Corporate Governance Bulletin

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In This Issue:

Feature 1:

President Barack Obama Takes Office 1,6

Feature 2:

Remembering Al Meyerhoff "I Was Meant to Do This Work" 2

Feature 3:

The Path to Restoring Investor Confidence 3,6

Departments:

Litigation Update 4-5

Settlement Update 6

Recommended Reading 7

Calendar of Upcoming Events 8

FEATURE 1

PRESIDENT BARACK OBAMA TAKES OFFICE

Under cold and clear skies, Barack Obama was sworn in as the 44th President of the United States. The President's historic inaugural address warmed the live audience of millions assembled in front of the nation's Capitol. After a sweeping November victory marked by soaring speeches, the President struck a more somber note in his January 20 address.

Not since the Franklin Delano Roosevelt inauguration during the bank crisis of March 1933 has a President entered into office under such gloomy economic circumstances. Nonetheless, President Obama's message to the world was one of optimism in America's ability to transcend crisis.

The keynote was struck by Obama's remarks about wealth distribution and its effect on democracy: "[t]he nation cannot prosper long when it favors only the prosperous" is a meaningful echo of Justice Brandeis' prophetic comment that "[w]e can have democracy in this country, or we can have great wealth concentrated in the hands of a few, but we can't have both." President Abraham Lincoln had similarly warned that powerful corporations and commercial banks, what Lincoln called the "money power," were frequently the opponent of democracy, rather than its advocate.

"What is required of us now is a new era of responsibility – a recognition, on the part of every American, that we have duties to ourselves, our nation and the world, duties that we do not grudgingly accept but rather seize gladly, firm in the knowledge that there is nothing so satisfying to the spirit, so defining of our character, than giving our all to a difficult task."

To rebuild America's middle class, Obama's words will be put to the test. Restoring the trust that Americans once had in their financial markets will not be an easy task in light of the Enron-esque deceptions that have emerged on Wall Street following the decimation of FDR's financial reforms. The incoming President noted that "[o]ur economy is badly weakened, a consequence of greed and irresponsibility on the part of some, but also our collective failure to make hard choices and prepare the nation for a new age." Obama's remarks address not only the "Banksters" on Wall Street – those greedy "some" who transformed finance into a casino – but also the failure of those tasked with enforcing the rules – Congress, the SEC, and the courts. Obama reminds us of the inherent ability of unchecked capitalist power to destroy itself, as well as the nature of legislators to settle for opportunism over leadership.

Confronting the legislative disasters that led to the ongoing meltdown is critical to Obama's objectives. With the passage of the Private Securities Litigation Reform Act in 1995, the repeal of the Glass-Steagall Act in 1999, and the rollback of oversight in derivatives transactions in 2000 – policed by an underfunded and neutered SEC – the stage was set for unrestricted profits for the financial services sector, along with the near elimination of the risk of punishment should misconduct or frauds be exposed. Now that the failures of the current banking regime are in plain sight, the incoming President looks to his predecessor FDR as a compass to restore and renew the crucial trust between people and government – pledging that those "who manage the public's dollars will be held to account, to spend wisely, reform bad habits, and do our business in the light of day." The President's subsequent call for a review and scrunity of executive compensation is an encouraging sign that Obama is acutely aware of the problems of our past.

Similarly, Obama's hopes to increase the "reach of our prosperity" may be furthered by restoring the labor protection provisions that allow employees to use majority-decision rules on whether to form a union. Obama has pledged to sign the legislation which would protect this right, called the Employee Free Choice Act ("EFCA"), which passed the House overwhelmingly in 2008 but failed a Senate filibuster threat. According to EFCA supporters, real economic recovery will require better salaries and jobs for workers. This bill will face a powerful opposition spearheaded by Bank of America and other bailout recipients.

Continued on page 6

FEATURE 2

REMEMBERING AL MEYERHOFF "I WAS MEANT TO DO THIS WORK"

Senator Paul D. Wellstone said, "[I fight] for the little fellers, not the Rockefellers." There are few public interest attorneys who represented that spirit more than the late **Al Meyerhoff**, an environmental and labor attorney who worked with Coughlin Stoia for the last decade. With a career that took him from the dusty fields of rural California to guest spots on *Meet the Press*, Meyerhoff brought legal expertise, courage and wit to his fight for the rights of working men and women and defrauded investors, and against deadly chemicals and pesticides.

Active in the anti-war movement in college, Meyerhoff decided to earn a law degree to create the change he wanted to bring to the world. After graduating from Cornell Law School in 1972, Meyerhoff turned down a corporate law job and instead accepted a position for $60 a week with California Rural Legal Assistance, an Office of Economic Opportunity program. Meyerhoff spent nearly 10 years defending the legal rights of farm workers and the rural poor against, in the words of Bill Moyers, "the bullies of agribusiness and politics."

An affinity for science and technology led Meyerhoff to join the Natural Resources Defense Council ("NRDC") in 1981, where he fought to protect workers, the public and the environment from hazardous chemicals and pesticides. Meyerhoff employed what he called a "multipronged approach" in his battle, using novel legal arguments to both inform the public and prevent cancer-causing chemicals from entering the food supply. With the passage of California's Proposition 65, Meyerhoff and the NRDC scored a major victory empowering consumers to make their own decisions about proven dangerous chemicals present in commercial products. Meyerhoff summarized the strategy as, "Tell the public [and] let them protect themselves." In the course of his work, Meyerhoff worked alongside the NRDC President Robert F. Kennedy, Jr. and testified before Congress more than 50 times.

Meyerhoff joined forces with Coughlin Stoia in 1998 and promptly filed a class action on behalf of over 30,000 garment workers in the sweatshops set up in the U.S. protectorate of the Northern Mariana Islands. A lifelong opponent of injustice, Meyerhoff revealed how Saipan workers were forced to sign "shadow contracts," working behind barbed wire and guard dogs to sew Made in USA-labeled clothes in the "Guantanamo of Capitalism." Shining a bright light on what *The New York Times* called "America's worst sweatshop," Meyerhoff sued the factories and upscale clothiers who used Saipan labor, such as Gap, Inc., Target Corp. and JCPenny Co., Inc., alleging patterns of substandard pay and mandatory unpaid overtime hours. The settlement of the action resulted in sweeping labor reforms and the payment of back wages to Saipan garment workers. Meyerhoff and members of his litigation team at Coughlin Stoia were honored as Trial Lawyers of the Year in 2006 by the Trial Lawyers for Public Justice in recognition of their efforts of bringing about the precedent-setting settlement.

In 2004, Meyerhoff scored another ground-breaking victory when he and the American Federation of Labor – Congress of Industrial Organizations ("AFL-CIO") successfully fought a NAFTA-imposed cross-border trucking program, which would have allowed unregulated Mexican rigs to freewheel through North America in violation of U.S. trucking industry safety and environmental standards.

Albert "Al" Meyerhoff
1947-2008

Meyerhoff's public interest advocacy led him to be a highly respected blogger for *The Huffington Post* and a sought-after op-ed contributor for newspapers including *The Washington Post*, *The New York Times*, and *Los Angeles Times*. Over the last few years, Meyerhoff's prolific pen savaged injustice and the hypocrisy of corruption, both public and private, and highlighted legal issues of importance to the public interest.

Reflecting on his 36 years as a labor, civil rights and environmental lawyer, Meyerhoff said, "I was meant to do this work." Many others agreed. According to the Sierra Club's executive director Carl Pope, Meyerhoff was "one of the most creative forces linking environmental law with social justice to make the world better for the next generation." Longtime friend U.S. Representative George Miller (D-CA) noted that Meyerhoff's sharp legal thinking was driven by a "sense of outrage against injustice."

In a posthumously published op-ed about chemotherapy and chemicals ("Our Champions, Our Killers," featured in the *Los Angeles Times*), Meyerhoff revealed that he was suffering from a potentially fatal leukemia. Meyerhoff faced his cancer treatment with characteristic courage and unflagging humor, exploring in his final article the irony of a life-long opponent of toxic products having to endure an intravenous infusion of toxic chemotherapy agents for his survival.

The optimism and tireless advocacy of the man *The New York Times* hailed as "a legal voice for the poor" continues to inspire many to build on the work Meyerhoff himself loved. "I worked on issues I believe in with extraordinary people doing extraordinary things," said Meyerhoff to the *Cornell Law Forum*. "What beats that?"

Meyerhoff is survived by his wife Marcia Brandwynne, his daughter Leah, his mother Ruth, and brothers George and Alan. As Brandwynne remembered her late husband, "He was the most generous, loving man I ever met, and that is what I miss."

Contributions in Meyerhoff's memory can be made to Doctors Without Borders Nutrition Program, 333 Seventh Ave., 2nd Floor, New York, NY 10001; Sierra Club, 85 2nd St., 2nd Floor, San Francisco, CA 94105; or Natural Resources Defense Council, 111 Sutter St., 20th Floor, San Francisco, CA 94104.

THE PATH TO RESTORING INVESTOR CONFIDENCE

FEATURE 3

Far too little attention has been paid to massive losses suffered by hundreds of millions of American workers with defined benefit plans. Over the last eight years, management, in the name of global competitiveness, was allowed to completely abolish defined benefit schemes for their employees (but not, to be sure, for themselves). In addition to such policy and contrary to the interests of working Americans, the U.S. government directed certain agencies, like the SEC – founded to protect the rights of beneficiaries and plan participants – not to enforce existing laws.

Long ineffective in protecting shareholder rights, the SEC actually became an obstacle under the George W. Bush administration. Joel Seligman, President of the University of Rochester and a leading authority on the history of the SEC, recently outlined three causes of the current problems at the agency: "A Congress that's been comfortable with vast unregulated areas, such as hedge funds and credit-default swaps, which sends a message to enforcement. The failure since 2005 to increase the enforcement budget . . . [a]nd some commissioners whose skepticism about enforcement may have undermined the SEC's effectiveness." Addressing the SEC transformation from watchdog to lapdog, *The New York Times* recently highlighted the SEC's role in the Madoff Ponzi scheme as the low point of public responsibility: "Created to protect investors from financial predators, the commission has somehow evolved into a mechanism for protecting financial predators with political clout from investors."

The SEC is not the only agency to blame. As bad as its record has been, the SEC is a shining star compared with the Department of Labor ("DOL"), whose regulative philosophy could have come out of Joseph Heller's *Catch-22*: there is no problem; there is no reason to find out if there is a problem; even if there were a problem, the DOL doesn't have legal authority to deal with it; even if Congress provides the authority, the DOL should not investigate; in addition, the DOL has already looked into this problem. The General Accountability Office analyzed the DOL's enforcement of voting rights of the millions of people with interests in employee benefit plans. The conclusion: the DOL trailed all other enforcement agencies and even found excuses for not taking action. For evidence, look no further than the blatantly illegal collusion between Hewlett-Packard Co. and Deutsche Asset Management, Inc. The SEC has at least completed an enforcement action in the case, but not the DOL, which should be the lead agency in the matter. More than seven years after the fact, the DOL continues to sit on its hands.

Eliot Spitzer, New York's former Attorney General who aggressively exposed and prosecuted conflicts of interest in the financial sector, recently testified before the Senate Banking Committee and concluded categorically: "Self regulation does not work." However, self regulation is the presumed formula for assuring law compliance by stock exchanges, stock brokers, accountants and lawyers. Consequently, it seems that the tools used to protect investors since the 1930s Depression have been blunted to say the least.

Traditionally, individual American investors have been able to pursue remedies through private litigation. Yet this relief has been also critically diluted during the past eight years. With the passage of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), the burden of proof necessary to survive a motion to dismiss has been raised to a level that virtually forecloses litigation; the responsibilities of lawyers, accountants, investment bankers and other "enablers" of corporate fraud have been shielded from recovery; and statutes of limitation and laws respecting venue have complicated an already expensive process.

Recently, several shareholder activists have come together to declare the following *Shareowner Bill of Rights* to enable investors to take steps in their own protection: (i) modification to the Sarbanes-Oxley Act to provide for the automatic disgorgement of performance-based compensation in cases where an issuer's financial statements have been falsified; (ii) giving private parties damage remedies under the Securities Exchange Act of 1934 against persons who intentionally aid and abet a securities fraud; (iii) a statutory modification to the PSLRA which currently prohibits a plaintiff from commencing discovery unless and until a plaintiff pleads a "reasonable inference" of fraud; (iv) adoption of a provision whereby shareholders holding 2% or more of an issuer's outstanding common stock for a period of one year prior to the record date are expressly permitted to nominate director candidates using the issuer's proxy statements; (v) adoption of an SEC rule

Continued on page 6

NEWS BRIEF

The Corporate Library Hosts Its First Annual Corporate Governance Conference for Public Pension Funds

The Corporate Library, the leading source for independent corporate governance information and analysis, is pleased to announce "**The Future of Corporate Reform**," a conference focusing on the emerging power of public pension funds in shaping governance reform.

President Bill Clinton will join a select list of speakers at the September 8-10 event, to be held at the historic Hotel del Coronado in San Diego, California.

The conference, sponsored in part by Coughlin Stoia, will unite institutional investors with leading minds from academia, public policy and political strategy in the pursuit of forging the new future of corporate reform, as pension funds take increasingly more important roles in restructuring the corporation and protecting its assets.

Shaping up to be this year's "must-attend" conference, The Future of Corporate Reform mixes educational sessions on investment strategy, litigation and public policy with recreational opportunities, creating unique learning and networking sessions for conference attendees. For more information, please visit: www.TCLconferences.com

LITIGATION update

Motion to Dismiss
Special Litigation Committee Cannot Stop *KLA-Tencor* Shareholder Derivative Action

Lead plaintiff **Alaska Electrical Pension Fund** scored a major victory in a derivative action brought on behalf of KLA-Tencor Corp. ("KLA"), the world's leading supplier of semiconductor and related micro-electrics. Judge James Ware of the United States District Court for the Northern District of California denied an attempt to dismiss the case and rejected settlements proposed by a Special Litigation Committee ("SLC") that failed to establish that it was comprised of independent directors.

On February 20, 2007, lead plaintiff, represented by Coughlin Stoia, filed a derivative action on behalf of KLA against certain of its executives and directors. The complaint alleges a massive stock option backdating scheme at KLA and details the tremendous damages that the company and its shareholders have suffered as a result of defendants' misconduct. The complaint demands that defendants disgorge their unearned gains from backdated stock options, compensate KLA for the damages they caused, and that KLA reform its corporate governance practices to prevent such misconduct in the future.

In response to the derivative suit, KLA's board created a two-person SLC, which consisted of one of the accused insiders. After completing its investigation, the SLC filed a motion to terminate the action and asked the court to approve settlements that the SLC had reached with several of the defendants. To prevail on such a motion, the SLC was required to demonstrate that it functioned independently of KLA's board of directors (several of whom were implicated in the wrongdoing) and that it had performed a reasonable investigation in good faith.

On December 12, 2008, Judge Ware denied the SLC's motion, rejected the settlements recommended by the SLC, and instructed lead plaintiff to assume immediate control of the prosecution of the case. In the public portions of his partially redacted order, Judge Ware noted the numerous reasons why the SLC failed to meet its burden to prevail on its motion to dismiss. Judge Ware found that the SLC had not established that it was independent. In addition to "several pieces of evidence [which suggested] that the SLC was not 'fully empowered to act for the company without approval by the full board,'" the court was also troubled that one of the SLC's members had been "tasked with investigating corporate malfeasance that he previously, if unintentionally, approved." The court also noted that the SLC failed to adequately investigate the backdating of stock options at KLA.

Furthermore, Judge Ware held that a "number of factors in the record implicate whether the SLC's investigation and conclusions were reasonable and made in good faith." Judge Ware also found the "depth and focus" of its inquiry to be inadequate, and stated that the "meager size" of the SLC's proposed settlement, "especially when considered in the light of the many questionable aspects of the investigation," justified denying its motion to dismiss and proposed settlements.

"It is a rare day when a court rejects a Special Litigation Committee's motion to dismiss a derivative case," said **Shawn A. Williams**, partner at Coughlin Stoia. "The court's ruling appropriately reflects the inadequacies of the SLC's recommendations and we look forward to continuing to pursue the action on behalf of KLA's shareholders."

In re KLA-Tencor Corp. Shareholder Derivative Litigation, No. 5:06-CV-03445-JW, Order (N.D. Cal. Dec. 12, 2008).

Motion for Class Certification
Class Sees Its Way Ahead in *Cooper Companies*

A class action brought against the contact lens and eyecare giant Cooper Companies, Inc. has taken a big step forward. Judge Cormac J. Carney of the United States District Court for the Central District of California certified a class and appointed lead plaintiffs **Wayne County Employees' Retirement System, UNITE HERE National Retirement Fund** and **United Food and Commercial Workers Union Local 880 – Retail Food Employers Joint Pension Fund** as class representatives in the action.

Plaintiffs allege that Cooper violated §§10(b) and 20(a) of the Securities Exchange Act of 1934. Plaintiffs' case is based upon a series of statements made during the class period, beginning with Cooper's announcement of its merger with Ocular Sciences, Inc. in 2004. The merger resulted in Cooper becoming the third-largest supplier of soft contact lenses in the world. The statements concerned Cooper's general revenue outlook, its inventory levels, its products' status in the market for contact lenses and its progress integrating its operations with former Ocular employees after the merger.

After defeating defendants' attempts to have the case dismissed, plaintiffs filed a motion seeking certification of a class of purchasers who acquired the company's stock during the class period. Although defendants attacked the adequacy of the class representatives, the court firmly rejected defendants' arguments.

In his decision, Judge Carney held that "[g]iven the extensive holdings of the class representatives, and the importance of the funds under their management, the class representatives are extremely likely to pursue this suit with vigor." Further, Judge Carney stated that "the evidence before the [c]ourt shows that the class representatives are genuine shareholders who sincerely believe that they have been defrauded by [d]efendants."

The court also held that the adequacy requirement was also satisfied as a result of lead counsel

Continued on page 5

Litigation Update continued from page 4

Coughlin Stoia's extensive experience prosecuting securities class-action lawsuits. Judge Carney stressed that "[i]t is undisputable that class counsel in this case has extensive experience prosecuting suits of this nature. Class counsel specializes in securities fraud actions and achieved success as lead counsel in one of the largest and highest-profile securities cases of the last decade, the *Enron* case."

Having examined and rejected defendants' arguments against certification, Judge Carney concluded that "adjudicating this matter as a class action is a superior method to resolve the parties' controversy because it avoids not only the dangers of duplicate discovery and trials, but also the unfairness of inconsistent findings and judgments. As the Ninth Circuit has so aptly stated, securities fraud cases fit Rule 23 'like a glove.'"

In re Cooper Companies, Inc. Securities Litigation, No. 8:06-cv-00169-CJC (RNBx), Order Granting Plaintiffs' Motion for Class Certification (C.D. Cal. Jan. 6, 2009).

Third Circuit Appeal
Pharmacia Gets Back on Track

In a dramatic win for plaintiff **Alaska Electrical Pension Fund**, the United States Court of Appeals for the Third Circuit reversed a lower court's summary judgment ruling which had threatened to permanently derail an action brought against Pharmacia Corp. Breathing new life into the litigation, lead counsel Coughlin Stoia successfully argued on the timeliness of institutional investors' §10(b) case against the drug maker.

The action arose from alleged concealment of unfavorable data about Pharmacia's flagship drug Celebrex and misleading statements made by defendants. The complaint alleges that the defendants concealed crucial long-term Celebrex safety data produced during a clinical trial. Pharmacia's researchers selectively published a "cherry-picked" subset of the first six months of data, hiding the full study's unfavorable results from the editors of the *Journal of the American Medical Association* and the general public.

In their motion for summary judgment, defendants alleged that the issue was fully public and investors were on "inquiry notice" from the moment that a February 2001 FDA panel disagreed with Pharmacia's analysis of the study. However, public revelation of deliberate wrongdoing by defendants – including the medical journal's editors' outrage over defendants' bad faith actions – did not appear until August 2001, when *The Washington Post* described it in an investigative exposé.

When Pharmacia investors filed suit, a federal district judge dismissed their claims as untimely, reasoning that the two-year statute of limitations on securities fraud claims had started running with the public reports of the FDA panel's skepticism. However, the Third Circuit reversed that ruling in its January 30 decision, holding that the limitations period on §10(b) claims does not begin to run until investors have indications that defendants committed actions with a fraudulent intent, or scienter. Merely making statements which might be proven false is not enough to stake a claim for fraud – there also must be a reason to believe that the defendants acted with fraudulent intent. "Accordingly, for investors to be on inquiry notice of §10(b) claims, there must be some indication that defendants did not, in fact, hold the views expressed."

In rejecting the lower court's summary judgment ruling, which left unchallenged would have foreclosed further litigation, the court held that the drop in Pharmacia's stock price on the disclosure of the FDA's unfavorable reception of Pharmacia's study data "did not indicate fraud or even the possibility of fraud." Until *The Washington Post* publication questioned the defendants' integrity, the Third Circuit explained, the matter appeared to involve not fraud, but an honest dispute about issues of scientific methodology.

The Third Circuit also rejected the defendants' cross-appeal, which argued that the case should be dismissed because the facts weren't strong enough to demonstrate intent to deceive. "While it is true that a legitimate disagreement over scientific data does not give rise to a securities fraud claim," the Third Circuit explained, "plaintiffs alleged something quite different: a bad faith misrepresentation of scientific data. Those allegations are sufficient to withstand the '[e]xacting pleading requirements' of the [Private Securities Litigation Reform Act of 1995], which require that the allegations give rise to a strong inference of scienter."

Coughlin Stoia partner and appellate attorney **Eric A. Isaacson** argued the case before the Third Circuit. "We are pleased that the Third Circuit has put the matter back on track," commented Isaacson. "This significant victory in the Third Circuit will benefit Pharmacia shareholders going forward."

Alaska Electrical Pension Fund v. Pharmacia Corp., 554 F.3d 342 (3d Cir. Jan. 30, 2009).

For more information on these & other cases, check out our website at csgrr.com

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SETTLEMENT update

Dollar General Landmark Recovery Achieved in Challenge to Private Equity Buyout

Plaintiffs the **City of Miami General Employees' and Sanitation Employees' Retirement Trust** and an individual investor recently announced a preliminary settlement of up to $57 million in an action challenging a private equity buyout brought against Dollar General Corp. The unprecedented settlement is one of the largest monetary recoveries in this type of litigation.

The action arises from the acquisition of Dollar General, a Tennessee-based chain of retail outlets, by the private equity firm Kohlberg Kravis Roberts & Co. ("KKR") for $22 per share – a price that plaintiffs allege inadequately compensated shareholders for their equity interest. As alleged in the complaint, the Dollar General Board of Directors breached its fiduciary duty by failing to maximize shareholder value and not disclosing all material information to shareholders regarding the acquisition.

Over the past 18 months, plaintiffs vigorously pursued these allegations. Even after the court refused to enjoin the shareholder vote on the acquisition by KKR, plaintiffs pressed forward, successfully moving to certify the class and forcing defendants to withdraw their motion for judgment on the pleadings. Plaintiffs also conducted extensive discovery, much of which was on an expedited basis, ultimately reviewing hundreds of thousands of pages of documents, taking and defending dozens of depositions, and filing six motions to compel defendants to provide plaintiffs with key internal company documents.

Plaintiffs painstakingly focused their efforts on three important areas that proved critical to their ability to obtain such a significant recovery. First, Dollar General's CEO had been quietly providing information about the internal workings of the Board to KKR. Next, although the CEO and one other Board member were aware of Dollar General's future growth potential – potential which could substantially affect the valuation of the company – the remainder of the Board was kept in the dark. Lastly, KKR offered secret payoffs to certain Dollar General insiders provided that Dollar General was sold for a lower price.

Facing plaintiffs' increasingly strong case, defendants had little choice but to settle the action. On the eve of summary judgment hearings, the parties agreed to resolve the case by establishing a $40 million fund for shareholders, with a possibility of a further $17 million should the company announce a public offering of Dollar General shares in the future.

Coughlin Stoia partners **Randall J. Baron** and **A. Rick Atwood, Jr.** represented the class in this hard-fought litigation. "This is an outstanding result for shareholders," Baron said. "This settlement is a signal to the actors in the private equity market that shareholders stand ready, willing and able to prosecute high-stakes private actions to defend shareholders' rights."

In re Dollar General Corp. Shareholder Litigation, No. 07MD-1, Preliminary Approval Order (Davidson County Cir. Ct., Tenn. Dec. 19, 2008).

Obama continued from page 1

Obama affirmed that the state of our economy "calls for action, bold and swift," and promised that "we will act – not only to create new jobs, but to lay a new foundation for growth." Obama's message is that "yes, we can" create jobs in markets driven by new incentives, many of them in the renewable energy sector.

Obama's call, "the work of remaking America," is meant to be heard by all, prosperous and jobless alike. Millions of Americans are inspired to rise to that challenge in an era where the oath of the highest office was sworn by a man "whose father less than 60 years ago might not have been served at a local restaurant." Obama's critical acknowledgment is that he is ready to lead, but he cannot go it alone. Changes must be made, difficult decisions confronted, and the new President advises us that we are in this together. "What is required of us now is a new era of responsibility – a recognition, on the part of every American, that we have duties to ourselves, our nation and the world, duties that we do not grudgingly accept but rather seize gladly, firm in the knowledge that there is nothing so satisfying to the spirit, so defining of our character, than giving our all to a difficult task."

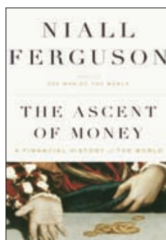
Restoring Investor Confidence continued from page 3

to preclude brokers from voting uninstructed shares in uncontested director elections; (vi) adoption of a uniform statute of limitations for private actions brought for violations of the Securities Act of 1933 and the Securities Exchange Act of 1934; and (vii) prohibition on the use of state court proceedings in securities actions to undermine or impair a federal court's ability to adjudicate pending actions alleging violations of the federal securities laws.

How do the real losers – the hundreds of millions of Americans participating in employee benefit plans and mutual funds – get redress? Government policies and regulatory practices have favored interests other than theirs. Remedial action by government has not worked well in the recent past. What is needed is for government to remove the obstacles confronting individuals who would like to help themselves.

This article was authored by Robert A.G. Monks of the LENS Foundation for Corporate Excellence. Referred to by *The Economist* and *Fortune* magazines as the leading shareholder activist and governance advocate in the world, Monks has authored many literary works, including the recently published *Corpocracy: How CEOs and the Business Roundtable Hijacked the World's Greatest Wealth Machine – and How to Get It Back* (John Wiley & Sons, Inc., 2008).

RECOMMENDED READING



The Ascent of Money: A Financial History of the World

Niall Ferguson
(The Penguin Press, 2008)

Money: the solution to – or cause of – all of life's troubles? Historian Niall Ferguson, who divides his time between Oxford and Harvard universities, is an unapologetic champion of the global financial system. The prolific Ferguson has already produced a two-volume history of the Rothschild banking dynasty, as well as the banking-and-Empire studies *Colossus*, *Empire* and *The Cash Nexus*. With frequent TV appearances, the 45-year-old has built a reputation for himself as the *enfant terrible* of the Oxford-Cambridge academic establishment. In his newest book, *The Ascent of Money* (modestly subtitled *A Financial History of the World*), Ferguson traces the interconnected development of financial instruments and nation-states, from Mesopotamian clay tablets to the "structured products" of Wall Street's mind-boggling derivative contracts.

Ferguson is a masterful and entertaining historian, and his book is filled with the sorts of obscure and fascinating financial anecdotes that you might expect from a top-notch young Oxford faculty who travels the world producing shot-on-locale PBS documentaries based on his books. Ferguson brings to life what might otherwise be a dull topic without cutting corners on the technicalities. The book's title, *The Ascent of Money*, is a nod to the Jacob Bronowski series *The Ascent of Man*, in which Ferguson delighted as a boy. Through Ferguson's sharp but selective lens, we are made to understand his central thesis that "financial innovation has been an indispensable factor in man's advance," and that the evolution of credit and debt has brought us from "wretched subsistence to the giddy heights of material prosperity that so many people know today."

A fascinating chapter on European mercantile capitalism takes us through the rise of the Medici of Florence to the Rothschilds of Frankfurt – and shows how increasingly sophisticated means of lending and bond trading facilitated the rise of empires. Conversely, financiers could also humble the most powerful nations by tightening the money supply or charging usurious interest. A "teachable moment" is found in the story of John Law, a Scot who was handed the opportunity to test out monetary theories as France's comptroller-general at the twilight of the 18th century monarchy. Law's bond schemes led to an irrationally exuberant "Mississippi bubble," as Parisians speculated wildly on the new world's promise. The late-1700s provides a cautionary tale for our times – loose credit and easy money often results in speculative asset bubbles which later deflate in dramatic fashion, in this case, collapsing the French monarchy.

Ferguson goes into a brief Darwinian analysis of economic behavior, implying that the fittest corporations and financial instruments persist, while the maladapted perish in a sort of creative destruction. In the final chapter, "From Empire to Chimerica," Ferguson explores his theory that the U.S. debt explosion of the last decade was enabled by Chinese investment of billions of dollars in U.S. Treasury securities, keeping interest rates low and fueling a lending frenzy, joining the two nations in a financial symbiosis Ferguson names "Chimerica" where "[t]he East Chimericans did the saving. The West Chimericans did the spending."

Despite the darkening economic skies, Ferguson optimistically concludes, "not even the worst has set us permanently back . . . though the line of financial history has a saw-tooth quality, its trajectory is unquestionably upwards." These are reassuring words during uncertain times, however an accurate forecast of the global economic situation would challenge a historian of even Ferguson's caliber. Given the author's boundless energy and impressive depth of knowledge, one suspects that even before the dust of the current crisis is fully settled, the irrepressible Ferguson will already have a new book published.

FAT CAT

Until recently, **John Thain** was best known as the Merrill Lynch CEO and Chairman brought in to clean up after Stan O'Neal's disastrous tenure and safely steer Merrill Lynch's sale to Bank of America ("BofA"). Thain's fresh-faced reputation changed dramatically in January when the Harvard MBA was summoned off the Colorado ski slopes and sacked following disclosure of potentially criminal misconduct.

John Thain

Thain had allegedly attempted to rush through a total of $3.6 billion in last-minute bonuses to himself and his Merrill Lynch cronies, all the while misleading investors about the true state of Merrill Lynch's balance sheet – which included $15 billion in losses. New York Attorney General **Andrew Cuomo** served Thain subpoenas in an investigation into whether the final bonuses engineered by Thain were diverted from taxpayer-funded Troubled Assets Relief Program ("TARP") bailout money.

Thain's involvement in the questionable bonus scheme should come as no surprise to those who know that Thain spent $1.22 million in corporate funds to renovate several Merrill Lynch suites – including $131,000 on area rugs, $68,000 on an antique credenza, $87,000 on guest chairs, $35,000 on a commode and $1,400 on a wastebasket. True to form, Thain reimbursed the expenses only when he had little choice and the scandal was made public.

CALENDAR
of Upcoming Events

April 5-7, 2009

Council of Institutional Investors (CII)
The Voice of Corporate Governance
Change 2
Spring 2009 Meeting

The Mandarin Oriental
Washington, D.C.

This annual meeting will educate its members about good corporate governance, shareowner rights and related investment issues. Sessions and panels will emphasize views on the U.S. and global economy, the Federal Reserve agenda, defined benefit plans, executive pay, investment issues and lessons learned from the Great Depression

For more information, visit: www.cii.org

April 23-24, 2009

Institute for Law & Economic Policy ("ILEP")
15th Annual ILEP Conference - Compensation of Plaintiffs in Mass Securities Litigation

Fairmont Princess Hotel
Scottsdale, AZ

Featured Speaker: **Joy Bull**, Coughlin Stoia Geller Rudman & Robbins LLP

This panel will focus on distribution of funds in class actions and claims administrators. Additional topics covered at the conference include damages, expert testimony on damages, recovery of damages by foreign investors in U.S. securities litigation and the global economy.

For more information, visit: www.ilep.info

April 28-29, 2009

Institutional Investor Conferences
The 2nd Annual United Arab Emirates ("UAE") Global Investor Forum

Emirates Palace
Abu Dhabi, United Arab Emirates

Featured Speaker: **Patrick W. Daniels**, Coughlin Stoia Geller Rudman & Robbins LLP

This forum will showcase the impressive range of investment opportunities now available in the UAE, as well as provide a platform for the leaders of the UAE's businesses to meet and discuss how best to use the capital markets for their investment and financing needs.

For more information, visit: www.iiconferences.com

May 3-7, 2009

National Conference on Public Employee Retirement Systems ("NCPERS")
2009 Annual Conference & Exhibition

Hyatt Regency Century Plaza
Beverly Hills, CA

This conference will focus on topics including current industry challenges and future directions, portfolio and investment management, intersection of government, politics and finance, risk mitigation strategies, corporate governance and fiduciary responsibilities, and healthcare and retirement.

For more information, visit: www.ncpers.org

May 4-7, 2009

James R. Hoffa Memorial Scholarship Fund
8th Annual "Drive for Education" Invitational Golf Tournament

Bally's Hotel & Casino
Las Vegas, NV

Join hundreds of Teamsters and help pay for scholarships going to outstanding Teamster family children on their way to college.

For more information, visit: www.teamster.org

May 6-7, 2009

Swiss-American Chamber of Commerce
Risk Mitigation for Institutional Investors

Milan, Italy

Featured Speaker: **Patrick W. Daniels**, Coughlin Stoia Geller Rudman & Robbins LLP

This conference, for senior executives from the leading asset management firms in Italy and Switzerland, will address the current banking crisis and breakdown in corporate governance. The event is invitation only and part of a regular program of educational and networking opportunities supported by the Swiss-American Chamber of Commerce.

For more information, visit: www.amcham.ch

May 17-20, 2009

AFL-CIO Building & Construction Trades Department National Legislative Conference

Washington Marriott Wardman Park Hotel
Washington, D.C.

For more information, visit: www.aflcio.org

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