

THE CORPORATE GOVERNANCE ALLIANCE DIGEST

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Published by: Eleanor Bloxham and John M. Nash, advisors, keynote speakers and authors on the topics of long-term value creation and corporate governance. Ms. Bloxham is Founder and President of The Value Alliance. Mr. Nash is Founder and President Emeritus of the National Association of Corporate Directors.

This edition of the DIGEST has 5 major sections:

- I. **BOARDS: NOMINATIONS, SUCCESSION, COMPOSITION, CONFLICTS**
- II. **COMPENSATION TRENDS & ISSUES**
- III. **AUDIT COMMITTEE ALERTS**
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- V. **OTHER REGULATORY AND LEGAL UPDATES**

A SPECIAL REPORT ON THE INSURANCE INDUSTRY WILL BE SENT IN THE NEXT DIGEST REPORT.

I. **BOARDS: NOMINATIONS, SUCCESSION, COMPOSITION, CONFLICTS and ETHICS**

An international GMI review of practices at 3,220 companies, gave 27 US companies and 7 non-US companies its highest rating of 10. These companies have outperformed the S&P 500 by an average of 11.13% for the 12 months ended Feb. 28. The average US company was rated 7. The number of independent directors at the companies reviewed: 55% (2004) vs 52% (2003). Separated CEOs and chairs: 47% (2004) vs 39% (2003). (NYT 3/6)

COMPOSITION

Spiegel will replace its current board after exiting bankruptcy. The new board will include 6 independent members. (NYT 2/15)

Under NYSE rules, a majority of directors must be "independent," as must all directors on audit, compensation, nominating and governance committees. Per NYSE rules, directors are not independent if they are executives at entities where more than 2% or \$1m (whichever is greater) of their revenue is from the listed company. The rules result in a variety of outcomes: Coke counts Warren Buffett as independent even though he heads a company that does hundreds of millions of dollars of business with them - it's <2% of Berkshire's revenue. Herb Allen is not independent because his son is president of a financial advisory firm that did \$1m in business with Coke. Sam Nunn retired as partner from King & Spalding, Coke's outside counsel, because the move allowed him to qualify as independent. BB&T says the director of its comp committee is independent because his law firm earns <2% of its revenues from the firm. GM says Merrill Lynch CEO Stanley O'Neal is independent because GM's underwriting and investment-banking business provides < 2% of Merrill's annual revenue. IBM says American Express CEO Kenneth Chenault is not independent because AmEx spends more than 2% of its annual revenue on IBM services. (WSJ 3/3)

The SEC requires public companies to report annually instances in which a director, senior executive or close relative of either receives more than \$60k from the company. The rule covers such circumstances as an outside director being paid as a company consultant or an executive having relatives who are

company employees. Citigroup's most recent proxy said that a sibling of CEO Charles Prince was paid a salary of \$143.9k in 2003, his wife was a partner in one of Citigroup's outside law firms, a sibling of President Robert Willumstad was paid \$214.2k as a Citigroup employee, a child of Robert Druskin, head of the Global Corporate and Investment Banking group, worked in Mr. Druskin's unit in 2003 at a compensation of \$2.1m, the spouse of another child made \$150k the filing disclosed; the children of two directors, Ann Dibble Jordan and Franklin Thomas, had Citigroup jobs with compensation of \$350k and \$236.5k, respectively.

None of these relationships had been reported in the prior Citigroup filings. (WSJ 3/3)

Fannie Mae has agreed to separate its CEO and Chair positions. (FT, NYT, WSJ 3/8)

Only 10 of 2,100 companies responding to a recent survey by the Nihon Keizai Shimbun, a Japanese economic daily, said they have more outside directors than insiders. Many experts on Japanese corporate governance expect the number of outside directors to rise because of shareholder ownership changes and increasing litigation exposure. (WSJ 3/10)

The Morgan Stanley board is proposing a change to allow annual elections of board members rather than staggered terms. (WSJ 3/10)

With its chair set to retire next month, Nestle decided its CEO Peter Brabeck would adopt that role as well. Many shareholders have said they will oppose the plan. Mr. Brabeck said that if the plan is derailed, he and the board will take it as a vote of no confidence and resign. (WSJ 3/24)

CONFLICTS and ETHICS

Research into ethics codes at top companies in Australia, Canada and Sweden found that the Swedes were strongest at ethical audits, staff training and using their code in strategic planning. In Australia and Canada, the penalties for a breach were generally more severe and ethical performance appraisals more common. (FT 3/6)

A Journal of Business Ethics study by Mark Schwartz, assistant professor of business ethics at Toronto's York University, of 57 managers, employees and ethics officers at 4 large Canadian companies found that concrete examples were very important in helping employees understand codes and codes that were negative in tone were considered clearer than those that sounded positive. Also, the study confirmed the importance of senior management support if codes are to be taken seriously. (FT 3/6)

Fannie Mae has agreed to establish a new Office of Compliance and Ethics reporting to the board. The board will ensure the office's head holds no other responsibilities and speaks directly to the board and Ofheo without management approval, "particularly on matters of wrongdoing." (FT, NYT, WSJ 3/8)

All of Citigroup's 260k employees are to receive ethics training every year as part of a new program at the firm. (NYPost 2/17)

Goldman Sachs CEO Hank Paulson will moderate 20 forums this year on various business judgment and ethical issues with all the bank's managing directors. Among the speakers invited by Mr. Paulson is Eliot Spitzer who talked to Goldman bankers last month about various ethical pitfalls. (NYT 3/29)

The Worldcom settlement is the largest in the history of securities fraud class-action cases. 11 former directors agreed to pay a total of \$55.25m, including \$20.25m of their own money. This is approximately 20% of their combined net worth excluding their primary residences and retirement accounts. The directors were charged with failing to protect investors by not stopping the \$11b accounting fraud that bankrupted

WorldCom. Insurance companies that provided D&O liability coverage to the WorldCom board members will pay \$35m. In addition, investment banks will pay \$6b. Citigroup and JP Morgan account for \$4.6b of that amount. About \$5b in settlement money is expected to go to WorldCom bondholders, with the rest going to stockholders. WorldCom founder and former CEO Bernard Ebbers was found guilty of directing the fraud. Mr. Ebbers was convicted of securities fraud, conspiracy and 7 counts of filing false reports with regulators. (NYT, WP 3/19, NYT 3/21)

The 1999 Cendant settlement was the second-largest. Cendant and its auditors agreed to pay \$3.2b to settle accounting fraud claims. (NYT, WP 3/19, NYT 3/21)

The US Chamber has filed a brief in a criminal case on behalf of a Merrill Lynch executive convicted of conspiring with Enron executives to finance transactions, involving electric generators on barges in Nigeria, to manipulate earnings. The chamber says the executive should get a light sentence because the accounting didn't really hurt investors since Enron was already bankrupt by the time it was known. (WP 3/30)

In addition to his full time job, US Chamber President Thomas Donohue sits as director of 4 public boards. His independence has been questioned on the boards of Qwest (they made a \$100k donation to the chamber while he was on the board), Sunrise Senior Living (he jointly owned property with the company when he joined its board and, 3 years later, the company bought it back, with stock, at double his investment just before the company went public), and Union Pacific, (his son was named to the board of Overnite, a company spun off by the company). While some question the number of boards and his ability to contribute, Mr. Donohue says: "the board positions offer him firsthand insight into how corporations operate"... and "allows me a series of relationships and contacts that I otherwise might not have." (NYT 2/20)

WalMart forced former vice chair and executive Thomas Coughlin, to resign from its board following an investigation

into fraudulent expense accounts and invoices and misuse of company-owned gift cards. Mr. Coughlin is a member of the board of ChoicePoint. (WSJ 3/29)

The SEC is conducting an informal inquiry into stock sales by ChoicePoint CEO Derek Smith and president Douglas Curling who made a combined \$16.6m in profit from selling company shares after the company learned of fraud involving its database of consumer information and before the breach was made public. ChoicePoint's stock has dropped about 10% since the breach was announced. (iWon Money 3/4)

An internal investigation at Boeing, prompted by information sent anonymously to Chair Lew Platt and the company's legal and ethics leaders revealed a "consensual" relationship between CEO Howard Stonecipher and a female executive at the company. The board determined the relationship violated the company's code of conduct, although it said the investigation determined that neither the career nor the compensation of the female executive was influenced by the relationship. The board asked for and accepted his resignation as CEO and as a member of the board. He had been a member of the board since 1997. (FT, NYT, USA.WP, WSJ 3/7)

Biogen General Counsel Thomas Bucknum has resigned from the company amid a regulatory inquiry into his sale of Biogen stock the same day the company says it learned of patient illnesses that led to Tysabri's withdrawal from the market (USA 3/10)

SUCCESSION

CEO turnover at 1,000 large companies rose from 44 in 2002 to 97 in 2004, according to a Burson-Marsteller / RHR survey. Boards, less tolerant of failure, are giving CEOs an average of 18 months to prove themselves. (BW 3/7)

L'Oreal CEO Lindsay Owen-Jones said longtime company executive Jean-Paul Agon would succeed him next year in a move to ensure a smooth transition. (WSJ 2/18)

Setting up a succession contest, Pfizer has elevated three execs to vice chair.

Henry McKinnell, current chair and CEO, is 62 years old and isn't scheduled to retire until February 2008. (WSJ 2/25)

Facing personal liability for accounting irregularities, Boards are putting in place new CFOs with the experience to handle the new rigors of accounting-reform regulations, such as the Sarbanes-Oxley Act. (USA 3/24)

Following a letter from former executives challenging his leadership of the company, Morgan Stanley CEO Philip Purcell named Stephen Crawford and Zoe Cruz as co-presidents reporting to him and succeeding Stephan Newhouse. The letter prompted a board review to assess the level of employee dissention and resulted in the management changes, which appear to shore up Mr. Purcell's position by elevating people loyal to him. Vikram Pandit, the president of the firm's institutional securities business, and John Havens, who ran the institutional equity business, resigned following the appointment of the co-presidents above them. (NYT, WSJ 3/29, NYT 3/30, WP 3/31)

NCR CEO Mark Hurd has been selected as HP's new CEO 2 months after the departure of Carly Fiorina. Patricia Dunn, Chair of the board, said the directors chose Mr. Hurd from a short list of candidates in part because of his "straightforward style" and his recognition of the importance of corporate culture. HP has 150k employee and \$80b in revenue. Hurd turned around Teradata which had revenues of \$1.2b. (NYT, WSJ 3/29, NYT, USA 3/30)

II. COMPENSATION TRENDS AND ISSUES

A GMI review of practices at 3,220 companies showed pay issues at 31 % of US, 6% of European, and 5% of Asian companies. (NYT 3/6)

According to Shirley Westcott of Proxy Governance, more than 100 proposals to curb pay, set stringent performance guidelines and limit severance packages are on shareholder ballots this proxy season (USA 3/31)

USE OF STOCK OPTION PLANS

According to the National Center for Employee Ownership, 40% of publicly traded companies with stock option plans are reconsidering them but 2/3 will probably keep their broad based plans (about 17% of public firms have them.) "Companies that are more committed to this, like Starbucks, Southwest Airlines, Whole Foods, will hold on to their programs and some companies, not nearly as much as anybody predicted, will change the form of the equity but they will still give everybody equity." (NYT 2/19)

Last year, Citigroup ended its renewable stock option plan, and like Cisco Systems, reduced the life span of the options it awarded to cut compensation costs. Aetna, Charles Schwab and Pfizer have either eliminated or significantly cut back on options for regular employees in the last year. Delphi, Eastman Kodak and AstraZeneca plan to cut back on the options they distribute to regular employees. (NYT 2/19, WSJ 3/29)

Time Warner's board cited new accounting rules as the reason for eliminating its employee stock option program. (The options will not be replaced with other forms of equity salaries and benefits will largely stay the same.) "Either they were doing something all these years that made no economic sense," said Greg Taxin, CEO of Glass Lewis "or they are ending an economically viable program because of a requirement to disclose it." (NYT 2/19)

Morgan Stanley has eliminated stock-options grants to management. (WSJ 3/10)

McDonald's announced that it will greatly reduce employee stock-based compensation and shift a portion of that compensation primarily to cash-based incentives. CFO Paull was awarded 29,899 non-qualified stock options and 9,970 restricted stock units; global CMO Light, 21,850 non-qualified stock options and 7,286 restricted stock units; and NAm President Alvarez, 36,799 non-qualified stock options and 12,270 restricted stock units. Each option has an exercise price of \$32.60 and becomes

exercisable in four equal installments on the first four anniversaries of the grant date. (CFO 3/9)

Compensation consultants expect that options will soon represent less than 30% of CEO total compensation, down from more than 60% today. (NYT 4/3)

USE OF ESPPs

Per the National Center of Employee Ownership: about 4,000 public companies have employee stock purchase plans with some 15m -- from top executives to hourly workers -- participating in them. Among the S&P 500, 183 have these plans, according to CSFB. ESPPs allow workers to buy shares of their company's stock, typically at a 15% discount to the current market price. Most also have a "look-back" feature that enables employees to apply the discount to the price of the stock at the beginning or the end of an investment period, whichever price is lower. If the stock falls 20% a few months after the start of the investment period, for example, the employee can buy the stock at that lower price, plus the additional 15% discount. Now, under FASB 123 R, in effect this summer, companies will have to expense the cost of the stock they set aside for ESPPs (the full market value, minus what the employees paid). While only 5% of firms with ESPPs are likely to get rid of them, many may reduce the % discount or the investment period to minimize the impact on the income statements. On average, regular, nonmanagement employees held the stocks they bought through the ESPPs for just five months in 2004, compared with 11 months in 2000. (WSJ 3/10)

BETTER DISCLOSURE

Becton Dickinson's proxy included a summary table that laid out the value of total CEO compensation. Honeywell's proxy listed the value of perks like legal fees and personal use of corporate planes and cars and is considered a model in listing its perks. Siebel Systems has promised investors that next year it will begin disclosing the operational and stock-price hurdles that management must scale for restricted shares to vest. (NYT 4/3)

DIRECTOR PAY

Pearl Meyer's data show that average total compensation of directors at 200 large companies probably topped \$200k up from an average of \$176k the previous year. The cash component of directors' pay at S&P 500 companies rose 15% in both 2004 and 2003 to \$50k. (USA 3/7, NYT 4/3).

Morgan Stanley is raising 2005 director pay 114% to \$75k. Alcoa is boosting director retainers nearly 17% to \$175k. Hershey's stock grant to each director is now worth \$80k, up 33%, pushing retainers to \$135k. Pepco is boosting per-meeting payments 60% to \$2k. U.S. Bancorp is doubling pay to committee chairs. (USA 3/7)

Staples is requiring its directors to accumulate at least \$200k in company stock over five years. (USA 3/21)

CEO PAY

At 100 major US corporations, CEO bonuses rose 46.4% to a median of \$1.14m, the largest percentage gain and highest level in at least 5 years, according to a Mercer survey. 5% of CEO bonuses rose while their company's net income went down. The median 2004 bonus equaled 141% of annual salary vs an average bonus of 5% of salary last year at concerns granting bonuses across the board, other surveys indicate. CEOs in the Mercer study had median total direct compensation of \$4.4m, about 160 times as much as the average U.S. production worker. (Total direct compensation includes salary, bonus, the value of restricted stock at the time of grant, gains from stock-option exercises and other long-term incentive payouts.). (WSJ 2/25)

According to a USA Today analysis of the 100 largest public companies filing annual proxies through 3/25 and data provided by eComp, pay rose 2.5% for the rank-and-file; 25%: for median CEO bonus and total pay (\$2.3 m and \$13.7m) 33%:for median restricted stock (\$4m) and 5%: for median CEO salary (f \$1.1 m) USA Today's review of several hundred fiscal 2004 proxy statements filed with the SEC found that some of the biggest compensation winners oversee small companies. Across a broad

cross-section of companies, there was extensive use of income-boosting retention bonuses, supplemental retirement pay and perks ranging from tax reimbursements to personal use of corporate jets. (USA 3/31)

The CEOs at 179 large companies filing proxies by 3/29 and not having changed leaders since last year, were paid about \$9.84m, on average, up 12% from 2003, according to Pearl Meyer and the median bonus was over \$1.9m, up more than 38%. (NYT 4/3)

Spencer Stuart chair Tom Neff says he has seen a move away from grants of restricted shares that automatically vest after 3 or 5 years in favor of giving shares that vest only if the company hits measures the board deems crucial to success and sees fewer companies agreeing to automatically vest all options or restricted shares if the CEO leaves. Companies are now offering 1-2 years of compensation, maximum, upon departure vs the 3- 5 years of pay that used to be commonplace. (NYT 4/3)

CEO - RETIREMENT PACKAGES

Motorola has decided not to offer retirement benefits to new employees. (CFO 3/25)

While employee pension plans are being reduced or eliminated or employees are being required to shoulder the investment risk for their retirement savings, a Corporate Library review of the 2004 proxy statements of 500 large companies for the NY Times shows 339 have separate retirement plans for executives only, which often operate in addition to the subsidized 401(k) and defined-benefit plans available to other employees. Of the 339 who will receive most of their retirement income from a supplementary employee retirement plan, roughly 1/4 will become eligible for an annual pension worth \$367k or less. Disclosure continues to be an issue. MBNA is a notable exception. (NYT 4/3)

Pfizer CEO Hank McKinnell will be paid about \$6.5m a year after he retires valued at about \$80m if taken as a lump sum. Lee Raymond, Exxon Mobil's chief executive, can expect \$5.9m a year. Vance Coffman retired as CEO of

Lockheed Martin and received a \$31.5m lump-sum payment. 8 executives are eligible to retire with annual benefits worth \$3m or more: Reuben Mark of Colgate-Palmolive, Robert Nardelli of Home Depot, Samuel Palmisano of IBM, and Ken Lewis of BofA. IBM, and BofA have recently been sued by workers over changes to their employee pension plans. (NYT 4/3)

CEO - DISGORGEMENT

International Paper has added provisions to its long-term incentive compensation plan to make it clear that the company can "recover compensation paid to a participant in cases of a restatement of the company's financial statements due to errors, omissions or fraud." (NYT 3/13)

12 senior executives at Nortel Networks voluntarily agreed to repay \$8.6m in bonuses after the company restated its revenue from 2001 to 2003. The company has filed a lawsuit to try to recover \$10m in bonuses from the former CEO, CFO and COO. The aggressive moves by Nortel are the exception, not the norm. (NYT 3/13)

Former Qwest CEO Joseph Nacchio, received performance-related bonuses of \$2.3m in 2000 and \$1.5m in 2001. In 2003, however, Qwest revised its earnings for those years because of improper accounting. A company spokesman said that Mr. Nacchio did not return any of the money and that the company has not tried to get it back. The SEC is preparing to file a civil lawsuit against him, according to people with knowledge of the matter. (NYT 3/13).

Past bonus payments can become tangled up in contracts that specify what executives receive when they are forced out. Former Dynegy CEO, Charles Watson, received a total of nearly \$10m for the company's performance in 2000 and 2001. The company later revised its financial results downward. Mr. Watson did not return any of the money and an arbitrator concluded that the company owed him \$22m in severance. (NYT 3/13)

Former El Paso CEO William Wise left the company in 2003. The company has since reported that it actually had a loss

of \$447m in 2001 saying, "certain personnel used aggressive, and at times, unsupportable methods to book proved" oil and gas reserves and that the numbers for other years were wrong too. Mr. Wise reportedly does not plan to give back the extra money he received for (not) meeting his performance. (NYT 3/13)

CEO - SPECIFIC PAY PACKAGES

Michael Eisner received a \$7.25m cash bonus for the year that ended 9/30/04 (he received no bonus in 2003) and \$735k for security services, personal protection and equipment. (WSJ 2/25, USA 3/31)

National Semiconductor CEO Brian Halla received a \$5m bonus for the year ended 5/30/04, 12x 2003 and the largest since becoming CEO in 1996. The board paid the bonus because the company exceeded maximum performance levels set for revenue growth and return on invested capital and the company made a \$283m net profit in 2004 vs a \$33.3m net loss in 2003. It "was wonderful...I feel I should pay somebody for doing this job," Halla said. Mr. Halla can make up to \$6m a year under a new pay plan intended to increase senior officers' potential cash incentives and reduce their reliance on options. He got 1m options (adjusted for a subsequent stock split) in 2004, 22% fewer than in 2003. (WSJ 2/25)

Smithfield Foods CEO Joseph Luter received a \$6.6m bonus for fiscal year 2004, 9x more than 2003. He has been CEO since 1975 and made an \$850k salary for five years. The directors decided to award a bonus only if 2004 pretax profit exceeded \$100m; they gave him 2% of such earnings between \$100m and \$300m plus 3% of the portion over \$300m. The company posted record net income of \$227.1m last year. "We were trying to make sure [Mr. Luter's] rewards are based on the ups and downs of the company," says RayGoldberg, an emeritus Harvard professor of agriculture and business who chairs the board's pay panel. "Compared to others in the industry, he's underpaid -- including bonuses." (WSJ 2/25)

Tyson CEO, John Tyson, received a \$5.4m bonus for 2004, the largest since becoming CEO in 2000, 3x his 2003

bonus, and more than the current plan allowed (\$4.6m). Directors justified the extra bonus by using criteria from a new bonus plan being submitted for shareholder approval. His employment contract guarantees him a \$1m salary, 500k stock options a year, an annual grant of performance shares valued at \$2.47m. In 2003 he received personal use of corporate aircraft and a \$2k department-store gift card for the holidays. Tyson Foods and retired CEO, Don Tyson, have offered to pay a combined \$1.7m to settle a SEC probe for failing to accurately disclose \$1.7m of benefits he received from 1997 through 2003. (WSJ 2/25)

GE CEO Jeff Immelt received \$8.5m in comp in 2004, up from \$7.6m in 2003. The increase was entirely due to change in bonus. GE said the CEO got "other annual compensation" of \$234k in 2004 compared with \$257k in 2003 which included costs relating to personal use of company aircraft and car service, home security and back-up power systems. (WSJ 3/4)

MCI CEO Michael Capellas was awarded \$5m in cash plus 357k shares of restricted MCI stock vesting over 4 years, currently worth \$8.5m, plus his annual salary of \$1.5m. Wayne Huyard, President of U.S. sales and service: \$465k cash, 166k shares worth \$4m. CFO, Robert Blakely: \$361k cash, 133k shares worth \$3.2m. Jonathan Crane, EVP of strategy and corporate development: \$373k cash, 109k shares worth \$2.6m. General Counsel, Anastasia Kelly: \$344k cash, 133k shares worth \$3.2m. (WSJ 3/7)

BP CEO Lord Browne received a total of £5.6m up 19.3%; profits were up 26%. Most of the increase came from performance-related bonuses and share incentive plans. His basic salary rose from £1.3m to £1.4m, his annual bonus grew from £1.9m to £2.3m. Share options were worth £1.9m compared with £1.5m the year before. The annual bonus was more than 1 1/2x Lord Browne's salary for meeting or exceeding all performance targets, including the key financial target of cash flow. (FT 3/9)

GlaxoSmithKline CEO Jean-Pierre Garnier received a basic salary and

bonus totaling £2.4m and also cashed in share options worth £3.6m. (FT 3/9)

Vodafone CEO Arun Sarin received a pay package worth £3.2m in the year to March 2004. (FT 3/9)

Franklin Resources founder and CEO from 1994 through 2003, Charles Johnson, never earned more than \$1.3m in any year before 2003, excluding two option grants of 23k and 22k shares. In 2003 his pay increased to \$2.7m, due to a \$2m bonus, his first in 5 years. In 2004, CEO pay rose 500% from \$2.7m to \$13.3m with two co-CEOs: his son, Gregory, and Martin Flanagan. (Bloomberg 3/9)

Boeing CEO, Harry Stonecipher retired April 1. He received a \$2.1m bonus for 2004 which he elected to receive in stock, eligible for a 25% match under Boeing's deferred compensation plan. The shares vested at his retirement. He is Boeing's second largest individual shareholder with over 1.76m shares. He will also receive his normal pension benefits in annual installments and any outstanding "performance" and "career" options will vest, remain exercisable or be paid out as applicable. He will forfeit options for 3k shares he was granted for being on the board in 2003. (WP, WSJ 3/11)

Because Flyi has failed to sell enough tickets to make a profit, it has reduced the salaries of CEO Kerry Skeen to \$369k from \$435k, President Thomas Moore to \$247k from \$275k, and CFO Richard Surratt to \$193k from \$215k; and they agreed to cancel some stock options; Skeen and Moore agreed to reduced life insurance benefits, and Skeen will defer \$1.4m to next year. The company will save \$2.2m over the next year. (WP 3/19)

BofA has paid \$1b in scandal-related settlements and penalties during the past year while absorbing the Fleet acquisition. CEO, Ken Lewis, received a total of \$19.3m in compensation. His salary of \$1.5m was unchanged from 2003. His bonus rose 6%, and his compensation package included restricted stock valued at \$11.8m, up 10% from \$10.7m in 2003, plus \$195k in other compensation that included life insurance. He also received purchase

rights of 500k shares, 100k more than 2003, at \$46.68 each in an option plan expiring in 2015. He also received \$35k for home security and secured parking plus other perks worth \$159k. (WSJ 3/29, NYT 4/3)

New HP CEO, Mark Hurd will receive an annual salary of \$1.4m, \$2.8m to \$8.4m bonus, and \$4.2m to \$12.6m annually in long-term incentive payments, \$2m signing bonus, \$2.75m relocation allowance, 1.15m stock options valued at \$6.9m, 400k restricted HP shares worth \$8m, free housing for a year, a 4-year mortgage interest subsidy, and "no limit on the weight of household goods" he chooses to ship to California. He will also be compensated \$15.4m to \$21.9m for income forfeited by leaving NCR and will be reimbursed up to 20% for decline in the value of 850k shares he owns in NCR. (NYT 3/30)

HBS Professors Bebchuk and Fried criticized Fannie Mae's practice of awarding cash bonuses based on growth in EPS, saying it provided incentives for senior managers to manipulate accounting in Fannie Mae's huge portfolio of mortgage investments to reach earnings targets. Fannie Mae has since eliminated all bonus programs based on EPS growth. (WP 3/30)

Coach CEO, Lew Frankfort, earned \$84m exercising options and received new grants worth \$130m. (USA 3/31)

Forest Labs CEO, Howard Solomon, gained \$90.5m from exercising options. (USA 3/31)

Directors used their "best business judgment" analyzing measures such as the economy, his progress on regulatory matters and leadership objectives and awarded Fifth-Third CEO, George Schaefer, an \$825k bonus and options worth up to \$17m although shares lost 20% and earnings fell 12%. He also gained \$9m exercising options and \$100k for trust and estate-planning fees. (USA 3/31)

Anheuser-Busch shares have been flat since Patrick Stokes became CEO in July 2002. In setting Stokes' 2004 salary, up 5% to \$1.5m, directors gauged shareholder return, financial results, market share and CEO pay at 20

companies. He also received a bonus of \$3.1m. According to the proxy, "Actual salary determination is subjective in that there are no specific weightings for the variables considered." Anheuser wants shareholder approval to boost the maximum potential annual bonuses to senior managers 50% to \$6m. Since 2002, Stokes has received options worth \$37m (USA 3/31)

Eli Lilly CEO, Sidney Taurel's total combined salary was up 41% to \$12.5m. (Bonus and stock grants increased 74% to \$4.6m.) Net income at Eli Lilly fell 29% and shareholder return dropped 17%. The board said it considered not only shareholder return and financial results but also leadership in "important initiatives to improve the company's productivity" and enabling it to "compete in an increasingly challenging business environment." Lilly directors also concluded that Taurel's compensation was "significantly" below that of his peers, giving him 400k options the company valued at about \$11m, vs. 2003's 350k option grant worth \$7.2m. (USA 3/31, NYT 4/3)

Sanmina-SCI had a net loss in each of the last 3 years, its shareholders' total return fell 27% and its CEO Jure Sola's pay rose to \$15 m from \$1.2m in 2003. (NYT 4/3)

Merck shares dropped 30% after Vioxx was taken off the market. Directors said operating results were below target but because CEO, Ray Gilmartin met his "personal performance objectives" he received a \$1.4m bonus and options valued at \$19.2m. He also earned \$34.8m exercising options. With Vioxx gone, the directors are lowering the performance targets for 2005 incentive pay. Under a new long-term performance plan, Mr. Gilmartin will get \$2.7m in stock next year if he meets earnings targets and double that if he exceeds them by a set amount. He gets the shares even if the stock price does not rise. (WSJ 3/1, USA 3/31, NYT 4/3)

Raymond James CEO, Tom James, received \$2.8m in 2004 salary, bonus and stock, and spent \$196k to cover insurance and three curators' salaries for his personal 1,650-piece art collection. (USA 3/31)

Carnival CEO, Micky Anson, received \$6.8m in salary, bonus and stock. Carnival spent \$178k on Miami Heat season tickets although Anson is one of the basketball team's majority owners. (USA 3/31)

Simmons Bedding CEO, Charles Eitel, was paid \$998k in salary and bonus and the company covers up to \$105k in annual costs for the crew on his yacht which he makes available for corporate functions 30 days a year. (USA 3/31)

American Express CEO, Ken Chenault, made \$11.3m in salary, bonus, stock and other compensation and \$8m in exercising stock options. The company also spent \$118k on his local transportation. (USA 3/31)

Cendant CEO, Henry Silverman, made \$18.6m in salary and bonus and received \$165k for reimbursement of legal fees (and taxes on the reimbursement) covering his employment contract negotiations. (USA 3/31)

Wachovia CEO, Ken Thompson, received \$18.1m in salary, bonus, stock and potential options gains plus a \$90k "expense allowance". (USA 3/31)

MGM Mirage CEO, Terrence Lanni, received \$21m in salary, bonus and stock-option gains plus 717k in supplemental retirement pay. (USA 3/31)

Kerr-McGee's Luke Corbett made \$5.1m in salary and bonus and \$707k exercising options and received \$87k under an annual stipend to "facilitate involvement in community activities." (USA 3/31)

Wells Fargo CEO, Richard Kovacevich, earned \$8.5m in salary and bonus and exercised stock options for a \$42.9m gain. Wells Fargo also spent \$61k on costs associated with his personal flight time on the corporate jet. (USA 3/31)

Although Apple Computer had a very successful year, CEO, Steven Jobs, was paid exactly \$1 because he had received \$75m worth of stock in 2003. (NYT 4/3)

Kodak CEO Dan Carp's bonus was \$2m bringing his total compensation to \$4.4m. (NYT 4/3)

Blockbuster CEO, John Antioco, received \$7m in salary and bonus, 5m options and \$27m worth of restricted stock. Blockbuster lost \$1.25b last year. (NYT 4/3)

Aramark CEO, Joseph Neubauer's, total pay and bonus fell 20% and 47% respectively and net income fell 13%. (NYT 4/3)

Unisys CEO Lawrence Weinbach's total pay dropped 17% as net income dropped 85%.(NYT 4/3)

Coke bottling CEO John Alm's contract stipulates that he will lose all his restricted stock if he is no longer at the company when his shares vest in 5 years, will forfeit all the shares if the stock price has not climbed 10% at vesting time, and he will lose 1/2 of them if it has not increased by 20%. (NYT 4/3)

Commerce Bancorp gives discretionary "expense allowances" of more than \$450k to CEO Vernon Hill and \$150k to George Norcross, CEO of its commerce insurance division. That was in addition to country club dues of \$3,564 for Mr. Hill and \$2,322 for Mr. Norcross. (NYT 4/3)

III. AUDIT COMMITTEE ALERTS

"Kurt Eichenwald's riveting account of the destruction of Enron Corp. "Conspiracy of Fools" ...[shows] how fragile institutions are and how susceptible they are to being corrupted by a series of small and seemingly innocuous decisions by individuals whose motivations are, in many respects, no different than yours or mine. At dozens of key points along the way, all it would have taken is one executive or auditor or lawyer or director willing to risk his job or bonus or disapprobation of his peers to stop the escalating fraud... you can't help but come away from Eichenwald's story with a new appreciation for how people in an organization rationalize things they would recognize as wrong or stupid in another setting." (WP 3/30)

Exxon has changed its accounting to comply with an SEC rule that requires companies to calculate their future

reserves using year-end prices. BP, Chevron and Shell had made the change earlier but the industry has asked the SEC to reconsider and use average prices instead and to reconsider what it says is an outmoded definition of reserves and its focus on proved rather than probable reserves. A 2/11 letter to CFOs of oil and gas companies from Carol Stacey, chief accountant in the SEC's division of corporation finance, calls for greater disclosure to reveal how they are accounting for both exploratory drilling and the swapping of energy stockpiles among companies. Companies use a range of practices for determining how to classify these costs associated with drilling exploratory wells that have so far fallen short of yielding proven reserves. Companies are initially permitted to capitalize the costs associated with drilling a well. However, one year after the completion of a well, companies are permitted to keep the asset on their balance sheets only as long as they are able to prove that they are "actively and continuously" taking steps to classify their reserves as proven. Activities such as searching for partners in development or production wouldn't provide "reasonable support for the deferral of exploratory drilling costs beyond one year after drilling is complete," Stacey wrote. In other words, the companies must write off their investments and take a charge to earnings. Companies also have varying practices for booking the proceeds and costs associated with the exchange of energy supplies with other companies. Some companies appear to be reporting proceeds from the sale of commodities on a "gross" basis, without taking into account the amount of money they have spent to purchase other stockpiles, the letter suggests. "We have questions regarding the appropriateness of reporting the proceeds and costs of buy/sell arrangements on a gross basis in the statement of operations," the letter said. It is not clear how companies will respond. (WSJ 2/17, FT 2/19, WSJ 2/21, FT 2/23, NYT, WSJ 2/24)

Due to IFRS, some companies plan to use fewer derivatives to hedge against shifts in currency markets, interest rates and commodity prices. (FT 2/28)

The Public Interest Oversight Board, an international board to oversee the setting of auditing standards (i.e. how audits are

conducted, conflicts of interest and ethical standards for auditors), has been established by the International Organization of Securities Commissions, the Basel Committee of Banking Supervisors, the International Association of Insurance Supervisors, the World Bank and the Financial Stability Forum. While much of the work will continue to be done by The International Auditing and Assurance Standards Board, a unit of the International Federation of Accountants, the new board will oversee the process and have a veto over appointments to that group. The board hopes to establish "very tight relations with national supervisory bodies." (NYT 3/1)

Over 500 public companies have reported deficiencies in their internal accounting controls. Problems include: lack of specialized accounting expertise, unfettered employee access to financial systems, problems identifying when certain assets need to be written off and difficulty in tracking and reporting costs. Many of the problems have been reported by small- and medium-sized companies, but among the biggest to report some deficiency in internal controls are McAfee, SunTrust, Eastman Kodak and Toys "R" Us. (WSJ 3/2)

Companies completing mergers or acquisitions currently record transaction fees as part of an intangible asset on the balance sheet. This summer FASB hopes to release a draft proposing that companies record M&A fees as expenses as part of a broader review of the accounting for business combinations that has been in progress since the late 1990s (WSJ 3/8)

An EU directive could introduce legal definitions into corporate governance guidelines for the first time in many EU countries. The requirement for all companies to have a mandatory audit committee with a majority of independent directors would involve a definition of independence, for example. The UK is a strong advocate of its principles-based "comply or explain" regime and has avoided setting rigid governance standards, while other governments want to be more prescriptive. The directive has also reopened discussion on issues such as the rotation of auditing firms and

whether auditors should be allowed to conduct other consulting work for their audit clients and has adopted a principles-based approach to firms offering additional advice to audit clients. But France is calling for a ban on all non-audit work conducted by advisers for audit customers. One amendment under discussion by members of the European parliament would give company boards more responsibility for monitoring advisory services by auditors. It would assign collective responsibility to the board for awarding consulting contracts and for selecting advisers. That amendment would also make boards as a whole responsible for the audit, as well as nominating and appointing auditors. This means the requirement for mandatory audit committees could be removed. While most Anglo-Saxon boards already have audit committees, many continental European companies with supervisory boards do not. The requirement for a separate audit committee would add a layer of management to the dual board structure, something many companies are keen to avoid. (FT 3/10)

Although the US does not use IAS, it holds 4 of the 14 seats IASB. North Americans also account for 6 of the 19 trustees, the same number as the Europeans. One reason for the heavy US presence is that American and international standards-setters are working to harmonize their rules. The EU, however, has said a clear preference should be given to countries that applied the standards or had promised to do so. The EU feels the IASB lacks accountability and has been too dismissive of European concerns. The EU also calls for more transparency in the way trustees are appointed. (FT 3/10)

At least 60 companies sought an extra 15 days to file their 2004 annual reports, which were due on 3/17, according to a CFO.com search of press releases and other public reports. Many of these companies cited issues related to documenting their internal controls as required by Section 404 of the Sarbanes-Oxley Act. There is, according to Bloomberg, a threefold increase in late annual reports filed with the SEC this year. (CFO 3/21, USA 3/24)

The Big 4 accounting firms are advising their corporate clients to change the way they account for auction-rate securities (long-term bonds and preferred stocks that resemble short-term instruments because their interest rates are reset periodically _ usually every 7, 28, 35, or 49 days). Until recently, most U.S. corporations have treated these securities like cash or cash equivalents, but the accounting firms believe that they are more appropriately classified as "investments," according to The Wall Street Journal. (CFO 3/25)

The SEC issued a 64-page expensing stock options guideline on the models companies can choose from when estimating the fair value of stock options. The ability to choose means that similar options plans at different companies may produce widely varying expense reports, making it difficult to compare financial statements. The SEC however says over time "the staff anticipates that particular approaches may begin to emerge as best practices and that the range of reasonable conduct, conclusions and methodologies will likely narrow." The staff accounting bulletin bars the use of pro forma financial statements that simply exclude options on actual financial statements, but it left the door open for the information to be disclosed in footnotes and to be used in pro forma reports included in news releases. It emphasized companies may make reasonable estimates that were different from each other's, and it said companies could use new information to change valuation formulas from year to year. Re: volatility the SEC said companies could use historic volatility of the stock or the implied volatility forecast shown by the trading of listed options in the company's stock. Some periods may be excluded from historic calculations, and a new event, like a merger, could alter historic patterns. It said newly public companies could base volatility estimates on trading in shares of similar companies. (WSJ 3/29, NYT 3/30)

The PCAOB says companies can bring in auditors at any time of the year -- and report on their findings at any time of the year. The catch? Auditors would not only be required to report that a company had fixed a material weakness - they'd also be required to inform the

company's audit committee if the company has failed to eliminate the weakness. (CFO 4/1)

AUDITORS and AUDIT FEES

Sam Wyly, who sold Sterling Software to Computer Associates in exchange for stock, filed suit against E&Y, which had audit relationships with both companies, because he had relied on E&Y's audit of Computer Associates' books for fiscal 1999 in making his decision to sell the company for stock. (WSJ 2/15)

Coordinating the roles and responsibilities of internal and external audit is an important audit committee function. David Richards, president of the US Institute of Internal Auditors, said internal auditors, who are employed by companies to do risk assessment and fraud awareness work, should assist the external auditors rather than help management. He said such arrangements could cut audit fees by up to 50% because external auditors would not have to do so many tests of controls. A PCAOB rule published in March last year, said: "If the internal audit function reports solely to management . . . the auditor should use their work to a much lesser extent and perform more of the testing himself." (FT 2/15, March Tone at the Top)

A judge hearing the bankruptcy case of Met Mortgage has decided to keep E&Y papers private which examiners say show E&Y and other companies may have played a role in Met Mortgage's "dubious accounting methods." (CFO 2/24)

A report by the GAO examined all tax shelters in the IRS database from 1998 to 2003 and found 61 Fortune 500 companies had bought tax shelters from their outside auditors, resulting in \$3.4b of revenue losses for the federal government. The GAO also found instances in which executives or directors at 17 Fortune 500 companies had purchased tax shelters from their companies' outside auditors. (WSJ 2/25)

A jury found E&Y was not liable for any fraud that occurred at Clarent. (CFO 2/24)

Audit costs are expected to increase 30% to 40% for companies with revenue between \$50m and \$500m. Alex Davern, finance chief for National Instruments Corp. and chairman of American Electronics Association's SOX 404 committee says external auditors are requiring companies to pay for things that won't prevent fraud. "We had to pay an auditor to come to a meeting to prove the meeting took place," he said. FEI says companies will spend an average of \$3m apiece to comply with 404; those with \$5b in revenue: \$8 m on average; those with less than \$100m in revenue: about \$550k on average. Annual costs are expected to drop after the first year or two of the rule's implementation. (WSJ 3/2)

UK's Professional Oversight Board for Accountancy found that among the big 4 accounting firms the proportion of fee income from the provision of non-audit services to audit clients fell from 35% to 25% in 2003-04. At the same time, 46% of fee income came from advisory services to non-audit clients - up from 38%. (FT 3/10)

There are currently 10 EU countries that offer some form of auditor protection: a liability cap in Germany and some proportionality to the size of the claim that can be made in other countries. The UK is discussing proposals to give auditors a liability cap. (FT 3/10)

ACCOUNTING AND CONTROL ISSUES

Toys R Us will restate some of its financial results, including fiscal year end 1/31/04 due to lease accounting changes. The company said it expected a full review will be completed and disclosed when the retailer releases its results for fiscal 2004. (FT 2/18)

Former Coleman CEO Perelman, is seeking \$2.7b in damages from Morgan Stanley because he says that when it advised Sunbeam on the acquisition of Coleman, Morgan knew of and should have disclosed Sunbeam's financial problems and, therefore, the stock was worth less. Morgan denies Mr. Perelman's contention. (WSJ 2/21)

Bally fired several top executives responsible "for multiple accounting

errors and creating a culture within the accounting and finance groups that encouraged aggressive accounting" and stopped making severance payments to them. Bally's board is reviewing a shareholder demand that it seek remedies against the individuals who might have been responsible for the company's accounting errors. Bally announced that the U.S. Attorney for the District of Columbia has launched a criminal investigation. (CFO 2/10, 2/24)

Cingular will take a pretax charge of \$171m to reflect a change in its accounting for operating leases and restate its annual results for 2000 through 2003, revise its 2004 earnings, and restate results for the first 3 quarters of 2004. As a result, BellSouth said it would adjust fourth-quarter 2004 pre-tax earnings by \$70m and reduce the fourth-quarter gain reported on the sale of 8 Latin American properties by \$64m to reflect tax obligations. BellSouth said prior-year results won't be restated because the change is immaterial. SBC said Cingular's error would reduce its fourth-quarter equity in income of affiliates by about \$66m. (WSJ 2/28)

Delphi said preliminary findings by the board showed that executives used sham sales of assets and other improper accounting maneuvers to inflate reported pretax earnings by a combined total of \$166m for the years 1999 to 2001 increasing reported cash flow from operations by a total of \$446.5m for 1999 through 2003. In some cases, it prematurely recognized revenue for technology contracts and rebates when it should have spread them over the life of the contract. Other times it improperly capitalized expenses over time, rather than recognizing them immediately. It also boosted cash flow from operations and pretax earnings by claiming it sold assets and inventory that it had actually agreed to buy back later. Delphi also improperly accounted for \$237m it paid to GM in 2000 to settle warranty claims and future retiree health-care obligations. The FBI, SEC and Justice Dept are investigating. (WSJ 3/7, CFO 4/1)

GE reduced its previously reported 2003 operating cash flow by \$1b and 2002 by \$1.2b because negative items related to vendor financing were moved to operating cash flow from investing cash

flow. The SEC says finance receivables that stem from operating activities belong in operating cash flow, not investing cash flow. (WSJ 3/7)

Fannie Mae has agreed to shore up its capital reserves, change how it accounts for certain financial transactions and take steps to prevent employees from falsifying book-keeping entries, fully audit and restate financial results for prior periods and to report any deviations from past earnings statements immediately to OFHEO. Fannie Mae said that because of its continuing accounting problems, its regulator OFHEO won't be able to assess its capital adequacy. (WSJ 3/8, NYT 3/9, WSJ 3/29)

MBIA will restate its financial results by \$54m over the last 7 years because of improper accounting related to two insurance deals in 1998 it made with Converium. MBIA previously disclosed that it had received subpoenas from both the SEC and the NY attorney general's office related to nontraditional reinsurance contracts, also known as finite insurance. (NYT, WSJ 3/9)

Revlon disclosed it found a "material weakness" in its internal controls, after the cosmetics company failed to detect a \$1.2m error in the estimate of the sales-return calculation for a large customer. (WSJ 3/10)

ConAgra Foods announced that it will restate its financials for the past 1-2 years to correct errors in its accounting for income taxes. (CFO 3/25)

Flowserv and its CEO, Scott Greer, agreed to pay \$400k to settle allegations that they broke a rule on fair disclosure by reaffirming an earnings forecast in a private meeting with analysts. It was the first fair disclosure case filed by the SEC involving a reaffirmation of earnings. (CFO, NYT 3/25)

As a step in an ongoing investigation, the SEC fined Time Warner \$300m, its second-biggest fine in history (only WorldCom surpassed it), and at the same time charged Time Warner with overstating online advertising revenue and the number of AOL's Internet subscribers, aiding and abetting 3 other securities frauds and violating a cease-

and-desist order against AOL issued in 2000. Time Warner will hire an independent auditor to review the company's accounting for 17 past transactions. Among the deals to be reviewed is a cable-programming affiliation agreement with Oxygen Media. The SEC also issued a cease-and-desist order against 3 Time Warner executives, including CFO Wayne Pace, in which they promised not to do it again. Time Warner CEO Richard Parsons issued a statement supporting the 3 officers who remain at Time Warner. (WSJ 3/22, NYT 3/29)

IV. CUSTOMER EMPLOYEE, COMMUNITY AND SHAREHOLDER RELATIONS,

CUSTOMERS

BofA lost computer data tapes containing personal information on 1.2m federal employees, which included Social Security numbers and account information that could make customers of a federal government charge-card program vulnerable to identity theft. The tapes were likely stolen by baggage handlers from a commercial flight in December. BofA and other banks of its size ship millions of data storage tapes a year. BofA noticed the problem when a damaged package arrived and a review of the contents revealed some tapes were missing. (FT, WP 2/26, WSJ 2/28)

Sony has built the ability to order pizza into its latest online multiplayer game. By typing the command "/pizza" while playing Everquest II, a fantasy game with 330k active players, you go to the Pizza Hut Web site, where you can place orders for delivery. Caution is required, as the game doesn't pause while you're ordering. In the future, Sony plans to integrate the pizza function more tightly into the game, so players can charge pizza to their monthly game subscription bill. (WP 2/27)

COMMUNITY

Giving by US corporations rose about 8% from 1999 - 2003. With the problems companies have suffered with corporate governance it has become more important that they be seen as human and institutions that really care stated Sandy Weil, chair of Citigroup. This

year's Excellence in Corporate Philanthropy awards are going to GE, Novartis, Arch Chemicals and Jumpstart. (FT 2/28)

A new coalition of about 50 groups, including environmentalists, community organizations, state lawmakers and academics, is planning to press Wal-Mart to change the way it does business. Plans include putting forward an association of disenchanted current and former Wal-Mart employees to discuss low pay and benefits and lobbying in 26 states for legislation requiring Wal-Mart to disclose how many employees do not receive company health insurance and turn to taxpayer-financed Medicaid. "We don't want to challenge Wal-Mart just on health care or just on the environment or just on sex discrimination. You want to pressure them on all three. This is an assault on a business model." Wal-Mart has taken out ads and invited 100 journalists to its Arkansas headquarters to hear its case. (NYT 4/3)

SHAREHOLDERS

"Our investigations reveal that investment consultant pay-to-play schemes involving collusion with money managers have cost funds from 10 to 15% of assets," says Edward Siedle president of Benchmark Financial Services. Investment consultants may have affiliations with firms that conduct trades for the pension funds they advise and a consultant may choose to recommend a money manager who agrees to funnel all trades through the consultant's brokerage arm. Investment consultants may also choose to recommend managers who have paid them to meet pension fund overseers at conferences they sponsor. Mercer has stopped holding conferences, but Callan and other consulting firms still sponsor them. One pension fund, Public School Teachers' Pension and Retirement Fund of Chicago, is reviewing a proposal to conduct a comprehensive conflict-of-interest audit of its investment consultant, Mercer. (NYT 2/20)

Dow Jones' board is recommending changes to its bylaws that would lower the stock threshold at which its majority owners, members of the Bancroft family, would maintain their voting control of the company. The board is also

recommending the bylaws be changed to require that a majority of directors not be representatives of the Bancroft family or members of management. The number of independent directors elected by common shareholders would be increased to 7 from 6; the board size also would be set at 16 members. (WSJ 3/1)

The Partners for Financial Stability survey of online investor relations of the 10 largest listed companies (by market capitalization) in Central and Eastern European showed little change. Its survey of EU countries showed slight disclosure improvements. (www.pfsprogram.org/capitalmarkets_research.php)

San Diego based Sempra is being criticized for hosting its annual meeting in London. Several controversial proposals are before the board. ISS is withholding support for three directors seeking re-election because it rejected shareholder measures to require directors to stand for election every year that had been approved by 52% of shares cast in 2001, 56% in 2003 and 63% last year, according to the measure's authors. Another proposal that won 66% approval last year calls for shareholders to endorse anti-takeover measures. The others ask that the company record stock options as an expense and link all stock options for senior executives to job performance. (LA 4/3)

EMPLOYEES

A federal judge ordered the reinstatement of David Welch, a former CFO of Cardinal Bankshares. Welch was the first person to win whistleblower protection under the Sarbanes-Oxley Act after he raised accounting questions at the company and was fired last year. He also was awarded nearly \$65k in back pay and damages. An attorney for Cardinal Bankshares, said that the bank's board was determined to appeal the ruling with the DOL's Administrative Review Board. (CFO2/24)

A New York jury awarded \$7.5m in a discrimination lawsuit to a former Wal-Mart employee suffering from cerebral palsy who claimed that Wal-Mart transferred him from his job as pharmacy associate to a position picking up garbage and collecting trash in the

parking lot after only one day of work. Wal-Mart said he was transferred at his request. (USA 2/25)

Wal-Mart Canada was ordered by Quebec's labor relations board to stop intimidating workers at a store where the United Food and Commercial Workers' Union has an organizing drive. The labor board found that 1 worker was taken into an office by the manager and an assistant manager who demanded the names of union sympathizers, another was threatened with a negative job evaluation if she supported the union drive, and, in a third case, a manager suggested that the cashier retract a recently signed union card. (NYT 2/26)

In a small sample survey of women who quit high level corporate jobs, those interviewed rarely cite family responsibilities as their reason according to Wanda Wallace, CEO of The Leadership Forum. Instead their motives include: not getting a desired promotion; feeling undervalued or being demoted, often following a change of leadership; no longer enjoying the job as much; tiring of corporate politics and, more positively, having achieved what they wanted to achieve. Over half of women still in top jobs were considering quitting. (FT 3/1)

Job cuts announced by US companies in February jumped 17% over January, according to a report released by Challenger, Gray & Christmas, making it the fourth time in the last 5 months that job cuts have topped 100k. The reason for the increase in firings is M&A activity, which often results in the elimination of redundant jobs. (Fortune 3/2)

A review in 2003 of 3,000 managers and knowledge workers at global companies by Hudson Highland Center for High Performance found that the biggest impediment to high performance (defined as making money for the company and developing new products, services and markets) is short-term focus. 10% said they worked in high-performing groups; 38% said they worked in "nonperforming groups; and almost 1/3 of the nonperformers said their businesses used to be high performing but 'top management raised our targets, cut our budgets and staff,

and we couldn't sustain results." (WSJ 3/8)

More and more Silicon Valley workers are dissatisfied with the long hours. Electronic Arts plans to announce this week that it will depart from the traditional Silicon Valley pay model by beginning to pay overtime to some workers. Those workers would no longer be eligible for options or bonuses. (NYT 3/9)

A Conference Board study of worker satisfaction shows 14% of employees are very satisfied, 25% simply "show up to collect a paycheck," and 67% said they did not identify with their employers' business goals. It made little difference how much employees earned or how old they were. The sharpest decline in workplace happiness was among workers aged 35 to 44, the second largest among the 45 to 54 year-olds. A Watson Wyatt survey showed only 51% of US and 33% of UK employees had trust and confidence in their companies' leaders. (FT 3/9)

Wal-Mart agreed to pay \$11m to settle a federal investigation that found hundreds of illegal immigrants were hired to clean its stores. The settlement is the largest of its kind. 12 businesses that provided contract janitor services to Wal-Mart will pay an additional \$4m in fines and plead guilty to criminal immigration charges. The \$11m will be spent on federal programs to enforce immigration law. WalMart still faces a class-action lawsuit filed on behalf of undocumented contract workers who say they were underpaid. The case was filed in November 2003 in a U.S. District Court in New Jersey. (WP 3/19)

Discussing discrimination against women, Pete Correll, CEO of Georgia Pacific says: "Let's face it. We live in a society that loves to discriminate," and Anne Mulcahy, CEO of Xerox added, "I won't declare victory until there are no lists of high-ranking women, no dinners honoring companies for promoting them, and no reporters thinking that a woman's success is such a big deal." (NYT 3/27)

Small-company employees are more than twice as likely as those with large companies to describe themselves as "extremely satisfied" with their work.

And their jobs are more likely to make them feel energized (44% vs. 28% at large companies), "inspired" (44% vs. 24%), and "passionate" (53% vs. 36%). (Fortune 3/29)

2 BofA employees, acting on a tip from a rival banker who was slated to move from JP Morgan to BofA, called a company preparing to merge with another and asked to get in on the deal. Due to inappropriate use of confidential information, all 3 were fired and the job offer rescinded. In a different era, the action by the BofA employees might well have been seen as an example of what hungry bankers do to secure an edge with a client and maybe even a better bonus. (NYT 3/29)

Of 2,000 global executives polled by Korn Ferry, nearly 44% plan to continue working past the age of 64, 15% past the age of 70. (CFO 3/31)

A suit alleges that Citigroup's Smith Barney unit discriminated against women when its "virtually all-male branch management" assigned accounts to brokers. The complaint seeks class-action status on behalf of all Smith Barney female brokers in the US, as well as some former brokers, a total of about 5,000. (WSJ 4/1)

As an extension to its benchmarking of the responsibility reports of the top 100 US companies against global reporting initiative guidelines, Social Investment Research Analyst Network may begin to assess the diversity policies of the biggest US companies by looking at which of them publicly disclose the age, race and gender of employees. By the end of the year the group hopes to persuade 1/4 of the S&P100 to refer to the global reporting initiative in their responsibility reports. (www.clear-profit.com)

V. OTHER REGULATORY AND LEGAL UPDATES

In 2003, the SEC had a 95% win percentage (it won 22 of the administrative cases it litigated and lost 1) vs a 2004 win percentage of 76% (it won 19 cases and lost 6). (NYT 2/15)

The NYSE, SEC and NASD, in one of the largest-fines ever levied for e-mail retention violations, fined JP Morgan \$2.1m for failing to retain electronic-mail messages that were linked to investigations into conflicts-of-interest between Wall Street's investment-banking and research-analyst practices. The bank's "representation that its e-mail production was complete, without disclosing that it had failed to retain, locate and restore all e-mail responsive to our investigation, is simply unacceptable". (WSJ 2/15)

China's cabinet will legalize private investment in sectors including power, rail, aviation, oil, and defense including military research companies and weapons manufacturers. (FT 2/25)

In a letter to William Donaldson, 6 members of Congress questioned a recent SEC staff decision to allow Halliburton, Verizon and Qwest to exclude shareholder proposals advanced by union-led pension plans. (WSJ 3/1)

The SEC will give small companies and foreign firms until 7/15/06 to comply with 404. (WSJ 3/3)

The SEC is increasing scrutiny of the legal profession. Donaldson said he has been "disappointed" by how some lawyers had contributed to the mutual fund scandal and helped companies disclose as little as possible related to executive compensation. (FT 3/6)

SEC enforcement chief Stephen Cutler said opponents who claim that the agency is overstepping its authority "may have too quickly forgotten the major frauds that rocked the US markets to their foundations only a few short years ago. "Recent financial restatements and insider-trading cases suggest that we are not out of the woods yet." "The notion that we should turn back the clock and ease up our enforcement efforts is sorely misguided," Cutler said. "Vigorous enforcement of the federal securities laws is an integral part of what it takes to maintain safe and efficient markets." (WP 3/19)

Citigroup will pay a civil fine of \$20m and Putnam Investments will pay \$40m to resolve federal regulators' accusations that they kept from customers the fact

that brokers had been paid to recommend certain mutual funds, creating a conflict of interest. NASD disclosed that Citigroup, American Express and JP Morgan had agreed to pay a total of \$21.25m for reported violations in sales of mutual funds. (NYT 3/24)