Corporate Governance Bulletin

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FEATURE 1

FINANCIAL CRISIS INQUIRY COMMISSION APPOINTED BY CONGRESS

In July, the U.S. Congress created the Financial Crisis Inquiry Commission (the "Commission"), naming **Byron S. Georgiou** of Coughlin Stoia Geller Rudman & Robbins LLP to serve as one of the 10 members. Tasked with examining "the causes, domestic and global, of the current financial and economic crisis in the United States," the Commission will begin holding hearings by this December.

The recent financial crisis came to a head in September 2008, when brokerage giants Bear Stearns and Lehman Brothers plummeted towards bankruptcy and AIG required an infusion of $85 billion. Amid the panic, Henry Paulson, the Secretary of the Treasury, advocated for an emergency bailout program to keep the major banks solvent, promising an investigation into the debacle later.

"Many people all over America have been devastated economically by this financial crisis. We have an obligation to pursue the truth, wherever that leads."
- Byron S. Georgiou, Esq.

Recognizing that the time to investigate is now, Congress passed the Fraud Enforcement and Recovery Act of 2009, which established the Commission to examine the causes and factors leading up to the worst financial crisis since the Great Depression. The Commission, nominated by Congress in a bipartisan fashion, will produce a detailed and clear-eyed examination of what went wrong. Not only is this critical to bringing accountability to a financial system that has rewarded irresponsible risk, it is essential to informing Congress as it moves forward with common sense reforms to prevent these crises from happening again in the future.

The Commission has a strong historical precedent in the inquiries held after the banking collapses of the previous century. In 1932, Congress convened what came to be called the "Pecora Commission," named after its chief counsel, Ferdinand Pecora. The Pecora Commission's detailed probe into the securities and banking practices of that era provided the basis for structural reforms, including the Glass-Steagall Act, the Securities Act of 1933, and the Securities Exchange Act of 1934. Conspicuously, the Glass-Steagall Act was repealed as part of the anti-regulation zealotry of the 1990s, allowing banks to merge commercial and investment aspects.

In fulfillment of its duties and to shine a bright light on what Pecora called "legal chicanery and pitch darkness," the Commission will be armed with subpoena power to obtain critical information regarding modern financial practices, providing the basis for rational suggestions to prevent further recurrence. The Commission will be headed by former California State Treasurer **Phil Angelides**, with former California Congressman **Bill Thomas** serving as vice-chair. The remaining members of the Commission are **Douglas Holtz-Eakin**, a Heritage Foundation Fellow, **Peter J. Wallison**, a co-director at the American Enterprise Institute and former partner at Gibson, Dunn & Crutcher LLP, **John W. Thompson**, Chief Executive Officer and chair of Symantec Corp., **Keith Hennessey**, an economic advisor to President George W. Bush, former Florida Governor and **Senator Bob Graham**, former Merrill Lynch analyst **Heather H. Murren**, **Brooksley Born**, a former chair of the U.S. Commodity Futures Trading Commission, and Georgiou, a securities attorney and Of Counsel at Coughlin Stoia.

Having worked on behalf of investors in the *Enron*, *WorldCom*, *Dynegy* and *UnitedHealth* securities class action litigations, Georgiou brings extensive financial investigative experience to the Commission. Georgiou's work on these cases involved investigating issues related to complex accounting rules, off-balance-sheet entities and corporate governance – a wealth of experience relevant to the Commission's inquiry. In addition to his investigative expertise, Georgiou, a Harvard Law graduate, also has experience representing the public, serving as both a labor lawyer and the legal affairs secretary to California Governor Edmund G. ("Jerry") Brown, Jr.

According to Georgiou, "Many people all over America have been devastated economically by this financial crisis. We have an obligation to pursue the truth, wherever that leads."

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FEATURE 2

WHAT'S PAST IS PROLOGUE: SECURITIES LITIGATION AND CORPORATE REFORM

Cycles are common in business and investing, indeed in all of life. What's most important is not that cycles occur, but rather their depth and frequency. In the long, dark years that followed the Great Depression it must have seemed that the upswing would never occur, and the frustration of the slow climb back, combined with the sheer magnitude of what had been lost, focused a great deal of American energy on securities reform.

The results of that effort, the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940, set new standards for corporate reporting and disclosure, and for the relationship between investors, professional money managers and the corporations themselves which are still in effect today. Their primary goal: to prevent such losses from ever happening again.

Our current down cycle has often been compared to that period, and the magnitude of loss is not dissimilar. The calls for reform – to prevent this from happening again – ring from boardroom to Facebook.

Though history tells us in no uncertain terms that such reforms will ultimately fail, the more important consideration is that the right reforms can help us greatly extend the timeline between such dramatic crashes. In the day of the digital dollar – and what is truly different about this crash is the accelerated speed with which it occurred, and the apparent speed of our recovery – the extended period of relative prosperity that occurred between World War II and 2008 seems all the more remarkable, and suggests that our sense of the critical relationships, as defined by the Acts of 1933, 1934 and 1940, is still fundamentally true. What's needed are incremental reforms, particularly in the areas of better reporting and disclosure, and greater clarity about the optimum balance of power between shareholders, boards of directors, and corporate management.

When all else fails, we litigate. Here again we should marvel at the resiliency of the 1933 and 1934 Acts, which for the most part continue to serve us well as the foundation for legal recourse, at least at the federal level. Our most recent effort at reform in this area occurred just 14 years ago, when the U.S. Senate overrode then-President Bill Clinton's veto of the Private Securities Litigation Reform Act of 1995 ("PSLRA"). The most important changes included heightened plaintiff pleading requirements; the stay of discovery until after the court has ruled on the defendant's motion for dismissal; and greater clarity regarding appointment of the lead plaintiff and approval of the lead counsel – sweeping changes by some standards, yet ultimately incremental, building as they did upon existing standards. Legal experts continue to disagree as to the overall effectiveness of these reforms, but no one can deny that the higher pleading standards are being met, or that institutional investors are increasingly likely to serve as lead plaintiffs in these cases.

Ric Marshall
Chief Analyst,
The Corporate Library

This last change is especially important, as the increased involvement in federal securities litigation by institutional investors has had at least one additional major impact: the greatly increased legitimization of such litigation as an essential tool for shareholder protection and recourse. An unanticipated and almost certainly unintended consequence of the PSLRA, this may ultimately prove its most important contribution.

But protection from whom? A top executive at one of America's largest providers of Director & Officer liability insurance answered it this way: "We don't have any issue with the plaintiff's bar, they're just doing their job. What we worry about are the CEOs and other top executives who think they can cheat and get away with it, and the boards that either don't know how or are unwilling to stop them – those are the bad guys."

We like our CEOs hungry, and are strongly in favor of giving them the right incentives to better lead our companies to growth and prosperity, but

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NEWS BRIEF

Coughlin Stoia Honors New York City Comptroller William C. Thompson, Jr.

William C. Thompson, Jr.
New York City Comptroller

Coughlin Stoia recently sponsored a reception honoring New York City Comptroller **William C. Thompson, Jr.** at the Yitzhak Rabin Center in Tel Aviv, Israel.

The Yitzhak Rabin Center invited a delegation, which included Thompson and leaders from the Israeli venture capital and investment community, to preview the Center's soon-to-be-opened Art Museum. Recognizing the importance of institutional investors in Israel, Coughlin Stoia partner **Patrick W. Daniels** recently accompanied Thompson to Tel Aviv for an institutional investor conference. According to Daniels, "Israeli institutional investors have grown tremendously in terms of assets, and as they do so they are faced with ever-increasing complexity in managing their funds. Leaders like Comptroller Thompson have a wealth of experience to share on how to develop 'best practices' in managing alternative investments, asset allocation, risk and corporate governance issues. Coughlin Stoia is honored to have a supporting role in bringing the Comptroller to Israel to share that experience."

Now a candidate for New York City Mayor, Thompson has served two terms as the Comptroller of New York City, overseeing more than $94 billion of employee retirement investments in the New York City Employees' Retirement System.

FIFTH CIRCUIT REVIVES PLAINTIFFS' CLAIMS IN *FLOWSERVE*

FEATURE 3

Coughlin Stoia Geller Rudman & Robbins LLP recently obtained a successful appellate ruling from the Fifth Circuit Court of Appeals that vacated the lower court's denial of class certification, reversed the court's grant of summary judgment and issued an important decision on the issue of loss causation in securities litigation. The panel included Sandra Day O'Connor, Associate Justice of the United States Supreme Court (Ret.) sitting by designation.

Coughlin Stoia represents lead plaintiff **Alaska Electrical Pension Fund** and named plaintiff **Massachusetts State Carpenters Pension Fund** (now known as **New England Carpenters Pension Fund**) in this securities class action pending in the Northern District of Texas. Plaintiffs allege violations of the Securities Act of 1933 and Securities Exchange Act of 1934 on behalf of a class of purchasers of Flowserve Corp. securities during the February 6, 2001 through September 27, 2002 class period. As alleged in the complaint, to mask the chaos caused by Flowserve's massive acquisitions, defendants misrepresented the company's financial condition by making related false statements concerning earnings forecasts, historical past performance, past and future integration costs and savings, and debt-covenant compliance.

The district court denied class certification and entered summary judgment based on defendants' arguments regarding loss causation. Specifically, the defendants in *Flowserve*, like defendants in many securities cases, argued that to demonstrate loss causation, plaintiffs must show that the company's subsequent announcements explicitly revealed the fraud that plaintiffs allege. Essentially, defendants asserted that to be liable, they had to confess to their own fraud for plaintiffs to establish loss causation.

Plaintiffs appealed the district court's ruling to the Fifth Circuit. After considering plaintiffs' appellate arguments, the Fifth Circuit rejected the district court's loss causation test that required a fact-for-fact disclosure of information that fully corrected prior misstatements. The Fifth Circuit's decision is very important to the case specifically and to securities actions in general. The Fifth Circuit held that "[i]f a fact-for-fact disclosure were required to establish loss causation, a defendant could defeat liability by refusing to admit the falsity of its prior misstatements." The decision is significant because it repudiates an argument frequently used by defendants in securities cases in an attempt to evade liability for their fraudulent conduct. Significantly, the Fifth Circuit panel noted that "[t]o be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action. Those ever higher hurdles are not, however, intended to prevent viable securities actions from being brought."

Commented Coughlin Stoia partner **Sanford Svetcov** (who briefed and argued the appeal): "Plaintiffs are obviously pleased that the Fifth Circuit agreed with us that there is no fact-for-fact or mirror-image test for proving loss causation. The decision is a great win for the plaintiffs and the putative class of investors."

Alaska Electrical Pension Fund v. Flowserve Corp., 572 F.3d 221 (5th Cir. 2009).

Corporate Reform continued from page 2

only up to a point, and whenever they cross that line we will be outraged, and rightly so.

One of the most recent developments in the world of securities litigation, perhaps yet another unintended consequence of the PSLRA, is the rise in "corporate reforms," where the reforms involved are company-specific, based on proven corporate governance practices, and imposed on the company as an integral part of the settlement agreement. This may be the most important form of "corporate reform" possible, as it is directed not at corporations in general but at one specific company where management and/or the board have clearly crossed the line, and are intended not to provide recourse for past damages but rather to help ensure that future shareholders not suffer the same kind of damages going forward.

Would these new corporate reforms born out of litigation have made a difference? They might have for Merrill Lynch, which prior to its failure was by far the most often named securities defendant in corporate America, even looking all the way back to passage of the PSLRA. They might also have made a difference at Bear Stearns or Lehman Brothers or Citigroup, all repeat defendants. They would have come too late for Countrywide, where undisclosed liabilities had accumulated beyond all hope for independent recovery long before, but it might not be too late for AIG, propped up as it has been by the U.S. government, and clearly in need of "corporate reform."

Corporate reform is needed, but our touch should be light, and sit squarely on our already solid foundation. Better yet, let's focus on the bad guys, one company at a time, as responsible investors, as regulators with a clear mandate for enforcement, as active and informed shareholders, and, as necessary, as proactive plaintiffs.

Ric Marshall is the Chief Analyst for The Corporate Library, the leading source for U.S. and Canadian corporate governance and executive and director compensation information and analysis. Marshall has been a guest speaker and panelist at corporate governance conferences throughout the U.S. and has written extensively on investing in corporate governance.

LITIGATION update

Motion to Dismiss
W Holding Cannot Escape Bad Loans

A class of investors suing W Holding Co., Inc. for securities laws violations advanced their case when the Honorable Jay A. Garcia-Gregory of the United States District Court for the District of Puerto Rico denied defendants' motion to dismiss the action. Plaintiffs allege that the defendants carried out a fraudulent scheme which inflated the company's earnings by at least $105 million.

On March 24, Judge Garcia-Gregory signed an order denying the attempt by W Holding to dismiss the case. Plaintiffs claimed that W Holding's stock traded under artificially inflated conditions, and that the bank's financial statements were false because defendants failed to appropriately write down specific loans despite knowing that it was likely the borrower would default.

The complaint filed by plaintiffs against W Holding, which operates as the holding company for Westernbank, alleges that during a period of more than two years, defendants issued materially false and misleading statements. As alleged in the complaint, despite representing that its lending activities were subject to a rigorous review process, the defendants misrepresented Westernbank's financial position, particularly in regards to loans made to Inyx Inc. that were secured by non-existent collateral. As a result, plaintiffs allege that the bank's financial results during the class period were artificially inflated due to a failure to write down the impaired Inyx loans. When defendants finally admitted that the company was unlikely to collect on the loans, W Holding's stock plummeted by 40%. W Holding has since admitted that it will not collect on the Inyx loans and that it will take a charge of more than $100 million.

In its order, the court rejected defendants' argument that the complaint failed to allege that the bank acted with a fraudulent mindset – *scienter* – because only two lower-level loan officers knew of the problems associated with the bad Inyx loans. Accepting plaintiffs' arguments, the court looked at the complaint in its entirety and found that due to a number of red flags and the bank's desire to maintain its share of the commercial banking market at all costs, plaintiffs adequately alleged *scienter*, a necessary condition for a securities fraud claim to go forward. Judge Garcia-Gregory similarly rejected defendants' motion to reconsider the court's order denying defendants' motion to dismiss, paving the way for discovery to begin in the case.

Commented Coughlin Stoia partner **Robert M. Rothman**, "We are pleased that the court has twice rejected defendants' attempts to dismiss this meritorious case. We look forward to proceeding to discovery, where we will further develop the evidence necessary to obtain a recovery for defrauded investors."

Hildenbrand v. W Holding Co., Inc., et al., No. 3:07-cv-01886, Opinion and Order (D. P.R. Mar. 24, 2009).

Motion to Dismiss
No Second Chance for Threshold

On April 3, the Honorable Claudia Wilken of the United States District Court for the Northern District of California issued an order upholding, in part, the second amended complaint filed against a start-up drug company, Threshold Pharmaceuticals, Inc. The securities fraud case arises from the failure of Threshold's drug candidate, TH-070, which the company had at one time claimed was going to be superior to Flomax®, Proscar® and other treatments for benign prostatic hyperplasia ("BPH").

Threshold is a Redwood City, California-based biotechnology company focusing on metabolic targeting strategies. Plaintiffs allege that investors had been deceived when Threshold issued positive news about TH-070's progress, while hiding the fact that there were significant safety issues with the drug which could delay or even derail FDA approval for commercial sale. Specifically, on April 5 and again on May 10, 2006, Threshold issued press releases regarding the fact that TH-070's clinical trials were "fully enrolled," touting the achievement of the milestone as a positive development. Damningly, Threshold failed to mention a bombshell: defendants already knew that significant liver toxicity issues had arisen in the trials that created grave new risks to the approval and commercial success of the drug. When Threshold finally disclosed the bad news, including a "clinical hold" imposed by the FDA as a result of these major concerns about the drug's liver safety problems, its stock price collapsed, falling from a high of $16.52 to as low as $1.55, and damaging investors to the tune of millions.

The court had previously dismissed §11 claims arising from statements about the drug's early clinical trials that were made in the company's initial public offering ("IPO") prospectus, as well as later claims under §10(b) arising from misleading statements made about the progress of later clinical trials of the BPH treatment candidate.

"The decision to uphold the second amended complaint is an important win for plaintiff **Electrical Workers Pension Fund, Local 103, I.B.E.W.** and other Threshold investors, and sends an important message to drug companies regarding their obligation to provide investors with complete information about ongoing drug trials, rather than painting rosy one-sided pictures that mislead investors as to the true risks of their investment," said Coughlin Stoia partner **Dennis J. Herman**.

Twinde v. Threshold Pharmaceuticals, Inc., et al., No. 4:07-cv-04972-CW, Order (N.D. Cal. Apr. 3, 2009).

Litigation Update continued from page 4

Motion for Class Certification Worldwide Class Moves Forward in Infineon

In a positive development for defrauded shareholders, a class of investors pursuing a securities fraud class action against Infineon Technologies AG has been certified by a federal judge in the Northern District of California. On March 6, the Honorable James Ware issued an order which upheld lead plaintiffs **Charter Township of Clinton Police and Fire Retirement System** and Reinhard Schroeder's allegations of securities law violations against Infineon, a German corporation that used to be one of the world's largest manufacturers of DRAM chips.

Plaintiffs allege that Infineon violated U.S. securities laws and asserts that the company made materially false and misleading public statements about historical and projected financial results related to issues of price-fixing of DRAM chips. Arguing against defendants' attempt to have the case brought to partial summary judgment, lead counsel Coughlin Stoia argued that "limiting application of domestic securities laws in cases involving transnational securities transactions 'might encourage those who wish to defraud foreign securities purchasers or sellers to use the United States as a base of operations and, in effect, create a haven for such defrauders and manipulators.'"

The Northern California district court agreed. Relying on this important policy consideration and by successfully identifying specific instances of defendants' U.S.-based misconduct, the plaintiffs succeeded in persuading Judge Ware to assert jurisdiction over the claims of investors who acquired their shares overseas. Against defendants' strenuous opposition, Coughlin Stoia succeeded in obtaining an order certifying a worldwide class comprised of U.S. and non-U.S. investors who acquired shares on the Frankfurt stock exchange and ADRs on the New York Stock Exchange. In addition, plaintiffs persuaded the court that investors who purchased in the offering and during the post-offering "quiet period" should also be included in the class of investors.

Coughlin Stoia overcame a number of arguments that successfully prevented the certification of a worldwide class in other actions, including the assertion that foreign jurisdictions would not recognize a judgment in a U.S. class action. "The only interest served by excluding non-U.S. investors would be defendants' interest in limiting liability for their admitted misconduct," said **Christopher M. Wood**, an associate in Coughlin Stoia's San Francisco office. "The inclusion of all injured investors, including non-U.S. investors, was the best mechanism through which all investors who had suffered losses could obtain relief." Defendants are seeking interlocutory relief from the court's order certifying the class, and as a result, the case is currently stayed.

In re Infineon Technologies AG Sec. Litig., No. 5:04-cv-04156, Order (N.D. Cal. Mar. 6, 2009).

Motion for Class Certification Primetime for Class in Syntax-Brillian

In the company's last quarterly earnings filing with the U.S. Securities and Exchange Commission in November 2007, Syntax-Brillian Corp. reported $550.7 million in assets and $227.5 million in liabilities – yet less than a year later, it was entering bankruptcy proceedings.

Lead plaintiff the **City of St. Clair Shores Police and Fire Retirement System** and named plaintiff the **City of New Haven Policemen and Firemen's Pension Fund** achieved a victory in their class action case against Syntax-Brillian, certain of the company's former officers and directors, and the company's auditor and underwriters. On July 17, the Honorable Frederick J. Martone of the United States District Court for the District of Arizona certified a class of defrauded investors, rejecting nearly all arguments put forward by the defendants.

As class representatives, the two public funds bring a securities lawsuit on behalf of all persons who purchased securities of Syntax-Brillian, maker of Olevia LCD televisions, between February 9, 2007 and November 14, 2007, as well as persons or entities who purchased or otherwise acquired Syntax-Brillian securities in the company's secondary public offering directly from an underwriter or participating dealer.

The plaintiffs allege that certain Syntax-Brillian officers violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by making false and misleading statements regarding the company's financial condition and operations. According to plaintiffs, the net effect of the misleading statements and deceptions artificially pumped Syntax-Brillian's stock price up, while certain insiders sold off millions of dollars of their own shares prior to the stock's collapse.

In his order, Judge Martone ruled in favor of plaintiffs' arguments in support of class certification. The ruling is a significant victory for plaintiffs and the members of the class of defrauded investors. "Now that the investor class has been certified by the court, we can proceed to obtain the best possible recovery for the plaintiffs and the class," said Coughlin Stoia partner **Ex Kano S. Sams II**.

Tsirekidze v. Syntax-Brillian Corp., No. CV-07-02204-PHX-FJM, 2009 U.S. Dist. LEXIS 61145 (D. Ariz. July 17, 2009).

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

Financial Commission continued from page 1

The Commission's mandate includes referral of potential criminal or civil violations to the U.S. or State Attorneys General. The Commission's findings will be reported to the President and Congress by December 15, 2010.

THE CORPORATE LIBRARY'S 2009 PUBLIC FUNDS FORUM DEFINES THE FUTURE OF CORPORATE REFORM

As the devastating recent losses suffered by public funds and investors worldwide continue to be tallied, a hopeful new paradigm is emerging. Around the world, public funds are rapidly adapting their strategies to reflect a greater role in shaping corporate governance and bringing new strategies forward in response to the crisis. Nowhere was that more evident than at The Corporate Library's 2009 Public Funds Forum held in San Diego, California.

Directors of public pension funds came together from September 8-10 at the historic Hotel del Coronado at a pivotal moment in the maelstrom afflicting financial markets worldwide. The Corporate Library, together with class action administrator Gilardi & Co. LLC and Coughlin Stoia Geller Rudman & Robbins LLP, assembled a group of industry experts, public officials and leaders in the field of corporate governance. The conference provided attendees with a unique opportunity to assess the current crisis and craft strategies to deepen their engagement in corporate reform.

Founded by **Nell Minow** and **Robert A.G. Monks**, The Corporate Library has built its success on providing analytical tools and research to grade corporations on their governance practices. Throughout the San Diego conference, the importance of using shareowner power to create and enforce good corporate behavior was a recurring message. Monks, who is regarded as one of the foremost shareholder activists in the world, cited some of the difficulties of reforming governance practice. As Monks puts it: "The United States is a corporatist state. This means that individuals are largely excluded both in the political and corporate spheres." Despite the challenges, Monks and The Corporate Library have demonstrated that investment in corporations with better governance practices and boards of directors responsive to shareholders consistently outperform, and several panelists elaborated on specific examples where stronger governance policies protect investment over the long term.

With the failures of management at many corporations making daily headlines, many public fund managers are realizing that their strategies must evolve to meet a new reality. During the conference, directors of public funds noted that their substantial investments give them not only the power, but the responsibility to help take the lead in shaping corporate governance, and that greater engagement in crafting new policy forms part of their fiduciary responsibility to protect fund assets.

Conference participants discussed the tools instrumental to ensuring the best possible governance in the future, including shareowner proxy access to affect corporate boards, enacting legislative changes which strengthen shareowner rights, and aligning shareowner interests with that of management. The success of targeted shareholder litigation to win permanent governance improvement was highlighted.

The conference featured both domestic and international participation by public fund representatives from throughout the U.S., as well as from the U.K., Norway and Israel. With a concentration of industry and academic experts, the conference provided a new outlook for the future, and new momentum to the corporate governance movement.

For information on The Corporate Library's 2010 Public Funds Forum, please visit www.TCLconferences.com or call (207) 874-6921.

RECOMMENDED READING

The Match King: Ivar Kreuger, The Financial Genius Behind a Century of Wall Street Scandals

Frank Partnoy
PublicAffairs, April 2009

Who was Ivar Kreuger? Although he's not a household name, the reclusive Swedish financier who built an empire founded on matches and monopolies should be better known: "[T]his man is the father of today's financial markets. Hedge fund managers and investment bankers employ many of the same techniques he invented. . . . America's securities laws were a direct response to his spectacular collapse. He was, in many ways, the original Bernie Madoff."

Every financial scandal has its anti-hero, the "poster child" of greed, graft or corruption. Like the corporate scandals of the early 2000s, which are personified by Enron and Ken Lay, the financial double-dealing of the 1920s and early 1930s will be forever characterized by the mysterious Kreuger.

With impeccable timing, Frank Partnoy, law professor, securities expert and talented author, brings to life the tale of Kreuger. Partnoy revises modern history's overly simplified account of Kreuger-as-Ponzi-schemer who had duped investors with a house of cards. Instead, as Partnoy explains, "the truth, as in most big financial stories, is far more complicated." Not to mention interesting. Kreuger in fact ran legitimate businesses and innovated financial practices that were to be copied for the next 80 years.

Born in rural Sweden, Kreuger dreamed of escaping "to Stockholm and then America, and [becoming] a world leader and a wealthy businessman." Beginning with a handful of Swedish match factories, and adding a proprietary blend of inaccessibility fortified with chutzpah, Kreuger succeeded in his efforts, eventually rivaling banker J.P. Morgan for the role of financier to European nations. Kreuger's curious rise and spectacular fall are ably treated in *The Match King*, Partnoy's follow-up to his previous books *Infectious Greed: How Deceit and Risk Corrupted the Financial Markets* and *F.I.A.S.C.O.: Blood in the Water on Wall Street*.

Kreuger parlayed a country-by-country monopoly on matchstick production (a household staple in the 1920s) into lucrative deals to provide large loans to rebuild European nations shattered by World War I. Kreuger's success in raising seemingly unlimited funds from American investors lay in his novel financial "innovations," which today's financial markets take for granted – convertible debentures, off-balance-sheet entities, creative accounting and earnings smoothing. By paying large and frequent dividends to investors (up to 25%), even giants such as Met Life didn't bother looking too hard at how the money was made. Foreshadowing the cozy relationship that companies like Enron would develop with their auditors, Kreuger made a habit of keeping his auditor's and accountant's interests aligned with his own, and never let the books be fully opened. Keeping his timid American auditor (one A.D. Berning) enthralled with perks such as luxury ocean-liner travel, other "gatekeepers" rarely raised public doubts about Krueger's businesses until a collapse in credit markets in the 1930s led to the unraveling of Kreuger's empire and the loss of millions of dollars of investor capital.

Yet despite its critical relevance to events unfolding today, Kreuger's story is not well known, and we are obliged to Partnoy for bringing it into focus. In response to revelations about Kreuger's practices, Congress passed the Securities Exchange Act of 1934, which created the U.S. Securities and Exchange Commission and established the right of shareholders to sue for fraud. That reform – one of the most important and controversial provisions in American law – had roots in the public outrage to Kreuger's collapse. As the Pecora Commission and other investigations unfolded, the public reaction to the securities practices of Kreuger led directly to the implementation of new regulations on Wall Street. On this, Partnoy is plain-spoken: "Whatever one thought of the 1930s securities laws, it was undeniable that they were a reaction to Ivar. . . . Simply put, without Ivar Kreuger, modern securities regulation and litigation would not exist."

Partnoy's well-researched book both entertains and informs. This work couldn't have come out at a better time.

FAT CAT


Ken Lewis

"Bank of America CEO Ken Lewis just doesn't get it. The era of greed and irresponsibility is over," said Michael Whitney of the Service Employees International Union ("SEIU") in a recent public message.

Lewis, Bank of America's CEO and President, is responsible for the bank's takeover of distressed Merrill Lynch for $50 billion. Unfortunately, Lewis failed to notice that Merrill Lynch had an additional $15 billion in unreported losses on its books. Lewis also did not seem to mind that Merrill Lynch subsequently handed out an estimated $4 billion in executive bonuses immediately before receiving a $10 billion bailout from the government.

Lewis is no stranger to corporate largesse. In 2007, the CEO earned total compensation of over $20 million, which included a base salary of $1.5 million, a cash bonus of $4.25 million, stock grants of $11 million, and exercised stock options amounting to approximately $3.4 million.

Currently, Lewis is the subject of both U.S. Securities and Exchange Commission and New York civil actions. New York Attorney General Andrew Cuomo is weighing charges against Lewis after citing his alleged failure to disclose material information to Bank of America shareholders related to the Merrill Lynch takeover.

CALENDAR
of Upcoming Events

October 3-7, 2009

National Coordinating Committee for Multiemployer Plans ("NCCMP")
2009 NCCMP Annual Conference

Caesars Palace
Las Vegas, NV

The NCCMP legislative conference is dedicated exclusively to the advocacy and protection of multiemployer plans, their participants and their families.

For more information, visit: www.nccmp.org

October 8-9, 2009

Asia Pacific Association for Fiduciary Studies
9th Annual Pacific Region Investment Conference

Renaissance Makati City Hotel
Manila, Philippines

Featured Speaker: **John J. Rice**, Coughlin Stoia Geller Rudman & Robbins LLP

This conference bridges Wall Street to the Asia Pacific region and provides members with meaningful educational forums that cover the most current and fundamental understanding of their roles as fiduciaries, focusing on regional specific issues and needs.

For more information, visit: www.apafs.org

October 13, 2009

Institute for International Research
7th Annual Local Government Pension Investment Forum 2009

Jumeirah Carlton Tower
London, U.K.

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

Many of the U.K.'s largest pension funds will attend this forum which discusses the latest developments in Local Government Pension Scheme investment rules and provides case study experiences from leading local government pension funds.

For more information, visit: www.iir-events.com

October 16, 2009

SMU Law Review Association
17th Annual SMU Corporate Counsel Symposium

Omni Mandalay
Dallas, TX

Featured Speaker: **James I. Jaconette**, Coughlin Stoia Geller Rudman & Robbins LLP

This symposium will include discussions from attorneys, general counsel, academics, and judges on the most current issues in corporate law including plaintiffs' counsel's perspective on securities litigation.

For more information, visit: www.smu.edu/lra

October 27, 2009

Information Management Network
The 5th Annual North East Public Employee Retirement Systems Forum

The Colonnade Hotel
Boston, MA

Featured Speaker: **Randi D. Bandman**, Coughlin Stoia Geller Rudman & Robbins LLP

This forum brings together public pension funds and investment consultants from all over the north east region and will cover pension management strategies, including topics on portfolio management, investment strategies, new asset classes, changes in the U.S. economy and legislation that affects public funds and their beneficiaries.

For more information, visit: www.imn.org

November 8-11, 2009

International Foundation of Employee Benefit Plans
55th U.S. Annual Employee Benefits Conference

Orange County Convention Center
Orlando, FL

This conference is designed to meet the specific needs of multiemployer and public sector plan trustees and administrators, attorneys, accountants, actuaries, investment managers and others who provide services or who are involved in the overall management and administration of benefit trust funds.

For more information, visit: www.ifebp.org

November 11-13, 2009

Professional Liability Underwriting Society ("PLUS")
2009 PLUS International Conference

Sheraton Chicago Hotel & Towers
Chicago, IL

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

This conference will provide information on significant United States Supreme Court decisions affecting securities class action lawsuits and discuss the impact these rulings have had on the number and types of cases being filed; dismissals being sought and granted; the types, sources, and determination of damages being claimed; and which defenses may most effectively be utilized for these claims in the future.

For more information, visit: www.plusweb.org

November 20, 2009

American Bar Association
The 13th Annual National Institute on Class Actions

Willard InterContinental
Washington, D.C.

Featured Speaker: **Bonny E. Sweeney**, Coughlin Stoia Geller Rudman & Robbins LLP

The agenda will examine issues concerning arbitration and class action waivers, recent developments in the standards for certifying a class, and advice for both plaintiffs and defense counsel on settling class actions.

For more information, visit: www.abanet.org

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