Robbins Geller Rudman & Dowd LLP

Corporate Governance Bulletin

4th Quarter 2010

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DEPARTMENTS

Phil Angelides: Lessons for Institutional Investors

Phil Angelides knows about the power of active institutional investors. As former Treasurer of the State of California, Angelides served on the boards of two of the nation's largest pension funds, including the California Public Employees' Retirement System (CalPERS), and his tenure was marked by significant strides toward increased shareowner action and governance improvements.

These days, as Chairman of the Financial Crisis Inquiry Commission (FCIC), Phil Angelides has been tasked with diagnosing the root causes of the recent financial crisis that has decimated public fund assets around the globe. Not surprisingly, corporate governance experts have cited "weak and inadequate" shareholding as a contributor to the current financial meltdown. As the Commission's chair, Angelides spends his time grilling Wall Street executives and traders and calling institutional investors to arms in the fight to preserve and defend the value of investments through active and alert ownership.

Long before his appointment to the 10-member Commission, which includes **Byron S. Georgiou**, Of Counsel to Robbins Geller Rudman & Dowd LLP, and **Brooksley Born**, the former chair of the Commodity Futures Trading Commission, Angelides had earned a reputation as an advocate of active ownership by public funds. As California's State Treasurer, a position he held from 1999 to 2007, Angelides served on the board of CalPERS as well as CalSTRS, the California State Teachers' Retirement System. These California pension funds are two of the largest institutional investors in the country, with over $346 billion invested. Transparency, accountability and a socially conscious focus were the hallmarks of Angelides' leadership. Long before the recent Wall Street-led meltdown, Angelides foresaw the hazard of dealing with risky financial institutions. In 2002, Angelides pushed California's public funds to deal only with brokerages who did not intermingle their investment advice with their sales departments, which earned Angelides praise from corporate governance experts.

Phil Angelides, as well as the CalPERS board, has demonstrated that shareholder activism goes hand in hand with protecting and adding to shareowner value – regardless of whether the market is up or down. According to a *Journal and Finance* report issued by CalPERS, "[T]he evidence indicates that shareholder activism is largely successful in changing governance structure, which ultimately results in a statistically significant increase in shareholder wealth." (Michael P. Smith, *Shareholder Activism by Institutional Investors: Evidence from CalPERS*, Journal of Finance, March 1996.)

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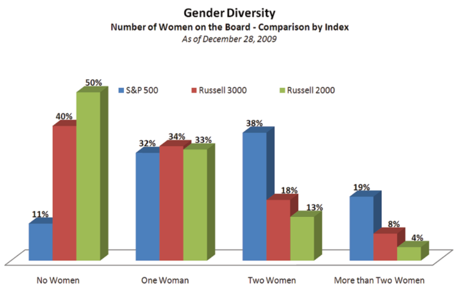
Uneven Progress: Female Directors in the Russell 3000

Despite studies demonstrating that companies with female board members have stronger financial performance and calls from institutional investors for an increase in gender diversity in corporate boardrooms, there continues to be a dearth of female directors in the United States. Moreover, when women do serve on corporate boards, they are unlikely to hold key leadership positions within the governance structure. A report published recently by The Corporate Library explores the prevalence of female directors among the companies in the Russell 3000 index, as well as the leadership positions held by women on those boards.

An examination of over 30,000 board seats in the Russell 3000 reveals that female board participation in the United States is still in its early stages, and depends heavily on company size. As shown in the chart below, larger companies are much more likely to have at least one woman serving on the board. The vast majority of the companies in the S&P 500 (89 percent) have at least one female director, and more than half of the S&P 500 companies have more than one. The picture is dramatically different, however, for the broader Russell 3000 index, where only about a quarter of the companies have more than one woman serving on the board. When the Russell 2000 is examined, the results are even more striking: half of these smaller companies have no female directors at all.



Note: sample sizes may differ from the number of companies in the name of the index because of additions and deletions due to corporate actions and other circumstances.

Clearly, the practice of ensuring gender diversity on the board has not been thoroughly embraced in the smaller companies in the United States. This is probably in part because these companies do not receive as much scrutiny as the largest firms from the groups promoting gender diversity in the boardroom, and consequently their boards have not given the issue much thought. The new SEC rules requiring boards to disclose their approach to considering diversity in director nominations may prompt more of these companies to consider the issue, and possibly to change their approach.

Annalisa Barrett
Senior Research Associate,
Board and Governance Practices
The Corporate Library

Even though the companies in the S&P 500 index seem to have heeded the advice to add women directors, there is still a lack of commitment to women's full participation, as evidenced by the dearth of women in leadership roles on these boards. As of March 2010, there were only 14 S&P 500 companies with female chairs of the board – in other words, less than three percent of the largest U.S. companies had a woman leading their boards. Most of these were companies where the chair was also the CEO.

Although more common than female board chairs, women who chair key board committees still only exist in low numbers at S&P 500 companies. Only 45 of these companies had women chairing their compensation committees; 58 had female audit committee chairs; and 75 had a woman leading their nominating committees as of March 2010. These positions are among the most influential on the board because they typically set the agenda for the committee meetings and provide the reports about the committee's work and recommendations back to the entire board.

While gender diversity in the boardroom has grown, gender parity – measured both by absolute numbers and by the levels of responsibility given to women – is still far out of reach. This is true even at the largest companies, and women are not represented at all at many smaller companies. To remedy this situation, a broader pool of female director candidates should be developed, so that there are more women ready and willing to serve on corporate boards. Once women are on the board, they must be given equal opportunity to serve in the positions of leadership and influence, such as chair of the board or of key committees.

This article was authored by Annalisa Barrett of The Corporate Library. Barrett currently oversees The Corporate Library's research on board and governance practices and produces research and reports on board composition, director pay, and other governance practices. In 2008, Ms. Barrett was named one of the first "Rising Stars of Corporate Governance" by the Millstein Center for Corporate Governance and Performance at the Yale School of Management. She holds an M.B.A. with distinction from the University of Michigan Business School.

The Future of Corporate Reform – The Corporate Library's 2010 Public Funds Forum

Two years into the global financial crisis, public funds are mobilizing to reclaim their power to mend critical weaknesses in the regulation of U.S. capital markets. After suffering recent devastating losses, institutional investors have realized that they cannot afford to stay on the sidelines while the next crisis brews. At a recent conference in Laguna Beach, California, representatives from public funds joined with a diverse panel, including CEOs, media luminaries and a former Secretary of State, to share knowledge and shape the direction of corporate reform.

Following opening remarks by **Robert A.G. Monks**, one of the pioneers of shareholder activism, former *NBC Nightly News* anchor **Tom Brokaw** delivered his perspective on the issues that are shaping the future. Berkshire Hathaway Chairman **Warren Buffett** set the tone for the conference in an interview with **Nell Minow** of The Corporate Library. By turns humorous and stern, the "Oracle of Omaha" singled out CEOs and directors of companies for special treatment, citing the example of Berkshire Hathaway, which does not shield its directors or officers from their actions. "If we screw up, we deserve a lot of downside… [as a director] you are a fiduciary for a lot of people." In regards to the officers and directors of bailed-out corporations and banks that brought the financial system to the brink, Buffett was particularly severe: "I think that the directors should pay a very significant penalty…and I don't think it should be insurable."

The conference featured a variety of other panelists, including **Ralph V. Whitworth**, founder of Relational Investors, California State Treasurer **Bill Lockyer**, and Georgia Attorney General **Thurbert Baker**, who echoed the call for board reform and accountability for directors. Conference participants shared information about "best practices" and new tools that can help ensure better governance in the future, including shareowner proxy access to affect corporate boards, enacting legislative changes that strengthen shareowner rights, and aligning compensation practice with shareowner interests. Both private and public legal actions have been successful in winning permanent governance improvement, a trend that continues to be of increased importance. Two members of the Financial Crisis Inquiry Commission, Chairman **Phil Angelides** and Commissioner **Byron S. Georgiou**, also Of Counsel at Robbins Geller Rudman & Dowd LLP, updated participants on what the Commission has learned as it heads toward reaching its conclusions, and how revelations about the causes of the recent crisis provide actionable lessons for fiduciaries. Former U.S. Secretary of State **Condoleezza Rice** addressed how ongoing global developments may affect public funds and offered participants an overview of international affairs impacting the current financial market.

More and more stakeholders in public funds now realize that their substantial investments give them not only the power, but also the responsibility to help take the lead in shaping corporate governance. Similarly, shareholders have also recognized that greater engagement in crafting new policy forms part of their fiduciary responsibility to protect fund assets. With a concentration of industry and academic experts, The Future of Corporate Reform 2010 Public Funds Forum provided a new outlook for the future and new momentum to the corporate governance movement.

For information on The Corporate Library's 2011 Public Funds Forum, please visit www.TCLconferences.com.

News Brief

Robbins Geller Partner Named to *NACD Directorship's* Top 100

In September, the 10,000-member National Association of Corporate Directors' *NACD Directorship* magazine named Robbins Geller Rudman & Dowd LLP partner **Michael J. Dowd** to their "Directorship 100." The list is a "veritable who's who of the American corporate governance community," and is intended to acknowledge those people who have had a profound impact and the greatest influence on corporate boardrooms and corporate governance.

Michael J. Dowd
Partner, Robbins Geller Rudman & Dowd LLP

Dowd was recognized by *NACD Directorship* as an "attorney that can send shivers down the spines of directors." Dowd's recent success in the trial against Household International (now part of HSBC) and his leadership of litigation teams in cases against UnitedHealth (recovery of nearly $1 billion), AOL Time Warner, WorldCom, Qwest, Vesta and others was also highlighted by the magazine. Dowd's most recent honor follows his being named an "Attorney of the Year" by *California Lawyer* magazine in 2010, and also as one of the *Daily Journal's* "Top 100 Lawyers" in September 2009.

The majority of the 100 named by the magazine consisted of shareholder/governance activists, prominent legislators like Senators Chris Dodd, Richard Shelby and Charles Schumer, Congressmen Barney Frank and Henry Waxman, President Obama and high-ranking members of the executive branch, and leaders of the business and investing community, including Warren Buffett, Steve Jobs and Steven Ballmer. Active litigators such as Dowd were a rarity on the list.

Litigation Update

Motion to Dismiss
Subprime Deception at CIT

In a significant ruling for defrauded investors of CIT Group, Inc., the Honorable Barbara S. Jones of the United States District Court for the Southern District of New York issued an order denying defendants' motion to dismiss on June 10, 2010.

CIT is a commercial and consumer finance company that recently restructured after filing for bankruptcy in November 2009. Lead plaintiff **Pensioenfonds Horeca & Catering** and named plaintiff **Don Pizzuti** allege that during the class period, defendants made false and misleading statements and omissions about CIT's subprime home lending and private student lending businesses and their impact on CIT's financial results. According to the complaint, defendants failed to disclose the known risks and impairments associated with both CIT's subprime home loans and private student loans to students of the sham Silver State Helicopters LLC vocational school.

Based on corroborated witness accounts, as well as defendants' admissions, plaintiffs allege that defendants exposed CIT to significant and known risks in both the home loan and student loan portfolios by providing subprime and non-guaranteed private student loans. Rather than disclosing these risks in CIT's public financial statements, defendants caused CIT to conceal them, which allowed defendants and CIT to complete a $690 million preferred stock offering, stave off dividend restrictions, protect CIT's credit and debt ratings, and collect over $35.7 million in performance bonuses and insider trading proceeds. As the truth underlying defendants' false statements began to surface, investors in CIT suffered hundreds of millions of dollars in damages, and CIT's stock price plummeted from a high of $61 per share during the class period to under $16 per share on March 6, 2008 – a 74% decline in little over seven months. CIT's stock price has never recovered.

In her June 10 order, Judge Jones held that plaintiffs' allegations sufficiently pled claims under the Securities Exchange Act of 1934 and the Securities Act of 1933, meeting the stringent pleading standards set forth in the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995. The court notably recognized plaintiffs' allegations that defendants "knew about CIT's lowered lending standards – and, in some cases, affirmatively approved them – while publicly touting the company's 'conservative' and 'disciplined' approach to subprime lending." The court also noted that "the deterioration of CIT's home loan and student loan portfolios, while [defendants were] making public statements indicating that CIT was outperforming the market and would suffer only minimal losses" sufficiently created a strong inference of scienter. Additionally, the court stated that where defendants affirmatively characterize lending standards as "conservative," the failure to disclose the lowering of such standards is actionable.

The ruling represents a significant victory in cases arising out of the subprime economic crisis by finding that defendants' false and misleading statements about the company's lending practices were at the very least reckless in light of the available truth contradicting their statements.

Attorneys **Tor Gronborg**, **Patrick W. Daniels**, **Thomas E. Egler**, **Robert R. Henssler**, **Jr.**, **Brian O. O'Mara** and **Francis A. DiGiacco** of Robbins Geller Rudman & Dowd LLP were responsible for litigating the case and obtaining this victorious ruling.

In re CIT Group, Inc. Sec. Litig., No. 08 Civ. 6613 (BSJ), 2010 U.S. Dist. LEXIS 57467 (S.D.N.Y. June 10, 2010).

Motion to Quash
Motorola: Sox Goes with Suit

On June 29, Judge Amy J. St. Eve of the United States District Court for the Northern District of Illinois denied KPMG LLP's motion to quash plaintiffs' subpoena seeking documents concerning the Public Company Accounting Oversight Board's ("PCAOB") 2007 inspection of KPMG's audits. The documents concerned certain intellectual property transactions executed by defendant Motorola, Inc. during the July 19, 2006 through January 4, 2007 class period.

Judge St. Eve's opinion was the first issued by a federal court regarding the reach of the Sarbanes-Oxley Section 105(b)(5)(A) evidentiary privilege with respect to documents and information relating to PCAOB inspections of a company's auditors. As such, the court's opinion is highly persuasive authority that may be utilized by future plaintiffs in seeking the production of evidence supporting allegations of an issuer's failure to comply with U.S. Generally Accepted Accounting Principles, as well as evidence of an auditor's failure to comply with PCAOB accounting standards (formerly known as Generally Accepted Accounting Standards or GAAS).

In *Motorola*, plaintiffs allege that defendants misled the investing public regarding the development and commercial viability of the company's 3G mobile handsets and engaged in two eleventh-hour sham intellectual property transactions with its key chipset suppliers in mid-2006 to conceal from investors that Motorola's 3G product portfolio was suffering hundreds of millions of dollars of earnings losses per quarter. During the course of the continued investigation of the alleged fraud, plaintiffs discovered that in or around April 2007, the PCAOB had inspected KPMG's audit workpapers, and concluded that the Big 4 auditor had failed to document vendor specific objective evidence of fair value of the 3Q06 intellectual property deals. Plaintiffs also found that Motorola had failed to disclose how it accounted for such transactions with its significant vendors. Thereafter, plaintiffs served a subpoena on KPMG, seeking documents and information regarding the PCAOB's 2007 inspection of KPMG's audit procedures of the 3Q06 intellectual property transactions.

After serving the subpoena, KPMG's counsel, Sidley Austin, LLP, filed a motion to quash. In filing its motion, KPMG, as well as its amicus Center for Audit Quality ("CAQ"), argued that the Sarbanes-Oxley Section 105(b)(5)(A) evidentiary privilege banned any use of any information "related to" or "concerning" the PCAOB inspection. KPMG and CAQ went as far as to contend that the identity of "Issuer C" (*i.e.*, Motorola) in the public PCAOB 2007 Inspection Report was confidential pursuant to the evidentiary privilege. In denying defendants' motion to quash, Judge St. Eve found that KPMG's position, that all information "related to" or "concerning" the PCAOB inspection is privileged, was "unsupported" by the text of the statute. The court held that any information regarding a PCAOB inspection in the possession, custody or control of an auditor that was not "prepared . . . specifically for the [PCAOB]" is discoverable and may be utilized as evidence in court proceedings. KPMG did not challenge Judge St. Eve's opinion and produced responsive materials shortly after the issuance of the court's order. In addition, after the court issued its opinion, KPMG took no position on whether Motorola's identity as "Issuer C" was confidential, and therefore the court ordered the briefing, which identified Motorola as "Issuer C," to be unsealed for public consumption.

The litigation team at Robbins Geller Rudman & Dowd LLP, consisting of **Tor Gronborg**, **Susan Taylor**, **Trig Smith**, **Jennifer Gmitro** and **Ivy Ngo**, was responsible for obtaining this decision of *first impression*.

Silverman v. Motorola, Inc., No. 07 C 4507, U.S. Dist. LEXIS 81671 (N.D. Ill. June 29, 2010).

Ninth Circuit Appeal Trial Court Ruling Overturned in Apollo Group, Inc.

On June 23, **Len Simon**, Of Counsel to Robbins Geller Rudman & Dowd LLP, secured a significant appellate victory for investors in *In re Apollo Group, Inc. Securities Litigation* when the Court of Appeals for the Ninth Circuit unanimously overturned a trial court decision, which had voided a $200 million jury verdict for a class of defrauded investors. The Ninth Circuit restored the verdict in full after examining the principal issue in the case, loss causation, and specifically, how much and what type of evidence was required to support the jury's verdict that the decline in the stock price was caused by defendants' wrongdoing.

A federal district judge in Arizona had allowed plaintiff **Policemen's Annuity and Benefit Fund of Chicago's** case to go to a jury trial, despite defendants' protestations that, because the stock did not drop precisely when the first evidence of fraud became public, the case was invalid. The case was tried by another law firm and the jury found for plaintiffs, awarding each investor $5.55 per share, for a total recovery of approximately $200 million. After the jury issued its verdict, defendants argued that the stock price movement did not match up well enough to the disclosures of new information to support the verdict. The trial court agreed and held that the verdict was unsupportable and granted judgment to defendants, leaving plaintiffs empty-handed.

Trial counsel asked Mr. Simon to handle the appeal, and after briefing and argument by Simon, the Ninth Circuit disagreed entirely with the district court's and Apollo's reasoning. The court held that the jury could reasonably have found that the research reports relied upon by plaintiffs provided "additional or more authoritative fraud-related information" than the prior media articles, and could have caused the stock drop and generated legally cognizable damages.

The Ninth Circuit also denied Apollo's request for a new trial, holding that the exclusion of certain evidence was proper, and that the jury instructions on loss causation and damages were accurate. The Ninth Circuit further denied Apollo's request for *remittitur*, which would have reduced the damages per share. The appellate court found that the jury could reasonably have credited plaintiffs' expert witness, who testified to the $5.55 per share damages, and neither the expert nor the jury needed to limit the damages to those caused on one day, by one disclosure, since there were several related partial disclosures.

According to Simon, "The Ninth Circuit's decision restores some common sense to the concept of loss causation, and also restores respect for jury verdicts. It is unfortunate when ordinary Americans like policemen lose pension money, and ordinary Americans sitting on a jury try to restore it, only to be trumped by a conservative judge second-guessing their decisions. The Court of Appeals righted this wrong."

In re Apollo Group, Inc. Sec. Litig., No. 08-16971, Memorandum (9th Cir. June 23, 2010). ■

For more information on these and other cases, check out our website at rgrdlaw.com

CLAYWORTH: AMICUS BRIEF MOVES COURT

On July 12, the California Supreme Court issued its decision in *Clayworth v. Pfizer, Inc.* *Clayworth* involved allegations that pharmaceutical manufacturers had conspired to fix prices. The plaintiffs are retail pharmacies seeking to halt the price fixing and recover overcharges. The pharmacies had already passed on the higher costs to the ultimate purchasers. The case revolved around an antitrust issue concerning whether the pass-on defense precluded the retail establishments from obtaining relief. Although principally brought under California's antitrust laws, plaintiffs also asserted a claim under the Unfair Competition Law (UCL).

The Court of Appeal applied the pass-on defense and held for the drug manufacturers. In a brief few sentences, devoid of any analysis, the appellate court also held that the plaintiffs had no UCL claim, because to obtain standing under the new UCL rules, plaintiffs had to show (under the Proposition 64 initiative passed by California voters in 2004) that they had been injured "in fact" and had "lost money or property" as a result of the wrongdoing. For the Court of Appeal, this meant that plaintiffs had to show they were "entitled to restitution" – which the appellate court held they were not, because they had already recouped the overcharges from consumers. In so ruling, the appellate court followed a troubling trend among several of the intermediate California appellate courts.

The parties' briefing focused on the antitrust issues, not the UCL claim. On behalf of the Consumer Attorneys of California (CAOC), Robbins Geller Rudman & Dowd LLP was brought in to file an amicus brief addressing the Court of Appeal's flawed UCL analysis. It turned out that this amicus brief was the only one that addressed these issues in any detail for the Supreme Court.

In a unanimous opinion, the California Supreme Court reversed the lower court's decision. On the antitrust question, the court first held, adopting the federal approach, that the pass-on defense generally does not apply in California. As to the UCL issues, the court also reversed, holding that (1) standing and remedies are different inquiries and one does not need to be entitled to restitution to have UCL standing; and (2) the right to seek injunctive relief is independent of the right to seek restitution, and one may have standing to seek injunctive relief even if restitution may ultimately not be deemed appropriate, so long as one can show "lost money or property" – which happened in this case the moment the retailers paid more for the drugs than they should have, regardless of whatever they may have done subsequent to that time to cushion their losses.

In reaching its conclusion, the California Supreme Court essentially adopted the analysis set forth in the Robbins Geller Rudman & Dowd LLP amicus brief on the UCL issue. This ruling has already been touted in the legal press as advancing the interests of consumers and businesses alike, whose meritorious claims frequently have been stymied in the lower courts by unduly restrictive interpretations of Proposition 64's new UCL standing requirements.

Clayworth v. Pfizer, Inc., 49 Cal. 4th 758 (2010).

Institutional Investors continued from page 1

"Without informed and empowered shareholders playing their part, the corporate system simply has no equilibrium."
-Robert A.G. Monks

Corporate governance expert Robert A.G. Monks shares these sentiments and has praised the initiatives taken by Angelides and CalPERS, noting that its Corporate Governance Investment Program "follows an active engagement strategy to unlock value through operational, strategic, and governance changes." (Robert A.G. Monks, *The Return of the Shareholder.*)

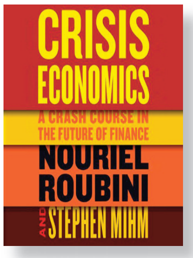
Another hallmark of Angelides' leadership has been the pursuit of environmental, social and governance (ESG) goals through legal actions and targeted investments. Both CalPERS and CalSTRS continue to take the opportunity to seed investments in energy efficiency and green technology. This "activist investor" approach pioneered by Angelides and others has produced dividends in furtherance of ESG goals, which should serve as a lesson for BP investors.

From tense hearing rooms in Washington, D.C. to the foreclosure mills of Sacramento and Bakersfield, California, Angelides has sought out the people and the stories that illuminate the reality of the financial meltdown. Leading multiple public hearings and analyzing thousands of documents, Angelides has proven himself worthy of the tradition of the Pecora Commission, which led the revealing inquiry into the financial shenanigans that underpinned the Great Depression. Many investors cheered as Angelides skillfully interrogated executives and traders from Goldman Sachs, including its Vice President David Viniar (see *Eye on Wall Street*, p7). The FCIC is due to publish its findings in a report on December 15, 2010.

Phil Angelides
Chairman, Financial Crisis Inquiry Commission

As recent events have taught us, one important defense against future cycles of massive losses to public funds and retirement schemes is active and alert ownership. Recently, more institutional investors and public funds are following this trail, blazed by Angelides, by taking a more active and public role to defend the value of their investments. ■

Recommended Reading



Crisis Economics: A Crash Course in the Future of Finance

Nouriel Roubini and Stephen Mihm
Penguin Press HC, 2010

In the wake of the recent financial crisis, we hear an oft-repeated refrain: "No one saw it coming." This series of unfortunate events is said to represent a rare outlier, a freak event, a "Black Swan." Politely begging to differ is Nouriel Roubini, whose recently published book, *Crisis Economics*, imparts the lesson that financial crises are more the rule than the exception, and that this crisis was foreseeable down to the details.

Roubini's remarkably prescient 2006 speech to the International Monetary Fund was reported by the *New York Times*: "[I]n the coming months…the United States was likely to face a once-in-a-lifetime housing bust, an oil shock, sharply declining consumer confidence and, ultimately, a deep recession,...homeowners defaulting on mortgages, trillions of dollars of mortgage-backed securities unraveling worldwide and the global financial system shuddering to a halt."

At the time Roubini gave that unpopular prediction, things seemed rosy. The Federal Reserve's Alan Greenspan had held interest rates low, and "financial innovation" spread everywhere. By 2006, just about every asset class imaginable had become securitized, repackaged, swapped, and derivatized, from credit card debt to aircraft leases. However, the combination of easy money and lax oversight helped inflate a series of bubbles that culminated in the collapse of an overheated housing market. Authors Roubini, a professor of economics at New York University, and Stephen Mihm, an economic history professor at the University of Georgia, carefully place this crisis in the context of similar boom and bust cycles over the last 300 years. As the authors put it: "[C]rises are not black swans but white swans: the elements of boom and bust are remarkably predictable." The curious thing is how quickly markets (and human beings) seem to forget this, and as the next impossibly large bubble begins to inflate, nod in agreement, insisting that "this time it's different."

The latest financial bust (the 12th post-war recession) brings the novel element of more complex financialization into the picture, which may have dramatically increased the size and scope of the contraction. The authors narrate how, beginning in the 1980s, many of the sensible rules governing securities passed in the aftermath of the Great Depression banking catastrophe were eroded or overturned, including the 1999 repeal of the Glass-Steagall Act, which separated investment banking from commercial. Despite massive warning signs, such as the derivatives-triggered bankruptcy of Orange County and the harrowing collapse of the PhD-run hedge fund LTCM, the "punch bowl" stayed out and the party kept going.

The remedies that Roubini and Mihm propose follow from their diagnosis of what caused the crisis. First, compensation on Wall Street must be realigned with incentives that benefit not just the short term interests of traders and executives, but also the long term interests of shareholders. Bonuses could be culled from a 5-year running pool of profits, rather than based on a single quarter or fiscal year. The compensation to ratings agencies requires a wholesale makeover (easier said than done), and opaque derivatives such as CDOs need to be brought out into the light of day and traded on exchanges. The securitization of assets has useful purposes, but Roubini recommends the securitization pipeline should be scrutinized closely at every step of the way. Credit default swaps, which are essentially insurance contracts on things neither the buyer nor seller owns, should be subject to "rigorous margin and collateral requirements." "Too big to fail" means a bank should probably be reduced to non-catastrophic size. Grimly, the authors acknowledge that far too little has been done, and the stage remains set for a future crisis, possibly more disastrous than this one. These reforms and others will not be easy to implement, but Roubini and Mihm are resolute in their conclusion that "we will plant the seeds of an even more destructive crisis" if this opportunity to act is squandered.

EYE ON WALL STREET: David Viniar

The Financial Crisis Inquiry Commission, co-chaired by Phil Angelides and Bill Thomas, recently hauled Goldman Sachs (GS) Chief Financial Officer David Viniar to its hearing room and inquired about the role that derivative instruments played in GS's business operations preceding the financial crisis. Viniar's response? "We don't have a derivatives business."

Professing ignorance about his company's basic bookkeeping operations, Viniar went on to testify under oath that as far as he knew, his Wall Street investment bank did not separately track revenues, profits and losses from its immense and highly profitable derivatives operations.

Viniar's answers left the 10-member Commission "highly skeptical" and "incredulous" – with good reason. A review reveals that GS holds over $40 trillion in notional value of derivatives on its books, and a huge percentage of its annual profits are due to its derivatives gambles. In fact, GS pocketed nearly $13 billion when its credit default swap bets placed with the collapsed insurance giant AIG were backstopped by a taxpayer-funded bailout to the tune of $85 billion. It seems Viniar – and GS – may not wish to reveal much about this and other lucrative trading schemes that may have leveraged up the price of oil and commodities in past years. Ignorance is apparently bliss: CFO Viniar took home a $57.5 million paycheck in 2007.

Calendar of Upcoming Events

October 14-15, 2010

Asia Pacific Association for Fiduciary Studies
10th Annual Pacific Region Investment Conference

New World Hotel
Manila, Philippines

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

This conference brings together investment experts and finance professionals in 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 18, 2010

Information Management Network ("IMN")
6th Annual North East Public Employee Retirement Systems Forum (NEPERS)

Seaport World Trade Center
Boston, Massachusetts

This conference brings together public pension funds and investment consultants from all over the north east region of the United States. The annual forum aims to provide public pension systems a forum to share experiences and information related to pension management strategies. Topics to be discussed include portfolio management, investment strategies, new asset classes, changes in the U.S. economy, and legislation that affects public funds and their beneficiaries, which combine to provide a dynamic conference.

For more information, visit: www.imn.org

October 22, 2010

Daily Business Review
Securities Law Roundtable

InterContinental Miami
Miami, Florida

Featured Speaker: **Paul J. Geller**,
Robbins Geller Rudman & Dowd LLP

This roundtable program will discuss the impact of the U.S. Supreme Court's recent decision in *Morrison v. National Australia Bank* on securities class actions in the U.S., federal securities litigation, the effects of the Dodd-Frank Wall Street Reform and Consumer Protection Act on securities litigation, and corporate governance and executive compensation in the age of financial reform.

For more information, visit: www.dailybusinessreview.com

October 29, 2010

Institute of Continuing Legal Education in Georgia
16th Annual Securities Litigation and Regulatory Practice Seminar

The Westin Buckhead
Atlanta, Georgia

Featured Speaker: **Paul J. Geller**,
Robbins Geller Rudman & Dowd LLP

This seminar will focus on strategies for prosecuting securities fraud class actions by discussing the evolving world of pleading standards, the U.S. Supreme Court decision in *Morrison v. National Australia Bank*, developments in loss causation, and the impact of Dodd-Frank on disclosure policy and governance and related ethical considerations.

For more information, visit: www.iclega.org

November 14-17, 2010

International Foundation
56th U.S. Annual Employee Benefits Conference

Hawaii Convention Center
Honolulu, Hawaii

This annual 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 service or who are involved in the overall management and administration of benefit trust funds in the United States by providing the essential tools to fulfill fiduciary obligation, and understand requirements of new legislation and recent regulations.

For more information, visit: www.ifebp.org

November 21-24, 2010

International Foundation
43rd Annual Canadian Employee Benefits Conference

Hilton San Diego Bayfront
San Diego, California

Featured Speaker: **Darren J. Robbins**,
Robbins Geller Rudman & Dowd LLP

This annual 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 service or who are involved in the overall management and administration of benefit trust funds in Canada.

For more information, visit: www.ifebp.org

December 1-3, 2010

PIRC
The 15th Annual Local Authority Pension Fund Forum Conference

Bournemouth Highcliff Marriott Hotel
Bournemouth, England

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

This annual conference is designed for, and attended by, local authority delegates – treasurers, pension investment officers, and elected members. The conference focuses exclusively on pension investment, making it very topical in today's uncertain investment climate.

For more information, visit: www.lapfforum.org

December 11-14, 2010

Institute for International Research (IIR)
The 19th Annual Public Fund Boards Forum

Grand Hyatt
San Francisco, California

This is a very special year for this conference, as IIR incorporates their Guns and Hoses conference into the program. Pension funds are still reeling from past economic crises and recent criticism in the public sphere. Since fiduciary responsibilities and ethical questions are becoming even more complicated, the agenda is designed to give trustees, administrators, consultants, experts and advisors the tools needed to fulfill duties, protect beneficiaries and grow fund assets.

For more information, visit: www.iirusa.com

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