THE CORPORATE GOVERNANCE ALLIANCE DIGEST

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www.corporategovernancealliance.com

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A listing of abbreviations is available at the end of the digest.

This edition of the DIGEST has 5 major sections:

I. BOARDS: SUCCESSION, COMPOSITION, CONFLICTS
II. COMPENSATION TRENDS & ISSUES
III. AUDIT COMMITTEE ALERTS
IV. SHAREHOLDER, EMPLOYEE, AND CUSTOMER RELATIONS
V. OTHER REGULATORY AND LEGAL UPDATES

In their own words … Views of CEOs, regulators, and shareholder advocates.

In a speech before the Practicing Law Institute, **William Donaldson** (Chair, SEC) described the proposed proxy access rules: "Nominees and directors still result from a system that operates in relationship with the CEO and maybe other top managers. The current SEC proposal seeks to provide a modest counterweight to this system… By allowing shareholders a greater prospective voice, it will make …other changes work better -- even at companies where shareholder nominees are never put forward or elected." (DJ 5/5)

In an interview, **Michael Eisner** (CEO, Disney) gives the reasons why you might want to have someone other than the CEO in the chair's seat -- and whether it makes that big a difference: "It's not cosmetic; it allows me and the rest of the management more time to run the operations of the company… [Having a non-executive chair is] about having somebody to take a lot of responsibility of the governance of the company and information flow and discussion flow… its [a] decision based on improved governance" (FT 3/5)

In an interview, **Sarah Teslik** (Executive Director, CII) explains that executive perks are a warning sign to investors and can reveal: "(a) no sense of boundary between personal and business expenses, (b) a desire to hide excessive pay by dividing it up into many pieces, including perks, and (c) a person who has no idea how much CEO perks anger other employees." (NYT 2/22)

As we see it, here are 3 trends.

1 - Although there have been some changes in board nominations, this will accelerate significantly. Shareholders will be more active in choosing board candidates. A new tone at the top and governance order is being established.

2 - CEOs will shift time currently spent on managing the way the board performs to managing the way the business performs. For the reasons Mr. Eisner articulated above, the US will trend to the non-executive chair.

#3 - Shareholder activism (institutional AND individual) will accelerate this proxy season. Beyond this season, director and management actions will continue to be in the spotlight from shareholders, employees, and customers, in conjunction with the information, legal, and regulatory environment. One issue sure to receive even more review: high levels of compensation and the relationship between performance and pay.

I. BOARDS: SUCCESSION, COMPOSITION, CONFLICTS

In response to a record volume of 12,000 comment letters on a proposed proxy access rule, the SEC will host a roundtable discussion on March 10. (FT 2/23)

CalPERS, CalSTERs and the NY State funds have submitted a proposal to nominate directors for Marsh & McLennan, which the company has challenged in a filing with the SEC. Similar proposals have been filed at Verizon and Dominion Resources. (FT 2/23)

According to research by Burson-Marsteller, only 70% of the Global 500 companies provide biographical data on their CEOs, of which only 5% have CIOs sitting on their boards (more likely European and Asian-based boards). All CEOs with prior CIO experience are based outside the US. (FT 2/18)

After board consideration of institutional shareholder criticism related to his innovation and shareholder responsiveness as the head of Bass PLC, newly appointed deputy chair, Sir Ian Prosser withdrew his candidacy. The nominations committee had not consulted with any investors in making the appointment, including the family which owns 38% of the shares. (WSJ 2/18)

Minder, who remains a director at Smith & Wesson, resigned as chair after it was revealed he spent nearly 15 years in prison for armed robbery. It "doesn't happen very often" that an ex-convict holds such a position. He was on the audit committee. The SEC is investigating the company's financial results from 2002. (WSJ 2/27, WP 2/28)

George Mitchell was named chair shortly following Disney's annual meeting where 43% withheld their votes for re-nomination of chair Michael Eisner as a director, while many of the top 10 shareholders voted in support. He is slated to remain as CEO. Densie Napier, treasurer of CT is calling for a review by Mitchell of the entire management team and CII and other investors questioned Mitchell's independence and what they called the quick and inadequate response of the board. The Corporate Library said the board had to act quickly. CalPERS and PA called for Eisner to step down as CEO. Leading up to the vote, Glass Lewis, ISS (who called for a separate chair), CT, CalPERS, CalSTERs, FLA. MA, NJ, NY state, NC, OH, OH Tchers, TRowe Price, and the VA funds all came out for withholding support. (NYC retirement funds did not.) Individual investors and mutual funds also withheld their votes in record numbers. Last year, The Corporate Library gave Disney's board a grade of F; this year, it may be a candidate for the most-improved board. An ISS review shows that last year at least 20% of votes cast at 9 major companies sought to block the CEO's re-election to the board. (FT, NYT, WSJ 2/26, FT, WSJ 2/27, USA 2/28, WP 2/29, NYT, USA, WP 3/1, WSJ 3/3, FT, NYT, WP, USA, WSJ 3/4, FT, NYT, WSJ 3/5, BW 3/15)

At Dell, CEO Michael Dell will remain as chair. Kevin Rollins will become CEO. (NYT, WSJ 3/5)

The Coke board is said to be split on who should replace Doug Daft as CEO when he retires at year-end. (FT 2/21)

The Exxon board elected Rex Tillerson, current head of exploration, President and director as part of its succession plan. (WSJ 2/27)

II. COMPENSATION TRENDS AND ISSUES

According to Deminor Rating, 94% of FTSE Eurotop 300 companies had compensation committees in 2003 vs 82% in 2002 and 78% in 2001. (CFOE Mar).

Consultants say 2003 compensation for CEOs in *BusinessWeek*'s Executive Pay Scoreboard will be up 10% to 15% or more, on average. Some of the pay increases are linked to performance; others are not. "Board members who reward undeserving CEOs may feel the heat at annual meetings, as angry shareholders vote against their reelection." (BW 2/23)

The IRS has said it will prosecute tax-law violators that violate the $1m cap on deductibility of pay that is not related to performance and eventually make an exec-pay review part of all corporate audits. The IRS recently probed tax returns of 2 dozen companies where pay not related to performance is treated as if it were, and the IRS is aware that some top executives have put pressure on those that report to them to exceed the caps on benefits, such as deferred compensation. (BW 3/1)

According to the IRRC, executive pay accounts for about 1/3 of proposals filed to date. Some aimed at capping CEO salaries at $1m have been made to Delta Airlines, Dow Chemical, EMC, Gannett, Gap, Eli Lilly, Merck and Merrill Lynch. Other pay proposals would limit use of stock options and instead use performance and time-based restricted shares. There are also proposals to require shareholder approval for executive retirement and severance packages. (FT 2/23)

A study for the WSJ by Mercer of 100 large companies shows 16% of CEOs this year vs 27% in 2001 are receiving options megagrants (with a value at least 8x salary and bonus) and restricted stock megagrants (with a value at least 2x salary and bonus). (WSJ 3/2, USA 3/5)

In the UK, where activism on compensation is stronger than the US, the NAPF and the ABI, the two largest shareholder groups, have questioned bonuses that "reward directors and other executives for effecting transactions, irrespective of their future financial consequences" because these bonuses can create a lack of alignment between executive and investor interests. (CFOE Mar).

Shareholders are questioning awards to Michael Green, former chair of Carlton Communications, who was awarded £15m after being ousted in October by shareholders wanting an independent non-executive chair. The payment was 2x salary but based on no written contract and formed part of a package of cash and share awards for Carlton directors who left after the merger with Granada. The payments totalled £27.3m - equivalent to more than 1/5 of ITV's targeted merger savings. (FT 3/3)

According to an SEC filing, Jamie Dimon will receive at least 90% of the pay William Harrison receives once the merger of Bank One and JP Morgan is complete. Mr. Harrison earned $20m in 2003 and $13.8m (7.7m + a special bonus of 5m) in 2002. Mr. Dimon earned $11.9m and about $10.7m in 2003 and 2002. If either bank backs out of the deal, that bank would have to pay a "kill fee" of $2.3b to the other bank. (FT 2/21, WSJ 2/23)

Fleet filed disclosures saying it was paying $59.4m in penalties in a settlement with the SEC and the NYSE over alleged trading abuses and also disclosed the top 5 executives received $32m in bonuses and stock awards last year; 4 of whom will also receive severance payments currently valued at $27.9m when they leave BofA. In addition, CEO Gifford and CFO McQuade received an additional $23 m in stock grants last month and McQuade is set to receive an increase to his base pay (of 500k) after the merger. (WSJ 3/3)

BofA has fired some employees involved with Canary, but not Richard Demartini, head of BofA's asset management business, who is alleged to have been aware of the arrangement. He will be paid as much as $4.5m this year, according to recent regulatory filings. (FT 3/5)

Freddie Mac filed disclosures saying it would take years to repair deficiencies in its accounting systems and disclosed that former CEO Greg Parseghian, (who stepped down in December over his role in the company's accounting) received compensation of more than $19m in 2003. He remains a consultant to the company at $375k per month. R. Mitchell Delk, who serves as the in-house lobbyist, received total compensation last year of about $1.1m. (FT 2/28, WSJ 3/1)

At Goldman, CEO Henry Paulson earned $21m 2003, up 75% from 2002. His base salary was $600k and he took the rest in stock. Lloyd Blankfein and John Thain each earned $20.2m in 2003 in base pay, stock, bonus and other comp up from $16.1m and $6.4m in 2002. (WSJ 2/25)

NY is investigating the pay of Dick Grasso and may sue Mr. Grasso and the NYSE directors who approved his pay plan for breach of fiduciary duty for "excessive and unreasonable" compensation. Investigators have spoken with some of the former directors to urge them to reach a settlement. (USA, WSJ 3/1)

The SEC has issued subpoenas to every NYSE director who served during Dick Grasso's 8 years as CEO along with a questionnaire asking what information they received before voting on Grasso's 3 comp contracts, what they thought the contracts included, how Grasso's pay was determined and how the amounts were justified. (WP 3/5)

If Disney CEO Eisner exits, he would receive more than $37m in salary, bonuses, pensions, and other perks. Including gains he can expect on options that vested late last year - the sum could reach nearly $375m. (BW 3/5)

In the case in Delaware court plaintiffs argue that Michael Eisner and Disney directors did not look after the company's best financial interests and allowed Michael Ovitz (who was with the company 14 months) a cash and stock package valued at the time at $140m. A spokesperson for a majority of the director defendants says the directors acted appropriately and in the best interests of shareholders. (WP 2/26,WSJ 3/1)

PG&E's chair and CEO, Bob Glynn, received $25.5 m in salary and bonuses last year. 2 divisions are in bankruptcy. (SFC 3/3)

Coke has 4 shareholder proposals this year that would restrict executive compensation. Last year, Coke awarded $8.4m in bonuses to its top 6 execs and laid off 3,700 employees. At the end of 2003, Daft's 1.7m restricted stock shares were valued at $86.3m. (SDT 3/5)

The chair Ryan Brant of Take-Two Interactive Software which is facing possible civil charges for its accounting practices (it has had 3 restatements), earned more than $4.6 m in 2003 ($753k in salary, $2.9 m in bonus and more than $1 m from exercising options.) (CFO ¾)

STOCK OPTIONS

Shareholders right to vote on stock option plans could create new conversations in this year’s proxy season. According to IRRC, if all outstanding options had been exercised last year, earnings would have been diluted by 16.9% for companies in the S&P 500 (vs 15.4%in 2002). Many investor groups say they will reject plans with more than 15% dilution over the duration of the plan. Many companies may also ask approval to increase the number of outstanding shares to reserve for stock option awards. A survey by D&T of 165 large companies found that 2/3 would run out of shares within 24 months. (SFC 3/5)

Following a path taken by SAP, IBM says options will continue to be a key part of its equity-based compensation, and in the future will grant options to its top 300 executives at a strike price 10% above the market price on the day they are issued. Henning Kagermann, CEO of SAP noted: “At our shareholders' meeting last year, the debate was whether it should be 10% or 15%. We finally settled on 10%." (FT, NYT, WP 2/25)

Describing the employee-option program at Siebel Systems, Tom Siebel recently called the company "a Marxist dream." (Barrons 2/23)

III. AUDIT COMMITTEE ALERTS

The PCAOB is holding hearings on March 9 related to guidelines for auditors in the review of internal controls and 180 comment letters that have been submitted. For the second time, the SEC has delayed 404 implementation. For “accelerated filers” companies with a market cap over $75 m that have filed annual reports with the SEC, they must comply beginning with fiscal years ending on or after 11/04. All other issuers, including small businesses and foreign private companies, must comply with the new requirements beginning with fiscal years ending on or after July 15, 2005. (CFO 2/26)

Existing standards (SAS 70) and new requirements (Section 404) could give companies pause when considering outsourcing of financial functions. Issues to consider: timing, scope and disclosure of audits for outsourced companies, potential external auditor conflicts of interests, and certification risks. (CFO 2/23)

Companies using international accounting standards will have to start expensing stock options beginning Jan. 1, 2005 using guidance by the IASB as to the method they may use for calculating the value of an option. 7,000 publicly traded companies in the European Union will be subject to the international accounting rules and IASB standards are expected to eventually be in use in more than 90 countries. 113 companies in the S&P 500 already expense, according to Bear Stearns and nearly 500 U.S. companies already have adopted or announced an intention to expense stock options. FASB has said it hopes to issue a standard on stock options before the end of 2004 that would take effect in 2005. (WSJ 2/19, USA 3/5)

Although Japan is participating with the US and Europe in talks aimed at setting international accounting standards, the lack of participation of Japanese companies in their own accounting body may mean that the views of Japanese companies are not fully considered in the final deliberations. (WSJ 2/17)

The European Financial Services Round Table has said its members continue to object to IAS 32 and IAS 39 and might use European rather than international standards in accounting for derivatives if the matter can not be resolved. The European Commission has approved all IASB standards other than IAS 32 and 39 and said they would have difficulty approving IAS 39 in its current form. (FT 2/18)

A three-judge panel unanimously ruled once it had been shared with the SEC and federal prosecutors, a McKeeson internal investigation was no longer protected by attorney-client priviledge. (CFO 2/26)

Oversight of CFOs is critical to stopping fraud. Key issues to look for: Does your CFO give into Wall Street pressure to produce ever-higher earnings? (In a study by Duke University, the NBER and University of Washington 78% of 401 CFOs said they would sacrifice "economic value" to achieve "smooth earnings.") How well does your CFO know accounting? (Many don't.) Is your CFO at the center controlling information from geographically isolated offices? If so that could be a “fraud incubator” – it was at Tyco and Worldcom. (USA 3/4)

AUDITORS AND AUDIT FEES

Federal prosecutors have launched a criminal investigation related to tax shelters sold by KPMG and notified about 30 current and former partners and employees that they are subjects of the probe. In January, an investigation revealed that WorldCom avoided paying hundreds of millions of dollars in state taxes under a KPMG scheme to charge subsidiaries royalties. New proposed legislation would impose a penalty of ½ of all fees received, which can still make abusive shelters profitable to offer. (FT, NYT, WP, WSJ 2/20, WSJ 3/5)

In the UK, Jonathan Symonds, chair of the FTSE 100 group of finance directors, said auditors should be given some form of liability cap, not for negligence – but they should not have to pay for lapses by directors. (FT 2/24) And in the US, while acknowledging that auditors should take much of the blame for the lack of confidence in financial reporting, a report by The American Assembly says auditors after proving their worth (via a mechanism like the PCAOB finding a firm that has good quality controls), "that auditor could be given a measure of protection from civil liability” and investor lawsuits. (FT 2/25,disne WP 2/26)

ACCOUNTING AND CONTROL SSUES

Morgan Stanley is facing questions from regulators and clients about the 12 year pattern of behavior of a broker arrested in February for diverting more than $50m of clients' money. (WSJ 3/3)

OFHEO asked Fannie Mae to submit a remediation plan in 30 days related to its use of 70 manual accounting systems. (WSJ 02/26)

Coke and Lancer are under investigation for accounting fraud related to iFountain. Following a board investigation, the Lancer board said in a January release that the Schroeders who own 28% of the company and hold 2 of 7 board seats were not guilty of "any intentional misconduct." In a letter to the SEC, KPMG said the news release constituted "a likely illegal act" because despite the statement, the board had already uncovered improper activities. Then, following an investigatory report by USA Today, the board said that although the 2 Schroeder brothers will remain on the board, George Schroeder would resign as CEO. The Lancer board said they found he made improper personal use of corporate assets (example: signing checks to himself for unapproved loans) and management used a "poorly written, ambiguous and problematic" sales agreement related to iFountain. (USA Today 3/1)

El Paso reduced its proven reserves by 35%. Unable to explain why, it has hired a law firm to look into the matter. (FT, NYT, WSJ 2/18)

The SEC launched a formal investigation into why Royal Dutch/Shell had to cut its proved oil and gas reserves by 20%. (FT, NYT 2/20)

Shell will be able to write back up 2% of the 20% decrease on its proved oil and gas reserves as a result of getting agreement to be able to develop the Kashagan field. (FT 2/25)

Following a unanimous decision of both the boards of Royal Dutch Petroleum of the Netherlands and Shell Transport and Trading of Britan due to lack of confidence Chair Watts and the head of the core oil and gas division, Walter van de Vijver, resigned. Shell abandoned its assertion that its management acted "in good faith." The new chair Jeroen van der Veer said Shell would be "listening, thinking, concluding and doing.". "I'm still in that listening phase.” (FT, NYT 3/3, FT, NYT 3/5)

As owner of 89% of Spiegel, Michael Otto, a German national and its sole voting shareholder, is facing questions from creditors and the SEC about his failure to file quarterly financial statements for 15 months prior to filing for bankruptcy protection. Apparently, Mr. Otto was concerned that bankruptcy would be imminent if he filed because without a bank deal, KPMG said it would have to raise doubts about the firm’s "going concern" status. Spiegel is financed by creditors that include 18 banks (examples: JP Morgan, Deutsche) that plan to takeover over Spiegel unless paid more than $1b and a small number of US shareholders (subjecting it to SEC review). Troubles began in 1999 when Spiegel loosened its credit policy to its customers described by one of its audit-committee members as "easy credit" to "pump up sales." The receivables were placed off balance sheet and major portions began to default creating a cash crunch. (WSJ 3/2)

According to the SEC and Colorado, the former CFO and controller of Vari-L have been criminally charged for inflating the company's revenue. (CFO 3/5)

Bondholders filed suit against the Italian government one day after Antonio Marzano, the Italian minister of industry, said he would appoint 8 creditor banks (many of whom are under investigation for their support of Parmalat) and 1 bondholder to an unofficial Parmalat creditors' committee. (Bondholders suing purchased the bonds on the advice of a bank now under investigation). SEC officials are visiting Italy to study the involvement of US banks. A former BofA executive has admitted to taking $27m in a kickback scheme. 26 people (some in prison) including executives and board members and 4 employees of DT, Grant Thornton, and Zini, Parmalat's law firm are on a list to be charged with manipulating the company's stock price, obstructing an investigation, and falsifying accounts at its foreign units. Judge Kaplan did not allow questioning of 2 former Zini employees about removal of documents by the firm related to the Parmalat case. Meanwhile, Parmalat has hired Kroll to track down its assets around the world. (FT, NYT 2/21, WSJ 2/27,FT 3/1, 3/2, NYT 3/5)

IV. CUSTOMER, EMPLOYEE, AND SHAREHOLDER RELATIONS

It can take a company up to 4 years to restore a damaged reputation according to a survey of US business leaders, financial analysts and journalists by Burson-Marsteller. (FT 2/19)

A survey by Harris Interactive and the Reputation Institute found that ¾ of respondents graded the image of 60 large companies as either "not good" or "terrible." Impacting the rankings were corporate scandals, customer service, treatment of employees, environmental policies, and prices for prescription drugs. Respondents said they “have yet to see companies demonstrate goodwill toward customers, employees and the communities where they do business.” “Now more than ever, the public has a show-me attitude.” No. 1 in the ranking again for 5 years in a row, Johnson & Johnson ‘s score fell below 80 (out of 100). "Too many companies think they can simply advertise their way out of a bad reputation," said Joy Sever, at Harris Interactive. (WSJ 2/19)

A recent Gallup poll shows 75% of the general public believes business corruption is widespread. (WSJ 3/2)

A survey by DT and Corporate Board Member of 373 directors shows only 48% of boards discuss ethics and compliance failures on a regular basis versus 52% “when brought to their attention”. While nearly 80% of companies surveyed have help lines or hotlines, there may be concerns about how anonymous they really are. 10% are deemed not anonymous in terms of follow-up, 3rd parties manage only 33% of them, and only 6% are used by more than 1% of the employee population. Further, only 19% of them allow access to non-employees, although 91% of companies say their codes of ethics not only include employees but also shareholders, suppliers, customers, and the community. (CBM Mar)

CUSTOMERS

Companies engaged in clinical trials overseas (which can be easier to do than here in the US) are faced with an ethical dilemna in what has been termed “parachute research” – providing drugs to patients who helped in the study who might otherwise not be able to afford them – and help to the communities in which the trials were undertaken. (NYT 3/5)

Documents sent overseas (associated with processing of, for example, insurance claims that include SS number as MetLife does) are not subject to US privacy laws. In response to a blackmail attempt by a clerical worker in Pakistan late last year who threatened to post confidential records of patients at UC SF Medical Center on the Internet, a bill is to be introduced in Congress similar to regulations now in Europe that would require companies to disclose their outsourcing practices and allow consumers to say no if they don't want their data leaving the country. (SFC 2/27, 2/29, WSJ 3/5)

In order to restore sales to Japan, Creekstone Farms Premium Beef said it is building a testing laboratory that will be equipped within 2 weeks. Currently, the USDA conducts any US testing that is done for mad-cow disease. (WSJ 2/27)

1m customers have won a class action claim against BofA for using Social Security payments to pay for customer fees and overdrafts. The bank may have to pay $1k to each customer. (WSJ 2/27)

EMPLOYEES

CEOs on a new reality show who do the jobs of their employees have used the experience to make improvements for employees and the company. To not be out of touch, CEOs need to step into employee shoes and spend time regularly with them say experts. (WSJ 3/2)

According to a USA Today poll, high-income, white-collar workers who once embraced globalization now are having second thoughts because of fears that their own jobs will be exported. (2/25)

In the calls for greater innovation and global competition and in the wake of tax breaks and other government benefits, CEOs face the risk of being perceived as not taking actions that would help displaced workers. Policy ideas under consideration include additional funding to community colleges, personal reemployment accounts, wage insurance, limiting the deductibility of payroll costs sent offshore, or limits on offshoring. Congress has passed a limited bill related to federal contracts. Under consideration in Congress are a number of proposals that would require notice for layoffs and removal of tax, loan or grant benefits. (NYT 2/23, WSJ 3/5)

The US Supreme Court ruled that designing more generous benefit packages for older workers is not in violation of a law banning age discrimination and "does not mean to stop an employer from favoring an older employee over a younger one." (USA 2/25)

Prior to a suit now filed related to allegations that Wal Mart discriminated against women in pay and promotions, Coleman Peterson, its retiring EVP of HR, repeatedly informed the company's board that Wal-Mart "significantly" lagged behind major retailers in the % of women holding managerial positions. (WSJ 2/23)

Findings of fact by the NLRB’s administrative law judges show that Wal-Mart has systematically used a variety of means to stop unionization including “firing workers who openly support the idea of unions.” (Wash post 2/25)

SHAREHOLDERS

IRRC estimates 1,100 proposals to date (vs.800 in recent years and 506 in 2001). In 2003, 35% percent of shareholder governance proposals won more than 50% stockholder approval (vs. 13.2 % in 1998). (NYT 3/3, AJC 3/5)

Companies may or may not choose to implement proposals agreed to by a majority of shareholders. In response, 3 NYC pension funds have asked boards at Maytag, Starwood, Honeywell, and Manor Care to establish a process for meeting with shareholders to discuss approved proposals. (FT 2/23)

A recent paper by Harvard's Paul Gompers and Joy Ishii, and Wharton's Andrew Metrick, studied shareholder rights at 1,500 large firms in the 1990s. They found that firms with stronger shareholder rights had higher market value, higher profits and faster sales growth. (WSJ 2/17)

A study by GSU and ISS found companies with the best governance best-run companies had five-year average annual returns of nearly 8% above their industry averages; those with the worst governance scores returned 4% less. (BW 2/23)

Owners of Wella have learned that voting rights matter – as certain classes of shares were offered less than others by P&G. The realization is causing a shift in the German market to purchase of shares with voting rights. (NYT 2/20)

Delaware Court's Judge Strine's ruling in the case of Hollinger reemphasized the rights of minority shareholders. In the case, Judge Strine spoke to the fiduciary duties and said that he "found Lord Black evasive and unreliable. His explanations of key events and of his own motivations do not have the ring of truth," that he "repeatedly behaved in a manner inconsistent with the duty of loyalty he owed" Hollinger International, and "breached his fiduciary and his contractual duties persistently and seriously," "During the course of his dealings, Black misrepresented the facts to the International board, used confidential company information for his own purposes without permission, and made threats . . . of 'multifaceted dimensions' towards International's board." Further he wrote that the findings of the special committee of the board were "highly disturbing and probative of violations of fiduciary duty and of the federal securities laws" and under Delaware law, the payments (made to Black and others) weren't properly authorized. The Judge issued an injunction of Black's sale of his controlling stake in Hollinger International's parent company. (FT, WSJ 2/27, FT 2/29)

Rite Aid, Cendant, WorldCom, Enron and Qwest investors are paying the legal costs of former executives defending themselves against fraud allegations. According to Tillinghast-Towers Perrin, a company's average cost of defending against shareholder suits last year was $2.2m and are expected to grow. According to a recent Delaware court ruling, Rite Aid is required to advance defense fees to its former CFO who has pleaded guilty -- until a "final disposition" of the legal case. D and O insurance is rarely designed to cover legal fees of those who have been convicted or pleaded guilty. (WSJ 2/17)

Adelphia must pay another $12.8m to help defend founder John Rigas and two of his sons against criminal charges, a Bankruptcy Court judge ruled. (DenverPost 2/19, CFO 2/20)

HSBC will no longer provide buy or sell recommendations on individual stocks. Instead, it will divide 300 analysts into 3 teams: macro-strategy (asset allocation); sector and companies (industry themes); and trading strategy (trading ideas clients can act on immediately). (FT 2/25)

V. OTHER REGULATORY AND LEGAL UPDATES

The SEC has proposed changes that would allow investors to get faster execution rather than the best price. There is a 75-day comment period. (FT, NYT, USA, WSJ 2/25)

NY is investigating insurance companies and may be finding many instances of rapid trading within variable annuities. Lipper data show large cash flows into and out of many different insurers' annuity subaccounts (WSJ 2/27, USA 2/28)

In the case of Metropolitan, its ability to escape state regulation in favor of the Pacific Stock Exchange and the SEC has temporarily benefited management but hurt investors. (NYT 2/29)

In a tentative agreement with the SEC and NYSE, the 5 largest floor-trading firms, tentatively agreed to pay a total of about $240m to settle civil charges that they stepped ahead of customer orders shortchanging customers by $155m. The SEC is looking into similar practices at all the exchanges. The NYSE is expanding its probe to about 24 more firms. (FT, USA, WSJ, WP 2/18, WSJ 3/4)

In the second half of 2003. the FSA ordered 63 companies to make changes to their advertising of investment products. (FT 2/18)

The CEO of the FSA said securities regulators should have been involved in the drafting of the new Basel rules that they will have to approve. Neither the FSA or SEC were involved in the drafting. (FT 2/18)

ABBREVIATIONS:

AIMR – Association for Investment Management and Research
APB - Auditing Practices Board
BofA – Bank of America
BW – Business Week
CalPERS - California Public Employee's Retirement System
CalSTRS - California State Teachers' Retirement System
CBM – Corporate Board Member
CFOE – CFO Europe
CGS – Cost of Goods Sold
CFTC - Commodity Futures Trading Commission
CIBC - Canadian Imperial Bank of Commerce
CII – Council for Institutional Investors
CSFB - Credit Suisse First Boston
DJ – Dow Jones
DOL – Department of Labor
E&Y – Ernst & Young
FASB – Financial Accounting Standards Board
FSA – Financial Services Authority
FT – Financial Times
GAO - General Accounting Office
ICAA – Investment Counsel Association of America
ICI - Investment Company Institute
IFAC - International Federation of Accountants
IRS – Internal Revenue Service
KKR - Kohlberg Kravis Roberts & Co.
NACD – National Association of Corporate Directors
NASD - National Association of Securities Dealers

NLRB – National Labor Relations Board
NYTimes – The New York Times
OFHEO - Office of Federal Housing Enterprise Oversight
PIS – Postal Inspection Service
PwC – PricewaterhouseCoopers
SDT – San Diego Tribune
SFC – San Francisco Chronicle
SPV – Special Purpose Vehicle
USA – USA Today
VC – Venture Capitalist
VIE – Variable interest Entity
WP – The Washington Post
WSJ – The Wall Street Journal
WWF – World Wildlife Fund
WTO – World Trade Organization