo from the NASD and a subpoena from the SEC related to the investigation of whether 12 brokerages gave gifts to fund executives to win trading business. The SEC is looking into other unethical relationships, including so-called revenue sharing between fund companies and brokers to defray the cost of goods and services. (MW, NYT, WSJ 2/11)